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W.A.No3215 of2025 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2026

DELIVERED ON : 20.08.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.Nos.3215 and 3216 of 2025,
C.M.P.Nos.26214, 26209, 26211, 26212, 26216, 26199, 26200,
26201, 26202, 26203 of 2025; 67, 521, 992 and 1003 of 2026

W.A.No.3215 of 2025:

DP Jain Bangalore-Chennai Expressways
Private Limited
(A Company Registered under
Companies Act 2013)
Rep by Authorised Signatory, Gautam Sharma,
Shop No.L8, Himalaya Accord Apartments
Opp Law College, Amravati Road,
Nagpur - 440 010.

Appellant(s)

Vs

1. Union of India
Through its Secretary, Ministry of Power,
Sharam Shakthi Bhawan, Rafi Marg
New Delhi - 110 001.
2. Ministry of Road, Transport and Highways
(MoRTH)), Through its Secretary
Government of India, Transport Bhawan,
1, Parliament Street, New Delhi-001.



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3. Ministry of Environment, Forest and Climate Change (MoEF and CC), Through its Secretary, Indira Paryavaran Bhawan, Jor Bagh Road, New Delhi-03.
4. National Highways Authority of India (NHAI) Through its Chairman, Under Ministry of Road, Transport and Highways, G5 and 6, Sector 10, Dwarka, New Delhi-75.
5. NTPC Tamil Nadu Energy Company Ltd(NTECL) Vallur Thermal Power Plant, Through its Managing Director cum Chairman, Vallur Thermal Power Project, Vellivoyal Chavadi, PO Ponneri Taluk, Chennai-10 (Tamil Nadu)

Respondent(s)

WA No.3216 of 2025:

DPJ Pollachi HAM Project Private Limited
(A Company Registered under Companies Act 2013) Rep by Authorised Signatory
Gautam Sharma, 17, Rajiaxmi B No.6
Sujatha Layout, Indraprastha Nagar,
Nagpur - 440 022.

Appellant(s)

Vs

1. Union of India
Through its Secretary, Ministry of Power,
Sharam Shakthi Bhawan, Rafi Marg
New Delhi - 110 001.
2. Ministry of Road, Transport and Highways (MoRTH)),Through its Secretary
Government of India, Transport Bhawan,
1, Parliament Street, New Delhi-001.

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3. Ministry of Environment, Forest and Climate Change (MoEF and CC), Through its Secretary, Indira Paryavaran Bhawan, Jor Bagh Road, New Delhi-03.
4. National Highways Authority of India (NHAI) Through its Chairman, Under Ministry of Road, Transport and Highways, G5 and 6, Sector 10, Dwarka, New Delhi-75.
5. Mettur Thermal Power Station 1 Through its Chief Engineer Mettur Dam 6 Thoppur - Mettur Dam, Dhavani Erode Road, Salem - 636 406.
6. Tamilnadu Generation and Distribution Corporation Limited Through its Chairman, 6th Floor TANTRANSCO Building, 144 Anna Salai Chennai - 600 002.

Respondent(s)

PRAYER: Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 15.10.2025 passed by the learned Single Judge in WP Nos.19558 and 19534 of 2025.

For Appellant(s) in
W.A.No.3215/2025:

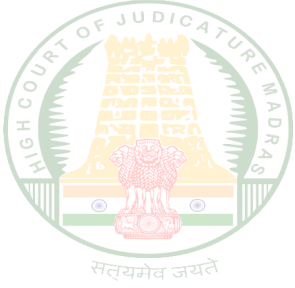
Mr.Aravind Datar
Senior Counsel
for Mr.R.Kannan

For Appellant(s) in
W.A.No.3216/2025:

Mr.Srinath Sridevan
Senior Counsel
for Mr.R.Kannan

For Respondent(s):

Mr. K.Srinivasa Murthy
Senior Panel Counsel
for R1 to R3 in both writ appeals



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Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by Mrs.S.R.Sumathy
Standing Counsel
for R4 in both writ appeals

Mr.M.Vijayan
for M/s. King and Partridge
for R5 in W.A.No.3215/2025

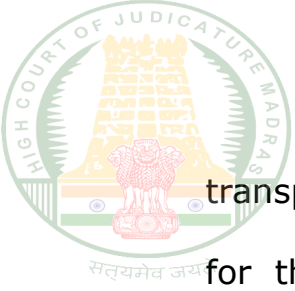
Mr.P.V.Balasubramaniam
Additional Advocate General
assisted by Mr.Arun Prasad
for R5 and R6 in W.A.No.3216/2025

COMMON JUDGMENT

THE CHIEF JUSTICE

These two writ appeals arise out of a common order dated 15.10.2025 passed by the learned Single Judge, whereby W.P.No.19558 of 2025 (filed by DP Jain Bangalore-Chennai Expressways Pvt. Ltd, the Appellant in W.A.No.3215 of 2025) and W.P.No.19534 of 2025 (filed by DPJ Pollachi HAM Project Private Limited, the Appellant in W.A. No. 3216 of 2025) came to be dismissed.

2. Since both writ petitions raised substantially overlapping questions of law concerning the obligation of Thermal Power Plants ("TPPs") to supply fly ash/pond ash free of cost and free of



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transportation to National Highway contractors executing projects for the National Highways Authority of India ("NHAI"), the two appeals were heard together and are being disposed of by this common judgment.

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3.1. W.A.No.3215 of 2025 concerns the four-laning of the Bangalore-Chennai Expressway from Km 204.500 to Km 230.000 (Arakkonam to Kancheepuram Section), awarded to the appellant by Letter of Award dated 16.09.2021, pursuant to which a Concession Agreement dated 04.02.2022 was executed with NHAI. The relevant TPP is Vallur Thermal Power Project operated by NTECL, a joint venture of NTPC Limited and TANGEDCO.

3.2. W.A.No.3216 of 2025 concerns the four-laning of the Madathukkulam-Pollachi section of NH-209, for which the Letter of Award was issued on 13.02.2019 and the Concession Agreement was executed on 05.12.2019. The relevant TPP is Mettur Thermal Power Station.

4. It is necessary, at the outset, to set out the chronology of



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notifications, circulars and office memoranda that both sides rely upon, as the entire controversy turns on their correct interpretation.

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(i) Notification dated 14.09.1999 issued by the Ministry of Environment, Forest & Climate Change ("MoEF&CC") under Section 3(2)(v) of the Environment (Protection) Act, 1986 read with Rule 5(3)(d) of the Environment (Protection) Rules, 1986, mandating use of fly ash in road construction and embankments, the obligation being cast for a period of "at least 10 years". For ease of reference, the relevant clause of the said Notification is extracted hereunder:

*"2(1) Every coal or lignite based thermal power plant shall make available ash, **for at least ten years** from the date of publication of this notification, without any payment or any other consideration, for the purpose of manufacturing ash-based products such as cement, concrete block, bricks, panels or any other material or **for construction of roads, embankments, dams, dykes or for any other construction activity.**"*

[emphasis supplied]

(ii) By amendment dated 03.11.2009, the ten-year stipulation



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contained in Para 2(1) of the 1999 Notification was deleted and replaced with an obligation to supply pond ash free of charge to Central and State road construction agencies, without a terminal date. For ready reference, the relevant portion of the said clause is reproduced hereunder:

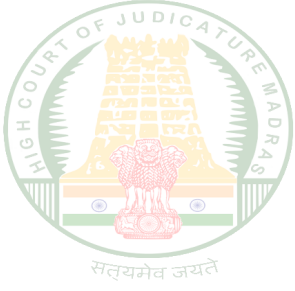
"(1) All coal or lignite based thermal power stations would be free to sell fly ash to the user agencies subject to the following conditions namely-

*(i) The pond ash should be made available free of any charge on 'as is where is basis' to manufacturers of bricks, blocks or tiles including clay fly ash product manufacturing unit(s) farmers, the Central and **the State road construction agencies**, Public Works Department and to agencies engaged in backfilling or stowing of mines. ..."*

[emphasis supplied]

(iii) By further amendment dated 25.01.2016, an additional obligation was cast on TPPs to supply fly ash free of transportation charges, within a radius of 300 kms. The relevant portion of the said amendment, reads thus:

*"(14) The coal or lignite based **thermal power plants shall within a radius of three hundred***



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kilometers bear the entire cost of transportation of ash to the site of road construction projects under Pradhan Mantri Gramin Sadak Yojna and **asset creation programmes of the Government involving construction of buildings, road, dams and embankments."**

[emphasis supplied]

(iv) MoRTH Circular dated 27.08.2018 made it the responsibility of NHAI to execute Memoranda of Understanding ("MoU") with the appropriate TPPs for supply of fly ash to contractors/concessionaires; this was reiterated by MoRTH Circular dated 23.10.2020.

(v) Notification dated 31.12.2021 was issued by MoEF&CC "*in supersession*" of the 1999 Notification, bringing the mandatory free-of-cost, free-transportation regime formally to a close, while casting the primary statutory responsibility of ensuring 100% ash utilisation upon the TPP itself, treating such 100% utilisation obligation as a "*change in law*", and providing that free supply with free transportation arises only where the TPP is otherwise unable to



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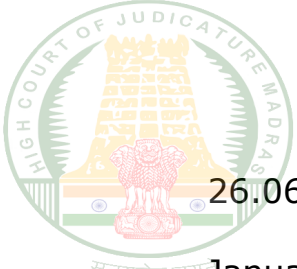
dispose of the ash and has served notice to that effect on the construction agency concerned.

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(vi) Circular dated 22.02.2022 issued by the Ministry of Power ("MoP") declared fly ash to be a "*valuable commodity*" to be auctioned through a transparent bidding process, envisaging free supply, on a first-come-first-serve basis, only as a residual option where ash remains unutilised despite auction and the user agency bears the transportation cost, the underlying object being to reduce the tariff burden on electricity consumers.

(vii) At the Minutes of Meeting of the MoP dated 14.06.2023, it was clarified that the Circular dated 22.02.2022 operates prospectively, and that all projects whose bid due date fell between 25.01.2016 and 31.12.2021 would continue to be eligible for free fly ash with free transportation, provided MoRTH furnished a list of such projects together with the quantity required, upon which MoP would issue instructions to the relevant TPP.

(viii) Pursuant to the above, an Office Memorandum dated



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26.06.2023 was issued listing projects eligible for free fly ash as on January 2023, followed by a further Office Memorandum dated 13.07.2023 issued by NHAI reiterating the obligation to supply free fly ash to projects with bid dates between 25.01.2016 and 31.12.2021. A further Circular dated 26.09.2023 was issued by MoRTH to the same effect.

(ix) Reference was made to a notification dated 01.01.2024 casting an obligation on TPPs to give notice to agencies such as NHAI regarding availability of ash.

(x) Guidelines dated 15.03.2024 issued by MoP superseded the 22.02.2022 Advisory prospectively, reiterating that the object was to maintain transparency, prevent malpractice, ensure 100% ash utilisation with least burden on electricity consumers, and directing the Appropriate Commission to scrutinise ash-related tariff expenditure.

5. The appellants had approached this Court under Article 226 of the Constitution seeking a writ of certiorarified mandamus to call



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for and quash the impugned communications of NHAI (*dated 12.09.2023 and 12.02.2024 in the case of the Bangalore-Chennai Expressway project, and the Circular of the Ministry of Power dated 22.02.2022 in the case of the Pollachi project*) as being contrary to the statutory notifications, and consequentially to direct the respective TPPs, viz., NTECL (Vallur) and Mettur Thermal Power Station to supply fly ash/pond ash free of cost and with free transportation, together with ancillary reliefs.

6. The learned Single Judge dismissed both writ petitions, principally on the finding that the obligation to supply free fly ash with free transportation was confined to a period of ten years from the 1999 Notification and was not thereafter extended; that the cost of fly ash stood built into the respective bids; that the Independent Engineer's opinion negating any obligation to supply free fly ash had gone unchallenged; and, in the case of the Bangalore-Chennai Expressway project, that the appellant had suppressed its reply to NHAI's letter dated 20.07.2021.

7.1. Mr.Arvind P. Datar, learned Senior Counsel appearing on



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behalf of the appellant in W.A.No.3215 of 2025, formulated the controversy as two-fold: (i) whether the concessionaire is entitled to free fly ash with free transportation for bids with due dates between 25.01.2016 and 31.12.2021; and (ii) who bears the responsibility for such supply.

7.2. It was submitted that a combined reading of the 1999 Notification (as amended in 2009 and 2016), the Notification dated 31.12.2021, and the clarificatory OMs dated 26.06.2023 and 13.07.2023, demonstrates that the obligation to supply free fly ash, though nominally superseded from 31.12.2021, was expressly saved and continued for all projects whose bid due date fell within the window of 25.01.2016 to 31.12.2021, a window within which the Bangalore-Chennai Expressway project (bid date 05.01.2021) squarely falls.

7.3. It was further submitted that the learned Additional Solicitor General, in the course of arguments before the Single Judge, had accepted that all projects on the prescribed list/annexure would be eligible, and that upon verification the



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Bangalore-Chennai Expressway project is found at Serial No.20 of the communication dated 04.02.2025 issued by NHAI, a concession said to be dispositive of the appeal in the appellant's favour.

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7.4. Reliance was placed on NHAI's own conduct in other fora, viz., in CWP No. 5772 of 2025 filed by NHAI before the Punjab and Haryana High Court against the State of Punjab and its Power Corporations, and in the counter-affidavit and interlocutory application filed by NHAI in SLP(C) No.10599 of 2022 pending before the Supreme Court, wherein NHAI has itself asserted, on oath, that TPPs are obliged to supply free fly ash with free transportation for projects with bid dates between 25.01.2016 and 31.12.2021, and has sought reimbursement of transportation costs. On the basis of the said stance of the NHAI, it was contended that NHAI, being "State" under Article 12 of the Constitution of India as has been by the Supreme Court in *Union of India v. Tarsem Singh*¹, it cannot approbate and reprobate by taking one position before the Punjab and Haryana High Court and the Supreme Court and a contrary position before this Court. He placed reliance on the

¹(2019) 9 SCC 304



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decisions of the Supreme Court and the High Court in *Premlata v. Naseeb Bee*²; *Basant Singh v. Janki Singh*³; and *Rika Global Impex Ltd. v. Union of India*⁴, in support of his submission that admissions made on oath in one judicial proceeding bind the deponent in other proceedings, even against different parties.

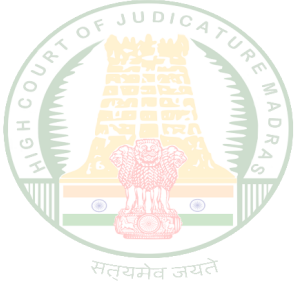
7.5. It was further submitted that the non-execution of a MoU between NHA I and the TPPs in Tamil Nadu cannot defeat what is otherwise a statutory, and not merely contractual, right.

7.6. It is also submitted that the arbitration clause in the Concession Agreement, being confined to disputes between the appellant and NHA I, cannot oust the writ jurisdiction where the reliefs sought are a certiorarified mandamus jointly against NHA I and NTECL (a stranger to the arbitration agreement) and quashing of statutory circulars, relying on the settled position that an arbitral tribunal cannot grant relief under Article 14 of the Constitution of India or in the nature of certiorarified mandamus.

²(2022) 6 SCC 585

³AIR 1967 SC 341

⁴2026 SCC OnLine Bom 2654



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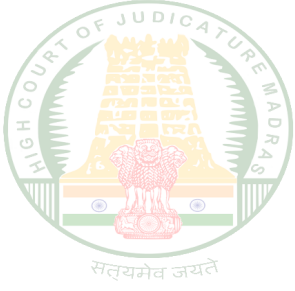
7.7. It is argued that any objection to maintainability on the ground of an arbitration clause, not having been raised at the earliest under Section 8 of the Arbitration and Conciliation Act, 1996, stood waived. To fortify the said plea, reliance is placed on a decision of the Delhi High Court in *MI2C Security Facilities Pvt. Ltd. v. North Delhi Municipal Corporation*⁵.

7.8. It is contended that the pendency of the dispute before the Dispute Resolution Board ("DRB") does not oust the writ jurisdiction, since the DRB cannot grant relief against the TPP, a stranger to the Concession Agreement, nor can it quash statutory notifications.

7.9. Distinguishing the decision of the Supreme Court in *State of U.P. v. Bridge & Roof Co. (India) Ltd*⁶, on which heavy reliance was placed by NHAI, it was urged that the said decision did not involve any statutory notification conferring an independent public-law right, and is accordingly inapplicable.

⁵2018 SCC OnLine Del 12019

⁶(1996) 6 SCC 22



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7.10. It was further submitted that the finding of the learned Single Judge that the cost of fly ash was built into the bid is factually erroneous and self-contradictory.

7.11. It is submitted that furnishing of quotations for earthwork does not establish that fly ash was never contemplated, since fly ash forms the embankment core, while earthwork confines and layers it, as per IRC-SP-58.

7.12. It is also submitted that the reliance placed by NHAI on Item 6F.02 of Schedule-G (Annexure-I), which contains no separate price component for procurement, testing, transportation or utilisation of fly ash, in fact, reinforces the appellant's case, since it shows the cost of fly ash was never priced into the bid at all.

7.13. Alleged suppression of the reply of the appellant dated 04.09.2021 to the letter of NHAI dated 20.07.2021 was refuted with reference to the record. As NHAI is "State" and cannot discriminate between similarly placed concessionaires, and as it cannot take



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advantage of its own default in not executing MoUs in Tamil Nadu while doing so in other States, restitutionary relief was claimed, relying upon a decision of the Delhi High Court in *Union of India v. Qayyum Khan*⁷, and it was prayed that the appellant be permitted to lodge its claim for reimbursement of the cost of borrow earth used for 57% of the completed project, with a direction to NHAI to consider reimbursement expeditiously.

8.1. Mr.Srinath Sridevan, learned Senior Counsel appearing on behalf of the appellant in W.A.No.3216 of 2025, adopted and reinforced the above submissions, and additionally relied on a document handed over by the learned Additional Solicitor General on 02.07.2026 before this Court, an OM dated 26.06.2023 listing projects eligible for free fly ash as of January 2023, in which Serial No.28 explicitly records that "*Four laning of Madathukulam-Pollachi section of NH-209*" is eligible for supply of 23,20,782 MT of free fly ash from Mettur Thermal Power Station with free transportation. It was submitted that this constitutes an unequivocal, written admission by the Central Government itself of the appellant's

⁷2009 SCC OnLine Del 839

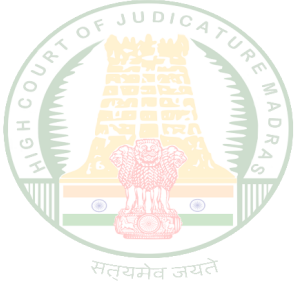


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entitlement, which was never disclosed either to the appellant or to the learned Single Judge until 02.07.2026, and that such suppression by NHA1 and the TPP is a matter requiring serious consideration.

8.2. It was submitted that the learned Single Judge erred:

- (i) in treating the ten-year period in the 1999 Notification as an upper limit rather than a floor ("*at least 10 years*");
- (ii) in overlooking that Para 2.1 containing the ten-year stipulation was itself deleted by the 2009 amendment;
- (iii) in holding, without appreciating the clarificatory MoM of the MOP dated 14.06.2023, that the Circular dated 22.02.2022 operated to extinguish the obligation retrospectively, when paragraph 5 thereof makes clear it operates only prospectively;
- (iv) in relying upon the unchallenged opinion of the Independent Engineer, who, not being a judge or arbitrator, is not competent to pronounce upon the



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TPP's public law obligations, such that his casual observations cannot bind a constitutional court; and (v) in recording that the appellant had suppressed its reply dated 04.09.2021 to NHAI's letter dated 20.07.2021, when in fact such a reply exists on record.

8.3. It was further submitted that by virtue of the reference to IRC SP-58 and IRC SP-84 in Schedule-D of the Concession Agreement, the obligation to use fly ash for embankments, as contained in the MoEF&CC notifications, stands incorporated by reference into the Concession Agreement itself, relying on *Giraraj Garg v. Coal India Limited*⁸.

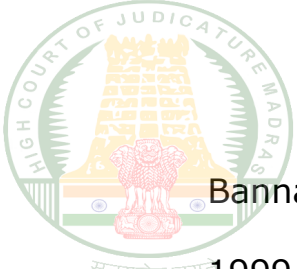
8.4. He further submitted that promissory estoppel and legitimate expectation operate in the appellant's favour, relying on *CT Sivanandan v. State of Kerala*⁹; *Pawan Alloys & Casting (P) Ltd. v. U.P. SEB*¹⁰; *Jai Prakash Associates Ltd. v. State of U.P.*¹¹; and

⁸(2019) 5 SCC 192

⁹(2024) 3 SCC 799

¹⁰(1997) 7 SCC 251

¹¹2010 SCC OnLine All 639



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Bannari Amman Sugars Ltd. v. CTO¹²; that the true intent of the 1999 Notification precludes recovery of any charge for ash, relying on *Tamil Nadu Fly Ash Bricks and Block's Manufactures Association v. TANGEDCO*¹³; and that different wings of the State are bound to speak in one voice, relying on *Lloyd Electric & Engg. Ltd. v. State of H.P.*¹⁴.

9.1. Learned Counsel for NHAI resisted both appeals on the ground that the writ petitions were not maintainable, the disputes raised being disputed questions of fact arising from the Concession Agreements, which contain a detailed dispute-resolution mechanism under Article 38 (DRB followed by arbitration), the appropriate remedy lies in arbitration and not in writ jurisdiction, relying on the decision in *Bridge & Roof Co. (India) Ltd* (supra).

9.2. It is further submitted that both appellants had, at the bidding and contracting stage, priced, designed and submitted drawings for the embankment work on the footing of conventional

¹²(2005) 1 SCC 625

¹³2014 SCC OnLine Mad 12775

¹⁴(2016) 1 SCC 560



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borrow earth, without reference to fly ash, and had continued to work with borrow earth for a substantial period before raising any claim for fly ash, the appellant in one of the cases having addressed its first communication to NTECL only on 14.09.2023, nearly two years after the letter of award, such that the claim for free fly ash is a clear afterthought, conceived to offset costs and escape the consequences of delay in completing the projects within the stipulated 730-day period.

9.3. It was contended that Schedule-G of the Concession Agreements, as approved by the Independent Engineer and NHAI, contains a price component only for borrow earth and none for fly ash, that payments have already been received on that basis, and that entertaining a claim for supply of, or reimbursement for, fly ash at this stage would result in double payment and unjust enrichment at the cost of the public exchequer, particularly since other concessionaires on the same corridor have procured borrow earth at their own cost without demur. It was further submitted that fly ash is not the sole permissible embankment material, and that Clauses 5.1.4, 5.1.4(a), 5.1.4(b), 12.1(a) and 12.1(d) of the Concession



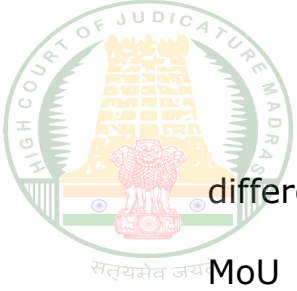
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Agreements cast the obligation of procuring all construction materials squarely on the concessionaire.

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9.4. On the question of Article 38, it was submitted that Section 8 of the Arbitration and Conciliation Act, 1996 has no application to the exercise of writ jurisdiction, and that the writ petitions were liable to be dismissed not because of any bar under Section 8, but because this Court, in the exercise of its discretionary jurisdiction, ought not to adjudicate disputed questions of fact arising from a contract containing an arbitration clause. As regards the Bangalore-Chennai Expressway project specifically, it was pointed out that the very same impugned letters dated 12.09.2023 and 12.02.2024 already stand referred to and contested before the DRB and, therefore, permitting parallel adjudication in writ proceedings amounts to the appellant riding two horses simultaneously.

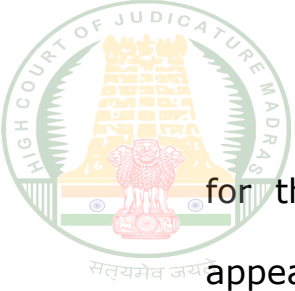
9.5. As to the reliance placed on NHAI's stand in the Punjab & Haryana proceedings and before the Supreme Court, it was submitted that the factual matrix in those cases is materially



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different. In the case before the Punjab and Haryana High Court, a MoU had in fact been executed between NHAI and the TPP concerned prior to the TPP's refusal to supply free ash, a stage never reached in Tamil Nadu, and that pleadings in one proceeding, made in a different factual context, cannot bind NHAI in an unrelated proceeding, more so where no final, conclusive order or ratio has been rendered in either the Punjab and Haryana High Court proceedings (which remain pending, and where the Division Bench has, at the interim stage, doubted the very maintainability of the writ petition) or the Supreme Court SLP.

9.6. He further submitted that the Independent Engineer's reports dated 26.10.2021, 24.06.2022 and 06.08.2024 (Pollachi) and 02.07.2024 and 27.09.2024 (Bangalore-Chennai Expressway) were relied upon as recording that borrow earth, and not fly ash, was the material contemplated for the embankment. Finally, it was submitted that the appellants had filed voluminous additional material running to several thousand pages before this Court for the first time, which was never placed before the learned Single Judge, and that an appeal, being a continuation of the original proceeding

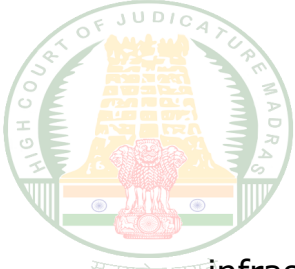


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for the limited purpose of testing the correctness of the order appealed against, cannot be permitted to be transformed into a re-adjudication upon a substantially enlarged record.

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10.1. Learned counsel for the fifth respondent in W.A.No.3215 of 2025, while adopting NHAI's submissions on maintainability and delay, additionally submitted that at no stage, viz., at the bidding stage, at the time of the Letter of Award, and at the time of the Concession Agreement, did the appellant address any communication to NTECL seeking fly ash or pond ash; that the appellant's first such communication was made only on 14.09.2023, two years after the Letter of Award, merely to "*explore the possibility*" of using pond ash, thereby itself conceding that pond ash formed no part of the original design; and that the writ petition, filed nineteen months after NTECL's reply dated 13.10.2023 and nearly forty-four months after the Letter of Award, was barred by gross, unexplained delay and laches, more so where third-party rights of successful e-auction purchasers had intervened in the interregnum.



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10.2. On facts, it was submitted that NTECL's ash-dyke infrastructure suffers from acute operational constraints. Only one of two sanctioned lagoons having been constructed, construction of the other having been stayed by an interim order dated 18.11.2018 in W.P.No.30237 of 2018, only ash above the 5.00-metre water-level mark is physically capable of being excavated at any given time, undercutting the premise that NTECL was sitting on a freely available "stock" that could simply be handed over on demand.

10.3. It was further asserted that there exists no MoU between NTECL and NHAH or the appellant obliging free supply, no privity of contract between the appellant and NTECL, and that NTECL has been disposing of its entire ash generation through transparent public e-auction, achieving utilisation of 137.79% (2023-24), 104.01% (2024-25) and 108.52% (2025-26 as on 07.08.2025), well in excess of the statutorily mandated 100%, without passing transportation costs onto the electricity consumer, while the appellant itself admits, in paragraph 20 of its own writ affidavit, that NTECL sells the ash it generates.



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10.4. It is also submitted that the Notification dated 31.12.2021 casts the primary responsibility of 100% ash utilisation upon the TPP, treats it as a "*change in law*" only as between the TPP and the regulatory/contractual change-in-law framework, and confers an obligation of free supply with free transportation only where the TPP is otherwise unable to dispose of the ash and has served the requisite notice on the construction agency, a contingency that does not arise on NTECL's undisputed record of over 100% utilisation through auction.

10.5. Learned counsel placed reliance on the Circular dated 22.02.2022 and the Guidelines dated 15.03.2024 for the proposition that the underlying object of monetisation is to benefit the electricity consumer by reducing tariff and not to subsidise private road contractors. He urged that to read these instruments as conferring an enforceable right on the appellant would convert a consumer-welfare and environmental-compliance measure into an instrument of unjust enrichment for a private concessionaire.

10.6. It was submitted that the very dispute stands already



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referred to the DRB, with NHAi having filed its statement of defence and having evinced its readiness to contest the claim before the DRB/Arbitral Tribunal, and that the claim, being already crystallised and quantified by the appellant itself at Rs.1,80,16,79,436/-, it grants no occasion for a writ court to embark upon a piecemeal exercise of ruling on "eligibility", while leaving quantification to arbitration.

10.7. Learned counsel relied on an order passed by the learned Single Judge of this Court dated 21.06.2024 in W.P.Nos.28106 and 20924 of 2021 and 10057 of 2022, wherein, on materially identical facts involving this very respondent, while dismissing the writ petitions, it was held that there being no privity of contract, no compulsion arose on NTECL to supply ash free of cost merely because a contractor demanded it, and that the doctrine of fairness was inapplicable in the absence of any contractual clause obliging the road-awarding authority to ensure free ash from the TPP.

11. Upon an overall conspectus of the rival submissions, the

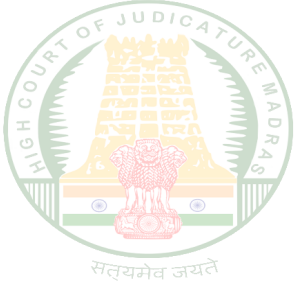


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following points arise for determination:

- (i) Whether the obligation to supply fly ash free of cost and free of transportation, cast originally by the Notification dated 14.09.1999, survived beyond ten years and continued, in a saved and modified form, for projects whose bid due date fell between 25.01.2016 and 31.12.2021;
- (ii) Whether the appellants' respective projects fall within, and have been officially recognised as falling within, the class of projects so saved;
- (iii) Whether NHA I is bound, on grounds of consistency and estoppel, by the stand taken by it in its pleadings before the Punjab and & Haryana High Court and the Supreme Court;
- (iv) Whether non-execution of a MoU between NHA I and the TPPs in Tamil Nadu defeats the appellants' claim;
- (v) Whether the writ petitions were barred by the existence of an arbitration clause / pendency of DRB proceedings, and whether the doctrine in *Bridge &*



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Roof (supra) applies;

(vi) Whether the claims were barred by delay and laches;

(vii) Whether grant of fly ash, or reimbursement of the cost of borrow earth, would result in unjust enrichment / double payment;

(viii) Whether NTECL, specifically, can be directed to supply ash free of cost having regard to its e-auction record, absence of privity, and the decision of the learned Single Judge in W.P.No.28106 of 2021 and batch cases; and

(ix) What relief, if any, the appellants are entitled to.

Point (i): Survival of the obligation beyond ten years:

12.1. We find considerable substance in the appellants' submission on this point. The 1999 Notification employed the words "*at least 10 years*", which, on a plain and grammatical construction, sets a floor and not a ceiling. To read "*at least 10 years*" as meaning "*only 10 years*" runs athwart the language employed and



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effectively rewrites the Notification. That apart, the very provision containing the ten-year figure, viz., Para 2.1 of the 1999 Notification, was deleted by the amendment dated 03.11.2009 and replaced with an unqualified obligation to supply pond ash free of charge to Central and State road construction agencies. Once the source of the ten-year stipulation is itself excised from the statute book, no vestige of that limitation can survive by implication. The learned Single Judge fell into error in treating a provision that had ceased to exist since 2009 as continuing to govern the field in 2021 and thereafter.

12.2. The obligation, thus, continuing without a fixed terminus after 2009, was further strengthened by the 2016 amendment, which added the requirement of free transportation. It was only the Notification dated 31.12.2021 that, in supersession of the 1999 Notification, brought the mandatory regime to a formal close. However, the Notification of 31.12.2021 does not operate as a clean, retrospective wipe of accrued eligibility. To the contrary, the clarificatory materials that followed, viz., the MoM of the Ministry of Power dated 14.06.2023, the consequential OM dated 26.06.2023,



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the MoRTH OM dated 13.07.2023 distinguishing "Pre-Fourth-Amendment" from "Post-Fourth-Amendment" projects, and the NHAI OM dated 13.07.2023, together constitute a clear, consistent and repeated administrative reiteration by the very authorities responsible for the policy that projects with bid due dates between 25.01.2016 and 31.12.2021 continue to be eligible for free fly ash with free transportation. These are not stray or ambiguous statements. They represent the considered, contemporaneous understanding of the Ministry of Power and MoRTH, the very Ministries whose notifications are under interpretation, and are entitled to great weight as administrative interpretation of the parent notifications.

12.3. We, accordingly, hold on Point (i), that the obligation to supply fly ash free of cost with free transportation, though formally superseded with effect from 31.12.2021, stood saved and continued to operate qua all projects whose bid due date fell between 25.01.2016 and 31.12.2021, both under the terms of the saving OMs, referred to above, and as a matter of legitimate expectation flowing from the consistent representations of the Ministries



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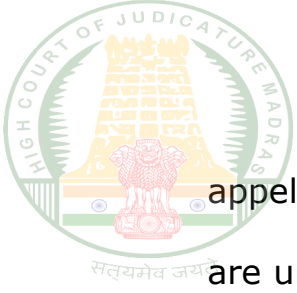
concerned. The contrary finding on this issue rendered by the learned Single Judge in the impugned judgment, cannot be sustained and is set aside.

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Point (ii): Whether the appellants' projects fall within the saved class:

13.1. As regards the Pollachi project (W.A. No. 3216 of 2025), the matter admits of little difficulty. Entry 28 of the list annexed to the OM dated 26.06.2023, viz., the document handed over by the learned Additional Solicitor General before this Court on 02.07.2026, records that the "*Four laning of Madathukulam-Pollachi section of NH-209*" is eligible for 23,20,782 MT of free fly ash from Mettur Thermal Power Station with free transportation. This is a written admission emanating from the Central Government's own records, contemporaneously prepared for internal administrative purposes and wholly independent of the present litigation.

13.2. It is difficult to conceive of more cogent documentary proof of eligibility. That this document was not placed before the learned Single Judge and remained undisclosed to the said



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appellant until 02.07.2026, is a matter of serious concern, and we are unable to accept any submission that would require this court to shut its eyes to such a vital document, merely because it surfaces at the appellate stage for no fault of the party seeking to rely upon it.

13.3. We, accordingly, hold that the appellant in W.A.No.3216 of 2025 has established, beyond doubt, its inclusion in, and entitlement under, the saved class of eligible projects.

13.4. As regards the Bangalore-Chennai Expressway project (W.A.No.3215 of 2025), the appellant's assertion that its project appears at Serial No.20 of NHAI's communication dated 04.02.2025 has not been controverted by NHAI with reference to any contrary entry, and the bid due date of 05.01.2021 is not in dispute.

13.5. We, accordingly, find that this project too falls within the class of projects whose bid due date lies between 25.01.2016 and 31.12.2021 and which stands recognised, on NHAI's own record, as eligible. This entitlement of the appellant is elaborated further in the



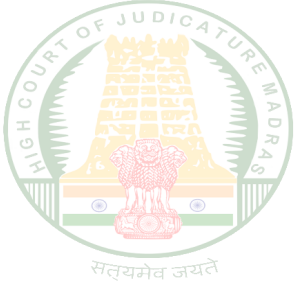
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subsequent paragraphs of this judgment. The eligibility under the Notification *vis-à-vis* a particular TPP is not an unconditional or automatic entitlement to free physical supply irrespective of that TPP's capacity and record of ash utilisation. The Notification dated 31.12.2021 itself makes free supply contingent upon the TPP's inability otherwise to dispose of the ash generated by it.

Point (iii): Binding effect of NHAI's stand in other proceedings

14.1. It is by now well settled that a party, more particularly a statutory authority answerable as "State" under Article 12 of the Constitution of India, cannot approbate before one court and reprobate before another on an identical question of obligation and that admissions made on oath in one judicial proceeding are relevant and, in appropriate circumstances, binding upon the deponent in other proceedings, even where the parties are not identical.

14.2. This view of ours is fortified by the following decisions of the Supreme Court:



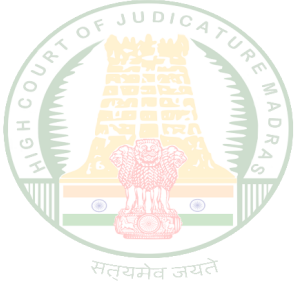
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(a) In *Naseeb Bee* (supra), it was held thus:

"6. The respondents — original defendants cannot be permitted to take two contradictory stands before two different authorities/courts. They cannot be permitted to approbate and reprobate once the objection raised on behalf of the original defendants that the Revenue Authority would have no jurisdiction came to be accepted by the Revenue Authority/Tahsildar and the proceedings under Section 250 of the Mplrc came to be dismissed and thereafter when the plaintiff instituted a suit before the civil court it was not open for the respondents — original defendants thereafter to take an objection that the suit before the civil court would also be barred in view of Section 257 of the Mplrc.

7. If the submission on behalf of the respondent-defendants is accepted in that case the original plaintiff would be remediless. The High Court has not at all appreciated the fact that when the appellant — original plaintiff approached the Revenue Authority/Tahsildar he was non-suited on the ground that the Revenue Authority/Tahsildar had no jurisdiction to decide the dispute with respect to title to the suit property. **Thereafter when the suit was filed and the respondent-defendants took a**



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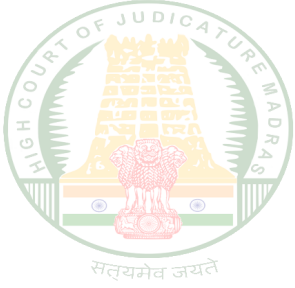
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contrary stand that even the civil suit would be barred. In that case the original plaintiff would be remediless. In any case the respondents — original defendants cannot be permitted to approbate and reprobate and to take just a contrary stand than taken before the Revenue Authority."

[emphasis supplied]

(b) In *Basant Singh* (supra), the Supreme Court held thus:

"5. The High Court also observed that an admission in a pleading can be used only for the purpose of the suit in which the pleading was filed. The observations of Beaumont, C.J. in Ramabai Shrinivas v. Bombay Government [AIR 1941 Bom 144] lend some countenance to this view. But those observations were commented upon and explained by the Bombay High Court in D.S. Mohlte v. S.I. Mohile [AIR 1960 Bom 153]. An admission by a party in a plaint signed and verified by him in a prior suit is an admission within the meaning of Section 17 of the Indian Evidence Act, 1872, and may be proved against him in other litigations. The High Court also relied on the English law of evidence. In Phipson on Evidence, 10th Edn, Article 741, the English law is thus



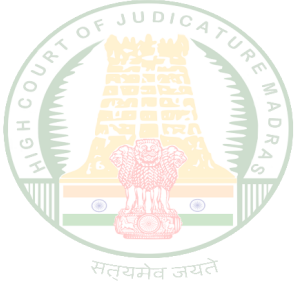
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summarised:

'Pleadings, although admissible in other actions, to show the institution of the suit and the nature of the case put forward, are regarded merely as the suggestion of counsel, and are not receivable against a party as admissions, unless sworn, signed, or otherwise adopted by the party himself.'

*Thus, even under the English law, **a statement in a pleading sworn, signed or otherwise adopted by a party is admissible against him in other actions.** In *Marianski v. Cairns* [1 Macq 212 (HL)] the House of Lords decided that **an admission in a pleading signed by a party was evidence against him in another suit not only with regard to a different subject-matter but also against a different opponent.** Moreover, we are not concerned with the technicalities of the English law. Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by a party in a pleading and other admissions. Under the Indian law, **an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. In other suits, this admission cannot be regarded as***



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conclusive, and it is open to the party to show that it is not true."

[emphasis supplied]

14.2. The counter affidavit of NHAI in SLP (C) No.10599 of 2022 and its writ petition, being CWP No. 5772 of 2025, before the Punjab and Haryana High Court, asserts, without qualification, that TPPs are under an obligation to supply free fly ash with free transportation for projects with bid dates between 25.01.2016 and 31.12.2021 and seek reimbursement of transportation costs. This is the stand taken by NHAI at the highest level of its own litigation strategy and is squarely inconsistent with the stand taken by it before this Court.

14.3. We are not persuaded by NHAI's attempt to distinguish the proceedings before the Punjab and Haryana High Court on the ground that MoU had already been executed between NHAI and the TPP prior to refusal. The existence or absence of the MoU will have a bearing upon the mode of implementation, not upon the existence of the underlying statutory obligation which NHAI has, as in the



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proceedings before the Punjab and Haryana High Court, NHAJ unequivocally asserted such obligation exists independent of any MoU.

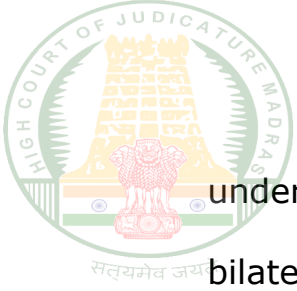
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14.4. That apart, the pendency or want of final adjudication of the proceedings before the Punjab and Haryana proceedings and the Supreme Court cannot detract from the evidentiary value of NHAJ's own sworn averments as admissions. An admission does not require to have matured into a decree before it may be relied upon against its maker. As a body meant to speak with one voice across the country, NHAJ cannot be permitted to disclaim in Tamil Nadu what it has affirmed on oath in Punjab and before the Supreme Court.

14.5. Accordingly, Point (iii) is answered against NHAJ.

Point (iv): Effect of non-execution of MoU

15.1. The obligation under the Notifications is statutory in character, deriving its force from subordinate legislation issued



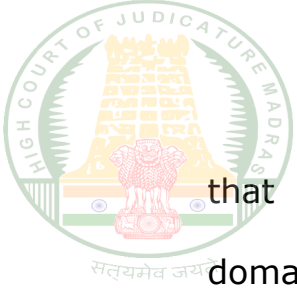
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under the Environment (Protection) Act, 1986, and not from any bilateral contractual arrangement. Execution of MoU between NHAI and TPP is, at best, a facilitative or administrative mechanism to co-ordinate the timing and quantum of delivery. It cannot be elevated into a condition precedent for the very existence of the underlying statutory right, as that would permit NHAI to defeat concessionaires' substantive entitlements by the simple expedient of its own inaction in a particular State, a proposition offensive to Article 14 of the Constitution of India, given that NHAI has executed such MoUs elsewhere (for instance, in Punjab).

15.2. Point (iv) is answered in favour of the appellants. We make it clear that non-execution of MoU does not extinguish, or operate as a condition precedent to the statutory obligation.

Point (v): Maintainability — arbitration clause,
DRB and Bridge & Roof

16.1. This point requires more nuanced treatment. The decision in *Bridge & Roof Co. (India) Ltd* (supra), does indeed hold



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that disputes relating to the terms of a contract lie within the domain of private law, that the existence of an arbitration clause is a good ground for a writ court to decline to exercise its extraordinary jurisdiction, and that Article 226 of the Constitution of India was never meant to supplant, but only to supplement, existing remedies. That principle, however, applies with full rigour to disputes that are, in substance, contractual, viz., disputes over interpretation of the Concession Agreement, quantification of amounts due thereunder, or performance obligations as between the concessionaire and NHAI. It does not apply to a challenge to the vires or correctness of statutory circulars issued by the Union of India, MoEF&CC and the Ministry of Power, nor to a claim for mandamus against a TPP with whom the concessionaire has no privity of contract and, consequently, no access to any arbitration clause at all.

16.2. An Arbitral Tribunal constituted under Article 38 of the Concession Agreement can neither issue a writ of certiorari quashing an executive circular, nor bind a non-signatory TPP by way of mandamus. Its jurisdiction, both *ratione personae* and *ratione*



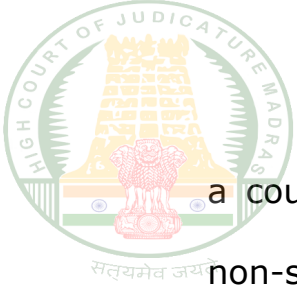
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materiae, is confined to the two contracting parties and to disputes arising "*under or in connection with*" the Concession Agreement.

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16.3. We are, accordingly, of the view that to the extent the reliefs sought are (a) a declaration as to the correct interpretation and continuing applicability of the statutory notifications and OMs; and (b) a mandamus against the concerned TPP, a stranger both to the Concession Agreement and to any arbitration clause, the writ petitions were maintainable, and the objection founded on *Bridge & Roof* (supra) and on the pendency of DRB proceedings do not go to the root of maintainability, though it bears materially, as discussed below, on the appropriate moulding of relief in respect of purely monetary/reimbursement claims as between the appellants and NHAI.

16.4. We further accept the appellants' submission, supported by the decision of the Delhi High Court in *MI2C Security Facilities Pvt. Ltd* (supra), that an objection to arbitrability, not having been raised at the threshold and NHAI having in fact entered into the merits by filing a detailed Statement of Defence before the DRB and



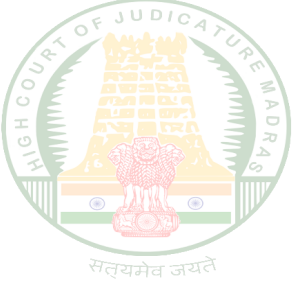
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a counter affidavit before this court, cannot now be permitted to non-suit the appellants outright.

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16.5. Furthermore, we are unable to accept the submission that the DRB proceedings and the present writ proceedings can run wholly independent of one another, when they concern the identical letters dated 12.09.2023 and 12.02.2024. Parallel and potentially inconsistent adjudication of the same subject-matter by two different fora is to be avoided as a matter of judicial discipline.

16.6. We, therefore, consider it appropriate, in moulding relief, to confine the writ jurisdiction to the public-law declaration as to the existence and scope of the statutory obligation and to a mandamus in principle against the concerned TPP, while leaving the quantification of any monetary claim (including the sum of Rs.1,80,16,79,436/- claimed in W.A.No.3215 of 2025) to be worked out before the DRB/Arbitral Tribunal already seized of the matter, which shall proceed uninfluenced by, but bound by, this Court's declaration on the existence of the statutory obligation.



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Point (vi): Delay and laches

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17.1. The plea of delay and laches, though pressed with some force by NHA I and NTECL, must be assessed differently for the two projects.

17.2. In W.A.No.3215 of 2025, the appellant's first communication to the TPP was admittedly made on 14.09.2023, and the writ petition was filed in 2025, which is a gap that calls for explanation. However, the submission made by learned Additional Solicitor General, in the course of arguments before the Single Judge, that all projects on the prescribed list/annexure would be eligible and that upon verification the Bangalore-Chennai Expressway project is found at Serial No.20 of the communication dated 04.02.2025 issued by NHA I stares at the face of the claim made by the NHA I and tilts in favour of the said appellant, more so, when we have held that the claim of the said appellant fell between 25.01.2016 and 31.12.2021

17.3. In W.A.No.3216 of 2035, the question of delay pales into



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insignificance once it is recalled that the entitlement itself, as recorded in the OM dated 26.06.2023 (Entry 28), was never disclosed to the appellant by either NHA1 or the TPP until 02.07.2026, i.e., during the pendency of the present appeal.

17.4. A party cannot be faulted for delay in asserting a right, when such right was itself kept unaware by the very authorities resisting the claim. Suppression of a material document by a public authority cannot be permitted to fructify into a limitation defence in that authority's own favour. We, accordingly, reject the plea of laches in W.A.No.3216 of 2025.

17.5. We do not find the delay to be either inordinate or such as to disentitle the appellants to relief, particularly since the cause of action in its current, crystallised form arose only upon the letters impugned in the writ petitions, and the writ petitions followed with reasonable promptitude thereafter.

17.6. We are conscious of NTECL's grievance that its own correspondence with the appellant concerned began only in



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September 2023, however, that circumstance goes to the equities as between the appellant and NTECL specifically, as discussed in Point (viii) below, rather than establishing laches *vis-à-vis* NHAH and the statutory scheme as a whole.

Point (vii): Unjust enrichment / double payment

18.1. We do not find merit in the submission that grant of the declaratory relief sought or reimbursement calculated by reference to the actual, demonstrable additional cost of procuring borrow earth in lieu of fly ash, would amount to unjust enrichment or double payment.

18.2. The submission proceeds on the premise that Schedule-G, by pricing "earthwork" as a composite item, has already compensated the concessionaire for whatever material, viz., earth or ash, went into the embankment, such that any separate payment or supply would duplicate that compensation. This conflates two distinct things: (i) the contractual price payable for the work of construction (which the concessionaire has earned by performing



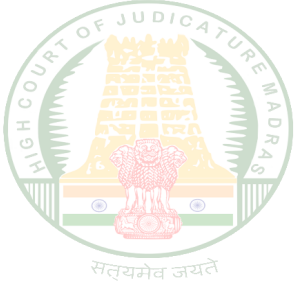
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the work, regardless of the source of material); and (ii) the cost of the raw material actually consumed.

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18.3. Where a concessionaire, denied fly ash to which it was statutorily entitled to free of cost, was compelled to purchase borrow earth at a market price never factored into its bid, as is evidenced by the absence of any distinct price component for fly ash procurement, testing, transportation or utilisation in Schedule-G Annexure-I Item 6F.02, it has suffered a real, quantifiable additional expenditure that the wrongdoing party (NHAI and/or the TPP, depending on where the default lies) must make good, it cannot be construed to be a windfall.

18.4. Whether, and to what extent, such additional expenditure has in fact been incurred, and its precise quantum, are matters of proof properly left to the DRB/Arbitral Tribunal, as indicated above.



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Point (viii): The position of NTECL

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19.1. This is the point on which the two appeals must, in our view, be treated differently, and on which we consider it necessary to record a note of caution against treating the appellants' entitlement as an unconditional, self-executing mandamus against every named TPP, irrespective of that TPP's own factual position.

19.2. The Notification dated 31.12.2021 does not cast an unqualified obligation of free supply upon every TPP in every circumstance. It casts the primary obligation of ensuring 100% utilisation of the ash generated by it upon the TPP and provides that free supply with free transportation arises specifically where the TPP is otherwise unable to dispose of the ash and has served the requisite notice on the construction agency concerned.

19.3. The NTECL has placed on record, and this has not been seriously disputed, that it disposes of its entire ash generation through transparent, competitive public e-auction, achieving utilisation figures of 137.79%, 104.01% and 108.52% across three



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successive years, well in excess of the statutory minimum, and that the appellant's own writ affidavit admits that NTECL sells the ash it generates.

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19.4. On this factual matrix, the contingency that triggers the obligation of free supply, viz., the inability of the TPP otherwise to dispose of the ash, does not appear to arise, at least not without further inquiry into NTECL's actual position at the relevant time. A learned Single Judge of this Court has, in fact, taken precisely this view on materially identical facts involving this very respondent in its order dated 21.06.2024 in W.P. Nos. 28106 and 20924 of 2021 and 10057 of 2022, holding that the absence of privity of contract and given the NTECL's e-auction record, the doctrine of fairness does not compel free supply.

19.5. We are conscious that the same logic could, in principle, be urged in respect of Mettur Thermal Power Station in the Pollachi matter. However, the position there stands on a materially different footing. In that the Central Government's own OM dated 26.06.2023 (Entry 28) affirmatively and specifically records Mettur



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TPP's eligibility obligation to supply a quantified 23,20,782 MT of free fly ash to the Pollachi project — an express, particularised administrative determination that we are not aware has been similarly made in respect of NTECL/Vallur *vis-à-vis* the Bangalore-Chennai Expressway project. In the absence of an equivalent express administrative determination naming NTECL and quantifying its obligation to this specific project, and having regard to NTECL's demonstrated auction-based utilisation record, we are unable to issue an unconditional mandamus directing NTECL to supply fly ash free of cost.

19.6. We make it clear that it is for NHAI, as the nodal authority under the MoRTH Circular dated 27.08.2018, to take up the matter afresh with NTECL/TANGEDCO, furnish the requisite particulars and seek the notice contemplated under the 31.12.2021 Notification, and only if NTECL is thereafter shown to be unable otherwise to dispose of its ash, would the obligation of free supply crystallise against it. This calibrated relief avoids doing violence either to the appellants' established statutory entitlement or to NTECL's demonstrated, unimpeached record of full and transparent



ash utilisation.

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Legitimate expectation and promissory estoppel

20.1. Independent of the above, we find that the doctrine of legitimate expectation squarely applies. The consistent, repeated administrative representations from the 1999 Notification, through its 2009 and 2016 amendments, the MoRTH Circulars of 2018 and 2020, and culminating in the MoM dated 14.06.2023 and the OMs of 26.06.2023 and 13.07.2023, created in the minds of concessionaires bidding for national highway projects between 2016 and 2021 a legitimate expectation that fly ash would be made available to them free of cost and free of transportation, an expectation on which they were entitled to structure their financial bids. There is no plea, much less any proof, of any "overriding public interest" of the kind required to defeat such expectation or to found promissory estoppel.

20.2. Mere administrative inconvenience or the fact that ash has since become commercially valuable does not constitute such



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overriding public interest, particularly where MoP's own Guidelines continue to carve out and preserve the entitlement of the very class of projects to which the appellants belong.

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Additional documents filed at the appellate stage

21.1. We do not accept NHAI's blanket objection to reliance upon the nine-volume convenience set filed before this Court. While it is true that an appeal ordinarily proceeds on the record as it stood before the court below, this rule cannot be pressed so far as to exclude documents that are (a) public, official records of the respondents' own Ministries! (b) directly relevant to the correct interpretation of the very notifications in issue; and (c) in the case of the OM dated 26.06.2023 (Entry 28), handed over by the learned Additional Solicitor General himself in the course of arguments before this Court.

21.2. Courts have consistently permitted reliance, at the appellate stage, on subsequent or newly-discovered official documents where the interests of justice so require, more

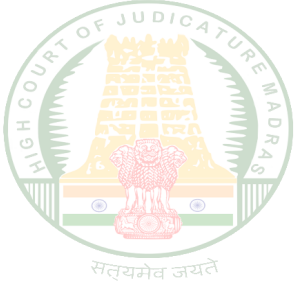


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particularly where the party resisting their admission is itself the author or custodian of the document and cannot claim prejudice from its own record being placed before the court. We find no prejudice to the respondents in receiving these documents, all of which are official, unimpeachable in origin, and were the subject of full argument.

22. For the reasons set out above, we summarise our findings as follows:

(a) The obligation to supply fly ash free of cost with free transportation was not confined to ten years from 1999; it continued without a fixed terminus from the 2009 amendment, was reinforced by the 2016 amendment, and though formally superseded from 31.12.2021, stood expressly saved for all projects with bid due dates between 25.01.2016 and 31.12.2021, by virtue of the MoM dated 14.06.2023 and the consequential OMs dated 26.06.2023 and 13.07.2023.



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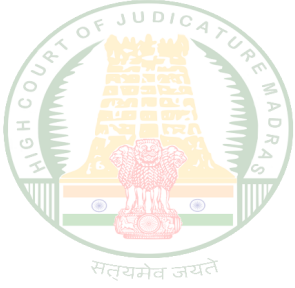
W.A.No3215 of2025 etc.

(b) Both the Pollachi project (bid date within the Concession Agreement dated 05.12.2019, well within the window) and the Bangalore-Chennai Expressway project (bid date 05.01.2021) fall within the saved class, the former appearing at Serial No.20 of NHAI's communication dated 04.02.2025 and the latter being expressly and quantifiably recognised at Entry 28 of the OM dated 26.06.2023.

(c) NHAI is bound by the consistent stand taken by it on oath before the Punjab and Haryana High Court and the Supreme Court affirming the existence of this very obligation, and cannot take a contrary stand before this Court.

(d) Non-execution of MoU between NHAI and TPPs in Tamil Nadu does not extinguish the statutory obligation.

(e) The writ petitions were maintainable to the



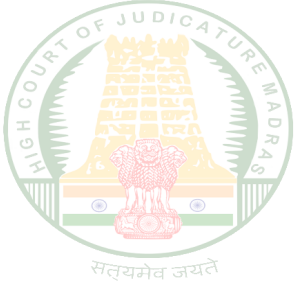
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W.A.No3215 of2025 etc.

extent they sought a declaration as to the statutory position and a mandamus against the TPPs (strangers to the arbitration clause); quantification of monetary claims as between the appellants and NHAI shall, however, be worked out before the DRB/ Arbitral Tribunal in light of the findings rendered by us.

(f) The plea of delay and laches fails in W.A.No.3216 of 2025 (Pollachi) in view of suppression of the OM dated 26.06.2023 until 02.07.2026, and is not found to be fatal in W.A.No.3215 of 2025 (Bangalore-Chennai Expressway) having regard to the continuous correspondence between the parties.

(g) No unjust enrichment or double payment arises from directing supply of, or reimbursement for, fly ash, as this is distinct from the contractual price paid for construction work.



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(h) The appellants' legitimate expectation, founded on the consistent representations of MoEF&CC, MoP and MoRTH, stands established and is not displaced by any overriding public interest.

23. In the result:

(i) W.A.No.3215 of 2025 (DP Jain Bangalore-Chennai Expressways Pvt. Ltd. v. Union of India and others) is partly allowed. The order dated 15.10.2025 in W.P.No.19558 of 2025, and the impugned letters of NHA dated 12.09.2023 and 12.02.2024 insofar as they proceed on the footing that no statutory obligation to supply free fly ash survives for the appellant's project, are set aside. It is declared that the appellant's project, having a bid due date of 05.01.2021, falls within the class of projects eligible for free fly ash with free transportation under the saved regime discussed above. The monetary claim for reimbursement, including the sum of Rs.1,80,16,79,436/- claimed by the appellant, shall stand relegated to, and be quantified by, the DRB already seized of the

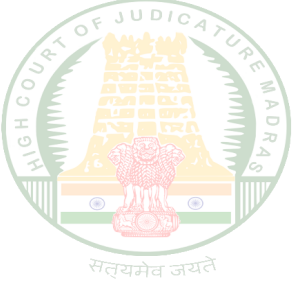


W.A.No3215 of2025 etc.

matter, or the Arbitral Tribunal under Article 38 in the event of failure of the DRB process, within three months of this judgment, on the footing of the statutory entitlement declared herein.

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(ii) W.A.No. 3216 of 2025 (DPJ Pollachi HAM Project Private Limited v. Union of India and others) is allowed. The order dated 15.10.2025 in W.P.No.19534 of 2025 is set aside. It is declared that the appellant's project is eligible for supply of fly ash free of cost and with free transportation to the extent of 23,20,782 MT, as recorded in Entry 28 of the OM dated 26.06.2023, from Mettur Thermal Power Station. The appellant's claim for reimbursement of the cost of borrow earth already incurred, to the extent of ash quantity not physically supplied, shall be adjudicated and quantified by the DRB constituted under the Concession Agreement, or, failing an outcome there within a reasonable time, by the Arbitral Tribunal under Article 38, within three months of this judgment, uninfluenced by any observation herein save as to the existence of the underlying statutory entitlement, which shall be treated as conclusively established.



W.A.No3215 of2025 etc.

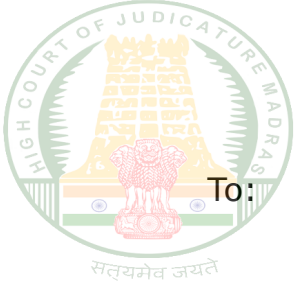
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(iii) The finding of the learned Single Judge that the obligation to supply free fly ash was confined to ten years from 1999 is set aside in both matters as being contrary to law.

There shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

(SUSHRUT ARVIND DHARMADHIKARI, CJ) (G.ARUL MURUGAN,J)
20.08.2026

Index : Yes
Neutral Citation : Yes
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To:

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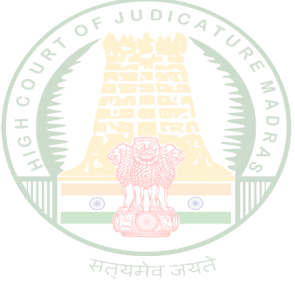
1. The Secretary, Union of India
Ministry of Power,
Sharam Shakthi Bhawan, Rafi Marg
New Delhi - 110 001.
2. The Secretary, Ministry of Road, Transport and
Highways (MoRTH),
Government of India, Transport Bhawan,
1, Parliament Street, New Delhi-001.
3. The Secretary
Ministry of Environment, Forest and Climate
Change (MoEF and CC),
Indira Paryavaran Bhawan, Jor Bagh Road,
New Delhi-03.
4. The Chairman,
National Highways Authority of India (NHAI)
Under Ministry of Road, Transport and Highways,
G5 and 6, Sector 10,
Dwarka, New Delhi-75.
5. The Managing Director cum Chairman,
NTPC Tamil Nadu Energy Company Ltd(NTECL)
Vallur Thermal Power Plant,
Vallur Thermal Power Project, Vellivoyal Chavadi,
PO Ponneri Taluk, Chennai-10 (Tamil Nadu)
6. The Chief Engineer,
Mettur Thermal Power Station 1
Mettur Dam 6
Thoppur - Mettur Dam, Dhavani Erode Road,
Salem - 636 406.



W.A.No3215 of2025 etc.

7. The Chairman, Tamilnadu Generation and
Distribution Corporation Limited
6th Floor, TANTRANSCO Building,
144 Anna Salai
Chennai - 600 002.

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W.A.No3215 of2025 etc.

THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

W.A.Nos.3215 and 3216 of 2025

20.08.2026