

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6389/2010 & CM APPL. No. 12648/2010

MILLENIUM GLASS INDUSTRIES Petitioner
Through: Mr. N.K. Kaul, Senior Advocate
with Mr. Kamal Mehta, Advocate.

versus

GAS AUTHORITY OF INDIA LTD. Respondent
Through: Mr. Navin Kumar, Advocate.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the order? No
2. To be referred to the Reporter or not? Yes
3. Whether the order should be reported in Digest? Yes

ORDER
24.09.2010

1. When this petition was first listed on 21st September 2010, learned counsel for the Petitioner took time to address the Court on the maintainability of the petition. Today, the submissions of both Mr. N.K. Kaul, learned Senior counsel as well as Mr. Kamal Mehta, learned counsel for the Petitioner have been heard at length on the question of maintainability of the petition.

2. The main submission as regard the maintainability of the present petition has been that the Gas Authority of India Ltd. ('GAIL') is headquartered in New Delhi. The decision whether or not to grant continuation of the gas supply to the Petitioner at its changed address in Firozabad in Uttar Pradesh (UP) had to be taken ultimately by GAIL in New Delhi, based on the advice of the Ministry of Petroleum and Natural Gas ('MoPNG') also located at New Delhi. Therefore, according to the Petitioner, this writ petition is maintainable in the

Delhi High Court. The Petitioner relies on Article 226(1) of the Constitution and the judgment dated 2nd July 2007 of the learned Single Judge of this Court in Writ Petition (Civil) No. 2103 of 2007 (*Jayaswals Neco Limited v. Union of India*). It is submitted that although no decision has been taken as yet by the MoPNG in New Delhi, the failure to take such a decision itself provides a cause of action for the Petitioner located at Firozabad in U.P. to invoke the jurisdiction of the Delhi High Court.

3. In order to appreciate whether the above contention of the Petitioner is tenable, it is necessary to notice the factual averments made in the writ petition.

4. The Petitioner is a small scale industry engaged in the business of manufacturing and sale of glass bangles, glasswares and other glass items. It has its factory at A19-20-21, Industrial Estate Agra Road, Firozabad, in U.P. The Petitioner states that it is running the said industry as a sub-lessee in the said premises which is owned by Uttar Pradesh State Industrial Development Corporation ('UPSIDC') and is under lease to M/s. AVM Glass Industries. Initially the sub-lease period was five years ending on 15th October 2005. After taking the premise on sub-lease the Petitioner applied to Respondent GAIL for a gas connection for running its factory. It is stated that the Respondent GAIL entered into a Gas Supply Contract ('GSC') dated 23rd January 2001 with the Petitioner at Agra in U.P. for the period of five years from 31st December 2002 to 31st December 2007 with the right to an

extension and the facility of the Petitioner transferring and assigning its rights thereunder in favour of a third party. The copy of the said GSC shows that it was signed at Agra by the representative of the GAIL at its regional office at Lucknow. The Petitioner is shown as having its registered office at Firozabad.

5. It is stated that when one year remained for the expiry of the contract period, the Petitioner exercised the right of extension in terms of Clause 3 of the GSC by issuing a notice dated 23rd December 2006 to GAIL. Thereafter, a fresh Gas Supply Agreement ('GSA') dated 25th August 2008 was entered into between GAIL and the Petitioner. A copy of the said agreement which is enclosed as Annexure P-8 shows that it was entered into at Lucknow between GAIL Regional Office at Lucknow and the Petitioner.

6. The Petitioner states that since the sub-lease period was going to expire on 15th October 2010 and since the lessor had already made clear its intention not to renew the sub-lease, the Petitioner started to look to acquire suitable land for relocation of its factory. By the letters dated 14th April 2009 and 8th May 2009, the Petitioner requested permission from GAIL to transfer and assign the gas connection to M/s Anand Glass Works, Firozabad. On 19th May 2009 the Lucknow office of GAIL informed the Petitioner that it has referred the matter relating to change of location/transfer of rights to the MoPNG for their advice. On 30th November 2009, the Petitioner wrote to GAIL at Lucknow stating that it had decided to shift its factory premises to its

owned premises at Mauza Rehna, Lalau, Agra Road, Firozabad. In reply, on 3rd December 2009 the Lucknow office of GAIL again reiterated that the Petitioner's request had been referred to MPNG for advice. This was followed by another letter dated 11th January 2010 from the Petitioner to GAIL, to which a similar reply was received on 13th January 2010.

7. On 3rd April 2010, the Lucknow office of GAIL informed the Petitioner of the guidelines received from the MoPNG regarding the change of location and transfer of rights. It was further stated that "request relating to change of location not covered by the above provisions should be referred to MoPNG for decision." The Petitioner was asked to address the points set out in the letter and inform GAIL of the updated status to enable GAIL to process the case further. Meanwhile, on 19th March 2010, the Petitioner invoked the arbitration clause since GAIL had not accepted its request for shifting.

8. On 29th May 2010, the Petitioner replied to the letter dated 3rd April 2010 of GAIL, Lucknow stating that there were no dues as on that date and requested for its case to be processed as soon as possible. Meanwhile, a notice dated 16th June 2010 was received from the DIC, Firozabad asking the Petitioner to hand over the plot to the partners of AVM Glass Industries. The Petitioner on 27th May 2010 wrote to GAIL, Agra stating that all dues had been paid on 21st May 2010. This was confirmed by an endorsement made by GAIL, Agra on a copy of

the said letter on 27th May 2010. In response to the Petitioner's reminder dated 16th July 2010, the GAIL Lucknow wrote on 17th July 2010 stating that the matter was under examination and they would revert after receiving a clarification. The Petitioner made a representation to GAIL at New Delhi on 18th August 2010 stating that if its lease was not covered by the MoPNG guidelines, then its case should be referred to the MoPNG for advice. No reply was received to this letter. In the circumstances, the present writ petition was filed making GAIL, New Delhi the sole Respondent with the following prayers:

“(A) A writ of mandamus and/or any other appropriate writ order and/or direction of similar nature directing the Respondent to extend and/or renew the gas supply agreement from the tenanted factory premises situated at A19-20-21, Industrial Estate, Agra Road, Firozabad to the relocated self owned factory premises at Mauza Rehna, Lalau, Agra Road, Firozabad of the Petitioner.

(B) Such further and other orders as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case.”

9. The correspondence referred to above is essentially been between the Petitioner's office at Firozabad and GAIL's Regional Office at Lucknow. It is not clear whether the Petitioner's case has been referred to the MoPNG for advice. Even then, merely because GAIL is awaiting certain advice of the MoPNG in New Delhi does not give rise to any cause of action in Delhi as far as the present petition is

concerned. The MoPNG guidelines received by the GAIL office in Lucknow were communicated to the Petitioner by a letter dated 3rd April 2010. The above narration shows that both the GSC and the later GSA were executed in U.P. The entire transaction is with the GAIL Regional Office at Lucknow. The MoPNG is not a party to the writ petition and no relief is sought against it. Article 226(1) of the Constitution permits this Court to issue writs to authorities within its jurisdiction. The authority which is stated to have failed to take a decision is the MoPNG but neither is it a party nor has any relief been sought against it. Even according to the Petitioner, GAIL at New Delhi cannot obviously take a decision without such advice of the MoPNG. On the other hand, the above narration of facts shows that GAIL, New Delhi is not in the picture.

10. This Court finds that the facts of this case have no parallel with those in *Jayaswals Neco Ltd. v. Union of India*. The decision of the Supreme Court in *Kusum Ingots & Alloys Ltd. v. Union of India (2004) 6 SCC 254* unambiguously holds that merely because the Respondent is located within the territorial jurisdiction of the Court will not *ipso facto* give jurisdiction to such High Court to entertain the writ petition. In the instant case, the mere fact that GAIL's headquarters is at New Delhi, cannot *ipso facto* enable this Court to entertain this writ petition.

11. In the considered view of this Court, this writ petition cannot be

entertained and is dismissed as such. The pending application is also dismissed. This will, however, not preclude the Petitioner from approaching the appropriate forum for relief.

12. Order dasti.

S. MURALIDHAR, J

SEPTEMBER 24, 2010
ak