

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th September, 2011

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W.P.(C) No. 3106/2011

% **M/S. ESSAR STEEL LIMITED** **..... Petitioner**

Through: Mr. Mukul Rohatgi, Mr. Neeraj Kishan Kaul & Mr. Arun Bhardwaj, Sr. Advs. with Mr. Rishi Agarwala, Ms. Shally Bhasin, Mr. Nikhil Rohtagi, Ms. Shikha Sarin & Mr. Karan Luthra, Advs.

Versus

UNION OF INDIA & ORS **..... Respondents**

Through: Mr. Vivek K. Tankha, ASG with Mr. B.V. Niren, Adv. for UOI & MoPNG
Mr. Parag P. Tripathi, ASG with Ms. Bindu Saxena, Mr. Shadan Farasat, Mr. Shailendra Swarup & Mr. K.K. Patra, Advs. for NTPC
Mr. Jayant Bhushan, Sr. Adv. with Mr. Manu Seshadri, Mr. Aman Gupta, Ms. Sanyukta Singh, Ms. Simar K. Narula & Mr. Kamal Budhiraja, Advs. for Lanco.
Ms. Bindu Saxena with Mr. Shailendra Swarup, Mr. Mohit Kumar, Mr. Abhishek Nigam & Mr. K.K. Patra, Advs. for RGPL.
Mr. Ehraz Zafar, Adv. for GVK Industrial Ltd.
Mr. Samanya Dhar Dwivedi, Adv. for GMR
Mr. Shyam Diwan, Sr. Adv. with Mr. Somiran Sharma, Adv. for R-3
Mr. Abhay Chattopadhyay & Mr. Ankur Sood, Advs. for Konaseeha Gas Power Ltd.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the directions issued by the respondent no.2 Ministry of Petroleum & Natural Gas (MoPNG) in its letters dated 30th March, 2011 and 21st April, 2011 to respondent no.3 Reliance Industries Ltd. (RIL) and respondent no.4 Niko Limited (Niko) and the consequential letter dated 4th May, 2011 of RIL intimating to the petitioner that the supply of Natural Gas to the petitioner in terms of the Gas Sales and Purchase Agreement (GSPA) between the petitioner on the one hand and RIL & Niko on the other hand was likely to be affected in compliance of the said directions of MoPNG.

2. It is *inter alia* the contention of the petitioner in the writ petition that the aforesaid direction of MoPNG reducing the supply of Natural Gas (Gas) to the petitioner is in contravention of the

policy/directions/guidelines framed by the Empowered Group of Ministers (EGoM) regarding allocation of limited available quantity of Gas to the consumers thereof.

3. The petition came up before this Court first on 10th May, 2011. On 12th May, 2011 the ASG appearing for the respondent no.1 Union of India (UOI) informed this Court that the EGoM will be meeting on 18th May, 2011 to discuss the issue. The writ petition was accordingly adjourned to 24th May, 2011.

4. However on 24th May, 2011 the ASG appearing for the respondent no.1 UOI clarified that the statement made on 12th May, 2011 was only that he had requested the Central Government to refer the matter to the EGoM and not that EGoM was to meet on any particular date. The writ petition was adjourned to 26th May, 2011.

5. On 26th May, 2011 the ASG appearing for respondent no.1 UOI as well as MoPNG informed that the UOI was not willing to place the matter before the EGoM since according to UOI the impugned direction is within the policy parameters already laid down by EGoM. Notice of the petition was issued.

6. Applications for impleadment were filed on behalf of several other consumers of Gas and which were allowed on 31st May, 2011.

7. On 3rd June, 2011 after partial hearing, the ASG appearing for respondent no.1 UOI as well as MoPNG again stated that the stand of EGoM in the matter will be made explicit by an affidavit to be filed on its behalf on or before 4th July, 2011. However no affidavit was filed and further time for the said purpose was sought on 7th July, 2011; this Court also directed the concerned Secretaries to ensure that the affidavit directed to be filed is positively filed and the instructions qua the stand of EGoM are communicated to the counsel.

8. An additional affidavit dated 23rd July, 2011 has been filed in pursuance to the orders dated 3rd June, 2011 and 7th July, 2011.

9. It was the contention of the senior counsel for the petitioner on 17th August, 2011 that the affidavit so filed is not in compliance of the order dated 7th July, 2011. However the ASG appearing for NTPC responded that MoPNG is empowered to convey the instructions of EGoM.

10. Though the writ petition was accompanied with an application for interim relief seeking stay of the direction impugned in the petition and

which would have resulted in the enhanced supply of Gas to the petitioner but no interim order was granted. It is the contention of the petitioner that owing to being deprived of its entitlement of Natural Gas, it is suffering losses of over ₹4 crores per day.

11. In the circumstances, hearing was commenced on 23rd August, 2011. Finding the contention of the petitioner to be that the impugned direction of MoPNG was contrary to the guidelines laid down by the EGoM and not finding the parties to have placed the documents of constitution of EGoM and the minutes of meetings of EGoM, the ASG was on 23rd August, 2011 directed to produce the same. The rules regarding constitution of EGoM and the minutes of the meeting of the EGoM were produced in sealed cover. Though initially some privilege with respect thereto was claimed but not pressed. The counsels have been heard.

12. The fight is over the limited resources of Natural Gas from the Krishna Godavari basin. The petitioner is a manufacturer of Hot Briquetted Iron and its manufacturing process is based on use of Gas. It is the case of the petitioner that no other substitute other than Gas can be used by the petitioner for manufacturing sponge iron and therefore

uninterrupted supply of Gas to the petitioner is necessary for its manufacturing activities on a continuous basis.

13. The parties who have got themselves impleaded in the present petition are also consumers of Gas and are competing with the petitioner for the same.

14. The natural resource of Gas vests in the Government of India. The Government of India has entered into an agreement with RIL and Niko permitting them to extract and exploit Natural Gas. The Apex Court in ***Reliance Natural Resources Ltd. Vs. Reliance Industries Ltd.*** (2010) 7 SCC 1 has held that the Government owns the Gas till it reaches ultimate consumer and that production share contract between the Government on the one hand and RIL and Niko as contractor on the other hand shall override any contractual obligations between the contractor (RIL and Niko) and any other party. Under the provisions of the production share contract, commercial utilization of Natural Gas is to be determined in accordance with the Government's Gas Utilization Policy and the decision of the Government would be binding on the contractor (RIL and Niko). Accordingly the Government of India is empowered to issue directions to the contractor (RIL and Niko) as to the distribution of Gas to

the various consumers thereof and in supersession of the agreements (GSPA) which the contractor (RIL and Niko) has entered into with different consumers.

15. At this stage, it may also be stated that RIL, besides being a contractor for exploitation and extraction of Gas, is also a consumer thereof in the power sector; thus, it has a dual role.

16. The government of India for attracting private investment in the Oil and Gas sector formulated the New Exploration Licensing Policy (NELP). The ASG in pursuance to the directions supra issued on 23rd August, 2011 has produced before this Court the copy of decision dated 20th October, 2009 titled “Constitution of an Empowered Group of Ministers (EGoM) on Gas Pricing and Commercial Utilization of Gas”. The same records the decision, with the approval of the Prime Minister, to constitute the Empowered Group of Ministers (EGoM) on Gas Pricing and Commercial Utilization of Gas, consisting of Sh. Pranab Mukherjee, Minister of Finance, Sh. P. Chidambaram, Minister of Home Affairs, Sh. Sushilkumar Shinde, Minister of Power, Sh. M. Veerappa Moily, Minister of Law and Justice, Sh. Murli Deora, Minister of Petroleum and Natural Gas, Sh. M.K. Alagiri, Minister of Chemicals and Fertilizers and

Sh. Montek Singh Ahluwalia, Deputy Chairman, Planning Commission. The EGoM has been empowered to consider and decide “issue of commercial utilization of Gas under NELP and other related matters”. It was further decided that the EGoM “will continue to be serviced by MoPNG”. MoPNG was also directed to ensure that the agenda papers/minutes of the meetings etc. are expeditiously forwarded to the Prime Minister’s Office and the Cabinet Secretariat. The documents produced by the ASG also contain an earlier decision dated 13th August, 2007 also of constitution of EGoM to examine and decide issues of Gas pricing and commercial utilization of Gas under NELP with composition then of the Ministers of External Affairs, Power, Chemicals & Fertilizers, Finance, Law & Justice, Petroleum and Natural Gas, Corporate Affairs and Sh. Montek Singh Ahluwalia, Deputy Chairman, Planning Commission. Under the said decision, MoPNG was also directed to place the report of the Chairman, Economic Advisory Council before the EGoM.

17. On the query as to the rules under which EGoM is constituted, the ASG has referred to The Government of India (Transaction of Business) Rules, 1961, Rule 6(4) whereof provides for constitution of *ad hoc*

committees of Ministers including Group of Ministers to be appointed by the Cabinet, the Standing Committees of the Cabinet or by the Prime Minister for investigating and reporting to the Cabinet on such matters as may be specified and if so authorized by the Cabinet, Standing Committee of the Cabinet or the Prime Minister, for taking decisions on such matters. It is stated that the *ad hoc* committee of Group of Ministers empowered to take decision on any matter is EGoM. With reference to Rule 6(6) it is pointed out that any decision taken by such EGoM may be reviewed by the Cabinet.

18. The senior counsel for the petitioner has contended that the EGoM for taking decision on Gas pricing and commercial utilization was constituted since the decision regarding Gas pricing and commercial utilization of Gas concerned not only the MoPNG but also other Ministries as Power, Steel, Fertilizers etc. which are concerned with the consumers of such Gas. It is thus contended that EGoM though in strength less than the Cabinet, is stronger than MoPNG; that the MoPNG cannot override a decision taken by the EGoM. The argument is, that the cuts imposed by the impugned directions on the supply of Gas to the petitioner are in violation of allocation of Gas by EGoM to the Steel

Sector to which the petitioner belongs.

19. Though the petitioner had built up its case on the basis of the Press Notes released from time to time and the senior counsel for the petitioner has also argued on the basis thereof but the minutes of EGoM having been produced before this Court, the discussion hereinafter is with reference thereto.

20. EGoM in its meeting held on 28th May 2008, after considering the “Concept Paper of Gas Utilization Policy” circulated by MoPNG, and keeping in mind the fact that Gas is an exhaustible resource, and the need for promoting conservation in its use and maximizing value addition to the economy, *inter alia* approved the following guidelines for a term of five years for sale of Gas (supply whereof was to commence from September 2008 and was expected to be initially 25 mmscmd to be slowly enhanced to 40 mmscmd by March 2009) by the contractor:-

- (i) The contractor would sell Gas to consumers in accordance with the marketing priorities determined by the Government;
- (ii) The marketing priority to not entail any “reservation” of Gas and in case consumers in a particular sector even though higher in priority are not in a position to take Gas when available, it should

go to the sector which is next in the order of priority;

(iii) The order of priority for supply of Gas was prescribed as under:-

- (a) existing Gas based urea plants, which were then getting Gas below their full requirement, were to be supplied Gas so as to enable full capacity utilization;
- (b) a maximum quantity of 3 mmscmd to be supplied to existing Gas based LPG plants;
- (c) up to 18 mmscmd, being the partial requirement of Gas based power plants and liquid fuel plants, would be supplied to the power plants;
- (d) a maximum quantity of 5 mmscmd to City Gas Distribution (CGD) for supply of Piped Natural Gas (PNG) to households and Compressed Natural Gas (CNG) in transport sector;
- (e) any additional Gas available beyond categories (a) to (d) above was to be supplied to existing Gas based power plants, as their requirement was more than 18 mmscmd;

(iv) It was emphasized that the fertilizer plants were to be given the highest priority.

(v) MoPNG would resolve issues if any in implementation of the decisions.

EGoM subsequently also directed supply of 1.4 to 2.7 mmcmd Gas to Ratnagiri Power Project Ltd. (RGPPL).

It would thus be seen that there was no mention of the steel sector till then in the matter of supply of Gas.

21. EGoM, in the meeting held on 23rd October, 2008 noticed the demand of Gas for steel plants as they were operating at low levels of capacity utilization and decided to give priority to the existing Natural Gas based sponge steel plants after the sectors decided in the meeting held on 28th May, 2008 supra. It was however resolved that the supply to the steel sector would be from the production beyond the first 40 mmcmd to be produced from RIL's KG-D6 field.

22. EGoM in its meeting held on 8th January 2009, with respect to the demand *inter alia* of the steel industries for Natural Gas decided that the decision regarding supply of Gas to steel sector can only be taken when there is increase in production from KG-D6 from 40 mmcmd and which was expected to take place in the year 2010. It was further decided that the next meeting of EGoM would be held only after the production from KG-D6 basin commences, so that the situation can be arranged better.

23. EGoM, in the meeting held on 9th April, 2009 decided that MoPNG should be authorized to take decisions regarding supply of unutilized quantity of Natural Gas including from CGD sector; MoPNG however while making such allocations was directed to accord priority to Gas based steel plants. It was however clarified that the process of allotment to steel industries will be with respect to the Gas beyond 40 mmscmd.

24. In the next meeting of EGoM held on 27th October 2009, it was *inter alia* decided that 0.44 mmscmd Gas should be supplied on firm basis to meet the shortfall of existing Gas based steel plants including of the petitioner herein. MoPNG was also authorized to take decisions regarding supply of Natural Gas to sectors/individual customers consequent to Gas available on account of short offtake, delay and any other unforeseen circumstances.

25. MoPNG vide its letter dated 12th June, 2009 to the Contractor (RIL and Niko) intimated that of the Gas beyond 40 mmscmd, 2.86 mmscmd be supplied to the petitioner. MoPNG vide subsequent letter dated 19th November, 2009 increased the allocation of the petitioner to 3.20 mmscmd.

26. The contention of the senior counsel for the petitioner thus is, that as per the decisions aforesaid of EGoM, the petitioner,

- a.) from the first 40 mmscmd of Gas extracted, is entitled to the unutilized Gas out of allocation of 5 mmscmd to the CGD and CNG and;
- b.) is entitled to priority qua the Gas extracted beyond 40 mmscmd.

It is argued, that the petitioner is not being given its entitlement from the unutilized Gas out of the allocation of 5 mmscmd to the CGD and which is contrary to the decisions of EGoM.

27. MoPNG, vide letter dated 30th March, 2011 impugned in this petition, in the face of significant reduction in production of Gas from KG-D6 fields has, in supersession of earlier directive for *pro rata* cuts on all customers, and considering subsidy implications in reduction of Gas supply to Fertilizer Plants and lesser availability of power in reduction of Gas supply to Power Plants and public good in maintaining requisite supply of CGD and CNG, directed:

- a.) supply upto full allocation to Fertilizer, LPG, Power and CGD sectors; and,
- b.) if Gas available is lesser than needed to meet full allocation

of said sectors also, for cuts to be imposed in the order of CGD, Power, LPG, Fertilizers; and,
c.) *pro rata* cuts on the remaining sectors.

28. MoPNG, vide letter dated 21st April, 2011 also impugned in this petition, in view of the supply being reduced to about 50 mmscmd directed supply of Gas first to the “core sectors”.

29. The senior counsel for the petitioner has contended that the direction of the EGoM of first giving priority to the steel sector including the petitioner, in the allocation of unutilized Gas of CGD has thus been violated. It is further contended that EGoM had merely laid down the priority, and the categorization by MoPNG of “core” and “non-core” sectors is also contrary to the decisions of EGoM. It is stated that the supply to the petitioner has thereby been brought down to nil. It is argued that with the fall in production of Natural Gas, the cut should have been *pro rata* on all the sectors/priorities and MoPNG was not entitled to lay down fresh priorities in the face of the changed situation. It is contended that MoPNG had vide aforesaid letter dated 12th June, 2009 allocated 2.86 mmscmd Gas to the petitioner within first 40 mmscmd production and today when the production is 50 mmscmd, the petitioner is not being

supplied any Gas. It is further contended that the petitioner falls in the elite group entitled to Gas from the first 40 mmcmd supply through the unutilized portion of CGD. It is yet further contended that while the cut in the steel sector is as much as 65%, that in the fertilizer sector is only of 7%. Various other arguments of the importance of steel viz.-a-viz. other sectors have also been made. It is further contended that while the power sector is getting the cheap Natural Gas, it is free to sell power at market rate. Reference is also made to *MRF Limited Vs. Manohar Parrikar* (2010) 11 SCC 374 on the importance of the business rules. It is urged that the decision to cut the supply of Natural Gas to petitioner is thus contrary to the rules and arbitrary.

30. Another contention of the senior counsel for the petitioner is that notwithstanding the statement of the ASG on 3rd June, 2011 that the stand of the EGoM in the matter will be made explicit by an affidavit and the direction in the order dated 7th July, 2011 to the concerned Secretaries to ensure that affidavit directed to be filed is positively filed and/or instructions qua the stand of EGoM communicated, the same has not been filed / communicated. It has thus been urged that EGoM has not been made aware of the directions impugned in this writ petition and/or to the

challenge thereof and the respondents have shied away from disclosing to this Court the stand of EGoM i.e. whether it agrees to the directions of MoPNG or not.

31. In this regard, I may notice that the additional affidavit dated 23rd July, 2011 supra deposes that the Cabinet Secretariat on the basis of legal advice obtained from the Ministry of Law had advised the MoPNG to clarify the position as sought by this Court; that EGoM is serviced by the Cabinet Secretariat; that the Cabinet Secretariat has informed that according to Rule 3 of The Government of India (Transaction of Business) Rules, 1961, the business allotted to a department is to be disposed of by or under the general or special directions of the Minister-in-charge and the Secretary of the concerned Ministry being the administrative head is responsible for transaction of business in that Ministry; that thus MoPNG only is authorized in the subject matter of this petition and not the Cabinet Secretariat.

32. The ASG appearing for NTPC has argued that the same issue as before this Court was raised by another Gas based steel industry before the Bombay High Court in W.P.(C) No. 3748/2011 titled ***Welspun Maxsteel Ltd. Vs. UOI*** which was disposed of on 8th July, 2011. It is

stated that though the petitioner herein was not a party to that petition but during the pendency of that petition and in pursuance to an order in that petition, the MoPNG was directed to meet the petitioners therein and to take a decision and in which hearing MoPNG has heard not only the parties before the Bombay High Court but all other concerned parties including the petitioner and had reiterated its decision. It is thus contended that the petitioner is privy to the proceedings before the Bombay High Court but has made no reference thereto in the present proceedings or during the hearing. It is urged that the judgment of the Division Bench of the Bombay High Court even though strictly speaking not binding on this Court but this Court cannot ignore the same. Reference is made to ***Pradip J. Mehta Vs. Commissioner of Income Tax, Ahmedabad*** (2008) 14 SCC 283 to contend that this Court even if not agreeable with the view of the Bombay High Court will have to state reasons for the same. It is contended that the petitioner herein has not argued as to how the petitioner is not bound by the judgment aforesaid of the Bombay High Court. It is also argued that there are no inconsistencies between the directions of MoPNG and the decisions of the EGoM and thus no error in the direction of MoPNG impugned in this petition.

33. The ASG appearing for UOI and MoPNG has also stated that his instructions are from the Cabinet Secretariat and thus the stand taken before this Court is the stand of EGoM also.

34. The ASG appearing for UOI and MoPNG has argued that the present petition is a speculative commercial venture of the petitioner; it is stated that the petitioner is free to buy the Gas from private sources but which costs more. It is further contended that another Company of the Essar Group of Companies to which the petitioner belongs, in the field of power generation is availing of the benefit of higher allocation of Natural Gas to the Power sector. It is further argued that the supply from KG-D6 basin commenced only on 27th October, 2009 and the decisions prior thereto were on the basis of expected supply; that though the supply was expected to grow but after growing initially, started falling; that the Government has nothing against the petitioner but the supply being limited, is required to be prioritized and the Government in its wisdom has placed the fertilizer industries at the top and power, CGD and CNG sectors ahead of the petitioner/steel sector. It is contended that while subsidy has to be given to the fertilizer sector, there is no subsidy in steel; that the petitioner is only suffering loss of profit. Reliance is placed on

Reliance Natural Resources Ltd. (supra) to contend that the Gas is to be used in the best interest of the country and not in private interest and that the Government has to prioritize and the petitioner has no right to the Gas demanded. It is further contended that what was earlier given to the petitioner and has been withdrawn and the petitioner is now demanding, was not given to the petitioner by EGoM but by the MoPNG when there was unutilized Gas but today there is no unutilized Gas. Reference is also made to ***State of Haryana Vs. Mahabir Vegetable Oils Pvt. Ltd.*** (2011) 3 SCC 778 on the limits of judicial review of administrative action.

35. The senior counsel for respondent Lanco Kondapalli Power Pvt. Ltd. (Lanco) in Andhra Pradesh has also contended that the petitioner is not entitled to anything in the first 40 mmcmd of Gas extracted / produced and that the decisions of the EGoM do not provide for any *pro rata* cut; that *pro rata* cut would be contrary to prioritization. It is further contended that as per the EGoM also, power sector to which Lanco belongs, is to get any additional Gas available within the first 40 mmcmd of Gas produced and only if after fulfilling complete requirement of Gas based power plants there is any unutilized Gas, is the steel sector to get the same. Attention is invited to the minutes of the

meeting of EGoM held on 27th October, 2009 where it was decided that KG-D6 Gas should be supplied on firm basis to power plants as Lanco so as to enable them to operate at 75% PLF. From the Press Note issued of meeting of EGoM of 27th October, 2009 it is shown that the firm allocation of power sector stood at 31 mmscmd, before steel gets any Gas. It is contended that the price of power is also regulated while that of steel is not. It is yet contended that the letters dated 12th June, 2009 and 19th November, 2009 supra enhancing the supply to the petitioner are of MoPNG and what was given by MoPNG can always be taken back by MoPNG and the petitioner cannot object. It is contended that the directions of MoPNG challenged in this petition are in accordance with the guidelines laid down by the EGoM.

36. The senior counsel for RIL has contended that as per para 121 of the judgment supra of the Apex Court in *Reliance Natural Resources Ltd.*, the contractual obligation of RIL stand overridden by production share contract; that RIL does not want to be in breach of its contractual obligations and will be bound by the Government directives and the decision of this Court thereon.

37. The counsel for GMR has adopted the arguments of the senior counsel for Lanco and has added that the EGoM decisions do not provide for any *pro rata* cut and the said argument has also been rejected by the Bombay High Court. He has further contended that the decisions impugned are of experts and there is a need for certainty in these matters and the matters cannot be permitted to be agitated indefinitely and which will affect the investment in the Gas based sectors.

38. The counsel for Gautami Industries another Gas based power plant in the State of Andhra Pradesh has reiterated that steel industries have no vested right and no priority and first sufficient Gas supply to the power plants to enable them to run up to 75% PLF has to be made. It is contended that no priority for steel beyond 40 mmcmd also has been provided and the discretion in this regard is still with the MoPNG.

39. The senior counsel for the petitioner in rejoinder has reiterated his case. He has contended that the consumption by the CGD has not changed and if earlier the unutilized portion of CGD within the first 40 mmcmd was being made available to the steel sector, there is no reason for the MoPNG to not allocate the same now; that though the petitioner was not in the priority list drawn up for the first 40 mmcmd of

Gas produced but was introduced therein by giving priority to it for allocation of unutilized Gas of CGD; that for production above 40 mmscmd, steel has priority; that CGD today also is taking only 1 to 1.5 mmscmd of Gas leaving the balance 3.5 to 4 mmscmd unutilized and over which the petitioner has a right. It is further contended that the petitioner was not a party to the High Court proceedings and thus cannot be affected therefrom. It is argued that the writ petition before the Bombay High Court was different. The case of the petitioner herein is that either the EGoM decisions be implemented or the matter be placed before the EGoM to consider the pleas of the petitioner. It is further contended that the Bombay High Court was not faced with a case of inconsistencies between the decisions of EGoM and the directions of the MoPNG. It is further urged that mere participation by the petitioner in the hearing before the MoPNG pursuant to directions of the Bombay High Court cannot curtail the fundamental right of the petitioner to approach the Court. It is yet further argued that the conduct aforesaid of MoPNG in the present case shows an attempt to keep the grievance of the petitioner out of purview of EGoM when the same should have been left to be decided by the EGoM; that all that the petitioner is seeking is, for

the EGoM to consider the matter.

40. The present petition was filed in May, 2011 i.e. before the decision of the Division Bench of the Bombay High Court. In fact the judgment of the Bombay High Court notices the pendency of the present writ petition. Thus the occasion for the petitioner to deal therewith in the writ petition did not arise. I am also of the opinion that the petitioner cannot be said to be a party to the petition before the Bombay High Court so as to be said to be bound thereby.

41. The contention before the Bombay High Court also was that the directives of the MoPNG, as impugned in these petitions also, violate the guidelines fixed by the EGoM and MoPNG in issuing the same was sitting in appeal over the decisions of EGoM. The Bombay High Court did not accept the said contention and held that the perusal of the various EGoM decisions showed that a very high priority had been given to the core/priority sectors like fertilizers, power, CGD and LPG; that the EGoM decisions could not be interpreted to mean that once the minimum supply exceeds 40 mmscmd, the entire additional or incremental supply is to be allocated to the steel sector; that the EGoM decision of 27th October, 2009 reflected in the Press Note dated 16th November, 2009 showed that

the firm allocation of 4.19 mmscmd to the steel sector would be after the firm allocation to the four priority/core sectors whose allocation totalled to 50.503 mmscmd; that the EGoM decisions empowered the MoPNG to take decisions regarding supply of Gas; that EGoM having decided the broader policy regarding determination of core and non-core sectors, the concerned Ministry being MoPNG was given requisite freedom or play in joints to implement the EGoM decisions and Gas Utilization Policy in the best interest of the country.

42. I, however on perusal of the judgment of the Bombay High Court do not find that the specific argument raised by the senior counsel for the petitioner herein, of the entitlement of the petitioner/steel sector to the unutilized quantity of the allocation of CGD in the first 40 mmscmd to have been expressly dealt with by the Bombay High Court. I therefore proceed to consider the same.

43. The decision in this regard was in the meeting of the EGoM held on 9th April, 2009. However, to determine as to what could be said to be “unutilized quantity of Natural Gas including from the CGD sector” and in allocation of which the petitioner/steel sector was given priority, first the allocation of each sector including of the CGD sector is to be

determined; only then, can the unutilized quantity in each sector, to which the petitioner lays claim, can be determined. Since the petitioner has based its claim only on the unutilized quantity of the CGD Sector, I proceed to determine the allocation of the CGD Sector.

44. The EGoM decision in the meeting of 28th May, 2008 allocated “a maximum quantity of 5 mmscmd” to be made available to CGD sector. The argument of the senior counsel for the petitioner is premised on 5 mmscmd being firm allocation of CGD sector; it is thus contended that since earlier, excess of 3.5 to 4 mmscmd upon utilization by CGD sector of 1 to 1.5 mmscmd only out of its allocation of 5 mmscmd, was being given to the petitioner/steel sector, the same is to continue. However the allocation of 5 mmscmd to CGD sector is not firm. The words/expression used, “a maximum quantity of 5 mmscmd” show that while the EGoM fixed the upper limit of Gas which could be supplied to CGD, it did not fix any minimum supply which had to be necessarily reserved for CGD sector and to which none else had a claim. Only if the words/expression “a maximum quantity of 5 mmscmd” can be ascribed the meaning of 5 mmscmd of Gas being reserved for CGD, can the petitioner succeed in its argument of being entitled to the unutilized

portion therefrom. Else, if the words/expression aforesaid permitted the allocation to CGD to be only of the quantity actually consumed by CGD sector, the question of any “unutilized quantity from CGD sector” would not arise.

45. The Supreme Court in ***Vishwanath Sood v. Union of India*** (1989) 1 SCC 657 was concerned with a clause in a contract providing for compensation not exceeding 10% of the estimated cost of work being recoverable. It was held that use of such language conferred the deciding authority with a wide margin of discretion, who may not only reduce the percentage but who can even reduce it to nil if the circumstances so warrant. Similarly, in ***High Court of Judicature For Rajasthan v. Veena Verma*** (2009) 14 SCC 734 where the Service Rule provided a maximum limit for direct recruits, it was held that there is no minimum quota and it is entirely in the discretion of authorities concerned to decide how much percent of the total vacancies will be allotted to direct recruits, provided that the maximum prescribed is not exceeded. The provision in the Stamp Act, 1899 empowering the Collector to levy penalty not more than ten times the duty payable, was also in ***Peteti Subba Rao v. Anumala S. Narendra*** (2002) 10 SCC 427 held to be not obliging the Collector of

Stamps to impose the maximum duty; it was held that the Collector has the discretion, depending upon the facts of the case to impose less than ten times penalty.

46. In fact, EGoM in its meeting on 28th May, 2008 itself had decided “Consumers belonging to any of the priority sectors should be in a position to actually consume Gas as and when it becomes available. So the marketing priority does not entail any “reservation” of Gas”. The minutes of the meeting of EGoM of 9th April, 2009 providing for priority to the petitioner/steel sector in unutilized quantity from CGD sector can thus not be read as 5 mmcmd of Gas being reserved for CGD sector and petitioner/steel sector being entitled to unutilized quantity therefrom.

47. The argument of the petitioner of being in the priority list of first 40 mmcmd of Gas extracted/produced is thus found to suffer from a basic fallacy and is rejected.

48. I have also wondered, that if such was the position, what was meant by the decision on 9th April, 2009 of EGoM of giving priority to the petitioner/steel sector in supply of unutilized quantity, if there was to be no such unutilized quantity – whether there is any need to harmonize

the two decisions. On consideration, I however do not find any need therefor. What is for interpretation is not a statute or a contract but minutes of meeting. The principles of interpretation of statutes or of contract are not to be applied thereto. What is to be culled out from the said minutes of meeting is the “decision” taken therein. A reading of the minutes of numerous meetings aforesaid show the demand for Gas from different sectors and an attempt to satisfy all. However, the priority accorded to different sectors in the meeting held on 28th May, 2008 cannot be said to be shaken or changed in the meeting of 9th April, 2009. Thus, the unutilized quantity of CGD sector has to be understood as, out of its earlier allocation and which was not fixed as aforesaid. If, as per the earlier allocation, there was to be no unutilized quantity, so be it. The said provision appears to have been made to provide for the eventuality of offtake by CGD sector of quantity lesser than earlier anticipated.

49. The petitioner has not argued that there is any unutilized quantity within the first 40 mmcmd of Gas produced. A perusal of the minutes of meeting of EGoM of 28th May, 2008 shows that of the initial 40 mmcmd of Gas produced, first full requirement to enable full utilization of fertilizer plants was to be met and thereafter, maximum 3 mmcmd to

LPG, upto 18 mmcmd to power plants, maximum 5 mmcmd to CGD was to be supplied; excess left was to be used to supply more than 18 mmcmd to power plants. MoPNG was authorized to resolve issues if any in implementation. Thus, even if it were to be the case of the petitioner that there is any excess/unutilized Gas within the initial 40 mmcmd produced, MoPNG has been authorized to resolve the claims with respect thereto.

50. I now proceed to consider the entitlement of the petitioner / steel sector to Gas under the decisions aforesaid of EGoM.

51. The demand of the steel sector was noticed first in the minutes of meeting of 23rd October, 2008. It was decided to give priority to said sector “after the sectors decided in the EGoM meeting held on 28th May, 2008. However, the supply would be made from the production beyond the first 40 mmcmd to be produced from RIL’s KG-D6 field”. The only meaning which can be ascribed to the said decision is that the petitioner/steel sector was not entitled to any share in the first 40 mmcmd of Gas produced/extracted and the priority of the petitioner/steel sector in production beyond 40 mmcmd also was to be after the sectors to which priority was given in meeting of 28th May, 2008.

52. The minutes of meeting of EGoM held on 8th January, 2009 are in the light of production of Gas expected to reach 80 mmscmd by 2012. The decision on requirement of steel sector was deferred till increase in production of Gas beyond 40 mmscmd which was expected only in the year 2010.

53. In the meeting on 9th April, 2009, besides the unutilized quantity of Gas, dealt with above, the EGoM though “recognized that allotment is necessary for Petrochemicals, Refinery and Steel Sectors” but observed that “precise allotment to these users will be made while taking decisions of utilization of Gas beyond 40 mmscmd.”

54. In the next meeting of EGoM held on 27th October, 2009, “it was decided that 0.44 mmscmd of KG-D6 Gas should be supplied on firm basis to meet the shortfall of existing Gas based steel plants, viz., Essar Steel (Hazira), M/s Ispat Industries (Dolvi) and M/s Vikram Ispat (Salav).” MoPNG was also authorized to take “decisions regarding supply of natural Gas to sectors/individual customers consequent to Gas available on account of short offtake, delay and any other unforeseen circumstances”.

55. No other decision of MoPNG is cited or shown.

56. On the basis of aforesaid decisions of MoPNG, the petitioner/steel sector is not found entitled to any supply of Gas in production till 40 mmscmd. In the production beyond 40 mmscmd, the priority of petitioner/steel sector is again, after the sectors of Fertilizers, LPG, Power, CGD and CNG. However, the EGoM is not found to have as yet decided on allocation for production beyond 40 mmscmd and which was kept pending in the meeting held on 9th April, 2009. In the subsequent meeting dated 27th October, 2009 also, no decision in this regard was taken, though firm allocation of 0.44 mmscmd (obviously from production above 40 mmscmd) was made to the steel sector including the petitioner. This firm allocation also is subject to decision of MoPNG consequent to unforeseen circumstances.

57. Thus the only claim of the petitioner can be out of the said 0.44 mmscmd firm allocation but which is not the basis of the present petition.

58. There being no decision of EGoM in favour of the petitioner forming the basis of claim of the petitioner, no merit is found in the argument that the directives of MoPNG impugned in this petition are

contrary to the decision of EGoM and that the matter is required to be placed before the EGoM.

59. In view of the aforesaid findings, the concessions even if any made on 12th May, 2011 and 7th July, 2011 in these proceedings to place the matter before EGoM, do not come to the rescue of the petitioner.

60. Though the petitioner has also contended that the decision to impose disproportionate cuts is irrational and arbitrary but to be fair to the senior counsel for the petitioner, he did not really press the same. Even otherwise, it is not for this Court to sit in appeal over the decision of the competent administrative authorities.

61. There is thus no merit in the petition; the same is dismissed with costs of ₹5 lacs payable by the petitioner to the MoPNG within four weeks of today.

**RAJIV SAHAI ENDLAW
(JUDGE)**

SEPTEMBER 29, 2011/bs