

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

+ **RFA No.239/2006**

% **12<sup>th</sup> September, 2018**

P.N. SETHI

..... Appellant

Through: Mr. Ajay Kumar Jha, Advocate  
with Mr. K.R. Sasiprabhu,  
Advocate and Mr. Rohit  
Chandra, Advocate (M.  
Nos.9811679632, 9971233838  
& 8447933100).

versus

PARLEY BISCUITS LTD.

..... Respondent

Through: Mr. Jagjit Singh, Advocate (M.  
No.9810152774).

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the Trial Court dated 22.10.2005 by which trial court has dismissed the suit filed by the appellant/plaintiff for

recovery of Rs.7,86,131/- against the respondent/defendant on account of providing by appellant/plaintiff to the respondent/defendant consultancy services towards settlement of accounts done by the appellant/plaintiff for the respondent/defendant with the supplier of natural gas Gas Authority of India Ltd. (GAIL) to the respondent/defendant. The appellant/plaintiff pleaded that a contract was entered into between him and the respondent/defendant in terms of the appellant's/plaintiff's letter dated 8.8.1997/Ex.PW1/1 and the reply of the respondent/defendant dated 11.8.1997/Ex.PW1/2. The appellant/plaintiff pleads that on account of his visiting the office of the GAIL India Ltd on various occasions and consequently the respondent/defendant was released a sum of Rs.1,10,76,965/- by GAIL and consequently the appellant/plaintiff became entitled to contractually receive 5% of this amount being Rs.5,53,848/-, and since the same was not paid in spite of repeated reminders to the respondent/defendant, hence the subject suit was filed.

2. Respondent/defendant contested the suit and took up the objection that the amount which was released by the GAIL to the respondent/defendant was not on account of any acts or efforts of the

appellant/plaintiff but was on account of the general circular dated 13.4.1993 issued by the Government of India whereby the consumers of natural gas had not to pay any minimum guaranteed off take amount, but that the consumer had only to pay for the actual gas consumed. Respondent/defendant contended that what was paid to the respondent/defendant by GAIL was the difference of the amount being the higher minimum off take already paid by the respondent/defendant to GAIL as compared to the lower amount which was actually payable on account of the lesser actual consumption of natural gas that as the minimum guaranteed consumption and this differential amount therefore was credited in favour of the respondent/defendant being the amount of Rs.1,10,76,965/-.

3. Trial court by the impugned judgment has dismissed the suit by holding that payment which is received by the respondent/defendant is on account of the general circular of Government of India dated 13.4.1993 and that no evidence has been led by the appellant/plaintiff that because of his skills and expertise that the said amount was released by GAIL to the respondent/defendant. The relevant discussions in this regard are

contained in paras 12 and 13 of the impugned judgment and these paras read as under:-

“12. The counsel for the defendant has vehemently argued that the plaintiff is unable to show that the plaintiff has put in any efforts to get the amount released. It has been admitted by the plaintiff in the cross examination that there is no details available to show as to when and for that matter how many times he visited the office of GAIL in connection with the job of the defendant. Although, he has stated that he has proof qua his visits but has not brought it on record. The plaintiff has also admitted that he has no special knowledge or expertise of the accounting system. The plaintiff has also admitted that the GOI has revised the schedule of price of the gas by GAIL through letter dt.13/4/1993. It has also been admitted by the plaintiff that the amount refunded to the defendant by the GAIL was on account of and in-consonance with letter dt. 13/4/1993 of GOI. It is submitted by him that he has convinced the authorities at GAIL by quoting examples. However, the plaintiff has not been able to show that he had communicated with GAIL in writing, nor he has brought any evidence by examining any official of GAIL with whom he had the meeting and deliberations over the issue pertaining to the refund of amount to the defendant.

13. The crux of the contentions of the counsel of the defendant that there is no cogent evidence on record which may indicate that the plaintiff had used his skills and experience to further the cause of the defendant with GAIL. In view of these facts where the documents filed on behalf of the plaintiff are not proved on record and he is unable to show that he has used his expertise, his skills for the benefit of the defendant, and for that matter the plaintiff has no special knowledge in the accounting field as has been admitted by him in the cross examination that he is an Engineer. Thereafter in these circumstances, the claim lodged by the plaintiff remains unsubstantiated as such the plaintiff is not entitled to the

principal amount claimed. Accordingly, issue no.2 is decided in favour of the defendant and against the plaintiff.”

(underlining added)

4. Learned counsel for the appellant/plaintiff has argued before this Court that it is not possible in the facts of the case for the appellant/plaintiff to have maintained his record of visits to GAIL and once the amount which is released to the respondent/defendant though may be in terms of the circular of Government of India dated 13.4.1993, yet since the respondent/defendant received this amount because of the efforts of the appellant/plaintiff by placing reliance upon the circular of the Government of India dated 13.4.1993, therefore the appellant/plaintiff became entitled to the amount due which was 5% of the amount released in favour of the respondent/defendant inasmuch as the figure of 5% is clearly stated in Ex.PW1/1 written by the appellant/plaintiff to the respondent/defendant and acknowledged by the respondent/defendant by its letter dated 11.8.1997/Ex.PW1/2.

5. Learned counsel for the respondent/defendant has argued that case of the appellant/plaintiff was misconceived more so because in the offer letter of the appellant/plaintiff dated 8.8.1997/Ex.PW1/1 the claim of the appellant/plaintiff only arises when the

respondent/defendant is released the amount by the settlement of accounts with GAIL India Ltd in terms of the provisions of the contract entered into by the respondent/defendant with GAIL, whereas the amount which is being released is not on account of the settlement of accounts with GAIL under the contract but *dehors* the contract and only on account of the circular dated 13.4.1993 of Government of India.

6. In order to appreciate the respective arguments, letter of the appellant/plaintiff dated 8.8.1997, letter of the respondent/defendant dated 11.8.1997 and the letter of the appellant/plaintiff to respondent/defendant dated 15.12.1997 (though receipt of which is denied by the respondent/defendant but being a document of appellant/plaintiff can be used against the appellant/plaintiff), are required to be referred to, and these three letters read as under:-

**“Letter dated 8.8.1997**

8 August 1997

M/s. Parle Biscuits Limited  
Delhi-Rohtak Road  
**BAHADURGARH-124507**  
(Haryana)

Sub: Consultancy services for Gas Supply Contract

Dear Sirs,

This has reference to my discussions in your office today regarding rendering of consultancy services for finalization of the accounts with GAIL for getting refunds for gas supply in terms of the provisions in the contracts executed so far with GAIL.

In this regard, I had offered to take 5% of the amount received from GAIL by your organization. This amount will be paid to us after you get the payments from GAIL.

Kindly convey your acceptance for the same and also favour us with information like copies of Contracts, amount paid to GAIL so far (month-wise) to enable us to take up the matter with GAIL.

Thanking you,

Yours faithfully,  
For NATURAL GAS ASSOCIATES

Sd/-  
(P.N. SETHI)  
CHIEF EXECUTIVE

**Letter dated 11.8.1997**

August 11, 1997

Mr. P.N. Sethi  
Chief Executive  
M/s. Natural Gas Associates  
354, Sector 'A' Pocket C  
Vasant Kunj  
NEW DELHI-110070.

Dear Sir,

This has reference to your letter dated 8<sup>th</sup> August 1997 and further discussions we had in our Factory.

We accept your offer for retainership with regard to finalization of accounts with GAIL for supply of Natural Gas to us. We also agree to pay you 5% (five per cent) of the amount received by us from GAIL against settlement of our claims.

In the meantime, we are sending you the copy of our Contract with GAIL along with details of payments made to them. We request you to file refund claims on our behalf wherever necessary.

Thanking you,

Yours faithfully,  
FOR PARLE BISCUITS LIMITED

Sd/-  
(S.S. SHIVRAIN)  
GENERAL MANAGER

Encl: As above.

**Letter dated 15.12.1997**

NGA/I2/37 15.12.97  
To  
M/s Parle Biscuits Limited,  
Delhi-Rohtak Road,  
BAHADUR GARH 124507  
(HARYANA)

SUBJECT:- NATURAL GAS

Dear Sirs,

This has reference to your letter dated II/8/97 on the above referred subject. Gas Authority of India Ltd. has relaxed Minimum Guaranteed Offtake Provisions of the Contract with effect from 13.4.93 in view of Government of India letter dated 13.4.93 which was not earlier given effect to, but on our pointing

out of the provisions contained in this letter the relaxations in MGO has been given by amending the earlier Contracts and making the necessary changes in all future Contracts.

Because of this change in Contracts effected from 13.4.97 the refund amount in favour of M/s Parle Biscuits Ltd. has been calculated by GAIL as Rs.1,10,76,965/- upto 31.7.97 and this amount is being adjusted against your gas supply bills from first fortnight of October, 97 by giving necessary credits.

In view of Govt. of India letter dated 13.4.93 and the amendments in the gas supply contracts, we also become entitled to Gas Pricing concessions, the case for which will be taken up after the aforesaid amount on account of MGO is adjusted. Since such gas supplies as per the recent gas pricing orders of Govt. of India, I would request you to make available to us the copies of future gas supply contracts as well as correspondence copies, if any, to keep our records up to date.

I am raising a consolidated bill of our fees as per our contract on the above referred amount of Rs.1,10,76,965/- as Rs.5,33,848/-. You may kindly make fortnightly payments based on the fortnightly gas supply bills and credit received from October, 97 onwards indicating the fortnightly amounts adjusted. This will also enable us to keep a track of the total amount credited by GAIL.

Thanking you,  
Encl. A/A.

Yours faithfully  
For NATURAL GAS ASSOCIATES  
Sd/-  
Authorized Signatory”

7. Para 1 of the letter dated 8.8.1997 makes it clear that entitlement of the appellant/plaintiff was only for settlement of

accounts and getting refunds in terms of the provision of the contract entered into by the respondent/defendant with GAIL. The amount which is released in this case is not by settlement of accounts under the contract and using by the appellant/plaintiff of his expertise for consequent release of the amount to the respondent/defendant payable under the contract of respondent with GAIL. The respondent/defendant was given the amount of Rs.1,10,76,965/- on account of bounty given by the Government of India that though in the contract for supply of natural gas payment had to be made on a minimum off take guarantee consumption but this payment by a consumer of natural gas need not be as per minimum off take guarantee but can be for a lesser actually purchased natural gas from GAIL. Therefore the present is not a case of any amount being got released by the appellant/plaintiff to the respondent/defendant by using his consultancy services for accounts for GAIL and this is in so many terms admitted by the appellant/plaintiff in his letter dated 15.12.1997/Ex.PW1/3 written to the respondent/defendant and which has been reproduced in its entirety above.

8. I may note that the respondent/defendant had also exhaustively and thoroughly cross-examined the plaintiff, and who in his cross-examination admitted that he had no record of any visits to the office of the GAIL and nor any proof that he conducted any discussion with any officials of GAIL for release of the said amount to the respondent/defendant, much less under the contractual provisions of respondent with GAIL. In any case even if the amount would have been released to the respondent/defendant on account of any discussion of the appellant/plaintiff with GAIL, yet since the release is not on account of the settlement of accounts in terms of the contracts but *dehors* the accounts settlement in terms of the contract, and only in view of the circular of Government of India dated 13.4.1993, in view of the language of Ex.PW1/1 no right accrues in favour of the appellant/plaintiff.

9. Counsel for the appellant/plaintiff argued that the respondent/defendant has admitted in its written statement that the amount would be due to the appellant/plaintiff on account of the contract being entered into by the respondent/defendant with GAIL, however in the opinion of this Court what would bind the parties is not

any aspect as stated in the written statement by the respondent/defendant because what is stated by the respondent/defendant in its written statement is only on the basis of the contract entered into between the parties as crystallized and formalized in terms of Ex.PW1/1 and Ex.PW1/2, and which letter restrict the issue of entitlement of the appellant/plaintiff only for settlement of accounts in terms of the contract and not *dehors* the contract.

10. There is no merit in the appeal. Dismissed.

**SEPTEMBER 12, 2018**  
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**VALMIKI J. MEHTA, J**