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

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Pronounced on: 12.04.2017

+ LPA 365/2016 & CM Nos.21510/2016 – 21513/2016

M/S. SANWARIYA GAS LIMITEDAppellant

Through: Mr.K.K.Rai, Senior Advocate with
Mr.S.K.Pandey, Mr.Anshul Rai, Mr.Awanish
Kumar and Mr.Chandrashekhar, Advs.

Versus

GAIL GAS LIMITED & ORS. ..Respondent

Through Mr.Ramjisrinivasan, Senior Advocate,
with Mr.Ajit Puduserry and Ms.Shruti Hazarika,
Advs. for R-1
Mr.Prashant Bezboruah and Mr.Rakesh Dewan,
Advs. for R-2
Mr.Punit K.Bhalla, Adv. for R-3

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. Present Letters Patent Appeal is filed seeking to impugn the order dated 29.2.2016 passed by the learned Single Judge. The grievance of the petitioner is that the respondent No.1 has been granted an interim protection

which is contrary to the interests of the appellant without hearing the appellant.

2. The relevant brief facts are that the appellant was authorized to lay, build and operate city gas distribution network in the geographical area of Mathura vide letter dated 12.06.2009 by respondent No.2. It is further stated that on 28.11.2011 respondent No.2 on the website hosted a letter dated 26.9.2011 pointing out acceptance of the Central Government Authorisation in favour of respondent No.1 for the geographical area of Firozabad. The grievance of appellant is that the geographical area of Firozabad as carved out by respondent No.2 encroached upon area of Govardhan and Vrindavan which were contiguous to the geographical area of Mathura where the appellant was authorized. The appellant filed a writ petition being No.2809/2013 challenging the said communication dated 26.9.2011. It is stated that the appellant went up to the Supreme Court and the appellant was directed to agitate the issue before respondent No.2 as per the Petroleum and Natural Gas Regulatory Board Act 2006 (hereinafter referred to as the 2006 Act). However, no further details are given of the proceedings including the proceedings before the Supreme Court as initiated by the petitioner. On 2.3.2015 respondent No.2 is said to have quashed the letter dated 26.9.2011 granting authorization to respondent No.1 for the geographical area of Firozabad. Respondent No.1 filed an appeal No.122/2015 before the Appellate Tribunal for electricity challenging the said order dated 02.03.2015. The Tribunal on 22.5.2015 passed a status quo order as on the date of the impugned order.

3. On 23.11.2015 respondent No.2 is said to have encashed the Performance Bank Guarantee for Firozabad Area furnished by respondent

No.1. The respondent No.1 is said to have challenged the said letter dated 23.11.2015 by filing Writ Petition No.11015/2015 i.e. the petition in which the impugned order which is subject matter of the present appeal was passed. The appellant was not made a party in the said Writ Petition as there was no lis between the appellant and the respondent on the issue regarding encashment of the bank guarantee by respondent No.2. The Learned Single Judge vide order dated 30.11.2015 directed the parties to maintain status quo with regard to encashment of bank guarantee.

4. It is further stated that respondent No.1 on 24.2.2016 filed an application CM No.7322/2016 in the said Writ Petition No.11015/2015 for modification of the interim order dated 22.5.2015 passed by the Appellate Tribunal in the Appeal No. 122/2015 pending before the said tribunal. The impugned order was passed on the filing of the said application. The grievance of the appellant is that he was not made a party in spite of the fact that the order passed in the said CM has a direct bearing upon the rights of the appellant. Hence, it is urged that the impugned order dated 29.2.2016 passed by the learned Single Judge be set aside.

5. We have heard learned counsel for the parties.

6. It is clear that the limited grievance of the appellant is that the impugned order has been passed granting liberty to the respondent No.1 to go ahead with the activities of laying pipeline, creating compression facilities, etc. in entire Firozabad including charge areas of Vrindavan and Govardhan in order to supply natural gas of CNG and PNG to various customers in line with the PNGRB authorisation to respondent No.1 without hearing the appellant. However, a perusal of the order would show that respondent No.1 was obliged to prefer an appeal before the appellate

authority and the appellate authority was to take up the said appeal expeditiously as possible. The impugned order also records that the appellate authority shall take up the application for interim relief.

7. Hence, as the adjudication of the application for interim relief has been relegated to the tribunal, the impugned order would necessarily be subject to further directions that may be passed by the tribunal. Accordingly, we grant liberty to the appellant to approach the tribunal, where the appeal would have been preferred by respondent No.1 for pressing its contentions as per law.

8. Petition stands disposed of. All pending applications also stand disposed of accordingly.

(JAYANT NATH)
JUDGE

CHIEF JUSTICE

APRIL 12, 2017

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