

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.11.2019
CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN
W.P.41002 of 2015 & M.P.s 1 & 2 of 2015
and

W.P. 13619 of 2016 & W.M.P.s 11921 to 11923 of 2016

M/s.Saheli Exports Pvt. Ltd.,
No.25, Sir Madhavan Nair Road,
Mahalingapuram,
Nungambakkam,
Chennai-600 034.

... Petitioner in
both W.P.s

Vs.

1. The Union of India,
rep. by the Secretary to the
Government of India,
Ministry of Petroleum and Natural
Gas, Shastri Bhavan,
New Delhi - 110 001.

2. GAIL (India) Limited,
GAIL Building,
16, Bhikaji Cama Place,
R.K.Puram, Ring Road,
New Delhi - 110 066.

3. GAIL (India) Limited,
rep. by Zonal General Manager,
7A, Kences Towers,
No.1, Ramakrishna Street,
North Usman Road, T.Nagar,
Chennai-600 017.

... Respondents in
both W.P.s

PRAYER in W.P. 41002 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 1st respondent to forthwith issue necessary clarification/instructions to the 2nd respondent to ensure continuance of gas supply to the petitioner's power plant after 31.12.2015.

PRAYER in W.P. 13619 of 2016 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the 1st respondent from cancelling the allocation of 35000 SCMD of natural gas allotted to the

petitioner vide letter dated 05.06.2000, which is being used since April 2005 as fuel for generating power at the petitioner's power plant and consequently direct the 2nd respondent to extend the term of the gas supply to the petitioner by executing necessary agreement, similar to agreements executed with other gas based power plants in the region.

For Petitioner : Mr. A.R.L. Sundaresan,
in both W.P.s Senior Advocate for
Mr.Vinod Kumar

For Respondents : Mr.T.L.Thirumalaisamy,
in both W.P.s CGSC for R1

Mr.P.V.S.Giridhar for R2 & R3

O R D E R

Writ Petition in W.P. 41104 of 2015 has been filed seeking a direction to the 1st respondent to issue a clarification to the 2nd respondent regarding continuation of gas supply to the petitioner power plant.

Writ Petition in W.P. 13619 of 2016 has been filed forbearing the respondents from cancelling the allocation of 35000 SCMD of natural gas allotted to the petitioner vide letter dated 05.06.2000.

2. The brief facts leading to the filing of these Writ Petitions are as follows :-

The petitioner company said to have a natural gas power plant originally at Thirumalkottai, Nagapattinam District. The petitioner sought for permission from the 1st respondent seeking for allotment of 35000 standard cubic meters of natural gas to their company, and it was intended to be used for generation of power utilised for manufacturing of steel, in the proposed steel plant of the petitioner. The 1st respondent by an order dated 05.06.2000 has allotted 0.035 MMSCMD of natural gas from Kuttralam fields in Cauvery basin for manufacture of steel in the proposed steel plant. The petitioner was also directed to enter into a gas supply agreement with 2nd respondent GAIL, within 60 days from the date of issue of that letter. Pursuant to the same, the petitioner has entered into an agreement with GAIL, initially for the period of 10 years from 06.10.2000. Thereafter, the agreement was renewed for a further period of five years from 01.01.2011 to 31.12.2015. Thereafter, when the

petitioner sought for further renewal, the 2nd respondent GAIL has informed the petitioner that, the original order for allocation of gas only for manufacture of steel, but the petitioner company has been using the fuel for generation of electricity in the power plant instead of using the gas for the manufacture of steel. In view of the above anomaly regarding the purpose of allocation, they have directed the petitioner to get re-allocation order from the 1st respondent permitting the petitioner to use the gas for their power plant. The 2nd respondent GAIL has also sought for clarification from the 1st respondent to that effect. Until the issue is clarified by the 1st respondent, the 2nd respondent GAIL informed the petitioner that they will supply the gas till the validity of the contract till 31.12.2015. Immediately, the petitioner has approached the 1st respondent by a representation dated 21.12.2015 seeking a clarification relating to the change in gas use condition i.e. from "generation of power for use in manufacture of steel" to "use as fuel in power plant", and to direct the 2nd respondent GAIL to continue the supply till the clarification is issued. Since the petitioner's request was not considered, the petitioner has filed a Writ Petition in W.P. 41002 of 2015 seeking a direction to the 1st respondent to issue necessary clarification to the 2nd respondent to ensure continuance of gas supply to the petitioner's power plant. So far, no order has been passed. The petitioner apprehends that, after the expiry of contract period, the 1st respondent may cancel the allotment order, another Writ Petition has been filed in W.P. 13619 of 2016 forbearing the 1st respondent from cancelling the allocation of natural gas allotted to the petitioner. This Court by an order dated 29.12.2015 granted an order of interim injunction restraining the respondents from discontinuing the gas to the petitioner's power plant.

3. Mr. AR.L. Sundaresan, learned Senior Counsel appearing for petitioner would submit that, even though the petitioner originally requested for supply of gas for production of power, due to oversight, the order has been issued for manufacture of steel in the power plant. However, the 2nd respondent GAIL granted interim relief for supply of gas to the petitioner's power plant. Subsequent communications between the petitioner and the 1st and 2nd respondents, clearly shows that the intention was only to supply gas to the power plant not to the steel industry. In the above circumstances, a clarification was sought from the 1st respondent and the application is pending from the year 2015. So far, no order has been passed by the 1st respondent. In the said circumstances, the learned Senior Counsel sought for a direction to the 1st respondent to consider the petitioner's representation as well as the representation

sent by the 2nd respondent seeking for clarification regarding the change of user condition within a time frame.

4. Per contra, the learned standing counsel appearing for the 1st respondent would submit that, the permission was granted only for manufacturing steel in the steel plant. Instead of that, the petitioner is using the gas for manufacturing the power, which is not permissible.

5. The learned counsel appearing for the 2nd respondent would submit that, the Writ Petition itself is not maintainable. The petitioner wants to enforce the contractual obligation between the parties, for that, the Writ Petition cannot be maintained. If at all, there is any dispute between the parties, the only remedy available for the petitioner to refer the matter to the Arbitrator as per Clause 15(1) of the contract. Without availing the said remedy, the petitioner cannot maintain a Writ Petition.

6. The learned senior counsel appearing for the petitioner would contend that, the petitioner has not sought to enforce any contractual obligation between the parties. Since the clarification sought by the petitioner is pending with a statutory authority, the Government can be compelled to discharge its statutory function.

7. I have heard and considered the rival submissions made by the learned counsel appearing for petitioner as well as the learned standing counsel appearing for 1st respondent, and the learned counsel appearing for 2nd and 3rd respondents and perused the records carefully.

8. Even though elaborate arguments are advanced by both sides, on the merits of the case, the prayer sought by the petitioner is only limited to the extent seeking for clarification from the 1st respondent regarding the user clause. In the above circumstances, this court is of the view that, instead of going into the merits of the case, it is suffice, to direct the 1st respondent to consider the petitioner's representation dated 21.12.2015 and the clarification sought by the 2nd respondent relating to change of user condition i.e. from "generation of power for use in manufacture of steel" to "use as fuel in the power plant" and pass suitable orders on merits. Accordingly, both the Writ Petitions are disposed of with a direction to the 1st respondent to consider the petitioner's representation dated 21.12.2015, and also the clarification sought by the 2nd respondent, after giving opportunity to the petitioner as well as the 2nd respondent, and pass suitable

orders in accordance with law within a period of twelve weeks from the date of receipt of copy of this order. The petitioner is also permitted to file a fresh representation to the 1st respondent. Considering the fact that, the 2nd respondent is supplying gas to the petitioner continuously from the year 2009, and now the petitioner is running the industry, till the final order is passed by the 1st respondent, the 2nd respondent is directed to supply gas on payment of necessary charges.

9. With the above direction, these Writ Petitions are disposed of. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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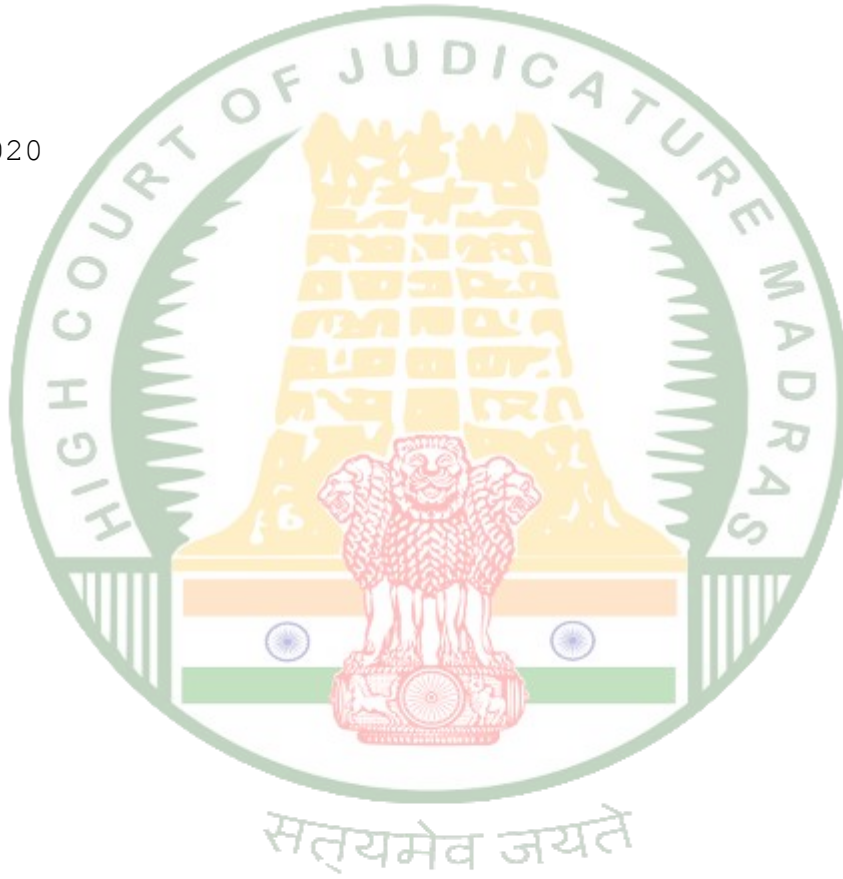
To

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Usman Road, T.Nagar, Chennai-17.

+2cc to Giridhar & Sai Advocate sr97167,97168
+1cc to M/s.T.L.Thirumalasamy Advocate sr97490
+1cc to M/s.Vinod Kumar Advocate sr97845

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