

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.912 of 2020
and CMP No.11248 of 2020

1. GAIL (India) Limited
GAIL Building,
16, Bhikaji Cama Place,
R.K. Puram, Ring Road,
New Delhi - 110 066
2. GAIL (India) Limited,
Represented by Zonal General Manager,
7A, Kences Towers, No.1. Ramakrishna Street,
North Usman Road, T. Nagar,
Chennai - 600 017 ... Appellants/2nd and 3rd Respondent

-Vs-

1. Saheli Exports Pvt Ltd
No.25, Sir Madhavan Nair Road,
Mahalingapuram, Nungambakkam,
Chennai - 600 034
2. The Union of India,
Represented by the Deputy Secretary to the
Government of India,
Ministry of Petroleum & Natural Gas,
Shastri Bhawan, New Delhi - 110 001
... Respondents /Petitioner & 1st Respondent

Appeal filed under Clause 15 of Letter Patent to set aside the order passed by the Hon'ble Court in WMP No.16195 of 2020 in W.P.No.13064 of 2020 dated 17/09/2020.

Prayer in WMP No.16195 of 2020:

Petition praying to grant an order of interim injunction restraining the Respondents from discontinuing gas supply to the Petition pending disposal of the writ petition.

Prayer in W.P.No.13064 of 2020:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other writ Calling for the records of the First Respondent in F.No. L-12013 / 2 / 2015 - GP-I dated 11.09.2020 canceling the allotment of natural gas to the petitioner made vide allotment letter dated 5.6.2000 which is being used continuously by the petitioner for generating power at the petitioners power plant and consequently direct the First Respondent to restore the original allotment made to the petitioner.

For Appellant : Mr.A.L. Somayaji
Senior Counsel for
Mr.Giridhar and Sai

For 1st Respondent : Mr.Vijay Narayan
Senior Counsel for
Mr.Vinod Kumar

For 2nd Respondent : Mr.R. Sankaranarayanan
ASGI

JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

Heard Mr.A.L. Somayaji, learned counsel for the appellant, Mr.Vijay Narayan, learned Senior Counsel for the first respondent and Mr.R. Sankaranarayanan, learned Additional Solicitor General for Union of India.

2. The intra court appeal is directed only against an interim order passed by the learned Single Judge on 17.09.2020, whereby, a direction has been issued to the appellants to continue the gas supply to the first respondent, pending the writ petition.

3. Mr.A.L.Somayaji and Mr.R.Sankaranarayanan have joined together in their arguments contending that the status of the agreement, as per the admitted position, according to them, is that the same expired on 31.12.2015 as per clause 2.2 of the Gas Sale, Purchase and Duration of the Agreement. It is further submitted that no extension of agreement has taken place in terms of Article 3 and in the absence of any such renewal, the agreement has absolutely no force. Hence this court could not by

an interim order issue direction for continuing the supply de hors the terms of the agreement.

4. It has also been pointed out that when the dispute arose, writ petitions being W.P.Nos.41002 of 2015 and 13619 of 2016 came to be filed regarding the subject matter, in which, an interim order was granted continuing the supply of gas and the matter came to be finally disposed of on 21.11.2019 with a direction to the Secretary, Government of India, Ministry of Petroleum and Natural Gas to decide the matter on a representation to be filed by the first respondent.

5. The impugned order dated 11.09.2020 is said to have been passed by the Deputy Secretary to the Government of India came to be challenged in the writ petition giving rise to the appeal on the ground that the order has been passed by a Deputy Secretary, who had not heard the matter and therefore the same was in violation of principles of natural justice.

6. The learned Single Judge, prima facie found this ground to be available for passing of an interim order, as a result thereof, the order impugned came to be passed on 17.09.2020.

7. Learned counsel for the appellants submits that apart from the interim arrangement that was continuing earlier having come to an end and in the absence of any agreement for continuing the supply, even otherwise if there was any such dispute, it could have been raised by way of invoking Arbitration under the said agreement. It is further submitted that tested on any grounds the impugned order dated 11.09.2020 passed by the Deputy Secretary clearly recited specific reasons for cancelling the allocation made by the Central Government which reasons have not been noticed by the learned Single Judge while passing the impugned interim order.

8. It is therefore submitted that such a relief, for which a writ petition was not maintainable and which otherwise could not have been granted at the interim stage, is contrary to law and therefore, the appeal deserves to be allowed and the impugned interim order deserves to be set aside.

9. Responding to the said submissions, Mr.Vijay Narayan, learned Senior Counsel points out that the order passed by the authority is not only in violation of principles of natural justice but even otherwise also, it fails to consider the fact that the change of usage of the gas was under the agreements that came to be amended from time to time and therefore, the gas was not being utilised for any purpose contrary to which it was allocated. He, therefore, submits that the order impugned dated 11.09.2020 otherwise also proceeds under erroneous assumption.

10. Having considered the submissions raised the first issue that requires consideration is as to whether the learned Single Judge could have proceeded to issue any such directions for the continuing of supply in the given facts and circumstances of the case.

11. We find that the issues that have been advanced before us in this appeal did require consideration by the learned Single Judge and therefore, it would be appropriate and in the interest of justice, as also expedient that such issues are considered by the learned Single Judge for the purpose of granting such a relief either at the interim stage or even finally.

12. In our opinion, we find it appropriate to dispose of this appeal with liberty to the appellants and the Union of India to file their response by the next week to which a reply may be filed by the first respondent in the week thereafter.

13. We request the learned Single Judge therefore to decide the matter appropriately keeping in view the aforesaid contentions that have been advanced apart from whatever grounds or facts are pleaded by the respective parties in their pleadings so that the present impasse may be resolved. This may be done preferably within fifteen days of the presentation of the certified copy of the order before the learned Single Judge for passing appropriate orders in respect of the contentions that have been raised before us.

14. The appeal stands disposed of accordingly. The interim order passed by the learned Single Judge shall continue for a further period of three weeks from today.

15. The order should not be construed in any way to be any opinion with regard to the rates of supply of the gas. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Deputy Secretary to the
Government of India,
Union of India,
Ministry of Petroleum & Natural Gas,
Shastri Bhawan, New Delhi - 110 001.

+1 Cc to Mr.Vinod Kumar, Advocate sr 32266(29/10/2020)

W.A.No.912 of 2020

SAI[CO]
SRG 23/10/2020



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