IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.13064 of 2020
and
W.M.P. Nos.16193, 16195, 16196 and 16197 of 2020

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

Vs.

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

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

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

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PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in F.No.L-12013/2/2015-GP-I dated 11.09.2020 cancelling the allotment of natural as to the petitioner made vide allotment letter dated 5.6.2000, which is being used continuously by the petitioner for generating power at the petitioner's power plant

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and consequently direct the first respondent to restore the original allotment made to the petitioner.

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For Petitioner : Mr.Vijay Narayan, SC
for Mr.P.Vinod Kumar

For Respondent-1 : Mr.G.Karthikeyan,
Assistant Solicitor General of India,

For Respondents
2 and 3 : Mr.P.V.S.Giridhar
for M/s.Giridhar and Sai

ORDER

The petitioner has sought for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in F.No.L-12013/2/2015-GP-I dated 11.09.2020, cancelling 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 petitioner's power plant and consequently for a direction to the first respondent to restore the original allotment made to the petitioner.

2. The petitioner is a company incorporated under the Companies Act, 1956, involving in the business of setting up power plants and generating electricity. The petitioner also had set up a natural gas based 8.8 MW power plant at Komal West Village, Nagapattinam District. The natural gas is to be used as fuel at the petitioner's power plant i.e., supplied by the second respondent. The first respondent has granted permission to Oil and Natural Gas Corporation (ONGC), which was selling gas directly to the consumers till 1992. Pursuant to the Government Policy, it was transferred to the second respondent/GAIL. The petitioner-Company had set up its natural gas based power plant during April 2005. The entire natural gas supplied by the second respondent had been used only for the purpose of generation of power. However, originally, the petitioner had sought for allotment of natural gas for generation of power, which was to be utilised for manufacture of steel, which was to be set up by the petitioner. Hence, it is understood that the gas supply was required by the petitioner for the purpose of generation of power for its proposed steel plant. On 23.12.1999, a request for allocation of natural gas was made by the petitioner stating that the gas is for production of power for utilising the same in its proposed steel plant. However, in the allotment letter dated 05.06.2020, issued to the

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petitioner by the Ministry of Petroleum and Natural Gas, it is mentioned that the gas allotment is for manufacture in the steel plant. The letter of allocation dated 05.06.2000 had two conditions, ie., (i) the petitioner should pay the relevant transportation charges and (ii) the petitioner should enter into a gas supply contract with the second respondent within 60 days, which means that there is no condition with regard to use of gas.

3. Accordingly, a contract dated 06.10.2000 came to be entered into between the petitioner and the second respondent. The said contract clearly stated that the gas is to be used for generation of power for use in the steel plant. It is stated that as proposed, the steel plant did not take off. Since the steel plant project was abandoned, the power generated in the plant using the gas allotted to the petitioner, was sold to captive consumers including a steel plant using the state grid. It is stated that the subsequent amendment agreement dated 03.05.2003 with the second respondent categorically stated that the gas allotted to the petitioner is for use of fuel at its power plant.

4. The agreement period was originally for 10 years and subsequently, it was renewed from 01.01.2011 till 31.12.2015 for a period of 5 years. The petitioner commenced drawal of gas alloted from April, 2005. The agreement dated 23.12.2010 also recognizes that the petitioner uses the gas as fuel for operating its power plant. In fact, in the term of the agreement dated 23.12.2010, the respondents took a stand that the discounted administered price mechanism was not available to natural gas supply to power plants supplying power to captive consumers. Based on such a stand, the second respondent had issued a demand seeking differential price for past supply of natural gas. When a demand seeking differential price for past supply of natural gas was raised, the same was referred to arbitral proceedings and an award, which partly allowed the demand made by the second respondent, was set aside by this Court. It is stated that though the said proceedings are not relevant, it is mentioned that, because the parties were aware of the fact that the gas was supplied only for the power plant, the petitioner was always treated as a power sector industry.

5. As the agreement dated 23.12.2010 provided for extension of term of supply, the petitioner sought for extension. Despite several reminders, there was no response from the second respondent. By a letter dated 20.12.2015, the second respondent sought for a clarification from the competent authority with regard to extending the terms of supply, as the petitioner had been using the natural gas for generation of power, instead of manufacture of steel.

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6. The petitioner also sent a representation on 21.12.2015 to the first respondent to clarify the same to ensure continuity of gas supply after 31.12.2015. The petitioner has also filed a Writ Petition in W.P.No.41002 of 2015 seeking a direction to the first respondent to issue necessary clarification to the second and third respondents to ensure continuous gas supply to petitioner's power plant, after the agreement period came to an end on 31.12.2015. The Interim Order dated 29.12.2015 granted by this Court in W.P.No.41002 of 2015, restrained the second respondent from discontinuing the gas supply to the petitioner. The first respondent reported to this Court that the amendments in the agreements between the petitioner and the second respondent recognising the use of the gas by the petitioner's power plant, was without the knowledge of the first respondent. Therefore, it is stated that the use of gas for generation of power is unauthorised and the allocation is liable to be cancelled.

7. Once again, the petitioner filed another Writ Petition in W.P.No.13619 of 2016 to forbear the first respondent from cancelling the allocation of natural gas. On 21.11.2019, this court had directed the first respondent to consider the petitioner's representations and pass orders and also directed the supply of natural gas till the final decision is taken by the first respondent.

8. Accordingly, the first respondent called upon the petitioner to attend the meeting on 07.03.2020, which was re-scheduled to 12.03.2020, which was attended by the petitioner's representative. The petitioner had also submitted a letter dated 11.03.2020, explaining the details relating to the allotment, the earlier agreements, the communications between the petitioner and the second and third respondents etc. During the meeting held on 12.03.2020, the nation wide lock down was announced due to covid-19 pandemic and the petitioner also did not receive any response from the respondents.

9. While so, on 11.09.2020, the petitioner received the impugned order from the first respondent through e-mail, whereby, the first respondent had cancelled the allotment of natural gas made to the petitioner in the year 2000, based on which, the petitioner had set up its power plant. It is submitted by the petitioner that the meeting, which the petitioner attended was before one Mr.Shyam Singh Mahar, Deputy Secretary (GP-II), Government of India, MOPNG. However, the impugned order had been issued by Mr.Anand Kumar Jha, Deputy Secretary to Government of India, MOPNG. It is stated that the impugned order is passed by an Officer, who had not conducted the hearing on 12.03.2020. The impugned order is

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challenged by the petitioner on several grounds including that of violation of principles of natural justice.

10. The first respondent had filed its counter affidavit stating that the amendments in the subsequent agreements relied upon by the petitioner between the petitioner and the second respondent, are without the knowledge of the first respondent. The gas was alloted for the specific purpose of manufacture of steel in the petitioner's proposed steel plant through its power plant. It is specifically stated by the first respondent that the usage of allocation of gas cannot be changed. The deviation from the terms of allocation amounts to unauthorised use of gas, which is liable to be cancelled.

11. So far as the violation of principles of natural justice is concerned, it is stated that the order impugned is an administrative order/institutional decision of the first respondent, which has already been established by the Hon'ble Supreme Court in the matter of Kalinga Mining Corporation -vs- Union of India reported in 2013 (5) SCC 252. Therefore, the petitioner cannot maintain the present Writ Petition.

12. The second and third respondents also had filed the counter affidavit admitting the fact that the gas was alloted for the purpose of establishing steel plant only. Admittedly, till date, the petitioner has not established the steel plant, but, instead, utilising the gas supplied for the purpose of generating power, which was sold to their customers for captive consumption. It is pointed out that the change of user from the petitioner did not fall within the present order of priority under the Union Government's Policy of allocation.

13. Before dealing with the merits of the case on the facts, the question of violation of principles of natural justice, as projected by the petitioner, has to be dealt with.

14. The impugned order is challenged contending that the factual aspects prior to the renewal request was not considered. The original allotment has been cancelled stating that the petitioner did not set up its steel plant and the gas supply was used for generating power, which is the purpose other than for which it was allotted. The fact of not setting up of the steel plant by the petitioner, is within the knowledge of the first respondent. Further, the original supply of gas was for the specific purpose of generating power and this usage was never changed by the petitioner.

15. The second reason for rejecting the request of the petitioner based on the change in gas usage is also assailed by the petitioner. It is pointedly argued that the order of

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priority in 2020 could not have been the basis for considering the case of the petitioner, as the allotment to the petitioner dates back to 2000 based on the then existing Policy under which power sector was priority sector. Hence the petitioner cannot be treated as a fresh applicant for a fresh allotment. Therefore, the current order of priority cannot be a factor to reject the case of the petitioner and cancel the original allotment dated 05.06.2000.

16. The first respondent submitted that the supply of natural gas was approved on firm basis in favour of the petitioner only for the manufacture of steel in the steel plant proposed to be set up in Kutthalam Zone, subject to the condition that the gas would be used for the manufacture of steel only. The first respondent, vide letter No.L-12011/5/01-GP (vii) dated 16.08.2001, approved the extension of contractual date of drawal by one year. Further, vide letters dated 28.04.2004 and 01.12.2004, the first respondent conveyed approval of the Government to extend the date of gas drawal to 30.06.2004 and 31.12.2004 respectively.

17. It is stated by the first respondent that in the Gas Supply Contract (GSC) dated 06.10.2000 entered into between the second respondent and the petitioner for supply of 35,000 SCMD, the usage of gas had been modified as fuel for production of power for manufacture of steel in the steel plant. As per contract, the gas supply was to commence from 31.12.2002 and the contract was valid upto 31.12.2010. Upon request by the second respondent, the first respondent approved the extension of the contractual date of gas supply directly by one year on 16.08.2001. Thereafter, an amendment to Gas Supply Contract was signed on 03.05.2003 between the second respondent and the petitioner, in which, the usage of gas had been changed as "for supply of gas for petitioner's proposed power plant". The first respondent also conveyed the approval of the Government to extend the date of gas directly. An amendment to gas supply contract was made on 21.02.2005 extending the gas drawal date to 31.12.2004. However, the usage of gas was again amended, as gas to be used as fuel for its power plant. After the Gas Supply Contract expired on 31.12.2010, another GSTA (Gas Sales and Transmission Agreement) was executed on 23.12.2010, which was valid upto 31.12.2015. Even in the said GSTA dated 23.12.2010, it was mentioned that the petitioner owns and operates the power plant using gas for industrial application as feed and/or fuel.

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18. The first respondent therefore specifically pleaded ignorance about the change of usage of gas as has been carried out in the agreements without their knowledge. As of now, the current gas utilization Policy allocation is sector specific and priority to a particular sector had been accorded, based on its contribution to economy and policy of the Government.

19. The learned counsel for the second respondent contended that the petitioner-Company had admittedly breached its own promise to set up a steel plant, on the basis of which, they sought allocation of gas. Having failed to set up a steel plant for which they got allocation of gas, the petitioner-Company cannot be permitted to take advantage of its own wrong. Mere fact that the allocation of order itself does not mention the purpose of the request, does not invalidate the impugned order. It was further contended by the second respondent that despite several requests, the petitioner failed to produce the representation of the petitioner that the allocation letter had been amended in respect of the purpose. As the petitioner failed to produce the same, the contract was not renewed after 31.12.2015.

20. The second respondent, being the distribution agent of the Government, cannot supply gas contrary to the terms of allocation, much less without an order of allocation. The second respondent further mentioned that it is bound by the Doctrine of Public Trust, which the petitioner had breached.

21. The contention of the petitioner is that the act of the first respondent-Union of India, is arbitrary, because, though it was aware of the fact that the petitioner-Company was using the gas for generating the power, it never raised any issue. The petitioner-Company also had invested huge sums of money in setting up the power plant with continuous of supply of gas till 2015. While so, sudden revocation of the same based on the ground that there is a major anomaly in the use of gas by the petitioner, is unacceptable. In fact, the second respondent recognized that the petitioner is supplying the power generated at the plant to the TNEB grid for supply to consumers. It is the stand of the petitioner-Company that only when the petitioner-Company challenged the second respondent's attempt to retrospectively change the price of gas supplied in the past and initiated arbitration with regard to gas supply for generation of power instead of using it for manufacture of steel, which was projected as a major anomaly and hence refused to renew the contract.

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22. In the above backdrop of the case, it is time to consider the impugned order, which, according to the petitioner-Company, did not consider any of the facts. The original allotment had been cancelled by stating that the petitioner did not set up a steel plant and that by using the gas for generating power, the petitioner has denied the allotment for different use. The learned counsel for the petitioner-Company argued that though the steel plant was not set up, which is a fact noted by the first respondent-Union of India, the allotment of gas itself is only for generating power, which was to be used for steel plant. Therefore, when the petitioner had used the gas supply only for generating power, it cannot be said that the petitioner used it for a different purpose. Secondly, so far as the priority prevailing in 2020 is concerned, the allotment of the petitioner dates back to 2000 and the Policy prevailing in 2000 is applicable. Admittedly, it is not a fresh allotment made to the petitioner, but it is only a renewal or extension of the existing allotment. Hence, rejection of the petitioner's case is only an extraneous factor and that cannot be the reason for cancelling the allotment made in the year 2000.

23. Be that as it may, the impugned order is assailed on the ground of violation of principles of natural justice. It is alleged by the petitioner-Company that in its representation dated 11.03.2020 that the second respondent-GAIL, New Delhi, had not been sharing the communications exchanged between the first respondent-Union of India and the second respondent-GAIL, New Delhi, with regard to the petitioner-Company's contract. As these documents reveal the factual position that the respondents were aware of the usage of the gas by the petitioner, though on 21.11.2019, this Court directed the first respondent to afford an opportunity of hearing to the petitioner before passing any orders, the first respondent-Union of India had not heeded to the request of the petitioner-Company for furnishing the documents to the petitioner-Company. Without the documents being furnished to the petitioner, there could not have been meaningful hearing, as directed by this Court. Hence, the petitioner-Company has stated that, in the absence of the relevant documents, there was no proper hearing.

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24. Secondly, it is specifically pointed out that even assuming that there was a hearing, the impugned order was not passed by the Officer, who conducted the hearing on 12.03.2020. The petitioner-Company was issued with notice to appear before Mr.Shri Shyam Singh Mahar, Deputy Secretary, Government of India, MOPNG. Accordingly, the petitioner-Company's representative appeared before the above said officer and submitted the representation dated 11.03.2020. However, the

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impugned order was passed by one Mr.Anand Kumar Jha, Deputy Secretary, Government of India, MOPNG, which is blatant violation of the principles of natural justice. The said Officer never heard the petitioner before passing any order.

25. In this regard, the learned counsel for the petitioner-Company relied on a decision of the Supreme Court reported in 2011 (2) SCC 258 [AUTONOTIVE TYRE MANUFACTURERS ASSOCIATION –VS – THE DESIGNATED AUTHORITY AND OTHERS], wherein, in paragraphs 77, 80 to 84, it had been held as follows:

> "77. It is trite that rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. In A.K. Kraipak [(1969) 2 SCC 262] , it was observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.
>
> 80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application.
>
> 81. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration

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of these matters that the question of application of the said principle can be properly determined. (See Union of India v. Col. J.N. Sinha [(1970) 2 SCC 458] .)

82. In the light of the aforenoted legal position and the elaborate procedure prescribed in Rule 6 of the 1995 Rules, which the DA is obliged to adhere to while conducting investigations, we are convinced that duty to follow the principles of natural justice is implicit in the exercise of power conferred on him under the said Rules. Insofar as the instant case is concerned, though it was sought to be pleaded on behalf of the respondents that the incumbent DA had issued a common notice to the advocates for ATMA and Ningbo Nylon, for oral hearing on 9-3-2005, however, there is no document on record indicating that pursuant to ATMA's letter dated 24-1-2005, notice for oral hearing was issued to them by the incumbent DA. Moreover, the alleged opportunity of oral hearing on 9-3-2005, being in relation to the price undertaking offer by Ningbo Nylon, cannot be likened to a public hearing contemplated under Rule 6(6) of the 1995 Rules.

83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in Gullapalli [AIR 1959 SC 308] , if one person hears and other decides, then personal hearing becomes an empty formality.

84. In the present case, admittedly, the entire material had been collected by the predecessor of the DA; he had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form of an order were recorded by the successor DA, who had no occasion to hear the appellants herein. In our opinion, the final order passed by the new DA offends the basic principle of natural justice. Thus, the impugned notification having been issued on the basis of the final findings of the DA, who failed to follow the principles of natural justice, cannot be sustained. It is quashed accordingly."

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26. The learned counsel for the petitioner-Company also relied on a judgment of the Supreme Court reported in 2014 (6) SCC 564 [UNION OF INDIA AND OTHERS –VS- SHIV RAJ AND OTHERS], wherein, it has been held as follows:-

> "17. This Court in Gullapalli Nageswara Rao [Gullapalli Nageswara Rao v. A.P. SRTC, AIR 1959 SC 308] , held: (AIR p. 327, para 31)
>
> "31. … Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."
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> 18. This Court in Rasid Javed v. State of U.P. [(2010) 7 SCC 781 : AIR 2010 SC 2275] following the judgment in Gullapalli Nageswara Rao [Gullapalli Nageswara Rao v. A.P. SRTC, AIR 1959 SC 308] , held that: (Rasid Javed case [(2010) 7 SCC 781 : AIR 2010 SC 2275] , SCC p. 796, para 51)
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> "51. … a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted."
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> 19. A similar view has been reiterated by this Court in Automotive Tyre Manufacturers Assn. v. Designated Authority [(2011) 2 SCC 258] , wherein this Court dealt with a case wherein the designated authority (DA) under the relevant statute passed the final order on the material collected by his predecessor-in-office who had also accorded the hearing to the parties concerned. This Court held that the order stood vitiated as it offended the basic principles of natural justice.
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> 20. In view of the above, the law on the issue can be summarised to the effect that the very person/officer, who accords the hearing to the objector must also submit the report/take decision on

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the objection and in case his successor decides the case without giving a fresh hearing, the order would stand vitiated having been passed in violation of the principles of natural justice."

27. Per contra, the learned counsel appearing for the second and third respondents-GAIL had placed reliance on the judgment of the Supreme Court reported in 2013 (5) SCC 252 [Kalinga Mining Corporation –vs- Union of India and Others]. It is useful to extract paragraphs 66 and 67 of the said judgment, as under:

"66. Upon conclusion of the arguments by the parties, Mr.S.P.Gupta, Joint Secretary who had heard the parties prepared the note running into 19 pages (from pp. 30-49) containing 47 paragraphs of original record. The note has been duly signed by Mr.S.P. Gupta, Joint Secretary on 17-9-2001. The High Court further noticed that in fact this is the report which had been duly approved by the Secretary on 18-9-2001 and by the Central Government Minister on 25-9-2001. While making the endorsement of the approval, the Secretary has written as under:

"I endorse fully the above note of the Joint Secretary. This is a very old case in which the parties have repeatedly recourse to the courts. As such (sic) even now near litigation may follow. Therefore the decision of the Central Government has to be in terms of a speaking order which is backed by facts and law."

67. The High Court further notices that the impugned Order dated 27-9-2001 is, in fact, a verbatim copy of the report/note prepared by Mr.S.P.Gupta, Joint Secretary. Upon examination of the entire matter, the High Court has concluded that the Order has been signed by Mr R.P. Khatri merely to communicate the approval of the Central Government to the parties."

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28. The above decision of the Hon'ble Supreme Court reported in 2013 (5) SCC 252, is distinguished by the learned counsel for the petitioner-Company pointing out that the minutes of the meeting on 12.03.2020, which was reduced to writing in the form of record of discussion, was considered by the Officer, who passed the order. In the absence of any material or record to substantiate the same, it is evident that the decision taken by

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the Officer is not the same Officer, who conducted the hearing on 12.03.2020. Therefore, the dictum laid in the said decision reported in 2013 (5) SCC 252 is not applicable to this case.

29. So far as the Doctrine of Public Trust is concerned, in the absence of any evidence or materials to show that there was any default on the part of the petitioner, the Doctrine of Public Trust is inapplicable.

30. The impugned order dated 11.09.2020 was passed by the Deputy Secretary to the Government of India, namely Mr.Anand Kumar Jha, whereas the representative of the petitioner-Company had appeared before one Mr.Shyam Singh Mahar, Deputy Secretary (GP-II) of the first respondent-Union of India. Pursuant to the directions given by this Court, the Government of India is hearing the petitioner-Company for the purpose of renewal of the allocation of supply of gas. Though the petitioner was given a personal hearing, the same was not complete, as the necessary communications between the first respondent-Union of India and the second respondent-GAIL, New Delhi, were not furnished to the petitioner-Company.

31. Secondly, the same officer, who heard on 12.03.2020 had not passed the impugned order dated 11.09.2020. Even presuming that the hearing given by Mr.Shyam Singh Mahar be deemed to be a hearing, the same is vitiated due to the fact that the orders were passed by one Mr.Anand Kumar Jha, when the hearing was not yet over on 12.03.2020. As the communications between the first respondent-Union of India and the second respondent-GAIL, New Delhi were not furnished to the petitioner-Company, it should be deemed that the petitioner-Company was not even heard. Even if a Government, be it a State or Central, is an impersonal body and hearing through Machinery is prescribed by law and discharging only Administrative acts and not Judicial acts in the matter of approving the allocation of supply of gas, the same Officer, who heard the matter, should have passed the final orders on the issue in question. The first respondent-Union of India had lost sight of the fact that if a statutory authority has power to do any act, which will prejudicially affect its subject, though there is no other respondents, but in this writ petition, the Union of India and GAIL are respondents. Any final determination by the authorities of the first respondent-Union of India and the second respondent-GAIL, New Delhi, is quasi-judicial in nature, the authority is expected to act Judiciously.

32. Admittedly, when the same officer, who heard the

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personal hearing, had not passed the impugned order, the impugned order itself is vitiated and the same is liable to be set aside only on that limited ground. Therefore, the order impugned is accordingly set aside, remitting the matter back to the first respondent-Union of India for fresh consideration. It is also open to the petitioner-Company to file a fresh representation and the first respondent-Union of India and the second respondent-GAIL, New Delhi, are directed to furnish the required/relevant communications between them with regard to the issue in question, before the date of hearing, to the petitioner-Company. Once the petitioner-Company is furnished with the copy of the said communications within the reasonable time, the hearing may be held and the appropriate orders be passed, after affording an opportunity of personal hearing to the petitioner-Company by permitting them to mark the documents and put-forth their arguments. However, the entire exercise has to be completed within a period of 12 weeks from the date of receipt of a copy of this order.

33. So far as the claim of non-payment of money by the petitioner-Company, it is seen that pending the writ petition, pursuant to the interim order passed on 17.09.2020, the second and third respondents have supplied gas to the petitioner-Company, for which the payment had not been received from the petitioner-Company despite receipt of invoices. Hence, a memo was filed by the second and third respondents dated 08.12.2020. In response, a memo dated 14.12.2021 was filed on behalf of the petitioner. The petitioner has stated that a total sum of Rs.42,35,432/- was charged as per the invoices raised by the second respondent. Out of which, a sum of Rs.28,92,478/- has been recovered by the second respondent by invoking the letter of credit issued by the petitioner-Company. Hence, there was a balance amount of Rs.13,80,994/- was pending, which according to the petitioner-Company, there was a dispute regarding the same. However, on 10.12.2020, the petitioner-Company had received an intimation from its bank that the said remaining amount of Rs.13,80,994/- was also recovered by the second respondent on 07.12.2020 by invoking the letter of credit issued by the petitioner-Company. Therefore, it is recorded that the entire invoice amount raised by the second respondent for the supply of gas pursuant to the interim direction given by this Court has been received by the second respondent.

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34. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

07.01.2021

Pending the writ petition, by virtue of the interim order, the petitioner had uninterrupted gas supply from the second and third respondents. After pronouncing the order, the petitioner made a request that such arrangement can continue. It is open to the petitioner to approach the second and third respondents in this regard at the earliest and the same may be considered by them.

Sd/-
Asst.Registrar (CS III)

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Sub Asst. Registrar

srn

To

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

2.GAIL (India) Limited,
GAIL Building,
16, Bhikaji Cama Place,
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New Delhi - 110 066.

3.GAIL (India) Limited,
Represented by Zonal General Manager,
7A, Kences Towers, No.1, Ramakrishna Street,
North Usman Road, T.Nagar,
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+1 cc to Mr.Vinod Kumar Advocate sr720
+1 cc to Mr.G.Karthikeyan Advocate sr1073
+1 cc to M/s.Giridhar & Sai Advocate sr1334

W.P.No.13064 of 2020
and
W.M.P. Nos.16193, 16195,
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