GAHC010257272023

2026:GAU-AS:16092

THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT PETITION [C] NO. 6590/2023

M/s Arin Tea Pvt. Ltd., represented by Sri Anupam Gogoi [Manager], Registered Address : Arengapara, Golaghat, Assam – 785621, Unit Address : Golaghat – Kachomari Road, Tetalital, Golaghat, Assam-785702.

.....Petitioner

-**VERSUS**-

1. Assam Gas Company Ltd., a Government of Assam Undertaking, having its Office at P.O. Duliajan, District – Dibrugarh, Assam, PIN – 786602, being represented by its Managing Director, Assam Gas Company Limited.
2. The Managing Director, Assam Gas Company Limited, P.O. Duliajan, District – Dibrugarh, Assam.
3. The Assistant Manager [Legal], Assam Gas Company Limited, P.O. - Duliajan, District – Dibrugarh, Assam.

4. State of Assam, represented by Chief Secretary to the Government of Assam, Block-C, 3rd Floor, Assam Sachivalaya, Dispur-781006.

.....**Respondents**

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

Advocate for the Petitioner : Mr. A.M. Baruah, Advocate

Advocate for the Respondent nos. 1, 2 & 3 : Mr. K. Khanna, Advocate

Advocate for the Respondent no. 4 : Mr. N. Goswami, Jr. Govt. Advocate, Assam

Date of Hearing : 23.07.2026

Date of pronouncement of judgment : 03.11.2026
Whether the pronouncement is of the

Operative part of the judgment ? : No
Whether the full judgment has been

Pronounced ? : Yes

JUDGMENT & ORDER

1. In this writ petition instituted under Article 226 of the Constitution of India, assail is made by the petitioner to a 'Call for Explanation cum Demand Notice' dated 30.08.2023 for payment of Additional Gas Consumption Bill amounting to Rs. 76,85,686/- with regard to variable reporting of tea production to the respondent M/s Assam Gas Company Limited. The 'Call for Explanation cum Demand Notice' dated 30.08.2023 ['the Notice', for short] is issued under the hand of the respondent no. 3 on behalf of the respondent no. 2, that is, the Managing Director of M/s Assam Gas Company Limited.

2. The petitioner is a company incorporated under the Companies Act and it has its registered office at Arangapara, Golaghat in the district of Golaghat, Assam. The petitioner company owns and manages a Tea manufacturing and tea processing unit at Tetelitol, Post Office – Bengenakhowa, District - Golaghat, Assam.

3. The respondent no. 1, M/s Assam Gas Company Limited ['the AGCL', for short] is a Government of Assam Undertaking incorporated under the Companies Act. It has its registered office at Duliajan, District – Dibrugarh, Assam. It is wholly owned by the Government of Assam and it carries out business related to natural gas in India and it is one of the premier natural gas distribution companies in India. The AGCL has a network of underground natural trunk and distribution pipeline that serves natural gas to a large number of Tea factories, commercial establishments and industrial consumers besides a large number of domestic consumers.

4. It is stated that most of the Tea gardens in Assam have opted for natural gas as a more cleaner and efficient fuel the use of which ensures production of better quality of Tea. The use of natural gas in the Tea garden factories ensures uniform heating during the drying process of Tea leaves and thus, production of quality Tea.

5. As the petitioner was desirous of purchasing natural gas for consumption as well as for dryers and troughs for production of Tea at its Tea factory situated at Tetelitol and the respondent AGCL being the seller and distributor of natural gas in the area, had agreed to sell and deliver natural gas to the petitioner, the petitioner as the consumer and the respondent AGCL as the seller and distributor of natural gas entered into a Gas Purchase Contract-Agreement on 14.08.2023. As per the Contract-Agreement, the petitioner was to purchase natural gas from the respondent AGCL and the respondent AGCL was to sell and deliver natural gas to the Tea factory of the petitioner through its Pipeline System to the extent, and for the purpose and period, and on the terms and conditions, as set forth in the Contract-Agreement from the date of commencement of supply of natural gas to the petitioner. As per the Contract-Agreement, the petitioner is required to pay the bill for consumption of natural gas monthly as per the reading of the meters installed in its premises by the respondent AGCL. As per Clause 23.00, the Contract-Agreement was for a period of five years with effect from 02.05.2021 to 01.05.2026. It is not brought to the notice of the Court whether after 01.05.2026, the parties have renewed the Contract-Agreement or have entered into any new Contract-Agreement.

6. It is during the course of business and during the subsistence of the above Contract - Agreement, the Notice dated 30.08.2023 has been served upon the petitioner. In

the Notice, it is mentioned that it was revealed to the respondent AGCL with credible information that the petitioner had reported substantially lower figures of Tea production in the petitioner's Tea factory to the AGCL during the reference period from May, 2022 to December, 2022. The Notice mentions that the figures of Tea production to the respondent AGCL were lower in comparison to the figures of Tea production reported to the Tea Board of India for the same months. The Notice has mentioned the comparative figures of Tea produced in the Tea factory of the petitioner, as reported to the AGCL and the Tea Board of India. From the figures of Tea production, the AGCL has found out that the petitioner has not reported 5,92,321 Kgs of Tea production to the AGCL.

7. In the above backdrop, the AGCL by the Notice dated 30.08.2023 has called for a detailed explanation to their satisfaction on the reasons / circumstances for not reporting 5,92,321 Kgs of Tea production to the AGCL within three days of receipt of the Notice. The Notice has further mentioned that on expiry of the three-days notice period or written confirmation from the AGCL's side regarding satisfactory explanation against any explanation as called by the Notice, if submitted by the petitioner, to the differential reporting of Tea production data as aforesaid, whichever is earlier, the call for explanation shall become operative as a demand Notice for payment of Rs. 76,85,686/- as Additional Gas Consumption Bill for the differential non-reported Tea volume within seven days of becoming so operative. The Notice has further mentioned that in the event of non-payment, appropriate legal action will be initiated against the petitioner with recurring interest on the principal gas consumption amount and the AGCL would issue 'Invoice cum Receipt of Payment' only after submission of 'Proof of Payment'. It is mentioned that the 'Call

for Explanation cum Demand Notice' would be without prejudice to all the rights, information, contentions, damages and remedies available to the AGCL under any laws of India in force. A break-up calculation of differential quantity value for the amount of Rs. 76,85,686/- has also been attached to the 'Call for Explanation cum Demand Notice'.

8. I have heard Mr. A.M. Baruah, learned counsel for the petitioner; Mr. K. Khanna, learned counsel for the respondent nos. 1, 2 & 3; and Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent no. 4.

9. Mr. Baruah, learned counsel appearing for the petitioner has submitted the relationship between the petitioner as the consumer of natural gas and the respondent AGCL as the seller and distributor of natural gas is governed by the terms and conditions laid down and set forth in the Gas Purchase Contract-Agreement dated 14.08.2023. He has contended that the terms and conditions of the Contract-Agreement are clear in that the petitioner as the consumer is obligated to pay the billing amount monthly, as metered, measured and recorded by or through the gas meter, installed and sealed by the respondent AGCL at the factory premises of the petitioner. The purchase and sale of natural gas has nothing to do with Tea production record submitted by the petitioner to the respondent AGCL or to the Tea Board of India or, for that matter, to the Central Excise authorities in Form RT-12 / Form ER-1. He has submitted that the respondent AGCL has never complained at any time that the meter installed by it in the factory premises of the petitioner was found tempered with or manipulated in any manner during the reference period. The Contract-Agreement has clearly stipulated that the billing is to

be done as per the volume of gas consumption recorded by the meter installed and sealed by the respondent AGCL. The petitioner as the manufacturer of Tea is required to file returns under the extant Central Excise Rules and the Tea [Marketing] Control Order mentioning the production data. But those returns have no co-relation with the volume of gas supplied by the respondent AGCL under the Contract-Agreement. He has contended that only in the occurrence of the event coming within the purview of Clause 10.08 of the Contract-Agreement the respondent AGCL could take note of the Tea production records submitted by the petitioner in Form RT-12 / Form ER-1 for calculation of the quantity of gas consumed by the petitioner during the concerned period. With no event as envisaged in Clause 10.08 occurring during the reference period and the meter installed by the respondent AGCL registering accurately, there was no reason for the respondent AGCL to demand an amount of Rs. 76,85,686/- as Additional Gas Consumption Bill. He has pointed out that the Bills made during the reference period contained details of actual volume of gas sold and supplied on SCUM basis and final amounts payable were worked out on that basis and there was no mention of the Tea production records in the Bills. With no power vested in the respondent AGCL to make demand any amount on the basis of Tea production record data under the Contract-Agreement, its reference to figures of Tea production record mentioned in Form RT-12 / ER-1 in the impugned Notice is clearly an arbitrary and unfair act. He has, thus, contended that the demand of the exorbitant amount of Rs. 76,85,686/- as Additional Gas Consumption Bill for production of 5,92,321 Kgs of Tea by the impugned Notice dated 30.08.2023 is liable to be set aside and quashed.

10. Mr. Khanna, learned counsel appearing for the respondent nos. 1, 2 and 3 has submitted that under Clause 10.07 of the Gas Supply Contract-Agreement, the petitioner has given a representation that it would give a true representation of its monthly Tea production data to the respondent AGCL by submitting a copy of monthly returns submitted in Form RT-12 / ER-1, along with the monthly gas consumption sheet. As such Form is relatable to Rule 12 of the Central Excise Rules, 2017 and is required by the Tea Board of India, the same casts an obligation on the petitioner as the manufacturer of Tea and consumer of natural gas to report Tea production record correctly to the AGCL as the seller and distributor of natural gas. The Call for Explanation cum Demand Notice has to be served when substantial variance was found in the Tea production records reported to the AGCL and the Tea Board of India. He has contended that a contractual mechanism has been incorporated in Clause 10.08 of the Contract-Agreement for calculating the consumption of gas and applicable gas consumption in the event of temporary absence of meter or the meter being out of order, by multiplying the quantity of gas produced in Kilograms with the average gas consumption ratio. The average gas consumption ratio is determined, under Clause 10.08, by the total volume of gas consumed in standard cubic meters divided by total quantity of Tea made as per the production records of the immediately preceding six working months. Mr. Khanna has submitted that the respondent AGCL based on the formula contained in Clause 10.08 of the Contract-Agreement has crystallized the projected demand in the Notice dated 30.08.2023. It is submitted by him that the Notice has been issued pointing to breach of contract and the consequential demand of gas consumption bill made due and payable. As the Notice is not a statutory notice and the demand is not a statutory demand, the petitioner cannot be permitted to agitate any issue arising out

of the Notice and the demand made in a writ petition under Article 226 of the Constitution of India. It has been submitted that the petitioner has agreed to pay all dues to the respondent AGCL in installments in its Letter written on 10.10.2023. He has further submitted that upon a physical inspection conducted at the factory premises of the petitioner on 06.10.2023, suspected discrepancy was confirmed by the discovery of two unauthorized and illegal tapping points installed by the petitioner by-passing the metered line, establishing not only theft of natural gas by the petitioner but also the reason for the huge discrepancy between the Tea production data submitted by the petitioner to the respondent and the Tea Board of India. He has submitted that in view of such unauthorized acts on the part of the petitioner, the demand made to the petitioner to make payment of the amount as Additional Gas Consumption Bill is clearly justified and, therefore, no interference to the Notice is called for.

11. In reply, Mr. Baruah has contended that the petitioner in its Letter dated 10.10.2023 had only mentioned that it would consider the respondent AGCL's suggestion regarding payment of the demanded amount on installment basis as it was threatened of cutting-off the supply of gas. It is contended that the respondent AGCL enjoys monopoly status in the concerned area in so far as the supply of natural gas is concerned and has considerable bargaining power. Mr. Baruah has pointed out that the respondent AGCL has made an allegation of unauthorized tempering, allegedly detected on 06.10.2023, in the Pipeline in their counter affidavit and the said allegation has been duly responded to in the petitioner's Reply Affidavit. He has submitted that in any view of the matter, such allegation of tempering is subsequent to the impugned Notice dated 30.08.2023 and has no bearing with the

cause raised in the present writ petition. He has submitted that such alleged subsequent unauthorized act cannot validate the previous allegation made in the Notice without any basis.

12. I have duly considered the rival submissions advanced by the learned counsel for the parties and have also gone through the materials brought on record by the parties through their pleadings. I have also gone through the written synopses of arguments submitted by the two contesting parties.

13. As per Clause 4.00 of the Gas Purchas Contract-Agreement, which has provided for installation, the AGCL is to provide gas from its Pipeline System at the Off-take Point inside the factory boundary of the consumer as defined under the Factories Act, 1948. The petitioner as the consumer is responsible for safe custody of all equipments owned and installed by the AGCL at the metering area of the petitioner's factory premises and the petitioner-consumer shall not temper or manipulate any of the equipments or their components in any way. The petitioner as the consumer shall not shut-off power supply to those equipments and generally provide necessary assistance and support to the AGCL as and when called for. It is further stipulated that the petitioner as the consumer shall install and operate its own Gas Receiving Terminal and Internal Piping System from the Off-take Point up to the points of consumption of gas inside the factory and such installation shall have to be kept safe for carrying gas to the satisfaction of the AGCL who shall have the authority to inspect the said equipments and Internal Piping System from time to time and it is the responsibility of the petitioner to afford all facilities and assistance for such inspection and to rectify immediately any defects in the Piping System and

equipments, as may be pointed out by the AGCL and pending such rectification, the AGCL shall have the right to stop sale of the petitioner.

14. It can be seen from the contents of the Notice dated 30.08.2023 that the Notice has been issued when it was revealed to the AGCL purportedly with credible information that the petitioner had reported to the AGCL substantially lower figures of Tea production records in its factory during the reference period from May, 2022 to December, 2022 in comparison to the Tea production records reported to the Tea Board of India during the same reference period. Giving a figure of 5,92,321 Kgs as the differential figure, a detail explanation was called for the satisfaction of the AGCL on the reasons / circumstances for non-reporting of 5,92,321 Kgs of Tea to the AGCL within three days of receipt of the Notice. The Notice has envisaged two situations. Firstly, on expiry of three days, the call for explanation, in the event of no explanation in writing, would become operational as a demand notice for payment of Rs. 76,85,686/- as additional gas consumption bill for the differential non-reported Tea production volume. As per the second situation, if any explanation is submitted as regards the differential figures of Tea production and unless there is a written confirmation from the end of the AGCL recording that the explanation is satisfactory, the call for explanation would become operational as a demand notice for payment of Rs. 76,85,686/- as additional gas consumption bill for the differential non-reported Tea production volume. Either of the two situations would become applicable on 'whichever is earlier' basis.

15. As per the Contract-Agreement executed between the two parties, the AGCL was to sell and deliver the gas to the petitioner's factory through the AGCL's Pipeline

System and for that purpose, the AGCL provided Off-take Point of gas from its Pipeline System inside the petitioner's factory boundary. The petitioner was made responsible for safe custody of all equipments owned and installed by the AGCL at the metering area of the petitioner's factory premises and the petitioner was not to temper or manipulate any of the AGCL's equipments or their components in any manner. It was further stipulated that the petitioner was to install and operate its own Gas Receiving Terminal and Internal Piping System from the Off-take Point up to the points of consumption of gas inside its factory and such installation shall have to be kept safe for carrying gas to the satisfaction of the AGCL, who shall have the final authority to inspect the said equipments and Internal Piping System from time to time. The petitioner was to afford all facilities and assistance for such inspection and to rectify any defects in the Piping System and equipments, as pointed out by the AGCL, immediately and pending such rectification, the AGCL would have the right to stop sale of gas to the petitioner. Under Clauses 5.05 and 5.07, the AGCL had direct access to the gas installation, Internal Piping System, consumption points, etc. inside the petitioner's factory at any time and the AGCL reserved the right to disconnect the supply of gas to the petitioner for any unauthorized connection of gas by the petitioner with the consequence of a penalty of Rs. 5,00,000/- in addition to the sale price of gas for a quantity equivalent to that of booked quantity for one full calendar year. The respondent AGCL under Clause 5.08 reserved the right to discontinue supply of gas with immediate effect for any theft / pilferage of gas by the petitioner and also, to terminate the Contract-Agreement forthwith along with forfeiture of the security deposit, penalty, etc.

16. Clause 10.00 with heading 'Metering' has outlined the detailed procedure for meter reading and billing. As per Clause 10.00, it is the AGCL who has to install and seal the gas meter of appropriate technology in order to determine the quantities of gas sold and delivered to the petitioner. The petitioner as the consumer has the duty to ensure protection of the meter so installed. The AGCL had the right and authority to check the meter at any time without any obstruction from the petitioner. There is requirement to submit a Calibration Certificate from an authorized agency at an interval of six months by the petitioner to the AGCL.

17. Clause 10.03 has envisaged for two situations – [i] when the meter is out of service; or [ii] when the meter registers inaccurately. It has been provided that in the event the meter is either out of service or is registering inaccurately, the volume of gas delivered to the petitioner would be estimated by correcting the error if the percentage of error is ascertainable by calibration test. If upon calibration test, as per Clause 10.04, the error in recording is found to be up to 2%, then the previous recording of the equipment is to be considered as correct. The meter shall, however, be adjusted at once so as to record correctly. As per Clause 10.05, if upon calibration test, the error in recording is found to be more than 2%, the previous recordings shall be corrected to zero error for a period equal to half the time elapsed since the date of the preceding inspection which in no case shall be more than one month. As per Clause 10.06, if the recordings of the meter are found to be abnormally high or low in the opinion of either the petitioner-consumer or the AGCL, then such gas meter is to be removed and recalibrated. If the deviation is found on calibration, necessary adjustment is to be done as per Clause 10.03 and / or Clause 10.04 and / or Clause 10.05.

18. In view of the conditions set forth in Clause 10.07, the petitioner had/has to pay to the AGCL for such quantities of gas as were/are metered, measured and recorded by or through the gas meter installed and sealed by the AGCL. The petitioner was/is to maintain meter readings in the monthly gas consumption sheet and on the first day of the consumption month, the monthly gas consumption sheet was/is to be collected by the AGCL. By Clause 10.07, the petitioner was/is also obligated to provide a copy of Form RT-12 / Form ER-1 relating to Tea production record with the monthly gas consumption sheet.

19. As there is mention of Form RT-12 / Form ER-1 [Tea production record] in Clause 10.07 of the Contract-Agreement dated 14.08.2023, it is apposite to find out the objects behind and purposes served by the afore-mentioned Forms, which are traceable to the Central Excise Rules, 1944 / the Central Excise Rules, 2002. It may be stated that earlier under Rule 173G of the Central Excise Rules, 1944, every manufacturer including a manufacturer of Tea was required to file monthly return in Form RT-12 and the same was the basis for departmental assessment under the earlier assessment system by the Central Excise Authorities. By the Central Excise Rules, 2002, self-assessment regime was introduced by the Central Government. As per Rule 12 of the Central Excise Rules, 2002, every assessee was required to submit a monthly return in the form specified by the Central Board of Excise and Customs ['the Board', for short] of production and removal of goods and other particulars within the prescribed period of time. With the coming into force of the Central Excise Rules, 2002, the system of filing monthly return in Form RT-12 got discontinued. By Notification no. 16/2011-Central Excise [N.T.] dated 18.07.2011,

the Board specified Form ER-1 for monthly return for production and removal of goods and other relevant particulars and CENVAT credit. Form RT-12 or Form ER-1 is to be submitted before the Central Excise Authorities and not to the Tea Board of India. Under Order 7 of the Tea [Marketing] Control Order, 2003, a manufacture of Tea is required to furnish a monthly return in Form-E to the Registering Authority. Subsequently, the Central Excise Rules, 2017 were made in supersession of the Central Excise Rules, 2002 and Form ER-1 continued to be applicable under the Central Excise Rules, 2017. With the enactment of the Central Goods and Services Tax Act, 2017 ['the CGST Act'], tea is no longer an excisable commodity attracting Central Excise duty and the taxable event in the tea industry shifted from manufacture under the Central Excise Act to supply under the CGST Act.

20. The condition laid down and set forth in Clause 10.08 is of significance. Clause 10.08 has provided that in the event of either temporary absence of the gas meter or the gas meter being out of order as provided under Clause 10.03 [the meter being out of service or the meter registering inaccurately], the quantity of gas consumed by the petitioner during such period shall be calculated by multiplying the quantity [Kilogram] of Tea produced during the relevant period with average gas consumption ratio. The average gas consumption ratio shall be determined by the total volume of gas consumed [SCUM] divided by total quantity of Tea made as per the production records [Form ER-1 / Form RT-12] of the immediately preceding six working months or from the date of consumption by the petitioner, whichever is earlier. It is mentioned that the same shall be a temporary arrangement and the installation of the gas meter shall be mandatory for a consumer like the petitioner as per Clause 10.01 to Clause 10.03.

21. A call for explanation notice and a demand notice represent two distinct stages. A call for explanation notice is ordinarily issued to inquire, investigate or seek clarification regarding a mismatch, error, or ambiguity before any liability is fixed. A demand notice is ordinarily understood as a notice which asserts a financial liability that has already been calculated or adjudicated. A demand notice is a written communication asking for payment or compliance within a specified time period mentioned in the notice, or else, to face definite consequences or legal action, as mentioned therein. If any statute provides for any call for explanation notice, often called a show cause notice also, and any demand notice, the statute also normally provides for the consequence or legal action. In the Notice dated 30.08.2023, which is not under any statutory provision, it is mentioned that in the event of non-payment of Rs. 76,85,686/-, appropriate legal action would be initiated against the petitioner company with recurring interest on the principal compensation amount mentioned therein and invoice cum receipt of payment would be issued only after submission of proof of payment.

22. The respondent AGCL is correct in contending that the petitioner being a private limited company incorporated under the Companies Act, is not a citizen and, therefore, it cannot invoke the fundamental right under Article 19 of the Constitution of India. However, Article 14 enunciates that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It is a settled position of law that the word 'person' includes juristic persons, corporations, and companies. Unlike the rights restricted exclusively to the citizens of India such as the freedoms guaranteed under Article 19, Article 14 applies to 'any

person' making it available to even companies including private limited companies incorporated under the Companies Act. A company can, therefore, challenge arbitrary action taken against it by the State or an instrumentality / agency of the State. The respondent company – AGCL, a Government of Assam Undertaking, which is wholly owned by the Government of Assam and a company incorporated under the Companies Act, is an instrumentality of the State within the ambit and purview of Article 12 of the Constitution of India. It is settled that the action of an instrumentality or agency of the State coming within the ambit and purview of Article 12 of the Constitution is amenable to the writ jurisdiction under Article 226 of the Constitution of India.

23. An instrumentality or agency of the State under Article 12 of the Constitution has power to contract. It is not in doubt that only because an instrumentality or agency of the State has entered into a contract with a private entity the contract would become a statutory contract. As such a contract falls in the realm of private law, the disputes relating to interpretation of the terms and conditions of such a contract are ordinarily not to be agitated in a writ petition under Article 226 of the Constitution and such disputes are to be agitated before and adjudicated by a civil court or in arbitration, if provided for in the contract. The contract entered into between the petitioner company and the respondent company herein in the form of the Contract-Agreement dated 14.08.2023 is not a statutory contract and therefore, the relationship between the contracting parties to such a non-statutory contract is governed by the provisions of the Contract Act.

24. It is also a settled position of law that every action of the State or an instrumentality or agency of the State is required to be guided by the touchstone of non-arbitrariness, reasonableness and rationality. It has been held in **Kumari Shrilekha Vidyarthi and others vs. State of Uttar Pradesh and others, [1991] 1 SCC 212,** that unlike a private party whose acts uninformed by reason and influenced by personal predilections in contractual matters may result in adverse consequences to it alone without affecting the public interest, any such act of the State or a public body even in the contractual field would adversely affect the public interest. All powers vested in the State or the public authority are meant to be exercised for public good and promoting the public interest. The same is equally true of all actions even in the field of contract. With the diversification of the State activity in a welfare State requiring the State to discharge its wide ranging functions through its several instrumentalities, which requires entering into contracts also, it would be unreal and not pragmatic, apart from being unjustified to exclude contractual matters from the sphere of State actions required to be non-arbitrary and justified on the touchstone of Article 14. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. It has been held that it is difficult to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.

25. It has inter-alia been observed in **Kumari Shrilekha Vidyarthi** that the State cannot be attributed the split personality of Dr Jekyll and Mr Hyde in the contractual

field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfill the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is the nature of its personality as State which is significant and must characterise all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. It has been held that there is no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity.

26. The Hon'ble Supreme Court in **Food Corporation of India vs. M/s Kamdhenu Cattle Feed Industries, [1993] 1 SCC 71** has inter alia observed that in contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. A public authority has been imposed with a duty to act fairly and to adopt a procedure which is fair-play in action. In the case of **Indian Oil Corporation Limited and others vs. Shashi Prabha Shukla and another, [2018] 12 SCC 85,** the Hon'ble Supreme Court has observed that jurisprudentially, a public authority in

its dealings has to be fair, objective, non-arbitrary, transparent and non-discriminatory. Any decision or action contrary to these functional precepts would be at the pain of invalidation thereof.

27. In **Noble Resources Ltd. vs. State of Orissa, [2006] 10 SCC 236**, the Hon'ble Supreme Court has held that a distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the court's scrutiny would be more intrusive, in the latter the court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Article 14 of the Constitution. While exercising contractual powers also, the government bodies may be subjected to judicial review in order to prevent arbitrariness on their part. Indisputably, inherent limitations exist, but it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter.

28. Article 14 of the Constitution strikes at arbitrariness which is an antithesis of the guarantee contained in Articles 14 of the Constitution. It has been said that the meaning and true import of arbitrariness is more easily visualised than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any foundational basis behind the impugned act and if so, does it satisfy the test of reasonableness.

29. Reverting back to the facts of the present case, it can be noticed that neither in the Notice dated 30.08.2023 nor in the Counter Affidavit, the respondent AGCL has

made any allegation to the effect that the gas meter and the equipments owned and installed by it at the metering area of the petitioner's factory premises for delivery of the gas at the Off-take Point had been tempered with or manipulated in any manner whatsoever during the reference period. There is no allegation that the Gas Receiving Terminal and Internal Piping System, installed and operated by the petitioner from the Off-take Point up to the points of consumption of gas inside the factory was tempered with or manipulated in any manner during the reference period. It is also not the case of the respondent AGCL which has the authority to inspect the gas meter, the equipments and Internal Piping System of the petitioner from time to time, had detected any defects or after detection of any defects, had instructed the petitioner to rectify those defects during the reference period.

30. The respondent AGCL prior to issuance of the Notice dated 30.08.2023 had not made any allegation with regard to the gas meter and or its sealing, which was sealed by it. The respondent AGCL did not have any report that the recordings of the meter were found to be abnormally high or low for it to be removed and recalibrated. It is also not the case that the petitioner did not pay for the quantities of gas, as were metered, measured and recorded by or through the gas meter installed by the respondent AGCL during the reference period. Under the Contract-Agreement, the petitioner company was duty bound to provide a copy of the Form RT-12 / Form ER-1 for Tea production record with the monthly gas consumption sheet to the respondent AGCL.

31. As per the terms and conditions of the Contract-Agreement dated 14.08.2023, the method of calculation provided in Clause 10.08 can be resorted to only in presence

of any of the two situations, that is, in the temporary absence of the meter or the meter being out of order as provided under Clause 10.03 [the meter being out of service or the meter registering inaccurately]. Therefore, it is evident that only when there is no meter installed or when the meter installed is out of order as set forth in Clause 10.08, the average gas consumption of the petitioner is to be determined as per the method of calculation provided in Clause 10.08 of the Contract-Agreement. It is not within the terms and conditions of the Contract-Agreement that the respondent AGCL would derive authority to raise a demand if it would detect a difference or mismatch in the Tea production record submitted by the petitioner to the Central Excise Authorities in Form RT-12 / Form ER-1 and the monthly gas consumption sheet the petitioner is required to submit as per Clause 10.07 of the Contract-Agreement.

32. Clause 15.00 of the Contract-Agreement had provided for billing. As per Clause 15.01, the respondent AGCL shall raise monthly invoices / bills on the petitioner within ten days from the close of the month for the sale price of gas to the petitioner during the preceding month on the basis of the volume of gas certified by it. As per Clause 15.03, in case the petitioner would fail to clear the bills as raised by the respondent AGCL within the specified period, the respondent AGCL would have the right to disconnect the gas supply to the petitioner immediately after the due date without any notice.

33. From the materials on record, as discussed hereinabove, it does not emerge that any of the situations which permitted the respondent company to resort to the method of calculation mentioned in Clause 10.08 of the Contract-Agreement, was in

existence at the time of issuance of the Notice which contains a demand for an amount of Rs. 76,85,686/- for the reference period from May, 2022 to December, 2022. There is no allegation, not to speak of presence of any convincing material to substantiate any such allegation, to the effect that the meter installed and sealed by the respondent AGCL at the Off-take Point of the petitioner's factory premises was either temporarily absent or out of order as provided in Clause 10.03. It is also not an allegation that the quantities of gas as were metered, measured and recorded by or through the meter installed and sealed by the respondent AGCL was either inaccurate or was result of any act of tempering or manipulation of the petitioner.

34. It might be a case that the petitioner had reported higher figures of Tea production month-wise to the Tea Board of India during the period from May, 2022 to December, 2022. Such reporting of higher figures of Tea production might be an act of deliberate design for any undue benefit or an act resulted from misconstrued understanding and casual approach, as sought to be canvassed in the writ petition. If the petitioner company had actually achieved such higher volume of Tea production during the reference period for any wrongful gain, thereby causing wrongful loss to the respondent AGCL in the process, then such act on the part of the petitioner is required to be established by respondent AGCL by following due process of law.

35. According to the respondent AGCL, it was revealed to it from Form RT-12 / Form ER-1 submitted by the petitioner company to the Tea Board of India during the reference period that the petitioner company had reported higher figures of Tea production records than what was reported to it during the reference period. From

the terms and conditions laid down and set forth in the Contract Agreement dated 14.08.2023, it is evident that the Contract-Agreement is only concerned with sale and delivery of quantities of gas as were/are metered, measured and recorded by or through the meter installed and sealed by the respondent AGCL at the factory premises of the petitioner and its month-wise billings and month-wise payments thereof. There is no terms and conditions in the Gas Purchase Contract-Agreement that the billing was/is to be done as per volume of Tea production. By the Gas Purchase Contract-Agreement, the petitioner as the consumer had undertaken, as per Clause 6.00, [i] to abide by all terms and conditions of the Gas Purchase Contract-Agreement; [ii] to make arrangement for alternative fuel in case gas supply is suspended or discontinued by AGCL due to non-availability/short availability of gas or any other constrained circumstances; [iii] not to resort to any unauthorized use /pilferage/theft of gas; and [iv] not to damage any property /equipments/instruments of AGCL installed in its factory premises. There is no allegation in the impugned Notice that the petitioner had violated any of the afore-mentioned four conditions.

36. What has emerged from the discussion made above in the context of the terms and conditions of the Gas Purchase Contract-Agreement is that the demand made on the petitioner through the impugned Notice dated 30.08.2023 for payment of the amount of Rs. 76,85,686/- as additional gas consumption bill for differential non-reported Tea volume amounts to a coercive step without any foundational and rational basis. A coercive step taken without any foundational and rational basis by an agency or instrumentality of the State like the respondent AGCL is an arbitrary act as such act does not satisfy the rational nexus test. Therefore, the demand

made on the petitioner for payment of the amount of Rs. 76,85,686/- cannot pass the scrutiny of law on the touchstone of Article 14 of the Constitution of India and is liable to be interfered with. Therefore, the demand made on the petitioner by the Noticed dated 30.08.2023 to make payment of Rs. 76,85,686/- as additional gas compensation bill stands interfered with.

37. When the writ petition was moved on 15.11.2023, it was submitted on behalf of the petitioner that there was an imminent threat to stop the supply of gas in view of the demand made for payment of Rs. 76,85,686/- by the Notice dated 30.08.2023. This Court taking note of such submission passed an interim order on 15.11.2023 to the effect that the respondent AGCL would not discontinue the supply of gas to the petitioner subject to deposit of an amount of Rs. 25,00,000/- in the Registry of the Court by the petitioner within a period of forty-five days from 15.11.2023. In deference to the Order dated 15.11.2023, the petitioner deposited an amount of Rs. 25,00,000/- in the Registry within the stipulated time period. In view of the determination made above, the amount of Rs. 25,00,000/- deposited in the Registry is to be returned to the petitioner as per due procedure.

38. In so far as the allegation regarding discovery of unauthorized and illegal tapping points installed by the petitioner, which was detected upon physical inspection on 06.10.2023, is concerned, this Court finds that such allegation of unauthorized and illegal tempering is subsequent to the impugned Notice dated 30.08.2023 having no co-relation with the cause of action stated to have arisen due to the impugned Notice dated 30.08.2023. Therefore, this Court refrains from making any observation in that connection. If the respondent AGCL has any cause of action to

proceed on the basis of such alleged unauthorized and illegal tapping, it is not precluded from proceeding on the aspect as per due procedure. It is clarified that the observations made hereinabove by this Court are only in respect of the cause of action stated to have arisen due to the Notice dated 30.08.2023 and none of the above observations shall be construed as observations on the merits of the claim of the either parties regarding such subsequent cause of action relating to alleged unauthorized and illegal tapping, detected on physical inspection on 06.10.2023.

39. Consequently, the writ petition stands allowed to the extent indicated, with the observations made and the direction given above. There shall, however, be no order as to cost.

Ananta Konwar
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JUDGE

Comparing Assistant