

(2009) 10 MAD CK 0121

Madras High Court

Case No: Writ Petition No. 3565 of 2004

Sangameswara Energy Private
Limited

APPELLANT

Vs

Union of India (UOI), Gas
Linkage Committee and GAIL
India Limited

RESPONDENT

Date of Decision: Oct. 20, 2009

Hon'ble Judges: V. Ramasubramanian, J

Bench: Single Bench

Advocate: Vijay Narayan, for the Appellant; J. Ravindran, Assistant Solicitor General for Respondents-1 and 2 and J. Srinivasa Mohan, for Respondent-3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Ramasubramanian, J.

The petitioner has come up with the present writ petition, challenging the decision taken by the Gas Linkage

Committee for the allocation of natural gas to a set of consumers.

2. I have heard Mr. Vijay Narayan, learned Senior Counsel for the petitioner, Mr. J. Ravindran, learned Assistant Solicitor General, for

respondents 1 and 2 and Mr. J. Srinivasa Mohan, learned Counsel for the third respondent.

3. The third respondent herein issued a notice dated 13.11.2003, inviting applications from interested natural gas consumers, for the allocation of

natural gas on fall back basis, from the gas installation of ONGC in Ramnad zone. The petitioner, which was in the process of setting up a 4 Star

Hotel in Chennai and which had an estimated power requirement in the range of 3 to 4 MW, made an application on 1.12.2003 in response to the said notice, for the allotment of 30,000-40,000 SCMD of natural gas for generation of power continuously for a minimum period of 10 years.

4. It appears that 46 applications were received in response to the above notice, with a total requirement of 12 MMSCMD, though the notice indicated only a quantity of 1 MMSCMD (million standard cubic meters), as available. Therefore, an Internal Departmental Committee was constituted by the third respondent. In a meeting held on 13.1.2004, the said Committee decided to classify all the applications into 4 categories viz., (i) Category-I comprising of Public Sector Enterprises (ii) Category-II comprising of consumers who intended to set up power plants in Ramnad and wheel it to TNEB for their captive consumption and (iii) Categories-III and IV comprising of existing consumers located in places other than Ramnad. After such categorisation, the Committee decided to make allotments of specific quantities to the Tamil Nadu Electricity Board and to 4 other Companies. Aggrieved by such prioritization and allotment, the petitioner has come up with the present writ petition.

5. Mr. Vijay Narayan, learned Senior Counsel appearing for the petitioner assailed the impugned proceedings primarily on the ground that the classification of all applications into 4 categories, after the issue of the tender notice, amounted to changing the rules of the game, in the course of the event and that the allotment has been made arbitrarily to those who did not even commence their projects in Kuttalam zone. It is the contention of the learned Senior Counsel that the whole process is vitiated by arbitrary and mala fide exercise of power and hence liable to be set aside. The learned Senior Counsel also pointed out that at the time of admission of the writ petition, an interim order was passed, directing the respondents to reserve 30,000 SCMD for the petitioner. Therefore, the learned Senior Counsel contended that the quantity reserved under interim orders of this Court, should be directed to be supplied to the petitioner.

6. At the outset, I am unable to accept the contention that on account of the classification of the applicants into different categories, the original

notice inviting tenders got tampered with. There is no dispute about the fact that in response to the tender notice, 46 applications were received.

There is also no dispute about the fact that the total quantity available was indicated in the tender notice, to be 1.0 MMSCMD and that the total

quantity applied for by the 46 applicants, was 12.0 MMSCMD. Therefore, there was no alternative for the Committee to classify the applications

into different categories and prioritize them. Moreover, the Supreme Court issued a direction in *M.C. Mehta v. Union of India* : 2002 (4) SCC

376, to the effect that whenever there is lack of adequate supply of natural gas, transport sector should receive priority of allotment and that

thereafter, it can be allotted to industries, preference being shown to Public Sector Undertakings and Power Projects. Therefore the classification

has been done by the Committee only in accordance with the above directions. Hence it cannot be contended that such categorisation amounted to

alteration of the tender conditions.

7. The contention that allotment has been made in an arbitrary manner, cannot also be accepted. According to the respondents, the available

quantity of 1.0 MMSCMD was sought to be distributed, by the impugned resolution, in the following manner:

Quantity (MMSCMD)

1. TNEB, Chennai - 0.45

2. BOC India Ltd., Kolkata - 0.02

3. Coromandel Electric Co. Ltd - 0.04

4. Arkay Energy Ltd., Chennai - 0.05

5. Arkay Energy Ltd., Chennai - 0.30

8. It is stated in the counter affidavit of the third respondent that out of the above 5 allottees, 3 are in the private power sector and 1 is the Tamil

Nadu Electricity Board. The remaining allottee was a manufacturer of Oxygen for medical use. Therefore, the priority given to them, is in tune with

the directions issued in *M.C. Mehta* case. The Supreme Court expressed its concern in the said case that public health should take precedence

over all other considerations. Therefore, the allotment in favour of the manufacturer of Oxygen for medical use, cannot also be said to be arbitrary.

9. In any case, the availability of natural gas in Ramnad zone, as in the case of other zones, appears to have dwindled to a great extent. It is stated in paragraph-7 of the counter affidavit filed in 2007 and an additional affidavit now filed at the time of hearing, that the quantity originally estimated by ONGC, as available in Ramnad zone in 2003-2004 was 1.75 MMSCMD. Therefore, an allocation of 1.884 MMSCMD was made. But the availability of gas under the Administered Priced Mechanism (APM) has dwindled in Ramnad to 1.1 MMSCMD, which is just about 60% of the contracted quantity. Even the Market Driven Priced (MDP) Gas in Ramnad is only about 0.47 MMSCMD. Therefore, as on date, there is a shortfall of 0.36 MMSCMD even in the contracted quantity. Hence, the question of the quantity reserved under interim orders of this Court, being supplied to the writ petitioner, also may not arise.

10. Relying upon a communication dated 20.6.2005 of the Government of India, Ministry of Petroleum and Natural Gas, addressed to the third respondent, it was contended by Mr. Vijay Narayan, learned Senior Counsel for the petitioner that the quantity reserved or committed as per Court orders, also deserve priority of treatment. Therefore, the learned Senior Counsel contended that the petitioner also deserve priority of treatment. A letter dated 13.3.2004, issued by the third respondent to one of the allottees, indicating the reservation of 30,000 SCMD for the benefit of the petitioner in terms of the interim orders of this Court, was also brought to my notice.

11. However, the above communications cannot advance the case of the petitioner. Once it is found that the impugned decision to make allotments in a particular manner cannot be found fault with, the petitioner would not be entitled to succeed in the main writ petition merely on the basis of any interim order that he was in enjoyment. When the third respondent is not able to supply even the contracted quantity, there is no question of issuing a direction to the respondents to rob Peter to pay Paul.

12. The contention that the allotment to two parties, who were unable to implement the project as per the original agreement, was arbitrary and vitiated by non-application of mind, cannot be accepted, since it is pointed out by the respondents that those two parties were already granted

extension of time. Moreover, in respect of one allottee by name Regency Power Corporation, the allotment was made only on account of the necessity to transfer their allocation from Kuttalam zone to Ramnad zone, due to short supply in Kuttalam.

13. In any event, the petitioner has not made any of the allottees, as parties to the writ petition, though the petitioner has challenged the allocations made in favour of at least 3 of those 5 allottees. In such circumstances, the question of setting aside the allotment in their favour, behind their back, does not arise.

14. In view of the above, I find no merit in this writ petition and hence it is dismissed. No costs.