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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :23.09.2025

Pronounced on :16.10.2025

CORAM

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

**O.S.A.No.300 of 2020, O.S.A.(CAD)No.
42 of 2021, 64 of 2021, O.S.A.(CAD)No.66 of 2022,
O.S.A.(CAD)No.109 of 2021, O.S.A.(CAD)No.125 of 2021 and
O.S.A.(CAD)No.127 of 2021
&
C.M.P.Nos.13812 of 2024, 14366 of 2020,
13808 of 2024, 13807 of 2024, 13811 of 2024,
18525 of 2021, 13809 of 2024, 20224 of 2021,
13810 of 2024 and 20250 of 2021**

O.S.A.No.300 of 2020:

M/s GAIL (India) Limited,
No.16, Bhikaji CAMA Place,
R.K.Puram, New Delhi.

.. Appellant

/versus/

M/s Coromandal Electric Company Ltd.,
Coromandal Tower,
No.93, Santhome High Road,
Chennai 600 028.

.. Respondent

Prayer: Original Side Appeal has been under Order 36, Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent praying to set aside the



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order dated 19.02.2020 passed by Learned Judge in O.P.No.533 of 2015 partially confirming the Award dated 09.03.2015 of the sole Arbitrator.

For Appellant :Mr.P.V.S.Giridhar, Senior Counsel
Asst.by Pooja Jain for M/s Giridhar and Sai

For Respondent :Mr.P.S.Raman, Senior Counsel for
Mr.K.Harishankar

O.S.A.(CAD)No.42 of 2021:

M/s GAIL (India) Limited,
No.16, Bhikaji CAMA Place,
R.K.Puram, New Delhi.

.. Appellant

/versus/

Kaveri Gas Power Ltd.,
No.5, Ranganathan Garden,
Anna Nagar, Chennai 600 040.

.. Respondent

Prayer: Original Side Appeal has been under Order 36, Rule 1 of Original Side Rules read with 37 of Arbitration and Conciliation Act, 1996, Clause 15 of the Letters Patent praying to set aside the order dated 19.02.2020 passed by Learned Judge in O.P.No.696 of 2016 partially confirming the Award dated 09.06.2016 of the sole Arbitrator.

For Appellant :Mr.P.V.S.Giridhar, Senior Counsel
Asst.by Pooja Jain for M/s Giridhar and Sai

For Respondent :Mr.Vinod Kumar



सत्यमेव जयते : O.S.A.No.64 of 2021:

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M/s GAIL (India) Limited,
No.16, Bhikaji CAMA Place,
R.K.Puram, New Delhi.

.. Appellant

/versus/

Kaveri Gas Power Ltd.,
No.5, Ranganathan Garden,
Anna Nagar, Chennai 600 040.

.. Respondent

Prayer: Original Side Appeal has been under Order 36, Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent read with Section 34 of Arbitration and Conciliation Act, 1996, praying to set aside the order dated 19.02.2020 passed by Learned Judge in O.P.No.526 of 2016 partially confirming the Award dated 09.06.2016 of the sole Arbitrator by not allowing the entire counter claim of the appellant from 06.11.2006.

For Appellant :Mr.P.V.S.Giridhar, Senior Counsel
Asst.by Pooja Jain for M/s Giridhar and Sai

For Respondent :Mr.Vinod Kumar

O.S.A.(CAD)No.66 of 2022:

M/s Arkay Energy (Rameswaran) Limited,
Rep.by its Authorised Signatory Mr.T.S.Das,
New No.20, Old No.129, Chamiers Road,
Nandanam, Chennai 600 035.

.. Appellant

/versus/

1.M/s GAIL (India) Limited,
No.16, Bhikaji Cama Place,
P.K.Puram, New Delhi 110 066.

.. 1st Respondent



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2.Hon'ble Mr.Justice G.N.Ray,
Former Judge, Supreme Court of India,
No.BE-265,Salt Lane City,
Kolkata 700 064.

.. 2nd Respondent

Prayer: Original Side Appeal has been under Order XXXVI, Rule XI of Original Side Rules read with Section 37 of Arbitration and Conciliation Act, 1996, under Section 13(1) of the Commercial Courts Act, 2015, praying to set aside the fair and decretal order dated 19.02.2020 passed in O.P.No.86 of 2015.

For Appellant :Mr.Anirudh Krishnan &
Mr.Adarsh Subramanian

For Respondents :Mr.P.V.S.Giridhar, Senior Counsel
Asst.by Pooja Jain for M/s Giridhar and Sai

O.S.A.(CAD)No.109 of 2021:

M/s GAIL (India) Limited,
No.16, Bhikaji CAMA Place,
R.K.Puram, New Delhi 110 066

.. Appellant

/versus/

1.M/s Coromandel Electric Co.Ltd.,
No.93, Santhome High Road,
Karpagam Avenue, R.K.Puram,
Chennai 600 028.

2.Mr.Justice Arijit Pasayat,
Retired Judge, Supreme Court of India,
B-98, Sector 27, Nodia 201 301.

.. Respondents



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Prayer: Original Side Appeal has been under Order 36, Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent, praying to set aside the order dated 19.02.2020 passed by learned Judge in O.P.No.407 of 2015 partially setting aside the award dated 09.03.2015 of the sole Arbitrator by allowing the entire counter claim of the appellant from 01.07.2005.

For Appellant :Mr.P.V.S.Giridhar, Senior Counsel
Asst.by Pooja Jain for M/s Giridhar and Sai

For Respondents :Mr.P.S.Raman, Senior Counsel for
Mr.K.Harishankar

O.S.A.(CAD)No.125 of 2021:

M/s GAIL (India) Limited,
No.16, Bhikaji CAMA Place,
R.K.Puram, New Delhi 110 066

.. Appellant

/versus/

M/s OPG Energy Pvt.Ltd.,
No.167, St. Mary's Road,
Alwarpet, Chennai 600019.

.. Respondent

Prayer: Original Side Appeal has been under Order 36, Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent, under Section 13(1) of Commercial Court Act, praying to set aside the order dated 19.02.2020 passed by learned Judge in O.P.No.102 of 2016 confirming the Award dated 02.09.2015 of the sole Arbitrator.



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For Appellant :Mr.M.Ajmal Khan, Senior Counsel
Asst.by Pooja Jain for M/s Giridhar and Sai

For Respondents :Mr.Vinod Kumar

O.S.A.(CAD)No.127 of 2021:

M/s GAIL (India) Limited,
No.16, Bhikaji CAMA Place,
R.K.Puram, New Delhi.

.. Appellant

/versus/

M/sArkay Energy (Rameswaram) Limited,
Rep.by its President (Commercial and Legal)
Mr.R.Jarard Kishore,
New No.20, Old No.129, Chamiers Road,
Nandanam, Chennai 600 035.

.. Respondent

Prayer: Original Side Appeal has been under Order 36, Rule 1 of Original Side Rules read with Section 37 of Arbitration and Conciliation Act, 1966 read with Section 13 of Commercial Court Act, praying to set aside the order dated 19.02.2020 passed by learned Judge in O.P.No.690 of 2014 confirming the Award dated 22.06.2014 of the sole Arbitrator.

For Appellant :Mr.P.Wilson, Senior Counsel Asst.by
Mr. Pooja Jain for M/s Giridhar and Sai

For Respondent :Mr.Anirudh Krishnan and
Mr.Adarsh Subramanian



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COMMON JUDGMENT

Prelude:

M/s GAIL (India) Limited, a Public Sector undertaking under the administrative control of Government of India, Ministry of Petroleum & Natural Gas (in short 'MoP & NG') involved in distribution and sale of Natural Gas. According to the Government policy, based on the end use and region of supply (landfall point) the pricing of the Gas determined by the Government of India. The role of MoP & NG is to distribute natural gas at the price fixed under the pricing policy to the companies, which were in need of natural gas. Earlier, (i.e.) from 18.09.1997, the price of gas fixed based on the landfall points linked to the price of a basket LS/HS fuel granting concession price for the North-Eastern States. The price was determined and notified by M/s GAIL (India) Limited with the approval of MoP & NG, every quarter. Parties willing to buy natural gas from M/s GAIL (India) Limited, has to enter into Gas Supply Contract (GSC) with M/s GAIL (India) Limited.



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2. M/s Arkay Energy (Rameswaram) Limited; M/s Coromandel Electric Co. Ltd.; M/s Sahell Exports Pvt. Ltd.; M/s Kaveri Gas Power Ltd.; and M/s OPG Energy Pvt. Ltd. are the five companies, which had entered into Gas Supply Contract (in short “GSC”) with M/s GAIL (India) Limited, on different dates and were procuring gas at the price fixed in terms of Article 10 of the GSC. Further, M/s GAIL (India) Limited as Seller and transporter and the procuring companies as BUYER, for the sale and purchase/transmission of Natural Gas, have entered into Gas Sales and Transmission Agreement (in short “GSTA”) to deal about the manner of deliver, measurement and calibration, billing and payments, price, transmission and marketing cost etc.,

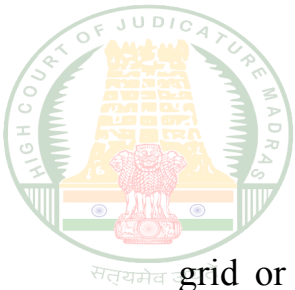
3. While so, the Government of India, took a policy decision to dismantle The Administrated Price Mechanism (in short “APM”) in a phased manner and to restrict the concession price under APM only for the manufacturers of fertilizer and for power generating companies. As a result, on 20.06.2005 in super session of earlier order, Ministry of Petroleum and Natural Gas (MoP & NG) fixed Rs.3,200/-per SCMD as APM price and



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Rs.3,840/- per SCMD as non-APM price. Buyers were intimated about the change in pricing policy and APM price fixed for the year 2005-2006 with effect from 06.06.2006. Buyers were called upon to confirm whether they fall within the category of Fertilizer or Power Generators. On the request of M/s GAIL (India) Limited, a classificatory letter, dated 27.06.2006, sent by MoP & NG to M/s GAIL (India) Limited, stating that APM gas price would be applicable for only those quantities of gas, which are used for generating electricity, which is supplied to the grid for distribution to the consumers through the public/utilities/licensed distribution companies.

4. For the above mentioned five buyer companies, M/s GAIL (India) Limited, after getting confirmation from them that they are using the gas supplied only for power generation and the same is distributed through grid for consumers, supplied natural gas at concessional APM price of Rs.3,200/- per SCMD. However, during the audit by CAG in the year 2011, it was found that natural gas from Cauvery Basin were supplied at APM price for the companies, which do not fulfil the condition of distributing through grid to the consumers through public utilities/licensed distribution companies. They either utilised the power generated without supplying to the



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grid or sold it to captive consumers using wheeling arrangement with the State Electricity Board. Awaiting clarification, the natural gas supplied at APM price, on provisional basis, was found to be erroneous. It was reported that supply of gas under APM rates to non-eligible customers in violation of the Ministry's order had resulted in loss of revenue to the tune of Rs.246.16 crores in the Gas Pool Account during April 2006 to March 2011. This Report of CAG triggered MoP & NG to write to M/s GAIL (India) Limited, on 17.11.2011 for action to recover the dues from the respective customers. In response, M/s GAIL (India) Limited through its General Manager (Marketing) vide, letter dated 02.11.2011 had informed the Ministry that they are taking action for invoicing at market price with effect from 16.11.2011 and also raising debit notes for the period prior to 16.11.2011. When the debit notes raised by the M/s GAIL (India) Limited for the differential rate between the market price and the APM price, the buyer companies disputed the claim and invoked the arbitration clause for settlement of the dispute.

Claim, counter claim and the award of the Aribtrator:

5. M/s Arkay Energy (Rameswaram) Ltd:

M/s Arkay Energy (Rameswaram) Ltd, before the Arbitral



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Tribunal, prayed for declarations that the demand under Debit Note No.33, dated 19.12.2011 in respect of gas supplied from 01.07.2005 to 31.12.2010 and from 01.04.2011 to 15.11.2011 are illegal, untenable and unenforceable and for consequential injunctions to restrain M/s GAIL (India) Limited from claiming the difference between APM and non-APM price for the above period. In addition, M/s Arkay Energy (Rameswaram) Limited made a claim for refund of Rs.4,67,67,809/- for the period 16.11.2011 till the date of claim statement. In turn, M/s GAIL (India) Limited made a claims for a sum of about Rs.85.55 crore towards the difference between APM price and Non-APM price and also sought damages of Rs.1 crore with interest.

6. By Award dated 22.06.2014, the Arbitral Tribunal rejected the debit note for the period prior to 01.01.2011 and for the period from 01.01.2011 to 15.11.2011. It upheld M/s GAIL (India) Limited's right to charge the non-APM price from 16.11.2011.

7. Challenging the Arbitral Award, M/s GAIL (India) Limited filed O.P.No.690 of 2014 against rejection of the claim under debit note. Whereas, M/s Arkay Energy (Rameswaram) Limited filed O.P.No.86 of



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2015 with regard to rejection of its claim to continue the supply of natural gas at APM price.

M/s Coramandel Electric Co. Ltd.:

8. M/s Coramandel Electric Co. Ltd, before the Arbitral Tribunal, prayed for a declaration that M/s GAIL (India) Limited's letter dated 29.11.2011 is against the terms of the agreements between the parties and therefore, illegal, invalid and void. Further sought for a direction to M/s GAIL (India) Limited to refund a sum of Rs.3,62,90,023/-with interest thereon at 18% per annum from the date of payment till the date of refund, being monies paid by M/s Coromandel Electric Co. Ltd., under protest for the period upto December 2012, and to further direct M/s GAIL (India) Limited to refund the further sums paid by M/s Coromandel Electric Co.Ltd., from January 2013 onwards with interest thereon at 18% per annum. In turn, M/s GAIL (India) Limited claimed a sum of Rs.42,91,54,646/- towards the difference in gas price for the period from 01.07.2005 to 31.12.2010 (Rs.40,47,05,498/-) and from 01.01.2011 to 15.11.2011 (Rs.2,44,49,148/-) along with interest of Rs.35,36,36,749/- from 01.07.2005 onwards.



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9. By Award dated 09.03.2015, the Arbitral Tribunal held that M/s GAIL (India) Limited is entitled to charge the non-APM price from 16.11.2008 to 15.11.2011 and to claim interest on the amount payable from 29.11.2011. Being aggrieved, M/s Coromandel Electric Co. Ltd. challenged the Award, as a whole in O.P.No.407 of 2015. Whereas M/s GAIL (India) Limited challenged the Award insofar as the rejection of its claim for the period upto 15.11.2008 in O.P.No.533 of 2015.

M/s Saheli Exports Pvt. Ltd.:

10. The debit note of M/s GAIL (India) Limited for Rs.3,19,59,256/- was challenged by M/s Saheli Exports Pvt Ltd. before the Arbitral Tribunal with a prayer of declaration that for the period extending from 06.06.2006 to 29.11.2008 and for the period subsequent thereto, the applicable price is the APM price of Rs.3200/- per SCMD and not the non-APM price of Rs.3840/- per SCMD. In turn, M/s GAIL (India) Limited made a claim of Rs.3,19,59,256/- being the difference in price, with interest thereon.



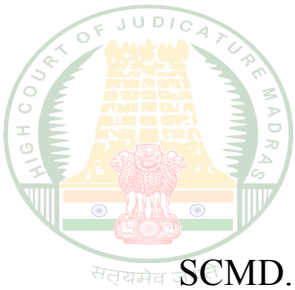
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11. By award dated 03.06.2016, M/s Saheli Exports Pvt. Ltd. was directed to pay at the non-APM price from 30.11.2008 along with interest thereon at 12% per annum and in case of default in making payment, at the enhanced interest rate of 18% per annum.

12. Being aggrieved, in O.P.No.438 of 2016, M/s Saheli Exports Pvt Ltd. challenged the award with regard to the claim of M/s GAIL (India) Limited for the period commencing from 30.11.2008. Whereas, M/s GAIL (India) Limited in O.P.No.664 of 2016, challenged the denial of relief for the period from 06.06.2006 to 30.11.2008.

M/s Kaveri Gas Power Ltd:

13. M/s Kaveri Gas Power Ltd. before the Arbitral Tribunal challenged the debit note raised by M/s GAIL (India) Limited claiming differential price for the period from 06.11.2006 to 29.11.2008 and the period subsequent thereto. M/s Kaveri Gas Power Ltd. also sought for a declaration that the applicable price in the aforesaid period is the APM price of Rs.3,200/- per SCMD and not the the non-APM price of Rs.3,840/- per



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SCMD. In turn, M/s GAIL (India) Limited made a claim of Rs.2,55,10,181/- in respect of the aforesaid period along with interest and damages.

14. By Award dated 22.06.2016, the Arbitral Tribunal allowed the claims of M/s Kaveri Gas Power Ltd. for the period up to 19.12.2008 and rejected its claims for the period from 20.12.2008 to 31.05.2010. The differential price with interest claimed by M/s GAIL (India) Limited from 20.12.2008 to 31.05.2010 upheld except for the claim for damages.

15. M/s Kaveri Gas Power Ltd., in O.P.No.526 of 2016 challenged the Award insofar as relief granted to M/s GAIL (India) Limited for the period commencing from 20.12.2008 and ending on 31.05.2010 along with interest at 10% per annum. Whereas, M/s GAIL (India) Limited in O.P.No.696 of 2016 challenged the Award, declining the claim for the period from 06.06.2006 to 19.12.2008 and also in respect of the disallowed rate of Interest and damages claimed.

M/s OPG Energy Pvt. Ltd.

16. Before the Arbitral Tribunal, M/s OPG Energy Pvt. Ltd.



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prayed for a declaration that M/s GAIL (India) Limited debit notes charging non-APM prices from 01.07.2005 to 30.06.2010 and for the period commencing from 01.06.2010 as illegal, null and void. In turn, M/s GAIL (India) Limited requested that the debit notes be upheld and that interest be paid on amounts payable upto 28.01.2013 and for further interest.

17. By Award dated 02.09.2015, the Arbitral Tribunal held that the claim for APM price is invalid for the period prior to 16.11.2011. However, it is valid for the period commencing from 16.11.2011. M/s GAIL (India) Limited has challenged the Award in O.P.No.102 of 2016.

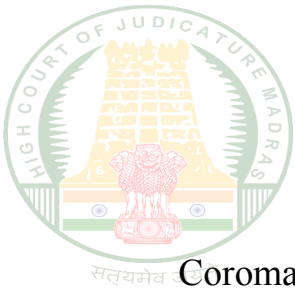
18. The Original Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 were taken up for consideration by the learned Single Judge of this Court. On considering the nature of the dispute and facts of the case, which centres around clarification and interpretation of the contract documents in connection with supply of natural gas, a common order was passed on 19.02.2020.



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19. In the light of the Article 10(i) of the Gas Supply Contract (in short “GSC”) and the correspondence between MoP & NG – M/s GAIL (India) Limited - Buyers, the Learned Single Judge tested the attempt of M/s GAIL (India) Limited to recover the difference between APM and non-APM rate on the ground of mistake, after receiving the Audit objection by CAG and arrived at a conclusion that the claim of differential rate by M/s GAIL (India) Limited is barred by limitation for the period prior to 15.11.2008 (i.e.) three years prior to the date of debit notes. For the three years period, after 16.11.2008 till 15.11.2011, his by waiver, acquiescence or estoppel. Section 10 and Section 17 of the Limitation Act, 1963, does not apply to the facts of the case. Further, the learned Single Judge held that M/s GAIL (India) Limited is entitled to demand non-APM price prospectively from 16.11.2011.

20. In short, the learned Single Judge had confirmed the Award passed in the matter between M/s GAIL (India) Limited and M/s Arkay Energy (Rameswaran) Limited by declaring the debit note prior to 15.11.2011 as void. The Arbitral Award passed in the dispute between M/s



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Coromandal Electric Company Limited and M/s GAIL(India) Limited holding that M/s GAIL (India) Limited is entitled to claim non-APM price from 16.11.2008 to 15.11.2011 held as barred by limitation up to 09.03.2010 and hit by waiver, acquiescence and estoppel upto 15.11.2011. In respect of Arbitral award passed in the matter between GAIL and M/s Saheli Exports Private Limited, the Arbitral award permitting M/s GAIL(India) Limited to charge non-APM price from 30.11.2008 held as barred by limitation upto 11.01.2010 and hit by acquiescence and estoppel upto 15.11.2011. In respect of arbitral award passed in the matter between M/s GAIL (India) Limited and M/s Kaveri Gas Power Limited, the award of the Arbitrator holding M/s GAIL (India) Limited is entitled to charge non-APM price from 20.12.2008 to 31.05.2010 held against M/s GAIL (India) Limited on the ground of limitation upto 24.04.2010 and acquiescence and estoppel thereafter upto 15.11.2011. Insofar as the Arbitral award in the matter between M/s GAIL (India) Limited and M/s OPG Energy Pvt. Ltd., the award of the Arbitrator was upheld.

21. As against the Common Order passed by the Learned Single Judge, the following Original Suit Appeals preferred by the parties.



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O.S.A.No.300 of 2020 and O.S.A.No.109 of 2021:

22. As against the order of the Learned Single Judge, O.S.A.No.300 of 2020 from O.P.No.533 of 2015 and O.S.A.No.109 of 2021 from O.P.No.407 of 2015 along with applications C.M.P.Nos.13812 of 2024 and 13811 of 2024 to permit the appellant to raise additional ground filed by M/s GAIL (India) Limited. In these two appeals and petitions M/s Coromandel Electric Co. Ltd. is the respondent.

O.S.A. (CAD)No.127 of 2021 and O.S.A.(CAD)No.66 of 2022:

23. As against the order of the Learned Single Judge passed in O.P.No. 690 of 2014. O.S.A.(CAD).127 of 2021 preferred by M/s GAIL (India) Ltd. Along with application Nos:13810 of 2024. O.S.A.No.66 of 2022 is filed by M/s Arkay Energy (Rameswaram) Limited against the order of the Learned Single Judge passed in O.P.No.86 of 2015.

O.S.A.(CAD)No.125 of 2021 :

24. As against the common order passed by the learned Single Judge in O.P.No.102 of 2016, M/s GAIL(India) Limited has filed



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O.S.A.(CAD)No.125 of 2021 along with C.M.P.No.13809 of 2024 to permit the appellant to raise additional ground. In this appeal and petition, M/s OPG Energy Pvt. Ltd., is the respondent.

O.S.A.(CAD)No.42 of 2021 and O.S.A.No.64 of 2021:

25. O.S.A.No.42 of 2021 and O.S.A.No.64 of 2021 by M/s GAIL (India) Limited against the order passed by the learned Single Judge in O.P.No.696 of 2016 and O.P.No.526 of 2016 respectively, along with C.M.P.Nos.13808 of 2024 and 13807 of 2024 to permit the appellant to raise additional ground were filed. In these two appeals and petitions, M/s Kaveri Gas Power Ltd. is the respondent.

26. Before advertng to the merits of the appeals under consideration, it is appropriate to record the memo filed on behalf of M/s Kaveri Gas Power Ltd on 19.07.2024. In this memo, it is reported that pending O.S.A.(CAD)No.42 of 2021 and O.S.A.No.64 of 2021, NCLT, Chennai vide order dated 04.02.2022 commenced Corporate Insolvency Resolution Process (CIRP) against M/s Kaveri Gas Power Ltd. and moratorium was imposed with effect from 04.02.2022. Thereafter, Interim



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Resolution Professional and subsequently, Resolution Professional appointed. The Resolution Plan proposed by RP failed leading to passing of liquidation order on 09.12.2022. M/s Kaveri Gas Power Ltd was purchased by one S.Elangovan in the auction. The liquidation auction sale was approved by NCLT vide order dated 26.04.2024. In the liquidation sale approval order, NCLT has recorded that all claims and obligation against M/s Kaveri Gas Power Ltd. stands discharged. Thereafter, the liquidation process closed formally vide, order dated 10.05.2024. Thus, M/s GAIL (India) Limited, which has not participated in the liquidation process, has lost its right to make any claim against M/s Kaveri Gas Power Ltd. Hence, the appeals stands abated.

27. Mr.Vinod Kumar, the Learned Counsel representing M/s Kaveri Gas Power Ltd., relying on the judgement of the Hon'ble Supreme Court rendered in *Ghanashyam Mishra and Sons (P) Ltd -vs- Edelweiss Asset Reconstruction Company Ltd reported in [(2021) 9 SCC 657]*, submitted that the 'clean slate theory' propounded in the above case squarely applies to M/s Kaveri Gas Power Ltd., hence, nothing survives in the appeal arising from the Arbitral Award passed against M/s Kaveri Gas Power Ltd.



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28. No specific denial or rebuttal to the above submission made by Learned Counsel, received from M/s GAIL (India) Limited.

Grounds of Appeal, Arguments and findings:

Submission on behalf of M/s GAIL (India) Ltd:

29. On behalf of M/s GAIL (India) Limited, the learned Senior Counsels Mr.P.V.S.Giridhar, Mr.M.Ajmal Khan and Mr.P.Wilson, appeared and placed their arguments under five broad heads.

30. They submitted that the buyers, who are the power generators using the natural gas supplied by M/s GAIL (India) Limited, utilised the power generated by them for private sale to its captive consumers. They did not supply power to the general public. Therefore, they are not entitled for APM price. It is contended that the power generated by them using the gas supplied by M/s GAIL (India) Limited was distributed to their own captive consumers through the wheeling arrangement paying wheeling charges to TANGEDCO. Such customers of M/s GAIL (India)Limited are not entitled for APM price, since they do not fall within the purview of distribution to



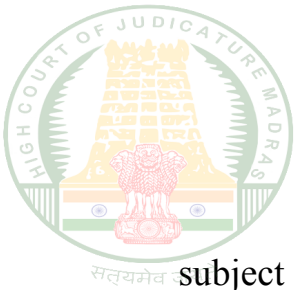
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consumers through a public utility/licensed distribution company.

(i) The MoP & NG, while classifying consumers under four categories, clarified that consumers generating electricity and supplying it to various consumers through the wheeling company arrangement with the State Electricity Board are not entitled for APM price.

(ii) Natural Gas is a resource vested with the Government of India. M/s GAIL (India) Limited has been distributing and selling the natural gas as Trustee. Till the resource reaches the end consumer, M/s GAIL (India) Limited, deals with the natural gas as a custodian and trustee of a public resource. When public trust doctrine applies, the plea of waiver, acquiescence or estoppel will not arise. The learned Single Judge without taking note of the spirit behind Section 10 and Section 17 of the Limitation Act, 1963, erred in holding that M/s GAIL (India) Limited is not entitled to claim the differential rate between APM price and Non-APM price, since the claim is barred by limitation and hit by waiver, acquiescence or estoppel,

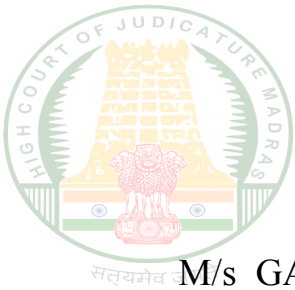
(iii) Article 10 with the caption “Price of Gas Supply Contract (GSC) / Gas Sales and Transmission Contract (GSTC)”, empowers the Central Government/ MoP & NG to fix the price of natural gas. Buyers on express acceptance of the said condition, had purchased the natural gas



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subject to the terms and conditions contemplated under GSC/GSTC. The supply of natural gas at APM-price to the respondent companies was only on a provisional basis, pending clarification from MoP & NG. While so, the learned Single Judge ought not to have invoked the principles of estoppel or acquiescence to deny the lawful claim of M/s GAIL (India) Limited to recover the differential charges.

(iv)The respondents, by misrepresenting the nature of their business and utilisation of the energy generated from the gas supplied by Grid, derived an unfair benefit and cannot be permitted to be unjustly enriched by such misrepresentation. The benefit was extended to the respondent companies solely based on their misrepresentation. Since it was a mistake, the time, till the discovery of the misrepresentation has to be excluded under Section 17 of the Limitation Act, 1963. The circular dated 20.06.2005 followed by the clarification dated 27.06.2006 issued by the MoP & NG, beyond any doubt excludes power generators utilising power for captive consumers from getting the benefit of APM price. The debit note was issued only in respect of the differential price that has been erroneously extended to the respondent companies due to mistake and misrepresentation. Hence, the decision of the learned Single Judge, denying the lawful claim of



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M/s GAIL (India) Limited, on the ground of limitation and estoppel, is perverse and against settled legal principles and against public policy.

(v) On behalf of the Government M/s GAIL (India) Limited holds natural resources in trust. The natural gas in question is held for the specific purpose of developing such resources in the interest of the people. Therefore, M/s GAIL (India) Limited, which is only a marketing agent for the transaction of public resources to power generators, holds the said natural resources vested in it in the capacity of a trustee. Therefore, under Section 10 of the Limitation Act, 1963, there is no limitation prescribed for the properties held by trustees. The Learned Single Judge miserably failed to apply Section 10 of Limitation Act, 1963 which specifically excluded limitation on enforcing the liability of the respondents. In ***Reliance Natural Resources Ltd. v. Reliance Industries Ltd., reported in [(2010) 7 SCC 1]***, the Hon'ble Supreme Court has held that supply of a natural resources, like, gas is governed by the public trust doctrine. Therefore, the relationship between M/s GAIL (India) Limited and the respondents not governed solely by contractual obligations, but is also governed by trust and public trust principles. Under Section 10 of the Limitation Act, 1963, three years period prescribes under Article 15 for the recovery of price of the goods sold and

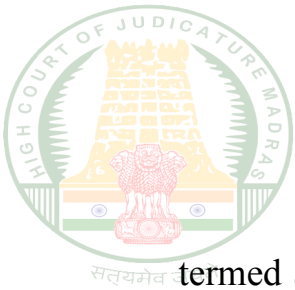


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delivered, is not applicable. In this regard, M/s GAIL (India) Limited is also taken out a petition under Order II, Rule (4) and Rule (22) of the OS Rules of Madras High Court to permit the appellant M/s GAIL (India) Limited to raise additional ground.

31. In nutshell, the contention of M/s GAIL (India) Limited is that they are holding the natural gas as trustee on behalf of the Government of India representing the people. Therefore, even by the contractual agreement, the right to claim the due price of the natural resources neither be waived nor estopped. As a marketing agent, M/s GAIL (India) Limited, distributes natural gas at the price fixed by the MoP & NG. The actions of M/s GAIL (India) Limited cannot curtail the right of the Government claiming the differential price extended to the respondents by mistake, by misrepresentation or by fraud. For reckoning limitation, till the period upto CAG report dated 16.09.2011, it has to be excluded in view of mutual mistake, invoking Section 17 of the Limitation Act, 1963.

32. The Learned Senior Counsels representing M/s GAIL (India) Limited submitted that the claim of M/s GAIL (India) Limited cannot be



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termed as a counter claim. In fact, it is a fresh claim made after the mistake and misrepresentation came to the knowledge of the supplier viz M/s GAIL (India) Limited. The concession price under APM rate extended to the respondents, by mistake, misrepresentation or fraud, sought to be recovered through the debit notes. However, the learned Single Judge has described the action of M/s GAIL (India) Limited as a 'counter-claim'. This error has led to the erroneous conclusion that the debit notes raised by M/s GAIL (India) Limited is hit by estoppel/acquiescence or barred by limitation. Even though fraud or misrepresentation was not expressly pleaded before the Arbitrator, the plea of 'mistake' is sufficient to save the limitation, since the issue involves public money and a concession was extended without authority of law. The differential price can be recovered without any reference to the Limitation Act, 1963 by applying the public trust doctrine.

33. The learned Senior Counsels representing M/s GAIL (India) Limited, to buttress their arguments had relied upon the following judgments:

- (i) Chandi Prasad Uniyal v. State of Uttarkhand (2012) 8 SCC 417;
- (ii) Mahabir Kishore v. State of M.P [(1989) 4 SCC 1];



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166];

(iii)Mahindra Holidays and Resort v. State of Kerala [(2019) 3 KLJ

(iv)Essar Steel Ltd. v. Union of India [2005 SCC Online Guj. 194];

and

(v)Reliance Natural Resources Ltd., vs. Reliance Industries Ltd.,

[(2010) 7 SCC 1].

34. Submission on behalf of M/s Arkay (Rameswaram) Limited,

M/s Coromandel Electric Co. Ltd., M/s OPG Energy Pvt. Ltd. and M/s

Kaveri Gas Power Ltd.:

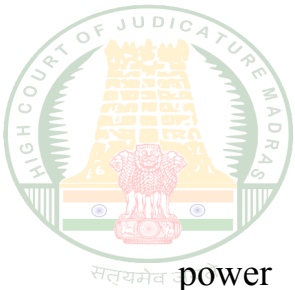
Mr.P.S.Raman, learned Senior Counsel representing for Mr.K.Harishankar appearing for M/s Coromandel Electric Co Ltd submitted that the appellant namely, M/s GAIL (India) Limited, from 2005 to 2011 was supplying natural gas at APM rate, after confirming that the respondents are power generators and distributing the power through Grid for the utilisation of consumers. Only because of the audit objection raised by the CAG in the year 2011, for the first time they sub-classified the power generators as those distributing power through Grid for utilisation by public consumer and for utilisation by captive consumer. The respondents, being the power



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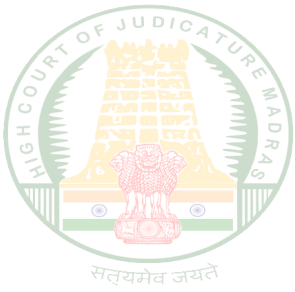
generators, hold agreement with TNEB for wheeling the power and had paid necessary charges for such wheeling. The power is utilised by captive customers. Prior to CAG objection and communication, M/s GAIL (India) Limited or MoP & NG never classified the customers as public or captive customers. The respondents had entered into GSC/GSTC with M/s GAIL (India) Limited on the specific term that the power generated by these respondents to be pooled through Grid for utilisation by the end users who are the captive customers of the power generators. M/s GAIL (India) Limited, consciously fixed the APM price after satisfaction on the clarification given by the respondents about the end users of the power generated. From June 2006, natural gas was sold by M/s GAIL (India) Limited at APM rate. Using the natural gas supplied by M/s GAIL (India) Limited, power generated and distributed through the grid for the consumers. Till the CAG communication dated 16.09.2011, there was no differential classification between the captive consumers and general consumers.

35. Mr. P.S.Raman, learned Senior Counsel submitted that the difference among the customers has no reasonable justification. Like, public customers, the captive customers also otherwise only depend on the public



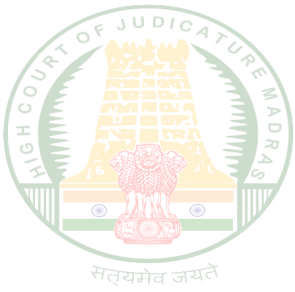
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power supply. By purchasing power from power generators through wheeling, the respondents in fact reduce the burden of the State supplying power to them. Therefore, the respondents, who are admittedly generating the power using the gas supplied and distributing it through Grid, cannot be mulcted with non-APM price with retrospective effect. M/s GAIL (India) Limited belated claim that supply of natural gas at APM price was a mistake due to misrepresentation is incorrect and untenable. The contract between M/s GAIL (India) Limited and the respondents is purely governed by the principles of contract. M/s GAIL (India) Limited cannot claim any privilege or advantage in respect of limitation by introducing plea of public trust doctrine. Natural gas sold by M/s GAIL (India) Limited, as a distributor and purchased by the respondents for the price quoted, will not fall within the principles of public trust doctrine. Section 10 of Limitation Act, 1963 does not apply to the facts of the case. A plea not raised before the Arbitrator or before the learned Single Judge, is now sought to be introduced by filing petitions to receive additional grounds. The learned Single Judge has dealt with the said plea made orally during arguments and has rightly rejected it. Therefore, the petitions to receive additional grounds is to be dismissed as redundant and superfluous.



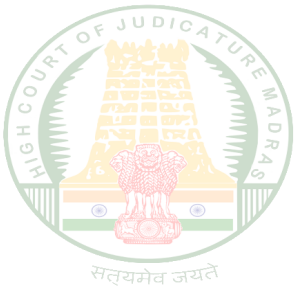
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36. Mr.Aniruth Krishnan, learned counsel and Mr.Adarsh Subramaniam, learned Counsel appearing for M/s Arkay (Rameswaram) Limited, submitted that there was no fraud, misrepresentation or mistake on the part of the respondents. Neither was there any unjust enrichment by them in availing of the APM price for the natural gas. The natural gas supplied were converted into energy, as per the agreement and the energy sold to the customers through grid. The pricing policy, as found in the communication dated 05.06.2006 and the further clarification by the Government of India, vide letter dated 27.06.2006, makes very clear that APM gas price is applicable for those quantity of gas used for generating electricity which is supplied to the Grid for distribution to customers through public utilities or licensed distribution companies. Based on this clarification, M/s GAIL (India) Limited and the respondents continued the contract of supply and purchase of natural gas at the price fixed. The power generated by these respondents had been sold to their respective customers taking into account the supply price of the natural gas fixed by M/s GAIL (India) Limited. The allegation by M/s GAIL (India) Limited that the purchaser companies misrepresented to them is false and untenable.



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37. The debit notes issued by M/s GAIL (India) Limited, demanding a higher price for goods already sold and utilized, will not fall under the public trust doctrine, since neither M/s GAIL (India) Limited, nor the respondents holding the natural resources. After supply of the energy to the end users several years ago, the plea of public trust doctrine or mistake under Section 17 of Limitation Act, 1963 and also to hold M/s GAIL (India) Limited as Trustee under Section 10 of the Limitation Act, 1963 is baseless and preposterous. These plea are desperate attempt by M/s GAIL (India) Limited to get protection under Limitation Act, 1963 and justify their belated claim with retrospective effect. Further, the Learned Counsels appearing for the respondents contended that the defence, which were not raised before the Arbitrator, is raised by the appellant for the first time, in the Court. Power of the Court under Section 34 as well as Section 37 of the Arbitration and Conciliation Act, 1996 are very limited. The grounds raised in the appeal filed by M/s GAIL (India) Limited does not fall within the parameters laid by the Hon'ble Supreme Court regarding the scope and ambit of Section 34 and 37 of Arbitration and Conciliation Act, 1996.



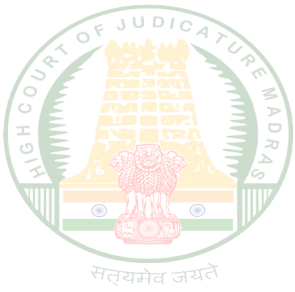
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38. Heard the Learned Counsels appearing on either side. The written submission filed by them carefully considered.

39. In respect of sale of natural gas, till 2005, the Government Pricing Order dated 01.10.1997 was in vogue. After change in policy, the Ministry of Petroleum and Natural Gas came out with revision of APM gas prices for consumers other than power and fertilizer sector consumers and communicated it to the stakeholders like M/s GAIL (India) Limited, ONGC Limited and Oil India Limited through letter dated 05.06.2006.

40. The said letter reads as below:-

“ 1. Please refer to this Ministry's letter of even number dated 20.06.2005 regarding Allocation and Pricing of Natural Gas. The said Order envisages revision of APM gas prices for consumers other than power and fertilizer sector consumers, in a phased manner over next 3-5 years to reflect the market price. In pursuance to the said decision of the Government, it has been now decided to increase the price of APM gas being supplied to the City Gas Distribution Projects and small consumers having allocations upto



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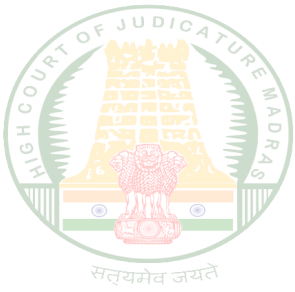


0.05 MMSCMD by 20% over the current APM price of Rs.3200/MSCm for general consumers and Rs.1020/MSC for North-East consumer. Thus, the revised prices for the above categories of consumers would be Rs.3840/MSCM for general consumers and Rs.2304/MSCm for North-East consumers.

2. Further, GAIL shall charge market price for the quantity of gas supplied to IGL and MGL which they are marketing to industrial consumers at market price. However, this increase in the gas price will not impact the Industrial consumers of IGL and MGL as they are already being charged market price for gas supplied to them.

3. This Order will come into effect from the mid-night of 5th /6th June 2006.”

41. The pricing policy for the supply of natural gas always been the prerogative of the Government. The terms of contract between the supplier (M/s GAIL (India) Limited) and its customers (power generating companies) deals with the pricing of Natural gas distributed through M/s GAIL (India) Limited. The most relevant clause in the said GAS SUPPLY CONTRACT (GSC) is Article 10.01, which reads as below:-



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Article-10 Price of Gas:

10.01 Present price of 1000 (One Thousand) Standard Cubic meters of GAS w.e.f 01.10.1997 is applicable as per Government Pricing Order No.L-12015/3/94-GP dated 18.09.1997 (Annexure-III). After 31.03.2000 the SELLER shall have right to fix the price of GAS which may be as per directive, instruction, order, etc. of the Government of India etc. which is likely to be market related in accordance with current policy of liberalization of the Government of India and the BUYER shall pay to the SELLER such price of GAS. Provided further, the price of GAS so fixed is exclusive of Royalty, Taxes, Duties, Service/ Transportation (Transmission) charges and all other statutory levies as applicable at present or to be levied in future by the Central or State Government or Municipality or any other local body or bodies payable on purchase of GAS from ONGCL/Other Producer(s) by the SELLER or on sale from SELLER to the BUYER and these shall be borne by the BUYER over and above the aforesaid price.

42. So long, GAIL the appellant supplying natural gas at APM price to the power generators/the respondents on the representation of the respondents regarding the end user of the power generated by them. The



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contention of the CAG in its audit report is that the power generators supply Electricity to their customers at commercial rate through the Grid of Tamil Nadu Electricity Board thereby they are gaining undue benefit. For such purchase to that extent, deprive consumers eligible for APM price. In this communication, CAG has stated that the company while implementing the Government directives had segregated its gas consumers in Cauvery Basin under Four categories viz.,

Category A -State Electricity Boards and Government Companies generating power for supply of Grid for distribution to consumers.

Category B – Private Companies generating power and selling to State Boards as IPP;

Category C – Consumers generating electricity for captive consumption without supplying to GRID and

Category D- Consumers generating electricity and supplying to various consumers using wheeling arrangement with state Electricity Boards. When clarification sought from the Ministry by the companies, whether D consumers were entitled for APM price, the Ministry has given the required clarification. There was no ambiguity in the Ministry's directives regarding applicability of APM gas price to customers generating power for supply to

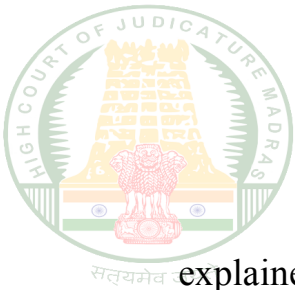


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the Grid for distribution through public utilities/licensed distribution companies only. Therefore M/s GAIL ought not to have supplied natural gas at APM rate to the category D consumers who are supplying power at commercially agreed rates in India.

43. We find, no such detail clarification with four categories of consumers had emanated from MoP & NG at any point of time prior to the CAG communication. The terms in the Gas Supply Contract (GSC) or in the Gas Sale and Transmission Agreement (GSTA) or in the clarificatory letters of MoP & GC, we are not able to find the four categories of consumers mentioned in the CAG report. While so, the contention of CAG that there was no ambiguity in the clarification given by MoP & NG is *per se* incorrect. When there was no sub classifications of consumers in the pricing policy dated 06.06.2006 or in the clarificatory letters, alleging that the power generating companies by misrepresentation or by fraud availed APM price and thereby, got unjust enrichment is totally untenable.

44. In Indian Council for *Enviro-Legal Action v. Union of India and others reported in [(2011) 8 SCC 161]*, the Hon'ble Supreme Court has



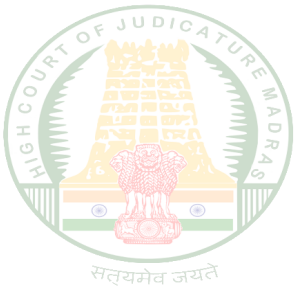
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explained, what is unjust enrichment, which reads as below:

“159. Unjust enrichment is basic to the subject of restitution, and is indeed approached as a fundamental principle thereof. They are usually linked together, and restitution is frequently based upon the theory of unjust enrichment. However, although unjust enrichment is often referred to or regarded as a ground for restitution, it is perhaps more accurate to regard it as a prerequisite, for usually there can be no restitution without unjust enrichment. It is defined as the unjust retention of a benefit to the loss of another or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.”

45. In ***Chandi Prasad Uniyal and others v. State of Uttarakhand and others reported in [(2012) 8 SCC 417]***, the Hon'ble Supreme Court has observed as below:

“14. We are concerned with the excess payment of public money which is often described as



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“taxpayers” money” which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc., because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.”

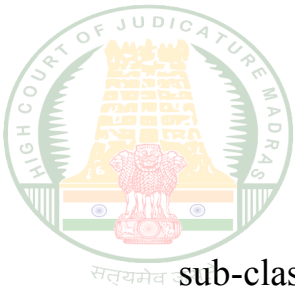
46. In the given case, though CAG has said that the clarification of Ministry is without any ambiguity, the Appellant/ M/s GAIL (India) Limited, ever since the price revision in the month of June 2006 had never placed on



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record that they have categorised their consumers under four categories such as A, B, C and D as found in the CAG letter. Contrarily, the communication of M/s GAIL (India) Limited to the respondents shows that they were supplying gas for producing electricity with full knowledge that their customers, who are generating power using the natural gas, are distributing the power through Grid for utilization of its captive consumers.

47. No doubt, the captive consumers of these power generators had the advantage of fixing the price by negotiation with the power generators and the power sold by the these respondents was at commercial price. However, when the pricing policy fixing APM gas price for generating electricity which is supplied to the Grid for distribution to the consumers through the public utilities/licensed distribution companies explicitly clarified by the Ministry of Petroleum and Natural Gas, vide, letter dated 27.06.2006, using the same expression without any difference between captive consumer and the public consumer, it is beyond any comprehension to entertain the sub classification of the consumer as public consumer and captive consumer at a later point of time. The learned Single Judge has therefore rightly held that M/s GAIL (India) Limited is estopped to make a



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sub-classification of the consumers for depriving the concession already granted and acted upon by the parties based on the promise. For easy reference, the content of the clarification letter of MoP & NG is extracted below:-

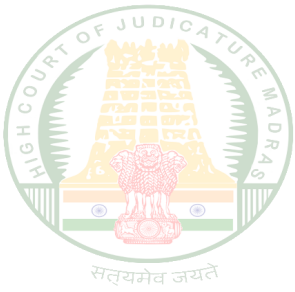
“ Subject: Revision of APM gas price w.e.f 06.06.2006.

Sir,

I am directed to refer to GAIL's letter No.ND/GAIL/Pricing/2006 dated 12th June 2006 on the above subject and to say that GAIL should charge market price for those quantities of APM gas being supplied by them to the City gas distribution companies, which the latter are using for supplying gas to the industrial and commercial consumers at market price. As these industrial and commercial consumers are already paying the market price to the city gas distribution companies, the increase in input gas price by GAIL would have no price impact on such consumers.

APM gas price would be applicable for only those quantities of gas which are used for generating electricity which is supplied to the grid for distribution to the consumers through the public utilities/licensed distribution companies.

GAIL is request to take necessary action accordingly.”



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48. Therefore, the plea of unjust enrichment, if to be considered in the light of the above judgments cited supra, this Court finds that there is no unjust enrichment for the respondents who have generated energy and sold to its customers for the price fixed. Neither the plea of mistake to apply section 17 of the Limitation Act, 1963 to save limitation can be countenanced.

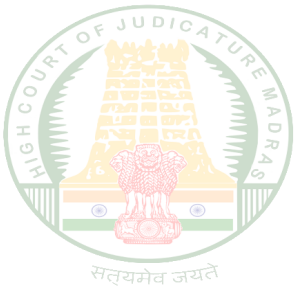
49. M/s GAIL (India) Limited, claims to be a distributor. It is in direct contact with the respondent with whom they have entered into written agreement regarding the supply, pricing, distribution and utilisation. M/s GAIL (India) Limited was never oblivious of the fact that the power generated by the respondents were distributed under wheeling arrangement and the end users are their captive customers. The plea of public trust doctrine exposed in *Reliance Natural Resources Ltd., v. Reliance Industries Ltd., reported in [(2010) 7 SCC 1]*, will not apply to the case in hand, since the resources sold for a price fixed, after due deliberation. It is not the case of M/s GAIL (India) Limited that the natural gas not utilised for power generation or it was not distributed through grid. Their specific case is that the power generated sold to the captive consumers and not to the public consumers. A concluded contract with *ad idem*, cannot be reopened by



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supplying terms externally, which are not part of the contract or in the clarificatory letters.

50. The extent of power generated by the respondents already utilized by distribution through grid for its customers. For the first time, after CAG objection, M/s GAIL (India) Limited claims that the customers must be general public and not captive customers. This differentiation never propounded by M/s GAIL (India) Limited in the terms of contract. For the first time, after CAG report dated 16.09.2011, debit notes raised for the differential price. By the time, the natural gas sold by M/s GAIL (India) Limited converted into energy by the contesting companies and sold to its consumers. Hence, even public trust doctrine will not apply to the case in hand, when there is a transparent transaction of the natural resources based on the terms of the contract. The sale of the Goods Act, 1930 does not provide for claiming higher price retrospectively after completion of the transaction at a specific price. If the plea of M/s GAIL (India) Limited, for any reason entertained, it will lead to uncertainty in perpetuity, which is against public policy.

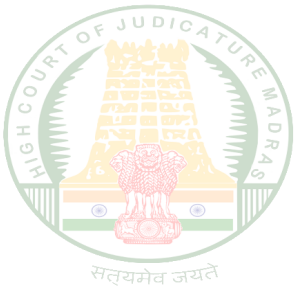


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51. The learned Single Judge, after due consideration of the facts, had rightly held that M/s GAIL (India) Limited, cannot claim any differential price with retrospective effect. Their right to claim non-APM price from the power generators, who are not supplying the power to the general public not entitled for APM price, will apply only prospectively and such change of policy is permissible under Article 10 of the Gas Supply Contract.

52. In the light of the above discussion, we hold that these appeals preferred against the well considered Common Order of the learned Single Judge deserved to be dismissed.

53. Accordingly, **O.S.A.No.300 of 2020, O.S.A.(CAD)No.42 of 2021, O.S.A.No.64 of 2021, O.S.A.(CAD)No.109 of 2021, O.S.A.(CAD)No.125 of 2021 and O.S.A.(CAD)No.127 of 2021 all filed by M/s GAIL (India) Limited stand dismissed. O.S.A.(CAD)No.66 of 2022 filed by M/s Arkay Energy (Rameswaram) Limited also stands dismissed.**



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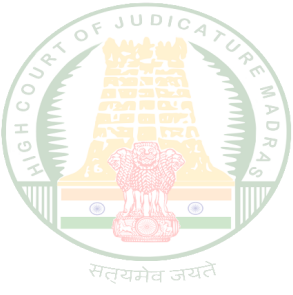
54. The Civil Miscellaneous Petitions to receive additional ground have been considered both by the learned Single Judge as well as by this Court. Hence, no separate order is required in these Petitions. Consequentially, the other Miscellaneous Petitions for stay of operation of the Common Order of the learned Single Judge are closed.

55. In the result, *all OSAs and CMPs are dismissed. No order as to costs.*

(Dr.G.J.J.) & (M.S.K.J.)
16.10.2025

Index:yes
Internet:yes
Speaking order/non speaking order
Neutral citation:yes/no
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Dr.G.JAYACHANDRAN, J.



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and
MUMMINENI SUDHEER KUMAR,J.

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delivery common judgment made in

O.S.A.No.300 of 2020,

O.S.A.(CAD)No. 42 of 2021,

O.S.A.No.64 of 2021,

O.S.A.(CAD)No.66 of 2022,

O.S.A.(CAD)No.109 of 2021,

O.S.A.(CAD)No.125 of 2021

and O.S.A.(CAD)No.127 of 2021

&

C.M.P.Nos.13812 of 2024, 14366 of 2020,

13808 of 2024, 13807 of 2024, 13811 of 2024,

18525 of 2021, 13809 of 2024, 20224 of 2021,

13810 of 2024 and 20250 of 2021

16.10.2025