

PETITIONER:
M.C. MEHTA VERSUS

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT: 31/08/1999

BENCH:
S S Ahmad, M Jagannadha Rao

JUDGMENT:

D E R

M. JAGANNADHA RAO, J.

This application has been filed by the Gas Authority of India Limited (for short 'GAIL') for the following reliefs:

"(a) extend the schedule for supply of gas to industries in Zone-I of Agra City, laid down vide the order dated 3/04/98 passed by this Hon'ble court in such a manner that in respect of cupola based industries supply of gas by GAIL coincides with the readiness of the consumer industries to draw gas;

(b) direct non-cupola based industries in Zone-I of Agra to draw gas latest by September, 1999;

(c) direct the Secretary, PWD, Government of Uttar Pradesh, and Secretary/Director General, Government of India, Ministry of Surface Transport to grant the permission for underpinning the gas pipeline to the Yamuna Road Bridge within four weeks so that GAIL may be able to the schedule for supply of gas to Zone-II and III laid down by this Hon'ble Court vide its order dated 3/04/98."

The first relief concerns Zone-I and the second relief concerns Zone-II and III in the city of Agra. We shall first deal with Zone-I and thereafter with Zone II and III. Zone I. On 3.4.1998, this Court directed the GAIL that it should start supply of Natural Gas to the Industries in Zone-I from July, 1998 so as to make available gas to the specified industries by December, 1998. It is now stated by GAIL that till December, 1998, 115 consumers out of 168 (referred to the order of this Court dated 30.12.96) alone had contacted GAIL for supply of natural gas. Other industries in Zone-I did not contact GAIL. It was stated that GAIL had made gas available in April, 1998 to its first consumer in May, 1998 and that by September, 1998, GAIL had completed gas pipeline network to supply gas to all the 115 consumers with whom it had entered into a contract in Zone-I. The complaint is that 79 out of these 115 consumers are not coming forward in Zone-I and are cupola based iron foundries. The rest are non cupola. All these 115 had given an undertaking earlier to receive natural gas from

GAIL. These 79 industries have been awaiting the technology to be developed by the National Metallurgical Laboratory (hereinafter called the 'NML') for conversion to natural gas. GAIL feels that there is likelihood of delay in the drawal of gas by the 79 cupola based iron foundries in Zone-I by the target dated 31.12.1998. Only 4 cupola based - customers are likely to draw Gas by December, 1998.

On 12.4.1999, this Court issued notice to 79 industries in Zone-I requiring them to show cause why they were not availing of the gas facility to be supplied by GAIL. They were also asked to state why they did not want to draw the gas and why their industries should not be allowed to be closed down.

On 5.4.1999, an affidavit of the Agra Iron Founding Association has been filed stating that 78 (and not 79) were cupola based (item 74 Diwan Chand Suraj Prakash Jain is not cupola based). The affidavit is filed on behalf of 78 cupola based industries. They admit that on 30.12.1996, in M.C.Mehta vs. Union of India 1997 (2) SCC 353, orders have been passed recording the undertaking on behalf of these industries for receiving gas as industrial fuel. They then refer to the chronology of the steps taken by them bonafide for conversion by approaching NML and Tata-Korf and their spending huge sums of money in that connection. They state that the problem is that fool-proof technology for these 78 industries to use natural gas is not yet ready, though now it is in the last stages of completion, -through the efforts of NML of Tata-Korf who have been working on a project. As soon as the technology is available, the 78 industries will switch-over to natural gas. They rely on the extension granted to GAIL earlier upto December, 1998 as the cause for delay in switching over. NML has conducted 10 trials on its new technology but these tests have not been initially successful. The 78 industries have entered into agreement with GAIL agreeing to switch over to natural gas and have paid Rs.2 lakhs as security and given Rs.6 lakhs guarantee/indemnity. They have paid Rs.14 lakhs to Tata Korf in January, 1998. On 6.2.1998 NML and Tata Korf visited Agra and on 10.2.78, the Association placed orders with Tata Korf for supply of the technology. On 19.3.1998, the Association has entered into agreement with Tata Korf under which Rs.20 lakhs have been paid as advance out of Rs.40 lakhs. Know how has been agreed to be provided by 31.7.1999 but the trial runs have failed. A chart is filed in this behalf. In all, 32 lakhs have been paid to Tata Korf. On 22.4.1999, there has been a meeting with Tata-Korf. All these steps have been taken during 1997, 1998 upto 22.4.1999.

On 26.4.1999, Tata Korf has written to the Association that the commissioning of the cupola and stabilizing the same will take place in 1st part of July, 1999 and they expect "to receive the orders" from the Association in July, 1999 after the cupola is successfully worked to the satisfaction of the Association. The schedule of supply of cupola is:

- (a) 10 cupolas in 4 months
- (b) in each month 5-6 cupolas can be completed.

After installation, those cupolas require fine tuning.

On 3.8.1999, Tata Korf has written to the Association that they had installed the new instrumentation successfully on 15.6.1999. Some more heats have to be developed. The demonstration unit will be established fully by end of September, 1999. Same schedule of supply as stated earlier is given.

We have heard learned senior counsel Sri V.R.Reddy for GAIL and Sri Sanjay Parikh for the Association. We have also heard Sri Krishan Mahajan and Sri Vijay Panjwani. Learned counsel Sri Krishan Mahajan has suggested that these 78 industries have been dodging and procrastinating in shifting to natural gas and that as per the orders of this Court dated 30.12.1996 in M.C.Mehta vs. Union of India 1997 (2) SCC 353, direction No. 5 requires that once the GAIL is ready, the industries, if they did not convert to natural gas, they have to close down. Now GAIL has been ready for supply of natural gas in September 1999 and at any rate by December, 1999 in respect of all the 115 industries who have agreed to convert to gas. Inasmuch as these 78 industries have not become ready to convert, they are liable to be closed down forthwith.

On the other hand, learned counsel for the Association Sri Sanjay Parikh has contended that in view of the above steps taken by the industries during 1997, 1998 and 1999 as narrated earlier, the stage is now set for switch over and that it will create great hardship if the industries are to be directed to be closed down now. Summarising the position, it is as follows. The correspondence between the Association and NML and Tata Korf, it shows that by end of September, 1999, the demonstration unit will be established. Thereafter, cupola will be supplied - 10 in 4 months and then in each month, 5 or 6 cupolas will be supplied. Now, going by the date September, 1999, it looks as if 10 cupola units will be supplied by January, 2000 (i.e. in 4 months) and by the time all these 78 cupola industries change over to gas, (as per the time schedule given by Tata Korf) it will be another 17 months - which will take us to July, 2001. This will be the time span on the assumption that conversion to natural gas will be started by these 78 industries after September, 1999.

Now in the orders of this Court dated 30.12.1996, the directions (4) and (5) read as follows: (at p.304):

"(4). Those industries which neither apply for gas connection nor for alternative industrial plot shall stop functioning with the aid of coke/coal in the TTZ w.e.f. April 30, 1997. supply of coke/coal to these industries shall be stopped forthwith. The District Magistrate and the Superintendent of Police shall have this order complied with.

(5) The GAIL shall commence supply of gas to the industries by June 30, 1997. As soon as the gas supply to an industry commences, the supply of coke/coal to the said industry shall be stopped with immediate effect."

In the above background, the question is whether these 78 cupola industries are to be allowed to function on coal/coke without receiving natural gas. So far as the remaining non-cupola industries which are 37 (out of 115)

who have contracted to draw, there is no reason why they have not accepted the supply of natural gas. Out of these, we are told only 8 industries were drawing natural gas. The rest 29 have been obviously taking it easy. We can divide the discussion into the various categories as follows: (1) The overall total was 168 and only 115 have entered into agreement with GAIL. Therefore, so far as the remaining (168-115) = 53 iron foundries are concerned, there is no justification for them to function - unless they have shifted out - and under clause 4 of the order dated 30.12.1996 of this Court, the said 53 iron foundries are already liable to be closed. If they have not shifted, these 53 industries must stop forthwith as they have acted in breach of direction No.4. (2) So far as the 29 non-cupola industries out of 115 (excluding 8 which have switched over to gas), there can be no difficulty in applying clause 5 of the order of this Court. If by 15.9.1999, these 29 industries do not accept gas, clause 5 of the order dated 30.12.1996 shall apply forthwith to them.

(3) So far as the 78 cupola based industries are concerned, the question is what order is to be passed? We have shown that even if the conversion starts from October, 1999, the time frame for all the 78 industries will be easily 21 months - which will take us to July 2001. This Court has given enough time to these industries right from 31.12.1996. We do not mean to say that they have not taken some steps for conversion but if the Tata Korf time-schedule can give the conversion technology to all the 78 of them at the earliest only by July 2001, the question is whether these 78 coke/coal based industries which are continuously using coke/coal can be allowed to pollute the air in and around the Taj Trapezium and also whether they are to be allowed such a long period upto July 2001. We cannot lose sight of the fact that GAIL has completed its obligation to be ready, even by September, 1998. No doubt, even now, as stated by counsel, these 78 industries are prepared to stand by the undertaking given by them to this Court to receive natural gas. In our view, having regard to the fact that the conversion of all these 78 cupola based industries is likely to be not completed till July, 2001 - it will be a matter of grave concern if the atmospheric pollution (as noted in the Neeri and Dr. Varadarajan reports and our earlier orders) is allowed to continue. Question is not strictly whether the 78 industries have or have not acted bonafide in making some efforts for conversion to natural gas but assuming they have taken some steps, the question is whether the danger to the environment does not require urgent action. The data already collected shows high levels of pollution in Agra in this area affecting the environment in the TTZ area.

In the circumstances, we are of the view that there is no other way to deal with the situation than to apply clause (5) of the order of this Court dated 30.12.1996 set out above, strictly to these 78 cupola based industries. We are conscious that any order to stop supply of coke/coal to the 78 coke/coal based iron foundries will result in the closing down of these 78 industries for some time, before they are able to switch on to natural gas. Obviously, the closure will have not be permanent one but of a temporary nature. There will be no difficulty in permitting them to re-open as soon as they have the cupola conversion technology installed in their respective industries. We are, therefore, compelled to put clause (5) of the order of this Court into

full effect in respect of these 78 industries w.e.f. 15.9.1999. In the result, we direct as follows:- (1) Out of 168, 53 iron foundries which have not agreed to accept gas have to be closed forthwith, if not already closed as per orders of this Court dated 30.12.1996 unless they have shifted. The District Magistrate and Superintendent of Police, Agra shall take action accordingly. (2)(i) Out of 115 which have opted and entered into agreements with GAIL, 37 are non-cupola based and among the 8 have converted to natural gas while in respect of the remaining 29 non-cupola industries. Clause (5) of the order of this Court dated 30.12.96 shall come into operation w.e.f. 15.9.1999, for they have no excuse for not accepting the natural gas from GAIL. The District Magistrate and Superintendent of Police, Agra will take steps to close down these industries by 15.9.1999. (ii) However, as and when these 29 non-cupola industries take steps to receive gas, they shall be allowed to function. (3)(i) In respect of the remaining 78, which are cupola based, in view of the reasons given above, clause (5) of the order dated 30.12.96 of this Court will come into operation w.e.f. 15.9.1999. That will mean that in respect of these 78 iron founding industries, the District Magistrate, Agra and the Superintendent of Police, Agra will have to see to it that no coal/coke is supplied to them after 15.9.1999.

(ii) Out of the 78 cupola based iron foundries, as and when any of them gets converted to natural gas and takes steps to receive gas from GAIL, they will be allowed to function. We dispose of the IA in respect of Zone-I accordingly. Copy to be communicated to District Magistrate and Superintendent of Police, Agra.

GAIL and Sri Krishan Mahajan are requested to furnish a list of the respective industries to the above officials in a week. ZONE II & ZONE III

So far as Zone II and Zone III are concerned, a number of affidavits have been filed by the GAIL and one by the Government of India. As the matter is to be adjourned, we do not propose to give a detailed order. Sri V.R.Reddy, learned senior counsel for GAIL has placed before us the correspondence and contended that, by its affidavit, the Union of India appears to have in principle, accepted that a pipeline can be allowed to be laid along the Old Yamuna Bridge but that the Union of India want to put GAIL on notice that, inasmuch as the old Bridge may require to be dismantled by Government, - GAIL must be prepared to go ahead with laying down the pipeline with that possibility of the Old Bridge being dismantled. Sri Reddy however points out that there are reports of some technical experts that the old Bridge need not be dismantled in the near future. He contends that, unfortunately, the Government of India has not so far applied its mind to these reports and therefore it has to take a final decision in the matter of dismantling of the Old Yamuna Bridge, after considering these reports. Learned senior counsel contends that appropriate directions be given to the Union of India in this behalf. In view of the above contention, we direct the Union of India to examine the expert reports given in connection with the dismantling of the old Bridge and take a final decision in regard to the same and give its response to this Court by way of affidavit so that GAIL can take a decision as to the laying of its pipeline for supply of natural gas to Zones II and III. Response of Union of India to be filed within four

weeks. Thus, we dispose of this I.A. so far as Zone I is concerned. The I.A. now remains pending in respect of Zone II and III. List I.A. after four weeks.

JUDIS