BEFORE THE PETROLEUM AND NATURAL GAS REGULATORY BOARD, NEW DELHI

IN THE MATTER OF
M/s Welspun Maxsteel Ltd. ............ Complainant / Petitioner

Versus
M/s Gas Authority of India Ltd. ...............Respondent

FACTS OF THE CASE:
1. The complainant company was formerly known as Vikram Sponge Iron Ltd. but later, its name was changed to M/s Welspun Maxsteel Ltd. The complainant company acquired the undertaking of Vikram Ispat, a Unit of M/s Grasim Industries Ltd. in furtherance of the Scheme of Arrangement between M/s Grasim Industries Ltd. and Vikram Sponge Iron Ltd. and under the order of the High Court of Madhya Pradesh and is engaged in the business of manufacturing and sale of sponge iron through gas based method.

2. The respondent is a Government of India Undertaking and is engaged in various activities relating to the natural gas including marketing and transmission.

3. The complainant has lodged this complaint under Section 11 (a) read with Section 25 of the PNGRB Act, 2006, hereinafter referred to as ‘the Act’ for getting a direction issued by the Petroleum & Natural Gas Regulatory Board, hereinafter referred to as ‘the Board’, to the respondent for revising the transportation charges in accordance with clause 6 (c) of the Petroleum and Natural Gas Regulatory Board (Protection of Consumers Interest in respect of Dedicated Pipelines for Natural Gas) Guidelines, 2010 hereinafter referred to as ‘the Guidelines’. The complainant has also requested for issuing another direction to the
respondent regarding refund of the excess amount of the fixed transportation charges along
with interest on account of its being unreasonable and arbitrary.

4. It is stated by the complainant that the Ministry of Petroleum & Natural Gas had made
the gas allocation to the complainant on 25.10.1988 and the Dept. of Steel, Ministry of Steel
& Mines had conveyed its ‘no objection’ on 19.1.1990 regarding issuance of necessary
approval of laying of gas pipeline covering a distance of 27 km. from ONGC metering station
at RCF, Thal to Salav Distt. Raigarh, Maharashtra.

5. The complainant had initiated the laying of the pipeline at its own expenses and in
furtherance of above-described approvals, issued a letter of intent on 7.8.1990 to M/s Essar
Construction Ltd. for laying the pipeline and also placed an order on 6.2.1992 for importing
pipeline and other material. But the respondent, despite considerable persuasion declined to
agree to the complainant’s initiative and refused to consider the fact that the complainant had
already awarded a firm contract for laying the gas pipeline and an amount of Rs. 4.15 crores
had already been incurred by it in this project.

6. Since the respondent was the only gas supplier in the area and exercises monopoly in
supply of gas so the complainant, which had already spent a huge amount for this project had
no other option but to agree to enter into the agreement on the terms and conditions as were
dictated by the respondent.

7. The complainant further alleged that the transportation charges were exorbitantly
fixed by the respondent and it installed dedicated pipeline with much higher capacity whereas
the complainant’s requirement was low capacity dedicated pipeline.
8. However, the Gas Supply Agreement dated 13.5.1991 was executed between the complainant and the respondent. The terms and conditions and the formula for determination of the transportation charges through the dedicated pipeline of 27 km. were specifically incorporated therein.

9. The complainant made representation on 14.6.1993, 22.9.1913, 22.10.1993 to the respondent for revision and reduction of the transportation charges but despite holding many meetings, this issue could not be resolved. Nevertheless, the officials of the respondent, had assured the complainant that this controversy would be set at rest very soon and required the complainant vide letter dated 11.4.1994 to either make adhoc payment of Rs. 48,50,000 p.m. or to pay at contractual rate till the issue is finally settled and simultaneously conveyed that it would not be in a position to supply gas if this offer was not accepted by the complainant. The complainant having no other option made payment of Rs. 40,00,000 p.m. upto May, 1994 and Rs. 48.50 lakhs from June, 1994 onwards on adhoc basis and kept waiting for final resolution of the issue.

10. The complainant, on 28.11.1995, approached the Ministry of Petroleum & Natural Gas for seeking relief and emphasized the fact that the life of the pipeline was reflected by the respondent as 30 years in their balance sheet for the year 2005-06. But this life was being considered as 10 years by the respondent for calculating transmission charges.

11. Strangely, on 31.3.1997 the respondent demanded Rs. 1,31,11,885 from the complainant as arrear of transportation charges and Rs. 1,14,28,917 as interest @ 24% p.a. on
the amount of arrear. The complainant was frightened of the monopolistic attitude of the respondent and sent a cheque of Rs. 1,31,11,885.

12. The complainant further stated that natural gas was initially been supplied to its steel plant through 27 km. dedicated pipeline from RCF Thal which was commissioned in 1992 but in August, 1998, the respondent had installed LPG extraction plant at Usar and the supply of the natural gas from RCF Thal to the plant of the complainant was routed through LPG Usar plant which has been supplying gas to the complainant and to various other consumers and since that time, the status of the dedicated pipeline stood changed to a common carrier pipeline and as such, the transportation charges for dedicated pipeline could not have been claimed by the respondent.

13. Despite serious resistance of the complainant, it was coerced to enter into a fresh agreement on 30.12.2006 for 5 years but a note of dissent was recorded on 20.11.2006 / 22.1.2007 during the meetings regarding arbitrariness and the exorbitant transmission charges.

14. The complainant even thereafter made representations to the Chairperson and the Secretary of this Board on 5.5.2010 and also to the respondent on 19.7.2010 and the respondent then advised the complainant to wait as relevant network tariff was under review of this Board. But the complainant was required to pay Rs. 117.98 crores upto 31.3.2011 and to pay Rs. 67,83,128.49 p.m. from April, 2011 towards fixed transmission and SCADA charges which was apparently more than 6 times of the capital cost.
15. The respondent, by filing a written reply has denied almost all the allegations as made by the complainant and stated that this complainant is successor in interest of Vikram Sponge Iron Ltd. which had entered into a series of contracts over a period commencing from 1991 to 2006 with the respondent for supply of natural gas and the complainant had lastly entered into a fresh Gas Sales and Transmission Agreement with the respondent on 31.3.2011 which is effective till 31.12.2015 and this agreement superseded all prior negotiations / representations / proposal and agreements and as such the present Gas Supply and Transmission Agreement dated 31.3.2011 is a standalone agreement between the respondent and the complainant and has no relevance or nexus with the earlier agreements / negotiations.

16. The respondent also stated that the questioned pipeline is not a dedicated pipeline. The pipeline from Uran to Thal is a ‘Trunk Line’ and extension from this trunk line till the complainant’s plant at Salav is a spur line which was laid for supply of gas to the complainant’s plant Salav.

17. It is further stated that the respondent is charging from its customers including the complainant, as has been determined by the Board vide order dated 12.3.2012 and thus, there can be no revision of tariff after 12.3.2012 even in the present case. It has also been emphatically stated that the allegation of coercion or use of monopolistic practice were never made by the predecessor of the complainant i.e. Vikram Sponge Iron Ltd. and all the agreements between Vikram Sponge and the respondent stood discharged by satisfaction performance and afflux of time and as such, continuing cause of action cannot be assumed in favour of the complainant. If argument sake, it is assumed, even then, it got discontinued on 12.3.2012 when this Board passed order with respect to the questioned pipeline and thus, the
present complaint is barred by limitation as it has not been filed within 60 days of accrual of the cause of action.

18. The respondent further added that prior to establishment of this Board, there were various other Forums viz. Consumer Commission and MRTP besides the civil court where the complainant or its predecessor could approach for redressal of their grievances upon accrual of any cause of action. Since the complaint or its predecessor never approached any legal forum for redressal of their alleged grievance, it leads to conclusion that the complainant or its predecessor never had any cause of action whatsoever against the respondent / GAIL or if at all it had any, the same were waived and abandoned.

19. The respondent while referring the concurrent findings of this Board and the Appellate Tribunal with regard to the application of arbitration clause in Shyam Industries case, merely informed that this issue is sub-judice before the Hon'ble Supreme Court and so declined to state any further on this issue.

20. The respondent denied the contention of the complainant of excercising coercion for laying its own pipeline and further denied the allegation of over-charging and added that the complainant was benefited by the pipeline of larger diameter which was required to maintain a particular gas pressure to meet the needs of the complainant.

21. The complainant in its rejoinder affidavit denied the respondent’s contentions as were made in its written reply and reiterated all the allegations and the contentions as have been made by the complainant from the very inception.
22. It stated that the PNGRB (Protection of Consumers’ interest in respect of Dedicated Pipelines for Natural Gas) Guidelines, 2010 are very much applicable in the present case since the respondent has been charging the monthly transportation charges from complainant on the basis of the formula applicable in the case of dedicated pipeline despite the fact that the pipeline is not a dedicated one, since 1998. It further stated that the pipeline from Uran to Thal is a ‘trunk line’ and the pipeline till the complainant’s plant at Salav from this trunk line is merely extension, but the respondent is levying fixed and exorbitant transportation charges which applies in case of dedicated pipeline.

23. The complainant further submitted that the pipeline in question forms part of the existing Mumbai Regional Natural Gas Pipeline Network for GAIL India Ltd. and this Board, in exercise of its power conferred under the provisions of Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Regulations, 2008 passed an order dated 12.3.2012 and fixed the tariff as Rs. 3.49 per mmbtu of UTU and Rs. 104 per mmbtu from Trombay RCF with effect from 20.11.2008 and the principle applied in this order reveals that the exorbitant monthly fixed transportation charges cannot be levied by the respondent.

24. The complainant, while admitting the respondent’s contention that the complainant and its predecessor in interest have been entering into series of contracts, submitted that the respondent is the only gas supplier in the area and the complainant, in order to run its business, had no option but to abide by the terms and conditions of the respondent. However, in pursuance to these contracts spanned over a period of more than 2 decades, the respondent levied transportation charges exorbitantly and the complainant kept on accepting supply of gas and made payment against the provisional invoices raised by the respondent and
simultaneously, continued protesting and requesting for reduction of the transportation charges and as such always kept this issue alive and never waived it.

25. It is also stated and reiterated by the complainant that PNGRB (Protection of Consumers interest in respect of Dedicated Pipelines for Natural Gas) Guidelines, 2010 is very much applicable in the present case since the respondent has been charging the monthly fixed transportation charges from the complainant on the basis of the formula applicable in the case of dedicated pipeline despite the fact that the pipeline is not a dedicated one since Aug., 1998. The respondent continued to charge at the same rate inflated 3% every year which were applicable only in case of dedicated pipeline.

26. The complainant also pointed out the write up (page 74 Annexure-P-19) that “M/s Vikram Ispat raised the issue regarding the quantum of fixed monthly transportation charges.” GAIL assured to revert back soon on the same but GAIL never reverted back. However, it shows the bonafide of the complainant and the monopolistic approach of the respondent.

27. Various issues have emerged from the pleading of the parties and Ld. Counsel for both the parties have been heard at length in respect of each issue.

28. At the very inception, it may be pointed out that jurisdiction of the Board has been challenged on the following grounds inter-alia;
29. The contract between the parties contains an Arbitration clause for settlement of disputes and the provisions of Section 12 (1) (a) of the Act clearly restrain the Board from taking cognizance in such matter.

30. It is admitted to both the parties that the Board in Shyam Industries case had held that in case, the contract contains a clause which is repugnant to the statutory provision, the Board will be competent to take cognizance despite being a clause of Arbitration in the contract. This finding of the Board has admittedly been upheld by the Hon’ble Appellate Tribunal and the matter is pending before the Apex Court.

31. There is thus concurrent finding of the Board and the APTEL and the same has not been reversed or stayed by the Hon’ble Supreme Court, so this Board has jurisdiction to look into the matter.

32. So far as the issue of limitation is concerned, it is argued on behalf of the respondent that Section 25 (2) of the Act specifically mandates that the complaint must be filed within 60 days of the accrual of cause of action whereas the claim of the complainant pertains to such cause of action which arose about 2 decades back. But the argument of the Ld. Counsel for the complainant carries weight that the respondent levied exorbitant transportation charges and has been indulging in the same monopolistic practices which makes the cause of action of continuous nature and thus the complaint cannot be said to be time barred.

33. The most important aspect in this matter is that the complainant has approached this Board for seeking relief regarding the revision of transportation charges in accordance with Clause 6 (C) of the Guidelines whereas this is admitted fact that the questioned pipeline is not
a dedicated pipeline since 1998. It is rather a trunk line from Uran to Thal and the complainant plant at Salav has been connected with this trunk line by means of a spur line.

34. It is also an admitted fact that the pipeline in question forms part of the existing Mumbai Regional Natural Gas Pipeline Network for GAIL India Ltd. and the Board, in exercise of its power conferred under the provisions of Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Regulations, 2008 passed an order dated 12.3.2012 and fixed the tariff as Rs. 3.49 per mmbtu of UTU and Rs. 104 per mmbtu from Trombay RCF with effect from 20.11.2008.

35. Moreover, the respondent made a categorical statement that it is levying the transmission charges from all of its customers including the complainant as has been determined by the Board vide order dated 12.3.2012 but the complainant could not rebut this statement by adducing any evidence in support of its contentions.

36. A judicial notice may be taken of the fact that the Board while determining the tariff charges might have mandated that the parties will make adjustment accordingly w.e.f. the date of enforcement of Tariff Regulation i.e. 20.11.2008. The complainant has nowhere pleaded that such adjustments have not been made by the respondent.

37. We thus hold that the nature of the questioned pipeline is not a dedicated pipeline since August, 1998 and as such, the respondent cannot be directed to revise the tariff in view of clause 6 (C) of the Guidelines which were issued and meant for the purpose of dedicated pipeline only.
38. On the issue of refund of extra charges, it may be stated that the Board, while passing tariff order directed the parties to make adjustment / refund w.e.f. 20.11.2008 and this Board does not have jurisdiction to grant any relief beyond that period.

39. In view of above, we do not find any merit in the complainant / petition and as such, it is liable to be dismissed as under:

ORDER

The complainant / petition is hereby dismissed with cost.

(K.K. Jha) 13.3.14
Member (KKJ)

(Subhash Chandra) 13.3.2014
Member (Legal)