Transmission Corporation Of Andhra ... vs M/S G M R Vemagiri Power Generation Ltd on 16 February, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2965, 2018 (4) KCCR SN 441 (SC), 2019 (132) ALR SOC 54 (SC)

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Bench: Navin Sinha, Rohinton Fali Nariman

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 8747 of 2014

TRANSMISSION CORPORATION OF
ANDHRA PRADESH LTD. AND OTHERS .....APPELLANT(S)
VERSUS

M/s. GMR VEMAGIRI POWER
GENERATION LTD. AND ANOTHER .....RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

The controversy for determination in the present appeal is, whether the word 'fuel' as used in clause 1.1.27 of the Power Purchase Agreement (hereinafter referred to as 'PPA') means "natural gas only" or includes Regasified Liquefied Natural Gas (hereinafter referred to as 'RLNG') also.

2. The Andhra Pradesh Electricity Regulatory Commission (hereinafter referred to as "the Commission"), in O.P. No. 20 of 2013 dated 08.08.2013, preferred by the respondent, held that the term 'fuel' as used in the PPA meant natural gas only in its natural form, and did not include RLNG. Simply because the physical composition of natural gas and RLNG are similar, it does not automatically entitle the respondent to generate power with RLNG, which was more expensive and not domestically available, affecting the per unit supply of power generated by it, as ultimately the consumer would have to pay more.

3. In Appeal No. 222 of 2013 preferred by the respondent, the Appellate Tribunal by the impugned order dated 30.06.2014 held that use of the word "only" after "natural gas" in the PPA dated 02.05.2007 had to be understood in context of the deletion of other alternate fuel such as Naphtha etc. incorporated in the earlier PPAs, and it was never intended to restrict the meaning of the word natural gas to exclude RLNG, which was a variant of natural gas and did not come in the category of an alternate fuel. It further held that the higher price of RLNG could not be a determinative factor to exclude it from the agreement as any increase in price of gas was an accepted risk, especially in view of the non-availability of natural gas from the KG-D6 basin. The use of RLNG had also been permitted on earlier occasions without any amendment to the PPA.

4. The predecessor of the appellant, the Andhra Pradesh State Electricity Board, in May, 1995 invited bids for establishing short gestation gas/Naphtha/fuel oil based power stations to bridge the demand supply gap of power in the State of Andhra Pradesh. Pursuant to the same, a PPA was executed between the parties on 31.03.1997 under which Naphtha was the primary fuel and gas an alternate fuel. Considering the high price of Naphtha, in March 2000, the Government of Andhra Pradesh decided to make gas the primary fuel. The Ministry of Petroleum on 05.06.2000 allotted 1.64 MMSCMD of natural gas to the respondent from the KG-D6 Basin sourced through the Gas Authority of India Ltd (GAIL), leading to a gas supply agreement dated 31.08.2001 between the respondent and the latter. The PPA was accordingly amended on 18.06.2003 making gas the primary fuel and Naphtha an alternate fuel. The PPA underwent further amendment on 02.05.2007, restricting the term 'fuel' to "natural gas only". A comparative status of the three PPA's can beneficially be set out as follows:

PPA dated 31.03.1997	Amendment Agreement to the PPA dated 18.06.2003	Amendment Agreement dated 02.05.2007
"1.1.27) "Fuel: means gas, Naptha, low sulphur heavy stock or furnace oil, and the like, that is intended to be used as primary fuel, by one or more units of the Project to generate power from the Project or in case of unavailability of Naptha any of the above as alternate fuel."	1.1.27) "Fuel: means Natural Gas that is intended to be used as primary fuel by one or more units of the project to generate or in case of unavailability of primary fuel, Naptha or Low Sulphur heavy stock and the like as alternate fuel."	1.1.27) "Fuel: means Natural Gas only."

5. GAIL having been unable to supply gas under the agreement due to prioritisation of other sectors, the respondent was permitted to purchase natural gas from M/s. Reliance Industries Ltd (RIL) at GAIL prices. The respondent, on 07.08.2012 and 27.08.2012, sought permission to allow use of RLNG as fuel for generating power. The appellant rejected the request on 10.09.2012 stating that under the PPA dated 02.05.2007, fuel meant "natural gas only" and did not include RLNG, which was priced much higher affecting the per unit price of power generated from the same to the ultimate detriment of the consumers.

6. Shri Basava Prabhu Patil, learned senior counsel appearing for the appellant, submitted that under the PPA, it was only natural gas in its natural form which was agreed to be used as fuel for generation of power. Merely because RLNG may be a variant of natural gas, will not suffice to bring it within the definition of fuel under the PPA. The cost of RLNG being three to four times higher than natural gas, the Commission rightly held that it was also a relevant factor to hold that RLNG was never intended by the parties to be included in the agreement.

7. The word 'fuel', as defined in the agreement, had to be given its natural meaning by confining it to natural gas only as intended by the parties. The definition could not be extended so as to include RLNG, as the parties never intended the same. There is no ambiguity in language warranting any inclusion to the definition either by implication or intention. Even if there was any ambiguity with regard to the intendment of the parties, the true intent has to be gathered from the plain meaning of the words used, read conjunctively with all surrounding circumstances and documents. Applying the common parlance test, RLNG was not synonymous with natural gas in the business and neither interchangeable, because of the additional processes required in the latter and the resultant higher cost involved including importation, as distinct from natural gas available at a lesser price and domestically.

8. Under the PPA dated 31.03.1997, Naphtha was the primary fuel and gas was an alternate fuel. Clause 3.3 dealing with energy charge defined cost of fuel based on indigenous and importation cost. The PPA contemplated approval of the fuel supply agreement by the fuel supply committee, to ensure reasonable prices as the cost of power generation was of paramount consideration in the interest of the consumer. The cost of Naphtha being higher, the PPA came to be amended on 18.06.2003 making natural gas the primary fuel, and Naphtha an alternate fuel. If RLNG was in contemplation of the parties,

and was considered to fall within the term natural gas, there would have been some discussion regarding it in the deliberations of the Commission while approving the amendments to the PPA, especially in view of the price difference. Such absence makes it manifest that the parties never intended to include RLNG in the term natural gas. The significance of the words "only" after "natural gas" in the third PPA dated 02.05.2007 cannot be lost sight of. It was necessitated in context of the realization that the parties may have resorted to other costly alternate fuels consequent to the dismantling of the administered price mechanism and the fuel supply committee.

9. The fact that RLNG may have been permitted to be used for a short period of seven days from 16.04.2009 to 23.04.2009 under pressing circumstances of a power crisis, by special orders under Section 11 of the Electricity Act, 2003 or again for a short duration from 15.02.2011 to 31.05.2011 cannot be stretched to contend that RLNG was intended to be included within the term natural gas. The cost of power generated from natural gas was Rs.1.75 per KWH while that from RLNG works out to Rs.4.63 per KWH and the financial burden for this short duration is Rs.427 crores. In March and April use of RLNG was permitted at per unit generation cost of Rs.9/□compared to Rs.3/□ per unit with existing natural gas leading to a financial burden of Rs.3.7 crores per day. These exceptions can never be construed to mean the norm to contend that use of RLNG was always in the contemplation of the parties and was intended to be included within the term natural gas. The very fact that the respondent sought permission on 07.08.2012 and 27.08.2012 to use RLNG for power generation makes it manifest that even as per its understanding, RLNG was not included within the term natural gas according to the intent of the parties. The appellant in its reply dated 10.09.2012 had reiterated that RLNG did not fall within the ambit of the PPA which was confined to natural gas only citing the cost difference of power per unit also.

10. A contract document had to be interpreted in accordance with the language used, with reference to the context in which it came to be prepared. A technical view of an agreement, torn out of context, cannot be taken to reinterpret the agreement and arrive at a new finding with regard to the intendment of the parties by including something which was never intended to be included, to the prejudice of a party to the contract, while giving an undue advantage to the other. A primary consideration will also be the understanding of the parties of the terms of the contract and what was intended, as reflected inter alia from their conduct. The contract being a commercial document, utmost importance had to be given to its efficacy. Shri Patil, in support of the submissions placed reliance on Polymat India (P) Ltd. & Anr. vs. National Insurance Co. Ltd. & Ors., 2005 (9) SCC 174, Gedela Satchidananda Murthy vs. Dy. Commissioner, Endowments Department, A.P. & Ors., 2007 (5) SCC 677, Timblo Irmaos Ltd., Margo vs. Jorge Anibal Matos Sequeira & Anr., 1977 (3) SCC 474, Sappani Mohamed Mohideen and

Anr. vs. R.V. Sethusubramania Pillai and Ors., 1974 (1) SCC 615, Trutuf Safety Glass Industries vs. Commissioner of Sales Tax, U.P., (2007) 7 SCC 242, The Union of India vs. M/s. D.N. Revri and Co. and Ors., 1976 (4) SCC 147, Nabha Power Ltd. vs. Punjab State Power Corporation Ltd. & Anr., 2017 SCC Online 1239 and Bharat Aluminum Company vs. Kaiser Aluminum Technical Services Inc., 2016 (4) SCC 126.

11. Shri Vikas Singh, learned senior counsel appearing for the Respondent, submitted that the original bid documents permitted import of fuel also, and fuel tie up linkage was the responsibility of the bidder. The Respondent invested approximately Rs.1153.10 crores in setting up the power generation plant, of which, 68.29% of the funding was from banks and financial institutions. The plant has operated intermittently for approximately 64 months only in the last 11 years. The conduct of the appellant in not accepting availability declaration with regard to RLNG was unjustified. The appellant was well aware of the possibility of future hike in gas prices, and more particularly after dismantling of the administrated price mechanism inclusive of inflation, all of which would make the gas prices market driven. Therefore, merely because the cost of RLNG was higher could not be a ground to contend that it was never intended to be included within the definition of natural gas or was contrary to interest of the consumer. RLNG was but a form of natural gas, compressed for transformation from gaseous to liquid state, reducing the volume to facilitate transportation in a safe and stable manner. Once delivered at the destination, it is regasified and then supplied to the consumer. Even according to the dictionary meaning they are the same.

12. The deletion of the words “intended to be used” after the words “natural gas”, as used in the second PPA, and the replacement thereof in the third PPA by the words “natural gas only” gave a much wider meaning and amplitude to the word natural gas so as to take within its ambit RLNG also. The deletion of “importation charges” in the PPA dated 18.06.2003 was of no significance as RLNG was to be delivered at the project site through the pipeline, and the cost of fuel was to be at the metering point at the project site, which would be inclusive of importation cost. Evidently there would be no separate charges by GAIL towards importation of RLNG. So long as the supplies were at GAIL prices, the appellants cannot raise objections with regard to price.

13. The term natural gas has not been defined under the PPA. The definition of natural gas in Section 2(za)(i) of the Petroleum and Natural Gas Regulatory Board Act, 2006 (hereafter referred to as the “PNGRB Act”) includes both liquefied natural gas (LNG) and RLNG. The appellants on more than one occasion had themselves permitted use of RLNG for production of power in 2011, 2012 and 2013. It is demonstrative of the fact that RLNG was never intended to be excluded under the PPA. It was only when the respondent wrote to the appellant for operationalising the RLNG scheme, that the appellant replied on 27.03.2015 raising objection to RLNG being outside the terms of the PPA. The respondent had

never sought permission from the appellant for use of RLNG by its letters dated 07.08.2012 and 27.08.2012, but merely given intimation about what was otherwise permissible under the PPA. After the dismantling of the administered price mechanism and the fuel Supply Committee, there was no requirement for consent or approval of the appellant.

14. The appellant having itself permitted use of RLNG on more than one occasion, cannot contend its exclusion especially when the agreement clearly is suggestive of its inclusion. Alternately, there had been waiver on part of the appellant by having permitted its use on more than one occasion. The appellant cannot be permitted to approbate and reprobate. Natural gas had been defined in Association of Natural Gas & Ors. vs. Union of India & Ors., 2004 (4) SCC

489. The plea that power generated by RLNG would be more costly and not in the interest of the consumer is belied by the fact that today the appellant is purchasing power at higher rate. The Director General, Petroleum Planning and Analysis Cell had now fixed price for marketing including pricing freedom for gas to be produced from discoveries in deepwater, ultra□deepwater and high pressure□ high temperature areas for the period 01.04.2016 to 31.09.2016 at US$ 6.61/MMBTU on GCV basis. On 05.05.2016, the respondent wrote to the appellant informing that GAIL had communicated that ONGC has indicated availability of the gas in the KG basin from its deepwater fiels□ S1 and VA fields at the rate of 6.3$/MMBTU even which has not been acceded to, as being beyond the PPA.

15. We have considered the submissions on behalf of the parties, and are not in agreement with the conclusions of the Appellate Tribunal.

16. The original PPA dated 31.03.1997, provided for Naphtha to be used as the primary fuel for generation of power and gas was an alternate fuel. Importation was also permissible. The price was to be fixed by the fuel supply committee, both to keep it reasonable, and to ensure that the cheaper option was always used. In March 2000, the Government of Andhra Pradesh, due to the cost factor, decided to replace gas as the primary fuel, and Naphtha was made an alternate fuel leading to allotment of natural gas by the Ministry of Petroleum and execution of an agreement between the respondent and GAIL. The PPA was then amended on 18.06.2003 making gas the primary fuel. Subsequently, when GAIL was unable to supply the allocated quantities of natural gas to the respondent because of sector prioritisation, the respondent was permitted to obtain supplies of natural gas from RIL. The realisation that in the circumstances, the generator could resort to use of other costly fuels also, led to the third amended PPA dated 02.05.2007 confining the definition of 'fuel' to "natural gas only".

17. It is relevant to notice that at both stages of the amendment to the PPA, in the proceedings before the Commission under Section 21(5) of the Andhra Pradesh Electricity Reforms Act, 1998, the parties never referred to the availability of RLNG as fuel contemplated within the term "natural gas" and the discussion was confined to "natural gas only". Had the parties intended otherwise, or the respondent had any such inkling in mind of RLNG being a variant of natural gas and consequently intended to be included in it, coupled with its availability as compared to natural gas, surely it would have figured in the discussion before the Commission. The absence of the same, combined with RLNG having to be imported, deletion of the importation clause in the PPA of 18.06.2003, the higher price of RLNG, leads to the inevitable conclusion that it was never in the contemplation of the parties that RLNG was to be included in the term "natural gas" even though it may be a variant of the same. It stands to reason that if Naphtha was removed as primary fuel because of the cost factor and made an alternate fuel in the second amendment to the PPA, the question of RLNG being included within the term of "natural gas only" irrespective of the cost factor, will not stand the test of reason.

18. A wrong question will inevitably lead to a wrong answer. The question for consideration presently is not if RLNG is a form of natural gas, but whether the parties intended to exclude any form of gaseous fuel from the ambit of the contract except for natural gas in its natural form from the domestic market, keeping the price of gas in mind, which would ultimately set the price per unit of electricity for the consumer. The PPA is a technical commercial document. It has been drafted by persons conversant with the business. RLNG and natural gas as used in the agreement are not synonymous or interchangeable. The principle of business efficacy will also have to be kept in mind for interpreting the contract. The terms of the agreement have to be read first to understand the true scope and meaning of the same with regard to the nature of the agreement that the parties had in mind. It will not be safe to exclude any word in the same. In Khardah Company Ltd. vs. Raymon & Co. (India) Private, Ltd., 1963 (3) SCR 183, on interpretation of a contract it was observed as follows:

> "18. ... We agree that when a contract has been reduced to writing we must look only to that writing for ascertaining the terms of the agreement between the parties but it does not follow from this that it is only what is set out expressly and in so many words in the document that can constitute a term of the contract between the parties. If on a reading of the document as a whole, it can fairly be deduced from the words actually used therein that the parties had agreed on a particular term, there is nothing in law which prevents them from setting up that term. The terms of a contract can be expressed or implied from what has been expressed. It is in the ultimate analysis a question of construction of the contract. And again it is well established that in construing a contract it would be legitimate to take into account surrounding

circumstances..."

19. It will not be a safe method to interpret a contract by picking out one clause of the same defining fuel, apply a technical scientific meaning to it as observed in Truetuf Safety Glass Industries (supra) and then conclude that being a form of natural gas, RLNG was intended to be impliedly included in the definition of fuel. The terms of a contract have to be given their plain meaning with regard to the intendment of the parties as to what was intended to be included and what was not intended to be included, as distinct from an express exclusion. The commercial parlance test will also have to be applied as to whether those in the business consider the two forms of gas as synonymous and interchangeable. Quite obviously the answer has to be in the negative considering the importation of RLNG, additional processes involved and the consequent higher costs involved.

20. In the event of any ambiguity arising, the terms of the contract will have to be interpreted by taking into consideration all surrounding facts and circumstances, including correspondence exchanged, to arrive at the real intendment of the parties, and not what one of the parties may contend subsequently to have been the intendment or to say as included afterwards, as observed in Bank of India & Anr. vs. K. Mohandas & Ors., (2009) 5 SCC 313:

> "28. The true construction of a contract must depend upon the import of the words used and not upon what the parties choose to say afterwards. Nor does subsequent conduct of the parties in the performance of the contract affect the true effect of the clear and unambiguous words used in the contract. The intention of the parties must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. The nature and purpose of the contract is an important guide in ascertaining the intention of the parties."

21. The respondent's letters dated 07.08.2012 and 27.08.2012 become crucially relevant for the understanding that it was itself under no misapprehension that RLNG was never intended to be included within the definition of natural gas under the contract. In the former, the respondent wrote, "We await the confirmation from your good office to take it up further for obtaining necessary consent, if any, in accordance with law for use of RLNG and the resultant tariff increase." The latter again requested for permission to use RLNG to supplement shortfall in gas from the KG□D6 Basin, requesting to acknowledge its usage. The contention of the respondent that these were only intimations and not request for permission to use RLNG stands belied from the plain language used in them. The appellant in its reply dated 10.09.2012 explicitly stated that under the agreement no other fuel except

natural gas could be used and that RLNG was never contemplated in the definition of fuel declining to accept the spot supply agreement for RLNG supplies, citing the cost of power per unit from the same at Rs.9□10 in comparison to Rs.3/□ per unit from natural gas. It is only thereafter the respondent approached the Commission in OP No.20 of 2013. The pleadings of the respondent, as quoted hereinafter, further confirm its own understanding that RLNG was never intended to be included in the definition of fuel which was confined to natural gas only :□"9. Since the above scenario affects the generation activities of the Petitioner, the Petitioner proposed to use RLNG. In this respect, the Petitioner has already made vide its letters dated 7.8.2012 and 27.8.2012 (produced as Annexures P□2 and P□3 respectively). In both these letters, the Petitioner appealed to the said Respondents to allow usage of RLNG and substantiated the circumstances/reasons for the said request of the petitioner.

10. To the utter surprise and shock of the Petitioner, instead of acceding to the above requests of the Petitioner, the Respondent No.3 has rejected the above requested of the Petitioner vide its letter dated 10.09.2012."

22. The sporadic use of RLNG on one or two occasions under pressing circumstances, after due orders under Section 11 of the Electricity Act, 2003, for short durations, cannot make the exception the norm to contend either that RLNG was included in the term fuel or that the appellant had agreed to its use. The question of waiver by the appellant or application of the principle of approbate and reprobate does not arise in the facts of the case.

23. The present was a contract for purchase of power generated from fuel which was reasonably priced so as to keep in check the cost of power generated from the same, in the interest of the consumer. Undoubtedly, cost of fuel was a primary consideration in the mind of the appellant. The contextual background in which the PPA originally came to be made, the subsequent amendments, the understanding of the respondent of the agreement as reflected from its own communications and pleadings make it extremely relevant that a contextual interpretation be given to the question whether RLNG was ever intended to be included within the term "Natural Gas", as observed in Bihar State Electricity Board vs. Green Rubber Industries, (1990) 1 SCC 731:

> "23.... Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated clause...."

24. In the facts and circumstances of the present case, there can be no manner of doubt that the parties by their conduct

and dealings right up to the institution of proceedings by the respondent before the Commission were clear in their understanding that RLNG was not to be included within the term "Natural Gas" under the PPA. The observations in Gedela Satchidananda Murthy (supra) are considered apposite in the facts of the present case :□ "32...The principle on which Miss Rich relies is that formulated by Lord Denning, M.R. in Amalgamated Investment & Property Co. Ltd. v. Texas□Commerce International Bank Ltd., [1982] 1 QB at p.121:

> 'If parties to a contract, by their course of dealing, put a particular interpretation on the terms of it—on the faith of which each of them—to the knowledge of the other—acts and conducts their mutual affairs—they are bound by that interpretation just as much as if they had written it down as being a variation of the contract. There is no need to inquire whether their particular interpretation is correct or not—or whether they were mistaken or not—or whether they had in mind the original terms or not. Suffice it that they have, by their course of dealing, put their own interpretation on their contract, and cannot be allowed to go back on it.' (emphasis supplied)"

25. A commercial document cannot be interpreted in a manner to arrive at a complete variance with what may originally have been the intendment of the parties. Such a situation can only be contemplated when the implied term can be considered necessary to lend efficacy to the terms of the contract. If the contract is capable of interpretation on its plain meaning with regard to the true intention of the parties it will not be prudent to read implied terms on the understanding of a party, or by the court, with regard to business efficacy as observed in Satya Jain (D) thr. Lrs. & Ors. vs. Anis Ahmed Rushdie (D) thr. Lrs. & Ors., (2013) 8 SCC 131, as follows:□ "33. The principle of business efficacy is normally invoked to read a term in an agreement or contract so as to achieve the result or the consequence intended by the parties acting as prudent businessmen.

Business efficacy means the power to produce intended results. The classic test of business efficacy was proposed by Lord Justice Bowen,L.J. in Moorcock. This test requires that a term can only be implied if it is necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended. But only the most limited term should then be implied–the bare minimum to achieve this goal. If the contract makes business sense without the term, the courts will not imply the same. The following passage from the opinion of Bowen, L.J. in the Moorcock (supra) sums up the position: (PD p.68) "...In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are business men; not to impose on one side all the perils of the transaction, or to emancipate one side from all the chances of failure, but to make each party promise in law as much, at all events, as it must have been in the contemplation of

both parties that he should be responsible for in respect of those perils or chances."

34. Though in an entirely different context, this court in United India Insurance Co. Ltd. v. Manubhai Dharamasinhbhai Gajera and Ors. had considered the circumstances when reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by and between the parties thereto. Certain observations in this regard expressed by Courts in some foreign jurisdictions were noticed by this court in Para 51 of the report. As the same may have application to the present case it would be useful to notice the said observations :(SCC p.434) "51. ...'..."Prima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying; so that, if, while the parties were making their bargain, an officious bystander, were to suggest some express provision for it in their agreement, they would testily suppress him with a common 'Oh, of course!' '' Shirlaw v. Southern Foundries (1926) Ltd., KB p.227.' * * * "An expressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them: it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, formed part of the contract which the parties made for themselves. Trollope and Colls Ltd. v.

North West Metropolitan Regl. Hospital Board, All ER p.268a□b.' "

35. The business efficacy test, therefore, should be applied only in cases where the term that is sought to be read as implied is such which could have been clearly intended by the parties at the time of making of the agreement..."

26. The definition of natural gas in Section 2(za)(i) of the PNGRB Act, has no relevance to the present controversy as the Act was enacted with the object to oversee and regulate refining, processing, distribution and marketing of petroleum products and natural gas. Similarly, the observation made in Association of Natural Gas (supra) in context of the controversy with regard to legislative entry has no relevance to the interpretation of the PPA.

27. The aforesaid discussion, therefore, leads to the inevitable conclusion that the intention of the parties under the agreement, as amended from time to time, was to generate power from fuel reasonably priced, so as to ultimately make available power to the consumers at reasonable rates. The choice of fuel as natural gas only has, therefore, to be understood as being confined to natural gas only in its natural form. The respondent was well aware that RLNG was never intended to be included in the definition of natural gas as understood by the parties, notwithstanding that it may be a variant of natural gas.

28. The appeal, therefore, has to be allowed, the Appellate Tribunal judgment is reversed, and the Commission order dated 08.08.2013 is affirmed.

.....J. (Rohinton Fali Nariman) .....J. (Navin Sinha)
New Delhi, February 16, 2018