

**IN THE SUPREME COURT OF
BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL
JURISDICTION)**

WRIT PETITION NO. 8753 OF 2015.

Naima Haider, J Abu Taher Md. Saifur Rahnian, J Judgment on 31.10.2017.	TM Textiles and Garments Ltd. Petitioner. <p style="text-align: center;">Vs</p> Bangladesh, represented by the Secretary Ministry of Power, Energy and Mineral Resources, Bangladesh Secretariat, Ramna, Dhaka and others. Respondents.
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For the petitioner:	Mr. Ajmalul Hossain, QC, Senior Advocate with Mr. Md. Saifullah Mamun and Mr. Forrukh Rahman, Advocates.
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For the Respondent No. 6-14:	Mr. Probir Neogi, Senior Advocate with Mr. A.M. Amin Uddin, Mr. Munshi Muniruzzaman, Mr. Suvra Chakraborty, Mr. Yousuf Khan Rajib, Mr. Shakib Rejwan Kabir, Mr. Anita Ghazi Rahman, Mr. Manzur Al- Matin, Mr. Taposh Bandhu Das, and Mr. Sumon Ali, Advocates.
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For the respondent No. 2:	Dr. Md. Bashir Ullah, Advocate
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Terms, Issues and Phrases:

Application for gas connection for captive power and industrial Project, dedicated 150 psi 12-inch gas line connection for industrial purpose, Judicial review of the propriety of the decision to provide gas connection to others through the petitioner's dedicated line.

Main Decision:

We do not find it necessary to proceed with an academic discussion on the legality of the impugned orders. We feel that justice would be best served if the Rule is disposed of with the direction upon all concerned to ensure that the petitioner is ensured the "approved gas supply and approved pressure" at all material times. No gas connection is to be provided to the other nine factories unless the "approved gas supply and the approved gas pressure" is ensured. The respondents are further directed to ensure strict compliance with the conditions set out in the aforesaid paragraph in connection with providing gas connection to the nine factories.....(Para 15).

Main Legal Issue:

Issue-1:

Whether the dispute in question should be resolved through arbitration as sought in the contract or through intervention of judicial review.

Issue-2:

Whether the writ petition is maintainable or not in spite of existence of arbitration clause in the contract.

Finding-1 and 2:

In our view, dispute which compelled the petitioner to move this Division is, in strict sense, not a dispute that should be resolved by arbitration, as suggested by Dr. Md. Bashir Ullah. The dispute is not a “contractual dispute”; the dispute, it seems, relates to the propriety of the decision to provide gas connection to others through the petitioner’s dedicated line. That being the position, we think that this Division can interfere and there is no need for the petitioner to refer this matter to arbitration.....(Para 10).

Constitution of Bangladesh: Article 102: Judicial review is available in the case where, in spite of existence of arbitration clause, the propriety of a decision of the statutory authority is questioned:

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Cases cited and/or relied on:

Nuruddin Vs. Titas Gas 3 BLC (AD) (1998) 231

JUDGMENT

NAIMA HAIDER, J:

1. In this application under Article 102 of the Constitution, Rule was issued calling upon the respondent to show cause as to why the impugned Letter No. 1 bearing Reference No. জোবিঅ/ভালুকা/৭৫৭.৬/৮৯৯ dated 30.03.2015 (Annexure-’K’ to the Writ Petition) and the impugned Letter No. 2 bearing Reference No. জোবিঅ/ভালুকা/৭৫৭.৬/১০২৫ dated 01.07.2015

(Annexure-'O' to the Writ Petition) should not be declared to be without lawful authority and are of no legal effect and/ or such other or further order or orders passed as to this Court may seem fit and proper.

2. The relevant facts, in brief, are as follows: The petitioner is engaged in the business of manufacturing and exporting knit products. The petitioner uses gas as a raw material in the manufacturing process. The petitioner applied for gas connection for both Captive Power and Industrial Project. The petitioner's requirement, amongst others, was pressure of 50 PSIG. Although the respondents provided the said gas connection, the respondents could not consistently provide the approved quantity of gas. The respondents could also not ensure continuous gas pressure of 50 PSIG. Thereafter, the petitioner, by its letter dated 19.06.2012 applied for dedicated 150 psi 12-inch gas line connection from the respondent No.2's "Dhanua Town Bordering Station" to the petitioner's factory. The dedicated line was to ensure that approved gas supply and the approved pressure are maintained. The petitioner undertook to pay the cost of such dedicated line. The respondent No.2 by its letter dated 04.07.2012 approved the increased load and also approved the construction of the dedicated pipeline. The petitioner thereafter requested for confirmation and assurance from the respondent No.2 regarding, among others, of undisturbed gas connection. The petitioner also requested the respondents not to provide any gas connection to anyone from the said dedicated gas line. The respondent No. 2 by its letter dated

25.10.2012 provided such assurance by stating

“আপনার ধনুয়া টিবিএস-এ নির্মিতব্য আরএমএস হইতে ভালুকাস্ট মেসারিস টিএম টেক্সটাইল এন্ড গার্মেন্টস লিমিটেড এর আঙ্গিনা পর্যন্ত ১২”x১৪০ পিএসআইজি গ্যাস বিতরণ লাইন হইতে অন্য কোন গ্রাহককে গ্যাস সংযোগ না প্রদানের অনুরোধ করিয়াছেন। এই বিষয়ে আপনাদের জানানো যাইতেছে যে, আপনাদের বর্তমান ও ভবিষ্যৎ চাহিদা বিবেচনায় আনুমানিক ৮ এমএমসিএফডি গ্যাস সরবরাহ নিশ্চিত না করিয়া উক্ত গ্যাস বিতরণ লাইন হইতে অন্য গ্রাহককে গ্যাস সরবরাহ করা হইবে না।”

3. The petitioner started the construction work of the dedicated pipeline from “Dhanua Town Bordering Station” to the petitioner's factory. M/S ARKO Engineering Limited was appointed for the said purpose for approximately Taka 20,43,44,289. When the construction work was completed, the respondent authority conducted successful examination of the said pipeline. Thereafter, gas was supplied to the petitioner's factory through the dedicated line. However, in contradiction with the previous assurances, the respondent authority requested the petitioner to sign two Gas Sale Agreements. The said agreements were signed on standard template and there was no room for negotiation. The petitioner came to know that the respondent-authority is planning to give gas connection to nine (9) other industries through the petitioner's dedicated line given that their location was closer to the dedicated line. The petitioner requested the respondents at several times, not to provide such gas connections. The respondents paid no heed thereto. The respondents, to the contrary, approved the

