

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. Of 2013

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

- 1) COMMON CAUSE
(A REGISTERED SOCIETY)
THROUGH ITS DIRECTOR
5, INSTITUTIONAL AREA
NELSON MANDELA ROAD
VASANT KUNJ, NEW DELHI-110070 ...PETITIONER No. 1

- 2) SHRI T S R SUBRAMANIAN
(FORMER CABINET SECRETARY, GOVT OF INDIA)
74, SECTOR 15-A
NOIDA (U.P.) -201301 ...PETITIONER No. 2

- 3) ADMIRAL (RETD.) L. RAMDAS
(FORMER CHIEF OF NAVAL STAFF)
BHAIMALA VILLAGE, P.O. KAMARLE
ALIBAG-402201 (MAHARASHTRA) ...PETITIONER No. 3

- 4) SHRI RAMASWAMY R IYER
(FORMER SECRETARY, GOVT OF INDIA)
R/O A-10, SARITA VIHAR
NEW DELHI-110076 ...PETITIONER No. 4

VERSUS

- 1) UNION OF INDIA
THROUGH ITS SECRETARY
MINISTRY OF PETROLEUM AND NATURAL GAS
SHASTRI BHAVAN, NEW DELHI-110001 ... RESPONDENT No. 1

- 2) DIRECTORATE GENERAL OF HYDROCARBONS
THROUGH ITS DIRECTOR GENERAL
OIDB BHAVAN, PLOT No. 2
SECTOR-73, NOIDA ... RESPONDENT No. 2
- 3) RELIANCE INDUSTRIES LIMITED
THROUGH ITS DIRECTOR
MAKER CHAMBERS IV
NARMIAN POINT, MUMBAI-400 021 ... RESPONDENT No. 3
- 4) NIKO RESOURCES LTD
THROUGH ITS DIRECTOR
DYNASTY BUSINESS PARK, 308, 309
A-WING 58, ANDHERI-KURLA ROAD
ANDHERI EAST, MUMBAI-400 069 ... RESPONDENT No. 4
- 5) CENTRAL BUREAU OF INVESTIGATION
THROUGH ITS DIRECTOR
CGO COMPLEX, LODHI ROAD
NEW DELHI-110003 ...RESPONDENT No. 5

To,

**THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION
JUDGES OF THE HON'BLE SUPREME COURT OF INDIA**

The Humble Petition of the
Petitioner above-named

MOST RESPECTFULLY SHOWETH: -

- 1) That the petitioner is filing the instant writ petition in public interest under Article 32 of the Constitution for the enforcement of Rights under Article 14 and 21 of the citizens. This petition highlights how only to favour a corporate house, i.e. Reliance Industries Limited (RIL), the Government first unilaterally doubled and now has

redoubled the gas price causing a huge loss to the public and the country. This petition seeks a quashing of the said decision, cancellation of the allotment in favour of RIL and a thorough investigation by an SIT/CBI into the said scam, which is probably one of the largest scams in independent India.

THE PETITIONERS

a) Petitioner No. 1, Common Cause is a registered society (No. S/11017) that was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating the common problems of the people and securing their resolution. It has brought before this Hon'ble Court various Constitutional and other important issues and has established its reputation as a bona fide public interest organization fighting for an accountable, transparent and corruption-free system. Shri Kamal Kant Jaswal, Director of Common Cause and a former Secretary to the Government of India, is authorized to file this PIL. The requisite Certificate & Authority Letter are filed along with the vakalatnama.

b) Petitioner No. 2, is Shri T S R Subramanian. He is the former Cabinet Secretary, Government of India. He studied in Imperial College of Science in London and did his masters degree from Harvard University. Prior to becoming the Cabinet Secretary, he served as Textile Secretary and Commerce Secretary of the Government of India, Chief Secretary of Government of U.P. and senior adviser at the

United Nations. He is the author of several books on governance.

c) Petitioner No. 3 is Admiral (Retd.) L. Ramdas. He is the former Chief of Naval Staff and a recipient of the Ramon Magsaysay award.

d) Petitioner No. 4 is Shri Ramaswamy R Iyer. He is a former Secretary to the Government of India and an officer of Indian Audit and Account Service.

The petitioners have not made any representation to the respondent authorities since several MPs and other eminent citizens have already written to the Government on this issue, and also a similar petition is pending before this Hon'ble Court (WPC 513/2013) wherein this Hon'ble Court has issued notice.

THE CASE IN BRIEF

2) The hydrocarbon reserves like oil and gas belong to the people of this country and the Government only acts as their custodian. However, in 1999 the government came up with the New Exploration Licensing Policy (NEPL) allowing private players to enter the fray. In the first round, RIL bagged the contract for exploring deep-water D6 block of the KG basin constituting an area of 7645 square kilometres. RIL entered into PSC in the year 2000 under the NDA Government, along with its minor partner NIKO Resources (10% stake).

3) The instant petition seeks cancellation of the allotment of Krishna-Godavari (K-G) basin gas block to RIL due to its persistent default in its undertaking to the Government and a thorough investigation by an SIT/CBI into the high level collusion between RIL and the top political establishment. This petition also seeks quashing of the decision taken by Cabinet Committee on Economic Affairs (CCEA) dated 27.06.2013 to increase the gas price from \$4.20 per Million British Thermal Units (mmbtu) to \$8.40 per mmbtu, effective from 1st April 2014. The instant petition prays that the entire gas field allotted to RIL consortium should be re-auctioned without allowing RIL to bid as it has repeatedly failed to successfully explore/discover/produce gas/petroleum and has been only escalating costs, resisting audit of the costs, squatting on the potential gas bearing assets without surrendering it, securing undue price increases by holding the entire nation to ransom through engineered gas shortages, and jeopardising the huge capital costs incurred by downstream projects. The petition also seeks adjustment of the \$ 7.2 billion premium collected by RIL from British Petroleum by sale of 30% of stake in the oilfield towards reduction in the cost of exploration and extraction of oil/gas from the oil fields.

4) The KG-DWN-98/3 deepwater block (also referred to as the KG-D6 block), with a contract area of 7645 sq. km., was awarded in the first NELP round in 2000 to a consortium of Reliance Industries Limited (RIL), the operator, and Niko Resources Limited (NIKO) with 90:10 participating interests. A contract dated 12.4.2000 was entered

into between the Union of India and Reliance Industries Ltd. and NIKO Resource Ltd. called a Production Sharing Contract (PSC) for the exploration for oil and gas, and in case of any commercial discoveries, the development and the production of oil and/or gas, as the case may be, in the contract area identified as Block KG-D6. A total of 19 discoveries have been made in the block between 2002 and 2008, out of which 18 are gas discoveries, and one is an oil discovery. A copy of the said PSC is annexed as **Annexure P1** (Page _____).

Hoarding of gas by RIL

5) In 2006, RIL declared to the regulator that the franchised area had 11.3 trillion cubic feet (tcf) of probable gas reserves and the company would produce 80 mmscmd, on the basis of an approved development plan involving drilling of 50 wells and investing \$8.8 billion, which, in terms of the PSC, would be reimbursed later by adjustment against the gas sales revenue as the first charge (CAG 2012, Chapter 4). The gas discovery had generated an all-round euphoria. Vast number of small investors invested their savings in the company's equity. Several power companies invested heavily on down- stream gas-based electricity generation facilities.

6) Resiling from its commitments and belying the commitments and the expectations of stakeholders, RIL took to hoarding the gas and started demanding huge revision of rates from the Government even before the expiry of the period up to 31.03.2014. The latest report on production for the week of 10-16 June 2013 states that only

9 wells, out of 18 are in production, the remaining are closed. The gas sales were reported at just 14.63 mmscmd, which is a mere 18% of the target rate of 80 mmscmd. This shows the mala fide conduct of RIL, and the Government instead of taking action and cancelling the allotment of KG block to RIL, colluded with RIL and has now given into its unconscionable demand of doubling the gas price. RIL's actions of hoarding the gas and not putting in more fields under production have caused a heavy loss to the economy, forced several power plants to stop production, increased the inflation and forced consumers and industry to purchase gas from abroad.

7) A brief dated 28.11.2011 was submitted by Director General of Hydrocarbons (DGH), the technical arm of the Petroleum Ministry, regarding the possible course of action by the Petroleum Ministry to deal with the falling production in the RIL operated KG-D6 block. The brief outlined that the cumulative shortfall in production till the end of 2011-12 was of the order of 76% of the approved target. It also stated that only 18 wells against the required 50 had been drilled by RIL. It also mentioned that RIL had incurred expenditure of \$ 5693 million, out of which \$4574 million were towards production facilities. RIL had recovered \$5258 million till 31.3.2011. The DGH recommended that cumulative cost recovery already made by RIL may be restricted in proportion to the cumulative gas production vis-à-vis the approved gas production. The detailed calculations were also done by DGH quantifying the amount that should be disallowed. A copy of the DGH letter dated 28.11.2011 has been annexed hereto and marked as **Annexure P2** (Page _____).

8) This brief was based on the opinion given by the then Solicitor General (Shri Rohinton Nariman). The SG had opined that *“costs incurred in constructing production /processing facilities and pipelines that are currently under utilized / have excess capacity cannot be recovered against the value of petroleum. The government should not allow cost recovery on this account in future periods.”* A copy of the said opinion dated 17.08.2011 is annexed as **Annexure P3** (Page _____). This opinion was accepted by the then Petroleum Minister Shri Jaipal Reddy and a strongly worded show-cause notice was issued to RIL on 02.05.2012. The said notice states: *“...you have failed to fulfill your obligations and to adhere to the terms of the PSC and are in deliberate and willful breach of PSC and have thereby caused immense loss and prejudice to the Government. You have also repeatedly failed to meet your targets under the PSC.”* A copy of the said notice dated 02.05.2012 is annexed as **Annexure P4** (Page _____).

9) However, soon after this in October 2012, the Government removed Shri Reddy as the Minister of MoPNG, and instead appointed Shri Veerappa Moily, an appointment designed to suit the interest of RIL. Immediately after his appointment, Shri Moily along with the Government started favouring RIL at every step. No action was taken against RIL for the deliberate drop in production and hoarding of gas, and instead steps were initiated to double the gas price without any proper justification.

10) RIL responded to the show cause notice denying these charges and pressed for arbitration in the matter. They appointed Justice Bharucha as their arbitrator. The government appointed Justice Khare as its arbitrator. Both the judges met and were in the process of appointing the third arbitrator in October 2012 when the Petroleum Minister was changed. The Government then decided to give up arbitration proceedings and started direct negotiations with RIL, and did not levy any penalty on RIL for its shortfall in production.

Gold plating by RIL

11) The contract was meant to favour RIL right from the beginning. In any business, increase in costs means decrease in profits. However, the PSC was signed by Government dictated by RIL, wherein an increase in cost by one rupee meant additional profits of RIL by almost Rs 2.20. Such a contract is itself unconscionable and liable to be struck down. A parameter called Investment Multiple (IM) has been defined in the PSC as: $IM = \text{Total Revenue} / \text{Total Investment}$. According to PSC, till IM is below 1.5, RIL takes away more than 80% of profits and government gets less than 20% of profits. It is only when IM becomes more than 2.5 that government gets 85%. This means, RIL has a huge incentive to keep IM below 2.5 by increasing the expenditure artificially. Thus if RIL were to increase expenditure from Rs. 1 billion to Rs 2 billion on a revenue of Rs 5 billion, their own net income would go up from Rs 1.6 billion to 3.5 billion. This is what the CAG has stated in para 8.1 of its report on performance audit of hydrocarbon PSCs. CAG concluded: "*The private contractors have inadequate incentives to reduce capital*

expenditure-- and substantial incentive to increase capital expenditure... so as to retain the IM in lower slabs.”

12) In 2004, RIL submitted an IDP saying they would produce 40mmscmd for an investment of \$2.39 billion. Within 2 years, RIL submitted another plan saying they would produce 80mmscmd for an increased investment of \$8.8 billion. It sounds preposterous that to double production, the investment has to be increased four times. Having put the initial infrastructure, it ought to have cost lesser to create additional production capacity. The then Petroleum Minister Shri Mani Shankar Aiyer did not allow this, and was therefore shunted out of the Ministry and Shri Murli Deora was made the Minister of PNG in January 2006. Despite strong protests from MPs like Shri Tapan Sen, the Government approved \$8.8 billion expenditure. By allowing this \$8.8 billion expenditure, in effect, the Government allowed a future windfall revenue of Rs 1.2 lakh crores (\$ 20 billion) for RIL.

13) The CAG has remarked that there is strong evidence that RIL is gold plating its capital expenditure for the obvious reasons stated above. For instance, RIL is required to place orders for its plant, machinery and other requirements through international competitive bids. The CAG found that bids were arbitrarily rejected to favour some parties. Just one company namely Aker group got many contracts. CAG has specifically mentioned ‘serious deficiencies’ in the award of \$1.1 billion order for a floating production, storage and offloading (FPSO) vessel from Aker Floating Production, which had

no prior experience of FPSO. CAG also points out that many of the single bid contracts were handed out to the Aker Group companies amounting to more than \$2 billion. Petitioners submit that there is a strong presumption that this group is related to RIL and through this group, RIL is siphoning off money and gold plating its expenditure.

14) RIL thus made unjust enrichment twice over: by over invoicing the capital costs and by ensuring that the capital costs take a longer time to recover. Not only did the DGH accept this increase in capital costs, which under the contract it need not have accepted, it did so in unseemly haste. For example, it took only 53 days for the DGH to approve the cost increase of nearly \$ 6.3 billion.

15) It is a settled legal position that the gas belongs to the people of this country. RIL is just a contractor hired by the Government of India to extract gas. Strangely, RIL sold 30% of its stake in 21 of 29 blocks to a foreign company British Petroleum (BP) in July 2011 at \$ 7.2 billion. The said deal was approved by the Government, which the petitioner submits is totally illegal and unconstitutional. The contractor was behaving as the owner of the resource and selling it for a huge price. The said deal shows the huge profits that RIL is making, and plans to make from the KG block.

16) The annual report for 2011-12 states: *"During the year the company received regulatory approvals for transfer of 30% Participating Interest (PI) in 21 Oil& Gas production sharing contracts including KG D6 to M/s BP Exploration (Alpha) Limited (BP).*

Consequently, the proceeds, net of adjustments for revenue and costs from 1st January 2011 to 30th August 2011(closing date) amounting to Rs 32,198 crore has been netted off from the cost incurred against the said blocks appearing in the Intangible Assets - Development Rights and Intangible Assets under Development forming a part of Fixed Assets.”

17) This raises an important question about Cost Recovery. The PSC envisages that the Contractors will recover their investments through their share of Cost and Profit Petroleum. Here, however, one of the Contractors has recovered a substantial part of his investment by way of stake sale. RIL's entitlement for Cost and Profit Petroleum ought to be reduced by the amount that it has recovered from the stake sale. . By doing so, Government takes its entitlement to Profit Petroleum to the higher level. By failing to do so, the Government enables the contractor to obtain double recovery of his investment: once by stake sale, and also from Cost and Profit Petroleum.

18) The CAG had to do a further audit of the cost and accounts incurred by the operators in the KG Blocks. This would have further exposed the gold plating by Reliance and its claims of cost deduction. However, the CAG audit was scuttled by RIL at every step, by not allowing physical access, and denying access to the documents to the CAG auditors. The audit that should have been completed by 2012 was scuttled and RIL ensured that no audit took place until Mr. Vinod Rai, who was known for his probity and courage, demitted the office of CAG in May 2013. News report on

the same dated 14.05.2013 is annexed as **Annexure P5** (Page _____). Till date no independent thorough audit has been done of the working of this PSC and the accounts of RIL, and the Government has instead doubled the price of gas without any audit or evaluation.

Non-relinquishment of area by RIL

19) The PSC has a built-in mechanism for progressive surrender of exploration area back to the government as the contractor discovers gas for commercial production in specific pockets and as it delineates certain portions as relatively less promising. The idea of this as claimed in NELP was that the state lacks capital for rapid expansion in exploration and production of petroleum resources of the nation, and hence the private players are being invited for a time bound exploration and then forfeit the rest of the area back to the government. The objective is thus twofold: one, to prevent hoarding of natural resources by the private parties without tapping them, like we have seen in the case of coal and spectrum in recent times, and two, to get a better price for the resources, as oil and gas are discovered in the basin, the neighbouring areas are likely to fetch better prices in the next round of auctions or competitive bidding.

20) Thus in the PSC, the exploration was divided into three phases and at the end of each of the first two phases the contractor was supposed to relinquish 25% of the area and finally after the phase III, it was to hold on to only that area where the operator discovered petroleum resources in commercially viable quantities and was

willing to develop further for production. The rest of the area was supposed to go back to the government. According to the CAG, phase I of the preliminary exploration got over in June 2004 and RIL gave notice of beginning phase III in 2005, but without relinquishing any part of the original area of basin. For phase III exploration the original end date was June 2007 and was extended to July 2008 by the Government. However, RIL has held onto entire 7645 sq km of area till today instead of 390 sq km from which it had begun commercially tapping reserves after phase III. The Government decided to declare the whole of the area as a 'discovery area' and this practically awarding it to RIL for future exploration in gross violation of the PSC.

21) As per the contract, 'discovery area' is only that area, where "based on discovery and results obtained from...wells drilled...the contractor is of the opinion that petroleum is... likely to be produced in commercial quantities." Thus the concept of discovery area is inextricably linked to drilled wells and findings of petroleum deposits that are recoverable. In this case, the contractor till 2010 had drilled wells in only one specific area in the North West of the total block. To begin with the DGH did not agree to RIL's insistence of not relinquishing any area before moving to phase II in May 2004, but according to CAG, it capitulated within a year. DGH was now willing to let the exploration continue based on seismic data, which as per the contract, was clearly part of phase I and had to be finished before moving to phase II of drilling exploratory wells. DGH instead allowed RIL to analyse seismic data on a 'fast track basis' and that

would also allow them to mark the area of relinquishment. RIL in its defence said that it lacked 'ultra deep-water rigs' for exploratory drilling, which shows that seismic data by itself is inadequate for 'discovery'.

22) In July 2006, DGH permitted RIL to enter phase III without surrendering any area, since the data showed 'continuity of discovery', according to DGH. Even the seismic surveys covered only a part of the block. CAG has documented that MoPNG initially resisted this idea in 2006-07, but had come around to the view of RIL and DGH by 2008, and approved RIL proposal of declaring the entire area as 'discovery area' by February 2009.

23) The CAG found that the idea of relinquishing of undiscovered area of D6 block was lost in a "sea of correspondence" between RIL and DGH, and later DGH and MoPNG. RIL kept insisting that petroleum was likely to exist and hence the whole area should be kept as a discovery area. CAG therefore concluded: *"The contractor's opinion that petroleum was 'likely' to exist in the entire contract area and 'could be produced after an exhaustive exploratory/appraisal programme' is not in consonance with the PSC definition of 'discovery area' which is centred on 'existence' of petroleum, based on wells drilled in that part."*

24) The CBI had in fact registered one Regular Case (RC) and two Preliminary Enquiries (PEs) against this collusion between the DGH under its then Director Shri V K Sibal and RIL after the CAG report.

News report on the same dated 09.10.2009 is annexed as **Annexure P6** (Page _____). However, owing to serious pressure from the establishment and the involvement of powerful individuals, CBI did not file any chargesheet and now plans to close the case. News report on the same dated 06.08.2013 is annexed as **Annexure P7** (Page _____). Now while analyzing 'Radia tapes' (intercepted conversations of RIL's lobbyist Ms. Niira Radia) CBI has found some evidence of collusion and fixing between RIL and Shri Sibal. The CBI wants this to be investigated. News report on the same dated 10.08.2013 is annexed as **Annexure P8** (Page _____).

25) Therefore petitioner submits that the decision of the Government to allow the contractors to retain the area that they ought to have relinquished is illegal and mala fide. The Directorate General of Hydrocarbons early this year, has now recommended that 86% of the area be taken back from Reliance. News report on the same dated 29.04.2013 is annexed as **Annexure P9** (Page _____). But the new Minister quietly buried this recommendation and has instead allowed RIL to retain the entire area of KG block originally allotted to it. A news report on the same dated 16.06.2013 is annexed as **Annexure P10** (Page _____). Dr. E A S Sarma (former Power Secretary, petitioner in similar petition) has asked for the information under RTI regarding this DGH recommendation, but so far no response has been received. The decision of the Petroleum Minister to overrule the CAG and the Director General, Hydrocarbon and not insist on

relinquishment is illegal and mala fide. All these decisions have been taken against the national interest and for collateral gain. Therefore this Hon'ble Court should direct the Government to take back the 86% of the area as recommended now by DGH.

CAG report

26) The CAG Performance Audit of Hydrocarbon PSCs has a special Chapter IV relating to KG-DWN-98/3-block. A copy of the executive summary and relevant findings from Chapter IV of the CAG report, presented to Parliament on 08.09.2011 are annexed as **Annexure P11** (Page _____). The Petitioners seek liberty to produce the full report if required in the course of the proceedings.

The main findings of the CAG are summarized below:

a) RIL and NIKO were to relinquish a large part of the contract area to the government and retain only the discovery area, but did not do so. The Director General Hydrocarbons initially asked for the return of this area, but thereafter did an “about turn” and permitted the retention of the proposed relinquished area as well. This was contrary to the provisions of the PSC.

b) This shift in stand was also taken by the Ministry of Petroleum and Natural Gas (MoPNG) and was illegal. In effect, it prevented the Govt of India from offering the relinquished area to other parties for Exploration & Production activities.

c) Unjustified time extensions in the exploration phases was granted by Gol, first by introducing a new extension policy

and thereafter by granting extensions of 13 months approximately for Exploration Phase –III.

d) That RIL and NIKO failed to drill deep exploration wells (4000m-5000m depth). That though RIL and NIOC were required under clauses 10.1 and 10.2 of the PSC to provide information to the Management Committee of a discovery, furnish particulars, run tests, submit a report and notify the government in advance of production tests so that the government representative can remain present during the test, this was not done.

e) That though under clause 21.5.2 and 10.3 of the PSC RIL and NIKO were required after a discovery to submit a proposed Appraisal Programme with a programme and budget to the MC, no such appraisal programme were made in respect of 14 out of the 19 discoveries resulting in “a high degree of uncertainty regarding the liability of the declaration of commercial discovery and the consequential development plan, as well as the associated estimates of reservoir reserves, production rates, development and production costs”. The lack of appraisal programme and budget “cast doubts on the robustness and completeness of data.”

f) That RIL and NIKO delayed action after the initial development plan was approved for the D1-D3 gas discovery. The initial development plan was submitted in a manner which “cast doubts on the robustness of the data and assumptions underline the development plan; raises doubts as to whether the upgradation to 80 MMSCMD with substantial increase in

development costs was justified in view of the non-submission of any appraisal programme for the review of the MC”.

g) There was a 117% increase in estimated capex.

h) RIL and NIKO refused to provide “information on estimated versus actual spent, scheduled versus actual completions, etc.”

i) Most procurement activities were undertaken late.

j) RIL and NIKO made hasty decisions “and awarded contracts at non competitive rates without ensuring price reasonability.”

k) There were deficiencies in the pre-qualification process and ASA (AFP)/Aker Group was selected despite lack of any experience of operation and maintenance. They should have been disqualified at the RFP stage as they had not fulfilled many requirements including non-submission of technical and commercial check lists and non-submission of preceding 3 financial years audited financial statements. The contractor was then allowed revision in the bids after the due date. The rates ultimately fixed were high and unjustifiable.

l) RIL and NIKO did not produce before CAG the project completion report, the quality surveys and systems audit, the reviews of health safety and environment requirements and the monthly progress reports and the lists of key personnel.

m) Cost plus contracts were entered into against single bids and revisions were permitted after the bid. The rates were non competitive and did not depict market rates.

n) There was a 124% escalation in man-hours, a cost overrun of 90% and a time overrun of 8 months as on March 2008.

o) Off-shore facilities bidding were with a single bidder where the rates were revised 3 days after opening the bid. This vitiated the tendering process and affected its transparency.

p) Similarly, there was a single bid for the MEG plant without any comparison of optimum technology and there was a time and cost overrun of 1.5 years and US \$ 5 million. There was an inordinate delay in completion.

q) There was an excess booking of US \$ 6.97 million for pre-paid insurance and US \$ 1 million to cost recovery. This adversely affected Union of India's financial interests.

r) There were deficiencies in the appointment of the auditors and CAG wanted to know whether any of the auditors had rendered any audit or other services to RIL and NIKO during that 2-3 years.

s) Complete access to the SAP system in accordance with clause 1.9.3 of Appendix C to the PSC was not provided. RIL and NIKO refused to share information with the audit team. "Extremely restricted access" was given.

Gas Price increase

27) RIL signed a contract with NTPC in 2004 to supply gas for its power plants at \$ 2.34 per mmbtu. It also signed an agreement with RNRL of ADA Group to supply the gas at the same price. However RIL went back on its word and refused to supply gas at that rate

which was apparently profitable for RIL. Under RIL's pressure, the Government revised gas price in 2007 to \$ 4.2/mmbtu which was clearly mala fide. RIL then argued that it could not sell gas at a price lower than what was approved by the Government. This Hon'ble Court held that since the gas belongs to the people of this country, the Government acts as a trustee of people's resources, and therefore the price fixed by the Government would be binding on all the parties. The said decision is reported as (2010) 7 SCC 1.

28) The cost of production of gas is much less than \$ 2.34 per mmbtu. RIL had actually signed long term agreements with NTPC and RNRL for supplying gas at that rate for 17 years. This means that at the rate of \$ 2.34 per mmbtu also, RIL was making significant profits. RIL's partner NIKO has a 25 year contract with the Bangladesh Government to supply gas at the rate of \$2.34/mmbtu. A copy of letter written by RIL to the Directorate General of Hydrocarbons dated 22.05.2009 giving its cost calculations is annexed as **Annexure P12** (Page _____). This shows that the demand for an increase in gas price is only an indication of its greed and its mala fide designs. The fact that the Governments have played along with RIL at every step shows the level of collusion and corruption that needs to be thoroughly investigated and prosecuted.

29) The justification given by the Government for doubling the price of gas from \$4.2/mmbtu to \$8.4 mmbtu is that it appointed a committee called 'Rangarajan committee' to come up with a formula for arriving at a gas price. A copy of the note for CCEA regarding

fixing of gas price dated 14.05.2013 is annexed as **Annexure P13** (Page _____). The recommended formula estimates the price by averaging some numbers derived from foreign gas markets even though those numbers neither represent well head price of conventional natural gas anywhere in the world nor reflect the cost of service for producing conventional natural gas in India. Also there was completely no justification for fixing the price in dollar terms for domestically produced gas. A detailed critique for the Rangarajan Committee formula and the resulting price increase has been written by Shri S P Sethi, former Principal Adviser Energy, Govt of India. A copy of the said articles is annexed as **Annexure P14 (Colly)** (Page _____). Also, an article written by Dr. E A S Sarma, former Power Secretary, Govt of India published in EPW dated 13.07.2013 is annexed as **Annexure P15** (Page _____).

30) Recently, the Parliamentary Committee on Finance has given its report strongly critical of the CCEA decision saying that this would have huge negative consequences for the economy and consumers. A copy of the same dated 07.08.2013 is annexed as **Annexure P16** (Page _____). The Outlook magazine has also published detailed analysis of the impact of this unnecessary gas price increase on the economy and inflation. Copy of the stories published in the said magazine dated 15.07.2013 are annexed as **Annexure P17 (Colly)** (Page _____) and of the magazine dated 22.07.2013 are annexed as **Annexure P18 (Colly)** (Page _____).

31) After this price doubling, the gas price in India has become one of the highest in the world. The cost of production at the well-head was never calculated by the Rangarajan committee. No attempt was made to determine this figure accurately and independent of the contractor. No attempt was made to study such cost of gas at the well-head internationally. According to experts the maximum price of gas at the well-head would not be more than \$ 1.43 and the price of \$ 4.2 is the highest in the world. To add to this fraud there is no explanation as to why when the entire domestic production is consumed internally that the price was fixed in US dollars. This fluctuation in the dollar rate has now effectively doubled the price of gas.

32) The lack of due diligence was deliberate with ministers at the highest level turning a blind eye to the data presented to them by honest and upright officers. Gas pricing in 60 countries has been seen showing that not one of these countries prices gas the way India does. The cost of production was \$ 3.6 per mmbtu. The price decided upon i.e. \$4.2 was the maximum price ever received by anybody, anywhere for natural gas at the well-head.

33) The Government's argument that the higher price will yield higher upstream investment in untapped hydrocarbon frontiers, resulting in higher output of domestic natural gas is fallacious. Firstly, the government itself admits that despite raising the domestic wellhead price of natural gas by 250% from \$1.79/mmbtu to \$4.2/mmbtu, the country's gas output has actually dropped. Today

the production from KG basin is around 27.44. This has been so stated by the Director of the MoPNG in its letter dated 04.06.2012. The same is annexed as **Annexure P19** (Page _____). The bulk of this drop is because of RIL's reneging on its commitments and producing inadequate quantities from KG block. The government cannot guarantee that a price of \$8.4/mmbtu will raise gas availability.

34) The single largest FDI that the above cited increase in gas price brought was BP's acquisition of a 30% stake in RIL's declining KG basin and not in any greenfield frontier. So therefore the earlier increase in price did not bring any new investment in exploration of a new field. Also, BP must have seen high returns from a known discovery at the then approved price of \$4.2/mmbtu, and this it invested about 33000 crores for 30% stake in RIL's KG basin block.

35) Most importantly, even if the government were right that new price would bring in more investment in exploration, there is absolutely no justification for raising the price of gas from existing fields. The country can always pay a higher price for more difficult horizons provided the duly approved and audited cost of exploration and production warrant the same. Here, the current production was realised with no prospect of getting \$8.4/mmbtu. The government is therefore only giving a windfall to the current contractor RIL at the cost of the common man and the taxpayers.

36) It is to be noted that millions of poor in India would be severely affected on account of the huge benefits given to the contractors inflation would increase enormously impacting food and energy security giving rise to higher prices for fertilizers, food products, cooking gas and the like. A vast majority of the Indian population lives below the poverty line of \$1.25 per day and this section will be deprived even further by the lavish benefits gratuitously given to the contractors. Thus their right to life already very precariously balanced will become even more vulnerable. The subsidy burden of the government would also increase enormously causing huge fiscal deficits.

37) According to calculations, the impact of this gas price rise would cost the country Rs. 54,500 crore every year, at current dollar prices. Households would obviously be impacted, as they are the end users of power, piped gas and compressed natural gas. Farmers and ultimately the consumers would also be impacted, as the cost of the fertilizers would go up significantly, which would increase the food prices. Gas-based power plants would be hit and may become unviable. This would have serious effect on the power situation in the country. Therefore the Government's decision is arbitrary, mala fide, unreasonable, based on extraneous considerations, while ignoring relevant considerations.

38) Since the decision has to operate from 01.04.2014, which is around the time the term of present government expires, the Government ought to have left the decision to the new government,

since it involves serious economic considerations, inflationary consequences and a massive increase in subsidy burden. The fact that this decision was taken in advance by the present government shows that it wanted to favour RIL for corrupt considerations, which would then help with the expenditure for the upcoming national elections. This is also the reason why the main opposition party is silent on the issue, as during election time when huge slush of funds is required by the major parties, no one is willing to speak against this decision, even though price rise is normally an important political issue. From these facts, it is absolutely clear that the doubling of gas price has been made just to benefit one corporate house i.e. RIL.

Retrospective tax concession

39) It is to be noted that the political establishment has a history of helping RIL at huge cost to the public exchequer. In the budget speech of 2009-10, the Government announced a huge tax concession to benefit RIL. (Source: <http://indiabudget.nic.in/ub2009-10/bs/speecha.htm>) This undue benefit finds a mention in the intercepted conversation between Ms. Niira Radia (lobbyist for RIL) and former finance secretary Shri N K Singh. A true copy of the transcript of the said conversation dated 09.07.2009 is annexed as **Annexure P20** (Page _____). BJP leader and former union minister Shri Arun Shourie confirmed the facts as discussed in the said conversation in an interview to CNN-IBN. A copy of a report on the said interview is annexed as **Annexure P21** (Page _____). An article published by the Editor of The Hindu

further confirmed the said facts. The said article dated 29.11.2010 is annexed as **Annexure P22** (Page _____).

40) The history of the case as well as recent developments show a high level of collusion between RIL and the Government, and the corruption involved makes it a gigantic scam. Therefore, keeping in view the nature of powerful personalities involved in this case, only a thorough investigation by an SIT or CBI under the supervision of this Hon'ble Court can get to the bottom of the matter so that all those guilty can be brought to justice and prosecuted.

41) The petitioners have not filed any other writ, complaint, suit or claim in any manner regarding the matter of dispute. The petitioners have no other better remedy available.

42) Since this is a public interest matter, and there is an asymmetry of availability of information, the petitioners seek liberty from this Hon'ble Court to produce other documents and records as and when required in the course of the proceedings, and as and when they become available to the petitioners.

GROUND

A. That the natural gas belongs to the people of this country and the government only acts as its custodian and trustee. This has been settled by this Hon'ble Court in RNRL vs RIL case, (2010) 7 SCC 1. The actions of the Government in bestowing undue and unwarranted windfall benefits to a private party at huge

cost to the public and to the nation, are thus unconstitutional, mala fide, arbitrary and illegal, and in violation of Articles 14, 21 and 39 of the Constitution of India.

B. That as per the law propounded in the 2G case ((2012) 3 SCC 1), the State, as a trustee of natural resources. This Court held: *“Natural resources belong to the people but the State legally owns them on behalf of its people... The State is empowered to distribute natural resources. However, as they constitute public property/national asset, while distributing natural resources, the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of natural resources.”* The same has been confirmed in the opinion dated 27.09.2012 in Presidential Reference (Spl Ref 1 of 2012) by stating that natural resources cannot be allocated to private profiteers without a corresponding gain to the public, and windfall gains are clearly impermissible. It states that when *“precious and scarce natural resources are alienated for commercial pursuits of profit maximizing private entrepreneurs, adoption of means other than those that are competitive and maximize revenue may be arbitrary and face the wrath of Article 14 of the Constitution.”*

C. That this Hon'ble Court has also held that the collusion between the extractive industry (“the mining mafia”) and some

agents of the State, leads to failure of the State and violates Articles 14 & 21 of the Constitution. This Court in Nandini Sunder's case (2011) 7 SCC 547 has held: *"...A development paradigm depending largely on the plunder and loot of the natural resources more often than not leads to failure of the State; and that on its way to such a fate, countless millions would have been condemned to lives of great misery and hopelessness. Policies of rapid exploitation of resources by the private sector, without credible commitments to equitable distribution of benefits and costs, and environmental sustainability, are necessarily violative of principles that are "fundamental to governance", and when such a violation occurs on a large scale, they necessarily also eviscerate the promise of equality before law, and equal protection of the laws, promised by Article 14, and the dignity of life assured by Article 21. Additionally, the collusion of the extractive industry, and in some places it is also called the mining mafia, and some agents of the State, necessarily leads to evisceration of the moral authority of the State, which further undermines both Article 14 and Article 21."*

D. That the action of the Government in condoning the RIL's deliberate drop in production, and not cancelling the allocation of the KG D-6 block despite RIL's reneging on its commitments and its obligations under the PSC. This was despite the fact that a show cause notice was issued by the Government. The

said decision caused significant loss to the country, was arbitrary, mala fide and unreasonable.

E. That the action of the Government in allowing the RIL to continue for the entire area of D-6 block of KG basin was against the PSC and amounted to bestowing unwarranted benefits to a private party. Despite the fact that DGH has now recommended that 86% of the area be relinquished by RIL, the Government in an arbitrary and mala fide manner has allowed the RIL to retain the entire area.

F. That the CAG has found that RIL is gold plating its capital expenditure for the obvious reasons stated above. RIL is required to place orders for its plant, machinery and other requirements through international competitive bids. CAG found that bids were arbitrarily rejected to favour some parties. Just one company namely Aker group got many contracts. CAG has specifically mentioned 'serious deficiencies' in the award of \$1.1 billion order for a floating production, storage and offloading (FPSO) vessel from Aker Floating Production, which had no prior experience of FPSO. CAG also points out that many of the single bid contracts were handed out to the Aker Group companies amounting to more than \$2 billion. The action of the Government in allowing all the expenditure by RIL without any proper evaluation is clearly mala fide, arbitrary and against public interest.

G. That the Government's decision to increase the price of gas from \$4.2/mmbtu to \$8.4/mmbtu, even for existing discovered fields, is arbitrary, unreasonable, designed to benefit a single private party, is mala fide and against public interest. The said decision is based on extraneous and corrupt considerations, while ignoring the relevant considerations of inflation, consumer interest, impact on power plants, increasing subsidy burden, fiscal deficit and the cascading effect on the country's economy. Therefore the said decision is violative of Articles 14 and 21 of the Constitution of India.

H. That the huge undue benefits in the form of increase in gas price, allowing RIL not to relinquish area as per the PSC, and allowing RIL to sell its equity in the block, all amount to post-bidding concessions that the sanctity of bidding process, violate the NELP, the PSC and are in the nature of largesse conferred on a favoured private party without any corresponding public interest, and thus is in violation of constitutional and legal norms.

I. That the right to life includes right to access energy at reasonable prices since it is used for cooking, transportation, agriculture and power. Thus the actions of the government in doubling the rate of gas that would frustrate any access of ordinary people to energy resources are in violation of Article 21 of the Constitution of India.

J. That the history of the case as well as recent developments show a high level of collusion between RIL and the Government, and the corruption involved makes it a gigantic scam. Therefore, keeping in view the nature of powerful personalities involved in this case, only a thorough investigation by an SIT or CBI under the supervision of this Hon'ble Court can get to the bottom of the matter so that all those guilty can be brought to justice and prosecuted.

K. That the prevailing corruption in the country in high places seriously impairs the right of the people of this country to live in a corruption free society governed by rule of law. This is a violation of Article 21 of the Constitution. The right to life guaranteed to the people of this country also includes in its fold the right to live in a society, which is free from crime and corruption.

PRAYERS

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court in public interest may be pleased to: -

a. Issue a writ of mandamus or any other appropriate writ directing the Union of India to cancel the PSC with RIL and NIKO concerning the KG block and/or levy appropriate penalty against them because of RIL's persistence failure in adhering to their

commitments, deliberate underproduction, gold plating and mala fide conduct, and put the D-6 field of KG Basin for auction.

b. Issue a writ of mandamus or any other appropriate writ directing a thorough investigation by an SIT or CBI under the supervision of this Hon'ble Court, into the high level collusion between RIL and the political establishment and the corruption involved, as has been highlighted in the instant petition, including on the aspects of not taking any action against RIL for its misconduct, increasing the price to \$4.2 mmbtu ignoring a subsisting bid by RIL to NTPC for 17 years at \$2.34 mmbtu, now doubling the gas price to \$8.4 mmbtu, giving retrospective tax benefits and not insisting on relinquishments of area from RIL.

c. Issue a writ of certiorari or any other appropriate writ quashing the decision of the Union of India to double the gas price from \$ 4.2 mmbtu to \$ 8.4 mmbtu, or direct that the said decision would only operate for fresh auctions for unexplored greenfield areas and not to existing discoveries.

d. Issue a writ of mandamus or any other appropriate writ directing a through independent audit by the CAG along with other eminent auditors & experts from the field of gas extraction, of working of the PSC governing KG block, gold plating by RIL, the underproduction by RIL and all related issues, and direct all authorities to cooperate with the said audit.

e. Issue a writ of mandamus or any other appropriate writ directing the Government to credit the \$ 7.2 billion premium amount collected by RIL from British Petroleum (BP) by sale of 30% of its stake in the oilfield towards reduction in cost of exploration and extraction of gas.

f. Issue a writ of mandamus or any other appropriate writ directing the Government to take back 86% of the D-6 area of KG basin from RIL as recommended by the Directorate General of Hydrocarbons, and as envisaged in the PSC.

g. Issue or pass any writ, direction or order, which this Hon'ble court may deem fit and proper under the facts and circumstances of the case.

Petitioners
Through

PRASHANT BHUSHAN
Counsel for the Petitioners

Drawn by: Pranav Sachdeva
Drawn & Filed On: August 2013
New Delhi