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**THE NEW JURISPRUDENCE OF SCARCE NATURAL  
RESOURCES: AN ANALYSIS OF THE SUPREME  
COURT'S JUDGMENT IN *RELIANCE INDUSTRIES  
LIMITED V RELIANCE NATURAL RESOURCES LIMITED*  
(2010) 7 SCC 1**

*Zoheb Hossain\** and *Alok Prasanna Kumar\*\** (\*\*\*)

Conflict over the extraction and exploitation of exhaustible and non-renewable natural resources (or the “resource curse”<sup>1</sup>) was not far from the minds of the framers of the Constitution of India. For instance, the Constitution not only vests all land, minerals and things of value under the territorial waters and the Exclusive Economic Zone in the Union of India to be used for the benefit of the Union (Article 297), it also directs the Government, to distribute the material resources of the community for the common good to benefit everyone and prevent a concentration of wealth in the economic system (clauses (b) and (c) of Article 39). This is further constrained by the mandatory requirements of Article 14 and Article 19(1)(g) read with clause (6) of Article 19 of the Constitution of India which demand that laws adhere to the principle of equal treatment of all and protection of freedom of business, trade and commerce subject to reasonable restrictions.

While the above provisions have individually been the subject of much interpretation and jurisprudential discourse by the Supreme Court of India,<sup>2</sup> they have not been seen as part of a greater whole; a mechanism that protects the natural resources of the country from misuse and keeps the “resource curse” at bay. Probably the first instance of the Supreme Court appreciating the said scheme in the Constitution is seen in the judgments delivered in the

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\* Advocate.

\*\* Advocate.

\*\*\* The authors were part of the team of advocates who appeared in this case and assisted Mr. Mohan Parasaran, Additional Solicitor General of India in his arguments before the Supreme Court of India. We wish to record our gratitude to him for his valuable guidance in writing this case comment.

1. See for instance Joseph E. Stiglitz, *Making Natural Resources into a Blessing rather than a Curse*, in “Covering Oil” Ed. Svetlana Tsalik and Anya Schiffrin, Open Society Institute (2005); See also Richard M. Auty, “Sustaining Development in Mineral Economies: The Resource Curse Thesis” (1993). London: Routledge.
2. For a discussion on the scope of territorial application of India’s laws *vis-a-vis* Article 297 see *Aban Lloyd Chiles v Union of India* (2008) 11 SCC 439. However, this case is arguably the first which interprets Article 297 in depth and with reference to its relation to the other provisions of the Constitution.

landmark case of *Reliance Industries Limited v. Reliance Natural Resources Limited*<sup>3</sup> (“the Reliance case”). In the separate, but largely concurring judgments delivered by Sathasivam J (on behalf of himself and the CJI)<sup>4</sup> and Sudershan Reddy J,<sup>5</sup> the Supreme Court has enunciated what we believe are the basic principles of what can be called the jurisprudence of scarce natural resources. For the purposes of this comment, and in understanding the scope of the principles of this emerging area of jurisprudence, we are restricting ourselves to exhaustible, non-renewable natural resources such as minerals, petroleum and natural gas.

While some individual aspects of this new emerging area have been elaborated upon in earlier judgments of the Supreme Court of India, we feel that the Reliance case brings together these aspects and coherently lays down the principles of the new jurisprudence of scarce natural resources, firmly grounding the same in the provisions of the Constitution of India. We argue that these principles could not have come at a more opportune time as India grapples with various conflicts (ranging from political to outright armed conflict) over the extraction and distribution of natural resources in different parts of the country. Given economic policies which have placed a premium on economic growth and industrialization, it is only inevitable that the hunger for raw materials will lead to more, and not less, conflict over scarce natural resources. It is also likely that the Courts will have a huge role in resolving such disputes involving not just the State and citizen, but also disputes between different groups of citizens with different and conflicting interests. We feel that the framework laid down by the Supreme Court in the Reliance case is worthy of emulation in the future and must be built upon to ensure that India does not succumb to the resource curse.

This comment is split into three sections. In the first, we summarize the factual background, the procedural history and the main findings of the Supreme Court in the Reliance case. In the second section, we take a closer look at the concurring judgment of Reddy J in this case, with focus on the principles that govern regulation of scarce natural resource extraction and exploitation elaborated by him in his judgment. In the last and concluding section, we will see how the Court has understood the constitutional scheme in a laudable manner that deserves to be followed in subsequent cases.

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3. (2010) 7 SCC 1.

4. Ibid, 6–68.

5. Ibid, 69–178.

## **Factual Background and Summary of Main Findings**

One may validly ask why the Court was dealing with questions of constitutional importance in a dispute that arose from a Company Petition filed in the Bombay High Court. The answer, as we outline in this section, lies in the peculiar facts which led to these questions being taken up, focussing primarily on how and why the Government was involved in this particular case.<sup>6</sup>

The genesis of the matter is traceable to the year 1999, when Reliance Industries Limited (RIL), entered into a Production Sharing Contract with the Union of India wherein RIL was awarded the rights to explore the EEZ of India for natural gas. A Production Sharing Contract is one of the mechanisms through which Governments enter into partnerships with Private Entities to extract oil and natural gas.<sup>7</sup> Having found commercial quantities of natural gas off the Krishna Godavari (KG) Basin in 2003, plans were drawn up by RIL in consultation with the Government, to begin extraction of the same. In the meantime, after the death of its founder, Dhirubhai Ambani, RIL itself was re-structured into two groups of companies headed by his two sons, Mukesh and Anil Ambani. In the course of the re-arrangement proceedings, one of the companies in the group headed by Anil Ambani, Reliance Natural Resources Limited (RNRL) claimed that it had a right to be supplied 28 mmscmd of natural gas at \$ 2.34 for a period of 17 years on the basis of a family MoU entered into between the two brothers, and approached the High Court of Bombay in the Company Petition, seeking enforcement of the same.<sup>8</sup>

The Single Judge of the High Court of Bombay in his final judgment and order dated 15.10.2007, held that the suitable arrangements made to supply natural gas had to be made in accordance with Government policy and legislation, and therefore directed the parties to re-negotiate in accordance

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6. The Court was also concerned, in the *Reliance case*, with the interpretation of the scope of certain provisions of the Companies Act, 1956, but we have limited ourselves to the constitutional law issues that were thrown up. It is also our belief that the company law issues, while interesting in themselves, were secondary to the more important questions of law raised in the context of the PSC and the Government's powers of regulation over natural resources, since, as Reddy J points out, private arrangements can never override policy considerations. See *Reliance* (supra n 6) 70, para 134.
  7. The other such mechanisms include concessions, participation agreements, and service contracts. See Ernest E. Smith & John Dzienkowski, *A Fifty Year Perspective on World Petroleum Arrangements*, 24 *Texas International Law Journal* 13 (1989).
  8. Mmscmd stands for Million Standard Cubic Metres per Day. The size of the RIL find was estimated at 11.5 trillion cubic feet See <http://www.eia.doe.gov/cabs/India/pdf.pdf> (Last accessed 27th September, 2010).

with the same.<sup>9</sup> Both parties filed appeals appeal before a Division Bench of the High Court of Bombay.

During the pendency of the dispute, the Bombay High Court had passed orders injuncting the creation of third party rights in the natural gas at KG D6. However, as the demand for natural gas increased and the production date of the KG D6 field grew closer, the Government, sought lifting of the injunction in the Bombay High Court. For this purpose, the Union of India was impleaded as a party in the dispute between RIL and RNRL, and after hearing the parties, the Court passed orders lifting the injunction and permitting commercial exploitation of natural gas from the KG D6 field. Following this, the Government set out the Gas Utilization Policy, giving priority to certain sectors of the economy such as power generation, fertilizers, LPG, and transportation.<sup>10</sup>

In its final judgment and order dated, 15.06.2009, the Division Bench of the Bombay High Court disposed of the appeals holding, *inter alia*:

1. A fixed quantum of gas, i.e. 28 mmscmd for a period of 17 years stands allocated to RNRL from the KG D6 field.
2. RIL will have to supply RNRL natural gas at rates prescribed in the private arrangements irrespective of Government decisions on the same.
3. The price, quantity and tenure as decided in the private arrangement between Mukesh Ambani and Anil Ambani will prevail over the Government fixed price, quantity or tenure. RIL was free, as per the terms of the PSC, to sell the natural gas extracted at any price since the price fixed by the Government was only for purposes of valuation.
4. Government decisions will apply only to the 10% of the natural gas extracted and saved, i.e., “profit gas”.
5. Any further allocations of gas made by the Government will apply only to the 10% of the gas which is the “government’s take”.<sup>11</sup>

Aggrieved by the same, all the parties concerned filed appeals before the Supreme Court of India. The Union of India was specifically aggrieved since the High Court’s judgment had completely subordinated the Government’s power to regulate the natural gas sector to the private

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9. *Reliance Natural Resources Limited v Reliance Industries Limited* [2009] 149 CompCas 129 (Bom).

10. The Gas Utilization Policy is available at <http://petroleum.nic.in/gasutilpolicy.doc> (last accessed 03 Sept. 2010). However, no decision was taken with respect to the power plants sought to be set up by the RNRL group since the same matter was under litigation.

11. *Reliance Industries Limited v Reliance Natural Resources Limited* 2009 (111) Bom LR 2507.

arrangements between parties, simply because the latter was prior in time. The Court also seemed to have ignored the fact that the extraction and supply of natural gas was governed by the PSC, entered into prior to the date of the MoU between Mukesh and Anil Ambani and would prevail over subsequent arrangements entered into by one of the parties. The interpretation of the PSC by the Bombay High Court also had the effect of vesting the ownership of natural gas in the KG D6 field entirely in the producer, i.e., RIL despite express provisions of the Constitution and the PSC itself which clearly stated that the ownership of natural gas continues to remain with the Government till it reaches onshore and put into delivery to a customer.

The three-judge Bench of the Supreme Court, in its verdict through two concurring judgments, overturned the Bombay High Court's judgment and held as follows:

1. All natural gas vests in the Union of India by virtue of Article 297, and title vests to the delivery point in accordance with Article 27.1 of the PSC.
2. Since some functions of the Union relating to the exploration and supply of natural gas have been privatized, such private parties are also bound by other Constitutional obligations that would have been applicable to the Union of India if such functions had not been privatized.
3. The power of the Union of India to regulate supply and production of natural gas is paramount under the Constitution. It is put into operation through relevant statutes and the PSC itself and this cannot be superseded by a private arrangement.
4. Allocation of natural gas made by the EGOM cannot be overridden by a contractor through a private arrangement.
5. Contractor, i.e. RIL, is bound by the decisions of the EGOM on price, quantity and tenure of supply of natural gas.
6. Supplies of natural gas can only be made in accordance with the policies of the Government and RNRL will have to approach the Government seeking allocation of gas before any supplies are made to it. Further, such supplies must be in accordance with the price, quantity and tenure fixed by the Government in the decisions of the EGOM.

### **Analysis**

The judgment of the Supreme Court is significant, not only because of the identity of the companies involved, and the mind boggling sums at

stake, but also because of the categorical manner in which the Supreme Court has affirmed the power of the Government to regulate the natural gas sector, and approved of the present method of regulation of this scarce commodity. Presently, under the Gas Utilization Policy evolved by the Empowered Group of Ministers, consumers of natural gas on a large scale generally request for supplies of the same, and the allocations are made in accordance with the priorities listed out in the Policy. It must be noted that this particular method of regulation has been adopted primarily because of the large demand for natural gas and the scarce supply of the same (being limited to a few fields across the country).

Whether this manner of regulation would survive scrutiny of the Courts under Article 14 and 19 of the Constitution is debatable, but since there was no actual challenge of the merits of the policy itself posed by any of the Respondents, the Court did not enter into this analysis. Rather, the Court merely took note of the manner of regulation and the reasons for the same, while approving the manner of regulation of the natural gas sector in the country. The Supreme Court, specifically, the elaborately researched and reasoned judgment of Reddy J, has analyzed the constitutional scheme for the regulation of natural resources in great depth and clarity.<sup>12</sup>

Reddy J notes that the Constitution vests the natural resources within the territory of India with the Union. This, he points out, is not “ownership” in the traditional sense as it is understood. It is not upto the complete discretion of the Government of the day on how to make use of the resources. In that sense it is not a power that is being vested on the Government.<sup>13</sup> Rather, it is an obligation or duty<sup>14</sup> placed upon the Government to make use of these resources in the manner prescribed by the Constitution. Reddy J uses the terms “hardwired” and “genetically encoded”<sup>15</sup> to describe the way the Constitution restricts the manner in which the Government may deal with the natural resources of India.

These obligations Reddy J finds in Part III and Part IV of the Constitution. Specifically, Reddy J finds these in Articles 14 and 39(b) of the Constitution. The link between Articles 14 and 39(b) has been made before

12. It is also hard to miss the tone of incredulity in Reddy J’s judgment as to why these issues had to be raised in what began essentially as a private dispute. As he himself puts it so clearly, it was because one of the parties laid claim to a significant part of India’s natural gas resources on the basis of a secret private pact, free of governmental oversight and regulation. *Reliance*, (supra n. 6 ) 75, para 145.

13. “Power” being used here in the Hohfeldian sense. See WH Hohfeld, *Some Fundamental Legal Conceptions as Applied in Legal Reasoning*, 23 Yale Law Journal 16 (1913).

14. In the same sense as Hohfeld *ibid* uses the term.

15. *Reliance*, (supra n. 6) 102, para 239.

and in the context of natural resources as well<sup>16</sup>, but this is the first time it is linked specifically to the ownership of the natural resources by the Union. Briefly, the State should ensure that not only is there equal access to the natural resources but also that there is a distribution of the same that would not end up favouring a few and to the detriment of all. This assumes significance in the context that extraction and exploitation of natural resources is no longer the exclusive domain of the State. Private players have been allowed to participate in the process, in the interests of increasing investments and efficiency, and in that context, questions emerge as to how the State should play its role as regulator of this sector of the economy.

In this case, as already mentioned, the whole scheme of regulation itself was not under challenge, and Reddy J does not subject every aspect of the regulation of the oil and natural gas sector to constitutional scrutiny.<sup>17</sup> However, he does lay down broad principles to be followed in interpreting the scope of the provisions of the Production Sharing Contract.

Broadly, these are:

- (1) *transfer title of those resources after their extraction unless the Union receives just and proper compensation for the same;*
- (2) *allow a situation to develop wherein the various users in different sectors could potentially be deprived of access to such resources;*
- (3) *allow the extraction of such resources without a clear policy statement of conservation, which takes into account total domestic availability, the requisite balancing of current needs with those of future generations, and also India's security requirements;*
- (4) *allow the extraction and distribution without periodic evaluation of the current distribution and making an assessment of how greater equity can be achieved, as between sectors and also between regions;*
- (5) *allow a contractor or any other agency to extract and distribute the resources without the explicit permission of the Union of India, which permission can be granted only pursuant to a rationally framed utilization policy; and*

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16. In the context of coal, see *Sanjeev Coke Manufacturing Company v Bharat Coking Coal* (1983) 1 SCC 147.

17. For a more detailed examination of the process by which the bids were awarded and PSCs were entered into, see *Centre for Public Interest Litigation v Union of India* (2000) 8 SCC 606.

- (6) *no end user may be given any guarantee for continued access and of use beyond a period to be specified by the Government.*<sup>18</sup>

While they have been laid down in the specific context of Production Sharing Contracts, nonetheless, they provide a useful basis for examining the validity of regulation in other sectors as well. This exercise will probably have to be carried out by the Court in a future instance where such a challenge is made to the manner in which regulation is carried out. Reddy J lays these down in the context of the issues broadly faced by every nation in its attempt to regulate the extraction and exploitation of natural resources. These, he identifies as follows:

- “ (1) *adequate supplies to meet overall energy and industrial needs;*  
 (2) *equitable access across all sectors, especially those which have implications for quality of life; and*  
 (3) *equitable pricing, even if market forces are allowed to play a much larger role.*  
 (4) *energy security of the nation;*  
 (5) *energy defense links; and*  
 (6) *inter-generational equities*”<sup>19</sup>.

He also identifies the problem of conservation of the same in light of the scarcity of the known sources as being a concern which States grapple with in the context of regulation of natural resources.

These concerns are clearly not exclusive to the area of natural gas or petroleum. These concerns are valid in the context of a range of natural resources which are important in meeting India’s energy and infrastructural needs. To that extent, the principles laid down in the context of natural gas in this judgment would be entirely applicable in future instances in determining the validity and scope of regulations in the context of other scarce natural resources. These principles, in our humble opinion, offer valuable guidance that should be followed in the future, not only by Courts, but also by the Government in framing regulatory policies for natural resources.

## **Conclusion**

Conflict over scarce natural resource is not a hypothetical or remote possibility. Nor is it necessarily going to take the form of a legal dispute

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18. *Reliance* (supra n. 6) 104 – 05, para 249 – 251.

19. *Reliance* (supra n. 6) 95 – 97.

between large conglomerates, decided by the forensic abilities of their lawyers and acumen of judges. Unregulated and unrestrained exploitation of scarce natural resources has led to serious outbreaks of violence in tribal areas<sup>20</sup> and also seriously undermined the functioning of democratic institutions<sup>21</sup>. In this context, the Constitution's exhortation to the State to ensure that the material resources of the community be used for the good of everyone and not concentrated in a few hands is not a mere homily or an ideological canon; it is an imperative placed upon the State to ensure that democratic institutions and the welfare of the citizens is not seriously compromised by the "resource curse". Reddy J recognizes that unchecked and unregulated exploitation of natural resources is disastrous not only to the environment and the economy, but also to the very fabric of democracy and institutions of governance in the country.<sup>22</sup>

Although the Union of India is the absolute owner of such natural resources as are found in the territorial waters and in the territory of India, its "rights" as a property owner are circumscribed by this Constitutional imperative of Part IV and the rights of the citizens under Part III of the Constitution. In that sense, the Government does not strictly "own" the property in the sense of how "ownership" is understood in the context of a private owner. The extent of the powers and the limitation of the powers of the Government in exercise of its function as the owner of scarce natural resources as articulated by the Supreme Court above clearly bear this out.

It could be said that the jurisprudence with reference to scarce natural resources as sought to be laid out above is akin to the Public Trust Doctrine which has been used in the context of the environment.<sup>23</sup> There are some differences though, the obvious one being that whereas the public trust doctrine seeks to protect and preserve what it is trying to protect, viz. the natural environment,<sup>24</sup> the jurisprudence of scarce natural resources recognizes

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20. The connection between the unchecked exploitation of natural resources in Chattisgarh and "Maoist violence" in India see *Fire in the Hole*, Foreign Policy Sept/Oct 2010 available at [http://www.foreignpolicy.com/articles/2010/08/16/fire\\_in\\_the\\_hole](http://www.foreignpolicy.com/articles/2010/08/16/fire_in_the_hole) (last accessed 03 Sep. 10).

21. For an examination of the influence of "iron ore barons" on the politics of Karnataka and Andhra Pradesh see *The Revenge of the Reddy Republic*, *Tehelka*, Vol 6, Issue 45, November 14, 2009, [http://www.tehelka.com/story\\_main43.asp?filename=Ne141109the\\_revenge.asp](http://www.tehelka.com/story_main43.asp?filename=Ne141109the_revenge.asp) (last accessed 03 Sept. 10) and *Despite Mining Scandals, Indian Mining Bosses Thrive*, *The New York Times*, August 18, 2010 [http://www.nytimes.com/2010/08/19/world/asia/19india.html?\\_r=1](http://www.nytimes.com/2010/08/19/world/asia/19india.html?_r=1) (last accessed 03 Sept. 10).

22. It is no surprise that his concurring opinion begins with a quote from Dr. B.R. Ambedkar on the importance of ensuring economic justice in protecting political democracy in India *Reliance* (supra n. 6) 69, para 132.

23. See *MC Mehta v Kamal Nath* (1997) 1 SCC 388.

24. For a detailed discussion by the Supreme Court in the context of environmental concerns see *MC Mehta* *ibid*, 407 - 413 paras 24-34.

that these resources have necessarily to be exploited for the betterment of citizens, but the exploitation of the same is constrained by considerations relating not only to the environment and equity towards future generations but also efficiency and wider benefit.

It must be mentioned that this new jurisprudence is only now emerging, and in the limited facts and circumstances of the *Reliance case*, served well to prevent the concentration of natural resources in a few hands. Its development will naturally be guided by the kinds of cases that are taken up by the appellate courts of this country, but the basic framework has been laid down in this case. The principles have been enunciated with reference to the scheme in the Constitution, and in our humble opinions, correctly so. Trickier and more complicated concerns will inevitably arise with regard to the issue of the proper utilization of scarce natural resources, and the same, we submit, will have to be decided in light of the scheme in the Constitution. The *Reliance case* being the pathfinder in this regard, Courts in the future will be well served to follow the paths marked out by the Hon'ble Judges of the Supreme Court of India.