

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

**APPEAL NO. 21 OF 2017
AND
IA NO.53 OF 2017 & IA NO.120 OF 2017**

Dated: 02nd June, 2017

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. B.N. Talukdar, Technical Member (P&NG)**

In the matter of:-

**INDIAN OIL CORPORATION)
LIMITED,)
Incorporated under the provisions of)
Companies Act, 1956 and having its)
Registered Office at G-9, Indian Oil)
Bhavan, Ali Yavar Jung Marg,)
Bnadra (East), Mumbai – 400 051) ... **Appellant****

AND

**1. PETROLEUM AND NATURAL)
GAS REGULATORY BOARD,)
Through its Secretary,)
First Floor, World Trade Centre,)
Babar Road, New Delhi - 110001)**

**2. H-ENERGY PRIVATE LIMITED,)
Mr. Manish Tiwari,)
General Manager, Origination,)
Trading and Marketing, 12th)
Floor, Knowledge Park,)
Hiranandani Business Park,)
Powai, Mumbai – 400 076) ... **Respondents****

Counsel for the Appellant(s) : Mr. Gaurab Banerji, Sr. Adv.
 Mr. Tushar Mehta, ASG
 Mr. Amit Meharia
 Ms. Tannishtha Singh
 Mr. Rajat Nair
 Ms. Sohini Chowdhury

Counsel for the Respondent(s) : Mr. Prashant Bezboruah
 Mr. Sumit Kishore
 Mr. Rakesh Dewan for R-1

Mr. Ramji Srinivasan, Sr. Adv.
 Mr. R. Sudhinder
 Mr. Siladitya Chatterjee
 Mr. Vivek Paul Oriel
 Mr. Tushar Bhardwaj
 Ms. Prerana Amitabh for R-2

ORDER

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI - CHAIRPERSON:

1. The Indian Oil Corporation Limited has challenged in this appeal Order dated 06/12/2016 passed by Respondent No.1 – the Petroleum and Natural Gas Regulatory Board (“**the Board**”). Respondent No.2 is H-Energy Private Limited, a Company engaged in the business of building liquefied natural gas degasification terminals (“**H-Energy**”).

2. The impugned order arises from a complaint dated 4/8/2016 lodged by H-Energy against the Appellant and its officials alleging, inter alia, violation of the statutory and regulatory provisions in the process of setting up LPG Pipeline from Paradip

– Balasur – Haldia – Kalyani – Durgapur – Patna - Muzzafarpur by not submitting an expression of interest as per the provisions of the PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Petroleum and Petroleum Products Pipelines) Regulations 2010 (“**the Authorizing Regulations**”) and/or without seeking authorization as required under the provisions of Chapter IV of the Petroleum and Natural Gas Regulatory Board Act, 2006 (“**the PNGRB Act**”).

3. The Board has in the impugned order merely recorded the submissions of the Appellant and H-Energy. It has not commented on those submissions. It has however constituted a Committee of the officers of the Board to conduct exhaustive examination and inspection of the record of IOCL, BPCL and HPCL and submit its report within two months. The Board has stated that on receipt of the report, it shall take a final decision.

Following is the relevant part of the order:

“The issue deserving consideration is that whether the intention of the respondent in avoiding the bidding route for seeking authorization involves malafides or there was a genuine and bona fide interpretation of statutory / regulatory provisions, and it needs subtle scrutiny for which the exhaustive examination and

inspection of the record of IOCL, BPCL and HPCL appears to be necessary.

However, we think that the matter does not require investigation by any investigating agency of the State or Central Government including the Central Bureau of Investigation (CBI) and a team of the Board's officers, as is being constituted hereunder would serve the purpose of facilitating the Board in arriving at just conclusion.

Therefore, we deem it proper to constitute a Committee to be headed by the Secretary, PNGRB and consisting of two member / deputationists, who are not from the respondent's company as under:

ORDER

A Committee headed by the Secretary, PNGRB and consisting of Sh. K. Rajeshwara Rao, OSD and Sh. S.K. Agrawal, OSD, who are deputationists from HPCL and BPCL respectively is hereby constituted to examine and inspect the record of the respondent, HPCL and BPCL in the light of parties' contentions and the observations made by us hereinabove and to submit its report to the Board within two (2) months w.r.t. Respondent's pipeline (PHDPL).

The Board, on receipt of the report of the Committee, shall take a final decision with regard to this complaint.

It is, however, made clear that the respondent may involve in incremental activities with regard to PHDPL at its own risk and will not be entitled to claim any relief on the ground of equity or making huge investment."

4. We have heard learned counsel for the parties. Mr. Tushar Mehta, learned Additional Solicitor General appearing for the

Appellant drew our attention to Section 25(3) of the PNGRB Act.

It reads thus:

“25. Filing of complaints:-

(1) A complaint may be filed before the Board by any person in respect of matters relating to entities or between entities on any matter arising out of the provisions of this Act: Provided that the complaints of individual consumers maintainable before a consumer disputes redress forum under the Consumer Protection Act, 1986 (68 of 1986) shall not be taken up by the Board but shall be heard and disposed of by such forum.

Explanation.- For the purposes of this sub-section, the expression “consumer disputes redress forum” shall mean the district forum, State Commission or, the National Commission, as the case may be, constituted under the provisions of the Consumer Protection Act, 1986 (68 of 1986).

(2)

(3) On receipt of a complaint under sub-section (1), the Board shall decide within thirty days whether there is a prima facie case against the entity or entities concerned and may either conduct enquiry on its own or refer the matter for investigation under this Chapter, to an Investigating Officer having jurisdiction; and, where the matter is referred to such Investigating Officer, on receipt of a report from such Investigating Officer, the Board may, hear and dispose of the complaint as a dispute if it falls under sub-section (2) of Section 27 and in any other case, it may pass such orders and issue such directions as it deems fit.”

5. Counsel submitted that perusal of sub-section (3) of Section 25 makes it clear that it is only after recording that there is a prima facie case against the entity, can the Board either conduct the enquiry on its own or refer the matter to an Investigating Officer having jurisdiction for investigation. In the impugned order, the Board has merely reproduced the submissions of the parties. No prima facie view is expressed that there is a case against the Appellant. On this ground alone, submits Mr. Mehta, the order constituting Committee deserves to be set aside.

6. Counsel submitted that the complaint is even otherwise not maintainable. Section 25(1) stipulates that a complaint would lie only if it involves any matter arising out of the provisions of the PNGRB Act. Since the pipeline in question is for the Appellant's captive use, it cannot qualify either as contract carrier, common carrier or a dedicated pipeline. Therefore, the issue raised in the complaint can never be said to be a matter arising out of the provisions of the PNGRB Act. Counsel submitted that in the circumstances, the appeal deserves to be admitted and impugned order deserves to be set aside.

7. Mr. Prashant Bezboruah, learned counsel for the Board submitted that the impugned order is merely an interim order and, hence, no interference is necessary with it. Mr. Ramji Srinivasan, learned counsel for H-Energy submitted that the Board has not passed any order or decision by which any person may be aggrieved. The appeal is premature and, hence, is not maintainable. Counsel submitted that the Board has recorded its prima facie view in order dated 31/08/2016. The Board has full authority to constitute a Committee. Counsel submitted that no case is made out for admitting the appeal.

8. We are conscious of the fact that we are dealing with a first appeal provided under Section 33(1) of the PNGRB Act. But, we find that the impugned order is merely an interim order. By the impugned order, a Committee is constituted and a report is sought. The Board has stated that after the report is received, it will take a final decision with regard to the complaint. The impugned order does not take any final decision. We are informed by the counsel for the Board that the report is already received. It is in a sealed cover. Since the Board is not

functional on account of vacancies, the sealed cover is not opened.

9. In the circumstances, in our opinion, the present appeal against an interim order is premature. Hence, instead of admitting the appeal, the better course would be to keep all contentions of both sides open and permit both sides to address the Board on the report so that the Board can pass a final order which can be appealed against by the party who is aggrieved by it. Hence, the following order:

ORDER

The Board is directed to give a copy of the report to the Appellant as well as to H-Energy. All contentions of the Appellant, including those raised in this appeal, are kept open. All contentions of H-Energy are also kept open. The Board shall hear both the parties and pass appropriate final order at the earliest independently and in accordance with law.

We make it clear that we have not expressed any opinion on the merits of the case.

10. The Appeal is disposed of in the aforestated terms at the admission stage.

11. In view of the above, the pending IAs, if any shall stand disposed of.

12. Pronounced in the Open Court on this **02nd day of June, 2017.**

B.N. Talukdar
[Technical Member(P&NG)]

Justice Ranjana P. Desai
[Chairperson]

✓ **REPORTABLE/NON-REPORTABLE**