

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
[APPELLATE JURISDICTION]**

**APPEAL NO. 254 OF 2014 &
IA NO. 411 OF 2014 & IA NO. 371 OF 2016**

Dated: 22nd September, 2017

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

IN THE MATTER OF:

**GSPL INDIA GASNET LIMITED)
GSPL Bhavan, Sector-26)
Gandhi Nagar,)
Gujarat-382024) ...Appellant**

AND

**1. PETROLEUM & NATURAL GAS)
REGULATORY BOARD)
1st Floor, World Trade Center,)
Babar Road,)
New Delhi-110001)**

**2. GAIL INDIA LIMITED)
16, Bhikaji Cama Place,)
R.K. Puram, New Delhi-110066) ...Respondents**

**Counsel for the appellant(s) : Mr. M.G. Ramachandran
Ms. Anushree Bardhan
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Mr. Piyush Joshi
Ms. Sumiti Yadava
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Mr. Roman Gupta
Mr. Kanav Vohra
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Ms. Nikita Agarwal
Mr. Pushkar Taimni
Mr. Sumit Kishore
Ms. Aparna Vohra
Ms. Tushita
Mr. Tushar Tharara
Ms. Samridhi Kapoor for R-1
Mr. Ajit Pudussery
Ms. Shruti Sharma for R-2

JUDGMENT

PER HON'BLE MR. B.N. TALUKDAR, TECHNICAL MEMBER (P&NG)

1. The Appellant, GSPL India Gasnet Limited is a Special Purpose Vehicle (SPV) formed by the consortium of the Gujarat State Petronet Limited, Indian Oil Corporation Limited, Bharat Petroleum Corporation Ltd. and Hindustan Petroleum Corporation Ltd. for laying, building, operating or expanding the Bhatinda – Jammu – Srinagar Natural Gas Pipeline (BJSPL) and the Mehsana – Bhatinda Natural Gas Pipeline (MBPL). Originally when the authorization for the BJSPL which is the subject matter in the instant case, was granted by PNGRB, it was the Gujarat State Petronet Ltd. Consortium (GSPL Consortium). The authorization was later amended in favour of the SPV, the Appellant.

2. The Respondent No.1, the Petroleum and Natural Gas Regulatory Board, (the Board) is a statutory body constituted under the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006 ("PNGRB Act") to regulate "the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto".
3. The Respondent No.2, GAIL India Ltd. (GAIL) was incorporated in August, 1984 as a Central Public Sector Undertaking (PSU) under the Ministry of Petroleum & Natural Gas (MoP&NG). This company is mandated to work in the hydrocarbon sector in the areas of exploration and production and processing, storage, transportation,

distribution and marketing and also import of natural gas.

The company was initially given the responsibility of construction, operation & maintenance of the Hazira – Vijaypur – Jagdishpur (HVJ) pipeline Project.

4. The Appellant in this case has impugned the Board's order dated 15.02.2011 accepting the authorization granted to GAIL by MoPNG earlier for the Dadri-Bawana-Nangal Pipeline (DBNPL), with final terms and conditions with amendments which include laying of a spur-line to Amritsar. The appeal has been filed under section 33 of Petroleum and Natural Gas Regulatory Board Act, 2006 ("PNGRB Act") in light of the order of the Delhi High Court dated 26.08.2014 in the matter of ***GSPL India Gasnet Ltd. Vs. PNGRB & Anr. (W.P.(C) 3028/2014*** wherein the High Court issued directions giving liberty to the Appellant to approach the Appellate Tribunal for Electricity within 3 weeks from the date of the said order.
5. Before examining the case, it is necessary to give the gist of the facts of the case as submitted by the Appellant which is as under:

- a. The Board issued a public notice inviting bids from interested parties for development of natural gas pipeline network along Bhatinda (Punjab) – Jammu Srinagar (J&K), (BJSPL) on 16.10.2009 with bid closing date on 17.08.2010. The pipeline route also included spur-lines including a spur-line to Amritsar as mentioned in Clause 17.2.2 of Section II (Scope of Work) of the public notice which reads as under: -

“After the completion of public consultation process, PNGRB has identified the final route of the natural gas pipeline. Accordingly, the Application-cum-Bids are invited for authorization for development of natural gas pipeline from Bhatinda (Punjab) to Jammu & Srinagar (J&K) via Moga – Kapurthala – Gurdaspur – Pathankot - Kathua spanning about 300 Kilometers and spur-lines to Firozpur, Jalandhar, Hoshiarpur, Amritsar, Batala, Jammu & Srinagar spanning about 440 kms (total of 740 kms with a design capacity of at least 15

MMSCMD). Proposed natural gas pipeline would pass through states of Punjab and Jammu & Kashmir..."

- b. Prior to the above public notice, Ministry of Petroleum and Natural Gas (MoPNG) issued authorization to GAIL to lay natural gas pipelines on common carrier basis along Dadri-Bawana-Nangal (DBNPL) on 11.07.2007. DBNPL was to traverse through the states of Uttar Pradesh, Haryana, Delhi and Punjab. In the case of Punjab, the pipeline was to pass through the Districts of Sangrur, Bhatinda and Ludhiana, but Amritsar was not included.

- c. During the course of inviting bids for BJSPL by PNGRB, a pre-bid meeting was held by the Board for clarifying/answering issues and queries if any from the potential bidders. One of the potential bidders for this BJSPL was also GAIL. GAIL was already executing their authorized DBNPL. GAIL raised a query to the Board whether they could also include

Jalandhar and Amritsar in DBNPL since GAIL's under-execution Dadri-Bawana-Nangal pipeline shall be easily catering the major demand centers of Bhatinda and Ludhiana and can further easily supply gas in Jalandhar and Amritsar. Can GAIL leverage upon the same existing network while bidding for Bhatinda-Jammu-Srinagar pipeline and thereby not entirely following the proposed route of BJSPL? The Board issued the clarification on 25.11.2009 stating that the proposed pipeline route is indicative and tentative in nature. The Board also clarified that the authorized entity shall ensure to build the desired system capacity between originating point and termination point along with providing gas connectivity to all demand centers indicated along the pipeline route whether through trunk pipeline or spur-lines. However the change of location of originating point or the terminating point including minor deviation of the route to the extent of +/-5% from the one indicated on a map in the bidding document shall be allowed for the purpose of the

feasibility report prepared by an individual bidder. Further the variance if any during the execution of the pipeline shall be governed by the relevant regulations. The Respondent No.2/GAIL's Dadri-Bawana-Nangal pipeline also will have to be taken to Moga from Ludhiana in which case there may not be major difference in the length of the pipeline.

- d. Based on the public notice dated 16.10.2009 and subsequent pre-bid clarifications, bids were received by the Board from various bidders and technical bids were opened on 17.08.2010 and financial bids on 29.10.2010. For this BJSPL, the GSPL consortium emerged as the lowest bidder (most favourable bidder). Though GAIL also participated in the bid, it lost to GSPL consortium. The Letter of Intent (LOI) to GSPL Consortium was issued on 18.05.2011 and the BJSPL authorization to GSPL Consortium was finally granted on 07.07.2011 and subsequently modified in favour of the Appellant (SPV formed by GSPL Consortium).

e. Meanwhile (i.e. between the period of opening of the financial bids for BJSPL on 29.10.2010 and issuance of LOI for BJSPL to the Appellant on 28.05.2011), the Board passed an order dated 15.02.2011 accepting the MoPNG's authorization granted to GAIL for DBNPL, which was prior to the Petroleum and Natural Gas Regulatory Board (Authorizing entities to lay, build, operate or expand natural gas pipelines) Regulations, 2008 coming into operation. This acceptance of authorization to GAIL for DBNPL by the Board was based on GAIL's application dated 04.12.2008. This authorization also spelt out the final terms and conditions with amendments which included laying of a spur-line to Amritsar which was not there in the original authorization to GAIL by MoPNG for DBNPL. In this regard, as per the Appellant the Board unilaterally amended the MoPNG's DBNL authorization and arbitrarily expanded the scope of DBNPL while authorizing GAIL to lay a spur-line to Amritsar in contravention to the original scope of work as provided in the MoPNG's

DBNL authorization. The Board also violated their own clarification given to the potential bidders in the pre-bid meeting on the issue of laying a spur-line by GAIL as a part of their DBNPL project. Request was made to the Board vide letter dated 10.09.2012 to exclude the spur-line to Amritsar in DBNPL authorization, but no response was obtained from the Board. Aggrieved by this acceptance of authorization to GAIL with amendment by the Board for DBNPL, the order dated 15.02.2011 has been impugned by the Appellant and hence the instant appeal.

6. We have heard the learned counsel appearing for the Appellant and the written submissions made by the Appellant have been perused. The gist of contentions of the Appellant is as under: -

- (i) The Board cannot expand the scope of the pipeline project under the garb of authorization under Regulation 17 of the PNGRB Authorization Regulation. The scope of authorization under

Regulation 17 is restricted to just acknowledge the authorization granted by MoPNG earlier. Any new laying of pipeline has to be done as per the open bidding process as laid down under provisions of Section 19 of PNGRB Act and the relevant PNGRB Authorization Regulations.

- (ii) Condition 6 of the MoPNG's DBNPL Authorization states that "The gas pipeline would be connected to any other gas pipeline as directed by the Government and/or any other statutory authority." It is emphasized that the MoPNG's DBNPL Authorization only mentions connection with any other gas pipeline, and does not authorize extension of the pipeline to any other demand center/city.

- (iii) By including a spur-line to Amritsar, the Board has placed the Appellant at a distinct disadvantage and conferred an unfair advantage on GAIL at the expense of the Appellant. Laying a parallel pipeline infrastructure by GAIL to cater to the demand in the Amritsar district would make the investment made

by the Appellant infructuous as it may not get the desired market whereas GAIL may get a new market share since it is an additional market opportunity for them.

- (iv) Appellant, for the first time received information in relation to expansion of scope of DBNPL authorizing GAIL to lay the spur-line to Amritsar through the responses from the Board to queries raised under RTI Act. This information was not available in public domain.
- (v) Employees of GAIL placed on deputation in the Board were on committees and working groups evaluating and processing the impugned order as well as the BJSPL EOI bid process indicating inherent conflict of interest.
- (vi) GAIL's letter dated 12.07.2010 confirming to the Board that they can lay a spur-line to Amritsar from Jalandhar refers to a discussion between the then Member (Infrastructure) of the Board and GAIL's

executive director without detailing the exact nature or context of discussion. The then Member (Infrastructure) between June, 2007 to 26.10.2011 was Mr. B.S. Negi who joined the Board after retiring from GAIL as Director (Business Development) against whom allegations of misuse of office had been raised before the Delhi High Court and also Supreme Court. Supreme Court had in fact, directed Mr. Negi not to participate in deliberations of the Board meetings in the case of ***PNGRB Vs. Indraprastha Gas Ltd. & Anr. (SLP 5408/2010)***, in an order dated 12.05.2011.

- (vii) Spur-lines without authorization are permissible only within the tariff corridor of 50 kms whereas, GAIL's letter dated 12.07.2010 stated that connectivity to Amritsar from Jalandhar on DBNPL can be provided by laying a spur-line of 85 kms. In contradiction, the impugned order states that Amritsar would be connected by a spur-line from DBNPL and not Jalandhar. Jalandhar will be connected by a spur-line

from DBNPL. The actual distance of Amritsar from DBNPL is approximately 125 kms and definitely not within 50 km of tariff zone.

(viii) Internal note of the Board dated 10.12.2010 records that spur-line to Amritsar from DBNPL be accepted by the Board knowing very well that the financial bids for BJSPL had already been opened and it was very clear that GAIL was not the successful bidder. This violates the special condition spelt out in para 20.2.5 of section III; special conditions of bid of BJSPL public notice.

(ix) The then Chairman of the Board on 20.12.2010 recorded his opinion in an internal note dated 10.12.2010 regarding spur-lines as follows:

“Only the spur-line specified in the MoPNG’s DBNPL Authorization approval may be included. Connections within 50 km tariff zone can be accepted. However, common carrier/contract

carrier beyond this will require authorization through the bidding process.”

- (x) Based on information obtained through RTI, a representation was made to the Board vide letter dated 04.01.2014 quoting a statement made by GAIL that spur-lines to Meerut, Chandigarh and Amritsar “...all within the tariff corridor of 50 km”, whereas Amritsar actually falls 85 km away from Jalandhar and approximately 125 km away from DBNPL. No response was received from the Board on this representation.
- (xi) Under the PNGRB Act, an entity proposing to lay, build, operate or expand a common carrier pipeline submits a technical and financial proposal based on the scope of work and the economic life of the project. Therefore, it is critical for such an entity to estimate the volumes, which shall be utilized at various demand centers along the route of the pipeline. It is based on such estimation and demand projection, that a bidding entity determines the

quote of the Financial Bid. In the present case, the Appellant based on the scope of work and the route to be covered as announced by the Board in relation to BJSPL, had submitted its Technical and Financial Bid. It is important to note that Amritsar was identified as one of the important demand centers, which would be serviced by the BJSPL. The Appellant had quoted very competitive and low tariff rates, which are going to remain fixed for a period of 25 years. The capacity of the pipeline is also determined by the Appellant considering Amritsar as a demand center and thereby committing to incur huge capital expenditure. The Appellant is adversely affected by the authorization to GAIL to develop the parallel pipeline infrastructure to Amritsar demand center for which the Appellant is authorized through a bidding process.

- (xii) The transportation tariff for BJSPL is determined under a competitive bid process whereas the spur-line to Amritsar of DBNPL is governed by DBNPL tariff

determined under PNGRB (Determination of Natural Gas Pipeline Tariff) Regulations, 2008. This has put the Appellant at a competitive disadvantage. The transportation tariff for DBNPL is subject to review and is based on the actual volumes transported in DBNPL and in contrast, the Appellant will not have this advantage of actual volumes transported and would be constrained at the bid price it had quoted under competitive bidding process.

(xiii) The Impugned Order is arbitrary as it is a breach of principles of natural justice, and principles of general law regulating competitive bids as it was issued to GAIL after GAIL participated in the competitive bids for BJSPL and had failed to be the preferred bidder, thereby circumventing and defeating the bid process. The Impugned order is in violation of principles of natural justice that govern competitive bid process.

(xiv) Regulation 5 (4) of the "Authorizing entities to lay, build, operate or expand natural gas pipeline" Regulations, 2008 clearly stipulates to avoid

infructuous investment. Against a competitive bid process to select the entity for BJSPL at the lowest pipeline tariff, allowing GAIL who lost the bid for BJSPL to lay a spur-line to Amritsar from their DBNPL project where Amritsar was not a demand center, has made the Appellant's investment in Amritsar infrastructure infructuous.

7. We have heard the learned counsel appearing for the Respondent No.1, the Board and perused their written submissions. The gist of contentions of the Board is as under: -

- i. The allegations leveled against the decision making process of the Board are completely unfounded and baseless which not only demean the reputation and dignity of the Board, but also question the integrity of the Board under which the Board performs its statutory duties.
- ii. The LoA dated 15.02.2011 issued to the Respondent No.2, GAIL considered all the relevant aspects, the

benefits and consequences and submissions made by GAIL. It was considered in compliance with due procedure prescribed under law.

- iii. In the EoI published in the newspaper for capacity booking prior to authorization by MoPNG for DBNPL, it was stated that the said pipeline would be connected to any other gas pipeline as directed by the Government and/or any other statutory authority. The same statement also was put in the authorization letter issued for DBNPL to GAIL under condition 6. This condition means that scope of the authorized pipeline shall not be restricted to serve only particular demand centers, but it can be extended to connect to demand centers of any other gas pipeline.
- iv. For laying of a spur-line, there was no requirement of permission from the Board prior to amendment of the Regulations dated 08.08.2014. The Amendment to the Regulation was notified on 08.08.2014 and cannot apply retrospectively. This is also

substantiated from the clarification issued by the Central Government on the issue of authorization for a spur-line on 15.10.2013.

- v. During pre-bid conferences for various pipelines, one of the specific queries raised before the Board was whether the authorized entity is 'entitled' to lay spur-line and provide transportation services to customers beyond tariff zone. The Board in its reply stated that authorized entity is obliged to provide transportation services to consumers falling in a tariff zone, however, beyond tariff zone, the authorized entity is 'entitled' to provide transportation services with prior approval of the Board.
- vi. GAIL in its letter dated 12.07.2010 had clearly mentioned the length of the spur-line to Amritsar as 85 kms. The length of the spurline is immaterial as long as the parameters prescribed in Regulation 2 (o) of the Determination of Capacity Regulations which defines 'spurline' are met. GAIL's spurline to Amritsar fully satisfies the definition of Spurline given in

Capacity Regulations 2 (o). This was known to the Board while taking the decision.

vii. It is true that the then Chairperson of the Board initially had reservation on allowing GAIL to lay a spur-line beyond the tariff zone. On his advice, a fresh board agenda was prepared and the same was approved by circulation and was duly signed by the Chairperson.

viii. It is not that a spur-line cannot start from another spur-line and there is restriction on the length of a spur-line. The definition of spur-line as stated in the PNGRB (Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010 is as under:

2(o) 'spur-line' means a pipeline necessarily originating or branching out from the trunk or transmission pipeline or sub-transmission line or another spur-line or from a terminal station on the existing transmission or trunk pipeline with

diameter and capacity not greater than the trunk or transmission pipeline but having no compression facility for supply of natural gas to one or more consumers. Any pipeline having a separate gas source or a compressor shall not be treated as a spur-line. The length of spur-line may not depend upon the length of the trunk pipeline. A spur-line must use the capacity of trunk pipeline in order to transport gas. Spur-line includes branch line also;

- ix. The issue of separate authorization for laying spur-lines from the authorized natural gas pipelines, was examined by MoPNG in consultation with Ministry of Law and Justice and MoPNG vide letter dated 15.10.2013 communicated as follows;

“No separate authorization is required for laying spur-lines originating from the authorized natural gas pipelines within its economic life, so long as the usage/purpose of the pipeline already authorized is not changed. However, the

spur-lines should meet all the requirements provided in Regulation 2 (a) of PNGRB (Determining Capacity of Petroleum Products and Natural Gas Pipelines) Regulations, 2010 defining spur-lines.”

- x. The argument raised by the Appellant that multiple pipelines serving the same city/demand center from different natural gas pipelines systems is economically not feasible in terms of the expenditure involved and whether the multiple pipelines will be utilized to their optimum capacity. This is contrary to the provisions of the Board Act, Section 20 (5) and the PNGRB Authorization Regulations [R 5(4)]. In this regard it is submitted that the cities like Baroda, Bharuch, Surat/Hazira are connected through spur-lines from HVJ-GREP-DVLP Gujarat Natural Gas Pipeline System of GAIL, as well as the GSPL's Gujarat Natural Gas Pipeline System. The Board Act does not prohibit that a city/demand centre cannot be served by multiple pipelines and the

Appellant itself has been a beneficiary of multiple lines serving same city/demand center.

- xi. The Regulation dated 08.08.2014 issued by the Board under Authorization Regulations specifies the procedure how spur-lines beyond the limit of tariff zones will be processed and approved. This does not require a separate authorization through the bidding process.
 - xii. The impugned letter dated 15.02.2011 had been webhosted by the Board and was available for public viewing under the tab "NG Pipeline "authorization" under Regulation 17". The Appellant did not take any steps to challenge the said letter as the Appellant was not aggrieved by the same and has filed the present appeal after a gap of 2-3 years with ulterior motives and the Appellant is not entitled to any relief as prayed in the present appeal.
8. We have also perused the written submissions made by the Respondent No.2, GAIL and heard the learned counsel

appearing for GAIL. GAIL's contentions are identical to the ones submitted by the Board. We, however, reproduce the gist of additional submissions made by GAIL as under:

- i. DBNPL was authorized by the Central Government much before BJSPL was even conceived by PNGRB. The authorization for the BJSPL was granted on 07.07.2011 only. However, for some inexplicable reason, the Appellant has not filed the complete letter through which authorization was granted to it for the said pipeline. The Appellant has indulged in concealment of material facts by not filing on record the complete letter of authorization granted by the Board for BJSPL.
- ii. As per the Authorization, BJSPL has to be commissioned on or before 07.07.2014. However, as per information made available by the Board in reply to RTI Act as on 23.03.2016, even the construction of the pipeline has not yet started and the Board has encashed part of the bank guarantee submitted by

the Appellant. This fact in itself totally disentitles the Appellant to any relief.

- iii. It is settled law that notings on file cannot be looked into by Courts since they are views expressed by individual officers and the individual view cannot be taken cognizance of and it is the final decision that matters. In ***Jasbir Singh Chhabra & Ors. Vs. State of Punjab & Ors., (2010) 4 SCC 192***, at page 208 the Hon'ble Supreme Court held as follows:

“It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may

suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by malafides or is influenced by extraneous considerations. The Court is duty bound to carefully take note of the same."

- iv. Allegations of malafides have been made by the Appellant without any evidence or proof to substantiate the same. It is settled law that allegations of malafide being very serious in nature have to be proved by the person making it and in the absence of any proof, the same is liable to be rejected. The relevant observations made in the Judgment reported in **Union of India Vs. Ashok**

Kumar & Ors., (2005) 8 SCC 760 are extracted as under:

“Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the

established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (***S. Pratap Singh v. The State of Punjab, AIR 1964 SC 72***). It cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility. As noted by this Court in ***E. P. Royappa v. State of Tamil Nadu and Another (AIR 1974 SC 555)***, Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (***See Indian Railway Construction Co. Ltd. v. Ajay Kumar 2003***

(4) SCC 579)). As observed by this Court in ***Gulam Mustafa and Ors. v. The State of Maharashtra and Ors. (1976 (1) SCC 800)*** mala fide is the last refuge of a losing litigant.”

9. The entire case revolves around laying of a spur-line to Amritsar in Punjab. The Appellant is a company who in this case has got an authorization to lay a natural gas pipeline from Bhatinda (Punjab) to Jammu and Srinagar (J&K), (BJSPL). This pipeline route includes laying of a spur-line to Amritsar. The authorization is granted by the petroleum and natural gas regulator i.e. the PNGRB, the Board who is Respondent No.1. GAIL India Ltd. (GAIL) who is Respondent No.2 is also authorized to lay another natural gas pipeline along Dadri-Bawana-Nangal. This pipeline route also includes the State of Punjab where Amritsar is a district. This authorization was granted by the Ministry of Petroleum and Natural Gas (MoPNG) when the Board was not established. Later, the same authorization granted to GAIL was accepted by the Board with an amendment which includes laying of a spur-line to

Amritsar which was not there in the original authorization granted by MoPNG. Appellant's contention is that the Board could not have included the laying of the spur-line to Amritsar which is outside the scope of its power and without jurisdiction under the PNGRB Act and also a breach of natural justice and this is the crux of the matter.

10. Let us now examine the authorization granted by MoPNG to GAIL for DBNPL network and its subsequent acceptance by the Board and the authorization granted to the Appellant by the Board for the BJSPL network in the following manner.

➤ Before granting authorization to GAIL for the DBNPL network, MoPNG issued notice inviting expression of interest (EoI) for the DBNPL alongwith 4 other pipelines. The general route description of the pipeline was mentioned as below:

“Tap off at DADRI in the already existing HVJ/GREP Pipeline Network to GAIL, in the state of Uttar Pradesh (U.P.)

General Route Description of the Trunk Pipeline and Spurlines.

The approximately 610 km long pipelines pass through the following districts.

U.P. Gautam Budh Nagar, Ghaziabad

Delhi North East Delhi, North Delhi and North West Delhi

Haryana: Sonapat, Panipat, Karnal

Punjab: Sangrur, Bhatinda and Ludhiana”

We observe from above it is very clear that Amritsar was not included in the pipeline route passing through Punjab.

- Subsequently, MoPNG vide letter dated 11.07.2007 granted authorization to GAIL for the above DBNPL network specifying only the terms and conditions for construction of the pipeline. Under terms and conditions, there was a condition viz No.6 which reads as under:

“6. The gas pipeline would be connected to any other gas pipeline, as directed by the Government and/or any other statutory authority.”

We observe from above that connectivity of the pipeline would be given to any other pipeline but there was no specific mention about connectivity to any other demand centre.

- After PNGRB, the Board came into operation, the above authorization granted by MoPNG was accepted by the Board vide letter dated 15.02.2011, wherein there was a mention about the route of the DBNPL as below:

“The route of Dadri-Bawana-Nangal Natural Gas Pipeline shall be through the districts of Gautam Budh Nagar, Delhi, Muzaffarnagar, Saharanpur, Yamunanagar, Fatehgarh Sahib and Ludhiana with spur-lines to Rithala, Bawana, Sonipat, Panipat, Yamunanagar, Saharanpur, Khanna,

Nangal, Ambala, Dorha, Bhatinda,
 Jalandhar, Amritsar, Derabassi, Larlu,
 Chandigarh, Meerut, Haridwar, Roorkee,
 Rishikesh & Dehradun.”

In Annexure-1 of the said letter also, the route of the pipeline was mentioned as below:

**“DETAILS OF DADRI-BAWANA-NANGAL
 NATURAL GAS PIPELINE:**

ITEMS	DETAILS	
NAME OF PIPELINE	<u>Trunk Line</u>	<u>Length (Kms)</u>
	i) Dadri-Bawana (Tap-off) (36")	40
	ii) Bawana (tap-off) – Yamunanagar (36")	149
	iii) Yamunanagar to Ludhiana (30")	147
		<u>Total: 336 Kms</u>
	Spur-lines to Rithala, Bawana, Sonipat, Panipat, Yamunanagar, Saharanpur, Khanna, Nangal, Ambala, Dorha, Bhatinda, Jalandhar, <u>Amritsar</u> , Derabassi, Larli, Chandigarh, Meerut, Haridwar, Roorkee, Rishikesh & Dehradun	<u>Approx: 550 Kms</u>
		<u>Total: 886 Kms</u>

We observe from above that laying of a spur-line to Amritsar was clearly mentioned in the letter of

acceptance of authorization issued to GAIL by the Board.

- Based on an EOI submitted by the Appellant for the BJSPL network, the Board went through public consultation by issuing a public notice and finally issued the public notice on 16.10.2009 inviting bids for development of BJSPL network wherein under scope of work in SECTION-II, it mentioned about the final route of the pipeline as below:

"17.2 Natural Gas Pipeline to be authorized

17.2.1 ...

17.2.2 After the completion of public consultation process, PNGRB has identified the final route of natural gas pipeline. Accordingly, the Application-cum-Bids are invited for authorization for development of natural gas pipeline from Bhatinda (Punjab) to Jammu & Srinagar (J&K)

via Moga-Kapurthala-Gurdaspur-Pathankot-Kathua spanning about 300 Kilometers and spur-lines to Firozpur, Jalandhar, Hoshiarpur, Amritsar, Batala, Jammu & Srinagar spanning about 440 Kms (Total of 740 Kms with a design capacity of at least 15 MMSCMD). Proposed natural gas pipeline would pass through states of Punjab and Jammu & Kashmir. The route map and other details of pipeline are enclosed as **Annexure-1.**"

In Annexure-1 of the said public notice, details of the pipeline are given as below:

Other details:

- a) **Route of the Main Trunk Pipeline (tentative):**

Bhatinda (Originating Point) – Moda – Kapurthala – Gurdaspur – Pathankot – Kathua (Termination Point).

b) **Length of Main Trunk Pipeline:** Approximately 300 Kms.

c) **Spurlines:** Following location en-route the pipeline shall be connected through spur-lines: Firozpur, Jalandhar, Hoshiarpur, Amritsar, Batala, Jammu, Anantnag, Srinagar

d) **Length of Spurlines:** Approximately 440 Kms

e) **Total Length of Pipeline Network: 740 Kms (approx.)**

f) **Design Capacity: 15 MMSCMD** (including common carrier capacity available for any third party on open access and non-discriminatory basis as per sub-regulation 5 (6) (j)).

We observe from above that laying of a spur-line to Amritsar was clearly mentioned in the public notice issued for the BJSPL network:

- Subsequent grant of authorization by the Board for the above BJSPL network vide letter dated 07.07.2011 issued to the Appellant, specified only the terms and conditions of authorization.

11. Having examined above, let us now examine the relevant Sections of the Petroleum and Natural Gas Regulatory Board Act, 2006 and the relevant regulations thereof. Section 11 of the PNGRB Act, 2006 stipulates the functions of the Board as under: -

"11. Functions of the Board.-- The Board shall-

- (a) Protect the interest of consumers by fostering fair trade and competition amongst the entities;
- (b) Register entities to—
 - (i) market notified petroleum and petroleum products and, subject to the contractual obligations of the Central Government, natural gas;
 - (ii) establish and operate liquefied natural gas terminals;
 - (iii) establish storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations;

- (c) authorize entities to—
 - (i) lay, build, operate or expand a common carrier or contract carrier;
 - (ii) lay, build, operate or expand city or local natural gas distribution network.”

In the present context, Section 11 (c) (i) is relevant which empowers the Board to authorize entities to lay, build, operate or expand a common carrier or contract carrier natural gas pipeline.

12. Section 16 of the PNGRB Act, 2006 basically defines authorization which reads as under: -

“16. Authorization –No entity shall—

- (a) lay, build, operate or expand any pipeline as a common carrier or contract carrier,
- (b) Lay, build, operate or expand any city or local natural gas distribution network, without obtaining authorization under this Act:

Provided that an entity –

- (i) Laying, building, operating or expanding any pipeline as common carrier or contract carrier; or

- (ii) Laying , building, operating or expanding any city or local natural gas distribution network,

immediately before the appointed day shall be deemed to have such authorization subject to the provisions of this Chapter, but any change in the purpose or usage shall require separate authorization granted by the Board.”

In the context of the present case, above Section 16 stipulates that no entity can lay natural gas pipeline as a common carrier pipeline without authorization. At the same time, it also stipulates that if any entity was already laying natural gas pipeline as common carrier or contract carrier before the appointed day, i.e., the date of establishment of the Board, shall be deemed to have such authorization but any change in the purpose or usage shall require authorization.

13. Section 17 of the PNGRB Act, 2006 stipulates as to how an entity which was already laying natural gas pipeline prior to the appointed day, has to apply to the Board for obtaining an authorization. This Section reads as under:

“17. Application for authorization. –

- (1) An entity which is laying, building, operating or expanding, or which proposes to lay, build, operate or expand, a pipeline as a common carrier or contract carrier shall apply in writing to the Board for obtaining an authorization under this Act:

Provided that an entity laying, building, operating or expanding any pipeline as common carrier or contract carrier authorized by the Central Government at any time before the appointed day shall furnish the particulars of such activities to the board within six months from the appointed day.

- (2)
- (3)
- (4) Subject to the provisions of this Act and consistent with the norms and policy guidelines laid down by the Central Government, the Board may either reject or accept an application made to it, subject to such amendments or conditions, if any, as it may think fit.
- (5) In the case of refusal or conditional acceptance of an application, the Board shall record in writing the ground for such rejection or conditional acceptance, as the case may be.”

14. Section 19 of the PNGRB Act, 2006 empowers the Board to invite applications and select an entity in specified

objective and transparent manner for granting authorization subject to such terms and conditions as it may specify which reads as under:

"19. Grant of authorization.—

- (1) When, either on the basis of an application for authorization for laying, building operating or expanding a common carrier or contract carrier or for laying, building, operating or expanding a city or local natural gas distribution network is received or on suo motu basis, the Board forms an opinion that it is necessary or expedient to lay, build operate or expand a common carrier or contract carrier between two specified points, or to lay, build, operate or expand a city or local natural gas distribution network in a specified geographic area, the Board may give wide publicity of its intention to do so and may invite applications from interested parties to lay, build, operate or expand such pipelines or city or local natural gas distribution network.
- (2) The Board may select an entity in an objective and transparent manner as specified by regulations for such activities."

15. Section 20 of the PNGRB Act, 2006 stipulates the procedure for declaring an existing pipeline for transportation of petroleum, petroleum products and natural gas or an existing city or local natural gas

distribution network, as a common carrier or contract carrier by the Board, which reads as under:

“20. Declaring, laying, building etc of common carrier or contract carrier and city or local natural gas distribution network—

- (1) If the Board is of the opinion that it is necessary or expedient, to declare an existing pipeline for transportation of petroleum, petroleum products and natural gas or an existing city or local natural gas distribution network, as a common carrier or contract carrier or to regulate or allow access to such pipeline or network, it may give wide publicity of its intention to do so and invite objections and suggestions within a specified time from all persons and entities likely to be affected by such decision.
- (2) For the purposes of sub –section (1), the Board shall provide the entity owning, the pipeline or network an opportunity of being heard and fix the terms and conditions subject to which the pipeline or network may be declared as a common carrier or contract carrier and pass such orders as it deems fit having regard to the public interest, competitive transportation rates and right of first use.
- (3)
- (4)
- (5) For the purposes of this section, the Board shall be guided by the objectives of promoting

competition among entities, avoiding infructuous investment, maintaining or increasing supplies or for securing equitable distribution or ensuring adequate availability of petroleum, petroleum products and natural gas throughout the country and follow such principles as the Board may, by regulations, determine in carrying out its functions under this section.”

16. All the above mentioned Sections of PNGRB Act, 2006 have been referred by both the rival parties as they have found relevant for their case. Both the rival parties have also raised a number of peripheral issues before us which as per our assessment, do not have direct bearing on the main issue. Though we have included those in the gist of their submissions, for sake of completeness, we shall now focus only on the main issue i.e. laying of a spur-line to Amritsar.
17. As per the Appellant, the Board did not have power to amend the authorization granted to GAIL by MoPNG for DBNPL. As per Section 17, the Board is simply authorized to accept the information submitted by GAIL in respect of the pipeline. The Board could have included the spur-line

to Amritsar following Section 19 of the PNGRB Act by giving wide publicity of the Board's intention to do so which as per the Appellant, the Board did not act under Section 19.

18. Secondly, the learned counsel appearing for the Appellant also argued very strongly in addition to his written submission that the Board could have allowed GAIL to lay a spur-line to Amritsar only within the tariff zone and relied on the definition of tariff zone which as per Regulation 2 (h) (ii) of the PNGRB (Authorizing entities to lay, build, operate or expand natural gas pipeline) Regulation, 2008 reads as under: -

"2 (h) (ii) - a corridor along the natural gas pipeline with a width of upto ten percent of the total length of the natural gas pipeline without including the length of the spur-lines or fifty kilometers measured from the nearest point on the surface of the natural gas pipeline on both sides, and including

the point of origin and the end point of the natural gas pipeline, whichever is less, and-“

19. As per the Appellant, the distance between the DBNPL and Amritsar is 125 kms which is much longer than 50 kms as stipulated in the above regulation. The distance of 85 kms as stated by GAIL is from Jalandhar to Amritsar. That the distance from DBNPL to Amritsar is much more than 50 kms has been consented upon by the Board and also GAIL during the hearing before us and also by their submissions to this Tribunal.

20. The learned counsel for the Board and the learned counsel for GAIL have contested this issue of tariff zone and have argued that laying of a spur-line does not require any authorization and the definition of spur-line does not limit the length upto 50 kms only. They have relied upon the amendment to the Authorization Regulations dated 08.08.2014 and MoPNG's clarification vide letter dated 15.10.2013.

21. We have examined the Regulation (3) of the amended regulations dated 08.08.2014 which reads as under: -

“(3) Laying of spur-lines:

No separate authorization is required for laying spur-lines originating from the authorized natural gas pipelines within its tariff zone as per clause (h) of sub-regulation (1) of regulation (2) and during its economic life, so long as the usage or purpose of the pipeline already authorized is not changed subject to the spur-lines meeting all requirements provided in clause (o) of regulation 8 of the Petroleum and Natural Gas Regulatory Board (Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010, defining spur-line:

Provided that if a spur-line is proposed beyond the limits of tariff zone, the admissible tariff shall be the applicable tariff of the tariff zone from which the tap-off for the spur-line is taken:

Provided further that in such instances beyond tariff corridor, the entity initiating the request shall inform the Board of its intentions alongwith the full details on the spur-line length, route, capacity and details of the customers to be served and the Board after public consultation shall give its decision to the entity within sixty days of the receipt of the request. In case, no communication is sent by the Board in the aforesaid sixty days, the above request shall be deemed to be approved for authorization."

22. In this context, we note that if an entity proposed to lay a spur-line beyond the tariff zone, it needs to submit all details including the customers to the Board and the Board will decide after a public consultation only.
23. We have also examined MoPNG's clarification dated 15.10.2013 which reads as under: -

"Subject: Spur-line to MFL, Manali from KKMBPL natural gas pipeline

Sir,

Please refer to letters dated 08.02.2013, 30.04.2013 and 26.06.2013 from GAIL (India) Ltd. on the subject mentioned above. The matter has been examined by the Ministry in consultation with Department of Legal Affairs, Ministry of Law and Justice. I am directed to convey following on the issue:

No separate authorization is required for laying spur-lines originating from the authorized natural gas pipelines within its economic life, so long as the usage/purpose of the pipeline already authorized is not changed. However, the spur-line should meet all requirements provided in Regulation 2 (o) of PNGRB (Determining Capacity of Petroleum Products and Natural Gas Pipeline) Regulations, 2010 defining spur-lines."

24. In this context, we note that the above clarification was given by MoPNG with respect to a particular spur-line to MFL, Monali from KKMBPL natural gas pipeline and is not an amendment to any regulation.

25. While on the subject, we have also examined the definition of spur-line as per Regulation 2 (o) of PNGRB (Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010 which reads as under:

“2(o) ‘spur-line’ means a pipeline necessarily originating or branching out from the trunk or transmission pipeline or sub-transmission line or another spur-line or from a terminal station on the existing transmission or trunk pipeline with diameter and capacity not greater than the trunk or transmission pipeline but having no compression facility for supply of natural gas to one or more consumers. Any pipeline having a separate gas source or a compressor shall not be treated as a spur-line. The length of spur-line may not depend upon the length of the trunk pipeline. A spur-line must use the capacity of trunk pipeline in order to transport gas. Spur-line includes branch line also;

26. We note from the above definition that length of a spur-line does not depend upon the length of the trunk pipeline, but, in the present case, the length of the spur-line is not relevant but what is relevant is how to deal with a spur-line beyond the tariff zone.
27. The Respondent No.2/GAIL has also strongly relied on condition No.6 of MoPNG's authorization to GAIL that as per this clause, the Board can permit GAIL to connect their DBNPL to Appellant's BJSPL. The Appellant however, has strongly contested that this is not interconnection between DBNPL and BJSPL, but laying a parallel spur-line to a common demand center/city of Amritsar. On this issue of interconnectivity, we notice that there is a separate provision in the PNGRB (Access Code for Common Carrier or Contract Carrier Natural Gas Pipelines) Regulations, 2008 in "Regulation 11 Interconnection of two common carrier or contract carrier natural gas pipeline."

28. Before going into other aspects of the case, we have also examined the sequence of events that took place between MoPNG's authorization to GAIL for DBNPL in 2007 and the Board's acceptance of this authorization in 2011 and vis-à-vis authorization to the Appellant for BJSPL.

- MoPNG authorized GAIL to lay the DBNPL network on 11.07.2007.
- The Board issued public notice inviting bids for laying the BJSPL network on 16.10.2009.
- Technical bids for BJSPL were opened on 17.08.2010 and financial bids on 29.10.2010.
- Board accepted authorization of DBNPL to GAIL granted by MoPNG on 15.02.2011.
- LOI to Appellant issued by Board for BJSPL on 18.05.2011
- Authorization granted to Appellant by Board for BJSPL on 07.07.2011.

29. We note that GAIL was one of the bidders for the BJSPL network along with the Appellant. When the financial bids

for BJSPL were opened up on 29.10.2011, it was known to the Board that GAIL was not the winning bidder for BJSPL. It was known to the Board that in the MoPNG's authorization to GAIL for DBNPL did not include the spur-line to Amritsar and also it was known to the Board that a spur-line to Amritsar was included in BJSPL and GAIL lost to the tender for BJSPL. BJSPL was later authorized to the Appellant on 07.07.2011. The way the Board allowed GAIL to include a spur-line to Amritsar in DBNPL authorization appears to be against natural justice which has also been claimed to be so by the Appellant.

30. We have noted another factor raised by the Appellant that since the bids for the BJSPL network were competitive bids, all financials including to transporting tariff to be quoted in the bid were worked out considering the gas demands in the demand centers and also the total volumes of gas alongwith other inputs and in doing so, possible markets in Amritsar was an important input for the bid preparation. The Appellant went through this entire exercise. On the other hand, while on this issue, we

have also examined the demand projections (tentative) submitted by GAIL to the Board vide letter dated 26.10.2010 wherein GAIL mentioned all the spur-lines to be considered in DBNPL including Amritsar as per advice of the Board, but in the demand projection, demand in Amritsar was not mentioned. Para 7 of the said letter giving the demand projection is quoted as under: -

“7. The tentative demand projected is given below:

Roorkee, Haridwar, Rishikesh, Dehradun: 2.7

MMSCMD

Sr. No.	Location	Gas Demand (MMSCMD)		
		2009-12	2012-2015	Total Demand
	Roorkee-Haridwar-Rishikesh-Dehradun			
1.	Roorkee	0.12	1.00	1.12
2.	Haridwar	0.13	0.40	0.53
3.	Rishikesh	0.12	0.30	0.42
4.	Dehradun	0.03	0.50	0.63
			Sub Total	2.70
	Ludhiana-Jalandhar	2009-12	2012-2015	Total Demand
5.	Ludhiana	0.60	-	0.60
6.	Jalandhar	0.37	0.50	0.87
			Sub Total	1.47

31. Finally, let us now find out the main basis on which the Board included the spur-line to Amritsar in the acceptance of authorization to GAIL for the DBNPL network.

32. In the Board agenda prepared for approval for acceptance of the Central Government Authorization granted to GAIL for laying the DBNPL network, the length of the proposed spur-line was mentioned to be within tariff corridor of 50 kms. The relevant para is reproduced below:

“2.10 Details of additional spur-lines as provided by GAIL in tariff proposal are as below:

S/N	Spur-line Section	Length
1	Saharanpur TOP to Haridwar pipeline	60 Kms
2	Haridwar – Dehradun pipeline from Saharanpur – Haridwar pipeline	40 Kms
3	Haridwar to Rishikesh pipeline from Saharanpur – Haridwar pipeline	25 Kms
4	Spurline to Roorkee from Saharanpur – Haridwar pipeline	15 Kms
5	Ludhiana – CGS Ludhiana pipeline	25 Kms
6	CGS Ludhiana – CGS Jalandhar pipeline	55 Kms
7	Spur-lines to Meerut, Chandigarh & Amritsar	All within tariff corridor of 50 Kms

It is observed that only spur-lines of Sr. No.1 and 6 above are the marginal cases exceeding 50 Kms tariff corridor width and rest all other spur-lines are well within 50 Kms tariff corridor.”

“Approval sought” as mentioned in the said agenda note reads as under:

“3.0 Approval Sought:

3.1 Approval of the Board is sought for the following:

3.1.1.....

3.1.2.....

3.1.3 Acceptance of spur-lines of DBNPL within tariff corridor of 50 Kms and spur-lines to Jalandhar and Haridwar.”

33. As can be seen from above, approval for the spur-line to Amritsar was sought based on the statement that Amritsar was within the tariff corridor of 50 kms. There was no mention at all regarding condition No. 6 (Interconnection to other pipelines) of MoPNG’s

authorization granted to GAIL in 2007. The Board did not consider the provisions of the said condition No.6 of the MoPNG's authorization, though GAIL has consistently insisted during hearing that the Board included Amritsar spur-line based on this condition. In the Board agenda note, the then Chairman of the Board also gave his opinion on 20.12.2010 as under:

“(3) Only the spur lines specified in the Central Government approval may be included. Connections within 50 Kms zone can be accepted. However, common carrier/contract carrier beyond this will require authorization through the bidding process.”

The Board and GAIL, however, have stated that the then Chairman of the Board's approval was obtained later by circulation.

34. We have also observed that there has not been much of discussion between GAIL and the Board regarding inclusion of the Amritsar spur-line except the Board Agenda as referred above. GAIL refers to their letter

written to the Board on 12.07.2010 wherein GAIL mentioned a discussion between Member (Infrastructure) of the Board and the Executive Director (Project) of GAIL. On our insistence, the Board vide letter dated 31.08.2017 has submitted a copy of the note which is unsigned regarding the internal meeting held on 31.01.2011. In this record note of the meeting also we have noted the recording that all the spur-lines are well within 50 Kms tariff corridor except spur-lines to Haridwar and Jalandhar which are the marginal cases. We reproduce the relevant para as below:

“(C) **Issue of Spur-lines:**

It was brought to the notice of the Board that:

- (i)
- (ii) All spur-lines are well within 50 Kms tariff corridor except spur-lines to Haridwar and Jalandhar which are the marginal cases. While spur-line to Haridwar is an entry to hilly state of Uttarakhand, spur-line to Jalandhar is a marginal case of 50 Kms tariff corridor width. Also, PNGRB has invited bids for

CGD network development in Jalandhar based upon DBNPL.

- The issue was discussed at length and the pipeline group was directed to prepare a guideline in coordination with the Commercial division at the earliest for treatment of spur-lines inside the tariff corridor as well as outside the tariff corridor for further discussion and deliberation. Providing the transporter "Right of First refusal" may be also explored in the proposed guidelines. It was felt that the clarity on this issue is required at the earliest.

- In the case of DBNPL, the Board agreed to accept the marginal cases of Haridwar and Jalandhar alongwith all spur-lines within tariff corridor. Pipeline group was advised to suitable modify the Board Agenda."

We note that in the above note also, the Board agreed to accept the spur-lines within tariff corridor and Amritsar spur-line was considered to be within 50 kms from DBNPL.

35. The main factor that was considered by the Board to include the spur-line to Amritsar has been found to be the distance of Amritsar from DBNPL which has been assumed by the Board to be within the tariff zone of 50 kms. This distance has been stated to be wrong by both the rival parties and stated to be more than 50 kms. Though the Board and GAIL also took garb of condition No. 6 of MoPNG's authorization to GAIL i.e. GAIL can connect the DBNPL to any other pipeline, has not been found to have been recorded as a reason to include Amritsar spur-line in the Board Agenda of the Board. Before the amendment on laying of spur-line was incorporated in the PNGRB (Authorizing entities to lay, build, operate or expand natural gas pipeline) Regulations, 2008 in 2014, we have not found any regulation which existed at the time of the impugned order which could allow the Board to include spur-line within the tariff zone of 50 kms.

36. Thus, after analyzing the entire arguments made by GAIL and the Board in favour of inclusion of the spur-line to Amritsar in acceptance of MoPNG's authorization to GAIL for DBNPL network as well as the written submissions made by them, we find no appropriate ground for the Board to amend the Central Government's authorization granted to GAIL for the DBNPL network by including a spur-line to Amritsar. There has not been any consistency of reasons to support the Board's decision to include the spur-line to Amritsar. The process followed to decide to include the Amritsar spur-line has not been found to be transparent. This particular view of ours can also be corroborated by the Board's own statement made in its submission to this Tribunal vide its submission dated 31.08.2017. The relevant portion of the paragraph 7 (iv) of the said submission reads as under:

"Thus it's not clear from the record whether the Board knew that the distance was more than 50 Kms at the time of inclusion of Amritsar spur-line."

37. On the other hand, the Appellant has completely relied on the noting of the then Chairman of the Board who commented that extension of pipeline beyond tariff zone would require public consultation before finally approving the acceptance of authorization. This argument of the Appellant also does not hold good in absence of such a regulation existing at the time of the impugned order. The amendment in regulation in respect of spur-line was in effect from 2014 only where provisions are provided for laying a spur-line beyond the tariff zone.

38. In the light of the foregoing, we hold that the best course of action would be to remand the matter back to the Petroleum and Natural Gas Regulatory Board to re-examine the matter in totality considering the relevant Sections of the PNGRB Act, 2006 as well as the regulations prevalent particularly at the time of the impugned order. The impugned order is set aside and the matter is remanded back to Respondent No.1 i.e. the Board. The Board will hear the parties again and pass the final order independently and in accordance with law

within 90 (ninety) days from today. With these observations/order, the Appeal is disposed of. Consequently, the IA No. 411 of 2014 and IA No. 371 of 2016 do not survive and are disposed of, as such.

39. Pronounced in the Open Court on this **22nd day of September, 2017.**

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

Justice Ranjana P. Desai
[Chairperson]

✓ **REPORTABLE/~~NON-REPORTABLE~~**