

APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

I.A.No.4 of 2012 in Appeal No.5 of 2012

Dated: 23rd January,2012

**Present: Hon''ble Mr. Justice M. Karpaga Vinayagam,Chairperson
Hon'ble Mr. M.B. Lal, Technical Member**

In the matter of

**GAIL(India) Limited
Gail Bhavan,
16, Bhikaji Cama Place,
New Delhi-110 066.**

.....Appellant(s)

Versus

**Gujarat State Petroleum Corporation
GSPS Bhavan, Behind Udyog Bhavan,
Sector-11,
Gandhinagar,
Gujarat-382 011.**

.....Respondent(s)

**Counsel for Appellant(s) : Mr. M.G. Ramachandran
Mr. Ankit Jain**

Counsel for Respondent(s) : Mr. Piyush Joshi

I.A.No.1 of 2012 in Appeal No.1 of 2012

In the matter of

Indian Oil Corporation Ltd

....Appellant(s)

Versus

**Gujarat State Petroleum Corporation
& Anr.**

....Respondent(s)

**Counsel for Appellant(s) : Mr. Abhinav Vasisht, Sr. Adv.
: Mr. Rajat Navet**

**Counsel for Respondent(s) : Mr. C.S. Vaidyanathan, Sr. Adv.
Mr. Piyush Joshi,
Mr. Aspit Kapadia
Mr. Nimisha singh Dutta
Mr. Inderbir Singh Alag for R-2
Mr. Sampada Narang for R-2
Mr. R Dewan for R-2
Mr. Ankit Jain for GAIL.**

I.A.No.2 of 2012 in Appeal No.2 of 2012

In the matter of

**Bharat Petroleum Corporation Ltd.
& Anr.**

....Appellant(s)

Versus

**Gujarat State Petroleum Corporation
&Ors.**

....Respondent(s)

**Counsel for Appellant(s) : Mr. Abhinav Vasisht, Sr. Adv.
Mr. Rajat Navet**

**Counsel for Respondent(s) : Mr. C.S. Vaidyanathan, Sr. Adv.
Mr. Piyush Joshi,
Mr. Aspit Kapadia
Mr. Nimisha Singh Dutta
Mr. Inderbir Singh Alag for R-2
Mr. Sampada Narang for R-2
Mr. R Dewan for R-2
Mr. Ankit Jain for GAIL.**

JUDGMENT

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

- 1. GAIL (India) Limited is the Appellant in Appeal No.5/2012.**
- 2. The Gujarat State Petroleum Corporation Limited is the Respondent. It filed a complaint under Section 12(1) a read with Section 12(b)(v) read with Section 13(1) g of the Petroleum Natural Gas Regulatory Board Act, 2006, (**

Petroleum Board Act) against GAIL in relation to the restrictive trade practice and other violations of the Petroleum Board Act in the supply of Re-gasified liquefied natural gas from Dahej LNG Terminal.

3. After hearing the parties, the Petroleum Board allowed the complaint filed by the Gujarat State Petroleum Corporation Limited, the Respondent, and gave following directions.

a) GAIL and its companies have to allow the Gujarat State Petroleum Corporation Ltd. to take delivery from the Petroleum Corporation Ltd. “Delivery point” instead of compelling them to take delivery from the “Delivery point” of the Appellant.

b) The GAIL(Appellant) is not entitled to any inter connectivity charges from 4.4.2011 i.e. the date of the complaint filed by the Petroleum Corporation Ltd.

c) The Petroleum Corporation, the Respondent shall pay to GAIL(Appellant), the first zone tariff under

the gas supply agreement from 20.11.2008 to 4.4.2011 and out of this amount, GAIL has to deposit 50 per cent of the amount with the Board for being utilised for the viability gaps in the pipeline to be built in uneconomic regions. No payment shall be made by the Petroleum Corporation Ltd., to the GAIL beyond the date of 4.4.2011.

d) The GAIL and other companies are directed to desist from restricting Petroleum Corporation Ltd., for direct connectivity on the ground that contractual provisions under the gas sales agreement.

4. Aggrieved by the above decision containing the above directions taken by the Board, GAIL, the Appellant has filed this present Appeal No.5 of 2012. Pending the Appeal, the Appellant sought for interim stay of implementation of the impugned decision taken by the Board in I.A.No.4 of 2012.

5. Similarly, Indian Oil Corporation Limited and Bharat Petroleum Corporation Ltd., the other companies supporting the cause of the GAIL have also filed Appeals in Appeal No.1 & 2 of 2012. In these appeals also both the companies have sought for the stay of the interim order in I.A. No.1 and 2 of 2012.

6. The Appeals have been admitted on 04.01.2012. The Petroleum Corporation Ltd., the Respondent took notice in the Appeals. Since the learned counsel appearing for the Appellants(GAIL and other companies) insisted for the stay of the operation of the impugned order, we have asked the learned Senior Counsel appearing for the Petroleum Corporation Ltd to take notice of the application in I.A. No.1,2 & 4 of 2012 seeking for the interim orders.

7. The matter was posted to 11th January,2012. On that date, learned counsel for both the parties have argued at length. The learned counsel for the Appellant(GAIL) has given a note giving some suggestions for passing orders regarding interim arrangement. We have also asked the learned

Senior Counsel for Petroleum Corporation Ltd., the Respondent to furnish note giving similar suggestions to enable us to pass some suitable interim orders in order to protect the interests of both the parties during the pendency of the Appeals.

- 8. Accordingly, on 17.01.2012 the learned Senior counsel for the Petroleum Corporation Ltd., has filed a note giving some suggestions.**
- 9. We have heard the learned counsel for both the parties who have argued at length.**
- 10. The learned counsel for Appellant has vehemently argued that the Petroleum Corporation Ltd., should not be allowed to shift the Delivery point from the existing Delivery point which is based on long term gas agreement with the Appellant and other companies, and thereby he sought for stay of the impugned order. On the other hand, the learned Senior Counsel appearing for the Respondent(Petroleum Corporation Ltd) with equal vehemence submitted that all the three members of the Board unanimously held in the**

impugned orders holding that the GAIL along with 2 other companies have indulged in restrictive trade practice by blocking off the direct connectivity to its Petroleum Corporation Ltd., pipeline and gave a specific directions to GAIL and other companies to desist from compelling the Petroleum Corporation Ltd to take delivery at GAIL Delivery point and to allow the Petroleum Corporation Ltd., to take delivery at Petroleum Corporation Ltd delivery point immediately and that its findings with the valid reasons should not be disturbed during the pendency of the Appeal. It is also stated in the written notes by the Petroleum Corporation Ltd, that it would pay charges for connectivity as may be fixed by this Tribunal even for the period that it did not use GAIL Delivery point, if this Tribunal so directs. In the light of the above submissions made by the learned counsel of both the parties as well as the written notes filed by them regarding interim arrangement, we pass the following order.

11. In the light of the facts and circumstances and also the specific findings given in the impugned orders passed by the Board, we are not inclined to grant absolute stay of the operation of the entire order of the Petroleum Board. However, we are inclined to grant stay in respect of some portion of the impugned order while permitting Petroleum Corporation Ltd., to take the connectivity to the Dahej LNG Terminal(GAIL) through their pipeline, as per the convenience subject to the following conditions by way of interim arrangements.

- i) From 20.11.2008 to 4.4.2011 i.e. the date of the complaint, the inter connectivity charges has been fixed as Rs.19.83 per mmbtu. The differential amount between rate prevailing prior to Board's order i.e. Rs.8.74 per mmbtu exclusive of Service Tax and Rs.19.83 per mmbtu has to be kept by the Petroleum Corporation Ltd in a separate account. If the final decision of the Appeals filed by GAIL and other companies is in favour of Petroleum Corporation**

Limited, the said amount should be paid to GAIL. In case, the decision in these Appeals is in favour of the Appellant namely GAIL, the amount payable to GAIL, if any, will be adjusted as per final judgement of this Tribunal.

- ii) From 4.4.2011 i.e. the date of the complaint, till the date of the Appeal filed before this Tribunal, the rate applicable would be as per rate prevailing prior to the order of the Board i.e. Rs.8.74 per mmbtu(excl. taxes) which the Petroleum Corporation Ltd should pay to GAIL. Depending on the outcome of the case, the amount payable, if any, over and above this amount, up to a ceiling of Rs.19.83 per mmbtu may have to be given by Petroleum Corporation to GAIL for which Petroleum Corporation should give an undertaking.
- iii) From the date of filing of this Appeal till the date of shifting of Delivery point, the above arrangements will continue. From the date of shifting of Delivery Point, an amount equivalent to existing rate i.e.

Rs.8.74 per mmbtu(excl. taxes) as per the gas supply agreement should be kept in separate account by the Petroleum Corporation Ltd., with an undertaking that in case final decision is given in favour of GAIL, this amount would be paid by the Petroleum Corporation Ltd to GAIL even for the period when the Delivery point of the Appellant has not been used and that Delivery point which has been shifted now would be shifted back to GAIL Delivery point. If the case is decided in favour of the Petroleum Corporation, then this amount can be taken back by the Petroleum Corporation Ltd.

12. The above directions by way of interim arrangements imposing these conditions are subject to the outcome of these Appeals. With these observations all the I.As in these Appeals are disposed of.

13. Both the parties pleaded their respective cases indicating emergent situation. Hence, we deem it fit to fix an early date for final disposal of these Appeals.

14. Accordingly, these Appeals and the other Appeal filed by the Petroleum Corporation Ltd are posted for final hearing on 23.02.2012. In the meantime, pleadings be completed.

**(M.B.Lal)
Technical Member**

**(Justice M. Karpaga Vinayagam)
Chairperson**

Dated: 23rd January, 2012

REPOTABLE/NOT REPORTABLE