

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Dated: 30<sup>th</sup> June, 2014**

**Present:**

**HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON**  
**HON'BLE MR. NAYAN MANI BORAH, TECHNICAL MEMBER (P&NG)**

**IA No.71 OF 2014**  
**IN**  
**DFR No.119 OF 2014**

**In the Matter of:**

**Reliance Industries Limited,  
Makers Chamber IV, 3<sup>rd</sup> Floor,  
222, Nariman Point,  
Mumbai-400 021**

**...Applicant/Appellant**

**Versus**

- 1. Petroleum and Natural Gas Regulatory Board  
1<sup>st</sup> Floor,  
World Trade Center  
Babar Road,  
New Delhi-110 001**
- 2. GMR Energy Limited,  
Skip House, 25/J,  
Museum Road,  
Bangalore-560 025  
Karnataka**
- 3. Union of India  
Through its Cabinet Secretary,  
North Block,  
New Delhi-110 001**

- 4. Ministry of Finance  
Through its Secretary,  
Shastri Bhavan,  
New Delhi-110 001**
- 5. Reliance Gas Transportation Infrastructure Limited  
101, Shivam Apartment,  
9 Patel Colony, Bedi Bunder Road,  
Jamnagar-361 008, Gujarat**
- 6. M/s. Kribhco Shyam Fertilizers,  
Shahjahanpur, Uttar Pradesh  
Through its Authorized Signatory,  
Kribhco Bhawan, A-10, Sector-1,  
District-Gautam Budhnagar,  
NOIDA-201 301**
- 7. M/s. Indo Gulf Fertilizers Ltd,  
Jagdishpur, Uttar Pradesh  
Through its Authorized Signatory,  
PO-Jagdishpur Industrial Area,  
District-Amethi,  
Uttar Pradesh-227 817**
- 8. M/s. IFFCO  
Bareilly, Uttar Pradesh,  
Through its Authorized Signatory,  
IFFCO Sadan, C-1, District Centre  
Saket Place, Saket,  
New Delhi-110 0017**
- 9. M/s. Tata Chemicals Ltd.  
Badaun, Uttar Pradesh  
Through its Authorized Signatory,  
Indira Dham, Babrala, District  
Buduan, Uttar Pradesh-202 521**

- 10. Shriram Fertilizers & Chemicals,  
Through its Authorized Signatory  
(A Division of DCM Shriram Consolidated Ltd),  
Shriram Nagar, Kota  
Rajasthan-324 004**
  
- 11. National Fertilizers Limited (NFL),  
Through its authorized Signatory  
A-11, Sector-24, Noida  
Uttar Pradesh-201 301**
  
- 12. Chambal Fertilizer & Chemicals Ltd,  
Through its Authorized Signatory  
Corporate One, 1<sup>st</sup> Floor,  
5 Commercial Centre, Jasola,  
New Delhi-110025**
  
- 13. Nagarjuna Fertilizers and Chemicals Limited  
Through its Authorized Signatory,  
8-2-248, Corporate Office,  
Nagarjuna Hills,  
Punjagutta,  
Hyderabad-500 082**
  
- 14. Gujarat State Fertilizers and Chemicals Limited  
Through its Authorized Signatory,  
PO- Fertilizer Nagar, Vadodara,  
Gujarat-391 750**
  
- 15. Rashtriya Chemicals and Fertilizer Limited  
Through its Authorized Signatory,  
7<sup>th</sup> Floor, “Priyadarshini”,  
Eastern Express Highway,  
Sion Trombay Road,  
Mumbai-400 022**

16. **Gujarat Narmada Valley Fertilizers Co Ltd.**  
**Through its Authorized Signatory,**  
**PO-Narmadanagar, District Bharuch,**  
**Bharuch, Gujarat-392 015**
  
17. **Krishak Bharti Co-operative Limited**  
**Through its Authorized Signatory,**  
**PO-Kribhco Nagar,**  
**Surat, Gujarat-394 515**
  
18. **Deepak Fertilizer**  
**Through its Authorized Signatory,**  
**Plot K-1, MIDC Industrial Area,**  
**Taloja Distt-Raigad-410 208**
  
19. **State of Andhra Pradesh**  
**Through its Authorized Signatory,**  
**Government Secretariat**  
**Hyderabad-500 002, AP**
  
20. **State of Gujarat**  
**Through its Principal Secretary**  
**Government Secretariat,**  
**Gandhi Nagar-382 020**  
**Gujarat** **...Respondent(s)**

Counsel for the Appellant(s) : Mr. H N Salve, Sr Adv.  
Dr. Millind Sathe, Sr. Adv.  
Mr. Somiran Sharma  
Mr. Raghav Sharkar

Counsel for the Respondent(s): Mr. Saurav Agarwal  
Ms. Soumi Guha Thakuria  
Mr. Ashish Tiwari  
Ms. Sonali Malhotra for R-1  
Mr. Amit Kapur

Mr. Vishron Mukherjee  
Mr. Gaurav Avaeja  
Ms. Rimali Batra  
Ms. Apoorva Mishra for R-2  
Mr. Rajat Nair  
Mr. K R Sasiprabhu for R-5  
Ms. Kaveeta Wadia  
(for R-6 to R-12 & R-14 to R-18)

## **ORDER**

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

1. The Reliance Industries Limited is the Applicant/Appellant herein.
2. The Applicant/Appellant has filed this Appeal against the Impugned Order dated 18.11.2013 passed by the Petroleum and Natural Gas Regulatory Board (Petroleum Board) directing the Reliance Gas Transportation Infrastructure Limited (R-5) to provide Open Access to its East West Pipeline (EWPL) to GMR Energy Limited (R-2) within 40 days as agreed to by the parties.
3. Since the Applicant/Appellant was not a party to the proceedings before the Petroleum Board, the Applicant/Appellant has filed this Application in IA No.71 of 2014 seeking leave to file the Appeal.

4. Since there was a delay in filing the Appeal, the Applicant has also filed another Application for condonation of delay in IA No.72 of 2014.
5. The Application for condonation of delay would be considered only after the leave to Appeal is granted. Therefore, we have to first take-up the Application in IA No.71 of 2014 seeking for leave to file the appeal to decide as to whether the leave could be granted. Therefore, we issued notice in IA No.71 of 2014 to the Respondents.
6. The contesting Respondent No.2 (GMR Energy Limited) has stoutly opposed the Application on the ground that the Applicant is not an “aggrieved person” and that, therefore, the Application seeking for leave to Appeal cannot be entertained as the Appeal filed by the Applicant not being an “aggrieved person” is not maintainable.
7. Similar objections have been raised by the Petroleum and Natural Gas Regulatory Board (R-1) also.
8. In view of the preliminary objections raised by the Respondents we shall first consider the issue with reference to maintainability of the Application seeking for leave to file the Appeal.

9. Thus, the only question which arises for consideration in the present Application is **“Whether the Applicant is an “aggrieved person” within the meaning of Section 33 (2) of the P&NGRB Act so that the Applicant is entitled to maintain the present Appeal?”**
10. Before considering this question, it would be apt to refer to the short relevant facts:-
- (a) The Applicant/Appellant, Reliance Industries Limited being the Gas Seller is a Seller of Natural Gas from KG-D6 Basin.
  - (b) Gas Seller, the Appellant has entered into Gas Sales and Purchase Agreements (GSPA) with various buyers including Fertilizers Companies situated in the State of Andhra Pradesh, Maharashtra, Gujarat, Uttar Pradesh and Madhya Pradesh from 2009 onwards. The Appellant’s gas is delivered to all the buyers at the Delivery Point which is at Gadimoga (Kakinada) in Andhra Pradesh.
  - (c) The Buyer has entered into a Gas Transmission Agreement with gas transporters (RGTIL etc) for onward transportation of gas from the Delivery Point to its facilities. RGTIL(R5) owns and operates a common

carrier trunk pipeline called the East West Pipeline (EWPL).

- (d) The Petroleum Board on 29.4.2013, on the basis of the request made by the GMR Energy Limited (R-2) directed the Reliance Gas Transportation Infrastructure Limited (RGTIL) R-5, to provide Open Access to GMR Energy Limited (R-2) to the EWPL pipelines for transportation of gas from West Coast to East Coast. Since this direction was not complied with, the GMR Energy Limited (R-2) again approached the Petroleum Board to give further directions to Reliance Gas Transportation Infrastructure Limited (R-5) to grant Open Access to EWPL.
- (e) Accordingly, on 2.7.2013, the Petroleum Board reiterated the directions already issued on 29.4.2013 by directing the Reliance Gas Transportation Infrastructure Limited (R-5) to grant Access to shippers i.e. GMR Energy Limited to the EWPL. The Petroleum Board further advised that the issue of taxation is to be sorted out mutually and be taken up with the Govt. of India.
- (f) Thereafter, on 5.8.2013, the Petroleum Board issued a Public Notice intimating its directions dated

29.4.2013 directing Reliance Gas Transportation Infrastructure Limited (RGTIL) (R-5) to grant access to GMR Energy Limited (R-2) for transportation of gas from West coast to East Coast. Even then, the Order had not been complied with.

(g) Therefore, on 20.9.2013, the GMR Energy Limited (R-2) filed an Application before the Petroleum Board for execution of the previous Orders dated 29.4.2013 and 2.7.2013.

(h) After hearing the parties, the Petroleum Board by the Impugned Order dated 18.11.2013, directed Reliance Gas Transportation Infrastructure Limited (R-5) to grant Open Access to GMR Energy Limited (R-2) to EWPL within a period of 40 days which was agreed to by RGTIL (R-5).

11. It is noticed that Reliance Gas Transportation Infrastructure Limited (R-5) against whom the directions were given, has not challenged this Order before this Tribunal. On the other hand, the Applicant/Appellant has filed the Appeal against the said Order dated 18.11.2013 along with an Application seeking for leave to Appeal.

12. According to the Applicant, the Gas Seller is responsible for collection of taxes and , Gas Seller has to collect the tax

applicable on the same after obtaining a relevant certificate from Reliance Gas Transportation Infrastructure Limited (R-5).

13. As per the Applicant, the impugned order causes the character of transactions under the GSPA's already entered into by it with its Buyers to change, and directly impacts its obligations as a seller.
14. Because of the changed circumstances arising out of the impugned order, RGTIL expresses its inability to issue the necessary certificate, in the absence of which, the Applicant claims that it would be exposed to conflicting tax demands from different taxing authorities under the CST Act as well as under various State VAT Acts.
15. Questioning the maintainability of the Application seeking for leave to Appeal, the learned Counsel for the contesting Respondent No.2 namely GMR Energy Limited as well as the Petroleum and Natural Gas Regulatory Board (R-1) have strenuously contended that the Applicant is neither affected nor impacted by the Impugned Order which directs Reliance Gas Transportation Infrastructure Limited (R-5) to grant Open Access to EWPL to GMR Energy Limited (R-2) and as such, the Applicant is not a "person aggrieved" in terms of Section 33 (2) of P&NGRB Act and that, therefore,

the Application seeking for leave to Appeal as well as the Appeal ought to be dismissed in limine.

16. In the context of the above preliminary objections, we are now called upon to answer the following question:-  
**“Whether the Applicant is “an aggrieved person” within the meaning of Section 33 (2) of the P&NGRB Act so as to maintain the present Appeal?”**
17. While dealing with this question, it is worthwhile to refer to the guidelines given by this Tribunal as well as Hon’ble Supreme Court while dealing with the issue as to whether a party is a person aggrieved or not.
18. Let us refer to those decisions:-
  - (a) 2009 ELR (APTEL) 459 GRIDCO Limited Bhubaneswar Orissa Vs Jindal Stainless Limited;
  - (b) 2013 ELR (APTEL) 768 Gujarat Electricity Regulatory Commission Ahmadabad Vs Century Rayon and Others
19. These decisions have been rendered by this Tribunal on the basis of the judgment of Hon’ble Supreme Court including the judgment in 1970 2 SCC 13 Nookala Sitaramaiah V Kotaiah Naidu and judgment in Gopalbandhu Biswal v Krishna Chandra Mohanty and Ors reported in (1998) 4 SCC 447.

20. The ratio decided in these decisions giving the mandatory guidelines for deciding this issue is as follows:-

- (a) A person who was not the party to the original proceedings is entitled to file an Appeal with leave of the Appellate Court provided that the person shall make out a prima facie case to show that he is the person aggrieved.
- (b) A person can be said to be aggrieved over an Order only when it causes him some prejudice in some form or the other. Unless the person is prejudicially or adversely affected by the Order, he cannot be entitled to file an Appeal as an aggrieved person.
- (c) The words “person aggrieved” did not mean a person who is merely disappointed of a benefit which may have been received if some other order had been passed. That means, the person aggrieved must be a person who has suffered a legal grievance. In other words, the person against whom a decision has been pronounced that has wrongfully deprived him of something or wrongfully refused him of something; or wrongfully affected his title to something.
- (d) An aggrieved person must be a person who suffered a legal grievance or legal injury or one who has been

unjustly deprived or denied of something which he should be entitled to obtain in usual course.

- (e) When a person had not been deprived of a legal right, when a person has not been subjected to a legal wrong; when a person has not suffered any legal grievance; when a person has no legal peg for a justifiable claim to hang on; that person cannot claim that he is a person aggrieved.

21. While dealing with above question framed in this case, we have to bear in mind the above principles laid down by this Tribunal as well as Hon'ble Supreme Court.
22. It is settled law as laid down by this Tribunal that a person who was not made a party in the original proceedings may still file an Appeal with the leave of the Appellate Forum provided that the said person shall make out a prima-facie case to the Appellate Court that he was aggrieved, he was affected and he was prejudiced due to the Order Impugned.
23. Therefore, a person cannot be disentitled to file an Appeal merely because he was not a party to the proceedings. This means even though he was not party to the proceedings, if he is able to demonstrate before the Appellate Court that he was affected or prejudiced due to the Impugned Order, he is entitled to file the Appeal.

24. In view of the above principles this Application can be entertained even though the Applicant was not a party to the original proceedings.
25. However, we should consider whether the Application could be allowed. For allowing this Application, we have to verify whether the Applicant is an “aggrieved person”.
26. As per the dictum laid down by this Tribunal as well as Hon’ble Supreme Court, as indicated above, the Applicant/Appellant in order to be established as an “Aggrieved Person” has to establish before this Appellate Forum that:-
- (a) Applicant has suffered a legal grievance;
  - (b) Applicant has suffered a legal injury; or
  - (c) Applicant has been deprived of something he was entitled to;
27. According to the Applicant/Appellant, it entered into a Gas Sales and Purchase Agreement with various buyers and the sale of gas by the Applicant to the buyers is taxed as per the applicable laws. Therefore, the Applicant must be reimbursed the tax amount by the Gas buyers based upon the applicable rate of tax and due to the Impugned Order, Reliance Gas Transportation Infrastructure Limited (R-5)

has expressed its inability to continue issuing the relevant certificate and since the Applicant is responsible for collection of tax, it is incumbent upon the Applicant to collect the tax eligible on the same. Further, the Impugned Order effectively modifies the character of transactions under the Gas Supply Purchase Agreement entered into with his buyers thereby it exposes the Applicant to conflicting tax demand from different taxing authorities thereby imposing the liability to pay tax on the seller and, therefore, the Applicant is an aggrieved person. But, this contention is vehemently opposed by the Respondents stating that the Applicant could not be considered to be an aggrieved person.

28. We have carefully considered the rival contentions urged by both the parties.
29. In the light of the nature of the Impugned Order and in view of the formidable objections raised by the Respondents namely GMR Energy Limited (R-2) and the Petroleum and Natural Gas Regulatory Board (R-1), we are unable to accept the contention of the Applicant/Appellant with regard to maintainability of the Applications, as it has not satisfied the ingredients of the term “person aggrieved”. The detailed reasons for the above conclusion are as follows:-

- (a) The Appellant has entered into Gas Sale and Purchase Agreement with various buyers situated in different States. The responsibility of Transportation of gas is that of the Buyer only and not the Appellant. As such, the liability for payment of taxes on purchase of natural gas is exclusively that of the Gas buyers. The sale of gas is taxed as per the applicable laws depending upon whether it is inter-State or Intra-State sale of natural gas. The Applicant is simply required to collect the applicable tax and deposit the same with the Central or State Govt., as the case may be.
- (b) It is settled law that a statutory authority must exercise its jurisdiction within four corners of the statute under which it has been set-up. Petroleum Board could not go into the question of taxation as it is not empowered to do so under the P&NGRB Act. Similarly, the Appellate jurisdiction of this Tribunal u/s 33 of the P&NGRB Act would only confine to the question relating to the validity of the Orders or decisions made by the Petroleum Board. The relevant provision Section 33 which relates to Appeals to Appellate Tribunal is as follows:-

*“Any person aggrieved by an order or decision made by the Board under this Act may prefer an*

*Appeal to the Appellate Tribunal: Provided that any person preferring an Appeal against an order or decision of the Board levying any penalty shall, while filing the Appeal, deposit the amount of such penalty: Provided further that where in any particular case, the Appellate Tribunal is of the opinion that deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realization of penalty.”*

The perusal of the above provision would make it evident that the grievance of the Appellant as per the averments in the Appeal is only relating to the issues with reference to the levy of tax on the gas being supplied by the Appellant. The subject matter of the grievance in relation to the taxation is beyond the scope of the PNGRB Act. Therefore, the words “person aggrieved” is term of “Section 33” would not apply to the present case.

- (c) It is contended by the Applicant that the Impugned Order dated 18.11.2013 has interfered with the Appellant’s assumption that the pipeline was its exclusive untrammelled carrier. This contention is totally misconceived. After the enactment of the PNGRB Act, 2006 which deals with the statutory sanction to the concept of open access to common

carrier, any contractual right or claim which impedes the right of any party to get open access has to give way to the statutory right of Open Access. The objective of the Open Access to common carrier cannot be put in abeyance to the choice of the commercial arrangements and conjectures of incidence of tax. In fact, the Applicant itself has admitted that the buyers have exclusive liability for payment of tax imposed in connection with the purchase of natural gas under the Gas Sale Purchase Agreement. This liability would not fall upon the Applicant.

- (d) It is an admitted fact that in terms of Clause 1 and 22 of the GSPA, the responsibility for payment of tax is that of the Buyer of the gas and not of the Appellant. Since the buyer has already indemnified the Appellant against all tax liabilities, the Applicant could not claim that the Impugned Order has impacted the Applicant. Being a seller of natural gas from KG basin fields, the Appellant is not supplying gas to GMR Energy Ltd. Hence, GMR Energy Ltd. need not pay central sales tax or AP VAT on the gas which is being sold by the Applicant to other buyers. Therefore, the Appellant cannot be construed to be a person aggrieved in

terms of Section 33 of the PNGRB Act. Thus, the Applicant is neither affected nor impacted by the decision taken by the Petroleum Board to direct RGTIL(R5) to grant Open Access to GMR Energy Ltd.,(R2) to the common carrier EWPL.

- (e) The perusal of the GSPA would make it crystal clear that the Appellant is fully indemnified by the Buyer of natural gas against any increase in taxes. There is no scope whatsoever for adverse impact on the Appellant even if there is an increase of tax on sale of natural gas. It is the buyer who has to take a call on such increase of tax either by paying the same or by contesting the same in accordance with law. On this basis, it is pointed out that the buyer has already approached the High Court and filed a Writ Petition against the Impugned Order. It is also stated that the Writ Petition is still pending. Therefore, looking from any angle, the Appellant who is merely a seller of gas, is not an “aggrieved person”.
- (f) That apart, the Applicant itself has admitted that the liability of tax is on the buyer of the Gas. Therefore, there is no merit in the contention that the Applicant would be subjected to tax liabilities. The Appellant is particularly dissatisfied because RGTIL (R-5) is not

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giving an assurance of issuing relevant certificate. This is a matter between the two Group Companies, namely RIL and RGTIL. Besides that, the rate of tax to be imposed is a matter which would have to be decided by the Tax authorities depending upon the correct interpretation of the tax statutes. Neither the Petroleum Board nor this Appellate Tribunal is the appropriate authority to go into the tax issue and to give a solution for the said issue.

- 30.** In view of the above reasoning, we are constrained to conclude that the Applicant is not an aggrieved person as it has not established the ingredients of the said term to be applicable to itself. As such, the Application seeking for leave to Appeal is liable to be dismissed.
- 31.** Accordingly, the Application in I.A. No.71 of 2014 seeking for Leave to Appeal is dismissed. In view of the above, question of condonation of delay does not arise. Accordingly, I.A.No.72/2014 is disposed of. Consequently, the Appeal is also rejected. However, there is no order as to costs.

**(Nayan Mani Borah) (Justice M. Karpaga Vinayagam)**  
**Technical Member(P&NG) Chairperson**

Dated: 30<sup>th</sup> June, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~