IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(APPELLATE JURISDICTION)

APPEAL No. 253 OF 2014

Dated: 08th July, 2016.

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

In the matter of:-

RELIANCE GAS TRANSPORTATION INFRASTRUCTURE LIMITED, through its Authorized Signatory, Registered Office at Reliance Corporate Park, Building No.7, B Wing, Second Floor, Ghansoli, Navi Mumbai – 400 701. **... Appellant**

AND

PETROLEUM AND NATURAL GAS REGULATORY BOARD First Floor, World Trade Centre, Babar Road, New Delhi – 110 001. **... Respondent**

Counsel for the Appellant(s) : Mr. N. Venkataraman, Sr. Adv.
Mr. K.R. Sasi Prabhu,
Mr. R.S. Prabhu
Mr. Gaurav Mitra
Mr. Rajat Nair
Mr. Somiran Sharma
Mr. Vishnu Sharma
Mr. Rahul Worah
Ms. Deepali Dwivedi
Ms.Shruti srivastava

Counsel for the Respondent(s) :Mr. Anand K. Ganesan
Mr. Sumit Kishore
Ms. Aparna Vohra
Ms. Mandakini Ghosh
Ms. Sonali Malhotra for PNGRB.

J U D G M E N T

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

1. The Appellant is a company incorporated under the Companies Act, 1956 and engaged in the business of construction and operation of pipelines for the transportation of natural gas. The Appellant owns and operates a 1460 (One Thousand Four Hundred Sixty) kilometre long "common carrier" natural gas pipeline by the name "East-West Pipeline" ("**EWPL**") which runs from Gadimoga in Andhra Pradesh to Bharuch in Gujarat, traversing the States of Telangana, Karnataka and Maharashtra.

2. The Respondent is a statutory body constituted under the provisions of The Petroleum and Natural Gas Regulatory

Board Act, 2006 ("**PNGRB Act, 2006**") 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, in exercise of its powers under the PNGRB Act, 2006 has promulgated the Petroleum and Natural Gas Regulatory Board (Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010 (**"Capacity Regulations"**) which came to be notified on 07/06/2010.

4. In this appeal the Appellant has challenged declaration dated 10/7/2014 made by the Respondent of the Appellant's EWPL capacity for the period 1/4/2010 to 31/3/2011 at 85 MMSCMD and for the period 1/4/2011 to 31/3/2012 at 95 MMSCMD. The impugned declaration has been assailed on many grounds, but what appeals to us at the outset is the submission that there is a breach of principles of natural justice. Before we give reasons for this view of ours it is necessary to give gist of the facts.

5. The Respondent vide its letter dated 05/4/2010 called upon the Appellant to determine the capacity of the EWPL system and inform the same to the Respondent as per the provisions of the Capacity Regulations. In response, vide its letter dated 10/4/2010, the Appellant determined the capacity of the EWPL at 80 MMSCMD (on the basis of inlet pressure at 72 barg) for the Financial Year 2009 - 2010.

6. The Respondent in exercise of its powers under Regulation 2(d) of the Capacity Regulations constituted a pipeline Capacity Assessment Group (**"CAG"**) for determining the capacity of the Appellant's pipeline. The CAG conducted a detailed exercise and submitted its report to the Respondent on determination of the capacity of the Appellant's pipeline for Financial Year 2009 - 2010. The Respondent in principle approved the CAG report. It thereafter, webhosted the same report for the purpose of public consultation and vide public notice dated 11/5/2011 sought public comments on the CAG report from all interested stakeholders. The CAG report approved by the Respondent and webhosted for public comments determined the capacity at 85 MMSCMD for the Financial Year 2009 - 2010. According to the Appellant, pursuant to aforesaid webhosting comments received from stakeholders were considered and finally the capacity of EWPL for the Financial Year 2009 - 2010 was declared at 85 MMSCMD (on the basis of inlet pressure at 72 barg) vide declaration dated 02/11/2012. In this exercise there was a strict adherence to the principles of natural justice.

7. It is the Appellant's case that inlet pressure of gas has fallen from the Financial Year 2009 - 2010 level 72 barg to 50 barg by the end of the Financial Year 2010 – 2011 and lower than 40 barg by the end of Financial Year 2011-2012 which would require as mandated by the Capacity Regulations, a redetermination of the pipeline capacity since lower pressure equates to lower capacity. Regulation 5 of the Capacity Regulations, 2010 expressly lays down inlet pressure as one of the variable parameters to be considered for determination of capacity.

8. The Appellant vide its letter dated 14/8/2012 appraised the Respondent of the aforesaid changes in inlet pressure for the years 2010 to 2012 and requested the Respondent to reassess the EWPL in line with Regulation 5 and Regulation 7(1) (c) and 7(1) (d) of the Capacity Regulations, 2010. It is the Appellant's case that for the previous Financial Year 2009 - 2010, the Respondent had agreed with the data on inlet

pressure furnished by the Appellant in determination and declaration of capacity.

9. The Appellant contends that CAG Resolution dated 4/9/2012 specifically highlights pressure drop/entry point pressure limitations of source as a parameter to be applicable to all capacity assessments and while declaring the capacity for other pipelines namely GSPL and GAIL for the Financial Years 2008 to 2012, the aforesaid parameters, as applicable have been considered by the Respondent in determining and declaring the capacities for such pipelines.

10. The Appellant's grievance is that even though for the subsequent Financial Years 2010 - 2011 and 2011 - 2012, the Respondent constituted a CAG and the said group furnished its report to the Respondent, it was not webhosted. Stakeholders including particularly the Appellant were not privy to such report. There was no process of public consultation and deliberations to take into account the

comments of the stakeholders. No opportunity of personal hearing was given to the Appellant. According to the Appellant, the Respondent did not consider the representation of the Appellant dated 14/8/2012. It is further the case of the Appellant that the Respondent disregarded the reduction in inlet pressure and unilaterally approved the report of the CAG and declared the capacity at 85 MMSCMD and 95 MMSCMD for the Financial Years 2010 - 2011 and 2011 - 2012 vide impugned declaration dated 10/7/2014. A copy of the CAG report was filed in this Tribunal only during the pendency of this appeal.

11. We have heard Mr. N. Venkataraman, learned senior counsel appearing for the Appellant. He has reiterated the above contentions. Counsel submitted that the Respondent should have shared the CAG report with the stakeholders. Public deliberations should have been held and the Appellant should have been granted personal hearing. A personal hearing would have enabled the Appellant to highlight the factum of change in inlet pressure which had drastically

reduced for the subsequent financial years from its previous level of Financial Year of 2009 - 2010. Counsel also made a grievance that the impugned order is cryptic. It does not contain any reasoning for diverging from the Petroleum and Natural Gas Regulatory Board (Access Code for Common Carrier or Contract Carrier Natural Gas Pipelines) Regulations 2008 ("**Access Code Regulations, 2008**"), Capacity Regulations and the CAG's own Resolution dated 4/9/2012. Counsel submitted that though impugned order can be successfully assailed on merits, inasmuch as this is a gross case of violation of principles of natural justice the matter should be remanded to the Respondent with a direction to give a hearing to the Appellant and pass appropriate reasoned order. In support of his submissions, counsel relied on ***Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v. Shukla and Brothers***[1]***, Oil and Natural Gas Corporation Limited v. Western GECO International Limited***[2]***, Automotive Tyre Manufacturers Association v. Designated Authority &***

[1] **(2010) 4 SCC 785**
[2] **(2014) 9 SCC 263**

Others[3], State of Orissa v. Dr.(Miss) Binapani Dei & Others[4].

12. We have also heard Mr. Anand K. Ganesan learned counsel for the Respondent. Counsel has supported the impugned order.

13. We have been taken through the above mentioned judgments of the Supreme Court. We shall refer to some of them and in their light examine whether there is a breach of principles of natural justice in this case. We must make it clear however that the cited cases have different factual matrix. However, the principles can be made applicable to this case.

14. In ***Automotive Tyre Manufactures Association***, the Supreme Court explained the meaning and scope of "*audi alteram partem*" which is a fundamental maxim of natural

[3] **(2011) 2 SCC 258**
[4] **(1967) 2 SCR 625**

justice. The Supreme Court observed that this maxim has many facets, two of them being (a) notice of the case to be met and (b) opportunity to explain and this rule cannot be sacrificed at the altar of administrative convenience or celerity. Following observations can be profitably quoted:

> *"79. In Swadeshi Cotton Mills v. Union of India, R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, His Lodrship observed thus: (SCC p.666).*
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> *.....The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise".*
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> *"80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the*

party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application."

Thus, the Supreme Court made it clear that unless expressly excluded the principles of natural justice apply to administrative / quasi-judicial decisions which have adverse civil consequences.

15. In ***Dr. (Miss) Binapani Dei***, the Supreme Court was considering how the State should conduct an enquiry for the purpose of removing a holder of an office in its medical department before her superannuation "for good and sufficient reasons". The Supreme Court observed that basic rules of justice and fair play must be observed. Following observations of the Supreme Court need to be quoted:

"9.……The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of

judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences."

16. It was urged by the counsel for the Appellant that the impugned declaration is bereft of reasoning and hence violates the principles of natural justice. The Supreme Court has repeatedly said that an order which affects a party prejudicially must contain reasons because that person must know what persuaded the deciding authority to hold against him. He can then effectively challenge the said order. Reasons also make it easier for the Appellate Authority to understand the grievance of the aggrieved person and also to understand what prevailed upon the deciding authority to give such decision. This facilitates the Appellate Authority to give a just decision.

17. In ***Assistant Commissioner, Commercial Tax Department***, the Supreme Court again empahsised the importance of giving an opportunity of hearing to the person who is likely to be adversely affected by the action of any administrative or quasi judicial authority and also the importance of passing reasoned orders. Following observations of the Supreme Court are material:

> *"13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the Court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher Court in the event of challenge to that judgment. Now, we may refer to certain judgments of this Court*

as well as of the High Courts which have taken this view.

14. The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the Court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality. The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders."

18. The above judgments state that the principles of natural justice are applicable to statutory bodies or Tribunals irrespective of whether they exercise administrative or quasi-judicial powers. Unless expressly excluded, the principles of natural justice apply to administrative/quasi-judicial decisions, which have adverse civil consequences for a party. Essential attribute of the concept of "natural justice" is making

known to the person against whom an adverse order is likely to be passed the case against him and the material which is placed before the decision making authority which is likely to be taken into consideration by it while passing the order. Another attribute of equal importance is opportunity of hearing. Opportunity of hearing must be given to a person so that he can controvert or correct any evidence in possession of the decision making authority which may be used against him. Communication of a reasoned order to the person against whom the adverse order is passed is another attribute of "natural justice" concept.

19. We shall now revisit the facts of the instant case. For the Financial Year 2009 - 2010, before determining the capacity of the Appellant's pipeline, the Respondent constituted a CAG. The CAG conducted a detailed exercise and submitted its report to the Respondent. The Respondent webhosted the said report for the purpose of public consultation. Vide public notice dated 15/5/2011, public comments were sought on the

CAG report from all interested stakeholders. Comments received from stakeholders were considered and the capacity of EWPL of the Appellant for the Financial Year 2009 - 2010 was declared as 85 MMSCMD (on the basis of inlet pressure of 72 berg vide declaration dated 2/11/2012). The aforesaid procedure indicates that the principles of natural justice were followed while issuing declaration dated 2/11/2012.

20. As stated earlier, it is the Appellant's case that inlet pressure of gas had fallen from the Financial Year 2009 - 2010 level of 72 barg to 50 barg in the Financial Year 2010 - 2011 and lower than 40 barg in the Financial Year 2011 - 2012. It is the Appellant's case *inter alia* that as per the Capacity Regulations, such a situation necessitates a redetermination of the pipeline capacity and Regulation 5 of the Capacity Regulations expressly lays down inlet pressure as one of the variable parameters to be considered for determination of capacity. The Appellant, therefore, informed the Respondent about the changes in inlet pressure and requested the

Respondent to reassess the EWPL. Admittedly, the Respondent constituted a CAG for Financial Years 2010 - 2011 and 2011 - 2012. The CAG submitted its report. But the report was not webhosted. There was no public consultation and deliberations. The Appellant got no opportunity to offer its comments or views. In such circumstances, personal hearing should have been given to the Appellant. That opportunity was denied to the Appellant. The Respondent issued the impugned declaration which is cryptic. It is bereft of any reasoning. It refers to the report of the CAG and states that the Respondent has accepted it. Barring this, the declaration contains no reasons. It bears repetition to state that the CAG report was not webhosted. Its copy was not made available to the Appellant. We have already referred to the letter/representation dated 14/8/2012 sent by the Appellant to the Respondent. The Appellant had appraised the Respondent of the changes in the inlet pressure for the Financial Years 2010 - 2011 and 2011 - 2012. The Appellant had requested the Respondent to reassess the EWPL capacity in line with the Capacity Regulations. The said

letter/representation in detail stated the case of the Appellant. However, the impugned declaration does not state why the Appellant's case stated in the said representation is rejected. It is the case of the Appellant that for the previous Financial Year 2009 - 2010, the Respondent had agreed with the data on inlet pressure furnished by the Appellant in determination and declaration of capacity. In the peculiar circumstances, therefore, it was necessary for the Respondent to give reasons why it had not taken into consideration the data on inlet pressure submitted by the Appellant this time. If the Appellant's case based on Capacity Regulations, CAG Resolution dated 4/9/2012 and Access Code Regulations, 2008 did not appeal to the Respondent, it ought to have given reasons for the said view.

21. It is important to note that the Appellant has alleged that while declaring capacity of other pipelines namely GSPL and GAIL for the Financial Years 2008 – 2009 to 2011 - 2012, the parameters laid down by the CAG in its Resolution dated

4/9/2012 were considered by the Respondent. However, in the case of the Appellant, it had failed to do so. According to the Appellant, the Respondent has adopted a discriminatory approach. On the submissions of the Appellant on the merits of the case, we do not want to express any opinion. But in the circumstances of the case and given the nature of allegations made by the Appellant, we are of the opinion that the Respondent ought to have given brief but clear reasons while declaring the capacity of the Appellant's EPWL. That would have introduced transparency and clarity in the declaration and would have given assurance to the Appellant that the Respondent had applied its mind to the Appellant's case which the Appellant had set out in its representation.

22. It must, however, be clarified that personal hearing is only meant to give an opportunity to the Appellant to place its case before the Respondent. It cannot be converted into a suit or a judicial proceeding. As stated by the Supreme Court in ***Dr. (Miss) Binapani Dei*** the deciding authority here is not in

the position of a judge who is called upon to decide an action between conflicting parties. Strict compliance with the judicial procedure cannot be insisted upon. Similarly, the order passed by the Respondent need not provide reasons like a judgment (See ***Assistant Commissioner, Commercial Tax Department***). The order must briefly but clearly give an idea as to why the Appellant's case stated in its representation dated 14/8/2012 was not accepted by the Respondent. In the circumstances, we will have to set aside the impugned declaration and remand the matter to the Respondent with a direction that the Respondent should give a personal hearing to the Appellant and pass a reasoned order. Hence, the following order:

O R D E R

(a) The impugned declaration dated 10/7/2014 issued by the Respondent is set aside only on the ground that there is breach of principles of natural justice.

(b) The matter is remanded to the Respondent.

(c) The Respondent is directed to give a personal hearing to the Appellant and pass a reasoned order. The entire exercise should be completed within three months from the date of receipt of this order by the Respondent. Needless to say that the Appellant shall cooperate with the Respondent.

(d) It is made clear that this Tribunal has not expressed any opinion on the merits of the Appellant's case. Nothing said by us in this judgment should be treated as expression of our opinion on the merits of the Appellant's case.

(e) The Respondent shall pass order independently and in accordance with law.

23. The appeal is disposed of in the aforestated terms.

24. Pronounced in the Open Court on this **8th day of July, 2016.**

B.N. Talukdar
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]

√**REPORTABLE/~~NON-REPORTABALE~~**