

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

APPEAL NO. 218 OF 2016

Dated: 30th October, 2018

**Present: HON'BLE MR. B.N. TALUKDAR, TECHNICAL MEMBER (P&NG)
HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER**

IN THE MATTER OF

**Hindustan Petroleum Corporation Limited,
Rep. By Deputy General Manager – Pipelines,
Hindustan Bhawan,
No. 8, Shoorji Vallabhdas Marg,
Ballard Estate
Mumbai – 400 001**

.... Appellant

VERSUS

**1. Petroleum & Natural Gas Regulatory Board,
First Floor, World Trade Centre,
Babar Road,
New Delhi-11 0001**

**2. Bharat Petroleum Corporation Limited,
Bharat Bhawan,
No. 4 & 6, Currimbhoy Road,
Ballard Estate,
Mumbai – 400 0001**

.... Respondent(s)

Counsel for the Appellant ... Mr. Manu Seshadri
Mr. Samarth Chowdhary

Counsel for the Respondent(s)... Mr. Rajender Kaul for R-1
Mr. Rajat Navet for R-2

J U D G M E N T

PER HON'BLE MR. JUSTICE N.K. PATIL, JUDICIAL MEMBER

1. Hindustan Petroleum Corporation Limited, Mumbai (in short, '**Appellant**'), questioning the correctness of the impugned communication, being Ref. No. MI/Monitoring/LPG/MHMSPL/03 dated 31.03.2016, issued by Petroleum & Natural Gas Regulatory Board (in short, "**first Respondent**") rejecting the request of the Appellant to revise the termination point for Mangalore-Hassan-Mysore-Sollur LPG Pipeline (MHMSPL) from Sollur to Yedyuru and, thereby, forcing the Appellant to make futile investments in the said project without any surety and certainty about the requirements of the second Respondent, presented this Appeal.

2. **The Appellant has sought the following reliefs in the instant Appeal:**

- (a) set aside the impugned Decision dated 31/3/2016 in respect of extension of MHMSPL LPG Pipeline upto Sollur and direct the Respondent No.2 to revise the terminal point from Sollur to Yedyur;

- (b) direct Respondent No.2 to execute the offtake agreement for 0.120 MMT ex-Yedyur with Appellant;

- (c) direct Respondent No.2 to adequately compensate the Appellant for all expenses incurred a MHMSPL Pipeline which has been laid by the Appellant up to Yediyur without any change in pipeline size, diameter, amongst other factors;
- (d) pass such further or other orders as it may deem fit and proper in the facts and circumstances of the case and thus render justice.

3. We have heard learned counsel, Mr. Manu Seshadri, appearing for the Appellant, learned counsel, Mr. Rajender Kaul, appearing for the first Respondent and learned counsel, Mr. Rajat Navet, appearing for the second Respondent.

MR. MANU SESHADRI, LEARNED COUNSEL APPEARING FOR THE APPELLANT PRESENTED THE FOLLOWING SUBMISSIONS:

4. Learned counsel, Mr. Manu Seshadri, appearing for the Appellant, submitted that, he will confine the instant Appeal insofar it relates to prayer (a) sought of the instant Appeal only. Further, he submitted that, liberty may be reserved to the Appellant to take appropriate steps against Bharat

Petroleum Corporation Limited (in short, “**second Respondent**”) insofar it relates to prayers (b) & (c) of the Appeal in accordance with law.

5. It is the case of the Appellant that, it is engaged in the business of petroleum refining, marketing and sale of petroleum products as well as construction and operation and maintenance of pipelines supplying petroleum products. The Appellant was responsible for laying and building of MHMSPL with estimated length of about 396 KM.

6. Further, it is the case of the Appellant that, after numerous communications between the Appellant and the second Respondent regarding the requirements of second Respondent pertaining to the said line, the Appellant had requested the first Respondent to terminate the pipeline at Yediyur, direct the second Respondent to conclude a firm product offtake Agreement for the revised Sollur requirement of 120 TMTP, to extend MHMSPL project completion time by seven months which has been caused due to delay on the part of the second Respondent. Therefore, he submitted a detailed representation for seeking an appropriate direction and extension of time for 24 months for completion of the project, but, instead of passing an appropriate order, the impugned communicated has been communicated to the Appellant stating that the Board has decided that the said pipeline has to be laid up to

Sollur. Further, HPCL's (Appellant herein) request for time extension up to 24 months for MHMSPL has been accepted. Not being satisfied with the impugned communication, the Appellant felt necessitated to present this appeal seeking appropriate relief, as stated supra.

7. The bone of contention of learned counsel for the Appellant is that, the impugned decision of the first Respondent rejecting the request of the Appellant to change the termination point from Sollur to Yediyuru is non-speaking, perverse and unjustified decision and is grossly prejudicial to the Appellant.

8. Further, he submitted that, the first Respondent did not assign any reason for not considering the request of the Appellant to change the termination point from Sollur to Yediyuru. Therefore, the decision of the first Respondent is contrary to the PNGRB Act and Regulations framed thereunder in as much as the impugned decision promotes idling of the resources and infructuous investment. The impugned communication issued by the first Respondent is in total gross violation of the principles of natural justice. Therefore, the impugned decision issued by the first Respondent is liable to be set aside at threshold.

PER-CONTRA,

MR. RAJENDER KAUL, LEARNED COUNSEL APPEARING FOR THE FIRST RESPONDENT OFFERED THE FOLLOWING SUBMISSIONS:

9. Learned counsel, Mr. Rajender Kaul, appearing for the first Respondent, at the outset, submitted that, the impugned communication dated 31.03.2016 of the first Respondent, is neither an order nor a decision of the first Respondent as envisaged under the PNGRB Act. The said communication has been sought to be treated as impugned order of the first Respondent for the purpose of filing this appeal is a simpliciter administrative reply of the first Respondent Board to the issues raised by the Appellant in a review meeting held on 19.11.2015 which does not constitute an appealable order or decision under Section 33 of the PNGRB Act. The appeal, therefore, is grossly misdirected.

10. Further, learned counsel appearing for the first Respondent submitted that, when the matter came up for consideration before this Tribunal on 23.10.2018, this Tribunal has observed that, in order to obtain necessary instructions, the impugned communication may be treated as notice and the Appellant may be directed to file a comprehensive representation redressing its grievances within reasonable time. In the event, such representation is filed by the Appellant, the first Respondent will consider the same and, after affording reasonable opportunity of

hearing to the concerned parties, will pass an appropriate order in accordance with law.

MR. RAJAT NAVET, LEARNED COUNSEL APPEARING FOR SECOND RESPONDENT PRESENTED THE FOLLOWING SUBMISSIONS:

11. Learned counsel, Mr. Rajat Navet, appearing for the second Respondent, at the outset, submitted that, in the light of the submissions made by the learned counsel appearing for the Appellant during the course of hearing and the written submission filed by the Appellant stating that they are confining their appeal only in respect of prayer (a) of the appeal and, further, sought liberty to redress their grievances against prayers (b) & (c) in accordance with law, hence, the second Respondent is not a necessary party to be adjudicated in the matter before this Tribunal.

OUR CONSIDERATION:

12. After considering the submissions of the learned counsel for the Appellant and learned counsel for the Respondents, and after perusal of the impugned communication dated 31.03.2016, what has emerged is that, an authorised officer of the first Respondent has issued the impugned communication to the Appellant stating that the Board (first Respondent herein) has decided that the said pipeline has to be laid up to Sollur and the request of the Appellant for extension of time up to 24 months for MHMSPL has been accepted.

13. It is the specific case of the Appellant that, the first Respondent/PNGRB, vide its instant communication, has communicated its decision that 24 months time has been extended for completion of the project, which is without affording reasonable opportunity to the Appellant, and without assigning any cogent reason, has issued an ex-parte decision rejecting the request made by the Appellant for change of termination point from Shollur to Yedyuru. The said decision is grossly prejudicial to the interest of the Appellant and does not contain any reason or discussion. Therefore, the impugned communication is liable to be vitiated for non-compliance of the principles of natural justice.

14. It is significant to note that, after careful perusal of the impugned communication dated 31.03.2016, it is not passed for compliance of the principles of natural justice. Therefore, we do not propose to express any opinion on merits or demerits of the case. It would suffice this Tribunal that if an appropriate order is passed, it will meet the ends of justice and safeguard the interest of the Appellant as well as the first Respondent. Also after taking into consideration the fair submissions of learned counsel for the first Respondent, we are of the considered view that the impugned communication dated 31.03.2016 be treated as notice and the Appellant is directed to file a comprehensive detailed representation for redressing his

grievances within a period of four weeks from the date of the receipt of this Order. In the event, such comprehensive detailed representation is filed before the first Respondent, the first Respondent shall consider the same and pass an appropriate order in accordance with law after affording reasonable opportunity to the Appellant and the concerned respondents.

ORDER

For the forgoing reasons, as stated supra, the instant appeal filed by the Appellant stands disposed of with the following directions:

- (a) The impugned communication dated 31.03.2016, being Ref. No. MI/Monitoring/LPG/MHMSPL/03 issued by the first Respondent Board, be treated as Notice;
- (b) The Appellant herein is directed to file a comprehensive representation before the first Respondent redressing his grievances within a period of four weeks from the date of the receipt of the copy of this order;
- (c) First Respondent/PNGRB is directed to consider the comprehensive representation to be filed by the Appellant and pass an appropriate order in accordance with law after affording reasonable opportunity of hearing to the parties and

dispose of the matter as expeditiously as possible, at any rate, within a period of six months from the date of appearance of the parties;

- (d) The Appellant herein is directed to appear before the first Respondent/PNGRB with his comprehensive representation, personally or through his counsel without notice on **26.11.2018 at 11:00 AM.**

All the contentions of the Appellant and the Respondents are left open.

No costs.

PRONOUNCED IN THE OPEN COURT ON THIS 30TH DAY OF OCTOBER, 2018.

(Justice N.K. Patil)
Judicial Member

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

√ **REPORTABLE**

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