

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

I.A.No.41 of 2013
IN
Appeal No.25 of 2013

Dated: 22nd March,2013

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

In the Matter of:

M/S. Gujarat State Petronet Ltd
Udyog Bhavan, Block No.15
3rd Floor, Sector-11,
Gandhinagar-382 010

...Applicant/Appellant

Versus

Petroleum & Natural Gas Regulatory Board
1st Floor, World Trade Centre,
Babar Road,
New Delhi-110 001

.....Respondent(s)

Counsel for the Applicant(s) : Mr. C S Vaidyanathan, Sr Adv
Mr. Piyush Joshi,
Mr. Aspi Kapadia,
Ms. Nimisha Singh Dutta,
Ms. Sumiti Yadava
Ms. Simon Benjamin

Counsel for the Respondent(s): Mr. Saurav Aggarwal
Mr. Vipul Sharda
Mr. Rakesh Dewan

ORDER

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

1. Gujarat State Petronet Limited is the Applicant/Appellant.
2. Challenging the main order dated 11.9.2012 passed by the Petroleum and Natural Gas Regulatory Board; the Appellant/Applicant has filed the Appeal. This Appeal was admitted on 28.1.2013.
3. During the pendency of the Appeal, the Appellant has sought for the interim order for staying the operation of Para 8.3 of the Impugned Tariff Order till the disposal of this Appeal.
4. On this application notice was issued to the Petroleum Board, the Respondent. The Respondent Board filed a reply stoutly opposing the grant of stay.
5. In response to the reply, the Applicant/Appellant filed a detailed rejoinder giving the ground for grant of interim order of stay of the operation of Para 8.3 of the impugned tariff order.

6. We have heard the learned Senior Counsel for the Appellant as well as the learned Counsel for the Respondent, Board. We have also carefully considered the respective submissions made by the parties.

7. The portion which is sought to be stayed is contained in Para 8.3 of the impugned order dated 11.9.2012. The same is as follows:

“8.3 GSPL shall have to return the cost of entire System Use Gas (SUG) including unaccounted gas to the shippers/consumer from 20.11.2008 onwards and similarly also withdraw separate recovery either in cash or in kind with immediate effect”.

8. This portion of the impugned order in Para 8.3 contained two parts:

(a) The Appellant is directed to return the cost of the entire System Use Gas (SUG) including unaccounted gas to the shippers/consumers from 20.11.2008 onwards and;

(b) The Appellant is directed to withdraw separate recovery either in cash or in kind with immediate effect.

9. According to the learned Senior Counsel for the Appellant, both the above directions (i.e. para 8(a) and 8(b) above) are in violation of the Act and applicable Rules which

cannot be implemented during the pendency of the Appeal and, therefore, the entire portion of the Para 8.3 of the impugned order is to be stayed.

10. On the other hand, the learned counsel appearing for the Board strenuously contended that both the directions given in Para 8.3 of the impugned order are perfectly in accordance with PNGRB Act as well as Regulations and other applicable laws and that therefore, the operation of this order may not be stayed.
11. After going through the Application seeking for the stay, Reply filed by the Board, the Rejoinder filed by the Applicant and after hearing the parties, we are of the view that operation of the first part (para 8(a) above) can be stayed during the pendency of the Appeal since the Appellant has been directed to return the cost of the entire System Use Gas (SUG) and unaccounted gas to the shippers/consumers from 20.11.2008 onwards by giving the effect of retrospectivity especially when in the connected Appeal in Appeal No.222 of 2012 in IA No.364 of 2012 , filed by the Reliance Industries, we have already granted stay of the retrospective effect given in same impugned order. Accordingly, we grant the stay to the operation of the First part (i.e. para 8 (a) above).

12. With reference to the Second Part(i.e. para 8(b) above) giving the direction to the Appellant to withdraw the separate recovery either in cash or in kind, the learned Senior Counsel vehemently argued that if this is not stayed, there would be huge economic loss to the Appellant and therefore, the operation of the said portion also has to be stayed. The Learned counsel for the Respondent Board has with equal vehemence contended that the stay of the Second Part would cause some serious consequences with respect to determination of tariff.
13. Taking into consideration of this strong objection for the grant of stay with regard to Second Part, we are not inclined to grant the stay of the Second Part, mainly on the reason that we do not want to interfere with merits of the matter with reference to determination of tariff at this stage.
14. However, in view of the vehemence with which the learned Senior Counsel has argued seeking for the interim stay we deem it fit to fix an early date for disposal of the main Appeal itself.
15. Accordingly, we post the matter for disposal of the Appeal on 10.4.2013. In the meantime, pleadings be completed.

16. With these observations, the stay application is disposed of.

(Nayan Mani Borah)
Technical Member(P&G)

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:22nd March,2013

√REPORTABLE/~~NON-REPORTABLE~~