

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI

(APPELLATE JURISDICTION)

**IA NO. 2254 OF 2019 IN APPEAL NO. 39 OF 2017 &
IA NO. 704 OF 2021**

Dated: 16th July, 2021

**Present: Hon'ble Mrs. Justice Manjula Chellur, Judicial Member
Hon'ble Dr. Ashutosh Karnatak, Technical Member
(P&NG)**

In the matter of:

Pipeline Infrastructure Limited

Through its Authorised Signatory

Registered Office at Reliance

Corporate Park, Building No. 7, B-Wing

Second Floor, Ghansoli, Navi Mumbai – 400 701

.... **Appellants**

Versus

Petroleum & Natural Gas Regulatory Board

1st Floor, World Trade Center

Babar Lane, Barakhambha Road

New Delhi – 110 001

.... **Respondents**

Counsel for the Appellant (s):

Mr. Ramji Srinivasan, Sr. Adv.

Mr. K. R. Sasiprabhu

Mr. Vishnu Sharma

Mr. Adit Singh

Ms. Rajshree

Counsel for the Respondent (s):

Mr. Buddy Ranganathan

Mr. Rahul Sagar Sahay

Ms. Pinki Mehra

Ms. Shipra Malhotra

Mr. Mohit Budhiraja

ORDER

PER HON'BLE DR. ASHUTOSH KARNATAK, TECHNICAL MEMBER

1. This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing. Sr. Advocate Mr. Ramji Srinivasan learned counsel for the Appellant and Mr Buddy Ranaganathan learned counsel from Respondent were present.

2. The present IA has been filed by Pipeline Infrastructure Limited ('**PIL**') alleging non-compliance of the Judgment of this Tribunal dated 15.11.2019 by the Petroleum and Natural Gas Regulatory Board ('**the Board**') in the Appeal which was filed under Section 33 of the PNGRB Act 2006 impugning the declaration of capacity by the Respondent Board of the East-West Pipeline ('**EWPL**') of the Appellant vide its order dated 30th December, 2016. Vide the aforesaid impugned order the Respondent has declared the capacity for the Appellant's Pipeline at 85 MMSCMD for the Financial year ('**FY**') 2010-11 and 95 MMSCMD for the Financial year 2011-12.

3. Vide Order dated 27.02.2019 in the present appeal, this Hon'ble Tribunal recorded the submissions made on behalf of Respondent-Board "***On instructions, learned counsel for Respondent-Board submits that by 31.12.2019 the Board will try to take a decision with regard to declaration of capacity of the pipeline in question for the years from 2012-2013 to 2017-2018***"

4. Further, this Hon'ble Tribunal, vide its final Order and Judgment dated 15.11.2019, directed "***The Board is directed to consider the change in the operating parameters, viz., inlet pressure etc., while declaring the capacity of the pipeline for the years 2010-11 and 2011-12 and declare the capacities within 03 (three) months from the date of this order. However, this is an unusual situation calling for a special approach to solve the issue. This order, therefore, should not be cited as a precedent in future.***"

5. Vide Order dated 04.12.2020 this Tribunal took note of the disregard of the Respondent Board in complying with the Orders dated 27.02.2019 and 15.11.2019 and issued notice to the Respondent Board to show cause as to why no action should be

taken against them for defying the directions passed by the Tribunal in Appeal No. 39 of 2017.

6. Subsequently the Board filed the compliance affidavit dated 07.12.2020 comprehensively describing its position regarding the steps taken by the Board for declaration of capacity for EWPL. That thereupon vide Order dated 07.12.2020, the Hon'ble Tribunal directed the Board to direct EIL to finalize the report and place it before this Hon'ble Tribunal within 7 days. The Respondent Board was further directed to place on record the best course of action to purge the contempt which had been indicated in the previous Order dated 04.12.2020 by this Tribunal.

7. Thereafter, the Board filed an affidavit dated 16.12.2020 placing on record the report of EIL for capacity determination for the years 2012-13 to 2018-19. It was stated that the EIL has followed the methodology provided in the Petroleum and Natural Gas Regulatory Board (Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline Regulations, 2010) (**'the Capacity Regulations'**). Vide Order dated 18.12.2020 this Tribunal recorded the submissions made by the Respond-

ent Board that EIL, which had determined the capacities for EWPL for FY 2012-13 onwards, would be assigned the work to determine the capacities for FY 2010-11 & FY 2011-12.

8. The Respondent Board submitted its affidavit dated 18.01.2021 along with the report of EIL for capacity determination for FY 2010-11 & FY 2011-12. The Appellant filed its reply/objections dated 19.02.2021 to the affidavits dated 16.12.2020 and 18.01.2021 of the Respondent Board. The Respondent Board filed its rejoinder affidavit on 08.04.2021 and the Appellant filed its affidavit in sur-rejoinder to rejoinder affidavit of the Respondent Board dated 29.04.2021. Vide its reply dated 08.04.2021, PNGRB submitted that the EIL Reports for capacity determination for the years 2010-11 to 2011-12 and 2012-13 to 2018-19 are yet to be approved/ accepted by the Board which could only be done when requisite quorum is available.
9. The matter finally came up for consideration on 11.06.2021 & 15.06.2021 where both parties argued at length. The Appellant advanced submissions on the grounds that the scope of work awarded by the Respondent Board was erroneous and did not

contain any reference to the factual background or any cogent guidelines as per the Capacity Regulations.

10. The Appellant argued that the determination of capacity was erroneous in that arbitrary values were considered for the inlet pressure, there was erroneous consideration of parameters with respect to compressor configuration at compressor stations. The Appellant highlighted that this was in direct contradiction to the order of this Tribunal dated 15.11.2019 wherein there was a specific direction to consider changes in inlet pressure for EWPL and that it was untenable to argue that this Tribunal's Order dated 15.11.2019 did not apply for capacity determination exercise for the years post FY 2010-11 & FY 2011-12. The Respondent Board refuted the submissions made by the Appellant.

11. We have heard the arguments of both the Parties i.e PIL(Appellant) and PNGRB (Respondent) at length. After due consideration of the submissions raised by both the parties, it is abundantly clear that the Respondent Board has not yet completed the exercise in terms of its own undertaking dated 27.02.2019 and the directions issued by this Tribunal in its

Judgment dated 15.11.2019. That even after issuing specific time-bound directions to the Respondent Board, the capacities for EWPL are still not declared, that too from FY 2010-11 onwards till date, that is even after a lapse of more than 10 years. During the final arguments it was submitted by the counsel of the Respondent that order of the Tribunal was complied for 2010-11 & 2011-12 and understandably not taken into account beyond FY 2011-12. It is surprising to note that when pressure condition was not changed why the same was not considered beyond that period. It was also informed by Appellant that during FY 2010-11 & FY 2011-12 the configuration of compressors at CS-01 has been taken as 2 plus 1, i.e. two in operation and one in standby whereas beyond that the same configuration seems not to be taken.

12. Further, this Tribunal has taken a serious note about a non-declaration of capacity within a specified time by the regulator which can have impact on tariff determination as well as open access obligations.

ORDER

13. Having regard to the factual and legal aspects of the matter as stated above, we are of the considered opinion to remit the matter back to PNGRB with the following directions :

- (i) The Respondent Board shall, at the latest, within 03 (three) months of the requisite quorum being available, will declare the capacity of the Appellant's EWPL from FY 2010-11 till the year EIL has submitted the report including all operation parameters.
- (ii) The Respondent Board in declaring the aforesaid capacities shall take into account the objections raised by the Appellant in the present appeal to the EIL reports. The EIL report to be shared with the Appellant, and due opportunity to be given to Appellant to submit their view on the report.
- (iii) In view of the fact that this Tribunal has already laid down vide its Order dated 15.11.2019 the parameters to be abided by in the capacity determination exercise premised on the relevant regulations, the same would be applicable across the Board to declaration of capacities for all years and not limited to FY 2010-11 & FY 2011-12 only.

- (iv) The Respondent Board to ensure to follow strict timelines and declare on an expeditious basis the capacity for EWPL not only for FY 2010-11 but also subsequently.
- (v) Till that time PNGRB is directed to use 85 MMSMD, as it appears in the acceptance to the central government's authorization letter issued by the Board, for Tariff determination of the pipeline.

Further, it may be noted that the regulator is responsible for the speeding up of Govt. of India Vision on Gas economy, thus it is necessary to have infrastructure laid as per schedule. Further safe operation is also equally essential for the hydrocarbon sector. Therefore it is directed that:-

- 1) An explanation for the delay in deciding this case to be filed as an affidavit.
- 2) PNGRB to develop a governance SOP to deal with disputes i.e. processing processes in line with article 24 & 25 of the act along with the benchmark timelines. The same may be submitted to the Tribunal through an affidavit.

- 3) A six-monthly report on an affidavit to be submitted to the tribunal on the status of all cases covered on point no. 2, pending more than three months.
- 4) PNGRB to file an affidavit every six months on status of all infrastructure projects including CGDs under the preview of PNGRB including catch up plan.
- 5) Ensuring safety is essential in hydrocarbon sector. PNGRB to issue guidelines to have a review mechanism at the board level ensuring safety & security (Including cyber security).

The Appeal is disposed off in accordance of above direction including the IA's.

Registry to send a copy of the Judgement to Secretary MoPNG, for their information and action deemed fit.

PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING ON THIS 16TH DAY OF JULY, 2021.

(Dr. Ashutosh Karnatak)
Technical Member

(Justice Manjula Chellur)
Chairperson