

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY (APPELLATE
JURISDICTION)**

**COURT-II
(P&NG – BENCH)**

**APPEAL NO. 172 OF 2015 & IA NO. 283 OF 2015
APPEAL NO. 227 OF 2015 & IA NO. 373 OF 2015**

Dated: 24th February, 2021

**Present: Hon'ble Mr. Justice R.K. Gauba, Judicial Member
Hon'ble Dr. Ashutosh Karnatak, Technical Member (P&NG)**

APPEAL NO. 172 OF 2015 & IA NO. 283 OF 2015

In the matter of :

**Bharat Petroleum Corporation Ltd.
Bharat Bhavan
4 & 6, Currimbhoy Road,
Ballard Estate, P.B. No. 688
Mumbai – 400 001**

... Appellant(s)

Versus

**1. Sabarmati Gas Ltd.
Plot No. 907, Sector – 21
Gandhi Nagar – 382021
Gujarat**

...Respondent No.1

**2. GAIL (India) Limited
16, Bhikaji Cama Place,
New Delhi – 110 066**

...Respondent No.2

**3. Petroleum & Natural Gas Regulatory Board
1st Floor, World Trade Centre,**

**Babar Road,
New Delhi – 110 001
Through its Secretary**

...Respondent No.3

Counsel for the Appellant(s) :

Mr. Rajat Navet

Counsel for the Respondent(s) :

**Mr. Piyush Joshi
Ms. Sumiti Yadava
Mr. Abhishek Prakash
Ms. Manali Joshi for R-1**

**Mr. Sachhin Puri, Sr. Adv
Mr. Sandeep Mahapatra
Mr. Dhananjay Grover for R-2**

Ms. Sonali Malhotra for PNGRB

APPEAL NO. 227 OF 2015 & IA NO. 373 OF 2015

In the matter of :

**GAIL (India) Limited
16, Bhikaji Cama Place,
New Delhi – 110 066**

... Appellant(s)

Versus

**1. Sabarmati Gas Ltd.
Plot No. 907, Sector – 21
Gandhi Nagar – 382021
Gujarat**

...Respondent No.1

**2. Petroleum & Natural Gas Regulatory Board
1st Floor, World Trade Centre,
Babar Road,
New Delhi – 110 001
Through its Secretary**

...Respondent No.2

GAIL (India) Ltd.

... Appellant(s)

Vs.

Sabarmati Gas Ltd. & Anr.

... Respondent(s)

Counsel for the Appellant(s) :

**Mr. Sachhin Puri, Sr. Adv
Mr. Sandeep Mahapatra
Mr. Dhananjay Grover**

Counsel for the Respondent(s) :

**Mr. Piyush Joshi
Ms. Sumiti Yadava
Mr. Abhishek Prakash
Ms. Manali Joshi for R-1**

Ms. Sonali Malhotra for PNGRB

ORDER

PER HON'BLE MR. JUSTICE R.K. GAUBA, JUDICIAL MEMBER (ORAL)

1. This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.
2. This batch of two appeals challenges the same order of Petroleum and Natural Gas Regulatory Board (PNGRB). On 10.02.2021, we had recorded the following order:

"1. These matters have been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold the physical hearing.

2. These appeals challenge the decision of the respondent Petroleum and Natural Gas Regulatory Board rendered on

23.06.2015 in case no. 123 of 2015 presented by respondent Sabarmati Gas Limited (SGL) in the wake of directions/observations in para 29 of the judgment of this Tribunal passed on 28.11.2014 in appeal No. 14 of 2014.

- 3. The prayer made by the respondent SGL in the said petition was for specific tariff for 500-meter connectivity from PLL Dahej Terminal to GSPL-GAIL delivery point to be re-worked separate from the tariff for DVPL and DVPL upgradation. It appears that the respondent board found by the impugned order that the petition of SGL was premature, it being not possible to grant the relief that had been prayed for till the subject-matter came within the purview of statutory provisions/regulations. The petition was accordingly dismissed by the board by the impugned order.*
- 4. The challenge by the appeals at hand (presented by the parties which were Respondents before the Board), however, is to the correctness and propriety of some of the observations/conclusions/declarations in the decision which are perceived by the appellants to be unfair and adverse to their interests and in the teeth of decisions already rendered by this tribunal in earlier round of appeal, though the same have not resulted in any relief being granted against them.*
- 5. In above facts and circumstances, the question of maintainability of these appeals arose. It was expressed by*

the learned counsel for each of these appellants that the questioned observations/conclusions/declarations may possibly be abused adverse to their legitimate interests and, therefore, the appeals have been presented to seek suitable correction. The learned counsel, however, fairly conceded that if it were to be recorded that the said questioned observations/conclusions/declarations are not to be treated as final, conclusive or binding, it being open to all parties to re-agitate the matter(s) before the board in future proceedings, as and when the occasion arises, and the board being bound to render decision in such proceedings as may be taken out hereafter, uninfluenced by such observations/ conclusions/declarations in the order under challenge, these appeals would not require to be pressed for any further directions.

6. *Having regard to the final result of the proceedings before the Board in which impugned order was rendered, for allaying doubts, if any, persisting, we are inclined to record clarification to the above effect. After all, the dismissal of the petition by the Board has not been challenged by the Respondent SGL which had instituted the case. The remedy of appeal is not to be allowed only for academic issues. Whether or not the decisions rendered in earlier round operate as res judicata will have to be considered as and when the issues come up for fresh consideration. In this view, the Board would undoubtedly be obliged to hear the*

parties and take a decision as per law. Of course, the parties would be present at such stage to assist so that no errors in fact or law occur. The issues revolving around the questioned observations/conclusions/declarations in the impugned order thus would have to be kept open.

7. The learned counsel on all sides sought time to seek further instructions from the respective parties they represent.”

3. The learned counsel for the Appellants in these matters as well as the learned counsel for the contesting party i.e. Sabarmati Gas Limited (SGL), which was the complainant before the PNGRB in the proceedings in which the impugned order was passed, submit, upon instructions from the respective parties they represent, that they are agreeable to the disposal of these appeals with clarifications as indicated in the proceedings recorded on 10.02.2021. The learned counsel representing PNGRB, on the other hand, submitted that she has been instructed to say that the Board shall abide by whatever directions are passed by this Tribunal in these appeals.
4. With consent of all sides, and for clarity in future, we direct that the observations/conclusions/declarations recorded in the impugned order dated 23.06.2015 in case No. 123 of 2015, which petition was found premature and consequently dismissed by the Board, will not be treated as final or binding on the parties. The issues raised in the proceedings before the Board in which the impugned order was passed are kept open and the parties will be entitled to raise their

respective contentions thereupon in such proceedings as may be taken out in future having a bearing on the said issues. The issue as to whether decisions rendered in earlier round operate as *res judicata* will have to be considered as and when such contention comes up for fresh consideration. The PNGRB, we are confident, will be properly assisted and will take appropriate decision at such stage in accordance with law.

5. With these observations, we dispose of both these appeals, and the pending applications, as not pressed.

(Dr. Ashutosh Karnatak)
Technical Member (P&NG)
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(Justice R.K. Gauba)
Judicial Member