IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI

(APPELLATE JURISDICTION – P&NG)

APPEAL NO. 152 OF 2020 &
IA NOS. 1032, 1033 OF 2020 & IA NOS. 397, 398 & 431 OF 2021,

APPEAL NO. 153 OF 2020 &
IA NOS. 1035, 1036 OF 2020 & IA NOS. 399, 400 & 435 OF 2021,

APPEAL NO. 161 OF 2020 &
IA NOS. 1158 & 1159 OF 2020,

APPEAL NO. 236 OF 2020 &
IA NOS. 1791 & 1724 OF 2020

AND

APPEAL NO. 6 OF 2021 &
IA NO. 1798 OF 2020

Dated: 07th July 2021

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

APPEAL NO. 152 OF 2020 &
IA NOS. 1032, 1033 OF 2020 & IA NOS. 397, 398 & 431 OF 2021
&
APPEAL NO. 153 OF 2020 &
IA NOS. 1035, 1036 OF 2020 & IA NOS. 399, 400 & 435 OF 2021

In the matter of:

M/s GAIL (INDIA) LIMITED
[Through its Director]
Having its registered Office at
16, Bhikaji Cama Place,
R.K. Puram
New Delhi-110016 … Appellant

VERSUS

1. PETROLEUM & NATURAL GAS REGULATORY BOARD
[Through its Secretary]
1st Floor, World Trade Centre
Babar Road,
New Delhi- 110001

2. GUJARAT GAS LIMITED
[Through its Managing Director]
Gujarat Gas CNG Station, Sector 5-C,
Gandhinagar-3820006
Gujarat … Respondents

Counsel for the Appellant(s) : Mr. Sacchin Puri, Senior Adv.
Mr. *Prashant* Bezboruah
Mr. Kamil Khan

Counsel for the Respondent(s): Mr. S.C. Batra
Mr. Utkarsh Sharma
Mr. Mohit Budhiraja
Ms. Pinki Mehra
Ms. Shipra Malhotra for R-1

Mr. Ramji Srinivaasan, Sr. Adv.
Mr. Piyush Joshi
Ms. Sumiti Yadava
Ms. Meghna Sengupta
Ms. Parminder Kaur
Mr. Shivkrit Rai for R-2

APPEAL NO. 161 OF 2020 &
IA NOS. 1158 & 1159 OF 2020

In the matter of:

BHARAT PETROLEUM CORPORATION LTD.
[Through its Authorized signatory]
Bharat Bhawan,
No. 4 & 6, Currimbhoy Road,
Ballard Estate,
Mumbai -400001 … Appellant

VERSUS

PETROLEUM & NATURAL GAS REGULATORY BOARD
[Through its Secretary]
1st Floor, World Trade Centre
Babar Road,
New Delhi- 110001 ... Respondent

Counsel for the Appellant(s) : Mr. Rajat Navet
Mr. Prashant Bezboruah

Counsel for the Respondent(s): Mr. Paras Kuhad, Sr. Adv.
Ms. Sonali Malhotra
Mr. Mohit Budhiraja
Ms. Pinki Mehra
Ms. Shipra Malhotra

APPEAL NO. 236 OF 2020 &
IA NOS. 1791 & 1724 OF 2020

In the matter of:

M/s SANWARIYA GAS LIMITED
[Formerly Known as M/s Saumya DSM Infratech Limited]
[Through its Director], Having its registered Office at:
D-80, Sector – 50,
NOIDA – 201301
Uttar Pradesh … Appellant

VERSUS

1. PETROLEUM & NATURAL GAS REGULATORY BOARD
[Through its Secretary]
1st Floor, World Trade Centre
Babar Road,
New Delhi- 110001

2. GAIL GAS LIMITED
[Through its CEO]
3rd Floor, Infohub Building,
GAIL Jubilee Tower,
B- 35 & 36, Sector -1,
NOIDA -201301
Uttar Pradesh

3. INDIAN OIL CORPORATION LIMITED (IOCL)
[Through its authorised representative]
Indian Oil Bhavan, Northern Regional Office,
1, Sri Aurobindo Marg,
Yusuf Sarai,
New Delhi 110016 …
Respondents

Counsel for the Appellant(s) : Mr. Shiv Kumar Pandey
Mr. Awanish Kumar
Mr. Chandrashekhar Chaklabbi
Mr. Anshul Rai

Counsel for the Respondent(s): Mr. Rahul Sagar Sahay
Ms. Pinki Mehra
Mr. Mohit Budhiraja
Ms. Shipra Malhotra for R-1

Mr. Ajit Pudussery for R-2

APPEAL NO. 6 OF 2021 &
IA NO. 1798 OF 2020

In the matter of:

M/s MAHARASHTRA NATURAL GAS LIMITED
[Through Mr.Sujit Ruikar, General Manager (Marketing)]
Registered Office at:
Plot No.27, "A" Block, 1st Floor,
PMPML Commercial Building,
Near P.M.T. Bus Depot,
Narveer Tanajiwadi,
Shivajinagar, Pune-411005 … Appellant

VERSUS

1. PETROLEUM & NATURAL GAS REGULATORY BOARD
[Through its Secretary]
1st Floor, World Trade Centre
Babar Road,
New Delhi- 110001

2. MAHESH GAS LIMITED
[Through Director]
C-27, Sai Chowk, Madhu Vihar, I.P.Extn,
New Delhi-110092 ...
Respondents

Counsel for the Appellant(s) : Mr. Sacchin Puri, Sr. Adv.
Mr. Kamil Khan
Mr. Rohit Jha

Counsel for the Respondent(s): Mr. Paras Kuhad, Sr. Adv.
Mr Utkarsh Sharma
Mr. Jitin Chaturvedi
Mr. Manu Aggarwal
Ms. Pinki Mehra
Mr. Mohit Budhiraja
Ms. Shipra Malhotra for R-1

Mr. Rishi Agrawala
Mr. Karan Luthra
Ms. Megha Bengani for R-2

J U D G M E N T

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

1. In these appeals common question of law as to the permissibility, legality or propriety of proceedings held, or orders passed, by the Petroleum and Natural Gas Regulatory Board (hereinafter referred to variously as “PNGRB” or “the Board) – established under the Petroleum and Natural Gas Regulatory Board Act, 2006 (for short, “the PNGRB Act”) - in absence of, or without the inclusion in the composition (of the Bench), a Member (Legal) has arisen for consideration. In addition, the issue of validity of action taken in absence of quorum prescribed by regulations governing the conduct

of business also needs to be addressed in each appeal. These questions have come up in the context of various orders passed in the name of PNGRB by some (of its) members against the backdrop of factual matrix that differs from case to case.

2. It is not in dispute that on the date(s) on which the impugned orders were passed, or the proceedings leading to such orders were held, the position of Member (Legal) in PNGRB was vacant. In fact, it is conceded that since 19.03.2020, with the retirement of the then incumbent Mr. S.S. Chahar, the Board has been functional without a Member (Legal), the Chairperson (Mr. D.K. Sarraf) having since demitted office on 03.12.2020, only one member (Mr. Satpal Garg) being presently in office (he also being due to retire on 14.08.2021), the other positions being unfilled, the oldest vacancy having occurred on 15.08.2017 due to retirement of Mr. Basudev Mohanty (Member) besides one on 18.05.2020 due to retirement of Mr. S. Rath, Member (I&T). It is stated by the Secretary to the Board, by her affidavits submitted on 11.05.2021 and 05.07.2021, that the process of appointments against existing vacancies is under way, reference being made to advertisement calling for applications having been issued on 29.01.2017 followed by advertisements dated 29.02.2020, 07.11.2020, 01.08.2020 and 16.01.2021.

3. The broad argument of the learned counsel for PNGRB resisting these appeals is that the proceedings under the PNGRB Act which mandatorily require the presence of Member (Legal) are only those that pertain to settlement of disputes between entities *inter se* or between an entity and another person with respect to matters specified in Section 24(2), the jurisdiction of Board in that regard being the one which was exercisable by civil court prior to enactment of the PNGRB Act. It is submitted that no other proceedings of the

Board, including those under Sections 15, 17, 19, 20, 23 and 25 of the Act, contain any such requirement explicitly or by implication. The Board contends that the rule on quorum specified in the Regulations has not vitiated any of the orders impugned in these appeals.

4. It may also be noted here that additional issues, *inter alia*, arising out of specific facts of each case and those concerning the merits of complaints required to be considered by the Board for appropriate orders as per law - including for interim reliefs – in two of these appeals (Appeal nos. 152-153 of 2020) on the strength primarily of an order passed on 26.08.2020 by the High Court of Delhi in Writ Petition (Civil) no. 1629 of 2021 are also pressed before us.

REGULATORY REGIME - OVERVIEW

5. It would be advantageous to take note of the regulatory law governing the business in sector of petroleum and natural gas before coming in grips with the legal issues raised here.
6. The PNGRB Act was enacted by Parliament for the establishment of the PNGRB (or the Board) to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas so as to protect the interests of the consumers and entities engaged in such activities relating to petroleum, petroleum products and natural gas.
7. The establishment of PNGRB was notified by Gazette Notification dated 31st March, 2006. The legislation empowers the Board to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas

and to promote competitive markets and for matters connected therewith or incidental thereto. Further, the Board is also tasked with the responsibility 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 ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country.

8. The subjects of establishment of the Board, its status, nature and composition are covered by Section 3 which reads as under:

> *3. Establishment and incorporation of the Board :-*
>
> *(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Board to be called the Petroleum and Natural Gas Regulatory Board.*
> *(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, issue or be issued.*
> *(3) The Board shall consist of a Chairperson, a Member (Legal) and three other members to be appointed by the Central Government.*
> *(4) The head office of the Board shall be at New Delhi and regional offices at such places as the Board may deem necessary having regard to public interest and magnitude of the work.*

9. The legislation, by Section 2(f) makes it clear that all references to the "*Board*" shall mean the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3. It is conceived as a body corporate which is to continue to exist in perpetuity. The

composition is plural it compulsorily including, besides the Chairperson, a Member (Legal), in addition to three others drawn from amongst those possessing domain knowledge ("*petroleum and natural gas industry, management, finance, law, administration or consumer affairs*"), the qualifications having been prescribed by Section 4. Noticeably, it is specified in law that the person chosen to occupy the position of Member (Legal) must be one who is either qualified to be a judge of a High Court or has been a member of the Indian Legal Service with prescribed minimum service.

10. The PNGRB Act, by virtue of various provisions, vests the Board with the power to regulate petroleum, petroleum products, and natural gas, including the power to promote competitive markets. The scheme of, and detailed provisions contained in, the statute unmistakably show that the intention of the legislature is to empower and enable the PNGRB to deal with every issue arising in the sector, including those pertaining to anti-competitive activities.

11. The third chapter of PNGRB Act delineates the functions and powers of the Board. Section 11 reads thus:

> *11. Functions of the Board :-*
>
> *The Board shall-*
> *(a) protect the interest of consumers by fostering fair trade and competition amongst the entities;*
> *(b) register entities to-*
> *(i) market notified petroleum and petroleum products and, subject to the contractual obligations of the Central Government, natural gas;*
> *(ii) establish and operate liquefied natural gas terminals;*
> *(iii) establish storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations;*
> *(c) authorise entities to-*

(i) lay, build, operate or expand a common carrier or contract carrier;

(ii) lay, build, operate or expand city or local natural gas distribution network;

(d) declare pipelines as common carrier or contract carrier;

(e) regulate, by regulations,-

(i) access to common carrier or contract carrier so as to ensure fair trade and competition amongst entities and for that purpose specify pipeline access code;

(ii) transportation rates for common carrier or contract carrier;

(iii) access to city or local natural gas distribution network so as to ensure fair trade and competition amongst entities as per pipeline access code;

(f) in respect of notified petroleum, petroleum products and natural gas-

(i) ensure adequate availability;

(ii) ensure display of information about the maximum retail prices fixed by the entity for consumers at retail outlets;

(iii) monitor prices and take corrective measures to prevent restrictive trade practice by the entities;

(iv) secure equitable distribution for petroleum and petroleum products;

(v) provide, by regulations, and enforce, retail service obligations for retail outlets and marketing service obligations for entities;

(vi)monitor transportation rates and take corrective action to prevent restrictive trade practice by the entities;

(g) levy fees and other charges as determined by regulations;

(h) maintain a data bank of information on activities relating to petroleum, petroleum products and natural gas;

(i) lay down, by regulations, the technical standards and specifications including safety standards in activities relating to petroleum, petroleum products and natural gas, including the construction and operation of pipeline and infrastructure projects related to downstream petroleum and natural gas sector;

(j) perform such other functions as may be entrusted to it by the Central Government to carry out the provisions of this Act.

12. There is general consensus amongst learned counsel for the parties that various types of powers vested in the Board may be broadly classified to be in the nature of “administrative”, “ministerial”, “legislative”, “Regulatory” and “Adjudicatory”, each at times mutually exclusive and yet complementary to the other. It is well settled that the regulations framed in exercise of statutory powers - the legislative role - have the force of law.

13. The regulatory and administrative functions seem to have some overlap. A separate chapter (no. IV) is devoted to the subjects of “*Registration* and *Authorisation*”, comprising of Sections 14 to 23. The provision contained in Section 15 sets out the detailed procedure for *Registration of entities* while Section 19 prescribes the broad contours of the process for *Grant of authorisation* – in exercise of regulatory control, it beginning with submission of application in accordance with Section 17. Some of the other provisions falling in same chapter deal with myriad related or incidental subjects like *declarations* (under Section 20) vis-à-vis *common carrier* or *contract carrier* or *CGD network* as indeed the privileges flowing from authorisations like *Right of first use* (Section 21) or obligations of all concerned including third parties and on the subject of determination of *transportation tariff* (Section 22). By all these detailed provisions, certain powers and responsibilities are entrusted by law unto the Board. The jurisdiction given to the Board is not restricted to grant of authorisation but also its *suspension* or *cancellation*, as provided in Section 23, in the event of the regulatory authority (Board) finding that the authorised entity has “*failed to comply with any conditions of authorisation*”. The said provision, being of import, regulatory in nature, may be extracted as under:

23. <u>Suspension or cancellation of authorisation</u> :-
If the Board, on an application of an affected party or on its own motion, is satisfied that the entity in favour of which authorisation has been granted under section 19 has failed to comply with any conditions of authorisation, it may, after giving an opportunity to such entity of being heard, either suspend the authorisation for such period as the Board may think fit or cancel the authorisation:

Provided that where the Board is of the opinion that an authorised entity persistently acts in a manner prejudicial to the interests of consumers, it may take action for the suspension of the authorisation immediately subject to the opportunity of hearing being given subsequently, after which action so taken may be confirmed or revoked.

14. It is undisputed that PNGRB in order to ensure the availability and supply of natural gas throughout the country, in exercise of its powers under Section 19 read with Sections 11 and 16 of the Act, grants authorization to entities for development of the City Gas Distribution ("CGD") network within a Geographical Area ("GA") *inter alia* through a bidding process, several bidding rounds having been held for various GAs since inception. These responsibilities have a mixed flavour of regulatory and administrative functions and invariably also involve ministerial actions.

15. Conflict of interest and raising of claim of rights or for enforcement of obligation of other party giving rise to a *dispute* requiring resolution is a natural fallout of any human intercourse, particularly if it concerns economic activity. Likewise, in the sector of petroleum and natural gas - two scarce and diminishing but valuable resources exploited by modern societies the world over. The responsibility for "*Settlement of Disputes*" in this field is conferred on the Board by provisions contained in Chapter-V of the

PNGRB Act. This is what would relate to the adjudicatory functions of the Board. As the detailed provisions falling in that chapter show, the *disputes* may be brought before the Board for settlement generally in two forms: such *disputes* as were thus far dealt with by civil courts or *complaints* of breaches of the regulatory framework established by this special law.

16. Section 12 of PNGRB delineates two crucial powers conferred on the Board, the provision reading thus:

> *"12. Powers regarding complaints and resolutions of disputes by the Board:-*
> *(1) The Board shall have jurisdiction to-*
> *(a) adjudicate upon and decide any dispute or matter arising amongst entities or between an entity and any other person on issues relating to refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas according to the provisions of Chapter V, unless the parties have agreed for arbitration;*
> *(b) receive any complaint from any person and conduct any inquiry and investigation connected with the activities relating to petroleum, petroleum products and natural gas on contravention of-*
> *(i) retail service obligations;*
> *(ii) marketing service obligations;*
> *(iii) display of retail price at retail outlets;*
> *(iv) terms and conditions subject to which a pipeline has been declared as common carrier or contract carrier or access for other entities was allowed to a city or local natural gas distribution network, or authorization has been granted to an entity for laying, building, expanding or operating a pipeline as common carrier or contract carrier or authorization has been granted to an entity for laying, building, expanding or operating a city or local natural gas distribution network;*
> *(v) any other provision of this Act or the rules or the regulations or orders made there*
> *(2) While deciding a complaint under sub-section (1), the Board may pass such orders and issue such directions as it*

deems fit or refer the matter for investigation according to the provisions of Chapter V."

(emphasis supplied)

17. It is necessary to note here itself the provisions contained in Sections 24 and 25 of the PNGRB Act since they respectively set out the broad framework of the process whereby the Board exercises the jurisdiction to adjudicate upon disputes under section 12(1) and act upon complaints under section 12(2) quoted above.

18. Section 24 of PNGRB Act reads thus:

24. <u>Board to settle disputes</u> :-
(1) Save as otherwise provided for arbitration in the relevant agreements between entities or between an entity or any other person, as the case may be, if any dispute arises, in respect of matters referred to in sub-section(2) among entities or between an entity and any other person, such dispute shall be decided by a Bench consisting of the Member (Legal) and one or more members nominated by the Chairperson: Provided that if the members of the Bench differ on any point or points, they shall state the point or points on which they differ and refer the same to a member other than a member of the Bench for hearing on such point or points and such point or points shall be decided according to the opinion of that member.
(2) The Bench constituted under sub-section (1) shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable by a civil court on any matter relating to –
(a) refining, processing, storage, transportation and distribution of petroleum, petroleum products and natural gas by the entities;
(b) marketing and sale of petroleum, petroleum products and natural gas including the quality of service and security of supply to the consumers by the entities; and
(c) registration or authorisation issued by the Board under section 15 or section 19.

(3) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Board shall have the power to decide matters referred to in sub-section (2) on or after the appointed day.

19. Section 25 of PNGRB Act runs as under:

"25. Filing of complaints:-
(1) A complaint may be filed before the Board by any person in respect of matters relating to entities or between entities on any matter arising out of the provisions of this Act: Provided that the complaints of individual consumers maintainable before a consumer disputes redress forum under the Consumer Protection Act, 1986 (68 of 1986) shall not be taken up by the Board but shall be heard and disposed of by such forum.

Explanation.- For the purposes of this sub-section, the expression "consumer disputes redress forum" shall mean the district forum, State Commission or, the National Commission, as the case may be, constituted under the provisions of the Consumer Protection Act, 1986 (68 of 1986).

(2) Every complaint made under sub-section (1) shall be filed within sixty days from the date on which any act or conduct constituting a contravention took place and shall be in such form and shall be accompanied by such fee as may be provided by regulations: Provided that the Board may entertain a complaint after the expiry of the said period if it is satisfied that there was sufficient cause for not filing the complaint within that period.

(3) On receipt of a complaint under sub-section (1), the Board shall decide within thirty days whether there is a prima facie case against the entity or entities concerned and may either conduct enquiry on its own or refer the matter for investigation under this Chapter, to an Investigating Officer having jurisdiction; and, where the matter is referred to such Investigating Officer, on receipt of a report from such Investigating Officer, the Board may, hear and dispose of the complaint as a dispute if it falls under sub-section (2) of

section 27 and in any other case, it may pass such orders and issue such directions as it deems fit.

(4) Where the Central Government considers that a matter arising out of the provisions of this Act is required to be investigated, it shall make a reference to the Board and the provisions of this Act shall apply as if such reference were a complaint made to the Board."

20. The learned counsel on all sides were unanimous in submission that reference to "*sub-section (2) of section 27*", as mentioned in the available text of the statute (PNGRB Act), in Section 25(3) quoted above, is *printing* or *clerical error*, there being no such sub-section in Section 27 and the contents of that Section having no nexus with the one covered here and *a fortiori* that the said part of the legislation be read as "*sub-section (2) of section 24*".

21. It is clear from a reading of Section 12 that it empowers the Board to settle the disputes under Section 24 and complaints under Section 25 of the Act. The settlement of disputes is dealt with under Chapter V of the Act, specifically under Sections 24 and 25. Section 24 of the Act deals with the settlement of disputes and it mandates that the disputes under Section 24 shall be adjudicated by a Bench consisting of the Member (Legal) and one or more members nominated by the Chairperson. It may be observed here itself that this provision clearly envisages that a Bench consisting of two members - one of them being Member (Legal) – would constitute a valid quorum.

22. Crucially, all proceedings before the Board are declared by Section 13 to be "*judicial proceedings*" and the Board is vested with powers of the "*civil court*" requisite, *inter alia*, for gathering evidence, it being armed with teeth to deal with cases of non-

compliance with orders of discovery, examination, local inspection or inquiry, perjury etc for initiating criminal action just like a civil court. Generally speaking, however, it is given liberty to regulate its own procedure though it is under a legislative mandate that all its actions "*shall be guided by the principles of natural justice*". Section 13 may be quoted hereunder:

13. Procedure of the Board :-

(1) The Board shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document, from any office and production of such documents;
(c) receiving evidence on affidavits;
(d) issuing commissions for the examination of witnesses or documents;
(e) dismissing an application for default or deciding it, ex parte;
(f) setting aside any order of dismissal of any application for default or any order passed by it, ex parte;
(g) granting interim relief;
(h) reviewing its decision; and
(i) any other matter which may be prescribed.

(2) Every proceeding before the Board shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Board shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) The Board shall be guided by the principles of natural justice and subject to other provisions of this Act and of any rules made there under, shall have powers to regulate its own procedure including the places at which it shall conduct its business.

23. Interestingly, the procedure prescribed in Section 25 for dealing with complaints is supplemented by the power to investigate, as set out in more detail in Section 26, which equates it (as expressly so stated by the marginal heading - like the heading of the chapter) with the overall objective of *settlement of disputes*. The provision reads thus:

26. Power to investigate (Settle Dispute):-
(1) For the purposes of provisions of section 25, the Board shall, subject to the provisions of sub-section (3), appoint by general or special order, an officer of the Board as an Investigating Officer for holding an investigation in the manner provided by regulations:

Provided that where the Board considers it necessary that the matter should be investigated by any investigating agency of the State or Central Government including the special police force constituted under section 2 of the Delhi Special Police Establishment Act, 1946, the Board may request the concerned Government for directing or authorizing such agency to investigate and the agency so directed or authorised shall, then, be competent to exercise the powers and to discharge the duties of an Investigating Officer under this Act.
(2) No person shall be appointed as an Investigating Officer unless he possesses such qualifications and experience as may be determined by the Board by regulations.
(3) Where more than one Investigating Officer is appointed, the Board shall specify, by order, the matters and the local limits of jurisdiction with respect to which each such officer shall exercise his jurisdiction.

24. The statute guides the process for dispute resolution by the Board as under:

> *27. <u>Factors to be taken into account by the Board</u> :-*
> *The Board shall, while deciding a dispute under this Chapter, have due regard to the provisions of this Act and to the following factors, namely:-*
> *(a) the amount of disproportionate gain made or unfair advantage derived, wherever quantifiable, as a result of the default;*
> *(b) the amount of loss caused to an entity as a result of the default;*
> *(c) the repetitive nature of the default.*

25. The legislation visualises that disputes, or complaints, brought for settlement before the Board may show up breaches of law or regulatory framework. The Board is vested with punitive powers to deal with such state of affairs and it may impose civil penalties as under:

> *28. <u>Civil penalty for contravention of directions given by the Board</u> :-*
> *In case any complaint is filed before the Board by any person or if the Board is satisfied that any person has contravened a direction issued by the Board under this Act to provide access to, or to adhere to the transportation rate in respect of a common carrier, or to display maximum retail price at retail outlets, or violates the terms and conditions subject to which registration or authorisation has been granted under section 15 or section 19 or the retail service obligations or marketing service obligations, or does not furnish information, document, return of report required by the Board, it may, after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of civil penalty an amount which shall not exceed one crore rupees*

for each contravention and in case of a continuing failure with additional penalty which may extend to ten lakh rupees for every day during which the failure continues after contravention of the first such direction:

Provided that in the case of a complaint on restrictive trade practice, the amount of civil penalty may extend to five times the unfair gains made by the entity or ten crore rupees, whichever is higher.

26. There can be no dispute as to the proposition that for imposing civil penalty, the Board would have to *find* the facts justifying such measure and that an order of such nature would invariably be preceded by an inquiry wherein one side may level accusations and the other party may contest by putting across facts to the contrary, the probe necessarily requiring the Board to perform an adjudicatory role *albeit* with the overall objective of enforcing the regulatory discipline.

27. It must also be mentioned here that besides civil consequences, the breaches of the statutory provisions or orders passed by the regulatory authority (PNGRB) may also lead to criminal action on the gravamen of accusations constituting offences created by this special law, as set out in a separate chapter (no. IX) with heading "*Offences and Punishment*", they including "*Punishment for contravention of directions of the Board*" (Section 44), "*Penalty for wilful failure to comply with orders of Appellate Tribunal*" (Section 45), "*Punishment for unauthorized activities*" (Section 46), "*Punishment for establishing or operating a liquefied natural gas terminal without registration*" (Section 47), "*Punishment for laying, building, operating a common carrier or contract carrier without authorisation*" (Section 48), "*Punishment for wilful damages to common carrier or contract carrier*" (Section

49) and "*Offences by Companies"* (Section 50). The offences under Sections 44 and 45 relate to wilful defiance of orders of the statutory authorities (Board and appellate tribunal). The key ingredient for offence under Section 46 is a fact-situation wherein "*an entity*" engages itself in acts whereby it "*markets*" any "*notified petroleum, petroleum products or natural gas without a valid registration, or authorisation*". Likewise, the offence under Section 47 proscribes the specified activities regulated under this law without registration. The offences prescribed under sections 48 and 49 control the unauthorised activities relating to pipelines declared as common or contract carriers and protect the lawful interests of authorised entities.

28. The offences (except those punishable under Sections 48 and 49) under the special law (PNGRB Act) are declared by Section 57 to be "*cognizable*" and the forum for trial of such offences is specified as Chief Metropolitan (or Judicial) Magistrate who may act only upon a "*complaint*" by the Board (or "*any investigating agency declared by the Central Government*"). It is, thus, clear that when it comes to criminal sanction, the Board is, generally speaking, the complainant and not the forum of trial. It must, however, be added that for gathering evidence so as to lodge a complaint for criminal action, the Board, being akin to a "civil court", and empowered to carry out "inquiry" or get the matter "investigated", would also have the jurisdiction to hold "inquiry" similar to the one envisaged in Section 195 of the Code of Criminal Procedure, 1973 (for short, "CrPC"). Such inquiry, as indeed inquiry into the complaint in terms of Section 25, would be akin to an inquiry by a "*civil court*", the jurisdiction of civil courts in matters governed by PNGRB Act having been barred by Section 56.

29. All orders passed by the Board are given the status of a "*Decree*" by Section 29 "*executable in the same manner as if it were a decree of a civil court*" subject to "*a certificate issued by an officer of the Board*". Likewise, the orders of this tribunal in appeal are also rendered "*executable as a decree*" by Section 36, it expressly conferring "*for this purpose*", on this forum (appellate tribunal), "*all the powers of a civil court*".

30. Since the above-mentioned provision (Section 29) falls in chapter on *settlement of disputes*, which covers the petitions raising *disputes* (under section 24) in matters thus far dealt with by civil courts, or complaints (under section 25) of breaches, it has to be construed that an order whereby the Board proceeds to decide ("*dispose of*") the complaint would also amount to a *Decree* enforceable just as an order on petition of dispute between entities or between an entity and a third party. Of course, the decisions rendered by the Board are amenable to second layer of judicial scrutiny in appeal (under Section 33) before this tribunal (established under Section 30) at the instance of "*any person aggrieved*" by such order(s).

31. There is provision in the statute (PNGRB Act) permitting delegation, it being Section 58 which reads as under:

> "*58. Delegation.—The Board may, by general or special order in writing, delegate to any member or officer of the Board subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to settle a dispute under Chapter VI and to make regulations under section 61), as it may deem necessary.*"

32. It is vivid that the statute permits PNGRB to "*delegate to any member or officer of the Board*" some of its "*powers and functions under this Act … as it may deem necessary*". But such authorisation to delegate expressly excludes "*the power to settle a dispute under Chapter VI and to make regulations under section 61*". It appears that there is a *clerical error* in available text of Section 58 when it refers to "Chapter VI" which relates to "*Appeals to Appellate Tribunal*", the intendment clearly being to refer to "*Chapter V*" which relates to "*Settlement of Disputes*". Noticeably, the exclusion is of entire chapter on "*Settlement of Disputes*" which covers not only the adjudication on petitions covered by Section 24 read with Section 12 but also "complaints" subjected to scrutiny, inquiry or investigation under Section 25 read with Section 12. Of course, over and above the general provision on power to "*delegate*", where so specifically required, the legislation vests in the Board the authority to delegate specific tasks to be performed like the responsibility to "*investigate*" [see Section 25(3)].

33. Be that as it may, it was fairly conceded by the learned counsel for the Board that the provision of Section 58 has not been availed at any stage, till date, by the Board to "*delegate*" the power or jurisdiction to inquire or investigate into any matter or complaint. It was also fairly conceded that the responsibility to take a call as to whether a complaint makes out a *prima facie* case or calls for inquiry or investigation cannot be delegated since that is *a duty of the Board*.

34. As indicated earlier, the PNGRB is also vested with legislative powers - the jurisdiction to frame regulations. This function mentioned in Section 11 (e) and certain other subject-specific

provisions is fleshed out in the form of more detailed clauses contained in Section 61 ("*Power of Board to make Regulations*").

35. As already seen, the Board is a multi-member body comprising of Chairman, Member (Legal) and three other Members. For the position of the Member (Legal), specific qualifications are prescribed. The PNGRB Act prescribes the following general rule on the subject of meetings of the Board:

> *8. Meetings of the Board :-*
>
> *(1) The Board shall meet at such times and places, and shall observe such procedure in regard to the transaction of business at its meetings (including the quorum at such meetings) as may be provided by regulations.*
> *(2) The Chairperson or, if he is unable to attend a meeting of the Board, the senior-most member present, reckoned from the date of appointment to the Board, shall preside at the meeting: Provided that in case of common date of appointment of members, the member senior in age shall be considered as senior to the other members.*
> *(3) All questions which come up before any meeting of the Board shall be decided by a majority of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.*
> *(4) All orders and decisions of the Board shall be authenticated by the Secretary or any other officer of the Board duly authorised by the Chairperson in this behalf.*

36. At the same time, Section 9 of the PNGRB Act visualises situations wherein there may be vacancies and lays down that any irregularity in the procedure not affecting the merits of a case would not invalidate the proceedings. The provision reads thus:

9. Vacancies, etc., not to invalidate proceedings of the Board :-
No act or proceeding of the Board shall be invalid merely by reason of –
(a) any vacancy in, or any defect in the constitution of, the Board; or
(b) any defect in the appointment of a person acting as a member of the Board; or
(c) any irregularity in the procedure of the Board not affecting the merits of the case.

37. Pertinent to observe here that the keyword in above saving clause is "*merely*", other factors vitiating action not having been excluded. We reserve detailed comment on this subject for later.

38. Amongst others, specifically in order to carry out the proceedings under Sections 24 and 25, the Board has framed and promulgated the *PNGRB (Conduct of Business, Receiving and Investigation of Complaints) Regulations, 2007* (for short, "*Business-Conduct Regulations*"), which regulate the procedure for the transaction of business at the hearings held before the Board, the form of the complaint etc. Regulation 2(h) defines the expression "*Proceedings*" and states that it "*means and include proceedings <u>of all nature</u> that the Board may hold in the discharge of its functions under the Act*". Clearly, no distinction is made between administrative agenda, regulatory business or, for that matter, adjudicatory or quasi-judicial matters.

39. Regulation 14 of the Business-Conduct Regulations provides as under:

"14. Proceedings, etc, before the Board.- The Board may, from time to time, hold hearings, meetings, discussions, deliberations, inquiries, investigations and consultations as it may consider appropriate in the discharge of its functions under the Act.

Provided that the meetings of the Board shall be convened in accordance with the Petroleum & Natural Gas Regulatory Board (Meetings of the Board) Regulations, 2007, amended from time to time."

40. The *PNGRB (Meetings of the Board) Regulations, 2007* (for short, "*Board-Meeting Regulations*") referred to in the above-quoted proviso, subsequent to the amendment made on 28.04.2020, provides as under:

7. Quorum required and voting.–

(1) Three Members of the Board, including Chairperson or in his absence the Member presiding over the meeting, shall constitute the quorum for transaction of business at a meeting of the Board:

Provided, in case the Board has at any times less than five Members due to vacancy or any other reason, two Members of the Board, including Chairperson or in his absence the Member presiding over the meeting, shall constitute the quorum for transaction of business at a meeting of the Board.

(2) All questions which come before any meeting of the Board shall be decided by a majority vote of the Members present and voting and in the event of any equality of votes, the Chairperson, or in his absence, the Member presiding over the such meeting, shall have a second or casting vote:

Provided that, in case of a meeting where only two members are present, including Chairperson or in his absence the Member presiding over the meeting, who duly constitute the quorum, then in such circumstances, Chairperson or the Member presiding over the meeting, shall not have the second or casting vote.

(emphasis supplied)

41. Prior to the amendment carried on 28.04.2020, the provision read thus:

7. Quorum required and voting.–

> *(1) Three Members of the Board including Chairperson or in his absence the Member presiding over the meeting, shall constitute the Quorum for transaction of business at a meeting of the Board;*
> *(2) All questions which come before any meeting of the Board shall be decided by a majority vote of the Members present and voting and in the event of any equality of votes, the Chairperson, or in his absence, the Member presiding over, shall have a second or casting vote.*

42. It may be mentioned here that the orders impugned in these appeals were passed after the amendment carried on 28.04.2020. Therefore, the arguments raised with reference to pre-amendment position of the quorum regulation are unacceptable. Even if it be argued that some of the impugned proceedings had commenced prior to the amendment, it does not change the position since it is well settled that amendment of procedural law, which it would be, can have retrospective effect.

43. From the above, it emerges that the proviso to Regulation 14 of the Business-Conduct Regulations states that the meetings of the Board shall be held as per the Board-Meeting Regulations which, in turn, provide (post the amendment made on 28.04.2020), a quorum of two Members (including Chairperson). The general rule on quorum does not insist on inclusion of Member (Legal). It may be added that the report of Secretary of PNGRB, noted earlier, shows that the Board is without the basic minimum quorum since 03.12.2020.

44. The "*meetings*" of the Board are convened, in terms of Regulations 3 & 6 of the Board-Meeting Regulations, "*at least once in each quarter of the calendar year*" by the Chairperson, or upon being so required of him by "(a)*ny two Members*", and "*ordinarily*"

after a "(n)*ot less than seven days notice*", except in case of "*any emergency*". The Regulations provide (Regulation 9) for "*minutes*" of the meetings of Board to be maintained and authenticated by each member.

45. The Business-Conduct Regulations also bear in mind the scheme and precept of Section 24 and provides thus:

> "*15. Bench to settle disputes – A Bench consisting of the Member (Legal) and one or more Members nominated by the Chairperson shall decide the disputes under section 24 of the Act, in accordance to the provisions of the Act.*"

46. Some other provisions of the *Business-Conduct Regulations* may be extracted as under:

> *17. Initiation of Proceedings –*
> *(1) The Board may initiate any proceedings suo moto or on a petition or complaint filed by any affected or interested person under the provisions of the Act.*
> *(2) The notice of the initiation of the proceedings may be issued by the Board and the Board may give such orders and directions as may be deemed necessary, for service of notices to the affected parties, the filing of reply and rejoinder in opposition or in support of the petition of complaint in such form as it may direct. The Board may, If it considers appropriate, issue order for publication of the petition or complaint inviting comments on the issues involved in the proceedings in such form as the Board may direct.*
> *(3) While issuing the notice of inquiry the Board may, in appropriate cases, authorize an officer of the Board or any other person whom the Board considers appropriate to present the matter in the capacity of the petitioner/complainant in the case*
>
> *20. Affidavit in Support –*
> *(1) The petitions or complaints shall be verified by an affidavit and every such affidavit shall be in Form III.*
> *(2) Every affidavit shall be drawn up in the first person and shall state the full name, age, occupation and address of the*

deponent and the capacity in which he is signing and shall be signed and sworn before a person lawfully authorized to take and receive affidavits.

(3) Every affidavit shall clearly and separately indicate the statements, which are true to the –

(a) Knowledge of the deponent;

(b) Information received by the deponent; and

(c) Belief of the deponent.

(4) Where any statement in the affidavit is stated to be true to the information received by the deponent, the affidavit shall also disclose the source of the information and a statement that the deponent believes that information to be true.

23. Service of notices and processes issued by the Board –

(1) Any notice, process or summons to be issued by the Board may be served by any one or more of the following modes as may be directed by the Board:

(a) Through any of the parties to the proceedings as may be directed by the Board;

(b) By hand delivery through messenger;

(c) By registered post with acknowledgement due;

(d) By publication in newspapers in cases where the Board is satisfied that it is not reasonably practicable to serve the notices, processes, etc., on any person in the manner mentioned above;

(e) In any other manner as considered appropriate by the Board.

(2) The Board shall be entitled to decide in each case the persons who shall bear the cost of such service or publication.

(3) Every notice or process required to be served on or delivered to any person may be sent to the person or his agent empowered to accept service at the address furnished by him for service or at the place where the person or his agent ordinarily resides or carries on business or personally works for gain.

(4) In the event any matter is pending before the Board and the person to be served has authorized an agent or representative to appear for or represent him or her in the matter, such agent or representative shall be deemed to be duly empowered to the service of the notices and processes

on behalf of the party concerned in all matters and the service on such agent or representative shall be taken as due service on the person to be served.
(5) Where a notice is served by a party to the proceedings either in person or through registered post, an affidavit of service shall be filed by such party with the Board giving details of the date and manner of service of notices and processes.
(6) Where any petition or complaint is required to be published it shall be published in such form in the newspapers to be specified, for such duration and within such time as the Board may direct.
(7) In default of compliance with the requirements of the regulations or directions of the Board as regards the service of notices, summons or processes or the publication thereof, the Board may either dismiss the petition or complaint or give such other or further directions as it thinks fit.
(8) No service or publication required to be done shall be deemed invalid by reason of any defect in the name or description of a person provided that the Board is satisfied that such service is in other respects sufficient, and no proceedings shall be invalidated by reason of nay defect or irregularity unless the Board on an objection taken, is of the opinion that substantial injustice has been caused by such defect or irregularity or there are otherwise sufficient reasons for doing so.

24 Filling or reply, opposition, objections, etc. – (1) Each person to whom the notice of inquiry or the petition or complaint is issued (hereinafter called the 'respondent') who intends to oppose or support the petition or complaint shall file the reply and the documents relied upon within such period with ten copies. In the reply filed, the respondent shall specifically admit, deny or explain the facts stated in the notice of inquiry or the petition or the complaint and may also state such additional facts as he considers necessary for just decision of the case. The reply shall be signed and verified and supported by affidavit in the same manner as in the case of the petition or complaint.
(2) The respondent shall serve a copy of the reply along with the documents duly attested to be true copies on the petitioner or complainant or his authorised representative and file proof of such service with the office of the Board.

(3) Where the respondent states additional facts as may be necessary for the just decision of the case, the Board may allow the petitioner/complainant to file a rejoinder to the reply filed by the respondents. The procedure mentioned above for filing of the reply shall apply mutatis mutandis to the filing of the rejoinder.
(4) Every person who intends to file objection or comments in regard to a matter pending before the Board, pursuant to the publication made for the purpose (other than the persons to whom notices, processes, etc. Have been issued calling for reply) shall deliver to an officer designated by the Board for the purpose the statement of the objection or comments with copies of the documents and evidence in support thereof within the time fixed for the purpose.
(5) The Board may permit such person or persons including associations forums and bodies corporate as it may consider appropriate to participate in the proceedings before the Board, if on the report received from the officer, the Board considers that the participation of such person or persons will facilitate the proceedings and the decision in the matter.
(6) Unless permitted by the Board, the person filing objection or comments shall not necessary be entitled to participate in the proceedings to make oral submissions. However, the Board shall be entitled to take into account the objections and comments filed after giving such opportunity to the parties to the proceedings as the Board considers appropriate to deal with the objections of comments.

25 Hearing of the matter –
(1) The Board may determine the stages, manner, the places the date and the time of the hearing of the matter, as it considers appropriate.
(2) The Board may decide the matter on the pleadings of the parties or may call for the parties produce evidence by way of affidavit or lead oral evidence in the matter.
(3) If the Board directs evidence of a party to be led by way of oral submission, the Board may, if considered necessary or expedient, grant an opportunity to the other party to cross-examine the persons giving evidence.
(4) The Board may, if considered necessary or expedient, direct that the evidence of any of the parties be recorded by an officer or person authorized for the purpose by the Chairperson.

(5) The Board may direct the parties to file written note of arguments or submissions in the matter.

26. Powers of the Board to call for further information, evidence, etc. –
(1) The Board may, at any time before passing orders on any matter, require the parties or any one or more of them or any other person whom the Board considers appropriate to produce such documentary or other evidence as the Board may consider necessary for the purpose of enabling it to pass orders.
(2) The Board may direct summoning of the witnesses, discovery and production of any document or other material objects produce-able in evidence, requisition of any public record from any office, examination by an officer of the Board the books, accounts or other documents or information in the custody or control of any person which the Board considers relevant to the matter.
(3) Whoever intentionally gives false evidence in any of the proceedings of the Board or fabricates false evidence for the purpose of being used in any of the proceedings shall be punishable in accordance with Section 193 of the Indian Penal Code, 1860 (45 of 1860).
(4) Whoever intentionally offers any insult or causes any interruption in any of the proceedings of the Board, shall be punishable in accordance with Section 228 of the Indian Penal Code, 1860 (45 of 1860).

29. Orders of the Board.

(1) All orders and decisions issued or communicated by the Board shall be certified by the signature of the Secretary or any other officer of the Board empowered in this behalf by the Chairperson and bear the official seal of the Board.

(2) All final orders of the Board shall be communicated to the parties to the proceedings under the signature of the Secretary or any officer of the Board empowered in this behalf by the Chairperson

33. The Board shall issue notice to the concerned person(s) and to such other person(s) as the Board

considers appropriate to show cause as to why the dispute should not be settled by the Board

37. The Board may make such order or orders as it thinks fit for collection of information, inquiry, investigation, entry, search, seizure, and without prejudice to the generality of its powers in regard to the following provisions.

58. Enforcement of orders passed by the Board.- The Secretary shall ensure enforcement and compliance with the orders passed by the Board, by the persons concerned in accordance with the provisions of the Act and regulations and if necessary, may seek the orders of the Board for directions.

47. It is pointed out that the Board-Meeting Regulations make a distinction between adjudicatory business or other kind of business including administrative. The second Chapter provides the general rules concerning *proceedings before the board* (which includes adjudicatory function) while third Chapter specifically lays down rules of particular import for *Settlement of Disputes*. The distinct formats of notices or orders in adjudicatory matters on one hand and administrative or regulatory meetings are highlighted.

48. With this backdrop on law, we may delve into the factual matrix.

THE FACTS

49. It is apposite to note the background facts to the extent germane, for present discourse, and leading to the orders that are impugned being passed in each of these matters.

50. The factual matrix of the proceedings from which these two matters arise are almost identical and parallel. They may be summarised together and simultaneously to bring out the common issues presently required to be addressed, primarily questions of law.

51. The appellant Gail (India) Ltd. (for short, "Gail") describes itself as a Government Company incorporated under the Companies Act, 1956 owned by the Government of India through Ministry of Petroleum and Natural Gas. It claims to be the premier Indian company engaged in the transportation and distribution of natural gas and other petroleum products, a Central Government authorized entity under the PNGRB Act, natural gas constituting its core business, it being engaged, *inter alia*, in owning and operating a network of over 10,716 kms of Natural Gas pipeline with a capacity to carry 213.33 MMSCMD of natural gas across the length and breadth of the country and also in the process of laying various other trunk pipelines for transportation of natural gas.

52. The authorization for development of the CGD Network in Thane District GA in the State of Maharashtra (which is subject matter of Appeal no. 152 of 2020) was granted by the Board through its 4th CGD Bidding Round in 2014-2015 in favour of *Gujarat Gas Company Limited* ("GGCL"), by letter dated 01.04.2015, which was accepted by GGCL on 10.04.2015. It is stated that pursuant to a Scheme of Amalgamation submitted by GGCL, it having been

accepted by the Board by letter dated 25.01.2016, the authorizations issued by PNGRB for CGD Networks and Natural Gas Pipelines to GSPC and GGCL were transferred in the name of *Gujarat Gas Limited* ("GGL"), the second respondent herein. The Board, on 23.01.2017, renamed the nomenclature of the GA from Thane District to "Palgarh District and Thane Rural" ("Authorized Area").

53. Similarly, through its 6th CGD Bidding Round in 2016-2017, the authorization for development of the CGD Network in Dahej Vagra Taluka GA in the State of Gujarat (subject matter of proceedings from which Appeal no. 153 of 2020 arises) was granted by letter dated 06.06.2016 by PNGRB in favour of the second respondent in said appeal, the latter (second respondent) having accepted the same on 13.06.2016.

54. It is stated by PNGRB that in accordance with the terms and conditions of the Authorization and the provisions of the *PNGRB (Exclusivity for City or Local Gas Distribution Networks) Regulations, 2008* ("CGD Exclusivity Regulations"), the aforesaid entity was granted marketing exclusivity (for a period of five years) and infrastructure exclusivity (for a period of twenty-five years) in respect of the respective Authorized GAs.

55. It appears that complaints were filed with PNGRB by the second respondent in the two captioned appeals on 15.07.2020 and 06.07.2020 respectively against the appellant Gail (India) invoking Sections 21(3) read with Sections 16, 17(1), 12(1)(b), 25, 28, 48, 50, 57 and 13(1)(g) of PNGRB Act, alleging that it (the appellant) has developed and has been operating an unauthorized CGD network supplying gas to low pressure CGD customers who have a requirement of natural gas up to 50,000 SCMD. It was alleged that

the appellant has been curtailing the supply pressure to the CGD network of the complainants to only 16 bar (g) and thereby creating operational difficulties for them (the complainants) in meeting the growing demand of gas within their respective GAs, while at the same time, continuing to supply to CGD customers without any authorization, in violation of the rights vested with the authorized CGD entities. Thus, it was stated that the appellant has violated and is continuously violating the rights which are vested with the authorized entities.

56. It is the case for PNGRB that upon receipt of the complaints, it had fixed 06.08.2020 and 21.07.2020 respectively as the dates of hearing by Video Conferencing (VC), to decide on the admissibility of the said Complaints. It is stated that though each of these was arranged only as preliminary hearing for deciding the issue of admissibility of respective complaint and the presence of the appellant (respondent before the Board) was neither required nor directed, the appellant opted to appear and was afforded hearing on each date, the proceedings being guided by principles contained in Section 13 (3) of PNGRB Act.

57. During the hearing on 06.08.2020 and 21.07.2020, the allegations in the respective complaints against the appellant were reiterated by the second respondent primarily contending that the latter (appellant) is and has been supplying gas to low pressure CGD Customers, who have a requirement up to 50,000 SCMD only, and is thereby creating operational difficulties for the former (complainant), reliance being placed on Regulation 3(2)(a) of the *PNGRB (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008* ("CGD Authorization Regulations 2008"), which states as follows:

"Regulation 3: Application.
(2) A CGD network shall be designed to operate at a pressure as specified in the relevant regulations for technical standards and specifications, including safety standards for maintaining the volumes of supply of natural gas on a sustained basis to meet the following requirements, namely:
(a) Customers having requirement of natural gas up to 50,000 SCMD shall be supplied through the CGD network;
Provided that until CGD Network is ready to supply natural gas to a customer (other than domestic PNG and CNG), such customers shall have right to get the supply of natural gas from any other alternate source or supplier, with prior permission of the Board, and if, once CGD Network is ready to supply natural gas to such customer, then, such customer shall cease to get supply of natural gas from such alternate source or supplier after 30 days of receipt of notice of readiness from the CGD network;
(b) Customers having requirement of natural gas more than 50,000 SCMD and upto 100,000 SCMD shall be supplied, at the discretion of customer-
(i) through the CGD network; or
(ii) through a pipeline not forming part of the CGD network"

58. It is the contention of the respondents (including the Board) that a bare perusal of the above provision shows that where the requirement of the customers is up to 50,000 SCMD of natural gas, then the same has to be supplied through the CGD network only. In case the entity, which is authorized to operate the CGD Network by the Board, is unable to meet the demand of CGD customers, due to non-establishment of CGD Network or any other reason, then such customers can meet their necessary requirement from any other alternate source or supplier but only after taking prior permission from the Board. However, once the CGD network is established and the authorized entity is ready and willing to meet the requirement of the CGD customers, then in such cases the CGD customers, whose requirement is up to 50,000 SCMD of natural gas, have to be

necessarily serviced and supplied gas from the CGD Network by the entity authorized to operate the Network, in terms of the clear mandate of Regulation 3(2)(a) of the CGD Authorization Regulations, 2008.

59. The order dated 21.07.2020, which is impugned by Appeal no. 153 of 2020 (DFR No. 282 of 2020), passed by the Board in Case No. PNGRB/Legal/BC-1/20/2020, registered on the complaint of the second Respondent (Gujarat Gas Ltd) reads thus:

> *"Admitted.*
>
> *The respondent is directed not to supply the gas from its high pressure common carrier natural gas pipeline to any customer having requirement of natural gas up to 50,000 SCMD within the Geographical Area of Dahej Vagra Taluka in terms of Regulation 3(2)(a) of the CGD Authorization Regulations, 2008.*
>
> *The respondents shall file reply within three weeks i.e. by 11th August,2020 and Rejoinder may be filed if any, within two weeks thereafter.*
>
> *The case is next posted for hearing on 1st September,2020 at 10:30 Hours."*

60. Similarly, the order dated 06.08.2020, which is impugned by Appeal no. 152 of 2020 (DFR No. 281 of 2020), passed by the Board in Case No. PNGRB/Legal/BC-1/21/2020, registered on the complaint of the second Respondent (Gujarat Gas Ltd) reads thus:

> *"Admitted.*
>
> *The respondent is directed not to supply the gas to low pressure CGD customer having requirement of natural gas up to 50,000 SCMD within the Geographical Area of Palgarh District and Thane Rural in terms of Regulation 3(2)(a) of the CGD Authorization Regulations, 2008.*

The respondents shall file reply within three weeks i.e.by 27th August, 2020 and Rejoinder may be filed if any, within two weeks thereafter.

The case is listed for hearing on 16th September, 2020 at 12:00 Hours."

61. Noticeably, the content and import of both orders is similar, the material difference being in respect of the GA.

62. It is the contention of the Board, as indeed of the complainant (second respondent in each appeal), that the appellant was also given an opportunity by the Board in the said hearings held, on 06.08.2020 and 21.07.2020 respectively, to make its submissions wherein the appellant, instead of responding to the allegations regarding supply of gas to customers having a requirement of below 50,000 SCMD, raised the issue of lack of jurisdiction of the Board to hear the complaint in the absence of Member (Legal) and also made submissions in respect of the quorum required to conduct the hearings under Section 25 of the PNGRB Act.

63. It is stated by the Board that having found in each of the aforementioned complaints a clear cut *prima facie* case made out of supply of gas by the appellant to customers, having a requirement of less than 50,000 SCMD of natural gas, within the respective authorized GA of second respondent, the latter being ready and willing to supply to such customers, the Board came to the conclusion that the complaints required to be admitted and accordingly, by the impugned orders dated 06.08.2020 and 22.07.2020 respectively granted time to the appellant to file its reply to each of the said complaints and listed the matters for hearing. It is also stated that since the issue revolved around the enforcement of a Regulation, which has been enacted and notified by the Board

pursuant to its powers under the PNGRB Act, in the capacity of a statutory regulator, it was deemed fit to direct the appellant in each matter to comply with Regulation 3(2)(a) of the CGD Authorization Regulations, 2008 and not to supply gas to consumers having requirement of up to 50,000 SCMD within the respective authorized area of the second respondent.

64. The aforesaid orders are challenged by the captioned appeals, it being the grievance of the appellant that the Board has passed the impugned orders on complaints under Section 25 of the PNGRB Act without jurisdiction and in complete violation of the provisions of the PNGRB Act and the settled position of law, impermissibly without the Member (Legal) being appointed and, therefore, without the requisite quorum requirement being fulfilled for an adjudicatory hearing, the submission that the jurisdictional issue had to be decided before any decision was taken on the interim stay having been ignored, effective opportunity for hearing having been denied.

65. The appellant formulates the questions of law raised by the appeals as under:

> *i. Whether the Board could have proceeded to list and hear the Complaint in the absence of the requisite quorum without a Member (Legal) being appointed to the Board and being a part of the adjudicatory hearing?*
>
> *ii. Whether the presence of the Member (Legal) in the hearing of a Complaint under Section 25(3) or 24(2) is mandatory and cannot be ignored and if ignored, would vitiate the entire proceeding being contrary to settled law and Constitution of India.*

iii. *Whether the provisions of Section 25 of the Act, which is silent on the number of members required for a hearing necessarily imply that the majority of Members of the Board must hear complaints and with Member (Legal) being a necessary part of such majority?*

iv. *Whether it was necessary for the Board to look at the contents of the Petition so filed which clearly provided that the dispute was regarding laying of pipelines and distribution of gas in a CGD Network by the Respondent?*

v. *Whether such a dispute would inevitably fall within the scope of Section 24 even though the petition was titled as a Section 25 petition. Such being the case, whether the Board would have had to refer the matter to the Bench formed under Section 24 and thus, whether the observations made by the Board, admitting the petition and granting an interim protection to Gujarat Gas Ltd. are perverse on the face of it.*

vi. *Whether in case the Board decides it is a dispute, the Board necessarily has to proceed under Section 24(2) of the Act, where the presence of Member (Legal) is statutorily required in terms of Section 24(1). Therefore, till such time as the Member (Legal) is appointed, whether the Board can proceed with the present Complaint?*

vii. *Whether the Board can pass interim orders without hearing the party in complete violation of principles of natural justice especially when an objection to that effect is made before the Board?*

viii. *Whether the Board can pass directions without giving reasons for such directions and without considering the objections of the Appellant?*

ix. *Whether the present 2 (two) Board members being a minority of the composition of the Board, which consists of 5 Members as per Section 3(3) of the Act, could hear and pass orders on complaints under Section 25 of the Act?*

x. *Whether the jurisdictional issue has to be first decided by the Board before it can proceed to admit any complaint and pass any orders (interim or final)?*

xi. *Whether the Board clearly has the 'essential trappings of a court' while it deals with a Complaint under Section 25 of the Act?*

xii. *Whether a direction issued by any statutory body in excess of its jurisdiction can be allowed to be sustained or is void ab initio?*

xiii. *Whether under Section 25 (3) of the Act, while forming its prima facie view, the Board also has to decide whether the complaint is a dispute or not between entities and pass an appropriate order before proceeding with the Complaint?*

xiv. *Whether the Board is legally enjoined to derive and assume powers for adjudication of disputes only in accordance with the Constitution of India and the settled law in terms of judgments of the Hon'ble Supreme Court of India and High Courts?*

xv. *Whether decisions taken in the absence of quorum or non-compliance with statutory requirements as prescribed under subordinate legislation should be struck down by Courts?*

xvi. *Whether the order passed by the Board is otherwise illegal and unreasonable and liable to be set aside?*

66. The contentions in appeals are contested by the respondents. It is submitted by PNGRB that any violation of the statutory

provision will attract the necessary consequences irrespective of whether the Board makes the requirement of compliance with the same explicit, as it has done in the impugned order, and to that extent it can be said that the direction contained in the impugned order is nothing but a positive and clear assertion of the statutory provision by the Board in order to sound a reminder to the appellant to conduct its operations within the regulatory framework.

67. It is the submission of PNGRB that since the hearing on 06.08.2020 and 21.07.2020 respectively in each case was a hearing relating to the first phase of Section 25(3), wherein no specific quorum has been specified under the Act, the Board, then comprising of the Chairperson and one other Member only, due to vacancy, constituted a proper and valid quorum under the Act to conduct the said hearing and to form a view as to whether the complaint filed by the second respondent deserved to be admitted or not and whether a *prima facie* case is made out against the appellant. The impugned orders were passed after hearing both sides, the Board having come to the conclusion that a *prima facie* case is made out in each case and hence proceeded to admit the complaints and direct the appellant to file its reply in each matter. It is stated that the directions given to the appellant to comply with the mandate of law and act in compliance of Regulation 3(2) of the CGD Authorization Regulations, 2008 are nothing but reiteration of the language contained said in Regulations.

68. By identical orders dated 26.08.2020 passed on the applications of the appellant for stay, we had *inter alia* observed and directed in each appeal (the order quoted hereinbelow being from Appeal no. 152 of 2020, it being similar in the other case) thus:

1. Feeling aggrieved against the Order dated 06.08.2020 in Case No. PNGRB/Legal/BC-1/21/2020, registered on the complaint of the second Respondent (Gujarat Gas Ltd), the appellant has filed the present appeal under Section 33 of Petroleum and Natural Gas Regulatory Board of India Act, 2006. The impugned order reads thus:

….

2. The petition, it essentially being complaint under Section 21(3) of the Act, on which impugned order was passed, was presented on 15.07.2020. It further appears that the appellant was represented on the basis of advance copy that had been served before the Petroleum and Natural Gas Regulatory Board ("Board") on the date impugned order was passed, there admittedly having been no formal notice issued to the said party for that day.

3. The appeal is yet to be registered. We do not know the reasons for non-registration so far. We presume it is still under scrutiny. The matter has been listed before us with a request for urgent listing in the context of prayer for interim stay.

4. This matter is taken up for hearing by video conference, physical presence being not possible due to National Lockdown imposed for containing spread of coronavirus (Covid-19).

5. The first respondent is the Board while the second respondent, as stated above, is the party on whose complaint the impugned order was passed. Both parties are duly represented by their respective counsel and appear on the basis of advance copy duly served.

6. Subject to scrutiny, objections/defects, if any, being communicated expeditiously and the same being removed forthwith, we direct the appeal to be registered.

7. Issue notice. Learned counsel, Mr. Subhash Batra accepts notice for the first respondent/Board and learned counsel, Mr. Piyush Joshi, accepts notice for second respondent/Gujarat Gas Limited.

8. One of the objections taken by the appellant in this appeal is that the impugned order was rendered by bench of the

Board comprising of Chairperson and a Member both of whom come from technical side of the relevant field. It is conceded by the learned counsel representing the Board that there is no Member (Legal) presently holding the office, there being a vacancy. The exception taken to the legality and propriety of the proceedings before the Board essentially is that in absence of a Member (Legal), such action as taken was impermissible in view of the provision contained in Section 24(1). Prima facie, the objection seems to be properly founded in law.

9. We also find, prima-facie, that the impugned order is cryptic and totally devoid of any reasoning. The background facts are missing and there is no observation even to the effect that the complainant (second respondent) had made out a prima-facie case. Even if we assume that a inherent in the fact that the complaint was entertained, the question of balance of convenience – one of the three essential ingredients for temporary injunction – does not seem to have been considered or commented upon.

10. It was the submission of the learned counsel for the second respondent that the prime prayer made before the Board in the complaint leading to this order was to injunct the appellant from laying down pipeline as that would come in conflict with the City Natural Gas Distribution network regarding which the second respondent has the necessary authorization for the geographical area in question. It is the contention of the complainant that the appellant is only authorized to operate a high pressure pipeline and cannot undertake any City Natural Gas Distribution network operation. While the appellant indicates that it has facts contrary to this to plead, and while we refrain from any definitive observation on the issue at this stage, the fact remains that it is not disputed that the appellantis actually servicing the need of large number of consumers. Therefore, before granting stay, that too ex-parte – in as much as the order seems to have been passed without reply being sought – against operations to which objection has been taken, the Board should have considered the balance of convenience from the perspective not only of the appellant but also the consumers at large being so serviced. The non-

consideration of these crucial factors seems to render the order prima facie questionable.

11. In the forgoing facts and circumstances, we stay the proceedings before the Board and also stay the operation of the impugned order of temporary injunction against the appellant till the matter comes before us for hearing, after pleadings on the appeal at hand are completed.

12. Though we have granted orders staying the operation of the impugned order and the proceedings before the Board, we add that any work connected to the subject activity being undertaken by the appellant hereafter will be at its own risk, cost and peril, it being subject to decision on the appeal at hand.

13. Replies to the appeal and the applications filed therewith may be filed within four weeks and rejoinder, if any, within two weeks thereafter.

IA No. 1034 of 2020 is disposed of. The matter be listed before Registrar for completion of pleadings on 13.10.2020."

69. The second respondent assailed the above-quoted order dated 26.08.2020 before the High Court of Delhi by Writ Petition (Civil) no.1629 of 2021 which was decided by Order dated 16.02.2021, the relevant part reading thus:

"…

2. The present petition has been filed by the Petitioner – Gujarat Gas Limited, challenging the impugned order dated 26th August, 2020 passed by the Appellate Tribunal for Electricity (hereinafter "APTEL").

3. APTEL, vide the impugned order, has stayed the proceedings before the Petroleum and Natural Gas Regulatory Board (hereinafter "PNGRB") and has also stayed the impugned order, dated 21st July, 2020 passed by PNGRB. By the impugned order a temporary injunction was passed against Respondent No. 3 – GAIL (India) Limited (hereinafter "GAIL"), directing said party to not supply gas to

any customer having requirement of natural gas upto 50,000 SCMD within the geographical area of Dahej-Vagra Taluka. The order of the PNGRB dated 21st July 2020 is extracted below is as under :

> *"The respondent is directed not to supply the gas from its high pressure common carrier natural gas pipeline to any customer having requirement of natural gas up to 50,000 SCMD within the Geographical Area of Dahej-Vagra Taluka in terms of Regulation 3(2)(a) of the CGD Authorization Regulations, 2008……"*

4. The said order of the PNGRB was challenged before APTEL by GAIL on various grounds. A perusal of the impugned order dated 26th August, 2020, shows that APTEL had stayed the temporary injunction order passed by PNGRB, as well as the proceedings before PNGRB, primarily on two counts. First, that the Member (Legal) was not part of the quorum of PNGRB, which passed the order of temporary injunction against GAIL. Second, the impugned order was cryptic in nature and did not have any discussion as to the three essential ingredients to be satisfied for temporary injunction. APTEL has admitted the appeal before it and has directed the parties to complete the pleadings, while staying the injunction order passed by the PNGRB.

5. Mr. Ramji Srinivasan, ld. Senior counsel appearing for the Petitioner submits that the PNGRB's order was completely justified, inasmuch as the PNGRB is competent to pass such an order in exercise of its powers under Section 21(3) read with Sections 25 and 26 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (hereinafter "the Act"). It is only in respect of disputes which are raised under Section 24 of the Act, that the Member (Legal) would be required to be part of the quorum of the PNGRB and not in respect of other provisions, under the Act. He further submits that the injunction order was also justified, inasmuch as GAIL's exclusivity in the geographical area of Dahej-Vagra Taluka was being violated. Since, the Petitioner was a successful bidder, it enjoyed exclusive legal right under the Act to operate in the geographical area of Dahej-Vagra Taluka, which was being violated by GAIL.

6. Considering these facts, it is submitted by Mr. Srinivasan, ld. Senior counsel, that the impugned order ought not to be interfered with. Reliance is placed by the ld. Senior counsel on another order of APTEL dated 21st October, 2020, titled M/s Maharashtra Natural Gas Limited v. Petroleum and Natural Gas Regulatory Board, passed in an un-connected matter where APTEL has itself, permitted PNGRB to go ahead and conduct its proceedings despite the absence of Member (Legal).

7. On the other hand, Mr. Chetan Sharma, ld. ASG appearing for GAIL and submits that first, the order passed by the PNGRB has rightly been held by APTEL to be cryptic in nature as the merits of the issues have not been dealt with and no reasons have been given. Second, GAIL has a strong case on merits and was given permission to supply the gas in the said geographical area under the Act. In these circumstances, he submits that the APTEL is justified in staying the proceedings before the PNGRB and also, staying the operation of the impugned order of temporary injunction passed by the PNGRB. According to Mr. Sharma, ld. ASG, though the appeal before APTEL challenges only the jurisdiction of the PNGRB, the matter deserves to be also heard on merits.

8. A perusal of the order dated 21st July, 2020 passed by the PNGRB, shows that the order is completely lacking in reasons. Neither the background of the case was given, nor the reasons for granting a far reaching injunction order directing that GAIL cannot supply natural gas to the consumers in the geographical area of Dahej Vagra Taluka. Such an order could not have been passed before coming to the conclusion that the Petitioner had made out a prima facie case in its favour and that the balance of convenience lies in favour of the Petitioner and irreparable loss would have been incurred by the Petitioner, if the stay order was not granted – that too without hearing GAIL.

9. … on this issue, the Court refrains from making any observation. The said question of the requirement of a Member (Legal) for constituting the quorum of PNGRB is left open to be decided in an appropriate case.

10. In view of the present constitution of PNGRB, and the fact that the matter is now pending before APTEL, it is deemed appropriate to direct the APTEL itself to adjudicate the issues that have arisen in the Petitioner's complaint before PNGRB, both on jurisdiction and on merits. APTEL, after hearing the parties on the merits of the complaint filed by the Petitioner, shall consider as to whether any injunction order or interim arrangement deserves to be passed in the matter. Needless to add, APTEL would give full hearing to all the parties concerned.

11. Considering that the nature of the dispute involves determining whether there would be rights, which are alleged to be violated on a daily basis, APTEL is requested to adjudicate the matter in an expeditious manner. Parties to appear before APTEL on 25th February, 2021.

12. On a query from the Court, as to the status of the appointment of Member (Legal) on the PNGRB, Mr. Sharma informs the Court that advertisement for appointment of Member (Legal) has been issued on 15th February, 2021. This is stated to be the third round of advertisements for the same. Considering the urgency involved, the Respondent would take steps to expedite the appointment of the Member (Legal) to the PNGRB.

13. This petition, along with all the pending applications, is disposed of in the above terms."

(emphasis supplied)

70. The second respondent has moved applications for directions and interim relief in the wake of above-quoted order of the High Court. It presses for interim reliefs, pending decision on the complaint by the Board, the prayer being for restraint orders to injunct the appellant from undertaking any works relating to or including the laying, building etc. of any pipeline or network within the GAs authorised to GGL or connecting new customers having a

demand of or actual supply upto 50,000 SCMD or from transporting or supplying any gas to any customer with demand or actual supply of up to 50,000 SCMD; direction to appellant to deposit all revenues or amounts received since the date of authorisation to GGL from customers having a demand or actual supply of up to 50,000 SCMD within the GA authorised to GGL; direction to provide data respecting relevant customers, sales etc; direction to the appellant not to undertake any action that may prejudice the vested rights of GGL under the authorisation.

71. The appellant has resisted the above-mentioned applications by detailed replies, its broad submissions being as under:

(a) The Complaint is hopelessly time-barred in terms of Section 25(2) of the PNGRB Act and has been filed more than 4 years after the date of any alleged contravention.
(b) The CGD Authorization Regulations relied on by Respondent No. 2 do not even apply to the Appellant. Therefore, the Complaint has to be dismissed at the outset on this ground itself.
(c) The Appellant is governed by a completely different set of natural gas pipeline regulations ("NGPL Regulations") and not by the CGD Regulations and is not setting up a CGD Network. Therefore, the Complaint is not maintainable.
(d) The Appellant is well within its rights to supply gas to its customers in the GAs and in fact is under a statutory obligation to do so in terms of the applicable NGPL Regulations framed by the PNGRB. Therefore, the Complaint is not maintainable.
(e) PNGRB itself has recognized the right of the Appellant to supply gas to its customers in the concerned GA and is well aware that the Appellant has been complying with its statutory obligations while supplying gas to customers.

72. The response to the allegations in the complaints on which the impugned orders were passed by the Board has been filed and the broad pleadings in such regard may be taken note of at this stage.

73. As noted earlier, the appellant is a Central Public Sector Undertaking and has been laying, building, operating and expanding Natural Gas Pipelines in the country since its establishment in 1984, from times prior to coming into force of the PNGRB Act, the Natural Gas Pipelines through which it caters to the requirements of customers to which exception is taken by the complainant being part of such network commissioned and made operational to the knowledge of GGL, the complainant prior to the grant of authorisation of the Gas in its favour.

74. The appellant submits that the customers serviced through its pipelines in the CGD Network areas authorized in favour of the second respondent are pre-existing customers of natural gas pipelines, including the consumers with daily gas requirements of up to 50,000 SCMD, who have been paying the applicable transportation tariffs of the Natural Gas Pipelines as fixed by PNGRB, such transportation tariffs being uniformly applied on a non-discriminatory basis in all the cases, whether the gas is supplied by the appellant or any other third party.

75. It is the contention of the appellant that the exclusivity in favour of an entity authorises it to operate CGD network in a specified GA. It fairly concedes that once an area is authorized by PNGRB as an authorized Geographical Area for laying, building, operating and expanding a CGD Network, then after the date of such CGD authorization, the appellant cannot seek or entertain any application for providing connectivity to any consumer having daily gas

requirements of up to 50,000 SCMD located within that authorized Geographical Area. In such cases, such consumers (having daily gas requirements of up to 50,000 SCMD) shall either get their connectivity only from the authorized CGD network and will get their piped natural gas supplies only through the authorized CGD network, or, if there is delay by the authorized CGD entity, then such customers may be entitled to get their gas supplies through alternative sources, but with prior permission of PNGRB, under the proviso to sub-regulation 3(2)(a) of the CGD Network Authorization Regulations. It argues that there is no provision either in the PNGRB Act or in the PNGRB CGD Regulations notified thereunder obligating that a pipeline which is a part of an authorized Natural Gas Pipeline and a customer (having requirement of less than 50,000 SCMD) who is already a customer of a Natural Gas Pipeline shall have to be compulsorily transferred to a CGD entity. The notified PNGRB Regulations clearly spell out that any pipeline including a spur-line of Natural Gas Pipeline excludes a pipeline of a CGD Network.

76. It is pointed out that Regulation 8(4) of the PNGRB NG Pipeline Affiliate Code Regulations provides that the NGPL entity shall not transfer or assign to an affiliate a consumer for whom the entity is providing service of the regulated activity unless the consumer gives permission to such transfer or assignment in writing. Thus, it is submitted that the NGPL Affiliate Code Regulations provide additional protection to such pre-existing consumers from any forced or non-consensual transfers, the prayer made by the complainant for interim relief, if granted, to have such impermissible consequence.

Facts of Appeal no. 161 of 2020 [In re Bharat Petroleum Corporation Ltd.]

77. The appellant Bharat Petroleum Corporation Ltd. (for short, "BPCL") is a Government of India undertaking incorporated under the Companies Act, 1956, *inter alia*, engaged in the business of Petroleum and Petroleum Products. The PNGRB is the sole respondent in this appeal, its order dated 04.08.2020 having been challenged by invoking the jurisdiction of this tribunal under Section 33 of PNGRB Act.

78. As part of its business operations, the appellant BPCL maintains and operates several pipelines including Irugur Devangonthi Pipeline; Bina Panki Pipeline; Kota Jobner Pipeline (KJPL); Mumbai -Manmad -Bijwasan Pipeline; Bina- Kota Pipeline; Mumbai- Uran LPG Pipeline; Mumbai Refinery - Santacruz Airport - ATF Pipeline; Kochi Refinery to Kochi Airport; and Mumbai Refinery - Wadilube LOBS Pipeline; the first three having been authorized by the Board as *common carrier* pipelines. It is the case of appellant that the remaining six pipelines (i.e. other than first three which are common carriers) have been laid and are being maintained by it (BPCL) as *captive* pipelines, for own use.

79. The controversy concerns the *PNGRB (Levy of Fee and Other Charges) Regulations, 2007* (hereinafter "Levy of Fee Regulations") notified by the Board on 26.11.2007 in exercise of powers conferred by clause (g) of sub-section (2) of Section 61 of the Act. Regulation 3 of the Levy of Fee Regulations prescribes a *fee* for every

application under various provisions of the Act. Regulation 4 (1) of the Levy of Fee Regulations provided for levy of *other charges during the operation period* on annual basis dependent on the turnover of the entity as per the formulation provided in the Levy of Fee Regulations. Regulation 4(2)(a) of the Levy of Fee Regulations provided for levy of *other charges during the construction period* at the rate of 0.2 percent of their capital expenditure (CAPEX) of the project based on estimated investment in the financial year, which was to be modified at the end of that financial year as per the actual expenditure on annual basis covered under the provisions of the Act. These charges were in relation to activities of registration and/or authorization. The relevant part of Levy of Fee Regulations, 2007 (prior to the amendment of 03.01.2019) would read thus:

> ***4.*** *Levy of other charges.–*
>
> *(1) Operation period: The entity who is undertaking operation of any of the activities covered under the provisions of the Act relating to registration and/or authorization, shall pay other charges to the Board on annual basis based on its turn over as per following formulation,-*

Turn over	*Other charges*
Upto Rs. 20,000 crore	*0.01% (Rs. 2 crore)*
Rs. 20,001 to 50,000 crore	*0.008% (Rs. 2 crore + 0.008% of >20,000 crore)*
Rs. 50,001 to 1,00,000 crore	*0.005% (Rs. 4.4 crore + 0.005% of >50,000 crore)*
More than Rs. 1,00,000 crore	*0.004% (Rs. 4.9 crore +0.004%of > 1,00,000 crore)*

(2) Construction period: (a) The entity relating to any of the activities of registration and/or authorization covered under the provisions of the Act shall pay other charges to the Board on annual basis during the construction period at the rate of 0.2 per cent of their capital expenditure (CAPEX) of the project based on projected investment in the financial year, which shall be modified at the end of that financial year as per the actual expenditure;

(b) Other charges remitted by an entity under sub-clause (a) above shall be treated as an interest free deposit and the Board shall refund such other charges once the entity commences regular operations and replaces with the appropriate level of other charges as applicable during the operation period as per sub-clause (1) above.

(3) The other charges shall be paid annually within fifteen days from the date of finalizing the annual statement of accounts by the entity.

(4) The other charges shall be paid through demand draft or pay order in favour of the Petroleum and Natural Gas Regulatory Board payable at New Delhi.

(5) The other charges received shall be entered into a register to be maintained by the Board with the details such as name of the entity remitting the payment, whether remittance under sub-clause (1) or sub-clause (2), amount, number and date of demand draft or pay order as the case may be and refund particulars in case of the remittance under sub-clause (2).

(emphasis supplied)

80. Noticeably, under the pre-amended provision the *other charges* were leviable only in respect of activities requiring registration or authorisation to be obtained from the Board and not otherwise.

81. Regulation 3 was amended from time to time by the PNGRB on 07.06.2010, 21.06.2013 and 03.01.2019. Substantial amendments were also made to Regulation 4 in the amendment notified on 03.01.2019. The said regulation post-amendment of 03.01.2019 reads thus:

4. Levy of other charges.---

(1) Any entity engaged in laying, building, operating or expanding natural gas pipeline or petroleum or petroleum product pipeline of any nature or city or local natural gas distribution network shall annually pay to the Board other charges in respect of each such pipeline or network for each financial year as specified in sub-regulation (2).

(2) Other charges payable annually in accordance with sub-regulation (1) shall be paid at rates specified below with effect from the first April, 2019, namely:-

(A) For each City or local natural gas distribution network:-

Population of the Geographical Areas as per 2011 Census of India	*From the second financial year to the fifth financial year, starting from the financial year in which authorization was granted or accepted by Board*	*From the sixth financial year, starting from the financial year in which authorisation was granted or accepted by Board, and onwards*
(1)	*(2)*	*(3)*
Less than 1 million	*Rs. 5,00,000*	*Rs. 5,00,000*
1 million or more but less than 5 million	*Rs. 5,00,000*	*Rs. 10,00,000*
5 million or more but less	*Rs. 5,00,000*	*Rs. 25,00,000*

than 10 million		
10 million or more	*Rs. 5,00,000*	*Rs. 50,00,000*

(B) For each Natural gas pipeline or petroleum product pipeline of any nature:-

(a) Before commencement of operations:	
(i) with a length of more than 50 kilometres with a length of upto 50 kilometres	*Rs. 5,00,000 for each pipeline Rs. 1,00,000 for each pipeline*
After commencement of operations:	
(i) with a length of more than 50 kilometres	*Rs. 5,00,000 for each pipeline or 0.02% of the revenue (excluding taxes) from that pipeline for the relevant financial year, whichever is higher.*
(ii) with a length of upto 50 kilometres	*Rs. 1,00,000 for each pipeline or 0.02% of the revenue (excluding taxes) from that pipeline for the relevant financial year, whichever is higher.*
Note: Other Charges in respect of Pipelines after commencement of their operation may be initially paid considering the revenue accrued (excluding taxes) during the previous financial year. Difference of amount paid and payable shall be adjusted at the time of making payment for the next financial year.	

(3) Other Charges payable under this regulation shall be paid annually for each financial year that is to say a period of 12 months beginning on first April and ending on thirty-first March of the following year, within a period of two months from the beginning of the financial year.

(4) Other Charges payable under this regulation shall be rounded off to the nearest Rs. 100.

(5) Other Charges shall be paid through demand draft or pay order in favour of the Petroleum and Natural gas Regulatory Board and payable at New Delhi, or by any electronic mode into

the account of the Board.
(6) In case of non-payment of Other Charges by the due date, late payment surcharge at the rate of one percent (1%) shall be payable on the outstanding amount for each month of delay or part thereof after due dates of payment as specified in sub-regulation (3). Such surcharge shall also be payable beginning from 1st April, 2019 on the past dues of other Charges as on 31st march 2019.
(7) Any entity liable to pay Other Charges or late payment surcharge in accordance with this regulation shall submit details of remittance in Form- I attached to this regulation, within seven days of making such payment.
(8) Other charges receivable and other charges received shall be entered into a register to be maintained by the Board with the details such as other charges receivable, name of the entity remitting the payment, financial year for which payment has been made or is payable, name of the CGD network or the name of the pipeline, serial number, date and name of the bank or its branch in respect of the demand draft or pay order or details of electronic payment, as the case may be.
(9) Other charges already remitted by an entity till the financial year 2018-19 for 'Construction Period' under sub-regulation (2) of regulation 4 before the commencement of the Petroleum and Natural Gas Regulatory Board (Levy of Fee and Other Charges) Amendment Regulations, 2018 as interest free deposit, shall be adjusted by the Board against the applicable Other Charges under sub-regulation (2).
(emphasis supplied)

82. A plain reading of amended provision shows the key words are "*pipeline of any nature*". The net has been cast wider than it existed before.

83. Prior to the amendment made on 03.01.2019, in terms of Regulation 4(2)(b), the *other charges* remitted by an entity under sub-regulation 4(2)(a) were to be mandatorily treated as an *interest free* deposit and the Board was to refund such other charges once the entity commenced regular operations and replaced the other

charges as applicable during the operation period as per sub-regulation 4(1).

84. As a result of the amendment dated 03.01.2019, the Board has made the "*other charges*" under Regulation 4 applicable, *inter alia*, to any entity engaged in laying, building, operating or expanding natural gas pipeline or petroleum or petroleum products pipeline of any nature. Every such entity was supposed to pay "*other charges*" annually in respect of each such pipeline or network for each financial year as specified in sub-regulation 4(2)(B). The amounts to be paid annually were decided based on the length of the pipeline i.e. whether it was more or less than 50 kilometres and also whether it was before or after the commencement of operations.

85. In respect of pipelines before the commencement of operations, the amount stipulated was Rs. 5,00,000/- for a pipeline of length of more than 50 kms and Rs. 1,00,000/- in respect of a pipeline of length of less than 50 kms. For pipelines with a length of more than 50 kms, after the commencement of operations, the amount to be paid was Rs. 5,00,000/- or 0.02% of the revenue (excluding taxes) from the pipeline for the relevant financial year, whichever was higher. In the case of a pipeline with a length of less than 50 kms, after the commencement of operations the amount to be paid was Rs. 1,00,000/- or 0.02% of the revenue (excluding taxes) from the pipeline for the relevant financial year, whichever was higher.

86. Indisputably, the appellant has been paying the applicable "*other charges*" for the three common carrier pipelines mentioned earlier as they concededly come within the purview of the powers/functions of the Board. As regards the other six pipelines –

claimed by appellant as captive pipelines – it is claimed that they were commissioned, or their construction activity had begun, prior to PNGRB coming into existence and, therefore, no authorization was required or sought from PNGRB, though PNGRB was duly informed about them, and their nature, from time to time.

87. It is the contention of the appellant that the "*other charges*" are not payable on *captive pipelines*, such charges being leviable only in respect of pipelines authorized by the Board as *common carrier* or *contract carrier* pipelines.

88. It appears that, on 05.04.2019, a letter was sent by the Secretary, PNGRB to the appellant regarding payment of *Other Charges* up to financial year 2018-19. The appellant, by its letter dated 27.05.2019, remitted the payment towards such Charges for the financial year 2019-20 in respect of the three common carrier pipelines authorized by the Board. Some exchange of communication followed primarily for the Board to gather facts respecting all pipelines of the appellant, whether under construction or operational, with reference to the particular subject of liability to make payment of *Other Charges*.

89. Eventually, by communication dated 07.01.2020, the appellant was called upon to attend and participate in a meeting of the Board on 28.01.2020 to discuss the issues of non/partial payment of other charges. The meeting convened on 28.01.2020 at 15.00 hours was held by the Chairperson of the Board sitting with Member (C&M). It was attended, amongst others, by representatives of Hindustan Petroleum Corporation Limited ("HPCL"), Indian Oil Corporation Limited ("IOCL") and the appellant (BPCL). It is one of the grievances of the appellant that the concerns expressed or submission made on the subject by its representative

were not reflected in the minutes of the said meeting that were drawn. Be that as it may, it is submitted that the Chairperson of the Board had asked the entities in said meeting to submit their views in writing on the applicability of *Other Charges* latest by 29.02.2020, it also being an advice that the entities provided the complete list of all petroleum product pipelines including non-common/contract carrier pipelines, operated by them after reconciling the same with PNGRB list.

90. It is not in dispute that, as on 28.01.2020, there were four (4) Members, including the Member (Legal), holding office occupying the positions in the Board. Concededly, in terms of the then prevailing PNGRB (Meetings of the Board Regulations), 2007, the quorum of a duly constituted Board for a meeting was minimum three members. Exception is taken to the meeting held on 28.01.2020 being held with only two Members being present. On this basis, the appellant pleads that the said meeting could not be construed as either a meeting of the Board under Section 8 of the PNGRB Act or a hearing by the Board, the impression created being that the meeting dated 28.01.2020 was just a monitoring meeting and that no decision would be taken by the Board on that basis. It is averred by the appellant that pursuant to the aforesaid meeting held on 07.01.2020, it (BPCL), by its letter dated 16.03.2020 had highlighted its issues, concerns and objections regarding the Levy of Other Charges.

91. The contentions of the appellant are that the purpose of PNGRB for levying Fees and Other Charges is basically to cover its expenses incurred while discharging its functions under section 11 of the PNGRB Act. It is stated that the PNGRB receives grants from Government of India as per section 38 of PNGRB Act, 2006 and the

levy of other charges should be applicable only on Common / Contract Carrier Pipelines authorized by PNGRB, and certainly not on Captive/Dedicated Pipelines, in order to cover the shortfall (if any) in PNGRB's expenses. It is contended that PNGRB can expand its scope of regulation to private pipeline operators in order to cover its operating expenses and that other charges should be levied only on third party volumes and not on own volumes of the entities and it should be linked to the actual revenue earned. It is argued that the word "Revenue" should mean earnings made by authorized entity by raising invoices on third party for usage of common carrier pipelines. It is submitted that the formation of Technical and Safety standards is also being undertaken by OISD and, therefore, it would be arbitrary on the part of PNGRB to levy "other charges" on dedicated/captive pipelines just for preparation of technical and safety standards.

92. It is the case of the appellant that issues raised against the imposition of *Other Charges* vis-à-vis captive pipelines are legal in nature and, therefore, the presence of Member (Legal) in the Board was imperative. As noted earlier, the Member (Legal) of PNGRB retired on 19.03.2020. At any rate, the then incumbent holding the position of Member (Legal) had not been joined in the deliberations in the meeting held on 28.02.2020. Subsequently, one of the other Members namely Member (I&T) – who also had not attended the meeting of 28.01.2020 - retired on 18.05.2020. Consequently, the number of Members in the Board was reduced to two (2) out of five (5), which continued to be the position on the date of filing of the appeal, there admittedly being no Member (Legal) throughout after the earlier incumbent completed his term on 19.03.2020.

93. Indisputably, on 28.04.2020, the PNGRB (Meetings of the Board) Regulations, 2007 were amended and the quorum requirement of three members for a meeting of the Board was reduced to two members.

94. On 04.08.2020, the impugned order was passed, *inter alia*, referring to the issues raised by the appellant by its letter dated 16.03.2020 and issuing directions to the appellant to pay the outstanding "*Other Charges*". The appellant assails the said order submitting that it does not record as to when the Board held a duly constituted and valid meeting to take such decision communicated on 04.08.2020. It is pointed out that the communication dated 04.08.2020 records the factum of the meeting held on 28.01.2020 but said meeting cannot be construed as a valid meeting of the Board under Section 8 of the PNGRB Act as on the said date, the minimum quorum of three members was not fulfilled, the Member (Legal) not being present and even having retired on 19.03.2020, the right to hearing as contemplated under the PNGRB Act having been denied, adding the vice of violation of principles of natural justice rendering the order void *ab-initio*.

95. The appellant formulates questions of law to be addressed as under:

i. Whether a decision can be taken by the Board under the Act and Regulations without affording the party an opportunity of a hearing in a validly constituted meeting, with requisite quorum?

ii. Whether the Board can pass decisions without hearing the party, in complete violation of principles of natural justice, which it is bound to follow under Section 13(3) of the Act?

iii. Whether the Board could have proceeded to pass the Impugned Decision in the absence of the requisite quorum

without a Member (Legal) being appointed to the Board and being a part of the decision making process?

iv. Whether the presence of the Member (Legal) in the Board's exercise of its adjudicatory/ judicial/ quasi-judicial functions is mandatory and cannot be ignored and if ignored, would vitiate the entire proceedings being contrary to settled law and the Constitution of India?

v. Whether the present 2 (two) Board members being a minority of the composition of the Board, which consists of five (5) Members as per Section 3(3) of the Act, could pass the Impugned Decision?

vi. Whether the jurisdictional issue has to be first decided by the Board before it can proceed to take any decision in exercise of the powers of the Board?

vii. Whether the Board clearly has the 'essential trappings of a court' while it deals with legal issues that arise before the Board even on the quasi-judicial side of its functions?

viii. Whether a direction issued by any statutory body in excess of its jurisdiction can be allowed to be sustained or is void *ab initio*?

ix. Whether the Impugned Decision levying "other charges" on the Appellant's captive/dedicated pipelines, which are not common/contract carriers authorized by the Board, is beyond the powers of the Board under the Act and in excess of the jurisdiction of the Board?

x. Whether the Impugned Decision on merits is bad in law and is liable to be set aside?

96. *Per contra*, the Board contends that the impugned communication cannot be challenged as an *order* since the liability to pay fee or other charges is a matter of self-assessment, there having been no *adjudication* made, the meeting presided over by

the Chairperson, as referred to above, not being a *hearing* by the Board. It is also the submission of the Board that the challenge is to the regulations and consequently not maintainable before this tribunal.

Facts of Appeal no. 236 of 2020 [In re Sanwariya Gas Ltd.]

97. The appellant is a company incorporated under the Companies Act 1956. It was originally incorporated on 19.02.2009 as Private Limited Company with the name of DSM Infratech Pvt. Ltd. It is pleaded that its name was changed thrice first on 04.06.2009 to Saumya DSM Infratech Pvt. Ltd and upon being converted into Public Limited Company on 11.02.2010 as Saumya DSM Infratech Ltd., since renamed as Sanwariya Gas Limited (for short, "Sanwariya Gas"), w.e.f. 01.04.2014. It is an entity authorized to, *inter alia*, implement the *Piped Natural Gas* (PNG) and *Compressed Natural Gas* (CNG) projects for various applications in the Domestic, Commercial, Industrial & Automotive sectors in Indian cities, it also being in business of selling CNG in the *Geographical Area* ("GA") of Mathura.

98. The PNGRB has been impleaded as the first respondent in this appeal, *Gail Gas Limited* (for short, "Gail Gas") and *Indian Oil Corporation Limited* (for short, "IOCL") being the second and third respondents respectively. It is stated that Gail Gas is an entity authorised for GA of Firozabad while IOCL is an oil marketing company. The appellant Sanwariya states that it has no grievance or prayer against Gail Gas or IOCL, they having been impleaded as

proforma party in the present appeal since they were also a party at hearing before the Board.

99. It is the case of Sanwariya that by its letter dated 15.04.2014 to the Board, it had requested approval of change of name from Saumya DSM Infratech Ltd. to Sanwariya Gas Ltd., the said request having been reiterated, for want of response, by letters dated 26.06.2014 and 15.07.2014. It appears that, by letter dated 04.12.2014, the PNGRB advised the appellant to submit the proposal for name change in terms of sub-regulation 10(4) and 10(5) of PNGRB (Authorising Entities to Lay, Build, Operate or Expand City or Local natural Gas Distribution Networks) Regulations, 2008 and that, in compliance, the appellant submitted its request accordingly, having followed it up, *inter alia*, by letter dated 06.05.2016, making a detailed representation on the subject submitting certain documents in support. By letter dated 28.11.2016, the Board sought certain clarifications with regard to the shareholding pattern of Sanwariya Gas, the latter having furnished a response by letter dated 13.12.2016 followed by a supplementary reply dated 23.12.2016**.**

100. It is the averment of the appellant Sanwariya Gas that it submitted several reminders requesting for the process on name change to be concluded including by letter dated 04.01.2017 and lastly by letter dated 15.09.2020, the Board having remained silent on all such communications.

101. It appears that on 05.04.2019, the PNGRB issued a show cause notice (SCN) to the appellant Sanwariya Gas alleging that it had engaged itself in unauthorized supply of CNG beyond the authorised GA of Mathura, its relevant para reading thus (the use of the expression “DSMS” being a reference to the appellant):

"… It may please be noted that as per information with PNGRB, the authorized entities for these GA's i.e. GAIL Gas Ltd. & Green Gas Ltd. have not given any consent to DSMS for supply of natural gas in their respective authorized Gas.

2. In view of the above, you are hereby asked to show cause within 15 days, as to why action should not be initiated under the PNGRB Act, 2006 read with Regulation 17 of PNGRB (Conduct of Business, Receiving and Investigation of Complaints) Regulations, 2007 on DSMS for carrying out unauthorized activities outside its authorized GA limits."

(emphasis supplied)

102. From the pleadings and material available, it appears that the primary allegations on which the *Show-Cause Notice* ("SCN") was issued against the appellant Sanwariya Gas were that it (the appellant) had laid a 27 km pipeline from their *City Gas Station* ("CGS") at Chhata to Mathura which passes through Vrindavan and Govardhan charge areas. It is alleged that the CGS established at Chhata is outside Mathura GA and is approx. 1.5 km from Gail Gas' SV station at Chhata and hence, around 1.5 Km *Sub Transmission Pipeline* ("STPL") from Gail Gas' Pipeline to CGS-Chhata and 27 Km pipeline from Chhata CGS to Mathura GA have been laid by appellant outside its GA without seeking authorization from PNGRB or permission from GAIL Gas. Further, the appellant allegedly laid branch lines in Vrindavan and Govardhan area, unauthorizedly so since both areas are outside Mathura GA. It is alleged that CNG stations set up by appellant at 100 KM & 107 KM milestones on Yamuna Expressway are also outside the boundary of Mathura GA and the same are in the GA of another entity (TTZ), there being neither any specific authorization nor No-Objection Certificate ("NOC") issued by PNGRB to appellant for setting up such CNG

stations in the GA of Gail Gas. It is further a case against the appellant that its Shri Ram CNG Station at Chhata (Rural), Vaibhav Filling Station of IOC at Expressway to Vrindavan and Jagdish Filling Station of IOC at Govardhan are outside the authorized GA of Mathura and within the boundary of TTZ GA of GAIL Gas.

103. The appellant Sanwariya Gas, by its reply dated 30.04.2019, responded to the show-cause notice dated 05.04.2019 submitting, *inter alia*, that the two CNG stations at 100 km and 107 km milestones on Yamuna Expressway were built as a part of an initiative of the Ministry of Petroleum and Natural Gas to develop a green corridor, the activities relating to the building and commissioning of the said CNG stations having been duly reported to the said Ministry.

104. It appears that the Board called the appellant along with Gail Gas and IOCL for hearing on 19.06.2019 and, thereafter, by letter dated 17.07.2019 asked the appellant to provide information on affidavit with regard to the following:

> "*(a) To provide complete details of operation of CNG stations with geographical co-ordinates being operated by them outside their authorized GA of Mathura.*
> *(b) CGS established at Chhata, outside Mathura GA and laying of 27 km pipeline from Chhata CGS to Mathura which passes through Vrindavan and Govardhan areas outside the Mathura GA in gross violation of PNGRB Regulations.*
> *(c) Laying branch lines in Vrindavan & Govardhan area which is outside the Mathura GA.*
> *(d) To provide the details of supply of Natural Gas to Industrial consumers outside authorized GA of Mathura.*
> *(e) The above details to be provided by DSMS to include their operations within the Firozabad (TTZ) GA authorized to GGL and Agra GA authorized to Green Gas Limited and any other area that falls outside Mathura GA.*

(f) To submit details of all the CNG stations being operated by them, including those along the Yamuna Express Way, on a map clearly indicating the GA boundary in the map of Mathura as per the authorization, along with the geographical co-ordinates of the CNG stations.

(g) To clearly spell out, whether all the nine CNG stations described on their website fall within the Mathura GA authorized to DSMS or outside."

105. It is stated that, in compliance, the appellant filed its detailed response dated 20.08.2019 followed by an affidavit dated 23.08.2019. It appears that by communication dated 31.07.2020, the Board directed the appellant to appear on 11.08.2020 at 3.00 PM through video conferencing for hearing under PNGRB Act read with Regulation 17 of PNGRB (Conduct of Business, Receiving and Investigation of Complaints) Regulations, 2007. During the hearing, the appellant, while contesting the case on merits, raised preliminary objection about the quorum of the Board as it was, in its submission, a case of *quorum non-judice* since Member (Legal) was not present.

106. The Board, however, by order dated 22.10.2020, rejected the objections and contentions of the appellant and held as under:

"(a) The objections raised by DSMS related to the requirement of the presence of Member (Legal) are hereby dismissed in line with law discussed in the similar objections raised in the matter of Jay Madhok Energy Private Limited, vide Order dated 04.08.2020 and in the matter of IMC Limited vide order dated 05.08.2020. The detailed Orders in this regard are available on PNGRB's website.

(b) In view of the Term Sheet agreement dated 7th October, 2020 signed between GAIL Gas Limited and Sanwariya Gas Limited, for the operations of two CNG Stations named as JP 107 KM and JP 100.4 KM milestones located on Yamuna Expressway, Mathura, the present issue is settled between the parties. However, DSMS is held to be in violation of the PNGRB CGD Authorization Regulations

and section 28 of the Act in operating CNG stations beyond its GA boundary and marketing natural gas from the STPL to certain industrial consumers in the areas beyond its Mathura GA boundary.

(c) DSMS is directed to pay an amount of Rs.1,40,00,000 (Rs. One Crore Forty Lakh Only) toward civil penalty under Section 28 of the PNGRB Act for the violation of authorization terms of Mathura GA till now. The penalty amount be deposited with PNGRB within 15 days from the date of this order, failing which PBG of the entity shall be encashed equal to the amount of penalty.

(d) DSMS is directed to cease operation of the remaining CNG Station(s) outside its GA boundary within 30 days from the date of this order to avoid penalty for continuing failure under section 28 of the PNGRB Act.

(e) DSMS is directed to cease supply of natural gas to the 5 industrial consumers outside its GA boundary once alternate arrangement for supply of natural gas is made by Gail Gas to such industrial consumers. Gail Gas is directed to make such alternate arrangements for supply of natural gas to these industrial consumers at the earliest not later than 30 days from the date of this order so that unauthorized supply of natural gas by DSMS to such industrial consumers is stopped."

107. The above order dated 22.10.2020 imposing the penalty of Rs. 1,40,00,000/- (Rupees One Crore and Forty Lakhs Only) under section 28 of the PNGRB Act 2006 and declaring few CNG stations and five industrial connections illegal is challenged by the captioned appeal under Section 33 of PNGRB Act.

108. It may be mentioned here that the Board in its reply to appeal has stated that after due deliberations and examination of the request of the appellant, it has since accepted the proposal/request on 06.11.2020 to amend the authorisation of Geographical Area of Mathura in favour of Sanwariya Gas Limited from existing joint venture of DSM Infratech Pvt. Ltd.

109. Besides pleading grounds to challenge the correctness of the findings on facts, the appellant contends that the impugned order is illegal because:

(i) The order is passed by Quorum Non-Judice i.e. Chairman and Member (C&M) of the Board whereas Section 24 of the PNGRB Act and Regulation 15 of PNGRB (Conduct of Business, Receiving and Investigation of Complaints) Regulations, 2007 mandate that any dispute has to be decided by a bench consisting of member legal or one of more members nominated by the Chairman.

(ii) The order ignores the view taken by this tribunal by order dated 26.08.2020 in DFR No. 281 of 2020 (since registered as Appeal no. 152 of 2020) – *case of Gail (India)* which is first captioned matter covered by this judgment, finding *prima facie* merit in the exception taken to the legality and propriety of the proceedings before the Board wherein order was passed "in absence of a Member (Legal)" against the letter of the provision contained in Section 24(1).

(iii) A hearing under Regulation 17 of PNGRB (Conduct of Business, Receiving and Investigation of Complaints) Regulations, 2007 cannot be construed to be hearing under Section 28 of the PNGRB Act.

110. We must observe here itself the view taken by this tribunal by order dated 26.08.2020 in (Appeal no. 152 of 2020) *case of Gail (India)* was at interlocutory stage.

111. The appeal at hand raises following questions of law:

(i) Whether the impugned order suffers from Quorum non-judice as per Section 24 of the PNGRB Act, 2006?

(ii) Whether the quorum of the Respondent no.1 passing the impugned order was also contrary to the Regulation 15 of the PNGRB (Conduct of Business, Receiving and Investigation of Complaints) Regulations, 2007?

(iii) Whether imposition of penalty by the respondent No.1 was contrary to Section 28 of the PNGRB Act?

(iv) Whether an authority mandated under the statute to act in accordance with the principles of natural justice can ignore the same thereby introducing arbitrariness in its decision affecting business of citizens of India?

112. The appellant has averred certain facts as were pleaded before the Board in answer to the Show Cause Notice, the same alleged to have been glossed over in the impugned decision. The said facts may be noted hereinafter.

113. It is pleaded that the CNG stations at Yamuna Expressway were installed by the appellant pursuant to sequence of events and consequences arising out of meeting dated 04.05.2017 by the MoP&NG where there was a discussion for development of a green corridor in a time bound manner, GAIL having been assigned the responsibility to identify bottlenecks in declaring green corridor to Delhi-Mumbai, Mumbai-Pune and Delhi-Agra Highways on priority. It appears that, by mail dated 09.07.2017, GAIL had sent to the appellant the list of Green Corridors identified by it and at serial no. 5 of the list, it assigned the appellant to set up DB stations on Delhi Agra Expressway as it passes through Mathura. By email dated 14.07.2017, GAIL requested the appellant to provide update on setting up CNG station at Delhi Agra Expressway and also indicated that the ministry was closely monitoring the progress of establishing CNG stations along the identified Green Corridor. By mail dated

25.07.2017, the appellant claims to have given the details/update about its CNG station on Yamuna Expressway at km 100 and 107 to GAIL. Thereafter, periodic mails were sent by GAIL to the appellant seeking update of the CNG stations on green corridor for the purpose of the review by the Joint Secretary MoP&NG. On the basis of these facts, it is stated that GAIL was a nodal agency for development of CNG stations on the Green Corridors under direction of MoP&NG, the appellant being bound by such directions.

114. On the subject of laying of 27 km of STPL, the appellant pleads that it had constructed its City Gas Station (CGS) outside its Geographical Area with the permission of PNGRB as GAIL had given tap off at Chhata which is 27 kms away from its GA. It submits that it (the appellant) was the participant of the first round of bidding for authorisations by PNGRB and, at that point of time, there was no clarity with regard to sale of gas through STPL which came only in 7th round of bidding and onwards. Since there was no prohibition at that point of time the appellant had given gas to few customers en-route to its GA.

115. The appellant also refers to a dispute with GAIL pleading that since Charge area of Goverdhan and Vrindavan are contiguous to the GA of Mathura, the appellant had been claiming the same to be part of its GA, having addressed several communications on this issue and ultimately having filed a complaint under section 25 of the PNGRB Act, 2006 before PNGRB, registered as Case no. Legal/111/2014. It is stated that, by judgment dated 02.03.2015, the Board had cancelled the authorisation in favour of GAIL Gas Ltd. for the GA of Firozabad wherein the stations and industrial connections which are subject matter of dispute in the present proceedings fall, the appellant's claim for Goverdhan and Vrindavan having been

rejected. The said judgment, it is stated, is under challenge by appeal filed by GAIL Gas Ltd. before this tribunal, vide appeal no. 122 of 2015, the Board also being a party to the said proceedings. It is stated that while issuing notice on the said appeal on 22.05.2015, this tribunal had directed that "*(i)n the meantime, without prejudice to the rights and contentions of the second respondent, status quo as obtaining on the date of the impugned order shall continue to operate.*" The appeal is still pending and the *status quo* order still in operation.

116. It is a grievance of the appellant that the impugned order was passed without considering the submission of the appellant based on above facts.

117. The Board, on the other hand, has averred that the facts of unauthorised activities of the appellant came to its notice upon enquiry into facts alleged in a communication from the appellant (vide reference number SGL/MoP&NG/2017/03 dated 18.08.2017) forwarded by email dated 23.08.2017 by Ministry of Petroleum and Natural Gas (MoP&NG), bringing out a dispute between the appellant and GAIL with respect of charge areas of Vrindavan and Govardhan in Mathura District. It is stated that it was brought to light that the appellant had laid certain branch lines from sub-transmission pipeline to supply natural gas to certain industries beyond its GA boundary, this impression being reinforced by further material in the shape of certain photographs examined with reference to the map of the Mathura GA and the locations of the CNG stations. Thus, by letters dated 10.11.2017, the parties (i.e. the appellant and respondent nos. 2 & 3) were called upon to furnish comments on the said issue, the appellant having pleaded justification on lines noted earlier while Gail stated that the appellant

had never sought any permission/consent from GGL for laying pipelines through Vrindavan and Govardhan areas and installation of CNG Stations (if any), inside Firozabad GA. It is pleaded by the Board that looking at the seriousness of issue it had decided to take *suo-motu* cognizance of the matter for further examination and had accordingly issued Show Cause Notices to the appellant and other respondents on 05.04.2019, under Regulation 17 of PNGRB (Code of Business, Receiving and Investigation of Complaints) Regulation, 2007, respecting the unauthorized activities.

118. The Board has pleaded that a perusal of the responses received from the parties (the appellant and respondent nos. 2 and 3), it became apparent that in the agenda and minutes of meeting dated 03.05.2017 for the joint meeting dated 21.04.2017 circulated by MoP&NG to concerned CGD entities, there was no specific direction to the appellant to set up CNG stations outside its GA boundary, it quoting the following extract from the minutes:

> *"…Individual CGDs made presentation regarding their performance in FY 2016-17 as well as projected target for FY 2017-18. ED(JV), GAIL also made a presentation on development of CNG Green Corridor on various NH/SH/ Expressways".*
>
> *…. ED-JV, GAIL shall identify bottlenecks in declaring Green corridor to Delhi-Mumbai, Mumbai-Pune and Delhi-Agra Highways on priority. Accordingly, necessary steps must be taken to resolve such bottlenecks for declaring these Highways as green corridor by July 2017…"*

119. The Board also states that even from the correspondence exchanged between the third respondent and MoP&NG regarding development of Yamuna Expressway as Green Corridor, it cannot be said that MoP&NG had directed the appellant to set up CNG stations with specific locations beyond their GA, such setting up of

CNG stations within authorized GA being permissible only as per CGD Authorization Regulations. The Board does note that the third respondent had submitted before it that they had agreed to accommodate the CNG dispensers of the appellant in their Retail Outlets (ROs) based on the confirmation from the appellant that the locations of the ROs are within the authorized area of the appellant though adding that based on the recent communications from PNGRB, it (third respondent) had already initiated action to stop the entity to establish CNG dispensers in order to avoid any un-authorized operation of CNG stations at the Retail Outlets of IOCL.

120. The Board asserts that it had conducted the final hearing on 11.08.2020 under PNGRB Act read with Regulation 17 of PNGRB (Conduct of Business, Receiving and Investigation of Complaints) Regulation, 2007, through Video Conferencing and had rightly rejected the objection of non-inclusion of Member (Legal). It argues that the finding returned to the effect that the appellant has been operating CGD Networks including City Gate Station (CGS) and two CNG Stations in Firozabad (TTZ) GA authorized to second respondent in complete violation of the CGD Authorization Regulations, CGD Exclusivity Regulations and CGD T4S Regulations, it not having sought any approval from the Board for such purposes is based on material gathered. It submits that the directions given by the impugned order cannot be assailed.

Facts of Appeal no. 6 of 2021 [In re Maharashtra Natural Gas Ltd.]

121. The appellant Maharashtra Natural Gas Limited (“MNGL”) was authorized by the Central Government for development of the

City Gas Distribution (CGD) network in Pune City ("*the Geographical Area*" or "the GA") which was accepted by the Board by letter dated 01.06.2009. It is stated that the appellant undertook steps to develop the GA and installed various *Compressed Natural Gas* (CNG) stations including CNG stations in name and style of Balaji Petroleum (HPCL), Abhay CNG, Jai Ganesh CNG, NRO Sus GNG etc, they having statedly become operational prior to 2018.

122. It appears that in the later part of the year 2014, the Board floated a tender for development of CGD network of city of Pune excluding the area authorised to the appellant which work was awarded to the second respondent Mahesh Gas Limited ("MaGL"). The appellant contends that the authorisation granted to MaGL for the development of the city of Pune excluded the area already authorised to it (the appellant). It appears the appellant lodged certain complaints before the Board against the second respondent accusing it of certain impermissible conduct vis-à-vis the authorisation. Subsequently, the second respondent (MaGL) preferred a complaint alleging, *inter alia*, that four CNG stations belonging to the appellant - namely Jay Ganesh, NRO Sus or Chandere, Balaji Petroleum & Abhay CNG stations - fall in the GA allotted to MaGL and outside the GA of the appellant. It appears that efforts made to resolve the issues by negotiations could not achieve amicable settlement.

123. The appellant made a complaint on 23.09.2019 to PNGRB alleging unauthorised construction of City Gas Station ("CGS") by MaGL in its GA. By another letter dated 23.09.2019, while mentioning the detailed background and circumstances behind establishing the Balaji Petroleum (HPCL) CNG Station and Abhay CNG Station, it requested the Board to accord *post facto*

NOC/permission for running the said CNG Stations which are claimed to be "*marginally beyond*" its GA, also offering to furnish a Bank Guarantee in terms of internal guidelines. It is also averred that by another communication dated 23.09.2019, it was represented to the Board that Jai Ganesh CNG Station and Chandere CNG Station (also called as NRO SUS) are predominantly falling under the GA of MNGL.

124. It is the grievance of the appellant that the Board (first respondent in the appeal) issued an order dated 01.10.2019, without affording any opportunity of hearing to the appellant, holding that two of the aforesaid CNG stations viz. the Balaji Petroleum (HPCL) located on Pune-Ahmednagar Road located near Wagoli (operational since January, 2014) and Abhay CNG Stations near Fursungi on Pune-Saswad Road (operational since March, 2016) had been set up by the appellant outside its GA. It was held that the appellant was consequently in gross violation of the PNGRB Act and CGD Authorization Regulations. It was directed that in the event of non-transfer of assets, the appellant was to cease the operations of the said two CNG Stations or else suffer penal action under the law. By the same dispensation, the Board directed a time-bound (within fifteen days) joint assessment by the parties in respect of location of the two other CNG stations (i.e. M/s.Jai Ganesh Petroleum, Urali Devach and NRO Sus, Sus Gaon) and a report to be submitted along with the exact geo-coordinates.

125. It is a grievance of the appellant that during this period from 01.10.2019 to January 2020, despite the best efforts made by it, the second respondent did not come forward for joint assessment. The Board, it is stated, convened a meeting of the parties on 24.01.2020 wherein the status of all the four stations mentioned in the letter

dated 01.10.2019 was discussed, the appellant claiming to also have apprised the Board about development of CGS station by the second respondent. It is alleged that the Board did not resolve the matter and instead issued, on 14.02.2020, four *Show Cause Notices* ("*SCNs*") to the appellant respecting each CNG station threatening penal action. It appears that the SCNs were issued under Regulation 16(1) of the CGD Authorization Regulations, 2008 read with Sections 46 and 50 of PNGRB Act.

126. It is not in dispute that the appellant challenged the aforesaid Show Cause Notices (SCNs) dated 14.02.2020 issued by PNGRB, by Writ Petition (Civil) 2472/2020, before Delhi High Court. The writ court, by order dated 05.03.2020, granted time of two weeks to the appellant for the purpose and availing the said liberty the appellant filed replies to the SCNs on 12.03.2020 raising, *inter alia*, various legal and factual grounds questioning the maintainability of the SCNs issued by the Board.

127. Against the above backdrop, the matter arising out of the SCNs was scheduled to be taken up by the Board for hearing on 16.09.2020. Indisputably, on that day, the PNGRB comprised of only the Chairperson and one Technical Member, the offices of the Member (Legal) and other Members being vacant. When the Chairperson and the Member who together constituted the panel that took up the matter called for arguments to be advanced, the appellant objected submitting that the constitution of the Board was incomplete in as much there were only two (2) members which was insufficient to meet the quorum and particularly on account of absence of legal member in the Board. Apparently, the objections were not accepted and an order was issued by the Chairperson with Member of the Board on same day (16.09.2020) observing that

admission had been made with regard to Balaji Petroleum and Abhay CNG Stations being outside the authorized GA of MNGL and on that basis holding that the appellant is liable for penal action for the period prior to February, 2020.

128. Feeling aggrieved by the above-said order dated 16.09.2020, the appellant preferred an appeal (numbered as DFR No.354 of 2020) before this tribunal on the grounds, *inter alia*, that the Board, in absence of Member (Legal) and other members, is not competent to hear the matter since the issue involves adjudication of offence as defined under section 46 and section 50 of the Act. This tribunal disposed of the said appeal by order dated 21.10.2020 as under:

> "*The grievances of the Appellant at this stage, by the present appeal, before PNGRB are primarily two fold viz. (i) that PNGRB is functioning without a Member (Legal) which, going by the provisions contained in the Section 3(3) read with Section 24 of PNGRB Act vitiates the proceedings and (ii) that the Board has assumed the power and jurisdiction of a criminal court for taking a decision with reference to offence provided by Section 46 of PNGRB Act, it being beyond its competence, proper procedure envisaged for such criminal action not being followed.*
>
> *We have heard the learned senior counsel for the Appellant, learned senior counsel for the Respondent PNGRB and the learned senior counsel for the intervener at length.*
>
> *At this stage of the process before the Board, it may not be appropriate for us to express any final opinion on the merits of the contentions raised in this appeal. We must, however, observe that the proceedings recorded by the Board thus far do not throw any light on the above aspects. Given the nature of the proceedings, and the course in which they seem to be heading, it is desirable that the submissions of the Appellant in above respect, particularly on the composition of the bench of the Board which is hearing the matter and the procedure it is following are duly noted, considered and decided in the first instance by the Board.*

In above view, after some hearing, it was agreed by all sides that it will be proper that the Appellant be given an opportunity to urge the contentions pleaded in the above respect by the present appeal before us formally by a representation before the Board within 10 days from today, serving a copy thereof also on the intervenor. The Board, it is agreed by all sides, will hear all parties on such representation and pass a reasoned order thereupon in accordance with law. It has also been agreed by all sides that, after taking decision on the said representation having a bearing on the jurisdiction, the Board will stay its hand for two weeks so that the party aggrieved by such decision can avail of the remedy of appeal there against. Ordered accordingly.

We make it clear that the above arrangement is restricted to the proceedings relating to Show Cause Notices issued for penal action under Section 46 read with section 50 of the PNGRB Act, and under Regulation 16 referred to above. All contentions of the parties are kept open."

129. Availing the liberty given by this tribunal by the above-quoted order, the appellant made an additional representation dated 30.10.2020 before the PNGRB and after affording the opportunity of hearing the same bench as had rendered the previous decision passed a fresh order on 02.12.2020 observing that the Board is well aware that the jurisdiction to try under the Sections 46 & 50 of the PNGRB Act lies with the Criminal Courts and holding that it only intended to have preliminary inquiry in the matter to ascertain if at all a *prima facie* case is made out before filing of the complaint. The relevant part of the order dated 02.12.2020, which is impugned by the appeal at hand, reads thus:

"36. The Board issued Show Cause Notice(s) under Regulation 16 of the CGD Authorization Regulations 2008, section 46 & 50 of the Act, in order to inquire into the defaults

if any of the entity in establishing the CNG Stations. The present show cause notices were issued under the above mentioned provisions so that in case the default committed fall within the purview regulation 16 the appropriate action of providing remedial actions, levying penalties in accordance with the provision may be taken. However, if the case would have been made out under the criminal provisions, then final appropriate course of action would have been to file the complaint as per section 57 of the Act with the appropriate forum. The Board never intended to of take any action under the penal provisions as the Board is well aware that the jurisdiction of the same lies with the Criminal Courts. The only purpose of issuing the notice under Section 46 and 50 is to have a preliminary inquiry in the matter before filing of the complaint if at all a prima facie case is made out."

130. The PNGRB, by above-mentioned order dated 02.12.2020, has also held that presence of Member (Legal) is essential only with reference to the settlement of disputes done by the Board under Section 24 of PNGRB Act but not otherwise, the proceedings under Section 25 and other provisions being merely regulatory or ministerial in nature rendering the presence of Member (Legal) non-essential. It has also been observed that wherever the Board exercises its adjudicatory functions under the Act and thereby adjudicates on a dispute or an issue, the presence of Member (Legal) is essential.

131. In the impugned order dated 02.12.2020 the first respondent Board has recorded its findings on the following two issues;

(i)Whether the Board has jurisdiction to hear the matters in absence of Member (Legal) and other Members as specified in the Act; and

(ii)Whether the Board has jurisdiction to hear the matter under Section 46 & 50 of the Act read with Regulation 16 of the PNGRB (Authorising Entities to Lay, Built, Operate or

Expand City or Local Natural Gas Distribution Networks) Regulations,2008.

132. The impugned order dated 02.12.2020 reads thus:

"Order

a) In view of the above-mentioned facts and observations, we are inclined to hold that the present proceedings, which are being held are regulatory in nature and the presence of Member (Legal) in such proceedings is not mandatory.

b) We further hold that, in view of the position of law discussed above, since the quorum has not been defined for hearing in the Act and in view of the fact that quorum can fall upto two members as per the Meeting of the Board Regulations, 2007, the Board of two members can continue with the present proceedings.

c) In view of the position of law discussed above, the, the Board continue to proceed with the proceedings as per Regulation 16 of CGD Authorization Regulations, 2008 read with Section 46 and 50 of the Act.

In view of the same, the preliminary objections raised by the entity are dismissed."

133. The Board, first respondent in the appeal, defends the impugned order pointing out, *inter alia*, that it is yet to take a decision on the merits of the case arguing that the appeal is premature.

134. The appeal was resisted by the second respondent *Mahesh Gas Limited*, since renamed as *Torrent Gas Pune Limited* ("TGPNL") alleging that the appellant has been engaging itself in unauthorised activities beyond its authorized GA of Pune City including Pimpri Chinchwad and along with adjoining contiguous areas of Hinjewadi, Chakan & Talegaon, the issues raised concerning four CNG stations namely: (i) Balaji Petroleum, Wagholi; (ii) Abhay CNG Station; (iii) Jai Ganesh, Uruli Devachi and (iv) Chandere CNG, Sus Gaon. It refers to the admission made by the appellant in pleadings before the writ court and in answer to the SCN

to the effect that two CNG Stations viz. Balaji Petroleum, Wagholi and Abhay CNG are outside the GA of the appellant. It also refers to the admission that the other two CNG station viz, Jai Ganesh, Uruli Devachi and Chandere CNG, Sus Gaon partially fall outside their GA. It points out that pursuant to the directions of the PNGRB to arrive at an amicable settlement, the appellant and the second respondent had resolved in the meeting held on 18.07.2020 to enter into a commercial arrangement for handover of assets of (i) Balaji Petroleum, Wagholi; (ii) Abhay CNG Station, the parties having agreed to conduct the joint survey for (iii) Jai Ganesh, Uruli Devachi and (iv) Chandere CNG, Sus Gaon. The order dated 16.09.2020 was passed by the Board against this backdrop, the appellant having challenged the said order to the extent thereby penal action had been contemplated vis-à-vis for the CNG stations (i) Balaji Petroleum, Wagholi; (ii) Abhay CNG Station by appeal DFR No. 354 of 2020, the directions regarding joint survey for the other two stations being not a subject matter of the said appeal. It is submitted by the second respondent that on 07.11.2020, the joint survey report (conducted by SECON Private Limited) was filed before the Board, it having been concluded by the agency (SECON Private Limited) that the two subject stations namely Jai Ganesh and Chandere fall exclusively within the authorized GA granted to TGPNL. It is also stated that the appellant has filed objections to said joint survey report on which the Board is yet to take a call.

135. Be that as it may, the appellant's challenge is primarily two-fold viz. that the Board does not have the jurisdiction to initiate penal action against the appellant under Section 46 and 50 of the PNGRB Act, 2006 and Regulation 16(1) of the CGD Regulations and further that even if it were to be held that the Board has the jurisdiction to

initiate such penal action, the same cannot be initiated in the absence of the Member (Legal).

136. There have been subsequent developments which would need to be taken note of at the time of scrutiny of this specific case later.

THE COMMON ISSUES

137. The issues that are common to these appeals may be formulated as under:

(i) Does the PNGRB Act stipulate mandatory inclusion of the Member (Legal) in all proceedings wherein issues of fact are to be determined, or rights or obligations of the parties are to be declared, or civil or criminal consequences are to be enforced?

(ii) Does the PNGRB Act stipulate mandatory compliance with quorum specified by the Regulations in all proceedings held in discharge of its various statutory functions?

(iii) What is the effect of the provision contained in Section 9 of PNGRB Act ("*Vacancies, etc., not to invalidate proceedings of the Board*")?

138. The above issues necessitate a view to be taken bearing in mind the overall scheme of the regulatory legislation.

THE CORE ARGUMENTS OF APPELLANTS

139. The core arguments of the appellants against the opinion articulated by PNGRB revolve around the scope and effect of Sections 24 and 25 of PNGRB Act.

140. It is the contention of the appellants that the Board has misinterpreted the provisions of the PNGRB Act and its allied regulations to take a position that the presence of Member (Legal) is not essential except in proceedings for settlement of disputes under section 24. It is submitted that the presence of the Member (Legal) is required at the time of hearing of all adjudicatory and legislative matters though it may not be required at the time of dealing with matters which are administrative or regulatory in nature.

141. The appellants rely on the ruling of the High Court of Delhi in *GAIL (India) Limited Vs. PNGRB* [2014 SCC OnLine Del 4682], rendered in the particular context of PNGRB Act, to submit that even at the time of framing of regulations by the PNGRB, it should include the presence of the Chairperson and Member (Legal), and thus there is absolutely no occasion to urge that at the time of discharging of adjudicatory functions the Member (Legal) can be left out. The High Court, it is pointed out, held thus:

> "*"33. A question may arise that if PNGRB, by way of Regulations, is empowered to lay down transportation tariff, why it cannot otherwise or by issuing guidelines or directions, so lay down transportation tariff. Again, to hold so would amount to nullifying the words "by regulations" used in Section 11(e) and Section 22 of the Act. Section 2(zh) defines "regulations" as Regulations made by the PNGRB under the PNGRB Act. The Division Bench of this Court in Indraprastha Gas Ltd. (supra), relying on a plethora of judgments of the Supreme Court, has held that price fixation/regulation/control is essentially a clog on the freedom of trade and commerce conferred the status of a Fundamental Right and has to be by legislative mandate and/or is a statutory function. There is no challenge in this petition to the statutory provision in the PNGRB Act delegating such legislative/statutory function to the PNGRB, circumscribing it only with the condition of the same being done by Regulations. However what follows is, that the*

PNGRB, in laying down the transportation tariff and the manner of determination thereof, by Regulations, performs a legislative function. There is an inherent difference between the executive functions of the PNGRB and such legislative function of the PNGRB in framing the Regulations. The Supreme Court in State of U.P. v. Renusagar Power Co. (1988) 4 SCC 59, Shri Sitaram Sugar Co. Ltd. v. Union of India (1990) 3 SCC 223, T.N. Seshan, Chief Election Commissioner v. Union of India (1995) 4 SCC 611 and State of Tamil Nadu v. K. Sabanayagam (1998) 1 SCC 318 has noticed the difference between legislative and administrative functions of bodies/authorities/office. Section 8 of the PNGRB Act dealing with transaction of business of the PNGRB, which comprises of, a Chairperson, a Member (Legal) who is qualified to be a Judge of the High Court or has been a member of the Indian Legal Service and of three other members, provides that if the Chairperson is unable to attend a meeting of the Board, the senior most member present shall preside at the meeting and all questions which come up before any meeting of the PNGRB shall be decided by a majority of the members present and voting. Thus it is well nigh possible that the executive functions of the PNGRB may be performed even in the absence of the Chairperson and Member (Legal). Similarly, Section 58 permits delegation of the powers of the PNGRB to any one or more members or officers. However the Regulations under Section 61, which are required to be by notification and which include the power under Section 61(2)(t) to lay down transportation tariff for common carriers or contract carriers, are under Section 62 required to be laid before each House of Parliament while it is in session for a period of 30 days and if the Parliament makes any modification in the Regulations, the Regulations thereafter would have effect only in such modified form. We assume that the framing of the Regulations by the PNGRB in the temporary absence of the Chairperson and Member (Legal) for any reason whatsoever would await the presence of the Chairperson and Member (Legal) as ordinarily there would not be any hurry to frame the same. We thus conclude that merely because PNGRB itself is the delegatee of the legislature to lay down transportation tariff and the manner of determination thereof, though with the condition of doing the

same by Regulations, would not entitle the PNGRB to further delegate the said function, even to itself, to be performed otherwise than by Regulations.

39. We accordingly hold that the PNGRB can exercise power, under Section 2(zn), of fixing the transportation rate; under Section 11(e)(ii), of regulating the transportation rate; and under Section 22, of laying down the transportation tariff and the manner of determining such tariff, only by Regulations. We further hold the provisions of the Model GTA Guidelines insofar as affecting the Ship-or-Pay Charges which the petitioner is entitled to collect from the shippers under the Agreements entered into with the shippers and insofar as varying the Force Majeure clause in the said Agreements to be having an impact on the transportation tariff and being in the nature of fixing the transportation rate and/or regulating the transportation rate and/or laying down the transportation tariff and the manner of determining such tariff. We accordingly hold the provisions of the Model GTA Guidelines, purporting to fix the transportation rate and/or regulating the transportation rate and/or to lay down the transportation tariff and the manner of determination thereof, though issued by the PNGRB but otherwise than by way of Regulations, to be bad.

40. Insofar as the argument of the respondents, of the petitioner misusing its dominant position, is concerned, it is not as if there is no cure therefore in the statute. The PNGRB can by making Regulations in accordance with Sections 61-62 of the Act do what it has sought to do by framing the Model GTA Guidelines and which has now been held to be not permissible. Without the PNGRB doing so and in the absence of any Regulations qua transportation tariff and the manner of determination thereof, the PNGRB in exercise of its adjudicatory functions also cannot pass an order having the effect of regulating transportation tariff or the manner of determination thereof. In Vijaya C. Gurshaney (supra) relied upon by the counsel for the PNGRB, there was no challenge to the power of the DDA under the Delhi Development Act, 1957 to take the policy decision to lay down the guidelines and in the absence thereof the reliance on the observations in the judgment is of no avail."

142. The appellants submit that the functions for which the Board takes decision in matters involving questions of facts, wherein the relevant averment of one party is contested by the other, where the decision of the Board would depend on adjudication, not necessarily limited to the disputes covered by Section 24, the array including allegations of infraction of law or Regulations or conditions of registration or authorisation, leading to such consequences as are envisaged not only in Section 24 but also under other provisions like those empowering the Board to impose civil penalty or suspend or cancel authorisation or registration or initiate criminal prosecution confers on all such proceedings before the Board the "*trappings of court*" and, therefore, the mandate contained in Section 24 about participation of Member (Legal) would also apply universally. In this context, reliance is placed on decision of Supreme Court reported as *State of Gujarat & Others Vs. Utility Users' Welfare Association & Others* [2018 (6) SCC 21], the Court having held (in context of similar regulatory regime under the Electricity Act) thus:

> "*95. What else can be called the 'trappings of the court'? We are buttressed in our conclusion by judicial pronouncements dealing with the expression "The trappings of the court". The expression "trappings of the court" initially found mention in a judgment of the Judicial Committee of The Privy Council in Shell Company of Australia, Limited v. Federal Commissioner of Taxation. It was observed by Lord Chancellor Sankey that there are tribunals with many of the "trappings of a court" but are not courts in the strict sense of exercising judicial power. In Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd., while dealing with the Industrial Tribunal, it was observed that the said Tribunal has powers vested in a civil court under the said Code while trying a suit, discovery of documents, inspecting, granting adjournment, reception of evidence on affidavit, enforcing attendance of witnesses, etc. The observations in R. v. London County*

Council of Saville, L.J. giving a meaning to the word "court" or "judicial authority" was cited with approval. Saville, L.J. observed as under:

> *"It is not necessary that it should be a Court in the sense that this Court is a Court, it is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition; and it is not necessary to be strictly a Court if it is a tribunal which has to decide rights after hearing evidence and opposition."*

99. Once we find that the tribunal has the trappings of the court in respect of its functions, we turn to the effect of the same.

105. In the context of the question which we are now dealing with, if we were to take the proposition as "no member having knowledge of law is required to be a member of the Commission" then we have a problem at hand. This is so because while interpreting Section 86 of the said Act, it has been expressed that the Commission has the 'trappings of the Court', an aspect we have agreed to hereinbefore. Once it has the 'trappings of the Court' and performs judicial functions, albeit limited ones in the context of the overall functioning of the Commission, still while performing such judicial functions which may be of far reaching effect, the presence of a member having knowledge of law would become necessary. The absence of a member having knowledge of law would make the composition of the State Commission such as would make it incapable of performing the functions under Section 86(1)(f) of the said Act.

107. We are, thus, of the view that it is mandatory to have a person of law, as a member of the State Commission. When we say so, it does not imply that any person from the field of law can be picked up. It has to be a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.

109. We are also not in a position to accept the plea advanced by the learned Attorney General that since there is a presence of a Judge in the Appellate Tribunal that would obviate the need of a man of law as a member of the State Commission. The original proceedings cannot be cured of its defect merely by providing a right of appeal.

110. We are, thus, of the unequivocal view that for all adjudicatory functions, the Bench must necessarily have at least one member, who is or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law and who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.

114. In view of our observations above, we conclude as under:

i. Section 84(2) of the said Act is only an enabling provision to appoint a High Court Judge as a Chairperson of the State Commission of the said Act and it is not mandatory to do so.

ii. It is mandatory that there should be a person of law as a Member of the Commission, which requires a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.

iii. That in any adjudicatory function of the State Commission, it is mandatory for a member having the aforesaid legal expertise to be a member of the Bench.

iv. The challenge to the appointment of the Chairman and Member of the Tamil Nadu State Commission is rejected as also the suo moto proceedings carried out by the Commission.

v. Our judgment will apply prospectively and would not affect the orders already passed by the Commission from time to time.

vi. In case there is no member from law as a member of the Commission as required aforesaid in para 2 of our conclusion, the next vacancy arising in every State Commission shall be filled in by a Member of law in terms of clause (ii) above."

143. It is pointed out that in the context of Competition Act, 2002, the High Court of Delhi in the matter of *Mahindra Electric Mobility Limited & Another Vs. Competition Commission of India & Another* [2019 SCC OnLine Del 8032] had held and directed that the Competition Commission of India ("CCI") "*shall ensure that at all times, during the final hearing, the judicial member (in line with the declaration of law in Utility Users Welfare Association, (supra) is present and participates in the hearing"*. It is pointed out that while undertaking a comparative study of provisions of various regulatory laws, the High Court also noted the status of the Board under PNGRB Act and observed thus:

"*114. The Petroleum and Natural Gas Regulatory Board Act, 2006 (hereafter as "the PNGRB Act") was framed to promote competitive markets and protect the interests of consumers by ensuring fair trade and competition among the entities. The Board under Section 11 of the PNGRB Act has to protect the interest of consumers by passing fair trade and competition among entities and through its regulations enable access to common carriers or contract carriers. To achieve those objectives, the Board has tariff framing authority : through regulations under Section 22(1). By virtue of Section 28, the PNGRB Board is empowered to entertain complaints or upon its satisfaction upon information, that anyone contravenes provisions of the Act or its directions or authorize the terms and conditions subject to which authorization is guaranteed to carriers and other service providers (under Section 15 and 19) or retail service obligations etc. It can entertain such complaints. These complaints and information can be the subject matter of an*

enquiry during the course of which opportunity should be given to the concerned allegedly erring authority. If the Board determines that the concerned service providers or entity has acted in violation provisions of the Act or the Board's directions, it can impose civil penalty for an amount up to Rs. 1 crore for each contravention and in case of continuing failure with additional penalty up to Rs. 10 lakhs for every day.

115. The Board is set up under Section 3 of the PNGRB Act and consists of Chairperson, Member (Legal) and three other members all of whom are to be appointed by the Central Government. The Chairperson has to be from amongst persons from of eminence in the fields of petroleum and natural gas industry, management, finance, law, administration or consumer affairs-as in the case of the members too. However, in the case of Member (Legal), the individual should be qualified to be the Judge of the High Court or should have been Member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years. The Selection Committee under Section 4(2) of the Act is to comprise of Member of the Planning Commission, in-charge of the energy sector and four Secretaries to the Government of India. The term of office of the Chairperson and other members is for five years or till they attained the age of 65 years whichever is earlier. Meeting of the Board have to be through a majority and in case of equality of votes, by Section 8(3), the Chairperson would have the casting vote. By Section 24 of the PNGRB Act, the Board has powers to settle disputes between two entities or between the entity or any other person. Section 26 outlines the power of investigation to aid the dispute settlement jurisdiction."

144. The High Court proceeded to hold thus in *Mahindra Electric Mobility Limited & Another Vs. Competition Commission of India & Another* (supra):

"*117. It is evident from the above enumeration of powers conferred upon the TRAI, the SEBI, the Electricity Commissions, the AAI, the AERA the PNGRB, that a two stage pattern has evolved in regulation of various sectors of*

the economy: the telecom, the securities, the power, airports and petroleum sectors. At the first stage the legislation provides for a primary regulator: in most cases, apart from regulatory duties, the concerned body also possesses regulation framing powers and power to issue directions, - after consulting or issuing notices to the concerned parties (and hearing them). These orders or directions are then appealable to tribunals (Securities Appellate Tribunal or SAT against orders of SEBI, TDSAT in the case of orders of TRAI; the Electricity Appellate Tribunal in respect of various orders, including tariff fixation orders of the concerned commissions, such as the state or central commissions, the Airport Appellate Tribunal against orders of the AAI and lastly, AERAT, against orders of AERA). In all these cases, composition of the primary authority - which have sweeping powers in the concerned segment, is not amongst members who are predominantly from the judicial or legal field. Expertise in law is one amongst the many fields prescribed as eligible qualification, in the case of membership of these authorities or statutory regulatory bodies. Likewise, the predominant membership of the appellate tribunals (TDSAT, Electricity appellate Tribunal, SAT, AERA) is not from the judicial or legal field. Undoubtedly, the chairperson of such tribunals should have possessed judicial experience as Judges of Supreme Court, or Chief Justice of any High Court, or judge of High Court. But in all these tribunals (barring one) the other members are not necessarily from the judicial and legal field.

118. The plurality and multifarious tasks conferred upon each regulatory body and the plenitude of their powers and authority in the respective fields occupied by them leaves no manner of doubt to this Court, that the functions of each of them have lasting impact on those it seeks to regulate. The impact can be diverse- as it may operate as a direction in rem against a class of service providers, (terms of licensing, grant of licensing, permitting interconnection in the telecom segment) or operate in rem against both service providers and consumers (as in the case of tariff fixation). In the case of SEBI, the directions can be drastic (as for instance, when for any violation or infraction of the enactment or the prescribed regulations, the trader or stockbroker, fund house, etc. can be prohibited from operating for specific

duration). Such action can result in deprivation of the right to trade or carry on business or profession; it may be a monetary sanction as in the case of penalty, or damages, etc. Yet, these drastic actions may have the effect of decrees (when the directions or orders are made by appellate bodies). But the primary determinations are made by regulatory bodies. This model or pattern inures under the Competition Act, as well.

134 (i) The Parliament has the power to enact legislation, and to vest adjudicatory functions, earlier vested in the High Court, with an alternative court/tribunal. Exercise of such power by the Parliament would not per se violate the "basic structure" of the Constitution.

135. If these observations are kept in mind, the fact that some powers under an enactment, which clothe the authorities with a broad range of powers (and jurisdiction) - such as administrative, quasi legislative and quasi-judicial per se would not make that body a judicial or purely administrative one. Previously, this Court noticed various decisions which held that the bodies created under the TRAI Act and the Electricity Act are acknowledged to be regulatory ones; in the case of TRAI, one of the rulings of the Supreme Court stated that regulation can take shape through subordinate legislation (i.e. rule making, regulation framing) or through "litigation" i.e. quasi-judicial determination in the course of decisions, directions and orders, after fact gathering i.e. granting opportunity to the parties concerned. In the case of the Electricity Commissions, it was held that they do perform quasi-judicial functions. As regards primary authorities under SEBI (i.e. the Board and the adjudicatory officers) there is no question that they do perform adjudicatory functions. The consequence of these functions (i.e. quasi-judicial determinations leading to orders and directions) is serious and parties concerned or service providers as a class are potentially impacted, sometimes gravely. In the case of SEBI, the Board's decisions can in fact lead to commercial shut down for specified periods, if the direction to stop trading is given. Undoubtedly, these result in serious civil consequences. In all these cases-as in the case of the Act,

the remedy of appeal is available as a right; the appellate tribunals uniformly are chaired by a judicially trained person (former High Court Chief Justice or former Supreme Court judge) in a couple of tribunals, in addition, other members drawn from the legal field are necessary. However, as regards the primary regulator, i.e. the bodies such as TRAI, SEBI, Electricity Commissions, AAI, AERA, PNGRB the statutes do not mandate that the members concerned (including adjudicating officers under Section 15I of SEBI Act) should be legally qualified or possess judicial experience."

145. The appellants argue - and there is no counter argument to this - that, as in context of judicial process, the quasi-judicial function also enjoins the authority on which such power is vested to act judicially. In this context, the following observations of Supreme Court in *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala [AIR 1961 SC 1669]* hold good:

"33. In my opinion, a court in the strict sense is a tribunal which is a part of the ordinary hierarchy of courts of civil judicature maintained by the State under its constitution to exercise the judicial power of the State. These courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction. The word 'judicial', be it noted, is itself capable of two meanings. They were admirably stated by Lopes, L.J. in Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson [(1892) 1 QB 431 : (1891-94) All ER Rep 429 (CA)] in these words: (QB p. 452)

> *'The word "judicial" has two meanings. It may refer to the discharge of duties exercisable by a Judge or by Justices in court, or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind—that is, a mind to determine what is fair and just in respect of the matters under consideration.'*

That an officer is required to decide matters before him 'judicially' in the second sense does not make him a court or even a tribunal, because that only establishes that he is following a standard of conduct, and is free from bias or interest."

146. The thrust of the submissions of the appellants is that it is not only the proceedings under Section 24 which have the "*trappings of court*" but all functions wherein the Board is engaged in a process that is adjudicatory in nature – where questions of facts have to be determined or rights or obligations enforced – this including process on complaints under Section 25 or imposition of civil penalty or initiation of criminal action. On this basis, it is argued that the requirement of participation by Member (Legal) is the mandate of law, notwithstanding the fact that this is mentioned only in Section 24.

ANALYSIS

147. We must make it clear here that this tribunal does not intend to examine or express opinion on the issue as to what is the proper quorum for the Board to exercise its legislative power wherein it would frame or promulgate regulations to carry out the objectives of the PNGRB Act and the State policy thereby enforced or as to whether such composition should mandatorily include the Member (Legal). We refrain from such scrutiny for the simple reason the scrutiny of validity or *vires* of such subordinate legislation is not within the jurisdiction vested in this tribunal. The views expressed on the issues raised in these appeals will have to be construed and

understood as our opinion concerning only the process adopted in such matters as may be brought before us in challenges by statutory appeal assailing the orders or decisions of the Board under PNGRB Act.

148. We do accept the broad plea that where the legislature considered it necessary to have a particular member present at a particular proceeding, it has expressly so provided and that in respect of other provisions, for which there is no such express requirement, the same cannot be read therein by implication. In taking this view, we are guided by ruling of the Supreme Court in *CCI v. SAIL* [(2010) 10 SCC 744], wherein the provisions of the Competition Act, 2002 were interpreted as under:

> *"71….Section 26(1), as already noticed, requires the Commission to form an opinion whether or not there exists a prima facie case for issuance of direction to the Director General to conduct an investigation. This Section does not mention about issuance of any notice to any party before or at the time of formation of an opinion by the Commission on the basis of a reference or information received by it. Language of Sections 3(4) and 19 and for that matter, any other provision of the Act does not suggest that notice to the informant or any other person is required to be issued at this stage. In contradistinction to this, when the Commission receives the report from the Director General and if it has not already taken a decision to close the case under Section 26(2), the Commission is not only expected to forward the copy of the report, issue notice, invite objections or suggestions from the informant, the Central Government, the State Government, statutory authorities or the parties concerned, but also to provide an opportunity of hearing to the parties before arriving at any final conclusion under Sections 26(7) or 26(8) of the Act, as the case may be. <u>This obviously means that wherever the legislature has intended that notice is to be served upon the other party, it has specifically so stated and we see no compelling reason to read into the provisions of Section 26(1) the requirement of</u>*

notice, when it is conspicuous by its very absence. Once the proceedings before the Commission are completed, the parties have a right to appeal under Section 53-A(1)(a) in regard to the orders termed as appealable under that provision. Section 53-B requires that the Tribunal should give, parties to the appeal, notice and an opportunity of being heard before passing orders, as it may deem fit and proper, confirming, modifying or setting aside the direction, decision or order appealed against."

(emphasis supplied)

149. The Board has been setup as a regulatory body to regulate the industry of petroleum, petroleum products and natural gas. The presence of such sectoral regulators is a necessity in any modern economy. The role of regulators and the nature of their functions was discussed by the Supreme Court, *albeit* in the context of Electricity Act, 2003, in *PTC India Ltd. v. Central Electricity Regulatory Commission* [(2010) 4 SCC 603], thus:

"49. On the above analysis of various Sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to Professor Wade, "between legislative and administrative functions we have regulatory functions". A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law. (See Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223])."

(emphasis supplied)

150. It is fairly conceded by learned counsel on all sides that the position of Electricity Regulatory Commissions under Electricity Act

and that of Petroleum and Natural Gas Regulatory Board (PNGRB) under the PNGRB Act is similar, if not almost identical, the prime difference being the sector placed under their respective care and regulatory control. As in the case of electricity regulatory commission, the Board has been conferred legislative role and adjudicatory jurisdiction, in addition to administrative powers, there being some administrative functions which would fall in the category of ministerial acts.

151. There was broad consensus amongst learned counsel for the parties that besides the advisory or other roles performed by it, the functions and powers of the Board can be classified as follows:

(i) *Legislative functions* (by framing Regulations): This power is conferred generally ("*consistent with this Act … to carry out provisions of this Act*") by Section 61(1) and specifically ("*without prejudice to the generality of the … power*") by Sections 61(2), as indeed by various clauses such as (e), (f)(v), (i) etc. of Section 11 on varied subjects such as concerning "*common carrier or contract carrier*" or CGD network including "*access*", "*transportation rates*", "*fair trade and competition*"; "*retail service obligations*", "*market service obligations*"; "*technical standards and specifications*", "*safety standards*" etc.

(ii) *Administrative powers* (to give effect to the PNGRB Act, and the rules and Regulations framed thereunder): Specific administrative powers have been granted to the Board *inter alia* under clauses (a)-(d) and (f)(i-iv) of Section 11 and Sections 14-21 of the Act, on such subjects as "*registration of entities*", "*authorisation*",

"*determining transportation tariff*", "*suspension or cancellation of authorisation*" etc.

(iii) *Judicial powers*: Illustratively under Section 24, empowering it to settle disputes, which would have ordinarily been amenable to the jurisdiction of civil courts, such erstwhile jurisdiction of civil courts having been ousted by Section 56.

152. There is no dispute as to what would encompass a legislative function. In the context of regulatory law like PNGRB Act, the power to put in position subordinate legislation in the form of Rules or Regulations is a legislative function. It bears repetition to say that having regard to the scheme of the law, and the context in which remedy of appeal before this tribunal is provided for, this is not the appropriate forum for examining the validity or *vires* of the parent statute (PNGRB Act) or the subordinate legislation (Rules or Regulations) framed thereunder. Similarly, this tribunal is not the forum where the acts done in exercise of advisory role (whenever) given to the Board may be brought in question.

153. The Board has argued that with respect to purely legislative functions of making regulations, it is not possible to say that there is any implied requirement of the presence of Member (Legal). We express no comment or opinion on this submission since it is not only beyond the domain of appellate jurisdiction vested in this tribunal but also because this question does not even arise in proceedings at hand.

154. The remedy of appeal is provided by Section 33, sub-section (1) whereof states that "(a)*ny person aggrieved by an order or decision made by the Board under this Act may prefer an appeal to*

the Appellate Tribunal". Though the statute casts the net very wide, we would exclude the decisions taken by the Board on framing of regulations from the purview of appeal before this tribunal because of the very nature of that function. But such exclusion would not cover the orders passed or decisions taken for enforcement of the regulations. Therefore, while we would refrain from scrutiny of procedure for framing regulations, it is necessary and within the domain of our appellate jurisdiction to examine if the presence of Member (Legal) is mandatory for processing issues of enforcement of regulations – be it in form of disputes or complaints or in similar proceedings.

155. Subject to just exceptions, and generally speaking, all acts other than those in exercise of legislative or advisory functions done by the PNGRB are amenable to appeal before this tribunal and they may include acts which are done in exercise of judicial or administrative functions, provided, of course, that the person claiming to be aggrieved makes out a case for such challenge within the four corners of law on the subject. The tests to be applied to examine the validity or otherwise of the impugned acts, however, might differ in context of administrative decisions in contrast of judicial decisions.

156. Before embarking on detailed analysis, it is necessary to bear in mind the distinction between judicial functions on one hand and administrative or ministerial functions on the other. This distinction was explained by the Supreme Court in *Jamal Uddin Ahmad v. Abu Saleh Najmuddin* [(2003) 4 SCC 257] as follows:

> *"14. The judicial function entrusted to a Judge is inalienable and differs from an administrative or ministerial function*

which can be delegated or performance whereof may be secured through authorization.

"The judicial function consists in the interpretation of the law and its application by rule or discretion to the facts of particular cases. This involves the ascertainment of facts in dispute according to the law of evidence. The organs which the State sets up to exercise the judicial function are called courts of law or courts of justice. Administration consists of the operations, whatever their intrinsic nature may be, which are performed by administrators; and administrators are all State officials who are neither legislators nor judges."

(See Constitutional and Administrative Law, Phillips and Jackson, 6th Edn., p. 13.) P. Ramanatha Aiyar's Law Lexicon defines judicial function as the doing of something in the nature of or in the course of an action in court. (p. 1015) The distinction between "judicial" and "ministerial acts" is:

If a Judge dealing with a particular matter has to exercise his discretion in arriving at a decision, he is acting judicially; if on the other hand, he is merely required to do a particular act and is precluded from entering into the merits of the matter, he is said to be acting ministerially. (pp. 1013-14)

Judicial function is exercised under legal authority to decide on the disputes, after hearing the parties, may be after making an enquiry, and the decision affects the rights and obligations of the parties. There is a duty to act judicially. The Judge may construe the law and apply it to a particular state of facts presented for the determination of the controversy. A ministerial act, on the other hand, may be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the Act done. (Law Lexicon, ibid., p. 1234). In ministerial duty nothing is left to discretion; it is a simple, definite duty. …."

(emphasis supplied)

157. It is correct to say that the administrative powers mentioned earlier involve some ministerial functions carrying no element of discretion. In fact, this would be true of all major functions such as adjudicatory as well. Before and after the Board (or the Bench) taking a call on issues within its domain, the officers and support staff (the ministerial wing) would invariably carry out the necessary follow up. This could be in the form of calling for information, issuing notices, collecting and collating the responses received, making presentation before the Board, arranging meetings or hearings – in fact all such mundane activity as is necessary to lay the stage for the Board to perform its functions effectively. The ministerial cadre does not reach conclusions; they don't pass orders; they have no discretion to exercise; they only aid and assist the Board or its members – only carry out the duties assigned so that decision making is efficiently done. They may be involved in checking post-authorisation compliance of predefined norms by the authorised entities and report deficiency (if any) to the Board but have no competence or authority in law to *order* compliance. If a case of non-compliance or breach of law or regulations (or orders of Board) come to the fore during ministerial scrutiny, they are duty-bound to inform the Board which would decide the appropriate course or measure to adopt. The privilege to decide or exercise discretionary powers, leading to civil consequences, such as grant, suspension or cancellation of authorisation or criminal action remains within the domain of the Board and not delegated to anyone else.

158. We must note here again that the learned Counsel for PNGRB fairly conceded that the powers and jurisdiction to adjudicate for settlement of disputes referred to in Section 24 and, equally importantly, to take effective decisions under Section 25 –

entertaining a complaint, taking a view thereupon, deciding on appropriate course of process (inquiry or investigation), hearing and disposal followed by appropriate directions etc. - are matters which cannot be and have not been ever delegated in exercise of discretion given by Section 58. The discretionary functions of the Board are both administrative and quasi-judicial.

159. It does appear, as is submitted by learned counsel for PNGRB, that two of the primary administrative (non-ministerial) functions of the Board are: (i) to *register* entities for undertaking marketing activities in respect of petroleum, petroleum products and natural gas; and (ii) *authorise* entities to construct and operate pipelines and pipeline networks for transportation of such products. These administrative functions are closely connected to the legislative power vesting in the Board the function of making regulations with respect to parameters required to be followed by such registered and authorised entities at different stages of their operations. One illustration of such exercise of legislative power is the *Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City Gas Distribution Network) Regulation, 2008* (for short, "*CGD Authorization Regulations*"). Regulation 10 of CGD Authorization Regulations pertains to grant of authorisation; Regulations 11 and 13 lay down the parameters which are required to be followed by the authorised entity post-authorization and pre-commissioning; and Regulation 14 lays down the parameters for post-commissioning service obligations.

160. We do not agree with the learned counsel for the Board that the performance of the regulatory function of checking compliance with the parameters prescribed by Regulations is a purely ministerial

act because it does not involve any element of discretion. The possibility of use of discretion is just one of the various factors that would determine whether an act is merely ministerial or more. As already noted, the muster includes scrutiny as to whether the act in question is performed by someone upon being "*merely required to*" and "*in obedience to the mandate of a legal authority*", it being not open (beyond limits of permissible delegation) to act in "*exercise of … his own judgment*" [see *Jamal Uddin Ahmad v. Abu Saleh* Najmuddin (supra)].

161. We also do not accept the submission that to reach satisfaction (illustratively) as to whether or not the authorised entity has achieved financial closure within the prescribed period is a ministerial act only because the facts might be objectively ascertainable and not subject to use of discretion. The plea of the learned counsel for the Board to classify an inquiry as to whether an entity (in whose favour an authorisation has been granted) has failed to comply with any conditions of authorisation as ministerial is improper attempt to reduce proceedings of far-reaching import (affecting rights and obligations of parties involved) to mere unilateral formality. We repel such plea particularly because it has the dangerous potential to free the process of obligation towards rules of natural justice. We are unable to subscribe to the argument that there is no requirement in law of acting judicially, let alone any adjudicatory process being applied, in the checking of compliance with the terms and conditions of authorization by an authorized entity.

162. If a fact is alleged by one but denied by other contending party, it becomes a question of fact and determination of such question on basis of evidence presented becomes quasi-judicial exercise which

cannot be delegated to a ministerial agency. At the time of consideration of application for grant of registration or authorisation (administrative exercise), such conclusion may be reached, with aid and assistance of administrative or ministerial staff, in environment that is not that of dealing with a *lis*. But when it comes to dealing with dispute situation, whether upon complaint or petition lodged by party affected, or *suo motu* upon information received, the quasi-judicial nature of proceedings – exercising regulatory control (leading to civil or criminal consequences) or performing adjudicatory duty to afford just relief and do justice between the disputants – is such that it can never be reduced to the level of a ministerial function "*of the Board*".

163. We would conclude on the subject by saying that Board is not expected to perform *ministerial* functions. There are no ministerial functions *of the* Board. Such *ministerial functions* are entrusted to the support staff. Therefore, there can be no question of any requirement of presence of Member (Legal) or any particular member for that matter, in ministerial functions.

164. It is admitted position of all sides that some of the functions of the Board are such in the performance of which certain discretion is conferred upon the Board, and where its decisions affect rights of parties. There is, however, divergent view canvassed by the parties on the issue as to whether in context of such functions as mentioned hereinbelow, there is a similar requirement of presence of Member (Legal):

(i) Under Section 15, the Board is empowered to consider applications by entities desirous of marketing notified petroleum, petroleum products or natural gas etc., and after making such enquiry and subject to such terms and

conditions as it may specify, to grant the certificate of registration to the entity. This necessarily involves application of mind by the Board as to whether the certificate of registration should be granted or not; and if it is to be granted, what are the terms and conditions to which it should be subjected. Sub-section (4) specifically contemplates grant of hearing before suspension or cancellation of such registration.

(ii) Section 17 empowers the Board to consider and either accept or reject applications for authorisation by entities. In the process, the Board is also empowered to impose amendments and conditions, as it may think fit, while accepting the application. The very expression "*as it may think fit*" shows conferment of discretion upon the Board.

(iii) Section 19 empowers the Board to select an entity for laying, building, operating or expanding a common carrier or contract carrier or city of local natural gas distribution network.

(iv) Section 20 confers discretion on the Board to declare an existing pipeline for transportation of petroleum etc. or an existing CGD network as a *common carrier* or *contract carrier*. There is a statutory requirement for the Board to act judicially under this section, to the extent that the owner of the pipeline or the network must be provided an opportunity of being heard.

165. It is the argument of the learned counsel for the Board that the submission that all administrative or quasi-judicial functions which involve discretion and have civil consequences mandatorily require

presence of Member (Legal) is based on a complete misunderstanding of administrative law.

166. Conferment of discretion upon the executive is a necessity of the modern State, and the entire jurisprudence of administrative law, including the requirement of compliance of principles of natural justice, principles of reasonableness and proportionality etc., has evolved to lay down the parameters within which such discretionary administrative and quasi-judicial functions ought to be exercised. We agree that in any such debate as at hand, the distinction between determinations which are regulatory and determinations which are purely judicial must always be borne in mind.

167. In *Clariant International Ltd. v. Securities & Exchange Board of India* [(2004) 8 SCC 524], the Supreme Court considering the position of *Securities & Exchange Board of India* (referred to in the judgment as "the Board") held as follows:

> *"65. The modern sociological condition as also the needs of the time have necessitated growth of administrative law and Administrative Tribunals. Executive functions of the State call for exercise of discretion. The executive also, thus, performs quasi-judicial and quasi-legislative functions and, in this view of the matter, administrative adjudication has become an indispensable part of modern State activity.*
>
> *…*
>
> *77. The Board exercises its legislative power by making regulations, executive power by administering the regulations framed by it and taking action against any entity violating these regulations and judicial power by adjudicating disputes in the implementation thereof. The only check upon exercise of such wide-ranging powers is that it must comply with the Constitution and the Act. In that view of the matter, where an expert Tribunal has been constituted, the scrutiny at its end must be held to be of wide import. The Tribunal, another expert body, must, thus, be allowed to exercise its*

<u>own jurisdiction conferred on it by the statute without any limitation</u>."

(emphasis supplied)

168. Placing reliance on decision of Supreme Court in the case of *Satya Pal Anand v. State of M.P* [(2014) 7 SCC 244], it is submitted on behalf of the PNGRB that it is no precondition for the exercise of discretionary functions by a statutory authority, even when some of them are quasi-judicial, that it should be manned by persons with judicial or legal experience. The case of *Satya Pal Anand* (supra) concerned the qualifications for appointment to the posts of Registrar, Additional Registrar etc. of tribunal under M.P. Cooperative Societies Act, 1960. Similarly, the issues in *Namit Sharma* v. *Union of India* [(2013) 1 SCC 745] [***"****Namit Sharma-I"*] and *Union of India v. Namit Sharma* [(2013) 10 SCC 359] [*"Namit Sharma-II"*], decided by Supreme Court in context of the provisions of the Right to Information Act, 2005 revolved around the proposition that the Information Commissions exercise judicial powers and not administrative functions which was repelled. We find merit in submission that it may not be correct to say that every exercise of discretion by the executive, which has civil consequences or which partake the character of a quasi-judicial function, must necessarily be undertaken in the presence of a judicial or legal member, it being impermissible to have such requirement 'read into' the statute despite the statute not having so provided. Such a requirement can be, and has been, read into the statutes, only when a statutory authority has to carry out an adjudicatory function which would otherwise be carried out by a court.

169. But the cases cited have no direct bearing here. it is not our domain to examine as to whether it would have been desirable if the legislation had explicitly prescribed the quorum or insisted on presence of Member (Legal) in context of Section 25. We are not addressing the question as to in exercise of which of the functions of the Board the presence of Member (Legal) is *desirable*. Our endeavour is primarily to find out as to whether the process concerning *complaints* entertained in terms of Section 12 (1) (b), probed as per procedure set out in Section 25, attract the norms for settlement of dispute prescribed in Section 24 and, if so, to what extent.

170. We agree with the Board that in all the above-mentioned processes, the power exercised is essentially that of regulation and, therefore, though rights are thereby determined, the statute not having provided for any hearing or duty to act judicially at such stages, the functions are administrative in nature. In discharge of such duties, the relevant considerations are set out in Section 13(3) – "… *be guided by the principles of natural justice and subject to other provisions of this Act and of any rules made thereunder, shall have powers to regulate its own procedure …*" – the meetings of the Board being regulated by Section 8 read with the Regulations framed in such context viz. *Business-Conduct Regulations* and *Board-Meeting Regulations*.

171. Whilst it may be that the decisions in nature above-mentioned are to be rendered following rules of natural justice, this by itself does not make them quasi-judicial or taken in a situation which is akin to *lis*. Therefore, we must reject the half-hearted suggestion that even in context of such administrative responsibilities the composition of Board must subscribe to the requirements of Section

24 regarding presence and participation of Member (Legal). For purposes of such proceedings, the requirements of quorum as stipulated in Section 8 read with Business-Conduct Regulations and Board-Meeting Regulations, however, must be adhered to.

172. We must add here that a similar argument is raised by the Board vis-à-vis process under section 23 ("*suspension and cancellation of authorisation*"). That, to our mind, opens up a different jurisdiction wherein, unlike grant of registration or authorisation, the proceedings would invariably be accusatory and adversarial in nature, the Board also expected to undertake inquisitorial role by inquiring into or getting investigated the allegations of misconduct. In this view, we feel such proceedings arising out of the jurisdiction of Board under Section 23 ought to be treated at par with adjudicatory process with the overall objective of achieving "*Settlement of disputes*". We would dwell on this aspect more later.

173. We agree with the submission that the requirement of presence of Member (Legal) being conspicuous by its absence in the provisions contained in Sections 15 or 19, it cannot be read therein by implication. But the question persists as to whether the above-noted position of provisions relating to *Registration* or *Authorisation* or *Suspension* or *Cancellation* must lead to the conclusion that there is no mandatory requirement of the presence of Member (Legal) in the exercise by the Board of any of its such other functions, particularly while dealing with Complaints under Section 25. The occasion for considering the measure in the nature of suspension or cancellation of authorisation or imposition of civil penalty would generally arise when there are accusations of violation or abuse of the position, breach of discipline or obligations,

indulgence in anti-competitive or unfair trade practice, or other misdemeanour of like kind. The experience shows that such kind of accusations would be levelled or brought to the cognizance of the Board in the form of *dispute* under Section 12(1) or *complaint* under section 12(2), the cases of the Board taking *suo motu* action on information gathered by itself being possible though rare. In this view of the matter, it requires, of necessity, a scrutiny of the inter-play between Sections 24 and 25, both along with other related or incidental provisions forming integral part of the statutory scheme for *Settlement of Disputes*, as set out in Chapter V of PNGRB Act.

174. This brings us to duty of the Board towards what is described expressly by the statute as "*Settlement of Disputes*". The prime and relevant part of the legislation on the subject (fifth chapter) lays down the procedure for dealing with such *Disputes* as would ordinarily (but for the special law) be within the domain of civil courts and *complaints* of breaches of law, regulations or binding orders of regulatory authority leading to civil consequences (or penalties). Though placed in a separate segment (ninth chapter), the legislation also creates new offences. Dealing with the same is part of, and would invariably be dependent on, inquiry or investigation envisaged in fifth chapter on settlement of disputes. In our considered view, the orders passed or decisions taken in context of all the above-mentioned subjects are covered under the category of "*adjudicatory functions*" of the Board for the simple reason, more often than not, if not invariably, they would engage the attention of the Board in "*ascertainment of facts in dispute*" and "*interpretation of the law and its application by rule or discretion to the facts of particular cases*" [see *Jamal Uddin Ahmad v. Abu Saleh Najmuddin* (supra)].

175. As already noted, in *State of Gujarat v. Utility Users' Welfare Assn.* [(2018) 6 SCC 21], the Supreme Court had the occasion to consider almost similar scheme and provisions of the Electricity Act, 2003. It was noted that the regulatory authority (State Electricity Regulatory Commission) thereunder performs various functions, including adjudicatory functions ("*adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration*") under Section 86(1)(f), it having been held that it is only in respect of the performance of this function that the presence of judicial member is necessary, for the reason that in exercising powers under this provision, the Commission had "*trappings of a court*", it having replaced civil courts in respect of such disputes, no such requirement having been considered necessary in respect of other functions. The following part of the said ruling may be quoted:

> *"90. We may also look to the nature and functions performed by the State Commission. Functions of the State Commission are prescribed under Section 86 of the said Act. The enumerated functions are determination of tariff, regulation of electricity purchase and procurement process of distribution licensees, facilitating intra-State transmission, issuing licences to persons, promoting cogeneration and generation of electricity from renewable sources, levy fee, specify or enforce standards, fix trading margins. All these functions are regulatory in character rather than adjudicatory. The real adjudicatory function is only provided in sub-clause (f) whereupon the Commission has the option of adjudicating the disputes between the licensees and generating companies, or to refer such disputes to arbitration. There is also an advisory role to be performed by the State Commission as specified in sub-Section (2). The issue, however, is not whether a Judge would be comfortable doing this function but whether these are types of functions which necessarily mandate a Judge to be a*

Chairperson. The answer to this would also be in the negative, supporting the view we have adopted on the plain reading of the Section.

….

103. We may also note that in terms of what has been opined in Gujarat Urja Vikas Nigam Ltd. [Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755] (GJ-I), such adjudication of disputes between the licensees and generating companies by the State Commission or the arbitrator nominated by it under clause (f) of sub-Section (1) of Section 86 of the said Act extends to all disputes and not merely to those pertaining to matters referred to in clauses (a) to (e) and (g) to (k) of Section 86(1) as may arise between licensees and generating companies. In effect, it has been observed that this is the only process of adjudication which has to be followed as there is no restriction in Section 86(1)(f) of the nature of the dispute that may be adjudicated. Similarly in A.P. Power Coordination Committee [A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd., (2016) 3 SCC 468] while referring to the judgment in Gujarat Urja Vikas Nigam Ltd. [Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755] (GJ-I), it has been observed that the Commission has been elevated to the status of a civil court in respect of all disputes between the licensees and generating companies. Such disputes need not arise from exercise of powers under the said Act but even claims or disputes arising purely out of contract have to be either adjudicated by the Commission or be referred to an arbitrator nominated by the Commission. In that context it has also been observed that the advisability of having the State Commission presided over by a Judge of the High Court as a Chairperson was mentioned in Tangedco Ltd. [Tangedco Ltd. v. PPN Power Generating Co. (P) Ltd., (2014) 11 SCC 53] The provisions of the Limitation Act, 1963 like Sections 5 and 14 have also been imported into the Act as observed.

…

116. In the context of the question which we are now dealing with, if we were to take the proposition as "no member having knowledge of law is required to be a member of the Commission" then we have a problem at hand. This is so because while interpreting Section 86 of the said Act, it has been expressed that the Commission has the "trappings of

the court", an aspect we have agreed to hereinbefore. Once it has the "trappings of the court" and performs judicial functions, albeit limited ones in the context of the overall functioning of the Commission, still while performing such judicial functions which may be of far-reaching effect, the presence of a member having knowledge of law would become necessary. The absence of a member having knowledge of law would make the composition of the State Commission such as would make it incapable of performing the functions under Section 86(1)(f) of the said Act.

….

117. In Madras Bar Assn. [Madras Bar Assn. v. Union of India, (2014) 10 SCC 1] (MJ-II), the Constitution Bench, referring to the decision in Madras Bar Assn. [Union of India v. Madras Bar Assn., (2010) 11 SCC 1] (MJ-I) observed that members of tribunals discharging judicial functions could only be drawn from sources possessed of expertise in law and competent to discharge judicial functions. We are conscious of the fact that the case (MJ-I) dealt with a factual matrix where the powers vested in courts were sought to be transferred to the tribunal, but what is relevant is the aspect of judicial functions with all the "trappings of the court" and exercise of judicial power, at least, in respect of same part of the functioning of the State Commission. ...

…

121. We are, thus, of the unequivocal view that for all adjudicatory functions, the Bench must necessarily have at least one member, who is or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law and who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge."

(emphasis supplied)

176. There is consensus amongst the learned counsel that Section 24 of PNGRB Act is similar to Section 86(1)(f) of the Electricity Act, 2003, which was under consideration before Supreme Court in the *Utility Users' case* referred to above. The salient features of Section 24 include the following:

i. It contemplates a *lis* between parties in the sense of a dispute between two parties over a legal relationship, status or private property.

ii. The bench comprising of Member (Legal) is conferred the jurisdiction, powers and authority, as were exercisable by a civil court, before the coming into force of the PNGRB Act in respect of the specified matters, i.e., these functions stand *transferred* from civil court to the Board.

iii. The jurisdiction of civil courts is excluded in respect of such matters by virtue of Section 56 of PNGRB Act.

177. We have not the least any doubt that such functions as mentioned above in relation to Section 24 of PNGRB Act are purely adjudicatory in character and the requirement of presence of Member (Legal) is the express mandate of the legislature in respect of performance of such functions by the Board. There is no reason why the jurisdiction of the Board under Section 24 of PNGRB Act be treated differently from the one of Electricity Regulatory Commission under Section 86(1)(f) of Electricity Act as interpreted by Supreme Court in *State of Gujarat v. Utility Users' Welfare Assn.* (supra). Both have *trappings of court* and it is imperative that like the latter the adjudication of a *dispute* by the Board in former be presided over by an authority that includes a man of law, particularly as that is also the will of legislature expressly mandated in the PNGRB Act.

178. But we are unable to subscribe to the proposition that no other provision of PNGRB Act carries the above features of Section 24 that are similar to Section 86(1)(f) of the Electricity Act. The procedure prescribed in Section 25 for dealing with complaints filed under Section 12 of PNGRB Act itself visualises, and expressly so, the possibility of an overlap. In our considered view, even in inquiry

into a complaint under section 25, the Board exercises functions that cannot be anything but adjudicatory since the allegations made of breaches have to lead to a probe to ascertain the facts, upon finding which the law is to be applied and any breaches (of law, regulations or orders) be found, suitable corrective or punitive measures adopted.

179. The provision contained in Section 25 dealing with the manner of scrutiny and examination of allegations made in nature of Complaint (under Section 12) is at the core of the controversy being addressed by us. Under Section 25, read with Section 12(b), the Board is empowered to receive complaints and conduct inquiry or investigation into contravention of various provisions of the law, obligations of entities, including those arising from terms and conditions subject to which authorisation has been granted. It is argued by the learned counsel for the Board that at such stage, the proceedings are regulatory or administrative in nature, and not even quasi-judicial. He relies on the following observations of Supreme Court in context of Section 26 (1) of the Competition Act, in the case of *CCI v. SAIL* [(2010) 10 SCC 744]:

> *"87. Now, let us examine what kind of function the Commission is called upon to discharge while forming an opinion under Section 26(1) of the Act. At the face of it, this is an inquisitorial and regulatory power. A Constitution Bench of this Court in Krishna Swami v. Union of India [(1992) 4 SCC 605] explained the expression "inquisitorial". The Court held that the investigating power granted to the administrative agencies normally is inquisitorial in nature. The scope of such investigation has to be examined with reference to the statutory powers. In that case the Court found that the proceedings, before the High-Power Judicial Committee constituted, were neither civil nor criminal but sui generis.*

91. The jurisdiction of the Commission, to act under this provision, does not contemplate any adjudicatory function. The Commission is not expected to give notice to the parties i.e. the informant or the affected parties and hear them at length, before forming its opinion. The function is of a very preliminary nature and in fact, in common parlance, it is a departmental function. At that stage, it does not condemn any person and therefore, application of audi alteram partem is not called for. Formation of a prima facie opinion departmentally (the Director General, being appointed by the Central Government to assist the Commission, is one of the wings of the Commission itself) does not amount to an adjudicatory function but is merely of administrative nature. At best, it can direct the investigation to be conducted and report to be submitted to the Commission itself or close the case in terms of Section 26(2) of the Act, which order itself is appealable before the Tribunal and only after this stage, there is a specific right of notice and hearing available to the aggrieved/affected party. Thus, keeping in mind the nature of the functions required to be performed by the Commission in terms of Section 26(1), we are of the considered view that the right of notice or hearing is not contemplated under the provisions of Section 26(1) of the Act."

(emphasis supplied)

180. The above-quoted observations of Supreme Court in themselves are the answer to the anxiety inherent in the argument articulated by the learned counsel. The preliminary scrutiny of a complaint is administrative action with the idea of ensuring regulatory discipline. Same would apply to preliminary fact-finding exercise whether internal inquiry or investigation. But if such preliminary scrutiny leads to process wherein the party in question is called upon to explain its conduct perceived to be in contravention, the proceedings turn quasi-judicial. Binding conclusions on facts cannot be reached except by following a procedure of which rules of natural justice are the hallmark.

181. It is the contention of the Board that the only function in respect of which presence of Member (Legal) is mandatory under the Petroleum and Natural Gas Regulatory Board Act, 2006 is *settlement of disputes* between entities inter-se or between an entity and any other person, i.e., disputes between third parties, and not those arising between an entity and the Board. It is argued that a plain reading of the statute reveals that there is no necessity of presence of Member (Legal) in respect of functions other than those specified in Section 24.

182. We have already noted that the functions (as set out in Section 11) of the Board include the responsibility to "*regulate*" the activities relating to "*petroleum, petroleum products or natural gas*" in the nature of establishing, laying, building, operating or expanding common carrier, contract carrier, city or local natural gas terminals, access thereto also by encouraging "*construction and operation of pipeline and infrastructure projects related to downstream petroleum and natural gas sector*"; "*protect the interest of consumers by fostering fair trade and competition amongst the entities*"; "*ensure fair trade and competition amongst entities and for that purpose specify pipeline access code*", determine transportation tariff; "*ensure adequate availability*"; "*monitor prices and take corrective measures to prevent restrictive trade practice*" and "*secure equitable distribution for petroleum and petroleum products*". We are of the opinion that the above delineate the broad objectives and that the powers spelt out by other provisions like Section 12 are geared to achieve the same. As said before, against the backdrop of such activities, situations of conflict of interest or breach of discipline of law are likely to arise. The power to regulate

includes the power to enforce. Thus, the Board is vested with the power to adjudicate over *disputes* as mentioned in Section 12(1)(a) and to deal with *complaints* as provided in Section 12(1)(b).

183. It does appear that while elaborating on the power to adjudicate on the *disputes*, Section 12(1)(a) circumscribes it as "*dispute or matter arising amongst entities or between an entity and any other person on issues relating to refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas*". Noticeably, it is not every kind of dispute that has been moved for adjudication from civil court to the Board. The dispute that the Board is to handle must involve an *entity* within the meaning of PNGRB Act and the subject-matter of controversy must relate to "*refining, processing, storage, transportation, distribution, marketing and sale*". The expression *entity* is defined by Section 2(p) as "*a person, association of persons, firm, company or co-operative society, by whatsoever name called or referred to, other than a dealer or distributor, and engaged or intending to be engaged in refining, processing, storage, transportation, distribution, marketing, import and export of petroleum, petroleum products and natural gas including laying of pipelines for transportation of petroleum, petroleum products and natural gas, or laying, building, operating or expanding city or local natural gas distribution network or establishing and operating a liquefied natural gas terminal*".

184. Similarly, in relation to jurisdiction to act on *complaints*, Section 12(1)(b) confines it to such "*activities relating to petroleum, petroleum products and natural gas*" wherein there is a "*contravention of … obligations*" pertaining to "*retail service*" or "*marketing service*" or of "*terms and conditions*" subject to which

permissions or authorisations have been granted or breach of "*any other provision of this Act or the rules or the regulations or orders made thereunder*". Pertinently, the detailed procedure is set out in fifth chapter titled "*Settlement of Disputes*" which covers adjudication over *disputes* (Section 24) and also action on *complaints* (Section 25) besides other regulatory controls including imposition of *civil penalty* (Section 28).

185. In view of the layout and scheme of the statute, we do not accept the broad argument of the Board that the jurisdiction and power to adjudicate upon *disputes* and deal with *complaints* of contravention of regulatory framework fall in two watertight compartments separate from each other. On the contrary, more often than not, the *disputes* and *complaints* of contraventions are likely to arise in situations wherein there is an overlap. Though in context of power to adjudicate over *disputes*, Section 12(1)(a) specifically mentions the procedure to be followed as one "*according to the provisions of Chapter V*", there is no such indication in Section 12(1)(b) about corresponding procedure for dealing with *complaints*. The last said omission is of no import because both powers are provided together under Section 12 with the marginal head reading "*Powers regarding complaints and resolution of disputes by the Board*", the detailed procedure being given in fifth chapter titled "*Settlement of Disputes*" which commonly applies to both.

186. There is no contest by any side to the general proposition that in context of *adjudicatory* role, Section 24 of PNGRB Act clothes the Board with all "*all … jurisdiction, powers and authority*" which were "*exercisable by a civil court*" before this enactment was enforced. Interestingly, it circumscribes the adjudicatory process concerning

disputes by making it relatable to not only "*refining, processing, storage, transportation and distribution*" and "*marketing and sale … including the quality of service and security of supply to the consumers*" by the entities but also their "*registration or authorisation*". The letter of the law contained in Section 24 clearly stipulates that the *adjudication over disputes* would be *by the Board* acting through "*a Bench consisting of the Member (Legal) and one or more members nominated by the Chairperson*". Though there is an argument raised that because of section 9 (referred to by counsel as "*Ganga clause*", borrowing the expression from a Supreme Court decision which we shall note later) even in context of *adjudicatory process over disputes* the absence of a Member (Legal) would be inconsequential which we shall consider in due course, we can generally state, for moving on to the consider the process prescribed for Section 25 (*Complaints*), that the *adjudication over disputes* under Section 25 is required by law to be by a bench of two members of the Board, and not the entire Board *en banc,* the bench invariably and compulsorily inclusive of the Member (Legal). Clearly, the quorum and composition for such purposes is prescribed by the statute – minimum two members suffice, at least one of them being the Member (Legal). This renders wholly unnecessary, for purposes of quorum under Section 24, any reference to *Business-Conduct Regulations* or *Board-Meeting Regulations* since being in the realm of subordinate legislation they cannot override the parent law.

187. As also already noted, Section 25 comes into play for dealing with *complaints*. To recapitulate for present discussion, it needs to be noted that focus of the jurisdiction of the Board here is on cases of "*contravention*" primarily of conduct of entities vis-à-vis obligations pertaining to "*retail services*", "*marketing services*",

"*retail price*", "*terms and conditions*" of authorisations granted and, what makes the catchment area very wide, of "*any other provision of this Act or the rules or the regulations or orders made thereunder*". Section 25 qualifies this by excluding consumer complaints as are covered by Consumer Protection Act,1986. Section 12(1)(b) confers the jurisdiction on the Board to receive complaints of such nature, "*from any person*", and inquire or get investigated. The person seeking to lodge complaint may be an affected or aggrieved party or simply a *whistle-blower*. We must add that nothing inhibits the Board from acting *suo motu*, as the sector regulator, should relevant information come in its hands in any manner other than a complaint under section 12. The procedure for dealing with information about such *contraventions* as above (made available by complaint or otherwise) is provided in fifth chapter ("*Settlement of Disputes*"), in general, and in Section 25, in particular.

188. Though there can be no hard and fast norm in this regard, sub-section (3) of Section 25 shows that, generally, a decision has to be taken by *the Board* on the complaint in a time-bound manner ("*within thirty days*") as to whether the allegations made are credible ("*whether there is a prima facie case*") meriting probe and if the answer be in affirmative as to how the truth is to be ascertained, a call to be taken at that stage as to whether the Board would itself conduct inquiry or get it investigated by another agency. It is after such inquiry or investigation – an exercise involving gathering of evidence – that the Board considers as to whether the facts found constitute a *dispute* within the meaning of Section 24 (2) or constitute a case of different kind ("*in any other case*"). The former situation would shift the proceedings before the bench of two members - which compulsorily include Member (Legal) – while the

latter scenario means the Board is to proceed further and it "*may pass such orders and issue such directions as it deems fit*", a general *non-Section 24* situation wherein the Board would abide by statutorily prescribed rules on quorum and composition, guided by Business-Conduct Regulations and Board-Meeting Regulations.

189. The above provisions were sought to be explained by learned counsel for the Board so as to project three water-tight compartments in the procedure. It was argued that the language adopted by the legislature in Section 25 (3) makes it clear that the working of the Section is *divided* into several phases. The first phase involves the decision by the Board, within thirty days of receipt of the complaint, as to whether there is a *prima facie* case made out against the entity or entities qua whom the complaint has been filed. The second phase empowers the Board to either conduct an inquiry on its own or refer the matter for investigation in order to verify the factual details involved in the case. The third and final phase involves the determination by the Board as to whether the complaint filed before it amounts to a dispute between entities and pertains to the category of cases specified in Section 24 (2) or whether it pertains to some other category of cases, like a matter relating to restrictive trade practice. He submitted that it is only at the last said stage that the presence of Member (Legal) becomes incumbent to hear and dispose of such a dispute, as per the clear mandate of the Act. To put it simply, it is the argument of PNGRB that it is only at the time of the proceedings in the matter reaching the third phase of Section 25 (3) and the determination being done by the Board as to whether the matter involves a dispute between entities and whether the matter falls in the category of cases specified in Section 24 (2) that the question of quorum become material.

190. We do not agree that action under Section 25 is permissible only against entities. It may be directed against any one conducting himself in breach of the law and regulatory framework. And more importantly, it is not necessary that every time, after entertaining a complaint, the process must be split into multiple phases. Several stages (as mentioned above) may roll into one. This is also relevant in context of possible directions that may follow. If the directions in the nature envisaged in Section 24 must be issued to put a check on continuance of contravention – illustratively by an *ad interim injunction* – the Board may have a good reason to do so simultaneous to directing inquiry or investigation mentioned in Section 25. In such fact-situation, the overlap necessarily means that even the direction for action under Section 25 is more appropriately handled by the bench constituted in terms of Section 24.

191. It may be that Sections 24 & 25 of the PNGRB Act are different in their scope, application, procedure, powers and consequences. It appears that Section 24 deals with proceedings between third-parties (i.e., excluding the Board itself), only one of which need be a regulated entity while the other could even be a private citizen, a commercial consumer of gas etc. The focus of such proceedings is on competing rights of the concerned private third-parties. But it cannot be said that proceedings under Section 25 would always or invariably be between the Board and a regulated entity alleged to have violated the provisions the Act or some Rule, Regulation or other prescription (such as terms or conditions of authorization) made thereunder. There may be situations, as some at hand wherein the cause for dispute brought for adjudication under Section

24 involves possible contraventions covered by Section 25 and, conversely, wherein the allegations of contravention of terms or conditions of authorisation or breach of legislative or regulatory provisions within the scope of Section 25 stem from what is a dispute involving an entity and a third party under Section 24. Going even further, the Board may come across facts showing *prima facie* commission of cognizable offences while examining a complaint under Section 25 also noticing that the matter is founded in facts constituting a dispute between two entities meriting resolution under Section 24. The proceedings of such nature cannot be split up and so the quorum and composition prescribed by Section 24 would prevail.

192. There is no doubt that the subject matter of a Section 24 proceeding is a 'dispute'. The expression 'dispute' was expounded in *Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority*, (1988) 2 SCC 338, to the effect that "a dispute arises where there is a claim and a denial and repudiation of the claim", the term *dispute* being synonymous with '*lis*', as was explained by Lord Greene, M.R. in *B. Johnson & Co. (Builders) Ltd. v. Minister of Health [(1947) 2 All ER 395 (CA)] : (All ER p. 399 D-E)*, quoted with approval by Supreme Court in *Union of India v. Namit Sharma*, (2013) 10 SCC 359, thus:

> "*… Lis, of course, implies the conception of an issue joined between two parties. The decision of a lis, in the ordinary use of legal language, is the decision of that issue. The consideration of the objections, in that sense, does not arise out of a lis at all. What is described here as a lis—the raising of the objections to the order, the consideration of the matters so raised and the representations of the local authority and the objectors—is merely a stage in the process of arriving at an administrative decision. It is a stage which the courts have always said requires a certain method of*

approach and method of conduct, but it is not a lis inter partes, and for the simple reason that the local authority and the objectors are not parties to anything that resembles litigation."

193. Broadly, a 'dispute' and a 'complaint' are inherently different. A dispute is a matter between the private parties and may be settled between them, thereby bringing a closure or cessation to the dispute and with that to the jurisdiction of the Bench. But in the context of a complaint situation, once a violation of a statutory obligation is brought to the notice of the Board by way of a complaint, the jurisdiction of the Board may not cease by the complainant withdrawing the complaint or 'settling' the matter with the entity. If an infraction has been brought to the notice of the Board under Section 25, it is a matter between the Board and the alleged contravener. Ordinarily, the obligation violated by the regulated entity for attracting Section 25 would be a regulatory obligation, one created by the PNGRB Act or subordinate legislation made thereunder or some prescription made by the Board in pursuance of such Act or Rules or regulations. The law which is enforced under Section 25 has its genesis in the PNGRB Act. Under Section 24 on the other hand, the Bench comprising of Board members invokes all law of the land, as may be applied by a civil court, so long as the dispute pertains to one of the matters specified in Section 24(2).

194. It is correct to contend that the procedure applicable to a Section 24 proceeding is adversarial whereby the two parties between whom dispute has arisen present their respective evidence and arguments and the Bench weighs the evidence and gives its decision, the Bench, or the Board, does not undertake, generally speaking, the exercise of fact finding, on its own or by seeking

assistance of other investigative agencies. The procedure applicable to a Section 25 proceeding, by contrast, is ordinarily inquisitorial procedure whereby the Board itself embarks upon, by a process of inquiry, or through investigation by another agency, the exercise of finding the evidence of violation or compliance of an obligation by a regulated entity. But that cannot be the rule. There may be exceptions, illustratively when the disputant brings a composite case also alleging contravention of law and regulations. Therefore, it cannot be accepted as a general rule that the facts are not determined in Section 25 proceedings by pitting the evidence of the complainant against that of the entity. There indeed may be occasions wherein the role of a complainant would be limited to merely that of informer to the competent authority of the violation of a statutory obligation of a person whereafter it would be a matter between the authority and the person to whom misdemeanour is attributed. But if the complainant has a stake involved and pursues it as a dispute for reliefs under Section 24, he would remain in the fray making the proceedings adversarial. Or, the complainant might be custodian of crucial evidence and his assistance might be necessary.

195. The Board has submitted through counsel that the powers which are exercisable by the Bench having *seisin* over a matter brought under Section 24 is *all* such "*jurisdiction, power and authority*" as was, before coming into force of the PNGRB Act, exercisable by the civil courts in respect of disputes relating to matters specified in Section 24(2). This, it is submitted, would include the power to allow discovery of documents, award interest, attach property of a party before judgment, power to issue a consent order etc. The learned counsel also canvassed, however, that the

Board exercising power under Section 25 has *only* those powers of the civil court which are specified in clauses (a)-(i) of Section 13(1), which are available to the Board in the performance of *all* its functions under the Act.

196. To our mind, the sequitur drawn is not correct. Two different aspects are being compared. The "*jurisdiction, power and authority*" mentioned in Section 24(2) is reflective of the substantive powers of the civil court to do justice in the *lis*, the reliefs it can grant and enforce under the law. It is the said jurisdiction, power and authority which (for purposes of the relevant activities concerning petroleum, petroleum products and natural gas) has been shifted from civil court to the statutory regulatory authority i.e. PNGRB. Section 13, on the other hand, specifies the procedural powers of the Board to gather evidence, ascertain facts, reach the truth in adversarial or inquisitorial setting, so as to discharge its statutory functions. Noticeably, the procedural powers of the Board as set out in Section 13 apply to all kinds of proceedings before the Board and that includes regulatory and adjudicatory.

197. We agree with the Board that Section 24 is a substitution of civil courts in respect of specified disputes. It may be that the purpose of Section 24 is to ensure that contractual disputes arising out of various upstream and downstream activities relating to petroleum, petroleum products and natural gas do not linger in civil courts for indefinite periods and are expeditiously decided by a substitutionary adjudicatory mechanism created under the Act. Similarly, the purpose of Section 25 seems to be to provide teeth to the regulator to ensure that everyone, including the regulated entities, duly abide by the mandate of, and obligations under, the PNGRB Act. Against this backdrop, the learned counsel on all sides

fairly conceded that Section 24 power, being a judicial power, cannot be delegated under Section 58 of the Act. But we cannot agree with further submission of the learned counsel for the Board that it is permissible to delegate the jurisdiction under Section 25 on the reasoning that it is an instance of exercise of regulatory power. As already noted, Section 58, while permitting delegation "*of its powers and functions*" expressly excludes the power to frame regulations (under Section 61), and, "*power to settle a dispute under Chapter VI* (*sic* - read Chapter V)" which part of the legislation covers the jurisdiction to deal with complaints. The only part of the process that may be delegated is the task of investigation as expressly provided by Section 25(3) and Section 26. Even with the power given to delegate the responsibility to investigate to any officer of the Board or outside agency, the duty to take decision on the report is still vested in the Board and that cannot be delegated.

198. It is clear from a perusal of Section 25 that it confers wide ranging powers on PNGRB to deal with any matter arising out of any of the provisions of the Act. The words "*matters relating to*" contained in the Section have a very extensive connotation and amplitude and have to be accorded the widest possible meaning. Matters pertaining to unfair trade and unfair competition are also included within the scope and meaning of this provision, as referred to in Section 11(a). The Board has the powers to entertain all types of complaints or disputes or petitions and to take all measures to ensure the protection of the entities as well as the consumers and to ensure compliance with the provisions of the PNGRB Act and the Regulations.

199. It is the submission of the learned counsel for the Board that there is no specific quorum required or mandated for conducting the

preliminary hearing under Section 25, the legislative intent being to have a continuity in the functioning of the Board in the circumstances of vacancy rather than a complete cessation.

200. We do not agree with the above reasoning. Of course, it is not desirable that the regulatory authority should cease to function. It should not, not the least on account of temporary vacancies as is the purport of saving clause in Section 9. It is the obligation of the executive branch of the State to take timely steps so that such statutory authorities are not made dysfunctional due to failure to keep them optimally manned. Inordinate and indefinite failure to fill the requisite positions of importance – as the post of Member (Legal) in PNGRB indisputably is – was, however, not the scenario meant to be taken care of by Section 9.

201. Coming back to quorum for preliminary stage of process under Section 25, there is no basis to the suggestion that law does not prescribe any. On the contrary, the quorum specified by Regulations in terms of command of Section 8 prevails in all proceedings other than those before the bench of minimum two members – one being Member (Legal) – under Section 24.

202. It is argued by the appellants that invocation of the chapter (no. IX) on "*Offences and Punishment*" by the Board involves proceedings that give rise to issues which by their very nature are serious as they have the prospect of leading to consequences affecting personal liberty of individuals (who may be sent to prison) impinging on the fundamental right guaranteed under Article 21 of the Constitution of India and, therefore, adjudicatory in character and not a regulatory one. The appellants contend that such proceedings stand on a pedestal higher than a *dispute* as covered by Section 24 since they involve complex questions of laws making

the presence of the Member (Legal) absolutely necessary. The appellants submit that the Board is essentially a regulatory authority but has not been given powers of a criminal court so as to take penal action within its jurisdiction.

203. In the context of a *complaint*, the Board having been satisfied as to existence of a *prima facie* case for further action under Section 24 may embark upon *inquiry* or order *investigation*. It is pointed out by the appellants that PNGRB Act does not define the expressions "inquiry" or "investigation". These expressions, it is submitted, are defined by the Code of Criminal Procedure, 1973 ("CrPC").

204. The term "inquiry" is defined by section 2 (g) of CrPC as under:

> *"inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;"*

205. Similarly, the term "investigation" is defined by section 2 (h) of CrPC as under:

> "*investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf*"

206. The term "*preliminary inquiry*" is not defined in PNGRB Act or in CrPC. Such preliminary inquiry, however, is envisaged in Section 159 CrPC which reads thus:

> *"159. Power to hold investigation or preliminary inquiry.— Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a*

preliminary inquiry into, or otherwise to dispose of, the case in the manner provided in this Code."

207. The learned senior counsel for appellants referred to the Constitution Bench decision in *Lalita Kumari vs. State* of UP (2014) 2 SCC 1 wherein, it is argued, preliminary enquiries were allowed to be conducted in some cases. The purpose of a preliminary inquiry, under criminal jurisprudence, is to ascertain whether a cognizable offence has been made out. It was submitted that only a Magistrate having the jurisdiction of a criminal court has the power and authority to order a preliminary inquiry and such inquiries can be conducted only in a limited type of cases by the police officials as held in *Lalita Kumari* (supra).

208. It is contended that since the Board is not a criminal court it does not enjoy the power of a criminal court and, as such, cannot proceed with hearing of matters relating to the offences punishable under Chapter IX of the Act. The Counsel would add that to determine the acquittal or conviction of a person accused of being complicit in an offence, the competent court trying the person has to come to a conclusion, upon appreciation of Law, facts, evidence etc. with respect to *mens rea* and *actus reus*, which conclusions are not expected to be arrived at by a regulatory authority like the Board.

209. On the basis of above, it is argued by the appellants that the Board does not have the power to hold inquiries, including preliminary inquiry, against any person or entity in respect of offences alleged to have been committed within the mischief of Sections 46 and 50 of PNGRB Act, the jurisdiction to order such a preliminary inquiry being only that of the judicial magistrate, after

receiving of an FIR, as per section 159 of the Code of Criminal Procedure, 1973.

210. We find most of the above-noted submissions incorrect, the error being more on account of deficiency in understanding of criminal jurisprudence. The power given to a judicial magistrate by Section 159 CrPC is for purposes which have no relevance here. The observations of Supreme Court in *Lalita Kumari* (supra) were in different context. The word *investigation* as defined in CrPC does guide as to the meaning and import of same expression used in PNGRB Act. The objective is "*collection of evidence*". Seen in the context, the purpose of *inquiry* is also similar. Only difference is that it is conducted by the Board itself. These processes – *inquiry* or *investigation* – are prelude to what must follow. And that stage is wherein the Board applies its mind to the evidence collected (by *inquiry* or *investigation*) to decide future course.

211. The PNGRB Act expressly confers on the proceedings before the Board the status and solemnity of "*judicial proceedings*" and equates the Board with a *civil court* (Section 13) with special reference to Section 195 CrPC. The idea is to clothe it with powers, *inter alia*, to deal with cases of *truancy* (non-compliance with its processes), *perjury* (giving or fabricating false evidence), etc. An inquiry anterior to initiating action for such offences is carried out under Section 195 read with Section 340 CrPC. Mere holding of such inquiry does not render the forum a criminal court. Conversely put, it is not necessary to be competent to hold such inquiry for the forum to be declared as a criminal court. This is true even of a civil court. Likewise, this is the position of the PNGRB. The forum (civil court or PNGRB) while holding such preliminary inquiry is not deciding on guilt or innocence of the person. It only formulates a

view whether facts and circumstances exist which *prima facie* show commission of an offence or contravention of law. The course of appropriate legal action would be chosen in such light, this necessarily including the issue of expediency of criminal action. The objective is that the statutory authority must make an informed choice and not simply be a post office.

212. There is no substance in, or meaning to, the argument that proceedings in the run-up to the action under Section 24 stand on a pedestal higher than those under Section 25. Both are of equal import. Since a complaint by the Board is pre-requisite for criminal action vis-à-vis the offences under Chapter IX, it is wrong to contend that Board cannot inquire or investigate in their respect because it is not a criminal court. The Board is not to try and punish the offender under Chapter IX. It is called upon to be the complainant in such respect. The trial is by regular criminal court.

213. We reject the broad contention of the appellants that the PNGRB does not have the jurisdiction to hear a matter falling under Chapter IX (*Offences and Punishment*) of the PNGRB Act for the simple reason it is expressly conferred with power, jurisdiction and responsibility of initiating the criminal action under the said chapter by lodging a "*complaint*" with the judicial magistracy which is prescribed as the court of cognizance and trial for the offences under the special law. Whilst there can be no doubt that the Board does not have a power to try or punish for the offences, that being the domain of criminal courts, it cannot be said that the Board does not have any role in this regard. On the contrary, it is the forum that *initiates* criminal action. After all, criminal offence cannot come within the *seisin* of competent criminal court unless there is a complaint presented by the Board. Being the statutory authority

vested with duty to initiate criminal prosecution, if facts exist constituting commission of such offence under this law, it is necessary that before it presents such complaint, the Board reaches a satisfaction about existence of such facts. It is natural corollary that for such satisfaction to be reached about existence of such facts as seemingly constitute offence under PNGRB Act, the Board must hold a preliminary inquiry. Such inquiry would be akin to an inquiry that is undertaken by a court (or authority equated with court for such purposes – as is the position of the Board herein) under Section 195 of Code of Criminal Procedure, 1973 ("CrPC") which is also meant to be an inquiry anterior to a complaint respecting specified offences, the objective being to muster evidence and reach a satisfaction about facts and expediency for criminal process to be given a trigger.

214. It is trite that the inquiry is preliminary, the conclusions reached by the Board are tentative (for purposes of criminal action), and satisfaction reached is *prima facie.* Though set out - by words appearing in Section 25(3) - for a stage anterior to inquiry or investigation ("*decide within thirty days whether there is a prima facie case against the entity or entities concerned and may either conduct enquiry on its own or refer the matter for investigation*"), this is what holds good as the position for the stage wherein the Board decides to lodge criminal complaint with court of competent jurisdiction. The inquiry being by a forum (Board) which is equated with a *civil court*, the *prima facie* conclusions may be reached by the Board having regard to preponderance of probabilities. But, in the judicial proceedings on the complaint before the criminal court, the necessary facts would have to be proved beyond all reasonable

doubts to the satisfaction of that court. That is a factor the Board will bear in mind before presenting complaint before the criminal court.

215. From the above, we deduce that while undertaking the preliminary inquiry or getting the matter investigated, the Board is under a duty to play a role of responsibility. The said role of the Board – and not of any other person (definitely not that of a delegate) – comes at several stages; first, even before inquiry or investigation, to decide whether to entertain by examining the complaint, as presented, by examining if the averments made therein (on assumption that they are truthful) make out a *prima facie* case for criminal action; second, to decide as to what would be the appropriate mode for probing into the veracity of the allegations – that is to say, as to whether an inquiry by Board itself would suffice or the matter is such wherein the assistance of an investigating agency would be required from the standpoint of collection of evidence. The evidence collected by inquiry or investigation must be such as would ultimately pass the muster of the criminal court in the final analysis. The third stage is when the probe (by inquiry or investigation) has concluded, and a report thereof prepared, to decide on appropriate legal response. Of course, if the allegations are found to be unsubstantiated by the evidence collected, the proceedings on the complaint would stand closed. But if the conclusions in fact-finding process were to support the case of the complainant, the Board must decide on further course of action.

216. The provision contained in Section 23 conferring jurisdiction on the PNGRB to *suspend* or *cancel* the authorisation has been referred to earlier. It is also a civil consequence flowing from breach or contravention of regulatory framework. It is clear from the scheme

of the law on the subject that it involves a two-stage process. In the first stage, the Board comes to satisfaction that the entity, in favour of which authorisation has been granted, has failed to comply with any conditions of authorisation. The second stage pertains to decision of the Board as to the consequential action to be taken as a result of such satisfaction.

217. In particular context of Section 23, it is submitted by the learned counsel for the Board that the scrutiny by the Board at first stage is purely administrative function meant for ascertaining whether the predefined norms have been met by the entity or not, the Board being required to grant a hearing to the entity, and thus act judicially, only at the second stage. The submission is that the consequential *suspension* or *cancellation* of the authorisation is a quasi-judicial act while arriving at satisfaction as to violation of the Regulations is a ministerial act.

218. Almost parallel to the above is the provision contained in Section 28 of PNGRB Act. It confers on the Board a power to impose *civil penalty*. It is part of its function called *Settlement of Disputes*. As already observed, for imposing civil penalty, the Board would have to *find* the facts justifying such measure and this necessarily requires an inquiry that may generally be *adversarial* in nature or, if invoked *suo motu* by the Board upon input received, even *inquisitorial*. The argument again is that the gathering of facts for initiating action under Section 28 is ministerial action while imposition of civil penalty a quasi-judicial function, there being no need for quorum till the order is to be issued imposing civil penalty.

219. We must reject the notions based on which above interpretation is canvassed. Both provisions – Sections 23 and 28 – envisage *civil consequences* flowing from violations or

contraventions specified therein, they being part of the regulatory control placed in the hands of the Board. Irrespective of the manner in which the facts relevant for such action come within the cognizance of the Board, it is always essential on part of the forum bound to follow principles of natural justice that the Board satisfies itself that grounds justifying such view do exist. It is part of the fair procedure that the party which is to be visited with such adverse civil consequences has the opportunity to defend itself by not only denying the allegations and presenting facts to the contrary but also explain the conduct and further present mitigating circumstances. The procedure for action under Sections 23 and 28, even if it begins *suo motu*, will eventually have to follow a process similar to the one prescribed for Section 24, one significant difference being that there must be an inquiry which, in turn, will be preceded by a notice to Show Cause. The Board cannot embark upon the final stage inquiry with pre-disposed mind. The facts gathered for such action during administrative scrutiny leading to Show Cause Notice cannot be treated as facts *found*. The statement of facts in Show Cause Notice are tentative conclusions, the party in question expected to show facts to the contrary.

220. In above view, the proceedings under Sections 23 or 28 will be multi-stage process. The collection of facts and material leading to issuance of Show Cause is administrative in nature, though undertaken with ministerial assistance. At that stage, the party against whom action is intended does not even have a right to participate. The decision to issue a Show Cause Notice is of the Board, not the administrative wing. Once the Show Cause Notice is issued, the inquiry into facts (with the party in question given

opportunity to defend) is quasi-judicial. Unless there is an element of *dispute* of the nature of Section 24, or unless other consequences as envisaged in Section 24 are intended to follow, the inquiry leading to *suspension* or *cancellation* of *authorisation* under Section 23 or imposition of *civil penalty* may be undertaken by the Board adhering to rule on *quorum* without the insistence on participation by Member (Legal). But the process being penal and quasi-judicial, there can be no violation of principles of natural justice.

221. As per the scheme of law, particularly the provisions contained in Sections 24 and 25 read together, the Board must first take a call as to whether the facts constitute a *dispute* of the kind mentioned in Section 24. If so, the matter would have to be shifted before the bench vested with the power and jurisdiction to subject it to adjudicatory process for, on behalf and in the name of the Board. At the end of such adjudicatory process, the Board, acting through the said bench, would have the option to choose from entire array of legal responses - including exercise of "*all … jurisdiction, powers and authority* (of) *a civil court*" as stated in Section 24; exercise regulatory control by *suspension* or *cancellation* of *authorisation;* recourse to civil penalty as provided in Section 28; or initiation of criminal action for offences under ninth chapter read with Section 57. It must be added that if the Board finds that in a matter arising out of a *complaint* under Section 12(1)(b), there is a need to exercise powers that would fall within the jurisdiction ordinarily exercised in context of a *dispute* within the meaning of Section 12(1)(a), particularly in the nature of *ad-interim injunction* (mandatory or prohibitory), the decision to shift the proceedings from the domain of Section 25 to the process under Section 24 must be taken expeditiously, definitely before any order of import is issued for the

reasons the powers of the latter kind can be exercised only by a bench that includes the Member (Legal).

222. The powers or authority of a civil court, as observed earlier, are of wide amplitude including not merely to grant reliefs in the nature of declaration or injunction but also enforce contractual or legal obligations, award compensation or damages for civil wrongs and while doing so temper justice with equity. It must be added that it is the sole discretion of the Board to have recourse to either of those courses or any or two or all of them. But if, in the course of taking a decision on the complaint, the Board comes to a view, whether before or after inquiry or investigation, that the subject-matter is not in the nature of *dispute* covered under Section 24 (as shown by words "*in any other case*" occurring in Section 25), it has the liberty to take such action "*as it deems fit*". It would not be wrong to say that in the last-mentioned scenario, which would be rare yet possible, the issues would most likely be of infraction of statutory prescription or Regulations, but not *inter-partes* involving "*entities or between an entity and any other person*", and consequently the legal response on the part of Board would take the shape of measures to enforce Regulations by appropriate directions, imposing civil penalty or even initiate criminal action. In both situations, whether the subject-matter of the *complaint* is, or is not, a *dispute* within the meaning of Section 24, the Board being the sectoral Regulator has the authority of law to enforce the discipline of law and Regulations, even if it involves the suspension, cancellation or modification of registration or authorisations already granted.

223. It was argued by the learned counsel for Board that the provision contained in Section 8 does not specify quorum nor stipulate that for a valid meeting, the presence of any particular

member is necessary and further that even the Chairperson is not required to be present at all the meetings of the Board. In our view, this is insignificant as the provisions have to be read together and not in isolation. The statute by Section 8 lays down broad guidelines for the "Meetings" of the Board to be regulated. The quorum is not specified by the legislation. It, however, expressly envisages the need for "quorum" to be specified leaving the detailed framework of principles on the subject of procedure to be put in position by the Board under its powers to frame regulations which is specifically given by Section 61(2)(a). It does appear that Section 8(2) contemplates a situation in which the Chairperson is unable to attend a meeting of the Board but makes up for the vacuum (temporary or prolonged) by providing for the senior-most Member to fill in. We agree that it is not the mandate of law that in all matters and on all occasions, all members of the Board, including the Chairperson and Member (Legal), must be present and participating in the process. It is a multi-member body and the very concept of quorum is inconsistent with such mandate as is mentioned. To put it simply, if all members were required to be present for all meetings of the Board, there was no question of the Board being conferred with the power to prescribe quorum of meetings by way of regulations.

224. We have noted Regulation 14 of the *Business-Conduct Regulations*. It covers the possibility of the Board assembling to deal with the business required to be taken care of in varied situations, such assembling of the Board called or categorized by different nomenclature like "*hearings, meetings, discussions, deliberations, inquiries, investigations and consultations*", all generically called in the marginal heading of Regulation as "*Proceedings etc.*" The

nature of the sitting – *hearing or meeting or discussion or deliberation or inquiry or investigation or consultation* - is left to be decided in its discretion ("*as it may consider appropriate*") by the Board. The Proviso to Regulation 14 attracts the Board-Meeting Regulations only in case of "*the meetings of the Board*".

225. It is the argument of the Board that several proceedings are envisaged to be held before the Board and they may be in the nature of hearings, meetings, discussions, inquiries etc. but it is only the meetings of the Board, in which internal deliberations are done by the Board, that are the subject matter of the Board-Meeting Regulations and which are to be held in accordance with those Regulations. The Counsel argued that for *Hearings* to be held, as is requisite in several adversarial proceedings (e.g. adjudication under Section 24; for suspension or cancellation of authorisation; for imposition of civil penalty; inquiry anterior to criminal complaint, etc.) in accordance with the Business-Conduct Regulations, no specific quorum has been provided, and that the Meetings of the Board Regulations have no application to hearings.

226. We do feel that the *meeting of the Board* connotes the Board assembling for purposes other than a *hearing*. The need to hold a *hearing* may arise when the Board is gathering views of stakeholders at large – for example while framing Regulations. It would be a *hearing* when the bench of the Board is sitting to adjudicate on a *dispute* under Section 24. In contrast, there may be a *meeting of the Board* to deal with administrative matters. We, thus, agree, that the proviso to Regulation 14 attracting the rule on quorum prescribed by Board-Meeting Regulations cannot be applied generally to all kinds of settings where members of the

Board are to assemble to discharge responsibilities vis-à-vis functions entrusted to the collective body by the law. To put it simply, the quorum prescribed by Board-Meeting Regulations is meant to be adhered to in *meetings of the Board* for administrative – and may be also regulatory – business but not in other situations. The Board may divide routine work amongst its members (including the Chairperson) to look after such duties as holding *discussions,* or for *deliberations*, or to hold *inquiry*, or *investigate*, or for *consultation*. The decisions of import, required to be taken *by the Board*, however, would fall in the category of business that must go before the Board in a meeting duly constituted and, therefore, complying with the prescribed quorum under Board-Meeting Regulations.

227. It is the submission of the Board that the provisions of the PNGRB Act and Regulations suggest that the Board, whenever it consists of a plurality of members, may hold sittings *en-banc*. At the same time, Sections 9 of the Act contemplates a situation where a vacancy might arise in the membership of the Board, the statute clarifying that for such reason the proceedings before the Board will not be invalidated. It is argued that the statute does not stipulate a minimum quorum for preliminary hearing on complaints under Section 25. The submission is that the absence of any prohibition, either in the negative form, enjoining members from functioning and hearing matters during the absence of one of them, or absence of a provision mandating a minimum quorum, implies that the legislature did not contemplate a logjam in the Board's functioning. Hence, there is no bar to the preliminary hearings under Section 25 of the Act being conducted by the Board even in the absence of Member (Legal).

228. It is contended that since no specific quorum has been provided either in the PNGRB Act or in the Business-Conduct Regulations for a hearing (except the ones being held under Section 24 of the PNGRB Act), the contention of the appellants that a preliminary hearing of a complaint under Section 25 of the Act cannot be conducted by two Members of the Board is untenable. The said position, it is argued, is also supplemented by Regulation 52 of the Conduct of Business Regulations, which specifically enables the Board to deal with any matter or exercise any power under the Act, for which no regulations have been framed, in the manner as it thinks fit.

229. The main thrust of the argument of the Board is that Section 9 of the PNGRB Act saves all orders from being invalidated and so the argument based on the deficiency in quorum or absence of Member (Legal) lacks substance.

230. It is clearly not correct to argue that the Board of two Members can under no circumstances constitute a valid quorum. This plea falls flat in the face of provision contained in Section 24 of PNGRB Act wherein the statute does specify a quorum by stipulating that any dispute arising under the said Section shall be decided by a Bench comprising of Member (Legal) and one or more members of the Board, as may be nominated by the Chairperson. This provision, in fact, also means that the proceedings before the bench of the Board entrusted with the responsibility of resolution of the *dispute* in terms of Section 24 are not controlled by the Board-Meeting Regulations if they were to specify quorum for meetings of the Board larger than the one prescribed in Section 24 itself. Thus, it is clear that the Act itself envisages and enables the Board to discharge its

functions and hold hearings with two members in matters of adjudication over disputes covered by Section 24, it undoubtedly being a necessary condition that one of the said two members must be Member (Legal).

231. In *B.K. Srinivasan and Ors. v. State of Karnataka and Ors.* [AIR 1987 SC 1059 : (1987)1 SCC 658], the Supreme Court had addressed issues concerning interpretation of a State legislation named *Mysore Town and Country Planning Act, 1961*. The said Act contained a clause (Section 76J) titled '*Validation of acts and proceedings*". The court opted to refer to it as the "*Ganga*" clause. The provision (Section 76J) reads thus:

> *76J. Validation of acts and proceedings - No act done or proceeding taken under this Act shall be questioned on the ground merely of,*
> *(a) the existence of any vacancy in, or any defect in the Constitution of the Board or any Planning Authority;*
> *(b) any person having ceased to be a member;*
> *(c) any person associated with the Board or any planning authority under Section 4F having voted in contravention of the said section; or*
> *(d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or*
> *(e) any omission, defect or irregularity not affecting the merits of the case.*

232. The Court held thus:

> "*The High Court was of the view that such defect as there was in regard to publication of the Plan was cured by Section 76J, the Omnibus Curative clause to which we earlier made a reference as the 'Ganga' clause. Provisions similar to Section 76J are found in several modern Acts and their object is to put beyond challenge defects of Constitution of statutory bodies and defects of procedure which have not led to any substantial prejudice. We are inclined to agree with the High Court that a defective publication which has*

otherwise served its purpose is not sufficient to render illegal what is published and that such defect is cured by Section 76J. The High Court relied on the two decisions of this Court Bangalore Woollon, Cotton and Silk Mills Co. Ltd. Bangalore v. Corporation of the City of Bangalore MANU/SC/0093/1961 : [1961]3SCR707 and Municipal Board, Sitapur v. Prayag Narain Saigal & Firm Moosaram Bhagwandas MANU/SC/0343/1969 : [1969]3SCR387. In the first case objection was raised to the imposition of octroi duty on the ground that there was failure to notify the final resolution of the imposition of the tax in the Government Gazette as required by Section 98(2) of the City of Bangalore Municipal Corporation Act. A Constitution Bench of the Court held that the failure to publish the final resolution in the Official Gazette was cured by Section 38(l)(b) of the Act which provided that no act done or proceeding taken under the Act shall be questioned merely on the ground of any defect or irregularity in such act or proceeding, not affecting the merits of the case. The Court said that the resolution had been published in the newspapers and was communicated to those affected and failure to publish the resolution did not affect the merits of its imposition and failure to notify the resolution in the Gazette was not fatal to the legality of the imposition. In the second case it was held that the non-publication of a special resolution imposing a tax was a mere irregularity, since the inhabitants had no right to object to special resolutions and had otherwise clear notice of the imposition of the tax. It is true that both these cases relate to non-publication of a resolution regarding imposition of a tax where the imposition of a tax was otherwise well known to the public. In the present case the situation may not be the same but there certainly was an effort to bring the Plan and regulations to the notice of the public by giving notice of the Plan in the Official Gazette. Non-publication of the Plan in the Official Gazette was therefore a curable defect capable of being cured by Section 76J. It is here that the failure of the appellants to plead want of publication or want to knowledge in the first instance assumes importance. In the answer to the Writ Petitions, the appellants took up the substantial plea that they had complied with the requirements of the Outline Development Plan and the Regulations but not that they had no knowledge of any such requirement. It can safely be said

that the defect or irregularity did not affect the merits of the case."

(emphasis supplied)

233. The learned Counsel for the Board has argued that even deficiency - non-inclusion of Member (Legal) - in composition of a bench of the Board sitting in adjudicatory process under Section 24 is inconsequential since the same is cured by Section 9 (quoted earlier), a provision also in the nature of *Ganga* clause. As is the plain import of language employed in Section 9, it prevents any act or proceeding of the Board from being invalidated *only* on the ground of any vacancy or any defect in constitution of the Board. It is the submission of the Board that the expression "any vacancy" includes vacancy in the position of Member (Legal); similarly, "any defect in the constitution" extends to a defect arising out of absence of Member (Legal), where such absence is projected as a defect in the proceeding.

234. A plain reading of the above-quoted decision makes it clear that the Supreme Court has not interpreted or applied a *Ganga clause* as a cure-all remedy. The effect in each case has to be construed and examined in peculiar facts and circumstances of the particular matter and in light of the mandate and import of the statutory provisions in compliance with which there is a deficiency. The crucial test is that of *prejudice*. Unlike the statute under scrutiny of the Court in the case referred above, the jurisdiction conferred upon the board by Section 12(1)(a) read with Section 24 is one which, but for this enactment, would have been exercised by a civil court. The learned counsel for the Board himself argued repeatedly that the said jurisdiction given to the regulatory authority is by substituting the civil court. It is in view of the judicial function thereby

entrusted to the Board that the mandatory requirement of inclusion of a Member (Legal) in the bench is stipulated. Non-inclusion of a Member (Legal) against such statutory mandate would not only be prejudicial to the parties to the dispute but also render Section 24(1) nugatory. That would be compromising with the heart and soul of the rationale for mandate of Section 24(1) for inclusion of Member (Legal) which is wholly undesirable and impermissible.

235. For above reasons, we reject the arguments based on Section 9 qua the adjudicatory or quasi-judicial functions of the Board.

SUMMARISING CONCLUSIONS

236. We may distil the conclusions reached by above discourse on the issues that have arisen in these appeals as under:

(i) The Petroleum and Natural Gas Regulatory Board ("PNGRB" or "the Board") is a statutory body, perpetual in existence, established by the Petroleum and Natural Gas Regulatory Board Act, 2006 ("the PNGRB Act") to regulate the business activities (in the nature of *refining, processing, storage, transportation, distribution, marketing* and *sale* but excluding *production* of crude oil and natural gas) concerning *petroleum*, *petroleum products* and *natural gas* so as to protect the interests of consumers and entities engaged in specified activities and to ensure uninterrupted and adequate supply in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto, this including the authority to frame regulatory framework (*legislative function*), power to administer and enforce law and regulations (*administrative* and *regulatory function*) and the jurisdiction to adjudicate over disputes involving entities and

determine rights and obligations in same manner as a *civil court* would ordinarily do (*adjudicatory or judicial function*) and have its decisions executed.

(ii) The PNGRB has been given the liberty to regulate its own procedure which must unexceptionally conform to *principles of natural justice,* it being vested with powers and jurisdiction of a *civil court* in the matters involving enforcement of attendance and gathering evidence for discharging its various functions, all the proceedings before it being deemed to be *judicial proceedings* to give it teeth to deal with instances of truancy, perjury or disobedience etc.

(iii) The *legislative* powers of the Board are in the realm of subordinate legislation, the regulations framed in its exercise having the force of law, they being binding on one and all including the Board itself.

(iv) The validity or *vires* of the regulations promulgated by the PNGRB may be challenged before the Constitutional Courts but not before this tribunal which has been established by the same statute to subject *an order or decision of the Board* to appellate scrutiny in case of challenge by a person thereby *aggrieved*.

(v) The statute expressly requires the Board, a collective body envisaged to comprise of a Chairperson and four members – mandatorily including a *Member (Legal)* – to abide by the Regulations that must be (and have been) framed on the subject of *transaction of business* particularly concerning the periodicity of and quorum for its meetings, it being desirable that it acts collectively, the decisions to be taken, generally speaking, by a *majority* vote; the reference to "*Board*"

wherever occurring meant to connote the Board acting as a collective body working with optimum strength, less than full composition being permitted subject to compliance with minimum quorum requirement generally and the inclusion of Member (Legal) in *adjudication of disputes* particularly.

(vi) The *PNGRB (Conduct of Business, Receiving and Investigation of Complaints) Regulations, 2007* ("the *Business-Conduct Regulations*") and *PNGRB (Meetings of the Board) Regulations, 2007* ("the *Board-Meeting Regulations*") govern and *generally* apply to all proceedings before the Board in relation to all its statutory functions including *judicial* or *adjudicatory*.

(vii) The *Business-Conduct Regulations* and the *Board-Meeting Regulations* fall in the realm of procedural laws and amendments thereto may have retrospective effect.

(viii) The Board is aided and assisted in carrying out its functions, amongst others, by its Secretary, other Officers and staff (as provided in terms of Section 10), they all forming the administrative or ministerial wing, bound to take out or do such actions as may be entrusted or delegated to them but not the adjudicatory function (*settlement of disputes*) or legislative authority (*power to frame regulations*).

(ix) The power of the PNGRB vis-à-vis such subjects as the issue of *declaration* of a pipeline as *common carrier* or *contract carrier* or a network as *local or city natural gas distribution network* or *determine transportation tariff* or register the entities engaged in specified activities or grant *authorisation* to operate in specified *geographical area* or specify obligations or privileges etc, is aimed to vest it with

regulatory control, the actions or decisions taken being administrative in nature, the procedure to be followed being guided by law (objectives of PNGRB Act, the consumers' interest being the reigning consideration, the process expected to abide by principles of natural justice and transparency) and regulations such as *Business-Conduct Regulations* and *Board-Meeting Regulations*.

(x) In all such regulatory functions as above – *no-dispute* situations – the Board takes decisions which are administrative in nature, they being outside the sphere of *Settlement of Disputes* which is governed by norms that are distinct. In discharge of such administrative responsibilities, the Board, assisted by its ministerial wing, takes decisions (like *authorisation* or *declaration*, *tariff* determination, *et al*) in a setting where the Members (including the Chairperson) meet, adhering to quorum specified, there being nothing in law that quorum for meetings on such subjects is incomplete or deficient in absence of Member (Legal).

(xi) The *adjudicatory* or *judicial function* generally covers the subjects included in the fifth chapter ("*Settlement of Disputes*") of PNGRB Act and includes not only the power to *adjudicate over disputes* (involving an entity), as per procedure specified by Section 24, but also the power to deal with *complaints of contravention of law* (*and orders of the Board*) under Section 25, both in terms of the function of the Board assigned by Section 12 as indeed the powers to *suspend* or *cancel* the authorisation under Section 23 or impose *civil penalty* under Section 28.

(xii) While adjudicating upon a *dispute* within the meaning of Section 24 read with Section 12(1)(a), the Board enjoys the same authority, powers and jurisdiction as is vested in a *civil court*, it actually being the *substituted adjudicatory forum* for such purposes.

(xiii) While dealing with a *complaint* under Section 25 read with Section 12(1)(b), the Board is expected to inquire (or investigate) if the allegations of *contraventions* are well-founded, this giving to it (the Board) the status of an *inquisitorial* machinery in contrast to the *adversarial* nature of process applied in adjudicating over *disputes.*

(xiv) The objective of *inquisitorial* process mentioned above is to ascertain the correct facts, the aim being to deal with parties found complicit in contravention.

(xv) The affirmative finding of contravention of law or regulations or orders of regulatory authority (the Board) necessarily leads to the stage wherein the Board is duty-bound to take a call as to what measures to adopt to bring in correction and discipline, the options available including not only *civil sanctions* like *suspension or cancellation* of authorisation (where the party in breach is an authorised entity) under Section 23, or imposition of *civil penalty* under Section 28, but also *criminal sanction* (where the contravention is of the kind that constitutes an offence specified in ninth chapter).

(xvi) The power to deal with *disputes* or authority to inquire (or investigate) into *complaints* cannot be put in separate watertight compartments, there being always a possibility of overlap.

(xvii) A *dispute* involving an entity may be brought before the PNGRB for adjudication in same manner as a *civil court* would render justice, the Board in such process being permitted by law (Section 24) to act (not *en banc*, but) through benches, the minimum strength of a bench constituted for the purpose being two members, it being mandate of law that they must invariably include the Member (Legal), the nature of proceedings being judicial.

(xviii) In view of the above, the quorum specified in *Board-Meeting Regulations* is not applicable to the *adjudicatory process* under Section 24, the parent law having specified the quorum (of minimum two) and the composition (mandatory inclusion of Legal-Member).

(xix) Though the PNGRB Act saves (by Section 9) *the acts* or *proceedings* from being rendered invalid *merely* by reason of *any vacancy in, or any defect in the constitution of the Board or irregularity* in procedure, the rule cannot be applied blindly or generally or unexceptionally, not the least in context of statutory requirement of Section 24 mandating adjudication over a dispute by a bench consisting of Member (Legal) and at least one other member, the test of *prejudice* caused by non-adherence to such prescription required to be applied in each case.

(xx) Having entertained (the first stage scrutiny) a *complaint* of *contravention(s)* of the kind mentioned in Section 12(1)(b), upon its perusal showing a *prima facie* case made out, the PNGRB must take a call (the second stage scrutiny) as to whether it would inquire into it on its own or get it investigated by another agency. This decision is *by the Board* and authority

to take such decision cannot be delegated, it being part of the overall jurisdiction for *Settlement of Disputes*. The aid or assistance taken from administrative wing in inquiry does not tantamount to delegation of Board's function the law expressly permitting outsourcing of investigative task.

(xxi) The wing or agency helping in inquiry or investigation does not *take* decision on the *complaint.* That is a function *of the Board* and it must discharge this responsibility (the third stage scrutiny) by itself, based on the material gathered during *inquiry* or *investigation*.

(xxii) It is possible that while *adjudicating over a dispute* in terms of Section 24, the bench of the Board may find it also a case of *contravention(s)* of the kind covered by Sections 12(1)(b) and 25, or a case for *suspension* or *cancellation* of *authorisation* or for imposition of *civil penalty* or initiation of prosecution for *offences* under ninth chapter of PNGRB Act. In such situation, the facts being common, multiplicity of proceedings being inadvisable, it being impermissible for the *judicial function* under Section 24 to be delegated, and it being essential to preclude possibility of conflicting conclusions being reached, the action on the aspects other than *dispute* taken for adjudication will also fall for consideration and directions before the same bench as is to have the *seisin* under Section 24.

(xxiii) Likewise, the PNGRB Act envisages the possibility that a *complaint* of contravention(s) brought to it under Section 12(1)(b) and processed through the three stages (as aforesaid) under Section 25 may entail the need to also adjudicate over a *dispute* and render justice to the party

thereby affected within the scope of Section 24 and, therefore, Section 25(3) expressly requires that the Board may *hear and dispose of the complaint as a dispute* which falls under sub-section (*2*) of Section 24.

(xxiv) In view of the high probability of matters coming within the cognizance of the Board requiring *Settlement of Dispute* involving issues to be addressed to resolve and redress the *dispute* with an entity under Section 12(1)(a) and bring about discipline in a situation of *contraventions* under Section 12(1)(b) and it being expedient to visit the party in breach with *civil consequences* (*civil penalty* or *suspension* or *cancellation* of *authorisation*) or made answerable under criminal law (*prosecution for offences*), it is essential that decision be taken *by the Board* at the earliest possible point of time as to whether the matter is to be dealt with by the Board through its bench under Section 24.

(xxv) The above is all the more necessary if a matter comes within the *seisin* of the Board as a *complaint* under Section 12(1)(b) read with Section 25 but requires adjudication over disputed questions of facts or impels consideration of relief(s) which ordinarily only a *civil court* is competent to grant, the substance being more important than the form, it being impermissible to bypass the procedure of Section 24.

(xxvi) In view of the above, the Board dealing with a *complaint* by a composition, generally subscribing to *Board-Meeting Regulations*, whether or not including at such stage the Member (Legal), will take the above-mentioned second stage decision as to desirability of treating it as case under Section 24(2) at the earliest before proceeding further.

(xxvii) If there is a case made out for such *interim orders* to be issued as fall within the domain of *jurisdiction, powers and authority exercisable by a civil court*, the Board sitting in jurisdiction under Section 25 must refer the matter with utmost expediency to the bench under Section 24 since such relief cannot be granted by any composition other than one that includes the Member (Legal).

(xxviii) For above reasons, and even otherwise in view of need for promptitude, the Board in whatever composition it then sits (whether or not including a Legal-Member) must decide on priority the necessity of invocation of procedure through the bench under Section 24, even if it requires rolling the three-stage scrutiny into one.

(xxix) It is only in the event of the Board in above-mentioned evaluation forming the view that the case does not fall within the purview of Section 24 that it may proceed further for inquiry or investigation and necessary appropriate measures under the law, such measures not including reliefs that may be granted by a *civil court* in a *dispute.*

(xxx) While dealing with the inquiry or investigation report, whether after reference to the bench under Section 24 or otherwise, and particularly while mulling over feasibility or expediency of lodging *complaint* for *offences* under the ninth chapter, the Board does not act as a *criminal court* nor does it decide conclusively on the guilt or innocence in the manner a criminal court would do. It only holds a preliminary inquiry akin to a pre-complaint inquiry under Section 340 read with Section 195 of Code of Criminal Procedure, 1973 (“CrPC”).

(xxxi) If the matter is not such as is to be made over to the bench under Section 24, the Board may hold preliminary inquiry and if found expedient proceed to lodge the complaint with the criminal court for prosecution of the offender without the presence of or participation by Member (Legal).

(xxxii) The civil sanctions of *suspension* or *cancellation* of *authorisation* under Section 23 or imposition of *civil penalty* under Section 28 are part of the regulatory control of the Board but the procedure followed must adhere to the principles of natural justice, the party against which it is directed being entitled to opportunity to defend itself.

(xxxiii) An inquiry for action under Sections 23 and 28 is quasi-judicial, preceded by a Notice to Show Cause the facts on which it is based being tentative conclusions of the Board formed with assistance of administrative scrutiny, the party in question expected to show facts to the contrary.

(xxxiv) The provision contained in Section 9 (*"Vacancies, etc., not to invalidate proceedings of the Board*") is not a cure for all deficiencies in *acts* or *proceedings* of the Board, the qualifying word "*merely*" strengthening the view that though *vacancy* in the Board by itself does not vitiate the functioning, the concerns of possible consequent prejudice must always be addressed, it being impermissible to render the mandate of inclusion of Member (Legal) in adjudicatory process under Section 24 nugatory. Therefore, under the extant provisions of law, it is not permissible for the Board to discharge its responsibilities under Section 12(1)(a) and (b) read with Sections 24 and 25 if there is a vacancy in the office of the Member (Legal), it consequently being the obligation of the

executive organ of State to take timely steps for ensuring that the said position is always filled.

(xxxv) In the event of the position of Member (Legal) being vacant, the parties seeking *adjudication over a dispute* under Section 12(1)(a) read with Section 24 will have to await the vacancy to be filled up or have resort to the *alternative dispute resolution* mechanism of *arbitration*, though that route is contingent on agreement.

(xxxvi) Since the remedy of *settlement of disputes* by *adjudication* by a bench of the Board constituted under Section 24 is by substitution of the jurisdiction of *civil court*, if the machinery envisaged by the PNGRB Act be not available on account of vacancy in the position of Member (Legal) having remained unfilled for inordinately long period, the party constrained to seek *adjudication over a dispute* of the kind covered by Section 12(1)(a) may have to seek redressal by approaching the jurisdictional civil court or Constitutional courts, the statutory machinery having broken down.

237. We must add here that we have not created a new rubric here. Our endeavour has been to understand and interpret the scheme of the law, keep all provisions of the statute relevant and alive, harmonise them where so required, clear misgivings, iron out creases in thought processes and repel erroneous notions. The principles crystalised and collated above are explanatory notes meant to guide the process of regulatory law enforced through the Board. Though we have tried to cover all possible situations as were projected during arguments, it is perhaps impossible to make it comprehensive. We, however, are confident that the above

conclusions will provide sufficient light to assist in choosing, *mutatis mutandis*, the right course.

238. We must observe here that given the nature of work wherein the participation by a Member (Legal) will be necessary more often than not in the dispute resolution process by the Board, inclusion of only one Member (legal) is always fraught with the risk of such incumbent being not available, even on account of such reasons as temporary absence. It is desirable that the stipulation be reconsidered so as to provide two Members from law background so that at least one is always available. But this is a matter for the legislature to consider.

239. Our answers to the issues formulated earlier, to be understood in light of above conclusions, thus are:

(i) The requirement of presence of, and participation by, Member (Legal) is unequivocally mandatory in the process of *adjudication over disputes* or grant of relief or issuance of orders permissible under Section 24 of PNGRB Act.

(ii) In all matters other than those covered by preceding sub-para, the issue may be dealt with by the Board for taking such decisions or issuance of such orders as are deemed appropriate collectively in a composition that may or may not include Member (Legal) but not so as to exercise *jurisdiction, powers and authority* mentioned in Section 24 of PNGRB Act, though adhering to the *quorum* specified in the Regulations.

(iii) Having regard to the rationale behind the statutory mandate of inclusion of Member (Legal) in the bench of the Board constituted for purposes of Section 24, the process being *judicial* in nature, it being the adjudicating forum created as a substitute for the *civil court*, exercise of *jurisdiction,*

powers and authority by the Board in absence of Member (Legal) causes prejudice to the disputant parties and, therefore, is not saved by Section 9 of the PNGRB Act.

(iv) The effect of deficiency in the *quorum* or composition of the Board at the relevant time on the *acts* or *proceedings* of the Board in cases other than one covered by the preceding sub-para will need to be examined on case-to-case basis, the tests to be applied including the possibility of prejudice.

CASE-SPECIFIC SCRUTINY

240. We may now apply the above conclusions to the facts-situation of each case before us and find out if there is anything amiss, also examining other issues specific to them.

The cases of GAIL (India) Ltd. (Appeal nos. 152-153 of 2020)

241. As already mentioned, we have devoted a lot of time on this batch of appeals, the hearing having continued over several days, for more than twenty hours. The learned counsel for the parties had agreed that the hearing would conclude on 12.05.2021. Against this backdrop, we do not appreciate the grievance expressed in the additional written submissions filed on 19.05.2021 by the counsel for second respondent in these two appeals about hearing on merits not having been provided.

242. We are conscious of the importance of "*hearing*". The right of hearing, however, cannot be allowed to be converted into a right to be heard *endlessly*. We expect the learned counsel appearing to assist to be conscious of the scope of subject being heard and of

their responsibility to ensure that the time given is optimally utilized to put across their case. Repetitive submissions do not subserve any interest. The adjudicatory or appellate institutions cannot afford prolixity in arguments. It is the responsibility of those who preside to regulate and control the proceedings such that time and opportunity are equitably distributed. Apart from the questions of law concerning quorum and participation of Member (Legal) common with connected appeals, the matter being heard in these appeals was the prayers in the applications made by the second respondent for directions and interim reliefs. As the later discussion would bring out more clearly, the attempt of the learned counsel instead was to convert such hearing into a final hearing for final decision on the complaints pending on the file of PNGRB, which was incorrect. The stage for such final adjudication on the *dispute* forming the core of the complaints is still to be reached since the pre-requisite requirement of inquiry is yet to be fulfilled. In these circumstances, we find the insistence on arguments for final decision on the complaints merely on pleadings improper and unfair. The explanation offered, when checked, that the matter had to be argued by the counsel "*to the satisfaction of the client*" is specious and unreasonable. That is not the purpose of *hearing*. Suffice it to say that sufficient time was given to learned counsel for all parties to make their respective oral submissions, the filing of written submissions, as sought, also being welcomed. We concluded the hearing on 12.05.2021. Even at that stage, the requests for additional written submissions were granted.

243. We have already quoted the impugned orders dated 21.07.2020 and 06.08.2020 passed by the Board in the context of two complaints presented by the second respondent in respect of

two different GAs invoking the jurisdiction of the Board under Section 25 PNGRB Act. As already tentatively observed by interlocutory orders dated 26.08.2020, the impugned orders fail to pass the muster of judicial orders in that they are shorn of reason. Our *prima facie* view was endorsed by the High Court in writ proceedings noted earlier. Such cryptic or laconic orders in quasi-judicial jurisdiction are impermissible, the procedure followed being also violative of principles of natural justice in that proper and effective opportunity to present its case was not afforded to the appellant before interim reliefs of such far-reaching consequence were afforded to the complainant (GGL). In this view, the orders also fall foul of the statutory command in Section 13(3) of PNGRB Act.

244. The complaints on which the impugned decisions were rendered may have been presented under Section 25 in that the allegations made therein do attempt bring out a case of contravention of regulations. But it cannot be ignored that they also make out a case of *dispute* between two entities within the meaning of Section 24 which is why the complainant also lays claim to damages/compensation. The form is not to guide the process; it is the substance which matters. The Board was not bound to remain within the confines of Section 25. The Board also treated it accordingly and thus entertained the prayers for *ad-interim injunction*, a relief that would be in exercise of jurisdiction under Section 24. That such *ad-interim injunction* was granted virtually on one-sided presentation of facts is itself questionable. More than that, the procedure adopted is impermissible since the Board did not follow the command of law that a *dispute* of such nature (as required the authority, power and jurisdiction of a *civil court*) could not have been dealt with without reference to a bench that included a Member

(Legal). The legitimate expectation of the opposite party that due process as per law will be applied cannot be given a go by only because the executive branch of the State has failed to take timely steps to fill the crucial vacancy of Member (Legal). As observed earlier, the complainant would have to seek remedy before the alternative forum if the statutory machinery is unavailable or has suffered from breakdown. The orders impugned by these appeals, to the extent thereby *ad-interim injunction* was granted against the appellant, cannot be sustained as they also suffer from the vice of *quorum non judice.* We vacate the same allowing the two captioned appeals.

245. While the appeals at hand deserve to be, and are being, allowed and the impugned orders to the extent they granted *ad-interim injunction* are set aside, the High Court of Delhi has desired by order dated 16.02.2021 (quoted earlier) that this tribunal "*adjudicate the issues that have arisen in the Petitioner's complaint before PNGRB, both on jurisdiction and on merits … consider as to whether any injunction order or interim arrangement deserves to be passed in the matter*".

246. The scope of proceedings required to be held in terms of the above-said direction in Order dated 16.02.2021 was considered and the views of the learned counsel solicited at the hearing. The learned counsel for the second respondent (complainant) submitted that this tribunal being the first appellate forum in the hierarchy of adjudicatory institutions established by the PNGRB Act is empowered by law to do all such things as the forum of first instance (PNGRB) may do under the law. He fairly conceded that the matter at hand (which has travelled to this tribunal by these appeals) being concerned with the propriety of the procedure applied, the

requirements (if any) of quorum, participation by Member (Legal) and grant of *ad-interim injunction* granted by the impugned orders, the scope of proceedings arising out of the directions of High Court only extends the jurisdiction of this appellate tribunal to consider grant of interim reliefs (if a case to that effect is properly made out) in the event the impugned orders are not sustained. We also understand our role, as the first appellate forum, accordingly. If there has been deficiency in process before the forum of first instance, it is our responsibility to bring in correction vis-à-vis the impugned decision and if a case of interim relief is made out, we have the power and jurisdiction to grant all such relief as the forum of first instance would be able to do at such stage. The *adjudication* by us on *the issues of jurisdiction and merits* that arise out of complaints before PNGRB at this stage, however, is with a view to "*consider as to whether any injunction order or interim arrangement deserves to be passed"* and not for final disposal of the main matters (complaints) pending before the PNGRB. In our reading of the order of High Court, we are not called upon to sit in inquiry over the complaints and finally decide the same as a forum of first instance. Such cannot be the intent behind the order quoted earlier. To treat it contrarily would disturb the adjudicatory machinery established by the statute. It would not only convert this appellate tribunal into forum of first instance but also render one layer of appeal (Section 33) unavailable. More than that, it would effectively convert the Supreme Court into the court of first appeal, a result that is wholly unacceptable since it would be violative of the provisions of the Constitution of India envisaging a role and status for the apex court as also tinker with contours of the jurisdiction of *second appeal*

(Section 37) circumscribed by Section 100 of Code of Civil Procedure, 1908.

247. By the applications mentioned earlier (submitted in the wake of order of the High Court), the second respondent (GGL), the complainant before the Board, *inter alia*, presses before us the prayer for interim reliefs stating that pending inquiry on the complaints, the impugned activities of the appellant being in contravention of regulations and in violation of exclusivity of authorisation granted in its favour cannot be permitted to continue. The prayers in the applications moved in the two matters are similar, the prime difference being the GAs and the facts peculiar to each of them.

248. The "*Application for Directions*" (IA no. 397 of 2021) in Appeal no. 152 of 2020, invoking section 34 of PNGRB Act read with Section 120(2) Electricity Act and Rule 30 of APTEL Rules, 2007, prays as under:

a) *Take on record the full copy of the petition filed by the Respondent No. 2/GGL before the Respondent No. 1/PNGRB in the matter of Gujarat Gas Limited v. GAIL (India) Limited (PNGRB/Legal/BC-1/21/2020), which is provided as Annexure R-2/2 herein;*
b) *Direct GAIL (India) Limited/the Appellant to submit its reply on merits to the Complaint, and completion of pleadings in this regard;*
c) *Adjudicate the matter in an expeditious manner; and*
d) *To grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.*

249. The "*Application for Directions*" (IA no. 399 of 2021) in Appeal no. 153 of 2020, invoking section 34 of PNGRB Act read with

Section 120(2) Electricity Act and Rule 30 of APTEL Rules, 2007, prays as under:

a) *Take on record the full copy of the petition filed by the Respondent No. 2/GGL before the Respondent No. 1/PNGRB in the matter of Gujarat Gas Limited v. GAIL (India) Limited (PNGRB/Legal/BC-1/20/2020), which is provided as Annexure R-2/2 herein;*
b) *Direct GAIL (India) Limited/the Appellant to submit its reply on merits to the Complaint, and completion of pleadings in this regard;*
c) *Adjudicate the matter in an expeditious manner; and*
d) *To grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.*

250. The first two prayer clauses in both above-mentioned applications *for directions* stand satisfied by previous directions in these proceedings. The question of proper process vis-à-vis the third prayer clause (the last being general in nature) is being considered by the present discussion.

251. The "Application for Interlocutory Relief" (IA no. 398 of 2021) in Appeal no. 152 of 2020, invoking section 34 of PNGRB Act read with Section 120(2) Electricity Act and Rule 30 of APTEL Rules, 2007, prays as under:

(a) Pass an order to restrain the Appellant/GAIL from undertaking any works relating to or including the laying, building, testing, commissioning or expanding any pipeline or network of pipeline in violation of Regulation 3(2)(a) of CGD Authorization Regulations within geographical area of Palghar District and Thane Rural authorised to Respondent No.2/GGL or connecting new customers having a demand

of or actual supply upto 50,000 SCMD located within the said geographical areas authorized to the Respondent No.2/GGL;

(b) Restraining the Appellant from transporting or supplying any gas to any customer with demand or actual supply of up to 50,000 SCMD in the geographical area of Palghar District and Thane Rural authorized to Respondent No.2/GGL;

(c) Direct the Appellant/GAIL to deposit all revenues/amounts received since the date of authorization to the Respondent No. 2/GGL, i.e., 01.04.2015, from customers having a demand or actual supply of upto 50,000 SCMD located within the geographical area of Palghar District and Thane Rural authorized to the Respondent No. 2/GGL, in a separate escrow bank account and submit details to the Hon'ble Tribunal;

(d) Direct the Appellant/GAIL to provide the following data with effect from date of authorization of the geographical area of Palghar District and Thane Rural, i.e., 01.04.2015, in favour of the Respondent No. 2/GGL; (i) list of customers to which it is supplying/has supplied natural gas since 01.04.2015 in the said geographical areas authorized to Respondent No. 2/GGL; (ii) copies of agreements with customers having a demand or actual supply up to 50,000 SCMD, (iii) total revenue from sale of gas to customers having a demand or actual supply of upto 50,000 SCMD since 01.04.2015, (iv) sales data of gas to customers in the said geographical areas authorized to Respondent No.2/GGL since 01.04.2015, (v) details of the pipelines through which the Appellant/GAIL has been supplying gas to the customers in the said geographical areas authorized to Respondent No.2/GGL.

(e) Direct the Appellant/GAIL (India) Limited not to undertake any action that may prejudice the vested rights of the Respondent No.2/GGL as the entity having authorization to lay, build, operate or expand the CGD network in the geographical area of Palghar District and Thane Rural;

(f) *To grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.*

252. The "Application for Interlocutory Relief" (IA no. 400 of 2021) in Appeal no. 153 of 2020, invoking section 34 of PNGRB Act read with Section 120(2) Electricity Act and Rule 30 of APTEL Rules, 2007, prays as under:

(a) Pass an order to restrain the Appellant/GAIL from undertaking any works relating to or including the laying, building, testing, commissioning or expanding any pipeline or network of pipeline in violation of Regulation 3(2)(a) of CGD Authorization Regulations within geographical area of Dahej-Vagra Taluka authorised to Respondent No.2/GGL or connecting new customers having a demand of or actual supply upto 50,000 SCMD located within the said geographical areas authorized to the Respondent No.2/GGL;

(b) Restraining the Appellant from transporting or supplying any gas to any customer with demand or actual supply of up to 50,000 SCMD in the geographical area of Dahej-Vagra Taluka authorized to Respondent No.2/GGL;

(c) Direct the Appellant/GAIL to deposit all revenues/amounts received since the date of authorization to the Respondent No. 2/GGL, i.e., 06.06.2016, from customers having a demand or actual supply of upto 50,000 SCMD located within the geographical area of Dahej-Vagra Taluka authorized to the Respondent No. 2/GGL, in a separate escrow bank account and submit details to the Hon'ble Tribunal;

(d) Direct the Appellant/GAIL to provide the following data with effect from date of authorization of the geographical area of Dahej-Vagra Taluka, i.e., 06.06.2016, in favour of the Respondent No. 2/GGL; (i) list of customers to which it is supplying/has supplied natural gas since 06.06.2016 in the said geographical areas authorized to Respondent No. 2/GGL; (ii) copies of agreements with customers having a demand or actual supply up to 50,000 SCMD, (iii) total revenue from sale of gas to customers having a demand or actual supply of upto 50,000 SCMD since 06.06.2016, (iv) sales data of gas to customers in the said geographical areas authorized to Respondent No.2/GGL since 06.06.2016, (v) details of the pipelines through which the

Appellant/GAIL has been supplying gas to the customers in the said geographical areas authorized to Respondent No.2/GGL.

(e) Direct the Appellant/GAIL (India) Limited not to undertake any action that may prejudice the vested rights of the Respondent No.2/GGL as the entity having authorization to lay, build, operate or expand the CGD network in the geographical area of Dahej-Vagra Taluka;

(f) to grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.

253. The prayer clauses (a), (b) and (e) in both applications (IA nos. 398 and 400 of 2021) are in nature of interim injunction. The prayer clauses (c) are in nature of attachment before judgment. The prayer clauses (d) are for discovery, the last prayer clauses (f) being general in nature.

254. The prayers for the reliefs are contested by the appellant (non-applicant), one of the objections being of delay, it also being the plea (in context of complaint corresponding to appeal no. 152 of 2020) that the *dispute* is of such nature as may be sent for arbitration.

255. As pointed out by the appellant, there being no denial on the part of the second respondent ("the complainant"), the network through which it has been supplying natural gas to the customers in question in the GAs, which is the bone of contention for the complainant, were pre-existing. The complainant secured the authorisations of the two GAs through bidding process. In the facts and circumstances *prima facie* borne out from record, prior knowledge about pre-existing network of, and activities undertaken, by the appellant will have to be attributed to the complainant.

256. It is the objection of the appellant that the pleadings as to the date on which cause of action arose in favour of the complainant to

lodge complaints are vague and that the complaints cannot be entertained since they were presented after the expiry of the limitation period of “sixty days” prescribed by Section 25(2). We cannot accept this argument at this stage for the simple reason that what is alleged by the complainant, if established during inquiry, might constitute a continuing wrong. The pleadings of the parties give rise to mixed question of fact and law, particularly on the subject-matter of limitation. Therefore, the complaints cannot be thrown out at the threshold as time barred, not the least without inquiry wherein opportunity to adduce evidence would have to be afforded to both disputants, the onus to prove the facts constituting the cause of action to be that of the complainant. The issue of limitation is thus kept open to be considered at appropriate stage after evidence has been presented.

257. In view of the observations that follow, we do not express any opinion at this stage on the issue of arbitrability of the dispute. The appellant (non-applicant) is at liberty, if so advised, to press it but only in accordance with law.

258. In sharp contrast to the common understanding on the scope of present hearing as mentioned earlier, while arguing on the above-mentioned applications in first captioned appeal (no. 152 of 2020) the learned counsel for the second respondent pressed for the following *final* reliefs (quoted from the text of additional written submissions dated 19.05.2021 filed in Appeal no. 152 of 2020):

> *“The Appellant is liable to (i) compensate the Respondent No.2/GGL for the loss being caused by the wilful actions of the Appellant and its continued interference with the rights of Respondent No.2/GGL as the authorized entity for Thane Geographical Area; and (ii) penalties for wilful violations of*

the provisions of the PNGRB Act and the regulatory framework. The amounts payable by Appellant are detailed in para 6.1(ii)("Final Relief") of GGL's complaint (provided at p.80 of IA 397/2021), which includes the civil penalty that the Appellant is liable to pay under the provisions of s.28 PNGRB Act; and the damages payable by Appellant which includes the following:

(i) Damages for wilful delay in providing connectivity: Rs. 301,89,15,000 (Rupees Three Hundred and One Crores Eighty Nine Lakhs Fifteen Thousand only); (ii) Damages for operating unauthorised CGD network and supplying CGD customers since December 2015 in the Authorized Area of Palghar District and Thane Rural: Rs. 1160,00,77,500/- (Rupees One Thousand One Hundred and Sixty Crores, Seventy Seven Thousand and Five Hundred only) for the period from December 2015 till 10th July 2020; (iii) Daily amount payable by the Appellant to the Respondent No.2 for each day of continuing operations of the unauthorised CGD network in the Authorized Area of Palghar District and Thane Rural: amount of Rs. 68,92,500/- (Rupees Sixty Eight Lacs Ninety Two Thousand Five Hundred only) to the Respondent No.2, for each day of continued operations of the Appellant's unauthorised CGD network from 11th July 2020 onwards; (iv) Damages for curtailing supply pressure of gas to the Respondent No.2: (a) Rs. 141,98,55,000/- (Rupees One Hundred and Forty One Crores Ninety Eight Lakhs Fifty Five Thousand only) since 11.02.2019 till 10.07.2020; (b) an amount of Rs. 27,57,000/- (Rupees Twenty Seven Lacs and Fifty Seven Thousand only) per day for each day of continued curtailment of gas pressure from 11.07.2020 onwards; (c) Damages for curtailing Respondent No.2's business operations and continuously interfering with the exercise of the rights of the Respondent No.2 as the authorised entity under the GGL CGD Authorisation: Rs. 48,82,00,000/- (Rupees Forty Eight Crores Eighty Two Lacs only) (being 10% of the total cumulative at risk investment of Rs. 488,20,00,000/- (Rupees Four Hundred and Eighty Eight Crores Twenty Lacs only) that has been made by the Respondent No.2 till 31.03.2020 in the GGL Authorised Area)."

(emphasis supplied)

259. Similarly, at the hearing on the above-mentioned applications in second captioned appeal (no. 153 of 2020), the learned counsel for second respondent pressed for the following *final* reliefs (quoted from the text of additional written submissions dated 19.05.2021 in appeal no. 153 of 2020):

> "*Respondent No.2/Gujarat Gas Limited is entitled to be restituted and placed in the same legal position by having its Marketing Exclusivity and Infrastructure Exclusivity extended by 60 months. In addition, the Appellant is liable to pay Respondent No.2/Gujarat Gas Limited an amount of Rs. 100 crores/- (Rupees One Hundred Crores Only) as damages towards tortious interference with and wilful actions of the Appellant to negate the value of the GGL CGD Authorisation.*
> *The Appellant/GAIL, is also liable to a civil penalty under s. 28 PNGRB Act for contravention of the PNGRB Act and the GGL CGD Authorisation. Since the actions of the Appellant are on-going, it is also liable to pay a civil penalty for every day that it continues to violate the GGL CGD Authorisation. The civil penalty that the Appellant is liable to pay under the provisions of s.28 PNGRB Act is detailed in para 6.1(ii)("Final Relief") of GGL's complaint (provided at p.38 of IA 399/2021).*
> *The Appellant/GAIL is liable to pay a fine of Rs. 25,00,00,000/-(Rupees Twenty-Five Crores only) with daily additional fine of Rs. 10,00,000/- (Rupees Ten Lakhs only) for each day during which the contravention continues, under s. 48 PNGRB Act for wilfully acting to infringe the GGL's exclusivity under the GGL CGD Authorisation, read with the PNGRB Act and applicable regulations by supplying gas to customers with requirement of less than 50,000 SCMD within GGL's Dahej Geographical Area, through the identified pipelines and thereby creating an unauthorised CGD network within GGL's Dahej Geographical Area.*
> *The Appellant/GAIL is liable to pay a fine of Rs. 25,00,00,000/- (Rupees Twenty Five Crores Only) with daily additional fine of Rs. 10,00,000/- (Rupees Ten Lacs Only) for each day during which the contravention continues,*

under s. 44 PNGRB Act for contravening the GGL CGD Authorisation for the Dahej Geographical Area which is in the nature of a direction of the PNGRB under the CGD Authorisation Regulations and the PNGRB (Exclusivity for City or Local Natural Gas Distribution Network) Regulations, 2008.

The Appellant is liable to pay the fine under s. 48 PNGRB Act for laying, building operating or expanding a city or local natural gas distribution network without authorization. The Appellant is liable to pay fine of Rs. 25,00,00,000/- (Rupees Twenty Five Crores Only) under s. 48 PNGRB Act with daily additional fine of Rs. 10 lacs for each day during which the contravention continues."

260. In the context of both complaints, the counsel for complainant argued that its case of violation of its exclusivity rights stands proven from the pleadings. It was submitted that the appellant has failed to furnish in respect of each GA (*Thane* and *Dahej*) any details of the customers it claims to be connecting and/or has connected through its "spur lines" or of the pressure at which it is delivering natural gas to such customers and the time when it developed the network to connect such customers, or provide any materials or documents that negate or traverse the documents that show continuing interference as alleged by the complainant, or countered the claim for compensation/damages, the only issue required to be addressed being as to whether the justifications raised by the appellant for the impugned conduct are valid in law or not. In specific context of its dispute concerning *Dahej* GA, the complainant refers to the GSA dated 23.11.2001 with Nahar Colours and Coatings Limited ("NCCL") and contract with United Phosphorous Limited ("UPL"), arguing that the averments relating to supply of gas to certain customers thereunder are erroneous, misleading, and without any

basis in law, submitting, *inter alia*, that the allocation of APM gas referred to by the appellant in relation to NCCL had occurred in 2002, and the allocation of gas is distinct from the transportation of gas; even if GAIL is the entity authorised by the Central Government to allocate the gas, it does not vest it with the continuing exclusivity to transport and supply the gas; the framework relating to allocation of domestic gas does not vest the appellant with the exclusive authority to transport the gas so allocated; the explanation offered by appellant being erroneous since the mandate of the PNGRB Act is to move towards a framework whereby unified entities undertaking gas sales and gas transportation arrangements are restructured and the gas sales activities and gas transportation activities are hived into different entities; the challenge by the appellant through Writ Petition No. 2445/ 2014 to Regulation 5A of the Petroleum and Natural Gas Regulatory Board (Affiliate Code of Conduct for Entities Engaged in Marketing of Natural Gas and Laying, Building, Operating or Expanding Natural Gas Pipeline) Regulations, 2008 framed pursuant to the proviso of Section 21(1) of PNGRB Act being pending before the High Court of Delhi, though conceding that an interim relief vide order dated 23.04.2014 had been provided against coercive action. It is the view canvassed by the complainant that the GSA of the appellant with NCCL was valid only till 31.12.2003 and that the recognition of the "dedicated pipeline" to NCCL granted by PNGRB in favour of the appellant on 14.12.2012 does not vest it with the authorisation to continue the same or develop or expand its network to cover further CGD customers once the authorisation for Dahej GA had been granted on 06.06.2016. It is submitted that the claim that presently the appellant is only *"laying a 4" spur pipeline"* is false and misleading

reference being made to GSA executed on 26.06.2019 for catering to quantity requirement of up to 50,000 SCMD which, as per the complainant, is being considered as having a requirement above 50,000 SCMD "*in light of potential future requirements*".

261. As noted earlier, the appellant resists the contentions and claims of the complainant in the two matters primarily submitting that its activities to which exception is taken are not violative of law or regulations, the arrangements being pre-existing, having the approval of PNGRB particularly concerning the tariff.

262. Having heard the learned counsel for both sides, and having considered their respective submissions on merits, we are not persuaded to accept the prayer for interim reliefs in the nature of first, second and fifth prayer clauses of the two applications for interlocutory relief (IA nos. 398 and 400 of 2021) as prayed for by the complainant GGL in the context of two complaints pending on the file of the Board.

263. There are serious questions raised even about the basis of the claim for exclusivity. As pointed out by the appellant, mere grant of authorisation cannot *ipso facto* have the effect of displacing the existing arrangements in the GA. The appellant has *prima facie* shown that its activities had the imprimatur of the Board since it was charging the consumers for impugned supplies as per the tariff determined by the Board, the tariff determination exercise having taken into account such activity undertaken by the appellant and thus having been tacitly countenanced. There is no order shown to have been passed by the Board calling upon the appellant, or for that matter any entity, for discontinuing its operations in the area corresponding to the authorisation in favour of GGL. As shown from

regulations, the choice cannot possibly be *imposed* on the existing consumers of the appellant to switch over to the authorised activity, the rationale being that it would be anti-competitive and, thus, in the teeth of the PNGRB Act.

264. From the above, it also follows that grant of interim restraint orders of the kind sought by GGL is impermissible in the present cases since the balance of convenience lies in favour of the appellant.

265. We do not think a case for attachment before judgment has been made out or even deserves to be granted at this stage of the process. It is not the case of the complainant that the business in which the appellant is engaged is resulting in generation of revenue or income that may not be accounted for. On the contrary, the appellant being a public undertaking, it would not be difficult to examine its books of accounts if a case for damages or compensation is established upon inquiry. There is no justification for its revenues to be blocked or taken over by the regulatory authority before the formal inquiry. The said interim prayers are also rejected.

266. While we are not inclined to grant interim reliefs of injunction or direction for deposit of revenue, we are of the opinion that, in all fairness, the *dispute* raised by the above-mentioned two complaints requires to be adjudicated upon in accordance with Section 24 and the regulations governing the requisite inquiry before the Board. The pleadings of the parties give rise to issues of facts and law. The questions of fact cannot be addressed only on the basis of pleadings, not the least without holding a proper inquiry following the principles of natural justice. In such inquiry, both sides (the accuser and the one accused) must have the opportunity to present

their respective evidence and once *facts* have been *found* at the conclusion of such inquiry, the questions of law can be addressed to determine if the *dispute* raised and claims staked by the complainant are correct meriting grant of reliefs.

267. It is not correct to say that the case of the complainant stands *proven* merely on basis of pleadings. The prayer for direction for discovery has been part of the applications (IA nos. 398 and 400 of 2021) for interlocutory reliefs. That part of the prayer was also to be considered on the basis of hearing. To put it simply, as at the stage of hearing there was no *direction* for discovery. In this view, the argument of the complainant that its case has been proven because there is no document filed by the appellant is misconstruing of law on pleadings. The basis of computation of compensation, as claimed, will have to be substantiated by the claimant through cogent evidence. Without a proper full-fledged inquiry, the claims of compensation of the kind made cannot be decided. Same would apply to the prayer for imposition of *civil penalty* which even otherwise is a matter within the domain of discretion vested in the regulatory authority and cannot be claimed as of right. It is not fair to press for such reliefs at the present stage of the process.

268. This brings up the crucial question as to what ought to be the process for probe into the *dispute* agitated through complaints by the second respondent. It is necessary at this stage to recall that by virtue of Section 13 of PNGRB Act, the Board is vested with the "*powers to regulate its own procedure*", expected to "*be guided by the principles of natural justice*" and to have "*for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit*" in respect, *inter alia*, of *"summoning and*

enforcing the attendance of any person and examining him on oath", "*requisitioning any public record or document or a copy of such record or document, from any office and production of such documents*" and "*receiving evidence on affidavits"*. As already noted, in exercise of the power vested in it, the Board has framed, *inter alia*, regulations to conduct the proceedings relating to its functions called the *Petroleum and Natural Gas Regulatory Board (Conduct of Business, Receiving and Investigation of Complaints) Regulations, 2007* (for short, "*the Business-Conduct Regulations*") which also apply to adjudicatory processes under Section 24. The general rules are set out in second chapter, the next (third) chapter covering the subject of *settlement of disputes* though applying the procedure of the previous (second) chapter. After scrutiny, if a petition or complaint is entertained, it is *admitted* and a notice is issued to the opposite party which has the opportunity to file *reply, opposition, objections, comments etc* under Regulation 24. The inquiry is under Regulation 25 wherein evidence is taken which may be by affidavits or oral and this includes opportunity for cross-examination of witness of the opposite party. The Board has the authority to call for further information as may be germane under Regulation 26 and also may refer some issues for expert opinion or advice under Regulation 27.

269. It is clear from the scheme of things that the pleadings are expected to give rise to issues that require determination by the Board. For purposes, *inter alia*, of an inquiry, the Board may authorise the Secretary or any other officer to call for information or records or documents, inspect, examine or study and make a report thereupon, issue notices etc (Regulations 37-44). It possesses inherent powers (Regulation 50) to issue all such orders as may be

necessary to secure ends of justice and to adopt even such procedure (Regulation 51) as may be at variance from the general procedure if deemed necessary or expedient in the special circumstances of a case.

270. The Code of Civil Procedure, 1908 ("CPC") applies to the proceedings taken out before a civil court. The procedure prescribed therein includes not only the mandatory rules on pleadings but also tools to narrow down the controversy, such tools including the admission-denial of documents, interrogatories, discovery by mandating production of documents, etc. For purposes of dealing with the *disputes* specified in Section 12(1)(a) read with Section 24, the PNGRB is the adjudicatory forum substituting the civil court. Since the law expressly applies CPC, though generally, to proceedings before the Board, there is no reason as to why the tools for narrowing down the controversy on facts be not applied here. At any rate, the power of *civil court* to require *discovery and production of documents* is expressly conferred on this tribunal by virtue of Section 34 of PNGRB Act read with Section 120(2) of Electricity Act. We are satisfied that applying such tools would curtail the need for formal evidence.

271. As observed earlier, the prayer clauses (d) in the two applications for interlocutory reliefs (IA nos. 398 and 400 of 2021) are for *discovery*. But the stage or ground for direction for discovery is yet to be laid. The prayer of such nature is always tested on the touchstone of relevancy (Order XI CPC). A roving inquiry cannot be permitted. The concerns of confidentiality of business or commercial affairs have to be borne in mind. More than that, and as part of the preliminaries, the basic factual position of all concerned – including the regulatory authority - has to be ascertained so that full contours

of the dispute are known and relevancy can be decided. This brings to the fore a peculiar position wherein the *adjudicatory function* of PNGRB is to be performed, with all neutrality and a mind that is not pre-disposed, and yet it is necessary that the factual position emerging from the existing records of the Board is also on the table. The said information is yet to come on record.

272. For the foregoing reasons, we decline to grant any orders of the nature prematurely pressed by the second respondent in these proceedings and at this stage. At the same time, however, it is necessary to issue directions so that further process on the complaints of the second respondent pending on the file of the PNGRB is properly regulated and geared for expeditious adjudication in accordance with law. We, thus, direct that:

(i) The complaints presented by the second respondent (hereinafter "*the complainant*") against the appellant (hereinafter "*the opposite party*" in the *disputes*) vis-à-vis the impugned activities in *Thane* and *Dahej* GA shall be dealt with and inquired into as petitions raising *dispute* within the meaning and scope of Section 24 of PNGRB Act.

(ii) For completion of record, formal replies to the complaints (may be by adopting the pleadings presented before this tribunal in answer to the interlocutory applications) shall be submitted by the opposite party with the Secretary of PNGRB, with liberty to take such objections as are available in law, the needful compliance to be made within four weeks hereof, copies to be served on the complainant.

(iii) In case the opposite party is advised and inclined to take objection against maintainability of the petition (styled as complaint) on basis of arbitration clause, it would bear in mind the provisions of the Arbitration and Conciliation Act, 1996. Needless to add that in such case, the preliminary objection as to arbitrability in first case shall be considered first.

(iv) The complainant will have the liberty to file rejoinder to the replies within four weeks with the Secretary of PNGRB, and shall serve copies on the opposite party.

(v) After the pleadings of the parties have been completed, the Secretary of PNGRB shall place on record of the files of each matter as expeditiously as possible, not later than four weeks of filing of rejoinders, office reports (supported by relevant documents) based on the records of PNGRB about the *factual position* relevant to the *disputes*, bearing in mind the need to maintain neutrality and scrupulously avoiding expression of opinion on the issues raised, copies to be made available to both parties to the disputes.

(vi) After the completion of exercise in above nature, the parties to the disputes will be obliged to submit affidavits of their respective authorised representatives admitting or denying the documents relied upon by the other side, and also by separate affidavits the documents forming part of the office reports mentioned above.

(vii) We give liberty to each party to seek, after completion of the stage last-mentioned above, additional information, as may be germane to the issues arising, by invoking the relevant rules of CPC on interrogatories, discovery etc. to narrow down the controversy and need for formal evidence.

(viii) The Secretary of the Board will oversee compliance of all preliminary steps by the parties for making the cases ready for inquiry and also have the discretion to enlarge time for compliance if sufficient grounds for the same are shown to exist.

(ix) It is clarified that the inquiry into each matter will have to be held, after formulation of issues (of fact and law), in which opportunity to present evidence and discredit the evidence of the other party by cross-examination shall be afforded to each side.

(x) The Secretary of PNGRB will make a formal report to this tribunal about compliances made with above directions, after four months, whereupon these matters would be placed by the registry before us for further directions.

273. The appeals and all applications filed therein stand disposed of in above terms.

The case of Bharat Petroleum Corporation Ltd. (Appeal no. 161 of 2020)

274. Having given our anxious consideration to the contentions of the appellant, we are of the view this appeal cannot be entertained by this tribunal since the challenge is essentially to the amendment to the regulations.

275. The grievance is against the demand by the impugned decision of the Board for payment of *other charges* by the appellant with reference to the activities of maintenance or operations of *captive pipelines* respecting which, as per the appellant, there is no obligation on its part under the law to seek authorisation from the

Board. The taxation in the shape of *other charges* is levied by the Board in exercise of its statutory function under Section 11 (g) of PNGRB Act. For enforcing this, the Board has framed, under Section 61(2)(g), the regulations known as the *PNGRB (Levy of Fee and Other Charges) Regulations, 2007* ("Levy of Fee Regulations") notified on 26.11.2007. It does *prima facie* appear that under the said regulations as originally notified and as they stood prior to 03.01.2019 there was no liability to pay *other charges* for any pipeline other than those respecting which registration or authorisation of the Board was requisite.

276. But, on plain reading of the text of the amended regulations as enforced from 03.01.2019, it appears that all pipelines *of any nature* have been covered by the taxation regulations. These do seem to include the *captive pipelines* as well. The chronology of facts set out in appeal shows that when the Board insisted on payment by the appellant the *other charges* in respect of all its pipelines including *captive pipelines* the appellant resisted and raised objections. The appeal is filed questioning the procedure adopted by the Board in dealing with the said objections, the prime argument of the appellant being that the Board could not have passed the impugned direction without the objections being considered by a composition that included the Member (Legal), the Board having functioned without the requisite quorum, the principles of natural justice having been flouted as, according to the appellant, effective opportunity of hearing was not afforded.

277. The challenge essentially is to the amendment to the regulations whereby the *captive pipelines* – covered by the expression "*pipelines of any nature*" – have also been brought under the obligation to pay *other charges* by the entity which maintains or

operates them. It is argued that under the PNGRB Act, the Board has been given the jurisdiction only qua such pipelines as are declared to be *common* or *contract* pipelines or *natural gas distribution network*. *Per contra*, the Board argued that the scheme of the legislation is such that it would cover regulation of all kinds of pipelines, the control over *common* or *contract* pipelines being just part thereof. Whether or not it was permissible or desirable to do so cannot be a question agitated before this tribunal since it pertains to the jurisdiction of the Board under Section 11(g) read with Section 61(2)(g) of PNGRB Act, the power to frame regulations, a legislative function. The appellant cannot succeed in its challenge to the impugned demand so long as the amended regulations are in force. As observed earlier, we are not expressing any opinion here on the requirement of quorum or inclusion of Member (Legal) in discharge of legislative functions by the Board. The *vires* of the regulations, and amendment thereto, cannot be brought in question before us, that being the domain of Constitutional courts only. In our considered view, the impugned decision was taken in proceedings which were administrative in nature.

278. In above view, the appeal is dismissed. The pending applications are rendered infructuous and disposed of accordingly.

The case of Sanwariya Gas Ltd. (Appeal no. 236 of 2020)

279. It is argued by the appellant Sanwariya Gas Ltd. ("SGL") that the genesis of the proceeding against it is a communication dated 23.08.2017 from the Ministry of Petroleum and Natural Gas (MoP&NG) to the Board seeking resolution of various issues between the appellant and GAIL. It is in that context that the Board

on 10.11.2017 had sought comments from the appellant and the second and third respondents on the issue/dispute between them. Subsequently on 05.04.2019, the Board issued Show Cause Notices ("SCNs") to the parties (the appellant and second & third respondents under Regulation 17 of the PNGRB (Code of Business, Receiving and Investigation of Complaints) Regulation, 2007, the primary allegation against the appellant being that it had undertaken activities beyond its authorized area.

280. By the order impugned in this appeal, the Board has injuncted the appellant asking it to cease operations of certain CNG Stations and supply of natural gas to certain industrial consumers on the basis of finding that both such activities are outside the GA authorised in its favour and hence unauthorised, compliance having been sought within specified period, the second respondent Gail Gas having been made responsible to make alternative arrangements for the consumers thereby affected, also imposing a civil penalty of 1,40,00,000/- against the appellant under section 28 of the PNGRB Act.

281. It is the contention of the appellant that the proceedings under regulation 14 and 17 of PNGRB (Code of Business, Receiving and Investigation of Complaints) Regulation, 2007 are distinct from each other. Regulation 14 relates to administrative/regulatory function and Regulation 17 relates to quasi-judicial function/adjudicatory function. It is submitted that the factual matrix in the present matter and the proceedings enumerated in regulation 17 suggest that it relates to the settlement of disputes between the appellant and the second-third respondents.

282. Thus, it is argued that in the present case the PNGRB was resolving disputes between the three entities in exercise of the

power conferred upon it by Section 12 of the PNGRB Act which has to follow chapter V of the PNGRB Act, in particular section 24. In such an event, the presence of Member (Legal) was mandatory and any order passed without said member would be a nullity due to *Coram non-judice*. It is also submitted that Section 28 is part of chapter V of the PNGRB act, and civil penalty could have been imposed only after a hearing wherein the presence of Member (Legal) is mandatory, the Board itself conceding (in para 43 of the impugned judgment) that the civil penalty was being imposed without a hearing under section 28 of the PNGRB Act.

283. We do not find any substance in the argument based on comparison of Regulations 14 and 17 of Business-Conduct Regulations. Regulation 17 applies to all kinds of proceedings before the Board including adjudicatory.

284. There is merit, however, in the argument of the appellant that the *suo motu* proceedings in which the impugned order was passed has its genesis in the initial inputs received from the MoP&NG regarding the *dispute* between the appellant on one hand and the second and third respondents on the other. There is no denial of the fact that each of these parties have been operating in areas which are in contiguity of each other. The grievance of the respondent entities has been that the appellant has been operating unauthorisedly in their GA. The appellant seeks to justify such activities claiming directives from governmental authorities with tacit consent of the authorised entities, the latter claiming to have been misled by the appellant. We are not presently expressing any opinion on the correctness or otherwise of the rival claims. What we intend to highlight here is that in the claims and counter-claims of the nature brought out by the facts narrated, a case of *dispute*

requiring resolution had come up before the Board. This was a matter that fell within the scope of Section 12(1)(a) read with Section 24 of PNGRB Act. True that the facts as found by the impugned order would also mean the case presented a scenario wherein an entity (the appellant) was indulging in contravention of the Regulations and, therefore, the case would also attract the provision contained in Section 12(1)(b) read with Section 25. The *prima facie* view formed by the Board at the outset, leading to Show Cause Notices being issued on 05.04.2019, if established, would also attract the civil sanction of penalty under Section 28 of PNGRB Act. But the Board has chosen to decide it as a matter not falling within the domain of Section 24. This, to our mind, is an approach which is not appropriate, the bypassing of Section 24 being prejudicial to the party adversely affected and vitiating the result.

285. As observed earlier, there is a high probability that in any matter coming within the *seisin* of the Board, there is an overlap of the elements of *dispute* involving *entities* requiring *adjudication* and consideration of such reliefs as may be sought ordinarily from a *civil court* (within the scope of Section 24) and of *contravention* of the regulatory framework or orders of the Board meriting the party responsible for such misdemeanour to be visited with sanctions – civil or criminal. Whilst in all matters where the element of *dispute* does not exist, the Board need not refer them to the bench envisaged in Section 24. But in all matters having such flavour, there is no escape from the requirement of law for the matter to be referred to the bench under Section 24.

286. There may be situations where the Board may not be clear at the initial stages as to which of the several parties is at fault. This is true of a case, like the one at hand, wherein the input came to the

Board from communication of the appellant forwarded by the MoP&NG. Conversely, this may also be true in a case presented as a *dispute* for settlement. The Board was not sure in present case. This is why the Board addressed the Show Cause Notices to the appellant and the two other entities (second and third respondent). By the impugned order, the notices issued to other entities seem to have been dropped. It appears that against the backdrop of the *dispute* taken note of by the Board, the main parties (i.e. the appellant and second respondent) entered into a settlement by executing a document named *Term Sheet Agreement* dated 07.10.2020. It is on that basis that the Board by the impugned order has treated the issue between the said parties as "*settled*". Clearly, the Board was conscious that a *dispute* was raging between the parties requiring to be subjected to process for *settlement.* In a scenario like this, the rival contentions had to be tested on evidence presented during inquiry. An inquiry of such nature would be an adversarial process. The findings returned at the end – wherein one side (the appellant) has been found guilty and the other two entities (Gail and IOCL) have been let off (their plea of ignorance having been accepted) though with a caution to exercise better vigil in future – cannot retrospectively be touted as a justification for non-invocation of Section 24 procedure. The end cannot justify the means – by hindsight.

287. While we do not accept the plea that in all cases involving only imposition of civil penalty under Section 28 the matter must be dealt with by a composition that includes Member (Legal), we do agree that in the case at hand the process is vitiated because the matter was not referred to the bench comprising Member (Legal) under Section 24 particularly because it arose out of a *dispute* of the nature

covered by Section 12(1)(a) of PNGRB Act. The procedure followed by the Board does not explain the omission in any manner.

288. There are some added reasons why we cannot uphold the impugned order which we state hereinafter.

289. The penal clause under Section 28 of PNGRB Act is predicated on satisfaction of contravention (by the person against whom proceedings are taken out) of "*a direction issued by the Board under this Act to provide access to, or to adhere to the transportation rate in respect of a common carrier, or to display maximum retail price at retail outlets*" or violation of "*the terms and conditions subject to which registration or authorisation has been granted under section 15 or section 19*" or of "*the retail service obligations or marketing service obligations*" or failure to "*furnish information, document, return of report required by the Board*". The imposition of *civil penalty* under Section 28 involves penal action and the procedure prescribed therefor has to be scrupulously adhered to. In our view, the action envisaged under Section 28 requires necessarily a notice specific to such action particularly because the civil penalty cannot be imposed unless "*an opportunity of being heard in the matter*" has been afforded.

290. The Show Cause Notice ("SCN") issued in present case on 05.04.2019 had generally called for a response, *inter alia*, from the appellant as to why "*action should not be initiated under PNGRB Act, 2006 read with Regulation 17* (of Business-Conduct Regulations) *… for carrying out unauthorized activities outside its authorized GA limits*". That was a notice in general terms. It may be argued that imposition of civil penalty is also an action under the PNGRB Act. But then, it cannot be ignored that at the time of issuing the above-mentioned SCN on 05.04.2019, the response sought was

only against action being *initiated*. There was no satisfaction reached at that stage about the appellant having indulged in a contravention of the kind covered by Section 28. The penalty has been imposed on the appellant "*for the violation of authorisation terms of Mathura GA*". This gravamen of accusations on which penalty has been imposed was not expressly mentioned in the SCN issued earlier. The satisfaction about contravention has been reached only by the impugned order which we are unable to sustain for reasons set out earlier. Prior to this finding being returned, there was no proposal on table for civil penalty to be imposed on the party at fault. Be that as it may, even in the event of that part of the order being held valid the imposition of civil penalty is without jurisdiction since there is no show cause notice given, or hearing afforded, specific to action taken under Section 28.

291. The provision contained in Section 28 prescribes the maximum limit of civil penalty for initial contravention and also for continuance. It is trite that before meting out such punishment, the party at the receiving end must be given opportunity to present mitigating facts or circumstances. The prerogative to decide on the severity lies with the authority vested with jurisdiction to impose such penalty. But while deciding on the quantum it must examine all relevant factors. The Term Sheet Agreement dated 07.10.2020, which has been accepted by the Board, shows the possibility that the appellant may alone have not been responsible.

292. The civil penalty of Rupees One Crore Forty Lakh is more than the maximum of Rupees One Crore that may be imposed for each contravention in the first instance. It is true that additional penalty of Rupees Ten lakh for every day may be imposed. But for that, it must be shown that a case is made out wherein "*failure continues after*

contravention of the first such direction". The impugned order is conspicuously silent on the justification for lump-sum imposition of penalty. It miserably fails to explain as to how the penalty has been quantified.

293. For the foregoing reasons, we are unable to uphold the impugned order passed by the Board. It is set aside.

294. The above result of the appeal, however, cannot mean the proceedings arising out of the Show Cause Notice issued on 05.04.2019, in so far as directed against the appellant would come to an end. On the contrary, having regard to the serious nature of contraventions alleged it is desirable that the same must continue and be taken to the logical end but by following due process of law. Thus, while setting aside the impugned order we remit the matter to the Board directing that it be dealt with in accordance with the procedure prescribed by, and in manner specified in, Section 24 of PNGRB Act. We direct that the penalty imposed by the impugned order, as realised by the Board, shall be presently refunded within four weeks of this judgment being pronounced.

295. Though the impugned order is being vacated and the proceedings revived before the Board, for fresh adjudication in accordance with law, keeping in view the Term Sheet Agreement that was entered into by the appellant with second respondent on 07.10.2020, we would remind the entities involved in this dispute of their general obligation to abide by the law and regulations. We would expect them to *suo motu* fall in discipline (if they have been on the wrong side) and take all such corrective measures as are necessary to undo the contraventions (if any) that are stated to have been indulged in. Their conduct hereafter would be as relevant as the one indulged in the past, for future decision-making process.

296. Lest there be any doubts entertained in such regard, we clarify that notwithstanding the above result, in the course of further proceedings, the Board will be at liberty to exercise its discretion under the law to consider having resort to all such measures – including sanctions (civil or criminal) – as it deems proper to enforce regulatory law on the subject. At the cost of repetition, however, we would remind the Board that it must follow the procedure prescribed by law.

297. We also clarify that nothing observed by us in above discussion shall be construed as expression of opinion by this tribunal on the merits of the allegations against, or the defences raised by, the appellant.

298. The appeal and applications filed therewith are disposed of in above terms.

The case of Maharashtra Natural Gas Ltd. (Appeal no. 6 of 2021)

299. It was brought to our notice at the concluding stages of the hearing (spread over several days) on this batch of appeals that the contesting parties to the matter at hand (MNGL and TGPNL) have recently taken certain steps to reach an amicable resolution of their *inter se* dispute. The learned counsel for the second respondent submitted on 05.05.2021 a note giving brief details of the said steps. According to the said note, in an endeavour to resolve the issues of transfer of CNG stations, Domestic and Industrial Customers which are outside the authorized area of the appellant, a meeting was held between the senior officials of the appellant and the second respondent on 15.04.2021 and an agreement was reached to amicably resolve the dispute which has also been acted upon. The

learned senior counsel for the appellant, having taken instructions, confirmed the correctness of facts stated in the said note.

300. It has been submitted by the appellant and the second respondent that:

(i) MNGL have removed its equipment from the *Abhay CNG Station (DODO-Online)* and have also de-leased the land from the franchisee. TGPNL has signed the new lease agreement with the Franchisee for setting up the station. TGPNL has made the payment of Rs. 1.13 crores towards the civil costs and other mechanical and electrical costs for the equipment left behind. Currently the process towards obtaining various approvals from PESO is in process;

(ii) MNGL have removed its equipment from the *Balaji CNG Station (HPCL-DBS)*. TGPNL has also paid an amount of Rs. 10 Lacs to MNGL towards the civil costs and other mechanical and electrical costs for the equipment left behind. However, the dealer currently is not interested in running a CNG station at his RO.

(iii) MNGL have removed its equipment from the *Jai Ganesh Petroleum CNG Station (BPCL-Online)*. TGPNL has also paid an amount of Rs. 10.42 Lacs to MNGL towards the civil costs and other mechanical and electrical costs for the equipment left behind. Currently the process towards obtaining various approvals from PESO is in process.

(iv) MNGL have removed its equipment from the *Sus Chandere Station (DODO-DBS)* and have also de-leased the land from the franchisee. TGPNL has also paid an amount of Rs. 1.74 crores to MNGL towards the civil costs and other

mechanical and electrical costs for the equipment left behind. Currently the process towards obtaining various approvals from PESO and others is in process.

301. Whilst some satisfaction can be drawn from the fact that the disputants have effectively resolved the feud, the learned counsel for the appellant is right in contending, and in this learned counsel for the Board joined, that the above settlement by itself cannot render the appeal infructuous since the matter arising out of SCN for criminal action remains pending before the Board.

302. We do not accept the argument of the Board that the appeal at hand is premature. The appellant had questioned the permissibility and legality of the proceedings before the Board with reference to the earlier order dated 16.09.2020 by appeal (DFR No. 354 of 2020) which resulted in the order dated 21.10.2020. The impugned order dated 02.12.2020 has been passed by the Board repelling the said contentions. The appellant being thereby aggrieved, it can maintain the appeal at hand. If there is a ground made out to affirm the plea raised it would vitiate the ongoing process before the Board. There is no justification in the argument that we must allow the process to be concluded and then examine its validity. Conscious as we are that the Board is yet to decide on the merits of the allegations, we would refrain from making any comment or expressing any opinion thereupon except to note the facts presented. Our scrutiny in this appeal is limited to the argument of *quorum non judice*, particularly on account of absence of Member (Legal).

303. As already concluded, the PNGRB is not a criminal court. If it comes across facts that *prima facie* constitute commission of an

offence under the PNGRB Act, it is competent to hold preliminary inquiry and after gathering the necessary material and ascertaining the facts, it may initiate a criminal prosecution by filing a criminal complaint before the criminal court of competent jurisdiction as prescribed by the PNGRB Act. Ordinarily, such preliminary inquiry would require, it being even otherwise within the spirit of rules of natural justice and also demands of fairness, that a notice be issued to the party against whom such action is directed so that it may show cause why such action was not called for. A show cause notice cannot be condemned as reflective of predisposition.

304. A show cause notice of the kind that is subject matter of present proceedings may be issued by the Board in proceedings drawn *suo motu* on facts coming to its notice in routine or in proceedings arising out of preliminary inquiry on a complaint under Section 25 of PNGRB Act. In such process, the only requirement is of adherence to the quorum prescribed under Section 8 read with the Business-Conduct Regulations and Board-Meeting Regulations. But, the requirements of law would differ if the facts concerning commission of offence come to light while dealing with a *dispute* requiring *adjudication* under Section 24 of PNGRB Act. The present case falls in the last said category. Hence, we find substance in the grievances of the appellant. We may elaborate the reasons hereinafter. But whilst we do so we shall not be construed as having expressed any opinion on the merits of the rival contentions.

305. It cannot be ignored that it all started with a grouse presented by the second respondent before the Board that the appellant had established four gas stations outside the GA authorised in its favour. The appellant, an entity operating under the authorisation granted by the Board in the GA having contiguity with the GA authorised to

the complainant, contested by presenting facts to the contrary. The Board was unable to resolve immediately only on the basis of the available records of authorisations in favour of competing entities. Apparently, there is need for detailed inquiry into facts including by a survey. The Board asked the disputants to resolve on their own and go in for joint survey. Ideally, such exercise should and could have been undertaken by the Board itself. Be that as it may, the claim and counter-claim, for whatever worth it was, and the inability of the Board to reach clarity on available record, showed a *dispute* had been presented in which disputed questions of facts were to be addressed and necessary directions issued so that the party against whom allegations had been made could be made to cease unauthorised operations. Such *dispute* would fall within the scope of Section 12(1)(a) and had to be adjudicated upon in accord with procedure prescribed in Section 24 of PNGRB Act. That the dispute also had brought to light facts that would constitute not only *contraventions* within the meaning of Section 12(1)(b) necessitating action initially under Section 25 or, for that matter, visiting the party found at fault with other consequences (civil or criminal) will not make a difference. Mere revelation that a *dispute* meriting *settlement* by *adjudication* would mean the Board had no option but to refer the matter to the bench under Section 24, a panel that would mandatorily include participation by a Member (Legal).

306. The error on the part of the Board, thus, lies in bypassing the procedure of Section 24. It should have remembered that by referring the *dispute* to the bench under Section 24, it was not foregoing its prerogative to deal with the contraventions effectively. On the contrary, such reference would lead to inquiry before a forum having *trappings of the civil court* and assist in reaching conclusions

on questions of facts followed by exercise of authority and jurisdiction to deal with the party in breach, bringing justice to the party adversely affected by such breach by affording requisite reliefs, and visit the wrongdoer with civil or criminal (or both) consequences.

307. The very fact that the SCN was issued in a situation that presented a *dispute*, the failure to refer the matter to the bench that comprised a member (Legal) has caused prejudice to the appellant. Thus, the proceedings taken out post-issuance of the SCN are vitiated and cannot be sustained.

308. The impugned order is, thus, set aside. The proceedings arising out of the Show cause Notice against the appellant may continue. But, for this the Chairperson will refer the matter to the appropriate bench to be constituted in accord with Section 24 of PNGRB Act.

309. The appeal and applications filed therewith are disposed of in above terms.

TO CONCLUDE

310. Before parting, we feel it pertinent to observe that the facts of the four appeals which we are allowing have demonstrated - only strengthening the view taken by this judgment - that the legislature had very sound reasons in mind for stipulating the mandatory inclusion of the Member (Legal) in the adjudicatory process before the PNGRB. After all, as repeatedly argued by the learned counsel for the Board itself, that is a function ordinarily of the *civil court*, the Board being the *substituted* forum created for the specialised field covered by the law (PNGRB Act). May be, the presence of a man of

law would have guided and steered the procedure better and such fundamental errors as have been committed would have been avoided.

311. It is a matter of grave concern that the Petroleum and Natural Gas Regulatory Board (PNGRB) is rendered virtually a dysfunctional body since 03.12.2020 when its then Chairperson demitted office leaving only one Member holding office, he too awaiting his own retirement on 14.08.2021, it being beyond his competence under the quorum rule to take effective decisions. We hope that the legislative promise of *adjudication over disputes* governed by PNGRB Act by a forum equally competent as a *civil court* shall be borne in mind and the vacuum that has been created by non-appointment of the Member (Legal) for over one year and other vacancies (one for almost four years) is filled in urgently.

312. We have come across two errors in the available text of PNGRB Act [*see* paras 20 and 32]. We hope and trust suitable corrective steps will be taken in such regard by the concerned authorities. We also hope our views expressed (in para 238) regarding composition of PNGRB will be considered.

313. The appeal (no. 161 of 2020) of *Bharat Petroleum Corporation Ltd.* Is dismissed, the challenge therein being essentially to *vires* of regulations framed by the PNGRB in exercise of legislative function.

314. The other four appeals – appeal nos. 152-153 of 2020 of *GAIL (India) Ltd.*, appeal no. 236 of 2020 of *Sanwariya Gas Ltd.* and appeal no. 6 of 2021 of *Maharashtra Natural Gas Ltd.* succeed and the orders impugned therein are set aside with directions about cases before the Board as indicated earlier.

315. The Petroleum and Natural Gas Regulatory Board shall pass all consequential orders in light of directions specific to each case.

316. This also disposes of all pending applications.

317. The parties are left to bear their own costs.

IN PARTING

318. We are aware that the views formulated on questions of law of great importance may not be the last word on the subject. Law is not static and its interpretation is an evolving exercise. Every *lis* and scrutiny at each layer of judicial hierarchy might bring in new facts or dimensions requiring a revisit. We derive satisfaction in having availed of the opportunity for crystalising what our judicial conscience feels are the appropriate principles for the regulatory authority to follow. In this endeavour, we were so very ably aided by learned counsel for the parties sharing their rich domain knowledge and experience with great clarity and erudition. We may not have agreed with them on certain aspects but this cannot detract from the fact that the counter-arguments on such aspects presented by them opened up the possibility of a very comprehensive and holistic view to be taken. We place on record our deep sense of appreciation and gratitude for the invaluable advice and assistance rendered by senior counsel Mr. Paras Kuhad, Mr. Ramji Srinivasan & Mr. Sachhin Puri and advocates of standing Mr. Rajat Navet, Ms. Sonali Malhotra, Mr. Piyush Joshi, Mr. Shiv Kumar Pandey, Mr. SC Batra, Mr. Rahul Sagar Sahay, Mr. Ajit Puduserry, Mr. Rishi Agrawala and their associates.

319. A copy of this judgment shall be sent by the Registrar of this tribunal to the Secretary, Ministry of Petroleum and Natural Gas, Secretary, Ministry of Law, Justice and Legislative Affairs in the Government of India and Secretary, Petroleum and Natural Gas

Regulatory Board, for further necessary action on the subjects relevant to each of them.

PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING ON THIS 07th DAY OF JULY, 2021.

(Dr. Ashutosh Karnatak)
Technical Member (P&NG)

(Justice R.K. Gauba)
Judicial Member