

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

**APPEAL NO. 133 OF 2018 &
IA- 591/2018 & IA-1267/2019**
&
**APPEAL NO. 134 OF 2018 &
IA-595/2018 & IA-1268/2019**

Dated: 13th October, 2021

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

**APPEAL NO. 133 OF 2018 &
IA- 591/2018 & IA-1267/2019**

In the matter of

GSPL India Gasnet Limited
GSPL Bhawan, Plot No. E-18
GIDC Electronic Estate
Nr. K-7 Circle, Sector 26
Gandhinagar - 382028

... **Appellant(s)**

VERSUS

Petroleum and Natural Gas Regulatory Board
First Floor, World Trade Centre,
Babar Road,
New Delhi- 110001

... **Respondent(s)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran, Sr. Adv.
Mr. Piyush Joshi
Ms. Sumiti Yadava
Mr. Abhishek Prakash
Mr. Shubham Arya
Ms. Srishti Khindaria

Counsel for the Respondent(s) : Mr. Buddy A. Ranganadhan
Mr. Utkarsh Sharma
Ms. Pinki Mehra
Ms. Tanuja Dhoulakhandi
Ms. Shipra Malhotra for PNGRB

**APPEAL NO. 134 OF 2018 &
IA-595/2018 & IA-1268/2019**

In the matter of:

GSPL India Transco Limited

GSPL Bhawan, Plot No. E-18
GIDC Electronic Estate
Nr. K-7 Circle, Sector 26
Gandhinagar - 382028

... **Appellant(s)**

VERSUS

Petroleum and Natural Gas Regulatory Board

First Floor, World Trade Centre,
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... **Respondent(s)**

Counsel for the Appellant(s)	:	Mr. M.G. Ramachandran, Sr. Adv. Mr. Piyush Joshi Ms. Sumiti Yadava Mr. Abhishek Prakash Mr. Shubham Arya Ms. Srishti Khindaria
Counsel for the Respondent(s)	:	Mr. Buddy A. Ranganadhan Mr. Utkarsh Sharma Ms. Pinki Mehra Ms. Tanuja Dhoulkhandi Ms. Shipra Malhotra for PNGRB

JUDGMENT (ORAL)

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

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

2. These appeals have assailed two identical communications, both described as orders, each dated 04.03.2016, addressed to the respective appellants herein thereby enforcing punitive action in the nature of encashment of twenty five per cent of the Performance Bank

Guarantee (“PBG”), the appellants having been found guilty of “first default” in terms of regulation 16 of *Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008* (for short, “NGP Authorization Regulations”). The authorization in question in relation to the appellant in the first captioned appeal (*GSPL India Gasnet Limited* – for short, “Gasnet”) is in relation to a Natural Gas Pipeline described as *Mehsana – Bhatinda Natural Gas Pipeline* (in short, “MBPL”). The authorization in question in relation to the second captioned appellant (*GSPL India Transco Limited* – for short, “Transco”) is in respect of the natural gas pipeline described as *Mallavaram – Bhilwara – Bhopal – Vijaipur Natural Gas Pipeline* (for short, “MBBVPL”). It may be added here that the first captioned appeal of Gasnet also pertained to another natural gas pipeline, it being Bhatinda – Jammu – Srinagar Natural Gas Pipeline (for short, “BJSPL”). The said appeal was amended in terms of permission granted by order dated 31.03.2021 to restrict the matter to MBPL only.

3. The authorizations in favour of the appellants herein in respect of MBPL and MBBVPL respectively were granted under regulation 5 of the NGP Authorization Regulations. Concededly, in compliance with the conditions imposed in the authorization, each of the appellants furnished PBGs of the requisite amounts in terms of regulation 8. Admittedly, the timeline of thirty-six months for completion of the requisite works of laying the pipelines was not met, there having been substantial delays. The position taken by the appellants has been that they were unable to carry out the necessary works for want of the statutory or other approvals that were requisite.

4. The *Petroleum and Natural Gas Regulatory Board* (for short, “PNGRB” or “Board”) admittedly reviewed and evaluated the performance on 10.07.2014 calling the parties in question for a review meeting. In the said meeting, the reasons for delay were outlined by the entities in questions i.e. appellants herein, being majorly inclusive of:-

- a. Non-appointment of Competent Authority (CA) in Haryana,*
- b. Delay in Forest permissions*
- c. Delay in Gram Sabha permissions due to lack of consistent policy – conflicting requirements of Ministry of Tribal Affairs and MOEF –*
- d. Delay in wild life clearances due to non constitutions of National Wild Life Board and certain State Wild Life Boards.*
- e. delay due to amendment of BS 105 guidelines of Ministry of Railways.*
- f. Delay due to Telangana agitation and subsequent bifurcation of Andhra Pradesh*
- g. The Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*
- h. Non-applicability of PMP Act in J&K”*

5. The record note of the proceedings of the abovesaid review meeting was shared by the PNGRB by its letter dated 15.07.2014 addressed to the appellants. It is clear from a bare reading of the said record note of proceedings that the Board was not satisfied with the explanations tendered at that stage. Reference is made by the learned counsel for the Board, particularly to para 6 of the said record of proceedings, it reading thus:-

“6. In his concluding remarks, Chairperson advised the entity to drastically revise their schedules and speed up implementation in the coming months. The matter of appointment of CA in Haryana must be taken up with MoP&NG expeditiously. The request for extension of time

for the projects shall be considered separately by the Board and if required, PNGRB shall seek further clarifications.”

6. From the material in the above nature, it is clear that the Board had communicated as early as on 10.07.2014 to the authorised entities that it would not be possible to construe procedural delays as mentioned above as “*Force Majure*”.

7. Communications were exchanged in the wake of the aforesaid review meeting including an advisory given on 13.08.2014 for revised implementation schedule to be submitted. It appears the appellants, by their letter dated 04.11.2015, while making various submissions and reiterating various constraints faced by them, sought extension of time by 24 months for the pipelines to be developed, subject to receipt of all statutory clearances, the extension of time being sought being upto December, 2017. It is a conclusion reached by the Board, as noted in the impugned order/communication, that approvals approximately to the extent of 94.04 percent had been obtained, but the requisite progress in laying the pipeline activities had not begun in right earnest or to the satisfactory level.

8. On the question of progress of the projects, we do feel that the appellants had indeed not progressed as per the schedule. In the context of ventures of such size covering a large geographical area, we do not appreciate the plea that to start the project work all the permissions and ROU over entire route as required must first be in position. We are of the view that given the extent of aprovals already obtained, in the least, steps could have been for completion of design engineering, placement of EPC tender, commencement of works in the nature of major Horizontal Directional Drilling work etc.

9. Be that as it may, the impugned order was passed in the wake of proceedings that were initiated by the Board by letter dated 08.10.2015, whereby the appellants were called upon to appear before the Board for hearing on 05.11.2015 under regulation 16 of the NGP Authorisation Regulations to explain why action should not be taken under the said provision. Admittedly, the appellants attended and participated in the said hearing on 05.11.2015 presenting their difficulties referring to the constraints faced by them as “*force majeure*”. The Board had called upon the parties in question to submit justifications including documentary evidence in support. Admittedly, the appellants made such submissions in writing in November, 2015. Upon consideration of the said submissions, the impugned orders were passed, the relevant portion, which is similar in both the matters, reading thus (The extract herein below is taken from the impugned order in the first captioned matter):-

“12. The Statutory permissions may not be in place all in one go. One or the other clearance might remain pending but it does not stop the entity from pursuing other activities related to the project. The situation on ground does not provide sufficient optimism for projections shown by the entity.

13. The Board has provided ample opportunities to the entity of being heard and reasonable time to fulfil its obligations, i.e., approx 20 months over and above the 36 months time prescribed in the extant Regulations. Also no substantive action is being taken by the entity within the specified period to the satisfaction of the Board. Therefore in accordance with the terms and conditions of authorization and provisions under regulation 16(1)(c)(i) of NGPL Authorization Regulations, PNGRB has come to the conclusion that breach of authorization has occurred with respect to non-completion of the pipeline project within scheduled completion period of 36 months for MBPL and BJSPL.

14. Hence, considering this as first default, as per the provisions of extant regulations, 25% of the Performance Bank Guarantees (PBGs) amounting to Rs. 5,00,00,000/- (Rs. Five Crores Only) are being encashed from the PBG No. PBGI00710400184 dated 15.05.2015 with Ratnakar Bank Limited submitted by you.

15. The Board has further decided to give time extension up to December 2017 for MBPL projects as sought by GIGL. Accordingly, it is advised to submit revised implementation schedule with milestones, which shall be closely monitored and deviation, if any, shall construe to be second default liable for action as per the provisions of extant Regulations.

16. You are hereby directed to make good the encashed PBG within two weeks of receipt of this letter, failure to do so shall attract the provisions of Regulation 16(1)(d) of NGPL Authorization Regulations. Kindly acknowledge the receipt of the letter.”

10. Given the conclusion that we have reached on a particular aspect, we do not feel it necessary to go into the issue as to whether the reasons set out by the appellants to seek condonation of delay in meeting the timelines qualify as “force majeure” or not.

11. We need to quote only regulation 16, which reads thus:-

“16. Consequences of default and termination of authorization procedure.

(1) An authorized entity shall abide by all the terms and conditions specified in these regulations and any failure in doing so, except for the default of the service obligation under sub-regulation (l) of regulation 14 and force majeure, shall be dealt with as per the following procedure namely:-

(a) the Board shall issue a notice to the defaulting entity allowing it a reasonable time to fulfill its obligations under the regulations;

(b) No further action shall be taken in case remedial action is taken by the entity within the specified period to the satisfaction of the Board;

(c) *In case of failure to take remedial action, the Board may encash the performance bond of the entity on the following basis, namely:-*

(i) *Twenty five percent of the amount of the performance bond for the first default:*

(ii) *Fifty percent of the amount of the performance bond for the second default:*

Provided that the entity shall make good the encashed performance bond in each of the cases at sub-clause (i) and (ii) within a week of encashment failing which the remaining amount of the performance bond shall also be encashed and authorization of the entity terminated:

(iii) *One hundred percent of the amount of performance bond for the third default and simultaneous termination of authorization of the entity;*

(d) *The procedure for implementing the termination of an authorization shall be as provided in Schedule G.*

(e) *Without prejudice to as provided in clauses (a) to (d), the Board may also levy civil penalty as per section 28 of the Act in addition to taking action as prescribed for offences and punishment under Chapter IX of the Act.”*

(Emphasis supplied)

12. The impugned decision of the Board, as observed earlier, treats the defaults on the part of the appellants as “first default”. It does appear that, by the impugned decision, the Board also granted extension of time for future compliances. We do not accept the argument of the appellants that the impugned order is inherently contradictory because the extension of time cannot be construed as approval of the reasons for delay. The case was one of “first default” at which stage the Board was not permitted, not the least by regulation 16 quoted above, to terminate the authorization. It was obliged by law

to grant further opportunity, the termination being a possibility only in the event of the authorized entities being found guilty of third default, which stage has not yet come.

13. The regulation 16, as quoted above, is a punitive law and has to be construed and applied strictly. Regulation 16 (1) (b) makes it unequivocally clear that further action, as envisaged in the subsequent clauses, cannot be taken by the Board unless and until reasonable time given for remedial action has lapsed. The Board may have been within its rights, and sound in its reasons and conclusions, in rejecting the grounds presented by the appellants justifying the delays, but it could not have imposed the penalty of forfeiture by encashment of the performance bank guarantee, to the extent of twenty five percent of the amount of the performance bond, unless and until it had granted, by an express order or communication, “ a reasonable time” to the authorized entity, which was in default, to “fulfill its obligations under the regulations”. We are unable to find, in the entire record of proceedings, orders or communications exchanged, any express direction given by the Board specifying what was “reasonable time”, in its view, for the appellants to carry out the necessary works so as to be relieved of the position of defaulting entities. We are unable to accept the submission of the learned counsel for the Board that the observations in para 6 of the record note of proceedings in relation to review meeting dated 10.07.2014 is to be treated as substantial compliance of the requirements of regulation 16 (1) (a). In punitive action, there cannot be a justification held out by substantial compliance. There must be a strict

compliance. It is in this respect that the action undertaken by the Board is remiss.

14. For the foregoing default in the due process, we are unable to uphold the impugned order to the extent thereby penalty of encashment of twenty five percent of the performance bond was imposed against each of these appellants. The impugned orders, to that extent, are set aside. The Board will use the money which was realized in terms of directions to the bank for encashment for restoring the performance bonds to their original position.

15. During the hearing, we were informed that the requisite works are still not complete, though the learned counsel for the appellants submitted that the authorizations remain alive till date, some progress having been made, all requisite approvals/permissions having since been obtained, there has been delay in completion, the deadline to be met now having been set as 31.12.2022 for the project in first captioned appeal and the matter relating to the second captioned appeal for such purposes being pending with the Board.

16. Considering the importance of National Gas Grid for expansion of gas based economy in India, concerted efforts are required for completion of all authorized Natural Gas Pipelines within stipulated schedule. Possibly, we would wonder, it would help if the Board, before initiating any process for bidding, were to explore the possibility of securing confirmation or assurances from respective State Governments as to timely availability of CA, Permissions and ROU which are key enablers for completion of such projects. PNGRB, being the regulator, is expected to monitor the progress *vis-*

à-vis schedules at least on quarterly basis or any other frequency as deemed appropriate. Timely action for the cases of delays ought to be taken in a consistent manner, as per notified regulations after due analysis of progress & catchup plan, or if required by necessary amendment to the regulatory framework. But it is essential that the Board follows the law and regulations, abiding by the prescribed procedure, in matters such as those arising out of regulation 16. Defaults of the kind noticed in these appeals render the action taken flawed and of no consequence.

17. We hope and trust that the Board will now suitably monitor the progress of the subject projects and initiate necessary action, if need be, to bring about a proper discipline in compliance of the authorization conditions, but strictly in accordance with law and regulations.

18. Both appeals are disposed of in above terms. The interlocutory applications, which are pending are rendered infructuous and are disposed of accordingly.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO
CONFERRING ON THIS 13TH DAY OF OCTOBER, 2021.**

(Dr. Ashutosh Karnatak)
Technical Member (P&NG)
mg/tp

(Justice R.K. Gauba)
Judicial Member