

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
AT NEW DELHI**

**(APPELLATE JURISDICTION)**

**IA NO.-1440 of 2021 In DFR NO. 321 OF 2021 &  
IA NO.- 1385 OF 2021**

**Dated: 22<sup>nd</sup> December, 2021**

**Present: HON'BLE MR. JUSTICE R.K. GAUBA, JUDICIAL MEMBER  
HON'BLE DR. ASHUTOSH KARNATAK, TECHNICAL MEMBER (P&NG)**

**IN THE MATTER OF**

**THINK GAS LUDHIANA PVT. LTD.**

Through Mr. Anurag Asthana,  
General Manager, Compliance & Legal  
2<sup>nd</sup> Floor, World Trade Tower,  
Sector -16 Noida 201301, Uttar Pradesh  
Email: [Anurag.Asthana@think-gas.com](mailto:Anurag.Asthana@think-gas.com)

**.... Appellant**

**VERSUS**

**1. Petroleum and Natural Gas Regulatory Board  
Through The Secretary, PNGRB**

First Floor, World Trade Centre  
Babar Road, New Delhi – 110 001  
Email: [secretary@pngrb.gov.in](mailto:secretary@pngrb.gov.in)

**..... Respondent**

Counsel for the Appellant

Mr. C.S. Vaidyanathan, Sr. Adv.  
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Mr. Ankit Bhandari

Counsel for the Respondent(s)

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Mr. Rahul Sagar Sahay  
Ms. Pinki Mehra  
Ms. Tanuja Dhoulakhandi  
Ms. Shipra Malhotra  
Mr. Mohit Budhiraja

# J U D G M E N T

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

1. This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.

2. Leave granted.

3. The respondent Petroleum and Natural Gas Regulatory Board (for short, "the Board") has been established by the Petroleum and Natural Gas Regulatory Board Act, 2006 (for short, "PNGRB Act"), the prime objectives of the said legislation being, *inter-alia*, "to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets". We may also note here that in terms of section 11 of the PNGRB Act, it is the statutory obligation of the Board, *inter-alia*, to protect the interests of the consumers, ensure fair trade and competition amongst entities.

4. It is admitted case for the Board that it had been receiving requests for grant of no objection certificates (NOCs) or permissions for supply or distribution of Coal-Bed Methane (CBM) or natural gas through cascades and setting up of CNG Daughter Booster Stations (DBS) in the areas where Board had not yet authorised any entity for developing or operating CGD networks in terms of one of its other functions under Section 11. Against the said backdrop, the Board framed and notified on 23.08.2013 "*internal guidelines for grant of NOC*", though a Public Notice dated 23.08.2013. Though the decision so notified was styled

and labelled as “*internal guidelines*”, in our reading it was essentially a “scheme” for dealing with applications in above nature for areas where the work of authorisation for laying of CGD networks was yet not complete.

5. It is not in dispute that applications were received pursuant to the above mentioned scheme of 2013 and certain NOCs/permissions were granted some of which have been operational ever since. It is also not in dispute that the appellant herein had also made such application, *albeit* after September, 2017 by when the Board had decided to put a freeze on the receipt of such applications, it having notified its intent to review the guidelines on the subject. Be that as it may, we may also note that the appellant had taken the matter *vis-à-vis* his request for grant of permissions respecting certain geographical area to the writ jurisdiction of the High Court of Delhi by Writ Petition Civil Appeal No. 2629 of 2021 which was decided by order dated 26.02.2021, an assurance having given to the writ court to the effect that “*based on a representation dated 06.01.2021 of the petitioner, the respondent no.1 has re-considered the issue and has decided to place the same before the duly constituted Board of the respondent no.1, subject to the proceedings pending before the learned Appellate Tribunal for Electricity(APTEL)*”.

6. We may note that the Board had virtually become dysfunctional with Chairperson and most of its Members having demitted office. The Board resumed effective functioning with the joining of office by its second Member on 09.08.2021.

7. The present appeal was brought under section 33 of the PNGRB Act questioning the legality, validity and propriety of the Public Notice

issued on 24.08.2021 by Joint Advisor (Authorisation and Technical) notifying to the public at large as under:

*“PUBLIC NOTICE NO:PNGRB/Auth/1-CGD(02)/2017*

*PNGRB vide Public Notice no. PNGRB/CGD/2013/NG Mktg-A dated 23.08.2013 had issued “Internal Guidelines for grant of NOC/Permission for (i) supply/distribution of CBM/natural gas through cascades; and (ii) setting up of CNG Daughter Booster Stations (DBS) in the areas where Board has not yet authorized any entity for developing or operating CGD networks”.*

*2. Further, vide Public Notice no. Infra/CGD/NOC-guidelines dated 07.09.2017, PNGRB had issued a draft of the revised existing guidelines, and had requested all entities desirous to apply for NOC/permission to hold their applications till the revision desirous to apply for NOC/permission to hold their applications till the revision of existing guidelines and apply as per the revised guidelines.*

*3. As of now, PNGRB has already authorized 228 Geographical Areas for development of CGD Network upto 10<sup>th</sup> CGD Bidding Round, and further, 65 GAs have been identified to be bid out in the 11<sup>th</sup> CGD Bidding Round.*

*4. In view of the above, PNGRB hereby withdraws afore-said Internal Guidelines dated 23.08.2013.”*

8. During the course of hearing, pursuant to our directions, the Board has placed before us the relevant papers relating to the decision to withdraw the internal guidelines dated 23.08.2013, such material being inclusive of the copy of the office memorandum dated 11.08.2021 convening 105<sup>th</sup> meeting of the Board, along with copy of the agenda paper pertaining to item no. 39 which, it appears, had been initiated by Joint Advisor (Auth. and Tech.), concurred by the Secretary to the Board, recommended by the second Member and approved by the first Member. The documents submitted include the minutes recorded against item no. 39 in the said 105<sup>th</sup> meeting of the Board held on 12<sup>th</sup> and 13<sup>th</sup> August, 2021, authenticated by the Secretary of the Board, the same reading as under:

**“OFFICE MEMORANDUM**

**Subject: Relevant extracts of the items from the Minutes of the 105<sup>th</sup> Meeting of the PNGRB held on 12<sup>th</sup> August, 2021 and 13<sup>th</sup> August 2021**

The relevant extract in respect of the item pertaining Authorisation Division from the minutes of the Board meeting held 12<sup>th</sup> August, 2021 and 13<sup>th</sup> August 2021 is furnished herewith for information and necessary action:-

*Item No. 39: Withdrawal of Internal Guidelines dated 23.08.2013 for grant of NOC/permission for*

- (i) Supply/Distribution of CBM/natural gas through cascades; and*
- (ii) Setting up of CNG Daughter Booster Stations (DBS), in the areas where Board has not yet authorized any entity for developing or operating CGD networks along with withdrawal of three NOCs.*

*The agenda was presented to the Board by Shri S.C. Gupta, Joint Adviser (Authorisation & Technical).*

*The Board deliberated the proposal and approved the following :*

- i) Withdrawal of Internal Guidelines dated 23.08.2013 for grant of NOC/permission for
  - a) Supply/Distribution of CBM/natural gas through cascades; and*
  - b) Setting up of CNG Daughter Booster Stations (DBS), in the areas where Board has not yet authorised any entity for developing or operating CGD networks.**
- ii) Withdrawal of 13 NOCs mentioned at Sr. No. 5 to 14 and Sr. No. 19 of Para 7 of the agenda Sr. No. 12 and 19 have 2 NOCs each)*

*Sd/-  
Vandana Sharma  
Secretary”*

9. Several contentions are raised by the Appellant *vis-à-vis* the desirability or permissibility of withdrawal of the internal guidelines. We do not intend to examine the same in these proceedings in as much as, at the hearing, it has been fairly conceded on behalf of the Board that having regard to the concerns as to the procedure adopted by the Board to reach a conclusion in the 105<sup>th</sup> meeting of the Board as aforesaid to withdraw the internal guidelines, the Board is inclined to

revisit the subject after hearing all such entities as have been granted NOCs and have continued to operate thereunder and applicants whose applications for such permissions had come up till the date of such withdrawal and whose particulars were mentioned in the information placed before the Board as part of the agenda paper, inclusive of the name of the Appellant herein it having been conspicuously omitted, possibly due to an inadvertent error.

10. While on the above basis, the appeal deserves to be allowed, the impugned decision ordered to be set aside, and the matter arising out of the proposal to withdraw the internal guidelines remitted to the Board for fresh decision, we only wish to point out here that the Board will have to always bear in mind the spirit of the legislative mandate in Section 13 (3) of the PNGRB Act – viz. to be guided by the principles of natural justice, in addition to adherence to the statutory provisions and rules framed thereunder. Further, the Board must remember that reasons are the hallmark of fair decision-making process and this applies equally to such decisions as are taken in administrative discretion.

11. For the foregoing reasons, and in the circumstances set out above, we allow the appeal. The impugned decision of the Board taken against item No. 39 in its 105<sup>th</sup> meeting held on 12<sup>th</sup> and 13<sup>th</sup> August, 2021 and subsequently notified by the Public Notice vide No. PNGRB/Auth/1-CGD(02)/2017 dated 24.08.2021 is hereby set aside. The Board will have the liberty to reconsider the proposal for withdrawal of the internal guidelines but, before it does so, it would be duty bound to follow the letter and spirit of the law and hear all such entities or persons as have been granted NOCs and have continued to

operate thereunder as indeed other applicants (in waiting) whose applications for such permissions in terms of the internal guidelines had come in till the date on which the 105<sup>th</sup> meeting of the Board was held.

12. Nothing said in this judgment, however, shall be treated as an expression of opinion by this Tribunal on the merits of the case of either side.

13. The appeal and the applications which are pending are disposed of in above terms.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO  
CONFERRING ON THIS 22<sup>ND</sup> DAY OF DECEMBER, 2021.**

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

**(Justice R.K. Gauba)**  
Judicial Member