

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

APPEAL NO. 161 OF 2019

Dated: **28.09.2022**

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

In the matter of:

**HINDUSTAN PETROLEUM
CORPORATION LIMITED**

Hindustan Bhawan
8, Shoorji Vallabhdas Marg
Ballard Estate,
Mumbai-400001

.... Appellant(s)

VERSUS

**PETROLEUM & NATURAL GAS
REGULATORY BOARD**

1st Floor, World Trade Centre,
Babar Road, New Delhi-110001

.... Respondent(s)

Counsel for the Appellant (s) : Mr. Matrugupta Mishra
Mr. Nipun Dave
Ms. Ishita Thakur

Counsel for the Respondent (s) : Mr. Utkarsh Sharma for R-1

J U D G M E N T (Oral)

PER HON'BLE MR JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The appellant is a public sector company engaged, *inter alia*, in the business of marketing petroleum and petroleum products which include dealing in *Aviation Turbine Fuel* ("ATF"), produced at its Mumbai refinery with storage facility located near Mumbai airport, it having developed, for

purposes of evacuating ATF from the said refinery, a pipeline described as *ATF pipeline*, which was commissioned in May, 1996, it having been authorized at that point of time by the Central Government. After the coming into force on 01.10.2007 of *Petroleum and Natural Gas Regulatory Board Act, 2006* (“PNGRB Act”), in terms of the statutory requirements, pursuant, *inter alia*, to a public notice issued by *Petroleum and Natural Gas Regulatory Board* (“the Board”), the appellant had furnished requisite information respecting the said ATF pipeline as well.

2. It appears that on the request received from another entity viz. *Reliance Industries Limited* (“RIL”), a proposal was mooted, some time in 2016, seeking declaration, *inter alia*, of the above-mentioned ATF pipeline of the appellant as a “Common Carrier” in terms of section 20 of PNGRB Act. The Board shared details of this request with the appellant and gathered information and clarifications, by exchange of certain communications, over the period.

3. Eventually, on 04.05.2018 the Board issued a public notice, purportedly under section 20(1) of PNGRB Act, inviting suggestions, or objections, from persons or entities at large likely to be affected by the decision, the public notice stating that the Board had formed an “opinion” that the said pipeline be declared as a Common Carrier. The appellant sought review of the said action by filing a petition (case no.

Legal/268/2018) which was rejected by order dated 21.02.2019 by the Board.

4. The present appeal challenges the legality, propriety and correctness of the above-mentioned public notice dated 04.05.2018 and the order dated 21.02.2019.

5. We have heard the learned counsel for the appellant and for the Board at length.

6. The procedure for declaring the pipeline, *inter alia*, as a Common Carrier is provided in section 20 of PNGRB Act, which may be quoted as under:

“20. Declaring, laying, building, etc., of Common Carrier or Contract Carrier and city or local natural gas distribution network:-

(1) If the Board is of the opinion that it is necessary or expedient, to declare an existing pipeline for transportation of petroleum, petroleum products and natural gas or an existing city or local natural gas distribution network, as a Common Carrier or Contract Carrier or to regulate or allow access to such pipeline or network, it may give wide publicity of its intention to do so and invite objections and suggestions within a specified time from all persons and entities likely to be affected by such decision.

(2) For the purposes of sub-section (1), the Board shall provide the entity owning, the pipeline or network an opportunity of being heard and fix the terms and conditions subject to which the pipeline or network may be declared as a Common Carrier or Contract Carrier and pass such orders as it deems fit having regard to the public interest, competitive transportation rates and right of first use.

(3) The Board may, after following the procedure as specified by regulations under section 19 and sub-sections (1) and (2), by notification,-

(a) declare a pipeline or city or local natural gas distribution network as a Common Carrier or Contract Carrier; or

(b) authorise an entity to lay, build, operate or expand a pipeline as a Common Carrier or Contract Carrier; or

(c) allow access to Common Carrier or Contract Carrier or city or local natural gas distribution network; or

(d) authorise an entity to lay, build, operate or expand a city or local natural gas distribution network.

(4) The Board may decide on the period of exclusivity to lay, build, operate or expand a city or local natural gas distribution network for such number of years as it may by order, determine in accordance with the principles laid down by the regulations made by it, in a transparent manner while fully protecting the consumer interests.

(5) For the purposes of this section, the Board shall be guided by the objectives of promoting competition among entities, avoiding in fructuous investment, maintaining or increasing supplies or for securing equitable distribution or ensuring adequate availability of petroleum, petroleum products and natural gas throughout the country and follow such principles as the Board may, by regulations, determine in carrying out its functions under this section.”

7. As is clear from the above quoted provision, the procedure to be followed by the Board for such purposes as at hand is the same as the one specified by regulations framed for purposes of section 19(1)(2). Section 19, we may note, relates to grant of authorization for laying, building, operating or expanding a common carrier or contract carrier or for laying, building, operating or expanding a city or local natural gas distribution network, either on application for such authorization received from a person or entity or by the Board on *suo motu* basis, the said

procedure for grant of authorization also beginning with, as in the case of declaration as Common Carrier, by the Board forming “an opinion”. It is, therefore, relevant to note here the relevant part of the regulations framed by the Board in terms of section 19 read with section 61 of the PNGRB Act, the same called as the *Petroleum and Natural Gas Regulatory Board (Guiding Principles for Declaring or Authorizing Petroleum and Petroleum Products Pipelines as Common Carrier or Contract Carrier) Regulations, 2012*.

8. Regulation 10 of the said 2012 Regulations is the one germane for the present purposes and may be quoted thus:

“10. Declaring of existing pipeline for transportation of petroleum and petroleum products as a common or Contract Carrier.

(1) If the Board is of the opinion that it is necessary or expedient to declare an existing pipeline for transportation of petroleum and petroleum products as a common or Contract Carrier,-

a) it may give wide publicity of its intention to do so by inviting objections and suggestions within a period of not less than one month from the date of invitation;

b) the Board shall also provide the entity owning the petroleum and petroleum products pipeline an opportunity of being heard within a minimum notice period of twenty one days from the close of the invitation for objections and suggestions.

(2) After considering the objections and suggestions received and after hearing the entity owning the petroleum and petroleum products pipeline under sub-regulation (1), the Board may declare the pipeline as a common or Contract Carrier subject to such terms and conditions as it may fix.

(3) Notwithstanding anything in sub-regulation (1) and sub-regulation (2), the entity may, on a suo motu basis, apply to the Board seeking declaration of a petroleum and petroleum products pipeline as a common or Contract Carrier and the Board after

giving an opportunity of hearing to the entity, shall, within a period of fifteen days from the receipt of such an application, declare the relevant petroleum and petroleum products pipeline as a common or Contract Carrier on such terms and conditions as it deems fit.”

9. The contention with which the appellant had approached the Board by the request for review, and also this tribunal by the appeal at hand, essentially is that the Board is obliged by the provision contained in sub-section (2) of section 20 to give an opportunity to the owner of the pipeline before it forms an opinion leading to issuance of a public notice under section 20(1). Given the scheme of the provision in section 20, we cannot accept the suggestion that the Board is called upon to hear the owner of the pipeline before its declaration as a common Contract Carrier twice – once before it forms an opinion under section 20(1) and again after it receives the objections or suggestions from the public at large. The words “for the purposes of sub-section (1)” with which sub-section (2) of section 20 begins do not in any manner mean that the opportunity of hearing to be afforded to the owner of the pipeline is to precede forming of an opinion anterior to the issuance of a public notice under sub-section (1). Such an opportunity would not serve any purpose since the suggestion or objections from other stakeholders would not be available at such stage.

10. The first stage in the entire process is where the Board forms an “opinion” respecting its proposal or intent to declare a pipeline a

Common or Contract Carrier. The right of the owner of the pipeline to file objections or oppose such declaration by presenting its point of view cannot, of course, be denied because that is built in the right to be heard provided in sub-section (2). The declaration would come, however, only when the matter reaches the stage of sub-section (3) which is after the suggestions and objections from the public at large have come in, pursuant to the notice issued in sub-section (1) of section 20 and after the entity owning the pipeline has also been given the opportunity of being heard. This is precisely the scheme laid out in the form of the formal procedure in regulation 10 of 2012 regulations quoted above.

11. The public notice issued on 04.05.2018 was based only on “opinion” of the Board. Such is beginning of the process which remains inchoate till the declaration is made under section 20(3). The opinion on basis of which objections or suggestions are invited cannot be equated with an order or decision which can be challenged by appeal under section 33 of the PNGRB Act. The order based on the request for review will not give any higher status to the public notice which was the subject matter of the request for review.

12. At this stage, the learned counsel for the appellant, having taken instructions, submitted that he may be permitted to withdraw the present appeal and instead given an opportunity to file a comprehensive

representation raising objections to the proposal put in public domain by the notice dated 04.05.2018, also responding to the suggestions or objections which may have been received by the Board from public at large in its wake. The learned counsel for the Board, on being asked, submitted that he leaves this request to the discretion of this tribunal.

13. In the above facts and circumstances, we dismiss the appeal as withdrawn. We, however, give liberty to the appellant to submit its updated comprehensive response to the public notice dated 04.05.2018, in opposition to the proposal for declaring the AFT pipeline as a Common Carrier, also dealing with such objections or suggestions as may have been received by the Board from the public at large. We hope and trust that the Board will consider the said response of the appellant, after affording proper opportunity of being heard, and pass further orders in accordance with law. We leave the timeline for such comprehensive response to be submitted to be fixed by the Board in its discretion.

14. The appeal is disposed of in above terms.

Pronounced in open court on this 28th Day of September, 2022

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

(Justice R.K. Gauba)
Officiating Chairperson

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