

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

APPEAL No. 174 OF 2016

Dated: 20th April, 2022

**Coram : Hon`ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon`ble Dr. Ashutosh Karnatak, Technical Member (PNG)**

In the matter of:

Gujarat Gas Limited

2, Shanti Sadan Society, Near Parimal Garden
Ellisbridge, Ahmedabad – 380006

... **Appellant(s)**

VERSUS

1. Saint Gobain India Private Limited

Sigapi Achi Building, Floor 7,
18/3 Rukmini Lakshmipathy Road
Egmore, Chennai - 600007

... **Respondent 1**

2. Petroleum and Natural Gas Regulatory Board

1stFloor, World Trade Centre
Babar Road, New Delhi – 110 001

... **Respondent 2**

Counsel on record for the Appellant(s):

**Mr. Piyush Joshi
Ms. Sumiti Yadava
Ms. Meghna Sengupta
Ms. Manali Joshi
Mr. Ankit Bhandari**

Counsel on record for the Respondent(s): Mr. Samir Malik

**Ms. Nikita Choukse
Mr. Mahip Singh
Mr. Sahil Sood for R-1**

**Mr. Utkarsh Sharma
Ms. Pinki Mehra
Ms. Tanuja Dhoulakhandi
Ms. Shipra Malhotra
Mr. Mohit Budhiraja for R-2**

JUDGMENT

PER HON'BLE DR. ASHUTOSH KARNATAK, TECHNICAL MEMBER

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. The present Appeal is filed by Gujarat Gas Limited challenging the order dated 17.05.2016 (“**Impugned Order**”) passed by the Petroleum and Natural Gas Regulatory Board (hereinafter “**PNGRB**”) in Case No. 156/2015 titled as “**Saint Gobain Pvt. Ltd. v. Gujarat Gas Limited**” to the limited extent that the Impugned Order has partially allowed the complaint and given “*impugned directions*” to the Appellant “*.....to provide access to the complainant on non-discriminatory basis for transportation of natural gas to its manufacturing plant at Jhagadia in accordance with CGD Access Code Regulations and CGD Exclusivity Regulations. Secretary or whichever officer is so authorised to do in absence of Secretary (presently by OSD(R)) to initiate proceedings against the respondent with regard to violation of the above described regulatory provisions when action is taken against similarly placed entity.*”
3. The following reliefs are sought by the Appellant before this Tribunal :-

Quote

- a) *The Appeal may be allowed and the Impugned Order and judgment dated 17.05.2016 passed by PNGRB in Case No. 156/2015 titled “Saint Gobain v. Gujarat Gas Limited” be modified/set aside to the extent that : (i) The Impugned Directions under the heading “Order” in the Impugned Order be quashed and set aside, and (ii) The Impugned Holdings on the Impugned Order be quashed and set aside as there is no automatic right with a third party to access the city gas distribution network on a non-discriminatory basis immediately on the end of the exclusivity period mentioned in an authorization issued for the relevant CGD network and a city gas distribution network, under the provisions of the PNGRB Act, cannot be declared as a common carrier or a contract carrier under s. 20 PNGRB Act;*
- b) *Without prejudice to the prayer at para (a) and in the alternative, the Impugned Directions are no longer capable of being implemented under the CGD Access Code Regulations, since the R-1/Saint-Gobain has ceased to meet the criteria for being covered under the CGD Access Code Regulations;*
- c) *Without prejudice to the prayer at para (a) and (b), and in the alternative, the R-1/Saint-Gobain has by creating the LNG facility within its premises, the legality of which is presently under consideration before the PNGRB, taken itself out of the scope of access on “non-discriminatory basis” as it cannot be treated in the same manner as other customers/consumers of the Appellant and has put itself in a sui generis position.*

Unquote

4. The brief facts of the case is that the Appellant (i.e Gujarat Gas) is engaged in laying, building, operating, and expanding city gas distribution network in various geographical areas in the State of Gujarat, including Jhagadia. Respondent No.1 (i.e Saint Gobain) is a company involved in the business of glass manufacturing having a plant in Jhagadia and is an admitted customer of the city gas distribution network of the Appellant. The Respondent No.2 is the Board constituted under the Petroleum and Natural Gas Regulatory Board Act, 2006.
5. On 01.10.2007 the PNGRB Act came into force, except for Section 16, vesting the power with the PNGRB to authorize inter alia City Gas Distribution Network (CGD) network. On 12.07.2010 Section 16 of the PNGRB Act was also notified to come into effect from 15.07.2010.

6. On 08.11.2012 the Appellant received the authorization for Surat-Baruch-Ankleshwar geographical areas for its existing CGD network from the PNGRB under Regulation 18 of the CGD Authorizing Regulations. It is relevant to mention herein that paragraph 4 of Schedule D of the said authorization stipulated that the Appellant is allowed an exclusivity period under the CGD Exclusivity Regulations in respect of the following: (a) Up to 31.03.2014 from the date of issuance of the authorization for laying, building and expansion of the CGD Network and (b) Up to 03 years from the date of issuance of the authorization in terms of an exemption from the purview of common carrier or contract carrier for the CGD Network.

7. On 12.01.2015, the Appellant and Respondent no.1 entered into a Gas Transportation and Distribution Agreement (“**GTDA**”) for a period up to 01.04.2015 (which was not extended further) and also executed an Allocation Agreement on the same day. Further, pursuant to the understanding reached on 09.03.2015, they also executed a Spot Purchase Agreement (“**Spot GSA**”) on 23.05.2015 and the DCQ under the GSA was reduced to 1656.779 MMBTU per day from 3100 MMBTU per day. The Spot GSA had been renewed several times. On 12.08.2015 the Appellant informed the Respondent No.1 that due to the limited availability of spot gas in the Appellant’s gas supply portfolio, the Appellant would not be in a position to extend the offer for spot gas with effect from 01.09.2015 and offered to amend the GSA to increase the DCQ there under to ensure the continued supply of gas. Respondent No.1, instead of seeking the amendment of the GSA as was offered by the Appellant, sought a Gas Transmission and Distribution Agreement (“**GTDA**”) to be provided for the period from 01.09.2015 to 31.03.2016 on the basis that it would obtain 1800 MMBTU per day of gas from another supplier GAIL. On 09.09.2015 the Respondent No.1 wrote to the appellant requesting again to issue the GTDA for a period commencing from 16.09.2015 to 31.12.2016 for a quantity of 1800 MMBTU per day. On 11.09.2015 the Appellant informed Respondent No.1 that subject to internal approvals, the Appellant is willing to extend the spot GSA up to 30.09.2015 which will be at the Retail Price. On 12.09.2015 Respondent No.1 stated that the price of the spot gas charged by the Appellant is higher than the market price by

approximately \$2/MMBTU and alleged that the Appellant is preventing it from exercising its option of buying gas at spot price and claimed that, as a customer, it has the option to buy gas from a supplier of its choice and that the Appellant is obliged to provide the GTDA immediately so as to enable it to obtain spot gas from 01.10.2015 from a supplier of its choice. It also requested the Appellant to extend the spot gas agreement from 16.09.2015 to 30.09.2015 together with providing a GTDA effective from 01.10.2015 to 31.12.2016 for a quantity of 1800 MMBTU per day. On 15.09.2015 the Appellant responded to the Respondent No.1 informing it that its request is under consideration of the management and that till the decision of the management the existing arrangements for the supply of gas to its manufacturing unit at Jhagadia would continue.

8. On 21.09.2015 Respondent No.2/PNGRB issued a public notice of its intent to declare the end of exclusivity period for Surat-Bharuch-Ankleshwar CGD Network in accordance with the provisions of section 20(1) of the PNGRB Act. According to Respondent no.1 post the expiry of exclusivity period i.e. 08.11.2015 and issuance of public notice dated 21.09.2015 by the Ld. Board regarding the same, the Appellant was legally obligated to grant transportation access to the Respondent on the pipeline under the various regulations of the CGD Access Code Regulation, 2011 and Exclusivity Regulations. Specific reliance is placed on the conjoint reading of regulations 3,4 & 9 of the CGD Access Code Regulations, 2011 and Regulation 9 of the CGD Exclusivity Regulations.
9. On 09.10.2015 Respondent No.1 sent a detailed communication to Respondent No.2 erroneously claiming that in light of the notice dated 21.09.2015 issued by Respondent No.2, the Appellant's marketing exclusivity had ended and that Respondent No.1 has the right to procure gas from a third party supplier and that it is continuing to suffer loss of Rs. 1 crore to Rs. 1.5 crore per month in relation to the procurement of natural gas for its manufacturing facility at Jhagadia as the Appellant is forcing it to buy gas from itself. The Respondent No.1 also claimed that since its requirements are more than 50,000 SCM per day, it cannot be considered

as a customer of the CGD network. On 09.10.2015 the Appellant submitted its objection to the public notice dated 21.09.2015 issued by Respondent No.2.

10. On 13.10.2015 Respondent No.1 once again issued a communication to the Appellant requiring the issuance of the GTDA and claiming that due to the unavailability of the GTDA they were suffering a loss of Rs. 60 lakhs to Rs. 80 lakhs and requested the Appellant to provide a GTDA effective from 16.10.2015 to 31.12.2016 for a quantity of 1800 MMBTU of gas per day. On 14.10.2015 the Appellant informed Respondent No.1 that it was willing to offer it the option of extending gas supply to its facility at Jhagadia at the current price (valid from 01.10.2015 till 15.10.2015) till 31.10.2015, as being offered to other customers at Surat-Bharuch-Ankleshwar CGD network on a non-discriminatory basis.
11. On 15.10.2015 Respondent No.1 once again requested the Appellant to consider “the market spot price” and not its “retail price” and issue a GTDA for the period effective from the period of 01.11.2015 to 31.12.2016 for a quantity of 1800 MMBTU per day. On 20.10.2015 the Appellant issued a communication to Respondent No.1 stating that since PNGRB itself has not formulated any regulations and there is no clarity on the regulatory aspect it would not be possible to accede to the request of Respondent No.1 for a GTDA and that the Appellant can facilitate gas supply to the Respondent No.1 at the prevailing prices as is being offered to other customers in Surat-Bharuch-Ankleshwar CGD network on a non-discriminatory basis.
12. On 07.11.2015 the Respondent No.1 executed the extension of the Spot GSA till 01.12.2015 and at the same time issued two separate communications requesting for the GTDA to be issued for a validity period from 10.11.2015 to 31.12.2016. The Respondent No.1 also alleged that it is incurring losses to the tune of Rs. 80 lakhs to Rs. 1 crore in relation to procurement of natural gas and also asserted that the Appellant was legally bound to allow access to its CGD network from 08.11.2015

when its exclusivity from the purview of common carrier would expire under the terms of its authorization.

13. On 09.11.2015 Respondent No. 1 filed the complaint before PNGRB (i.e Respondent No. 2) u/s 25 read with section 11(a), 11(e), 11(f)(iii) 12(1)(a), 12(1)(b), 12(2) and 22 of the Petroleum and Natural Gas Regulatory Board Act, 2006 against Gujarat Gas for denying access to the natural gas pipeline from Amboli to Jhagadia on the Hazira-Ankleshwar Pipeline which was developed and marketed by Gujarat Gas for transportation of natural gas from another gas supplier at a competitive price to the Glass Manufacturing unit of Saint Gobain, in violation of the Act read with Regulation 9 of the Petroleum & Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Network) Regulations, 2008 (herein after referred to as “the “Exclusivity Regulations”) and the provisions of the Petroleum and Natural Gas Regulatory Board (Access Code for common Carrier or Contract Carrier Natural Gas Pipeline) Regulations, 2008 (hereinafter referred to as “Access Code Natural Gas Pipeline Regulations”) and the Petroleum & Natural Gas Regulatory Board Access Code for City or Local Natural Gas Distribution Network Regulations, 2011 (hereinafter referred to as “the Access Code CGD Regulations”).
14. On 17.05.2016 Respondent No.2 i.e PNGRB pronounced its judgment holding that although there is no restrictive trade practice and that the CGD Network of the Appellant has not been declared a common carrier network and that regulations will have to be formulated in order to determine the tariff in respect of access to the CGD Network however issued the Impugned Order thereby resulting in the present appeal.
15. **The issue to be determined before this Bench is whether PNGRB is correct in the Impugned order that the Respondent no.1 i.e Saint Gobain is entitled to seek transportation access on the CGD network of the Appellant post expiry of the marketing exclusivity period granted by the Ld. Board.**

16. The main contention of the Appellant is that CGD network was not notified as a common carrier or contract carrier network and no tariff had been notified to enable non-discriminatory access. Even the capacity for the Appellant's CGD network had not been declared by PNGRB and hence access could not have been directed as the capacity available for access has not determined. Moreover, under the 2015 CGD Capacity Regulations, the capacity (and hence access) was in respect of entry and exit points located on the steel pipeline network and hence direction to provide access till the premises of St. Gobain at Jhagadia could not have been issued. The Impugned Order was not a valid order in terms of the regulatory framework governing access to CGD Networks as was existing at the time. Furthermore, the Impugned Order is not valid and is incapable of being implemented under the present regulatory framework governing CGD Network, since the 2011 CGD Access Regulations were repealed on 23 November 2020 and replaced by the 2020 CGD Access Regulations, which clearly stipulate that access to CGD Network under the said regulations is applicable only in relation to CGD networks that have been declared as a common carrier. The Appellant has also relied on this Hon'ble Court judgment dated 23.03.2022 in the matter of *Gujarat Gas Limited v. Charotar Gas Sahakari Mandali Limited & Anr. Appeal No. 6 of 2022*, that power to declare the pipeline as contract carrier or common carrier lies with PNGRB which is required to be notified as per Section 20 of the PNGRB Act, and mere expiration of exclusivity period will not create any right in favour of or against any entity, unless CGD network has been declared as common carrier or contract carrier. The Appellant has also contended that it is an undisputed fact that the Appellant's CGD network has not been declared as a common carrier till date. Hence, the access regulations are presently not applicable to the CGD Network of the Appellant.

17. Whereas the contention of the Respondent 1 is that Ld. Board is correct to hold that the Appellant is mandated to allow third party access upon expiry of exclusivity on a non discriminatory basis. Section 3 of the PNGRB (Access Code for City or Local Natural Gas Distribution Networks) Regulations, 2011 do specifies that regulations shall apply to an entity authorised to lay, build operate or expand a city or local

natural gas distribution network in a geographic area under the Petroleum and Natural Gas Regulatory Board Act, 2006, immediately at the end of its exclusivity period, if any, allowed by the Board under the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Network) Regulations, 2008 from the purview of common carrier or contract carrier, and to any entity or shipper who wants access to entry point capacity, exit point capacity and delivery at CNG exit point capacity on such city or local natural gas distribution network for supply of natural gas to domestic, commercial or industrial consumers. Post the expiry of exclusivity period i.e. 08.11.2015 and issuance of public notice dated 21.09.2015 by the Ld. Board regarding the same, the Appellant was legally obligated to grant transportation access to the Respondent no.1 on the pipeline under the CGD Access code Regulation, 2011 and Exclusivity Regulations. The authorized entity has to declare and webhost on its website capacity available on its CGD network, 180 days prior to the end of exclusivity period allowed by the Board under CGD Exclusivity Regulations. The authorized entity, after the end of period of exclusivity from common carrier or contract carrier, shall provide access to shippers on its CGD Network on non-discriminatory open access basis in accordance with CGD Access Code Regulations and subject to the threshold limits mentioned in regulation 5 at the end of the exclusivity period. Consumer or shipper who is getting gas through the authorised entity during the exclusivity period shall have the right to reserve such capacity after the end of exclusivity period. The Appellant has failed to fulfil obligations of the pipeline marketing exclusivity holder to declare and web host the capacity available on its CGD Network, 180 prior to the end of the exclusivity period to initiate the process of post-exclusivity (as required under Regulation 4 of CGD Exclusivity Regulations).

18. Respondent No. 2 has submitted in their written submission filed on 06.04.2022 that the impugned direction was based on the clear cut mandate contained in the then prevailing CGD Access Code Regulations. The Appellant has failed to fulfil its commitment of declaring and webhosting the capacity available on its CGD Network

as specified in CGD Access Code Regulations. While giving the directions to grant access, the Board was aware of the fact that the issue of transportation tariff to be charged by the Appellant after granting access to third parties like Respondent no. 1 is yet to be determined and is not empowered to determine the transportation rate of a CGD network for the authorised entity until it is declared as common carrier or contract carrier after following due procedure laid down in Section 20 of the PNGRB Act. Further the Respondent no. 2 also brought before this bench various development made to extent of the regulatory scheme in existence at the time of passing the impugned order and the various changes to the same which have taken place since then.

Deliberations

19. In order to determine the issue in hand the following questions are required to be analysed:-
- i) Whether Respondent No. 1 is a CGD Customer?
 - ii) Whether Surat-Bharuch-Ankaleshwar pipeline is a common carrier/contract carrier pipeline?
 - iii) Whether Appellant is duty bound to give third party access after the expiry of exclusivity period?
20. In order to analyse the above questions it is pertinent to refer to the relevant sections and scheme of the PNGRB Act. One of the prime mandate of the Board under the Act is to ensure that uninterrupted and adequate gas supply is made to all parts of the country. The Board is also under a duty to promote competitive markets. The Board is also mandated to protect the interest of consumers as well as entities engaged in activities relating to petroleum, petroleum products and natural gas. This mandate of the Board has been captured in the various regulations framed by the Board in exercise of its powers under the Act. Section 11 (a) of the Act provides that the Board shall protect the interest of consumers by fostering fair trade and competition amongst entities. Section 11 (d) of the Act provides that the Board shall declare pipelines as common carrier or contract

carrier. Section 11 (e) (i) of the Act provides that the Board shall regulate by regulations 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. Section 11 (e) (ii) of the Act provides that the Board shall regulate by regulations transportation rates for common carrier or contract carrier. Section 11 (e) (iii) of the Act provides that the Board shall regulate by regulations access to city or local natural gas distribution network so as to ensure fair trade and competition amongst entities as per pipeline access code.

Section 20 of the PNGRB Act provides as under:

“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.”

It is pertinent to mention herein that Section 2 (zb) of the PNGRB Act has defined "notification" means a *"notification published in the Official Gazette and the expression "notified" with its cognate meanings and grammatical variations, shall be construed accordingly."*

21. **Whether Respondent No. 1 is a CGD Customer?**:- It is to be noted that Respondent No. 1's daily natural gas consumption is less than 50,000 SCMD. There is no dispute with the fact that the Respondent No. 1 is a City Gas Distribution ("CGD") Network customer and the same has also been admitted by the Respondent No. 1 and PNGRB in its impugned order.

22. **Whether Surat-Bharuch-Ankaleshwar pipeline is a common carrier/contract carrier pipeline**:-Respondent No. 2 in its written submission dated 06.04.2022 has submitted that the declaration of the Surat-Bharuch-Ankleshwar CGD Network as common carrier was initiated by the Board vide issuance of Public notice dated 21.09.2015 and the issue of applicable tariff would have also stand resolved with the finalization /notification of the relevant Tariff Regulation. The Draft tariff Regulation were, in fact web hosted by the Board on its website on 02.09.2016, soon after the Impugned order. However proceedings under public notice dated 21.09.2015 were dropped by the Board as it was thought that the Board should first enact the Regulations, specifying the detailed procedure, which the Board shall follow while declaring a CGD Network as Common Carrier or Contract Carrier in terms of Section 20(5) of the PNGRB Act. However the draft Regulations web hosted by the Board on 02.09.2016 never culminated in the notification of the final Regulations.

23. The Guiding principles for declaring City or Local Natural Gas Distribution Networks as Common Carrier or Contract Carrier Regulations 2020 were notified by PNGRB on 30.09.2020. The PNGRB (Determination of Transportation Rate CGD and Transportation Rate for CNG, Regulations, 2020 have also been notified by the Board on 23.11.2020.
24. In fact the Board did initiate the public consultation process for declaration of Surat-Bharuch-Ankaleshwar CGD Network as a common carrier or contract carrier however the same is challenged by Gujarat Gas Limited before the Hon'ble Delhi High Court by way of C.M. No. 34446/2021 in LPA No. 254/202 , titled Gujarat Gas Limited vs PNGRB.
25. It was also brought to the notice of this Bench that by order dated 11.10.2021, the Hon'ble Court of Delhi has granted stay of the operation, implementation and execution of the Public Notice dated 13.09.2021 issued by the Board. The validity of CGD Guiding principles Regulations has also been challenged by the Appellant before the Hon'ble Court by way of WP (C) no. 1017/2021.
26. Respondent No. 2 in its written submission has also brought to the notice to this Bench that the CGD Guiding Principles Regulations has been challenged by the Appellant and are sub-judice before the Hon'ble High Court of Delhi. The stay has also been granted by the Hon'ble High Court with respect to public notice dated 13.09.2021 wherein Board has initiated the public consultation process for declaration of Surat-Bharuch-Ankleshwar CGD Network as a common or contract carrier. Therefore it will not be appropriate for this Bench to get into this issue.
27. However on the plain reading of Section 20 of the PNGRB Act, it is correct to say that as per said section, if the Board is of the opinion that it is necessary or expedient, to declare an existing city or local natural gas distribution network, as a common carrier or contract carrier or to regulate or in order to 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. Moreover the said declaration has to be done by notification in accordance with the PNGRB Act.

In view of the above it may very well be said that the disputed pipeline has till date not been declared as a common carrier/contract carrier pipeline in accordance with the PNGRB Act & Regulations.

28. **Whether Appellant is duty bound to give third party access after the expiry of exclusivity period?**:- Herein the question arises is whether after the expiry of marketing exclusivity period and in absence of declaration of pipeline as a contract carrier or common carrier whether entity is duty bound to give third party access in the pipeline. On a reading of the Section 20 of the PNGRB Act it is apposite to say that the authorized entity would be enjoying exclusivity for certain years as decided by the Board and after following the due procedure as specified under the Act i.e after giving wide publicity of its intention to do so, inviting objections & suggestions, providing opportunity of hearing to the entity owning the pipeline etc the Board would fix the terms and conditions, subject to which the pipeline or network may be declared as common carrier or contract carrier. And after following the procedure as specified, PNGRB by notification, allow access to the common carrier or contract carrier or city or local natural gas distribution which will permit access to the third parties in the networks of the authorized entities. All these actions of the Board were to be taken under a prescribed procedure as mentioned in the Act. However the 2011 Regulation seems to be not in conformity of the PNGRB Act. It seems that the same has also been realised by the Board and accordingly the 2011 Regulations has been repealed and 2020 Regulations has been notified.
29. Further Regulation 9 of the PNGRB CGD Exclusivity Regulations itself states that the “ *the entity shall allow third party access on a non discriminatory basis to any entity in its CGD network as per the provisions in the relevant regulations for*

declaring CGD network as common carrier or contract carrier.” Thus it may be said that without declaring the disputed pipeline as common carrier/contract carrier, the direction given by PNGRB in the impugned order are un-implementable.

30. Vide notification dated 23.11.2020, the PNGRB (Access Code for City or Local Natural Gas Distribution Network) Regulations, 2020 have also been notified and Regulation 24 of the same clearly stipulates that after coming into operation of the said Regulations, the earlier CGS Access Code Regulations, 2011 shall stand repealed. Regulation 3 of the CGD Access Code Regulations, 2020 also specifies that the Regulations shall become applicable only once the concerned GA has been declared as a common carrier in terms of CGD Guiding Principles Regulations, 2020 and CGD Exclusivity Regulations, 2020. It is settled that PNGRB cannot fix tariff of the CGD network unless the same has been declared as common carrier /contract carrier. The transportation rate to be charged by the Appellant after granting access to third parties like Respondent no. 1 is not determined as the network has not been declared as common carrier/contract carrier. PNGRB is not empowered to determine the transportation rate of a CGD network for the authorised entity until it is declared as common carrier or contract carrier which could only be done after following the procedure laid down in Section 20 of the PNGRB Act. Moreover PNGRB itself has stated in its impugned order that merely expiry of the exclusivity period, the nature of the CGD network does not automatically result in the CGD network becoming a common carrier. Thereby meaning that only after declaration of the pipeline as common carrier /contract carrier, PNGRB is empowered to determine the transportation rate of a CGD network for a third party access. In fact PNGRB itself has admitted in its impugned decision that *“the issue of tariff which would be applicable on the transportation of natural gas on third party shall stand resolved with the finalization/ notification of the relevant Tariff Regulations.”*

31. Irrespective of the fact whether CGD Access code Regulations 2011 is repealed and CGD Access Code Regulations 2020 has been notified, there is no dispute

with the fact that procedure laid down under Section 20 of the PNGRB Act for declaring CGD Network as common Carrier or Contract Carrier and for providing access to third parties has not been followed. Therefore in the instant case it is irrelevant whether Regulation 2011 is repealed or not and Regulation 2020 are in place.

ORDER

In view of the above, the Appeal is allowed. The impugned order dated 17.05.2016 of the PNGRB is set aside to the limited extent of the prayer of this present appeal. The parties are free to explore possible settlement in conjunction of PNGRB and are also free to approach PNGRB for the same in accordance with law.

The Registrar shall certify a copy of this judgment to both the parties.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING
ON THIS 20th DAY OF APRIL, 2022.**

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

**(Justice R.K. Gauba)
Officiating Chairperson**