

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

**APL NO. 429 OF 2022 &
IA NOS. 1767, 2012, 1942,1983 & 1990 OF 2022**

Dated: **30.11.2022**

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

In the matter of:

**Indraprastha Gas Limited
Through Shri Rajeev Kumar
Senior Vice President-Marketing
IGL Bhawan, Community Centre
Plot No. 4, Sector-9
R.K. Puram, New Delhi – 110022**

.... Appellant(s)

Versus

- 1. Petroleum and Natural Gas Regulatory Board
Through The Secretary
1st Floor, World Trade Centre
Babar Road, New Delhi-110001** **Respondent 1**
- 2. Haryana City Gas Distribution Limited
Through its Company Secretary
A-149, Sushant Lok, Phase-1,
Gurugram – 122002** **Respondent 2**
- 3. M/s Adani Total Gas Limited
Shantiram. Near Vaishno Devi Circle,
S G Highway, Ahmedabad- 382124
(Gujarat)** **Intervener/
Respondent 3**

Counsel for the Appellant(s) :

Mr. Sacchin Puri, Sr. Adv.
Ms. Rimali Batra
Mr. Prashant Bezboruah
Mr. Anshuman Choudhary
Ms. Anisha Bhattacharya
Mr. Abhishek Lalwani
Ms. Shweta Arora

Counsel for the Respondent(s):

Mr. Rahul Sagar Sahai for R-1

Ms. Kiran Suri, Sr. Adv.
Mr. Sanjeet Singh

Ms. Aishwarya Kumar
Ms. Vidushi Garg for R-2

Mr. Sajan Poovayya, Sr. Adv.
Ms. Ruby S. Ahuja
Mr. Lakshya Khurana
Ms. Raksha Agarwal
Ms. Pragya Agarwal
Ms. Deepti Sarin for R-3/Intervener

JUDGMENT (ORAL)

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

1. The background facts, as presented by the appellant, to the extent necessary for present purposes were noted in brief in order dated 21.10.2022, which reads as under:

"1. This matter was mentioned in the morning with the prayer for urgent hearing today, the appellant apprehending adverse proceedings to be drawn on 26.10.2022 by the first respondent/Petroleum and Natural Gas Regulatory Board ("the Board") in the wake of meeting notice which has been issued by it on 19.10.2022, the date of meeting (26.10.2022) and all the preceding dates after today being court holidays. In this view, this Bench has been convened, upon request, for urgent hearing, the matter having been listed under our directions through supplementary list.

2. Issue notice returnable on 02.11.2022. Dasti, in addition.

3. The appellant is a company controlled by the Central Government, it having been authorized, prior to the enactment of the Petroleum and Natural Gas Board Act, 2006 ("PNGRB Act") to lay, build and operate CGD network, inter alia, in the area of the city of Gurgaon (now 'Gurugram'). As a consequence, it is a deemed authorized entity, a position duly acknowledged even by the respondent Board, illustratively by its report submitted for hearing on 14.07.2017 before Hon'ble Supreme Court of India in W.P.(C) no. 3029/1985 MC Mehta v Union of India.

4. The appellant has certain grievances against another company viz. Haryana City Gas Distribution Ltd. ("HCGDL"). It has filed a complaint under Section 24 & 25 of the PNGRB Act, having been registered as case (no. Legal/22/2022). The HCGDL also seems to have similarly filed some complaint (Case no. Legal/23/2022) against the appellant. Both the said matters came up before the Board on 13.10.2022 on which notice was issued on the two complaints, the matters having been adjourned by the impugned order for further proceedings to 12.01.2023. After having directed issuance of notice, the Board also added as under:

"7. It is to be noted that the applications submitted by

both parties i.e. HCGDL & IGL, pertaining to authorization of the Gurgaon District (now known as Gurugram) are pending and the same is under process, which would be decided in due course, by the Board under the regulatory provisions of the Petroleum and Natural Gas Regulation Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008.

8. Meanwhile, HCGDL and IGL are at liberty to submit the documents (prior to the appointment date of PNGRB i.e. 01.10.2007) in support of their applications already pending before PNGRB which must be in line with the PNGRB Act and regulations framed thereunder.”

[Emphasis supplied]

5. It is not clear from the Order dated 13.10.2022 as to which application of the appellant was being referred as was statedly “under process” and was to be “decided in due course” by the Board.

6. After the above said matter had been adjourned to 12.01.2023, the Board has issued the notice on 19.10.2022 inviting the appellant to present himself before the Board “for meeting”, the captioned subject indicating the meeting to concern “processing of application for development of CGD network in Gurgaon (Gurugram)”. In the body of the meeting notice, the date of the application is mentioned as 06.10.2008 under Section 17 of the relevant Regulations.

7. It is submitted that there is no application moved on behalf of the appellant seeking grant of authorization under regulation 17, the communication dated 06.10.2008 being only in the nature of intimation as was the obligation of the appellant, a deemed entity, under the law and regulations. It is apprehended by the appellant that the Board might have misconstrued the intimation as a request for grant of authorization and may proceed to pass order or record such observations as would complicate the dispute and adversely affect the rights of the appellant.

8. In above view, we give liberty to the appellant to seek deferment of the meeting before the Board presently fixed for 26.10.2022 till this tribunal has considered the appeal and the application filed therewith, with assistance of the Board.

9. The matter shall be listed before us on 02.11.2022. Meanwhile, the operation of paras 7 & 8 of the Order dated 13.10.2022 shall be kept in abeyance. The appellant shall comply with the requirement of the Order XXXIX Rule 3 of CPC within two days.”

2. The matter came up before us on 02.11.2022, by which time the Board had acceded to the request for deferment. However, certain submissions were made concerning participation in these proceedings by one of us – Member (Technical), the same having been recorded in the proceedings

dated 02.11.2022 as under:

“The first respondent, Petroleum and Natural Gas Regulatory Board (“PNGRB”) has entered appearance through Mr. Rahul Sagar Sahai, Advocate, who seeks time of one week to file formal reply. The request is granted. The second respondent, Haryana City Gas Distribution Limited enters appearance through Mr. Sanjeet Singh led by Mr. P. Chidambaram, Sr. Advocate. The second respondent has already submitted its reply on 31.10.2022, copy whereof has now been delivered to the appellant.

It appears from copy of record of notes of meeting convened by the Board for 26.10.2022, as placed before us for perusal, that the Board agreed to defer the meeting pursuant to the order dated 21.10.2022.

At the hearing today, it has been pointed out that appellant Indraprastha Gas Limited is a venture in which GAIL (India) Limited is a promoter holding a stake to the extent of 22.5 per cent. On the basis of this fact, exception is taken to the matter being heard by the Bench which includes Member (Technical), on account of whose participation, with reference to his earlier service with GAIL (India) Limited, an order of “stay of all proceedings relating to GAIL (India) Limited” before this tribunal was passed by Hon’ble Supreme Court by order dated 22.02.2022 in Civil Appeal no.7467-7468/2021 titled “M/s Sravanthi Energy Private Limited v. GAIL (India) Limited & Anr.”. The learned counsel for the appellant submitted that he would need time to file a formal rejoinder to the reply but, for the present, his response is that the order dated 22.02.2022 passed by Hon’ble Supreme Court cannot be read as extended to any other company/entity where GAIL (India) Limited may be a stakeholder, the doubts raised here being incorrect and improper, GAIL (India) Limited itself not being a party to the present proceedings.

If any clarification in this regard is required the parties would have the liberty to approach Hon’ble Supreme Court for the purpose.

3. We are informed today that the appellant had moved Hon’ble Supreme Court by applications IA nos. 176967/2022 & 176958/2022 for clarification/directions and seeking intervention, in the course of proceedings arising out of above-mentioned Civil Appeal nos. 7467-7468/2021 *M/s Sravanthi Energy Private Limited Versus Gail (India) Limited & Anr.* Hon’ble Supreme Court by order dated 25.11.2022, has disposed of the said IAs observing as under:

“Learned counsel for the parties are ad idem that the proceedings before the Appellate Tribunal for Electricity (APTEL) should continue, as

they have no objection to Dr. Ashutosh Karnatak, Technical member (PNGRB), hearing the case.

In view of the statement made by the learned counsel for the parties, we clarify that the APTEL may hear and decide the case.

The I.As. are disposed of.”

4. Meanwhile, a third party i.e. *M/s Adani Total Gas Limited* (formerly known as *M/s Adani Gas Limited*) has moved an application (IA-1990/22) seeking impleadment or permission to intervene. The advance copy of the said application had already been served on the parties to the appeal before us.

5. It may be noted here that though the prayer for interim relief, by IA no. 1767/2022, was pressed before us by the appellant restricted to the proceedings pending before the Board concerning the *Geographical Area* (“GA”) of *Gurgaon District* (now known as *Gurugram*), in the main appeal, the relief sought also concerns two other GAs viz. Noida and Faridabad, the prayer clause reading thus:

“(A) allow the present appeal.

(B) Set aside the paragraph 7 and 8 of the Impugned Order dated 13.10.2022 passed by the Petroleum and Natural Gas Regulatory Board in Case No. 22 of 2022 and Case No. 23 of 2022;

(C) Set aside the Impugned Letter dated 19.10.2022 issued by the Petroleum and Natural Gas Regulatory Board, to the Appellant, with respect to the areas of Gurugram, Noida and Faridabad, and

(D) Pass such other or further orders as the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

6. Before we come to the submissions that were made today, we must note here that when the *ad interim ex-parte* order granted by us on 21.10.2022 was brought to the notice of the Board in the meeting concerning GA of *Gurugram* at 1030 hrs. on 26.10.2022, the Board had recorded doubts as to whether the order dated 21.10.2022 of this tribunal “*can be given effect*

to” for several reasons including the effect of the order dated 22.02.2022 passed by the Hon’ble Supreme Court in Civil Appeal nos. 7467-7468/2021 *M/s Sravanthi Energy Private Limited Versus Gail (India) Limited & Anr.* issuing restraint against one of us – Member (Technical) from hearing such matters as where Gail (India) Limited is a party. Coming from a statutory body subordinate in hierarchy to this Tribunal, we disapprove of such observations recorded by it in the said minutes. The orders passed by the tribunal are binding till they are varied, modified, vacated or set aside, whether in appeal or in review jurisdiction or by subsequent orders.

7. The *ad interim* relief which was pressed before us on 21.10.2022 through IA no. 1767/22, concerned only the meeting convened by the respecting Board at GA of *Gurugram* at 10:30 a.m. on 26.10.2022. It is brought to our notice, particularly through the application of the intervener, that the Board had also convened separate meetings, *albeit* on same date (26.10.2022), respecting the pending matters of grant of authorization *qua* two other GAs viz. Faridabad and Noida. It further appears that the appellant herein has also certain claims *vis-à-vis* the said other GAs of Faridabad and Noida and, in that context, had mentioned the pendency of the appeal at hand before the Board in the two separate meetings convened for such purposes on 26.10.2022. The minutes of the said meetings have been filed with the intervention application and we notice that the meeting concerning Faridabad GA was held at 11:00 a.m., while the meeting concerning Noida GA was held at 11:30 a.m., the minutes recorded for each being identical. In each of the said minutes, the submissions of *Indraprastha Gas Limited* (Appellant) concerning pendency of the appeal at hand were noted and while rightly observing that the order issued by this tribunal (on 21.10.2022) “*did not cover the liberty to IGL for deferment of meeting related to*” Faridabad GA or Noida, the Board, none the less, agreed to defer the said meetings upon such

request of IGL as well. We only clarify that there is nothing in order dated 21.10.2022 from which it could have been inferred that this tribunal had desired or directed the deferment of any meeting before the GA other than that of GA of *Gurugram*.

8. We have heard the learned counsel on all sides at length. From the submissions made before us, it emerges that the claim of the appellant that it is a *deemed authorized entity qua* the GA of *Gurugram* is being examined by the Board. Though it is the contention of the appellant that the Board has already recorded due satisfaction in such regard and all compliances have been made including furnishing of requisite particulars necessary under the law and applicable regulations, it cannot be denied that in the face of complaints of another entity *Haryana City Gas Distribution Limited* (second respondent), the Board has the competence to record a proper satisfaction in formal proceedings of the kind which have been taken up.

9. We are informed that both the appellant as well as the second respondent have filed complaints against each other under Sections 24/25 of *Petroleum and Natural Gas Regulatory Board Act, 2006* (“PNGRB Act”) which concern the GA of *Gurugram* only. At the same time, the Board is also seized of the applications of various interested parties, including the intervener, for grant of authorisation under section 17 of PNGRB Act, 2006 read with Regulation 18 of CGD Authorisation Regulations.

10. The learned counsel on all sides fairly agreed that it is not desirable that the parties get embroiled in procedural wrangles of the kind that have come up before this tribunal through the appeal at hand. On the basis of submissions made, and the deliberations thereupon, consensus has emerged and, on such basis, with the consent of all parties present before this tribunal through their respective counsel, we direct as under:

- I. The Board is requested to take up for consideration for appropriate orders the intimation(s) of the appellant *Indraprastha Gas Limited* respecting its claim of deemed authorisation concerning GAs of Gurugram, Faridabad and Noida ahead of all other pending matters relating to the said GAs;
- II. The Board is requested to take up, after compliance with above, the applications under Section 17 of PNGRB Act read with Regulation 18 of CGD Authorisation Regulations of all concerned entities, including the second respondent *Haryana City Gas Distribution Limited* as indeed the intervener *M/s Adani Total Gas Limited* for consideration and appropriate orders;
- III. The complaints under Sections 24/25 of PNGRB Act of the appellant *Indraprastha Gas Limited* and the second respondent *Haryana City Gas Distribution Limited* shall be taken up separately by the Board, for such action as deemed proper in accordance with law; and
- IV. Since some concerns were raised in such regard, we add that the Board will have the competence and jurisdiction to call for such further information or documents, as may be necessary.

11. With the above directions passed, with consent of the parties, nothing further survives in this appeal or the pending applications, which stand disposed of accordingly.

PRONOUNCED IN THE OPEN COURT ON THIS 30TH DAY OF NOVEMBER, 2022.

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

mg/mkj

(Justice R.K. Gauba)
Officiating Chairperson