IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
APPELLATE JURISDICTION

APPEAL NO. 121 OF 2020 & IA NO. 453 OF 2020

Dated: 19th July, 2023

Present: Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Dr. Ashutosh Karnatak, Technical Member (P&NG)

In the matter of:

Megha Engineering and Infrastructures Limited S-2, TIE, Balanagar, Hyderabad-500037, Telangana .... Appellant(s)

Versus

Bhagyanagar Gas Limited
(A Joint Venture of GAIL (India) Ltd & HPCL) Parishram Bhavan, 2nd Floor, APIDC Building, Basheer Bagh, Hyderabad-500004, Telangana

.... Respondent(s)

Petroleum and Natural Gas Regulatory Board Through its Chairperson/ Authorized Representative
1st Floor, World Trade Centre, Babar Road, Barakhamba, New Delhi-110001

Counsel on record for the Appellant(s) : Mr. Purvesh Buttan
Mr. Prateek Narwar

Counsel on record for the Respondent(s) : Mr. Shiv Kumar Pandey for R-1

Mr. Munawwar Naseem
Ms. Sanjna Dua for R-2

ORDER

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

The present appeal is filed, under Section 111 of the Electricity Act, 2003 read with Section 33 of the Petroleum and Natural Gas Regulatory Board Act, 2006, challenging the Order passed by the Petroleum and Natural Gas Regulatory Board (PNGRB) dated 18.02.2020 whereby the Appellant was directed to hand over the CNG Station situated in Kanuru to the first Respondent, and they were restrained from marketing CNG thereat.

I. CASE OF THE APPELLANT:

The Appellant is an entity, authorized by the letter of the PNGRB dated 14.09.2015 for development of the City Gas Distribution network (hereinafter referred to as "CGD network") in the Geographical Area (hereinafter referred to as "GA") of Krishna District (excluding the area already authorized in favour of the 1st respondent). The 1st Respondent, a Joint Venture of GAIL (India) Ltd. and HPCL, was incorporated in August 2003, and was authorized by the letter of the PNGRB dated 28.07.2009 for the development of the Vijayawada CGD network. The PNGRB is a body constituted under the Petroleum and Natural Gas Regulatory Board Act, 2006 ("the Act" for short) to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to promote competitive markets and for matters connected therewith or incidental thereto.

The 1st Respondent, vide its letter dated 26.03.2018, sought clarification on the boundary of Vijayawada GA, and thereafter filed a

complaint on 27.06.2018, (which the Appellant claims was after expiry of 34 days beyond the 60 days stipulated in Section 25 (2) of Act), contending that the CNG station established by the Appellant fell outside the Geographical area authorized in their favour; the appellant had built a CNG Station (Daughter Booster Station) within the GA allotted to the 1st Respondent, i.e. in KANURU village in Vijayawada; the appellant was carrying on construction in a covered enclosure because of which the 1st Respondent was unable to make out the nature of construction, and could not agitate the issue earlier; the 1st Respondent had informed PNGRB, vide its letter dated 26.03.2018, regarding the unauthorized construction of the CNG station by them; and the Appellant had encroached into the area allocated to the 1st Respondent for development of the CGD network.

In their reply, to the 1st Respondent's complaint dated 07.01.2019, the Appellant stated that the PNGRB had, vide its Letter dated 14.9.2015, granted authorization in favour of the Appellant in a part of the area of Krishna District (excluding the area already authorized, i.e. Vijayawada) which consisted of 50 Charged Areas (hereinafter referred to as "CA"); some part of Vijayawada Municipal Corporation fell under CA-06 of the Appellant's area of operation which covered: (1) Vijayawada (Municipal Corporation) (Part); (2) Ramavarappadu (Ct); (3) Kanuru (Ct) and (4) Yenamakakuduru (Ct) (Ct is "Census town"); Kanuru Village area fell under CA-06 of the Appellant's authorized area of business; the 1st Respondent was granted authorization for different Charge Areas which were indicated by the name of area/village/town as specifically indicated by the PNGRB in its Map No. PNGRB/CGD/BID/5/2015/4/GA Krishna District dated January, 2015; the Appellant had constructed a CNG Station on its own land bearing Re-Survey No 230/2 which fell under Kanuru Gram

Panchayat, Penamaluru Mandal of Krishna District, and the Gram Panchayat had granted its approval for construction of the CNG Station, at Re-Survey No. 230/2, by its Resolution No. 244 dated 16.03.2018; the District Panchayat Officer, Krishna District, vide letter dated April 2018, had also given no objection to install and set up the Daughter Booster Station at Re-Survey No. 233/2 of Kanuru Village; and the Vice Chairman, Vijayawada, Guntur, Tenali & Mangalagiri Urban Development Authority (VGTMUDA), Vijayawada had issued a map showing KANURU Village area limits wherein the aforesaid Re-survey clearly fell.

The Appellant further states that the 1st Respondent had, vide its email dated 08.02.2018, levelled allegations of encroachment by the appellant, to which the appellant had immediately replied, vide its email dated 08.02.2018, confirming that they were setting up their CNG filling station within Kanuru village limits, which fell under CA-06; PNGRB had itself referred to 'Kanuru' Village in the list of villages falling under CA-06; after several hearings, PNGRB had constituted a committee to ascertain *"whether the CNG station constructed by the Appellant fell within the village of limit of KANURU (Census Town) or not as per PNGRB allotment of CA-06 to the Appellant."*; thereafter, the Committee visited Vijayawada on 21.01.2019 to carry out ground verification of the CNG Station built by the Appellant at Kanuru (Ct), and recorded the following observations/findings: (*1*) *The authorized maps given to both the entities were GIS based maps. The latitude and longitude of the said CNG station are 16.29066° N and 80. 411099° E, respectively;* (*2*) *This latitude and longitude fall under the area authorized on 28.07.2009 to M/s Bhagyanagar Gas Limited; (3) This latitude and longitude fall under the area authorized to M/s Bhagyanagar Gas Limited even on the map given to M/s Megha*

Engineering Limited for the authorization issued on 14.09.2015 for Krishna District excluding areas already authorized; (4) It has been noted that in the table detailing the village with population > 5000, under Charge Area-06, the name of village Kanuru (Ct.) has been mentioned. Though as per the map given to Megha Engineering, the Kanuru village falls under the area already authorized to M/s Bhagyanagar Gas Limited. Similarly errors were also seen in respect of Pornaki, Ganguru in Charge Area-07; (5) It has been noted that in the bid document clause 2.1.1& 2.1.2 for Krishna District, the areas offered were the area excluding the areas already authorized and map of already authorized areas was available on the PNGRB website. Accordingly, bidders should have verified the areas offered in line with the tender condition before submitting their bids; in view of the above, the committee observed that the said CNG station falls under the area authorized to M/s Bhagyanagar Gas Limited; on 28.01.2019, the committee submitted the said report to PNGRB; thereafter PNGRB, vide its order dated 06.02.2019, served a copy of Committee Report on the Appellant, to which the Appellant filed its reply, before the PNGRB on 18.02.2019, contending that their submissions and representations during the committee's site visit were not recorded, and the Committee had failed to look into the core issue for which it was constituted by the PNGRB i.e. ground verification of the CNG Station of the Appellant, and whether it falls in Kanuru village limits or not.

The Appellant further submits that PNGRB, vide its order dated 06.03.2019, had called for documents showing (i) Village Kanuru, (ii) location of CNG Station, and (iii) National Highway passing through the area authorised to the Appellant; the Appellant, vide their letter dated 25.03.2019, submitted (i) PNGRB map (duly enlarged) showing the village Kanuru, CNG Station and NH passing through CA-06, and (ii) a

google map showing Kanuru village, the CNG Station and NHs; the Appellant also filed a complaint on 18.02.2019, under Sections 11 & 12 read with Section 25 of the Act, before the PNGRB for construction & operation of the CNG Station (Daughter Booster Station) in APSRTC Bus Depot at West Ibrahimpatnam, which fell under the GA allotted to the Appellant; PNGRB, vide its order dated 06.03.2019, admitted the complaint and fixed the hearing on 18.04.2019; both the complaints filed by the parties were finally heard on 18.04.2019; by common order dated 22.05.2019, the PNGRB granted one month for mutual conciliation and an amicable settlement between the parties; the Appellant and the 1st Respondent jointly discussed the complaints; the Appellant gave a proposal to maintain status quo in both cases which was not accepted by the 1st Respondent; thereafter the 1st Respondent vide its letter dated 08.07.2019, and the Appellant vide its letter dated 10.07.2019, informed PNGRB that the parties had not arrived at an amicable settlement; and the PNGRB passed Order dated 18.02.2020 directing the Appellant to hand over the CNG Station, situated in Kanuru, to the 1st Respondent within 60 days from the date of the order, and also to cease and desist from marketing of CNG.

The Appellant submits that the PNGRB failed to appreciate that they did not encroach into the GA allotted to the 1st Respondent; they had set up the CNG Station at Kanuru within their authorized GA which falls within CA-6 as shown in map No. PNGRB/CGD/BID/5/205/4/GA-Krishna District dated Jan-2015; the 1st Respondent's contention, based on the coordinates of the Appellant CNG, is unfounded and misleading, since PNGRB authorized the CAs by the name of villages/towns along with NHs passing through such villages/towns, and not by way of coordinates; details of the CAs, covering different villages, are shown in the "Table" in the map itself; the table specifies

the name of the villages falling under different CAs along with NHs passing through such CAs; this table is an accurate guide of the areas which fall under different CAs as showing all these villages/towns in the map, which is a small scale drawing, may not be possible; the Appellant had constructed the CNG Station in its own land bearing Re-Survey No. 230/2, which falls under the Kanuru Gram Panchayat, Penamaluru Mandal of Krishna District; as the table in PNGRB Map No. PNGRB/CGD /BID/5/2015/4/GA-Krishna District dated January 2015 has also authorized some part of Vijayawada Municipal limits under CA-6, the contention of the 1st Respondent that entire Vijayawada Municipal limits is under their jurisdiction is devoid of merit; the committee had visited the site of CNG Station of the Appellant at Kanuru on 21.01.2019 to ascertain *"**whether the CNG station location constructed by the Appellant falls within the village limits of Kanuru (census town) or not as per the PNGBR's allotment of CA-06 to the Appellant**"*; the findings of the Committee are contrary to the fact and record, since PNGRB in its authorization of the GA to the Appellant has clearly mentioned the name of villages covered under CA-6 indicating the NHs passing through the villages; the Committee failed to record the submissions made on behalf of the Appellant during site visit of the committee, which clearly shows that the report of the Committee is totally one-sided and biased in favour of the 1st Respondent; the Committee's findings that "*the said CNG station falls under the area authorized to M/s Bhagyanagar Gas Limited*" is beyond the jurisdiction of the committee members; PNGRB has evidently erred in upholding the findings of the Committee, since the authorized Map clearly indicated that "CA-6 covers Vijayawada (M.Corp) (Part), Ramavarappadu (Ct), Kanuru (Ct), Yenamalakuduru (Ct) through which NH 9 & NH 221 roads are passing; it is therefore clear that

Ramavarappadu, Kanuru and Yenamalakuduru villages fall under the GA of the Appellant along with a part of Vijayawada Municipal Corporation; since PNGRB had authorized the CAs by the name of villages, and the Appellant had built its CNG Station within Kanuru village limits, the Committee should not have taken the latitude and longitude during their site visit; the Committee members were satisfied that the Appellant's CNG Station was well within Kanuru village limits, but failed to record the said facts and instead recorded only the latitude and the longitude as represented by the 1st Respondent; the PNGRB failed to appreciate that the Committee could not have concluded its report only on the basis of latitude and longitude, thereby exceeding their power and jurisdiction; the jurisdiction of the Committee was limited only to carry out ground verification of the CNG station set up by the Appellant at Kanuru, and whether or not it falls within Kanuru village limits; the prejudice of the Committee is demonstrated by its failure to record whether or not the Appellant's CNG station falls within Kanuru village limits; as the authorization is based on the name of the villages with adjacent roads (NHs), no finding could have been recorded on the basis of the co-ordinates of the CNG station; since PNGRB has authorized the GA to the Appellant, strictly based on the name of the villages and the entire village limits of Kanuru falls under CA-6 of the Appellant, the findings of the Committee, with regards other CAs are irrelevant; the Committee had no authority to declare that there was an error in CA-7, particularly when the Appellant did not make any submissions on CA-7 and the committee was not even authorized to give their findings on other charge areas; before submitting the bid, the Appellant had examined all instructions, forms, terms and conditions in the Application-cum-Bid documents and the relevant regulations of the PNGRB, and had accepted the terms as required under clause 2.1.1 of

the bid documents; with regards clause 2.1.2 of bidding document, the Appellant had carefully studied the GA and charge area before submitting its Application-cum-Bid documents; it had also confirmed the CAs tabulated in the Map provided by the PNGRB, after considering the areas already authorized to the 1st Respondent, and verifying on the ground; and as there were no part areas for the village listed in the table, all the villages, listed in the table against the respective CAs, were considered as fully located within the respective village limits.

The Appellant further submits that the PNGRB had failed to appreciate that the complaint was time barred as per Sec 25 (2) of the PNGRB Act, 2006; the 1st Respondent had sought clarifications on the boundary of Vijayawada Geographical Area co-shared between the Appellant and the 1st Respondent from PNGRB vide their letter dated 26.03.2018; the 1st Respondent, however, filed the complaint on 27.06.2018 i.e. after expiry of 34 days beyond the 60 days stipulated in Section 25 (2) of the PNGRB Act, 2006; the PNGRB had authorised 50 Nos. of Charge Areas, by the name of villages/towns in Krishna District as is clearly indicated in the Table provided in the PNGRB Map No. PNGRB/CGD/BID /5/2015/4/GA-Krishna District dated Jan-2015; PNGRB failed to appreciate that allotment of the Charged Areas to the Appellant is based on the name of villages/towns as stipulated in the said map; the impugned order was passed by PNGRB without application of judicial mind and without appreciation of facts; the order was passed mechanically directing the appellant to handover the station to the 1st respondent, even though the land and equipment installed thereon belongs to the appellant exclusively, and the respondents have no stake or share in the same; and, at best, PNGRB could only have asked the appellant to close the unit and not to

handover the station, as it would require the appellant to hand over their land and equipment.

II.CASE OF THE 1ST RESPONDENT:

The 1st Respondent, a joint venture of GAIL (India) Limited, and HPCL, was incorporated in August 2003 as a City Gas Distribution company for distribution and marketing of Compressed Natural Gas (CNG) and distribution of Piped Natural Gas (PNG) to Domestic, Commercial and Industrial Sectors in the state of Andhra Pradesh; PNGRB, vide its letter 28.07.2009, accepted the Central Government authorization for their CGD network for the Geographical Area of Vijayawada; along with the said letter was enclosed a map of the geographical area and the geographical information system (GIS) based map; Clause 5 of the authorization letter states that the Geographical Area & Charge Area accepted for CGD Network Authorisation for Vijaywada GA is as per the submitted map duly signed by M/s BGL & PNGRB (copies enclosed); the authorization letter dated 14.09.2015, issued by PNGRB to the appellant, was also accompanied by a map of the geographical area and the geographical information system (GIS) based map; clause 1 of Schedule D/authorization issued to the appellant, vide letter of the PNGRB dated 14.09.2015, states that the authorized area for laying, building, operating or expanding the proposed CGD Network shall cover an area of 824 square kilometres and as depicted in the enclosed drawing"; the maps of the geographical areas allotted to both the appellant and the 1st respondent were based on Geographical Information System (GIS), a tool which is used to read Maps; GIS coordinates are used to identify the exact location of a place on any map; there was, therefore, no ambiguity regarding the areas of operations of Appellant and the 1st Respondent; the names of the

places referred on a map are for general reference to the places, whereas specific locations are always identified as per GIS coordinates; the appellant built a CNG Station (Daughter Booster Station) in the Geographical Area allotted to the 1st respondent i.e. at a location called Kanuru, Vijayawada; the GIS coordinates of the daughter booster station of the appellant are $16^0$29'03.8"N $80^0$41'06.08"E; the 1st respondent filed a complaint before the PNGRB on 05.01.2019 under Sections 11 &12 read with Section 25 of the Act regarding the illegal construction of the CNG station by the appellant in the geographical area of the 1st respondent; a committee was formed by the PNGRB; after ground verification, in the presence of the representatives of the appellant and the 1st respondent, the Committee, vide their report dated 28.01.2019, opined that the CNG station, which was the subject matter of the complaint, fell under the area authorized to the 1st respondent; the committee opined that the authorised maps given to both the entities were GIS based maps, the latitude and longitude of the said CNG station were 16.29066 ^{0}N and 80.411099 ^{0}E respectively."; in response to the report of the committee dated 28.01.2019, the appellant filed point-wise comments dated 18.02.2019 wherein they did not dispute the finding of the committee that the maps of both the entities were GIS based maps, and the GIS coordinates of the CNG station were not in dispute; the appellant was aware that the area allotted to it was as per the GIS based map, and the co-ordinates of the CNG station did not fall in their geographical area; this was the reason that the appellant was evasive on the specific query of the PNGRB, as recorded in para 11 of the impugned order, that they provide the coordinates of the CNG station; PNGRB passed the impugned judgment/order based on the GIS based map, and the co-ordinates of the CNG station, which has not been specifically denied by the

appellant; construction and operation of the CNG station by the appellant is contrary to Clause 15 of Schedule D/authorisation issued to the appellant; violation of the Regulations by the appellant is recorded by the Board in para 13 of the impugned order, which the appellant has not rebutted in the present appeal; the Regulations violated by the appellants are the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, and the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Network) Regulations, 2008; the following findings of the Board remain unrebutted in the present appeal ie (1) the maps of both the entities are GIS Based maps, and the GIS coordinates of the CNG station are not in dispute; (2) violation of Regulations by the appellant has been recorded by the Board in para 13 of the impugned order; and (3) considering the per day sale of CNG from the subject CNG Station by the appellants, the 1st respondent has suffered a loss of approximately Rs. 18.95 Crs so far, and the losses are still continuing.

The 1st Respondent submits that, by their letter dated 26.03.2018, they had challenged the illegal construction of the CNG station by the appellant in the Geographical Area of the 1st Respondent; since the said CNG station has not yet been removed, there is a continuing cause of action, and their complaint is therefore well within time; as the maps of both the entities are GIS Based maps, GIS coordinates would prevail over the names referred to in the table in the map; as per the Act, it is only the PNGRB which is empowered to grant authorization to an entity for the purpose of laying city gas distribution network, and to define the geographical area of an entity; approvals by the State Government or the Gram Panchayat is

of no consequence in determining thegeographical area of an entity; the appellant's contention that the DBS station has been constructed in their geographical area is incorrect, as the said DBS station fall under the geographical area of the 1st respondent; the committee, constituted by the PNGRB, carried out ground verification based on GIS coordinates and submitted its report; in their comments filed on 18.02.2019, the appellant did not dispute the findings of the committee that the maps of both the entities were GIS Based maps and the dispute related to the GIS coordinates of the appellant's CNG station; the appellant's complaint was merely as a counterblast to the complaint filed by the 1st respondent; the 1st respondent had challenged the illegalconstruction of the CNG station by the appellant in the Geographical Area of the 1st Respondent; since the said CNG station has not yet been removed, there is continuing cause of action, and the complaint of the 1st respondent was within time; the appellant must shut down the CNG station as it does not fall under the geographical area ofthe appellant; the impugned order is as per the Act, and the regulations framed thereunder, and is in accordance with law; the authorization of entities is in terms of GIS based maps, and not the names of the villages; and the impugned order is a reasoned order, in accordance with law, and after proper appreciation of facts.

III.CASE OF THE 2nd RESPONDENT- PNGRB:

The order passed by the PNGRB is based on facts and is well reasoned; PNGRB had authorized the Appellant, vide letter dated 14-9-2015, to develop the City Gas Distribution Network (hereinafter referred to as 'CGD Network') in the Geographical Area (hereinafter referred to as 'GA') of Krishna District, Andhra Pradesh (excluding the area already authorised); the GA authorised to the Appellant was

through a bidding process, and the map of the same was enclosed along with the bid document as well as the authorization letter; the authorised maps, given to the entities, were GIS based maps in which each and every point of the GA, or within the GA, can be traced through latitude & longitude coordinates; the latitude and longitude of the said CNG station are 16.29066'N & 80.411099°E, respectively; however, there was some confusion between the Appellant and the 1st Respondent with respect to the boundary of Vijayawada GA co-shared between them; accordingly, vide letter dated 26-3-2018, the 1st Respondent sought clarification from the PNGRB with respect to the *'Boundary of Vijayawada GA co-shared between Bhagyanagar Gas Limited (BGL) and Megha engineering & Infrastructure Ltd. (MEIL)';* thereafter the 1st respondent filed a complaint before the PNGRB on 27-6-2019 contending, inter alia, that the Appellant had illegally constructed a CNG Station (Daughter Booster Station) in the GA of Vijayawada allotted to the 1st Respondent on 28-7-2009; the co-ordinates of the Appellant's Daughter Booster Station are 16.29'03.8" N & 80.41'06.08" E; and the Appellant has encroached into the area allotted to the 1st Respondent for development of the City Gas Distribution ("CGD") Network due to which the 1st Respondent has suffered a loss of Rs. 6,57,60,000/- (approx.) which is continuous and recurring.

It is submitted on behalf of the PNGRB that the Appellant filed its reply to the aforesaid complaint of the 1st Respondent and contended, inter alia, that some parts of Vijayawada Municipal Corporation also fall under CA 06 of the Appellant's area of operations; as the area authorised by PNGRB is by the name of villages/area/town along with NHS passing there from, and not by coordinates, the CNG Station (Daughter Booster Station) constructed by the Appellant is within the

area that falls under CA-06; hence, there is no encroachment into the authorized area of the 1st Respondent; it is only after getting necessary approval from Kanuru Gram Panchayat and the Dist. Panchayat Officer, Krishna, that the Appellant had constructed the CNG Station in its own land which clearly falls within Kanuru village limits, which is part of CA – 6, and the same can be derived from the Map bearing No. PNGRB/CGD/BID/5/2015/4/ GA - Krishna District dated January, 2015 wherein "Kanuru (Census town)" is mentioned and the village limit can be ascertained from the revenue maps issued by the Statutory Authorities; after hearing both the parties on 21-1-2019, PNGRB constituted a committee to ascertain whether the CNG station, constructed by the Appellant, fell within the village limit of (Census town) or not as per the PNGRB's allotment of CA – 06 to the Appellant; the said committee visited Vijayawada on 21-1-2019 and carried out ground verification of the CNG Station built by the Appellant at Kanuru; thereafter, the committee gave its findings through its report dated 6-2-2019 observing that (1) the latitude & longitude of the CNG station under dispute are 16.29066ºN and 80.411099ºE, which fall under the area authorised to M/s. Bhagyanagar Gas Ltd. on 28-7-2009, the same is evident from the map given to the Appellant in the authorization on 14-9-2015 for Krishna District excluding areas already authorised; (2) even though the name of village Kanuru is present under CA - 06, Kanuru village falls under the area already authorised to Respondent No.1 as per the map given to the Appellant. The same was termed as an error, by the committee; (3) as per clause 2.1.1 & 2.1.2 of the bid document for Krishna District, the areas offered were the area excluding the areas already authorized, and the map of the already authorised areas was available on the PNGRB website. Accordingly, bidders should have verified the areas offered in line with the tender conditions

before submitting their bids; and the committee thus concluded that the CNG station of the Appellant falls under the area authorised to Respondent No.1.

It is further submitted, on behalf of the PNGRB, that the committee consisted of experts in the field from the PNGRB; thereafter, on 18-2-2019, the Appellant submitted its objections and comments on the Committee Report dated 28-1-2019 contending it was biased in favour of the 1st Respondent; the said objections were duly considered by PNGRB while passing the impugned Order dated 18-2-2020; the Appellant's contentions in this regard are baseless and devoid of merit; regarding the 1st Respondent's delay in filing complaint No. Legal/265/2018, the PNGRB observed that the contention that the complaint was filed after expiry of the stipulated period of 60 days was not tenable as the CNG Station of the appellant was still in operation till date, and the cause of action was continuous and recurring; while placing reliance on the committee report, PNGRB specifically noted that the GA authorised to the Appellant was through a bidding process, and the map for the same was enclosed with the bid document, which maps were GIS based maps in which each and every point of the GA or within the GA can be traced through latitude & longitude coordinates; it thereafter observed that the latitude and longitude of the CNG station are 16.29066'N & 80.411099°E, respectively which fall under the area authorised to the 1st Respondent on 28-7-2009; PNGRB also observed that the coordinates of the CNG station are an essential requirement for determining whether the location falls in the GA or not, and that the coordinates provided by the 1st Respondent, prima facie, indicated that the CNG station built by the Appellant fell within the area authorised to the 1st Respondent; even though the committee report expressly stated that the latitude and longitude of the CNG station are 16.29066'N &

80.411099°E respectively, and they fall under the area authorised to the 1st respondent, PNGRB exercised its discretion and directed the Appellant, vide email dated 10.01.2019, to provide the coordinates of the CNG Station; the Appellant, vide email dated 17.01.2019, asserted that the coordinates provided by the 1st Respondent had no relevance in allotment of the GA to them, as the allotment was based on the name of villages / area / town along with NHS passing there from; it is settled law that courts usually show deference and consideration to the recommendations of an expert committee consisting of experts in the field, and do not interfere with the report of an expert committee unless it is proved that the report is arbitrary or malafide; despite having been given various opportunities, the Appellant failed to furnish the co-ordinates of the CNG station; the appellant's contention that the PNGRB had erred in merely upholding the findings of the Committee is not tenable; in the present case, the Appellant had filed its objections to the report of the committee, and the same were duly considered by the PNGRB while passing the impugned order dated 18.02.2020; in its report, the committee had expressly observed that the said CNG station of the Appellant fell under the area authorised to the Complainant (1st Respondent); the PNGRB has also emphasized on the importance of co-ordinates in determining whether the location falls in a particular GA or not; in the meanwhile, the Appellant also filed a Complaint in Case bearing No. Legal/08/2019, contending, inter alia, that the 1st Respondent had illegally constructed one another CNG Station in its authorised area; after hearing the respective complaints of the Appellant and the 1st Respondent, PNGRB. by common Order dated 22-5-2019, provided an opportunity to the parties to amicably settle both the matters through conciliation observing that, in both the matters, pleadings were completed and various documents along with maps

were filed by the parties, and the said matters were finally heard on 18.04.2019 by the Board, wherein the Board's preliminary observation was that the complaints are in form of cross complaints and both the parties are operating CNG stations in the geographical area of one another; therefore, without going into the merits of the cases, the Board granted one month for mutual conciliation and an amicable settlement between the Parties; in compliance with these directions, both parties conducted a meeting on 22-6-2019, in which the Appellant gave a proposal to maintain status quo in both cases, which was not accepted by the 1st Respondent; accordingly the parties, vide letters dated 8-7-2019 and 10-7-2019, conveyed to the PNGRB that they had failed to arrive at any amicable settlement; the Complaint filed by the Appellant was allowed by the PNGRB, vide Order dated 18-2-2020; however, the same has not been challenged till date; and the Appellant has encroached into the area allocated to the 1st Respondent for the development of City Gas Distribution ("CGD").

On compliance with the Order passed by this Tribunal dated 31-7-2020, directing the PNGRB to place on record whether the disputed area was part of the LOI issued to the Appellant, it is submitted, on behalf of the PNGRB, that the LOI dated 28.07.2015 issued by PNGRB to the appellant states that the area of authorization will be as per the extent shown in Annexure -1 of the bid document, and that the grant of authorization shall be governed by the terms and conditions contained in the Application cum Bid Document (ACBD), clarifications issued and Schedule D of PNGRB CGD Authorizing Regulations, 2008; there is no illegality or infirmity in the impugned Order passed by the PNGRB as to warrant interference by this Tribunal; and there being no merit in the Appeal, the same is liable to be dismissed.

IV.REJOINDER OF THE APPELLANT:

In their rejoinder to the reply filed by the 1st respondent, the appellant submits that, clause 6 of the Letter of Authorization (LOA)/Grant of Authorization (GOA) dated 14.09.2015, given by PNGRB to the Appellant, stipulates that the entity is allowed an exclusivity period under the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008, in respect of the following: (a) 300 months from the date of issue of this communication for laying, building and expansion of the CGD network; and (b) 60 months from the date of issue of this communication in terms of an exemption from the purview of common carrier or contract carrier for the CGD network: the map/s enclosed with the bid documents, and also forming part of Grant of Authorization (GOA), do not stipulate that the said map is a Geographical Information System · (GIS) based map;in the map, all 50 Nos. of Charge Areas (CA) are shown in different colors; the Charge Areas (CA) number, and the name of villages in which the CAs are covered, are also given in the table duly showing the roads passing through the boundaries of the Cas; the remarks shown in the map are: (i) *Landmarks are indicative in nature (ii) Each charge area is depicted in different color and enclosed by physical features such as roads, rivers, railway tracks or administrative boundaries as shown in the map (iii) this map is a part of 'application -cum-bid document' for the* ***Krishna District*** *Geographical area;* therefore, the Table given in the map, showing the list of CAs and name of villages shown against each *CA,* are under the jurisdiction of the Appellant; the CNG-Kanuru of the Appellant is within CA-6, and there is no ambiguity that Kanuru Village is within the jurisdiction of Appellant; the 1st Respondent

never denied nor disputed that the villages are shown against each *CA* or that they are within the *GA* of the Appellant; authority for village boundaries shall be based on the village revenue maps and, admittedly, the boundaries of the village never changed, but it can be merged with municipality or it may be converted into· municipality depending upon the area and population; and, according to the revenue map provided by the local statutory authorities, the land where the CNG Station was constructed by the Appellant was clearly within Kanuru Village.

The appellant further submits that they have constructed the CNG station in Kanuru village which is within the jurisdiction of CA-6 under Geographical Area (GA) authorized to the Appellant; the Geographical Information System (GIS) coordinates is not the basis of the CAs given in the GA allotted to the Appellant, since, nowhere in the bid documents or in the GOA or in the map, has it been stipulated that the map is a GIS based map; in the absence of such a stipulation in GOA or in the map, the alleged coordinates cannot be the basis for deciding the village boundaries in each CA; the PNGRB sent an email to the Appellant on 10.01.2019 requesting them to plot the said CNG station on the PNGRB's authorized GA map, and provide the exact co-ordinates for the same; in reply thereto, the Appellant, vide its email dated 17.01.2019, informed the PNGRB that, according to the PNGRB's map, CA-06 expressly covers Kanuru (Ct- Census town); PNGRB, in the said map, had indicated that NH-5 & NH-9 Road/s were passing through the jurisdiction of CA-6; as such it was clear that PNGRB had authorized the Charge Areas by name of villages (i.e. census town with Population >5000); the Appellant had constructed and installed its CNG station in its own land in Kanuru Village (census town) which is adjacent to NH-9, for

which NOC for installation of CNG station was given by the local statutory authorities; moreover, NH-9 is adjacent to Kanuru Village (census town), which was also shown by PNGRB in its map; since the CA authorized to the appellant by the PNGRB was strictly based on the name of Villages (i.e. census town), the appellant had constructed its CNG station within the village limits of Kanuru; the alleged coordinates, as contended by the BGL in its Complaint Petition, has no relevance in the facts and circumstances of allotment of GA to the appellant by PNGRB, more particularly when the allotment of GA to the appellant is specifically based on the name of villages (with population >5000)for each CA; if required, PNGRB can carry out ground verification of the location of the appellant's CNG station to ascertain whether the said CNG station location falls within the village limits of Kanuru (census town) or not, as per the PNGBR's allotment of CA-06 to the appellant; from the above, it is clear that the Appellant has specifically sought ground verification, if required by PNGRB, only to the extent of verification of the location of their CNG station, and whether the said CNG station location falls within the village limits of Kanuru (census town) or not; PNGRB constituted a committee consisting of two of its serving officers, without informing the terms of reference; the said committee visited the site on 21.01.2019 in the presence of both the parties; the findings of the committee are purely one-sided and do not record the basic issue referred by the Appellant in its email dated 17.01.2019; the Appellant denied all the findings of the committee elaborately in its comments filed on 18.02.2019 before the PNGRB, including the latitude & longitude taken by the Committee which is contrary to the particular verification sought by the Appellant; nowhere in the bid documents or in the GOA or in

the map has it been stipulated that the map is Geographical Information System (GIS) based map; the Appellant constructed its CNG Station at Kanuru village (as shown in the Table given in the map) which falls under the GA authorized to the Appellant, whereas the 1st Respondent contended that, as per the coordinates, it falls under their GA; the Committee did not consider the contention of the Appellant, but gave its recommendations by recording the coordinates even though there is no stipulation in the bid documents or GOA that the map is GIS based map; the committee acted beyond its authority and gave a final verdict instead of its opinion; in asking the Appellant about the coordinates, the PNGRB has shown its bias towards the 1st Respondent; the PNGRB did not apply its mind, and decided the matter based on the committee report, despite objections of the Appellant; the PNGRB did not comment on whether the so called co-ordinates relied upon by the `1st Respondent falls within Kanuru village limits, and thereby failed to determine the location of CNG Station of the Appellant, as to whether it falls in Kanuru village or not; in the absence of such determination, the decision of the PNGRB is invalid and illegal; the question of relying on the so-called coordinates does not at arise; the findings of the PNGRB are not in accordance with the map and the GOA given to the Appellant; and the Appellant has not violated any provisions of PNGRB Act and Regulations while constructing its CNG Station at Kanuru village which is a part of the map and GOA given by the PNGRB.

The Appellant further submits that, in its impugned order dated 18.02.2020, the PNGRB could not determine whether the CNG Station falls under Kanuru village limits of CA-6 or not; in the absence of such vital findings, the finding of the PNGRB, in Para 13

of the impugned order dated 18.02.2020, is devoid of logic; the very fact that Kanuru village is under CA-6 would go to show that it is within the *GA* authorized to the Appellant as per the LOA/GOA, and as clearly shown in the map; the 1st Respondent, admittedly, filed its complaint before the PNGRB after expiry of the time limit specified in Section 25 (2) of the Act; nowhere in the bid documents nor in the LOA/GOA or map is it stipulated that the map is based on GIS; the name of villages, with road boundaries which falls in each CA, was clearly given in the table in the map, and hence any kind of co-ordinates would not change the village limits; the PNGRB had granted authorization for each district; the village limits in such districts are as fixed by the local statutory authorities (i.e. revenue authorities), not by the PNGRB; for construction of any structure or a CNG Station, approval granted by the local authority is final and binding, and the PNGRB has no role in such matters; the issues of coordinates or GIS is not the core issue as the imperative question would be as to whether the CNG Station of the Appellant is within Kanuru village, which has been clearly mentioned in the Table given in the map by the PNGRB; Kanuru village is a part of CA-6 under the *GA* authorized to the Appellant by the PNGRB; with regards the CNG Station constructed by them in APSRTC at West Ibrahimpatnam, the 1st Respondent has admitted that they are operating the CNG station on the area authorized to the Appellant after 14.09.2015, wherein the Appellant has lost a revenue of Rs. 3.97 Cr till 18.02.2019; the Appellant is not commenting on the map of the 1st Respondent, and whether their map is based on GIS or not; the fact is that nowhere, either in the LOA/GOA or in the map given to the Appellant by the PNGRB, is it stated to be based on GIS map; in the map, Kanuru village falls within CA-6 of the *GA*

authorized to the Appellant; as Kanuru village is a part of CA-6, the question of verification of coordinates does not arise; the accepted principles is that the names of villages given in the Table on the map prevail for all the purposes; if the names of the villages, given in the Table on the map, are not relevant, then the purpose of listing so many villages in the table on the map is defeated; it is totally wrong and misconceived that the coordinates prevail over the names referred in the table on the map; and the accepted principle is that the names of villages given in the Table on the map prevail for all purposes.

V.CONTENTS OF THE IMPUGNED ORDER PASSED BY THE PNGRB:

In the Order under appeal dated 18.02.2020, the PNGRB noted that a complaint was filed by the first respondent contending that the Appellant had illegally constructed a CNG Station (Daughter Booster Station) in the Geographical Area ("GA") of Vijayawada allotted to the 1st Respondent, the co-ordinates of the Appellant's Daughter Booster Station were 16029'03.8" N & 80041'06.08" E; the Appellant had encroached into the area allocated to the 1st Respondent for the development of City Gas Distribution **("CGD")** Network due to which the 1st Respondent had suffered loss of Rs. 6,57,60,000/- (approx.) which was continuous and recurring; the 1st Respondent had been authorized by the PNGRB, vide its letter dated 28.07.2009, for the development of CGD Network in the Geographical Area **("GA")** of Vijayawada; the appellant was an entity authorized by the PNGRB, vide letter dated 14.09.2015, for the development of CGD Network in the GA of Krishna District, Andhra Pradesh (excluding the area already authorised); the 1st respondent had

contended that the CNG station of the Appellant fell outside the area authorized to them in the authorization wherein it was specifically mentioned that the authorized area for laying, building, operating or expanding the proposed CGD Network shall cover an area of 8424 Sq. Km, and as depicted in the enclosed drawing; in view of the above, the area authorised to the appellant was not governed by the nomenclature of the village/town but by the map only; the 1st Respondent had further contended that both the entities were provided with GIS based maps, and they were not authorised to include in their GA(s) any area other than the area authorised by the Board; and, thus, the area authorised to the 1st respondent is to be governed by the map only, and not by the nomenclature of the village/town; the appellant had obtained permissions from the authorities, by misrepresenting the fact that it had the authority to build the CNG station; and such permissions would not supersede the limits of the authorized GA set up by the Board, as it was the exclusive domain of the Board to demarcate the GA to the entity.

The impugned order then records the appellant's contention that the PNGRB had granted them authorization for laying, building, operating , or expanding city or natural gas distribution network in the authorised area of Krishna District (excluding the area already authorised), which consisted of 50 Charge Areas **("CA");** some parts of Vijayawada Municipal Corporation also fell under CA- 06 of the appellant's area of operations; the name of villages covered under CA-06 were as under: (a) Vijayawada (Municipal Corporation), (b) Ramavarappadu (Census town), (c) Kanuru (Census town), and (d) Yenamakakuduru (Census town); as the area authorised by the PNGRB was by the name of villages/areas /towns along with NHs

passing therefrom and not by coordinates, therefore the CNG Station (Daughter Booster Station) constructed by the appellant was within the area which fell under CA-06, and there was no encroachment into the authorized area of the 1st Respondent; it is only after getting necessary approval from Kanuru Gram Panchayat vide Resolution dated 16.03.2018, and from the District Panchayat Officer vide its Letter No. 1433/2017, had they constructed the CNG Station in their own land in Re-survey No.230/2 which clearly falls within Kanuru village limits. which is part of CA-6, and the same can be derived from the Map bearing No. PNGRB/CGD/BID/5/2015/4/GA-Krishna District dated January, 2015 wherein "Kanuru (Census town)" is mentioned, and the village limit can be ascertained from the revenue maps issued by the Statutory Authorities.

The PNGRB then noted that it had constituted a committee in order to ascertain "whether the CNG station constructed by the Appellant fell within the village limit of Kanuru (Census town) or not" as per the PNGRB's allotment of CA-06 to the appellant; the Committee visited Vijayawada on 21st January, 2019, to carry out ground verification of the CNG Station built by the appellant at Kanuru, and recorded the following observations: (1) the authorised maps given to the entities were GIS based maps. The latitude & longitude of the said CNG station were 16.29066 °N and 18.411099°E respectively; (2) this latitude & longitude fell under the area authorised on 28.07.2009 to Mis. Bhagyanagar Gas Ltd; (3) this latitude & longitude fell under the area authorised to Mis. Bhagyanagar Gas Ltd even on the map given to the Ms. Megha Engineering for the authorisation issued on 14.09.20I5 for Krishna District excluding areas already

authorised; (4) it had been noted that, in the table detailing the village with population more than 5000 under CA-06, the name of the village Kanuru is present though, as per the map, Kanuru village falls under the area already authorised to the 1st Respondent; similar errors were also seen in respect of Porank, Ganguru in CA-07; (5) it had been noted that, in the bid document, clause 2.1.1 & 2.1.2 for Krishna District GA, the areas offered were the area excluding the areas already authorised, and the map of the already authorised areas was available on the PNGRB website; the bidders should have verified the areas offered in line with the tender conditions before submitting their bids; the committee submitted its report to the Board on 28.01.2019, as per which it has been observed that the "CNG station of the appellant fell under the area authorised to the first respondent.

The PNGRB then noted the appellant's contention that the Committee Report dated 28.01.2019 was biased in favour of the first respondent; the Committee formed its observation on the basis of longitude and latitude, which was not correct as the PNGRB had authorised CA by the name of villages as per which the CNG station was built/constructed within the specified village of Kanuru; the Committee had made its observations without recording the fact that the CNG station fell within the village limits of Kanuru; the Committee declared that there was an error in Charge Area-07 **("CA- 07")** despite the fact that no submission had been made with respect to the same; moreover, the committee was not even authorized to examine the same; the appellant had carefully examined all the instructions, forms, terms and conditions of the Application-cum-bid, and had accepted the Bid document; the appellant, after carefully

examining the GA and CA, had submitted its Application-cum-Bid-Document; the 1st Respondent had filed the complaint after expiry of the stipulated period of 60 days as provided in Section 25 (5) of the Act; and they did not also submit any application seeking condonation of such delay before the Board.

The PNGRB then observed that the contention of the appellant, that the present complaint was filed after expiry of the Stipulated Period of 60 days, was not tenable as their CNG Station was still in operation till date, and the cause of action is continuous and recurring; the appellant had emphasized that the CA part of the GA authorised in their favour by the PNGRB was strictly based on the name of the villages, and thereby their CNG Station fell within Kanuru village limits; the GA authorised to the appellant was through a bidding process, and the map for the same was enclosed with the bid document; the authorised maps given to the entities were GIS based maps in which each and every point of the GA or within the GA could be traced through latitude & longitude coordinates; the latitude and longitude of the said CNG station were 16.29066°N & 18.411099 °E respectively, under the area authorised to the 1st Respondent on 28.07.2009; the coordinates of the CNG station were an essential requirement for determining whether the location fell in their GA or not; the coordinates provided by the 1st Respondent indicated that the CNG station built by the appellant fell within the area authorised to the 1st Respondent; however, the PNGRB had called upon the appellant to provide the co-ordinates of their CNG Station; instead of complying with these directions, the appellant asserted that the co-ordinates 16.29'03.8" N & 80°41' 06.08"

E, provided by the 1st Respondent, had no relevance in the allotment of the GA to the appellant, as the allotment of the GA is based on the name of villages/area/town along with NHs passing therefrom, and not on coordinates, which is not tenable; when PNGRB had again called upon them, vide e-mail dated 10.01.2019, to plot the CNG station on their map and provide the exact co-ordinates, the appellant, vide its mail dated 17.01.2019, again emphasized that the CA authorised to them by the PNGRB was based on the name of the villages; to resolve this issue, the PNGRB constituted a committee; from Para 2,4 and 5 of the Committee's Report dated 28.01.2019 , it was clear that the CNG Station of the appellant fell within the authorised area of the 1st respondent; considering the fact that the appellant has also filed a complaint against the 1st respondent before the Board (Case bearing No. Legal/08/2019) contending that the 1st Respondent had illegally constructed a CNG Station in the authorised area of the appellant, the Board, after hearing the parties, had passed a Common Order dated 22.05.2019, providing an opportunity to the parties to amicably settle both the matters through conciliation; the parties conducted a meeting on 22.06.2019, in which the appellant gave a proposal to maintain *status quo* in both the cases, which was not accepted by the 1st Respondent; and the appellant vide its letter dated 8.07.2019, and the 1st respondent vide letter dated 10.07.2019, conveyed to the Board that they had failed to arrive at an amicable settlement.

The PNGRB further observed that Regulation 12 of the PNGRB (Authorising Entities_to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, provides that *" the exclusivity period to lay, build, operate*

or expand a city or local natural gas distribution shall be as per the provisions in the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008; Regulation 5 of the *Exclusivity for City or Local Natural Gas Distribution Networks Regulations, 2008* provides for the infrastructure exclusivity which is 25 years from the date of the grant of the authorisation; and Regulation 6 of *Exclusivity for City or Local Natural Gas Distribution Networks Regulations, 2008* provides for marketing exclusivity which is 5 years from the date of the grant of authorisation; and in view thereof, the appellant was in violation of the above stated Regulations by operating the CNG Station in the area authorised to the 1st Respondent.

The PNGRB, accordingly, passed an order directing the appellant to hand over the said CNG station situated at Kanuru in the GA authorised to the 1st Respondent within 60 days from the date of this order and thereafter to cease and desist from marketing CNG in the GA authorised to the 1st Respondent.

Elaborate submissions, both oral and written, were advanced on behalf of the Appellant by Ms. Kiran Suri, Learned Senior Counsel, on behalf of the 1st Respondent by Mr. Shiv Kumar Pandey and on behalf of the PNGRB by Mr. Munnawar Naseem, learned Counsel. It is convenient to examine the rival submissions under different heads.

VI.PRELIMINARY OBJECTION: IS THE APPEAL BARRED BY LIMITATION?

Ms. Kiran Suri, learned Senior Counsel appearing on behalf of the Appellant, would submit that the 1st Respondent has filed the present

Appeal beyond the period of limitation prescribed in Section 25 of the Act, that too even without an application seeking condonation of delay; the 1st respondent was bound to show sufficient cause, before the PNGRB could have entertained the complaint filed by them; prayer (a), seeking to remove the CNG station, is not a continuing cause of action, and prayer (b), for compensation, is again not a continuing cause of action; the challenge made to the alleged encroachment is not a continuing cause of action; the operation at the CNG station is the consequence, and not the cause of action, as per the complaint; and it cannot therefore be said that the cause of action is continuing and, therefore, there is no need to file an application for condonation of delay showing sufficient cause. Learned Senior Counsel would rely on **Virender Chaudhary v. Bharat Petroleum Corpn: (2009) 1 SCC 297**, in this regard.

Sri Shiv Kumar Pandey, Learned Counsel for the 1st respondent, would submit that the 1st respondent had promptly agitated the issue of encroachment by the appellant into its GA, the moment it came to its knowledge in February 2018, by first writing to the appellant, then to PNGRB, and then filing the complaint before the PNGRB; since the appellant is still operating the CNG station, the cause of action is still continuing; the complaint of the 1st respondent before the PNGRB was within limitation; and, even otherwise, there is no bar for the court/tribunal to exercise its discretion to condone the delay, in the absence of a formal application. Reliance is placed in this regard on **Sesh Nath Singh v. Baidyabati Sheoraphuli Coop. Bank Ltd., (2021) 7 SCC 313.**

In **Virender Chaudhary v. Bharat Petroleum Corpn., (2009) 1 SCC 297,** on which reliance is placed on behalf of the Appellant, the Supreme Court held that a Writ Petition is a discretionary remedy; the

court exercises its jurisdiction only upon satisfying itself that it would be equitable to do so; and delay and/or laches, indisputably, are relevant factors.

No period of limitation is prescribed for availing the remedy of a Writ Petition before the High Court under Article 226 of the Constitution of India. Delay and latches are, therefore, relevant factors to be taken into consideration by the High Court in exercising its discretion to entertain a Writ Petition. Unlike the extra-ordinary remedy under Article 226 of the Constitution of India, a period of limitation is prescribed under the PNGRB Act for availing the statutory remedy of filing a complaint before the PNGRB, or an appeal thereagainst before this Tribunal.

A.RELEVANT STATUTORY PROVISIONS:

Section 12 of the PNGRB Act relates to the powers regarding complaints and resolution of disputes by the Board. Section 12(1) stipulates that the Board shall have jurisdiction to- (a) adjudicate upon and decide any dispute or matter arising amongst entities or between an entity and any other person on issues relating to refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas according to the provisions of Chapter V, unless the parties have agreed for arbitration; (b) receive any complaint from any person and conduct any inquiry and investigation connected with the activities relating to petroleum, petroleum products and natural gas on contravention of- (i) retail service obligations; (ii) marketing service obligations; (iii) display of retail price at retail outlets; (iv) terms and conditions subject to which a pipeline has been declared as common carrier or contract carrier or access for other entities was allowed to a city or local natural gas distribution network, or authorisation has been granted to an entity for

laying, building, expanding or operating a pipeline as common carrier or contract carrier or authorisation has been granted to an entity for laying, building, expanding or operating a city or local natural gas distribution network; and (v) any other provision of this Act or the rules or the regulations or orders made there under. Section 12(2) provides that, while deciding a complaint under sub-section (1), the Board may pass such orders and issue such directions as it deems fit or refer the matter for investigation according to the provisions of Chapter V.

Chapter V of the PNGRB Act relates to Settlement of Disputes. Section 24, thereunder, requires the Board to settle disputes. Section 24(1) stipulates that, save as otherwise provided for arbitration in the relevant agreements between entities or between an entity or any other person, as the case may be, if any dispute arises, in respect of matters referred to in sub-section (2) among entities or between an entity and any other person, such dispute shall be decided by a Bench consisting of the Member (Legal) and one or more members nominated by the Chairperson. Section 24(2) provides that the Bench, constituted under sub-section (1), shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable by a civil court on any matter relating to (a) refining, processing, storage, transportation and distribution of petroleum, petroleum products and natural gas by the entities; (b) marketing and sale of petroleum, petroleum products and natural gas including the quality of service and security of supply to the consumers by the entities; and (c) registration or authorisation issued by the Board under Section 15 or Section 19. Section 24(3) provides that, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Board shall have the power to decide matters referred to in sub-section (2) on or after the appointed day.

Section 25 relates to filing of complaints. Section 25(1) enables a complaint to be filed before the Board by any person in respect of matters relating to entities or between entities on any matter arising out of the provisions of this Act. Under the proviso thereto, the complaint of individual consumers, maintainable before a consumer disputes redress forum under the Consumer Protection Act, 1986 (68 of 1986), shall not be taken up by the Board, but shall be heard and disposed of by such forum. The Explanation thereunder stipulates that, for the purposes of this sub-section, the expression "consumer disputes redress forum" shall mean the district forum, the State Commission or, the National Commission, as the case may be, constituted under the provisions of the Consumer Protection Act, 1986 (68 of 1986).

Section 25(2) requires every complaint, made under sub-section (1), to be filed within sixty days from the date on which any act or conduct constituting a contravention took place, and shall be in such form and shall be accompanied by such fee as may be provided by regulations. The Proviso thereto enables the Board to entertain a complaint, after expiry of the said period, if it is satisfied that there was sufficient cause for not filing the complaint within that period.

Section 25(3) provides that, on receipt of a complaint under sub-section (1), the Board shall decide within thirty days whether there is a prima facie case against the entity or entities concerned and may either conduct enquiry on its own or refer the matter for investigation, under this Chapter, to an Investigating Officer having jurisdiction; and, where the matter is referred to such Investigating Officer, on receipt of a report from such Investigating Officer, the Board may hear and dispose of the complaint as a dispute if it falls under sub-section (2) of Section 27 and, in any other case, it may pass such orders and issue such directions as it deems fit. Section 25 (4) provides that, where the Central Government

considers that a matter arising out of the provisions of this Act is required to be investigated, it shall make a reference to the Board, and the provisions of this Act shall apply as if such reference were a complaint made to the Board.

The requirement, of Section 25(2) of the PNGRB Act, is for a complaint to be filed before the PNGRB within sixty days from the date on which any act or conduct constituting a contravention takes place. In computing this period of sixty days, it is necessary to ascertain, in the first instance, the date on which the act constituting the contravention took place.

In this context it is relevant to note that, on the issue of Illegal construction of the CNG station in their Vijayawada GA, the 1st Respondent informed the Appellant, by its e-mail dated 8th February, 2018, that they had observed construction activity of a CNG station within their Vijayawada GA; the location of the upcoming CNG station was marked in their authorized GA map (Vijayawada); and the location of the Appellant's CNG station was within CA-06 of the 1st Respondent's authorized Vijayawada GA. Through this email, the 1st Respondent requested the Appellant to stop all construction activity immediately and, by 15.02.2018, remove all equipment from the site. The 1st Respondent once again requested the Appellant to desist from undertaking such practices of encroaching onto their GA, and rather work amicably within their authorized areas.

In reply to the 1st Respondent's e-mail dated 08.02.2018, the Appellant, by its e-mail dated 08.02.2018, confirmed that they were setting up their CNG filling station, ie daughter booster station, but within their authorized and approved area only; the PNGRB had declared and approved (1) Vijayawada M. Corp) (part), (2) Ramavarappadu (Ct), (3) Kanuru (Ct) and (4) Yenamalakuduru (Ct) as

Charge Area-06 under their area of business jurisdiction; as such, by virtue of the authorization given by PNGRB, it was clear that the Appellant was authorized to construct their CNG stations within the area falling under the above named areas/villages; their DBS station site was clearly situated within the area limits of Kanuru village, which clearly fell under authorized Charge Area-06, and hence the question of illegally encroaching into the 1st Respondent's authorized area did not arise; as the proposed site, where the DBS station was being constructed, was within Kanuru area limits, it was evident that PNGRB had unambiguously mentioned the name of Village Kanuru in the list of villages falling under Charge Area-06, and as such they were proceeding ahead with their construction activities.

The 1st Respondent thereafter, vide its letter dated 26.03.2018, sought clarification from the PNGRB on the boundary of Vijayawada Geographical Area co-shared between the Appellant and the 1st Respondent, and later filed a complaint before the PNGRB on 27.06.2018. The Appellant claims that, computed from 26.03.2018, the Complaint filed by the 1st Respondent on 27.06.2018 was after expiry of 34 days beyond the 60 day period of limitation stipulated in Section 25 (2) of Act.

In their Complaint dated 27.06.2018, the 1st Respondent requested the PNGRB to direct the Appellant to remove the CNG station at Kanuru, and to direct the Appellant to compensate the 1st Respondent for the accumulated business losses as on the date of the complaint, apart from further losses arising if their operation was not stopped. Removal of the CNG Station at Kanuru, as sought by the 1st Respondent in its complaint dated 27.06.2018, would arise only after its construction is completed.

While it is does appear, from the Appellant's e-mail dated 08.02.2018, that they were still in the process of setting up their CNG filling station, ie daughter booster station, as on that date ie 08.02.2018, it is evident from the submission of Ms. Kiran Suri, Learned Senior Counsel appearing on behalf of the Appellant, (as referred to hereinafter under the head "Estoppel and Legitimate Expectation"), that construction of the Appellant's CNG station at Kanuru was completed during the period 08.02.2018 to 29.06.2018. While the Appellant has chosen not to disclose the actual date of completion of construction of the CNG Station, so long as it was completed after 29.04.2018, the complaint filed by the 1st Respondent on 27.06.2018 must be held to be within the period of limitation of sixty days as stipulated under Section 25(2) of the PNGRB Act.

The Appellant continues to operate the CNG Station at Kanuru even as on date. As the 1st Respondent, in its complaint dated 27.06.2018, had also sought compensation for business losses, arising even after the complaint till the operations of the CNG Station are stopped, it is evident that the alleged act or conduct, constituting the contravention, continues even as on date.

It is necessary, in this context, to note that Section 22 of the Limitation Act relates to continuing breaches and torts and, thereunder, in the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues. Section 23 relates to suits for compensation for acts not actionable without special damage and, thereunder, in the case of a suit for compensation for an act which does not give rise to a cause of action, unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Black's Law Dictionary defines "Continuing Wrong" as an on-going wrong that is capable of being corrected by specific enforcement. The definition of "Continuing Wrong" in P. Ramanatha Aiyer's Concise Law Dictionary is that it is the very essence of a continuing wrong that it is an act which escalates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury, which is complete, there is no continuing wrong even though the damage, resulting from the act, may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong (limitation act S. 22).

The origin of the concept of a continuing wrong can be traced to the concept of a continuing cause of action in a civil matter. The concept of continuing cause of action arose principally in regard to the point of time up to which damages could be assessed in a given action. A continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought. If once a cause of action arises, and the acts complained of are continuously repeated, the cause of action continues and goes on de die in diem. If there is a connection between the series of acts before and after the action is brought, and they were repeated in succession, they become a continuing cause of action. They are an assertion of the same claim –and continuance of the same alleged right. This is how, in civil law, a continuing cause of action is understood. A recurring cause of action is the same act, which constitutes the original wrong, is repeated again and again. Thus, a continuing cause of action would be a recurring cause of action; or to put it differently the phrases "continuing cause of action" and "recurring cause of action" are synonyms. **(Hole Vs. Chard Union: (1804) 1 Ch. 298: 7 R.84 (70) LT**

52; DIGAM SINGH v. ANSHU PRAKASH & ORS: ORDER OF THE Delhi HIGH COURT IN WP (C) 1254/2012 Dated 25.02.2013)

The very essence of a continuing wrong is that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. (**Balakrishna S.P. Waghmare vs. Shree Dhyaneshwar Maharaj Sansthan : AIR 1959 SC 798**).

A "continuing wrong" postulates a breach of a continuing duty or a breach of an obligation which is of a continuing nature. What makes a wrong, a wrong of a continuing nature is the breach of a duty which has not ceased but which continues to subsist. The breach of such a duty creates a continuing wrong and hence a defence to a plea of limitation. **(M SIDDIQ (D) THR LRS V. MAHANT SURESH DAS & ORS: Order of the Supreme Court in Civil Appeal Nos 10866-10867 of 2010 dated 09-11- 2019).** A continuing offence or a continuing wrong is a continuing breach of the duty which itself is continuing. If a duty continues from day to day, the non-performance of that duty from day to day is a continuing wrong.**(G.D. Bhattar v. State: AIR 1957 Cal 483)**

In **M.R. GUPTA VS UNION OF INDIA & ORS: (1995) 5 SCC 628,** the Supreme Court opined that the appellant's grievance, of his pay fixation not being in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules; and so long as the appellant is in service, a

fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules.

In **UNION OF INDIA & ANR VS TARSEM SINGH :(ORDER IN CIVIL APPEAL NO.5151-5152 OF 2008, 13.08.2008**), the Supreme Court held that a `continuing wrong' refers to a single wrongful act which causes a continuing injury. `Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action; where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury.

As the relief sought, of compensation for business losses, is for the alleged act of contravention even as on today, it is clear that this relief, sought in the Complaint dated 27.06.2018, is available to be granted even till the date this Order is passed. We are satisfied that the cause of action continues, and the Complaint is not barred by limitation as stipulated in Section 25(2) of the PNGRB Act.

Even otherwise, in terms of the proviso to Section 25(2), power is conferred on the PNGRB to entertain a complaint after expiry of the period, of sixty days prescribed in Section 25(2), on its being satisfied that there was sufficient cause for not filing the complaint within that period of sixty days. The satisfaction is that of the PNGRB, and the aforesaid provision does not obligate the PNGRB to await an application seeking condonation of delay in order to arrive at such satisfaction.

In **Sesh Nath Singh v. Baidyabati Sheoraphuli Coop. Bank Ltd., (2021) 7 SCC 313,** on which reliance is placed on behalf of the 1st

Respondent, the Supreme Court held that Section 5 of the Limitation Act, 1963 (akin to the proviso to Section 25(2) of the PNGRB Act) does not speak of any application; the Section enables the court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed; although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the court or tribunal to weigh the sufficiency of the cause for the inability of the appellant applicant to approach the court/tribunal within the time prescribed by limitation, there is no bar to exercise by the court/tribunal of its discretion to condone delay, in the absence of a formal application.

Viewed from any angle, we are satisfied that the Complaint filed by the 1st Respondent, before the PNGRB on 27.06.2018, is not barred by limitation under Section 25(2) of the Limitation Act, and the PNGRB cannot be held to have acted illegally in entertaining and deciding the said complaint.

VII. IMPUGNED ORDER PASSED BY THE PNGRB:

Ms. Kiran Suri, learned Senior Counsel appearing on behalf of the Appellant, would submit that the order of the PNGRB dated 18.02.2020 was based solely on the recommendations of its own committee, which is an interested party of the PNGRB; the findings, in para 11 of the impugned Order, are based only on the observations made by the Committee stating that the authorized maps given to the entities were GIS maps; the finding, that coordinates would determine whether the location falls in one GA or the other, is also based upon the report of the Committee; PNGRB failed to consider the objections raised by the appellant to the report of the Committee, and to record independent

findings on all the issues raised by the appellant; the impugned judgment of the PNGRB suffers from non-application of mind and is bereft of independent reasons; and it is violative of principles of natural justice.

Mr. Munawwar Naseem, Learned Counsel for the PNGRB, would submit that, on receipt of the complaint from the 1st Respondent, PNGRB acted in terms of Section 25 of the PNGRB Act granting an opportunity of being heard to the parties, opportunity to the Appellant to furnish coordinates (Para 11 of the impugned Order), appointment of committee (under Section 25(3) "…*conduct enquiry on its own…*"); allowing objections to be filed on the report of the Committee; allowing the parties, by order dated 22-5-2019, to amicably settle matters through settlement (para 12 of the impugned order); and finally passing a reasoned order on the basis of the terms of Application cum Bid Documents, the Letters of Authorization, and the laws applicable to the parties (Section 19 of the PNGRB Act, Regulation 12 of the Authorization Regulations, and Regulation 5 of the Exclusivity Regulation).

Sri Shiv Kumar Pandey, Learned Counsel for the 1st respondent, would submit that, vide the impugned order, PNGRB allowed the complaint of the 1st respondent and, in para 11 of the said order, recorded the conduct of the appellant which deliberately did not give the co-ordinates of the CNG station in dispute, which led to forming a committee to ascertain the same; and location on a map can be identified only through GIS coordinates. (Pgs. 121-129 of common compilation).

The power exercised by this Tribunal, to interfere with the order of the PNGRB, is an appellate power. Chapter VI of the PNGRB Act relates to Appeals to the Appellate Tribunal. The term "appeal" is not a

defined expression under the PNGRB Act. An appeal is a judicial examination of the decision by a higher court of the decision of a subordinate court to rectify any possible error in the order under appeal. **(Malluru Mallappa v. Kuruvathappa, (2020) 4 SCC 313).** The essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause. An appeal removes a cause entirely, subjecting the fact as well as the law to a review and a retrial. **(*Shankar Ramchandra Abhyankar* v. *Krishnaji Dattatreya Bapat*, (1969) 2 SCC 74**; **Malluru Mallappa v. Kuruvathappa, (2020) 4 SCC 313).** An appeal is a continuation of the proceedings of the original court/tribunal, and involves a rehearing on law as well as fact. **(Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar, (1980) 4 SCC 259; *B.M. Narayana Gowda* v. *Shanthamma*, (2011) 15 SCC 476; *H.K.N. Swami* v. *Irshad Basith*, (2005) 10 SCC 243; Malluru Mallappa v. Kuruvathappa, (2020) 4 SCC 313; Santosh Hazari v. Purushottam Tiwari: (2001) 3 SCC 179; Madhukar v. Sangram, (2001) 4 SCC 756).** In the first appeal, all questions of fact and law decided by the trial court/original tribunal are open for reconsideration. (***SantoshHazari* v. *PurushottamTiwari* :(2001)3SCC179; Madhukar v. Sangram, (2001) 4 SCC 756).** A right of appeal carries with it a right of rehearing on law as well as on fact, unless the statute conferring a right of appeal limits the rehearing in some way. ***(Hari Shankar* v. *Rao Girdhari Lal Chowdhury*, AIR 1963 SC 698**; **Vinod Kumar v. Gangadhar, (2015) 1 SCC 391;B.V. Nagesh v. H.V. Sreenivasa Murthy, (2010) 13 SCC 530;Malluru Mallappa v. Kuruvathappa, (2020) 4 SCC 313).**

Section 30 of the PNGRB Act relates to the Appellate Tribunal. Section 30(1) stipulates that, subject to the provisions of the PNGRB Act, the Appellate Tribunal, established under Section 110 of the

Electricity Act, 2003, shall be the Appellate Tribunal for the purposes of this Act, and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act. Section 33(1) enables any person, aggrieved by an order or decision made by the PNGRB under this Act, to prefer an appeal to the Appellate Tribunal. Section 33(3) enables the Appellate Tribunal on receipt of an appeal under sub-section (1), and after giving the parties an opportunity of being heard, to pass such orders thereon as it thinks fit. Section 33(6) enables the Appellate Tribunal, for the purpose of examining the legality or propriety or correctness of any order or decision of the PNGRB referred to in the appeal filed under sub-section (1), either on its own motion or otherwise, to call for the records relevant to disposing of such appeal, and make such orders as it thinks fit. The power conferred on the Appellate Tribunal, both under sub-section (3) and sub-section (6) of Section 33 of the Act, are extremely wide.

This Tribunal is the first appellate authority and, in view of Section 33(3) of the PNGRB Act, the whole case before the original authority (ie the PNGRB) is open for re-hearing both on questions of fact and law. As a matter of law, if the appraisal of evidence by the PNGRB suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, this appellate tribunal is entitled to interfere with the findings of fact recorded in the order appealed against. (**Santosh Hazari v. Purushottam Tiwari: (2001) 3 SCC 179; Madhusudan Das v. Narayanibai : (1983) 1 SCC 35 : AIR 1983 SC 114**).

The PNGRB has, no doubt, relied largely on the report of the Committee to hold that, based on co-ordinates, the subject CNG Station falls within the Vijayawada GA, authorized in favour of the 1st Respondent. The necessity for constitution of a committee is evident

from the impugned Order itself, wherein the PNGRB has recorded that the authorized map given to the entities were GIS based maps in which each and every point of the GA, or within the GA, could be traced through latitude and longitude co-ordinates; the latitude and longitude of the said CNG Station are 16.29066 degrees north and18.411099 degrees east respectively under the area authorized to the 1st Respondent on 28.07.2009; the co-ordinates provided by the 1st Respondent, prima facie, indicated that the CNG Station, built by the Appellant falls within the area authorised to the 1st Respondent; PNGRB had intimated the Appellant to provide the co-ordinates of the CNG Station; instead of compliance, the Appellant asserted that the co-ordinates had no relevance; when PNGRB again intimated the Appellant, vide e-mail dated 10.01.2019, to plot the CNG Station on their map and provide exact co-ordinates for the same, the Appellant, by its e-mail dated 17.01.2019, again emphasized that the GA authorized to them was based on the name of the villages; and to resolve this, the Board had constituted a committee. From the impugned Order it does appear that, while contending that co-ordinates were not relevant, the Appellant chose not to plot the map on their GA on the basis of co-ordinates which resulted in the PNGRB constituting a committee.

As we shall be examining the rival contentions, urged on behalf of all the parties including the PNGRB, on its merits, we see no reason to delve further into the contentions urged, by the Learned Senior Counsel and the Learned Counsel appearing on behalf of the Appellant and Respondents 1 & 2, under this head.

VIII. COMMITTEE'S REPORT:

Ms. Kiran Suri, learned Senior Counsel appearing on behalf of the Appellant, would submit that the PNGRB constituted its internal committee to verify, on the ground, whether "*location of CNG station of the Appellant is in Kanuru village or not*"; the committee visited the site on 21.01.2019, but did not verify whether or not the CNG station of the Appellant was in Kanuru village; the Committee, constituted by the PNGRB, was its own committee with its own interest, and hence the committee's recommendations are unilateral; the said committee had followed only the "co-ordinates" method to determine the location of the Appellant CNG Station, and not the boundaries of the villages as envisaged in the bid documents; and the committee did not determine *whether the CNG Station of the Appellant falls under Kanuru village or not*, which is the crux of the matter in dispute.

Mr. Munawwar Naseem, Learned Counsel for the PNGRB, would submit that the PNGRB constituted a committee of two members to ascertain whether the CNG stations constructed by the appellant fell within the limits of Kanuru village; the said committee visited Vijayawada on 21-1-2019, and carried out ground verification of the CNG Station built by the Appellant at Kanuru; the committee submitted its report dated 6-2-2019 wherein it recorded that the latitude & longitude of the CNG Station fell under the area authorised to Ms. Bhagyanagar Gas Ltd (ie the 1st respondent) even on the map given to the appellant ie M/s. Megha Engineering, along with the authorisation issued on 14.09.2015 for Krishna District GA, excluding the areas already authorized; it is evident from the Committee Report that the CNG station of the Appellant falls under the area authorized to the 1st Respondent; the committee appointed by the PNGRB consisted of experts in the field; and the report dated 06.02.2019, submitted by the committee, is complete and states the correct position.

Sri Shiv Kumar Pandey, Learned Counsel for the 1st respondent, would submit that the PNGRB constituted a committee for ground verification of the CNG station constructed by the appellant; the committee visited the site, and recorded the coordinates in the presence of both the parties and submitted their report dated 28.01.2019 recording that the CNG station constructed by the appellant was within the GA of the 1st respondent; and the appellant filed its objections to the said committee report dated 28.01.2019, but did not object to the coordinates recorded in the committee report.

The committee visited Vijayawada on 21st January 2019 to carry out ground verification of the CNG station put up by the Appellant at Kanuru, Vijayawada. In its report, the Committee recorded that the representatives from Ms Megha Engineering and Ms Bhagyanagar Gas Limited were also called at site i.e. CNG station at Kanuru during verification. The Committee recorded its findings as under: (1) The authorised maps given to both the entities were GIS based maps. The latitude and longitude of the said CNG station are 16.29066 N and 80.411099 °E respectively. (2). This latitude and longitude fall under the area authorised on 28.07.2009 to Ms Bhagyanagar Gas Limited.(3) This latitude and longitude fall under the area authorised to Ms Bhagyanagar Gas Limited even on the map given to M/s Megha Engineering Limited for the authorization issued on 14.09.2015 for Krishna District excluding areas already authorised. (4) in the table, detailing villages with population> 5000, under Charge Area -06, the name of village Kanuru (Ct) has been mentioned. Though, as per the map given to Megha Engineering, Kanuru village falls under the area already authorised to M/s Bhagyanagar Gas Limited. Similar errors were also seen in respect of Poranki, Ganguru in Charge Area - 07. (5) under clause 2.1.1 & 2.1.2 of the bid document for Krishna District, the

areas offered were the area excluding the areas already authorized, and the map of the already authorised areas was available on the PNGRB website. Accordingly, bidders should have verified the areas offered in line with the tender condition before submitting their bids. In view of above, the committee observed that the said CNG station falls under the area authorised to M/s Bhagyanagar Gas Limited.

As noted hereinabove, the Committee constituted by the PNGRB had, in its report, recorded its findings which, to the extent relevant, are that the latitude and longitude of the subject CNG station were 16.29066 N and 80.411099 °E respectively; this latitude and longitude fell under the area authorised on 28.07.2009 to the 1st Respondent; this latitude and longitude fell under the area authorised to the 1st Respondent even in the map given to the Appellant for the authorization issued on 14.09.2015 for Krishna District excluding areas already authorized; under clause 2.1.1 & 2.1.2 of the bid document for Krishna District, the areas offered excluded the areas already authorized, and the map of the already authorised areas was available on the PNGRB website; and the bidders should have verified the areas offered, in line with the tender conditions, before submitting their bids. It is on the basis of the aforesaid findings that the Committee concluded that the subject CNG station fell under the area authorised to M/s Bhagyanagar Gas Limited (ie the 1st Respondent).

A.PNGRB Order Dated 06.02.2019

In its Order dated 06.02.2019, the PNGRB observed that it had heard the Learned Counsel for the parties on 07.01.2019; the Appellant had filed its reply; rejoinder, if any, may be filed by the Complainant (1st Respondent) within two weeks; the field visit was conducted by PNGRB team on 21.01.2019 in the presence of both the parties; a copy of the

Report was hereby served to each of the parties; the parties may file comments, if any, on the field report by 20.02.2019; and the case was being posted for further hearing on 05.03.2019.

B.APPELLANT'S COMMENTS, SUBMITTED TO PNGRB, ON THE COMMITTEE REPORT ON THE CNG STATION AT KANURU

While opposing the report of the committee, and submitting that they did not agree with the findings recorded therein, the Appellant stated, in its letter dated 18.02.2019, that the findings of the Committee were contrary to the fact that the authorization of CA-6 specifically indicated the name of villages and roads passing through the villages, as given by PNGRB to them vide its letter dated 14.09.2015; the Committee had not recorded the submissions and representation of their authorized representatives during their site visit, which clearly depicted that the report of the Committee was totally one-sided and biased; the Committee, in its findings, had given conclusive observations, that "*the said CNG station falls under the area authorized to M/s Bhagyanagar Gas Limited"* which was beyond the jurisdiction and power of the committee members; and hence the Committee's report was biased in favour of the 1st Respondent, and was liable to be ignored and rejected.

In their comments on each of the findings of the Committee, the Appellant submitted, on finding no.1, that the authorized Map given by PNGRB, along with authorization letter dated 14.09.2015, clearly indicated that CA-06 covered Vijayawada (M.Corp) (Part), Ramavarappadu (Ct), Kanuru (Ct), Yenamalakuduru (Ct) through which NH 9 & NH 221 roads were passing ("Ct" means Census town.); from this authorization, it was clear that the villages i.e. Ramavarappadu, Kanuru, Yenamalakuduru fell under the Geographical Area of the Appellant, along with part of Vijayawada Municipal Corporation area;

on the basis of the unambiguous understanding through the authorized map, the Appellant had invested more than Rs. 150 Crores (Rupees One Hundred and Fifty Crores Only) to set-up its CNG Station within Kanuru Village limits, which was also certified by the statutory authorities of the area, and clearly fell under their Geographical Area; PBGRB, in its authorized Map, had clearly and unambiguously stipulated/mentioned the names of villages with population >5000 and part of Vijayawada Municipal Corporation Area, against the different Charge Areas; when PNGRB authorized the Geographical Area, by the name of villages and some part of Vijayawada Municipal Corporation, and when the Appellant had built its CNG Station within the specified village of Kanuru, the question of the Committee taking latitude and longitude did not arise, since the same is contrary to the PNGRB's authorization of the Geographical Area to the Appellant, which is expressly in the name of villages; the Committee members during their visit were satisfied with the Appellant's representation that their CNG Station was well within the village limits of Kanuru, which the Committee members had grossly failed to record in its findings, and had recorded only the latitude and longitude as contended by the Petitioner; the Committee had overlooked and had not dealt with their representation, and had only looked at the representation of the complainant, which could clearly be seen from the findings in their report.

On finding no.2, the Appellant stated that the Committee, without looking into the specific unambiguous authorization given by PNGRB to both of them, could not have concluded in its report only on the basis of latitude and longitude, and could not have observed that the same falls under the area authorized on 28.07.2009 to the 1st respondent; the Committee had exceeded its jurisdiction as it was constituted by the PNGRB only for carrying out ground verification of the CNG station set

up by them at Kanuru ie whether it falls in Kanuru village limits or not; however, the Committee has not recorded whether or not their CNG station was within the village limit of Kanuru, which clearly demonstrated the prejudice of the committee against the Appellant, and in favour of the 1st Respondent; since authorization of the Geographical Area to the Appellant was based on the name of villages with adjacent roads, the question of decisive findings based on the co-ordinates of the CNG station does not arise; the Committee had no authority to give its decisive findings that the latitude and longitude falls under the area authorized to the 1st Respondent, without recording the fact of existence of the Appellant's CNG Station within the village limits of Kanuru; since the committee members had acted beyond their jurisdiction, and as the members of the committee had violated principles of natural justice by not recording their submissions and representations, the report of the committee shadows serious doubts of its being non-prejudicial and unbiased.

On finding no. 3, the Appellant stated that the Committee had nowhere recorded as to whether or not the Respondent's CNG Station falls within the village limits of Kanuru, and has based its finding on latitude and longitude which was never the reason for its constitution; the committee was constituted by the PNGRB for carrying out ground verification of the CNG station set up by them at Kanuru; the jurisdiction of the Committee was limited only to the extent of ground verification of the CNG Station of the Appellant, and whether or not it fell in Kanuru village limits; the committee's report was contrary to the actual ground situation and the authorization; the committee did not take into account the basis of allotment of Geographical Areas by the PNGRB to both the parties; the findings, as recorded by the Committee, was nothing but the contentions of the 1st Respondent raised in its complaint petition;

and the report of the committee is not a report, but a conclusive finding and decision which is much beyond the jurisdiction and powers of the committee.

On finding no.4, the Appellant submitted that this finding is not straightforward, since PNGRB had authorized the Geographical Area to the Appellant strictly based on the name of villages; the entire village limits of Kanuru clearly falls under Charge Area-6 of the Appellant, and there is no doubt or any kind of error; the findings of the Committee that "*Similar errors were also seen in respect of Poranki, Ganguru in Charge Area - 07*", is not relevant to the subject matter of this dispute; all the Charge Areas, authorized by the PNGRB to the Appellant, are in the name of the village; accordingly the Appellant had planned his business model within the authorized Geographical Area; the Committee has no authority to declare that there is an error in Charge Area-07 particularly when the Appellant did not made any submissions on CA-07, and the committee was not authorized to give their findings about other charge areas.

The Appellant submitted that finding no.5 was never discussed and was not a finding recorded during the site visit of the Committee; before submitting the bid, they had examined all instructions, forms, terms and conditions in the Application-cum-Bid documents, and the relevant regulations of the PNGRB; they had read all the documents forming part of the Application-cum-Bid document, and had understood and accepted as required under clause 2.1.1 of the bid documents; with reference to clause 2.1.2 of the bidding document, they had carefully studied the geographical area and charge area before submitting their Application-cum-Bid documents; the Charge Areas, tabulated in the Map provided by PNGRB, had been carefully studied, more particularly with respect to the part area of Municipal Corporation of Vijayawada

after considering the areas already authorized to Bhayganagar Gas Limited; they had also verified on the ground, and had considered it in its bid; there was no part areas for the Village listed in the table, and hence all the villages listed in the table, against respective Charge Areas, had been considered fully within the respective village limits; after considering the Geographical Area and its Charge Areas, the Appellant had made its business plans to implement the CGD network within its jurisdiction GA; and they had continuously invested crores of rupees for laying the pipeline networks, and setting up of CNG stations well within their authorized Geographical Area.

The Appellant further submitted that the conclusive observations of the Committee were perverse, untenable, biased, without proper application of mind and without due appreciation of the facts and circumstances; the Committee had no right to given such conclusive findings without considering the basis of authorization of the geographical area by PNGRB to the Appellant; the committee had acted beyond its power and jurisdiction, and had not followed principles of natural justice; they did not bother to record and deal with the submissions and representations of the Appellant; the committee had failed to look into the core issue for which it was constituted i.e. ground verification of the CNG Station of the Appellant, and whether it falls in Kanuru village limits or not. The Appellant concluded stating that, as the report of the committee was untenable, it was liable to be ignored, rejected and set-aside in the interest of justice and fair play.

We find no merit in the contention, urged on behalf of the Appellant, that the Committee, constituted by the PNGRB, was its own committee with its own interest, and hence the committee's recommendations are unilateral. In effect, the submission is that the

Committee was biased against the Appellant and in favour of the 1st Respondent.

A pre-disposition to decide for or against one party, without proper regard to the true merits of the dispute, is bias. There must be reasonable apprehension of that pre-disposition, and it must be based on cogent material. **(Gurcharan Singh Sahney v. Harpreet Singh Chabbra, 2016 SCC OnLine Hyd 90).** Allegations of bias are easier made than established, and such allegations require proof of a very high order. The mere fact that the members of the Committee are officers of the PNGRB, or that they applied the "co-ordinates test" to determine the exact location of the CNG sub-station to ascertain whether it falls within Vijayawada GA or the Krishna District GA, without anything more, would not justify an inference of bias.

It is settled law that the person, against whom malice or bias is alleged, should be impleaded as a party respondent to the proceedings, given an opportunity to meet the allegations, and in his absence no enquiry over the allegations should be made. **(*State of Bihar* v. *P.P. Sharma*, 1992 Supp (1) SCC 222 : AIR 1991 SC 1260; T. Premachandra Rao v. B. Pramod, 2006 SCC OnLine AP 445).** These officers of the PNGRB are not parties to the present proceedings, and consequently these allegations cannot be examined in this Appeal.

Except to contend that the "co-ordinates test" should not be applied, and reference to Kanuru village in CA-06 of the table in the Krishna District GA map should be accepted as proof of the subject CNG station falling within Krishna District GA, the Appellant does not even dispute that, in case the "coordinates test" (longitude and latitude) were to be applied, the subject CNG station would fall within the first

Respondent's Vijayawada GA. In the objections filed to the report of the Committee, the Appellant had only contended that the PNGRB had authorized Krishna District GA to the Appellant strictly based on the name of villages, and the entire village limits of Kanuru falls under Charge Area-06 of the Appellant, as per the PNGRB Map of Krishna District GA authorized in their favour; and the Committee could not have arrived at the conclusion, that the subject CNG station fell under the area authorised to the 1st Respondent, merely on the basis of latitude and longitude. The Appellant has not even claimed that, on application of the "co-ordinates test", the location of the subject CNG station fell within the limits of Krishna District GA, and not within the boundaries of Vijayawada GA.

In the impugned Order, PNGRB had, no doubt, relied largely on the findings of the Committee, in its report, that the co-ordinates (latitude and longitude) of the CNG station, set up by the Appellant at Kanuru, fell within the 1st Respondent's GA. As shall be detailed later in this Order, the PNGRB gave the Appellant another opportunity, even after receipt of their objections to the Committee's report, of establishing that, based on co-ordinates, the CNG Station at Kanuru fell within their GA, and not within the boundary limits of Vijayawada GA, authorization for which was granted earlier in favour of the 1st Respondent.

IX. AUTHORISED AREA: ITS SCOPE:

Sri Shiv Kumar Pandey, Learned Counsel for the 1st respondent, would submit that the PNGRB, in the exercise of its powers under Section 61 of the PNGRB Act, framed the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations,2008 **(**"the 2008 Regulations" for short**);** Regulation 2 (1) (c) defines authorized area; and the PNGRB is the only authority competent to carve out a

Geographical Area which is depicted in the map annexed to every bid and authorization.

Ms. Kiran Suri, Learned Senior Counsel for the Appellant, would submit that, in reply to a query from this Tribunal as to whether GA maps are based on boundaries or co-ordinates, PNGRB, in its affidavit dated 25.06.2021, has relied on Regulation 2(1)(c) of the PNGRB Regulations, 2008; this provision makes no mention regarding adoption of the co-ordinates method; and, on the other hand, it is clearly stated therein that it shall be based on the name of villages, blocks, tehsils, sub-divisions or districts for which boundaries are notified by the Central or State Government.

A.RELEVANT STATUTORY PROVISIONS:

Section 11 of the PNGRB Act relates to the functions of the Board and, under sub-section (c) thereof, the Board shall authorise entities to- **(i)** lay, build, operate or expand a common carrier or contract carrier; **(ii)** lay, build, operate or expand city or local natural gas distribution network. Section 17(2) provides that an entity which is laying, building, operating or expanding, or which proposes to lay, build, operate or expand, a city or local natural gas distribution network shall apply in writing for obtaining an authorisation under this Act. Under the proviso thereto, an entity laying, building, operating or expanding any city or local natural gas distribution network authorised by the Central Government at any time before the appointed day shall furnish the particulars of such activities to the Board within six months from the appointed day. Section 17(3) stipulates that every application, under sub-section (1) or sub-section (2), shall be made in such form and in such manner and shall be accompanied with such fee as the Board may, by regulations, specify. Section 17(4) provides that, subject to the provisions of this Act and consistent with the norms and policy

guidelines laid down by the Central Government, the Board may either reject or accept an application made to it, subject to such amendments or conditions, if any, as it may think fit. Section 17(5) provides that, in the case of refusal or conditional acceptance of an application, the Board shall record in writing the grounds for such rejection or conditional acceptance, as the case may be.

Regulation 2(1)(c), of the 2008 Regulations, defines "authorized area" to mean the specified geographical area for a city or local natural gas distribution network (hereinafter referred to as the CGD network) authorized under these regulations for laying, building, operating or expanding the CGD network which may comprise of the following categories, either individually or in any combination thereof, depending upon the criteria of economic viability and contiguity as stated in Schedule A, namely: (i) geographic area, in its entirety or in part thereof, within a municipal corporation or municipality, any other urban area notified by the Central or the State Government, village, block, tehsil, sub-division or district or any combination thereof; and (ii) any other area contiguous to the geographical area mentioned in sub-clause (i).

Regulation 17 of the 2008 Regulations relates to the entity authorized by the Central Government for laying, building, operating or expanding CGD network before the appointed day. Regulation 17(1) provides that the entity shall submit relevant information along with supporting documents in the form as in Schedule H within a period of one hundred and eighty days from the appointed day. Regulation 17(2) requires the entity to abide by the terms and conditions of the authorization by the Central Government including obligations, if any, imposed by the Central Government. Regulation 17(3) requires the entity to abide by the relevant regulations for technical standards and specifications, including safety standards and the quality of service

standards. Regulation 17(4) enables the Board to consider grant of exclusivity on such terms and conditions as per the provisions in the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008 ("the Exclusivity Regulations" for short).

B.PNGRB LETTER DATED 28.07.2009

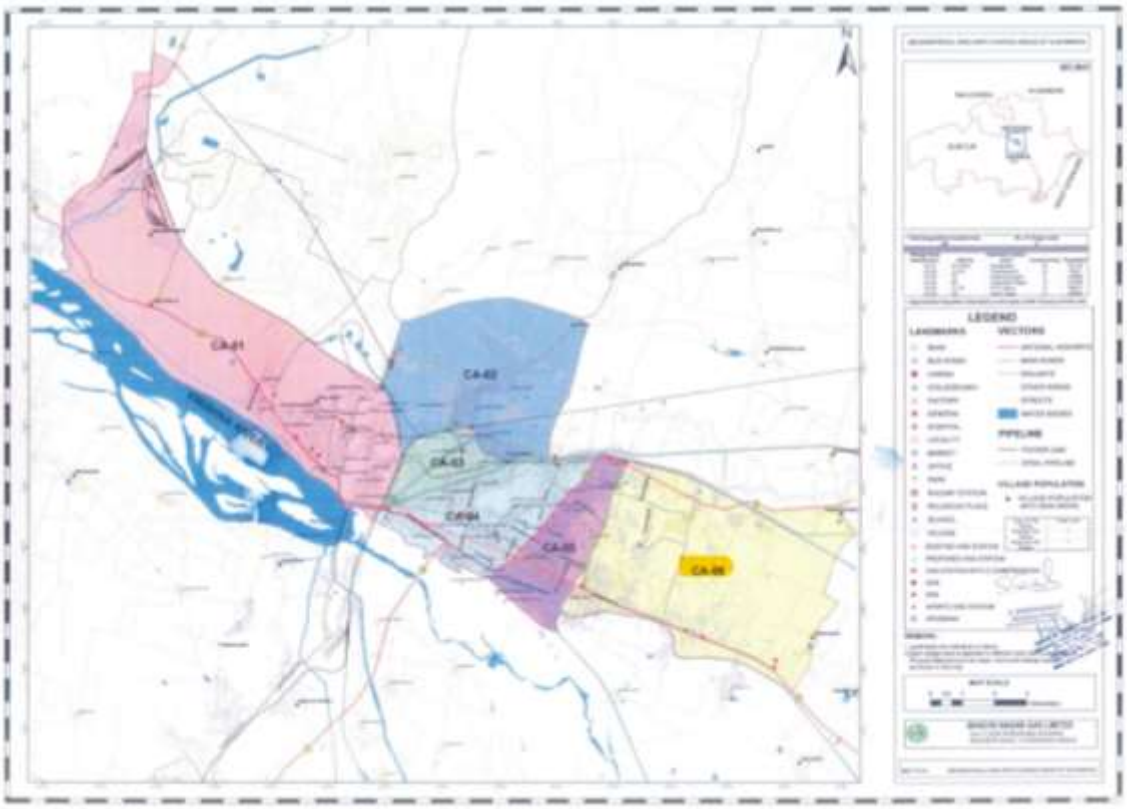
On the subject of acceptance of the Central Government Authorization given to the 1st Respondent, (ie M/s Bhagyanagar gas Limited ("M/s BGL" for short), for Vijaywada CGD Network, PNGRB, after referring to their earlier letter dated 22.10.2008, informed the 1st respondent, by its letter dated 28.07.2009, that the 1st Respondent had, by its letter dated 25.07.2009, submitted a Performance Bank Guarantee, for Vijayawada CGD Network, for Rupees Four Crores; the PNGRB, in view of the authorization given by the Central Government vide letter Ref:16019/05/08-GP dated July 9th 2008, hereby grants exclusivity for 5 years from the date of issue of the Performance Bank Guarantee to the 1st Respondent, for Vijaywada CGD Network, as requested by them vide letter dated 18th July, 2008, subject to the following terms and conditions: (1) M/s BGL shall abide by the provisions of the PNGRB Act, 2006 and relevant regulations including amendments thereof and regulations, if any, framed from time to time.(2) M/s BGL shall abide by the Technical Standards and specifications including Safety Standards (T4S) for, city and/or Local Natural Gas Distribution Networks Regulations 2008 including the Emergency Response & Disaster Management Plan (ERDMP), (3) BGL shall abide to Quality of Service standards as per regulations framed under PNGRB Act,2006. (4) M/s BGL shall abide by the regulations covering exclusivity for marketing of gas from the purview of Contract Carrier & Common Carrier as specified In the Petroleum

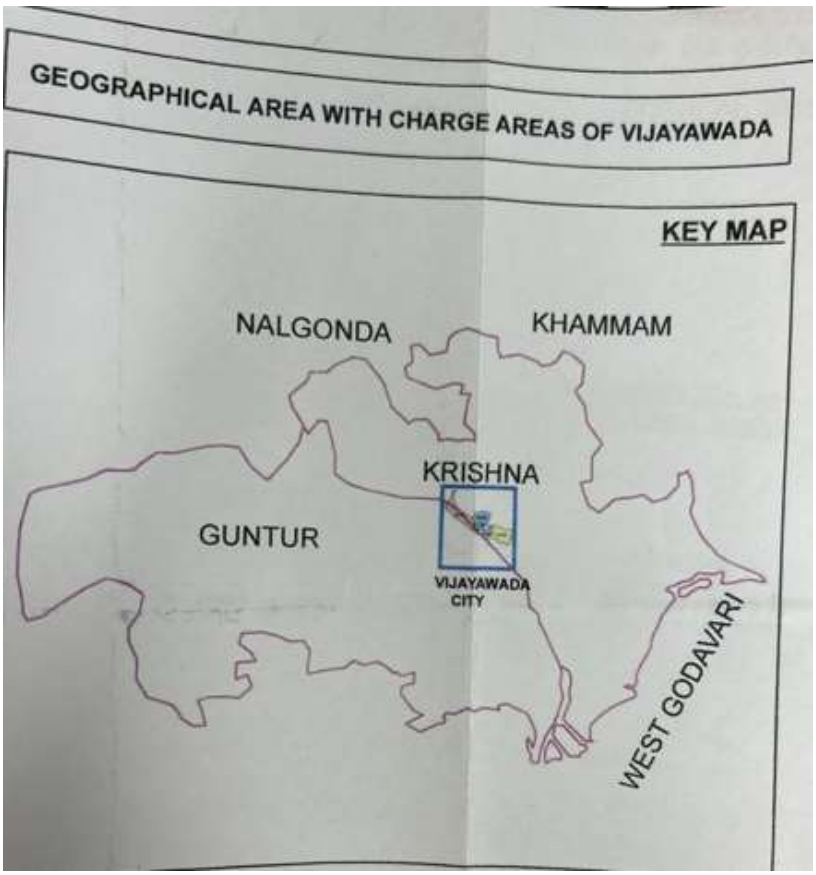
and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Network) Regulation, 2008.(5) The Geographical Area & Charge Area accepted for CGD Network Authorization for Vijayawada GA is as per submitted map duly signed by M/s BGL & PNGRB(Copy enclosed) . The project milestones for the above CGD Network development shall be as per Annnex-1,

The 1st Respondent was further informed that violation of any condition/conditions, mentioned in clauses (1) to (5) shall be treated as default and shall be dealt as per the provisions of the PNGRB Act, 2006; and the 1st Respondent should submit the Network Tariff and Compression Charge for CNG as per the Petroleum & Natural Gas Regulatory Board (Determination of Network Tariff for City or Local Natural Gas Distribution Networks and Compression Charge for CNG) Regulations,2008 for the approval of the Board separately within 30 days of the issue of this letter.

Enclosed with the said letter, under the head “MILE STONE FOR GEOGRAPHICAL AREA” it is stated: (1) Geographical Area-VIJAYWADA (2) Charge Areas- As defined in the enclosed Map-1 (3) Year Wise Domestic PNG Connections Commitment during the Exclusivity Period of 5 Years (4) Year Wise Steel Pipeline Length Commitment during the Exclusivity Period of 5 Years (5) Year Wise Compression Capacity Commitment during the Exclusivity Period of 5 Years. It is further stated that Non Achievement of any of the above project milestone shall lead to revocation of the specific performance Bond Bank Guarantee, and the Period of exclusivity shall start from the date of issue of specific Performance Bank Gurantee. The project milestone as mentioned above shall be on year to year basis from the date of issue of PBG. Attached to the said letter, was the Map of the GA of the 1st Respondent.

C.MAP, OF THE 1ST RESPONDENT'S GA, ENCLOSED TO THE LETTER OF THE PNGRB DATED 28.07.2009:

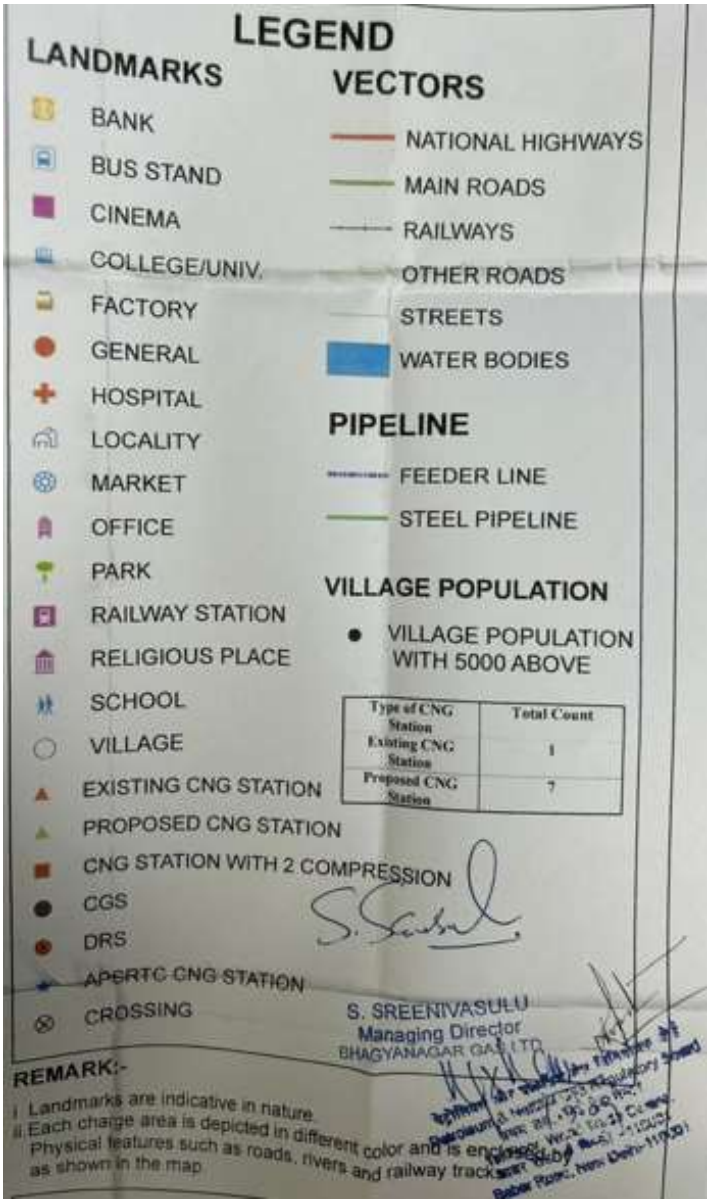


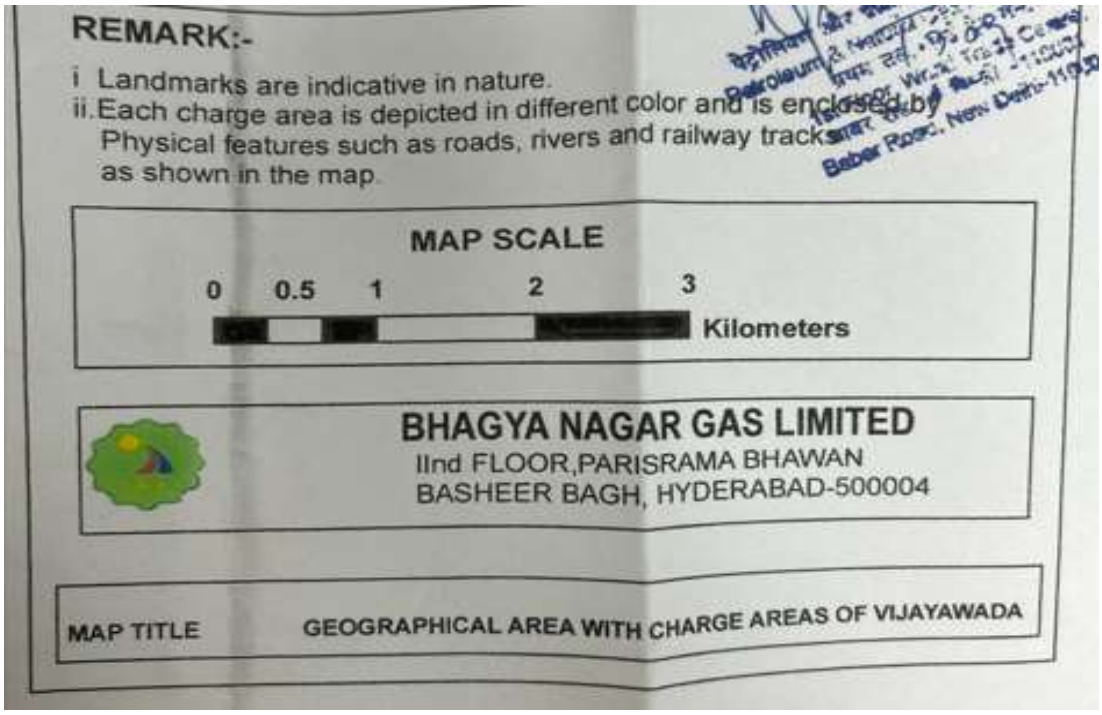


Total Geographical Area(Sq Kms)	No. of Charge Areas
133	6

Charge Areas Identification	CNG No.	Important location within	Area(Sq Kms)	Population*
CA-01	C7,C8,B1	Donabanda	45	157729
CA-02	C3,C5	Payakapuram	24	74627
CA-03	C4	Kedareswarapet	6	148966
CA-04	B2	Prajasakthi Nagar	12	210306
CA-05	C1,C2	RTC Colony	9	184017
CA-06	NA	Ashok Nagar	37	100630

★ Approximate Population Calculated on the basis of 2001-Census of India data

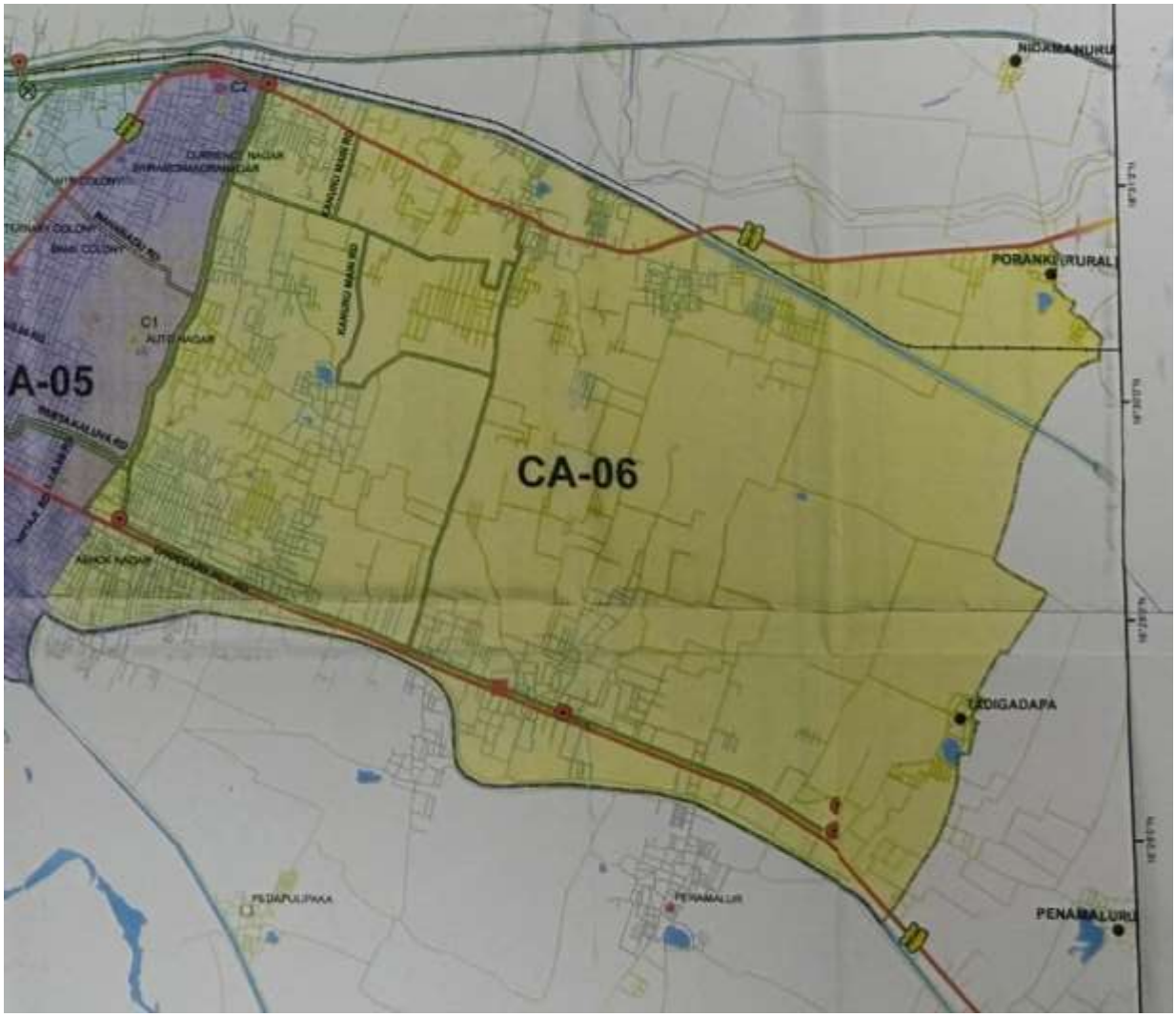




Shorn of all other details, the main part of the map attached to the letter of the PNGRB dated 28.07.2009, (whereby exclusivity was granted to the 1st Respondent for the GA authorized in their favour by the Central Government earlier), is as under:-

F7.4.2015

CA-06 of the 1st Respondent's GA, on its being culled out from the map attached to the letter of the PNGRB dated 28.07.2009, is as under:-



It is in the yellow marked portion, as detailed in the aforesaid map (which is CA-06 of the 1st Respondent's GA), that the CNG station established by the Appellant at Kanuru is said to be located; and applying the test of co-ordinates (latitude and longitude), the CNG station is said to fall within CA-06 of the GA of the 1st Respondent.

Regulation 2(1)(c) of the 2008 Regulations makes it clear that the specified geographical area may comprise either in its entirety or in part within a municipal corporation or municipality or any other urban area,

village, block, tehsil, sub-division or district or any combination thereof; and also any other area contiguous to this area. Except in cases where anauthorization was granted by the Central Government before the PNGRB was constituted, the power to specify an authorised area is conferred, under the PNGRB Act, exclusively on the PNGRB.

While Section 11 (c) (ii) of the PNGRB Act stipulates that the Board shall, among other functions, authorise entities to lay, build, operate or expand a city or local natural gas distribution network, Section 17 of the Act makes a distinction between entities to whom an authorisation is granted by the PNGRB, and those entities which were granted an authorisation by the Central Government earlier. This distinction is clear from a plain reading of Section 17(2) of the Act. The main part of the said Section requires an entity, which proposes to lay, build, operate or expand a city or local natural gas distribution network, to apply in writing to the Board for grant of an authorisation. Unlike the entities aforementioned, the proviso thereunder requires the entities, authorised by the Central Government, only to furnish particulars of such activities, (ie lay, build, operate or expand a city or local natural gas distribution network), to the PNGRB, and not seek grant of authorization.

Entities which are granted authorisation by the Central Government are required, in terms of Regulation 17 of the 2008 Regulations, to submit relevant information along with supporting documents, in the form prescribed in Schedule IV, to abide by the terms and conditions of the authorisation given in their favour by the Central Government as well as the conditions imposed therein, besides adhering to the relevant regulations. Regulation 17(4) enables the Board to grant exclusivity to such an entity as per the terms and conditions of the Exclusivity Regulations. Regulation 5(1) of the

Exclusivity Regulations confers power on the Board to grant exclusivity to an entity subject to the terms and condition stipulated therein.

With respect to those entities, which were not granted authorisation by the Central Government and which have submitted an application to the Board seeking its authorisation, Section 17(4) confers power on the Board either to reject or accept such an application. The Board is, however, obligated, in view of Section 17(5), to give reasons in case it either rejects or conditionally accepts the application seeking authorisation.

By its letter dated 28.07.2009, the PNGRB informed the first Respondent that, in view of the authorisation given in their favour by the Central Government on 09.07.2008, the PNGRB was granting them exclusivity for a period of five years for the Vijayawada CGD Network, as sought by them vide letter dated 18.07.2008, subject to the terms and conditions stipulated in the said letter. Condition 5 of the said letter stipulates that the geographical area and the charge area, accepted for the CGD network authorisation for Vijayawada GA, was as per the submitted map duly signed both by the first Respondent and the PNGRB. Attached to the said letter of the PNGRB dated 28.07.2009, was the map of Vijayawada GA for which the first Respondent had been granted an authorisation by the Central Government. In view of the authorisation given to them by the Central Government on 09.07.2008, and the exclusivity granted to them by the PNGRB by its letter dated 28.07.2009, the first Respondent is entitled to operate exclusively within its GA ie Vijayawada GA.

Unlike the first Respondent which was granted an authorisation by the Central Government, the Appellant was granted authorisation by the PNGRB after following the procedure prescribed in the Act and the regulations for inviting applications cum bids, and thereafter granting

authorisation. In the light of the authorisation given by the Central Government and the exclusivity given by it, the PNGRB could not, in law, have granted the Appellant authorisation to operate within any part of the GA of the first Respondent. Any error on part of the PNGRB, in having got prepared the table given in the map of Krishna District GA, (based on which bids were invited and authorisation was given in favour of the Appellant), cannot result in the first Respondent's right, to operate exclusively within its GA (Vijayawada GA), being defeated.

X. SANCTION OBTAINED FROM LOCAL AUTHORITIES: ITS EFFECT:

Ms. Kiran Suri, learned Senior Counsel appearing on behalf of the Appellant, submits that the Appellant had constructed the CNG-Station in its own land in RS No. 230/2 in Kanuru village, for which permissions were granted by the Kanuru Gram Panchayat authorities vide Resolution dated 16.03.2018, and AP Panchayat Raj Department vide its letter dated Apr 2018; the Vice-Chairman, Vijayawada, Guntur, Tenali & Mangalagiri Urban Development Authority (VGTMUDA), Vijayawada, another statutory authority, provided the land use map showing the boundaries of Kanuru Village, wherein the land in Re-Survey No 230/2 is shown to fall within Kanuru village limits; and the village limit, as fixed by the local statutory body, is always final and conclusive.

On the request of the Appellant, for issue of no-objection certificate for construction of the CNG Station at R.S. No. 230/2 under the jurisdiction of Kanuru Grama Panchayath, the Kanuru Grama Panchayath, vide Resolution No. 244 Dated 16.03.2018, recorded that, as the site was situated on the Vijaywada-Machilipatnam Road, and at the corner of Endowments Colony, permission was granted to "Megha

Engineering & Infrastructures Ltd to construct CNG station without any interruption to the traffic.

Regarding the request for grant of No Objection Certificate for setting up of Daughter Booster station at R$ No. 230/2, Kanuru Village for the supply of CNG to Auto and Cars, the District Panchayat Officer Krishna, informed the Collector & District Magistrate, Krishna, vide LD's No. 1433/2017 Pts 3 dt.-04-2018, that the Gram Panchayat in its Resolution No. 244 dated 16.03.2018 had approved the request, and had conveyed it's no objection to install/ setting up of Daughter Booster station at R$ No. 230/2, Kanuru Village in Penamaluru Mandal of Krishna District for the supply of CNG to Auto and Cars; therefore, this department had no obiection for setting up of Daughter Booster station at R$ No. 230/2, Kanuru Village in Penamaluru Mandal of Krishna District for the supply of CNG to Auto and Cars; and the original plan received, was submitted herewith for taking further action in the matter.

The power conferred on the PNGRB, both under the PNGRB Act and the 2008 Regulations, is only to grant authorization for different geographical areas, within which the authorized entities are entitled to lay, build, operate or expand their Natural Gas Distribution network. However grant of authorization would not, by itself, enable the authorized entity, without obtaining the requisite statutory approvals, to establish and operate the CNG station. Grant of authorization by the PNGRB merely enables the authorized entity to operate within the authorized GA, and does not exempt the authorized entity from complying with its obligations of obtaining other statutory approvals required to construct and establish a CNG station.

A no objection certificate, for construction and operation of the CNG station within Kanuru village limits, was required to be obtained from the Kanuru Gram Panchayat as also the District Panchayat

Officer, Krishna. Without approval of these authorities, the Appellant could not have installed or set up the Daughter Booster Station in Kanuru Village. Grant of NOC, by both these authorities, would only go to show that the location of the subject CNG station, installed by the Appellant, falls within Kanuru Village limits. That does not, however, mean that the said CNG station falls outside the boundaries of Vijayawada-GA, and within Krishna District- GA, more so as the 1st Respondent's authorization for, and exclusivity with respect to, Vijayawada-GA was granted more than six years prior to bids being invited for grant of authorization for the Krishna District-GA. Further the bid document itself makes it clear that bids were being invited for grant of authorization for Krishna District GA, excluding the areas already authorized (ie the Vijayawada GA authorized in favour of the 1st Respondent). The statutory sanctions, above referred, would not, by itself, support the Appellant's claim that they had constructed the CNG station within Krishna District-GA, or that the location of the subject CNG station fell beyond the boundaries of Vijayawada-GA.

The Appellant's contention that the Committee, constituted by the PNGRB, did not determine the question whether or not the CNG station established by the Appellant falls within Kannur village, matters little, as the material on record, coupled with the admission of the PNGRB of having committed an error, makes it clear that the CNG station established by the Appellant falls within Kanuru Village limits. That, by itself, is not conclusive. As the boundary of Krishna District GA explicitly excluded the area falling within Vijayawada GA, for which authorization was granted in favour of the 1st Respondent in the year 2008, the PNGRB lacked jurisdiction even to invite bids for any part of Vijayawada GA. The mere fact that the subject CNG Station is located within Kanuru village limits, or that Kanuru village is shown under CA-06 in the

table given on the lower portion of the left side of the Map of Krishna District GA, would neither confer any right on the Appellant to establish its CNG station within any part of Vijayawada GA, nor deny the 1st Respondent its right to exclusively operate within each and every part of Vijayawada GA.

While we are satisfied that the Appellant had installed/ constructed the CNG station (Daughter Booster Station) in its own land in Kanuru village, the proprietary rights of the Appellant over the land, on which the subject CNG station was installed, has no bearing on the question whether or not the CNG station is located within the 1st Respondent's GA. Even if location of the subject CNG station is held to fall within Vijayawada-GA boundary limits, and not within Krishna District-GA, the Appellant would nonetheless continue to remain owner of the land on which the CNG station was constructed, as also of the assets thereat. The Appellant would, however, no longer be entitled to continue operating the subject CNG station or market the CNG products therefrom.

XI. SHOULD THE LOCATION OF THE CNG SUBSTATION BE DETERMINED ON THE BASIS OF THE TABLE SHOWN IN KRISHNA DISTRICT GA MAP UNDER CA-6 OR BASED ON CO-ORDINATES?

Ms. Kiran Suri, learned Senior Counsel appearing on behalf of the Appellant, would submit that the complaint filed by the 1st Respondent before the PNGRB, that the Appellant's CNG station in Kanuru village fell under its GA, is based on "co-ordinates" (i.e. longitude & Latitude); the internal committee, constituted by the PNGRB, relied on "coordinates" in holding that the CNG Station of Appellant fell in the GA of the 1st Respondent; based on the recommendations of the committee, PNGRB passed the impugned order dated 18.02.2020 in

favour of the 1st Respondent; the table in the map dated January-2015, which forms part of the Letter of authorization (LOA), clearly mentions the name of villages which fall under different CAs, along with NHs passing through such CAs; since it is not possible to show all these villages in a small scaled map, this table in the map is a true and accurate guide of the areas/villages which fall under different CAs; as such, there is no confusion or ambiguity with regard to the villages which fall under different CAs authorized to the Appellant; the extent of the Geographical Area ("**GA**") of Krishna District (excluding the area already authorized), is shown in Map bearing No. PNGRB/CGD/BID/ 5/2015/4/GA-Krishna District dated January-2015, which is part of the Letter of authorization (LOA); in the said map, Charge Areas ("**CA**") are marked; a Table containing the CA numbers, and the village names covered by such CAs, are given on the left side of the map; in the said Table "*Roads Passing Through*" (such as NHs) is also given against each CA; another Table is given, on the right side of the map, showing the CA name and Mandal name in which the CA falls; according to the Table, CA-06 clearly covers the areas of (1) Vijayawada (M. Corp) (Part), (2) Ramavarappadu (Ct), (3) **Kanuru (Ct)** & (4) Yenamakakuduru (Ct); and "Ct" means "**Census town**" as per the Revenue maps.

Learned Senior Counsel would further submit that, during the hearing held before it on 31.07.2020, this Tribunal had asked a specific question as to whether the disputed area was part of the LOI issued to the Appellant; the PNGRB, in its counter-reply to the Appeal, has vaguely stated that "*LOI dated 28.07.2015 issued by PNGRB to the Appellant states the area of authorization will be as per the extent shown in Annexure-1 of the bid documents and that the grant of authorization shall be governed by the terms and conditions contained*

in the Application cum bid document (ACBD), clarifications issued and Schedule D of PNGRB CGD Authorization Regulations, 2008"; and the PNGRB did not give a specific reply as to whether or not the disputed area was part of the LOI of the Appellant.

Learned Senior Counsel would also submit that the 1st respondent was granted authorization by the Central Government on 26.10.2008, and the map depicted CA-06 contained only Ashok Nagar; the map provided the break-up of areas pertaining to each CA; Kanuru village is not part of Ashok Nagar; the authorisation of the 1st respondent was approved by the PNGRB on 26.07.2009, and no change was made in CA-06 or areas in respect of CA-01 to CA-05.

Sri Shiv Kumar Pandey, Learned Counsel for the 1st respondent, would submit that the order of the PNGRB, declaring the CNG Station of the Appellant to be in the geographical area allocated to the 1st Respondent, was based on a scrutiny of the GIS Co-ordinated map given to the 1st respondent and the appellant for their respective Geographical Areas (GAs); the Maps allocated to the parties were never under dispute; only the location of the CNG station, established by the appellant, is in dispute; the 1st respondent has been operating in the GA of Vijayawada from September 2005, i.e. prior to the notification of the PNGRB Act, and is a Central Government authorized entity; after notification of the PNGRB Act on 01.10.2007, the entities already operating, pursuant to the Central Government authorization, had to furnish information to the PNGRB of their activities in their respective GAs along with the MAP of their Geographical Area as per Section 17 of the PNGRB ACT read with Regulation 17 of the Authorisation Regulations, and the PNGRB issues letter of acceptance of the Central Government Authorisation; accordingly, such a letter was issued to the 1st respondent on 28.07.2009; and the said letter is accompanied by a

GIS coordinated map indicating the charged areas and the total Area allocated to the 1st respondent i.e. 133 sq. kms.

Learned Counsel would further submit that the appellant was granted authorization for the GA in Krishna District (excluding area already authorized), vide letter dated 14.09.2015, pursuant to a bidding process initiated by the PNGRB; Clause 1 of the said letter mentions the map indicating the Charged areas and the total Area allocated to the appellant i.e. 8,424 sq. kms; the said map also indicated a yellow portion ie the area already allocated to the 1st respondent; the CNG station in question falls in the said area; the appellant has filed a copy of its bid documents along with its rejoinder dated 19.08.2020; clause 1.1.1 gives the geographical area and the related information which clearly states that the GA is as depicted in the Map; Clause 2.1.2 of the bid document states that the bidder must carefully study the GA before submitting the bid application; the map, along with the bid for the GA in Krishna District (excluding area already authorized), had a portion marked in yellow as **"Excluding Vijaywada GA Authorised to BGL";** the appellant, while bidding for the GA, was aware of the area authorized to the 1st respondent, and even otherwise was duty bound to do so; and this is evident from query no.1 asked by this tribunal vide order dated 04.09.2020.

Mr. Munawwar Naseem, Learned Counsel for the PNGRB, would submit that the Vijayawada GA map was on the website of the PNGRB when the tender was floated, and the bidders were required to be mindful of the contiguous areas which had already been allotted to others earlier; Annexure 1 of the Application cum Bid Document contained the map depicting the Geographical Area and the Charge Areas; bidders were informed that it was incumbent upon them to ***"…carefully study the geographical area and charge area before***

submitting their Application-cum-Bid." (Clauses: 2.1.2, 3.1.1 and 3.1.2); as per the map of Vijayawada GA, Kanuru village was authorized in favour of the 1st Respondent on 28.07.2009; Vijayawada GA was authorized by PNGRB, to the 1st respondent (BGL), under Regulation 17 of the 2008 Regulations, since the entity was already operating as per the Central Government Authorization prior to the appointed date of PNGRB; a copy of the said authorization letter is available on the PNGRB's website; the expression "***excluding area already authorized***" is mentioned on the cover page of the bid document, as well as in various clauses of the invitation/tender for application-cum-bid document issued by the PNGRB for Grant of Authorization for laying, building, operating or expanding city or local natural gas distribution Network in the Geographical Area of Krishna District (***excluding area already authorized***); the authorized map (enclosed with the bid document as well as with the authorization letter) is a GIS based map in which each and every point of the GA or within the GA can be traced through latitude & longitude coordinates; the onus is on the bidder, and thereafter the authorized entity, to make itself aware that their authorized area expressly excludes the previously authorized area; and entities were required to carefully go through the co-ordinates mentioned in the map and ascertain their GA.

A.APPELLANT'S LETTER OF AUTHORISATION DATED 14.09.2015:

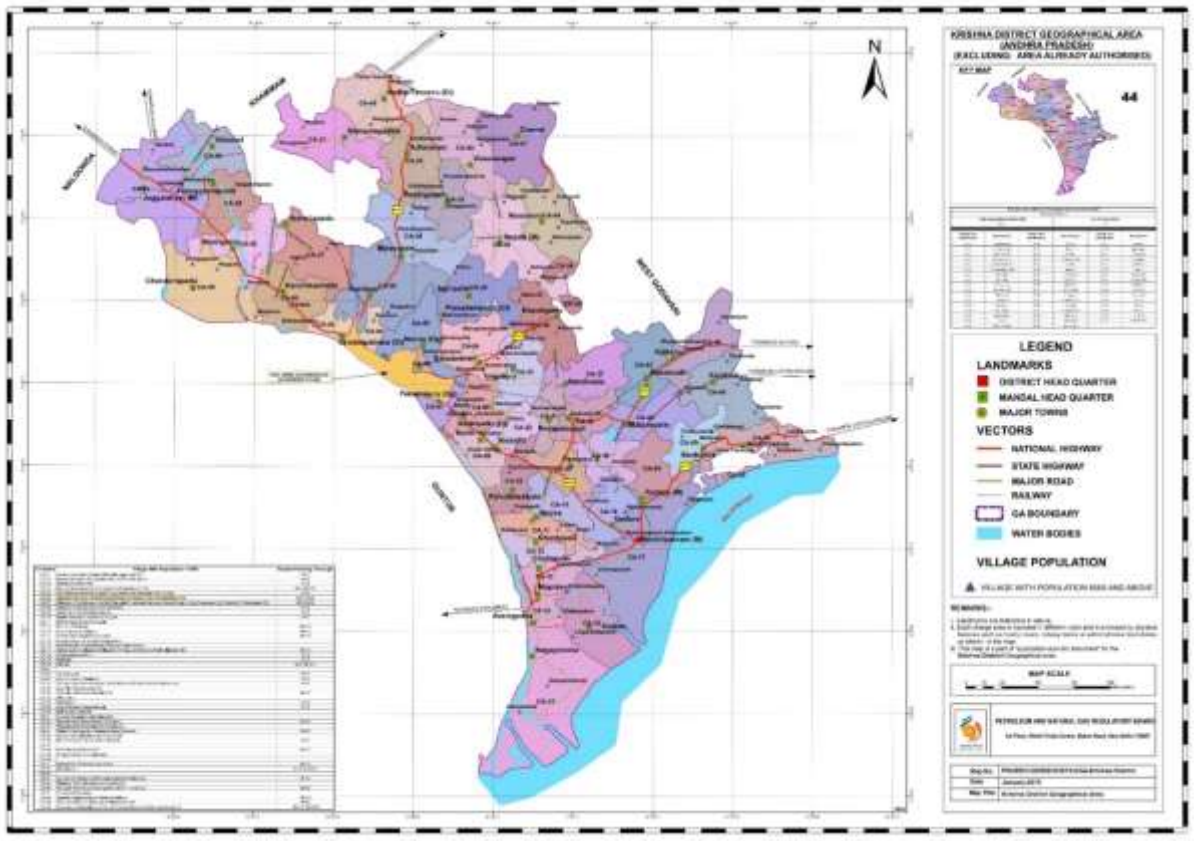
The PNGRB informed the Appellant, vide letter dated 14.09.2015, that, enclosed to the said letter, was the authorization in Schedule D for the GA of Krishna District (excluding area already authorized) in duplicate, which was issued with the approval of the Board. The Grant of authorization for laying, building, operating or expanding CGD network, in Schedule D (in terms of regulations 10 (1) and 18 (7)),

as enclosed along with the PNGRB letter dated 14.09.2015, records that, with reference to the Appellant's application-cum-bid for grant of authorization for laying, building, operating or expanding the CGD network in **Krishna District (excluding area already authorized),** it had been decided to grant them the authorization subject to the 2008 Regulations and the following, among other, terms and conditions: (1) The Authorized Area for laying, building, operating or expanding the proposed CGD Network shall cover an area of 8424 square kilometers and as depicted in the enclosed drawing; (6) The entity is allowed an exclusivity period under the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008, in respect of the following:(a) **300** months from the date of issue of this communication for laying, building and expansion of the CGD network; and (b) **60** months from the date of issue of this communication in terms of an exemption from the purview of common carrier or contract carrier for the CGD network: Provided that the entity meets the obligations in line with the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008: Provided further that the period of exclusivity allowed under sub-clause (a) or sub-clause (b) may be terminated before expiry of the period mentioned above in line with the provisions under Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008; (12) The furnishing of performance bond of **Rs 15 Crores (Rupees Fifteen Crores Only**) is a guarantee for timely commissioning of the project as per the prescribed targets in the bid and for meeting the service obligations during the operating phase of the project. (13) The entity shall abide by- (a) the service obligations as specified under regulation 14 of the Petroleum and Natural Gas

Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008; (b) the service obligations specified under the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008; (c) the service obligations specified in Schedule-J to the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008; (d) the quality of service standards as specified under regulation 15 of Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008; (15) The entity shall comply with the applicable provisions under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008, relevant regulations for technical standards and specifications, including safety standards, any other regulations as may be applicable and the provisions of the Act, and (16) The entity shall comply with any other term or condition which may be notified by the Board in public interest from time to time.

The Appellant was requested to confirm its acceptance by filling-in the acceptance of the grant of authorization, and return the same in original.

B. MAP OF APPELLANT'S GA:



CA Name	Village With Population > 5000	Road/s Passing Through
CA-01	Gandrai,Shermohammedpet,Chillakallu,Jaggaiahpet (M)	NH 9
CA-02	Pendyala,Moguluru,Konayapalem,Muppella,Chanderlapadu	NH 9
CA-03	Paritala,Kanchikacherla	NH 9
CA-04	Kavuluru,Kethanakonda,Ibrahimpatnam (Ct),Guntupalle (Ct)	NH 9, NH 221
CA-05	Adivinekkalam, Gudavalli,Gollapudi (Og),Surampalle,Kesarapalle,Nunna (Og)	NH 9
CA-06	Vijayawada (M Corp.) (Part),Ramavarappadu (Ct),Kanuru (Ct),Yenamalakuduru (Ct)	NH 5, NH 9
CA-07	Enikepadu (Og),Nidamanuru (Og),Edupugallu,Punedipadu,Vanukuru,Gosala,Ganguru (Og),Penamaluru (Og),Poranki (Ct),Tadigadapa (Ct)	NH 5, NH 9
CA-08	Uppaluru,Kolavennu,Katuru,Kankipadu (Ct)	NH 9
CA-09	South Valluru,North Valluru,Vuyyuru	NH 9
CA-10	Kapileswarapuram,Mantada,Choragudi	NH 9
CA-11	Kosuru,Kaza,Mowa,Ghantasala	
CA-12	Mallavolu,Srikakulam	NH 214
CA-13	Lakshmipuram,Challapalle	NH 214
CA-14	T.Kothapalem,Mopidevi,Avanigadda	NH 214
CA-15	Ganapeswaram,Edurumondi,Nagayalanka	
CA-16	Pedakallepalle,Viswanadhapalle,Lingareddipalem,Koduru	
CA-17	Sultannagaram Gollapalem,Tallapalem,Chinnapuram,Pedana (M),Machilipatnam (M)	NH 214
CA-18	Akulamannadu,Guduru	NH 9
CA-19	Nidumolu	NH 9
CA-20	Pamarru	NH 9, NH 214
CA-21		
CA-22	Ventrapragada	NH 9
CA-23	Akuru,Telaprolu,Manikonda	NH 5
CA-24	Veerapaneni gudem,Vedurupavuluru,Buddavaram,Peda Avutapalle,Gannavaram	NH 5
CA-25	Agiripalle,Prasadampadu (Ct)	
CA-26	Velagaleru,Konduru,Kondapalle (Ct)	NH 221
CA-27	Alluru,Alluru	
CA-28	Nandigama	NH 9
CA-29	Anigandlapadu,Penuganchiprolu	NH 9
CA-30	Bhimavaram,Vatsavai	
CA-31	Ulukuru,Penugolanu,Gampalagudem	
CA-32	Kambampadu,Cheemalapadu,A.Konduru	NH 221
CA-33	Kunaparajuparva,Rangapuram,Reddigudem	
CA-34	Pulluru,Chandragudem,Vehadam,Edara,Mylavaram	NH 221
CA-35	Digavalli,Gollapalle,Mirjapuram,Nuzvid (M)	
CA-36	Mallavilli,Veeravalli,Kanumolu,Bapulapadu	NH 5
CA-37		
CA-38	Gudivada (R),Gudivada (M)	NH 214
CA-39	Dokiparru,Kowtaram,Gudlavalleru	
CA-40		
CA-41	Pedatummidi,Chorampudi,Mulapamu	NH 214
CA-42	Mudinepalle	NH 214, SH 63
CA-43		
CA-44	Gullapudi,Chakkapalle,Katrenipadu,Gopavaram,Musunuru	SH 43
CA-45	Kalagara,Putrela,Narasapuram,Vissannapet	
CA-46	Rajupeta,Patha Tiruvuru,Ganugapadu,Nadim Tiruvuru (Ct)	NH 221
CA-47	Chanubanda,Kotapadu	
CA-48	Atapaka,Bhujabalapatnam,Kolleti lota,Kaikalur	NH 214
CA-49	Thadinada,Korukollu,Kondangi,Pedalanka,Kalidindi	SH 63
CA-50	Laxmipuram,Chinagollapalem,China Pandraka,Nidamarru,Kruthivennu,Bantumilli	NH 214, NH 214A

Total Population within the Geographical Area as per Census 2011					
35.80 Lacs (Approx.)					
Total Geographical Area (Sq KMs)			No. of Charge Areas		
8424			50		
Charge Area Identification	Mandal Name	Charge Area Identification	Mandal Name	Charge Area Identification	Mandal Name
CA-01	Jaggayyapeta	CA-18	Guduru	CA-35	Nuzvid
CA-02	Chandarlapadu	CA-19	Movva	CA-36	Bapulapadu
CA-03	Kanchikacherla	CA-20	Pamarru	CA-37	Nandivada
CA-04	Ibrahimpatnam	CA-21	Pedaparupudi	CA-38	Gudivada
CA-05	Vijayawada (Rural)	CA-22	Vuyyuru	CA-39	Gudlavalleru
CA-06	Vijayawada (Urban)	CA-23	Ungutturu	CA-40	Pedana
CA-07	Penamaluru	CA-24	Gannavaram	CA-41	Bantumilli
CA-08	Kankipadu	CA-25	Agiripalle	CA-42	Mudinepalle
CA-09	Thotlavalluru	CA-26	G.Konduru	CA-43	Mandavalli
CA-10	Pamidimukkala	CA-27	Veerullapadu	CA-44	Musunuru
CA-11	Ghantasala	CA-28	Nandigama	CA-45	Vissannapet
CA-12	Challapalle	CA-29	Penuganchiprolu	CA-46	Tiruvuru
CA-13	Mopidevi	CA-30	Vatsavai	CA-47	Chatrai
CA-14	Avanigadda	CA-31	Gampalagudem	CA-48	Kaikalur
CA-15	Nagayalanka	CA-32	A.Konduru	CA-49	Kalidindi
CA-16	Koduru	CA-33	Reddigudem	CA-50	Kruthivennu
CA-17	Machilipatnam	CA-34	Mylavaram		

KRISHNA DISTRICT GEOGRAPHICAL AREA (ANDHRA PRADESH) (EXCLUDING: AREA ALREADY AUTHORISED)

KEY MAP

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REMARKS:-

i. Landmarks are indicative in nature.
ii. Each charge area is depicted in different color and is enclosed by physical features such as roads, rivers, railway tracks or administrative boundaries as shown in the map.
iii. This map is a part of 'application-cum-bid document' for the **Krishna District** Geographical area.

MAP SCALE

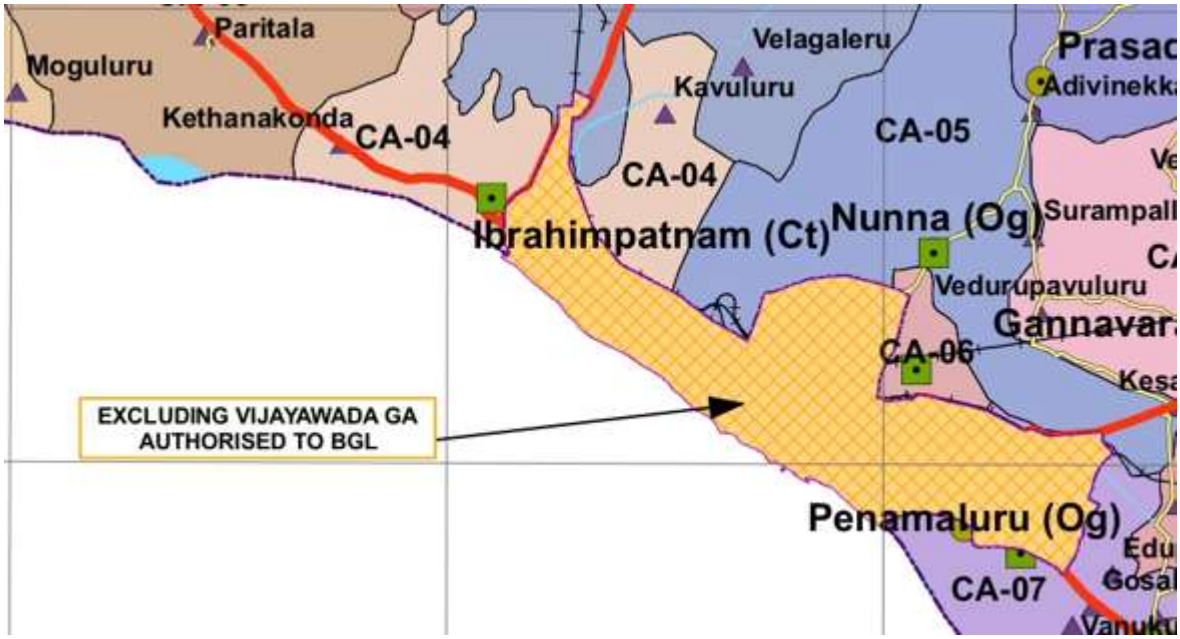
0 15 30 60 90 120 Kilometers

PETROLEUM AND NATURAL GAS REGULATORY BOARD

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

Map No.	PNGRB/CGD/BID/5/2015/4/GA-Krishna District
Date	January-2015
Map Title	Krishna District Geographical Area

The areas, excluded from the Krishna District GA boundaries in the map enclosed along with the Application cum bid document issued in 2015, are marked in yellow. This yellow portion of the Map, which is specifically referred to as the excluded GA area authorized to the 1st Respondent- BGL, has been enlarged for the purpose of clear identification of the said Area, and is as under:-



C.RELEVANT CLAUSES OF THE BID DOCUMENT

Clause 1.1 of the Application cum Bid Document, whereby bids were invited for the Krishna District GA in the year 2015, relates to the geographical area and related information. Clause 1.1.1 thereof states that the PNGRB had received EOIs from various stake holders for development of City Gas Distribution (CGD) networks in different parts of the country; PNGRB had also identified geographical areas on suo-motu basis for development of CGD networks in the country; based on these, and after completion of due process, PNGRB was now inviting applications-cum-bids for grant of authorization for developing City Gas Distribution (CGD) network in the geographical area of GA-KRISHNA

DISTRICT (EXCLUDING AREA ALREADY AUTHORISED), and as depicted in the map at Annexure-1.

CLAUSE 2.1 of the Application cum Bid Document relates to Documentation. Clause 2.1.2 states that this 'Application-cum-Bid document' comprises 14 Nos. of Annexures. The bidder shall note the following with respect to these Annexures. Annexure-1 is the Map depicting the Geographical Area and Charge Area, and it is stipulated thereagainst that the bidder shall carefully study the geographical area and charge area before submitting their Application-cum-bid.

As noted hereinabove, clause 1.1 of the "Application-cum-Bidding document" relates to the Geographical Area ("**GA**) of Krishna District. Clause 1.1.1 makes it clear that bids were being invited by PNGRB for grant of authorization in the Geographical Area of "**GA**" - Krishna District (**EXCLUDING THE AREA ALREADY AUTHORIZED**), and as depicted in the map at Annexure – 1. All the bidders were informed thereby that the Geographical Area of Krishna District, for which bids were being invited, excluded the area already authorized, which is the area authorised by the Central Government in favour of the 1st Respondent several years earlier. Clause 1.1.1 of the bid document also makes it clear that the Geographical Area of Krishna District was as depicted in the map at Annexure- 1 of the Application-cum-Bidding document. In terms of Annexure-1, which relates to the map depicting the Geographical Area and charge area, the bidders were required to carefully study the Geographical Area and the charge area before submitting their Application-cum-Bid document. The said map carves out a portion in yellow, from the GA of Krishna District, and notes that this yellow portion is the excluded area forming part of the Vijayawada-GA authorised in favour of the 1st Respondent.

It is no doubt true that the said map of Krishna District GA, at the left side bottom, contains the respective number of each of the 50 CAs, the village with population of more than five thousand, and the roads passing through. CA-06, thereunder, refers to (1) Vijayawada (M. Corp) (Part),(2)Ramavarappadu(CT),(3)Kanuru(CT),and(4)Yenamakakuduru (CT), and the road passing through as NH-5 & NH-09. Relying on this table, the Appellant contends that, since Kanuru Village in its entirety forms part of CA-06 of the Krishna District GA, the authorisation for which was granted by the PNGRB in favour of the Appellant, all that is required to be considered is whether or not the CNG Station, established by the Appellant is located within Kanuru Village.

In this context it is necessary to note that the said map also indicates the co-ordinates of the Krishna District–GA, besides specifically referring to the excluded Vijayawada–GA portion which was authorised in favour of the 1st Respondent earlier. This excluded portion, as noted hereinabove, is shown as the yellow portion in the map of Krishna District-GA, and as forming part of the 1st Respondent's authorized GA.

The submission urged on behalf of the 1st Respondent and the PNGRB, on the other hand, is that the question which necessitates examination is whether the CNG station established by the Appellant falls within the yellow portion marked in the map which would then fall within the 1st Respondent's GA and not the Appellant's; and it is only by applying the co-ordinates test (i.e. Longitude & Latitude) can the location of the CNG station be determined, particularly whether it falls within the Appellant's GA or the 1st Respondent's GA.

Unlike authorization for the Krishna District GA, which was given to the Appellant by the PNGRB, the authorization for Vijayawada- GA was granted by the Central Government to the 1st Respondent and, in

compliance with the proviso to Section 17 (2) of the PNGRB Act, the 1st Respondent intimated the PNGRB thereof, and did not seek its approval as it was not required to do so. After it was so intimated, PNGRB, by its letter dated 28.07.2009, granted the 1st Respondent exclusivity for operating the Vijayawada – GA. Bids were invited by the PNGRB, for the Krishna District GA, more than 6 years thereafter in the year 2015. The action of the PNGRB, in inviting bids and in granting an authorization for the Krishna District GA to the appellant thereafter, would not denude the 1st Respondent of its right to exclusively carry on operations within the Vijayawada GA, more so since the bidders were specifically informed in terms of the Application cum bid document and the Map annexed thereto, when bids were invited later in the year 2015, that the GA of Krishna District (for grant of authorization of which bids were invited), excluded the areas already authorized which is the Vijayawada GA. Further, the map annexed to the bid documents also specified that the yellow portion therein was the excluded area (ie the Vijayawada – GA) authorised to the 1st Respondent earlier.

While the Appellant may be justified in contending that there is no ambiguity in the table of the Krishna District GA map (authorization for which was given in favour of the Appellant) regarding the villages which fall under different CAs, and that Kanuru Village is shown under CA-06 in the said table, it needs to be borne in mind that authorization and exclusivity for the Vijayawada GA was given in favour of the 1st Respondent more than six years before bids were invited for the adjacent Krishna District GA in the year 2015. It is only because the PNGRB lacked jurisdiction even to invite bids for any part of Vijayawada GA that the Application cum bid document, whereby bids were invited for the Krishna District GA, specifically records that the bids being

invited was for Krishna District GA excluding the area already authorized, and the enclosed map records the excluded portion in yellow.

Any error on the part of the PNGRB in preparing the table in the map, showing Kanuru in CA-06 of Krishna District GA, would not confer any right on the Appellant to establish a CNG station in any part of the Vijayawada GA, or result in the 1st Respondent being denied its right to operate exclusively within each and every part of the Vijayawada GA, as the Vijayawada GA was specifically excluded both from the Krishna District GA map and in the authorization given to the Appellant for the said GA. By the year 2015, when bids were invited for Krishna District GA (excluding the areas already authorized), the 1st Respondent had been carrying on operations within its GA for the past more than six years on the basis of the authorization and exclusivity granted in its favour. It is not even the Appellant's case that the 1st Respondent had any role to play in preparation of the PNGRB map in which Kanuru Village was shown as falling within CA-06 of Krishna District GA. While the Appellant may be entitled to hold the PNGRB to account for the consequences of any error committed by it in preparation of the map, they can neither operate the CNG station by encroaching into, nor deprive the 1st Respondent of its right to operate exclusively within each and every part of, Vijayawada GA.

We are satisfied, from the plethora of documents placed on record, that the CNG Station established by the Appellant is within Kanuru Village Limits. What we are, however, required to examine is whether or not the CNG station, installed and operated by the Appellant in Kanuru village, falls within any part of Vijayawada-GA, in as much as PNGRB lacked jurisdiction to invite bids for any part of the Vijayawada-GA area, and the Appellant was obligated to ensure, before

establishing the CNG station at Kanuru, that the subject CNG station was not located within any part of Vijayawada-GA area, and not rely merely on the table referred to in the map.

XII. WAS THE PNGRB JUSTIFIED IN APPLYING THE CO-ORDINATES TEST TO HOLD THAT THE CNG STATION AT KANURU FELL WITHIN VIJAYAWADA GA?

Ms. Kiran Suri, Learned Senior Counsel appearing on behalf of the appellant, would submit that, while the PNGRB claims to have made a mistake in CA-06 and CA-07 of the appellant's GA, and CA-06 of the 1st respondent's GA, they failed to point out the effect of such mistake on the element of population, number of households in that area or the inch Km pipeline difference in the area; these are all corresponding changes; merely stating that there is an error in naming three villages in CA-06 is not sufficient to give a different interpretation to the terms of the unambiguous contract; in its second affidavit dated 10.12.2020, PNGRB has admitted that the "charge areas" of GA were based on the Mandal/Talukas as stated in the bid document; PNGRB has conveniently failed to provide the population after alleged revisiting; and, after the areas have been considerably varied in 2020, they are now stating it to be an error.

Learned Senior Counsel would further submit that the PNGRB had provided a map depicting the GA and CA, showing CAs in different colours, and with the names of villages; they also provided the total number of households in the GA as per the latest census, as also the target based on households and achievement of inch-kilometer pipelines; it is thus apparent that GA and CA, and the number of households, were identifiable with reference to Tahsil/Mandal/District, and not with reference to co-ordinates; the bid criteria is related to Census 2011; the eligibility criteria is related to the population; Census

2011 is based on the boundaries of Tehsil/District etc, and has no connection with co-ordinates; the selection criteria is also based on the number of households in the GA, as per the latest census, which is again Tehsil/District based; another indication is that the eligibility criteria, to consider the financial strength of the person, is based upon the 2011 census and the population in the particular area; there is nothing on record to show that such calculation of population or households is based upon co-ordinates; and the census does not provide details on the basis of co-ordinates, but provides such information based upon village boundaries.

Learned Senior Counsel would state that the PNGRB, vide its letter dated 07.04.2015, gave certain clarifications with regard to CAs in response to other bidders, who proposed to reduce the number of CAs; on this issue, the PNGRB held that CAs in any given GA are demarcated based on the number of Tehsils/Mandals/Talukas etc, and these GAs and CAs are demarcated as per the mandal boundaries within the district; from these clarifications of the PNGRB, it is clear that the intention of the parties is that demarcation of the CAs, shown in the Table given in the map, are based on villages covered by the Mandal boundaries, and nothing more; and, further, the bid documents neither stipulate nor envisage “co-ordinates method” for demarcation of the CAs within GAs.

Learned Senior Counsel would state that the contention of the 1st Respondent, that the map given to all entities is based on GSI (Geographical Information System), the CNG Station constructed by the Appellant at Kanuru fell in their GA on the basis of co-ordinates, specific locations are always identified as per GIS coordinates, the names of places referred to in the Table on the map are for general reference to places and, as per the coordinates, the Appellant’s CNG

Station fell under the GA of the 1st Respondent, is not tenable and necessitates rejection; even assuming there is an error in the name of villages mentioned in CA-06, the appellant cannot be made the victim of the error for no fault on their part; and variation/error stated by PNGRB, in the map of the 1st respondent of the year 2009, would amount to re-writing of the contract /Geographical Areas to the disadvantage of the Appellant. On interpretation of contract, Learned Counsel would rely on **Bank of India Vs. K. Mohandas & Anr: (2009) 5 SCC 331,** and **Nabha Power Ltd. Versus Punjab State Power Corp Ltd: (2018) 11 SCC 508.**

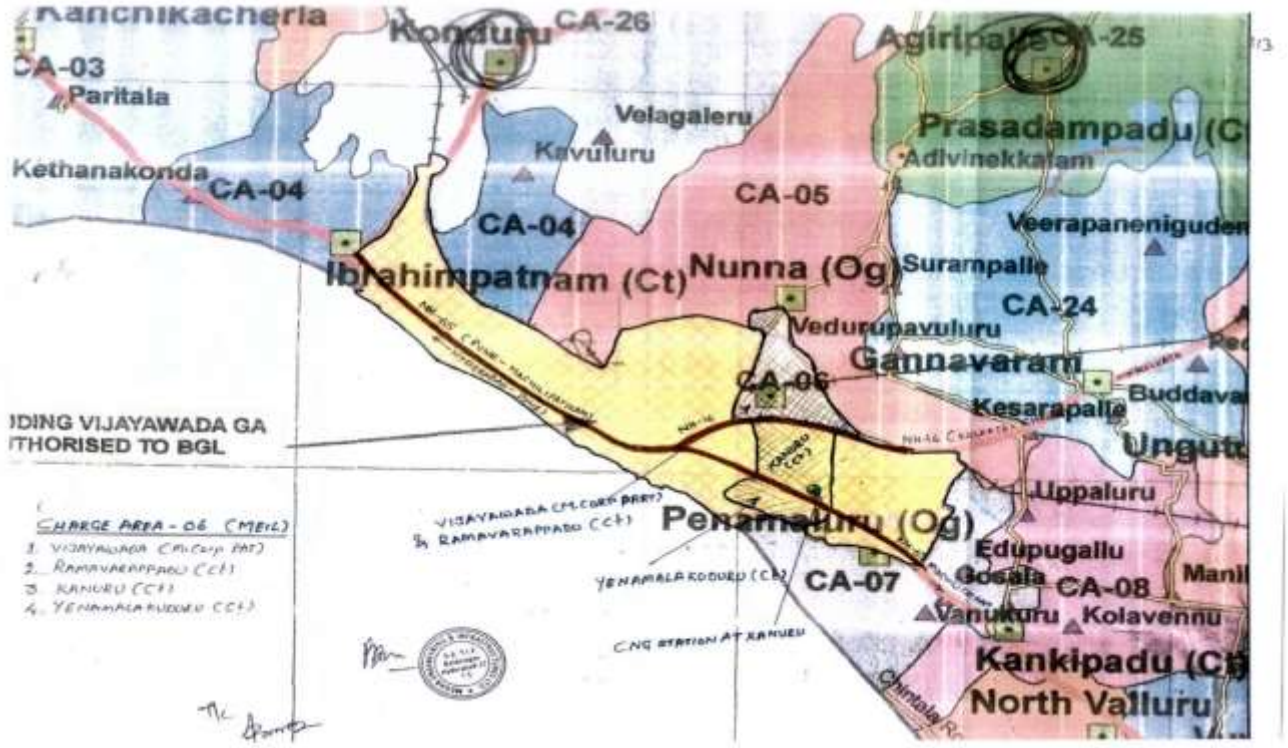
Mr. Munawwar Naseem, Learned Counsel for the PNGRB, would submit that the latitude and longitude, which are to be solely relied upon, clearly show that Kanuru village falls within Vijayawada GA authorized to the 1st Respondent; the Appellant is taking unlawful advantage of the village name mentioned in the legend; the map submitted by the Appellant itself (pg. 113 of the Appeal), if superimposed on the map of the GA of Vijayawada (pg. 47 of the Appeal), would clearly show that Kanuru village falls in Vijayawada GA; any departure from the boundaries provided in the Map, based on latitude and longitude, would unsettle the sector and give rise to umpteen frivolous disputes; the entities bidding for a particular GA are required to be map literate; GA boundaries and CA boundaries of a GA map with coordinates cannot be changed; and each and every point in the map is with reference to the coordinates, and there cannot be any kind of manipulation or alteration in that data.

Sri Shiv Kumar Pandey, Learned Counsel for the 1st respondent, would submit that, even though PNGRB has wrongly mentioned the name of Kanuru village in the legends of the Map allocated to the appellant, that would not take away the statutory rights of the 1st

respondent. Reliance is placed by the Learned Counsel in this regard on **Maharshi Dayanand University v. Surjeet Kaur, (2010) 11 SCC 159.**

In its Order dated 06.03.2019, the PNGRB directed the Appellant to submit the PNGRB authorised map of Krishna District, other than the already authorised area, showing the following: (i) Village Kanuru, (ii) location of the CNG station, and (iii) National Highway passing through the area authorised to the Appellant. In compliance with the said order, the appellant, vide its letter dated 25.03.2019, submitted the following maps: (1) PNGRB Map (duly enlarged showing Village Kanuru, CNG Station and NH passing through CA-06, (page 113 of the Appeal paper book filed by the Appellant) (ii) a Google Map showing the Kanuru Village, CNG station and NHs.

The enlarged PNGRB Map submitted by the Appellant, (at Page 113 of the Appeal Paper Book filed by the Appellant), is as under:-



F

The afore-extracted map highlights the yellow area which is the excluded area authorised by the Central Govt earlier in favour of the 1st Respondent ie the Vijayawada GA area. The said Map, filed by the Appellant before this Tribunal, shows both Kanuru Ct, and the CNG station at Kanuru, as falling within the yellow area (ie the area excluded from Krishna District GA as it was authorised in favour of the 1st Respondent by the Central Govt earlier). While it is contended on behalf of the respondents, that this map is an admission by the appellant that the subject CNG station falls within Vijayawada GA, even if it were to be presumed otherwise, the submission, urged on behalf of PNGRB, that superimposition, of the said Map of Krishna District GA on the Map of Vijayawada GA, would establish that both the subject CNG station and Kanuru village fall within the boundaries of Vijayawada GA authorised in favour of the 1st Respondent (ie they both fall within the yellow coloured area shown in the PNGRB map as being the area excluded from Krishna District GA, as it was authorised in favour of the 1st Respondent), has considerable force and cannot be readily brushed aside.

It matters little, whether or not the PNGRB had inadvertently included Kanuru Village in the Krishna District GA Map, since the PNGRB could not have granted (and, in fact, did not grant) authorisation to the Appellant for any part of Vijayawada GA, as authorisation for the said GA was granted in favour of the 1st Respondent by the Central Government in 2008, and exclusivity was granted to them by the PNGRB in 2009, several years before bids were invited by the PNGRB, for the Krishna District GA, in the year 2015.

A.JUDGEMENT RELIED UPON BY BOTH SIDES:

Let us now take note of the judgements cited by Learned Counsel on either side under this head.

On the construction to be placed on a term in an instrument, it is settled law that the explicit terms of a contract are always the final word with regard to the intention of the parties. A multi-clause contract inter se the parties has, thus, to be understood and interpreted in a manner that any view, on a particular clause of the contract, should not do violence to another part of the contract. (**Nabha Power Ltd. v. Punjab SPCL, (2018) 11 SCC 508).** The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed. It is this objective meaning which is conventionally called the intention of the parties, or the intention of Parliament, or the intention of whatever person or body was or is deemed to have been the author of the instrument. (***Investors Compensation Scheme Ltd.*** **v.** ***West Bromwich Building Society*****, (1998) 1 WLR 896 : (1998) 1 All ER 98 (HL);** ***Attorney General of Belize*** **v.** ***Belize Telecom Ltd.*****, (2009) 1 WLR 1988 (PC); Nabha Power Ltd. v. Punjab SPCL, (2018) 11 SCC 508).**

The true construction of a contract must depend upon the import of the words used and not upon what the parties choose to say afterwards. Nor does subsequent conduct of the parties, in the performance of the contract, affect the true effect of the clear and

unambiguous words used in the contract. The intention of the parties must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. The nature and purpose of the contract is an important guide in ascertaining the intention of the parties. **(Bank of India v. K. Mohandas, (2009) 5 SCC 313)**. If the contract is clear and unambiguous, its true effect cannot be changed merely by the course of conduct adopted by the parties in acting under it. **(Ottoman Bank of Nicosia v. Ohanes Chakarian: AIR 1938 PC 26; Bank of India v. K. Mohandas, (2009) 5 SCC 313).**

The Application cum bid document and the Letter of authorization explicitly state that the Krishna District GA, for which bids were invited and an authorization was issued in favour of the Appellant thereafter, excluded the area already authorized. Even the PNGRB map attached thereto, earmarks the excluded area in yellow, and records that this was the Vijayawada GA authorized to BGL (ie the 1st Respondent).

In **Maharshi Dayanand University v. Surjeet Kaur, (2010) 11 SCC 159**, on which reliance is placed on behalf of the 1st Respondent, the Supreme Court held that the respondent therein had no statutory right or any vested right to pursue her BEd course; the mistake on the part of the appellant to allow her to appear in the examination cannot, by any logic, be treated as a conduct conferring any such right on the respondent; and the rules and regulations cannot be allowed to be defeated merely because the appellant erroneously allowed the respondent to appear in the BEd examination.

The Appellant is seeking to take advantage of the error in the Table in the PNGRB Krishna District GA map wherein Kanuru village is shown as part of CA-06 of Krishna District GA, thereby overlooking all

the other indicators, as also ignoring the fact that the PNGRB lacked jurisdiction either to invite bids or grant authorization in the year 2015 over any part of Vijayawada GA for which authorization and exclusivity had been granted in favour of the 1st Respondent more than six years prior thereto. In the light of the law, declared by the Supreme Court in **Maharshi Dayanand University**, the statutory right conferred on the 1st Respondent under Section 17 of the PNGRB Act, Regulation 17 of the 2008 Regulations and Regulation 5 of the Exclusivity Regulations cannot be defeated by any such error on the part of the PNGRB, more so as it is well settled that neither the court nor any tribunal has the competence to issue a direction contrary to law or to direct an authority to act in contravention of a statutory provision. **(Maharshi Dayanand University v. Surjeet Kaur, (2010) 11 SCC 159).**

B.CLARIFICATION ISSUED BY PNGRB IN ITS LETTER DATED 07.04.2015:

In response to the Clarification sought, relating to the 5th round CGD Bidding, the PNGRB informed the Appellant, by its letter dated 07.04.2015, that, with reference to the Pre-Bid meeting held on 23rd March 2015 and submissions made by various entities related to the issues concerning 5th round CGD bidding, the response to the Clarifications sought by the prospective bidders were enclosed to the said letter; and these clarifications shall constitute a part of respective Application-Cum-Bid- Document and shall be duly signed and submitted along with the bid document by the authorized signatory of the entity.

The response to the clarification sought is given by the PNGRB in the form of a table. Issue No.6, in the said table, is that the number of Charge Areas (CA) were on the .higher side for the GAs of East

Godavari District excluding area already authorized (Existing CAs-46; Proposed CAs-5) and Krishna District excluding area already authorized (Existing CAs-50; Proposed CA-5). The clarification given thereto by the PNGRB was that there would be no change; the CAs in any given GA are demarcated based on the number of Tehsils/ Mandals/ Talukas etc; and, for these GAs, CAs are demarcated as per the Mandal boundaries within the districts.

Queries were raised by the bidders, among others, that the number of Charged Areas were on the higher side for the GAs, including Krishna District excluding the areas already authority; and, as against the existing 50 CAs, it was proposed that there should be 5 CAs. While clarifying that there would be no change in the existing CAs, the PNGRB had stated that the CAs were demarcated based on the number of Tehsils/ Mandals/Talukas etc, and as per the Mandal boundaries within the districts.

As noted hereinabove, bids invited for Krishna District GA excluded the Area already authorised i.e. the area authorised to the 1st Respondent earlier by the Central Government with respect to Vijayawada GA. As the PNGRB could not have invited bids for any part of Vijayawada GA, the mere fact that the CAs in Krishna District GA boundaries are demarcated on the number of Tehsils/Mandals/Talukas etc. is of no consequence, for no part of Vijayawada GA could have been subject to a bidding process or authorised in favour of the Appellant as part of the Krishna District GA.

XIII. ARE THE FINDINGS OF 'MAP OF INDIA' ERRONEOUS?

Ms. Kiran Suri, Learned Senior Counsel appearing on behalf of the Appellant, would submit that PNGRB, in its affidavit dated

04.11.2020, has stated that they had approached Map of India which had revisited the CAs of the Appellant; according to Map of India, CA-5 is Vijayawada (Rural), CA-6 is Vijayawada (Urban) and CA-7 is Penamaluru; but the name of areas which fall under Vijayawada (Urban) was not mentioned deliberately, since CA-6 consists of Vijayawada (M. Corp) (Part), Ramavarappadu (Ct), **Kanuru (Ct)** & Yenamakakuduru (Ct); the Map of PNGRB, attached with the bid document, does not show the areas of CAs individually, but Map of India has assessed the area of CA-6 as 5.72 Sq.km; PNGRB has also stated that they got assessed the area of CA-6 of GA of the 1st respondent from Map of India which has assessed the same as 26.22 Sq.km, as against 37 Sq.km given in the map of the 1st respondent for Ashok Nagar, the area has been reduced by Map of India to 10.78 Sq.km for which no reasons have been placed on record by the PNGRB; and CA-06 of the 1st respondent covers Ashok Nagar, which is a locality in Vijayawada city, whereas Kanuru (CA-6 of the Appellant) is a village under Penamaluru Mandal of Krishna District, which is near the locality of Ashok Nagar.

Mr. Munawwar Naseem, Learned Counsel for the PNGRB, would submit that the PNGRB provided a detailed breakup of the 8424 sq.km of Krishna District GA of the Appellant (at **Annexure "A2/1"** of the Compliance Affidavit of PNGRB dated 4-11-2020) by Map of India, the vendor of the PNGRB, after revisiting the CAs; a perusal of the same would show that Kanuru village (GA-06) is not a part of the 8424 sq.km of Krishna District GA; on the other hand, the detailed breakup of 133 sq.km of Vijayawada district GA of the 1st Respondent **(at Annexure "A2/2" of the compliance Affidavit of PNGRB dated 4-11-2020)** would show that Kanuru village falls in CA-06–Ashok Nagar of

Vijayawada district GA which was awarded to the 1st Respondent, and CA-06 is mentioned in GA ID 99.06; Charge Area 07 of this GA map i.e., Penamaluru Mandal would have covered Kanuru village under its area if Kanuru was not authorized under Charge Area 06 (Ashok Nagar) in the map of Vijayawada GA to the 1st Respondent; the disputed area-Kanuru village falls in the GA authorized to the 1st Respondent, and not in the area of the Appellant; and thus, in the map authorized to the Appellant, there is no error either with regard to the coordinates or the boundaries.

By its order dated 04.09.2020, this Tribunal had issue a questionnaire calling upon all the parties in the Appeal to furnish information, in terms thereof, by way of an affidavit. In response to certain queries in the said questionnaire, the PNGRB filed its affidavit on 03/04.11.2020. Query No. 1 required the PNGRB to submit a detailed break-up of the 8424 Sq. Km. of authorized area of Krishna GA which was awarded to the Appellant. The PNGRB was also directed to clarify whether Kanuru Village was part of the indicated area of 8424 Sq. Km. of Krishna District GA , or exclusive of Kanuru. In its answer thereto, PNGRB stated that it had approached Map of India, and had sought a detailed breakup of the 8424 Sq. Km. of authorized area of Krishna GA; Map of India, after revisiting the CAs, had provided a detailed breakup of the 8424 sq. km of Krishna District GA of the Appellant; the detailed breakup was marked as Annexure “A2/1”, a perusal of which would show that Kanuru Village is not part of the 8424 sq. km. of Krishna District GA; CA-06 was not mentioned in GA ID 5.06; and the CAs, with the corresponding area totalling to 8424 sq. km. are mentioned thereafter in the affidavit.

A.Detailed break-up of Krishna District GA- ANNEXURE A2/1

GA Name	GA ID	CA Name	State	District	Area Sq-km
Krishna District (Excluding area already authorized) GA	5.06	CA-17 Machilipatnam	Andhra Pradesh	Krishna	453.87
Krishna District (Excluding area already authorized) GA	5.06	CA-15 Nagayalanka	Andhra Pradesh	Krishna	408.15
Krishna District (Excluding area already authorized) GA	5.06	CA-01 Jaggayyapeta	Andhra Pradesh	Krishna	314.63
Krishna District (Excluding area already authorized) GA	5.06	CA-35 Nuzvid	Andhra Pradesh	Krishna	246.09
Krishna District (Excluding area already authorized) GA	5.06	CA-02 Chandarlapadu	Andhra Pradesh	Krishna	242.88
Krishna District (Excluding area already authorized) GA	5.06	CA-31 Gampalagudem	Andhra Pradesh	Krishna	230.9
Krishna District (Excluding area already authorized) GA	5.06	CA-50 Kruthivennu	Andhra Pradesh	Krishna	226.6
Krishna District (Excluding area already authorized) GA	5.06	CA-47 Chatrai	Andhra Pradesh	Krishna	226.01
Krishna District (Excluding area already authorized) GA	5.06	CA-16 Konduru	Andhra Pradesh	Krishna	223.16
Krishna District (Excluding area already authorized) GA	5.06	CA-26 G. Konduru	Andhra Pradesh	Krishna	214.98
Krishna District (Excluding area already authorized) GA	5.06	CA-25 Agiripalle	Andhra Pradesh	Krishna	210.8
Krishna District (Excluding area already authorized) GA	5.06	CA-03 Kanchikacherla	Andhra Pradesh	Krishna	204.73

Krishna District (Excluding area already authorized) GA	5.06	CA-36 Bapulapadu	Andhra Pradesh	Krishna	200.37
Krishna District (Excluding area already authorized) GA	5.06	CA-27 Veerullapadu	Andhra Pradesh	Krishna	201.06
Krishna District (Excluding area already authorized) GA	5.06	CA-45 Vissannapet	Andhra Pradesh	Krishna	200.73
Krishna District (Excluding area already authorized) GA	5.06	CA-46 Tiruvuru	Andhra Pradesh	Krishna	199.61
Krishna District (Excluding area already authorized) GA	5.06	CA-32 A. konduru	Andhra Pradesh	Krishna	198.61
Krishna District (Excluding area already authorized) GA	5.06	CA-49 Kalidindi	Andhra Pradesh	Krishna	194.86
Krishna District (Excluding area already authorized) GA	5.06	CA-34 Mylavaram	Andhra Pradesh	Krishna	192.11
Krishna District (Excluding area already authorized) GA	5.06	CA-44 Masunuru	Andhra Pradesh	Krishna	191.61
Krishna District (Excluding area already authorized) GA	5.06	CA-24Gannavaram	Andhra Pradesh	Krishna	178.15
Krishna District (Excluding area already authorized) GA	5.06	CA-30 Vatasal	Andhra Pradesh	Krishna	169.69
Krishna District (Excluding area already authorized) GA	5.06	CA-43 Mandavalli	Andhra Pradesh	Krishna	165.87
Krishna District (Excluding area already authorized) GA	5.06	CA-33 Reddigudem	Andhra Pradesh	Krishna	162.61
Krishna District (Excluding area already authorized) GA	5.06	CA-48 Kaikalur	Andhra Pradesh	Krishna	162.06

Krishna District (Excluding area already authorized) GA	5.06	CA-28 Nandigama	Andhra Pradesh	Krishna	156.84
Krishna District (Excluding area already authorized) GA	5.06	CA-42 Mudinepalle	Andhra Pradesh	Krishna	156.04
Krishna District (Excluding area already authorized) GA	5.06	CA-05 Vijaywada (Rural)	Andhra Pradesh	Krishna	156.37
Krishna District (Excluding area already authorized) GA	5.06	CA-04 Ibrahimpatnam	Andhra Pradesh	Krishna	151.34
Krishna District (Excluding area already authorized) GA	5.06	CA-23 Unguturu	Andhra Pradesh	Krishna	144.87
Krishna District (Excluding area already authorized) GA	5.06	CA-29 Penuganchiprolu	Andhra Pradesh	Krishna	144.49
Krishna District (Excluding area already authorized) GA	5.06	CA-37 Nandivada	Andhra Pradesh	Krishna	141.73
Krishna District (Excluding area already authorized) GA	5.06	CA-40 Pedana	Andhra Pradesh	Krishna	135.37
Krishna District (Excluding area already authorized) GA	5.06	CA-12 Challapalle	Andhra Pradesh	Krishna	134.86
Krishna District (Excluding area already authorized) GA	5.06	CA-10 Pamidimukkala	Andhra Pradesh	Krishna	129.37
Krishna District (Excluding area already authorized) GA	5.06	CA-09 Thotlavalluru	Andhra Pradesh	Krishna	126.66
Krishna District (Excluding area already authorized) GA	5.06	CA-19 Movva	Andhra Pradesh	Krishna	125.84
Krishna District (Excluding area already authorized) GA	5.06	CA-39 Gudlavalleru	Andhra Pradesh	Krishna	123.09

Krishna District (Excluding area already authorized) GA	5.06	CA-18 Guduru	Andhra Pradesh	Krishna	119.35
Krishna District (Excluding area already authorized) GA	5.06	CA-41 Bantumilli	Andhra Pradesh	Krishna	117.3
Krishna District (Excluding area already authorized) GA	5.06	CA-20 Pamarru	Andhra Pradesh	Krishna	111.96
Krishna District (Excluding area already authorized) GA	5.06	CA-08 Kankipadu	Andhra Pradesh	Krishna	106.49
Krishna District (Excluding area already authorized) GA	5.06	CA-38 Gudivada	Andhra Pradesh	Krishna	105.93
Krishna District (Excluding area already authorized) GA	5.06	CA-21 Pedaparupudi	Andhra Pradesh	Krishna	79.92
Krishna District (Excluding area already authorized) GA	5.06	CA-22 Vuyyuru	Andhra Pradesh	Krishna	77.14
Krishna District (Excluding area already authorized) GA	5.06	CA-13 Mopidevi	Andhra Pradesh	Krishna	74.87
Krishna District (Excluding area already authorized) GA	5.06	CA-14 Avanigadda	Andhra Pradesh	Krishna	60.63
Krishna District (Excluding area already authorized) GA	5.06	CA-07 Penamaluru	Andhra Pradesh	Krishna	60.16
Krishna District (Excluding area already authorized) GA	5.06	CA-11 Ghantasala	Andhra Pradesh	Krishna	57.52
Krishna District (Excluding area already authorized) GA	5.06	CA-06 Vijaywada (Urban)	Andhra Pradesh	Krishna	5.72

Query No. 2, as posed by this Tribunal, required the PNGRB to submit a detailed breakup of the authorised GA for Vijayawada which was awarded to the 1st Respondent, and to clarify whether or not Kanuru

Village was part of the already authorised GA awarded to the 1st Respondent.

GA Name	GA ID	CA Name	State	District	Area SqKm
Vijaywada GA	99.06	CA -03 Kedareswarpet	Andhra Pradesh	Krishna	5.63
Vijaywada GA	99.06	CA -05 RTC Colony	Andhra Pradesh	Krishna	7.42
Vijaywada GA	99.06	CA – 04 Prajaskim Nagar	Andhra Pradesh	Krishna	14.03
Vijaywada GA	99.06	CA – 06 Ashok Nagar	Andhra Pradesh	Krishna	26.22
Vijaywada GA	99.06	CA – 01 Donabanda	Andhra Pradesh	Krishna	37.98
Vijaywada GA	99.06	CA – 02 Payakapuram	Andhra Pradesh	Krishna	41.71
					132.99

In its answer thereto, PNGRB submitted that the Map of India, after revisiting the CAs, had provided a detailed breakup of the said 133 sq. km area of Vijayawada GA; a copy thereof was marked as Annexure “A2/2”, a perusal of which showed that Kanuru Village fell in CA-06 – Ashoknagar of Vijayawada District GA which was awarded to the 1st Respondent; CA-06 was mentioned in GA ID 99.06, and the CAs mentioned thereafter, with the corresponding areas, totalled to 132.99 sq. km.

B.ANNEXURE A2/2- break-up of 133 sq. Km of Vijayawada GA

In response to query No. 3, PNGRB reiterated that the name of the Village Kanuru had been inadvertently included in the Map, and was an error on the part of the Board; the boundaries of the maps annexed to the bid document were the only criteria to determine the authorised area where an entity can operate; the Committee report had made it clear that the CNG station was not within the authorised boundary of

the GA of the Appellant as provided by the Map with the bid document, and the demarcation made in the map was glaring and without any discrepancy in the boundaries; in case where some portion of a District in the particular GA has already been authorised, only the remaining portion of the District is included in the proposed GA for bidding; and, in the present case, the CNG station under dispute fell under the area authorised to the 1st Respondent on 28.07.2009, and the same is evident from the map given to the Appellant in the authorization on 14.09.2015 for Krishna District excluding the areas already authorised.

In reply to query No. 4, which was whether, during the process of public consultation with respect to the areas proposed for bidding for Krishna GA, any comments were received from any stakeholders with respect to Kanuru area, PNGRB stated that, as per the terms of the bid document, the bidder/Appellant was under the obligation to carefully study the GA and CA before submitting their application-cum-document of Krishna District (excluding area already authorised); and thus it was incumbent upon the Appellant to recognize the areas already authorized to protect its own interest. Reference is made by the Board to Clause 2.1.1 & 2.1.2 of the bid document, and it is stated that no comments were received from the stakeholders with respect to Kanuru area.

The case of the Appellant, as is evident from the written submissions filed on their behalf, is that the 1st respondent was granted authorization by the Central Government on 26.10.2008, and their map depicting CA-06 contained Ashok Nagar; CA-06 of the 1st respondent covers Ashok Nagar, which is a locality in Vijayawada city; Kanuru village is not part of Ashok Nagar; and Kanuru (CA-6 of the Appellant) is a village under Penamaluru Mandal of Krishna District, which is near

the locality of Ashok Nagar. It is clear therefrom that Ashok Nagar and Kanuru are adjacent to each other.

The letter of authorization, given in favour of the Appellant, records that the total extent of the Krishna District GA is 8424 sq km. It is evident from the aforesaid table that the break-up of Krishna District GA given by Map of India, after revisiting the CAs, clearly reveals that Kanuru Village is not part of the 8424 sq. km. of Krishna District GA, and CA-06 was not mentioned in GA ID 5.06. Likewise, the letter of the PNGRB dated 28.07.2009, granting the 1st Respondent exclusivity, records that the total extent of Vijayawada GA is 133 sq km. The detailed breakup of the said 133 sq. km area of Vijayawada GA as given by Map of India, after revisiting the CAs, shows that Kanuru Village fell in CA-06 – Ashoknagar of Vijayawada District GA which was awarded to the 1st Respondent, CA-06 was mentioned in GA ID 99.06, and the CAs with the corresponding areas totalled to 132.99 sq. km.

As Ashoknagar and Kanuru are adjacent to each other, the PNGRB appears to have mistakenly shown Kanuru, which formed part of CA-06 of Vijayawada GA authorized in favour of the 1st Respondent, as falling within CA-06 in the table of the Krishna District GA map.

On the question whether the GA maps were based on co-ordinates, the PNGRB, in compliance with the Order of this Tribunal dated 16-4-2021, filed an Additional Affidavit dated 25-6-2021 which reads as under:

> ***"Query No. 1: Is the Geographical map based on boundaries or coordinates?***
>
> ***<u>Ans.</u> ……***
> ***..***
> *In this backdrop it is pertinent to state here that the Geographical Areas (GAs) bid out by the Respondent No.2 Board, as per the*

current practice, are named on the basis of districts they cover, and the district boundaries are defined by the respective State Governments.

In addition, the GA maps issued along with the authorization letters, by the Respondent No.2 Board, also have geographical coordinates on them, which are required to be taken into consideration while adjudicating disputes pertaining to a Geographical Area.

*It is submitted that in the present Appeal, there is no dispute with regard to the boundaries and coordinates of village Kanuru as shown in the Map along with the letter of authorization issued to the Appellant. Meaning thereby, that a perusal of the boundaries as well as coordinates would show that the disputed area-village Kanuru falls in the GA authorized to Respondent No.1 and not in the area of the Appellant. Thus, in the map authorized to the Appellant, there is no error either with regard to the coordinates or the boundaries.**"***

Query No.2: PNGRB to confirm if there is any Standard Operating Procedure to deal with contiguous areas which may come in future i.e., during pre-tender, during pre-bid and during post award.

Ans 2. *It is submitted that PNGRB initially accepted the authorization of entities already authorized by the Central Government before the appointed day, under Regulation 17 and Regulation 18 of the CGD Authorization Regulations. At the time, boundaries of most of the GAs authorized were based on the density of population and included only populated areas or talukas, and were not based on the district boundaries and were interspersed.*

Thereafter, as PNGRB started to bid out GAs, it became necessary to have coordinates so that the earlier authorized areas (areas authorized prior to the appointed day) in any particular district could be distinguished from the unauthorized areas inside that particular district boundary.

The Board from 4th round onwards has been authorizing GAs based on boundaries of Districts, to rule out the issues/disputes arising amongst GAs having contiguous areas. As such, there was no requirement of a SOP regarding boundary disputes.

Even otherwise, as per Regulation 5(3) of the CGD Authorization Regulations, during the period of public consultation process, any person or entity may submit in writing to the Board its views, if any,

on the expression of interest as well as suo-moto invitation of bids by the Board. Therefore, opportunities are granted to all persons interested in the area to be authorized. In case an overlap in the area is perceived then the Board can be approached. Respondent No.2 Board after considering the objections issues a corrigendum, in case the same is required."

The aforesaid reply given by the PNGRB does show that the GA map, issued along with the authorization letter granted to the Appellant by the PNGRB, had geographical coordinates on them; and, in the map authorized to the Appellant, there is no error either with regard to the co-ordinates or the boundaries.

As rightly stated on behalf of the PNGRB, the boundaries as well as the co-ordinates of village Kanuru, as recorded in the Map attached along with the letter of authorization issued to the Appellant, does appear to show that the disputed area ie village Kanuru falls in the Vijayawada GA authorized to Respondent No.1, and not in Krishna District GA for which alone was authorised in favour of the Appellant.

The stand taken on behalf of the Appellant in the present proceedings, that no reliance ought to be placed on co-ordinates, is contrary to what the Appellant had raised in its complaint to the PNGRB regarding installation of a CNG station in Ibrahimpatnam, by the 1st Respondent, within the boundaries of Krishna District GA of the Appellant. As shall be detailed hereinafter, the Appellant had projected its case, in the said Complaint, mainly on the basis of co-ordinates.

XIV.COMPLAINT FILED BY THE APPELLANT:

Sri Shiv Kumar Pandey, Learned Counsel for the 1st respondent, would submit that, as a counterblast to the complaint filed by the 1st respondent, the appellant filed a complaint before the PNGRB (Case No. 08/2019) challenging the CNG station of 1st respondent at

Ibrahimpatnam; this dispute also involves the same map of the respective GAs, of the 1st respondent and the appellant, which is the subject matter of the present appeal; and the appellant relies upon the co-ordinates when it comes to their complaint, but rejects the same when it comes to the 1st respondent's Complaint.

Mr. Munawwar Naseem, Learned Counsel for the PNGRB, would submit that a similar order was passed against the 1st Respondent for operating its GA in the GA of the Appellant.

In their Complaint Petition, filed before the PNGRB on 18th February 2019, the appellant stated that the 1st Respondent had built/set-up the CNG Station (Daughter Booster Station) in APSRTC Bus Depot at West Ibrahimpatnam long back, which does not fall under the GA allotted to them; as such, setting up of the CNG Station by the 1st Respondent, in an unauthorized Geographical Area, is illegal; subsequently, the GA of Krishna District (excluding areas already authorized) had been authorized to the Appellant; as such the CNG Station of the 1st Respondent, located in APSRTC Bus Depot at West Ibrahimpatnam, clearly falls in the GA allotted to the Appellant; the location of the CNG Station of the 1st Respondent is marked on the map of the GA of the Appellant, and is attached; as per the authorization given by the PNGRB to the Appellant, Charge Area-04 covers "Kavuluru, Kethanakonda, Ibrahimpatnam (Census town), Guntupalle (Census town)", in which NH-9 & NH-221 are passing through Charge Area-04; NH-221 starts from NH-9 at Ibrahimpatnam circle and hence Western part of Ibrahimpatnam, from the junction of NH-9 & 221, clearly falls under Charge Area-04 of the Appellant; however, the 1st Respondent had illegally set-up their CNG station in APSRTC Bus Depot which is in the Western part of Ibrahimpatnam, and clearly falls in the GA of the Appellant; the location of the CNG Station of the 1st

Respondent falls in Survey No. 63, and the same is marked in the Survey Map of Ibrahimpatnam issued by the Revenue Authorities, and is attached herewith; the location of the CNG Station, built by the 1st Respondent illegally, can be seen from the Google Maps, in which APSRTC Bus Depot clearly falls in West Ibrahimpatnam, which is under the GA of the Appellant, and a copy of the Google Map showing APSRTC Bus Depot is attached; the photographs of CNG Station, illegally built by the 1st Respondent in APSRTC Bus Depot, is also attached; the 1st respondent commenced commercial operations in this area from 01.01.2018; since they were sustaining huge financial losses due to loss of business in this area, the Appellant, vide its letter dated 04.12.2018, had asked the 1st Respondent to withdraw facilities from the APSRTC Bus Depot at West Ibrahimpatnam, with a copy to the Secretary, PNGRB; and, as there was no reply, the Appellant issued another notice vide its letter dated 31.12.2018 with a copy to the Secretary, PNGRB.

The relief sought by the Appellant, in the said Complaint, among others, was to direct the 1st Respondent to stop its operations immediately at the CNG Station in APSRTC Bus Depot at West Ibrahimpatnam, which was within the GA of the Appellant.

The PNGRB upheld this contention of the Appellant, holding that the said sub-station was established by the 1st Respondent beyond its Geographical Area, and that it fell within Krishna District GA limits, authorisation for which had been granted in favour of the Appellant. Since authorisation was granted to the 1st Respondent, by the Central Government several years before bids were invited for grant of authorisation for Krishna District GA in the year 2015, the question which the PNGRB had to consider was whether or not the subject CNG station at West Ibrahimpatnam fell within the GA of the 1st Respondent

for, if it had, the PNGRB could not have granted authorization to the Appellant over the subject area. It is, evidently, because the said CNG station was held not to fall within the GA of the 1st Respondent, that the PNGRB had held that, as it fell within the GA of Krishna District (authorization for which had been given to the Appellant), the 1st Respondent had illegally established the CNG station at the APSRTC Bus Depot at West Ibrahimpatnam.

As noted hereinabove the Appellant, in their Complaint, had marked the location of the CNG Station of the 1st Respondent in their GA map, and had stated that location of the CNG Station, illegally built by the 1st Respondent in APSRTC Bus Depot in the western part of Ibrahimpatnam, fell under Charge Area-04 of Krishna District GA, which could be seen from the attached Google Map. The said Google Map identified the APSRTC Bus Depot, and showed that it was located in CA-04 of the Appellant's GA, evidently on the basis of co-ordinates. Having relied on the Google Map (which is based on co-ordinates), in its complaint against the 1st Respondent, to establish that the CNG station at APSRTC bus depot in West Ibrahimpatnam fell within Krishna District GA, the Appellant cannot now turn around to contend that determination of the location of the CNG station at Kanuru, as falling within the Vijayawada GA of the 1st Respondent on the basis of co-ordinates, is illegal.

In the light of the analysis and findlings afore-mentioned, we are satisfied that the subject CNG station at Kunuru falls within Vijayawada GA for which authorization and exclusivity was granted in favour of the 1st Respondent, several years prior to bids being invited, and authorization being granted to the Appellant, in the year 2015 for Krishna District GA.

XV. HAS THE EXCLUSIVITY PERIOD, OF THE 1ST RESPONDENT'S AUTHORISATION, ELAPSED?

Ms. Kiran Suri, Learned Senior Counsel appearing on behalf of the Appellant, would submit that the Appellant constructed its CNG-Station at Kanuru village in January, 2018; prior to year 2018 there were no business activities undertaken by the 1st respondent in Kanuru village even though PNGRB had authorized Vijayawada GA to the 1st respondent in July 2009; and the exclusivity period of 5 years also lapsed in 2014.

Sri Shiv Kumar Pandey, Learned Counsel for the 1st respondent, would submit that Regulation 12 of the Authorization Regulations gives marketing and network exclusivity to the authorized entity; in order to end this exclusivity, or to declare an entity as a common carrier, the PNGRB has to hear and pass an order in terms of Section 20 of the PNGRB Act, 2006; as on date the 1st respondent's network in GA of Vijayawada is not declared as a common carrier, and the statutory exclusivity, granted under the authorization regulations, still continues; and the appellant, by constructing the CNG station within the GA of the 1st respondent, has infringed upon the statutory right of the 1st respondent i.e. exclusivity by virtue of the Authorization Regulations.

Regulation 12 of the 2008 Regulations relates to the exclusivity period. Regulation 12(1), as inserted with effect from 06.04.2018, provides that the exclusivity period to lay, build, operate or expand a city or local natural gas distribution shall be as per the provisions in the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008. Regulation 12(2) stipulated that, notwithstanding anything contained in any other regulation made under the Act, the exclusivity from purview of common carrier or contract carrier shall be eight years.

Regulation 5 of the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Network) Regulations, 2008 ("the Exclusivity Regulations" for short) relates to exclusivity for laying, building or expansion of CGD network. Regulation 5(1) enables the Board to allow an entity exclusivity for laying, building or expanding of CGD Network over the economic life of the project subject to the following terms and conditions, namely:- (a) during the economic life which is normally expected to be twenty five years of the CGD network project consisting of network of pipelines, online compressors for compressing natural gas into CNG and other allied equipment and facilities, the authorized entity shall carry out further expansion required through pipeline capacity building and CNG infrastructure as well as carry out replacements and upgradation of assets and facilities as and when necessary in order to maintain the network system integrity at all times including keeping it abreast of technical advancements and the entity shall meet the requirement for investment in pipelines and other allied equipment including online compressors for compression of natural gas into CNG which may emerge either to meet the entity's own requirements or other entities requirements post-exclusivity period as per regulation 6 besides complying with the service obligations as per regulation 8; (b) the economic life of the project shall commence from,- (i) in case an entity proposes to lay, build or expand a CGD network on or after the appointed day, the date of grant of authorization to the entity by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008; (ii) in case an entity is laying, building or expanding CGD network before the appointed day, where the entity has either an authorization from

the Central Government before the appointed day or an authorization from the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the economic life of the CGD Network project shall commence from the start-up date of the commencement of physical activities of laying, building or expanding the CGD network; (c) at the end of the economic life of the project, issue of allowing further extension of the period of exclusivity or not may be considered by the Board for a block of ten years at a time, depending on the satisfactory compliance of the service obligations and quality of service norms as specified in the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the service obligations under regulation 8 and on such terms and conditions, as it may deem fit at that point in time; (d) non-compliance to the provisions of clause *(a)* of sub-regulation *(1)* shall be dealt through levy of penalty and termination of the exclusivity period as per the provisions of regulation 10 and the Board reserves the right to allow any other entity to take up the activities of laying, building or expanding or replacement of assets and facilities or both in the CGD network in terms of the provisions in regulation 10.

Section 20 of the PNGRB ACT relates to declaring, laying, building, etc., of common carrier or contract carrier and city or local natural gas distribution network. Section 20(1) provides that, 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.

Section 20(2) stipulates that, 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.

Section 20(3) enables the Board, after following the procedure as specified by regulations under section 19 and sub-sections *(1)* and *(2)*, by notification, to (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.

Section 20(4) enables the Board to 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. Section 20(5) stipulates that, for the purposes of this section, the Board shall be guided by the objectives of promoting competition among entities, avoiding infructuous 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.

The submission urged on behalf of the Appellant, that the exclusivity period for the Vijayawada GA Areas lapsed in 2014, is only to be noted to be rejected. Regulation 12(i) of the 2008 Regulations provides that the exclusivity period shall be in terms of the exclusivity Regulations, and Regulation 12 (2) stipulates that the period for which a distribution network shall be excluded, from the purview of a common carrier and contract carriers, shall be eight years. Regulation 5(1) of the Exclusivity Regulations enables the PNGRB to grant exclusivity to an entity for laying, building, operating or expanding the CGD network over the economic life of the project which, in terms of Regulation 5(1)(a), is normally expected to be 25 years for the CGD network project.

Section 20(i) of the PNGRB Act confers power on the PNGRB to declare the existing pipeline of the existing city or local natural gas distribution network to be a common carrier or a contract carrier or to allow access to such pipeline or network. The said provision prescribes the procedure for issuing such a declaration. In terms thereof, the PNGRB is required to give wide publicity seeking views on such declaration, and individual objections and suggestions, within the specified time from all persons and entities likely to be affected from such a decision; thereafter to give the entity, owning the pipeline or network, an opportunity of being heard; and then to fix the terms and conditions subject to which the pipeline or network may be declared a common carrier or contract carrier (Section 20(2)).

It is only after the aforesaid procedure is followed, can be the PNGRB thereafter issue a declaration that the network shall henceforth

be a common carrier or a contract carrier. It is not in dispute that the PNGRB has not initiated any action in terms of Section 20 of the PNGRB Act. Consequently, the 1st Respondent continues to have exclusivity for the entire Vijayawada GA and the Appellant cannot claim that it is entitled to establish its CNG station, within any part of Vijayawada GA, on the specious plea that the entire network of the 1st Respondent is no longer exclusive.. As the 1st Respondent continues to retain exclusivity over the entire Vijayawada GA till date, their not establishing a CNG station at Kanuru, before the Appellant established its CNG station thereat, is of no consequence, more so as the Appellant could not have established its CNG station within any part of Vijayawada GA. The contentions, urged on behalf of the Appellant under this head, necessitate rejection.

XVI. HAS THE 1st RESPONDENT FAILED TO PROVIDE DETAILS REGARDING ITS ACTIVITIES IN KANURU VILLAGE?

Ms. Kiran Suri, Learned Senior Counsel for the appellant, would submit that it is strange that the 1st respondent, which is holding this authorization since 2008, with exclusivity period of five years, did not provide details of the connections provided in areas covered under CA-01 to CA-06.

Regarding the presence of the 1st respondent, in the charged area in dispute, Sri Shiv Kumar Pandey, Learned Counsel for the first respondent, would submit that (1) Domestic (PNG): - About 1,000 customers are using gas and about 11,000 have registered for new connections; (2) Commercial (PNG): **-** 3 customers have signed gas agreement and 18 customers have agreed in principle to take gas; and (3) CNG Stations: One online Station.

While details of the activities of the 1st Respondent in Kanuru has now been furnished, it must be taken note of that, as long as they continue to have exclusivity over the subject area also, no other entity can establish its CNG station thereat, irrespective of whether or not any activity is being undertaken by the 1st Respondent within its authorized GA. While failure to do so, may confer power on the PNGRB to initiate action against the 1st Respondent, that does not mean that the Appellant can encroach into the GA of the 1st Respondent and establish a CNG station thereat.

XVII. ACQUIESCENCE AND WAIVER:

Ms. Kiran Suri, learned Senior Counsel appearing on behalf of the Appellant, would submit that, as required under Section 18 of the PNGRB Act, wide publicity was given to the present bidding process in 2015; advertisements were issued in 2015, but the 1st respondent remained silent; the 1st respondent, by email dated 08.02.2018, raised the dispute with the appellant, but filed the complaint only on 27.06.2020; it is apparent that the 1st respondent kept quiet from 2008 onwards, and did not notice any error in their CA-01 to CA-06; they did not raise any objection to the widely published notifications; they did not commence any business activity in Kanuru till construction by the appellant was completed; they did not file any complaint for a period of about 5 months; they permitted the appellant to make huge investment and continue with construction of the CNG station; and, even assuming the interpretation given by the 1st respondent is correct, they must be deemed to have acquiesced to the act of the appellant.

Acquiescence is sitting by, when another is invading the rights and spending money on it. It is a course of conduct inconsistent with the claim for exclusive rights in a trade mark, trade name, etc. **(Virender Chaudhary v. Bharat Petroleum Corpn., (2009) 1 SCC 297; *Ramdev***

***Food Products (P) Ltd.* v. *Arvindbhai Rambhai Patel* (2006) 8 SCC 726; *Power Control Appliances* v. *Sumeet Machines (P) Ltd.*, (1994) 2 SCC 448).**

The general principle with regard to waiver of contractual obligations is to be found in Section 63 of the Contract Act whereunder it is open to a promisee to dispense with or remit, wholly or in part, the performance of the promise made to him or he can accept instead of it any satisfaction which he thinks fit. Neither consideration nor an agreement would be necessary to constitute waiver. (**V. Praveen v. Telangana State Road Transport Corporation, 2018 SCC OnLine Hyd 364; *All India Power Engineer Federation v. Sasan Power Ltd., (2017) 1 SCC 487*; *Jagad Bandhu Chatterjee v. Nilima Rani, (1969) 3 SCC 445*).**

Waiver is contractual and may constitute a cause of action. It is an agreement between the parties, and a party fully knowing its rights having agreed not to assert the right for a consideration. (**All India Power Engineer Federation *v. Sasan Power Ltd., (2017) 1 SCC 487*; Krishna Bahadur3**). The essential element of waiver is that there must be a voluntary and intentional relinquishment of a known right or such conduct as warrants the inference of the relinquishment of such a right. It means forsaking the assertion of a right at the proper opportunity. (**V. Praveen v. Telangana State Road Transport Corporation, 2018 SCC OnLine Hyd 364; *Provash Chandra Dalui* v. *Biswanath Banerjee, 1989 Supp (1) SCC 487*).**

To constitute waiver, there must be a voluntary and intentional relinquishment of a right. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question. It cannot be held that there has been a waiver of a valuable rights where the circumstances show that what was done was involuntary. There can

be no waiver of a non-existent right. Similarly, one cannot waive that which is not ones as a right at the time of waiver. Some mistake or misapprehension as to some facts which constitute the underlying assumption, without which parties would not have made the contract, may be sufficient to justify the court in saying that there was no consent. (***All India Power Engineer Federation*; *Waman Shriniwas Kini* v. *Ratilal Bhagwandas & Co., 1959 Supp (2) SCR 217: AIR 1959 SCC 689*). (V. Praveen v. Telangana State Road Transport Corporation, 2018 SCC OnLine Hyd 364)**

Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege which, except for such a waiver, a party could have enjoyed. It is, in fact, an agreement not to assert a right. There can be no waiver unless the person, who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them. (***Dawsons Bank Ltd.* v. *Nippon Menkwa Kabushiki Kaisha*, AIR 1935 PC 79; *Basheshar Nath* v. *CIT*, AIR 1959 SC 149; *Mademsetty Satyanarayana* v. *G. Yelloji Rao*, AIR 1965 SC 1405; *Associated Hotels of India Ltd.* v. *S.B. Sardar Ranjit Singh*, AIR 1968 SC 933; *Jaswantsingh Mathurasingh* v. *Ahmedabad Municipal Corpn.*, 1992 Supp (1) SCC 5; *Sikkim Subba Associates* v. *State of Sikkim*, (2001) 5 SCC 629; *Krishna Bahadur* v. *Puma Theatre*, (2004) 8 SCC 229; *State of Punjab* v. *Davinder Pal Singh Bhullar*, (2011) 14 SCC 770; N. Malla Reddy v. State of Andhra Pradesh, 2013 SCC OnLine AP 483)**

The essence of a waiver is an estoppel, and where there is no estoppel there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case, and the question of estoppel, waiver or abandonment would not be

examined in the absence of a specific plea of waiver, acquiescence or estoppel, or even a plea of abandonment of right. (***State of Punjab v. Davinder Pal Singh Bhullar, (2011) 14 SCC 770*; *Municipal Corpn. of Greater Bombay* v. *Dr. Hakimwadi Tenants' Assn.*, 1988 Supp SCC 55**; **N. Malla Reddy v. State of Andhra Pradesh, 2013 SCC OnLine AP 483).** The principle of waiver and acquiescence involves equity and justice. Conduct of the parties is a ground for attracting the doctrine of estoppel by acquiescence or waiver. **(Khoday Distilleries Ltd. v. Scotch Whisky Assn. [(2008) 10 SCC 723; Virender Chaudhary v. Bharat Petroleum Corpn., (2009) 1 SCC 297).**

From the facts noted hereinabove, it is clear that, soon after the Appellant commenced construction of the CNG station at Kanuru, and even prior to its completion, the 1st Respondent, by its e-mail dated 08.02.2018, had called upon them to desist from doing so, they had sought clarification from the PNGRB thereafter as to whether the said construction was within their GA, and had thereafter filed a complaint before the PNGRB on 27.06.2018, all within a span of less than five months. In the absence of any material placed on record to show that the 1st Respondent was aware of the table in the Krishna District GA map enclosed along with the Application cum bid document issued in 2015, knowledge of its contents cannot be attributed to them. It is, therefore, difficult to agree with the submission, urged on behalf of the Appellant, that the 1st respondent remained consciously silent though wide publicity was given to the bidding process and advertisements were issued/ notifications published in 2015. In any event, as the PNGRB lacked jurisdiction to invite bids for any part of Vijayawada GA, as that would have resulted in violating the 1st Respondent's statutory right under Section 17 of the PNGRB Act, Regulation 17 of the 2008

Regulations and Regulation 5 of the Exclusivity Regulations, no blame can be placed on the 1st Respondent in this regard.

As it is nobody's case that there is any error in the Vijayawada GA map regarding location of the CNG station at Kanuru within its boundaries, it defies reason that the 1st respondent can be blamed for not noticing a non-existent error in their CA-01 to CA-06 from 2008 onwards. The Appellant was called upon, by the 1st Respondent's email dated 08.02.2018, not to proceed with construction of the CNG station at Kanuru. Having chosen to proceed and complete construction, despite being called upon to refrain from doing so, the Appellant cannot now turn around and blame the 1st Respondent for not having commenced business activity in Kanuru till construction by the appellant was completed. Likewise, and for the very same reason, the 1st Respondent cannot be faulted for the appellant's investment in construction of the CNG station.

Since conduct of the parties is a ground for attracting the doctrine of estoppel by acquiescence or waiver, and waiver arises out of an agreement between the parties where a party fully knowing its rights has agreed not to assert the right for a consideration, the said principle cannot be extended to the 1st Respondent herein as there is, admittedly, no contract between them and the Appellant, and there is no material placed on record to show that they had consciously, voluntarily and intentionally waived their statutory right to operate exclusively within their GA. By granting an authorization in favour of the Appellant, the PNGRB could not have waived the 1st Respondent's right to operate exclusively within Vijayawada GA, as it lacked jurisdiction to even invite bids for any part thereof, let alone grant authorization to anyone else to operate within the GA authorized in favour of the 1st Respondent.

As noted hereinabove, there must be a voluntary and intentional relinquishment of a known right or such conduct as warrants the inference of the relinquishment of such a right or of forsaking the assertion of a right at the proper opportunity. The voluntary and intentional relinquishment of a right alone constitutes waiver. The material on record should disclose that there existed an opportunity for choice between the relinquishment and an enforcement of the right in question, and that what was done was involuntary. None of these tests are satisfied in the present case to hold that the 1st Respondent had either acquiesced to the construction of the sub-station or had waived its right to exclusively operate within Vijayawada GA.

XVIII. ESTOPPEL:

Ms. Kiran Suri, learned Senior Counsel appearing on behalf of the Appellant, would reiterate the very same submissions, which she had urged in support of her contention that the 1st Respondent had waived its rights, to also contend that, since both the 1st respondent and the PNGRB had remained silent spectators, which had resulted in the appellant making business plans as per the villages depicted in the CAs in the map and in spending huge money in construction, they were estopped from making any objection at this stage and that the doctrine of legitimate expectation is attracted.

The true principle of promissory estoppel is that, where one party has, by his words or conduct, made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made, and it is in fact so acted upon by the other party, the promise would be binding on the party making it; and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings

which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. (**Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd., (1983) 3 SCC 379; Motilal Padampat Sugar Mills Co. Ltd., 1979 2 SCC 409**).

This doctrine has evolved to prevent injustice where a promise is made by a person knowing that it would be acted upon by the person to whom it is made, and in fact it is so acted on, and it is inequitable to allow the party making the promise to go back on it. (**M/s. Motilal Padampat Sugar Mills Co. Ltd., 1979 2 SCC 409**). **(The Annavarappadu Hut Peoples Association, Ongole, Rep. by its President . v. The Government of A.P. Rep. by its Secretary, Revenue Department & Ors, 2018 SCC OnLine Hyd 2).** The obligation arising against an individual out of his representation, amounting to a promise, may be enforced ex contractu by a person who acts upon the promise. (**Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council, (1970) 1 SCC 582**).

The doctrine of promissory estoppel, being an equitable doctrine, must yield when equity so requires. If it can be shown, by the public authority, that, having regard to the facts as they have transpired, it would be inequitable to hold the public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made, and enforce the promise or representation against the public authority. The doctrine of promissory estoppel would be displaced in such a case because, on facts, equity would not require that the public authority should be held bound by the promise or representation made by it. (**Union of India v. Indo Afghan Agencies, (1968) 2 SCR 366; Motilal Padampat Sugar Mills Co. Ltd., 1979 2 SCC 409**).

Promissory Estoppel, being an extension of the principle of equity, the basic purpose of which is to promote justice founded on fairness and to relieve a promisee of any injustice perpetrated due to the promisor's going back on its promise, is incapable of being enforced in a court of law if the promise which furnishes the cause of action or the agreement, express of implied, giving rise to binding contract is statutorily prohibited or is against public policy. (**Amrit Banaspati Co. Ltd.2**). Estoppel stems from an equitable doctrine. It, therefore, requires that he, who seeks equity, must do equity. The doctrine cannot be invoked if it is found to be inequitable or unjust in its enforcement. (**Delhi Cloth and General Mills ltd., (1983) 4 SCC 166)**. **(The Annavarappadu Hut Peoples Association, Ongole, Rep. by its President . v. The Government of A.P. Rep. by its Secretary, Revenue Department & Ors, 2018 SCC OnLine Hyd 2).**

In order to invoke the doctrine of promissory estoppel, it is also necessary that the representation must be clear. For the purpose of finding whether an estoppel arises in favour of the person acting on the representation, it is necessary to look into the whole of the representation made. It is also necessary that the representation must be unambiguous and not tentative or uncertain. (**Delhi Cloth and General Mills ltd., (1983) 4 SCC 166**).

In order to invoke the doctrine of promissory estoppel it must be established that (a) a party has made an unequivocal promise or representation by word or conduct to the other party; (b) the representation was intended to create legal relations, or affect legal relationships to arise in future; (c) a clear foundation has been laid, in the petition, with supporting documents; and (d) the party invoking the doctrine has altered its position relying on the promise. The Court will not apply the doctrine in the abstract. (**State of Bihar v. Kalyanpur**

Cements Ltd (SC), 2010 (28) VST 1 (SC)). **(MAKS Casting (P) Ltd., R.R. District Versus Government of Andhra Pradesh and others 2010 SCC OnLine AP 741**

To invoke the said doctrine, clear, sound and positive foundation must be laid in the petition itself by the party invoking it, and bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the public authority would not suffice to press into aid the doctrine. The doctrine of promissory estoppel cannot be invoked in the abstract. (**Kasinka Trading's case (supra); Kalyanpur Cements Lid's case (supra)**). **(MAKS Casting (P) Ltd., R.R. District Versus Government of Andhra Pradesh and others 2010 SCC OnLine AP 741).**

The doctrine of promissory estoppel cannot be invoked in the abstract, and courts are bound to consider all aspects including the results sought to be achieved arid the public good at large. The fundamental principles of equity must ever be present in the mind of the court while considering the applicability of the said doctrine. If it can be shown, having regard to the facts and circumstances of the case, that it would be inequitable to hold the public authority to its promise, assurance or representation, the doctrine must yield. (**Kasinka Trading(1995) 1 SCC 274, Union of India v. Godfrey Philips India Ltd.[1986] 158 ITR 574 (SC); [1986] 59 Comp Cas 576 (SC); Krishnapatnam Port Company Limited v. Government of Andhra Pradesh, 2014 SCC OnLine Hyd 1330)**.

The doctrine of promissory estoppel would not apply in the teeth of an obligation or liability imposed by law, and there can be no promissory estoppel against the exercise of legislative power. (**Motilal**

Padampat Sugar Mills Co. Ltd. v. State of U.P.[1979] 44 STC 42 (SC); [1979] 118 ITR 326 (SC); (1979) 2 SCC 409, Kasinka Trading(1995) 1 SCC 274; Krishnapatnam Port Company Limited v. Government of Andhra Pradesh, 2014 SCC OnLine Hyd 1330).

It is not even the Appellant's case that the 1st Respondent, either by its words or conduct, had made to the Appellant a clear and unequivocal promise which was intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the Appellant. Consequently, the doctrine of promissory estoppel has no application to the 1st Respondent.

Even with respect to the PNGRB, it must be borne in mind that the doctrine of promissory estoppel has certain limitations. PNGRB, as a public authority, cannot be barred by promissory estoppel from enforcing a statutory prohibition. Promissory estoppel cannot also be used to compel PNGRB, as a public authority, to carry out a representation or promise which is contrary to law or which was outside its authority or power to make. (**Union of India v. Indo Afghan Agencies, (1968) 2 SCR 366; Motilal Padampat Sugar Mills Co. Ltd., 1979 2 SCC 409**). In public law, the most obvious limitation on the doctrine of estoppel is that it cannot be evoked to give an overriding power which the authority does not in law possess. In other words, no estoppel can legitimate an action which is ultra vires. (**Wade, Administrative law, 5 edition, pp. 233-34; Express Newspapers Pvt. Ltd. v. Union of India**). As grant of authorization to the Appellant, for any part of Vijayawada GA, would have contravened Section 17 of the PNGRB Act, Regulation 17 of the 2008 Regulations and Regulation 5 of the Exclusivity Regulations, the doctrine of promissory estoppel would not obligate the PNGRB to continue permitting the Appellant to operate its CNG station within Vijayawada GA, for the error they

committed in showing Kanuru village under CA-06 in the table of the Krishna District GA map.

XIX.DOCTRINE OF LEGITIMATE EXPECTATION

Legitimate expectation may arise (a) if there is an express promise given by a public authority; or (b) because of the existence of a regular practice which the claimant can reasonably expect to continue. Such an expectation must be reasonable. (**Madras City Wine Merchants' Assn. (1994) 5 SCC 509**; **B. Venkateswarlu v. Govt. of A.P., 2014 SCC OnLine AP 172).** A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. (**Jasbir Singh Chhabra v. State of Punjab, (2010) 4 SCC 192; Halsbury's Laws of England, 4th Edn; B. Venkateswarlu v. Govt. of A.P., 2014 SCC OnLine AP 172)**

Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. (**Food Corporation of India v. Kamdhenu Cattle Feed Industries (1993) 1 SCC71; Jasbir Singh Chhabra, (2010) 4 SCC 192; B. Venkateswarlu v. Govt. of A.P., 2014 SCC OnLine AP 172)**

Legitimate expectation cannot be upgraded to a legally enforceable right which it is not, as it is merely a part of the rule of non-arbitrariness to ensure procedural fairness of the decision. The requirement of public interest can outweigh the legitimate expectation of private persons and the decision of a public body on that basis is not assailable. (**Ghaziabad Development Authority v. Delhi Auto & General Finance (P) Ltd. (1994) 4 SCC 42; B. Venkateswarlu v. Govt. of A.P., 2014 SCC OnLine AP 172).**

There is also a distinction between a mere hope and a legitimate expectation. **(R. Selvaraj 2002 (1) MLJ 627; Madras City Wine Merchants Association's, (1994) 5 SCC 509; B. Venkateswarlu v. Govt. of A.P., 2014 SCC OnLine AP 172).** For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope. It cannot amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation, and a mere disappointment does not attract legal consequences. A pious hope, even leading to a moral obligation, is not a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and, therefore, does not amount to a right in the conventional sense. **(Punjab Communications Ltd. v. Union of India (1999) 4 SCC 727, Chanchal Goyal (Dr.) v. State of Rajasthan, (2003) 3 SCC 485, J.P. Bansal v. State of Rajasthan, (2003) 5 SCC**

134, State of Karnataka v. Umadevi, (2006) 4 SCC 1 , Kuldeep Singh v. Govt. of NCT of Delhi, (2006) 5 SCC 702; Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381 and Sethi Auto Service Station v. DDA, (2009) 1 SCC 180; Union of India v. Hindustan Development Corpn (1993) 3 SCC 499; Jasbir Singh Chhabra, (2010) 4 SCC 192).

A claim based on mere legitimate expectation, without anything more, cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. (**Attorney General for New South Wales v. Quin[1990] 64 Aust LJR 327 and National Buildings Construction Corpn. v. S. Raghunathan(1998) 7 SCC 66; Krishnapatnam Port Company Limited v. Government of Andhra Pradesh, 2014 SCC OnLine Hyd 1330)**.To strike down the exercise of administrative power, solely on the ground of avoiding the disappointment of the legitimate expectation of a person, would be to set the court adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form the basis for invalidating the exercise of a power when its exercise otherwise accords with law. (**Union of India v. Hindustan Development Corpn. (1993) 3 SCC 499, Attorney General for New South Wales[1990] 64 Aust LJR 327; S. Raghunathan(1998) 7 SCC 66; Krishnapatnam Port Company Limited v. Government of Andhra Pradesh, 2014 SCC OnLine Hyd 1330)**.

As the legitimacy of an expectation can be inferred only if it is founded on the sanction of law, and permitting the Appellant to operate within Vijayawada GA would contravene the law, ie the statutory provisions referred to hereinabove, the doctrine of legitimate

expectation would have no application in the case on hand. In any event, a claim based on mere legitimate expectation, without anything more, cannot ipso facto give a right to invoke these principles.

XX.RESTITUTION:

Sri Shiv Kumar Pandey, Learned Counsel for the 1st respondent, would submit that the 1st respondent filed complaint dated 27.06.2018 before the PNGRB challenging the illegal construction of the CNG station by the appellant within their GA; in the said complaint, the 1st respondent had also sought an interim prayer to stop operation of the CNG station illegally constructed by the appellant; though the 1st respondent had sought a prayer to stop operation of the CNG station before the PNGRB, the same was not decided by the PNGRB; thereafter, vide order dated 31.07.2020, this Tribunal granted status quo; and the appellant cannot take advantage of an interim order. Reliance is placed in this regard on **Goa State Cooperative Bank Limited versus Krishna Nath A. (Dead) Through Legal representatives and others (2019) 20 SCC 38.**

As the impugned Order passed by the PNGRB was not permitted to be given effect to during the pendency of these appellate proceedings, and the Appeal is now being dismissed in part, neither can the 1st Respondent be made to suffer, nor can the Appellant be permitted to reap the benefits of the interim order, on application of the Doctrine of Restitution, for it is well settled that no person can suffer from the act of court and an unfair advantage gained by a party of interim order must be neutralised.

The principle of restitution enjoins a duty upon the courts to do complete justice to the party at the time of final decision, and to do away with the effect of an interim order. (***South Eastern Coalfields***

***Ltd.* v. *State of M.P.*, (2003) 8 SCC 648**; **Goa State Coop. Bank Ltd. v. Krishna Nath A., (2019) 20 SCC 38).** The concept of restitution is a common law principle and it is a remedy against unjust enrichment or unjust benefit. The court cannot be used as a tool by a litigant to perpetuate illegality. A person who is on the right side of the law, should not have a feeling that in case he is dragged in litigation, and wins, he would turn out to be a loser, and the wrongdoer as a real gainer, after several years. (**Goa State Coop. Bank Ltd. v. Krishna Nath A., (2019) 20 SCC 38).**

The court should never permit a litigant to perpetuate illegality by abusing the legal process, and must ensure that there is no wrongful, unauthorised or unjust gain for anyone by the abuse of process of the court. No one should be allowed to use the judicial process for earning undeserved gains or unjust profits. The object and true meaning of the concept of restitution cannot be achieved unless the courts adopt a pragmatic approach in dealing with the cases. **(Goa State Coop. Bank Ltd. v. Krishna Nath A., (2019) 20 SCC 38; Amarjeet Singh v. Devi Ratan, (2010) 1 SCC 417; *Ram Krishna Verma* v. *State of U.P.*, (1992) 2 SCC 620**; ***Grindlays Bank Ltd.* v. *CIT*, (1980) 2 SCC 191**)

While, in principle, there can be no quarrel with the submission urged on behalf of the 1st Respondent that, on the dismissal of the Appeal, the earlier status quo order passed by this Tribunal would no longer survive, and they are entitled for restitution for the loss suffered by them on account of the interim order, it must be borne in mind that prayer (2) of the 1st Respondent's complaint, which was to direct the Appellant to compensate them for the business loss accumulating to Rs.2.28 crores till the filing of the petition, apart from future losses which may arise if the Appellant does not stop its operations, was not granted

by the PNGRB, and yet the 1st Respondent chose not to prefer an appeal against that part of the order passed by the PNGRB.

The present Appeal, preferred against the order of the PNGRB, is by the Appellant herein. While this Tribunal would, no doubt, be entitled to dismiss the Appeal, if it is satisfied that it is devoid of merits, it would not be justified in granting the 1st Respondent the relief of restitution in an Appeal filed by the Appellant herein.

By the order, impugned in this Appeal, the PNGRB granted the 1st Respondent a part of the relief sought by them ie Prayer (1) which is to direct the Appellant to remove the CNG station as it is within the GA of the 1st Respondent. With respect to this relief, the PNGRB had, by way of the impugned order, directed the Appellant to handover the subject CNG station at Kanuru to the 1st Respondent within 60 days from the date of the order, and the Appellant was, thereafter, directed to cease and desist from marketing CNG within the GA authorised to the 1st Respondent. While it is always open to the 1st Respondent to initiate proceedings afresh seeking restitution, it would be wholly inappropriate for this Tribunal to issue any such direction in this regard in an Appeal filed by the Appellant, against whom the 1st the Respondent seeks restitution.

XXI. MUTUAL DISCUSSIONS :

Ms. Kiran Suri, Learned Senior Counsel appearing on behalf of the Appellant, would submit that, in compliance with the directions of this Tribunal, the parties met in Hyderabad on 13.02.2023 for mutual discussions in order to arrive at an amicable settlement; the Appellant proposed they “co-exist” in Kanuru village since both parties are

operating the respective CNG stations at a distance of 500 metres; but the parties could not arrive at an amicable resolution of the dispute.

Sri Shiv Kumar Pandey, Learned Counsel for the 1st respondent, would submit that, during the mediation process, the 1st respondent had offered to compensate the appellant for its installation subject to valuation by an independent valuer or, in the alternative, the appellant could be a dealer of the 1st respondent and share commission on the sale of CNG.

While it is clear that the PNGRB cannot solely be blamed, and the Appellant ought also to have satisfied itself that the excluded Area shown in the Krishna District GA Map, as the area authorised in favour of the 1st Respondent ie Vijayawada GA, did not include Kanuru Village, before establishing their CNG station thereat, we cannot ignore the fact that the error on the part of the PNGRB, in referring to Kanuru village as falling within CA-06 in the table of the Krishna District GA map, may have possibly also weighed with the Appellant in installing their CNG station at Kanuru, investing huge sums of money. In any event, the 1st Respondent cannot be faulted in this regard as it was not involved, in the bidding process undertaken in the year 2015, in any manner.

In terms of the earlier order of the PNGRB, both the parties, no doubt, attempted to mutually resolve their differences, but to no avail. It does appear that, while the Appellant had proposed that both parties operate their respective CNG stations, located within a distance of 500 m from each other in Kanuru Village, the 1st Respondent had offered to compensate the Appellant for its installation, subject to valuation by an independent valuer, or, in the alternative, to appoint the Appellant as its dealer on sharing the commission received on the sale of CNG. Both the parties intimated the PNGRB that their attempt to reconcile their differences had failed.

Bearing in mind the fact that the Appellant has invested huge sums of money in establishing the subject CNG station, and the direction to cease and desist from marketing CNG from the said Station, would render their entire investment worthless, we are satisfied that the PNGRB should endeavour to mediate between both the Appellant and the 1st Respondent, and try to persuade them to arrive at a fair and reasonable settlement.

XXII.EQUITABLE CONSIDERATIONS: MOULDING THE RELIEF:

On the equitable power of this Tribunal, Ms. Kiran Suri, Learned Senior Counsel appearing on behalf of the Appellant, would place reliance on **Hindalco Industries Ltd Versus Union of India: 1994 (2) SCC 594,** and submit that this Tribunal should quash the order passed by the PNGRB dated 18.02.2020, and uphold that the CNG Station of the Appellant in Kanuru Village falls under CA-6 within the GA authorized to the Appellant.

Sri Shiv Kumar Pandey, Learned Counsel for the 1st respondent, would submit that, when there is a conflict between law and equity, it is the law which would prevail, in accordance with the Latin maxim "*dura lex sed lex*", which means "the law is hard, but it is the law"; Equity can only supplement the law, but it cannot supplant or override it; and, in the present case, the statutory right of the 1st respondent is infringed. Reliance is placed by the Learned Counsel on ***Raghunath Rai Bareja v. Punjab National Bank*, (2007) 2 SCC 230.**

When there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim "*dura lex sed lex*", which means "the law is hard, but it is the law". Equity can only supplement the law, but it cannot supplant or override it. **(Raghunath**

Rai Bareja v. Punjab National Bank, (2007) 2 SCC 230). It is impermissible to permit the Appellant to continue operating its CNG station at Kanuru on equitable considerations, since it falls withing the boundaries of Vijayawada GA, and permitting them to do so would result in contravention, and fall foul, of Section 17 of the PNGRB Act, Regulation 17 of the 2008 Regulations, and Regulation 5 of the Exclusivity Regulations.

The law declared, in **Hindalco Industries Ltd. v. Union of India, (1994) 2 SCC 594,** is that this Tribunal, while keeping justice, equity and good conscience at the back of its mind, may, when compelling equities of the case oblige them, shape the relief consistent with the facts and circumstances established in the given cause of action; if the Tribunal thinks it just, relevant and germane, after taking all the facts and circumstances into consideration, it may mould the relief, in exercising its discretionary power, and equally avoid injustice; likewise when the right to remedy under the Act itself arises on the presence or absence of certain basic facts, at the time of granting relief, it may either grant the relief or refuse to grant the same; it would be one of just and equitable exercise of the discretion in moulding the ancillary relief; and it is not as of right.

While the Appellant cannot be permitted to continue to operate the CNG station and market CNG therefrom, we find considerable force in the submission, urged on behalf of the Appellant, that the PNGRB could not have directed them to hand over the CNG station at Kanuru to the 1st Respondent. As noted hereinabove, the land, on which the CNG station has been installed at Kanuru, is owned by the Appellant, and they have invested large sums of money in constructing the CNG station. The Appellant could not have been called upon to hand over its assets to the 1st Respondent without adequate consideration

XXIII.CONCLUSION:

The first part of the impugned Order, passed by the PNGRB, directing the Appellant to hand over the CNG station at Kanuru, to the 1st Respondent, is accordingly set aside. The 2nd part of the relief granted by way of the impugned order, directing the Appellant to cease and desist from marketing CNG, from the CNG station at Kanuru, as it falls within Vijayawada GA, is upheld.

The order now passed by us, upholding the impugned order of the PNGRB to the extent it had directed the Appellant to cease and desist from marketing CNG from the CNG station at Kanuru, shall not come in the way of the PNGRB undertaking the exercise of mediating between, and in trying to persuade, both the parties to mutually resolve their differences, and arrive at a fair and a reasonable settlement regarding the subject CNG station at Kanuru.

Consequently, while the land on which the CNG station was constructed, and the assets installed thereat, shall continue to remain with them, the Appellant shall henceforth cease and desist from operating, or marketing CNG from, the said CNG station at Kanuru. The Appeal stands disposed of with the aforesaid directions. IAs, if any pending, would no longer survive, and are accordingly dismissed.

Pronounced in the open court on this 19th day of July, 2023.

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

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

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