IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.639 OF 2023 & IA Nos.1123 OF 2023 & 2209 OF 2023

Dated: 26.04.2024

Present: Hon'ble Dr. Ashutosh Karnatak, Technical Member (P&NG)
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

AGP CGD INDIA PRIVATE LIMITED
Through: Mr. Susheel Jad, General Counsel (Legal Head)
Having registered office at:
Unit No. 305, Third Floor, Worldmark 2,
Asset-8, Hospitality District, Aerocity, NH-8,
New Delhi-110037
Email: susheel.jad@agppratham.com … Appellant(s)

Versus

1. **PETROLEUM & NATURAL GAS REGULATORY BOARD**
Through: The Secretary
1st Floor, World Trade Centre,
Babar Road, New Delhi – 110001
Email: secretary@pngrb.gov.in

2. **HYUNDAI MOTOR INDIA LIMITED**
Through: Mr. Nitin Kumar Gupta, Manager (Legal & Secretarial),
Plot No. C11 & 11A, City Centre, Urban
Estate, Sector 29, Gurugram, Haryana-122001
Email: secretarial@hmil.net

3. **INDIAN OIL CORPORATION LIMITED**
Through: Mr. Mahesh Chander Gupta
(Chief General Manager (Gas)),
Having registered office at:
Indian Oil Bhavan, G-9 All Yavar Jung Marg,
Bandra (East) Mumbai-400051

Email: kgwalani@indianoil.in … Respondent(s)

Counsel for the Appellant(s)	:	Paras Kuhad, Sr. Counsel Piyush Joshi Sumiti Yadava
Counsel for the Respondent(s)	:	Sumit Kishore Tanuja Dhoulakhandi Mohit Budhiraja Sanskriti Bhardwaj Suyash Gaur Harshita Tomar Kartikey Joshi for Res. 1 Buddy Ranganadhan Aashish Gupta Chandni Ghatak Aditya Thyagarajan Rajarshi Roy Jayati Sinha for Res. 2 Smarika Singh Saifur Rehman Faridi Yashna Mehta Aman Goyal Arjun Singh Rana Tanya Gupta for Res. 3

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. Apart from the issue with regards to maintainability of the present appeal, it also involves another important issue with very wide ramifications regarding the interpretation of Regulation 3 of Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operation or Expand City or Local Natural Gas Distribution Network) Regulations, 2008. These regulations are hereafter referred to as "PNGRB Regulations" in short.

2. First, a brief conspectus of the facts and circumstances leading to filing of the instant appeal.

3. The appellant AGP CGD India Private Limited is a Special Purpose Vehicle (hereinafter referred to as “SPV”) incorporated by the consortium of AG&P LNG Marketing Pvt. Limited and Atlantic Gulf & Pacific Company of Manila Inc., which has been provided three authorizations for development of City Gas Distribution network (hereinafter referred to as “CGD network”) in the respective Geographical Areas (hereinafter referred to as “GAs”/ “GA”) in the 9th CGD bid round including the authorization for the GA of Kanchipuram District. Thus, the appellant is the authorized entity for the GA of Kanchipuram District having authorization to lay, build, operate or expand city or local natural gas distribution network in the said GA.

4. The appellant had been in correspondence with the 2nd respondent Hundai India Motor Limited, an industrial consumer located in Kanchipuram District GA for supply of natural gas to it. The 2nd respondent is stated to have been delaying the finalization of agreement with the appellant and ultimately informed the appellant vide letter dated 05.08.2022 that considering its long-term business plan, it has finalized its PNG supply with 3rd respondent Indian Oil Corporation Limited. In a meeting held on 06.09.2022, the 2nd respondent informed the appellant that it has already entered into an agreement with 3rd respondent for supply of PNG to its facilities.

5. Feeling aggrieved by the conduct of 2nd and 3rd respondents, whereby 2nd respondent had decided to take supply of PNG for its requirement from 3rd respondent and the 3rd respondent had agreed to

supply PNG to it, the appellant filed a complaint before the 1st respondent Petroleum and Natural Gas Regulatory Board (in short "PNGRB") on 13.10.2022, alleging infringement of its rights including infrastructure as well as marketing exclusivity.

6. The Board found that no agreement had been signed between the 2nd and 3rd respondent herein regarding supply of natural gas by 3rd respondent to 2nd respondent in Kanchipuram GA, and thus, held the complaint as premature. Accordingly, vide order dated 20.01.2023, it dismissed the complaint with liberty to the appellant to approach it again, in case, any rights granted to it under the PNGRB Act, as well as the Regulations framed thereunder are infringed.

7. On 07.02.2023, the appellant filed an application before the Board under Regulation 50 of PNGRB Regulations, 2007, seeking some clarificatory directions. The Board treated the application as a review application under Section 13(1)(h) of the PNGRB Act read with Section 114 and Order XXXXVII Rule 1 of the Code of Civil Procedures, 1908, and dismissed the same vide order dated 20.04.2023 upon holding that there is no apparent error in the order dated 20.01.2023.

8. The appellant has now assailed both these orders dated 20.01.2023 and 20.04.2023 of the Board in the instant appeal.

9. All the three respondents, in their separate replies filed before this Tribunal, stated that the appeal having been filed against an order dismissing the review application is not maintainable in view of Order XXXXVII Rule 7 of Civil Procedure Code and hence liable to be dismissed

straight away. The respondent nos. 1&2 have also stated that the appeal is time barred and is liable to be dismissed on this score as well.

10. We have heard Shri Paras Kuhad, learned senior counsel appearing on behalf of the appellant and Shri Sumit Kishore, Shri Buddy Ranganadhan, and Ms. Amarika Singh appearing on behalf of the respondent nos. 1 to 3 respectively on the maintainability of the appeal as well as on the merits of the case.

In re: Maintainability of the Appeal

11. Even though the respondents, in their replies to the memorandum of appeal, had assailed the maintainability of the appeal on the sole ground that it has been filed against an order dismissing the review application which is not permissible in view of Order XXXXVII Rule 7, CPC, yet this ground was not agitated during the oral arguments at all. Even the written submissions filed on behalf of the respondents do not say a word about the said ground. It is probably for the reason that the respondents must have realized that the appeal has not been filed against the order dated 20.04.2023 alone vide which review application was dismissed but also against the initial order dated 20.01.2023 vide which applicants' complaint was dismissed and hence the same is clearly maintainable.

12. So far as the delay in filing the appeal is concerned, we find that the same has already been condoned by this Tribunal vide order dated 02.08.2023 which has not been assailed by any of the respondents and thus, has attained finality. Hence, the respondents are hereby precluded from agitating the ground of limitation again.

13. During the oral arguments on 15.03.2024, the learned counsels for the respondents challenged the maintainability of the appeal on an altogether new ground which was not agitated by any of them in their replies or in the oral submissions on any date prior to the said date. We could have conveniently brushed aside the said objection to maintainability of appeal as it was not raised either in the replies or on any date prior to 15.03.2024, but in order to bring quietus to the issue of maintainability of appeal, we asked the parties to file a brief note on the said issue and have heard the learned counsels in detail.

14. It is argued on behalf of the respondents that this Tribunal lacks jurisdiction to entertain the appeal for the reason that in the impugned order dated 20.01.2023, the Board has not given any findings on the merits of the complaint filed by the appellant and dismissed the complaint as being premature with liberty to the appellant to approach the Board again, in case, any of its rights under the PNGRB Act, as well as Regulation made thereunder were infringed, which indicates that the Board did not give any findings on the issues raised by the appellant in the complaint. It is submitted that instead of approaching the Board again, the appellant has approached this Tribunal by way of the instant appeal, calling upon this Tribunal to exercise original jurisdiction in appellate proceedings to adjudicate upon the issues raised by the appellant in its complaint, which is not permissible, in view of the scheme of PNGRB Act. It is pointed out that Section 25 read with Section 33 of the PNGRB Act envisaged that original adjudication shall be undertaken by the Board and any party feeling aggrieved by the decision of the Board may file an appeal before this

Tribunal. According to learned counsels the appellant cannot be permitted to bypass the original jurisdiction of the Board by asking this Tribunal to exercise original jurisdiction in appeal proceedings filed under Section 33 of the PNGRB Act, read with Section 111 of the Electricity Act. Reliance is placed in this regard upon the judgment of this Tribunal in appeal No.239/2015 *Indian Wind Power Association v. Tamil Nadu Generation and Distribution Corporation Limited & Ors.* decided on 05.02.2020 in which it has been held as under:

> "30…*The law has created the adjudicatory machinery and a hierarchy*. *The adjudicatory forum at each level must discharge its responsibilities in accordance with law. If the course suggested were to be followed, and adopted, or shall we say become the norm, it would amount to permitting abdication of responsibility. What has to be done by Forum of first instance must be done by that Forum alone. If it fails to exercise its jurisdiction, this Tribunal is vested with the power to correct the course.*
>
> 31. *We may quote sub-section (6) of Section 111 and Section 121 of Electricity Act, 2003 hereunder:*
> *"111. Appeal to Appellate Tribunal. -- … (6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the Appropriate Commission under this Act, as the case may be, in relation to any proceeding, on its*

own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit."

"121. Power of Appellate Tribunal. – The Appellate Tribunal may, after hearing the Appropriate Commission or other interested party, if any, from time to time, issue such orders, instructions or directions as it may deem fit, to any Appropriate Commission for the performance of its statutory functions under this Act."

32. *The jurisdiction conferred by Section 111(6) is akin to the power of revision and that given by Section 121 is of general superintendence. If we find that the State Commission has failed to render final decision as expected of it in law, it is not for us to take over the responsibility and decide the dispute at the stage of appeal. That would not only be improper usurpation of jurisdiction but also set a bad precedent countenancing abdication. Moreover, it would result in a situation where this Appellate Tribunal would be reduced to the status of the forum of first instance rendering the appeal before the Supreme Court (under Section 125 of Electricity Act, 2003) as virtually the first appeal wherein questions of facts could also be raised. That is not a desirable interpretation to adopt."*

15. The learned counsels submitted that though the above judgment has been rendered on Section 111 of Electricity Act, yet the same applies to instant case also for the reason that section 33 of the PNGRB Act which

provides for appeals to this Tribunal from an order or decision of the Board, is in *Pari Materia* to Section 111 of the Electricity Act. They further submitted that clearly no findings have been given by the Board on the merits of the case and cited the judgment of the Hon'ble Supreme Court in *Shyam SEL & Power Ltd. v. Shyam Steel Industries Ltd. (*2023) 1 SCC 634 to canvass that the impugned order of the Board dated 20.01.2023 cannot be construed as an appealable order and therefore, the instant appeal is clearly not maintainable. The relevant part of the said judgment is quoted hereunder: -

> "22. *It could thus be seen that both the judgments of Justice S. Murtaza Fazal Ali as well as Justice A.N. Sen have a common thread that, as to whether an order impugned would be a 'judgment' within the scope of Clause 15 of Letters Patent, would depend on facts and circumstances of each case. However, for such an order to be construed as a 'judgment', it must have the traits and trappings of finality. To come within the ambit of 'judgment', such an order must affect vital and valuable rights of the parties, which works serious injustice to the party concerned. Each and every order passed by the Court during the course of the trial, though may cause some inconvenience to one of the parties or, to some extent, some prejudice to one of the parties, cannot be treated as a 'judgment'. If such is permitted, the floodgate of appeals would be open against the order of Single Judge."*

"31. *It is difficult to appreciate the anxiety on the part of the Division Bench of the High Court to itself dispose of the interlocutory application instead of relegating it to the court below for its disposal. When the Division Bench of the High Court itself took 8-9 months to decide the appeal, it is difficult to understand as to what the learned Judges of the Division Bench of the High Court meant by "unnecessary prolongation of the litigation and utter wastage of time". If the learned Judges of the Division Bench were so much concerned with the prolongation of litigation, they could have very well requested the learned Single Judge to decide the injunction application within a stipulated period. Instead of waiting for a period of 8-9 months, this could have been done by them at the very first instance when the appeal was listed. The hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. If the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts. As observed by this Court in Monsanto Technology LLC (supra), the appellate court cannot usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of*

convenience and irreparable injury are made out in the case or not."

16. The learned counsels further argued that this Tribunal being a creature of the statute cannot act beyond statutory powers conferred on it. It is pointed out that the power conferred on this Tribunal under Section 33 of the PNGRB Act read with Section 111 of the Electricity Act, 2003, is to exercise appellate jurisdiction and not the original jurisdiction, and therefore, it cannot assume the role of the Board in adjudicating upon the issues raised by the appellant in the complaint in the absence of any findings on those issues from the Board.

17. On these submissions, it is urged on behalf of the respondents to dismiss the appeal as being not maintainable.

18. Learned senior counsel for the appellant vehemently refuted the submissions made on behalf of the respondents on the aspect of maintainability of the appeal. According to him it is beyond any cavil that the impugned order dated 20.01.2023 of the Board falls under the category of "order or decision" referred in Section 33 of the PNGRB, in so far as appellant's complaint alleging breach of its infrastructure and marketing exclusivity by 2nd and 3rd respondents has been dismissed vide the said order. It is submitted that the appellant is aggrieved by the rejection of its complaint by the Board on the ground of being premature, which, in itself, is good reason for approaching this Tribunal by way of appeal under Section 33 of the PNGRB Act. He argued that the facts before the Board were sufficient enough to allow the appellant's complaint but the Board has erred

in holding the complaint as premature, and therefore, the appellant had no other option except to approach this Tribunal by the present appeal.

19. It is, further argued by the learned counsel for the appellant that as per the settled principle of law, this Tribunal has the power to either remand the matter back to the Board for decision on the merits of the case or to decide all the questions of facts as well as law arising in the present appeal itself. It is argued that this power is of discretionary nature conferred on an appellate body and needs to be exercised upon considering the entire facts and circumstances of the case as well as the legal ramifications of the issues involved in the case. It is submitted that in the instant case, since the appeal has been heard in detail on several dates, and involves an issue regarding interpretation of Regulation 3 of PNGRB Regulations, 2008, it would be an exercise in futility to remand the case back to the Board. To buttress his submissions, the learned counsel cited *Filterco v. CST 1986 2 SCC 103 and Tarlok Singh v. State of Punjab* 1977 3 SCC 218 in which the Hon'ble Supreme Court, instead of remanding the matter to original authority decided to undertake adjudication of issues including factual issues for the first time at the stage of Supreme Court itself as it was found that all the necessary facts were available on the record before it.

20. It is, further submitted that remanding the matter to the Board at this juncture would render the appellant remediless since there is no Coram available in the Board at present for the reason that there is no Member Legal in the Board. It is submitted that the issue involved in the present case is of such nature which requires to be adjudicated by a Bench comprising of a Member Legal also, and since no such Bench can be

constituted in the Board at present, remanding the matter to the Board would not be appropriate and justified course of action.

21. We have given our thoughtful consideration to the rival submissions made by the learned counsels and have perused the record as well as the judgments cited at the Bar.

22. Before dealing with the arguments raised on behalf of the parties, we feel it pertinent to reproduce Section 33 of the PNGRB Act hereunder: -

> *"33. Appeals to Appellate Tribunal :-*
> *(1) Any person aggrieved by an order or decision made by the Board under this Act may prefer an appeal to the Appellate Tribunal : Provided that any person preferring an appeal against an order or decision of the Board levying any penalty shall, while filing the appeal, deposit the amount of such penalty : Provided further that where in any particular case, the Appellate Tribunal is of the opinion that deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.*
>
> *(2) Every appeal under sub-section (1) shall be filed within a period of thirty days from the date on which a copy of the direction or order of decision made by the Board is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be*

prescribed : Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties an opportunity of being heard, pass such orders thereon as it thinks fit.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the Board.

(5) The appeal filed under sub-section (1) shall be dealt with by the Appellate Tribunal as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within ninety days from the date of receipt of appeal: Provided that where any such appeal could not be disposed of within the said period of ninety days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Board referred to in the appeal filed under sub-section (1), either on its own motion or otherwise, call for the records relevant to disposing of such appeal and make such orders as it thinks fit."

23. It is evident from the bare reading of the said legal provision that any person aggrieved by an order or decision of the Board may approach this Tribunal by way of appeal.

24. In the instant case, the appellant approached the Board with a complaint under Section 21(3) read with Section 12(1)(b) read with Section 16, Section 25, and Section 13(1)(g) of the PNGRB Act, read with Regulation 3(2)(a) of PNGRB Regulation, 2008, against the 2nd and 3rd respondent herein with clear cut allegations that the respondents have willfully violated its marketing as well as infrastructure exclusivity by hatching a business plan whereby the 3rd respondent would supply natural gas to the 2nd respondent for its requirement in the factory situated in Kanchipuram GA for which the appellant is the authorized entity. However, the Board dismissed the complaint as premature vide its impugned order dated 20.01.2023. The appellant again approached the Board on 07.02.2023 by way of an application under Regulation 50 of PNGRB Regulation, 2007, seeking some clarificatory directions with regards the order dated 20.01.2023, which was treated by the Board as a review application and was dismissed vide order dated 20.04.2023 on the ground that no apparent error can be found in the earlier order dated 20.01.2023. Since both these orders are against the appellant, it is natural for the appellant to be aggrieved by the same. The appellant felt that its complaint before the Board was not premature and disclosed all the requisite facts supported by documents to enable the Board to pass an order on merits of the case. Therefore, upon dismissal of its application for clarification, the only option available to the appellant was to approach this Tribunal by way of appeal. Therefore, it cannot be said that the appeal is not maintainable

at all. It is for this Tribunal to ascertain and decide whether the Board was right in dismissing the complaint of the appellant as premature.

25. We have minutely perused the pleadings of the parties filed before the Board which have been reproduced to a large extent by the Board in its impugned order dated 20.01.2023. It is manifest from bare reading of these pleadings of the parties that there was some sort of understanding between the 2nd and 3rd respondents whereunder 3rd respondent was to supply natural gas to 2nd respondent for requirement in its automobile plant located in Kanchipuram District. This fact has not been denied either by 2nd respondent or by 3rd respondent in their replies to the appellant's complaint before the Board. It is very clearly contended by these two respondents before the Board that such an arrangement between them is clearly valid and permissible in view of the regulation 3(2)(b) of PNGRB Regulation, 2008, and therefore, the complaint filed by the appellant is totally frivolous. Having regard to the nature of pleadings of the parties before the Board, as noticed hereinabove, dismissal of complaint by the Board as premature on the ground that there has been no agreement between the respondents for supply of natural gas by 3rd respondent to 2nd respondent, clearly appears to be erroneous and not sustainable. The Board should have proceeded to determine the actual controversy involved in the complaint before it as to whether a common carrier like 3rd respondent Indian Oil Corporation can supply natural gas to a bulk consumer like Hundai Motor India Limited 2nd respondent for its requirement in the automobile plant situated in Kanchipuram District GA of which the appellant is the authorized entity as per the PNGRB Regulation, 2008. Instead of doing so, the Board found a shortcut by dismissing the complaint as premature on an extraneous

ground thereby causing serious miscarriage of justice. Such conduct of the Board cannot be countenanced and needs to be deplored.

26. Thus, we are unable to sustain the impugned order dated 20.01.2023 of the Board while holding that the Board has committed a serious illegality in dismissing the complaint of the appellant as being premature.

27. Having held so, this Tribunal is left with two options i.e. either to remand the case back to the Board for a fresh consideration on the issues involved in the case or to decide the issues involved in the case itself on merits. We find it appropriate and justifiable to adopt the latter course of action for various reasons.

28. Firstly, we have heard the learned counsels for the parties in detail on the merits of the case on various dates commencing from 02.02.2024. The arguments were heard on 02.02.2024, 13.02.2024, 01.03.2024, 08.03.2024, 15.03.2024, and lastly on 21.03.2024. It was for the first time on 15.03.2024 that objection to the maintainability of the appeal was raised by learned counsel for 3rd respondent, which was then reiterated by learned counsels for other two respondents also. Such objection to the maintainability of the appeal should have been raised on the very first date i.e. 02.02.2024 when we commenced hearing of this appeal. The learned counsels for the respondents maintained a stoic silence in this regard till 15.03.2024 thereby giving an impression that there is no challenge to the maintainability of the appeal. Hence, having heard the learned counsels extensively on the merits of the case on several dates, we do not find it appropriate to remand the matter back to the Board for a fresh consideration.

29. Secondly, there is no dispute between the parties so far as the factual aspects of the case are concerned. Only the rights of the parties flowing from the interpretation of Regulation 3(2)(b) of the PNGRB Regulation, 2008 are to be determined, for which entire material has been placed before this Tribunal by the learned counsels. Therefore, we do not see any justification for remanding the matter back to the Board for fresh consideration.

30. Thirdly, we are told that full coram is not available in the Board as there is no Member Legal at present. Therefore, even if we remand the case back to the Board, it cannot be heard in near future because of lack of proper Coram. Remanding would, thus, not serve any purpose.

31. Lastly, but importantly, we note that the main issue involved in the appeal is the interpretation of Regulation 3(2)(b) of PNGRB Regulations, 2008, which can be done more effectively and authoritatively by this Tribunal for the reason that it would have very wide ramifications throughout the length and breadth of the country, and therefore, we find it appropriate and in the fitness of things as well as in the interest of justice to take up such role of interpretation of the concerned legal provision.

32. Hence, we now proceed to deal with the merits of the case.

<u>In Re: Interpretation of Regulation 3(2)(b) of PNGRB Regulations, 2008</u>

33. It has been already noted hereinabove that the appellant had apprised the Board in the complaint that there has been an arrangement between 2nd respondent and 3rd respondent whereunder 3rd respondent has

agreed to supply natural gas to 2nd respondent for requirement in its automobile plant situated in Kanchipuram District GA of which the appellant is the authorized entity and according to the appellant, such conduct of the respondents tantamounted to infringement of its rights in the Kanchipuram District GA including its infrastructure and marketing exclusivity within the GA. According to the 2nd and 3rd respondents, such an arrangement is permissible and not violative of any regulation particularly Regulation 3(2)(b) of PNGRB Regulations, 2008.

34. Therefore, the entire controversy between the parties revolves around the interpretation of Regulation 3(2)(b) of PNGRB Regulations, 2008. We, thus, find it pertinent to reproduce the Regulation 3 of PNGRB Regulations, 2008 hereunder:

> ***"3. Application.***
>
> *(1) These regulations shall apply to an entity which is laying, building, operating or expanding, or which proposes to lay, build, operate or expand a CGD network.*
>
> *(2) A CGD network shall be designed to operate at a pressure as specified in the relevant regulations for technical standards and specifications, including safety standards for maintaining the volumes of supply of natural gas on a sustained basis to meet the following requirements, namely: -*

(a) customers having requirement of natural gas upto 50,000 SCMD shall be supplied through the CGD network;

Provided that until CGD Network is ready to supply natural gas to a customer (other than domestic PNG and CNG), such customers shall have right to get the supply of natural gas from any other alternate source or supplier, with prior permission of the Board, and if, once CGD Network is ready to supply natural gas to such customer, then, such customer shall cease to get supply of natural gas from such alternate source or supplier after 30 days of receipt of notice of readiness from the CGD network.

(b) customers having requirement of natural gas more than 50,000 SCMD and upto 100,000 SCMD shall be supplied, at the discretion of customer

(i) through the CGD network; or

(ii) through a pipeline not forming part of the CGD network;

(c) customers having requirement of natural gas more than 100,000 SCMD shall be supplied through a pipeline not forming part of the CGD network."

35. We also find it apposite to quote Regulation 12 of these Regulations hereunder which relates to the exclusivity period of an authorized entity in a particular GA: -

> *"**12. Exclusivity period**.*
>
> *(1) 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.*
>
> *(2) 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;*
>
> *Provided that in case an entity timely achieves the work programme in each of the eight contract years, such exclusivity shall be extended by a period of two years.*
>
> *Provided further that in case an entity is not able to timely achieve the work programme in any of the eight contract years but is successful in timely achieving the cumulative work programme at the end of the eighth contract year, such exclusivity shall be extended by a period of one year.*

Provided also that in case flow of natural gas in the designated transmission pipeline is delayed for a period beyond three months from the scheduled date as indicated and is also later than the date CGD network is ready to take gas for reasons not attributable to the authorized CGD entity selected through the bidding process, the Board may extend the exclusivity period for exemption from the purview of common carrier or contract carrier by a period corresponding to the difference in the actual and scheduled natural gas flow in the transmission pipeline serving the authorized geographical area or the date when CGD network is ready to take gas, whichever is less, after assessing the reasons for such a delay and in case, the year-wise targets in respect of domestic piped natural gas connection, natural gas stations and inch-kilometer of steel pipeline as well as schedule of levying transportation rate for CGD and transportation rate for CNG shall also be shifted accordingly by the Board. Further, the exclusivity period for laying, building or expanding the CGD network as stipulated shall also be extended by the same period. For the purpose of monitoring progress of committed targets, the same shall be prorated in the effected years.

Provided also that in respect of those geographical areas where designated source of natural gas in the bid is other than from natural gas pipelines, including from an LNG terminal, the third proviso shall not apply.

Explanation 1: - For the purpose of this sub-regulation, it is clarified that, the exclusivity for laying, building or expansion of CGD networks, in all cases, shall remain twenty-five years from the date of authorisation."

Explanation 2: For the purpose of this sub-regulation, the readiness of CGD networks shall mean any of the following, namely:-

(a) Operation of at least one CNG Station within authorized geographical area, or
(b) Procurement of land for setting up City Gate Station, or
(c) Completing laying of steel pipeline at least to the extent of 10% of the MWP target for the first year, or
(d) Completing laying of MDPE pipeline at least to the extent of 50% of the MWP target of steel pipeline for the first year.

Note: Explanation 2 This will be applicable to all authorized entities irrespective of the year of bidding or authorization"

36. Regulation 3(2) divides consumers of natural gas in three categories according to their respective requirements. Clause (a) of Sub-Regulation 2 of Regulation 3 relates to customers having requirement of natural gas up to 50,000 SCMD and states that such customers shall be supplied through CGD network alone. Clause (b) of the said Sub-Regulation 2 relates to customers having requirement of natural gas more than 50,000 SCMD up to 1,00,000 SCMD and envisages that at the discretion of the customer,

they shall be supplied natural gas either through CGD network or through a pipeline not forming part of the CGD network. Clause (c) of the said Sub-Regulation 2 of Regulation 3 relates to customers having requirement of natural gas more than 1,00,000 SCMD and states that such customers shall be supplied natural gas through a pipeline not forming part of CGD network.

37. Clearly, discretion has been conferred upon the consumers of natural gas falling in category (b) of Sub-Regulation 2 of Regulation 3 to take supply of natural gas either through CGD network or a pipeline not forming the part of CGD network. However, in case, of customers falling in category (c), there is no such discretion and they have to be supplied natural gas only through a pipeline not forming part of CGD network. In this appeal, we are concerned with Regulation 3(2)(b) only. The issue which arises for adjudication is whether the consumers falling in category (b) and choosing to take supply through a pipeline not forming part of CGD network as provided under clause (ii) thereof, also have to take supply of natural gas only from the authorized entity for the GA within which their plant etc. is situated, even though, through a separate pipeline not forming part of CGD network or it is permissible for them to take supply of natural gas from an entity other than the authorized entity for the particular GA including a common carrier like the 3rd respondent Indian Oil Corporation.

38. Regulation 12 provides that an authorized entity shall enjoy marketing exclusivity in the GA for eight years extendable by further two years on fulfilling given criteria and infrastructural exclusivity for a period of 25 years. This would mean that no entity other than the authorized entity can supply

natural gas to the consumers in the particular GA for a period of eight or ten years as the case may be and no entity other than the authorized entity can lay, build or expand CGD network within that GA for a period of 25 years from the date of its authorization.

39. The argument raised on behalf of the appellant is that an authorized entity for supply of natural gas in a particular GA under PNGRB Regulations carriers the marketing service obligation to supply natural gas to all the consumers within the GA in view of Section 2(b) and 2(w) (iii) of the PNGRB Act, 2006, which do not make any distinction as regards to any category of the consumers on the basis of their requirements. It is argued that in terms of Section 21 of the PNGRB Act, an authorized CGD entity is required to provide access to its CGD network to others only after it being declared as a common carrier or a contract carrier by the PNGRB after following the procedure prescribed in Section 20 of the Act. It is pointed out that the authorization issued to the appellant by PNGRB has an essential condition which specifically requires that the CGD entity shall maintain uninterrupted supply of natural gas to all categories of consumers in the CGD network. On this aspect our attention has been drawn to Paras 5 and 6 of the authorization which are quoted herein below:

> "5. *The entity shall design and install an optimal size of the infrastructure in terms of pipelines of various types including steel belting of the authorised area, online compressors of adequate capacity for compressing of natural gas into CNG, allied equipment and facilities in the CGD network depending upon the potential demand for natural gas. The infrastructure in the CGD network should be adequate to maintain*

uninterrupted flow of natural gas in the pipelines and be also able to maintain supplies at adequate pressure to online CNG stations."

"6. *The entity shall maintain an uninterrupted supply of natural gas to all categories of customers in the CGD network…"*

40. Learned senior counsel for the appellant vehemently submitted that the appellant enjoys marketing as well as infrastructural exclusivity in the entire Kanchipuram District GA of which it is authorized entity, and therefore, it alone can supply natural gas to any category of consumers situated within the said GA, even if to be supplied through a pipeline other than the CGD network. On this aspect he cited the judgment of Hon'ble Delhi High Court in *AGP City Gas Private Limited and Anr. v. PNGRB & Ors.*, decided on 15.03.2023. It is the submission of the learned senior counsel that the Regulation 3(2)(b) has to be interpreted in a manner which does not violate or infringe upon the marketing and infrastructural exclusivity of an authorized entity for a particular GA and also keeping in mind the financial viability of the CGD infrastructure. He argued that an authorized entity which makes huge capital investment in thousands of crores in creating CGD infrastructure in the GA allotted to it cannot be expected to cater to only domestic PNG, transport and small commercial consumers only for the reason that these categories of consumers are necessarily required to be cross subsidized and the entire model is based on cross-subsidization of small consumers by the consumers with higher requirements. According to the learned senior counsel, permitting a

common carrier like 3rd respondent to supply natural gas to bulk consumers in a particular GA would render the creation of entire CGD infrastructure by the authorized entity a financial impossibility and therefore, there would be no CGD network for supply of natural gas to domestic PNG consumers.

41. It is further submitted by learned senior counsel that in case, the common carrier like 3rd respondent is permitted to supply natural gas to any bulk consumer within a particular GA, it would tantamount to having two parallel infrastructures for distribution, marketing and sale of natural gas in that GA – one created by CGD entity with obligations to supply to all consumers located within the GA on payment alongwith concomitant obligation of minimum work programme including establishment of requisite number of domestic PNG connections as well as complying with the statutory service obligations and the other created by the NGPL (Natural Gas Pipeline) entity at its will for supply to large consumers within the GA on a contractual basis without concomitant obligations and with freedom to stop supply of gas at will leaving that consumer high and dry.

42. Learned senior counsel would further submit that the authorization of 3rd respondent, a transmission pipeline / common carrier, is for transportation of natural gas only as envisaged by Section 2(j) of the PNGRB Act and not for distribution, marketing and sale thereof. It is argued that the “pipeline” contemplated under Regulation 3(2)(b)(ii) i.e. the pipeline not forming part of CGD network, cannot be laid by an NGPL entity for the reason that it is not authorized to lay, build, operate, or expand a gas pipeline. It is pointed out that there is no reference to consumers having requirement of more than 50,000 SCMD in the NGPL Regulations,

thereby authorizing an NGPL entity to supply natural gas to such consumers.

43. On the contrary, it is argued by learned counsels for 2nd and 3rd respondents that the words “pipeline not forming part of CGD network” appearing in Regulation 3(2)(b)(ii) of PNGRB Regulations, 2008, have to be interpreted as referring to a pipeline not to be laid by the authorized CGD entity but by some other entity. It is argued that if supply of natural gas to all the consumers in a GA was to be inevitable made by the CGD entity itself, there was no need for legislator to have given discretion in this regard to a bulk consumer by introducing the expression “at the discretion of customer” in Regulation 3(2)(b)(ii). According the learned counsels, introduction of the said phrase in the Regulations has been for the benefit of bulk consumers thereby giving them freedom to procure supply of natural gas from third parties at their discretion without being bound to take the supply of natural gas from the authorized entity alone. It is submitted that in case the interpretation sought to be given by the appellant to Regulation 3(2)(b)(ii) is accepted, it would set at naught the discretion given to the bulk consumers and thus would be in the teeth of the legislative mandate thereby creating a monopoly of the authorized entity in the entire CGD network.

44. Referring to the main objective of engrafting PNGRB Act which is “protecting the interest of consumers to ensure uninterrupted, adequate supply of petroleum and petroleum product and natural gas in all parts of the country and to promote competitive markets”, it is argued that the interpretation sought to be given by the appellant to Regulation 3(2)(b)(ii)

being against the interest of bulk consumers as well as against the competitiveness and creating a monopoly in favour of authorized entity, is clearly contrary to the object of the Act, and thus, cannot be accepted.

45. On behalf of 3rd respondent Indian Oil Corporation Limited, it is also submitted that in terms of clause 1(g) of Schedule-J of the NGPL Authorization Regulations, said respondent is obligated to provide connectivity to its consumers in "tariff zone". It is pointed out that "tariff zone" is defined under Regulation 2(1)(h) of the NGPL Authorization Regulation to *inter alia,* include a corridor of 50 km measured from the nearest point on the surface of natural gas pipeline on both sides. It is submitted that in the present case, that the factory premises of 3rd respondent is located at Plot No.H-1, SIPCOD Industrial Park, Irrungattukottai, Sriperumbudur Taluk, Kanchipuram District and the premises of 2nd respondent is approximately 09 km from the Ennore-Tuticorin pipeline which is within the authorization of 3rd respondent, and therefore, being within the stipulated distance of 50 km width permitted under the NGPL Authorization Regulations, the 2nd respondent falls within the tariff zone of Ennore-Tuticorin pipeline which makes 3rd respondent competent to supply natural gas to 2nd respondent.

46. We have given our anxious consideration to the rival submissions made by the learned counsels on the issues under consideration and have perused the relevant legal provisions as well as the PNGRB Regulations.

47. Since the issue under adjudication before us relates to interpretation of a legal provision, we may note at the outset that the fundamental principle of interpretation is to assign the words in a statute / legal provision

their natural, original and precise meaning, provided the words are clear and taking into account the purpose of the statute. This is known as primary rule of literal construction in the interpretation of statute and states that the words / phrases in a statute should be examined in their literal sense and given their natural effect. According to this rule, the words/ phrases and sentences of a statute are to be understood in their natural, ordinary, popular or grammatical meaning unless such a construction leads to an absurdity or the statute suggests a different meaning. In other words, in interpreting a statute, the cardinal rule is that the statute is constructed literally or grammatically giving the words their ordinary or natural meaning.

48. The other basic principles of literal construction are that every word in the law should be given meaning as no word is unnecessarily used and one should not presume any omissions and if a word is not there in the statute, it shall not be given any meaning. Nothing is to be added to or taken from the statute unless there are adequate grounds to justify the interference.

49. Having said so we may also note the objective of enacting the PNGRB Act, 2006, which is borne out from its preamble and Section 1(4). The preamble of the Act reads as under:

> *"An Act to provide for the establishment of Petroleum and Natural Gas Regulatory Board to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and entities engaged in*

specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto."

50. Sub-Section 4 of Section 1 of the Act states that it applies to refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas.

51. Therefore, the Act clearly intends to regulate, *inter alia,* the specified activities including transportation, distribution, marketing and sale of petroleum as well as natural gas as also to protect the interests of consumers and to ensure uninterrupted as well as adequate supply of these products throughout the country.

52. Regulation 2(1)(c) defines "authorized area" as meaning the specified geographical area for a city or local natural gas distribution network (hereinafter referred to as 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).

53. We may also note that other relevant provisions of the Act.

54. Section 2(d) of the Act define the authorized entity as an entity (A) registered by the Board under section 15 - (i) to market any notified petroleum, petroleum products or natural gas, or (ii) to establish and operate liquefied natural gas terminals, or (B) authorised by the Board under section 16 - (i) to lay, build, operate or expand a common carrier or contract carrier, or (ii) to lay, build, operate or expand a city or local natural gas distribution network.

55. Section 2(i) define CGD network as an interconnected network of gas pipelines and the associated equipment used for transporting natural gas from a bulk supply high pressure transmission main to the medium pressure distribution grid and subsequently to the service pipes supplying natural gas to domestic, industrial or commercial premises and CNG stations situated in a specified geographical area.

56. Section 2(j) defines common carrier as such pipelines for transportation of petroleum, petroleum products and natural gas by more than one entity as the Board may declare or authorise from time to time on a nondiscriminatory open access basis under sub-section (3) of section 20, but does not include pipelines laid to supply- (i) petroleum products or natural gas to a specific consumer; or (ii) crude oil; Explanation.- For the purposes of this clause, a contract carrier shall be treated as a common

carrier, if – (a) such contract carrier has surplus capacity over and above the firm contracts entered into; or (b) the firm contract period has expired.

57. Section 2 (w) explains the meaning of "marketing service obligations" as obligations- (i) to set up marketing infrastructure and retail outlets in remote areas in respect of notified petroleum and petroleum products; (ii) to maintain minimum stock of notified petroleum and petroleum products; (iii) of a local distribution entity to supply natural gas to consumers; and (iv) such other obligations as may be specified by regulations.

58. We also find Section 16, 19 and 21 relevant for the discussion on the issue for consideration and the same are reproduced hereunder:

> *"**16. Authorisation** :-*
> *No entity shall-*
>
> *(a) lay, build, operate or expand any pipeline as a common carrier or contract carrier,*
>
> *(b) lay, build, operate or expand any city or local natural gas distribution network, without obtaining authorisation under this Act : Provided that an entity :-*
>
> *(i) laying, building, operating or expanding any pipeline as common carrier or contract carrier; or*
> *(ii) laying, building, operating or expanding any city or local natural gas distribution network, immediately before the appointed day shall be deemed to have*

such authorisation subject to the provisions of this Chapter, but any change in the purpose or usage shall require separate authorisation granted by the Board."

*"**19. Grant of authorisation** :-*

(1) When, either on the basis of an application for authorisation for laying, building, operating or expanding a common carrier or contract carrier or for laying, building, operating or expanding a city or local natural gas distribution network is received or on sue motto basis, the Board forms an opinion that it is necessary or expedient to lay, build, operate or expand a common carrier or contract carrier between two specified points, or to lay, build, operate or expand a city or local natural gas distribution network in a specified geographic area, the Board may give wide publicity of its intention to do so and may invite applications from interested parties to lay, build, operate or expand such pipelines or city or local natural gas distribution network.

(2) The Board may select an entity in an objective and transparent manner as specified by regulations for such activities."

*"**21. Right of first use, etc** :-*

(1) The entity laying, building, operating or expanding a pipeline for transportation of petroleum and petroleum products or laying, building, operating or expanding a city or local natural gas distribution network shall have right of first use for its own requirement and the remaining capacity shall be used amongst entities as the Board may, after issuing a declaration under section 20, determine having regard to the needs of fair competition in marketing and availability of petroleum and petroleum products throughout the country: Provided that in case of an entity engaged in both marketing of natural gas and laying, building, operating or expanding a pipeline for transportation of natural gas on common carrier or contract carrier basis, the Board shall require such entities to comply with the affiliate code of conduct as may be specified by regulations and may require such entity to separate the activities of marketing of natural gas and the transportation including ownership of the pipeline within such period as may be allowed by the Board and only within the said period, such entity shall have right of first use.

(2) An entity other than an entity authorised to operate shall pay transportation rate for use of common carrier or contract carrier to the entity operating it as an authorised entity.

(3) An entity authorised to lay, build, operate or expand a pipeline as common carrier or contract carrier or to lay, build, operate or expand a city or local natural gas distribution

network shall be entitled to institute proceedings before the Board to prevent, or to recover damages for, the infringement of any right relating to authorisation. Explanation:- For the purposes of this sub-section, "infringement of any right" means doing of any act by any person which interferes with common carrier or contract carrier or causes prejudice to the authorised entity.

59. Section 16 of PNGRB Act provides that no entity shall lay, build, operate or expand any city or local natural gas distribution network i.e. CGD network without obtaining authorization under the Act. The selection of an entity for grant of such authorization is governed by Section 19 of the Act. It envisages such selection to be made by inviting applications from the interested parties and in an objective as well as transparent manner. The authorized area or the GA, for which the authorization is given to an entity for setting up of CGD network is defined in Regulation 2(1)(c), which has been already noted hereinabove.

60. Thus, as per the scheme of the Act and the Regulations, an entity is selected in a transparent manner and is given authorization to lay, build, operate or expand a CGD network in a specified GA. Regulation 12(2) provides marketing exclusivity of 08 years to such an authorized entity for the specified GA from the purview of common carrier or contract carrier. It also confers infrastructural exclusivity upon the authorized entity in the specified GA for 25 years for laying, building or expanding of CGD network in all cases from the date of authorization.

61. Now, we turn to the contentious Regulation 3. Even through it has been already quoted hereinabove but for the purpose of convenience we think it apposite to quote it here again: -

> ***"3. Application.***
>
> *(1) These regulations shall apply to an entity which is laying, building, operating or expanding, or which proposes to lay, build, operate or expand a CGD network.*
>
> *(2) A CGD network shall be designed to operate at a pressure as specified in the relevant regulations for technical standards and specifications, including safety standards for maintaining the volumes of supply of natural gas on a sustained basis to meet the following requirements, namely: -*
>
> *(d) customers having requirement of natural gas upto 50,000 SCMD shall be supplied through the CGD network;*
>
> *Provided that until CGD Network is ready to supply natural gas to a customer (other than domestic PNG and CNG), such customers shall have right to get the supply of natural gas from any other alternate source or supplier, with prior permission of the Board, and if, once CGD Network is ready to supply natural gas to such customer, then, such customer shall cease to*

get supply of natural gas from such alternate source or supplier after 30 days of receipt of notice of readiness from the CGD network.

(e) customers having requirement of natural gas more than 50,000 SCMD and upto 100,000 SCMD shall be supplied, at the discretion of customer

(iii) through the CGD network; or

(iv) through a pipeline not forming part of the CGD network;

(f) customers having requirement of natural gas more than 100,000 SCMD shall be supplied through a pipeline not forming part of the CGD network."

62. Clause 1 of the Regulation specifically provides that the Regulations apply to an entity which is laying, building, operating or expanding a CGD network or propose to do so i.e. an authorized entity.

63. There is no dispute with regards to clause 2(a). We are concerned with Clause 2(b)(ii) of the Regulation. We are called upon to determine whether the "pipeline" referred to in Regulation 2(b)(ii) i.e. the pipeline not forming part of CGD network shall have to be laid for a bulk consumer by the authorized entity for the specified GA alone or can be laid by a natural gas pipeline (NGPL) entity like the 3rd respondent Indian Oil Corporation Limited also.

64. Regulation 3(2) divides consumers of natural gas in three categories according to their respective requirements. Clause (a) of Sub-Regulation 2 of Regulation 3 relates to customers having requirement of natural gas up to 50,000 SCMD and states that such customers shall be supplied through CGD network alone. Clause (b) of the said Sub-Regulation 2 relates to customers having requirement of natural gas more than 50,000 SCMD up to 1,00,000 SCMD and envisages that at the discretion of the customer, they shall be supplied natural gas either through CGD network or through a pipeline not forming part of the CGD network. Clause (c) of the said Sub-Regulation 2 of Regulation 3 relates to customers having requirement of natural gas more than 1,00,000 SCMD and states that such customers shall be supplied natural gas through a pipeline not forming part of CGD network.

65. We do not see anything in the entire Regulation 3 or in any other Regulation which may be taken to indicate that the "pipeline" referred to in Regulation 3(2)(b)(ii) shall have to be laid by an NGPL entity and not by the authorized entity for that specified GA. Clause 1 of the Regulation specifically states that the Regulation applies to the entities laying, building, operating or expanding a CGD network or proposes to do so. There is no reference to an NGPL entity in the entire Regulation 3. Even though discretion is given to the consumers having requirement of natural gas more than 50,000 SCMD and up to 1,00,000 SCMD to get the supply of natural gas either through CGD network or through a pipeline not forming part of the CGD network, yet it is clear from the plain reading of the Regulation 3(2)(b)(ii) that such a pipeline also shall have to be laid by the authorized entity for the concerned GA. Had it been the intention of the

Board while making the Regulations in the year 2008 that the bulk consumers falling in categories 3(2)(b)(ii) shall have to get supply of natural gas directly from an NGPL entity and not from the authorized entity, it would have been said so specifically in these Regulations. In that case, the words “pipeline not forming part of CGD network” would have been followed by the words “laid by an NGPL entity”. As already noted hereinabove, this Tribunal while interpreting the Regulation, can not add anything to it. We are precluded from presuming the omission of any word or expression in the Regulation. When we read the Regulation 3 in an ordinary and literal manner, it becomes manifest the “pipeline” contemplated in clause 2(b)(ii) of Regulation 3 also had to be laid by the authorized entity alone.

66. It appears that this category of consumers falling under clause (b) of Regulation 3(2) has been specified in the Regulation with regards to the gas pressure and flow to be required by the consumers falling therein. Such consumers would be requiring natural gas at a pressure and flow higher than supplied through small inch pipelines constituting the CGD network and for this reason only provision has been made for supply of natural gas to such consumers through a separate pipeline not forming part of CGD network. A plain and simple reading of the entire Regulation 3 reveals that there is no linkage or connection between the Regulation 3(2)(b) and the NGPL entity.

67. It is to be borne in mind that earlier the transportation as well as marketing of gas was being done by major NGPL entities but later on, with the passage of time retail business was separated from transportation

business and the CGD entities were created for different GAs. Such entities, which are authorized under Section 16 of the Act to lay, build, and operate the CGD network in a specified GA are required to make huge investments for creating the CGD infrastructure. The authorization issued to such entities has an essential condition requiring them to maintain uninterrupted supply of natural gas to all categories of consumers in the CGD network. We may note the Para Nos. 5&6 of the authorization issued to be appellant for development of CGD network in Kanchipuram District GA:-

> "5. *The entity shall design and install an optimal size of the infrastructure in terms of pipelines of various types including steel belting of the authorised area, online compressors of adequate capacity for compressing of natural gas into CNG, allied equipment and facilities in the CGD network depending upon the potential demand for natural gas. The infrastructure in the CGD network should be adequate to maintain uninterrupted flow of natural gas in the pipelines and be also able to maintain supplies at adequate pressure to online CNG stations*."
>
> "6. *The entity shall maintain an uninterrupted supply of natural gas to all categories of customers in the CGD network…"*

68. We have gone through the entire authorization granted to the appellant. It nowhere makes any distinction between any category of consumers to whom the appellant is required to supply gas. The

authorization clearly requires the appellant to supply gas uninterruptedly to all categories of consumers in the Kanchipuram District GA. We are told that the authorization granted to all the entities under Section 16 of the Act contains similar provisions.

69. The marketing as well as infrastructural exclusivity enjoyed by authorized entity in the specified GA under Regulation 12 also advances the case of the appellant. By providing marketing exclusivity for 08 years to authorized entity in specified GA, it is clear that the intention has been that no other entity shall sell gas in their GA till the exclusivity period ends. Grant of infrastructural exclusivity for 25 years to an authorized entity in a specified GA indicates that no other entity shall lay, build, or expand any pipeline in that GA till the end of the exclusivity period. Upon reading Regulation 3 alongwith Regulation 12, the only inescapable conclusion which can be drawn is that no entity other than authorized entity can lay or build a pipeline or a pipeline network and sell / market gas in a GA till the exclusivity period mentioned in Regulation 12 comes to an end.

70. In our opinion, it is imperative to maintain the exclusivity of an authorized entity in a specified GA during the period specified in Regulation 12 to ensure orderly market conduct and to uphold the safety standards. Permitting involvement of other entities also in a GA would disrupt the operations of the authorized entity, adversely affect its business, compromise the safety measures and undermine the effectiveness of the GA.

71. The PNGRB Act, policy and the Regulations came up for consideration before the Hon'ble Delhi High Court in AGP City Gas Private

Limited and Anr. v. PNGRB and Ors. decided on 15.03.2023 and upon considering the regulatory framework made by PNGRB from 2013 to 2022, regulatory guidelines as well as public notices issued by PNGRB from time to time and previous judicial decisions, the Hon'ble High Court recognized the existence of marketing exclusivity in favor of a CGD entity and, *inter alia,* held as under: -

> *"The National Gas Policy identifies the fundamental objectives of India's stated shift towards more sustainable fuel sources to be the encouragement of market forces so as to enhance competition and creation of a competitive and efficient industry structure. However, the said policy itself acknowledges that while competition and its attendant benefits can reduce the need for regulation in some areas of monopoly, the benefits of regulation in certain areas – "potentially outweigh the cost". The infrastructural requirements connected with the construction of a nationwide natural gas pipeline network was acknowledged to fall in the latter.*
>
> *The policy document recognised the said sector as being at the threshold of rapid growth. It also laid emphasis on the creation of a national gas grid which would ultimately be available to be accessed by players on a non-discriminatory basis. The policy is thus an embodiment of the avowed national objective of the country progressing forward to adopt a more sustainable energy source.*

Undisputedly, the CGD Exclusivity Regulations and CGD Authorization Regulations which ultimately came to be framed both adopt and incorporate principles relating to infrastructure and marketing exclusivity. The Court thus finds that both the Act as well as the Regulations have consciously embraced the global norms relating to exclusivity. In fact, the various provisions enacted in connection therewith clearly appear to be an endorsement of those norms relating to exclusivity.

Both Regulations 5 and 6 of the CGD Exclusivity Regulations specifically provide for the privilege of exclusivity being conferred on an entity. They do not speck of exclusivity being conferred or attached to parts of a CGD Network or pockets of a GA.

The right of exclusivity can be claimed and stands vested in the Authorised Entity ("AE"). This clearly flows from the grant and the authorisation made in its favour. It is the AE which has been charged with laying the infrastructure in place and make the requisite investments so as to ensure that the CGD Network is established as per the timelines prescribed. The Court thus finds itself unable to either appreciate or comprehend the distinction which is sought to be drawn when the Board observes that exclusivity is conferred on the CGD Network and not the AE.

Exclusivity, for reasons which are evident and apparent, would obviously operate upon the network and the GA. However, the protection accorded by the grant of exclusivity would necessarily be to one entity which is claimed by the AE. The distinction which is thus sought to be drawn and highlighted by the Board is clearly of no consequence.

Applying the principles enunciated in Assn. of Registration Plates (II) to the facts of the present case, the Court notes that it is manifest that in terms of the Act, an AE is identified after a vigorous and detailed tendering and bidding process. It is that selected AE which is then tasked to undertake the creation of the requisite infrastructure in the concerned GA. It is that entity which is required to create the pipeline infrastructure by making the requisite capital expenditure without any State aid. It must be noted that as in Assn. of Registration Plates (II), an AE is obliged to design and lay in place a gas network designed to meet the requirements of all categories of consumers. The design and construction of a pipeline network is a sophisticated and technologically intensive project. It is also a long-term project spreading over twenty-five years. Bearing in mind the larger goal which infuses the legislation, namely, the creation of a national gas grid, the Act puts in place the concept of exclusivity. It is in one sense, the protection extended to the AE during the gestation period enabling it to recoup the massive capital

expenditure which is likely to be incurred in the course of establishment of the pipeline network. However, the AE is parallelly placed under various obligations and duties. Those constitute the internal balances designed to protect the interest of the consumer and other stakeholders. The Court thus finds itself unable to accept the monopoly argument as was canvassed."

72. It was sought to be argued on behalf of the respondents that this judgment of the Hon'ble Delhi High Court applies only to cases covered by Regulation 3(2)(a) and not to the cases covered under Regulations 3(2)(b). The argument has been noted only to be rejected. There is nothing in the conclusions reached by the Hon'ble High Court in the said judgment, noted hereinabove, to show that these do not apply to the categories of consumers covered under Regulations 3(2)(b).

73. In case, Regulation 3 is interpreted in the manner in which respondent Nos. 2&3 want us to do, it would militate with the vary object and purpose of creating Geographical Areas, selecting authorized entities to lay the pipeline network and supply gas to the consumers in that area and conferring marketing / infrastructural exclusivity upon them. We concur with the submissions made on behalf of the appellant that if the NGPL entities like 3rd respondent are permitted to supply natural gas to any bulk consumer within a particular GA, it would tantamount to having two parallel infrastructures for distribution, marketing and sale of natural gas in the GA – one created by CGD entity with obligation to supply to all consumers located within the GA alongwith concomitant obligation of minimum work

programme including establishing of requisite number of domestic PNG connections as well as complying with statutory service obligation, and the other created by the NGPL entity at its will for supply to large consumers within the GA on a contractual basis without concomitant obligations and freedom to stop supply of gas at will. Further, it would be unconscionable and against public policy to hold that Regulation 3(2)(b)(ii) permits NGPL entities to supply and market gas to bulk consumers within a specified GA for the reason that this would have intense adverse effect on the entire business of an authorized entity which would be constrained to supply natural gas only to domestic consumers, transport sector and similar commercial consumers which require to be cross-subsidized. By doing so, the entire CGD infrastructure would become a financial burden upon the authorized entity which would find it impossible to even recover the value of its huge investments in that area.

74. On behalf of 3rd respondent, it is argued that in terms of clause 1(g) of Schedule-J of the NGPL Authorization Regulations, it is authorized to provide connectivity to consumers in the "tariff zone" which is defined as a corridor of 50kms measured from the nearest point on the surface of natural gas pipeline on both sides. It is submitted that since the premises of 2nd respondent is within the said specified distance of 50kms from Ennore-Tuticorin pipeline of the 3rd respondent, it is authorized to supply gas to the 2nd respondent. We are unable to countenance these arguments for various reasons. Upon creation of GAs and after giving authorization to selected entities for supply of gas in the specified GAs, the authorization of NGPL entity to supply gas to its consumers in "tariff zone" would cease if the consumer is based in the specified GA which has been allotted to an

entity under Section 16 of the Act and the authorized entity is capable of supplying gas to even the bulk consumers in the GA. As and when an entity is authorized to supply/ market gas in a specified GA, the first right to lay the pipeline network in the GA would belong to the authorized entity and in case, the authorized entity is unable, for any reason what so ever, to do so, the NGPL entity would step in. This would be in consonance with the spirit of the gas policy under which the transportation and marketing of the gas was started and regime of authorization was evolved under Section 16 to authorized entities to supply / market gas in a specified GA after creating a CGD pipeline network.

75. Further, where there appears to be a conflict between the two regulations, a rational and justified approach is required to be adopted while keeping in mind the overall nature and viability of the two entities involved therein. In the present case scenario, we find that main business of the 3rd respondent, a common carrier and an NGPL entity, is transportation of gas whereas an authorized entity is responsible to supply natural gas to all the consumers within the GA uninterruptedly after making huge investments in developing the CGD pipeline network. Therefore, even though clause 1(g) of Schedule-J of NGPL Regulations authorizes an NGPL entity to supply gas to consumers in the "Tariff Zone" yet it cannot be taken to authorize an NGPL entity to intrude into a specified GA for which an entity has been authorized to lay CGD network to supply gas to all the consumers. The conflict can be rationally resolved by limiting the operations of an NGPL entity under said clause 1(g) of Schedule-J of NGPL Regulations to the areas which do not form part of any GA created under PNGRB Regulation, 2008.

76. We may also note that a committee formed in August, 2016 to examine city gas distribution (CGD) bidding related issues also has realized that such practice of supply of gas by NGPL entities to bulk consumers in a specific GA, is causing loss of important revenue associated with the network tariff that the industrial consumer would otherwise pay to the CGD entity thereby resulting in increasing of the network tariff for remaining consumers. The committee has, in its report dated 25.09.2017 suggested exclusion of entities other than authorized entity to lay pipelines and tariff distribution activities in a specified GA independently of the size of customers saying that this measure will improve the attractiveness of CGD business and augment the interest of bidders as well as the consumers.

77. Having regard to the above discussion, we hold and conclude that only the authorized entity for a specified GA has the right and is competent to lay "pipeline" referred to in Regulations 3(2)(b)(ii) for supply of gas to bulk / industrial consumers within that GA.

Final decision

78. For the foregoing reasons, the impugned order of the Board cannot be sustained. The same is hereby set aside. The appeal stands allowed.

79. During the course of arguments, we were informed by the learned counsels for respondents that the 3rd respondent has commenced supply of natural gas to 2nd respondent from the month of January, 2024.

80. In view of what we have held hereinabove, the supply of natural gas by 3rd respondent to 2nd respondent is against the letter and spirit of Regulation 3(2)(b)(ii) and thus, cannot be permitted to continue. The 3rd respondent is hereby directed to stop supply of natural gas to 2nd respondent within one month from today positively during which time, the 2nd respondent may finalize talks with the appellant for supply of natural gas by the appellant to its plant situated in Kanchipuram District GA.

81. The appeal alongwith pending IAs stands disposed of accordingly.

Pronounced in the open court on this 26th day of April, 2024.

(Virender Bhat)	(Dr. Ashutosh Karnatak)
Judicial Member	Technical Member (P&NG)

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REPORTABLE / ~~NON-REPORTABLE~~

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