

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
APPELLATE JURISDICTION**

APPEAL NO. 714 OF 2023

Dated: 2nd February 2024

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

Central U.P. Gas Limited
Through its Senior Manager,
7th Floor, UPSIDC Complex,
A-1/4, Lakhanpur,
Kanpur- 208024 U.P.
Mobile No. 07565908080
navinsingh@cugl.co.in

.....Appellant

Versus

1. Hindustan Petroleum Corporation Limited,
Through its Executive Director,
4th Floor, Gas & Renewables Dept., WZ CGM,
Richardson & Cruddas Building, Sir JJ Road,
Byculla, Mumbai- 400008 (Maharashtra)
022-23768192
dpgupta@hpcl.in, corphqo@hpcl.in

.....Respondent 1

2. Petroleum & Natural Gas Regulatory Board,
Through its Secretary,
1st Floor, World Trade Centre
Babar Road, New Delhi- 110001
011-2345-7700 Email:-contact@pngrb.gov.in

.....Respondent 2

Counsel on record for the Appellant(s) : Shiv Kumar Pandey
Anshal Rai
Chandrashekhar A.C

Counsel on record for the Respondent(s) : Sacchin Puri, Ld. Sr. Adv.
Matrugupta Mishra
Swagatika Sahoo
Ritika Singhal
Vignesh Srinivasan
Nipun Dave
Ishita Thakur
Sonakshi for Res. 1

Sumit Kishore
Divyansh Hanu
Tanuja Dhoulakhandi
Mohit Budhiraja
Sanskriti Bhardwaj
Suyash Gaur
Harshita Tomar
Kartikey Joshi ... for Res. 2

J U D G M E N T

PER HON'BLE DR. ASHUTOSH KARNATAK, TECHNICAL MEMBER (P&NG)

1.0 Appeal dated 11.05.2023, under Section 33 of the Petroleum and Natural Gas Regulatory Board Act, 2006, has been filed by the Appellant i.e. M/s Central U.P. Gas Limited before this Tribunal and has sought following relief:-

- a) Quash the impugned order of PNGRB dated 17.02.2023 in Case No. Legal/13/2022 not restraining the respondent No. 1 from the activity of laying carbon steel (CS) pipelines in the Bareilly geographical area authorized to the Appellant as mentioned in para 18.

- b) Direct the Respondent No. 1 to remove the illegal pipeline laid by Respondent No. 1
- c) Allow the appeal as prayed and pass any other order that is deemed fit and proper under the facts and circumstances of the case.

2.0 Appellant i.e. Central U. P. Gas Limited is a joint venture between India's two Maharatana companies, GAIL (India) Limited and Bharat Petroleum Corporation Limited and came into existence on 25th February, 2005 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 Uttar Pradesh. The Hon'ble PNGRB vide its letter 22.04.2009 accepted the Central Government authorization for CGD network for Geographical Area (GA) of Bareilly.

3.0 Respondent No.1 i.e. M/s Hindustan Petroleum Corporation Limited is an entity authorized by the Board for development of City Gas Distribution (CGD) network in geographical area of Bareilly District (excluding area already authorized), Pilibhit and Rampur vide letter dated 29.03.2019.

4.0 Respondent No.2 i.e. Petroleum Natural Gas Regulatory Board herein referred to as "**Board**" constituted under the Petroleum and Natural Gas Regulatory Board Act, 2006 having both administrative as well as quasi-judicial function.

5.0 Case as per Appellant

5.1 It is a case of Appellant that during the field survey, it came to their notice that respondent no.1 is carrying out some unauthorized CGD activity of laying carbon steel (CS) pipelines in the Bareilly geographical area

authorized to the Appellant. According to Appellant there are five sections of Respondent No.1's pipeline inside Appellant's authorized GA, whereas details of major sections are as follows:

- a. Bareilly Bypass (approx. 16 Kms)- This section is wrongly claimed by HPCL as border of CUGL and HPCL GA. The fact is that this bypass is not the Border as it is newly built in CUGL's Bareilly authorization. Infact the Border of HPCL GA is about 2 Kms away from this bypass.
- b. Padarathpur Road (approx. 2.40 Kms).
- c. Palpur Kamalpur Road / Parsauna Road (approx. 3.90 Kms).
- d. From intersection of / Parsauna Road to Invertise university (approx. 3.30 Kms)- This section was already having CUGL's laid pipeline and operation online CNG stations.

5.2 Whereas Appellant informed the Respondent no.1 vide email dated 07.03.2022, that they were laying CS pipeline in the GA authorized to the Appellant and thereafter had also sent several follow up and reminder mails for the same. Since there was no response from the Respondent no.1, the Appellant filed the complaint in proper format on 12.07.2022 challenging the abovementioned encroachment of the Respondent no.1 before the Ld. Board in Case no. LEGAL/13/2022.

5.3 Respondent no. 2, vide its order dated 14.07.2022, recorded the admission of the Respondentno.1 to the effect that it was laying the pipeline in GA of the Appellant and granted interim protection to the Appellant. Vide its order dated 17.02.2023,Board declared that the Respondent no.1 has infringed the infrastructure exclusivity of the Appellant and passed the following direction:-

“22. The Board is of the view that the Respondent by laying the pipeline has not only violated the terms and conditions of the authorization letter dated 29.03.2019 but also infringed the infrastructure exclusivity of the Complainant in the subject GA.....

(b) The Respondent shall ensure that no further violation is to be made in the GA of the Complainant and parties to strictly complies with the Safety Standards laid down by the Board.”

5.4 The Appellant noticed on 04.03.2023 that the Respondent no.1 again resumed its activity of laying pipeline in their GA which was the subject matter of dispute in Case No. LEGAL/13/2022 in clear violation of the direction dated 17.02.2023 passed by Board. Appellant asked Respondent no.1 vide letter dated 04.03.2023 to stop its activities in the GA of Bareilly allocated to the Appellant as the same is in violation of order dated 17.02.2023 in Case No. LEGAL/13/2022 but the Respondent No. 1 did not stop its activities.

5.5 Appellant filed an application under section 44 of the PNGRB Act before the Board on 06.03.2023 for directions against the Respondent No.1 for violation of order dated 17.02.2023 in Case No. LEGAL/13/2022 and prayed for following interim prayer-

“Direct the respondent to stop activity of laying carbon steel (CS) pipelines in the Bareilly geographical area authorized to the petitioner.”

5.6 During the course of hearing on 25.04.2023 the Respondent no.1 relied upon para 18 of the impugned order wherein the Board has held hereunder:-

“18...However, the Board keeping in mind the spirit of the PNGRB Act, 2006 to ensure the supply of natural gas in all parts of the country by developing the infrastructure and the submissions of the Respondent that it has made an investment of INR 50 Crore approx. for laying the

said pipeline and grave loss will be caused to the public exchequer if the said pipeline is removed, is not inclined to direct the Respondent to discontinue the its activity and removal of said pipeline, as same would lead to delay of the laying of CGD Network of Bareilly (EAAA) District, Pilibhit and Rampur Districts.”

5.7 It is the case of the Appellant that accepting the contentions of the respondent no.1, vide order dated 25.04.2023, the Board rejected the interim prayer sought by the Appellant in its application under Section 44 of the PNGRB Act and completely ignore the fact that the same was contrary to the final direction granted by the Board in the impugned judgment.

5.8 Accordingly the Appellant has challenged the impugned order limited to observation made in para 18 before this Tribunal & sought stay of the increment activities of Respondent No.1 in GA of Appellant. It is the contention of the Appellant that while passing the impugned judgment, the Board did not consider the following-

- i. The Board vide impugned judgment having declared that the Respondent no.1 has infringed the infrastructure exclusivity of the Appellant, could not have allowed the Respondent no.1 to continue illegally work in the Geographical Area of the Appellant and perpetuate illegality.
- ii. The Respondent no.2 having specifically held that the Respondent no. 1 has infringed the infrastructure exclusivity of the Appellant in the subject GA. The said right is a statutory right granted to the Appellant under regulations framed by this Hon'ble Board under the PNGRB Act, 2006. The Hon'ble Supreme Court in ***Maharshi Dayanand University v. Surjeet Kaur, (2010) 11 SCC 159***

“11. It is settled legal proposition that neither the court nor any

tribunal has the competence to issue a direction contrary to law and to act in contravention of a statutory provision. The Court has no competence to issue a direction contrary to law nor the court can direct an authority to act in contravention of the statutory provisions.”

- iii. Respondent no.2 while rejecting the interim prayer of the Appellant completely ignore the fact that the same was contrary to the final direction granted by the Respondent no.2 in the impugned judgment.
- iv. If urgent order restraining the Respondent no.1 is not passed, the application of the Appellant under Section 44 of PNGRB Act would be infructuous and it would also frustrate the judgment dated 17.02.2023 of the Respondent No.2.
- v. It is well settled that 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. In the present case the statutory right of CUGL is infringed. Hence, Respondent’s repetitive claim that their investment of Rs. 50 Crores (as claimed by Respondent) may become infructuous, is misleading as it is purely due to fault of their own officers did not check the facts and continued to waste public money along with violation of PNGRB regulations.

6.0 Vide order dated 17.05.2023, this Tribunal made the said activity of HPCL subject to outcome of the Appeal. However the Appellant challenged the order dated 17.05.2023 of this Tribunal before the Hon’ble Supreme Court in Civil Appeal No. 4191/2023. The Hon’ble Supreme Court dismissed the appeal with following observation:-

“We find that the appellant has been adequately protected under the impugned order as the action of laying down pipeline is specifically made subject to final outcome of the appeal”

7.0 In the written submission dated 26.12.2023 submitted by Appellant before this Tribunal the Appellant has contended the following legal submission:-

- i. PNGRB imposed civil penalty and having held that the Respondent No. 1 has violated the statutory right of the Appellant could not have allowed Respondent No. 1 to continue with the activities in GA of Appellant. (*Maharshi Dayanad University versus Surjeet Kaur (2010) SCC 159 para 11 & 19.*)
- ii. The Appellant cannot be compelled to give NOC against its statutory rights. There cannot be estoppels against the statute.
 - *State of U.P v U.P.RajyaKhanji Vikas Nigam SangarshSamitii, (2008) 12 SCC 675, Para 43,44*
 - *Shree Sidhballi Steels Ltd. V. State of U.P., (2011) 3 SCC 193, Para 33*
- iii. The Tribunals are creatures of the Act and it is not open to them to travel beyond the provisions of the statute. (*D. Ramakrishna Reddy v Addl Revenue Divisional officers (2000) 7 Scc 12, Para 22.*)
- iv. The Respondent no.1 made some illegal investment, which may become infructuous, is misleading as it is purely due to fault of Respondent no.1, did not check the facts and continued to waste public money along with violation of PNGRB regulations. It is well settled that 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. (*Basawaraj v Land Acquisition officer, (2013) 14 SCC 81, Para 12 & Raghunath Rai Bareja vs Punjab National Bank (2007) 2 SCC 230, para 29.*)

8.0 Case as per Respondent No. 1

8.1 Preliminary Objection

- i. The present Appeal has been preferred by the Appellant against the order dated 17.02.2023 passed by the Hon'ble PNGRB in case no. Legal /13/2022. The said complaint was preferred by the Appellant seeking the directions against the Respondent No.1 for encroaching into the Appellant's geographical area.
- ii. The captioned appeal is not maintainable since the Appellant has also filed a petition, being Execution Petition no. 1/2023 before Respondent No. 2 seeking execution of the same impugned order. That the Appellant has filed a petition under Section 44 of the Petroleum and Natural Gas Regulatory Board Act, 2006 for enforcement of the impugned order.
- iii. Pursuant to hearing held on 25.04.2023 the Ld. Board directed both the parties to explore the possibility of arriving at a settlement. The Ld. PNGRB refused to grant interim relief and posted the matter for 30.05.2023.
- iv. The Appellant, instead of trying to settle the matter, filed the captioned appeal before this Hon'ble Tribunal. It is the contention of the Respondent No. 1 that the Appellant in its present appeal has cleverly failed to mention that it has also preferred a petition seeking enforcement of the impugned order before the Ld. PNGRB. The Appellant has simpliciter mentioned that it "***filed an application under section 44 of the PNGRB Act before the Respondent No. 2 on 06.03.2023 for directions against the Respondent for violation of order dated 17.02.2023 in case No. Legal /13/2022. Along with the said application the Appellant had also filed an application for urgent listing***". The Appellant has also just annexed the copy of the urgent

application and not the copy of the enforcement petition along with the captioned appeal. It is thus evident that the Appellant has deliberately and knowingly concealed this fact from this Hon'ble Tribunal. The Appellant has, thus, approached this Hon'ble Tribunal with unclean hands.

- v. Respondent No. 1 has relied on the Hon'ble Supreme court in the matter of *Amar Singh v. Union of India and Ors.*, reported in (2011) 7 SCC 69, has held as under:-

“Courts have, over the centuries, frowned upon the litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with “unclean hands” and are not entitled to be heard on the merits of their case. ”

- vi. It is also contended by the Respondent no. 1 that even after the captioned appeal before this Hon'ble Tribunal, the Appellant has not withdrawn its enforcement petition, pending before the Ld. PNGRB. Instead, on the last date of hearing 06.06.2023, the Appellant prayed for relief from the Ld. PNGRB which was denied due to the pendency of captioned appeal.
- vii. Further, the law on the doctrine of approbate and reprobate is well settled. The Appellant cannot approach this Hon'ble Tribunal against the same impugned order, whose enforcement the Appellant is seeking before the Ld. PNGRB. It is thus prayed that the captioned appeal be dismissed on this ground alone.

8.2 Facts of the case as per Respondent No. 1

- i. The Ld. PNGRB vide its letter dated 22.04.2009 upon considering the authorization given by the Central Government, granted the Appellant

exclusivity for 05 years from the date of issue of Performance Bank Guarantee dated 09.04.2009 for the Bareilly area.

- ii. Thereafter the Ld. Board, vide its letter dated 29.03.2019, granted authorization to Respondent No. 1 for development of CGD network in the Bareilly (EAAA), Pilibhit and Rampur Geographical Area under the 10th round of bidding.
- iii. It is a case of Respondent No.1 that Bareilly district is shared between the Appellant & Respondent No.1, wherein the Appellant's Geographical Area is defined in the Authorization as per the following demarcation:

“ north- NH 24 and Road Joining NH24 to Bareilly Baheri Road (Bahit)

South- Rail Track (Bareilly to Lucknow) and Bareilly Budaun Road

*East-road joining NH 24 and Bareilly Bilsanda Road, NH 24 and Canal
West-Shankhan River”*

- iv. The authorized area of the Appellant for Bareilly district is from the pre-PNGRB bidding era and it is now surrounded by the Respondent No.1 GA. Further the GA of Respondent No.1 is hindered by a river in the west and an elongated strip of Appellant's area on the East. The options for reaching its GA from city gas station through steel pipeline are restricted due to the geographical location of the Appellant's Authorised Area in Bareilly.
- v. From 2020 the Respondent No.1 started developing the steel infrastructure in its geographical area. After being approached by the Appellant, vide its communications dated 07.04.2022, 9.04.2022 and 23.04.2022 the Respondent No.1 informed the Appellant that it was laying its steel pipeline alongside NH-30 (Old NH-24) to reach its own charge area. They also categorically stated that while a part of the pipeline may fall within the Appellant's geographical area, they had no

intention of undertaking any commercial activities in the Appellant's charge area.

- vi. The Respondent's proposed pipeline route of GA of Bareilly, Pilihibit and Rampur was also indicated in a detailed map attached to letter dated 19.04.2022 addressed to the Appellant. It is contended by the Respondent could lay the pipeline without incurring unnecessary extra kilometers of pipelines, which is unsafe and avoiding unnecessary expenditure of public money and thus compelled to pass through the GA of the Appellant such that the Appellant's commercial interests are not affected thereby.
- vii. However, despite the assurances given by the Answering Respondent the Appellant preferred a complaint before the Ld. PNGRB, which culminated into the impugned order. The Ld. PNGRB vide its order dated 14.07.2022, after hearing both the parties, restrained the Answering Respondent from carrying out further work in the Appellant's GA and to maintain status quo till the disposal of the Complaint. The relevant extracts of the order dated 14.07.2022 are as under:

"After hearing both the parties and presentation made by the Complainant, the Board is of opinion that prima facie the Complainant has a good case on merits and, therefore, the Board hereby restrains the Respondent from carrying out further work as alleged in the Complainant's GA and, also restrains from laying the subject pipeline in the GA authorized to the Complainant, and to maintain status quo till disposal of the instant Complaint.

Further, both the parties are hereby directed to refer the Geographic Information System (GIS) map issued by the Board for subject GA"

- viii. It is pertinent to mention that during the pendency of the complaint dated 12.07.2022 and in line with the directions given by the Ld. PNGRB, the Respondent No 1 reached out to the Appellant and made multiple attempts, (particularly meetings held on 16.08.2022, 14.10.2022 and 16.11.2022) to reach an amicable settlement. The

Appellant, however, refused to settle the issue amicably and instead sought surrender of the infrastructure by the Respondent No. 1 and/or removal of the pipelines already laid by the Respondent No. 1.

- ix. The Respondent No.1 filed its reply dated 29.08.2022 to the complaint dated 12.07.2022 and submitted that the tap off point from the nearby natural gas pipeline is SV11 of GAIL Natural Gas pipeline at Chaubari and this SV station is under the Appellant's area. The Respondent No.1 despite its best efforts to get suitable land for its City Gas Station ("CGS") near the SV station, within the Appellant's GA, to comply with Regulation 2(g) of the PNGRB (Technical Standards and Specifications including Safety Standards for City of Local Natural Gas Distribution Networks) Regulations, 2008, was unsuccessful. The Respondent No.1 could only succeed in acquiring land just outside the Appellant's area at a distance of 0.5 km.
- x. Thereafter, the Respondent No.1 also filed an affidavit dated 05.01.2023 wherein it categorically stated that the route of the pipeline has been planned to supply the natural gas to its own GA. And that the pipeline is meant to ensure connectivity between the source point and the charge areas of Geographical Area. The Respondent No.1 also undertook to not do any business in the area allocated to the Appellant and to also abide by all legal provisions while operating the pipeline.
- xi. However, despite repeated assurances by the Respondent No.1 that it will not breach the Appellant's economic exclusivity and that it would ensure proper safety standards of the pipeline, the Appellant refused to amicably settle the matter. Thereafter, the Complaint dated 12.07.2022 culminated into the impugned order dated 17.02.2023 whereby the Ld. PNGRB imposed a penalty of INR 5 lakhs on the Respondent No.1 for

violating the GA of the Appellant. The Ld. PNGRB however, also noted that the Appellant had failed to show any damage suffered by it due to the Respondent No. 1. The Ld. PNGRB further noted that great loss will be caused to the public exchequer if the pipeline of the Answering Respondent is removed and thus the Ld. PNGRB was not inclined to direct the Respondent No.1 to discontinue its activity of laying pipeline. The relevant extracts of the impugned order are as under:

"18. It is clearly depicted from the authorization letters of both the parties that the GA of the Complainant is surrounded by the GA of the Respondent, creates an unusual situation where it restricts the Respondent to lay the pipeline, from the GA of the Complainant. However, the Board keeping in mind the spirit of the PNGRB Act, 2006 to ensure the supply of natural gas in all parts of the country by developing the infrastructure and the submissions of the Respondent that it has made an investment of INR 50 Crore approx. for laying the said pipeline and grave loss will be caused to the public exchequer if the said pipeline is removed, is not inclined to direct the Respondent to discontinue the its activity and removal of said Pipeline, as same would lead to delay of the laying of CGD Network of Bareilly (EAAA) District, Pilibhit and Rampur Districts. It is pertinent to note that since the Respondent is laying its pipeline within the GA of the Complainant, and the Board in unusual situation, feels not appropriate to pass direction to remove the said pipeline, therefore, it will be foremost obligation of the Respondent to be cautious in future and lay further work under the supervision of the Responsible Officer and strictly comply with Safety Standards laid down by the Board and not to further infringe the infrastructure exclusivity of the Complainant. An affidavit to the effect that no commercial activity will be carried out in the GA authorized to the Complainant has already been filed and the Respondent must ensure the undertaking given in the affidavit be observed at all times by the Respondent and its Officers."

(Underline supplied)

- xii. Evidently, the Ld. PNGRB has allowed the Respondent No.1 to continue laying the subject pipeline while directing it to be "*cautious in future and lay further work under the supervision of the Responsible Officer and strictly comply with Safety Standards laid down by the Board*". It is most humbly submitted that the Respondent No.1 is not infringing into any new areas in the GA of the Appellant other than already indicated in the map attached to the letter dated 19.04.2022

addressed to the Appellant. The Respondent No.1 is only completing the same pipeline, a substantial portion of which has already been laid down by the Respondent No.1 in the Appellant's GA and which was subject of the Complaint dated 12.07.2022.

- xiii. Further, the Respondent No.1, in compliance with order dated 17.02.2023, has also deposited the penalty amount of INR 5 lakhs on 06.04.2023. The same has also been acknowledged by Ld. PNGRB. The Answering Respondent in its bonafide belief and understanding of the Impugned Order simply resumed its activity that was stayed by the Ld. PNGRB vide its Order dated 14.07.2022, and which was allowed for continuation vide the Impugned Order.
- xiv. It is pertinent to mention that the Respondent No. 1 vide its letter dated 19.04.2022 had informed the Appellant that it was laying a steel pipeline in the Bareilly bypass on NH-30 and Bukhara to NH-30 junction near Fatima Leyan Public School on PWD Road, a part of which was falling in the Appellant's GA. In the said letter, a detailed map of the pipeline route of GA of Bareilly, Pilihibit, Rampur was attached. The Appellant was informed that the pipeline was being laid to reach the Respondent No. 1 GA only.
- xv. It is further pertinent to mention that as on 14.07.2022, i.e., the date on which the Ld. PNGRB ordered status quo and restrained the Respondent No.1 from further laying the subject pipeline, the Respondent No.1 had already laid down certain portion of planned steel pipeline. It was only after passing of the impugned order when the status- quo was vacated that the Respondent No.1 was able to resume its work and lay the remaining steel pipeline including crossings, tie-ins etc. It is most humbly submitted that this portion of the pipeline is being

laid down in patches and is necessary otherwise it would render the already laid pipeline as useless and render the entire investment of INR 50 Crore made by the Respondent No.1 as infructuous. It is also submitted that Respondent No.1 is adhering to their original plan of steel pipeline network as submitted vide its letter dated 19.04.2022 to CUGL.

- xvi. Further, in para 18 of the impugned order dated the Ld. PNGRB has allowed the Respondent No.1 to continue its future work while ensuring strict compliance with the Safety Standards laid down by the Ld. PNGRB. In light of the same the Respondent No.1 is laying the remaining portion of the subject pipeline while ensuring strict compliance with the impugned order such that it will not harm the interests of the Appellant.
- xvii. In the written arguments dated 26.12.2023, filed by Respondent No. 1 prayed that the captioned appeal be dismissed as being devoid of merit on the following grounds:-

8.2.1 The captioned appeal is not maintainable.

- i. The Appellant has also filed a petition under Section 44 of the PNGRB Act, being Execution Petition No. 1/2023, before the Ld. PNGRB seeking execution of the same impugned order.
- ii. Though the Appellant, in the memorandum of appeal, has mentioned that it has filed an application seeking urgent listing and interim relief against HPCL, under Section 44 of the PNGRB Act, it has failed to mention that the main relief sought was for enforcement of the Impugned Order. The Appellant purposely did not annex the said enforcement petition. HPCL had deposited the penalty amount, i.e. Rs. 5,00,000/- in compliance of order dated 17/02/2023.

- iii. It is a settled principle of law that no party can be allowed to accept and reject the same thing and thus, one cannot blow hot and cold at the same time. The same has been recognized by the Hon'ble Supreme Court in the matter of *Union of India v. N. Murugesan*, reported in (2022) 2 SCC 25. The Appellant cannot approach this Hon'ble Tribunal against the same impugned order, whose enforcement the Appellant is seeking before the Ld. PNGRB. The present Appeal is also liable to be dismissed for withholding material facts.
- iv. The Appellant till date is pursuing the enforcement petition from before the Ld. PNGRB. Instead on the last date of hearing before the Ld. PNGRB, i.e., 30.05.2023, after this Hon'ble Tribunal had already dismissed the Appellant's application seeking interim relief, the Appellant prayed for relief before the Ld. PNGRB which was denied due to the pendency of captioned appeal.

8.2.2 The Appellant doesn't have exclusivity in the said Geographical Area:

- i. The Ld. PNGRB vide its letter dated 22.04.2009 granted authorization to the Appellant wherein it expressly noted that the Appellant was granted "exclusivity for 5 years from the date of issue of Performance Bank Guarantee.....". Evidently the exclusivity was limited for marketing and expired on 22.04.2014. It is not even the Appellant's case that it has infrastructure exclusivity. Rightly or wrongly, it is an admitted position. Even during oral arguments, the Appellant failed to show how it has infrastructure exclusivity. The Appellant has not brought any document on record to show that it still has exclusivity in the said geographical area.

- ii. The Ld. PNGRB vide its letter dated 29.03.2019 granted authorization to HPCL for developing CGD network in the geographical area/ GA of Bareilly (except already authorized areas), Pilibhit and Rampur. In Schedule D of the said authorization, the Ld. PNGRB has categorically stated that HPCL will have an exclusivity for laying, building, and expanding the CGD network for a period of 300 months (25 years) and exclusivity in terms of an exemption from the purview of common carrier or contract carrier for the CGD network for a period of 96 months (08 years).
- iii. However, there is no such grant of exclusivity for laying building and expanding the CGD network to the Appellant by the Ld. PNGRB. It is, thus, submitted that the exclusivity granted to the Appellant ended in 2014.
- iv. Even otherwise, the Ld. PNGRB vide authorization dated 22.04.2009 has granted only marketing exclusivity to the Appellant. The Point 4 of the Terms and Conditions specifically notes that M/s CUGL shall abide by the regulations covering exclusivity for marketing of gas from the purview of Contract Carrier & Common Carrier as specified in the PNGRB (Exclusivity for City or Local Natural Gas Distribution Network) Regulation, 2008. Thus, even if it is believed that the Appellant's exclusivity is continuing or has been extended the same is restricted to only marketing exclusivity. There is, thus, no bar on HPCL to lay and complete the subject pipeline.

8.2.3 There is no merit in the captioned appeal:

- i. NH-24 is the boundary for both HPCL and the Appellant and HPCL has laid the pipeline along this boundary only. The authorized area of the Appellant for Bareilly District is from the pre-PNGRB bidding era

and it is now surrounded by HPCL's Geographical Area. While HPCL's Geographical Area is hindered by an elongated strip of Appellant's area on the East it is hindered by a river in the West. HPCL's options for reaching its entire Geographical Area from City Gas Station through Steel pipeline are, thus, restricted due to the geographical location of the Appellant's Authorized Area in Bareilly.

- ii. Subsequent to receiving authorization dated 29.03.2019, HPCL submitted a detailed DFR for the subject pipeline to the Ld. PNGRB in 2019 and the Ld. PNGRB authorized it on 09.06.2020. Since then, HPCL has been laying the subject pipeline as per the DFR and the map annexed thereto. The subject pipeline was envisaged in 2019 itself.
- iii. HPCL started developing the steel infrastructure in its geographical area from 2020. HPCL also got due permissions from PWD, on 25.09.2021, and NHAI on 01.12.2021 before starting its work. It is pertinent to mention that the said permissions were given after due public consultation, however, the Appellant never participated in such proceedings to oppose the permissions being granted to HPCL.
- iv. HPCL was constrained to lay the subject pipeline in its current route to avoid laying unnecessary extra kilometers of pipelines, which is unsafe, and to also avoid unnecessary expenditure of public money. Further, the tap off point from the nearby natural gas pipeline is SV11 of GAIL Natural Gas pipeline at Chaubari and this SV station is under the Appellant's area. HPCL tried its best to get suitable land for its City Gas Station near the said SV station, to fall within Regulation 2(1)(g) read with Regulation 2(1)(d) of the PNGRB (Technical Standards and Specifications including Safety Standards for City of Local Natural Gas

Distribution Networks) Regulations, 2008. The said regulations read as under:

"2. Definitions

(1) In these regulations unless the context otherwise requires:

(d) "city or local natural gas distribution network" (hereinafter referred to as CGD network) means an interconnected network of gas pipelines and the associated equipments 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;

(g) "city gate station (CGS)" means the point where custody transfer of natural gas from natural gas pipeline to the CGD network takes place and this may also be referred to as City Gate Measuring and Pressure Regulating Station.

Provided that if CGS is established outside the authorized Geographical Area then pipeline connecting from CGS to authorized CGD network shall be considered as a part of CGD network, however the authorized entity shall not supply natural gas to any customer from the pipeline outside its geographical area."

- v. However, despite HPCL's best efforts to get suitable land for its City Gas Station near the SV station, within the Appellant's GA, HPCL was unsuccessful. HPCL could only succeed in acquiring land outside the Appellant's area at a distance of less than 0.5 km. It is submitted that if HPCL had located its City Gas Station within the Appellant's Geographical Area, then HPCL's entire pipeline, irrespective of passing through the Appellant's Geographical Area, would have been within the aforementioned provision.
- vi. The aforementioned proviso to Regulation 2(1)(g) was introduced by the Ld. PNGRB vide its Notification dated 30.06.2020. The said proviso allows CGD entities to pass through geographical area of

another entity, wherein the CGS is established in another entity's geographical area, subject to the authorized entity not doing any business in the other entity's geographical area. It is submitted that HPCL's pipeline should also be considered under the same regime since HPCL has undertaken not to indulge in commercial activities in the Appellant's geographical area.

- vii. The Ld. PNGRB is in the process of amending the PNGRB (Technical Standards and Specifications including Safety Standards for City or Local Natural Gas Distribution Networks) Regulations, 2008. The Ld. PNGRB is seeking to add the following proviso to existing Regulation 2(1)(g):

"Provided further that in cases where CGS is established inside or outside the authorised Geographical Area, but the Board is satisfied that there is necessity or expediency that the pipeline connecting from such CGS shall have to pass through other Geographical Area(s), then the Board may grant approval for such pipelines, and such approved pipelines shall be considered as a part of the authorized CGD network, however the authorized entity shall not supply natural gas to any customer from such pipeline outside its geographical area."

- viii. Once the said amendment regulation is notified, HPCL's pipeline will be covered under the said proviso. The said amendment clarifies the current position of law which nowhere debars an entity to lay a pipeline in another entity's geographical area subject to non-violation of the latter entity's economic exclusivity.
- ix. HPCL on numerous occasions has informed the Appellant that while a part of pipeline may fall within the Appellant's geographical area, HPCL has no intention of undertaking any commercial activities in the Appellant's geographical area in contravention of applicable law. HPCL has also attempted to resolve the matter amicably multiple times, however, without any success. This is in the spirit of keeping marketing exclusivity of the Appellant intact.

- x. Appellant has simply made bald statements against HPCL and has failed to bring on record any document/ proof to show that it has suffered any damage due to the subject pipeline. The issue of damages was not even argued by the appellant thus has given up. It is a standard practice whereby multiple entities lay pipelines adjacent to each other, while ensuring safety and security of such pipelines. Evidently, no loss is being caused to the Appellant by HPCL's subject pipeline. It is important to highlight that HPCL has made an investment of INR 50 Crore, and it will become infructuous.
- xi. Appellant has also failed to mention any legal provision under which HPCL can be directed to remove its already laid pipeline and/ or sell the pipeline to the Appellant. In the absence of a legal provision, no penal action can be directed towards HPCL. In fact, HPCL, being a PSU and with the intention to lay the subject pipeline at the earliest and avoid unnecessary litigation, has already paid the cost of INR 5 Lakhs, imposed by the Ld. PNGRB.
- xii. Ld. PNGRB merely held that HPCL should have taken NOC from the Appellant, however, by virtue of the Impugned Order, the PNGRB has itself authorised HPCL's pipeline even if it was not so due to mere absence of NOC from the Appellant. The same has not even been challenged by the Appellant.
- xiii. Ld. PNGRB was not inclined to direct HPCL to discontinue its activity of laying the pipeline. In fact, the Ld. PNGRB has protected the interests of the Appellant by making HPCL responsible for strictly complying with all the safety standards laid down by the Ld. PNGRB. It is important to highlight that on several occasions CUGL created unwarranted obstruction and delayed the construction of the pipeline.

9.0 PNGRB in its reply dated 10.10.2023 has contended that :-

- i. A case is made is out against the Respondent No.1 therefore the Board is inclined to impose a Civil Penalty under Section 28 of the PNGRB Act, however keeping in view certain existing applicable provisions in CGD/NGPL/PPPL Authorization Regulations which would debar the entity to participate in the bidding process, when any civil penalty is being imposed by the Board. The Board/Respondent No.2 while taking into consideration the facts and circumstance of the instant case held that the imposition of civil penalty in the instant case, will not operate as a bar to the Respondent No. 1 to participate in the Bidding process, initiated by the Board/Respondent No.1 in future. A civil penalty of Rs 5,00,000/- (Rupees Five Lakhs Only) under Section 28 of the PNGRB Act, 2006, was imposed on the Respondent No.1 for violating the provisions of the PNGRB Act and extant regulations framed there under without prejudice the right of the Respondent No.1 to participate in the bidding process initiated by the Board, in future.
- ii. The instant case shall not be treated as the precedent, since the same has been passed keeping in view the peculiar situation where infrastructure has already been laid and a investment of INR Rs 50 Crores has been made, which would get infructuous is the order to dig out. As regards the claim of damages made by the Appellant, substantial evidence had been filed to substantiate the same, barring certain photographs, which have been placed on records, in support of its claim. That the Board/Respondent No.2 directed the Respondent No.1 shall ensure that no further violation is to be made to the GA of the Appellant and both the Appellant and Respondent No.1 complies with safety Standards laid down by the Board.
- iii. The impugned Order is completely in tune with provision laid down under PNGRB Act and Regulations framed there under. There is no

illegality or infirmity in the order passed by the Respondent No.2 so as to warrant any interference from this Hon'ble Tribunal.

10.0 Issue (s):

- 1. Whether Appeal is maintainable since the Appellant has also filed a petition under Section 44 of the PNGRB Act before the Board.**
- 2. Whether para 18 of the impugned order dated 17.02.2023 has restrained the respondent No. 1 from the activity of laying carbon steel (CS) pipelines in the Bareilly geographical area authorized to the Appellant as mentioned.**
- 3. Whether Respondent No. 1 has infringed infrastructure exclusivity of the Appellant by passing through the GA of the Appellant with the activity of laying carbon steel (CS) pipelines in the Bareilly geographical area authorized to the Appellant. If so, its effect.**

11.0 Deliberations

11.1 Issue No 1: Whether Appeal is maintainable since the Appellant has also filed a petition under Section 44 of the PNGRB Act before the Board.

- i. Appellant has filed a petition before the Hon'ble Board under Section 44 of the PNGRB Act, being Execution Petition No. 1/2023 with the following prayers:-
 - a. *Pass direction to implement the order dated 17.02.2023 passed by this Hon'ble Board in case no. legal/12/2022 against Hindustan Petroleum Corporation Limited*
 - b. *Pass Penalty against the Respondent for non-implementation of the order dated 17.02.2023 passed by this Hon'ble Board in case no. legal/13/2022.*

- ii. The Appellant also sought interim relief “..direct the respondent to stop activity of laying Carbon Steel (CS) pipelines in the Bareilly geographical area authorized to the petitioner”.
- iii. It is pertinent to mention herein that Section 44 of the PNGRB Act talks about the Punishment for contravention of directions of the Board. It says:-

“ If a person contravenes the directions of the Board, such person shall be punishable with fine which may extend to twenty-five crore rupees and in case of continuing contravention with additional fine which may extend to ten lakh rupees for every day during which the contravention continues.”

- iv. From the perusal of Section 44 of the Act, it is clear that Board has a power to take action against a person, if there is any contravention with the direction of the Board. And if the action of the person is found to be in contravention of the order of the Board, is also empowered to impose fine which may extend to twenty five crore. In case of continuing contravention than additional fine which may extend to ten lakh rupees for every day during which the contravention continues may also be imposed.
- v. It is important that before imposing the fine as stipulated in Section 44, the Board has to necessarily examine whether, pursuant to the order dated 17.02.2023, any contravention of the direction of the Board has been made by Respondent No. 1.
- vi. In order to verify the same, notice was issued by the Board and in the hearing dated 25.04.2023, Board heard both the parties and after hearing directed both the parties to settle the dispute amicably and listed the matter for 30.05.2023. However Board, after hearing

preliminary arguments of both the parties, did not find it appropriate to grant interim relief to the Appellant and listed the matter for further hearing.

- vii. It is relevant to mention herein that in the present memorandum of Appeal before us, though the Appellant has mentioned that it has filed an application seeking urgent listing and interim relief against Respondent no.1 under section 44 of the PNGRB Act from the Board, it did not mention that the main relief sought was for the enforcement of the impugned order.
- viii. It is also relevant to mention herein that Appellant has filed appeal before this Tribunal under section 33 of the PNGRB Act which say:-

“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.....”

- ix. On perusal of section 33, it is clear that Appellant does have a remedy to invoke Appellate jurisdiction of this Tribunal against the order of the Board under Section 33 of the PNGRB Act, which it has invoked after the delay of 53 days. Further Section 33(2) proviso has empowered this Tribunal to entertain appeal even 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.

- x. While exercising their power under Section 33(2) proviso, this Tribunal condoned the said delay of 53 days vide order dated 02.08.2023 considering that the delay of 53 days is no so inordinate as to deny the Appellant on merits subject to the cost.
- xi. It is pertinent to mention herein that the issue before the Board is with respect to the contravention of the direction of the Board. Board being the regulator has full powers to examine whether any contravention against the order of the Board has taken place by the Respondent therein under Section 44.
- xii. The Appeal before the Tribunal is distinguished with the prayer to quash the impugned order of the Petroleum and Natural Gas Regulatory Board dated 17.02.2023 in case no. Legal/13/2022 not restraining the Respondent No. 1 from the activity of laying Carbon Steel (CS) pipelines in the Bareilly geographical area authorized to the Appellant as mentioned in para 18.
- xiii. The issue before the Board is distinguished than the issue before the Tribunal thereby correct to say that this appeal is maintainable.

11.2 Issue no. 2: Whether para 18 of the impugned order dated 17.02.2023 has restrained the respondent No. 1 from the activity of laying carbon steel (CS) pipelines in the Bareilly geographical area authorized to the Appellant as mentioned.

- i. The relevant extract of Para18 of the impugned order dated 17.02.2023 :

"18. It is clearly depicted from the authorization letters of both the parties that the GA of the Complainant is surrounded by the GA of the Respondent, creates an

unusual situation where it restricts the Respondent to lay the pipeline, from the GA of the Complainant. However, the Board keeping in mind the spirit of the PNGRB Act, 2006 to ensure the supply of natural gas in all parts of the country by developing the infrastructure and the submissions of the Respondent that it has made an investment of INR 50 Crore approx. for laying the said pipeline and grave loss will be caused to the public exchequer if the said pipeline is removed, is not inclined to direct the Respondent to discontinue the its activity and removal of said Pipeline, as same would lead to delay of the laying of CGD Network of Bareilly (EAAA) District, Pilibhit and Rampur Districts. It is pertinent to note that since the Respondent is laying its pipeline within the GA of the Complainant, and the Board in unusual situation, feels not appropriate to pass direction to remove the said pipeline, therefore, it will be foremost obligation of the Respondent to be cautious in future and lay further work under the supervision of the Responsible Officer and strictly comply with Safety Standards laid down by the Board and not to further infringe the infrastructure exclusivity of the Complainant. An affidavit to the effect that no commercial activity will be carried out in the GA authorized to the Complainant has already been filed and the Respondent must ensure the undertaking given in the affidavit be observed at all times by the Respondent and its Officers."

- ii. On perusal of para 18, it is clear that Board was not in favor of removing the pipelines laid by the Respondent no.1 and for stopping the activities keeping in view that Respondent no.1 has made an investment of INR 50 Crore approx. for laying the said pipeline and grave loss will be caused to the public exchequer if the said pipeline is removed and also in order to ensure the supply of natural gas in all parts of the country by developing the infrastructure expeditiously. Further, the intention of the Board for not directing the Respondent No. 1 to discontinue its activity or to remove the pipeline is also clear from the perusal of the para 18, whereby it has specifically mentioned in the same para that "...not inclined to direct the Respondent to discontinue the its activity and removal of said Pipeline, as same would lead to delay of the laying of CGD Network of Bareilly (EAAA) District, Pilibhit and Rampur Districts."
- iii. It is true that PNGRB did concluded that Respondent No.1 has not only violated the terms and conditions of the authorization letter dated 29.03.2019 but also infringed the infrastructure exclusivity of the Appellant in the subject GA, because of which penalty of Rs. 5,00,000/-

was also imposed but no direction to discontinue the activities or removal of pipeline was given by the Board.

- iv. Board is very well aware of the unusual situation and considering it did neither pass any direction to remove the said pipeline nor directed to discontinue its activity as same would also ultimately lead to delay of the laying of CGD Network of Bareilly (EAAA) District, Pilibhit and Rampur Districts.
- v. Considering all the prevalent fact and circumstances, Board did made Respondent no. 1 responsible for strictly complying with all the safety standards laid down by the Board and to ensure that no further violation is to be made in the GA, that is no new pipeline to be laid in the GA of the Appellant. But with respect to the disputed pipeline laid by Respondent no. 1 in the GA of Appellant, directions were given by the Board to strictly comply with the safety standard.
- vi. The word 'no further violation' to be made in the GA can only mean that any violation other than the line which has already been laid to a substantial extent. If the Board had intended that Respondent No.1 should not complete the construction of the pipeline, it would have specifically restrained them from completing the pipeline laying activities. Board was aware of peculiar circumstances and specifically mentioned that grave loss will be caused to the public exchequer if the said pipeline is removed.
- vii. Further the interim order passed earlier on 14.07.2022 was vacated by the Board while disposing the complaint vide order dated 17.02.2023 and Respondent no.1 recommenced laying of the remaining part of pipeline. The Appellant seeks to read direction 'B' (in terms of which the Respondent No.1 was directed to ensure that "no further violation was

made in the GA of the Appellant”) as an order restraining the first Respondent from continuing to lay the remaining part of the pipeline.

- viii. It is a settled law that orders of Courts/Tribunal should not be read as statutes and a single line therein cannot be read out of context to give it a meaning in which those observations were made.
- ix. Thus it is clear that in para 18 of the impugned order dated 17.02.2023 respondent No. 1 has not been restrained by the Board from the activity of laying carbon steel (CS) pipelines in the Bareilly geographical area authorized to the Appellant.

11.3 Issue No. 3: Whether Respondent No. 1 has infringed, infrastructure exclusivity of the Appellant by passing through the GA of the Appellant with the activity of laying carbon steel (CS) pipelines in the Bareilly geographical area authorized to the Appellant. If so. Its effect.

- i. The Petroleum and Natural Gas Regulatory Board (PNGRB) was constituted under the Petroleum and Natural Gas Regulatory Board Act, 2006, notified via Gazette Notification dated 31st March, 2006 and came into effect on 01.10.2007 and Section 16, which is relating to Authorization, came into effect on 12.07.2010.
- ii. The vision & value of the PNGRB is *“to create a vibrant energy market with rapid and orderly growth through facilitation of flow of investments into the basic infrastructure for efficient transportation and distribution of petroleum, petroleum products and natural gas at minimum cost and high level of protection of consumer interests through fair trade practices and competition amongst the entities so as to ensure the enhanced competitiveness of Indian economy and customer satisfaction.”*

iii. To achieve its vision, one of the prime mandate of the Board under the Act is to ensure that uninterrupted and adequate gas supply is made to all parts of the country and to promote competitive markets. The Board is mandated to protect the interest of consumers as well as entities engaged in activities relating to petroleum, petroleum products and natural gas. This mandate of the Board has been captured in the various regulations framed by the Board in exercise of its powers under the Act.

Section 2(d) of the PNGRB Act defines

"authorised entity" means 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;"

iv. City or local natural gas distribution network is defined under Section 2(i) of the PNGRB Act as :-

"city or local natural gas distribution network" means 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.

Explanation :- For the purposes of this clause, the expressions "high pressure" and "medium pressure" shall mean such pressure as the

Central Government may, by notification, specify to be high pressure or, as the case may be, medium pressure;”

v. Entity is defined under Section 2(p) of the PNGRB Act as

"entity" means a person, association of persons, firm, company or cooperative society, by whatsoever name called or referred to, other than a dealer or distributor, and engaged or intending to be engaged in refining, processing, storage, transportation, distribution, marketing, import and export of petroleum, petroleum products and natural gas including laying of pipelines for transportation of petroleum, petroleum products and natural gas, or laying, building, operating or expanding city or local natural gas distribution network or establishing and operating a liquefied natural gas terminal;.

vi. Accordingly, if any entity that wishes to lay, build, operate or expand any city or local natural gas distribution network requires authorization under Section 16 of the PNGRB Act. The provisions read as follows:-

“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.”*

vii. Thus authorization of a specified geographical area for a CGD network is granted by the Board, which is considered as an authorized area, to authorized entity. The term **‘authorized area’** is defined under

Regulation 2(c) of the authorization Regulation (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 as:

“(c) “authorised area” means 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);”

viii. Thus it is clear that the geographical area for the purpose of authorization is carved out by the Board, who is the statutory authority and is empowered to demarcate the GA for granting authorization for laying, building, operating or expanding CGD network in an “authorized area”.

ix. For the said purpose authorized area, as per the Regulation, depending upon the criteria of economic viability and contiguity as stated in Schedule A, GA may comprise of the following categories, either individually or in any combination thereof, namely 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 any other area contiguous to the geographical area. This exercise of carving out the GA for authorization purpose is complex exercise and is done by the Board after considering multiple factor mentioned therein.

- x. The authorization Regulation (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 is applicable to any entity which is laying, building, operating or expanding or which proposes to lay, build, operate or expand CGD network which is clarified in Regulation 3 of the authorization regulation which says that:-

(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.

- xi. The objective of the establishment of the Board is to ensure the supply of natural gas in all parts of the country in compliance with the mandate of the PNGRB Act and the provisions of the PNGRB(Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 (ÇGD Authorization Regulations), the Board, either through acceptance of the Central Government Authorizations, granted in favour of entities before the appointed day under Regulation 17 of the CGD Authorization Regulation or grant of Authorization under Regulation 18 of the CGD Authorization Regulation for the Entities that were carrying out CGD activities, but were not authorized by the Central Government, are required to apply for fresh authorization or Entities that seek to set up CGD activities after the appointed day, under Regulation 5 of the CGD Authorization Regulation i.e., all entities seeking to set up operations afresh, after the PNGRB Act came into effect, would be required to either submit an expression of interest, followed by participation in the bidding process, or participate in the suo-motu invitation of bids by the PNGRB.
- xii. As per Regulation 3, CGD network is basically 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 customer requirements of natural gas up to 50,000 SCMD. Customers having requirement of natural gas more than 50,000 SCMD and up to 100,000 SCMD can also be supplied through the CGD network or through a

pipeline not forming part of the CGD network, at the discretion of customer.

- xiii. Thus in terms of Section 11 read with Section 16 of the PNGRB Act and Regulation 3 (Authorising CGD Regulation), the transportation of natural gas through a CGD network is a regulated activity requiring authorisation from the Board in favour of an entity commonly referred as the authorised entity for a specified GA. Unless and until an area is authorised by Board for CGD development, such area would not be considered as GA.
- xiv. In the present case, there is no dispute that both Appellant and Respondent No.1 are authorised entities and are permissible under the PNGRB Act /Regulation to lay build operate or expand CGD network in an area authorized to them. The Board vide its letter dated 22.04.2009 accepted Central Government Authorization for CGD Network-Bareilly GA of the Appellant and has granted (Marketing) exclusivity for 05 years (Ref point no. 4 of LOA of Appellant) from the date of issue of Performance Bank Guarantee subject to various terms and condition. Further vide letter dated 29.03.2019, Board granted Authorization to Respondent No.1 for development of CGD network in the Bareilly (EAAA), Pilibhit and Rampur Geographical Area under the 10th round of bidding. Looking into the map clearly shows that the authorized area of the Appellant for Bareilly district is from the pre-PNGRB bidding era and is now surrounded by the area authorised to Respondent no. 1 by PNGRB through bidding process.
- xv. It is also correct to say that there is no dispute between both the authorized entities with respect to the authorized Geographical area which is clearly demarcated by the PNGRB. However the reason of passing through the GA of the Appellant given by the Respondent no. 1 is that :-

- i. GA is hindered by a river in the west and an elongated strip of Appellant's area on the east, and their option for reaching its entire GA from City Gas Station through steel pipeline are restricted due to the geographical location of the Appellant's Authorised area in Bareilly.
- ii. Without incurring unnecessary extra kilometers of the pipeline, which is unsafe and avoiding unnecessary expenditure of public money they were compelled to pass through the GA of the Appellant to reach its own charge area and they have no intention of undertaking any commercial activities in the Appellant's charge area.
- iii. In fact subsequent to receiving authorization from the Board in 29.03.2019, Respondent no. 1 submitted a detailed DFR for the subject disputed pipeline to the Board in 2019. Respondent No.1 accordingly has been laying it in accordance with DFR and the map annexed thereto. Thus it can be construed that Board was aware of the route of the pipeline.
- iv. The tap off point from the nearby natural gas pipeline is SV 11 of GAIL NG pipeline at Chaubari and this SV station is under the Appellant's area. They tried its best to get suitable land for its city gas station near the said SV station, to fall within 2(1)(g) read with Regulation 2(1)(d) of the PNGRB (Technical Standards and Specification including Safety Standards for City or Local Natural Gas Distribution Networks) Regulation 2008. Respondent No. 1 could only succeed in acquiring land outside the Appellant's area at a distance of 0.5 km. If the Respondent no. 1 had located its CGS within the Appellant's GA, then entire pipeline irrespective of

passing through the Appellant's GA would have been within the 2(1)(g).

Proviso of Section 2(1)(g)

"2. Definitions

(1) In these regulations unless the context otherwise requires:

(g) "city gate station (CGS)" means the point where custody transfer of natural gas from natural gas pipeline to the CGD network takes place and this may also be referred to as City Gate Measuring and Pressure Regulating Station.

Provided that if CGS is established outside the authorized Geographical Area then pipeline connecting from CGS to authorized CGD network shall be considered as a part of CGD network, however the authorized entity shall not supply natural gas to any customer from the pipeline outside its geographical area."

xvi. On perusal of the proviso of Section 2(1)(g), it is clear that it allows CGD entities to pass through geographical area of another entity, wherein CGS is established outside their GA. In other words if the CGS is situated outside their authorized GA, and for that matter that outside GA could be or could not be a part of other entity's authorized GA, subject to the authorized entity not doing any business in that geographical area, it did allowed to lay pipeline to connect from CGS to authorized CGD network. Thus it is an enabling provision allowing authorized CGD entity to pass through the GA of another entity with the proviso of not doing any business in other entity's GA. It is not restricting the entity to lay pipeline outside their GA to connect CGS irrespective of the fact whether that outside GA is authorized or not to other entity. However this right is restricted and is subject to not supplying natural gas to any customer from the said pipeline outside its geographical area.

- xvii. It is also pertinent to mention herein that under section 2(1) (g) there is no provision for taking permission from the Board for laying the pipeline for connecting from CGS to authorized CGD network and shall be considered as a part of CGD network with the only condition to comply that the authorized entity shall not supply natural gas to any customer from the pipeline outside its geographical area.
- xviii. Thereby meaning that entity is only required to take statutory permission from municipal authorities or NOC from the district authorities for laying pipeline, if the outside area is not authorized to any other entity, Similarly even if outside area is authorized to some other entity, there is no provision under Section 2(1)(g) of taking permission from the Board or from other entity .
- xix. It is clear that pipeline connecting from CGS to authorized CGD network will be considered as a part of CGD network only and there is no stoppage for passing through the other entity GA. Keeping in view of the complexities in carving GA for authorization which may be individual or combination thereof Section 2(1) (g) was formulated.
- xx. In fact, in order to tackle these peculiar situation and bring more clarity Board has also proposed the amendment in the existing Regulation 2(1)(g) though the same is still not notified. Thus it can very well said that Board is aware of these situation that may arise because of the demography of the different GA.
- xxi. It is a matter of fact that Respondent no. 1 in all his communication to the Appellant and also before the Board had categorically stated that while a part of the pipeline may fall within the Appellant's geographical area, they have no intention of undertaking any commercial activities in the Appellant's charge area or affecting the Appellant's commercial interest

thereby. Infact, Respondent No. 1 vide its affidavit dated 05.01.2023 undertook not to do any business in the complainant's Geographical area and has clearly mentioned that had no intention of undertaking any commercial activities in the Appellant's area.

- xxii. Thus it is clear that Respondent no. 1 has no intention of undertaking any commercial activities in the GA granted to the Appellant. This point was confirmed by the Ld. Counsel during the hearing also. The Respondent no. 1 was constrained to lay the subject pipeline in its current route due to the geographical constraint and to avoid infructuous expenditure of public money by laying unnecessary extra kilometers of pipeline, which is unsafe. The tap off point from the nearby natural gas pipeline is SV 11 of GAIL NG pipeline at Chaubari and this SV station is under the Appellant's area.
- xxiii. It is clarified here that authorized entity is responsible to lay the infrastructure in the GA for the development but does not mean that the total land etc. of the GA is in their control. The purpose of authorization is not to grant a monopoly over the GA or distribution of natural gas but is limited to lay, build, operate or expand the network and is a mere infrastructure provider in its authorized GA. The scope and ambit of authorizations is limited to distribution and supply of CNG and PNG by a CGD network.
- xxiv. As per the provisions of the PNGRB Act, CGD Network is an inter-connected network of gas pipelines and associated equipment. for transporting Natural Gas from "Natural Gas Pipelines" into the medium pressure pipelines and in turn, supplying gas to 3 categories of consumers situated in the Specified Geographical Area, viz.:
 - a. Domestic consumers (to be used as piped gas at homes).

b. Industrial/Commercial consumers (to be used as fuel/feedstock).

c. CNG Stations (to be used as vehicular fuel).

xxv. Regulation 12 of the PNGRB CGD Authorization Regulations read with Regulations 5 and 6 of the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008 (“PNGRB CGD Exclusivity Regulations”), provide for two types of exclusivities to the entity authorized to develop the CGD Network as under:

(i) The authorized entity is granted exclusivity for developing the CGD Network in the authorized Geographical Area for a specified period from the date of authorization (commonly referred to as ‘Infrastructure Exclusivity’).

(ii) The authorized entity is granted exclusivity from the purview of common carrier/contract carrier for a specified period from the date of authorization.

xxvi. In other words, starting from the CGD authorization date, the CGD Network shall be available only to the authorized entity so that no third-party marketers can access that CGD Network for marketing their Natural Gas, thereby providing the CGD entity a reasonable opportunity to recover its investments.

xxvii. However, after the expiry of the exclusivity period, the authorized entity shall make the CGD Network in the specified Geographical Area accessible to third parties for marketing Natural Gas to commercial/industrial consumers so as to ensure fair trade and competition amongst entities in terms of Section 11(e)(iii) of the PNGRB Act.

xxviii. Even after the expiry of exclusivity from the purview of common carrier/contract carrier also, it is very much clear that only the infrastructure laid by authorized entity in the authorized area can be utilized by third party for marketing Natural Gas in the GA as per exclusivity rules. Thus, there is no threat created by passing through the GA of the appellant with respect to the infrastructure exclusivity or exclusivity from the purview of common carrier or contract carrier. It may also be clarified that as per CGD Regulation in case any customer having requirement of gas more than 50,000 SCMD to 1,00,000 SCMD has an option of taking gas either through the CGD network or through the natural gas pipeline and in this given scenario also the gas cannot be supplied through, to say from the pipeline of Respondent no. 1 and customer can only exercise the option of CGD authorized entity, which in present case is Appellant or Natural Gas pipeline entity.

xxix. There is no embargo in the PNGRB Act which restricts the authorized entity to pass through the GA of other entity in order to reach to its own GA from CGS. It is also clear there is no infringement by Respondent no.1 by passing through the GA of the Appellant in order to reach from CGS to its own GA. The word "infringement has been explained in section 21 of the PNGRB Act which is with respect to Right of first use which says that .

"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."

xxx. In the present case by passing through the GA of the Appellant, in order to reach its GA from the CGS, has not interfered with the exclusivity right of common carrier or contract carrier granted to the Appellant. Infact

Respondent no.1 has always given on an affidavit that they have no intention of undertaking any commercial activities in the Appellant's GA.

xxxi. Further Appellant was not able to substantiate its claim and quantify the damages being claimed thereby failed to show any prejudice caused to them by passing through the GA of the Appellant.

12.0 It is essential in today's scenario where the geographical size of a GA is becoming large and, considering the practically available route, the CGD pipeline connecting from its CGS may pass through some sections of other contiguous Geographical Area(s) also. This type of situation may also arise where multiple districts are covered under single GA, but due to no direct sharing of the district boundaries (in some cases), it may not be possible to lay CGD pipeline from one district of a GA to another district covered under the same GA, without crossing the boundary of one another contiguous geographical area in ensuring efficient and economical transportation of natural gas by a CGD entity from the gas-source point (CGS) to its authorized GA.

13.0 It is also important to note that the Board has to be guided by the objectives of promoting competition among entities, avoiding infructuous investment, maintaining or increasing supplies for securing equitable distribution & ensuring adequate availability of natural gas throughout the country.

14.0 It seems that Board is aware of this peculiar situations which entities may face while laying pipe line and have accordingly also already proposed modification in the Section 2(1)(g) by bringing more clarity. Since being an evolving sector, It is advisable that PNGRB should come up with the guidelines/ regulations in order to deal with these time testing situations.

15.0 It is also pertinent to mention herein that the issue of exclusivity granted to Appellant is not been dealt by this Tribunal in the present case before us

and is left open and considering Appellant has infrastructure exclusivity only the “*infringement issue*” is being dealt .

16.0 Thus, in view of the above facts, arguments, submissions, Act & regulations it is clear that :-

1. Respondent No. 1 has not infringed the infrastructure exclusivity by passing through the GA of the Appellant with the activity of laying carbon steel (CS) pipelines in the Bareilly geographical area authorized to the Appellant. Further, it is also clear that Respondent No.1 will not undertake any commercial activities in the Appellant’s geographical area.
2. Being an evolving sector, PNGRB as a Regulator is well advised to come up with the guidelines/ regulations in order to deal with these time testing situations.

Order

Having regard to the factual and legal aspects of the matter as stated above, we are of the considered opinion that there is no merit in the case. Accordingly the Appeal is dismissed.

No order to the cost.

Pronounced in the open court on this 02nd day of February, 2024.

(Virender Bhat)
Judicial Member

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

√
Reportable/~~Non-Reportable~~