

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

**APPEAL No. 569 of 2023 & IA No. 431 of 2024**

Dated : 21<sup>st</sup> May, 2024

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

In the matter of:

**ASSAM GAS COMPANY LIMITED**

*Through Managing Director (Gokul Chandra Swargiyari)*

Having its registered office at:

P.O. Duliajan

Dist.: Dibrugarh

Assam – 786602

Email Id: [court.clerk@hsalegal.com](mailto:court.clerk@hsalegal.com)

**... APPELLANT**

*Versus*

**PETROLEUM AND NATURAL GAS REGULATORY BOARD**

*Through: Secretary*

1<sup>st</sup> Floor, World Trade Centre,

Babar Road,

New Delhi – 110001

Email: [secretary@pngrb.gov.in](mailto:secretary@pngrb.gov.in)

**... RESPONDENT**

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:

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R. Sharath for Res. 1

## **JUDGMENT**

### **PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. The Assam Gas Company Limited (AGCL) is aggrieved by the order dated 10<sup>th</sup> August, 2022 passed by the Respondent-Board whereby the Board has determined the tariff for the Appellant's natural gas pipeline namely Assam Natural Gas Pipeline (ANGPL) applicable from 20<sup>th</sup> November, 2008 i.e. the date when the Tariff Regulations, 2008 were notified.

2. The Appellant is a company wholly owned by the Govt. of Assam and engaged in processing and transportation of natural gas through integrated gas transportation system. The company is in the business of supplying natural gas to Industrial, Commercial as well as

Domestic consumers in various towns of Upper Assam through City Gas Distribution (“CGD”) network. Pursuant to the directions of the Govt. of Assam, the Appellant designed and commissioned the natural gas pipeline i.e. ANGPL in the year 1986 i.e. much prior to the notification of Petroleum and Natural Gas Regulatory Board Act, 2006 (PNGRB Act).

3. Be it noted here that PNGRB (Authorizing Entities to Lay, Build, Operate and Expand City or Local Natural Gas Distribution Networks) Regulations 2008 (hereinafter referred to as “Authorization Regulations 2008”) were notified on 16.03.2008. Thereafter, the PNGRB (Determination of Natural Gas Pipeline Tariff) Regulations, 2008 (hereinafter known as Tariff Regulations, 2008) were notified on 20<sup>th</sup> November, 2008 which lay down the methodology for determination of transportation tariff for natural gas pipelines.

4. In this appeal, we are concerned mainly with Section 16 & 17 of the PNGRB Act, 2006 and therefore, for the sake of reference are reproduced hereunder :-

**Section 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.*

**Section 17. Application for authorisation.**

*(1) An entity which is laying, building, operating or expanding, or which proposes to lay, build, operate or expand, a pipeline as a common carrier or contract carrier shall apply in writing to the Board for obtaining an authorisation under this Act :*

*Provided that an entity laying, building, operating or expanding any pipeline as common carrier or contract carrier authorised by the Central Government at any time before the appointed day shall furnish the particulars of such activities to the Board within six months from the appointed day.*

*(2) An entity which is laying, building, operating or expanding, or which proposes to lay, build, operate or expand, a city or local natural gas distribution network shall apply in writing for obtaining an authorisation under this Act :*

*Provided that an entity laying, building, operating or expanding any city or local natural gas distribution network authorised by the Central Government at any time before the appointed day shall furnish the*

*particulars of such activities to the Board within six months from the appointed day.*

*(3) Every application under sub-section (1) or sub-section (2) shall be made in such form and in such manner and shall be accompanied with such fee as the Board may, by regulations, specify.*

*(4) Subject to the provisions of this Act and consistent with the norms and policy guidelines laid down by the Central Government, the Board may either reject or accept an application made to it, subject to such amendments or conditions, if any, as it may think fit.*

*(5) In the case of refusal or conditional acceptance of an application, the Board shall record in writing the grounds for such rejection or conditional acceptance, as the case may be.*

5. The Appellant had obtained authorization from the Central Govt. for laying and operating the ANGPL pipeline as a common carrier and therefore in pursuance to Section 17(1) of the PNGRB Act, read with Regulation 17(1) of the Authorization Regulations, 2008 furnished the particulars of the activities being undertaken by it to the Respondent-Board vide letter dated 19<sup>th</sup> October, 2012. The Board accepted the Central Govt's authorization in favour of Appellant's ANGPL on 20<sup>th</sup> December, 2013.

6. Vide letter dated 19<sup>th</sup> May, 2011, the Appellant filed its submissions before the Board for determination of provisional tariff for ANGPL. Vide Order dated 30<sup>th</sup> May, 2014, the Board arrived at a

transportation tariff of Rs.4.05/MMBTU for the said pipeline for the period 20/11/2008 upto financial year 2013-14 provisionally. The Appellant filed a Review Petition against the said provisional tariff order. However, the Review Petition was dismissed by the Board vide order dated 29<sup>th</sup> April, 2015 as being time-barred.

7. The Appellant assailed both the orders dated 30<sup>th</sup> May, 2014 as well as 29<sup>th</sup> April, 2015 before this Tribunal by way of Appeal No. 305 of 2016. Before the Appeal could be heard and decided by this Tribunal, the Board issued a final tariff order dated 4<sup>th</sup> June, 2019. Accordingly, the Appellant sought withdrawal of the Appeal No. 305 of 2016 from this Tribunal and the same was dismissed as withdrawn vide order dated 12<sup>th</sup> July, 2019.

8. In the above noted final tariff order dated 4<sup>th</sup> June, 2019, the Board had determined the final initial unit natural gas pipeline tariff for ANGPL as under :-

- a. "For the period 20.11.2008 to FY 2013-2014, the tariff determined by the Board in the Provisional Tariff Order i.e. Rs 4.05/MMBTU on GCV basis was upheld.*
- b. The tariff for the period 01.04.2014 to 30.06.2019 was determined to be the same as charged by AGCL.*
- c. Tariff for the period 01.07.2019 to FY 2030-2031 was determined to be Rs.1.81/MMBTU on GCV basis."*

9. The Appellant filed Review Petition against the said final tariff order also but the Review Petition was dismissed by the Board vide order dated 11<sup>th</sup> February, 2020. The Appellant assailed the final tariff order dated 04.06.2019 before this Tribunal by way of appeal bearing No. 101 of 2022. This Tribunal, vide judgement dated 18<sup>th</sup> May, 2022 remanded the matter back to the Board with the direction to review the impugned order dated 4<sup>th</sup> June, 2019, restricted to the issue of the date from which the tariff determined thereby is to become effective.

The relevant portion of the judgement is quoted herein below :-

*“In the forgoing facts and circumstances, as duly noted in the previous orders quoted above, we dispose of this appeal directing the respondent Board to undertake a review of the impugned order, restricted to the issue of the date from which the tariff thereby determined is to become effective. Needless to add, the matter would deserve some primacy and, therefore, we would expect the Board to undertake the review expeditiously and pass the requisite order, in accordance with law at an early date, preferably within two months”.*

10. In compliance of the above noted judgement of this Tribunal, the Board again conducted the hearing in the matter and passed impugned order dated 10<sup>th</sup> August, 2022 holding that the tariff determined for the Appellant’s pipeline ANGPL is applicable w.e.f.

20<sup>th</sup> November, 2008 i.e. the date of notification of the Tariff Regulations, 2008.

11. It is canvassed before us on behalf of the Appellant that the Board ought to have made the transportation tariff applicable for Appellant's ANGPL from the date of acceptance of its authorization by the Board i.e. 20.12.2013 and the board has grossly erred in making the tariff applicable retrospectively w.e.f. 20<sup>th</sup> February, 2008. It is submitted that the applicability of tariff as per the PNGRB Act, 2006 as well as the extant Regulations framed thereunder shall have to be from the date of acceptance of Central Govt.'s authorization by the Board and prior to such acceptance, it is the contractual rate which is applied to the consumers of the Appellant.

12. Per contra, it is argued on behalf of the Respondent-Board that the date of acceptance of Central Govt.'s Authorization in respect of Appellant's ANGPL by the Board i.e. 20<sup>th</sup> December, 2013 can in no manner be considered at all for the applicability of the tariff and the tariff has to be levied from the date of notification of the Tariff Regulations i.e. 20<sup>th</sup> November, 2008. It is submitted that the arguments raised on behalf of the Appellant that the tariff is being applied retrospectively is erroneous for the reason that the Appellant



has been in the gas transportation business much prior to 20<sup>th</sup> November, 2008 and, therefore, it cannot be said that the tariff is being levied retrospectively. It is further pointed out that as per Section 17 of the PNGRB Act, the Appellant Company being a Central Govt. Authorized entity, was required to furnish particulars of its activities to the Board within six months from the appointed date i.e. the date of notification of PNGRB Tariff Regulations i.e. 20<sup>th</sup> November, 2008 but it submitted the required information after about 4 years on 19<sup>th</sup> October, 2012. It is submitted that the Appellant cannot be allowed to take advantage of its own delay in submitting the requisite information to the Board in order to avoid the applicability of tariff determined by the Board.

13. We have considered the rival submissions made by the Learned Counsels appearing for the parties and gone through the impugned order as well as entire material on record including the written submissions filed by the Learned Counsels.

14. We have already reproduced Sections 16 & 17 of the PNGRB Act, 2006 in paragraph No. 4 hereinabove which are material for the disposal of this appeal.

15. It is very pertinent to note here that the PNGRB Act, 2006, except Section 16 came into force on 1<sup>st</sup> October, 2007 whereas Section 16 came into force on 15<sup>th</sup> July, 2010.

16. Section 16 made it mandatory for an entity to obtain authorization from the Board for laying, building, operating or expanding any pipeline as a common carrier/contract carrier or local natural gas distribution network. Proviso attached to the Section envisaged that an entity engaged in such activities immediately before the appointing day i.e. the date of coming into force this Section shall be deemed to have such authorization subject to the provisions of the Chapter in which the Section is found i.e. Chapter IV of the Act.

17. Sub-Section (1) of Section 17 provides that an entity which is engaged in laying, building, operating or expanding a pipeline as a common carrier/contract carrier or proposed to do so shall apply to the Board in writing for obtaining an authorization under this Act. Proviso attached to Section 17(1) carves out an exception in favour of the entities who have been engaged in such activities and were authorized by the Central Govt. for these activities at any time before

the appointed day and provides that such entities shall only furnish the particulars of their activities to the Board within six months from the appointed day.

18. Reading the proviso attached to Section 16 of the Act in conjunction with the proviso attached to Section 17(1) would reveal that the entities authorized by the Central Govt. prior to the appointed day are deemed to be authorized and are merely required to submit certain information to the Board within six months from the appointed day. Those entities did not require fresh authorization.

19. Undisputedly, the Appellant was having an authorization from the Central Govt. prior to coming into force the PNGRB Act, 2006. Therefore, it was deemed to have authorization under Section 16 of the Act also and was only required to furnish the particulars of its activities to the Board within six months from the appointed day. The appointed day would be the date when Section 16 of the act was notified i.e. 15<sup>th</sup> July, 2010.

20. The Hon'ble Supreme Court had occasion to consider the provisions of Section 16 & 17 of the PNGRB Act in Adani Gas Limited Vs. Union of India and ors. SLP (C) No(s). 28192-28193 OF 2018 decided on 28<sup>th</sup> September, 2021 and it has been held as under :-

*“Therefore, if one reads the proviso to Section 16 with the proviso to Sections 17(1) and Section 17(2) the former (i.e., proviso to Section 16) only states that entities that had been previously authorized by the Central Government could claim deemed authorization. The rationale for this is that the provisos to Section 17(1) and 17(2) merely require such entities (as were authorized by the Central Government prior to coming into force of PNGRB Act) to intimate certain details to the PNGRB - but do not require any fresh authorization. This distinction i.e., between authorization and intimation is crucial because it states that entities which received Central Government authorization before the commencement of the Act, and which had started to lay, build or operate CGD networks were deemed to be authorized under the PNGRB Act. This is the only logical and reasonable construction, given this Court’s declaration in Special Reference (supra), that States did not have the competence to enact any laws or frame policies in respect of natural gas. It was the Parliament alone that could do so. The Court also declared ultra vires the Gujarat enactment, in light of this reasoning. Parliament was conscious that authorizations for CGD networks were being granted by the Central Government, and it sought to save only these authorizations, which had the support of the Constitution. Authorizations granted by state governments were not legal and did not have the support of the Constitution, and such authorizations were to be obtained afresh, under the regime put in place by the PNGRB Act.*

21. Thus, it is manifest that there was no need for the Appellant to go for fresh authorization. It was only required to furnish requisite particulars of its activities to the Board which it did vide letter dated 19<sup>th</sup> October, 2012 i.e. much belatedly. The Board accepted the Central Govt.’s Authorization in favour of the Appellant’s ANGPL on 20<sup>th</sup>

December, 2013. Relying upon these facts, it is argued on behalf of the Appellant that the Board had no jurisdiction on its gas pipeline till 20<sup>th</sup> December, 2013 and, therefore, the tariff determined for the same ought to have been made applicable w.e.f. the said date only.

22. We have already noted hereinabove that in terms of the proviso attached to Section 17(1) of the PNGRB Act, the Appellant was required to furnish particulars of its activities to the Board within six months from the appointed day i.e. the date when Section 16 of the Act was notified i.e. 15<sup>th</sup> July, 2010. Evidently, the Appellant has committed inordinate and contumacious delay in submitting these particulars to the Board and, therefore, it has been correctly held by the Board in the Impugned order that the Appellant cannot be permitted to take benefit of its own laxity and in-action.

23. The crucial issue which arises for consideration in this appeal is with regards to the date from which the tariff determined by the Board for Appellant's ANGPL ought to be made applicable.

24. Prior to coming into force of Section 16 of PNGRB Act, the Respondent-Board had no jurisdiction for the natural gas pipelines operating as a common carrier or contract carrier. It is by virtue of Section 16 of the Act which was notified on 15<sup>th</sup> July, 2010, that the

Board got jurisdiction over such gas pipelines and authority to determine tariff for these pipelines. Prior to 15<sup>th</sup> July, 2010, it was the contractual rate agreed between the natural gas pipeline entity and the consumer, which prevailed. Therefore, the Respondent-Board could determine tariff for such natural gas pipelines including that of the Appellant only w.e.f 15<sup>th</sup> July, 2010 and not prior to that date.

25. The fact that Section 16 of the PNGRB Act was not notified along with other provisions of the Act on 1<sup>st</sup> October, 2007 clearly indicates that the legislature did not intend the natural gas pipelines to be put under the control & purview of the Board immediately upon its creation. The reason is not far to seek. The legislature found it prudent and appropriate to give time the newly established board to formulate procedure for inviting applications from the natural gas pipeline entities for authorization and also for examining those applications. The said Section 16 of the Act is couched in negative terms and therefore in case it also had been notified along with the other provisions of the Act, that would have prevented the natural gas pipeline entities to carry on their activities till they obtained authorization, which would have brought all their activities to a sudden stand-still. To avoid such a

situation, breather was provided to the Board by postponing notification of Section 16.

26. On the issue under consideration, we also find it profitable to quote the following observations of Hon'ble Delhi High court in Voice of India vs. Union of India & Ors. ILR (2010) III Delhi 331 :-

39. We are of the opinion that **Section 16 is the source of power as it gives statutory mandate to the Board to issue authorizations.** Section 16 also confers monopoly on the Board to issue authorizations. **Without notification of Section 16, Board does not have the power to issue authorizations, inasmuch as there would be no ban on other entities from laying, building, operating or expanding CGD Networks.**

40. We are further of the view that Sections 17, 18 and 19 of the PNGRB Act are all procedural Sections in aid of Section 16. In fact, Sections 17 to 19 lay down the procedure to be adopted by the Board for inviting applications from entities and selecting the best amongst them. These Sections do not give the Board the power to grant authorisation to an entity which has applied to it. This power is specifically provided under Section 16 of the Act and in absence of non-notification of the same, the Board cannot issue LOL's to any of the entities selected by it. If the respondents, submissions were to be accepted, it would lead to chaos and would destroy the very object of the PNGRB Act which is to ensure that entities authorised by the Board are alone allowed to carry on the business of Natural Gas distribution.

...  
45. **In our opinion, in view of non-notification of Section 16 of the PNGRB Act, the power of the Board to grant authorisations has not come into force. Any authorisation given by the Board cannot be termed as a valid authorisation as Section 16 of the PNGRB Act has not yet been notified by the Government of India. It would be relevant to mention here that the Union of India in its affidavit dated August, 2009 has also taken a similar view...**

27. Thus, clearly the Respondent-Board has fallen into an error in holding that the tariff determined by it to the Appellant-ANGPL would

be applicable from 20<sup>th</sup> November, 2008 i.e. the date when PNGRB Tariff Regulations were notified. It is simply for the reason that the Board had no jurisdiction over the natural gas pipelines in the year 2008 and till 15<sup>th</sup> July, 2010. It is mutual tariff agreed between the ANGPL entities and the consumers which prevailed upto 15<sup>th</sup> July, 2010. We find it inexplicable as to how the Board could determine tariff for Appellant's ANGPL from a date prior to 15<sup>th</sup> July, 2010 when it had no jurisdiction over the said pipelines before the said date.

28. We do not find any force in the arguments raised on behalf of the Appellant that the tariff for its ANGPL ought to have been determined from the date when its authorization was accepted by the Board i.e. 20<sup>th</sup> December, 2013. We have already noted that the Appellant itself contumaciously delayed furnishing of the particulars regarding its activities to the Board in terms of Proviso to Section 17(1) of the PNGRB Act, and, therefore, it cannot be permitted to take advantage of the delay committed by it itself. Manifestly belated acceptance of Central Govt.'s authorization in favour of Appellant's ANGPL by the Board on 20<sup>th</sup> December, 2013 has happened only for the reason that the Appellant did not furnish the requisite particulars in time and did so in October, 2012, presumably for the reason that it could continue



levying tariff from its consumers as per the mutually agreed rate which might have been higher than the tariff determined by the Board.

29. In view of the above discussion, we find the impugned order of the Respondent-Board erroneous and un-sustainable. The same is hereby set aside. We hold that the tariff determined by the Board for Appellant's ANGPL would be applicable w.e.f. 15<sup>th</sup> July, 2010. The Appeal stands allowed to the above extent. All the IAs stands disposed of.

Pronounced in the open court on this 21<sup>st</sup> day of May, 2024.

(Virender Bhat)  
Judicial Member

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

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