

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

**APPEAL NO. 14 OF 2023 & IA NO. 14 OF 2023**

**Dated: 26<sup>th</sup> April, 2024**

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

**In the matter of:**

**GUJARAT GAS LIMITED**

Through Mr. Ajitpal Singh, Manager  
Having Registered Office at:  
Gujarat Gas CNG Station, Sector 5C  
Gandhinagar – 382006, Gujarat  
Email: Ajitpal.Singh@GUJARATGAS.com  
Phone: +917573018733

... Appellant

*Versus*

**PETROLEUM AND NATURAL GAS  
REGULATORY BOARD**

Through The Secretary, PNGRB,  
1<sup>st</sup> Floor, World Trade Centre, Babar Road,  
New Delhi – 110 001  
Email: secretary@pngrbgov.in  
Phone: 9312061203

... Respondent

Counsel for the Appellant(s) : Piyush Joshi  
Sumiti Yadava

Counsel for the Respondent(s) : Rahul Sagar Sahay  
Sanskriti Bhardwaj  
Kartikey Joshi  
Harshita Tomar  
Suyash Gaur  
Arun Sanwal

**JUDGEMENT**

**PER HON'BLE DR. ASHUTOSH KARNATAK, TECHNICAL MEMBER**

The present appeal is being filed u/s 33 of the PNGRB Act, 2006 by the Appellant and following relief has been sought:-

- a) *Allow the present Appeal and set aside the Impugned order dated 02.08.2022 in case no. Legal/27/2021 issued by the PNGRB/Respondent; and*
- aa) *Hold that the Impugned Decisions are not applicable to the Geographical Areas authorised under Regulation 18 CGD Authorisation Regulation or awarded prior to 06.04.2018; and*
- b) *Direct the Respondent to provide due opportunity to the Appellant to make its submissions and provide an opportunity to be heard in relation to the Amended Review Petition as was amended vide the application for amended permitted vide Order dated 05.07.2022; and*
- c) *Set aside the findings in Para 30 and 32 of Impugned Order that there was failure to achieve MWP since the review proceedings were not proceedings under Regulation 16 CGD Authorisation Regulations, which are mandatory to make a determination in relation to any failure to achieve MWP targets; and*
- d) *Direct the Respondent to provide the Appellant with the source of the data in Tables in Para 30 stated in the Impugned Order and allow suitable time and opportunity to the Appellant to make its submissions in respect thereof; and*
- e) *Direct the Respondent that in light of the Hon'ble High Court of Delhi's Orders dated 11.10.2021 and 18.08.2021 in Gujarat Gas Limited v. PNGRB (LPA 254/2021), the Respondent cannot make assumption that the period of exclusivity from the purview of the contract carrier or common carrier has expired in respect of the (i) Nadiad GA (GA ID 98.04) (ii) Navsari GA (GA ID 98.05) (iii) Rajkot GA (GA ID 98.06) (iv) Surendranagar GA (GA ID 98.07); and*
- f) *Hold that in order for an order to be a valid order of the Respondent Board, the members hearing and deciding a petition must place their signature to*

*the Order at the time of pronouncing the Order and certified copy of the Order or decision must have the signature of the Members who had heard and decided the petition; and*

*g) Pass such other orders or further orders, which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

## **1.0 Facts of the case**

- 1.1. The Appellant is the authorized entity for the GAs of (i) Nadiad GA (GA ID 98.04) (ii) Navsari GA (GA ID 98.05) (iii) Rajkot GA (GA ID 98.06) (iv) Surendranagar GA (GA ID 98.07) under Regulation 18.
- 1.2. Respondent, PNGRB i.e. Petroleum and Natural Gas Regulatory Board (The Board) is a statutory body constituted under the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006 ("PNGRB Act") notified via gazette notification dated 31 March 2006 to regulate "the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interest of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto.
- 1.3. As per the provisions of the PNGRB Act as well as the provisions of Regulation 18(1) of the PNGRB (authorizing Entities to lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 ("hereinafter referred to as CGD Authorization Regulations"), the Respondent Board granted authorization to the Appellant (then known as GSPC Gas Company Limited) for Navsari District GA, Nadiad District GA, Rajkot GA & for Surendranagar GA through separate authorisation letter dated 01.10.2013, which was also accepted vide separate letter dated

04.10.2013. Later the authorization of all the four GA.s were amended in favour of Appellant *vide* separate letter dated 25.01.2016. The details of the GA authorized under Regulation 18 of the CGD Authorization Regulation along with the exclusivity are tabled hereunder:

<b>GA Name</b>	<b>Nadiad</b>	<b>Navsari</b>	<b>Rajkot</b>	<b>Surendranagar</b>
<b>GA ID</b>	98.04	98.05	98.06	98.07
<b>Authorised Entity</b>	Gujarat Gas Limited	Gujarat Gas Limited	Gujarat Gas Limited	Gujarat Gas Limited
<b>Date of Authorization</b>	01.10.2013	01.10.2013	01.10.2013	01.10.2013
<b>Date of end of the exclusivity (from the purview of declaring common or contract carrier</b>	30.09.2018	30.09.2018	30.09.2018	30.09.2018

- 1.4. In order to monitor the post authorization activities, the Board asked the Appellant to appear before them on 27.10.2016 & 23.12.2018 to present the latest status of the project and tentative schedule to achieve the specified targets of the respective GA's.
- 1.5. It is pertinent to mention herein that, in the progress review meeting held on 23.12.2018, the Appellant informed the Board that the MWP targets of the subject GA's are on the higher side, as assigned by the Board and the Appellant will make all possible efforts to achieve the assigned targets.

- 1.6. Since the MWP targets were not achieved by the Appellant, the Board vide letter dated 04.03.2020 sought reasons from the Appellant for the shortfall in achievement of the targets along with the information and details of likely achievement up to 31.03.2020 against the MWP targets of Nadiad & Surendranagaer GA's. It is relevant to mention herein that it was specifically mentioned in the said letter dated 04.03.2020 by Respondent Board that submission of the Catch up Plan would not lead to revision/extension of MWP Targets assigned as per authorization and the Respondent Board reserves its right to take action for non achievement of targets.
- 1.7. The Appellant, vide letter dated 21.03.2020, submitted the alleged details of various events that resulted in delays in achieving the MWP targets which were originally stipulated under the terms and conditions of authorizations for the Nadiad & Surendranagar GA's along with the catch Up-Plans submitted with respect to likely achievement of work programme up to 31.03.2020.
- 1.8. On account of the Covid-19 pandemic, the Appellant vide two separate letters dated 12.06.2020 requested the Board to consider it as *Force Majeure* event under the PNGRB CGD Authorization Regulations, 2008 & to grant the exemption from being declared as common carrier or contract carrier for a period of atleast eighteen (18) month from March 25,2020 following and an extension of CGD infrastructure exclusivity for a period of 18 months.
- 1.9. In response to the Appellant's Letter dated 12.06.2020, the Board vide letter dated 22.07.2020 requested the Appellant to provide the following details within 15 days of receipt of the letter ( i) date of occurrence of *force majeure* events; (ii) date of end of *force majeure* events; (iii) duration of *force majeure*, along with the supporting documents.
- 1.10. That vide letter dated 28.08.2020, the Appellant responded to the letter dated 22.07.2020 issued by the Board and inter alia stated that by the letters dated 07.04.2020, 24.04.202 & 12.06.2020, the Appellant had declared not only the

*force majeure* events for the various authorized areas but also material adverse change caused by change in law in respect of all their authorized areas.

- 1.11. That in meanwhile, the Respondent Board, after taking cognizance of the various guidelines/orders issued by the Ministry of Home Affairs, Government of India, in light of the Covid -19 pandemic, issued the guidelines by way of the public notice Ref: PNGRB/Monitoring//Misc-FM/(3)/2020 dated 02.09.2020.
- 1.12. It is pertinent to mention herein that the aforesaid guidelines categorically provided that no request for allowing *Force Majeure* shall be considered for events/occurrence that are not covered in the definition of *Force Majeure* under the relevant bid, document or regulation 2(1)(ga) of CGD authorization regulations. It was also clarified that securing permission from statutory/local/other authorities of any government or government agencies is the prime responsibility of the CGD entities and delay on this account would not qualify as "*Force Majeure*".
- 1.13. The Respondent Board, in furtherance of the Guidelines/public notice dated 02.09.2020, issued a clarification dated 26.10.2020 (ref no.: PNGRB/Monitoring/7/Misc-FM/(3)/2020 ) stated that securing permissions from statutory/local/or other authorities of Central/States is the prime responsibility of the CGD entities. Hence delays, if any, on this account do not qualify as "*Force Majeure*".
- 1.14. That in the meanwhile, Respondent Board vide public Notice Ref: PNGRB/Monitoring/1/ CGD-COVID-19/2020/Vol-II dated 05.11.2020 issued "Extension of exclusivity period and shifting of year-wise MWP targets of Cumulative Work Program on account of '*Force Majeure*' i.e. COVID-19 pandemic for the Geographical Areas (GA s) authorized to various CGD Entities" and granted an extension to 41 CGD Entities in respect of 185 GA s that had been considered eligible for *Force Majeure* extension on account of Covid-19 pandemic. It is pertinent to mention herein that subsequently the Respondent Board vide

public notice dated 27.05.2022 withdrew the Impugned Public Notice dated 05.11.2020..

- 1.15. That on 09.07.2021, the Board issued a Public Notice and guidelines for consideration of "*Force Majeure*" in CGD networks for second Covid-19 wave. The Appellant vide letter dated 30.07.2021 sought suspension of the service obligation towards MWP target and extension of exclusivity on account of "*Force Majeure*" due to rise in COVID-19 cases since March 2021. Since the GA's in question were not found eligible, by the Respondent Board for granting the benefit of the advent of the *Force Majeure*, the same was not granted to the Appellant .
- 1.16. That the Respondent Board on 13.09.2021 issued public notices declaring expiring of exclusivity period from purview of declaration as contract carrier or common carrier for thirteen GAs of the Appellant including the GAs authorised under Regulation 18 of the CGD Authorization Regulations inclusive of 04 GA's in present Appeal . It is relevant to mention herein that in the matter of *Gujarat Gas Limited v. PNGRB (LPA 254/2021)* vide order dated 11.10.2021, the Hon'ble High Court of Delhi's which had stayed the Public Notices dated 13.09.2021 is still pending.
- 1.17. That being aggrieved, the Appellant on 06.10.2021 preferred the review petition bearing Case No. Legal/27/2021 before the Respondent Board.
- 1.18. The Board in view to take a holistic view regarding the suspension of MWP Targets and extension of Exclusivity from the purview of being declared as a common carrier or contract carrier, for the entire COVID -19 period (including all of the three waves), called up a meeting with the stakeholders on 08.04.2022.
- 1.19. In furtherance of the meeting dated 08.04.2022, the Board in its 112<sup>th</sup> (Emergency) Meeting held on 11.05.2022 took a decision for the suspension of the relative obligations of the entities towards their work program along with an extension for exemption from the purview of the common

carrier/contract carrier for a period of 24 months w.e.f. 24.03.2020, for 179 GAs. Consequent to the Emergency Board Meeting, the Respondent Board sent letter(s) dated 17.05.2022 and 18.05.2022, to the respective eligible entities w.r.t 179 GAs for the said decision. On account of restriction imposed by the respective Government due to Covid-19 pandemic in India.

- 1.20. The Respondent Board dismissed the review petition filed by the Appellant vide impugned order dated 02.08.2022 holding that the subject GA's were not found eligible for granting the benefit of COVID-19 on account of *Force Majeure*, as the time period to achieve the MWP as well as the exclusivity period had already expired much before the advent of COVID-19.
- 1.21. In the impugned order dated 02.08.2022, the Board also observed that the terms and conditions of the authorization are sacrosanct in nature and the service obligation of the authorized entity including MWP Targets is a part of authorization letter, which cannot be amended unless specifically extension is granted by the Board. In the impugned order it was also held by the Respondent Board that the Catch-Up Plan submitted by the defaulting entities is merely a future plan in order to ascertain the time period for achieving the shortfall MWP Targets however, the submission of Catch-Up Plan nowhere amends the time period for achieving the stipulated MWP Targets.
- 1.22. Against the impugned order dated 02.08.2022, Appellant filed an appeal under Section 33 of the PNGRB Act, 2006 before this Tribunal along with not communicating or giving any decision in relation to Force Majeure claim on account of COVID-19 pandemic for authorisation under Regulation 18 CGD Authorisation Regulations for Nadiad GA, Navsari GA, Rajkot GA and Surendranagar GA; Guidelines dated 02.09.2020 for consideration of Force Majeure; Clarification dated 26.10.2020 to guidelines for consideration of Force Majeure in CGD and Public Notices and guidelines dated 09.07.2021 for consideration of Force Majeure in CGD networks for second-COVID-19 wave.



## **2.0 Contention of the Appellant**

2.1 It is the contention of the Appellant that the Impugned Order dated 02.08.2022 is untenable in law and has to be set aside.

2.2 The said order has rejected the COVID-19 Force Majeure claim of the Appellant in relation to the relevant Regulation 18 GAs on the ground that the exclusivity period for being declared as a common carrier or contract carrier (“**Marketing Exclusivity Period**”) of the relevant GAs had expired much before the COVID-19 pandemic. The Appellant has also contended that:-

- i. The determination that the Marketing Exclusivity Period has expired is in violation of the settled principle that the Marketing Exclusivity Period does not end till the CGD network is declared as a common carrier by following the process laid down in s. 20(4) PNGRB Act read with the applicable regulation and relied on this Hon’ble Tribunal’s judgment dated 20.04.2022 in the matter of *Gujarat Gas Limited v. Saint Gobain India Private Limited and Anr.*, (APL No. 174 of 2016).
- ii. The determination in the Order dated 02.08.2022 that the exclusivity of the Appellant in relation to each of the relevant GAs has expired is in violation of the Hon’ble High Court of Delhi’s Order dated 11.10.2021 in the matter of *Gujarat Gas Limited v. PNGRB (LPA 254/2021)* which had stayed the Public Notices dated 13.09.2021. In relation to the force majeure notices issued by the Appellant, the PNGRB could not have decided nor considered that the Marketing Exclusivity Period has expired as it is in direct violation of and is negated by the Hon’ble High Court of Delhi’s Order dated 11.10.2021.

2.3 The data relied upon and stated in the Order dated 02.08.2022 in Para 30,31 & 32 was not part of the pleadings and it is not clear

when and how this data was obtained. No due opportunity was provided to the Appellant to review this data and make submissions clarifying the same. The said Order is therefore in violation of principles of natural justice and has to be set aside.

- 2.4 The Appellant has a vested legitimate expectation of the implementation of the catch up plan and that no further action would be taken as long as the remedial measures are being implemented.
- 2.5 The authorisations for the subject GAs were vested with the Appellant in 2013 and thus CGD Authorisation Regulations as applicable in 2013 are applicable. The 2020 FM Guidelines, the Clarifications to 2020 FM Guidelines and 2021 FM Guidelines all of which rely on definition of Force Majeure provided in Regulation 2(1)(ga) CGD Authorisation Regulations that was introduced only in 2018 will not be applicable to authorisations granted prior to 2018 as they are not applicable to earlier authorisations.
- 2.6 The Impugned Order merely uses the phrase “Sd/-” and does not contain signatures of the Members or the Secretary or any officer empowered by the Chairperson of the Board in this regard as mandated by s.8(1), s.8(3) and s.8(4) r.w. S. 10 r.w s.13(3) PNGRB Act read with the PNGRB COB Regulations.

### 3.0 **Contention of the Respondent.**

- 3.1 It is the contention of the Respondent Board that Appeal is not maintainable as guidelines and public notices issued by the Respondent Board are not “orders or decisions” and therefore this Hon’ble Tribunal does not have the jurisdiction to test the *vires* of the aforesaid guidelines and public notices. (*PTC India Limited Vs. Central Electricity Regulatory Commission. (2010) 4 SCC 603*).

- 3.2 The benefit of Covid-19 extension cannot be granted to the Appellant as, in terms of the authorization letters, the period of exclusivity and MWP targets had lapsed prior to occurrence of Covid-19 and thus having failed to achieve the targets within the stipulated period of 05 years which got expired in 2018 itself, the appellant cannot be granted extension in achievement of MWP Targets on account of Covid-19.
- 3.3 While seeking the reasons for the shortfall in achieving the targets along with the information and details of likely achievement up to 31.03.2020 against the MWP targets the Board vide letter dated 04.03.2020 to the Appellant, explicitly mentioned that the submission of catch up plan and information sought does not lead to revision/extension of MWP targets, assigned as per authorization and the Board reserves its right to take action for non-achievement of targets. There was never a challenge to the aforesaid letter by the Appellant.
- 3.4 That the appellant accepted the authorization letter, which also includes the MWP obligations, and therefore it is a responsibility of the entity to provide PNG domestic connections within the timelines given in the authorization letters. In the eventuality that the entity fails to achieve its MWP, then it is liable for penal action as per the PNGRB act, and regulations notified there under.
- 3.5 The Board had never accepted the catch-up plan and the remedial measures being taken by the appellant or even acknowledged the same.
- 3.6 The MWP targets that were to be achieved by 31.08.2018 have not been completed even as on date and as per the affidavit filed by the appellant and further time till 2026 is sought which is in complete

derogation of the authorization letters as well as the letter and spirit of the PNGRB act and regulations.

- 3.7 The time period for completion of the MWP targets was over prior to the advent of the force majeure event i.e. COVID-19 and therefore the benefit of the same could not have been granted to the Appellant.
- 3.8 It is no more *res integra* that the performance of a contract is never discharged merely because it may become onerous to one of the parties. The doctrine of frustration must always be within narrow limits. (***Energy Watchdog vs. CERC (2017) 14 SCC 80***).
- 3.9 The data given in the tables at Para 30 is factual & is in due knowledge of the Appellant. Further, the dates given in the table therein pertain to the dates of authorization of the subject 4 GAs and the end dates of their exclusivity period for exemption from the purview of common carrier or contract carrier, which dates are mentioned in the authorization letters issued to the Appellant by the Respondent Board. It is submitted that the Appellant had accepted the said authorization letters and sent an acknowledged copy of the same to the Respondent Board.
- 3.10 Further, regarding the Appellant's contention that the source of the data given at point number (iii), (vi) and (vii) of table at Para 30 of the Order impugned by it, is not known to it, it is submitted that the provisions of the CGD Authorization Regulations based on which the Schedule D was issued to the Appellant included the "Milestones for project implementation", which has a breakup of targets to be completed in each of the 5 years. The data regarding the achievements as on 30-9-2018 and 31-5-2022 is also based on the data submitted by the entities on the online portal of the Respondent Board, which in the present case is understood to be submitted by the Appellant itself.

- 3.11 The Respondent Board passed the Order impugned by the Appellant in terms of the pleadings made by the Appellant and the reliefs sought by it in the amended review Petition and therefore the Appellant cannot be allowed to inter alia, contend that the issues relating to default in performance are to be determined only under the specific provision of Regulation 16 CGD Authorization Regulation, which require a separate proceeding to be undertaken, as alleged or at all.
- 3.12 The Orders dated 11-10-2021 and 18-8-2021 passed by the Hon'ble High Court of Delhi would show that by Order dated 18-8-2021 in CM No.26676/2021, the High Court had stayed the operation and implementation of the Public Notice dated 30.06.2021 on the ground that in the absence of a duly constituted Board, the impugned notice was without jurisdiction in view of provisions of Section 10(1) of Petroleum and Natural Gas Regulatory Board Act, 2006. Further, by Order dated 11-10-2021, the High Court had stayed the operation and implementation of 13 Public Notices all dated 13.09.2021 on the ground that "the Respondent ought not to have issued the Public Notices on 13.09.2021 when admittedly the Quorum of the Board was not complete when the notices were issued."
- 3.13 A new authorization was not granted to Gujarat Gas Limited and, only the name of the authorized entity was changed, which does not result in change in date of authorization and the associated obligations of the entity. Therefore, the contention of the Appellant that Para 6 of the relevant authorizations became applicable to the Appellant only from 25-1-2016 is devoid of any merit and thus liable to be rejected.
- 3.14 The principles of natural justice cannot be put in a straight-jacket

formula. It is no unruly horse and the party contending the infraction of the principles of natural justice has to show some real prejudice cause (*PD Agrawal v. State Bank of India AIR 2006 SC 2064*). In the present case, the Appellant has not pleaded or shown any real prejudice that has been caused and therefore this ground is completely untenable and misconceived.

3.15 With effect from April 2022, the Respondent Board adopted the general practice, similar to various other Tribunals, to not provide original signed Orders to the parties and only mention 'Sd/-' above the names of each of the members, and to retain the originally signed copy of the Order for itself. The order impugned by the Appellant is in conformity with Section 8(1), 8(3) and 8(4) read with Section 10 read with Section 13(3) of PNGRB Act read with the PNGRB Conduct of Business Regulations. In fact, no provision as such requires the Respondent Board to communicate a signed copy of the Order to the parties appearing before it. The earlier practice of the Board was to upload the signed copy of the Order/Judgment(s). However, the said practice was discontinued later as mentioned hereinabove insofar as the signatures of the Board officials, were being misused and some fabricated documents were being created by some anonymous person. Therefore, the Board in lieu of the abundant caution adopted the practice to upload the documents on the website with 'Sd/-'.

4.0 **In view of the above, the issue(s) for deliberation before this Tribunal are :**

1. **Whether Appellant is entitled to be benefitted from the suspension of the service obligation towards MWP targets and extension of exclusivity from the purview of being declared CGD**

network as a common carrier /contract carrier on the account of restriction of work due to COVID-19 under *force majeure*.

2. Whether the catch up plan submitted by the Appellant would affect the suspension of relative obligation towards MWP under the terms and conditions of the authorisation.
3. Whether the impugned order dated 02.08.2023 is bad in law in terms of principle of natural justice as the opportunity of being heard was not granted and therefore to be set aside.
4. Whether the impugned order dated 02.08.2023 is a valid order of the Respondent Board as the said order and also the certified copy of the same does not have the signature of members hearing and deciding a petition.

## 5.0 Deliberation(s)

### 5.1 Issue 1: Whether Appellant is entitled to be benefitted from the suspension of the service obligation towards MWP targets and extension of exclusivity from the purview of being declared CGD network as a common carrier /contract carrier on the account of restriction of work due to COVID-19 under *force majeure* .

- i. In order to analyse the above questions it is pertinent to refer to the relevant sections and scheme of the PNGRB Act. 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. The Board is also under a duty to promote competitive markets. The Board is also 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.

- ii. In the present case there is no dispute that the authorization for all the 04 GA's were granted under Regulation 18 (1) of the CGD authorisation Regulation, 2008 with the project milestones to be achieved during the marketing exclusivity period which was of 05 years from the date of authorisation, as stated in PNGRB's letter dated 01.10.2013 while granting Authorization. Further vide letter dated 25.01.2016, PNGRB while accepting the scheme of amalgamation and thereby amending the authorization in the name of Gujarat Gas Limited, did clearly mention that subsequent to the acceptance of the scheme of amalgamation, the name of the new authorized entity is Gujarat Gas Limited and the terms and conditions of all the authorization letter shall be read in conjunction with the respective authorization letters.
- iii. Thus it is clear that no new authorization was granted to the Appellant and only the name of the authorized entity was changed which does not result in change in date of authorization and the associated obligation of the Appellant.
- iv. It is a matter of fact that the authorized CGD Networks envisaged a certain exclusivity period, as determined by the Board under the Regulations, and during such period, the CGD Network enjoys immunity from the purview of being declared as a Common Carrier or a Contract Carrier and only the authorized entity may use the CGD Network for supplying the gas during such period, within its authorized Geographical Area (GA).
- v. Apart from this, the infrastructural exclusivity is also granted to the authorized entity for a longer period for the economic life of the CGD network which is usually 25 years (further extendable at the discretion of the Board)], conferring upon it exclusive rights to lay, build, operate or expand the CGD Network.



- vi. There is no dispute with the fact that authorisation is granted to the entity which is under the obligation to comply with the given terms /obligations/conditions/targets as detailed in authorisation letter. Failure to achieve conditions & defaults has consequences and the Board is empowered to take appropriate actions in accordance with PNGRB Act & Regulations. Thus failure to achieve the MWP milestones/ default by Appellant, as detailed in the authorisation letter, has consequences and Board is empowered to take appropriate action.
- vii. It is also relevant to mention herein that achievement of MWP is not dependent on determination of exclusivity period or extension of exclusivity period. The yearly MWP targets are sacrosanct & is an execution plan required to be achieved yearly as per the milestones detailed in authorisation letter. The exclusivity period is limited which is 05 years in the present case for the Appellant w.r.t common carrier/contract carrier & 25 years with respect to infrastructure exclusivity. The determination of exclusivity period & MWP Targets are independent of each other. The only relevance of MWP & exclusivity is the targets required to be achieved in each year in the given exclusivity period w.r.t common carrier /contract carrier, which is clearly detailed in the authorization letter.
- viii. It is also a matter of fact that in present case the yearly MWP targets as detailed in the authorization letter has been accepted by the authorized entity at the time of acceptance of authorization under Regulation 18 of the CGD authorization Regulation. Therefore in case the Appellant is not able to achieve various targets, the Board is empowered to take appropriate action against the defaulting entity in accordance with PNGRB Act & Regulations.

- ix. As Appellant did not achieve the MWP targets, the Board vide letter dated 04.03.2020 sought reasons from the Appellant for the shortfall in achievement of the targets along with the information and details of likely achievement upto 31.03.2020. In the said letter it was specifically mentioned that submission of the Catch up Plan would not lead to revision/extension of MWP Targets assigned as per authorization and the Respondent Board reserves its right to take action for non achievement of targets.
- x. As per the Regulation 13 (3) of the CGD Authorization Regulation which deals with post authorization monitoring of activities (pre-commissioning): *“(3) The Board shall monitor the progress of the entity in achieving various targets with respect to the CGD network project, and in case of any deviations or shortfall, advise remedial action to the entity”*. Thus it seems that submission of the catch up plans are sought from the entities with the view to speed up their works progress so that the entities achieve the targets as per the terms and conditions of the authorization, to suggest remedial action or if required, to take any adverse action for not achieving the targets as per the authorization.
- xi. Board also explicitly mentioned in their letter dated 04.03.2020, while seeking the reasons for the shortfall in achieving the targets along with the information and details of likely achievement up to 31.03.2020 against the MWP targets, that the submission of catch up plan and information sought does not lead to revision/extension of MWP targets, assigned as per authorization . Thus the Board has reserved its right to take action for non-achievement of targets. There was also never a challenge to the aforesaid letter by the Appellant.

- xii. The issue(s) before the Respondent Board was “(i) *Whether the Subject GAs authorized to the Review Petitioner entitled to be benefitted from the suspension of the service obligation towards MWP Targets and extension of exclusivity from the purview of being declared CGD Network as a common carrier or contract carrier on the account of restrictions of work due to COVID- 19 under Force Majeure, If Yes, to what extent? (ii) Whether the ‘Catch-up Plan’ submitted by the Review Petitioner during the various PRMs, would affect the suspension of relative obligations towards MWP and extension of exclusivity from the purview of being declared CGD Network as a common carrier or contract carrier as stipulated under the terms and conditions of the authorization?”*”
- xiii. The Respondent Board was only required to examine whether the Appellant is entitled to be benefitted from the suspension of the service obligation towards the MWP targets and extension of exclusivity from being declared CGD Network as a common carrier or contract carrier **on the account of restrictions of work due to COVID- 19 under Force Majeure**. With respect to the issue, whether the exclusivity period of the Appellant is expired from the purview of being declared as a common carrier or contract carrier or not, it is clear from the bare perusal of the impugned order that this was never an issue nor deliberated in the hearing before the PNGRB.
- xiv. It is also relevant to mention herein the issue of Appellant exclusivity in relation to each of the relevant GAs is pending before Hon’ble High Court of Delhi’s in the matter of *Gujarat Gas Limited v. PNGRB (LPA 254/2021)* wherein the stay on the operation, implementation and execution of the PNGRB’s Public notice dated 13.09.2021 has been granted by the Hon’ble Court. The subject

matter is still *sub judice*. Thus it will not be appropriate to adjudicate the issue of determination of exclusivity which is already pending before the Hon'ble High court.

- xv. There is no dispute with the fact that at the time of grant of authorization to the Appellant for all the four GA's, based on the population covered under the GA, the project milestones was worked out which was also accepted by the Appellant. The same were required to be achieved by the Appellant during the marketing exclusivity of 05 years As per the affidavit submitted by the Appellant in pursuance to the Tribunal's order dated 04.01.2021 & 11.01.2024, the details of the MWP accepted at the time of authorization and the current status of the milestone achieved for all the four GA's by the Appellant is detailed below:

<b>S.NO</b>	<b>Rajkot GA MWP</b>	<b>Total MWP Target as per Authorisation</b>	<b>Status</b>	<b>Timeline by which the Appellant undertakes to Complete the Remaining MWP, if any*</b>
1.	PNG-D Connections	4,09,105	3,56,495 as on 31.12.2023	31.03.2015
	Inch-KM Steel Pipeline	2,105	Achieved as on March 2018	NA
	Compression Capacity (Kg/day)	Target Completed as on date of authorisation		

<b>S.N O</b>	<b>Surendra nagar GA MWP</b>	<b>Total MWP Target as per Authorisation</b>	<b>Status</b>	<b>Timeline by which the Appellant undertakes to Complete the Remaining</b>
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				<b>MWP, if any*</b>
1.	PNG-D Connections	1,12,728	30,943 as on 31.12.2023	31.03.2026
	Inch-KM Steel Pipeline	580	Achieved as on 31.03.2023	NA
	Compression Capacity (Kg/day)	Target Completed as on date of authorisation		

<b>S.NO</b>	<b>Navsari GA MWP</b>	<b>Total MWP Target as per Authorisation</b>	<b>Status</b>	<b>Timeline by which the Appellant undertakes to Complete the Remaining MWP, if any*</b>
1.	PNG-D Connections	1,15,093	Achieved as on 31.03.2023	NA
	Inch-KM Steel Pipeline	593	Achieved as on 31.03.2023	NA
	Compression Capacity (Kg/day)	Target Completed as on date of authorisation		

<b>S.NO</b>	<b>Nadiad GA MWP</b>	<b>Total MWP Target as per Authorisation</b>	<b>Status</b>	<b>Timeline by which the Appellant undertakes to Complete the Remaining MWP, if any*</b>
1.	PNG-D Connections	1,29,737	75,048	31.03.2026
	Inch-KM Steel Pipeline	668	564	31.03.2026

	Compression Capacity (Kg/day)	Target Completed as on date of authorisation
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- xvi. On perusal of the details submitted, it is clear that the Appellant has achieved the MWP for compression capacity w.r.t all 04 GAs; Inch KM for three GA s; except Nadiad; with respect PNG Connection only Navasari & Rajkot MWP has been achieved by Appellant. Thus it evident from the record submitted by the Appellant that majority of MWP targets has been achieved as per the Authorisation letter.
- xvii. Being the regulator it is for the Board to accept/extend/reject the catch up plans for achieving the MWP targets in accordance with PNGRB Act & Regulation. The Respondent Board is empowered to take appropriate action in case of default or breach of the obligation by any entity as settled at the time of authorization. It is clear from the contention of the Appellant that they were unable to achieve the said targets due to lack of various govt./ statutory Permission /approval In this respect it is relevant to mention herein the Board time and again clarified that statutory permission cannot be classified as the ground of benefitting due to force Majeure.
- xviii. Further it is not mandatory for the Board to grant the extension of exclusivity and MWP targets only on the basis of force majeure. It has to be decided on case to case basis depending upon the facts & circumstance of each case with same approach.
- xix. With regard to extension on the ground of *force Majeure*, it is well settled and clarified duly by the Board that securing permission from statutory/local/other authorities of any Govt or Govt. Agencies is the prime responsibility of the CGD entities Hence delay on this ground would not qualify as *force Majeure*.

The determination of exclusivity period and MWP Targets are independent of each other. The Extension/determination of exclusivity period is *sub-judice* & is pending before the Hon'ble court. Further, it is not mandatory for the Board to grant the extension of exclusivity and MWP targets only on the basis of *force majeure*. It has to be decided on case to case basis depending upon the facts & circumstance of each case with same approach. The Board being the regulatory body is empowered to take appropriate decision with respect to suspension or extension of MWP targets which were already been settled at the time of authorisation.. The submission of the catch up plans sought by the Respondent was with the view to speed up their works progress, to suggest remedial action or if required, to take any adverse action for not achieving the targets as per the authorization, so that the MWP targets are achieved by the Appellant. The mere submission of catch up plan by the Appellant does not automatically leads to the revision/extension of the MWP Targets which are sacrosanct. Considering the majority of the MWP targets been achieved by the Appellant, as per the affidavit in pursuance of his Tribunal order dated 04.01.2024 & 11.01.2024 submitted before the Tribunal, in the interest of equity and justice the Board may take liberal approach and grant opportunity of being heard to the Appellant in terms of suspension or extension of MWP targets already been settled at the time of authorisation.

**5.2 Issue 2: Whether the catch up plan submitted by the Appellant would affect the suspension of relative obligation towards MWP under the terms and conditions of the authorisation.**

- i. It is clear that the submission of catch up plan by the Appellant does not automatically lead to revision / Extension of MWP Targets. As per the Regulation 13 (3) of the CGD Authorization Regulation which deals with post authorization monitoring of activities (pre-commissioning): *“(3) The Board shall monitor the progress of the entity in achieving various targets with respect to the CGD network project, and in case of any deviations or shortfall, advise remedial action to the entity”*.
- ii. Thus it seems that submission of the catch up plans are sought from the entities with the view to speed up their works progress so that the entities achieve the targets as per the terms and conditions of the authorization, to suggest remedial action or if required, to take any adverse action for not achieving the targets as per the authorization.
- iii. Being the regulator of the industry, they are empowered to monitor the progress and pass necessary direction in the interest of the industry. During the analysis it is crucial to differentiate between controllable and uncontrollable reasons for delay which are beyond the control of entities. The Respondent Board should monitor the progress and pass appropriate orders/direction after due diligence and accordingly suggested to make proper procedure in line with applicable act, laws and regulations.
- iv. While seeking the reasons for the shortfall in achieving the targets along with the information and details of likely achievement up to 31.03.2020 Board also explicitly mentioned



in their letter dated 04.03.2020, against the MWP targets, that the submission of catch up plan and information sought does not lead to revision/extension of MWP targets, assigned as per authorization and the Board reserves its right to take action for non-achievement of targets..

**Thus it is undisputed that mere submission of catch up plan by the Appellant will not automatically suspend /extend relative obligation towards MWP under the terms and conditions of the authorisation unless specifically allowed by the Board..**

**5.3 Issue 3 : Whether the impugned order dated 02.08.2022 is bad in law as the opportunity of being heard was not granted.**

- i. As per the contention of the Appellant that on 20.06.2022 they submitted an application for amendment in the pending review petition. A hearing on the interim application for amendment was held on 05.07.2022 and on the same day the Respondent Board admitted and took it on record. However, no hearing or opportunity to submit supporting facts, data and arguments or even written submissions in relation to the amended petition was provided and instead the operative portion of the Impugned Order was first pronounced on 02.08.2022 and the detailed order comprising the Impugned Order was uploaded on the website of Respondent Board on evening of 02.08.2022. There was therefore no hearing provided in relation to the amended Review Petition.
- ii. Whereas the Respondent Board has contended that on 31.05.2022, the Appellant sought time to file an amended Review Petition which was duly filed on 20-06-2022. Thereafter the review petition was again listed for hearing on

23.06.2022, where the Appellant sought adjournment. The Board granted the final opportunity for arguments and directed the matter to be listed on 05.07.2022 wherein the Review Petition along with Application seeking permission to amend the review petition were taken up for hearing and the Application for amendment was allowed and that the final arguments on the review petition were heard and the order was reserved. The relevant extract of the order dated 05.07.2022 is

*“By way of an interlocutory Application , the Review Petitioner seeks liberty to amend the original review petition withdraw the prayer(s) made in the original petition to an extent of Surant-Bharuch-Ankalehwar District, Valsad District and Hazira District GAs and confine the original petition and prayers in respect of GAs namely, Nadiad, Navasari, Rajkot & Surendra nagar District.*

*In view of the submission made by the Ld. Counsel, the Interlocutory Application are taken on record and the Board allows to amend the original review petition as prayed.”*

**It is clear from the order dated 05.07.2022, that the Board has considered the amendment sought by the Appellant for withdrawal of other disputed GAs which was originally filed by the Appellant in review petition except the GAs in question. The same is also incorporated in the impugned order dated 02.08.2023. Thus it seems that fair opportunity was granted to the Appellant and there is no violation of principle of natural justice and no prejudice has been caused to the Appellant.**

**5.4 Issue 4: Whether the impugned order dated 02.08.2023 is a valid order of the Respondent Board as the said order and also the certified copy of the same does not have the signature of members hearing and deciding a petition.**

- i. It is the contention of the Appellant that the Impugned Order is *non-est* in law as it does not bear the signatures of the members that had heard the matter and neither has it till date been duly communicated to the Appellant as required under Regulation 29 Petroleum and Natural Gas Regulatory Board (Conduct of Business, Receiving and Investigation of Complaints) Regulations, 2007 (“COB Regulations”). but only carries type written words “Sd/-” above the names of each of the members. The certified copy also does not have the signatures of the Members who had heard and decided the review petition and only carries the typed written words “Sd/-” above the names of the members and has been marked as “certified copy” by the Secretary. The Impugned Order merely uses the phrase “Sd/-” and does not contain signatures of the Members or the Secretary or any officer empowered by the Chairperson of the Board in this regard as mandated by s.8(1), s.8(3) and s.8(4) r.w. S. 10 r.w s.13(3) PNGRB Act read with the PNGRB COB Regulations.
- ii. Whereas, it is the contention of the Respondent Board that with effect from April 2022, the Respondent Board adopted the general practice, similar to various other Tribunals, to not provide original signed orders to the parties and only mention ‘Sd/-' above the names of each of the members, and to retain the originally signed copy of the Order for itself. Order impugned by the Appellant is in conformity with s.8(1), s.8(3) and s.8(4) r.w. S. 10 r.w s.13(3) PNGRB Act read with the PNGRB COB Regulations.
- iii. Section 24 (2)(a) of the PNGRB Act PNGRB Act read with PNGRB COB Regulations mandates the PNGRB to issue a final decision or Order of the Board with signatures of members who heard the petition. The placing of the phrase “Sd/-” does not substitute signature as required for orders and decisions of the Board under the PNGRB Act.
- iv. It is also relevant to mention that this is also not a case of digital signature/water mark being added so as to be considered as a valid

signature having been placed on an official document in terms of the Information Technology Act, 2000.

- v. The said Impugned Order has not been signed in accordance with the PNGRB Act & Conduct of Business, Receiving and Investigation of Complaints, Regulations, 2007. It is to be highlighted that under Order 20, Rule 3 CPC a Judgment is required to be dated and signed by the Judge in open court at the time of pronouncing it and when once signed shall not afterwards be altered or added. Although the CPC is not applicable in totality it is instructive particularly in terms of s. 13(3) PNGRB Act in relation to principles of natural justice.
- vi. This Hon'ble Tribunal in the case of Mahanagar Gas Limited v PNGRB & ORS (Appeal 110/2020) vide judgement dated 16.07.2021 has also held that signature of the members of a quasi-judicial authority who have heard a petition is mandatory and an order not indicating consent of all members who heard the matter is in breach of natural justice.
- vii. Further Hon'ble Supreme Court in case ***State Bank of India and Another versus Ajay Kumar Sood (CA No. 5305 of 2022) in para 22 clarified that*** “....All judicial institutions must ensure that the judgments and orders being published by them do not carry improperly placed watermarks as they end up making the documents inaccessible for persons with visual disability who use screen readers to access them. On the same note, courts and tribunals must also ensure that the version of the judgments and orders uploaded is accessible and signed using digital signatures. They should not be scanned versions of printed copies. The practice of printing and scanning documents is a futile and time-consuming process which does not serve any purpose. The practice should be eradicated from

*the litigation process as it tends to make documents as well as the process inaccessible for an entire gamut of citizens.”*

- viii. The PNGRB Act and the regulations there under do not permit orders and decisions of the Board to be communicated otherwise than bearing the signatures of the Board. The present Impugned Order merely bearing the typed alphabets “Sd/-” is not in accordance with the provision of the relevant Act/Regulation.
- ix. Section 24(2)(a) of the PNGRB Act provides that:

*“The Bench constituted under sub-section (1) shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable by a civil court on any matter relating to – (a) refining, processing, storage, transportation and distribution of petroleum, petroleum products and natural gas by the entities...”*

Section 28 of the PNGRB Act provide Civil penalty for contravention of directions given by the Board as detailed herein:-

*“In case any complaint is filed before the Board by any person or if the Board is satisfied that any person has contravened a direction issued by the Board under this Act to provide access to, or to adhere to the transportation rate in respect of a common carrier, or to display maximum retail price at retail outlets, or violates the terms and conditions subject to which registration or authorisation has been granted under section 15 or section 19 or the retail service obligations or marketing service obligations, or does not furnish information, document, return of report required by the Board, it may, after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of civil penalty an amount which shall not exceed one crore rupees for each contravention and in case of a continuing failure with additional penalty which may extend to ten lakh rupees for every day during which the failure continues after contravention of the first such direction : Provided that in the case of a complaint on restrictive trade practice, the amount of civil penalty may extend to five times the unfair gains made by the entity or ten crore rupees, whichever is higher.”*

Section 29 of the PNGRB Act provides that:

*"Every order made by the Board under this Act shall, on a certificate issued by an officer of the Board, shall be executable in the same manner as if it were a decree of a civil court..."*

- x. As evident from above relevant clauses from the PNGRB Act, the Respondent Board has the power to impose civil penalty under Section 28 and order of the Board has been statutorily treated as Decree of a civil court under Section 29 of the Act. Therefore, the Board clearly has the essential trappings of a court. Any proceeding or an action by the PNGRB in a complaint may result in adverse consequences affecting the rights and interest of an entity.
- xi. In the Appellate Tribunal For Electricity at New Delhi (Appellate Jurisdiction) Appeal No. 233 of 2016: **Global Energy Pvt. Ltd. And Karnataka Electricity Regulatory Commission**, held that,  
*"..... All members of the Commission who heard the matter should sign the order. If the order is not signed by all the members who heard the matter it will be invalid as it will not be the order of the commission. .... This is in line with the fundamental proposition that a person who hears must decide and divided responsibility is destructive of the concept of judicial hearing. If a Member dissents he must give reasons for the dissent and that shall form part of the order. This is against the basic principle that one who hears the matter should sign the order. ....It has ignored the fundamental principle of judicial decision-making which applies to quasi judicial bodies as well that one who hears the matter must sign the order.*
- "59. It is quite true that a quasi-judicial Tribunal enjoys greater flexibility and freedom from the strict rules of law and procedure than an ordinary court of law, but however much informality and celerity might be considered to be desirable in regard to the proceedings of an Industrial Tribunal, .... Section 16 of the Industrial Disputes Act makes the imperative provision that the award of a Tribunal shall be in writing and shall be signed by all the Members. So long as there is no change or alteration in the original notification which constituted the Tribunal, the expression "all the Members" must mean and refer to all the members whose names appear in this notification and, unless all of them sign the award, it would not be valid or operative award in the law."*
- xii. As contended by the Board that from the effect of April 2022, the Respondent has adopted the general practice similar to various other Tribunals do not provide original signed orders to the parties and only mention SD/- in the above of each of the name of each of the

members and to retain the original signed copy of the order itself and to produce the said original signed order as and when directed.

**In view of the above it is apposite to say that the proper notification in regard to such change must be given by the Board, until then the Respondent Board is bound by the mandatory provisions of the Act.**

### **ORDER**

- 1. In view of the above and considering that the determination of exclusivity period and MWP Targets are independent of each other, the Extension/determination of exclusivity period is *sub-judice* which is still pending before the Hon'ble High court,**
- 2. PNGRB erred in concluding that Appellant does not found to be eligible for granting the benefit of COVID-19 on account of force majeure as the time period to achieve MWP Targets as well as the exclusivity period from the purview of being declared as a common carrier or contract carrier has already been expired much before the advent of COVID-19.**
- 3. Though it is not mandatory for the Board to grant the extension of exclusivity and MWP targets only on the basis of *force majeure*. It has to be decided on case to case basis depending upon the facts & circumstance of each case with same approach.**
- 4. The Board being the regulatory body is empowered to take appropriate decision with respect to suspension or extension of MWP targets which were already been settled at the time of authorisation.**
- 5. Having regard to the factual and legal aspects of the matter as stated above, the PNGRB order dated**

**02.08.2022 is set aside and the respondent Board is directed to grant an opportunity to the Appellant to make its submissions and provide a fresh opportunity to be heard with respect to the amended review petition in case no. Legal/27/221 within four weeks of this order.**

**6. IA's pending, if any, is disposed off accordingly.**

**7. No order to the cost.**

**PRONOUNCED IN THE OPEN COURT ON THIS DAY OF 26<sup>th</sup>**

**April, 2024.**

**(Virender Bhat)  
Judicial Member**

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

**REPORTABLE / ~~NON-REPORTABLE~~**