

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 18 OF 2023 & IA No. 1452 OF 2022

Dated: 8th May, 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
Gandhi Nagar – 382006, Gujarat
Email: Ajitpal.Singh@GUJARATGAS.com
Phone: +917573018733

... Appellant

Versus

**PETROLEUM AND NATURAL GAS
REGULATORY BOARD**

Through The Secretary, PNGRB,
1st 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 has sought following relief:-

- 1 *Allow the present Appeal and set aside the Impugned order dated 26.07.2022 in case no. Legal/29/2021 issued by the PNGRB/Respondent; and*
 - aa) *Hold that the Impugned Decisions are not applicable to the Geographical Areas authorised under Regulation 3rd CGD Bid Round or awarded prior to 06.04.2018; and*
- 2 *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*
- 3 *Set aside the findings in Para 31 and 35 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*
- 4 *Direct the Respondent to provide the Appellant with the source of the data in Tables, V, VI, VII stated in the Impugned Order and allow suitable time and opportunity to the Appellant to make its submissions in respect thereof; and*
- 5 *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) Jamnagar (GA ID 3.03) (ii) Bhavnagar GA (GA ID 3.02) (iii) Kutch(West) GA (GA ID 304); and*

- 6 *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*
- 7 *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 i.e. the GSPC Gas Company Limited (“herein referred to as GSPC”) had been granted authorization vide letter(s) dated 17-01-2014 of Jamnagar GA, 05-03-2014 of Bhavnagar GA, and 19-12-2014 of Kutch (West) GA and the terms and conditions were duly accepted by GSPC on 28-01-2014 for Jamnagar GA, 13-03-2014 for Bhavnagar GA and 26-12-2014 for Kutch (West) GA in pursuance of the 3rd CGD Bidding Round as per the provision of the PNGRB Act as well as the Regulation 5 and 10(1) (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008.
- 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 31st 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 It is relevant to mention herein that the Appellant (then known as GSPC Gas Company Limited) was awarded the authorization for Bhavnagar District, Jamnagar District & Kutch (West) District which was amended in favour of Appellant vide letter dated 25.01.2016 for all the three district by the Respondent Board.
- 1.4 The details of the GA authorized under Regulation 5 of the CGD Authorization Regulation along with its exclusivity are tabled herein in Table-I,II,III respectively:

TABLE-I
JAMNAGAR GEOGRAPHICAL AREA

GA Name	Jamnagar GA
Bidding Round	3 rd CGD Bidding Round
GAID	3.03
Authorized Entity	Gujarat Gas Limited* [*Initially authorized to GSPC Gas Company Limited then transferred to Gujarat Gas Limited on 25-1-2016]
Date of Authorization	17-1-2014
Date of end of the exclusivity*	16-1-2019
Authorization	Authorized under Regulation 5 of CGD Authorization Regulations

TABLE-II
BHAVNAGAR GEOGRAPHICAL AREA

GA Name	Bhavnagar GA
Bidding Round	3 rd CGD Bidding Round
GAID	3.02
Authorized Entity	Gujarat Gas Limited* [*Initially authorized to GSPC Gas Company Limited then transferred to Gujarat Gas Limited on 25-1-2016]
Date of Authorization	5-3-2014

Date of end of the exclusivity*	4-3-2019
Authorization	Authorized under Regulation 5 of CGD Authorization Regulations

TABLE-III
KUTCH (WEST) GEOGRAPHICAL AREA

GA Name	Kutch(West) GA
Bidding Round	3 rd CGD Bidding Round
GAID	3.04
Authorized Entity	Gujarat Gas Limited* [*Initially authorized to GSPC Gas Company Limited then transferred to Gujarat Gas Limited on 25.01.2016]
Date of Authorization	19-12-2014
Date of end of the exclusivity*	18-12-2019
Authorization	Authorized under Regulation 5 of CGD Authorization Regulations

- 1.5 It is relevant to mention that the authorization letter includes the breakup of targets to be completed in each of the 5 years as mentioned in the Schedule D :-

YEAR WISE BREAK-UP OF INCH KM-STEEL P/L TARGETS					
NAME OF GA	Year 1 (20%)	Year 2 (50%)	Year 3 (80%)	Year 4 (90%)	Year 5 (100%)
Jamnagar	1094.04	3690.24	3496.80	3184.32	1435.92
Bhavnagar	2695.73	2695.73	2695.73	898.58	0.00
Kutch(West)	2768.58	2743.90	2311.75	2446.30	-

Year Wise Break Up of Number OF DOMESTIC CUSTOMERS TARGETS					
NAME OF GA	Year 1	Year 2 (15%)	Year 3 (50%)	Year 4 (70%)	Year 5 (100%)
Jamnagar	92000	92000	92000	92000	0
Bhavnagar	1,22,500	1,22,500	1,22,500	1,22,500	0.00
Kutch(West)	41,500	41,500	41,500	41,500	-

1.6 In order to monitor the post-authorization activities, the Board vide letter dated 07.03.2017, asked the Appellant to present the latest status of the project and tentative schedule to achieve the specified targets of the subject GA. The Respondent Board during the meeting held on 07-03-2017 observed as under:-

“The latest progress report (QPR) submitted by the entity for the month of January 2017 indicates that the entity has failed to achieve the targets for aforementioned GAs as prescribed in Authorization terms and conditions.”

The Respondent Board further asked the Appellant to submit its Catch-Up Plans to cover up targets specified in the Minimum Work Program (MWP) as per the terms and conditions of the authorization letters.

1.7 That on 23-12-2018, in the progress review meeting with respect to the subject GAs, the Respondent Board again observed that the progress was unsatisfactory and advised the Appellant to submit a Catch-Up plan to achieve the targets of the Subject GAs.

1.8 That since the targets were not achieved, Respondent Board vide letter dated 04.03.2020 sought reasons from the Appellant, for the shortfall in achievement of the targets along with information and details of likely achievement up to 31.03.2020 against the MWP targets of the Subject GAs. It is relevant to mention herein that it was specifically mentioned in the said letter of the 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.

1.9 The Appellant vide letter dated 16-05-2020 submitted to the Respondent Board, the alleged details of various events that resulted in delays in achieving the MWP targets originally stipulated under the terms and conditions of authorizations, for the subject GAs such as for Bhavnagar GA the difficulties faced by the Appellant are (I) increase in overall connection cost per household (ii) failure to seek permission from Bhavnagar Municipal Corporation along with the Catch-Up Plans submitted with respect to likely achievement of work programme up to 31-3-2020; w.r.t to Jamnagar GA the challenges were comprised of (i) rocky terrain leading to slow progress in laying of pipeline infrastructure (ii) Limited progress within Jamnagar Municipal Corporation (JMC) due to construction of ramp outside each household owners refuse to allow breakage of the same. (iii) Low acceptance of PNG in tenant occupied premises (iv) Subject GA has majority of the household in rural areas. Further providing connectivity to this far-flung villages/rural areas has become unviable due to increase in overall connection cost per household (v) High cost on rent payable to Panchayat makes the overall cost of connecting such villages economically unviable. This change was not anticipated at the time of award of authorization; w.r.t to Kutch (West) GA the challenges were: (i) Kutch(West) falls under seismic zone IV due to which laying of pipeline infrastructure is slow and challenging (ii) Abrupt change in strata or uncertain strata while carrying out excavation which directly affects work execution (iii) Inconsistent or many times non-availability of labour workforce due to extreme climatic condition (iv) Majority of residents do not have ownership documents of the property for reason being same had been lost in Earthquake of 2001 and

same cannot be taken up for registration This is direct loss to domestic connection.(v) The subject GA has majority of the households in rural areas Further providing connectivity to this far flung villages/rural areas has become unviable due to increase in overall connection cost per household (vi) high cost on rent payable to Panchayat makes the overall project cost of connecting such villages economically unviable This change was not anticipated at the time of award of authorization. The Appellant along with the letter dated 16-05-2020, submitted a Catch-Up Plan with respect to work programme of likely achievement up to 31-3-2020.

- 1.10 That after the outbreak of COVID-19, the Appellant vide two separate letters dated 21.07.2020 requested the Respondent Board to consider the following on account of the Covid-19 Pandemic :
 - i. Declaration of COVID -19 pandemic as *Force Majeure* event under the PNGRB CGD Authorization Regulations, 2008.
 - ii. An extension of 18 months w.r.t the milestones under the respective CGD Authorizations.
- 1.11 The Respondent Board vide letter dated 22.07.2020 in light of the aforesaid letter of the Appellant 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 supporting documents.
- 1.12 Vide letter dated 28-8-2020, the Appellant responded to the letter dated 22-07-2020 issued by the Respondent Board and inter alia alleged that by the letters dated 07-04-2020, 24-04-2020 and 12-06-2020, the Appellant had declared not only *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.

- 1.13 That in a 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 '*Guidelines for the Consideration of FM in CGD Network*' by way of the public notice Ref: PNGRB/Monitoring /Misc-FM/(3)/2020 dated 02.09.2020.
- 1.14 That the aforesaid guidelines issued on 02.09.2020 in para 3.4, 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 are the prime responsibility of the CGD entities. Hence, delays on this account would not qualify as "*Force Majeure*".
- 1.15 On 26.10.2020, the Respondent Board, in furtherance of the Guidelines/public notice dated 02.09.2020, issued "a clarification related to consideration of requests of CGD Entities for time extension under '*Force Majeure*' (ref no.: PNGRB/ Monitoring/7/ Misc-FM/(3)/2020 (P-810)) and categorically 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*".
- 1.16 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 GAs that had been considered eligible for *Force Majeure* extension on account of Covid-19 pandemic. It is the contention of the Respondent Board that the said extension was not made applicable in relation to the GAs authorized vide 3rd CGD bidding round. However, the said notice has been withdrawn vide letter dated 27.05.2022.

- 1.17 That on 09.07.2021, the Respondent Board issued a Public Notice “*Procedure for considering Force Majeure extension of exclusivity period and shifting of year wise MWP targets of Cumulative Work Programme on account of “force majeure” i.e. Second wave of Covid-19 pandemic for authorized Geographical Areas (Gas).*” In response to which 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 a rise in COVID-19 cases since March 2021. It is submitted by the respondent Board that the GAs in question were not found eligible for granting the benefit of the advent of the *Force Majeure*, the same was not granted.
- 1.18 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 authorized in the 3rd CGD bid round.
- 1.19 That the Appellant being aggrieved preferred the review petition on 06.10.2021 bearing Case No. Legal/27/2021 before the Respondent Board.

- 1.20 Meanwhile the Board, while taking 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.
- 1.21 In furtherance of the meeting dated 08.04.2022, the Respondent Board in its 112th (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.
- 1.22 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 about the above mentioned decision on account of restriction imposed by the respective Government due to Covid-19 pandemic in India. It is pertinent to mention herein that the subject extension was not granted to the Appellant for the subject GAs in dispute herein.
- 1.23 Vide impugned order-1 dated 26.07.2022, the Respondent Board dismissed the review petition filed by the Appellant holding that :-

“as per the relevant provisions of the Act and CGD Authorization Regulations, 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 addition to the above, 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 the Catch-Up Plan nowhere amends the time period for achieving the stipulated MWP Targets.

It will not be out of place to mention that the Subject GAs of the Review Petitioner dos not found 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, had already been expired before the advent of COVID-19”

1.24 Thereby the Impugned Orders which are the subject matter of the present appeal before the Tribunal under Section 33 of the PNGRB Act are:-

- (i) order dated 26.07.2022 of the PNGRB in the matter of Gujarat Gas Limited, Case No. Legal/29/2021 ("Impugned Order-1").
- (ii) not communicating or giving any decision in relation to *Force Majeure* claim on account of COVID-19 pandemic for authorization under 3rd CGD Bid Round namely (a) Jamnagar GA (GA ID 3.03), (b) Bhavnagar GA (GA ID 3.02) and (c) Kutch (West) GA (GA ID 3.04).
- (iii) Guidelines dated 02.09.2020 for consideration of *Force Majeure* ("2020 FM Guidelines") .
- (iv) Clarification dated 26.10.2020 to guidelines for consideration of *Force Majeure* in CGD networks ("Clarifications to 2020 FM Guidelines") .
- (v) Public Notices and guidelines dated 09.07.2021 for consideration of *Force Majeure* in CGD networks for second-COVID-19 wave ("2021 FM Guidelines") .

2.0 Contention of the Appellant

2.1 It is the contention of the Appellant that the Impugned Order-1 dated 26.07.2022 is untenable in law and has to be set aside because of the following reasons:

- (i) The said order has rejected the COVID-19 *Force Majeure* claim of the Appellant in relation to the relevant GAs

authorised under 3rd CGD Bid Round on the ground that the exclusivity period for being declared as a common carrier or contract carrier (“**Marketing Exclusivity Period**”) had expired much before the COVID-19 pandemic.

- (ii) 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).
- (iii) The determination in the Order dated 26.07.2022 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. Para 31 and 32 of the impugned order provides a data consolidating data which was not submitted by the Appellant neither any opportunity to be heard was ever provided the Appellant.
- (iv) Para 31 and the determination in Para 35 relating to lack of progress were not part of record in the proceedings of the review petition and are in breach of principles of natural justice. The determination in relation to the performance and achievement of MWP in the Impugned Order are *ultra vires* the scope of review petition proceedings under Sec.13 PNGRB Act which were specifically in relation to the

amended review petition and when clearly under the CGD Authorisation Regulations, issues relating to alleged default in performance are to be determined only under the specific provision of Regulation 16 CGD Authorisation Regulation and which require a separate proceeding to be undertaken in order to determine whether or not there has been a failure to meet the minimum work programme. The determination in Para 31 and 35 of the Impugned order are non-est and bad in law and have to be set aside.

- (v) Impugned order-1 is in violation of principles of natural justice as no hearing of amended Review Petition was ever provided.
- (vi) The Impugned Order is arbitrary and discriminatory as the relevant GAs of the Appellant also suffered and was impacted by the COVID-19 pandemic and no imposition of penalties can be undertaken for obligations during the said period of 24 months for which benefit has been given to other GAs.
- (vii) The Impugned Order is bad in law as it does not refer to or apply the provisions of the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 ("CGD Authorization Regulations") as were applicable on the date of bid submission in the 3rd CGD Bid Round i.e. 18.02.2011, but instead quotes and relies on provisions of regulations as were amended after 2014. Further, it is the contention of the Respondent Board that the provisions of Regulation 14 (11) that mandates the suspension of obligations being prevented due to *force*

majeure shall be suspended and Regulation 14(13) CGD Authorization Regulations, which mandates that the time for performance of the relative obligation suspended by such *force majeure* "shall stand extended by the period during which such *force majeure* lasts". The Impugned Order does not consider either of the said Regulation 14(11) and 14(13) CGD Authorization Regulations.

- (viii) The Impugned Order-1 does not bear the signatures of the members who had heard the matter and whose decision it is seeking to communicate and neither has it, till date been duly communicated to the Appellant as required under Regulation 29 of the COB Regulations as it does not contain signatures of either the Members or the Secretary or any officer of the Board empowered in this behalf by the Chairperson but only carries type written words "Sd/-" above the names of each of the members.
- (ix) The Impugned Orders, particularly Impugned Order-1, by erroneously stating that there is no basis for Catch-Up Plan and not considering the impact of COVID-19 *Force Majeure* on the revised MWP targets is a breach of legitimate expectation of the Appellant since the Appellant has been investing and undertaking works since 2014-2015 based on the same and the Respondent Board in compliance with Regulation 16 CGD Authorization Regulations, not undertaken any further action or coercive measure since the remedial measures were and are being implemented by the Appellant.
- (x) The proceedings in which the Impugned Order was passed was only a review petition filed under s.13 PNGRB Act and

was not a proceeding under Regulation 16 CGD Authorisation Regulation and could not replace the same. The Impugned Order ignores that the provisions of Regulation 7 CGD Authorisation Regulation are for the purposes of bid evaluation and the minimum work programme of the selected bidder is monitored in terms of Regulation 16 CGD Authorisation Regulation.

- (xi) The Respondent Board fails to take into account the fact that the definition of “*force majeure*” stated in the Bid Document was limited to the purposes of submission of the bid and the bid process and could the submission of the bid pursuant to the said Bid Document not be claimed to have amended the term “*force majeure*” for the purposes of Regulation 16 CGD Authorisation Regulations or in any manner resulted in an amendment of the process stipulated in Regulation 16 CGD Authorisation Regulations for determining and dealing with achievement of minimum work programme
- (xii) The provision of Regulation 7(1) (c) relied upon in order dated 26.07.2022 is completely erroneous since Regulation 7(1) (c) does not regulate nor is it applicable to post-commissioning monitoring or post authorisation obligations.

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 the occurrence of Covid-19 and thus having failed to achieve the targets within the stipulated period of 05 years which got expired in 2019 itself, the appellant cannot be granted extension in achievement of MWP Targets on account of Covid-19.
- 3.3 As of 31.08.2023 the Appellant has only provided 65,234 PNG domestic connections against a target of 4, 90,000 and laid 581-inch km of steel pipeline against a target of 8,986 in Bhavnagar district GA. Similarly, it had provided only 48,052 PNG domestic connections against a target of 3, 68,000 and laid 652-inch km of steel pipeline against a target of 12,856 in Jamnagar district GA. Similarly, it had provided only 9,222 PNG domestic connections against a target of 1, 66,000 and laid 438-inch km of steel pipeline against a target of 10,271 in Kutch (West) district GA.
- 3.4 That vide letter dated 17-05-2022, PNGRB had granted an extension of 02 years for extension of exclusivity period and shifting of MWP targets to a number of entities who were eligible, however the same was not granted to the Appellant since it was not eligible as the period to finish the MWP targets i.e. 31.03.2019 for Jamnagar, Bhavnagar and 31.12.2019 for Kutch (West) has already expire prior to the advent of Covid-19. The same has been clearly depicted in the chart at para 31 of the impugned order.
- 3.5 The submission of catch up plan and information sort 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.

- 3.6 Regulation 16 of Petroleum & Natural Gas Regulatory Board (authorizing entities to lay, build, operate or expand city or local natural gas distribution networks) Regulations, 2008 is only a mechanism for encashment of performance bond in case of default by an entity and has no relation with a catch-up plan.
- 3.7 Data referred in para 30 and para 35 of the impugned order is well known to the parties and is in fact submitted by the Appellant on the online portal of the Respondent Board.
- 3.8 Exclusivity period from purview of common carrier or contract carrier had already expired before the advent of COVID- 19.
- 3.9 Presumption of expiry of exclusivity period is not in violation of the orders of the Hon'ble High Court of Delhi dated 11-10-2021 and 18-8-2021.
- 3.10 Amendment in authorization dated 25.01.2016 was not a fresh authorization and was only the name of the authorised entity was changed.
- 3.11 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 the 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.
- 3.12 There is no mandate by law that original signed order has to be provided by the Board.

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 26.07.2022 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 26.07.2022 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 mandates 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 with the fact that respondent Board has granted authorization vide letter(s) dated 17-01-2014 of Jamnagar GA, 05-03-2014 of Bhavnagar GA, and 19-12-2014 of Kutch (West) GA and the terms and conditions were duly accepted by GSPC on 28-01-2014 for Jamnagar GA, 13-03-2014 for Bhavnagar GA and 26-12-2014 for Kutch (West) GA in pursuance of the 3rd CGD Bidding Round as per the provision of the PNGRB Act as well as the Regulation 5 and 10(1) (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008.
- iii. It is relevant to mention herein that the Appellant (then known as GSPC Gas Company Limited) was awarded the authorization for Bhavnagar District, Jamnagar District & Kutch (West) District which was amended in favour of Appellant vide letter dated 25.01.2016 for all the three district by the Respondent Board.
- iv. 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.
- v. The importance of MWP is detailed in 7(1)(c) of the CGD Authorization Regulations under the heading bidding criteria as enumerated hereinafter:

“7(1) (c) Minimum Work Programme for infrastructure for PNG domestic connections and inch-kilometer of pipeline to be laid by the successful bidder Infrastructure for PNG domestic connections. –

The Board shall work out the target for infrastructure for PNG domestic connections as five per cent of the households of the respective geographical area to be achieved by the successful bidder during the first five years from the date of grant of authorisation in Schedule D as under, namely:---

- (i) the successful bidder shall achieve fifteen per cent, fifty per cent, seventy per cent. and one hundred per cent of this target by the end of second year, third year, fourth year and fifth year respectively; and*
- (ii) the Board may consider carry forward of the target from one year to another within the period of five years.*

Inch-kilometer of pipeline. – The Board shall work out the target for inch kilometer of pipeline, for which both steel pipeline and MDPE pipeline shall be considered, as per the following, namely:-

- (i) for geographical areas having an area of less than or equal to 1,000 square kilometers, product of 0.65 and the area in square kilometers of the respective geographical area;*
- (ii) for geographical areas having an area of more than 1,000 square kilometers and less than or equal to 5,000 square kilometres, product of 0.36 and the area in square kilometres of the respective geographical area subject to a minimum of 650 inch-kilometer of pipeline;*
- (iii) for geographical areas having an area of more than 5,000 square kilometres, product of 0.07 and the area in square kilometres of the respective geographical area subject to a minimum of 1,800 inch kilometer of pipeline.*

The target for inch-kilometer of pipeline worked out as per the above shall be achieved by the successful bidder during the first five years from the date of grant of authorization in Schedule D as under, namely:-

- (i) the successful bidder shall achieve twenty per cent., fifty per cent, eighty per cen., ninety per cent and one hundred per cent of this target by the end of first year, second year, third year, fourth year and fifth year respectively covering all the charge areas; and*
- (ii) the Board may consider carry forward of the target from one year to another within the period of five years.”*

vi. Thus it is clarified here that as per the aforesaid provisions the authorized entity has to achieve the Minimum Work Programme for the infrastructure of the PNG Domestic connections and Inch-

Km Pipeline within stipulated time from the date of grant of authorization, which states as follows:

The infrastructure of PNG Domestic Connections: The successful bidder shall achieve fifteen percent, fifty percent, seventy percent, and one hundred percent of this target by the end of the second year, the third year, fourth year, and fifth-year respectively; and

The Inch-Kilometre of Pipeline: The successful bidder shall achieve twenty percent, fifty percent, eighty percent, ninety percent, and one hundred percent of this target by the end of the first year, second year, third year, fourth year, and fifth year respectively covering all the charge areas.

- vii. It is pertinent to mention herein that the Appellant failed to achieve the MWP targets within 5 years which is even prior to the advent of COVID -19. That after the outbreak of COVID-19 Pandemic, the Appellant vide two separate letters dated 21.07.2020 requested the Respondent Board to consider the following:
- (I) Declaration of COVID -19 pandemic as Force Majeure event under the PNGRB CGD Authorization Regulations, 2008.
 - (II) An extension of 18 months w.r.t the milestones under the respective CGD Authorizations.
- viii. The Respondent Board vide letter dated 22.07.2020, in light of the aforesaid letter of the appellant 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 supporting documents.
- ix. Vide letter dated 28-08-2020, the Appellant responded to the letter dated 22-07-2020 issued by the Respondent Board and inter alia stated that by the letters dated 07-04-2020, 24-04-2020 and 12-06-2020, the Appellant had declared not only *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.

- x. In furtherance of the meeting dated 08.04.2022, the Board in its 112th (Emergency) Meeting which was 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.
- xi. 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 about the above mentioned decision on account of restriction imposed by the respective Government due to Covid-19 pandemic in India. It is pertinent to mention herein that the subject extension was not granted to the Appellant for the subject GAs in dispute herein as, according to the Respondent Board, the period to finish the MWP target has already expired prior to advent of COVID-19.
- xii. Vide impugned order-1 dated 26.07.2022, the Respondent Board dismissed the review petition filed by the Appellant holding that :-

“as per the relevant provisions of the Act and CGD Authorization Regulations, 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 addition to the above, 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 the Catch-Up Plan nowhere amends the time period for achieving the stipulated MWP Targets.

It will not be out of place to mention that the Subject GAs of the Review Petitioner does not found 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, had already been expired before the advent of COVID-19”

- xiii. It is a matter of fact that the Respondent Board vide letter dated 17-5-2022, granted an extension of 2 years for extension of exclusivity period and shifting of MWP targets to a number of entities who were eligible. As the period to finish the MWP targets i.e. 31.03.2019 for Jamnagar, Bhavnagar and 31.12.2019 for Kutch West has already expired prior to the advent of Covid-19, thereby considering it ineligible, the Respondent Board did not grant the extension of exclusivity period and shifting of MWP targets to Appellant.
- xiv. It is the contention of the Appellant that the Impugned Order is arbitrary and discriminatory as the relevant GAs of the Appellant also suffered and were impacted by the COVID-19 pandemic and no imposition of penalties can be undertaken for obligations during the said period of 24 months for which benefit has been given to other GAs. The provisions of Regulation 14 (11) that mandates the suspension of obligations being prevented due to *force majeure* shall be suspended and Regulation 14(13) CGD Authorization Regulations, which mandates that the time for performance of the relative obligation suspended by such *force majeure* "shall stand extended by the period during which such *force majeure* lasts". The Impugned Order does not consider either of the said Regulation 14(11) and 14(13) CGD Authorization Regulations.

- xv. This Tribunal agrees with the Respondent Board's view the time period for completion of the MWP targets was over prior to the advent of the *force majeure* event i.e. COVID-19 since the MWP targets were required to be achieved with the time frame of five years as per the authorization letter which is also accepted by the Appellant. The Appellant is obligated to achieve the contractual performance as executed & accepted between the parties. Further it is pertinent to mention that extension/suspension of services on the ground of *Force Majeure* is not a right but depends upon circumstances of the individual case and being the Regulator, Respondent Board is empowered to decide the same.
- xvi. One of the contentions of the Appellant is that the Respondent Board fails to take into account the fact that the definition of "*Force Majeure*" stated in the Bid Document was limited to the purposes of submission of the bid and the bid process and could the submission of the bid pursuant to the said Bid Document not be claimed to have amended the term "*Force Majeure*" for the purposes of Regulation 16 CGD Authorisation Regulations or in any manner resulted in an amendment of the process stipulated in Regulation 16 CGD Authorisation Regulations for determining and dealing with achievement of Minimum Work Programme. It is further submitted by the Appellant that the scope of *Force Majeure* cannot be limited by any defined term and therefore the concept of *force Majeure* as applicable under general law will be applicable to the said authorization granted pursuant to the 3rd CGD Round.

xvii. The *Force Majeure* as defined in Clause 7 of the Application cum bid document of the 6th CGD Bidding round ('hereinafter referred to as ACBD') is as enumerated below:-

"7.0 FORCE MAJEURE Force Majeure shall mean and be limited to the following:

a) War / hostilities

b) Major Riots or Civil Commotion

c) Earthquake, flood, tempest, lightening or other natural physical disasters

d) Restrictions imposed by Central Government or other statutory bodies which prevents or delays the execution of obligations under the Regulations.

The authorized entity shall within one week of occurrence of above causes notify PNGRB about the occurrence of the force majeure event and provide PNGRB all details of arising and ceasing of the impediment. The time and performance of the respective obligations suspended by the force majeure shall stand extended by the period(s) for which such conditions of force majeure last. PNGRB's decision, whether such force majeure conditions did actually exist shall be final and binding"

xviii. It is clear from the definition of *Force Majeure* as mentioned in Clause 7 of ACBD, limits the expansion of the *Force Majeure* only to the war, major riots, natural calamities, and restrictions imposed by the Central Government or other statutory bodies. Further it is also mandated that the authorized entity shall within one week of the occurrence of the *Force Majeure* has to inform the Board about such incident.

xix. The Appellant in the affidavits dated 30.01.2024 have stated multiple reasons for non-compliance of MWP targets including delay in getting statutory permission which cannot, by any stretch of imagination be expanded to include the aforesaid reasons to be qualified to be fall under the definition of *Force Majeure*. If such a vide definition is adopted or allowed by this Hon'ble Tribunal it will have industry wide ramifications and the

consumer interest which is the prime mandate of the Act will become diluted.

xx. It is the contention of the Appellant that CGD Authorization Regulations as applicable on the date of submission of the bids, Regulation 16 CGD Authorization Regulation that governed the consequences of default provided a highly flexible regime and the term *force majeure* was not defined as of the date of submission of the bid and if the performance of obligation was hindered by *force majeure* event then such failure to perform was excluded from the scope of a default in performance. Furthermore, even if there was a default in performance, the respondent Board is required to provide the entity a reasonable time to fulfil its obligation and “*no further action shall be taken in case remedial action is taken by the entity within the specified period to the satisfaction of the Board*”.

xxi. Regulation 16 stipulates “**16. Consequences of default and termination of authorization procedure.**

(1) An authorized entity shall abide by all the terms and conditions specified in these regulations and any failure in doing so, except for force majeure, shall be dealt with as per the following procedure, namely:-

(a) the Board shall issue a notice to the defaulting entity allowing it a reasonable time to fulfill its obligations under the regulations;

(b) no further action shall be taken in case remedial action is taken by the entity within the specified period to the satisfaction of the Board;

(c) in case of failure to take remedial action, the Board may encash the performance bond of the entity equal to percentage shortfall in meeting targets of inch-kms and/or domestic connections. Provided that, the value so encashed would be refunded, if the entity achieves the cumulative targets at the end of exclusivity period for exemption from the purview of common carrier or contract carrier. In case of failure to abide by other terms and conditions specified in these regulations, performance bond shall be encashed as under:

(i) 25% of the amount of the performance bond for the first default ; and

(ii) 50% of the amount of the performance bond for the second default:

Provided that the entity shall make good the encashed performance bond in each of the above cases within two weeks of encashment failing which the remaining amount of the performance bond shall also be encashed and authorization of the entity terminated.

(iii) 100% of the amount of performance bond for the third default and simultaneous termination of authorization of the entity.

(d) the procedure for implementing the termination of an authorization shall be as provided in Schedule G;

(e) without prejudice to as provided in clauses (a) to (d), the Board may also levy civil penalty as per section 28 of the Act in addition to taking action as prescribed for offences and punishment under Chapter IX of the Act.”

- xxii. It is also relevant to mention herein that in the record note of hearing u/r 16 held on 21.06.2019 the Respondent Board noted that with respect to Kutch (West), the Appellant informed that as on 31.05.2019, they have laid 198.89 Inch-km Steel pipeline and provided 637 PNG Domestic connections against the target of 10,271 for Inch-Km Steel pipeline (2% achievement) and 1,66,000 for PNG Domestic connections (0.4% achievement) and due to non/under achievement of targets, the Respondent Board advised the Appellant to expedite the development of the CGD networks and to explain why action under regulation 16 be not initiated against them for non-achievements of the target and also advise to submit aggressive catch up plan.
- xxiii. Further, in the record note of the hearing u/r 16 held on 15.09.2022, the Respondent Board noted the performance of the Appellant w.r.t PNG-D targets and Inch-KM Steel Pipeline as on 31.07.2022 and details of achievement of Appellant as on 31.12.2023 w.r.t all three GAs as per the Affidavit submitted by the Appellant in pursuance to the Tribunal order dated 04.01.2024 and 11.01.2024 as detailed below in **table IV-**

Name of GA	MWP Targets as on 31.03.2019		Achievement as on 31.07.2022		Achievement as on 31.12.2023	
	PNG-D Connections	Inch-Km Steel Pipeline	PNG-D Connections	Inch-Km Steel Pipeline	PNG-D connection	Inch-km steel PVI
Bhavnagar	4,90,000	8,987	54,141	581	68665	581
Jamnagar	3,68,000	12,856	34,462	651	50471	652
Kutch (West)	1,66,000	10,271	4,872	364	9943	440

- xxiv. It is noted that with regard to all 3 subject matter GAs authorised to Appellant under 3rd Bidding round, the Appellant had to achieve the above-stated targets of PNG-D targets and Inch-KM Steel Pipeline infrastructure for Bhavnagar by March 2019, for Jamnagar GA by January 2019, and for Kutch (West) by December 2019. Further, it is also recorded in the said minutes of the meeting dated 15.09.2022, the Respondent Board allowed a remedial time period up to December 2022 for achieving the PNG-D targets and Inch-KM Steel Pipeline infrastructure (steel) for all three GAs in question here, however, the Appellant failed to achieve the MWP targets.
- xxv. Thereby, it is apparent from the performance of Appellant as on 31.07.2022 & 31.12.2023 failed to achieve the targets of PNG connection-D & inch km steel & MDPE pipeline in all the three GAs. It is the case where the Appellant, time and again was informed about the abysmal performance with respect to the MWP targets by the Respondent Board.

- xxvi. It is pertinent to mention herein that MWP is one of the bidding criteria based on which the authorization was granted to the Appellant
- xxvii. That the Tribunal is of the view, even though the performance of the Appellant is below the par in achieving the targets, the Board still granted the remedial time period up to December 2022 to Appellant for achieving the targets of PNG-D connections and Pipeline Infrastructure (Steel). It was also time and again highlighted by the Board that securing permissions from statutory/local/or other authorities of Central/States is the prime responsibility of the CGD entities. Delays, if any, on this account does not qualify as “*Force Majeure*”.
- xxviii. Considering the low / non performance of the Appellant in achieving the MWP targets, the Board was fair for not providing further extension to the Appellant on the ground of not getting the permission from the statutory authorities including the other above stated hardships being faced by the Appellant. It is relevant to mention that nowhere the Appellant has submitted on record any document in support of the same to prove its contention.
- xxix. Thus the Board is correct in holding that Appellant is not entitled to be benefitted from the suspension of the service obligation towards MWP targets and extension of exclusivity on account of *Force Majeure* due to COVID-19.
- xxx. Further, It was also contended by the Appellant that the Impugned Orders, by erroneously stating that there is no basis for Catch-Up Plan and not considering the impact of COVID-19 *force majeure* on the revised MWP targets is a breach of legitimate expectation of the Appellant since the Appellant has

been investing and undertaking works since 2014-15 based on the same and the Respondent Board in compliance with Regulation 16 CGD Authorization Regulations, not undertaken any further action or coercive measure since the remedial measures were and are being implemented by the Appellant..

- xxxii. It is pertinent to mention herein that the procedure for allowing the remedial time to fulfil the MWP obligation cannot be clubbed together with *Force Majeure* extension. In the matter **Union of India v. Hindustan Development Corpn. (1993) 3 SCC 499**, the Hon'ble Supreme Court held that the doctrine of legitimate expectation is related to the need for fairness in administrative decision making. The Hon'ble Supreme Court while accepting the substantive aspect of doctrine has made it clear that substantive relief can be granted to an applicant only if he can prove that the decision taken by the public authority is arbitrary, unreasonable and is not taken in the public interest. In the present case, the Respondent Board has already given fair opportunities to the Appellant for achieving the targets inclusive of remedial extension till December 2022.
- xxxiii. It is correct that the time period for completion of the MWP targets was over prior to the advent of the *force majeure* event i.e. COVID-19. Since the MWP targets were required to be achieved with the time frame of five years as per the authorization letter accepted by the Appellant, it failed to achieve miserably. The Appellant cannot cover the shortcomings /failure of its performance in the garb of *Force Majeure*. It is also highlighted that this is the case where the Appellant was granted authorization through the bidding and MWP targets as per Regulation 7(1) (C) was one of the bidding parameter therefore

the targets as accepted by the Appellant by accepting the authorization letter, which is sacrosanct., is binding on Appellant. **Thus this Tribunal is of the view that the Respondent Board is correct in holding that Appellant is not 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*.**

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) The Appellant was granted authorization vide letter(s) dated 17-01-2014 for Jamnagar GA, 05-03-2014 for Bhavnagar GA, and 19-12-2014 for Kutch (West) GA in pursuance of the 3rd CGD Bidding Round as per the provision of the PNGRB Act as well as the Regulation 5 and 10(1) (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008.
- (ii) That the target for the Jamnagar GA w.r.t PNG domestic connection was 3,68,000 & 12,856 w.r.t inch-km steel P\L to be achieved within five years ending on 31.03.2019 and for Bhavnagar w.r.t PNG domestic connection was 4,90,000 & 8986 w.r.t inch-km steel P\L to be achieved within five years ending on 31.12.2019 and for Kutch (west) w.r.t PNG

domestic connection was 1,66,000 & 10,271 w.r.t inch-km steel which has already expire prior to the advent of Covid-19.

- (iii) In order to monitor the post-authorization activities, the Board vide letter dated 07.03.2017, asked the Appellant to present the latest status of the project and tentative schedule to achieve the specified targets of the subject GAs. The Respondent Board during the meeting held on 07-03-2017 observed as under:

“The latest progress report (QPR) submitted by the entity for the month of January 2017 indicates that the entity has failed to achieve the targets for aforementioned GAs as prescribed in Authorization terms and conditions.”

In the said meeting the Respondent Board further asked the Appellant to submit its Catch-Up Plans to cover up targets specified in the Minimum Work Program as per the terms and conditions of the authorization letters.

- (iv) That on 23-12-2018, in the progress review meeting with respect to the subject GAs, the Respondent Board again observed that the progress was unsatisfactory and advised the Appellant to submit a Catch-Up plan to achieve the targets of the Subject GAs.
- (v) That since the targets were not achieved, Respondent Board once again, vide letter dated 04.03.2020 sought reasons from the Appellant, for the shortfall in achievement of the targets along with information and details of likely achievement up to 31.03.2020 against the MWP targets of the Subject GA. It is relevant to mention herein that it was specifically mentioned in the said letter of the 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.

- (vi) Looking into the details alleged by the Appellant vide letter dated 16.05.2020 of various events that resulted in delays in achieving the MWP targets originally stipulated under the terms and conditions of authorizations for Bhavnagar GA are increase in overall connection cost per household & failure to seek permission from Bhavnagar Municipal Corporation along with the Catch-Up Plans submitted with respect to likely achievement of work programme up to 31-3-2020; w.r.t to Jamnagar GA the challenges were of (i) rocky terrain leading to slow progress in laying of pipeline infrastructure (ii) Limited progress within Jamnagar Municipal Corporation (JMC) due to construction of ramp outside each household owners refuse to allow breakage of the same. (iii) Low acceptance of PNG in tenant occupied premises (iv) Subject GA has majority of the household in rural areas. Further providing connectivity to this far-flung villages/rural areas has become unviable due to increase in overall connection cost per household (v) High cost on rent payable to Panchayat makes the overall cost of connecting such villages economically unviable. This change was not anticipated at the time of award of authorization; w.r.t to Kutch (West) GA the challenges were: (i) Kutch(West) falls under seismic zone IV due to which laying of pipeline infrastructure us slow and challenging (ii) Abrupt change in strata or uncertain strata while carrying out excavation which directly affects work execution (iii) Inconsistent or many times non-availability of labour workforce due to extreme climatic

condition (iv) Majority of residents do not have ownership documents of the property for reason being same had been lost in Earthquake of 2001 and same cannot be taken up for registration This is direct loss to domestic connection.(v) The subject GA has majority of the households in rural areas Further providing connectivity to this far flung villages/rural areas has become unviable due to increase in overall connection cost per household (vi) high cost on rent payable to Panchayat makes the overall project cost of connecting such villages economically unviable This change was not anticipated at the time of award of authorization. The Appellant along with the letter dated 16-05-2020, submitted a Catch-Up Plan with respect work programme to likely achievement of up to 31-3-2020.

- (vii) It is pertinent mention even though the Appellant was granted remedial time upto December 2020 vide letter dated 21.09.2022, the Appellant failed to achieve the targets.
- (viii) The submission of catch up plan 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.
- (ix) Regulation 16 of Petroleum and Natural Gas Regulatory Board (Authorizing entities to lay, build, operate or expand city or local natural gas distribution networks) Regulations, 2008 is only a mechanism for encashment of performance bond in case of default by an entity and has no relation with a catch-up plan.
- (x) Exclusivity period from purview of common carrier or contract carrier had already expired before the advent of Covid-19.

This Tribunal is of the view that the Appellant has submitted its bid after due diligence and considering all the challenges & hindrances to be faced while implementing the project. It is the prime responsibility of the bidder to anticipate the shortcomings on the ground of failure to seek permissions, the geographical conditions, risk & cost analysis etc. Further vide letter dated 21.09.2022, the Respondent Board has further given remedial period upto December, 2022 for achieving the targets

- (xi) On perusal of the achievement by the Appellant as detailed in table I, para xxv on above the achievements of the Appellant is not at par with the targets required to be achieved within 60 months of the grant of authorisation. 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 and accordingly an execution plan is required to be achieved yearly as per the milestones detailed in authorisation letter.
- (xii) The exclusivity period is limited which is 60 months in the present case for the Appellant w.r.t common carrier/contract carrier for CGD network & 300 month with respect to laying building & expansion of CGD network. 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.
- (xiii) It is also a matter of fact that in present case the yearly MWP targets as detailed in the authorization letter that has been

accepted by the authorized entity at the time of acceptance of authorization. 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.

- (xiv) 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”*.
- (xv) 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.
- (xvi) 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.
- (xvii) Tribunal is of the view that once the catch up plan is sought from the entity, the Board should pass a appropriate order, whether they are accepting or rejecting the catch up plan. The

catch up plan submitted by the entities provides the details regarding the permissions, resources, reasons for delay and other enablers and the future road map to cover up the gap in order to achieve the project's timeline.

- (xviii) Being the regulator of the industry, the Respondent Board is 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 it is suggested to make proper procedure in line with applicable act, laws and regulations.
- (xix) The entity is aware of the repercussion of not achieving targets timely. It is clear that the submission of catch up plan by the Appellant does not automatically lead to revision / extension of MWP Targets and the Respondent Board, being the regulator has to analyse the cause of delay and issue appropriate direction accordingly.
- (xx) It is also relevant to mention herein that 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.

- (xxi) The 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.
- (xxii) 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 and accordingly an execution plan is required to be achieved yearly as per the milestones detailed in authorisation letter. The exclusivity period is limited which is 60 months in the present case for the Appellant w.r.t common carrier/contract carrier for CGD network & 300 month with respect to laying building & expansion of CGD network. 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.
- (xxiii) 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.

(xxiv) Hon'ble Supreme Court in ***Joshi Technologies International INC vs UOI & others (2015) 7SCC*** in para 70.5 has held “*that occurrence of commercial difficulty inconvenience or hardship in the performance of the condition agreed to in the contract can provide no justification in not complying with the terms of the contract which the parties has accepted with open eyes.*”.

(xxv) It is also 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.

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 26.07.2022 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.

- 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 26.07.2022 and the detailed order comprising the Impugned Order was uploaded on the website of Respondent Board on evening of 26.07.2022. There was therefore no hearing provided in relation to the amended Review Petition.

- ii. Whereas the Respondent Board has contended that on 31.5.2022, 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

Thus it clear 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 26.07.2022 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. Where as 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. From the bare perusal of Section 24 (2)(a) of the 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 ***para22 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...”

x. 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.”

xi. 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...”

xii. As evident from above relevant clauses from the PNGRB Act, PNGRB 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.

xiii. 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."

- xiv. 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 in general practice of signing the order sheet as Sd/- to be considered as signed must be given by the Board, until then the Respondent Board is bound by the mandatory provisions of the Act.

ORDER

In view of the above the Tribunal is of the view that:-

- 1. This is the case where the Appellant was granted authorization through the bidding whereas per Regulation 7(1) (C) it was one of the bidding parameter. MWP targets as per the authorization letter is sacrosanct and the Appellant cannot cover the shortcomings /failure of its performance in the garb of *Force Majeure*.**
- 2. The Respondent Board is correct in holding that Appellant is not 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*.**
- 3. 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.**
- 4. The 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. The proper notification in regard to change in general practice of signing the order sheet as Sd/- to be considered as signed must be given by the Board, until then the Respondent Board is bound by the mandatory provisions of the Act.**

Having regard to the factual and legal aspects of the matter as stated above, the Appeal is dismissed.

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

No order to the cost.

PRONOUNCED IN THE OPEN COURT ON THIS DAY OF 8th

May, 2024.

**(Virender Bhat)
Judicial Member**

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

REPORTABLE / ~~NON-REPORTABLE~~