

APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)

**APPEAL No. 25 OF 2023 &
IA NOS. 53, 52, 868 & 885 OF 2023**

Dated: 15th May, 2024

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Dr. Ashutosh Karnatak, Technical Member (P&NG)

In the matter of:

AGP CGD INDIA PRIVATE LIMITED

Through Senior Vice President and General Counsel

Unit No. 305, Third Floor, Worldmark-2

Asset 8 Hospitality District, Aerocity

New Delhi – 110037

...Appellant

VERSUS

**1. PETROLEUM & NATURAL GAS REGULATORY
BOARD**

Through the Secretary, PNGRB

1st Floor, World Trade Centre,

Babar Road,

New Delhi- 110 001

... Respondent No. 1

2. TORRENT GAS CHENNAI PRIVATE LIMITED

Having its registered office at

Samanvay, 600 Tapovan

Ambavadi, Ahmedabad,

Gujarat – 380015.

... Respondent No. 2

Counsel for the Appellant(s) : Mr. Paras Kuhad, Sr. Adv.
Mr. Manu Aggarwal

Counsel for the Respondent(s) : Mr. Rahul Sagar Sahay
Mr. Sumit Kishore
Ms. Tanuja Dhoulakhandi
Mr. Mohit Buddhiraja
Mr. Kartikey Joshi
Ms. Sanskriti Bhardwaj
Mr. Suyash Gaur
Ms. Harshita Tomar for Res.1

Mr. Gopal Jain, Sr. Adv.
Mr. Gaurav Juneja for Res.2

JUDGEMENT

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

I. INTRODUCTION:

1. The reliefs sought, by the appellant in the present appeal, are to (a) quash and set aside the order dated 22.12.2022 passed by the PNGRB in Case No. Legal/11/2022; (b) allow Complaint No. Legal/11/2022 filed by the Appellant before the first respondent Board against the 2nd respondent in terms of the prayers thereof, including: (1) hold that the following nineteen OMC petrol stations, namely: (i) Ram Filling Station, Neelankarai (IOCL); (ii) Vasanth Enterprises, Kottivakkam (IOCL); (iii) Sree Hanisha, Kottivakkam (IOCL); (iv) VSV Agency, Perungudi (IOCL); (v) Lakshmikantham Service Station, Pallikaranai (IOCL); (vi) VK Enterprises Coco, Madipakkam (IOCL); (vii) Sree Balaji Enterprises, Ullagaram (IOCL); (viii) Om Sakthivel Agencies, Adambakkam (IOCL); (ix) Kris Enterprises, Vettuvankeni (BPCL); (x) Sree Vari Enterprises, Kottivakkam (BPCL); (xi) HU Sreeram Agency, Pallikaranai (BPCL); (xii) ICPL Fuel Station, St. Thomas Mount (BPCL); (xiii) ASM Abdul Kadir, Menambakkam Airport (BPCL); (xiv) JSK Fuel Station, Kovur (BPCL); (xv) Krishnaveni Service Station, Paraniputhur (BPCL); (xvi) Nandambakkam Petroleum, Nandambakkam (BPCL); (xvii) Metro Petroleum, Kovilambakkam (HPCL); (xviii) Krishnaraj & Co., Menambakkam Airport (HPCL); and (xix) R. Krishnamurthy, Manapakkam (HPCL) are located within the geographical area of Kanchipuram District (GA ID 9.61) authorized to the Complainant; ; and (2) direct the Respondent to pay damages to the Complainant of Rs. 3,00,00,000/- (Rupees Three crores

only) for each CNG Station where it has started undertaking works which aggregates to an amount of Rs. 57,00,00,000/- (Rupees Fifty Seven Crores) for the nineteen CNG Stations being developed by Respondent in Kanchipuram GA; (c) direct the 2nd Respondent to cease and desist from laying, building or operating any CGD network in Kanchipuram District GA 9.61; and (d) direct the 2nd Respondent to cease and desist from establishing or operating the afore-stated 19 CNG Stations in respect of which the Appellant had filed Complaint No. Legal/11/2022 before the Respondent Board against the 2nd Respondent.

2. The Respondent PNGRB, vide letter dated 26.09.2018, granted authorization to the Appellant for development of a City Gas Distribution Network in the Geographical Area (GA) of Kanchipuram District under the PNGRB (Authorizing entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 (hereinafter referred to as the “2008 Regulations”). The terms and conditions of the authorization letter was accepted by the Appellant, after the judgement of the Supreme Court in ***Adani Gas Ltd. v. Petroleum & Natural Gas Regulatory Board, (2020) 4 SCC 529***, vide letter dated 20.02.2020. The Board, vide letter dated 07.09.2018, granted authorization to the 2nd Respondent for development of the City Gas Distribution Network in the Geographical Area (GA) of Chennai and Tiruvallar Districts. The terms and conditions of the authorization letter were accepted by the 2nd Respondent vide letter dated 11.09.2018. The Appellant filed a complaint before the PNGRB, under Section 21(3) read with Section 12(1)(b), 23, 25 and 13 (1) (g) of the PNGRB Act, 2006 against the 2nd Respondent, alleging infringement of their rights including infrastructure exclusivity and marketing exclusivity vested with it under the City or Local Gas Distribution Network Authorized for the Geographical Area of Kanchipuram District. After adjudicating the said complaint, the PNGRB

passed its final judgement dated 22.12.2022 in Case No. Legal/11/2022 which is now under appeal.

3. In its order dated 26.04.2023, this Tribunal recorded the submissions of parties that the issue was confined to disputes pertaining to 19 CNG Stations which are (i) Ram Filling Station, Neelankarai (IOCL); (ii) Vasanth Enterprises, Kottivakkam (IOCL); (iii) Sree Hanisha, Kottivakkam (IOCL); (iv) VSV Agency, Perungudi (IOCL); (v) Lakshmikantham Service Station, Pallikaranai (IOCL); (vi) VK Enterprises Coco, Madipakkam (IOCL); (vii) Sree Balaji Enterprises, Ullagaram (IOCL); (viii) Om Sakthivel Agencies, Adambakkam (IOCL); (ix) Kris Enterprises, Vettuvankeni (BPCL); (x) Sree Vari Enterprises, Kottivakkam (BPCL); (xi) HU Sreeram Agency, Pallikaranai (BPCL); (xii) ICPL Fuel Station, St. Thomas Mount (BPCL); (xiii) ASM Abdul Kadir, Menambakkam Airport (BPCL); (xiv) JSK Fuel Station, Kovur (BPCL); (xv) Krishnaveni Service Station, Paraniputhur (BPCL); (xvi) Nandambakkam Petroleum, Nandambakkam (BPCL); (xvii) Metro Petroleum, Kovilambakkam (HPCL); (xviii) Krishnaraj & Co., Menambakkam Airport (HPCL); and (xix) R. Krishnamurthy, Manapakkam (HPCL).

4. As shall be detailed later in this judgement, it was submitted, on behalf of the 2nd Respondent, that a part of the then Kanchipuram District, where these 19 CNG Stations were located, was included in GA 9.62 for which an authorisation was granted in their favour. The dispute, in the present appeal, revolves mainly around which GA the afore-said 19 CNG stations are located. While the appellant contends that they all fall within Kanchipuram District GA (ie GA 9.61) authorisation for which was granted in their favour, both the PNGRB and the 2nd Respondent submit that they fall within Chennai & Tiruvallur Districts GA (ie GA 9.62) authorisation for which was granted in favour of the 2nd Respondent.

5. The appellant seeks to support its claim that GA 9.61 is co-terminus with the then Kanchipuram District, among others, on the basis that (1) nine of the towns/villages with population of more than 5000, in which 15 of the 19 CNG Stations are located, have all been identified in the annexed map itself as falling within Kanchipuram District GA; (2) these towns/ villages and talukas (in which these 15 CNG stations are located) are not reflected in the Chennai & Tiruvallur District GA (ie GA 9.62) map which was enclosed along with the authorisation letter issued to the 2nd Respondent; (3) the charge areas of GA 9.61 correspond with the Talukas of the then Kanchipuram District; (4) the Kanchipuram District Boundary line in black overlaps the Kanchipuram District GA Boundary line in pink; (5) the area of the GA in sq kms tallies with the area of Kanchipuram District as reflected in the 2011 census handbook; (6) the fact that the error in the area, as recorded in the original authorisation, was corrected by the Board at the appellant's request, to reflect the area mentioned in (5) above, is also a tacit admission by the Board that the boundaries of Kanchipuram District GA are co-terminus with the boundaries of Kanchipuram District; (7) the population and number of households as shown in the map of Kanchipuram District GA tallies with the population and number of households of the then Kanchipuram District as per the 2011 Census Hand Book; and these and other factors conclusively establish that all these 19 CNG stations fall within Kanchipuram District and resultantly within Kanchipuram District GA for which an authorisation was granted in favour of the appellant; and a co-ordinates based exercise cannot be undertaken to ascertain the locations of these stations, more so as no co-ordinates of the CNG stations have been independently ascertained by the Board, and the Board has accepted the 2nd Respondent's case without independent application of mind.

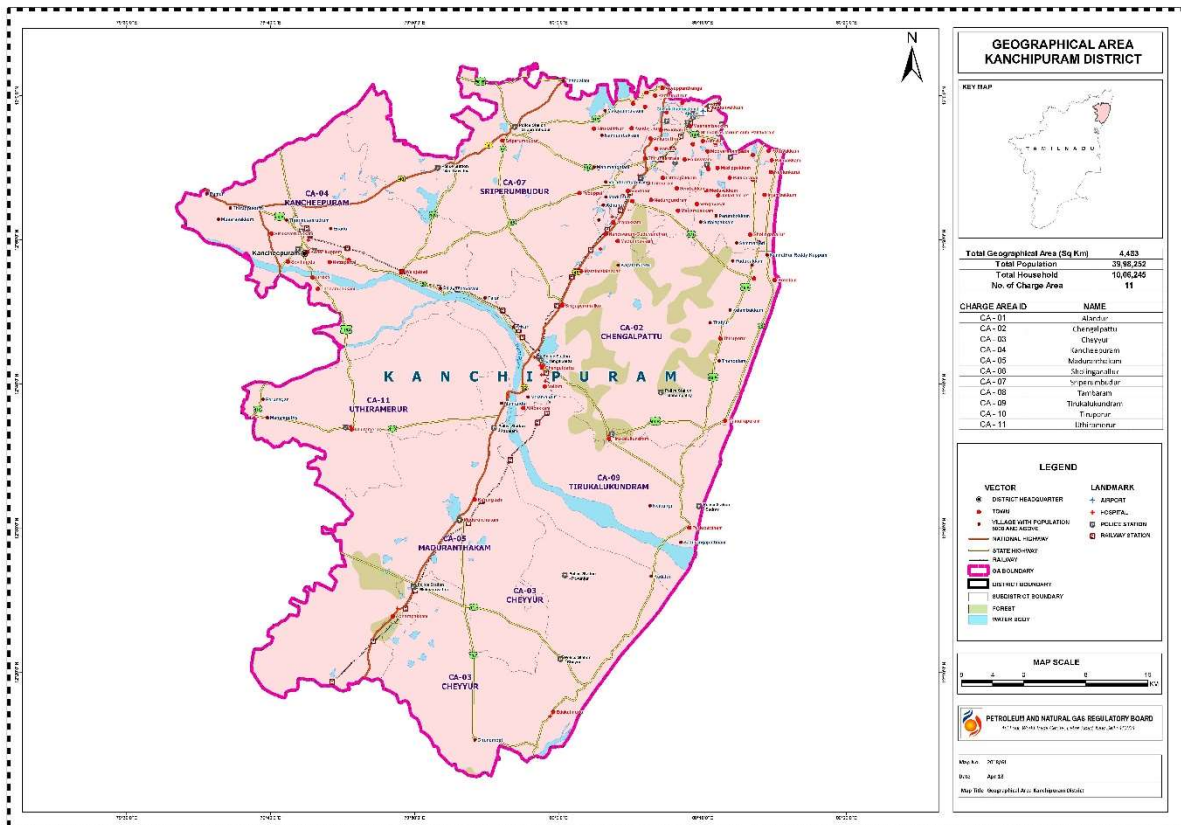
6. On the other hand, the case of the Board and the 2nd Respondent, in short, is that, since the physical map, enclosed along with the application cum bid document and the letter of authorisation, indicate the co-ordinates of both GA 9.61 and 9.62, which admittedly coalesce and do not overlap, the scientific method to be applied, to establish where these 19 CNG Stations are located, is the Co-ordinates test; and all other modes of identification of its exact location, relied upon by the appellant, are either irrelevant or pale into insignificance as compared to the co-ordinates test.

7. Yet another aspect which must be taken note of is that neither the Appellant nor the second Respondent seek to have entire process followed by the PNGRB, in granting authorisation for Kanchipuram District GA in favour of the Appellant and Chennai- Tiruvallur Districts GA in favour of the second Respondent, set aside. The inter-se dispute is confined only to these 19 CNG Stations in that, while the Appellant's claim that the 19 CNG stations in dispute would fall within their GA and it should be permitted to operate them, the submission urged on behalf of the second Respondent is that these 19 CNG Stations falls within their GA and, since they are continuing to operate these CNG stations, no interference is called for.

II. A BRIEF BACKGROUND:

8. The Application-Cum-Bid Documents for the 9th round of bidding, for various Geographical Areas including GA 9.61 (Kanchipuram District GA)

and GA 9.62 (Chennai-Thiruvallur Districts GA), were web-hosted by the PNGRB on its portal on 12.04.2018. Bids were invited separately for each GA. Annexure-1 of the Application-Cum-Bid-Document (ACBD) of Kanchipuram District GA i.e. GA 9.61 contains a map which is as under:



9. The left side of the map is the physical map of Kanchipuram District GA and the longitude and latitudes i.e. coordinates are reflected on all four sides of the said map. On the right side of the map is the total area of the GA in square kilometers i.e. 4483 sq kms, the total population of the GA is shown as 39,98,252, the total households in the GA are shown as 10,08,246, and the total number of charge areas in the GA are recorded as 11. The charge area ID and the name of each of these 11 charge areas is then detailed on the right side of the map. Thereafter is a table titled Legends, on the left side of which is the Vector and the righthand side is the Landmark.

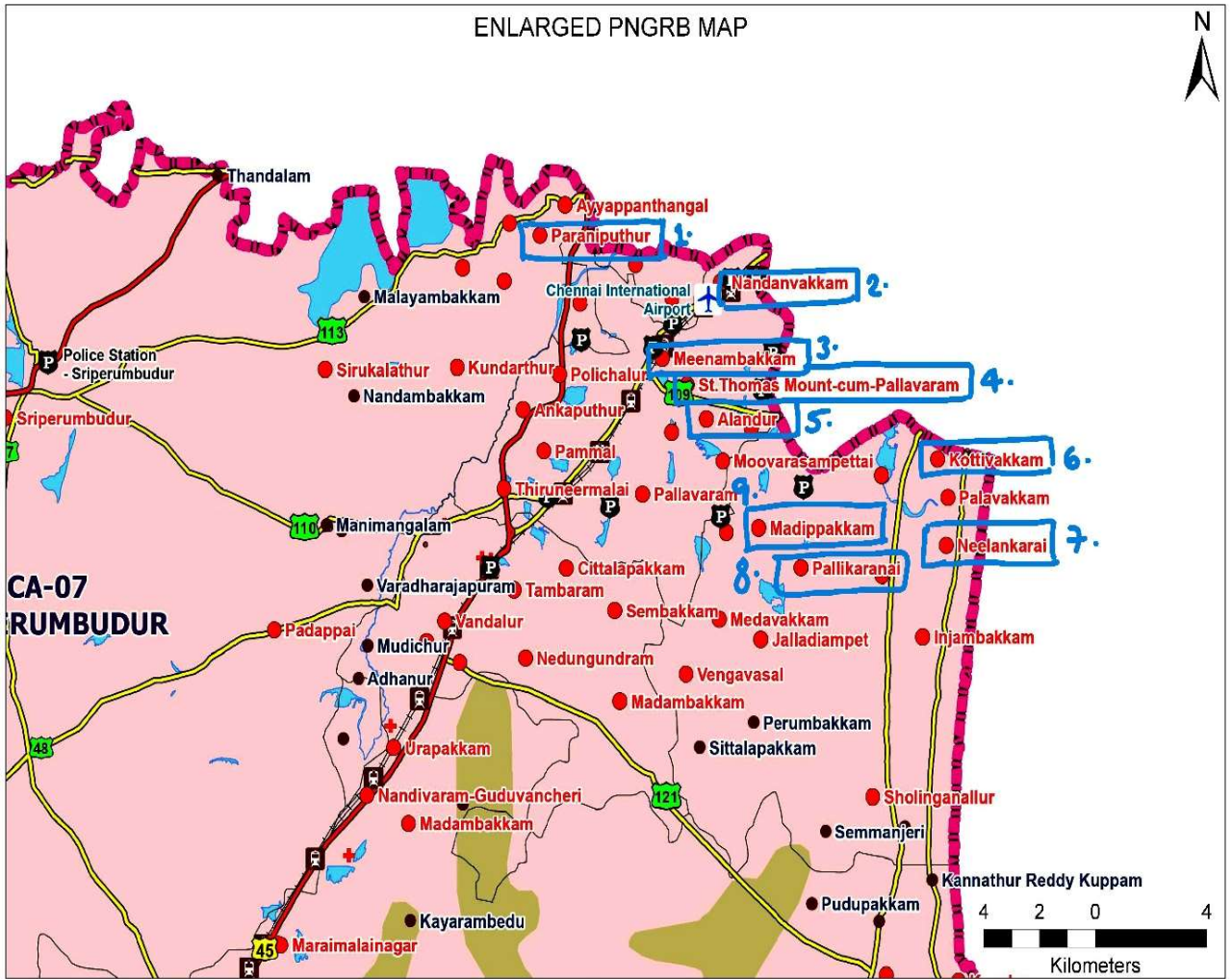
Under the sub-head Vector, details of the identification marks of (1) district Headquarters, (2) Towns, (3) Villages with population of 5000 and above, (4) National highway, (5) State Highway, (6) Railway, (7) GA boundary, (8) district boundary, (9) sub-district boundary, (10) forest, and (11) water body are furnished. Under the sub-head Landmark, identification marks are given for (1) airport, (2) hospital, (3) police station, and (4) railway. Thereafter, details of the map scale are furnished, the map date is shown as April 2018, and the map table is shown Geographical Area Kanchipuram District. The GA boundary of the physical map (ie Kanchipuram District GA) on the left side is shown in pink and the district boundary of Kanchipuram district is shown in black, both of which overlap. The 11 charge areas are also demarcated in the said map. The Appellant contends that each of these 11 charge areas are in fact the Talukas of the then Kanchipuram District and the total area of these 11 charge areas is 4483 square kilometers which is the area of Kanchipuram District as well as Kanchipuram District GA.

10. As noted hereinabove, the map annexed to the ACBD (and later with the authorization letter) contains identification marks of villages with population of 5000 and above. It is not in dispute that 15 of the subject 19 CNG stations are located in 9 villages with a population of 5000 and more, the details of which are as under:

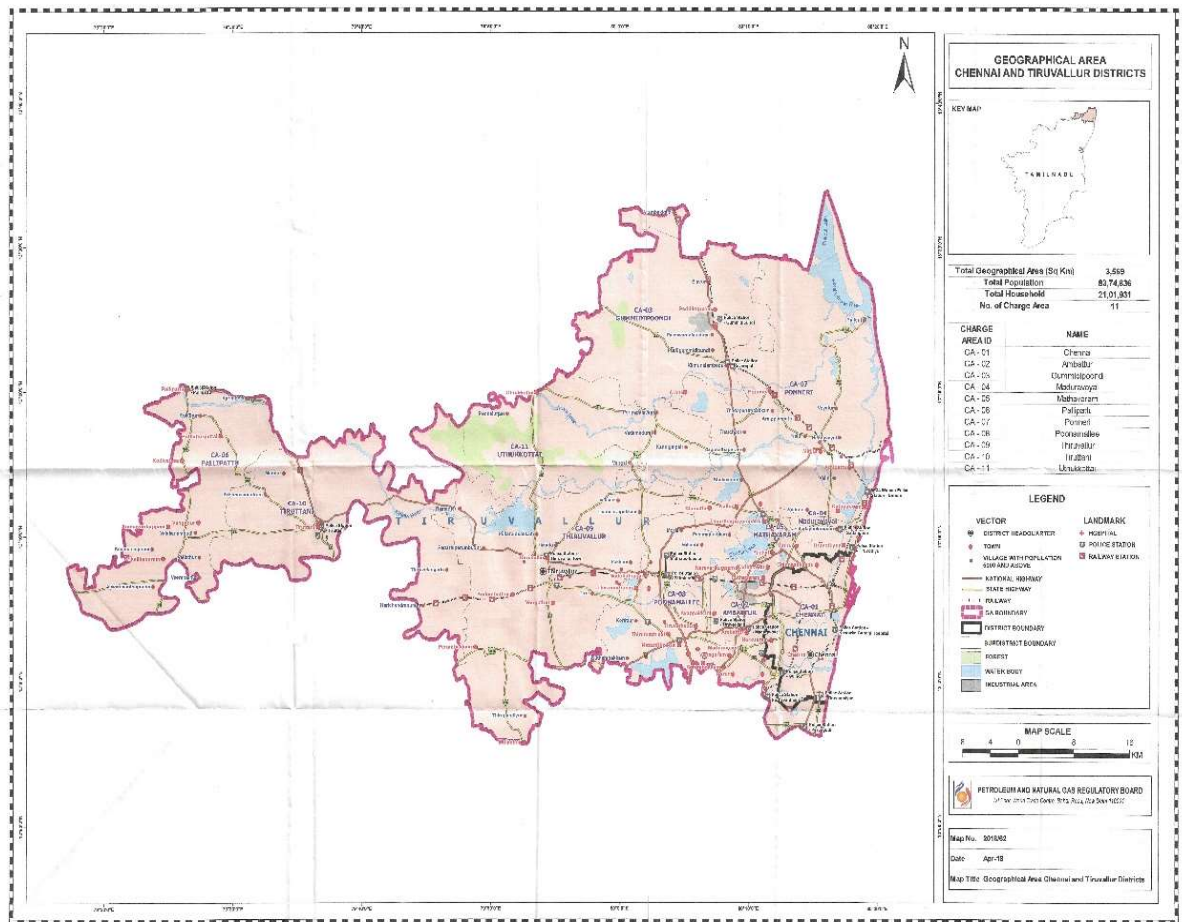
Enlarged Map – Index

S. No.	Village Name	CNG Station located in the said Village
1.	Paraniputhur	Krishnaveni Service Station
2.	Nandanvakkam	Nandambakkam Petroleum
3.	Meenabakkam	ASM Abdul Kadir
4.	St. Thomas Mount -cum- Pallavaram	ICPL Fuel Station
5.	Alandur	Krishnaraj & Co.
6.	Kottivakkam	VSV Agency
7.		Vasanth Enterprises
8.		Sree Vari Enterprises
9.	Neelankarai	Ram Filling Station
10.		Kris Enterprises
11.	Pallikaranai	Lakshmikantham Service Station
12.		Metro Petroleum
13.		HU Sreeram Agency
14.	Madippakkam	VK Enterprises COCO
15.		Sree Hanisha Service Station

11. That these 9 villages are located in the Kanchipuram GA map is evident from the enlarged map of Kanchipuram GA which is as under:



12. Likewise, along with the Application-Cum-Bid-Document of GA 9.62 i.e. Chennai and Thiruvallur Districts GA, the following map was enclosed:



13. We had recorded in our earlier order that the learned Senior Counsel, appearing both on behalf of the Appellant and the 2nd Respondent, had agreed that the maps of Kanchipuram District GA (9.61) and Chennai-Thiruvallur district GA (9.62) coalesce, and do not overlap. Consequently, these 15 CNG stations either fall in Kanchipuram district GA i.e. GA 9.61 or in Chennai-Thiruvallur Districts GA i.e. GA 9.62. As shall be detailed hereinafter, both the PNGRB Act and the 2008 Regulations obligate the PNGRB to clearly identify the GAs before inviting bids for grant of authorisation for such GAs. Before considering this aspect, we must, however, first deal with the rival contentions urged by the learned Senior Counsel and learned Counsel appearing on behalf of parties of either side.

14. Before doing so, it is necessary to note the contents of the impugned Order passed by the PNGRB.

III. CONTENTS OF THE IMPUGNED ORDER:

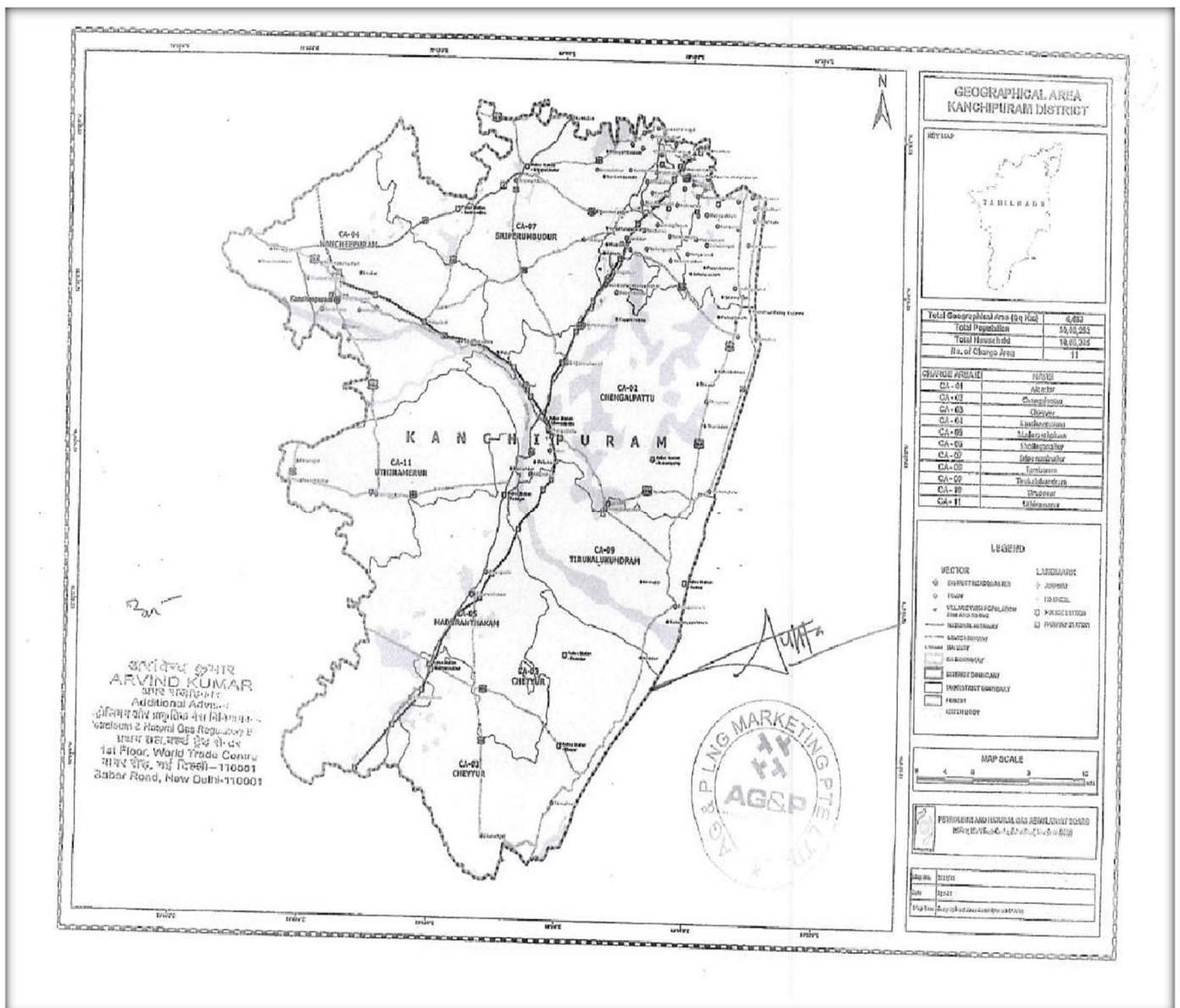
15. In the impugned Order dated 22.12.2022, the PNGRB observed that a complaint was filed by the Appellant, before the PNGRB on 11.04.2022, under Section 21(3) read with Section 12(1)(b), 23, 25, 13(1)(g) and other applicable provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006 ("the 2006 Act" for short), and the Extant applicable Regulations. against the 2nd Respondent - Torrent Gas Chennai Private Limited for infringement of their rights, including infrastructure exclusivity and marketing exclusivity, under the City or Local Gas Distribution Network (**hereinafter referred to as 'CGD Network'**), and Authorisation for Geographical Area (**hereinafter referred to as the 'GA'**) of Kanchipuram District.

16. The Complainant was granted authorization vide letter dated 26.09.2018 for Kanchipuram GA, and the said authorization was amended in favour of the Complainant vide letter dated 01.09.2020. The 2nd Respondent was granted authorization by the PNGRB, vide letter dated 07.09.2018, for development of CGD Network in the GA of Chennai and Tiruvallur Districts, and the said authorization was amended in favour of the 2nd Respondent vide letter dated 01.09.2020.

17. The relevant facts, as noted in the impugned Order, are that the PNGRB invited bids on 12.04.2018 for the 9th CGD Bidding Round for various Geographical areas, including the Geographical Areas of Chennai-Tiruvallur, and Kanchipuram Districts. Pursuant thereto the PNGRB, vide letter dated 07.09.2018, granted the authorization for the development of CGD Network in the GA of Chennai and Tiruvallur District in favour of the 2nd Respondent, the terms and conditions of which were accepted by the 2nd

Respondent on 11.09.2018. The press release issued by the Board on 14.09.2018, identifying successful bidders for the 86 authorized GAs, was subjected to challenge before this Tribunal in 'Adani Gas Limited vs Petroleum and Natural Gas Regulatory Board & Anr.' (Appeal No. 292 of 2018), and 'IMC Limited vs Petroleum and Natural Gas Regulatory Board & Anr.' (Appeal No. 323 of 2018).

18. The Board, vide letter dated 26.09.2018, granted authorization of Kanchipuram District GA in favour of the appellant. Attached to the authorization is a map which is as under:-



19. The Complainant informed the Board stating that they were not Complainant is not in a position to accept the terms and conditions of the authorization letter dated 11.09.2018. The Supreme Court, vide its Judgment dated 17.02.2020, disposed of Civil Appeal No. 3992 of 2019 titled 'Adani Gas Limited vs Petroleum and Natural Gas Regulatory Board & Ors.', agreeing with the order passed by the Technical Member and upholding the authorization granted for Kanchipuram District GA to the Complainant and for Chennai & Tiruvallur District to the 2nd Respondent. Thereafter the appellant, vide letter dated 20.02.2020, accepted the terms and conditions of the authorization letter dated 26.09.2018.

20. Hindustan Petroleum Corporation Limited (**hereinafter referred to as the HPCL**), vide email dated 17.06.2021 enclosed a list of sample layouts provided by the 2nd Respondent to HPCL for installation of Compressed Natural Gas (**hereinafter referred to as the CNG**) facilities in Chennai, and informed the appellant that discussions were in progress, and they were interested in facilitating CNG installation at their outlet in the Subject GA. The appellant, vide email dated 17.06.2021 informed HPCL that certain petrol station were falling under their GA; in reply thereto HPCL, vide email dated 21.06.2021, informed the appellant that the 2nd Respondent was claiming that four out of five CNG stations were falling in their GA; the appellant vide email dated 07.07.2021 informed HPCL that the Subject GA comprises the areas of Kanchipuram and Chengalpattu; the location of CNG Station Nos. 1 to 4 fall under the subject GA authorized to the appellant; HPCL, vide email dated 08.07.2021, requested the 2nd Respondent to resolve the issue, regarding location(s) of CNG Station No. 1 to 4, with the appellant as HPCL had already started work at CNG Station No. 2; the 2nd Respondent, vide email dated 08.07.2021, informed HPCL that 'KMZ' Map

shared by them with HPCL was the official map of their GA issued by the PNGRB and, unless the Board notified revised GA boundaries, the said KMZ map had to be considered as the official boundaries of the GA.

21. The impugned Order thereafter records that the appellant, vide letter dated 17.08.2021, had informed the Board that it had issued Tender No. PNGRB/Auth-1/CGD(03)/2021 "For Supplying GIS Bases Geographical Area Maps", which was based on the Survey of India Map and, if the Board has finalized the agencies to provide the maps, the Complainant may procure the same from the agencies with due permission of the Board, and they be provided with the digital map of the subject GA; in response thereto, the Board, vide letter dated 23.09.2021, informed that Tender No. PNGRB/Auth-1/CGD(03)/2021 for supplying GIS based Geographical Area Map, was cancelled, and no agency was hired for the said tender; a GIS Map, indicating the respective GA and its boundaries, had already been provided along with the authorization letters of the Subject GA; the district boundaries with the GAs were considered to be defined by the Survey of India/Office of the Registrar General & Census Commissioner, India or the respective local authority such as the District Administration; and, in case any confirmation was required in relation to a district boundary, the same shall be dealt directly with the District Administration or the Municipal Corporation; the appellant, vide letter dated 23.09.2021, requested the Chief Controller of Explosives, Petroleum & Explosives Safety Organization (PESO) to provide the list of 19 locations falling within the subject GA where the 2nd Respondent was undertaking works to establish CNG stations, and not to consider any request of the 2nd Respondent pertaining to the same.

22. In order to verify the limits of the district, the appellant, vide letter dated 24.09.2021, requested the District Collector, Kancipurram to provide the district map of the Subject GA according to Census of India, 2011;

subsequently, the District Collector provided the verified map of Kanchipuram District. Relying on the map provided by the District Collector, the appellant vide letter(s) dated 19.10.2021, provided details of the boundaries of the Subject GA all the Oil Marketing Companies (OMC), and informed them that setting up of CNG Stations by the 2nd Respondent in the subject GA was in violation of the PNGRB Act and the authorization vested with the appellant; thereafter, vide letter dated 31.01.2021, the appellant informed the 2nd Respondent that they were attempting to set up CNG dispensing facilities in the Subject GA. They were requested to stop the construction activities undertaken at various retail outlets. In response thereto, the 2nd Respondent, vide its letter dated 22.02.2022, clarified that Chennai GA was spread over certain parts of Kanchipuram, as per the map web-hosted by the Board, during the bidding process, and the activities carried out by the 2nd Respondent were in compliance with the Geo-Coordinate Boundary of Chennai GA; the appellant, vide letter dated 19.01.2022, informed the Board that an error had occurred in para 1 of the terms and conditions of the authorization letter dated 26.09.2018 mentioning the total authorized area of the GA to be '6936.50 sq. kilometres' instead of '4483 sq. kilometres' and sought correction of the same, which was accepted by the Board vide letter 31.01.2022.

23. Alleging that the Respondent was still in the process of construction work of the CNG Stations in the Subject GA, the appellant filed the complaint on 11.04.2022, and after notice and completion of pleadings, the matter was finally heard on 07.07.2022. In order to get a ground report, the Board, vide order dated 29.09.2022, constituted a three members committee to visit the disputed area on 06.10.2022, and directed status quo to be maintained. On the report of the Committee being placed before it on 18.10.2022, the Board directed certified copy of the Committee Report to be supplied to the parties to enable them to file their objections.

24. After extracting the contents of the report, the impugned order records the relief sought by the appellant and their contentions. Their contentions are (1) the 2nd Respondent is encroaching upon the area of the Subject GA having set up and operating 3 CNG Station. They are in process of setting up 16 more CNG Stations. (2) the 2nd Respondent has not disputed that the town/villages and charge area, where the subject CNG Stations are located, are specified by name in the map annexed with the authorization letter issued to the Complainant, by the Board. (3) the contention of the 2nd Respondent that the names of these towns/villages and charge area are to be ignored, and only the contours of the boundary of the map with reference to the Geospatial Coordinates i.e. Latitude and Longitude, which will result in the Subject CNG Stations falling within the GA of the Respondent. (4) in terms of the Public Notice dated 10.03.2016, the Board issued a tender for hiring vendors for supplying customised maps. Clause 17.1.1 specifies the scope of the work for the vendors which includes preparation of Individual GA Maps depicting the Taluka/Tehsil/Mandal as Charge Area and pointing to important town/cities District HQ and National/State Highway on the map. (5) pursuant to the public notice dated 10.03.2016, the Board identified a list of possible CGD GAs for the upcoming CGD Bidding Round. The said public notice made it explicit that the concept of GA for CGD Bidding was based on the district concept. (6) the Board specified its attention to consider Taluka/Tehsil/Mandal as Charge Area, by another public notice dated 24.02.2018 and 01.03.2018. The public notice dated 24.02.2018 was issued district wise, later on public notice was issued GA wise. Both the public notices emphasise that the identification of GA was based on the Administrative Districts. (7) By the public notice dated 01.03.2018, the Board emphasised that the basis of identification of the GA was Administrative District, and GA 9.61 comprised of Kanchipuram District and GA 9.62 comprised of Chennai and Tiruvallur Districts. (8) the public notice dated

01.03.2018 shows that the Board gave wide publicity of its intention to form one GA comprising of Administrative Districts of Kanchipuram and another GA comprising of Administrative Districts of Chennai & Tiruvallur. At no stage, the Board formed any opinion with respect to such co-ordinates, by which the 2nd Respondent was allegedly authorized. (9) by Public Notice No: PNGRB/MAPS/2018 dated 18.01.2018, the Board, through a vendor, undertook the exercise of preparation of maps on the same scope of work as of the public notice dated 10.03.2016. (10) the Application-cum-Bid document (**hereinafter referred to as 'ACBD'**) dated 06.04.2018 was issued with the identification of the GA and the Charge Area on the basis of Administrative District and Talukas/Tehsils/Mandals respectively. The stand of the Board, as recorded in para 47 of the Judgment of APTEL in Appeal No. 292/2018 dated 28.02.2019, was that the GAs were identified with reference to Administrative Districts as they existed at the time of the census of the year 2011. It was the case of the 2nd Respondent before APTEL that they had been authorized by the Board which is, in fact, the same as the Administrative District and the same was admitted by the 2nd Respondent in its pleadings. (11) the 2nd Respondent's contention, in the proceedings before APTEL and the Supreme Court, was that the description by name of the charge areas, number of households and population mentioned in the authorized map were not relevant. This is wholly inconsistent with its own stand in respect of GA 9.72. In those proceedings, when the 2nd Respondent observed that there was an error in these figures, when compared with administrative boundaries and data, it was brought to the knowledge of the Board, that with respect to the Subject GA, no such error was highlighted. Thus, the 2nd Respondent accepted the description of Charge Area, and the population in GA 9.61 & 9.62, was correct. The 2nd Respondent was now estopped from taking the plea that part of charge area of the Subject GA falls under the GA authorized to the 2nd Respondent. (12) if the contention of the

2nd Respondent that a mistake was committed by the vendor during the ministerial exercise of drawing a map of GA, if accepted and applied across the Board, would result in the following: (a) the villages and charge areas specified in the map issued for GA 9.61, would be part of GA 9.62, (b) the total area of GA 9.61 would stand reduced to 4296.22 sq. km. from the total area of 4483 sq. km. specified in the map issued by the Board for the Subject GA, (c) the total area of GA 9.62 would stand enhanced to 3738.67 sq. km. from the total area of 3562 sq. km. stated in the map issued by the Board for Chennai & Trivullar District, (d) there will be significant overlap in different GAs which form part of different CGD Bidding Rounds and, further, all the GA boundaries would have to be redefined which would lead to chaos in the CGD Sector, and (e) all the information provided in the map such as vectors, total area, population, number of households, industrial areas, charge areas etc. would become irrelevant; and (13) there was no delay in filing the Complaint as discussions with the 2nd Respondent completely failed only on 22.02.2022 when they stated that the authorization should be treated in terms of the geo-coordinates boundaries.

25. The impugned Order then records the contentions of the 2nd Respondent as under: (1) they are merely operating within the coordinates provided in the map supplied and webhosted by the Board. The appellant does not dispute the same. It claims, without justification, that the basis of the Board's determination of a GA is not the co-ordinates, but the legends and vectors given in the map and the figures stated in the 2011 Census. (2) a map can be prepared to scale, with accurate depiction of landmarks, etc, only with the proper use of coordinates. Unlike a geo- coordinate map which is the "primary basis" of determination, the nomenclature and legends remain subordinate to the map depicting the latitude and longitude and cannot substitute the primary basis which fixes the contours of the authorized Geographical Area. Mention of the name of the district, taluks,

villages, etc. therein works only as a reference, and not as the grounds of the geographical limits. (3) They had sought the original (digital) maps used for the geo-coordinates map from the Board. These maps were provided by Board on 01.09.2020 (in the form of '.shp' file) and they were exactly as per the co-ordinates webhosted for the bid and later forming part of the authorization. This establishes that the 2nd Respondent is operating within the co-ordinates given in the map for the authorized GA. (4) the tender document does not refer to the said Public Notice, and the nomenclature of the GA is merely indicative and does not necessarily mean the whole district. (5) There is no overlap in GA Nos. 9.61 and 9.62, and the appellant is deliberately causing confusion between the boundary of a GA and that of the district. (6) the provisions of the Act, and the Regulations made thereunder, show that a specified geographical area could be a combination of administrative demarcation in entirety or a part thereof. Neither the PNGRB Act nor the Regulations restrict the specified geographical area to the administrative boundary, and the same is also not even remotely linked to any census data. (7) if the intention of the Board was to apply this district concept to the 9th Bidding Round, it would have appropriately incorporated the same in the Regulations, which were amended a couple of months before the date of conclusion of bid submission (i.e. 10.07.2018). Even during the bidding process, no such indication/ clarification was given by the Board. (8) the GA boundary and the district boundary are two entirely different concepts, and both serve completely different purposes. The GA boundary is the area/region depicted by the map with geo-coordinates as provided by the Board and for which the bid had been invited by the Board for the development of the CGD network. The concept of a district boundary is only for administration purposes. The district boundary does not have any sanctity under the statutory framework i.e. the PNGRB Act and the Regulations made thereunder. (9) the charge areas are merely a subset of

the GA, and cannot be forcibly introduced as a new basis for defining the specified geographical area, which does not exist in the PNGRB Act or in the Regulations framed thereunder. (10) The appellant's contention that the area awarded to the 2nd Respondent cannot be more than 3,569 sq. km is not tenable. The authorization for GA 9.62 states that the proposed CGD network shall cover an area of 3,569 sq. km "and as depicted in the enclosed drawing or map". It is, therefore, possible that the GA area number may be more or less than the number given, and it is the GA map which is sacrosanct. (11) Until the 10th CGD Bidding Round, all the GAs authorized by the Board were always accompanied by the map with geo-coordinates forming part of the authorization letter. The concept of referring to the maps of Survey of India has been introduced only from the 11th CGD Bidding Round. (12) The Public Notice dated 18.01.2018, for the supply of customized and inter-active maps, nowhere mentions that the vendor should place reliance on the Survey of India maps or on the district boundary as per the 2011 Census. As per the scope of work given in the said tender, the geographical data used by the vendor to prepare the maps could not have been more than 2 years old. In these circumstances, the question of placing reliance on the 2011 Census (for a tender issued in 2018) does not even arise. (13) The appellant was negligent and failed to undertake its own survey/ due diligence of the area. Its conduct and submissions are inconsistent with its own case before the Hon'ble Supreme Court and the Appellate Tribunal for Electricity (APTEL). (14) the Complaint is time-barred. The appellant had been authorized by the Board on 07.09.2018. It came to the knowledge of the appellant in June 2021 that 2nd Respondent was claiming certain outlets falling within GA authorized to the 2nd Respondent. The appellant had approached the Board on 11.04.2022, almost after a lapse of a year since then.

26. On the basis of pleadings and arguments, the PNGRB framed the following issues for determination: (i) **Issue No. 1:** Whether the Complaint was time barred as per the provision of Section 25 of the PNGRB Act?; (ii) **Issue No. 2:** Whether the boundaries of the Geographical Area authorized to the parties would be depicted on the basis of district boundaries as per 2011 census?; (iii) **Issue No. 3:** Whether the Subject CNG Stations were falling under the Geographical Area of the Complainant (ie the appellant)?; and (iv): Relief.

27. The Board then observed that, since its inception, it had conducted 11 CGD Bidding Rounds wherein 297 GAs had been authorized, which covered 97% of the population and 88% of the area of the country.

28. On Issue No. 1, the Board, after extracting Section 25 of the PNGRB Act, observed that, as per section 25 of the Act, the complaint had to be filed within 60 days from the date on which any act or conduct constituting a contravention took place; in view of the facts of the instant case, the Board observed that, various communications were exchanged between the appellant and the 2nd Respondent which lasted up to 22.02.2022 when the 2nd Respondent declined to stop the activities carried out in Kanchipuram District; the appellant had also contended that it came to know of the activities of the 2nd Respondent in Kanchipuram District in July 2021, since then communications were exchanged, and the opening and operating of the Subject CNG Stations would tantamount to arising of a continuing cause of action; and there was breach and violation in the authorized area of the appellant, which continued till date.

29. The Board expressed its inclination to agree with the submission of the appellant for the reason that the averments contained in the complaint stated that continuous contravention was taking place in the area authorized

to the Complainant; and, thus, this issue was decided in favour of the appellant and against the 2nd Respondent.

30. On Issue No. 2, the Board observed that, after forming a *prima-facie* view, it had issued public notices with respect to the process of bidding/authorizing the Geographical Areas, and the same nowhere affirmed that it would be a final decision of the Board; pursuant to issuance of the public notice, the Board invites comments/suggestion, if required, from the public at large; and thereafter, the Board takes into consideration the comments/suggestions and formulates its final decision.

31. The Board expressed its disinclination to accept the submission of the appellant that the public notice dated 01.03.2018 mentioned that the basis of identification of GA was Administrative District; the intention of the Board was never to authorize One Whole District as a Geographical Area; the Board, on various occasions, had authorized Full/Part/Multiple District(s) as a Geographical Area to numerous entities, in the 9th CGD Bidding Round; as per the contents of the ACBD, it was the obligation of the bidder that he must be completely aware of the whereabouts of the proposed geographical area and charge areas, for which the bid was being submitted; in the present case, both the appellant as well the 2nd Respondent had bid for the Subject GA wherein the appellant became the successful bidder; at the time of submission of bids for the Subject GAs, none of the parties had either brought this to the notice of the Board nor raised any objection regarding the issue relating to the boundaries of the GA of Kanchipuram District and Chennai & Trivullar Districts.

32. With respect to the contention of the appellant that the GA comprised of identified talukas, villages, population, households, and landmarks which were based on the district boundaries of Kanchipuram District as of Census 2011, and was the basis of the bid of the GA authorized under the 9th CGD

Bidding Round, the Board noted that the 2nd Respondent had claimed that they were working within the boundaries as per the co-ordinates provided in the map of authorization by the Board, and the geographical co-ordinates provided with the map demarcated the area represented in the map and therefore the locations that fell within the co-ordinates would form part of the relevant geographical area.

33. The Board then observed that, for determining the issue at hand, it was essential to look into Regulation 2(1)(c) of the CGD Authorization Regulations which defined “authorized area”; it was evident from the aforesaid definition that the specified geographical area for a CGD Network would be comprised entirely or partially of a district or sub-division or block or village or their combination and, further, an authorized area can also include any other contiguous area; it may be possible that different areas of the same district may be part of two or more separate authorized Gas; similarly, a specified GA could be a culmination of two areas falling in different districts; there was no requirement, either in the Regulations or otherwise, that the entire district should necessarily fall only in one specified area; there were various such GAs awarded by the Board in different times wherein such combinations could be seen; and, in ACBD, the Board clearly mentioned that the maps depicted the Geographical Areas and Charge Area.

34. The Board then extracted Regulation 10(1) read with Schedule D of the CGD Authorization Regulations which related to the “*Grant of Authorization*”, and observed that the appellant as well as the 2nd Respondent had accepted the terms and conditions of authorization of their respective Gas; and the terms and conditions of the authorization letter were sacrosanct in nature and could not be deviated.

35. The Board then referred to the map issued with Schedule-D which contained the following table:

<u>Kanchipuram District</u>		<u>Chennai and Trivullar District</u>	
<i>Charge Area ID</i>	<i>NAME</i>	<i>Charge Area ID</i>	<i>NAME</i>
CA-01	<i>Alandur</i>	CA-01	<i>Chennai</i>
CA-02	<i>Chengalpattu</i>	CA-02	<i>Ambattur</i>
CA-03	<i>Cheyyur</i>	CA-03	<i>Gummidipoondi</i>
CA-04	<i>Kancheepuram</i>	CA-04	<i>Maduravoyal</i>
CA-05	<i>Maduranthakam</i>	CA-05	<i>Mathavaram</i>
CA-06	<i>Sholinganallur</i>	CA-06	<i>Pallipattu</i>
CA-07	<i>Sripwerumbudur</i>	CA-07	<i>Ponneri</i>
CA-08	<i>Tambaram</i>	CA-08	<i>Poonamallee</i>
CA-09	<i>Tirukalkundram</i>	CA-09	<i>Thiruvallur</i>
CA-10	<i>Tiruporur</i>	CA-10	<i>Tiruttani</i>
CA-11	<i>Uthiramerur</i>	CA-11	<i>Uthukkotai</i>

<u>Kanchipuram District</u>		<u>Chennai and Trivullar District</u>	
<i>Total Population</i>	<i>39,98,252</i>	<i>Total Population</i>	<i>83,74,836</i>
<i>Total Household</i>	<i>10,060,245</i>	<i>Total Household</i>	<i>21,01,931</i>
<i>No. of charge area</i>	<i>11</i>	<i>No. of charge area</i>	<i>11</i>

36. It then observed that it was a matter of record that reference to the 2011 Census was made in the Bidding Document, for the limited purpose i.e. for Bid Bond and Application Fee, as it required the Successful Bidder to submit the Performance Bond as per the population in the 2011 Census of India.

37. The Board then referred to the ACBD issued at the time of 9th CGD Bidding Round, and to certain clauses therein. It noted that Clause 1.1.3 thereof stipulated that it was the bidder's responsibility to obtain all information related to the present gas supply availability and pipeline connectivity and also existing customers, if any, in the specified geographical

area; Clause 2.1.1 thereof stipulated that the bidder was expected to examine all the contents of the 'Application-cum-Bid document', including all instructions, forms, terms and conditions and all the regulations of PNGRB. The 'Application-cum-Bid document' together with all its annexures thereto shall be considered to be read, understood and accepted by the bidder. Failure to furnish any information required as per the 'Application-cum-Bid document' or submission of Application-cum-Bid not complete in every respect will be at bidder's risk and may result in the rejection of the Application-cum-Bid; Clause 2.1.2 stipulated that the bidder shall carefully study the geographical area and charge areas before submitting their Application-cum-Bid; and Annexure 1(Map) stipulated that the bidder shall carefully study the geographical area and charge areas before submitting their Application-cum-Bid.

38. From the aforesaid mentioned provisions, the Board made the following observations: (i) the appellant and the 2nd Respondent had participated in the bidding process of the 9th CGD Bidding Round, wherein the ACBD issued by the Board clearly stated that it was the responsibility of the bidder to carefully study the GA and the charge areas before submitting the bid; despite numerous opportunities granted by the Board to submit objections, the appellant did not submit any objection with respect to the same; (ii) the Board gave a tender to the vendor to prepare the map, wherein the vendor was given the scope of work which included that (1) the geographical data used by the vendor to prepare the maps should not be more than 2 years old, complete geo-referencing had to be provided in the supplied maps with standard cartographic symbology and colours; (2) All NH/SH & major roads and area segments such as residential, commercial, industrial, forest land / green area in urban /rural areas were to be indicated in the maps with their names. The vendor was required to collect details of

all administrative divisions such as Taluka/Tehsil/Mandal etc, (3) submissions shall also be in the form of geo referenced .shp files projected in WGS formats besides JPG and PDF formats along with 5 prints each of A1 size. (iii) the primary obligation of the vendor was to provide a map of the geographical area and, thereafter, provide population for the area so depicted and not vice versa. Reference to the 2011 Census population numbers find place only once, that too only in the context that the population data of the area was to be provided and authenticated with the source details; (iv) the tender document given to the vendor did not state that the Board shall provide a map (let alone the Census 2011 map) to the vendor for undertaking the exercise of preparing a customized map; and, in these circumstances, the appellant's claim that the Board provided a map (either the Census 2011 map of Kanchipuram revenue district or otherwise) to the vendor for preparation of the GA map was entirely speculative and false.

39. The Board further observed that the appellant had attempted to confuse two entirely different concepts, ie the GA boundary and the district boundary, even though both serve completely different purposes. (I) the demarcation of the boundary of a district is at the discretion of the Central/ State Government, and may undergo change with time for better administration as and when the change is notified; in the case of GA of Kanchipuram Districts also, the district of Kanchipuram has been split between Kanchipuram district and Chengalpattu district post the award of the GA to the appellant. On the contrary, the boundary of the GA remained the same even if there was a split or merger of district(s) after the GA was awarded to a CGD entity. In other words, the GA boundary is sacrosanct and cannot be altered post the bid. This also becomes clear when both the webhosted maps attached with the bidding document for GA No. 9.61 (Chennai and Tiruvallur Districts) and GA No. 9.62 (Kanchipuram Districts) are juxtaposed with each other. Not only the bifurcated GA boundaries of the

respective maps seamlessly coalesce (without any overlap whatsoever) but also reflect and match with the position of major landmarks in the area. (ii) Reliance has been placed by the appellant, upon the communication received from the Board on 23.09.2021, to claim that the maps of Survey of India/ local authorities were relevant for ascertaining the GA boundary. On observing the letter dated 23.09.2021, it is found that the appellant is deliberately twisting the communication from the Board out of context. (iii) the Board's letter dated 23.09.2021 to the Appellant, in response to their request to provide "digital map, clearly showing the administrative boundaries of the Kanchipuram District GA (ID9.61) for detailed planning and development of infrastructure"; it was only in this context that the Board replied that the district boundaries within the GA are considered to be as defined by the Survey of India/ Office of the Registrar General and Census Commissioner; the Board also clarified that, in case any confirmation was required in relation to a district's boundary, the same shall be dealt directly with the district administration or municipal corporation; thus, the Survey of India/ Government maps were only meant for administrative purposes, including to plan and make applications to local authorities, etc. (iv) until the 10th CGD Bidding Round, the GAs authorized by the Board had always been accompanied by the map with geo-coordinates forming part of the authorization letter. The concept of referring to the maps of Survey of India has been introduced only from the 11th CGD Bidding Round. In the 11th CGD Bidding Round, the bid document did not include the map of the GA which was proposed to be awarded. Instead, the Board asked the bidders to procure the maps for identification of district and charge area boundaries from the Survey of India. The tender document for the 11th CGD Bidding Round states: *"The district boundary within this GA shall be as defined by the respective local authority, such as district administration. Bidders may procure the maps for identification of District and Charge Area boundaries*

from Survey of India. However, the boundary should be duly vetted by district administration for correctness on ground. Bidders are informed that any dispute arising in relation to boundary shall be dealt directly with the District Administration or Municipal Corporation. PNGRB shall have no role in defining the boundary, except the nomenclature of that particular district and charge areas falling in the GA.”; it is clear that the Survey of India maps/ maps issued by local authorities have no relevance in the present case i.e. for bids awarded as part of the 9th CGD Bidding Round.

40. After referring to Clauses 2.2 to 2.2.2 of the Bid Document for the 9th CGD Bidding round, which relates to clarifications of Application-cum-Bid document, the Board observed that it was clear from the said clauses that an opportunity was provided to all the bidders to clear their doubts, if any with respect to the tender document which inter- alia included the map as well; a visual inspection of the map for the GA of Chennai and Tiruvallur Districts made it clear that the GA boundary of Chennai and Tiruvallur Districts extended beyond the district boundary of Chennai and Tiruvallur; if one referred to the GA map of Kanchipuram District as well, it would be clear that GA Nos. 9.61 and 9.62 represent mutually exclusive areas and there is no overlap whatsoever between the two; the appellant did not show any prudence or proactiveness in seeking clarification from the Board regarding the map, if it so required; (ii) in its judgment dated 17.02.2020, the Supreme Court also recognized that the bidders were required to obtain information on their own and were also required to carefully study the GA and the charge area before submitting the bid; (iii) It is an undisputed fact that, vide Tamil Nadu Government Gazette numbered as No. II/(1)/RDM/(B)/2018 dated 04.01.2018, some villages which formed part of Kanchipuram District was shifted to Chennai District, before the launch of 9th CGD Bidding Round; if the said fact was brought to the knowledge of the Board, at the time of 9th CGD Bidding Round, then the GA authorized to the 2nd Respondent would

have also included the said shifted villages; however, at this stage, keeping in mind the well settled law i.e. the Rule of Estoppel by Conduct which meant that when a person through agreement, misrepresentation or negligence makes the other person believe in certain things upon which the other person had taken some action causing a change in their current situation, then the first person cannot deny the veracity of the statements given by him in the latter stages, the Board was not in a position to take cognizance of the Official Gazette dated 04.01.2018. (iv) in view of the above, the Board was of view that the 2nd Respondent was strictly operating within the co-ordinates provided by the PNGRB through a GIS map as part of their authorization letter. The 2nd Respondent had accepted the map for GA 9.61 during the bidding round, and also as a part of their authorization letter; the appellant had neither raised any query during the bidding process nor raised any objections on the GIS map given to them as a part of their authorization letter; the appellant had also not disputed the sanctity of the co-ordinates given in the maps; the GIS map for GA No. 9.62 clearly demarcated the GA boundary with pink line and the district boundaries with black line; it was also clear that there was no overlap in maps for GA No. 9.61 and 9.62; it was also clear that the concept of survey of India Map was introduced by the Board from the 11th CGD bidding round, and the same cannot be applicable to the GAs awarded during the 9th CGD Bidding Round; and, thus, this issue was decided against the appellant.

41. On Issue No. 3, the Board observed that, in view of the afore-said deliberations, they were holding that the subject disputed area did not fall under the authorized area of the 2nd Respondent; hence, the CNG Station No. 1 to 5 were not under the GA of the appellant; and, therefore, this issue was decided against the appellant.

42. The Board summarized its conclusions holding that the concept of Survey of India Map was introduced by the Board from the 11th CGD bidding round, and the same could not be made applicable to the GAs awarded during the 9th CGD Bidding Round; the 2nd Respondent was strictly operating within the coordinates provided by the PNGRB through a GIS map as part of their authorization letter.

43. In view of these facts, the submission made by the parties, and the observations made, the Board held that the instant Complaint merited dismissal being devoid of merits. The interim order also stood vacated.

IV. RIVAL CONTENTIONS:

44. Elaborate submissions, both oral and written, were put forth by Sri. Paras Kuhad, Learned Senior Counsel appearing on behalf of the Appellant, Sri Rahul Sagar Sahai, Learned Counsel appearing on behalf of the Respondent-PNGRB, and Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent. It is convenient to examine these rival contentions under different heads.

V. BELATED FILING OF COMPLAINT:

45. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that, after almost 4 years from the date of its authorization i.e. 26.09.2018, the appellant filed a complaint against the 2nd Respondent before the PNGRB in April 2022, *inter alia*, alleging that the 2nd Respondent was undertaking development of 19 Compressed Natural Gas (“CNG”) stations within the areas specified to be a part of GA No. 9.61; as the complainant, the onus was on the appellant to show that the disputed CNG stations are located in GA No. 9.61; however, the appellant has not proved or shown even once the exact location of the CNG stations till date either on the GA map or in the .shp file provided by the PNGRB; instead,

the appellant is causing confusion by introducing irrelevant considerations and attempting to re-open the bid process; an attempt has been made to turn a commercial dispute about the location of CNG stations into a litigation about the process of determination of a GA; in any case, the 2nd Respondent has unequivocally demonstrated, using the GA map as well as the .shp files given by the PNGRB, the exact location of the CNG stations, and that all the disputed 19 CNG stations fall squarely in the GA awarded to them; PNGRB dismissed the complaint filed by the appellant, vide its order dated 22.12.2022, holding that the *“subject disputed area does not fall under the authorized area of the Respondent (ie the appellant)”*; the PNGRB held that the 2nd Respondent was *“strictly operating within the coordinates provided by the PNGRB through a GIS map as a part of their authorization letter”*; PNGRB further noted that the appellant had accepted the map for GA No. 9.61 during bidding, and also as a part of their authorization letter, and no query or objection with respect to the map was raised at any point; and, further, the sanctity of the coordinates given in the map were also not disputed by the appellant.

46. This issue, regarding belated filing of the complaint, was considered by the PNGRB in the impugned Order dated 22.12.2022, and it was observed that bids were invited on 12.04.2018 for the 9th CGD Bidding Round for various Geographical areas, including the Geographical Areas of Chennai- Tiruvallur, and Kanchipuram Districts; the 2nd Respondent was granted authorization by the PNGRB, vide letter dated 07.09.2018, for development of CGD Network in the GA of Chennai and Tiruvallur Districts, the terms and conditions of which were accepted by the 2nd Respondent on 11.09.2018, and the said authorization was amended in favour of the 2nd Respondent vide letter dated 01.09.2020; the appellant was granted authorization vide letter dated 26.09.2018 for Kanchipuram GA, and the said authorization was amended in favour of the Complainant vide

letter dated 01.09.2020; a complaint was filed by the Appellant on 11.04.2022 against the 2nd Respondent; a press release was issued by the Board on 14.09.2018, identifying successful bidders for the 86 authorized GAs; and this was subjected to challenge before this Tribunal in '*Adani Gas Limited vs Petroleum and Natural Gas Regulatory Board & Anr.*' (Appeal No. 292 of 2018), and '*IMC Limited vs Petroleum and Natural Gas Regulatory Board & Anr.*' (Appeal No. 323 of 2018).

47. On Issue No. 1, ie whether the complaint was time barred as per the provision of Section 25 of the PNGRB Act, the Board observed that, as per Section 25 of the Act, the complaint had to be filed within 60 days from the date on which any act or conduct constituting a contravention took place; various communications were exchanged between the appellant and the 2nd Respondent which lasted up to 22.02.2022 when the 2nd Respondent declined to stop the activities carried out in Kanchipuram District; the appellant had also contended that it came to know of the activities of the 2nd Respondent in Kanchipuram District in July 2021; since then communications were exchanged; the opening and operating of the Subject CNG Stations would tantamount to arising of a continuing cause of action, and there was breach and violation in the authorized area of the appellant, which continued till date.

48. The Board expressed its inclination to agree with the submission of the appellant for the reason that the averments contained in the complaint stated that continuous contravention was taking place in the area authorized to the Complainant; and, thus, this issue was decided in favour of the appellant and against the 2nd Respondent.

A. ANALYSIS:

49. Section 25 of the PNGRB Act, 2006 relates to the filing of complaints. Section 25(1) enables a complaint to be filed before the Board by any person in respect of matters relating to entities on any matter arising out of the provisions of the PNGRB Act. Section 25(2) requires every complaint, made under sub-section (1), to be filed within sixty days from the date on which any act or conduct constituting a contravention took place and shall be in such form and shall be accompanied by such fee as may be provided by Regulations. The proviso to Section 25(2) enables the Board to entertain a complaint after expiry of the said period if it is satisfied that there was sufficient cause for not filing the complaint within that period.

50. As noted hereinabove, the Board has held this issue in favour of the Appellant and against the 2nd Respondent, and the present Appeal has been filed not by the 2nd Respondent, but by the Appellant herein. While the 2nd Respondent may well be entitled to sustain the order of the PNGRB on grounds which were held against it by the Board, in view of the Order 41 Rule 22 CPC, it must also be borne in mind that it is only if this Tribunal were to be satisfied, that the reasons which weighed with the PNGRB in rejecting this contention of the 2nd Respondent is ex facie illegal, would interference be justified.

51. More than one year four months after the Appellant accepted the terms and condition of authorization vide its letter dated 20.02.2020, Hindustan Petroleum Corporation Limited informed the Appellant on 17.06.2021 that discussions were in progress with the 2nd Respondent for installation of compressed natural gas stations in Chennai. In response thereto, the Appellant informed HPCL that some of these petrol stations fell under their GA. In response, HPCL informed them by e-mail dated 21-06-2021 that the 2nd Respondent was contending that some of these petrol stations fell in their GA. Thereafter, correspondent ensued between the Appellant and the 2nd

Respondent on 07-07-2021 and 08-07-2021. The Appellant requested the Board, vide its letter dated 17.08.2021, to provide GIS based Geographical Area map which was based on the Survey of India Map and informed them of the agencies which had been finalised to provide the map, so that the Appellant would procure the same from such agencies with due permission of the Board, and that they be provided with the digital map of the subject GA. The Board thereafter, vide its letter dated 23.09.2021, informed the appellant that the GIS map, indicating the respective GA area and boundaries, had already been provided along with the authorisation letter. The Appellant then approached the District Collector, Kanchipuram, vide its letter dated 24.09.2021, seeking a copy of the District Map of Kanchipuram district in accordance with the Census of India, 2011. On receipt thereof, the Appellant, vide letter dated 19.10.2021, informed the Oil Marketing Companies of the details of the boundaries of their GA contending that the CNG stations set up by the 2nd Respondent in the subject GA were in violation of the PNGRB Act and the authorization vested with the Appellant.

52. On 19.01.2022, the Appellant informed the Board of the error which had occurred in the area mentioned in the authorisation letter dated 26.10.2018, mentioning the total authorised area of GA 9.61 as 6936.50 square kilometres instead of 4483 square kilometres, and that it needed correction. The Board, vide the letter dated 31.01.2022, carried out the necessary corrections.

53. Vide letter dated 31.01.2022, the Appellant informed the 2nd Respondent that they were attempting to set up CNG dispensing facilities in the subject GA. They were requested to stop construction activities undertaken by them at various CNG stations. In response thereto, the 2nd Respondent, vide letter dated 22.02.2022, informed the Appellant that the Chennai GA was spread over certain parts of Kanchipuram as per the map

web-hosted by the Board during the bidding process, and the activities carried out by the 2nd Respondent were in compliance with the geo-coordinate boundary of Chennai GA. Thereafter, the Appellant filed a complaint before the Board on 11.04.2022.

54. It is clear therefore that the delay on the part of the Appellant, in approaching the Board under Section 25 of the PNGRB Act by way of its complaint, was neither wilful nor deliberate. The facts narrated hereinabove do show that the Appellant initially endeavoured to have the issue amicably resolved with the 2nd Respondent, and it is only when it failed to do so did it approach the Board by filing the complaint. Further, In the impugned order, the Board has noted that various communications were exchanged between the Appellant and the 2nd Respondent up to 22.02.2022 when the 2nd Respondent declined to stop the activities being carried out by them in Kanchipuram District. The Appellant has also contended that it became aware of the activities of the 2nd Respondent in Kanchipuram District only in July 2021, since then communications were exchanged, and the 2nd Respondent continuing operating the subject CNG Stations would tantamount to the arising of a continuing cause of action as there was a continuing breach and violation in their authorized area. It is in such circumstances that the Board decided this issue in favour of the Appellant holding that the averments in the complaint alleged continuous contravention was taking place in the area authorized to the Appellant.

55. While the proviso to Section 25(2) no doubt enables the PNGRB to entertain a complaint after expiry of the period of 60 days, if it is satisfied that there was sufficient cause for not filing the complaint within the said period, we are satisfied that, in the light of the above-referred facts and the conclusion of the PNGRB that the cause of action was continuing, the Appellant cannot be said to have filed the complaint belatedly.

56. In this context it is necessary to understand what constitutes a continuing cause of action. A continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought. If once a cause of action arises, and the acts complained of are continuously repeated, the cause of action continues and goes on *de die in diem*. If there is a connection between the series of acts before and after the action was brought, and they are repeated in succession, they become a continuing cause of action. They are an assertion of the same claim, and a continuance of the same alleged right. (***Hole v. Chard Union* [(1894) 1 Ch D 293 : 63 LJ Ch 469 : 70 LT 52; *Commissioner of Wealth Tax, Amritsar v. Suresh Seth*, (1981) 2 SCC 790).**

57. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. (***Balkrishna Savalram Pujari v. Shree Dnyaneshwar Maharaj Sansthan*: AIR 1959 SC 798; *Commissioner of Wealth Tax, Amritsar v. Suresh Seth*, (1981) 2 SCC 790).**

58. The true principle appears to be that where the wrong complained of is the omission to perform a positive duty requiring a person to do a certain act, the test to determine whether such a wrong is a continuing one is whether the duty in question is one which requires him to continue to do that act. Breach of a covenant to keep the premises in good repair, breach of a continuing guarantee, obstruction to a right of way, obstruction to the right of a person to the unobstructed flow of water, refusal by a man to maintain his wife and children whom he is bound to maintain under law and the carrying on of mining operations or the running of a factory without complying with

the measures intended for the safety and well-being of workmen may be illustrations of continuing breaches or wrongs giving rise to a civil liability *de die in diem*. (**Commissioner of Wealth Tax, Amritsar v. Suresh Seth, (1981) 2 SCC 790**).

59. In case, the Appellant's contention that the subject CNG stations fall within their authorised GA is held to merit acceptance, then the continuing operation of the CNG Stations by the 2nd Respondent in the appellant's GA would be a continuing violation of the appellant's authorisation resulting in a continuing cause of action. In which case, the complaint cannot be said to have been filed belatedly, since Section 25(2) requires every complaint, made under sub-section (1), to be filed within sixty days from the date on which any act or conduct constituting a contravention took place. As the act or conduct of the 2nd Respondent, which resulted in a contravention taking place, continues even as on date, the sixty' day limitation period cannot be said to have expired till date. We are satisfied, therefore, that this contention urged on behalf of the 2nd Respondent necessitates rejection.

VI. EARLIER LITIGATION BEFORE THE SUPREME COURT:

60. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that an appeal (Appeal No. 292 of 2018) was filed before this Tribunal by Adani Gas Limited challenging, *inter alia*, the decision of the PNGRB to award GA No. 9.61 and GA No. 9.62 to the appellant and the 2nd Respondent respectively; the primary question in this appeal was whether a bidder could have quoted a bid to connect domestic piped-natural gas connections less than 2% or more than 100% of the total households existing as per the Census of 2011, even though this criteria was not mentioned in the Bid Documents; for this purpose, it was imperative to decide the relevance of the Census of 2011 data in the bidding process conducted by PNGRB; on 28.02.2019, this Tribunal pronounced its judgment

in the appeal; in the appeal preferred thereagainst in **Adani Gas Limited v. Petroleum and Natural Gas Regulatory Board & Ors. [Civil Appeal No. 3992 of 2019; (2020) 4 SCC 529**, the Supreme Court upheld the award of GA Nos. 9.61 and 9.62; the findings of the Supreme Court are summarized as (a) the Census 2011 figures were only utilized to peg the net-worth requirement and value of the performance bond to be submitted by a bidder; and where a specific linkage was sought, with reference to the 2011 Census data, a clear and categorical provision was made to that effect; the Supreme Court then analysed why Regulation 7 of the 2008 Regulations did not provide for a link with the Census of 2011; (b) *On the Bid Document*, the Supreme Court considered the provisions of the Bid Document in detail and held that merely because the map given with the Bid Document contained a reference to population and household figures on the basis of the Census of 2011 did not mean that the Census of 2011 was the basis of submission for bids; thereafter, the Supreme Court also reiterated the principle that a bidder could not have been disqualified on the basis of a criterion which was not notified, and of which the bidders had no knowledge, as that would be arbitrary and in violation of Article 14; the key takeaways from the judgment of the Supreme Court can, thus, be summarized as follows: (a) the Census of 2011 has no relevance, except to peg the performance bond and net-worth, with respect to the 9th Bidding Round; (b) under the Bid Document, the bidders were required to obtain information about the present gas supply availability, the pipeline connectivity and the existing customers in the GA; bidders were also required to examine the contents of the Bid Document including instructions, terms and conditions and regulations of the Board; the data given in the map (population, household etc.) was, at best, a compendium of the latest official record of the GA, and (c) a criterion which was not notified to the bidders at the time of bidding (i.e. not specified in the Bid Document) cannot be applied as that would be a violation of Article 14.

A. JUDGEMENT OF THE SUPREME COURT IN ADANI GAS LTD. V. PETROLEUM & NATURAL GAS REGULATORY BOARD, (2020) 4 SCC 529:

61. In *Adani Gas Ltd. v. Petroleum & Natural Gas Regulatory Board, (2020) 4 SCC 529*, the Supreme Court noted that, in 2018, the Petroleum and Natural Gas Regulatory Board (“the Board”) had conducted the ninth round of bidding for City or Local Natural Gas Distribution Networks (“CGD Networks”); on 14-9-2018, a press release was placed on the Board's website notifying details of the successful bidders in various geographical areas (GAs); and the contest in the batch of appeals before it had arisen over the grant of authorisation for laying, building, operating or expanding CGD networks, among others, in the following GAs: (i) GA 61 — Kanchipuram District; and (ii) GA 62 — Chennai & Tiruvallur Districts; two appeals were instituted thereagainst before APTEL, one by Adani Gas Ltd and the other by IMC Ltd. Adani Gas Ltd had preferred the appeal against the decision of the Board to award Lols, in respect of three GAs — 51 (Puducherry District), 61 (Kanchipuram District), and 62 (Chennai & Tiruvallur Districts), on the ground that the successful bids were beyond the unreasonably high limit adopted by the Board. By their separate judgments, the Chairperson and Member Technical (Petroleum and Natural Gas) rendered divergent findings, following which the Chairperson directed that the proceedings in the two appeals be placed before the judicial member. The judicial member recused from hearing the appeals on 7-3-2019. This led to the institution of appeals before the Supreme Court which, in the exercise of its powers under Article 142 of the Constitution, transferred the proceedings before Aptel to itself in order to bring finality to the dispute.

62. After taking note of Regulations 5, 5(6), 6, 7 and 9 of the 2008 Regulations, the Supreme Court observed that, under Regulation 7, the Board, while considering proposals for authorisation, shall tabulate and

compare all financial bids which meet the minimum eligibility criteria in accordance with the bidding criteria set out; the Table set out in Regulation 7(1)(a) provided for the tabulation of all eligible financial bids on the basis of five parameters and the weightage to be ascribed to each of them; the first criterion is the “lowness” of the transportation rate for CGD computed in rupees per million for a British Thermal Unit, and the weightage ascribed to this criterion is 10%; the second criterion is the “lowness” of the transportation rate for CNG expressed in rupees per kilogram, and the weightage ascribed to this criterion is 10%; the third criterion is the “highness” of the number of CNG stations to be installed within eight contract years from the date of authorization, and the weightage ascribed to this parameter is 20%; the fourth criterion is the “highness” of the number of domestic piped natural gas connections to be achieved within eight contract years from the date of authorization, and the weightage ascribed to this criterion is 50%; the fifth criterion is the “highness” of the inch-kilometre of steel pipeline to be laid within eight contract years from the date of authorization, and the weightage ascribed to this parameter is 10%.

63. The Supreme Court then observed that Regulation 7(1)(b) sets out a year-wise work programme indicating the progress which must be achieved by the successful bidder every year during the course of eight contract years from the date of authorization; under Regulation 7(3), a bidding entity with the highest composite score, in terms of the criteria contained in sub-regulation (1), is to be declared as the successful bidder; the illustration thereto shows that the entity, which has quoted the highest number of PNG domestic connections to be achieved, is allotted a score of 100%; the entities below the highest were to be assigned a score in relation to the first entity on a proportionate basis; under Regulation 9, the grant of an authorisation is to be issued to a successful entity after it furnishes a performance bond, and the quantum of the performance bond is based on the population of the

GA as determined with reference to the Census data of 2011; from an analysis of the CGD Authorisation Regulations, it becomes evident that the 2011 Census figures have been utilised to peg the net worth requirement in Regulation 5(6)(e) and the value of the performance bond to be submitted to the Board post authorisation in Regulation 9; and, significantly, Regulation 7, which provides a Table specifying the five bidding criteria to evaluate competing bids, does not link the said criteria with the census figures of 2011.

64. The Supreme Court noted that, on 12-4-2018, the Board had initiated the bidding process for authorising entities to lay, build, operate or expand CGD networks for the ninth round, and bids were invited by means of an application-cum-bid-document for each GA; the bidding process covered various GAs, including those of (i) GA 61 — Kanchipuram District; and (ii) GA 62 — Chennai-Tiruvallur; on 31-5-2018, Addendum 1 to the bid document was issued by the Board; Clause 14.2, inserted as a result of Addendum 1, clarified that, what should be considered to be the level of “unreasonably high” or “unreasonably low” quotes, shall be decided by Board at the time of bid evaluation on a case-to-case basis after considering the relevant factors’ in terms of the said stipulation; the Board clarified that the determination of an unreasonably high or low quote would be made by the Board at the time of bid evaluation on a case-to-case basis after considering the relevant factors; on 23-7-2018, a note (“Board Note”) was moved for the approval of the members of the Board with a view to encourage serious bidders and to avoid unrealistic/unreasonable bidding in terms of Clause 4.4.1 of the bid document; the Board Note provided for the reasonability of bidding parameters; the Board Note was approved by the members of the Board including the Chairperson; and, between 24-7-2018 and 18-8-2018, the financial bids submitted by the bidders for various GAs were opened by the Board.

65. The Supreme Court observed that the Board Note of 23-7-2018 adopted the Census 2011 data, on the total number of households, as the basis for computing the minimum and maximum limits for the purpose of determining unreasonably low or unreasonably high quotes; the Board Note stipulated that 2% of the total households in terms of the Census 2011 data would be regarded as the minimum quote; anything below 2% would be considered unreasonably low; similarly, on the upper end of the spectrum, the Board Note proposed that 100% of the total households in terms of the Census 2011 data would be regarded as the maximum; a quotation beyond this upper limit would be construed to be unreasonably high; and two features of the Board Note dated 23-7-2018 must be noted - first, the Board Note was generated after the last date for the submission of bids, and second, the Board Note was an internal document of the Board which was not notified to the bidders.

66. The Supreme Court observed that the first aspect, which formed the subject-matter of the controversy, was the relevance of the 2011 Census data in the bidding process; the primary plank on which the appellants contend that the 2011 Census data was relevant to the bidding process was the reference to population/household figures derived from the 2011 Census data in the map annexed to the bid document; it was contended that (i) the map attached to the bid document did not only describe the land area but also the population and households comprised in it, (ii) the rationale for this was that the authorisation is to lay the CGD network in a defined land area and to service the defined households in that area, (iii) the figures for population and number of households in the map attached to the bid document were drawn from the 2011 Census, (iv) in several areas out of the 86 GAs which were a part of the ninth round of bidding, certain parts of the GAs were excluded from the zone of authorization, (v) whenever certain parts of the GAs were excluded from the zone of authorisation, the

population/household number was proportionally reduced to reflect the population/households as per the reduced area. Examples of the above are Surendranagar (GA 8); and Medchal-Ranga Reddy (GA 72); (vi) in GA 72, Medchal-Ranga Reddy: (a) the original map attached to the bid document showed the entire district with a corresponding number of households of 13,47,118 according to the 2011 Census, (b) the bid document was amended to exclude the area in which an existing entity was already laying a CGD network as a result of which not only was the land area reduced but even the number of households was reduced to 4,56,557, (c) Torrent Gas Pvt. Ltd., which was the highest bidder for the reduced area, had bid 10,05,300 PNG connections, which worked out to 74.6% of the original number of households (13,47,118) and 220% of the reduced number of households (4,56,557), (d) the Board, at its meeting on 29-8-2018, rejected the H1 bidder for GA 72 on the ground that the bid of 220% of the households was unreasonably high, (e) the bid of the H1 bidder for GA 72 was in fact 99% of the estimated households for 2026 but was yet rejected as the “unreasonably high” norm was with reference to the 2011 Census, and not 100% of the 2026 estimate because, if it was the latter, the H1 bidder would have been declared to be successful, (f) the map annexed to the bid document depicted not only the land area but also the population/number of households which were intrinsically inter-twined in the bid parameters, (g) clause 1.1.3 of the bid document mandated bidders to look at the “existing population”, hence, it was incorrect to suggest that the bidders had to keep in mind the population in the GAs in 2018, and, on the contrary, Clause 1.1.1 required bidders to bear in mind the population/households as given in the map annexed to the bid document.

67. The Supreme Court observed that the submission urged on behalf of the appellants, in regard to the relevance of the 2011 Census data, must first and foremost be assessed in the context of the CGD Authorisation

Regulations as amended on 6-4-2018; the Regulations postulated that bidders must submit both technical and financial bids; the procedure specified in Regulation 5 applied to an invitation by the Board for laying, building, operating or expanding a CDG network; Regulation 5(6) required the fulfilment of minimum eligibility criteria; for a technical bid to pass muster, the minimum eligibility criteria required the bidder to be qualified both with reference to technical and financial parameters; this was evident from Regulation 5(6) under which the Board was to scrutinise the bids of only those entities which fulfilled the minimum eligibility criteria; the minimum eligibility criteria included the technical capability of the bidding entity to (i) lay and build; and (ii) operate and maintain a CGD network; both of them were defined with reference to the qualifying criteria; besides the technical criteria, the minimum eligibility requirement under Regulation 5(6)(e) incorporated the financial ability to execute the project and to operate and maintain it in the authorised area; the financial criteria were defined with reference to the minimum net worth of the bidding entity; the net worth required was dependent on the population of the GA under the 2011 Census; the minimum net worth required was specifically defined with reference to the 2011 Census figures of population for the GA; the bidding entity was also required to submit a bid bond in the form of a performance bond guarantee; and the quantum of the guarantee was dependent on the population of the GA.

68. The Supreme Court further observed that Regulation 7 required the Board to tabulate all financial bids which met the minimum eligibility criteria, in accordance with the bidding criteria specified in the table; the table incorporated in the Regulation provided five-fold criteria for the tabulation and comparison of financial bids; significantly, the bidding criteria in Regulation 7 are not linked to the 2011 Census figures; there were two significant facets of Regulation 7: (i) the absence of a linkage of the projected

number of domestic PNG connections with the 2011 Census data; and (ii) the absence of a cap or ceiling on the “highness” norm both in relation to the third and the fourth criteria; the provisions contained in the 2008 CGD Authorisation Regulations, as amended on 6-4-2018, indicated that where a specific linkage was sought with reference to the 2011 Census data, a clear and categorical provision was made to that effect; such provisions were found in regard to the financial capability of a bidder as part of the minimum eligibility criteria in Regulation 5(6)(e), and the extent of the performance bond in Regulation 5(6)(h); absent a condition in Regulation 7, linking the “highness” of the number of PNG connections to be achieved within eight years from the date of authorisation with the 2011 Census data, it would be contrary to basic principles of interpretation to read such a restriction into the CGD Authorisation Regulations; a conditionality which had not been incorporated in Regulation 7 could not be introduced as a matter of construction; and the Court must first and foremost read the Regulation in accordance with its plain and natural meaning.

69. The Supreme Court then observed that there was evidently a reason why Regulation 7 did not introduce a ceiling or provide for a linkage with the Census data of 2011; consumers or users, as the case may be, in a CGD network broadly comprised of four categories, namely: (i) Domestic; (ii) Commercial; (iii) Industrial; and (iv) Vehicular; the Board had submitted with justification that, in a model of cross-subsidisation, the viability of the project had to be perceived from a twenty-five-year perspective; gains in one category of users could offset the losses in another category; the CGD Authorisation Regulations were intended to subserve the object of establishing the infrastructure necessary for setting up an operational CGD network; in creating the infrastructure, the successful entity was contractually bound to set up a project for the future; the infrastructure so created would be of service to consumers or, as the case may be, users;

infrastructural projects catered to future needs could legitimately be forward looking; it was from this perspective that, except for the tariff in the first two bidding criteria of Regulation 7 (the transportation rates for CGD and CNG), no ceiling was provided by the Board for the criteria set out in Regulation 7; more particularly, Regulation 7(3) provided for a mandate to tabulate and compare the bids of all entities which had met the minimum eligibility criteria upon their qualifying in a competitive bidding process; the Regulations did not contemplate the disqualification of a bidder with reference to a norm which would limit a bid to 100% of the population figures provided by the 2011 Census data; and for the Board to stipulate an absolute norm to that effect, when it has not been specifically incorporated in the Regulations, would have rendered the decision-making process vulnerable to a challenge on the ground that it was not consistent with Regulation 7.

70. The Supreme Court then held that Clause 1.1.1 of the bid document incorporated a reference to the GA as depicted in the map set out in Annexure 1, for which the Board was inviting bids for the grant of an authorisation to develop a CGD network; the main plank of the submissions of the appellants was that the map contained a reference to population and household figures on the basis of the 2011 Census; clause 1.1.3 placed the responsibility on the bidder to obtain information about the present gas supply availability, the pipeline connectivity and the existing customers in the GA; significantly, the scope of work in Clause 1.2 required bidding entities “to lay, build, operate or expand the CDG networks” to meet the requirement of natural gas“ in domestic, commercial and industrial segments including natural gas in the vehicular segment in the said geographical area to be authorised”; bidders were required under Clause 2.1.1 to examine the contents of the bid document including instructions, terms and conditions and regulations of the Board; the bidder was required to carefully study the GA and the charge area before submitting the bid; in other words, bidders

were on notice of the actions required to be taken to implement the Regulations; the bid document necessarily had to be in conformity with the CGD Authorisation Regulations; the map, at best, was a compendium of the latest official record of the GA; the map did not dictate how the number of domestic PNG connections was to be calculated; there was no such indication particularly in Clause 1 of the bid document where the map was referenced; the mere attachment of a map to the bid document would not result in the imposition of conditions of eligibility or qualification; these have been provided in the Regulations which have a statutory character; and the depiction of the GA in a map attached to the bid document did not override the specific requirements of the bidding criteria as defined in Regulation 7.

71. With respect to the appellants' contention, that the decision which was taken in the form of the Board Note dated 23-7-2018 had categorically stipulated a range of 2% to 100% of the number of households as per the 2011 Census as the minimum/maximum threshold to judge the reasonableness of the bids and, despite this, the decision of the Board dated 10-8-2018 virtually reversed the earlier decision recorded in the Board Note of 23-7-2018 thereby tainting the decision-making process with arbitrariness, the Supreme Court summarized the contentions as under: (i) the 2 to 100% criterion based on the 2011 Census data was the basis on which the bids for 79 out of 86 GAs were evaluated; (ii) in respect of the bids for four GAs (out of the remaining seven GAs) where the highest bidder had bid a number of PNG connections below 2% of the number provided by the 2011 Census, those four bidders were furnished with an opportunity to improve their bids and match the 2% threshold; (iii) it was only for the three bidders, with the highest composite scores in GAs 51, 61 and 62, that the bids were evaluated with reference to the projected number of households in 2026; and (iv) for example, in GA 62 (Chennai-Tiruvallur), there were ten bidders of whom the bids of nine were evaluated with reference to the 2011 Census data on the

number of households, whereas the bid of one bidder (Torrent Gas Pvt. Ltd.) had been evaluated with reference to the number of projected households in 2026.

72. The Supreme Court held that the CGD Authorisation Regulations, as amended on 6-4-2018, revealed that the Regulations did not contain any stipulation determining a range of 2 to 100% of the number of households under the 2011 Census as the criterion to evaluate bids; the Regulations did not link the “highness” factor of domestic PNG connections to the 2011 Census data; in Clause 4.4.1 of the bid document, the Board reserved to itself the right to reject any unreasonably high or low bid; in Addendum 1 to the bid document, the Board clarified to all prospective bidders that the evaluation of whether a bid was unreasonably low or high would be conducted on a case-to-case basis at the time of bid evaluation; if the Board Note of 23-7-2018 were to be construed in the manner in which the appellants had urged, the automatic disqualification of bidders based on a criterion introduced by the Board Note would raise serious doubts about its fairness and legality; this was because the Board Note was not notified to bidders as a basis for evaluation of bids before the date for the submission of the bids had closed; to disqualify a bidder on the basis of a criterion which was not notified and of which bidders had no knowledge would be arbitrary and would constitute an infraction of Article 14; the Board was thus correct in determining that the automatic disqualification of a bid on the basis of a criterion specified in the Board Note (which was never notified to the bidders) would not be “legally correct”; hence, it would be reasonable to interpret the Board Note dated 23-7-2018 as being the formulation of a guideline for the Board; as a guideline in the process of evaluation, the decision taken by the Board on 23-7-2018 was not to the effect that every bid below 2% or above 100% would necessarily stand disqualified; consistently with the use of the word “may be”, the decision of the Board meant that the power which the

Board reserved to itself in Clause 4.4.1 could be invoked if it came to the conclusion that the bid had not been justified to be reasonable; in other words, the breaching of the range of 2 to 100% was a trigger for the Board to scrutinise the bid and determine whether the power under Clause 4.4.1 should be invoked; hence, the course of action which the Board followed of calling upon the bidders with the highest composite scores in GAs 51, 61 and 62 to justify their bids in terms of their reasonableness could not be faulted; on the contrary, if the Board had rejected these bids solely on the ground that they were above the limit of 100% of households under the 2011 Census data, the decision would have been seriously flawed for having applied a criterion which was not a part of the Regulations, was not embodied in the bid document and, in any event, was not notified to bidders before they had submitted their bids; evidently, for the purpose of projecting the number of PNG connections within a GA, it was the number of households and not the overall population that was relevant as each household was unlikely to have more than one PNG connection; moreover, as neither the CGD Regulations nor the bid document required the number of projected households to be calculated on the basis of the 2011 Census data, the decision of the Board to accept the justification provided by the bidders could not be attacked on the ground that the figures provided did not strictly match the numbers extrapolated from the 2011 Census data; the power granted to the Board under Clause 14.2 of the bid document was an enabling clause that allowed the Board to apply its mind to a quote and determine its reasonableness; the quotes submitted by all bidders with respect to the projected number of households in 2026 were admittedly estimates; similarly, the Board's own determination of a baseline for comparing the reasonableness of various quotes was also an estimate; therefore, the Board's use of the baseline figure and its consequent acceptance of the reasonableness of a quote could not be faulted because it

did not strictly adhere to one particular methodology of arriving at a number of projected households unless the methodology used was arbitrary, having no correlation with the result sought to be achieved; on a bare construction of the Board Note dated 23-7-2018 and the fact that the Board Note was formulated after the last date for the submission of bids, the Board Note did not set out absolute criteria for disqualification of bids; the agenda note dated 9th August merely tabled a proposal to apply the criteria of 2 to 100% range, but the Board did not subsequently adopt this course of action, a decision within its power and indeed necessary to preserve the integrity of the bidding process; having established that the Board Note was not an absolute binding criteria, and the Tribunal was approached only with respect to GAs 51, 61 and 62, the Board's treatment of other GAs could not be decisive in determining the legality of the authorisations granted in GAs 51, 61 and 62, especially where the Board's actions in respect of the other GAs had not been independently challenged; the assessment of the reasonability of the bid was a matter solely between the highest bidder and the Board; such an assessment would not alter the scores of the highest bidder vis-à-vis the scores of the other bidders; the sole question was whether the highest bidder's quote was reasonable, and the power to determine such reasonability resided solely with the Board by virtue of Clause 14.2 of the bid document; and, thus, the presence and hearing of other bidders was not necessary.

B. REGULATION 7 OF THE 2008 REGULATIONS:

73. In *Adani Gas Ltd. v. Petroleum & Natural Gas Regulatory Board*, (2020) 4 SCC 529, while the Supreme Court was no doubt examining the grant of authorization for GA 9.61- Kanchipuram District and GA 9.62 — Chennai & Tiruvallur Districts, which are also the subject matter of the present appeal, the appeal before the Supreme Court was in challenge to

the validity of the decision of the Board, to award Lols for these GAs, on the ground that the successful bids were beyond the unreasonably high limit adopted by the Board. Since the scope and ambit of Regulation 7 of the 2008 Regulations fell for consideration in the afore-said judgement, it is useful to note what the said Regulation provides.

74. The 2008 Authorisation Regulations, notified initially on 19.03.2018 and as amended on 06.04.2018, are the Regulations applicable to the present case. Regulation 7 thereof relates to the bidding criteria and reads thus:-

“7. Bidding criteria.

(1)The Board, while considering the proposal for authorization, shall tabulate and compare all financial bids meeting the minimum eligibility criteria, as per the bidding criteria given below, namely:-

[1(a) The Board, while considering the proposal for authorisation, shall tabulate and compare all financial bids meeting the minimum eligibility criteria, as per the bidding criteria specified below, namely:-

Sl. No.	Bidding Criteria	Weightage (%)	Explanation
1	Lowness of transportation rate for CGD – in rupees per million British Thermal Unit (Rs./MMBTU)	10	Bidder is required to quote transportation rate for CGD only for the first contract year which shall not be less than Rs. 30 /MMBTU. Rates for the subsequent contract years

			shall be derived considering the quoted rate and escalation as per Note.
2	Lowness of transportation rate for CNG -in rupees per kilo gram (Rs. / kg)	10	Bidder is required to quote transportation rate for CNG only for the first contract year which shall not be less than Rs. 2 /kg. Rates for the subsequent contract years shall be derived considering the quoted rate and escalation as per Note.
3	Highness of number of [CNG Stations] (online and daughter booster stations) to be installed within 8 contract years from the date of authorization	20	-
4	Highness of number of domestic piped natural gas connections to be achieved within 8 contract years from	50	-

	the date of authorization		
5	Highness of inch-kilometer of steel pipeline (including sub-transmission steel pipelines) to be laid within 8 contract years from the date of authorisation	10	-
<p>Note - Annual escalation shall be considered from the second contract year and onwards based on the “Wholesale Price Index (WPI) Data (2011-12 = 100)” for “All Group / Commodity”, as normally available on the website of the Office of the Economic Adviser, Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion (DIPP) on the link “http://eaindustry.nic.in/home.asp.”</p>			

Provided that in the case of the geographical areas of (i) Bilaspur, Hamirpur and Una Districts; (ii) Panchkula (Except area already authorised), Shimla, Solan and Sirmaur Districts and (iii) Barmer, Jaisalmer and Jodhpur Districts, it is not mandatory to supply natural gas through steel-pipes. However natural gas has to reach in all charge areas. The bidding parameters and their respective weightage will, accordingly, be as under: -

Sl. No.	Bidding Criteria	Weightage (%)	Explanation
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1	Lowness of transportation rate for CGD – in rupees per million British Thermal Unit (Rs./MMBTU)	10	Bidder is required to quote transportation rate for CGD only for the first contract year which shall not be less than Rs. 30 /MMBTU. Rates for the subsequent contract years shall be derived considering the quoted rate and escalation as per Note.
2	Lowness of transportation rate for CNG -in rupees per kilo gram (Rs. / kg)	10	Bidder is required to quote transportation rate for CNG only for the first contract year which shall not be less than Rs. 2 /kg. Rates for the subsequent contract years shall be derived considering the quoted rate and escalation as per Note.
3	Highness of number of [CNG Stations] (online and daughter booster stations) to be installed within 8 contract years from the date of authorization	25	-
4	Highness of number of domestic piped natural gas	55	-

connections to be achieved within 8 contract years from the date of authorization		
<p>Note - Annual escalation shall be considered from the second contract year and onwards based on the “Wholesale Price Index (WPI) Data (2011-12 = 100)” for “All Group / Commodity”, as normally available on the website of the Office of the Economic Adviser, Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion (DIPP) on the link “http://eaindustry.nic.in/home.asp.”</p>		

(b) Successful bidder shall be required to achieve the year-wise work programme within 8 contract years as per details given below, namely:-

PNG Connections (cumulative)		¹ [CNG Stations] (cumulative)		Inch-km of steel pipeline (cumulative)	
By the end of contract year	% of work programme	By the end of contract year	% of work programme	By the end of contract year	% of work programme
1 st	Nil	1 st	Nil	1 st	5
2 nd	10	2 nd	15	2 nd	20
3 rd	20	3 rd	30	3 rd	40
4 th	30	4 th	45	4 th	60
5 th	40	5 th	60	5 th	70

¹ Subs. by point (i) of Cl. (2) of sub-reg (b) of reg (2), for ‘natural gas stations’ *ibid.* (w.e.f. 27.04.2018).

6 th	60	6 th	75	6 th	80
7 th	80	7 th	90	7 th	90
8 th	100	8 th	100	8 th	100
Note - In case derived numbers are in fraction, the same shall be rounded off to the nearest whole number and fraction 0.5 shall be rounded off to next higher whole number.					

Provided that in the case of the geographical areas of (i) Bilaspur, Hamirpur and Una Districts; (ii) Panchkula (Except area already authorised), Shimla, Solan and Sirmaur Districts and (iii) Barmer, Jaisalmer and Jodhpur Districts, successful bidder shall be required to achieve the year-wise work programme within 10 contract years as per details given below, namely: -

PNG Connections (cumulative)		[CNG Stations] (cumulative)	
By the end of contract year	% of work programme	By the end of contract year	% of work programme
1 st	Nil	1 st	Nil
2 nd	10	2 nd	10
3 rd	20	3 rd	20
4 th	30	4 th	30
5 th	40	5 th	40
6 th	50	6 th	50
7 th	60	7 th	60
8 th	70	8 th	70
9 th	80	9 th	80

10 th	100	10 th	100
Note - In case derived numbers are in fraction, the same shall be rounded off to the nearest whole number and fraction 0.5 shall be rounded off to next higher whole number.			

[(3) Bidder entity with the highest composite score, considering the criteria under sub-regulation (1) and as illustrated in Schedule C (1), shall be declared as successful bidder.

Provided that in case of tie in the evaluated composite score, the successful bidder shall be decided based on the highness of numbers of PNG connections among the tied bidding entities. In case there is tie on number of PNG connections also, highness of inch-kilometer steel pipeline shall be considered and thereafter in case of tie in inch-kilometer as well, highness of numbers of [CNG stations] shall be considered]”

C. ANALYSIS:

75. On the relevance of the 2011 Census data in the bidding process, it was contended on behalf of the appellants, in ***Adani Gas Ltd. v. Petroleum & Natural Gas Regulatory Board, (2020) 4 SCC 529***, that the map attached to the bid document did not only describe the land area but also the population and households comprised in it; the figures for population and number of households in the map attached to the bid document were drawn from the 2011 Census; out of the 86 GAs, which were part of the ninth round of bidding, certain parts of several GAs were excluded from the zone of authorization, and the population/household number was proportionally reduced to reflect the population/households as per the reduced area; the map annexed to the bid document depicted not only the land area but also the population/number of households which were intrinsically inter-twined in

the bid parameters; clause 1.1.3 of the bid document mandated bidders to look at the “existing population”; and clause 1.1.1 required bidders to bear in mind the population/households as given in the map annexed to the bid document.

76. It is in this context that the Supreme Court observed that the relevance of the 2011 Census data must be assessed in the context of the CGD Authorisation Regulations as amended on 6-4-2018; Regulation 5(6) required the fulfilment of minimum eligibility criteria, and for the Board to scrutinise the bids of only those entities which fulfilled the minimum eligibility criteria; and the bidding criteria in Regulation 7 were not linked to the 2011 Census figures.

77. It is useful, in this context, to note what Regulations 5(6)(e) and 5(6)(h) of the 2008 Regulations stipulate. Regulation 5 relates to the criteria for selection of entity for expression of interest route. Regulation 5(6) requires the Board to scrutinize the bids received in response to the advertisement in respect of only those entities which fulfil the following minimum eligibility criteria, namely, among others, (e) the entity has adequate financial strength to execute the proposed project, operate and maintain the same in the authorized area and shall meet the following financial criterion to qualify for bidding for a single CGD network, namely:-

Population in the geographical area [as per latest census of India]	Minimum net worth of the bidder entity
(1)	(2)
5 million or more	Rs.1,500 million for a population of 5 million, plus additional Rs. 300 million for each 1 million of population or part

	thereof, in excess of 5 million (refer Note – 3)
2 million or more but less than 5 million	Rs.1,000 million
1 million or more but less than 2 million	Rs. 750 million
0.5 million or more but less than 1 million	Rs.500 million
0.25 million or more but less than 0.50 million	Rs.250 million
0.1 million or more but less than 0.25 million	Rs.100 million
Less than 0.1 million	Rs.50 million

Note – 1 The above minimum net-worth is applicable in case the bidder entity bids for a single geographical area in a particular bidding round.

Note – 2 In case a bidder entity bids for more than one geographical area, then, the minimum net-worth requirement shall be calculated by considering 100% of minimum net-worth required for the bidded geographical area having the highest population, plus 20% of minimum net-worth required for each of the other geographical areas. For example, if a bidder has bidded for four geographical areas namely A, B,C and D and out of these four geographical areas, C has the highest population, then minimum net-worth requirement shall be calculated as minimum net-worth requirement of C plus 20% of minimum net-worth requirements for A, B and D each.

Note – 3 For example, if the population is 8.4 million, then the minimum net-worth required shall be Rs. 2,700 million (i.e. Rs. 1,500 million for initial 5 million of population, plus Rs. 1,200 million for 3.4 million of population in excess of 5 million).

(i) Net-worth of a bidder entity shall be computed as per Schedule-K.

78. Regulation 5(6)(h) required the entity to furnish a bid bond, in the form of Bank Guarantee or demand draft or pay order from any scheduled bank drawn in favour of the Petroleum and Natural Gas Regulatory Board payable at New Delhi, for an amount equal to- (i) rupees fifty million for a population of five million and proportionately higher amount for population of more than five million; (ii) rupees thirty million for a population of one million and more but less than five million; (iii) rupees twenty million for a population of half a million and more but less than one million; (iv) rupees fifteen million for a population of quarter of a million and more but less than half a million; (v) rupees ten million for a population of one-tenth of a million and more but less than quarter of a million; and (vi) rupees five million for a population less than one-tenth of a million.

79. In ***Adani Gas Ltd. v. Petroleum & Natural Gas Regulatory Board, (2020) 4 SCC 529***, the Supreme Court drew a distinction between Regulations 5(6)(e) and 5(6)(h) on the one hand, and Regulation 7 of the 2008 Regulations on the other, to hold that the 2008 Regulations indicated that, where a specific linkage was sought with reference to the 2011 Census data, a clear and categorical provision was made to that effect; such provisions were found in regard to the financial capability of a bidder as part of the minimum eligibility criteria in Regulation 5(6)(e), and the extent of the performance bond in Regulation 5(6)(h); absent a condition in Regulation 7, linking the “highness” of the number of PNG connections to be achieved

within eight years from the date of authorisation with the 2011 Census data, such a restriction could not be read into the 2008 Regulations.

80. On the contention of the appellants that the map contained a reference to population and household figures on the basis of the 2011 Census, the Supreme Court, after referring to clauses 1.1.3, 1.2 and 2.1.1 of the Application cum Bid Document, observed that the bidder was required to carefully study the GA and the charge area before submitting the bid; the bid document necessarily had to be in conformity with the 2008 Regulations; the map, at best, was a compendium of the latest official record of the GA; the mere attachment of a map to the bid document would not result in the imposition of conditions of eligibility or qualification, as these have been provided in the Regulations; the depiction of the GA in a map attached to the bid document did not override the specific requirements of the bidding criteria as defined in Regulation 7; the Regulations did not link the “highness” factor of domestic PNG connections to the 2011 Census data; neither the 2008 Regulations nor the bid document required the number of projected households to be calculated on the basis of the 2011 Census data; and the decision of the Board to accept the justification provided by the bidders could not be attacked on the ground that the figures provided did not strictly match the numbers extrapolated from the 2011 Census data.

81. Unlike in ***Adani Gas Ltd. v. Petroleum & Natural Gas Regulatory Board, (2020) 4 SCC 529***, the dispute, in the present appeal, relates to 19 CNG stations all of which, even according to the 2nd Respondent, were located within the then Kanchipuram District. The submission, urged by Learned Senior Counsel and Learned Counsel on either side, vary on the manner in which the boundaries of Kanchipuram District Geographical Area should be determined. The Appellant’s contention is that, since the Kanchipuram District Geographical Area (GA) is co-terminus with the then

existing Kanchipuram District, and as there is no dispute that these 19 CNG stations fall within the boundaries of Kanchipuram District, these CNG stations fall within the authorized area of the Appellant; and the Board erred in holding that these CNG stations fall within the geographical area authorised in favour of the second Respondent on the basis of co-ordinates.

82. Even while examining the scope and ambit of Regulation 7 of the 2008 Regulations, the Supreme Court, in ***Adani Gas Ltd. v. Petroleum & Natural Gas Regulatory Board, (2020) 4 SCC 529***, held that the map (in Annexure-1 of the ACBD) was, at best, a compendium of the latest official record of the GA. If that be so, then all factors, such as area, population, households etc as reflected on the right side of the said map, would assume relevance in determining the contours and extent of each of these GAs ie GA 9,61 and 9.62.

83. As noted hereinabove, it is not in dispute that the adjoining geographical areas of Chennai–Tiruvallur Districts on the one hand, and Kanchipuram District GA on the other, do not overlap. It is thus evident that these 19 CNGs stations either fall within the boundaries of Chennai-Tiruvallur District GA or Kanchipuram District GA. As shall be detailed hereinafter, both the PNGRB Act and the 2008 Regulations obligate the PNGRB to clearly identify the GAs for which bids are intended to be invited before commencing the exercise of inviting bids for the concerned geographical areas. What we are required to examine, in the present appeal, is the exercise undertaken by the PNGRB to identify the boundaries of GAs 9.61 and 9.62. Since this question did not arise for consideration in ***Adani Gas Ltd. v. Petroleum & Natural Gas Regulatory Board, (2020) 4 SCC 529***, reliance placed on behalf of the 2nd Respondent on the said judgement, to contend that the data referred to on the right side of the map is irrelevant in determining the boundaries of the GAs, is misplaced.

VII. APPLICATION-CUM-BID DOCUMENT (“ACBD”):

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

84. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that the ACBD was issued by the Board on 12.04.2018; (1) Cl. 1.1.1 of the ACBD states that PNGRB “has identified” the GA and is “accordingly” inviting applications-cum-bids for the “aforesaid geographical area” as depicted in the map at Annexure-1; thus, the bids which were invited, and the area which was depicted, is the area which stood identified by the Board in terms of Section 19, i.e., the area comprised in the respective districts; (2) in Clause 2.1.2, Annexure 1 is described as the “Map depicting the Geographical Area and the Charge Areas”, and the bidders were asked to carefully study both, before submitting the bid; the entire Annexure 1, including all the attribute data mentioned therein, constitutes the map and depiction of the Geographical Area; and the GA and the Charge Areas are sacrosanct as per ACBD and the Regulations; (3) Annexure 1 to the ACBD describes the Geographical Area with reference to various factors, including its total area, population, number of households, Charge Areas, towns/ villages comprised therein, overlapping of the district and GA boundary etc; the 2nd Respondent is bound by the various attribute data which it had submitted as part of its offer to the Board, including the total area, the population etc., which correspond to the data of the districts of Chennai and Tiruvallur; (4) thereafter, various bidders sought clarifications and the Board issued Corrigenda, correcting the attribute data of several maps; if the GAs were identifiable at this stage only with reference to co-ordinates, and not Districts, there was no public record available for the various data figures of the GA; it was thus not possible for any bidder to seek any clarification or the Board to issue any Corrigendum, for a GA allegedly identified with reference to co-ordinates; and the population and number of

households could, if at all, be derived by undertaking an exercise akin to that carried out by the Survey of India and the Census of India, which was clearly not done.

B. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

85. Sri Gopal Jain, Learned Senior Counsel, would submit that the application-cum-bid document (“ACBD”) for the 9th CGD Bidding Round was issued by PNGRB on 12.04.2018; a GA map along with geo-coordinates was web hosted with the bid document for each GA; some of the important provisions of the bid document were as follows: (a) Clause 1.1.1 of the Bid Document stated that the PNGRB has identified the GA considering availability of natural gas and pipeline connectivity in the GA or in its vicinity for development of CGD network; further Clause 1.1.1 also states that PNGRB is accordingly inviting applications-cum-bids for grant of authorization for developing City Gas Distribution (CGD) network in the aforesaid geographical area as depicted in the map at Annexure-1; (b) Clause 1.1.3 stated that it is the bidder’s responsibility to obtain all information related to the present gas supply availability and pipeline connectivity and also existing customers, if any, in the specific GA; (c) Clause 2.1.1 stated that the bidder is expected to examine all the contents of the Bid Document, including all instructions, terms and conditions and all the regulations of the Board, and the Bid Document, together with all its annexures, shall be considered to be read, understood and accepted by the bidder; (d) Clause 2.1.2 of the Bid Document stated that the application-cum-bid document *inter alia* comprises of the following annexures: (i) Annexure 1 – Map depicting the Geographical Areas and Charge Areas: The bidder shall carefully study the geographical area and charge areas before submitting their Application-cum-Bid, and (ii) Annexure 1 of the Bid Document: The bidder shall carefully study the geographical area and

charge area before submitting their Application- cum-Bid; thus the map for each GA was supplied by PNGRB as Annexure 1 of the Bid Document; the geo-spatial coordinates i.e. latitude and longitude were an integral part of each map; and opportunities were also available to bidders to seek any clarifications, if required prior to the bid submission.

C. RELEVANT CLAUSES OF THE APPLICATION CUM BID DOCUMENT:

86. Part A of the Application-cum-Bid document (“ACBD” for short) contains the instructions to the bidders. Reference of the bidders is drawn thereby to the Regulations applicable to them which includes the 2008 authorisation regulations and the amendments thereto. Clause 1.1 of the ACBD relates to the geographical area and related information. Clause 1.1.1 states that the PNGRB has identified this geographical area considering the availability of natural gas and pipeline connectivity in the GA or in its vicinity for development of CGD network; PNGRB was, accordingly, inviting Applications-cum-Bids for grant of authorisation for developing City Gas Distribution (CGD) network in the aforesaid geographical area as depicted in the map at Annexure-1. Clause 1.1.2 states that the charge areas are also depicted in the map; if the bidding entity is finally granted authorization, the entity shall be required to reach the charge areas as stipulated in the CGD authorisation Regulations. Clause 1.1.3 makes it clear that it is the bidder’s responsibility to obtain all information related to the gas supply availability and pipeline connectivity and also existing customers, if any, in the specified geographical area; the bidder can also refer to list of NOCs/Permissions granted by the PNGRB to various entities under the provisions of the internal guidelines for grant of NOC/Permission for (i) supply/distribution of CBM/natural gas through cascades; and (ii) setting up of CNG/LNG Daughter Booster Stations (DBS) in the areas where the Board has not yet authorised any entity for developing or operating CGD networks at

<http://www.pngrb.gov.in/CGD-NOCs.html>; these NOCs/Permissions are subject to the conditions contained in the Internal Guidelines and include the condition that in case the area, in which supply/distribution of CBM/natural gas through cascades and/or setting up of CNG/LNG DBS are allowed, is covered under any authorised GA in future, then such entity to whom NOC/permission has been granted shall obtain prior approval from the authorised entity for continuation of such activities or shall cease its activities immediately. Clause 1.2 relates to the scope of work and, thereunder, the entities bidding for this work shall be required to lay, build, operate or expand the CGD network to meet the requirement of natural gas in domestic, commercial and industrial segments, including compressed natural gas in the vehicular segment, in the said geographical area to be authorized, and also to comply with the relevant regulations notified from time to time; and the entities shall be required to carry out the development of CGD project in line with the regulations laid down by the PNGRB.

87. Clause 2.0 of the ACBD relates to the bidding documents and Clause 2.1 to documentation. Clause 2.1.1 provides that the bidder is expected to examine all the contents of the Application-cum-Bid document, including all instructions, forms, terms and conditions and all the regulations of PNGRB; the Application-cum-Bid document together with all its annexures thereto shall be considered to be read, understood and accepted by the bidder; failure to furnish all the information required as per the Application-cum-Bid document or submission of Application-cum-Bid not complete in every respect will be at the bidder's risk and may result in rejection of the Application-cum-Bid. Clause 2.1.2 stipulates that the Application-cum-Bid document comprises of the following Annexures and the bidder shall note the following with respect to these Annexures, Annexure 1 to Annexure 13 as well as Annexure 1 of Part B are detailed thereunder. Annexure 1 is the map depicting the geographical area and charge area, and the bidders were

directed to carefully study the geographical area and the charge areas before submitting the bid.

88. Clause 2.2 of the ACBE relates to clarifications of the Application-cum-Bid document, and Clause 2.2.1 stipulates that the entity requiring any clarification shall obtain the same from the Secretary, PNGRB in writing so as to ensure submission of the Application-cum-Bid on or before the bid closing date; the PNGRB will respond in writing to such queries, which are received up to one month from first day of bid sale period; written copies of the PNGRB's response (including explanation of the query but without identifying the source of the query) will be hosted on the web site of the PNGRB. Annexure 1 to the ABCD, which relates to the map depicting the geographical area and the charge area, also requires the bidder to carefully study the geographical area and charge area before submitting their Application-cum-Bid.

D. ANALYSIS:

89. While the physical map, on the left side of Annexure-1, no doubt contains the longitudes and latitudes of the Geographical Area, and must therefore be held to form an integral part of the map, it must also be borne in mind that the other details on the right side of Annexure-1, such as the area of the GA in square kilometres, the total number of households in the GA as per the 2011 Census, the total population of the GA as per the 2011 Census, details of the charge areas of the GA, and on the left side of Annexure-1 itself, details such as the boundaries of the charge areas as recorded in the physical map, location of the 9 villages with a population of above 5000 where 15 of the 19 PNG stations are located, the district boundary of Kanchipuram District overlapping the GA boundary of GA 9.61 etc, are also relevant and must also be held to form an integral part of the map in Annexure-1. While the 2nd Respondent seeks to highlight the failure

of the Appellant to seek clarifications prior to bid submission, what it has chosen not to state is that if, as is now contended before us, the information on the righthand side of the map is irrelevant and the other factors referred to in the physical map are erroneous, the 2nd Respondent should also have sought necessary clarifications, which they chose not to do. That the PNGRB had held in favour of the 2nd Respondent on the basis of co-ordinates would not, by itself, justify our ignoring all the other details, given both on the left side and the right side of the map of Annexure-1 of the ACBD, apart from the co-ordinates.

90. Since the PNGRB has, in the impugned order, applied the co-ordinates test, it would be appropriate to consider the appellant's challenge thereto, before examining the factors relied on by them to contend that the boundaries of the Kanchipuram District GA are co-terminus with the boundaries of the then Kanchipuram District. Let us first examine the 2nd Respondent's contentions regarding the appellant's pleadings both in their complaint filed before the PNGRB and thereafter in the appeal filed before us.

VIII. HAS THE APPELLANT, IN ITS PLEADINGS, ACKNOWLEDGED THE EXISTENCE OF 'COORDINATES':

91. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that, during its oral submissions, the appellant has disputed the existence of geo-coordinates, and has submitted that the PNGRB maps do not contain the geo-coordinates of even a single point of the GA or its boundary; apart from these contentions being raised only for the first time before this Tribunal, this submission is also absurd; in its complaint before the PNGRB, the appellant has repeatedly acknowledged that the map given by the PNGRB contains 'coordinates' i.e. the latitude and longitude; in fact, the appellant had

claimed in its complaint before the PNGRB that it had not “physically verified” the coordinates i.e. latitude and longitude specified in the map, thereby accepting the existence of co-ordinates; prayer (e) of the complaint filed by the appellant before PNGRB also shows that the existence of co-ordinates has not been disputed; even in its appeal before this Tribunal, the appellant has not disputed the fact that the GA maps contain co-ordinates; and it is evident from a perusal of the aforesaid pleadings that the appellant had never disputed the existence of co-ordinates in its submissions before the PNGRB.

A. ANALYSIS:

92. In Para 3.1.5(iv), of their complaint filed before the Board, the Appellant stated that the 2nd Respondent’s contention, that its authorised Chennai GA spread over certain parts of Kanchipuram District as per the map web-hosted by the Board, was false and fraudulent, since the 2nd respondent’s contention accorded significance only, and in supersession of vectors, legends etc. marked on the Authorized map, to the co-ordinates i.e. the latitudes and longitude figures of the boundary marked on the authorized map, which formed no part of the identification of the GA by the PNGRB; all these data (referred to in Para 3.1.5(iv)) could not be disregarded, on the basis of a map, subsequent to the dispute with reference only to the coordinates and contours of the boundary.

93. In Para 4.7 of the very same complaint, the Appellant had stated that it had submitted the bid for Kanchipuram GA on the basis of the information and data provided in the ACBD for Kanchipuram District, including the total area, population, number of households, villages, towns, airport etc; the co-ordinates, i.e. the latitudes and longitudes specified in the map, were not physically verified by the Appellant to check whether the Vectors and Legends mentioned in the map corresponded to the latitudes and longitudes

mentioned in the edges, since there was no requirement or obligation for them to do so; the specific latitudes and longitudes did not, within themselves, have any commercial significance; and it was not viable to undertake a physical verification exercise of going to individual villages, verifying their coordinates and matching it with the authorized map, as such an exercise was neither contemplated nor undertaken by any of the bidders. In Para 4.22 of the complaint, the Appellant stated that the co-ordinates can, at best, be used by an authorized entity to identify its boundaries, and cannot be used by any other entity to alter their respective geographical areas.

94. Further in Para 6.2(e), among the final reliefs sought by them from the PNGRB, the Appellant sought a direction from the Board to hold that the co-ordinates, given on the side of the rectangle framing the map provided with the authorization, were not capable of changing the identified details and specifications of a particular Geographical Area including: (i) the total area, total population and total households; and (ii) identified talukas, towns, villages, landmarks, district headquarters specified to be comprising a particular Geographical Area.

95. It is clear from the afore-said averments in the complaint, as also the prayers made by them to the Board, that the Appellant's grievance was mainly that the details furnished on the right hand side of the map should be given preference over the co-ordinates i.e. latitudes and longitudes specified in the map, more so as they could not be specifically verified by the Appellant to check whether the vectors and legends mentioned in the map corresponded to the latitudes and longitudes mentioned on the edges.

96. Even in the Appeal filed before this Tribunal (in Para 7 Page 23), the question of law raised was whether the geo-spatial co-ordinates, indicated on the map issued with the letter of authorization, formed the sole and exclusive basis for determination of the extent of the geographical area

authorized to an entity. It does not appear to be the Appellant's case, even in the Appeal filed before this Tribunal, that the latitudes and longitudes indicated in the map could not be relied upon, and such contentions are being urged across the bar for the first time during the course of hearing of this appeal.

97. In the light of the fact that the appellant has not disputed the existence of co-ordinates in the physical map in Annexure-1, and has only contended that the other information given in the map would be the relevant consideration for determination of the boundaries of the GA, we may not be justified in examining whether or not the map contains co-ordinates. Since elaborate arguments were put forth in this regard, and to avoid the possibility of our being faulted for not taking note of them, we reproduce the submissions, urged by Learned Senior Counsel and Learned Counsel, in this regard making it clear that we do not intend expressing any opinion thereupon as it is un-necessary for us to do so.

IX. CO-ORDINATES TEST:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

98. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that, even if the co-ordinates test is to be applied, it must be applied with reference to the correct co-ordinate based map of the Survey of India, as per which, even the alleged coordinates of the CNG stations as per the 2nd Respondent, fall in GA 9.61 of the appellant; application of co-ordinates must be on the SOI digital map which is, admittedly, the source map for the authorization maps; if the coordinate test is applied, it would lead to various regulatory anomalies, some of which are noted in the impugned order, and none of which have been factually disputed; one such anomaly which arises in respect of the Barmer,

Jaisalmer, Jodhpur Districts GA 9.55, is that a part of the area of the GA, as per co-ordinates and principle applied by Board, large part of the authorised area falls in Pakistan, which is completely absurd; the co-ordinate test is not applicable in the present case, since the authorization maps are not GIS maps; they do not contain the co-ordinates of even a single point of the GA or its boundary, but only contain the co-ordinates of the reference grid in which the map has been placed; a GIS map has been defined by the Supreme Court as “*an organised collection of computer hardware, software, geographic data designed to capture all forms of geographically referenced information (see www.volusia.org).*” [T.N. Godavarman Thirumulpad (98) v. Union of India, (2006) 5 SCC 28 at para 35]’; clearly, the pdf map issued with the authorization does not match this description; boundaries cannot be determined by these grid co-ordinates and placing pdf file on a digital platform; the Appellant has made detailed submissions of facts in its Affidavit dated 25.04.2023 on the point that the authorization maps are not GIS maps; the processes followed for the preparation of a co-ordinate based geo-referenced map by the Survey of India (SOI) are explained in the Appellant’s Affidavit dated 25.04.2023; these factual submissions remain uncontroverted; coordinates are, but, one of the ways of geo-referencing a map and are not the criteria for determining the authorised area being demarcated by PNGRB for being placed for competitive tender as part of a CGD bid round; the tender issued for selection of the map vendor also shows that he was required to geo-reference the map, not with coordinates but standard cartographic symbology and colours; from a bare perusal of the authorization maps, it is evident that there are no co-ordinates of any point in the GA or on the boundary of GA are stated therein; in fact, factually, even the 2nd Respondent’s case is only that the co-ordinates of the GA boundary can be ‘derived’ from the map; it is the further case of the 2nd Respondent that, when the coordinates of the CNG stations (as allegedly ascertained by

them), and the .shp file provided by PNGRB, are plotted on Google Earth, along with the co-ordinates of the CNG stations, it shows them as falling within GA 9.62; once all the details of the GA have been clearly provided in the map, and the addresses of the CNG stations are known, there is no warrant for such a derivative exercise; further, the Board itself stated in its tender of March, 2021 that “Use of data from alternative online sources such as Google Earth / Google Maps is strictly prohibited as this is strictly against the usage policies of the respective services.”; the first time the Board sought preparation of GA maps geo-referenced with respect to coordinates was by issuing a tender for the same in March, 2021; this geo-referencing with coordinates was to be consistent not with any coordinates of any reference grid given in the authorization maps, but with the district boundaries; if the authorization maps were in fact GIS maps, geo-referenced with the co-ordinates, this whole exercise was completely redundant; if the exercise had gone through, any error in the depiction would have been corrected with reference to the district boundary as per Survey of India, and not entailed correction of the attribute data by giving primacy to the juxtaposition of the contours of the boundary with the coordinates of the grid; since there is no geo-referencing exercise which was undertaken by or on behalf of the Board, even if the co-ordinate test is applied, it must be applied with reference to the source map, which is the Survey of India map; the appellant has demonstrated in its Affidavit dated 25.04.2023 that conducting such an exercise, and assuming, without prejudice, the co-ordinates of the CNG stations as stated by the 2nd Respondent to be correct, the CNG Stations in question fall within GA 9.61 authorized to the appellant; the appellant has also demonstrated that the CNG stations, on the basis of their admitted addresses, fall in GA 9.61; and the 2nd Respondent has not disputed these maps and factual submissions, but has argued that the PESO addresses are irrelevant.

B. SUBMISSIONS URGED ON BEHALF OF THE PNGRB:

99. Sri Rahul Sagar Sahai, Learned Counsel for the PNGRB, would submit that the test to determine a dispute, with regard to boundary (such as the instant case), is “co-ordinates” i.e. longitudes and latitudes; the other data mentioned in the map such as number of households, population etc., though part of the map, are determinative for other aspects such as the value of the performance bank guarantee etc; it is relevant to take note of Regulation 5 of the Authorization Regulations (which provides for bank guarantees); the ACBD, in clause 1.1, provides that the GA is ‘as depicted in the ‘map’ enclosed; *this map is up to scale and co-ordinate based*; therefore, it is possible to find out the location of any point based on the co-ordinates i.e. longitude and latitude; sailors have been using the method for centuries to navigate the open seas; the clause states that “PNGRB has *identified* this geographical area”; it only means that the PNGRB has identified the area as depicted in the map and not ‘district’; this map is accordingly geo-referenced; confusion has been created by the Appellant with regard to the geo- referenced map, digital map, co-ordinate map and GIS Map; during oral submissions, the counsel for the Board had referred to an article by National (which can be accessed with URL <https://education.nationalgeographic.org/resource/geographic-information-system-gis/4th-grade>) and **annexed as Annexure - A with this Written Submission,** which defines geographic information system (GIS) as a computer system for capturing, storing, checking and displaying data related to positions on Earth’s surface; it further states that GIS can use information that includes location which can be expressed in many different ways such as latitude and longitude, address or ZIP code; therefore, as was presented during the oral submissions, GIS is not a separate or different kind of map; it is only such a platform or system where data is stored in various layers and can be accessed as such; however, the GIS system is based on

co-ordinates i.e. longitude and latitudes; accordingly, a geo-referenced can be digitally stored and shown in a GIS system; the Supreme Court in ***TN Godavarman v UOI (2006) 5 SCC 45 (at para 28 & 29)*** has dealt with GIS (Geographical Information System) and GPS (Global positioning system) concept, and has held that the later technology gives more spatial information, but that does not mean that the information given by the earlier technology is inaccurate; the co-ordinate method used by the Board to decide boundary dispute is not erroneous; the Impugned Judgement also states that a visual inspection of the map for the GA of Chennai and Tiruvallur Districts would make it clear that the GA boundary of Chennai and Tiruvallur Districts extended beyond the district boundary of Chennai and Tiruvallur; the PNGRB further noted that GA Nos. 9.61 and 9.62 represented mutually exclusive areas and that there was no overlap whatsoever between the two; and there is clear finding in the PNGRB impugned order dated 22.12.2022 that the map of the GA 9.61 and GA 9.62 coalesce seamlessly.

C. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

100. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that, in terms of the order passed by this Tribunal on 05.04.2023 in the present appeal, the area of divergence in the present case is “*confined only to the location of the 19 CNG Stations*” as both parties claim that they fall within their respective GAs; a visual inspection of the maps given with the Bid Document for GA Nos. 9.61 and 9.62 would show that the maps contain geo-spatial coordinates (latitude and longitude); these maps are admittedly final and sacrosanct; the maps seamlessly merge/coalesce into each other; this shows that the co-ordinates given in the maps provided by PNGRB were accurate, and the maps do not overlap with each other; every location on earth has its own unique geo-coordinates; in the case of *TN Godavarman v. Union of India & Ors. [(2006) 5 SCC 28]*, at paras.

35 to 37, the Supreme Court has recognized that the latest technology under the Geographical-Information System (GIS) can locate even a pin on earth; in the present case, the exact location of the disputed CNG stations can be verified only using geo-coordinates as the same are unique to the location and do not undergo any change unlike other administrative characteristics like address, names of districts/village/towns etc; the 2nd Respondent first ascertained the geo-coordinates of each of the CNG stations under challenge; they duly verified if the same fell within the GA awarded to them by plotting the coordinates on the map given by PNGRB; the exercise of plotting the co-ordinates is straight-forward, it can be undertaken either manually or using any well-accepted GPS software; in fact, the 2nd Respondent has demonstrated, in the hearing before this Tribunal, the exact location of all the 19 CNG stations using co-ordinates by manually plotting them on the PNGRB map; similarly, the 2nd Respondent also demonstrated, in its presentation, the exact location of these CNG stations using different GIS software; on the contrary, till date, the appellant has not proved or shown the exact location of the CNG stations either on the GA map or in the .shp file provided by PNGRB; all the disputed 19 CNG stations are unambiguously within the GA boundary authorized to the 2nd Respondent; in its complaint before the PNGRB, the appellant nowhere contended that the disputed 19 CNG stations fell within the GA awarded to the 2nd Respondent as per the 'coordinates' test; rather, its only contention (albeit wrong) was that the vendor appointed by PNGRB to prepare the maps made a mistake while juxtaposing the map with the coordinates; the scope of work for the vendor appointed to prepare the said maps further states that *“complete geo-referencing has to be provided in the supplied maps with standard cartographic symbology and colours”* (Clause 17.1.1.2); this shows that the maps provided by the vendor were geo-referenced; and the vendor was also required to ensure submissions in the form of geo-referenced .shp files

projected in WGS format besides JPG and PDF (*Para. 17.1.1.2(f)*); and it can also be visually seen from the map of GA No. 9.62 that an area below 'Chennai' and around SH-109 (major landmark) is in GA No. 9.62.

101. Though we have refrained from examining the contention urged on behalf of the appellant, for the first time during the hearing of this appeal, that what is shown in the map in Annexure-1 of the ACBD and the Authorisation are not co-ordinates, we must nonetheless consider the exercise undertaken by the respondents to locate the 19 CNG Stations on the maps of GA.9.61 and 9.62. As the 2nd Respondent claims to have plotted these stations, by placing the .shp file provided to them by the Board on Google Earth Platform, we shall take note of the rival submissions in this regard. Before that, we must examine the appellant's contention that the .shp files were not available with the Board when it invited bids in April, 2018.

X. NOT SHARING .SHP FILES: ITS EFFECT:

A. SUBMISSIONS OF THE APPELLANT:

102. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that it was orally contended by the Board that certain .shp files were also available with them at the ACBD stage though, evidently, no such file was shared with any bidder; all references to the .shp files in these submissions are without prejudice to the Appellant's contention that the .shp file cannot be considered in the present case since: (i) these files were not made available to either the appellant or the 2nd Respondent, or for that matter to any other bidder, prior to submission of their bids, or even at the stage of authorization; (ii) there is no affidavit on record as to who prepared these .shp files, when were they received and if any verification thereof was undertaken by the Board; (iii) there is no reference to any .shp file in the ACBD; if such a file existed and the bidders were required to

ascertain the extent of their GAs with respect to co-ordinates, there would be no question of PNGRB not making the same available to the bidders at the bidding stage; (iv) if such .shp file existed, and the coordinates were the determining factor of the GA, at least the Board would have corrected the total area in sq km, wherever it was inconsistent with the .shp file, by issuing corrigenda; evidently, no such corrigenda, in respect of total area on the basis of .shp file, were issued. (v) there is no record of any co-ordinates having been supplied to the map vendor for plotting a GA boundary on the basis thereof in an .shp file; Geo-referenced data was not provided to the vendor for preparation of the maps, and the vendor was not required to do any survey on his own; (vi) when disputes arose between the appellant and the 2nd Respondent, and the appellant requested PNGRB for a digital map of GA 9.61 on 17.08.2021, PNGRB, by its response dated 23.09.2021, did not provide this .shp file to the appellant, but referred it to the district administration/ Survey of India/ Census of India.

B. SUBMISSIONS OF PNGRB:

103. On the issue of not sharing of .shp files, Sri Rahul Sagar Sahai, Learned Counsel for the PNGRB, would submit that an argument was raised that the .shp file was not shared by PNGRB with the Appellant, but had been shared with the 2nd Respondent; this is again twisting of the facts; the .shp file needs special software to open; the 2nd Respondent had specifically sought .shp file from the Board, and thus it was shared with them; on the other hand, the Appellant had sought a digital map which had already been web-hosted and shared; the same was mentioned in the PNGRB's letter dated 23.09.2021. and, in any case, the .shp file was also shared with the Appellant during the oral submissions before this Tribunal.

C. SUBMISSIONS OF 2ND RESPONDENT:

104. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that the PNGRB had clarified, in January, 2020, that it has .shp files for all the 136 GAs awarded in 9th and 10th Rounds; therefore, the appellant's contention that there were no GIS maps available with the PNGRB in 2018, by referring to the tender floated by PNGRB for preparation of GIS maps in 2021, is incorrect and misleading; the map issued with the Bid Document has itself been prepared using the .shp files given by the PNGRB; and, in such a scenario, there can be no question of any difference between the .shp files and the map enclosed with the Bid Document.

D. ANALYSIS:

105. By email dated 01.09.2020, the 2nd Respondent requested the PNGRB to share the Geo-coordinates map of the Geographical Area of Chennai and Tiruvallur (GA-ID 9.52) for demarcating their GA boundary. In reply thereto, the Board forthwith, vide e-mail of the same date i.e. 01.09.2020, forwarded, a copy of the .SHP file for Chennai and Tiruvallur District GA to the 2nd Respondent.

106. After authorization was granted to the Appellant on 26.09.2018, and the Appellant had, vide their letter dated 20.02.2020, accepted the terms and conditions of the authorization, they addressed letter dated 17.08.2021 to the Respondent – Board requesting to be furnished a digital map showing the administrative boundaries of Kanchipuram District (ID-9.61) for detailed planning and development of the infrastructure. The Appellant informed the Board that, while they had already procured the Survey of India Map in digital form, which was the basis for setting up the administrative boundaries of the GA by PNGRB, they should be provided the same as duly authenticated by the Board. The Appellant also informed the PNGRB that the latter had issued Tender for supplying GIS based Geographical Area maps, which was based

on the Survey of India map; and that they be informed if the Board had finalised these agencies to provide the map, in which event, they could procure the same from these agencies with due permission from the PNGRB.

107. In reply, the Board, vide letter dated 23.09.2021, informed the Appellant that the Tender issued in 2021 for supplying GIS based Geographical Area maps was cancelled by the PNGRB and no agency was hired under the said tender; along with the authorisation letters of the aforesaid GAs, a GIS map indicating the respective GA area and boundaries had already been provided; the district boundaries with the GAs were considered to be as defined by the Survey of India/ Office of the Registrar General & Census Commissioner, India or the respective local authority, such as district administration; and in case any confirmation was required in relation to a district's boundary, the same shall be dealt directly with the district Administration or Municipal Corporation.

108. The 2nd Respondent informed the Appellant, vide letter dated 22.02.2022, that, before commencing activities in their authorised Geographical Area, the 2nd Respondent, as a duty-bound CGD entity, had sought the original maps (digital maps) used by the PNGRB for the geo-coordinates map, in order to dispel any confusion that could arise in the identification of the boundary limits of the respective authorised entities; the digital maps were received on 01.09.2020 from the PNGRB; these maps were exactly as per the co-ordinates web hosted for the bid and later forming part of the CGD authorisation.

109 The .SHP files, on which reliance is now placed on behalf of the respondents to contend that location of each of these 19 CNG stations, on application of the coordinates test, would fall within GA 9.62, were not made available by the Board along with the application-cum-bid document web-

hosted on the PNGRB website on 12.04.2018. It is indeed disconcerting that the Board should withhold such an important document and make it available only to the 2nd Respondent at their request on 01.09.2020 after an authorization was granted in their favour. Even worse is the Appellant's case, in that they were not even furnished a copy of the .SHP files till during the hearing of the present Appeal when, by order dated 20.09.2023, we had directed the PNGRB to make available the .SHP files both to the appellant and the 2nd Respondent.

110. In our order dated 20.09.2023, we had recorded the submission urged on behalf of the Board that the .SHP file was ready and could be perused by us. We had noted the submission urged on behalf of the Appellant that a copy of the .SHP file relating to Chennai – Tiruvallur GA was made available to the 2nd Respondent at their request, and fairness demanded that a copy of the .SHP file, for both Chennai – Tiruvallur GA and Kanchipuram GA, be made available to the Appellant also. We had also noted the stand of the Board, during the hearing held on 13.09.2023, that the .SHP file was not made available to the Appellant, since they had not made any such a request; and it was because the 2nd Respondent had sought a copy thereof, that it was made available to them. We had then observed that, since the .shp file with respect to Chennai and Tiruvallur District GA had already been made available to the 2nd Respondent, a copy of the .shp file of 9.61 and 9.62 be made available to the Appellant, and a copy of the Kanchipuram .shp file be made available to the 2nd Respondent, within one week. It is only thereafter that the .shp files of both the GAs were made available to the Appellant, and a copy of the .shp file of Kanchipuram District GA was made available to the 2nd Respondent.

111. The submission, urged on behalf of the Board, that the .SHP files were made available at the request of the parties does not merit acceptance, since

the Board was obligated to share with the bidders all information relevant for submission of bids, and since the Board had placed heavy reliance on the .SHP files of both the GAs i.e. 9.61 and 9.62, they ought to have been made available to all the bidders along with the ACBD, and should have been shared with both the Appellant and the 2nd Respondent.

112. While we are satisfied that the Board ought to have made available the .shp file of the respective GAs along with the ACBD itself, that does not mean that we accept the submission of the appellant that the .shp file was not even in existence in 2018 when bids were invited. The map vendor was asked to submit a geo-referenced map, and we have no reason to disbelieve the submission urged by Sri Rahul Sagar Sahai, learned Counsel for the Board, that it is .shp file submitted by the map vendor which was made available to the appellant (ie for both the GAs) and to the 2nd Respondent (ie for GA 9.61), albeit pursuant to the directions of this Tribunal.

XI. THE .SHP FILES:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

113. Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that, even if the shp file is considered, it also shows that the total population of Kanchipuram GA is specified as 39,98,252; the area corresponding to this population as per Census 2011 is the district of Kanchipuram; as per the impugned order also, the primary obligation of the vendor was to provide a map of the geographical area, and thereafter provide population for the area so depicted and not vice—versa; the .shp file inter alia contains the names and Code_2011 of the charge areas of the GA; the 'Code_2011' of each of the charge areas corresponds exactly to the codes of the respective talukas as per Census 2011, except that

Chengalpattu and Tirupuror have the same code since Chengalpattu was bifurcated into two Talukas - Chengalpattu and Tiruporur in the year 2012, after the 2011 Census; the outer boundary which emerges from the Talukas is co-terminus with the GA boundary of GA 9.61; the entirety of these Talukas, which together comprise the Kancheepuram District, were included in the Kanchipuram District GA 9.61; the 2nd Respondent contended that there is a mismatch between the number of talukas and charge area as there are 11 charge areas in the authorisation map of GA 9.61 while number of talukas of Kanchipuram District is 10; the afore-stated bifurcation of Chengalpattu explains this increase from 10 to 11 in para 43(III) of the impugned order; and the population and household figures of the Charge Areas as stated in the .shp file add up to 39,98,252 and 10,06,245 respectively, which are exactly the corresponding figures in the Census 2011.

114. With reference to google earth platform, Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that, without prejudice to the contention of the Appellant that Google Earth cannot be referred to for the present proceedings, a placing of the pdf authorization map on Google Earth also shows that the pink boundary in the map is a thick boundary which, on scale, extends to about 400 metres at several places; thus, it cannot be considered to be an accurate depiction of the GAs' extent; at the stage of filing the Written Submissions, the 2nd Respondent has produced a map allegedly plotting the Survey of India boundaries of Alandur, Pallavaram and Sholinganallur Talukas on Google Earth Pro, to show that parts of these Talukas fall in GA 9.62; there is no warrant for such a co-ordinates and Google Earth based exercise (the validity whereof is not accepted by the appellant) since as shown above, including on the basis of .shp file, that these Talukas fall in GA 9.61; and the sub-district boundaries

shown in this map produced by the 2nd Respondent as part of GA 9.62, are absent in the authorization map.

B. SUBMISSIONS OF THE 2ND RESPONDENT:

115. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that a .shp file is a simple, non-topological format for storing the geometric location and attribute information of geographic features; a .shp file depicts a geographic location through geometry and may contain several 'layers'; PNGRB has placed on record the .shp files for GA No. 9.61 and 9.62 before this Tribunal; these .shp files have been used to prepare the map issued with the Bid Document; Geo-coordinates are inherently embedded in the .shp files, unlike other layers which are added/ imported; any data points/ tables (such as households, population, names of town etc.) are added/ imported separately and are not embedded in the .shp file; they are only indicative and need not necessarily correspond to the geographic location depicted through geometry; the .shp files given by the PNGRB match exactly with the GA map and the co-ordinates given by the PNGRB for GA No. 9.61 and 9.62; the appellant had separately added a 'Survey of India' layer in its presentation, which was not in the .shp files given by the PNGRB; during the hearing before this Tribunal, the 2nd Respondent showed, by way of a presentation, the exact location of the CNG stations using the .shp files given by the PNGRB; the result is again the same, all the CNG stations fall in the GA awarded to the 2nd Respondent; the maps showing the location of the 19 CNG stations using the .shp files given by the PNGRB are enclosed herewith as **ANNEXURE -1**; and the 2nd Respondent had shown, during its submissions, that some CNG stations in particular are located inside GA 9.62 but are very close (range of around 100-200 m) to the boundary of GA 9.61.

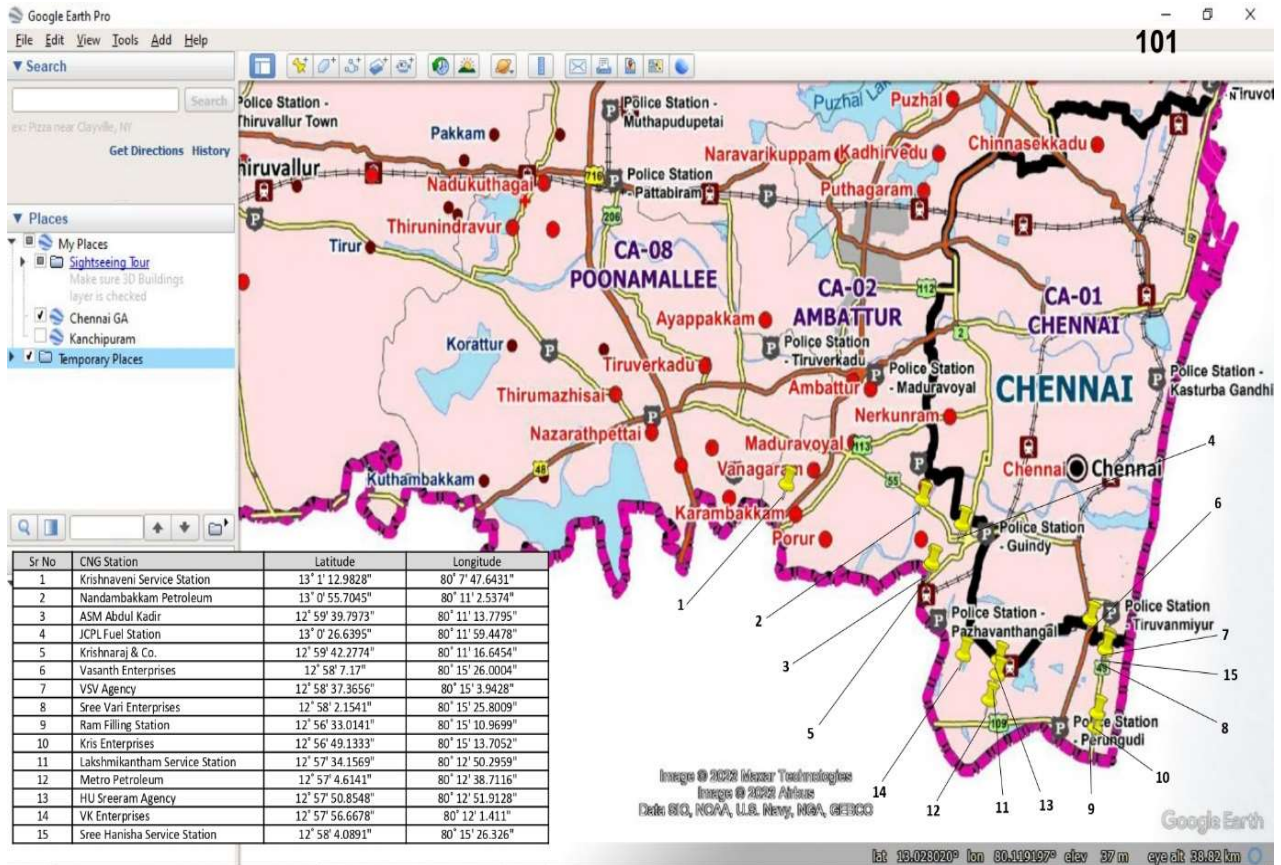
C. ANALYSIS:

116. The 2nd Respondent claims to have ascertained the geo-coordinates of 15 of the 19 CNG stations falling within the 9 Villages, which the Appellant claims are located in the map of Kanchipuram District GA. The 2nd Respondent contends that they had ascertained the geo-coordinates of these 15 CNG Stations using a handheld GPS instrument by physically visiting each of the 15 CNG stations. They have furnished details of the co-ordinates of each of these 15 CNG Stations in the form of a table which reads as under:

- Each of the CNG stations given below have unique geo co-ordinates.
- These geo-coordinates were ascertained using a handheld GPS instrument by physically visiting each of the CNG stations.

S. No.	CNG Stations	Lat-Lon In Decimal Degree		Lat-Lon In Degree Minute Second	
		Latitude	Longitude	Latitude	Longitude
1.	Krishnaveni Service Station	13.020273019	80.129900878	13° 1' 12.9828"	80° 7' 47.6431"
2.	Nandambakkam Petroleum	13.015473497	80.184038192	13° 0' 55.7045"	80° 11' 2.5374"
3.	ASM Abdul Kadir	12.994388165	80.187160995	12° 59' 39.7973"	80° 11' 13.7795"
4.	JCPL Fuel Station	13.007399879	80.199846637	13° 0' 26.6395"	80° 11' 59.4478"
5.	Krishnaraj & Co.	12.995077064	80.187957081	12° 59' 42.2774"	80° 11' 16.6454"
6.	Vasanth Enterprises	12.968658349	80.257222349	12° 58' 7.17"	80° 15' 26.0004"
7.	VSV Agency	12.977046017	80.251095228	12° 58' 37.3656"	80° 15' 3.9428"
8.	Sree Vari Enterprises	12.967265041	80.257166922	12° 58' 2.1541"	80° 15' 25.8009"
9.	Ram Filling Station	12.942503922	80.253047206	12° 56' 33.0141"	80° 15' 10.9699"
10.	Kris Enterprises	12.946981499	80.253807008	12° 56' 49.1333"	80° 15' 13.7052"
11.	Lakshmikantham Service Station	12.959488042	80.213971110	12° 57' 34.1569"	80° 12' 50.2959"
12.	Metro Petroleum	12.951281711	80.210753232	12° 57' 4.6141"	80° 12' 38.7116"
13.	HU Sreeram Agency	12.964126355	80.214420245	12° 57' 50.8548"	80° 12' 51.9128"
14.	VK Enterprises	12.965741082	80.200391959	12° 57' 56.6678"	80° 12' 1.411"
15.	Sree Hanisha Service Station	12.967802542	80.257312800	12° 58' 4.0891"	80° 15' 26.326"

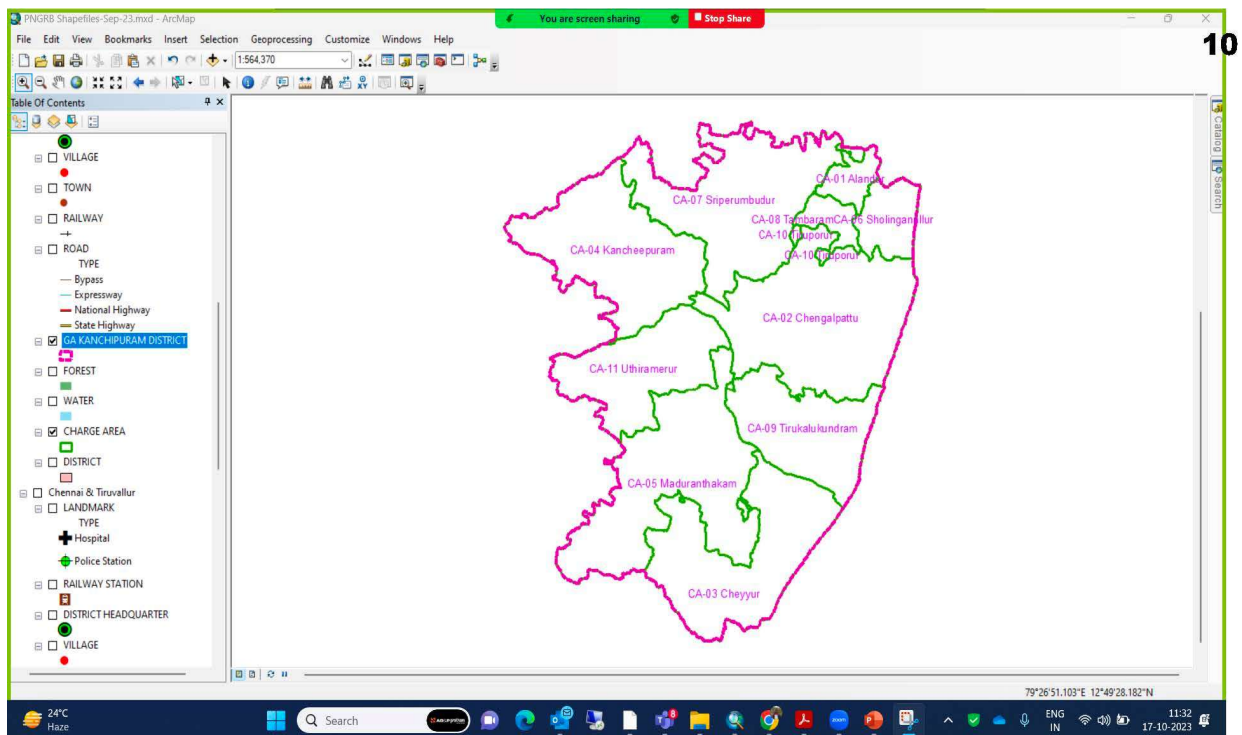
117. The longitude and latitudes, as reflected in the afore-said table, have been extrapolated by the 2nd Respondent into the .SHP file and, from the visual presentation made by them during the course of the hearing of this Appeal, it does appear that, as a result, these 15 CNG stations fall within the GA boundaries of Chennai-Thiruvallur Districts GA. A copy of the relevant portion of the said map, as shown by the 2nd Respondent during its visual presentation, is as under:



118. In the light of the visual presentation made on behalf of the 2nd Respondent, even if we were to accept the Appellant's contention that the PNGRB had not undertaken any independent exercise to determine the exact location of these 19 CNG stations on the basis of co-ordinates, and had only relied on what the 2nd Respondent had contended, it would only require us, if we were to hold that it is only the co-ordinates test which is applicable and all other parameters should be ignored, to direct the PNGRB to undertake the exercise of determining the locations of these 19 CNG stations on the basis of the co-ordinates given in the map/.shp file.

119. The clarification given by the Board in January 2020 that it has the .SHP files for all the 136 GAs awarded in the 9th and 10th round of bidding matters little, since the .SHP files ought to have been made available to the bidders as an Annexure to the ACBD, which was web-hosted on the PNGRB portal on 12.04.2018.

120. Apart from their contention that no reliance can be placed on coordinates as shown in the .SHP file, the Appellant submits, in the alternative, that the .SHP file has several layers containing the information as recorded in the map in Annexure-1. We see no reason to burden this judgement with the voluminous maps filed both on behalf of the appellant and the 2nd Respondent. It would, in our view, suffice to take note of one such map of Kanchipuram District GA, which contains the division of the GA into different charge areas, and also indicates the different layers, of the .SHP file, at the extreme left of the said map:



The outer boundary of the charge areas seamlessly coalesces with the GA boundary

121. Even if we were to ignore the additional layer of “Survey of India” enclosed by the Appellant in its presentation, the fact remains that several layers in the .SHP files, which was pointed out on behalf of the Appellant, do also reflect the villages with population of more than 5000, the area in square kilometres, the total number of households in the GA, the total population etc all of which correspond to the information furnished in the map at

Annexure-1 of the ACBD, the effect of which shall be considered later in this Order.

XII. FAILURE OF THE APPELLANT TO SHOW THE EXACT LOCATION OF THE CNG STATIONS ON THE PNGRB MAP:

A. SUBMISSIONS OF THE 2ND RESPONDENT:

122. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that the exact location of the CNG stations can only be established/ ascertained using co-ordinates – and not on the basis of addresses; as an example, if the exact location of this Tribunal is required to be ascertained on a map, it can only be done using geo-coordinates (latitude and longitude); the official address i.e. ‘Core-4, Scope Complex, Lodhi Road, New Delhi – 110 003’ can, at best, give a vague idea of where this Tribunal might be located; in the present case, despite this Tribunal’s order dated 05.04.2023, the appellant has failed to plot the exact location of the CNG stations on the basis of the co-ordinates given in the map provided by PNGRB at the time of bidding; instead, the appellant is causing confusion by plotting the CNG stations on the basis of their addresses as per the Petroleum & Explosives Safety Organization (PESO); in another instance, the appellant did plot the CNG stations on the basis of co-ordinates – not on the GA map given by PNGRB but on the Survey of India map of Kanchipuram during the hearing before this Tribunal, the appellant had argued that the Affidavit dated 25.04.2023 was not controverted by the 2nd Respondent; this is irrelevant as the same was not a mandate of the order dated 05.04.2023 passed by this Tribunal; *firstly*, it is impossible to exactly “plot” the location of any point on earth on a map on the basis of “addresses” instead of the exact “coordinates”; *Secondly*, even otherwise, the objective and jurisdiction of PESO is not to verify the location of a CNG station; *Thirdly*, Survey of India map has no sanctity for the 9th Round of Bidding, and the only relevant

map is the one given by PNGRB on the basis of which bids were submitted by the appellant and the 2nd Respondent.

B. ANALYSIS:

123. As noted hereinabove, the visual presentation, made on behalf of the 2nd Respondent during the course of hearing of this appeal, does show that, on the .shp files being placed on google earth platform, and if the co-ordinates (ie the longitude and latitude) of each of the 15 CNG Stations (which the 2nd Respondent claims to have physically ascertained visiting each of the 15 CNG Stations and using a hand-held GPS system) were to be accepted, then they do appear to fall within the boundaries of GA 9.62 ie Chennai-Tiruvallur Districts GA. We have no reason to disagree with the submission of the Learned Senior Counsel for the 2nd Respondent that the Survey of India Map was irrelevant in the 9th Round of bidding, since the Board had got maps prepared for each GA by awarding work orders to map vendors. What we are, however, required to examine (which we shall do so later in this Order) is whether the Co-ordinates test is the only test to be applied to the exclusion of all other identification criteria, and whether the Board intended to fix the boundaries of the GAs, for which it intended to invite bids, only on the basis of co-ordinates.

XIII. IS APPLICATION OF THE CO-ORDINATES TEST THE ONLY WAY OF LOCATING THE CNG STATIONS IN THE AUTHORISED GA:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

124. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that the case of the 2nd Respondent is that all of the above factors are liable to be ignored, and one must look at only the “coordinates” in the authorization maps and read the pink GA boundary in

reference thereto, and on that basis alone, determine in which GA do the CNG stations in question fall; firstly, such a submission that, one part of a document should be considered determinative, overlooking all other parts of the document; ignoring the statutory and regulatory background in which the document is set; and also ignoring the subsequent dealings of the parties and their admissions contained therein, is contrary to all canons of interpretation; consistent with this flawed approach, the 2nd Respondent has sought to produce a new map with the written submissions, arguing that, since one particular landmark, viz. the state highways, allegedly match in the shp maps of GA 9.61 and GA 9.62, the placing of these maps is correct; such a map does not further the 2nd Respondents' case; the plotting of CNG stations on this map is not accepted by the appellant as correct; there is no enquiry with respect to highways involved in the present case; in fact this map contradicts the 2nd Respondent's oral submission that the CNG stations in question are along State Highway 107; and the Board having clearly determined GA 9.61 and GA9.62 as identical with the respective districts, even if it is assumed, though not admitted, that any part of the depiction of this decision in the map is inconsistent with the decision, it is at the most a bona fide mistake made by the map vendor in the depictive exercise, which cannot form the basis of the rights of parties.

B. ANALYSIS:

125. To answer this contention, urged on behalf of the appellant, we must first ascertain whether the other tests suggested on behalf of the appellant, (apart from the co-ordinates test) merit acceptance, and whether the Board intended to prescribe any such test to identify the boundaries of the GAs for which it intended to invite applications for the 9th round of bidding.

126. Let us now consider the factors which the appellant seeks to place reliance upon in support of their submission that all these 19 CNG Stations are in fact located within GA.9.61 ie Kanchipuram District GA.

XIV. RELEVANCE OF CHARGE AREAS:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

127. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that, while the 2nd Respondent has contended that the charge Areas are not relevant at the stage of bidding, this submission is clearly unfounded as shown by (i) regulatory determination made during the 5th CGD Bidding Round; (ii) Cl. 2.1.2 of ACBD; Sch. C; and for the reason that the Charge Areas are the building blocks of a GA; this argument was evidently taken since the Charge Areas of the respective GAs are clearly identical with the Talukas of the corresponding Districts, and it is not even the case of the Respondents that there are any co-ordinates of the Talukas in the map issued with the ACBD and/ or authorization.

B. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

128. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that the appellant has placed emphasis on the concept of 'charge areas' to argue that 'charge areas' are nothing but 'talukas' of a district; 'Charge areas' are not defined anywhere either in the PNGRB Act, the Authorization Regulations or in the Bid Document; it is also not a bidding criteria for bidders under Regulation 7; it is, however, commonly understood that charge areas are such areas in the authorized area that a bidder is required to reach to meet the demands of the consumers; the concept of charge areas is to ensure holistic/ equitable development of the entire GA and they are merely a sub-set of the GA; under

the Authorization Regulations, the first step is to define the GA based on the criteria given in Schedule A; it is only thereafter that the charge areas are fixed within the boundary limits of the GA already decided; in other words, a GA is like a cake which is prepared first and 'charge areas' are like slices of that cake which can be cut only after the cake is prepared; it cannot be the other way around; in fact, in GA No. 9.61 itself, the charge areas do not match with the talukas of Kanchipuram; as per the District Census Handbook of 2011, Kanchipuram had 10 talukas (Sriperumbudur, Tambaram, Alandur, Sholinganallur, Chengalpattu, Kancheepuram, Uthiramerur, Tirukalukundram, Maduranthakam and Cheyyur); however, there are 11 charge areas in the map of GA No. 9.61; similarly, the charge areas of GA No. 9.62 also do not match with the talukas of Tiruvallur District; there are 9 talukas in Tiruvallur as per the District Census Handbook of 2011 (Gummidipoondi, Ponneri, Uthukkottai, Tiruttani, Pallipattu, Thiruvallur, Poonamallee, Ambattur, Mathavaram) whereas there are 10 charge areas of Tiruvallur as per the GA map; in fact, in the map of GA No. 9.62, whole of Chennai has been shown as one charge area i.e. CA-01, even though Chennai District had 10 talukas existing since 2013; the appellant has also relied upon the response dated 07.04.2015 to the clarifications sought during the 5th Bidding Round to argue that charge areas are demarcated based on tehsils/ mandals/ talukas etc; this is wholly irrelevant as the clarifications applicable to the 5th Bidding Round in 2015 cannot be applied to the 9th Bidding Round of 2018.

C. ANALYSIS:

129. As noted hereinabove, Clause 1.1.2 of the ACBD states that the charge areas are also depicted in the map; if the bidding entity is finally granted authorization, the entity shall be required to reach the charge areas as stipulated in the 2008 Regulations. Similarly, Annexure 1 of the ACBD, ie

the map depicting the geographical area and charge area, directs bidders to carefully study the geographical area and the charge areas before submitting the bid.

130. Since the ACBD emphasises on the importance of charge areas, and Annexure-1 thereto requires the bidders to consider both the Geographical Area and the charge areas, we must express our inability to agree with the submission that the charge areas are irrelevant. As the sum total of the area in sq.km of each of these talukas is equivalent to the total area in sq.km of the then Kanchipuram District, it is evident that each of the charge areas depicted in the Kanchipuram District GA map ie GA 9.61 is equivalent to the talukas of the then Kanchipuram District (ie prior to GO dated 04.01.2018), or in other words the Kanchipuram District as was taken into consideration by the PNGRB while inviting bids for the 9th round of bidding.

131. As shall be detailed later in this order, while it was always open to the Board to fix all charge areas, other than as the Talukas of a District, the map in Annexure-1 of Kanchipuram District GA does appear to show that the charge areas were taken to be the Talukas of the then Kanchipuram District. It is no doubt true, as is submitted on behalf of the 2nd Respondent, that, in terms of the 2011 Census Handbook, Kanchipuram District had 10 Talukas. It is because Chengalpattu Taluka was subdivided, after the 2011 Census, into two Talukas in the year 2012, ie into Chengalpattu and Tiruporur talukas, and as the map was evidently prepared on the basis of the Kanchipuram District as it existed prior to GO dated 04.01.2018, that the total number of Talukas are shown in the map in Annexure-1 of GA 9.61 as 11. We had no occasion to consider the talukas of Chennai & Tiruvallur Districts, nor was it even argued during the course of oral hearing, in as much as the appellants makes no claim over any part of the then Chennai & Tiruvallur Districts, and it is the 2nd Respondent which claims that a part of the then Kanchipuram

District falls within the boundaries of their GA ie Chennai & Tiruvallur Districts GA (ie GA 9.62).

132. Unlike with respect to the Geographical area, the map in Annexure-1 of the ACBD does not record the co-ordinates of each of the Talukas. Taking into consideration the fact that the area in sq km of each of the talukas, the population of each of the talukas and the number of households in each of these talukas (as recorded in the 2011 Census Handbook), when clubbed together, represent the area in sq.km, the population and the number of households of the then Kanchipuram District, and is reflected on the right side of the map in Annexure-1 as the area in sq.km, the population and the number of households of Kanchipuram District GA, it does appear that the demarcated charge areas in the said map correspond to the Talukas of the then Kanchipuram district, and no part of any of these charge areas (Talukas) in Kanchipuram GA are shown in the GA map of 9.62 ie Chennai & Tiruvallur Districts GA.

XVI. RELEVANCE OF THE TOWNS AND VILLAGES REFERRED IN THE MAP:

A. SUBMISSIONS OF THE APPELLANT:

133. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that (a) Towns/ Villages – within the image part of the authorization maps, the important towns and villages have been marked; within the GA boundary of the authorisation map of GA 9.61, towns Paraniyuthur; Nandanvakkam; Meenabakkam; St. Thomas Mount-cum-Pallavaram; Alandur; Kottivakkam; Neelankarai; Pallikaranai; and Madippakkam, where 15 of the 19 CNG stations, in respect of which the complaint was filed are admittedly located, have been specifically named and marked; none of these towns are marked in the map of GA 9.62; (The remaining 4 CNG Stations are located in villages with a population less than

5,000 as per Census 2011, which are not marked in either of the maps but are admittedly part of GA 9.61); the Towns of Kanchipuram District, as per Census 2011. form part of attribute data as also the boundary data of the shp file of GA 9.61; their population is also mentioned which matches their population as per Census 2011; these towns have thus been included in the Kanchipuram District GA 9.61 as per .shp file by name in the attribute data, by being pictorially depicted within the GA; and by their entire population being included in the attribute data; this also includes the towns mentioned above, where 15 of the 19 CNG stations are located; and all the villages with population 5,000 or more (total 38 in number) of Kanchipuram District as per Census 2011 form part of attribute data of the .shp file of GA 9.61, with their entire population included.

B. SUBMISSIONS OF THE 2ND RESPONDENT:

134. With respect to the appellant's claim that the disputed 19 CNG stations fall within GA No. 9.61 as the official address of the said stations is in the villages/ towns shown (as 'dots'/ points) in the PNGRB map/ .shp file given by the PNGRB, Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that any claims over the GA awarded to the 2nd Respondent, merely on the basis of names of villages/ towns, is not correct as the nomenclature cannot prevail over the geo-coordinates that give precise contours of the GA boundary; the instant dispute is not whether the GA boundary has been properly determined or not; but a commercial dispute concerning the location of certain CNG stations; further, the villages/ towns shown in the appellant's map are not location points/ coordinates; these villages/ towns run into several kilometres; as examples, Alandur is around 19.50 sq. kms and Pallavaram is about 12.92 sq. kms and spread into GA No. 9.62 even though they are shown by way of 'dots'/ points in GA 9.61 map; significantly, even as per the appellant, Alandur is about 26 sq.

km; in any event, as per the appellant's own Detailed Feasibility Report (DFR), a part of Alandur is in the Chennai District; in response to a query from this Tribunal as to whether Alandur, Sholinganallur and any other areas spread over both GA Nos. 9.61 as well as 9.62, the 2nd Respondent is placing on record a map demonstrating that these areas indeed spread over both GAs; the said map is enclosed as **ANNEXURE – 2**; therefore, even if a CNG station has its official address in a village shown to be on the appellant's map, it does not necessarily mean that the location/ geo-coordinates of the CNG station will also always fall within the GA awarded to the appellant.

C. ANALYSIS:

135. The 2nd Respondent, in its letter addressed to the Appellant on 22.02.2022, has itself stated that, according to them, a part of Kanchipuram District fell within GA No. 9.62 ie Chennai-Tiruvallur Districts GA. The map in Annexure 1 with respect to each of these GAs contains various details, one among which is the name of the villages whose population is 5000 or more. 15 of these 19 CNG stations fall in 9 villages, with a population of 5000 and more, in the then Kanchipuram District. The location of these 9 villages have been referred to and identified in the map in Annexure 1 to fall within GA No. 9.61 ie Kanchipuram District GA.

136. If, as is now contended before us, a part of Alandur and Pallavaram villages also fall within GA 9.62, and that was the intention of the Board, then the GA 9.62 (Chennai-Tiruvallur Districts GA) map should have reflected the names of these villages, since it is not in dispute that the population of these villages exceed 5000 in number. The very fact that all these 9 villages/towns are reflected only in the physical map of GA 9.61 ie Kanchipuram District GA does lend support to the appellant's submission that the subject 19 CNG Stations fall within Kanchipuram District GA ie GA 9.61.

XVII. GA AND DISTRICT BOUNDARY LINES SHOWN IN THE MAP:

A. SUBMISSION OF THE APPELLANT:

137. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit, with respect to the boundary line, that the authorisation maps show the GA boundary in dotted pink line and district boundary with solid black line; this, besides being evident from a bare perusal of the authorization maps, is also the admitted position of the Board (in the impugned order - para 46); a bare perusal of the authorization maps also shows that these boundaries completely overlap each other in both the maps, further establishing the identity of the GA and the respective districts; even as per the .shp file, the GA boundary is co-terminus with the District boundary as considered by PNGRB both for Kanchipuram District GA 9.61 and Chennai & Tiruvallur Districts GA 9.62; in the .shp file also, there is no overlap between the Kanchipuram District and GA of Chennai & Tiruvallur, showing that no part of Kanchipuram District was, or was intended to be, included in GA 9.62.

138. Learned Senior Counsel would submit that the 2nd Respondent has taken inconsistent stands with respect to the depiction of the boundary; on the one hand it is contended that the only relevant boundary is the GA boundary indicated in pink and “the district boundary indicated in ‘black’ has no relevance whatsoever”; on the other hand, it has sought to treat the black district boundary line as sacrosanct, and argued that, since the authorization map shows a ‘hump’ area, below the ‘black district boundary’ of Chennai, as included in GA 9.62, a part of Kanchipuram must be held to have been included in GA 9.62; however, as has been borne out from the record, no part of Kanchipuram ever came to be included in GA 9.62; in fact, while it has been the stand of the Board as well as the 2nd Respondent, taken orally

for the first time before this Tribunal, that the hump portion in GA 9.62 has been carved out of Kanchipuram District and given to the 2nd Respondent, this contention is without any basis nor is there even a whisper, in the pleadings of the 2nd Respondent before the PNGRB or in the pleadings/ Affidavits filed by the 2nd Respondent and PNGRB before this Tribunal, and/ or in the record of the Board produced before the court.

B. SUBMISSIONS OF THE 2ND RESPONDENT:

139. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that, as part of the 9th Bidding Round, PNGRB supplied a geo-referenced map with every GA as part of the tender document itself; in contrast, in the 11th Bidding Round, the PNGRB did not supply a map for the GAs to be authorized; unlike the 9th bidding round which was a 'map' round, PNGRB did not supply a map for the GAs to be authorised under the 11th bidding round ('no-map' round); this is evident from Clause 1.1 of the Bid Document for the 11th bidding round: (a) *Firstly*, as part of Annexure-1 of the Bid Document, only charge areas within the GA were given (Clause 1.1.1); (b) *Secondly*, it was also provided that the district boundary of the GA shall be as defined by the respective local authority, such as district administration. While it was further provided that the bidders may procure the maps for identification of district and charge areas boundaries from Survey of India, PNGRB made it clear that the boundary "*should be duly vetted by district administration for correctness on ground*" (Clause 1.1.2), (c) *Thirdly*, PNGRB also made it clear that it "*shall have no role in defining the boundary, except the nomenclature of that particular district and charge areas falling in the GA*" (Clause 1.1.2), (d) *Fourthly*, as part of Annexure-1 (Charge Areas of the GA) read with the Corrigendum issued by PNGRB on 18.11.2021, PNGRB clarified that in case any charge area had been merged/ bifurcated/ renamed, then the charge area and name as on the date of

advertisement shall prevail; (e) On 14.02.2022, Schedule-D of the Regulation was amended and it was inserted that the authorized area “for laying, building, operating or expanding the proposed CGD network shall cover the following Charge Areas, as depicted in indicative and not to scale drawing or map...”. The authorization given to the successful bidders of the 11th Bidding Round also specifically states the name of the district and the charge area; (f) reference may also be made to the outline of charge areas supplied with a sample authorizations for the 11th Bidding Round, and the said outline states that it is “indicative, non GIS and not to scale”; in conclusion, the terms of the 11th CGD Bidding Round were completely different; if the contention of the appellant were to be accepted, there would be no difference between the terms of 9th and 11th Bidding Rounds; it is also evident that, whenever PNGRB decided to invite bids on the basis of the district boundary, it clearly mentioned the same; PNGRB also made it clear that the boundary of the GA based on district shall be that which is prevalent as on the date of the bid, and not based on the last Census data i.e. 2011; and thus, even under the district approach, the boundary to be relied upon was the one as on the date of bidding.

140. On the contention of the appellant that the GA boundary indicated in ‘pink’ and the district boundary in ‘black’ overlap, and this shows that the GA and district boundaries are the same, Sri Gopal Jain, Learned Senior Counsel. would submit that, *Firstly* the ‘district’ boundary/ ‘black line’ is wholly irrelevant for the 9th Round; GA boundary/ ‘pink line’ is the only relevant consideration; if the appellant’s contention is accepted, it will cause chaos and uncertainty as the GA map given by PNGRB will have no sanctity; *Secondly*, PNGRB has itself admitted before this Tribunal that there was an error in depicting the district by way of the ‘black’ line; *Thirdly*, without prejudice to the above, ‘district’ boundary does not necessarily mean the entire district in all cases; it only means that part of the district which

has been awarded as part of the GA in question; there are several instances in the 9th Bidding Round itself where PNGRB has used the ‘black’ line to indicate even ‘part’ districts:

Name of GA	Submissions
Navsari (Except Area Already Authorised), Surat (Except Area Already Authorised) & Tapi (Except Area Already Authorised) & Dang District (GA 9.10)	<p>a. Only a part of Surat district is part of GA of 9.10.</p> <p>b. However, the ‘black’ line can still be seen all along (Map is at Pg. 100 of R- 3).</p>
Valsad (Except Area Already Authorised), Dhule & Nashik Districts (GA 9.39)	<p>a. Only a part of Valsad district is included as part of GA 9.39.</p> <p>b. However, the end of the boundary of GA contains indicates the ‘black’ line as the district boundary. This further shows that the district boundary indicated in ‘black’ has no relevance (Map is at Pg. 101 of R- 3).</p>
Moradabad (Except Area Already Authorised) District+ the area granted under Regulation 18. (GA 9.83)	<p>a. GA 9.83 includes a part of (but not the entire) Sambhal and Amroha districts. This is evident from the fact that ‘Chandausi’ – which forms a part of Sambhal district – is specifically included in the map for GA No. 9.83. A ‘black’ line indicating the district boundary is also given in the map.</p> <p>b. Sambhal district (except the area already awarded as part of GA No. 9.83)</p>

	was subsequently awarded as part of the 11 th Bidding Round (Map is at Pg. 99 of R- 3).
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141. Sri Gopal Jain, Learned Senior Counsel, would further ,submit that the appellant, in its oral submissions, placed reliance on the .shp file given by the PNGRB to argue that the GA boundary and district boundary coalesce for GA Nos. 9.61 and 9.62, and “*depiction of district boundary of Kanchipuram District in the .shp file is not correct, as it is inconsistent with the Survey of India Boundary*”; the appellant has, thus, acknowledged that ‘district’ layer in the .shp file given by the PNGRB does not match with the administrative district boundary as per Survey of India; this substantiates the 2nd Respondent’s case and establishes beyond doubt that PNGRB has not awarded GAs on the basis of ‘district’ concept; this further shows that the appellant is wrong in using the Survey of India map to plot the CNG stations on the basis of coordinates, when it was specifically directed by this Tribunal, vide order dated 05.04.2023, to enclose maps drawn on the basis of the PNGRB maps which refer to the co-ordinates; the appellant deliberately did not comply with this order as it would have shown that all 19 CNG stations fall in the GA awarded to the 2nd Respondent..

C. ANALYSIS:

142. In para 46 of the impugned order, the Board has stated that the GIS map for GA 9.62 clearly demarcate the GA boundaries with a pink line and the District boundary with a black line. A perusal of the map of GA 9.61 also shows that, while the GA boundaries are recorded in the form of a pink line, the District boundaries are recorded in the form of a black line, both of which overlap, necessitating the conclusion that the boundaries of Kanchipuram District GA 9.61 is the same as the boundaries of the then Kanchipuram

District. We find force in the submission, urged on behalf of the Appellant, that a perusal of the authorised map does show that the GA boundary in pink overlaps the District boundary line in black of both GAs 9.61 and 9.62.

143. It is unnecessary for us to examine what the Board did in the 11th bidding round, since the present dispute relates to the 9th bidding round. While a copy of the map of every GA was enclosed along with the ACBD in the 9th bidding round, the maps could only have been prepared on the basis of what the Board had identified as the GA for which bids were to be invited. It is not in dispute that the map does contain the co-ordinates of GA 9.61. As shall be elaborated later in this Order, there is nothing on the record to show that the Board intended to identify the GA boundaries on the basis of co-ordinates alone. On the contrary, the material on record does show that the Board had intended, in so far as GAs 9.61 and 9.62 were concerned, to treat these GAs as co-terminus with the then Kanchipuram District and the then Chennai-Tiruvallur Districts respectively.

144. We see no reason to undertake an exercise of examining the terms and conditions of the 11th bidding round since the present case is confined only to the 9th bidding round, that too with respect to the authorised entities of GAs 9.61 and 9.62. Suffice it to observe that, since we have refused to examine the appellant's contention regarding non-existence of co-ordinates in the map as it is contrary to the pleadings on record, we must express our inability to also examine the 2nd Respondent's contentions regarding the hump part of Kanchipuram District falling within their GA, as it is neither supported by pleadings both before the PNGRB and later before this Tribunal, nor is there a reference to any such hump in the impugned order.

145. Except to state that the black line in the map is irrelevant, no reasons are forthcoming for the 2nd Respondent's conclusion regarding its irrelevance. The submissions made by the Counsel for the Board, during

the course of hearing of the present appeal, cannot be treated as the submission made by the Board, in the absence of any affidavit being placed by the Board in this regard. If the black line shown in the map is erroneous, as is now claimed, the Board was then duty bound to explain as to when it came to know of the error and as to how such an error had occurred. The Board was then obligated to explain as to where the district boundaries are reflected. This submission, of the black line being in error, appears to have been made only to sustain the impugned judgement, that too by the counsel for the Board, and not by the Board itself. The submission that the District boundary does not mean the entire District, and refers to only that part which falls within the GA, is only to be noted to be rejected, for If that were to be so, then providing for the District boundary was wholly unnecessary.

146. In ***Adani Gas Ltd. v. Petroleum & Natural Gas Regulatory Board***, (2020) 4 SCC 529, the Supreme Court held that the Tribunal was approached only with respect to GAs 51, 61 and 62, (ie GAs 9.51, 9.61 and 9.62), the Board's treatment of other GAs could not be decisive in determining the legality of the authorisation granted in GAs 51, 61 and 62, especially where the Board's actions in respect of the other GAs had not been independently challenged; and to decide the sole question in the said appeal, the presence and hearing of other bidders was not necessary. Reference to other GAs, by the counsel for the 2nd Respondent, is wholly extraneous to the present lis, and it would be inappropriate for us, in light of the judgement of the Supreme Court in **Adani Gas**. to take note of GAs which do not form part of the dispute in the present appeal.

XVIII. DOES THE NAME OF THE GA INDICATE THAT THE GAs WERE CARVED OUT ON THE BASIS OF DISTRICTS:

A. SUBMISSIONS OF THE APPELLANT:

147. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit, with respect to the name of the GA, that the names of the GAs in question also show that they correspond to the entirety of their respective districts with no area being excluded from the entire district as part of the authorization; the only reasonable interpretation of the authorisations, issued to the appellant and the 2nd Respondent, is that they were issued for the respective districts; they comprise of the Talukas of the respective Districts with GA 9.61 including the three Talukas where the CNG stations in question are located; and the respective GAs including the towns and villages of the corresponding districts, and in particular, GA 9.61 including the towns where the CNG stations in question are admittedly located.

B. SUBMISSIONS URGED ON BEHALF OF THE PNGRB:

148. On the issue of naming of GAs, Sri Rahul Sagar Sahai, Learned Counsel for the PNGRB, would submit that reliance was also placed on the fact that the instant GA was named “Kanchipuram District GA” in the authorization and other places, and therefore the entire district should be considered as the GA based on the name; this argument is also wrong and, in fact, is contrary to the Appellant’s own stand in the Draft Feasibility Report (“DFR”); in the DFR submitted by them, the Appellant mentioned that parts of Chennai were also part of its GA, however, for the purpose of “study region”, it is referring to the same as Kanchipuram District GA; at page 348, the DFR states that “for all intent and purposes, the study region in the report is referred to as “Kancheepuram District GA”; accordingly, the name used by PNGRB and by entities, including the Appellant, were only for reference purposes and cannot be used to determine the boundary; the appellant was confusing two entirely different concepts: the GA boundary and the district boundary serve completely different purposes; the demarcation of the

boundary of a district is at the discretion of the Central/ State Government, and may undergo change with time for better administration as and when the change is notified; on the other hand, the GA boundary is sacrosanct and cannot be altered post the bid; the Impugned Judgment also stated that the Appellant had placed a lot of emphasis on the Survey of India digital maps, and other maps obtained from local authorities, in support of its complaint; however, PNGRB observed that, until the 10th CGD Bidding Round, the GAs authorized by PNGRB had always been accompanied by the map with geo-coordinates forming part of the authorization letter; the concept of referring to the maps of Survey of India has been introduced only from the 11th CGD Bidding Round; in the 11th CGD Bidding Round, the bid document did not include the map of the GA which was proposed to be awarded; and,. instead, PNGRB asked the bidders to procure the maps for identification of district and charge area boundaries from the Survey of India.

C. ANALYSIS:

149. We see no reason to delve into the contentions under this head, since the other details referred to hereinabove do appear to support the appellant's contention that the Board intended to carve out GA 9.61 and 9.62 in terms of the then existing Kanchipuram District and Chennai-Tiruvallur Districts. The villages with population of over 5000, where 15 of the CNG Stations have been set up, have all be identified as being located in the GA 9.61 map, and fall within the Talukas which constitute the charge areas of Kanchipuram District GA. As the appellant has not even contended before us that any part of Chennai District falls within Kanchipuram District GA, we see no reason to examine the contents of the draft feasibility report to ascertain whether such a claim had been put forth, on behalf of the Appellant, therein. While the purposes which the GA boundary and the District boundary serve may not be the same, that does not mean that the GA boundary can, in no case,

be the same as the District boundary. As shall be elaborated later in this Order, the material on record does not show that the Board intended to identify the boundaries of these two GAs on the basis of co-ordinates, as all other factors lend support to the appellant's submission that these two GAs were intended to be identified on the basis of the boundaries of their respective Districts.

150. The financial criteria specified in Regulation 5(6)(e), and the requirement of furnishing a bid bond, in the form of Bank Guarantee or demand draft or pay order, under Regulation 5(6)(h) of the 2008 Regulations, both refer to the 2011 Census. Regulation 5 of the 2008 Regulations relates to the criteria for selection of entity for expression of interest route. Regulation 5(6) requires the Board to scrutinize the bids received in response to the advertisement in respect of only those entities which fulfill the following minimum eligibility criteria, namely, among others, (e) the entity has adequate financial strength to execute the proposed project, operate and maintain the same in the authorized area and shall meet the following financial criterion to qualify for bidding for a single CGD network, namely:-

Population in the geographical area [as per latest census of India]	Minimum net worth of the bidder entity
(1)	(2)
5 million or more	Rs.1,500 million for a population of 5 million, plus additional Rs. 300 million for each 1 million of population or part thereof, in excess of 5 million (refer Note – 3)

2 million or more but less than 5 million	Rs.1,000 million
1 million or more but less than 2 million	Rs. 750 million
0.5 million or more but less than 1 million	Rs.500 million
0.25 million or more but less than 0.50 million	Rs.250 million
0.1 million or more but less than 0.25 million	Rs.100 million
Less than 0.1 million	Rs.50 million

Note – 1 The above minimum net-worth is applicable in case the bidder entity bids for a single geographical area in a particular bidding round.

Note – 2 In case a bidder entity bids for more than one geographical area, then, the minimum net-worth requirement shall be calculated by considering 100% of minimum net-worth required for the bidded geographical area having the highest population, plus 20% of minimum net-worth required for each of the other geographical areas. For example, if a bidder has bidded for four geographical areas namely A, B,C and D and out of these four geographical areas, C has the highest population, then minimum net-worth requirement shall be calculated as minimum net-worth requirement of C plus 20% of minimum net-worth requirements for A, B and D each.

Note – 3 For example, if the population is 8.4 million, then the minimum net-worth required shall be Rs. 2,700 million (i.e. Rs. 1,500 million for initial 5 million of population, plus Rs. 1,200 million for 3.4 million of population in excess of 5 million).

(i) Net-worth of a bidder entity shall be computed as per Schedule-K.

151. Regulation 5(6)(h) requires the entity to furnish a bid bond, in the form of Bank Guarantee or demand draft or pay order from any scheduled bank drawn in favour of the Petroleum and Natural Gas Regulatory Board payable at New Delhi] for an amount equal to- (i) rupees fifty million for a population of five million and proportionately higher amount for population of more than five million; (ii) rupees thirty million for a population of one million and more but less than five million; (iii) rupees twenty million for a population of half a million and more but less than one million; (iv) rupees fifteen million for a population of quarter of a million and more but less than half a million; (v) rupees ten million for a population of one-tenth of a million and more but less than quarter of a million; and (vi) rupees five million for a population less than one-tenth of a million.

152. While the purposes served by both Regulation 5(6)(e) and 5(6)(h) of the 2008 Regulations may well be to assess the financial strength of the applicant entity, and to quantify the bid bond amount to be submitted by them, it is relevant to note that both these requirements are based on the population of the Geographical area as per the last census ie the 2011 Census. Assessment of financial strength and quantification of the bid bond is confined to the population of the geographical area for which the bid has been submitted, and not beyond. Consequently, population of the Geographical area is an indicator of the boundaries of the GA, for it is only within the GA can the successful bidder operate on its being authorised by the Board to do so. As noted hereinabove, the Survey of India map is of no consequence, nor is the conditions stipulated in the 11th round of bidding of any relevance, to the present lis.

153. Suffice it for us to hold that, accepting the submission urged on behalf of the second Respondent that it is only the GA co-ordinates of each of these

sub-stations which are required to be taken into consideration, would require us to ignore every other detail referred to in the map in Annexure 1. It is not the nomenclature of the villages alone which is being taken note of, but various other information reflected in the maps of these two Gas which have been considered. Such information appears to support the appellant's submission that GA 9.61, ie Kanchipuram District GA, is co-terminus with Kanchipuram District as it existed just prior to GO dated 04.01.2018.

154. It is evident, from what has been stated hereinabove, that, while application of the co-ordinates test may result in the 19 CNG Stations being held to fall within GA 9.62 ie Chennai & Tiruvallur Districts GA, all other factors indicate that the boundary of Kanchipuram District GA is co-terminus with the boundary of the then Kanchipuram District. As it is even the 2nd Respondent's case that all these 19 CNG Stations fell within the then Kanchipuram District, these CNG Stations must then be held to fall within Kanchipuram District GA.

155. The only manner in which this issue can be resolved is to ascertain what the PNGRB Act and the 2008 Regulations required of the Board regarding determination of the GA, and what the PNGRB intended to specify as the GA and its boundaries. As shall be elaborated later in this Order, Section 19 of the PNGRB Act read with Regulation 2(1)(c), 5(4) and Schedule A of the 2008 Regulations obligate the Board to clearly identify the boundaries of the GA for which bids are to be invited.

XIX. IS THE AUTHORIZATION A STATUTORY CONTRACT BETWEEN THE PARTIES?

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

156. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that the authorization issued for GA 9.61 to the

appellant is and that issued to the 2nd Respondent for GA 9.62 are statutory contracts, between the respective entities and PNGRB, which fall for interpretation in light of the entire statutory and regulatory background, and have the following features: (a) the authorisation issued to the 2nd Respondent states that it has been issued for laying a CGD network “in the Chennai and Tiruvallur Districts in the State of Tamil Nadu”, and the authorisation issued to the appellant states that it has been issued for the Kanchipuram Districts in the State of Tamil Nadu”; (b) Area – the authorization of the 2nd Respondent states that the authorised Area shall cover an area of 3569.00 sq km; it is the same area which is mentioned in the map annexed to the authorization; this is also the exact area of GA 9.62 as per the work order issued to the map vendor [p. 197 at 193/File-3]; this area is the sum of the areas of Chennai (175 sq km) and Tiruvallur (3394 sq km) Districts as per Census 2011 [pp. 2, 36, 38/C5]; a detailed break-up of the areas of Chennai and Tiruvallur Districts, in terms of Talukas, show that the total area exactly matches the sum of the areas of the Talukas of the Districts as per Census 2011; it was specifically contended, by the appellant before the Board, that this total area would stand enhanced if the 2nd Respondent’s contention is accepted; in response, the 2nd Respondent did not dispute this, but argued that it is possible that the GA area number may be more or less; during the course of oral arguments, on a specific query being put by the Bench, it was admitted by the 8iuiK9o0Learned Counsel for the 2nd Respondent that the said figure of “3569.00 sq km” is “incorrect” (i.e., it is inconsistent with the 2nd Respondent’s case); with respect to the appellant, the area mentioned in the authorisation map is 4483 sq km, which is also the area of Kanchipuram District as per Census 2011; it is the detailed break-up of the sum of the areas of the Talukas of Kanchipuram District as per Census 2011; it also matches the area communicated to the map vendor [p. 197 at 193/File-3]; and this was reiterated by the Board vide letter dated

31.01.2022; had any area from Kanchipuram District been carved out of GA 9.61, the area of GA 9.61 would have stood reduced from 4483 sq.km (c) Population – the authorisation maps also mention the population of the respective GAs’ which exactly match the population of the respective districts as per Census 2011; and the detailed break-up of the population into Talukas also shows that the sum of population of the Talukas of the respective districts exactly match the population of the GA specified in the authorisation map; vide addendum dated 21.06.2018, it was declared by PNGRB that, for population, the data given in tender documents and subsequent corrigendum and addendum shall be final and binding; this addendum was duly signed by all parties including the 2nd Respondent, and was submitted as part of the bid document; the population “of the Geographical Area” as per Census 2011 is crucial for determination of eligibility as also grant of authorization (Reg 5(6)(e) and Reg 9); the 2nd Respondent, evidently, submitted a bid bond of Rs. 8,37,48,360, which is exactly ten times the population of Chennai and Tiruvallur Districts as per Census 2011; thus, the population data is final and binding on the parties; this also shows that no part of the Kanchipuram District has been included in GA 9.62; (d) Households – similarly, the authorization maps contain the number of households of each of the GAs which exactly match the number of households in the respective districts; household numbers are indicated, since the number of PNG connections form a significant part of the bid, with weightage of 50%. (Reg. 7(1)(a)); the number of PNG connections that a bidder may offer to connect is a direct function of the number of households in the GA; in the present case, when the reasonability of the bids for PNG connections by the appellant for GA 9.61 and the 2nd Respondent for GA 9.62 came into question, the Board assessed reasonability of the bids for the respective GAs by considering the household numbers for the respective ‘districts’ as per Census 2011, projecting them to the year 2026 by which the

PNG target is to be completed (considering the authorisation year as 2018) and then comparing the figures; the validity of the Board's decision was upheld by the Supreme Court in ***Adani Gas Limited v. PNGRB & Ors., (2020) 4 SCC 529***; the prime question before the Court in that case was that, for the purpose of judging reasonability of the bids, which data is to be considered, i.e., what would be the nature of data, of which date, and of which geographical unit; the Court considered the above Board agenda note dated 28.08.2018; the Board also clearly submitted before the Court that it had made the calculations as per basic data sheet of the 'respective districts of the GA' according to the latest census data; in fact, in Civil Appeal No. 3289 and 2019 which was filed by the 2nd Respondent before the Supreme Court, it stated that "as per the Census of 2011, the number of households existing in the GA of Chennai and Tiruvallur was 21,01,931", which was the combined number of households for Chennai and Tiruvallur districts as per Census 2011; none of the parties, including the 2nd Respondent, contended that the data to be used for ascertaining reasonability of the bids was to be not of the district, but of a different area, to be ascertained on the basis of co-ordinates; a bare reading of the judgment of the Supreme Court shows that all parties proceeded on the assumption that the respective GAs were identical to the corresponding districts; this exercise conducted by the Board and sustained by it before the Supreme Court, constitutes a clear admission on the part of the Board that the respective GAs are co-extensive with the corresponding Districts; the 2nd Respondent did not seek any correction in the said household numbers, and is now bound by the said figures in the map; in the same round, in respect of GA-72, upon part of a district being carved out of the district, PNGRB reduced the number of households; the 2nd Respondent had objected to the extent of reduction; and it was held by PNGRB that the 2nd Respondent was bound by the data given in the ACBD since the finality and binding nature of the data was accepted by all bidders

by signing the addendum dated 21.06.2018; this clearly establishes the relevance and binding nature of the household data stated in the map issued with the Authorization (e) Charge Areas/ Sub-districts – the authorisation maps list the Charge Areas on the right hand side, and within the image of the GA, the boundaries of the charge areas are marked and their names are indicated; these boundaries are described on the right hand side under Legends as “SUB-DISTRICT BOUNDARY”; the charge areas and sub-districts have been used inter-changeably in the map, consistent with the regulatory determination; in fact, the charge areas, by name, are the talukas of the respective districts; it is an admitted position that the 19 CNG stations in question fall in Talukas: Alandur, Sholinganallur and Sriperumbudur; these Talukas constitute Charge Areas CA-01, CA-06 and CA-07 of GA 9.61 respectively, as noted in the impugned order as well.

A. ANALYSIS:

157. As noted hereinabove, the Appellant was granted an authorisation, for Kanchipuram district GA (ie GA 9.61), by the PNGRB vide letter dated 26.09.2018. Para 1 of the said authorisation recorded the area in square kilometres of the said GA as 6936.50 square kilometres. The Appellant, vide letter dated 19.01.2022, brought this error, in the authorisation granted to them for Kanchipuram District GA, to the notice of the Board. The PNGRB, by its letter dated 31.01.2022, informed the Appellant that, although the tender document and the map issued in Schedule D (authorisation letter) had mentioned the correct area as 4483 square kilometres, inadvertently the same had been written as 6936.50 square kilometres in Para-1 of Schedule D; and, in view of the above, the authorised area mentioned at Para-1 of Schedule D should be read as 4483 square kilometres. It is clear therefore that, as recently as 31.01.2022 (long after the bids were invited and finalised and authorisation was granted for both the GAs), the Board acknowledges

the total area in sq.kms of GA 9.61 to be 4483 square kilometres which corresponds to the area in sq.kms of the then Kanchipuram District as per the 2011 Census Handbook.

158. We see no reason to examine the Appellant's contentions, on an analysis of the Judgment of the Supreme Court in **Adani Gas Limited vs. PNGRB (24 SCC 529)**, since we have already referred to the said Judgment in detail earlier in this order. We had also observed earlier in this Order that there was force in the submission of the Appellant that the Talukas of the then Kanchipuram district constituted the charge areas of Kanchipuram District GA for which the Appellant was granted an authorisation. Consequently, since these 19 CNG stations fall within Alandur, Sholinganallur, and Sriperumbudur Talukas of Kanchipuram District, which corresponds to charge areas CA-01, CA-06, and CA-07 of GA 9.61, it does appear that these 19 CNG stations fall within the charge areas of Kanchipuram district GA.

159. While we agree with the submission that the authorisation issued to the Appellant and the 2nd Respondent by the PNGRB may well constitute a statutory contract, we do not wish to delve on this aspect in the light of what we have held hereinabove, or to express any opinion on the submission urged on behalf of the Appellant and the 2nd Respondent as to what transpired during the oral hearing, though we find a reference thereto in the written submissions not to be in good taste. Questions posed by the Bench, during the oral hearing of the appeal, are primarily for eliciting necessary information, and is not a conclusive expression of its views which must await the final judgement. We wish to say no more.

XX. STATUTORY SCHEME:

A. SUBMISSION ON BEHALF OF APPELLANTS:

160. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that, as the subject contract is a statutory contract, everything leading to the formation of the contract, including the final authorization issued, is governed by the Act and the Regulations; since PNGRB is a regulator, even the regulatory determination made by it are elevated to the level of Regulations. (**NHAI v. Aam Aadmi Lokmanch, (2021) 11 SCC 566**); this is owing to the highly specialized and dynamic nature of the field meant to be regulated; a regulatory determination once made, equally binds the regulator, and cannot be deviated from except for shown public interest. ((**SEBI v. Sunil Krishna Khaitan, (2023) 2 SCC 643**; **Mahindra Electric Mobility Limited and Another v. Competition Commission of India and Another, 2019 SCC OnLine Del 8032 at para 119**); the Board identifies a 'specified geographic area' in which it considers it necessary or expedient to develop the public infrastructure of a CGD network; it then gives wide publicity of its intention, i.e., the intention to develop a CGD network in such specified area (S. 19(1)); the statutory requirement of giving wide publicity accords sanctity to the area publicized, and the same cannot be deviated from in a regulatory action; this is followed by selection of an entity through a competitive process at a global level. (Section 19(2) and S. 20(5)); both the identification of GA on the basis of necessity or expediency, and the competitive selection process, make the concepts of market forces and economic viability, central to the whole process; the definition of "authorised area" in Regulation 2(1)(c) of the CGD Authorization Regulations permits identification of geographical areas comprising of parts or combinations of various administrative units therein; the identification of geographical area is necessarily with reference to administrative geographical units; there is no reference to identification on the basis of geo-spatial coordinates (either in this or any other clause of the 2008 Regulations or in any Board decision); the two specified criteria, for

determination of a geographical area, are economic viability and contiguity as mentioned in Schedule-A; the concept of contiguity is also defined in Schedule-A as a function of economic viability. (There is no deletion of 'economic viability from Regulation 2(1)(c)); the Note to Schedule-A also emphasizes on economic viability of the GA; Regulation 2(1)(c) of the 2008 Regulations makes such units as the constituent elements of a GA since the economic data, which is necessary for identification of the GA, as also for submission of bids, is available only in respect of the statutory geographical units such as talukas, districts, notified urban areas etc; in particular, reliable, comprehensive and statutorily authenticated economic data, in terms of the Census Act, 1948, is available only in the Census (this is the reason why, despite being 7 years old, the last available census data of 2011 is referred to in the regulations); the lowest unit, mentioned in Regulation 2(1)(c), is also the lowest unit considered in the Census i.e., a village. (not only is there no basis for the submission of the 2nd Respondent that a part of some of the villages of Kanchipuram District was made part of GA 9.62, but such a submission is also contrary to Regulation 2(1)(c)); in any case, there is no economic data available for any amorphous area identifiable only with reference to the co-ordinates; the GA cannot be a non-specified unit; for instance, a household/commercial user in a particular area should be able to know to whom they should apply for supply of PNG, on the basis of the administrative unit in which they are located, rather than undertaking a coordinates based exercise; Schedule-B however indicates that the geographical unit in question should ideally be a district or a combination of districts, since the said Schedule requires availability of granular data of the "economic activity in the proposed geographical area in terms of industrial and commercial activity (number of units and fuel mix)" and "vehicular population profile", which is available in the Census only at the district level and not for its lower sub-division (while Schedule-B applies to the expression

of interest route cases, it is submitted that the same parameters must govern the suo-motu determination of the GA by the Board); the statutory scheme is that the GA must be identified with reference to geographical units considered in the Census; the GA cannot be an amorphous unit, identifiable with reference to co-ordinates, for which no economic data is available; the bidder is required to make its offer in terms of Schedule-C; while the offer is to be made consistent with the ACBD, the ACBD as such is not made part of the offer under Schedule-C, or the authorization under Schedule-D; Schedule-C contemplates that the bidder shall submit the relevant data, including the charge areas of the GA and the extent of the geographical area as his own data (Cl. 4(B)) i.e., it shall give its own understanding of the geographical area, and give a declaration that the data given in the 'application-cum-bid' is correct, complete and truly stated; this makes the bidder bound by the data submitted by it along with its bid; the Board evaluates eligibility, inter alia, on the basis of the financial strength of the bidder in terms of Regulation 5(6)(e), which is a function of the figure of population "in the geographical area" as per the Census, i.e., the population of the geographical area should be available in Census 2011; upon selection by the Board, the successful bidder is required to submit Performance Bond in terms of Regulation 9, which is again a function of "Population in the Geographical Area, as per the 2011 Census of India, once again emphasizing that the GA must be a unit whose population is available in the 2011 Census of India; both these provisions necessarily require that the GA must be a combination of one or more geographical units identified in the Census, such as towns, villages, talukas and districts; while it has been held in the impugned order that reference to Census 2011 is made in the bidding document for the limited purpose of the bid bond and the application fee; this firstly ignores that it is only the data 'of the GA' which can be considered – the bid bond for one area cannot be based on the population of another area;

and secondly, that the bid bond and application fee are completely agnostic of the total area, households and towns and villages situated in a GA, all of which figures in the present case, also correspond to the Census 2011 data of the respective districts.

161. Learned Senior Counsel would further contend that, after submission of the performance bond, the authorization in terms of Schedule-D is issued with reference to the bid submitted, and lays emphasis on which State or Union Territory the GA is located in, and the extent of the area in terms of sq km for which the authorization is issued [para 1]; in view of the extant statutory scheme, and the regulatory determinations made by the Board, the only permissible manner for identification of GA's is on the basis of districts and marking of charge areas on the basis of taluka/ tehsil/ mandal.

B. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

162. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that Section 2(i) of the PNGRB Act defines a city or local natural gas distribution network; Section 19 provides for the grant of authorization; Section 19(2) states the Board may select an entity in an objective and transparent manner as specified by regulations for such activities; Regulation 2(1)(c) of the Authorization Regulations defines an authorized area; it is thus evident that determination of the GA is completely left to the discretion of the PNGRB; Schedule A of the Regulations lays down the criteria for defining authorized area for laying, building or expanding a CGD network; Regulation 4 deals with initiation of proposal through expression of interest route or *suo-motu* by the PNGRB; Regulation 5 deals with the criteria for selection of entity via an expression of interest; Regulation 6 pertains to the *suo-motu* route; in the case of a *suo-motu* route, the 'public consultation process', applicable to the

expression of interest route under Regulation 5, has no applicability because the Regulation itself states that aspects relating to expression of interest in Regulation 5 shall not apply in the case of a *suo-motu* bid; PNGRB conducted its 9th CGD Bidding Round in the year 2018; this was a *suo motu* (Regulation 6) round by PNGRB covering 86 GAs across India; prior to the launch of the 9th Bidding Round on 12.04.2018, PNGRB amended the 2008 Regulations on 06.04.2018; Schedule A of the Regulations was also amended and the criteria/ basis to define the authorized area for laying, building or expanding a CGD network was modified; Regulation 7 was also substituted and the bidding criteria was changed; however, the definition of “authorized area” in Regulation 2(1)(c) remained unchanged.

163. Learned Senior Counsel would further submit that, under Schedule A of the original/ unamended 2008 Regulations, the criteria for determining a ‘specified geographical area’ was economic viability and geographical contiguity; however, by way of the amendment on 06.04.2018, this criteria was changed to “*natural gas availability, pipeline connectivity and geographical contiguity*”; therefore, “economic viability” was no longer a relevant factor in determining the ‘specified geographical area’ for the 9th Bidding Round; and the Bid Document also does not refer to “economic viability”;

C. ANALYSIS:

164. On the question as to whether exercise of regulatory power can be elevated to the status of Statutory Regulations, and the need for regulatory certainty, it must be borne in mind that not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular,

unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity. (**Securities & Exchange Commission v. Chenery Corpn., 1947 SCC OnLine US SC 109 : 91 L Ed 1995 : 332 US 194 (1947); Mahindra Electric Mobility Limited v. Competition Commission of India, 2019 SCC OnLine Del 8032; NHAI v. Aam Aadmi Lokmanch, (2021) 11 SCC 566**).

165. Problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard-and-fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case-by-case evolution of statutory standards. And the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency. (**Securities & Exchange Commission v. Chenery Corpn., 1947 SCC OnLine US SC 109 : 91 L Ed 1995 : 332 US 194 (1947); Mahindra Electric Mobility Limited v. Competition Commission of India, 2019 SCC OnLine Del 8032; NHAI v. Aam Aadmi Lokmanch, (2021) 11 SCC 566**).

166. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to Professor Wade, 'between legislative and administrative functions we have regulatory functions'. A statutory instrument, such as a rule or

regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law. (**PTC (India) Ltd. v. CERC, (2010) 4 SCC 603; NHAI v. Aam Aadmi Lokmanch, (2021) 11 SCC 566**).

167. It is important for the regulator to be consistent and predictable. Further, regulations must be clear, as ambiguous regulations cause confusion and uncertainty. Regularity and predictability, along with certainty, are hallmarks of good regulation and governance. These principles underpin the “rule of law”, check arbitrariness and are read as the intent of the legislation, which the Courts, if need be, will enforce as a principle of interpretation. A regulator, when it executes statutory functions, interprets the enactment and gives meaning and, in that sense, lays down what it believes is the rule. As a legislator who constructs and states at the first instance what is the rule, the Board tacitly promises and prophesies the interpretation that appeals to them. Any good regulatory system must promote and adhere to principles of certainty and consistency, providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. (**Union of India v. Raghur Singh, (1989) 2 SCC 754**). Unless men know what the rule of conduct is, they cannot regulate their actions to conform to it. Otherwise, the regulator “fails in its primary function as a rule maker. [**Francis Bennion, *Bennion on Statutory Interpretation*, 5th Edn. (Indian reprint), Section 266 at p. 801.**] This does not mean that the regulator/authorities cannot deviate from the past practice, albeit any such deviation or change must be predicated on greater public interest or harm. Therefore, to examine the question of inconsistency, the analysis is to ascertain the need and functional value of the change, as consistency is a matter of operational effectiveness. Sometimes changes

are desirable and necessary. (**SEBI v. Sunil Krishna Khaitan, (2023) 2 SCC 643**).

168. In “***The Nature of the Judicial Process***”, Benjamin N. Cardozo observed:

“I am not to mar the symmetry of the legal structure by the introduction of inconsistencies and irrelevancies and artificial exceptions unless for some sufficient reason, which will commonly be some consideration of history or custom or policy or justice. Lacking such a reason, I must be logical just as I must be impartial, and upon like grounds. It will not do to decide the same question one way between one set of litigants and the opposite way between another.”

(emphasis supplied)

169. While it may not be necessary for us to examine the nature of the Regulatory power conferred by the PNGRB Act on the Respondent-Board, in the present appeal, the judgements relied on behalf of the Appellant do not support their submission that the regulatory exercise undertaken by the PNGRB stands elevated to the level of statutory regulations. Besides exercising its regulatory powers under different provisions of the PNGRB Act, the Board has been conferred the power to make Regulations under Section 61 of the said Act. Section 61(1) enables the Board, by notification, to make Regulations consistent with the Act and the Rules made thereunder to carry out the provisions of the PNGRB Act. Clauses (a) to (za) of Section 61(2) provide for matters with respect to which the Regulations may provide. Unlike, with respect to exercise of regulatory power, the Regulations made under Section 61 are required, in terms of Section 2 (zb) of the PNGRB Act, to be notified in the official gazette. It is difficult for us, therefore, to agree with the submission of Shri Paras Kuhad, Learned Senior Counsel appearing

on behalf of the Appellant, that exercise of regulatory powers by the Board should be elevated to the status of Statutory Regulations.

170. It is useful, in this context, to take note of the relevant statutory provisions governing the obligations of the Board to prescribe the extent of each Geographical Area for which an authorisation is to be granted by them. Section 19 of the PNGRB Act relates to grant of authorisation and, under sub-section (1) thereof, when, either on the basis of an application for authorisation for laying, building, operating or expanding a city or local natural gas distribution network is received, or on suo- motu basis the Board forms an opinion that it is necessary or expedient to lay, build, operate or expand a city or local natural gas distribution network in a specified geographic area, the Board may give wide publicity of its intention to do so, and may invite applications from interested parties to lay, build, operate or expand a city or local natural gas distribution network. Section 19(2) enables the Board to select an entity in an objective and transparent manner as specified by Regulations for such activities.

171. It is clear from Section 19(1) of the PNGRB Act that the Board must first form an opinion that it is necessary or expedient to lay, build, operate or expand a city or local natural gas distribution network in a specified geographic area. It is only after formation of such an opinion is the Board then required to give wide publicity of its intention, and to invite applications from interested parties. The Board is required thereafter, in terms of Section 19(2), to select an entity in an objective and transparent manner, as specified by Regulations, for such activities.

172. Regulation 2(1)(c) of the 2008 Regulations defines "*authorized area*" to mean the specified geographical area for a city or local natural gas distribution network (hereinafter referred to as "CGD network") authorized under these regulations for laying, building, operating or expanding the CGD

network which may comprise of the following categories, either individually or in any combination thereof, depending upon the criteria of economic viability and contiguity as stated in Schedule A namely:- (i) geographic area, in its entirety or in part thereof, within a municipal corporation or municipality, any other urban area notified by the Central or the State Government, village, block, tehsil, sub-division or district or any combination thereof; and (ii) any other area contiguous to the geographical area mentioned in sub-clause (i).

173. Regulation 6 relates to invitation by the Board for laying, building, operating or expanding of CGD network, and thereunder the Board may suo-motu form a view regarding the development of a CGD network in a specific city or a geographic area, and in such a case, the procedure as specified in Regulation 5 (except aspects relating to the expression of interest) shall apply. Regulation 5(4) enables the Board, based on the views received and taking into consideration the criteria specified in Schedule A, to decide or fix the authorized area for the proposed CGD network.

174. Schedule-A of the 2008 Regulations relates to the basis for defining authorized area for laying, building, operating or expanding CGD network. It is stipulated thereunder that the specified geographical area, in respect of an authorized area for a CGD network as per Regulation 2(1)(c) of the Authorisation Regulations, may be determined considering the following criteria of natural gas availability, pipeline connectivity and Geographical Contiguity, namely:- (1) Natural Gas availability and pipeline connectivity. Thereunder geographical area shall either have availability of natural gas or a natural gas pipeline passing within such area or passing in its vicinity or a natural gas pipeline is proposed to be laid either within or in vicinity of such area. (2) Geographical contiguity. Thereunder, for the purpose of any area to be considered as contiguous to the geographical area as per Regulation

2(1)(c) of the Authorisation Regulations, such an area shall not have an economic viability to have an independent CGD network on its own.

175. It is clear from the definition of an “authorised area” under Regulation 2(1)(c), read with Regulation 5(4) of the 2008 Regulations, that, taking into consideration the criteria specified in Schedule-A, the Board is required to decide or fix the “authorised area” for the proposed CGD network. While an “*authorised area*”, ie a “*specified geographical area*”, may fall in its entirety or in part within a district or of a combination of one or more districts, it is evident that the boundaries of a geographical area must be specified/decided by the Board, since Regulation 2(1)(c) defines an authorised area to mean the specified geographical area for a city or local natural gas district network, and Regulation 5(4) requires the Board to fix the authorised area for the proposed CGD network. The obligation to fix the authorised area, ie a specified geographical area, must be fulfilled by the Board prior to invitation of bids. since Regulation 5(4) requires the “*authorised area*” to be fixed for the “*proposed CGD network*”.

176. The Concise Oxford English Dictionary defines the word “*specified*” to mean “*to identify clearly and definitely*”. As the obligation placed on the PNGRB, under Section 19 (1), is to first form an opinion that it is necessary or expedient to lay, build, operate or expand a city or local natural gas distribution network in a specified geographic area, it must identify, clearly and definitely, the Geographical area within which it considers it necessary to lay a CGD network. As an “*authorized area*” is defined in Regulation 2(1)(c) of the 2008 Regulations to mean the specified geographical area authorized for laying, building, operating or expanding the CGD network. It is only for a definitely identified area, that an authorisation can be given in favour of the selected entity. While requiring the PNGRB to clearly and definitely identify the Geographical Area for which bids are to be invited, the

Regulations leave it to the discretion of the PNGRB to decide what should constitute a geographical area, for Regulation 2(1)(c) makes it clear that a Geographical Area may comprise either individually or in any combination thereof, depending upon the criteria of economic viability and contiguity as stated in Schedule A, a geographic area, in its entirety or in part thereof, within a municipal corporation or municipality, any other urban area notified by the Central or the State Government, village, block, tehsil, sub-division or district or any combination thereof; and (ii) any other area contiguous to the geographical area mentioned in sub-clause(i).

177. In this context, it is relevant to note that the 2nd Respondent informed the Appellant, vide letter dated 22.02.2022, that their authorised GA (Chennai and Thiruvallur District GAs) was also spread over to certain parts of Kanchipuram District as per the map web hosted by the PNGRB during the CGD bidding, considering which the bid members had quoted to make the GA financially viable. Subsequently, in our order dated 05.04.2023, we had recorded that earlier the learned Senior Counsel, appearing on behalf of the 2nd Respondent, was called upon to place before us a coalesced map showing both the GAs (9.61 and 9.62) juxtaposed to each other, to enable us to ascertain whether the Geographical Areas, as reflected in the respective maps, overlap; learned Senior counsel appearing on behalf of the Appellant and the 2nd Respondent were in agreement that the GAs, as indicated in the coalesced map furnished on behalf of the 2nd Respondent, reflected the GAs indicated in the separate maps furnished along with the bid documents, to the extent the boundaries of both the Geographical Areas had been correctly shown therein. We had also recorded the submission of Mr. Gopal Jain, learned Senior Counsel appearing on behalf of the 2nd Respondent, that, while the disputed 19 CNG stations fell within Kanchipuram District, they fell with the GA for which an authorization was given in favour of the 2nd Respondent; using a handheld GPS system, the

2nd Respondent had plotted these CNG stations on the basis of coordinates; and they found that all these stations fell within GA 9.62 ie Chennai-Tiruvallur Districts GA.

178. Since these 19 CNG stations indisputably fell within the boundaries of the then Kanchipuram District, what we are required to ascertain is whether the PNGRB had decided to fix GA 9.61 and GA 9.62 on the basis of a District or beyond or less. If it is held that the Board had fixed the GAs on the basis of a district, then, it is the Appellant which is entitled to operate these 19 CNG stations falling within its authorised Geographical Area which is co-terminus with the then Kanchipuram District. If, on the other hand, the Board intended to fix the GAs on the basis of co-ordinates or to exclude a part of Kanchipuram District from Kanchipuram District GA, and include it within Chennai and Tiruvallur District GAs, then it is the 2nd Respondent which must be held entitled to continue operating these 19 CNG Stations.

179. As identification by the Board of a “specified Geographical Area” for which bids are to be invited is in discharge of its statutory obligations under Section 19(1) of the PNGRB Act read with Regulation 2(1)(c), 5(4) and Schedule A of the 2008 Regulations, and the manner in which a Geographical Area should be determined is left to the discretion of the Board under the PNGRB Act and the 2008 Regulations, there is no obligation cast on the Board only to rely on the 2011 Census data while determining the Geographical Area. That does not, however, mean that the PNGRB is prohibited from relying on the 2011 Census data in determining the limits of each of the GAs for which bids are intended to be invited. The exercise now undertaken by us is to ascertain whether the 2011 Census data was, in fact, relied upon by the Board in determining the area and extent of GAs 9.61 and 9.62.

180. We have no quarrel with the submissions of Mr. Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, that determination of the GA is at the discretion of the PNGRB. The question is not regarding the power of the PNGRB to determine the boundaries of each of the GAs for which bids are proposed to be invited, but as to how the boundaries of GAs 9.61 and 9.62 have been actually determined. It does appear that either the map vendor had erred in properly recording the coordinates of GAs 9.61 and 9.62 or it has erred in correctly recording all other details reflected in the map ie the District boundary, Talukas (Sub-Districts) boundaries, reference to the name of the villages with a population of 5000 and above, the total area of the GA in sq. kms in terms of the 2011 census, the total population of the GA in terms of 2011 census, the total number of households in the GA as per the 2011 census, etc.

181. It is relevant to note that the left side of the map of each of these two GAs records the GA boundary by way of a red line, the District boundary by way of black lines, and both these lines overlap both with respect to GA 9.61 and 9.62. The black line between Chennai and Tiruvallur Districts in GA 9.62 reflects the boundaries of Chennai District within the said GA as it comprises of two districts ie Chennai and Tiruvallur. The District boundary, recorded in the black line which overlaps the GA 9.62 boundary line in red, evidently refer to the District boundaries of both Chennai and Tiruvallur Districts put together, and not separately.

182. It is no doubt true that mere issuance of the public notice, identifying GA on the district concept, did not disable PNGRB from, thereafter, amending the boundaries of the GAs to include within one GA the entire district plus a part of another district. The question which necessitates examination is whether the Board had, in fact, deviated from the district concept indicated in the public notice, and had taken a conscious decision

to include a part of Kanchipuram District in the GA of Chennai and Tiruvallur Districts.

XXI. REGULATORY DETERMINATION BY THE BOARD:

183. On the regulatory determination made by the Board, Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that it is the stated position of the PNGRB, before this Tribunal, that from the 4th round onwards it has been authorizing GAs based on the boundaries of Districts, to rule out the issues/disputes arising amongst GAs having contiguous areas. (as recorded in answer to Query no. 2 at p. 102 of the judgment in Appeal No. 121 of 2020 titled *Megha Engineering and Infrastructures Limited v. Bhagyanagar Gas Limited*); on 10.12.2020, the Board filed an Affidavit before this Tribunal in the case of *Megha Engineering*, reaffirming that “*while preparing maps, the vendors are supposed to take data related to boundaries from Survey of India or Census of India 2011 District Handbook, based on which, the charge Areas are demarcated*”, and that “*the boundaries of the Geographical Areas are checked with the district boundaries as mentioned in the Census of India 2011 District Census Handbook or with the maps given in the official website of each district*”; during the 5th CGD bidding round, the Board further took a decision that charge areas are demarcated as per the mandal boundaries within the districts, and made a public declaration of this decision in response to clarifications dated 07.04.2015; these decisions constitute regulatory determination made by the PNGRB; in regulatory jurisprudence, such determinations have been placed on par with regulations made in exercise of the power of delegated legislation; and it is not the case of the Respondents that the Board revisited these regulatory determinations, assuming it could have done so.

A. ANALYSIS:

184. As held hereinabove, regulatory determination by the Board cannot be placed on par with Statutory Regulations. In the light of the judgement of the Supreme Court, in **Adani Gas Limited**, it may not be appropriate for us to examine what the PNGRB had done with respect to other GAs, since the authorisation granted with respect to those GAs is neither under challenge, nor are those, in whose favour authorisation was granted, parties to the present proceedings. We see no reason, in such circumstances, to examine the clarifications given by the PNGRB with respect to the GAs of Megha Engineering and Infrastructure Limited and Bhagyanagar Gas Limited, since the authorisation granted to both the said entities are not the subject matter of the present Appeal.

XXII. DETERMINATION OF GAS' 9.61 AND 9.62 BY PNGRB ON THE BASIS OF DISTRICTS:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

185. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that (1) the regulatory exercise for the 9th CGD Bidding Round commenced in the year 2016; one of the objectives under consideration was to identify GAs in a manner that avoided cherry-picking (Note to Schedule-A); the Board again made a regulatory determination to achieve this objective by identifying GAs on the basis of districts. (Public Notices dated 10.03.2016 and 12.04.2016); on 18.01.2018, PNGRB issued a tender for getting the maps of the identified GAs prepared through a vendor; it was stipulated in the tender document that the vendor shall collect details of all administrative divisions such as Taluka/Tehsil/Mandal etc. and indicate them in the maps supplied, and that the source for population data of the geographical area, was the Census of India; in the clarifications to the said tender, it was stated that the Board would not provide geo-referenced data to the vendor for preparation of the maps, and that the vendor was not

required to do any survey on his own; (2) shortly after 19.02.2018, a draft Board Agenda was prepared for finalization of GAs for the 9th CGD Bidding Round, which shows that the GAs were still based on the district concept; the final Board Agenda and the Minutes of the Meeting thereon were not made available to the Appellant for inspection; however, the final Board Agenda was subsequently provided to the Appellant by its counsel who obtained it from the PNGRB under the Right to Information Act on 19.09.2023); this records that, based on the entire consultation process, i.e., inputs from stakeholders and internal deliberations within PNGRB along with members and authorization division, the Board had prepared a list of 86 GAs comprising of 156 full districts and 18 Part Districts; in the list enclosed with the Board Agenda, there are several part districts marked but Kanchipuram, Chennai and Tiruvallur are shown as full and not part districts. [at Sr. 118, 119, 127]; and the relevant entries read as follows:

List of Geographical Areas for the 9th Round CGD Bidding			
SN	State/UT	District Name	Remarks
118	Tamil Nadu	Kanchipuram	
119	Tamil Nadu	Chennai	clubbed with Tiruvallur
127	Tamil Nadu	Tiruvallur	clubbed with Chennai

B. SUBMISSIONS URGED ON BEHALF OF THE PNGRB:

186. In support of his contention that it was not necessary to make the boundary of an administrative district as the boundary of a GA, Sri Rahul Sagar Sahai, Learned Counsel for the PNGRB, would submit, *on the issue of the concept of a GA*, that it was necessary, at the outset, to understand the formation and concept of GA under the PNGRB Act, 2006 and the Regulations framed thereunder as the expression Geographical area (GA)

had a particular meaning in downstream petroleum jurisprudence; the expression 'specified geographic area' finds mention in Section 19 of the PNGRB Act, which governs the grant of authorization to entities; and Section 19(2) states that the Petroleum and Natural Gas Regulatory Board ("PNGRB") may select an entity in an objective and transparent manner as specified by regulations for such activities.

187. After extracting Section 19 of the PNGRB Act, and Regulation 2(1)(c) of the 2008 Regulations, Learned Counsel for the PNGRB would submit that, on analyzing the provisions of the PNGRB Act and the 2008 Regulations, it was clear that a geographical area may comprise of an area, in entirety or in part thereof, within a municipal corporation or municipality, any other urban area, village, block, tehsil, sub-division or district or any combination thereof; determination of the GA is completely left to the discretion of the regulatory authority i.e. PNGRB; Regulation 2(1)(c) of the Authorization Regulation makes it clear that a specified geographical area could be a combination of administrative demarcations in its entirety or in a part thereof; it is possible that different areas of the same district may be a part of two or more separate authorized GAs; similarly, a specified GA could be a culmination of two areas falling in different districts; there is no requirement, either in the Regulations or otherwise, that the entire district/city should necessarily fall only in one specified GA; in fact, this position is common ground between the parties since, even according to the Appellant "it was never the contention of the Appellant that the Board is not empowered to demarcate a Geographical Area comprising of parts of one or more districts".

C. ANALYSIS:

188. Regulation 5(7) of the 2008 Regulations requires the application-cum-bid to be submitted in two parts in the form as specified in Schedule C in

separate properly earmarked and sealed envelopes, namely: - (a) Part I (Technical bid) covering general particulars of the entity and technical details of the project including minimum eligibility criteria under sub-regulation (6); (b) Part II (Financial bid) covering the financial details under Regulation 7. Schedule C of the 2008 Regulations is the proforma of the application-cum-bid for grant of authorisation for CGD network. Serial No. 4 of the said Schedule relates to technical details of the proposed CGD network project. Serial No. 4(B) requires the applicant to indicate in the maps the charge areas and the extent of the geographical area along with the sketch of facilities proposed. The application contains a declaration by the applicant that the information furnished is true to the best of the applicant's knowledge and belief and the information and data given in the annexure, attachments, enclosures and calculation sheets accompanying the application-cum-bid are correct, complete and truly stated, and if any statement made therein is found to be incorrect, the application-cum-bid shall be rejected, the application fee and the Bid Bond shall be forfeited and the applicant shall be liable to be proceeded against, and for punishment under the provisions of the Act.

189. The application-cum-bid document is issued by the Board inviting entities to submit their bids for laying a CGD network in the specified geographical Area (GA). The obligation placed on the Board, by Section 19(1) of the PNGRB Act read with Section 2(1)(c), 5(4) and Schedule A of the 2008 Regulations, is to specify the geographical area for which bids are to be invited. Part A of the ACBD draws reference of the bidders to the applicable Regulations, including the 2008 Regulations and the amendments thereto. Clause 1.1.1 of the ACBD states that the PNGRB was inviting Applications-cum-Bids for grant of authorisation for developing City Gas Distribution (CGD) network in the aforesaid geographical area as depicted in the map at Annexure-1. Clause 1.1.2 states that the charge areas

are also depicted in the map; if the bidding entity is finally granted authorization, the entity shall be required to reach the charge areas as stipulated in the CGD authorisation Regulations. Clause 1.2 of the ACBD requires the bidding entities to comply with the relevant regulations notified from time to time, and requires them to carry out the development of CGD project in line with the regulations laid down by the PNGRB. Clause 2.1.1 provides that the bidder is expected to examine the contents of the Application-cum-Bid document, including all instructions, forms, terms and conditions and all the Regulations of the PNGRB. Clause 2.1.2 stipulates that the Application-cum-Bid document comprises of Annexure 1 to Annexure 13. Annexure-1 is the map depicting the geographical area and the charge areas, and the bidders were directed thereby to carefully study the geographical area and the charge areas before submitting the bid. Annexure 1 to the ABCD, which relates to the map depicting the geographical area and the charge areas, also requires the bidder to carefully study the geographical area and the charge areas before submitting their Application-cum-Bid.

190. In ***Adani Gas Ltd. v. Petroleum & Natural Gas Regulatory Board***, (2020) 4 SCC 529, the Supreme Court held that the bidder was required to carefully study the GA and the charge area before submitting the bid; and the bid document necessarily had to be in conformity with the 2008 Regulations. It is, therefore, difficult for us to accept the submission that it is only the application cum bid document which has to be considered, by the bidding entities. The conditions stipulated in the application-cum-bid document must be read along with the applicable statutory provisions in the PNGRB Act and the 2008 Regulations. Since entities are required to submit their bids separately for each of the GAs, it is evident that bids can be invited

by the PNGRB only after the contours and boundaries of each GA, for which bids are invited, are clearly identified by them.

191. While it is true that Regulation 2(1)(c) confers power on the Board to specify the geographical area, in its entirety or in a part thereof, it does not discharge the Board of its obligations to specify the GA before inviting bids. It is necessary for us, therefore, to ascertain what the Board has determined to be the specified Geographical Area for GAs 9.61 and 9.62. The question is not regarding the power of the Board to demarcate the GA comprising of one or more districts, but regarding the actual exercise undertaken by the Board, and the decision taken by it pursuant thereto regarding the contours and boundaries of GAs 9.61 and 9.62.

192. It is true, as submitted on behalf of the 2nd Respondent, that the Board had addressed letter dated 26.09.2018 to the Appellant regarding grant of authorization for development of city gas distribution networks in the area of Kanchipuram Districts. Para-1 also states that enclosed the said letter is the authorisation in Schedule D for the GA of Kanchipuram Districts in duplicate. While Kanchipuram District is referred to in the plural in the letter dated 26.09.2018, the map annexed thereto refers to the “Geographical Area, Kanchipuram District”. It is on the basis of this letter that it is contended that the nomenclature of the GA is irrelevant, and the map given at the time of bidding would prevail over any other consideration.

193. While demarcation of the boundaries, of each District in each State, no doubt falls within the exclusive jurisdiction of the State Government which can undergo a change with time, and the boundary limits of both Chennai and Kanchipuram Districts have undergone a change pursuant to GO dated 04.01.2018 issued by the Government of Tamil Nadu before the PNGRB issued the Application cum Bid Document on 12.04.2018, it is also not in dispute that the Board has itself acknowledged, in the impugned order, that

it had not taken into consideration the changes made to the districts, vide GO dated 04.01.2018, while inviting bids from eligible entities.

194. Division of the erstwhile Kanchipuram District between Kanchipuram and Chengalpattu districts, post award of the GAs, would have no bearing on determination of the subject GAs 9.61 and 9.62, and in issuing the application-cum-bid document pursuant thereto.

195. As noted hereinabove, the manner in which the Geographical Area should be demarcated, whether it should be on the basis of the district or more or less, are all matters which fall exclusively within the discretion of the Board. As the Board has itself acknowledged that it had not taken into consideration the contents of GO dated 04.01.2018 in demarcating GAs 9.61 and 9.62, the changes made to the Kanchipuram and Chennai districts by way of the said GO would not have any bearing on the determination of boundaries of the subject Geographical Areas by the Board. What was taken into consideration by the PNGRB, before issuing the Application cum Bid Document on 12.04.2018, were the Kanchipuram, Chennai and Tiruvallur Districts as they existed prior to GO dated 04.01.2018, and the information furnished in the map annexed to the ACBD was based on the 2011 Census which was the last Census undertaken in the country.

196. What we are concerned with, in the present Appeal, is the exercise undertaken by the Board to determine the GA. The Appeals before this Tribunal and later before the Supreme Court in **Adani Gas** was on the scope and ambit of Regulation 7, which related to the bidding criteria. The issue in the present case, on the other hand, is regarding determination by the PNGRB, of the areas covered by GAs 9.61 and 9.62, in the discharge of its statutory obligations under Section 19 of the PNGRB Act read with Regulation 2(1)(c), 5(4) and Schedule A of the 2008 Regulations. The context in which the Supreme Court, in **Adani Gas**, observed that the 2011

Census could not be relied upon has already been dealt with earlier in this order, and does not bear repetition.

197. We have no quarrel with the submission of the 2nd Respondent that the map vendor was not called upon to rely on the Survey of India Map and, consequently, it is un-necessary for us to delve into the question whether or not the map prepared by the Map vendor, which forms the basis for invitation of bids in the 9th round of bidding, was in accordance with the Survey of India Map or the consequences of their failure, if any, to do so.

198. The right side of the map, in Annexure 1 of the ACBD and in the authorization, for GA 9.61 ie Kanchipuram District GA contains details of the charge area ID and the corresponding name of the charge area. CA-01 is Alandur, CA-02 is Chengalpattu, CA-03 is Cheyyur, CA-04 is Kancheepuram, CA-05 is Maduranthakam, CA-06 is Sholinganallur, CA-07 is Sriperumbudur, CA-08 is Tambaram, CA-09 is Tirukalukundram, CA-10 is Tiruporur, and CA-11 is Uthiramerur. These 11 charge areas correspond to the Talukas of Kanchipuram District as it stood on 03.01.2018 ie prior to GO dated 04.01.2018 issued by the Government of Tamil Nadu. The boundaries of these charge areas are also demarcated within the GA boundary of the physical map on the left side, and is recorded under the caption “Legend” on the right side of the map as “Sub-District boundaries”. That the map vendor has taken information which existed within two years prior to the work order is evident from the fact that Kanchipuram District under the 2011 Census consisted of 10 Talukas, one of these ie Chengalpattu taluk was bifurcated in the year 2012 to become Chengalpattu and Tiruporur Taluks. Except bifurcation of Chengalpattu taluk into two in the year 2012, all other talukas of Kanchipuram District remained as it was, post the 2011 Census, till GO dated 04.01.2018 was issued. It is the admitted case of PNGRB that it did not take into consideration the amended boundaries of Kanchipuram District

as notified by the Government of Tamil Nadu on 04.01.2018, and it had invited bids on the basis of Districts as it existed prior to 04.01.2018.

199. It is relevant to note that the sum total of the population of each of these charge areas, as recorded in the 2011 census, correspond to the total population of Kanchipuram District as per the 2011 census which is also recorded, as the population of the Kanchipuram District GA, ie 39,98,252, on the right side of the map. Likewise, the sum total of the area in sq. kms. of each of these charge areas (Talukas) in the 2011 census corresponds to the area in sq. kms of Kanchipuram District ie 4483 sq. kms, which is also the area in sq. kms of Kanchipuram District GA. The very fact that the Appellant had, vide its letter dated 19.01.2022 sought amendment of its authorization and for correction of the total area in sq. kms. recorded therein as 6936,50 sq kms to 4483 sq. kms, and the Board had accordingly, vide its letter dated 31.01.2022, carried out the amendment, would show that, even as on 31.01.2022, the Board was of the view that the authorization given to the Appellant for Kanchipuram District GA corresponded to the Kanchipuram District boundary as it existed prior to GO dated 04.01.2018.

200. The villages with population of 5000 and above are also noted in the GA map. Out of the 19 CNG sub-stations, 15 of them are located in 9 villages with a population of 5000 and above, and are all reflected in the map of Kanchipuram District GA ie GA 9.61, and are not referred to in the map of Chennai and Tiruvallur Districts GA ie GA 9.62. If, as is now contended before us on behalf of the second respondent, a part of Kanchipuram District was consciously included in GA 9.62 ie Chennai-Tiruvallur Districts GA, then the villages above 5000 population and the talukas in which these villages where these 19 CNG Stations are located, ought to have been reflected in the Chennai-Tiruvallur Districts GA map, and added to the total area in sq.kms, the total population and the total households on the right side of the

map of Chennai-Tiruvallur Districts GA. Likewise, the area in sq.kms, population and households of that part of the Kanchipuram District which was included within the Kanchipuram District GA ought to have been excluded therefrom. Further the 9 villages, where the 15 CNG are located, should have also been reflected in the map of Chennai-Tiruvallur Districts GA.

201. It is relevant to note that the total area in sq. kms. ie 3659 sq. kms., the total population ie 83,74,836 and the total households ie 21,01,931 shown on the right side of the map at Annexure A of the bid documents for GA 9.62 ie Chennai-Tiruvallur Districts GA tallies with the corresponding figures reflected in the 2011 census for Chennai and Tiruvallur Districts together; no part of any of the Talukas of Kanchipuram District, where these 19 CNG stations are located, are reflected in the map of Chennai-Tiruvallur Districts GA; and the 9 villages with a population of 5000 and above, wherein 15 of the 19 CNG stations are located, are also not shown in the map of Chennai-Tiruvallur Districts GA.

202. It does appear from the documents placed on record in these proceedings, as also from the original records which the PNGRB had placed for our perusal, that the Board has not taken a conscious decision to include any part of the then Kanchipuram District or any part of the Talukas/ Villages of the then Kanchipuram District in Chennai-Tiruvallur District GA.

203. While it is no doubt true that the Application-cum-Bid Document does not per-se state that the GAs would be awarded on a District concept area or on the basis of the Survey of India map, it does not also state that the GAs would be awarded on the basis of co-ordinates. Further, both in terms of the ACBD as also the annexed map, all the bidders were asked to take note of the Geographical Area and the charge areas. From Annexure 1 to the Application-cum-Bid Document ie the map of each of these GAs, the public

notices and other records of the PNGRB, we have sought to ascertain what the Board intended to specify as the boundaries of each of these two GAs, since Section 19(1) of the PNGRB Act read with Regulation 2(1)(c), 5(4) and Schedule A of the 2008 Regulations, obligates the PNGRB to clearly identify the GA before inviting bids for the said GAs. While the parameters to be born in mind by the Board to decide on the contours of the GA was changed by amendment to Schedule A on 06.04.2018, and Regulation 2(1)(c) no doubt gives a wide discretion to the Board to fix the boundaries of each of these GAs, the PNGRB Act and the 2008 Regulations also place an obligation on the Board to clearly identify and decide what the boundaries of GAs 9.61 and GA 9.62 should be.

204. The emphasis, placed on behalf of the 2nd Respondent, on the use of words “Kanchipuram Districts” instead of ‘Kanchipuram District’ in the authorization granted in favour of the Appellant is of no consequence. The use of the word “Districts” denotes a district in the plurality and means two Districts or more. It is not even contended, on behalf of the 2nd Respondent, that there exists more than one Kanchipuram District in the State of Tamil Nadu or that the Appellant’s authorization included an area beyond Kanchipuram District.

205. We have considered various factors, and not merely the nomenclature given to the respective GAs. The division of Kanchipuram District, post award of the GA to the Appellant, has no bearing on the present lis, since what the Appellant is entitled to is only for the area as reflected in the map of Kanchipuram District GA which is co-terminus with the then Kanchipuram District. As discussed hereinabove, the judgment of the Supreme Court in **Adani Gas** related to bidding criteria and on the scope of Regulation 7, and not as to what constituted the GAs for which an authorization was granted in favour of the Appellant and the 2nd Respondent.

206. The Appellant's contention, that reliance should be placed on the Survey of India map, is misplaced since what is of relevance is the contours of the map in Annexure 1 of the Application-cum-Bid Document which later formed part of the authorization letter. The issue regarding non-furnishing of .SHP file has already been discussed earlier in this order. The submissions made by parties, before this Tribunal in **Adani Gas**, as well as before the Supreme Court, related to whether or not the successful bidders had complied with the bidding criteria in Regulation 7, and the submissions made in that context cannot be extrapolated to the present dispute which relates to determination of the boundaries of GAs 9.61 and 9.62 for which authorization was granted in favour of the Appellant and the second Respondent respectively. As already noted hereinabove, in the light of the judgement of the Supreme Court in **Adani Gas Ltd**, it may not be appropriate for us, in the instant case, to examine the decision taken by the Board with respect to other GAs.

207. With a view to ascertain what the PNGRB had decided as the criteria for determining the boundaries of both the GAs, we shall now take note of the contents of the relevant Public Notices, the tender and work order issued to the map vendor and the communication between them and the Board, as also the official records of the PNGRB which we had directed them to place for our perusal.

XXIII. PUBLIC NOTICE & OTHER DOCUMENTS:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

208. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that it was also noted in the Board Agenda that the list for the 9th CGD Round bidding had been prepared, inter alia, based upon "Combination of districts for forming GAs based upon the input from

stakeholders and internal deliberations [pr. 5(vi)]; it was decided that the list may be 'web-hosted once approved by the Board for information of all'; (3) the list was evidently approved by the Board since a list identical to the list annexed to the above Board Agenda, was in fact web hosted on 24.02.2018 "for information to all stakeholders concerned". [p. 108/C1]; it is thus established that the Public Notice was giving wide publicity to the decision of the Board formed after completion of the consultation process, in consonance with Section 19; (4) the Board having decided, pursuant to the above Agenda dated February, 2018, that Kanchipuram, Chennai and Tiruvallur Districts will be comprised into GAs as indicated above, this decision could only have been changed by the Board itself; no such subsequent decision has been shown to this Court; (5) the same list was reorganized and published by PNGRB vide public notice dated 01.03.2018; this list also contained the names of Districts comprising the respective GAs and the State in which they were located; in conformity with the Board Agenda dated February, 2018, the list contains 86 GAs comprising of 156 full districts and 18 Part Districts; the 18 part districts are stated to be so at Sr. No. 8, 9, 10, 15 (2 part-districts), 19, 52, 53, 54, 56, 57 (2 part-districts), 75, 76, 77, 82, 83 and 84; all the cases of part-districts are those where a part of the area was previously authorized, except in the case of Chittorgarh District, for which Rawatbhata Taluka was placed in GA 57, and the remaining talukas were included in GA 59; there is no division below Taluka level in any of the GAs; and GAs 9.61 and 9.62 were described therein as follows:

List of Geographical Areas for the 9th Round CGD Bidding			
SN	State/UT	Geographical Areas	District Name
61	Tamil Nadu	Kanchipuram District	Kanchipuram

62	Tamil Nadu	Chennai and Tiruvallur Districts	Chennai
			Tiruvallur

209. With respect to the correspondence with the map vendor, Sri Paras Kuhad, Learned Senior Counsel, would submit that, despite repeated queries from the bench and assurances by the Respondents, it has not been stated as to what part of Kanchipuram District/talukas/towns/villages were included in GA 9.62, when, and pursuant to which decision of the Board; in fact, as the correspondence with the map vendor shows, no such decision was taken or communicated to the map vendor; (6) on 12.03.2018, the Board awarded contracts for preparation of GA maps pursuant to clause 17.1.1 of the tender document dated 18.01.2018 to Samvridhi Infotech Pvt. Ltd and ML Infomap Pvt. Ltd; the contract awarded to ML Infomap Pvt. Ltd specifically reiterated the direction to depict Taluka/ tehsil/ Mandal as charge areas, and to indicate the important towns/ cities; (7) on 23.03.2018, a work order was issued to ML Infomap Pvt. Ltd to prepare maps for 59 GAs, including “Kanchipuram District GA 9.61” and “Chennai and Tiruvallur Districts GA 9.62”; this is the only document containing any information about GAs 9.61 and 9.62 provided by PNGRB to ML Infomap; the list attached to the work order contains the names of the State, Geographical Area, District Name, Area, and Rate; under ‘Area’, the area of the GA in sq. km, is mentioned, and it matches with the area of the Kanchipuram and Chennai & Tiruvallur districts as per Census 2011; there is no reference to any geographical coordinates (latitude or longitude) in this or any other document provided by the PNGRB to the map vendor; the only information provided in respect of GAs 9.61 and 9.62 is the name of the respective districts and the total area, which matches the Census 2011 area in respect of GAs 9.61 and 9.62; this is also the same as the area mentioned in the bid document and the authorization letter of the respective GAs; the selected

vendor had provided a certificate to PNGRB on 23.02.2018 stating that it has prepared the maps with administrative boundaries as per census and updated up to the year 2017; it was thus clearly communicated by the PNGRB to the map vendor that the GA map should be for the whole of Kanchipuram and Chennai & Tiruvallur Districts respectively, that the talukas of the districts should form the charge areas of the respective GAs, and that the total area covered should be 4483 sq. km for GA 9.61 and 3569 sq. km. for GA 9.62, respectively; assuming, without prejudice, that the map vendor was asked to prepare a map with co-ordinates, he was at best asked to provide the co-ordinates of the respective districts, which alone constituted the Board's determination; it is not the case of the Board that they had ascertained the co-ordinates and had asked the map vendor to draw a GA boundary on the basis thereof; co-ordinates are not the decision of the Board, but are, at best, one of the tools to depict the district based decision of the Board; (8) the maps along with a summary sheet were received by PNGRB on 09.04.2018, and approval thereon was granted by the members of the Board [This document was not made available for inspection, but was shown to the Court and the Counsel for the Appellant by the Board during the course of the hearing]; (9) on 11.04.2018, a draft Public Notice was prepared for inviting bids under the 9th CGD Bidding Round; the immediately next document in the file is a summary sheet containing the list of GAs being advertised with the figures of population and number of households; for Kanchipuram District GA 9.61 and Chennai and Tiruvallur Districts GA 9.62; these figures match those of Census 2011; this was one day prior to the issuance of the bid document on 12.04.2018, and even till this stage, the only reference point for GAs 9.61 and 9.62 is the respective districts of Kanchipuram and Chennai & Tiruvallur, and their total area, population and households, all three of which match the Census 2011 data; and (10) it is thus established that there is no revisitation of the composition or boundaries

of the GAs after 01.03.2018; and contrary to the oral submission of the counsel for PNGRB, there is no proposal, discussion or decision whatsoever in any of the files to include any part of Kanchipuram District, or any village (or part thereof) in GA 9.62, or to identify the GAs on the basis of co-ordinates.

B. SUBMISSIONS MADE ON BEHALF OF PNGRB:

210. On the issue of public notices, Sri Rahul Sagar Sahai, Learned Counsel for the PNGRB, would submit that reliance placed on the PNGRB Public Notices dated 10.03.2016, 24.02.2018 and 01.03.2018 is misplaced; the notices were not final or determinative, and the Board had sought comments/ views from various stakeholders; Regulation 2(1)(c) of the Authorization Regulations, even after amendment, remained unchanged except Schedule A; further, the notices mention about a “concept”; the concept of district, was there – district boundary is an important factor to be considered; however, it was not necessary or mandatory to make the boundary of an administrative district as the boundary of the GA; and the GA boundary may vary from the administrative district boundary.

C. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

211. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that the appellant has placed reliance on the Public Notices issued by the PNGRB, several years prior to the bidding for the 9th Round, to argue that bidding was based upon ‘district’ concept to avoid “cherry-picking” and ensure uniform development of CGD network; Public Notices are not ‘notification’ as per the definition of ‘notification’ provided in Section 2(zb) of the PNGRB Act, and do not have the force of law; pursuant to the issuance of a Public Notice, PNGRB invites comments/ suggestions, if required, from the public at large and takes its final decision

only after considering the said comments/ suggestions; thus, as rightly held by the PNGRB, Public Notices are not a 'final decision' of the PNGRB; even otherwise, neither the tender document for the 9th Bidding Round nor the Authorization Regulations refer to the aforesaid Public Notices; a bidder is only expected to study the requirements of the Bid Document and, as held by the Supreme Court in *Adani* (supra) case, introduction of any consideration/ criteria/ requirement which was not notified to the bidders in the Bid Document would have been illegal and arbitrary; the Public Notice dated 10.03.2016, relied upon by the appellant itself, states that the same was for general information, and any input on the said Public Notice may be submitted to the PNGRB; similarly, the Public Notice dated 12.04.2016 also states that the PNGRB seeks comments/ views from the stakeholders for consideration; it is, therefore, clear that the aforesaid Public Notices are not final decisions and have no legal force; moreover, the fact that, pursuant to the aforesaid Public Notices, PNGRB did not deem it fit to introduce 'district' concept by way of an amendment to the Authorisation Regulations further shows that the Public Notices were not final decisions; the Public Notice dated 12.04.2016 refers to the unamended Authorization Regulations and envisages that the basis for determining a 'specified geographical area' was economic viability and geographical contiguity; however, on 06.04.2018 i.e. immediately prior to the launch of the 9th CGD Bidding Round on 12.04.2018, the Authorization Regulations were amended and 'economic viability' was removed as a criteria; thus, the entire basis of the Public Notice dated 12.04.2016 was changed by this amendment; the Public Notices dated 24.02.2018 and 01.03.2018 also do not help the appellant; these notices nowhere specify that the boundaries of any GA are to be as per the 2011 Census data or as per the Survey of India map; and it is absurd to suggest that the data of Census of 2011 was

used as the basis by PNGRB for bidding and development of CGD networks in the year 2018.

212. Learned Senior Counsel would further submit that the appellant has also relied on the Public Notice dated 24.02.2018 to argue that PNGRB had already finalized the list of GAs to be awarded as part of the 9th Bidding Round; however, this is not correct; and a comparison of the indicative list given by PNGRB with the Public Notice dated 24.02.2018 and the eventual GAs put out for bidding would reveal the following:

GA Name (9th Bidding Round) (Pg. 195 onwards of C-1)	Remarks on the indicative list given in Public Notice dated 24.02.2018. (Pg. 109 onwards of C-1)
Navsari District (EAAA), Surat District (EAAA), Tapi District (EAAA) & the Dangs District (GA 9.10)	The names of Surat and Tapi are not indicated in Public Notice.
Valsad (EAAA), Dhule & Nashik Districts (GA 9.39)	Valsad (part area) is not mentioned in the Public Notice.
Dakshina Kannada District (GA 9.28)	It was proposed that the Dakshina Kannada District will be split in two parts. However, it was eventually offered as one GA.
Medak, Siddipet & Sangareddy Districts (GA 9.71)	The actual GA offered for bidding includes excluded portion of already authorized GA. However, the same is not indicated in the Public Notice.
Burdwan District (GA 9.86)	The Public Notice envisages East and West Burdwan. However, eventually awarded only

	as a single district.
Karaikal & Nagapattinam Districts (GA 9.50)	Nagapattinam district is geographically split by Karaikal (UT). However, they are awarded separately with different combination. This further demonstrates that GAs have not been awarded on 'district' concept.
Cuddalore, Nagapattinam & Tiruvarur Districts (GA 9.64)	
Moradabad (EAAA) District (GA 9.83) + the area granted under Regulation 18.	The Public Notice only shows only part of Moradabad district, where as the GA includes parts of Sambhal and Amroha Districts.

213. The aforesaid instances show that PNGRB never intended that the indicative list released as part of the Public Notice of 24.02.2018 would be final or that it would restrict PNGRB from making any changes to the authorized area before bidding.

D. ANALYSIS:

i. PUBLIC NOTICES ISSUED BY THE PNGRB:

214. A public notice was issued by the PNGRB on 10.03.2016, (in continuation of its earlier public notice dated 08.09.2014), wherein it was stated that a tentative list of all possible upcoming CGD Gas, for inclusion in the future rounds of CGD bidding had been identified; as the concept of Geographical Area (GA) for CGD bidding was now based upon the district concept so as to avoid cherry-picking and ensure that development of CGD

network takes place uniformly in city areas as well as rural areas, the identified list had been prepared. Annexure C-2, to the Public Notice dated 10.03.2016, is the list of probable GAs en-route upcoming/under-implementation natural gas pipelines which can be considered for future CGD bidding depending upon the status of construction of the pipelines, and the details of the probable GAs are furnished in the form of a table. Column 1 of the said table is the Serial Number, Column 2 relates to the GA (District), and Column 3 to the State. At Serial Number 110 of the Table is Thiruvallur in the State of Tamil Nadu, Serial Number 111 is Chennai in the State of Tamil Nadu, and Serial Number 126 is Kancheepuram in the State of Tamil Nadu.

215. Thereafter, another public notice was issued by the PNGRB on 12.04.2016, in para 3 of which it was stated that the basis of identifying and selecting any GA for inviting bids are as under: (i) GA shall be based upon district concept so as to avoid cherry-picking, and to ensure that development of CGD network takes place uniformly in city areas as well as rural areas; (iii) There should be natural gas pipeline connectivity to the respective GA so as to ensure gas supply for the proposed CGD network; this may include pipeline connectivity directly through the district GA or in close proximity of the district GA; and (vii) prevalent market conditions in a specific area or sector requiring inclusion of GA for CGD development.

216. The subject of the public notice dated 24.02.2018 was the list of Geographical Areas (GAs) for the 9th Round CGD (City Gas Distribution) bidding. It was stated therein that, in furtherance to the earlier public notice dated 10.03.2016, a list of Geographical Areas had been identified by PNGRB for the 9th round of CGD bidding and was enclosed as Annexure-A; the list included a total of 86 Geographical Areas consisting of 156 complete districts and 18 part-districts; and bids shall be invited on these GAs by

March, 2018. Annexure-A thereto is the list of Geographical Areas for the 9th Round CGD bidding. The table, there-under, has four columns. The first column is the Serial No., the second column is the State /UT, the third column is the district name, and the fourth column is remarks. At Serial No. 118 is the State of Tamil Nadu, the corresponding District is shown as Kanchipuram, and the remarks column is blank. At Serial No. 119 is the State of Tamil Nadu, the corresponding District is shown as Chennai and, in the remarks column, it is stated that it is clubbed with Thiruvallur. Likewise, at Serial No. 127 is the State of Tamil Nadu, the corresponding District is shown as Tiruvallur and, in remarks column, it is stated that it is clubbed with Chennai.

217. The afore-mentioned table also shows that, in certain GAs, one district has been clubbed with either another District or a part of another District. For instance, at Serial No. 96 of the said table, is the State of Punjab, the corresponding district is Patiala, and the remarks column states that it is clubbed with Sangrur and part Mohali (SAS Nagar). It is in this context that a distinction must be drawn between this GA at Serial No. 96 with the GAs referred to at Serial Nos. 118, 119 and 127. While Chennai District is clubbed with Tiruvallur District to form one GA, Kanchipuram GA is exclusively with respect to Kanchipuram District, and is not clubbed with any other District. The table does not show Chennai & Tiruvallur Districts GA being clubbed with any part of Kanchipuram District either.

218. A public notice was issued thereafter on 01.03.2018, subsequent to the PNGRB's public notice date 24.02.2018, and a GA-wise list was enclosed thereto for reference. Annexure-A to the public notice dated 01.03.2018 is the list of Geographical Areas for the 9th Round CGD bidding. The table there-under contains four columns: the first is the Serial Number, the second is the State /UT, the third is the Geographical Areas, and the

fourth is the District Name. At Serial Number 61 of the said table is the State of Tamil Nadu, the corresponding Geographical Area is shown as Kanchipuram District, and the District Name is shown as Kanchipuram. At Serial Number 62, Column 2 refers to the State of Tamil Nadu, at column 3 the Geographical Area is shown as Chennai & Tiruvallur Districts, and at column 4, the districts are shown as Chennai and Tiruvallur. No reference is made therein to the Chennai and Thiruvallur Districts GA containing any part of Kanchipuram District.

219. It is not just the earlier Public Notices dated 10.03.2016 and 12.04.2016 which state that the GA shall be based upon district concept, even the table annexed to the Public Notices dated 24.02.2018 and 01.03.2018 clearly show that, while Chennai and Tiruvallur Districts GA comprised of the two complete districts of Chennai and Tiruvallur, the Kanchipuram District GA comprised only of the entire Kanchipuram District.

ii. TENDER & WORK ORDER ISSUED FOR PREPARATION OF MAPS:

220. Tender dated 18.01.2018 was issued by the PNGRB inviting bids for hiring of vendors for supplying customized and interactive maps. Section-I thereof is the instructions to bidders. Section-II relates to the scope of the work and the time schedules. Clause 17 there-under relates to the scope of work. Clause 17.1 stipulates that it was proposed to award a rate contract for a period of two years for providing the following integrated Networks and Geographical Area Maps. Clause 17.1.1 refers to the repository of geographical area maps of existing/proposed CGD networks across India; and the repository of Geographical Area maps for approximately 100 Gas. It is stated that the task includes preparation of individual GA maps depicting Taluka/Tehsil/Mandal as charge areas and pointing important towns/cities, District HQ and National/State Highways on the map; and output required in

WGS, JPG, PDF and Auto card formats along with 5 prints each of A1 size. Clause 17.1.1.1 states that, based on these maps, PNGRB proposed to float further bids for authorization for CGD networks in India; during this period, maps shall be required for approximately 100 geographical area/districts; however, the quantum of work required may vary to any extent and no claim on this account shall be admissible. Clause 17.1.1.2 requires the bidder to take into account all the points explicitly stated, as well as those that shall be required to produce the output as required and stated. The detailed scope of work is as under: (a) The geographical data used by the vendor to prepare the maps should not be more than 2 year old; complete geo-referencing has to be provided in the supplied maps with standard cartographic symbology and colours; (b) the submissions shall have customized layouts printed on A1 sheets (3 sets) at an appropriate scale (minimum 1:10,000) in colour; all NH/SH and major roads and area segments, such as residential, commercial, industrial, forest land /green area in urban /rural areas, are to be indicated in the maps with their names; the vendor shall collect details of all administrative divisions such as Taluka/Tehsil/Mandal etc, and indicate them in the maps supplied; the accuracy level of the maps at this level shall be within 20 m and certain additional landmarks/ details may be required to be added besides removal of other details; (c) the population data of the area is to be provided and shall be authenticated with the source details (Census 2011 or later); (e) while taking outputs, a strip of maximum width of 15 cm should be left on the right side to be used for title, legends, scale, tables and other details as desired by PNGRB; the rest of the sheet shall indicate the actual map leaving a strip of only 1" from all edges; (f) submissions shall also be in the form of geo-referenced .shp files projected in WGS formats besides JPG and PDF formats along with 5 prints each of A1 size; (g) the vendor shall guarantee the accuracy of the details provided in each map to a level as specified; in case inaccuracies are reported by

PNGRB within six months of receiving final deliverables for a city/geographical area, the vendor will rectify the same and provide fresh prints and submissions at no extra cost within a period of 10 working days.

221. Clause 17.1.1.3 stipulates that the vendor shall provide necessary authorization to PNGRB to use the map for its bidding as well as monitoring purposes; this will include adding more information to the maps later on, and sharing the maps with other agencies for project implementation and monitoring purposes; no term of such authorization can be in conflict with the terms and conditions of the tender; and the vendor shall also indemnify PNGRB from any legal implications arising from use of such maps for the afore-said purposes.

222. Thereafter, the scope of work for online GIS integration of oil and gas pipeline data is specified to include, (1) overlaying of GA maps prepared under clause 17.1.1 on interactive maps of India; (2) overlaying of pipeline network prepared under clauses 17.1.2 and 17.1.3 on the interactive maps of India; (3) integration of attribute information on pipelines, locations and others provided by PNGRB; (4) development of web based GIS interface for visualization of oil and gas pipelines; (5) develop an interface on GIS framework for users to filter information on pipelines, locations, GA maps, NGP, PPP, CGD with various options; and (6) integrate the GIS interface with the PNGRB web site under desired section as hypertext link with secured authentication.

223. It is clear from the aforesaid tender dated 18.01.2018, that the Board intended the task, entrusted to the map vendors, to include preparation of individual GA maps depicting Taluka/Tehsil/Mandal as charge areas, and pointing important towns/cities, District HQ and National/State Highways on the map.; and the map vendor was required to collect details of all administrative divisions such as Taluka/Tehsil/Mandal etc, and indicate

them in the maps supplied; the population data of the area was to be provided and was required be authenticated with the source details (Census 2011 or later);

224. Tender dated 18.01.2018 makes it clear that the Board intended for Taluka/Tehsil/Mandal to be depicted as charge areas; and the population data of the area was to be provided and authenticated with the source details ie Census 2011 or later. As the last official Census was only the 2011 Census, the population and area details have evidently been taken by Map Vendor therefrom. As Talukas were to be depicted as charge areas, and as it is evident that the sum total of the 11 charge areas constituted the Kanchipuram District GA and the sum total of these 11 talukas constituted the then Kanchipuram District, it is clear that the Kanchipuram District GA is co-terminus with the then Kanchipuram District.

225. A work order was issued by the PNGRB to M/s. ML Infomap Private Limited on 23.03.2018 requesting them to develop 59 Geographical Area maps enclosed as Annexure-A. Annexure-A to the said letter is a table containing 8 columns. Column No. 1 is the Serial Number, Column No. 2 is the State/Union Territory, Column No. 3 is the GA, Column No. 4 is the name of the district, and Column No. 5 is the area in square kilometres. Details of the other columns need not be referred to as they are not relevant for the purposes of this Appeal. At Serial Number 61 of the said table is the State of Tamil Nadu, the corresponding GA is shown as Kanchipuram District GA, the corresponding district name is shown as Kanchipuram district, and the area in square kilometres is shown as 4483 square kilometres. At Serial Number 62 of the said table is the State of Tamil Nadu, the corresponding GA is shown as Chennai and Thiruvallur district GA, the corresponding name of the district is shown as Chennai and Thiruvallur, and the area in square kilometres is shown as 3569 sq.kms.

226. It is clear from this work order that the PNGRB intended to have maps prepared on the basis of the Districts, for not only does the table contain the names of the Districts which are shown as Kanchipuram, Chennai & Tiruvallur, the corresponding area in square kilometres also tallies with the total area in square kilometres of the then Districts of Kanchipuram, Chennai and Tiruvallur. The 2011 Census records the area of Chennai District as 175 square kilometres, and the area of Tiruvallur District as 3394 square kilometres i.e a total of 3569 square kilometres, which tallies with the area in square kilometres as shown in the afore-said table, as also in the map of GA.9.62. Likewise, the area in square kilometres of Kanchipuram district, in the table annexed to the work order dated 23.03.2018, is shown as 4732 square kilometres, which is the area mentioned not only in the authorisation map, but also the area of the then Kanchipuram district as per Census 2011.

iii. DOCUMENTS FROM THE ORIGINAL RECORDS OF THE PNGRB:

227. The original records of the PNGRB, in relation to the subject dispute, were placed for our perusal. The record contains, among others, Board Agenda No. Infra/CGD/Bid-9th Round/01/2018 of February, 2018 which relates to finalisation of GAs for the 9th CGD bidding round. Para 4 of the said Agenda Note records that, based on the inputs received from various stakeholders and internal deliberations, a list of 86 Gas, which comprised of 156 full districts and 18 part districts from 22 States and UTs, had been prepared and the list was enclosed as Annexure 1. Para 6 of the said agenda note records that the amendments, in CGD Authorisation Regulations, was at an advanced stage of finalisation; an amendment to the CGD Authorisation Regulations was targeted to be finalised by 28.02.2018 for legal vetting; in addition, the tender for hiring an agency for customized maps was under technical evaluation, and was expected to be awarded soon.

228. Annexure 1 to the afore-said Agenda Note contains the list of GAs for the 9th Round CGD bidding, and the table thereunder contains four columns. The first is the Serial No; the second is the State/Union Territory; the third is the name of the district, and the fourth is the remarks column. At Serial. No. 118 of the Table is the State of Tamil Nadu, the district is shown as Kanchipuram, and the remarks column is blank. At Serial No. 119 of the table is the State of Tamil Nadu, the district is shown as Chennai, and in the remarks column it is stated that it is clubbed with Tiruvallur. At Serial No. 127 is the State of Tamil Nadu, the district is shown as Tiruvallur and, in the remarks column, it is stated that it is clubbed with Chennai. This Agenda Note also makes it clear that Kanchipuram GA was to be the Kanchipuram District, and Chennai & Tiruvallur GA was to comprise of two whole districts of Chennai and Tiruvallur.

229. The PNGRB informed ML Infomap Pvt. Limited, vide letter dated 12.03.2018, that they were pleased to award them the contract for item No. 1 as per the following schedule of rates for each part and subject to all the terms and conditions contained in the tender documents. Serial No. 1 contains the item details and the rates quoted. It refers to the repository of geographical area maps for approximately 100 Gas. The task includes preparation of individual GA maps depicting Taluka/Tehsil/Mandal as charge areas, and pointing important town/cities, District HQ and National/State Highways on the map as per clause 17.1.1 and the output was required in WGS, JPS and PDF formats along with 5 prints each of A1 size.

230. The PNGRB informed ML Informap Pvt. Ltd, vide letter dated 23.03.2018, that they should develop 59 GA maps, and the maps enclosed as Annexure A immediately. Annexure A has 8 columns. The first is the Serial No; the second is the State/Union Territory; the third is the GA; the fourth is the district name; the fifth is the area in sq. kms; the sixth is the rate; the

seventh is the company to which contract was awarded, and the eighth relates to the cost. At Serial No.61, of the table in Annexure-A, is the State of Tamil Nadu, the corresponding GA area is referred to as Kanchipuram district, the corresponding district name is shown as Kanchipuram, and the corresponding area is shown 4483 sq. kms. At Serial No. 62 in the State of Tamil Nadu, the corresponding GA area is referred to as Chennai and Tiruvallur districts, the corresponding district names are shown as Chennai-Tiruvallur, and the corresponding area is shown as 3569 square kms.

231. From the aforesaid details also, it is clear that the Board intended for maps to be prepared for GAs 9.61 and 9.62 on the basis of the respective districts in its entirety and not a part thereof, for if the Board had intended to include a part of Kanchipuram District in Chennai & Tiruvallur Districts GA, and exclude such part from the Kanchipuram District GA, it would have made it clear in the said letter.

232. A summary sheet, of the GAs offered in the 9th CGD Round, are detailed in pages 399-402 of File No. AUTC/CGD/GA/List/GA/GAIL/17-18. The said summary sheet is in the form of a table containing 11 columns. The first column relates to the GA. ID; the second column relates to the State/UT; the third column relates to the GA, the fourth column relates to the name of District; the fifth column contains details of the households; the sixth column contains details of the population; the seventh column contains details of the area in square kms; the eighth column relates to the bid bond (in Rs.), the ninth column relates to the minimum net worth (in Rs. Crores), the tenth column relates to the Performance Bank Guarantee (Rs. in Crores), and the eleventh column relates to the Application fee.

233. At Srl. No. 61, of the table in the summary sheet, is the State of Tamil Nadu, the corresponding name of the GA is shown as Kanchipuram district, the corresponding name of the district is shown as Kanchipuram, the

corresponding number of households is shown as 10,06,245, the corresponding population is shown as 39,98,252, the corresponding area in square kms is shown as 4482.00 sq. kms, and the corresponding bid bond is shown as Rs. 3,00,00,000. At Serial. No. 62, of the table in the summary sheet, is the State of Tamil Nadu, the corresponding GA is shown as Chennai-Tiruvallur, the corresponding name of the district is shown as Chennai-Tiruvallur, the corresponding number of households are shown as 21,01,931, the corresponding population is shown as 83,74,836, the corresponding area in square kms. is shown as 3569 square kms, and the bid bond is shown as Rs. 8,37,48,360. From the name, number of households, population and area in sq kms of the respective GAs, as reflected in the afore-said table, it is evident that the Board intended to determine the boundaries of GAs 9.61 and 9.62 on the basis of the corresponding Kanchipuram District and Chennai & Tiruvallur Districts.

234. The Board Note dated 09.04.2018, signed by the Secretary of the Board and Member (I&T), records that, subsequent to the Board approval dated 05.04.2018, a reference copy of the ACBD was web-hosted on the PNGRB site; the Board has already approved 86 GAs for the 9th round CGD bidding; and, once the amended CGD authorization Regulations are notified, the bid for the same shall be invited through e-portal. The said note also records that customised maps for the 86 GAs were received from M/s ML Infomap and M/s Samvridhi along with the summary sheet showing GA-wise area, population, bid bond, PBG and application fee, which was being placed for approval. In the table given there-under reference is made to Shimla, Solan and Sirmaur GA in the District of Shimla which was proposed to be merged with certain charge areas. The said table also refers to Bilaspur, Hamirpur and Una GA in Bilaspur District which was also proposed to be merged with certain other charge areas. The Board Note thereafter records

that, after approval, M/s ML Infomap would be communicated to modify the Geographical Area map for the aforesaid GAs.

235. It does appear from the said Board Note dated 09.04.2018, signed by the Secretary of the Board and Member (I&T), that the Board did not modify the Geographical Area maps of GAs 9.61 and 9.62. From the public notices, the tender and work order issued to the map vendor, the correspondence between the Board and the Map Vendor, and the Board Notes, it is evident that, what the Board intended to fix as the boundaries of GA 9.61 are the boundaries of the then Kanchipuram District. What none of the parties to these appellate proceedings have acknowledged, evidently in their own interest, is that, while the Board had all through intended for GA 9.61 to be co-terminus with the then Kanchipuram District, the map vendor had erred in fixing the co-ordinates of this GA and GA 9.62 ie Chennai-Tiruvallur Districts GA, which has resulted in these 19 CNG stations being erroneously shown as falling within the co-ordinates of GA 9.62, though they are in fact located within the boundaries of the then Kanchipuram District as it existed just prior to GO dated 04.01.2018, which is co-terminus with Kanchipuram District GA.

236. Pursuant to the Board Note dated 09.04.2018, signed by the Secretary of the Board and Member (I&T), a draft public notice dated 11.04.2018 was prepared for inviting electronic bids from interested parties for development and CGD networks in 86 (wrongly stated in the note as 80) Geographical Areas. The draft public notice states that details of the Geographical Areas and bids were available at the PNGRB website. Attached thereto is a summary sheet ie a table containing 11 columns. The first column is the GA ID, the second column is the State/ Union Territory, the third column is the Geographical Area, the fourth column is the District's name, the fifth column relates to households, the sixth column relates to population, the seventh

column relates to the area in sq. km., the eighth column relates to the Bid Bond in Rupees, the ninth column relates to the minimum networth in Rupees/ crores, the tenth column relates to the performance bank guarantee (in Rupees/crores), and the eleventh column relates to the application fee. At Serial No. 61 of the said table is the State of Tamil Nadu. The corresponding GA is shown as Kanchipuram District, the name of the corresponding District is shown as Kanchipuram, the corresponding number of households is shown as 10,06,245, the corresponding population is shown as 39,98,252, the corresponding area in sq. km. is shown as 4483 sq.km., the corresponding Bid Bond is shown as 3 crores, the corresponding minimum networth is shown as 100 crores, the corresponding performance bank guarantee is shown as 33 crores, and the corresponding application fee is shown as 12 lakhs. At Serial No. 62 of the said table is the State of Tamil Nadu, the corresponding GA is shown as Chennai and Tiruvallur District, the corresponding name of the District is shown as Chennai and Tiruvallur, the corresponding number of households is shown as 21,01,931, the corresponding population is shown as 83,74,836, the corresponding area in sq.km. is shown as 3569, the corresponding Bid Bond is shown as 8,37,48,360, the corresponding minimum networth is shown as 249 crores, the corresponding performance bank guarantee is shown as 50 crores, and the corresponding application fee is shown as 12 lakhs.

237. The Appellant's claim that these figures match the details furnished on the right side of the map in both GAs 9.61 and 9.62 (Annexure 1 to the ACBD) seems justified. Just a day thereafter, a public notice was issued on 12.04.2018 inviting electronic bids from interested parties for development of CGD networks in 86 Geographical Areas which included Gas 9.61 and 9.62.

238. It is evident from the Board Note dated 09.04.2018 (signed by both the Secretary and Member (I&T) of the Board and prepared just three days before the application-cum-bid documents were web-hosted on 12.04.2018), that the Board did not modify the Geographical Area maps prepared by the map vendor with respect to GAs 9.61 and 9.62. Just as the Appellant had submitted its application in Schedule C on the basis of the map given by the PNGRB, so had the 2nd Respondent submitted its application in Schedule C on the basis of the map given by the PNGRB for GA 9.62, without raising any objection to the information provided on the right side of the map, besides the particulars mentioned on the physical map itself (details of which have been referred to earlier in this Order).

239. The doctrine of estoppel, would not bar this Tribunal from inquiring into the actual identification exercise undertaken by the PNGRB to determine the boundaries of the GAs, more so in the light of the evident error which appears to have been committed by the map vendor, in fixing the coordinates of each of these two GAs. Thereafter, a public notice was prepared on 11.04.2018 and was placed on the website of the PNGRB on 12.04.2018. It is stated, in the said public notice, that details of GAs and bids are available at the PNGRB's website.

240. As noted hereinabove the public notices issued by the PNGRB prior to the issuance of Application-cum-Bid Document, the tender issued inviting bids for preparation of maps, the work order issued to the map vendor and the Board note dated 09.04.2018 signed by the Secretary and Member (I&T) of the Board, support the contention of the Appellant that the Board intended to invite applications for GA 9.61 and GA 9.62, both of which were specified on the basis of the respective Districts to which they corresponded. While the Board was, undoubtedly, entitled, even after issuance of the said public notices, to have consciously decided, for reasons to be recorded in writing,

to determine the boundaries of the GAs on any basis other than that of a District, neither the material placed on record in these appellate proceedings nor the original records placed for our perusal by the Board, show that the Board having intended to deviate, or to have actually deviated, from its earlier decision that bids for GA 9.61 and GA 9.62 should be invited on the basis of the respective Districts. As there is no material on record to show that the Board had consciously decided to include a part of the then Kanchipuram District in GA. 9.62, it does appear that the apparent error of the map vendor, in fixing the co-ordinates so as to correspond with the respective districts to which GAs 9.61 and 9.62 related to, went un-noticed by the Board as also the parties to these proceedings before an authorization was granted for GA 9.61 in favour of the Appellant, and for GA 9.62 in favour of the second Respondent.

241. The material on record does not also show that the Board ever having intended to determine the boundaries of GAs 9.61 and 9.62 merely on the basis of co-ordinates, nor does it show the Board to have held the other information, furnished in the maps annexed to the authorization granted to GAs 9.61 and 9.62, to be erroneous. We find force in the submission, urged on behalf of the Appellant, that what the Board intended in stipulating the boundaries of GAs 9.61 and 9.62 were the boundaries of the then existing Districts of Kanchipuram, Chennai and Tiruvallur.

242. The public notices issued by the Board, from time to time, are not notifications under Section 2(zb) of the PNGRB Act, but notices issued by the Board in the discharge of its statutory obligation, under Section 19(1) of the PNGRB Act, to give wide publicity of its intention to invite applications for laying, building, operating or expanding a city or local natural gas distribution network in a specified Geographical Area.

243. While it is true that the bidders would go by the Application-cum-Bid Document in submitting their bids, the ACBD itself requires the bidders to make themselves aware of the 2008 Regulations as well as the contents of the map in Annexure 1 of the bid documents. The PNGRB Act and the 2008 Regulations have left it to the discretion of the Board to determine the manner in which the contours or the boundaries of the GA should be determined. While the amended Schedule A requires the Board to bear in mind the factors stipulated therein while determining the GA, it does not expressly stipulate as to how the GA boundaries should be actually determined. Since Section 19 of the PNGRB Act and the 2008 Regulations require the PNGRB to specify the geographical area, and only thereafter to invite bids for each of the specified GAs, what the Board ought to have been done was to clearly identify the GAs for which the bids were proposed to be invited before web-hosting the ACBD on 12.04.2018. Failure of the Board to exercise greater caution in specifying the GA has resulted in this avoidable litigation. In the light of the judgement of the Supreme Court, in **Adani Gas Limited**, it may not be appropriate for us to examine the contentions, urged on behalf of the second Respondent, with respect to GAs which are neither the subject matter of the present appeal nor are the successful bidders of such GAs parties to the present proceedings.

244. We find force in the submission of Mr. Paras Kuhad, Learned Senior Counsel appearing on behalf of the Appellant, that the Board has not been able to show which part of the Kanchipuram District and the Talukas/Villages therein were included in GA 9.62, if so when, and pursuant to which decision taken by the Board. The material on record does not also disclose any such conscious decision having been taken by the Board, much less any such decision having been communicated to the map vendors pursuant to the award of contract in their favour. The records summoned from the Board disclose that the contract awarded to M L Infomap Pvt Ltd, with respect to

GAs 9.61 and 9.62, required them to depict Talukas/Tehsils/Mandals as charge area, and to indicate the towns and cities. As the talukas or tehsils or mandals are all sub-divisions of a district, and it is the sum total of all the talukas in a district which constitute the said district, it is evident that the map vendor was called upon to prepare maps for GAs 9.61 and 9.62 on the basis of the districts of Kanchipuram and Chennai and Tiruvallur Districts. The table attached to the work order given to the map vendor makes it abundantly clear that the Board intended to have maps prepared for GAs 9.61 and 9.62 on the basis of the respective districts of Kanchipuram, Chennai & Tiruvallur, neither more nor less.

245. The exercise undertaken by us was to ascertain what the Board intended to and had actually constituted as the boundaries of GAs 9.61 and 9.62, whether the Board intended that GA 9.61 should be confined to Kanchipuram District and GA 9.62 to Chennai-Tiruvallur Districts or whether the Board intended to include a part of Kanchipuram District in Chennai-Tiruvallur Districts GA. It is pursuant to this exercise undertaken by us that various factors have been taken into consideration, one among which is approval of the maps submitted by the map vendors. As the Board could well have decided to deviate from the map submitted by the map vendor (which apart from the co-ordinates, contains several other details all of which indicate that GAs 9.61 and 9.62 were co-terminus with Kanchipuram District and Chennai-Tiruvallur District), we also sought to satisfy ourselves as to whether the Board, after receipt of the maps from the map vendor and before issuing the Application-cum-Bid Document on 12.04.2018, had taken a conscious decision to deviate from the map submitted by the map vendor. It is in such circumstances that we had to examine, in detail, various aspects including the process undertaken by the Board in approving the maps submitted by the map vendor.

246. It does not stand to reason that the Board, against whose order an appeal lies to this Tribunal, should be heard to contend that the process of approving the maps, submitted by the map vendor, is beyond the jurisdiction of this Tribunal. In this context, it is necessary to note that Section 33(1) of the PNGRB Act enables a person, aggrieved by an order or decision made by the Board under the PNGRB Act, to prefer an appeal before this Tribunal and Section 33(3) confers powers on this Tribunal, on receipt of such an appeal under Section 33(1) and after giving the parties an opportunity of being heard, to pass such orders thereon as it thinks fit. An appeal before this Tribunal, under Section 33(1) of the PNGRB Act, is an appeal both on facts and law, and is, in effect, a continuation of the original proceeding before the Board. The jurisdiction conferred on this Tribunal under Section 33(3), to adjudicate the appeal, is extremely wide and, in the exercise of this jurisdiction, it is always open to this Tribunal not only to consider the material on record which form part of the appellate proceedings, but also to summon and examine the relevant records of the PNGRB. While it is true that both the Appellant and the second Respondent have made it clear that they are not seeking to have the entire bidding process set aside, and their dispute is confined only to the 19 CNG sub-stations, this lengthy and elaborate exercise undertaken by us is only to ascertain whether these 19 CNG stations, which all admittedly fell within the then Kanchipuram District, was intended by the Board to be made part of the Kanchipuram GA ie GA 9.61 or as part of Chennai-Tiruvallur Districts GA ie GA 9.62.

XXIV. DETERMINATION OF THE SUBJECT GAs ON THE BASIS OF DISTRICTS:

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

247. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that the appellant's case was that (i) the statutory scheme, when read with the regulatory determination made by the Board, required that the GA is based on the district concept and the sub-districts (Taluka/ Tehsil/ Mandal) should form its Charge Areas; in the present case, the public consultation, the determination of the GAs and the evaluation of bids, were all on the basis of GA 9.61 comprising of the entire district of Kanchipuram, and GA. 9.62 comprising entirely of the districts of Chennai and Tiruvallur; no decision was ever taken by the Board to include any part of Kanchipuram District, let alone any part of the talukas or villages of Kanchipuram District in GA 9.62 and vice-versa; this constitutes the background context of the contract between the parties. (2) the text of the contract between the parties, i.e. the authorisation, also clearly show that these are authorisation for the respective districts. The authorisation for GA 9.61 issued to the Appellant includes the concerned talukas and the towns/ villages in which the concerned CNG stations are located, while the authorization for GA 9.62 given to the 2nd Respondent does not. (3) the action of the Board, and the subsequent conduct and dealings of the parties at every stage, also show that they understood and represented that the GAs were co-terminus with the respective districts; and (4) the "coordinates test" is not applicable in the facts of the present case.

B. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

248. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that the appellant's contention that the authorization of a GA has been granted by PNGRB on 'district' concept, and that too linked to Census 2011, is wrong and misleading; a bidder is only concerned with what was included in the Bid Document, and introduction of any consideration/ criteria/ requirement which was not notified to the bidders

in the Bid Document is not permissible; there was no mention whatsoever in the Bid Document that the GAs will be awarded on 'district' concept or on the basis of the Survey of India map; the GA boundary is the area / region depicted by the map with geo-coordinates as provided by the PNGRB, and for which the bid had been invited by the PNGRB for the development of the CGD network; on the other hand, the concept of a district boundary is only for administration purposes, and the district boundary does not have any sanctity under the PNGRB Act and the Authorization Regulations; Regulation 2(1)(c) of the Authorization Regulations makes it clear that the specified geographical area could be a combination of administrative demarcations in entirety or in part thereof; therefore, a specified GA could be a culmination of two areas falling in different districts; in fact, this position is undisputed since, even according to the appellant, *"it was never the contention of the Appellant that the Board is not empowered to demarcate a Geographical Area comprising of parts of one or more districts"*; further, when PNGRB amended the Authorization Regulations in 2018 immediately prior to the 9th Bidding Round, it did not introduce the 'district' concept in the Regulations; this shows that the PNGRB never intended to follow the 'district' concept while awarding GAs; merely because the GA is named 'Kanchipuram District' cannot and does not mean that the entire/ full district has been granted to the appellant; in the authorization granted by the PNGRB, the appellant's own GA is named "Kanchipuram Districts" (i.e. with an 's') whereas the map for GA No. 9.61 only refers to the GA as "Kanchipuram District"; in other words, nomenclature is irrelevant and the map given at the time of bidding will prevail over any other consideration; even otherwise, the demarcation of the boundary of a district is at the discretion of the State Government, and may undergo a change with time; as an example, India is reported to have more than 770 districts presently, whereas this number was around 640 districts as per the Census of 2011 and 593 districts in the 2001 Census;

further, even Chennai District was enlarged by the Government of Tamil Nadu before the start of the bid vide Government Order (“GO”) dated 04.01.2018, and several villages/ areas falling in Kanchipuram district have been carved/ brought within the Chennai district; even in the case of Kanchipuram, the district has been split between Kanchipuram district and Chengalpattu district post the award of the GA to the appellant; on the contrary, the boundary of the GA (as depicted in the authorization letter issued by the PNGRB) remains the same, and does not change even if there is a split or merger of district(s) after the GA is awarded to a CGD entity; without prejudice to the aforesaid submissions, even if it is *assumed* (without any admission whatsoever) that the PNGRB had intended to adopt the ‘district’ concept for the 9th bidding round (which it has not), PNGRB will have to follow a logical basis of determination of the district, wherein the said district would necessarily have to be the administrative demarcation as notified by the respective State Government as on the date of advertisement of inviting the bids for the 9th Round by PNGRB in April 2018 and not any arbitrary date; this is because *firstly*, as a concept, ‘district’ is neither defined in the statute nor in the rules or the bidding document; it is absurd to suggest that the district prevailing in the year 2011 was used as the basis by PNGRB for bidding and development of CGD networks in the year 2018, since several administrative and other demographic changes had taken place across India between 2011-2018; *Secondly*, the principle that the 2011 Census /area are not relevant has been recognized by the Supreme Court itself in its judgment in the *Adani* (supra) matter; therefore, selection of district could not have been arbitrary and the demarcation that happened by way of a Government notification, before the notification of the advertisement inviting the bids and even before the tender for selection of vendors to prepare the maps was awarded, could not have been disregarded; if the argument of the appellant, that the district boundary was to be kept as the GA were to be accepted, it would lead to

chaos and uncertainty in determining the GA boundary; the appellant has also relied upon the communication received from PNGRB on 23.09.2021 to claim that the maps of Survey of India/ local authorities are relevant for ascertaining the GA boundary; however, the appellant is twisting the letter from PNGRB out of context; vide letter dated 17.08.2021, the appellant had requested the PNGRB to provide “*digital map clearly showing the administrative boundaries of the Kanchipuram District GA (ID- 9.61) for detailed planning and development of infrastructure*”; in response to the aforesaid letter, PNGRB clarified, vide letter dated 23.09.2021, that it had already provided a GIS map indicating the respective GA area and boundaries with the authorization letter; PNGRB further clarified that the district boundaries within the GAs are considered to be defined by the Survey of India/ Office of the Registrar General and Census Commissioner, India or the respective local authority such as district administration; and PNGRB nowhere suggested that GAs had been awarded on ‘district’ concept.

249. Sri Gopal Jain, Learned Senior Counsel, would also submit that the appellant has also argued that the primary source considered by PNGRB for identification of geographical areas is not co-ordinates but the 2011 District Census Handbook; *Firstly*, this argument has already been considered and rejected by the Supreme Court in the *Adani* judgment; *Secondly*, the appellant’s stand in this case is inconsistent with its own stand in the past; before this Tribunal as well as the Supreme Court in the *Adani* litigation, the appellant itself argued (quite rightly) that it was the bidder’s responsibility to obtain all information related to the gas supply availability and pipeline connectivity and also existing customers, if any, in the specified geographical area and the Census of 2011 was never the determining factor for this purpose; thus the appellant had itself accepted, *inter alia*, that the Census of 2011 was only relevant for the purposes of determining the minimum net worth of the bidding entity, and the value of the Performance Bid Bond to be

given by the successful bidder to PNGRB; the appellant had also accepted that the reference to Census 2011 population and household numbers in the map were only for giving an idea about population and household numbers to the bidders with respect to the map; *Thirdly*, even the tender document issued by PNGRB for the supply of customized and interactive maps nowhere mentions that the vendor shall place reliance on the Survey of India maps or on the district boundary as per the 2011 Census; in fact, a perusal of the scope of work of the vendor would show that the geographical data used by the vendor to prepare the maps could not have been “*more than 2 years old*”; had the intention of PNGRB been to make the Census of 2011 as the basis for identifying the GA, it would not have inserted this condition in the tender document; it is absurd to suggest that the data of Census of 2011 was used as the basis by the PNGRB for bidding and development of CGD networks in the year 2018; the appellant has also placed reliance on the 2011 Census data to argue that the same matches with the data given in the legend of the PNGRB map, the GA is based on ‘descriptive’ concept, and the map issued by the Board is descriptive (as it provides the district boundary, charge areas, villages/towns, total area, total population and total household) which represents the intention of the Board; even this contention was raised and rejected by the Supreme Court in the *Adani Gas* case; further, the appellant’s claim that, if the ‘coordinates’ test followed by the 2nd Respondent is accepted, it would lead to an increase in the total area of GA No. 9.62/ decrease in the total area of GA No. 9.61 is also misleading; it is not even the appellant’s case that it had physically measured the total area either before the bid or after accepting the authorization; even otherwise, without prejudice to the submission that the Census of 2011 has no relevance in the context of the present case, there are several cases in the 9th Bidding Round where the data given in the PNGRB map does not match with the Census of 2011 data; one such example is the GA of Barmer, Jaisalmer and Jodhpur

Districts (awarded to the appellant) i.e. GA No. 9.55 where the area as per the authorization map was 89,900 sq. km. whereas the total area of Barmer, Jaisalmer and Jodhpur as per the Census of 2011 is 89,638 sq. km; similarly, for GA No. 9.01 of Srikakulam, Visakhapatnam, Vizianagaram Districts, the total area as per the authorization map is 23,650 sq. km. whereas the total area of Srikakulam, Visakhapatnam, Vizianagaram Districts as per the Census of 2011 (District Census Handbook) is 23,537 sq. km.

C. ANALYSIS:

250. In the light of what has been held hereinabove, it is evident that the PNGRB, in the discharge of its statutory obligations under Section 19(1) of the PNGRB Act read with Regulation 2(1)(c), 5(4), and Schedule-A of the 2008 Regulations, has determined the boundaries of both the Kanchipuram District GA (GA 9.61) and the Chennai and Tiruvallur Districts (GA 9.62) to be co-terminus with the then Kanchipuram District and the then Chennai and Tiruvallur Districts. The material on record makes it abundantly clear that the Board never intended for any part of the then Kanchipuram District to be excluded from GA 9.61 or to be included in GA 9.62. While every other parameter shows that the Board intended for GA 9.61 to be co-terminus with the then Kanchipuram District, and GA 9.62 to be co-terminous with the then Chennai and Tiruvallur Districts, the error of the map vendor, in failing to properly fix the co-ordinates of both GAs 9.61 and 9.62, that has resulted in this long-drawn litigation between the Appellant and the 2nd Respondent. The material on record does not also show the Board ever having intended to determine the contours of GAs 9.61 and 9.62 on the basis of co-ordinates.

251. While it is true that the map vendor was also directed to provide co-ordinates, every other information required to be provided in the map clearly show that the Board intended for the maps to be prepared treating GA 9.61 to be co-terminous with Kanchipuram District, and for GA 9.62 to be treated

as co-terminous with Chennai and Tiruvallur Districts. The present dispute has arisen evidently because the Board did not specifically inform the bidders of its' having determined the boundaries of GAs 9.61 and 9.62 based on the districts' concept, besides the map vendor's error in fixing the co-ordinates of both the GAs. Failure on the part of the PNGRB to do so, has also resulted in our having to examine the record in detail to ascertain how the Board has, in fact, determined GAs 9.61 and 9.62, since the exercise of determination is a statutory obligation to be discharged by the Board in terms of the PNGRB Act and the 2008 Regulations. Since the ACBD itself requires bidders to make themselves aware of the PNGRB Act and the extant Regulations, any ambiguity in the map (since the 2nd Respondent contends that, in the light of the co-ordinates, the 19 CNG stations fell within their GAs) required them to seek clarifications from the Board regarding the apparent contradiction between the co-ordinates on the one hand, and every other parameter on the map on the other. The 2nd Respondent chose not to do so, and instead proceeded to construct and operate these 19 CNG stations despite being aware that they were physically located in the then Kanchipuram District, as is evident from the 2nd Respondent's letter addressed to the Appellant on 22.02.2022.

252. Determination of the contours of a GA is at the discretion of the Board, and it is not necessary for the Board to invariably prescribe the boundaries of each GA on the basis of a District, since Regulation 2(1)(c) of the 2008 Regulations enables the GA boundary to be determined by the Board on the basis of each district or more or less, or along with any other district in its entirety or in part etc. As wide discretion has been conferred on the Board, by the extant 2008 Regulations, it was unnecessary for an amendment to be made thereto, that too to curtail the power of the Board requiring it to determine the GA solely on the basis of a district. While the Board was not obligated to fix the boundaries of the GA on the basis of the corresponding

district, it has been conferred the power to do so, if it considered it appropriate. In the present case, the PNGRB has determined the boundaries of GAs 9.61 and 9.62 on the basis of their respective districts, and not beyond.

253. The other contentions, urged under this head, have already been dealt with earlier in this order, and do not bear repetition. Suffice it to hold that the impugned order, dismissing the complaint filed by the Appellant, is contrary to the extant statutory provisions and the material on record. and necessitates interference.

XXV. OTHER ISSUES:

1. ESTOPPEL:

A. SUBMISSIONS URGED ON BEHALF OF PNGRB:

254. On the applicability of the principle of estoppel, and on the issue of bidder's responsibility to examine the Application Cum Bid Document (ACBD) and the Annexure along with it, Sri Rahul Sagar Sahai, Learned Counsel for the PNGRB, would submit that the Bid Document for the 9th CGD Bidding Round was issued by the Board on 12.04.2018; some of the important provisions of the Bid Document were as follows: (a) Clause 1.1.1 of the bid document stated that PNGRB has identified this geographical area (GA) considering availability of natural gas and pipeline connectivity in the GA or in its vicinity for development of CGD network; (b) Clause 1.1.3 states that it is the bidder's responsibility to obtain all information related to the present gas supply availability and pipeline connectivity and also existing customers. if any, in the specific GA; (c) Clause 2.1.1 states that the bidder is expected to examine all the contents of the Bid Document, including all instructions, terms and conditions and all the regulations of the Board. It further states that the bid document, together with all its annexures, shall be

considered to be read, understood and accepted by the bidder; (d) Clause 2.1.2 of the Bid Document states that the application-cum-bid document inter alia comprises of the following annexures; (e) Annexure 1 of the ACBD is the Map depicting the Geographical Areas and Charge Areas: The bidder shall carefully study the geographical area and charge areas before submitting their Application-cum-Bid. Importantly, this map includes the coordinates of the GA, and thus the coordinates form an integral part of the bid document; (f) the geo-spatial coordinates (latitude and longitude) are given in the map provided with the Bid Document; the said co-ordinates can be clearly seen from a simple visual inspection of the map; a bare reading of the aforesaid provisions of the ACBD make it amply clear that all the bidders were required to carefully study the GA and charge areas before submitting the bid; It is further evident that the Board had provided multiple opportunities for the bidders, including the Appellant, to seek clarifications which they required prior to the bid submission; the point raised in the complaint, with regard to the map being erroneous, was never raised earlier; and all other entities have already invested on the basis of the map enclosed with the tender.

255. On the issue of submission of Schedule C, Sri Rahul Sagar Sahai, Learned Counsel for the PNGRB, would submit that that the Appellant had participated for both GAs – Chennai and Kanchipuram; while it was successful in Kanchipuram, it was unsuccessful in Chennai where the 2nd Respondent had won the bid; Schedule C submitted by the Appellant as well as the 2nd Respondent for Chennai, at the time of bidding, included the same map which was provided by the PNGRB; at no point of time, had the Appellant raised the issue that the said map of Kanchipuram GA or Chennai GA were defective; the relevant excerpts of Schedule C, submitted by the Appellant and the 2nd Respondent for Chennai GA, and by Appellant for Kanchipuram GA, submitted during oral hearing, the Impugned Judgment

deals with the aforementioned issue, and rightly rejects the contention of the Appellant; it mentions that the ACBD issued by PNGRB for the 9th Bidding Round made it clear that it was the responsibility of the bidder to carefully study the GA and the charge areas before submitting the bid; PNGRB further noted that, despite numerous opportunities granted by PNGRB to submit any objection, the Appellant herein had not submitted any objections with respect to the same; the impugned Judgment is completely in tune with the provisions laid down under the PNGRB Act and the Regulations framed thereunder; and there is no illegality or infirmity in the Order passed by the PNGRB so as to warrant interference by this Tribunal.

B. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

256. Sri Gopal Jain, Learned Senior Counsel, would submit that the appellant and the 2nd Respondent both participated and submitted their bids for various GAs under the 9th bidding round; the appellant submitted its bid for both GA No. 9.61 as well as 9.62. The respective maps: (i) given by PNGRB with the Bid Document for GA Nos. 9.61 and 9.62; (ii) enclosed by the appellant with its Schedule C (application-cum-bid) at the time of submitting its bid for both GAs; and (iii) enclosed with the authorization awarded to the appellant for GA No. 9.61 and to the 2nd Respondent for GA No. 9.62 were the same; the appellant succeeded for GA No. 9.61 and authorisation was granted to them on 26.09.2018; the 2nd Respondent was successful for GA No. 9.62 and authorisation was granted by PNGRB to them on 07.09.2018; the maps for GA Nos. 9.61 and 9.62 were available in the public domain at the time of bidding and all bidders had access to the same; the appellant, in fact, submitted its bid for both GAs; significantly, the appellant did not seek any clarification with respect to the maps for GA Nos. 9.61 and 9.62 at the time of bidding; the map forming part of the Bid

Document was also given with the authorization of the respective GA; this map was accepted by the parties without any objections; further, the appellant also submitted its 'Schedule C' documents to PNGRB on the basis of the map given by PNGRB without raising any objections; and the appellant is, therefore, *estopped* from raising any objections about the PNGRB map at this stage.

C. ANALYSIS:

257. We are in agreement with the submission, urged on behalf of the Board, that the bidder was required to study the GA and the charge area before submitting the application cum bid. That does not discharge the PNGRB of its statutory obligation to clearly identify the boundaries of the GA for which it intended to invite bids and, thereafter, to grant authorisation for the identified GAs in terms of the Regulations. A reading of the Geographical Area and the Charge Areas, as reflected in the map, does appear to show that the Geographical Area No. 9.61 is the same as the Kanchipuram District as it existed prior to 04.01.2018 and the boundaries of the Chennai – Tiruvallur district GA corresponded to the boundaries of Chennai and Tiruvallur districts as it existed prior to 04.01.2018. Accepting the submission, urged both on behalf of the Board and the 2nd Respondent, that the co-ordinates have been correctly fixed would mean that every other information referred to hereinabove has been erroneously determined by the map vendor.

258. It is with a view to satisfy ourselves, as to whether this seemingly far-fetched submission urged on behalf of the Board and the 2nd Respondent was justified, that we had called for the records to ascertain whether the PNGRB had, at any time, consciously decided to include that part of Kanchipuram GA (where these 19 CNG stations are located) within Chennai and Tiruvallur district GAs or to identify the boundaries of both GA 9.61 and

9.62 on the basis of co-ordinates. No such information is discernible from the records placed before us.

259. The doctrine of estoppel by conduct means that where one by words or conduct wilfully causes another to believe in the existence of certain state of things and induces him to act on that belief, or to alter his own previous position, the former is precluded from averring against the latter a different state of things as existing at that time. The fundamental requirement as to estoppel by conduct is that the estoppel must concern an existing state of facts. The second requirement of an estoppel by conduct is that it should be unambiguous. Finally, an estoppel cannot be relied on if the result of giving effect to it would be something that is prohibited by law. Estoppel is only a rule of evidence. (**Supdt. of Taxes v. Onkarmal Nathmal Trust, (1976) 1 SCC 766**). The test of estoppel by conduct of unambiguity and it not being prohibited by law is not satisfied in the present case. The Board cannot justify its failure to comply with its statutory obligations, in clearly and unambiguously determining the boundaries of GA 9.61 and 9.62, seeking shelter under this doctrine.

260. We also find it difficult to accept the submission, urged on behalf of the PNGRB, that the impugned judgement is in accordance with the provisions of the PNGRB Act and the Regulations made thereunder, or that the impugned order does not suffer from any illegality or infirmity as to warrant interference by this Tribunal.

2. IS THE APPELLANT INDIRECTLY CHALLENGING THE BID PROCESS AND THE MAP GIVEN BY THE PNGRB?

A. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

261. Sri Gopal Jain, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that the appellant is effectively contending that the co-ordinates in the map given by the PNGRB be ignored, and the area which has clearly been awarded to the 2nd Respondent be given to the appellant; the appellant's contention has the effect of going behind the bid process after it is over and after the authorization has also been validly awarded way back in the year 2018; the appellant is *estopped* from raising any such objections at this stage; co-ordinates bring precision and specificity and, if the coordinates of a map are ignored or not followed, it would be virtually impossible to accurately define the boundary of a GA; it would also lead to chaos and uncertainty in the exact identification of the GA boundary; the geo-coordinate map is the "primary basis" of determination of the boundary of the GA, the legends given in the map are subordinate to the map to-scale and, therefore, cannot substitute the primary basis (map to-scale) which fixes the contours of the authorized GA.

B. ANALYSIS:

262. As submitted on behalf of the 2nd Respondent, the Appellant no doubt contends that the co-ordinates given in the map are erroneous, and inferentially claims that the said coordinates be ignored. What is left unsaid by the 2nd Respondent is that the both the Board and the 2nd Respondent are asking us to ignore all other information furnished in the map in Annexure-1. As detailed hereinabove, it is because of these contradictions in the map between the co-ordinates on the one hand, and all the other information reflected in the map on the other, that we had perforce to undertake the exercise of ascertaining what the Board had determined, as the boundaries of GAs 9.61 and 9.62, in terms of the provisions of the Act and the 2008 Regulations.

263. We must express our inability to agree with the submission that, in the absence of co-ordinates, it is impossible to define the boundaries of GAs, and are satisfied that what the Board had identified as GAs 9.61 and 9.62 are the areas covered by the then Kanchipuram district and Chennai & Tiruvallur districts. There is nothing either in the PNGRB Act or in the Regulations or even in the ACBD to show that the Legends given in the map are subordinate to the map to scale. Even if this contention were to merit acceptance, the map to scale in Annexure-1 contains the charge area boundaries, the name of the Villages with population of 5000 and more which indicate that the boundaries of Kanchipuram District GA is co-terminus with the then Kanchipuram District. Further, the district GA boundary, as shown in the said map, of each of these two GAs overlap with the GA boundary. These aspects support the Appellant's contention that the GA authorised in their favour is the then existing Kanchipuram district.

3. MISREPRESENTATION BY THE APPELLANT:

A. SUBMISSIONS URGED ON BEHALF OF THE PNGRB:

264. On the issue of facts showing misrepresentation by the Appellant, Sri Rahul Sagar Sahai, Learned Counsel for the PNGRB, would submit that, unlike what has been presented by the Appellant, the Board never stated that the GA in the instant case was based on the district boundary; it was wrongly assumed by the Appellant as clearly brought out by the following facts; vide letter dated 17.08.2021, the Appellant sought a "digital map"; it also stated that the PNGRB had floated a tender for GIS based GA maps, and it could alternatively seek the map from the said agencies; in response, the Board, vide letter dated 23.09.2021, explicitly informed that the GIS map indicating the respective GA area and boundaries had already been provided; the district boundaries 'within' the GAs are considered to be as

defined by the Survey of India/ office; shockingly, the Appellant completely misrepresented and, vide its letter dated 24.09.2021 to the District Collector, sought the district map of Kanchipuram according to Census of India 2011, however, falsely stated that PNGRB had informed it that along with the authorization a GIS map indicating respective GA area and boundaries has already been provided (the map provided by PNGRB of the Kanchipuram district was based on Census of India 2011); It is clear that PNGRB, in its letter, had not stated that the map provide by it was based on Census of India, 2011; the District Collector vide its letter gave the district map of Kanchipuram district; in yet another case of gross misrepresentation, the Appellant wrote to IOCL vide its letter 19.10.2021, that it was informed by PNGRB that GIS based Geographical Area Maps were not available since the tender calling for such maps was cancelled; this statement was false as PNGRB, vide its response dated 23.09.2021, had in fact stated that the GIS map, indicating the respective GA area and boundaries, had already been provided; the said tender was floated for the 11th CGD Bidding Round; and the whole attempt seemed to be that the Appellant was trying to show that, according to PNGRB, the district map was also the GA map which was patently wrong.

B. ANALYSIS:

265. While it is true that the Board never informed either the Appellant or the 2nd Respondent that the GAs were based on the district boundaries, the documents on record as well as the documents placed for our perusal by the Board, as referred to hereinabove, do show that the Board intended to determine the GA boundaries on the basis of the boundaries of the respective districts. In any event, the understanding of the Appellant, even if it be erroneous (which we are satisfied it is not), would not amount to misrepresentation of relevant facts.

4. DOES THE SUBSEQUENT CONDUCT OF THE PNGRB REFLECT THEIR UNDERSTANDING THAT THE RESPECTIVE GEOGRAPHICAL AREAS WERE DEMARCATED ON THE BASIS OF DISTRICTS?

A. SUBMISSION URGED ON BEHALF OF THE APPELLANT:

266. Sri Paras Kuhad, Learned Senior Counsel appearing on behalf of the appellant, would submit that in the tender issued by the PNGRB in March 2021, for hiring an agency for supplying GIS based geographical area maps, it is admitted that Taluka/Tehsil/Mandal constitute Charge Areas of the GAs; in para 18.1(d), it is admitted that the population and household numbers of the GAs are to be derived from the Census 2011 data, which shows GAs are census units; in para 18.1(k), the commonality of the GA boundary and administrative boundary is conceded by the Board, by requiring the vendor to ensure that the GA boundary must coincide with the administrative boundaries within accuracy limit of 5 metres; in para 18.7, the Board has stipulated that, if the geo-referencing of the GA map and the GA boundary projections are found not to be in line with the respective district boundaries, then the GA map shall not be accepted; this constitutes a clear admission by the Board of the primacy of district boundary over the co-ordinates derived from geo-referencing; since this was an exercise for GAs which were already authorised, including all 9th Round GA's, the understanding of the Board as reflected in this tender constitutes an admission of how it demarcated the GA at the relevant time; immediately after disputes arose between the parties, vide letter dated 23.09.2021 addressed to the Appellant, PNGRB stated that "*district boundaries within the GAs are considered to be as defined by the Survey of India/Office of the Registrar General & Census Commissioner, India or respective local authority, such as district administration*"; there is a clear continuity in the exercise

undertaken by the Board; the Board having decided to identify GAs on the basis of Districts, made its determination for Kanchipuram District GA 9.61 and Chennai and Tiruvallur Districts GA 9.62 in terms of districts, gave wide publicity to this district based determination for the 9th CGD Bidding Round (public notice dated 01.03.2018), asked the map vendor to prepare the maps of the districts, issued ACBD with all the data of the corresponding districts, evaluated reasonability of the bids with reference to the district data, and issued authorization stating that it is for the respective districts and the specified total extent, corresponding to the area of the respective districts; it reaffirmed the determination based on district concept in the case of *Megha Engineering* [reply to Q. 2 at p. 102 of the judgment in Appeal No. 121 of 2020] and in letter dated 23.09.2021 to AGP; and, in the 11th Round in 2021 also, admittedly, the district concept was followed, consistent with the determination made in 2016.

B. ANALYSIS:

267. What we are concerned in the present appeal is the 9th round of bidding, and we may not be justified in either referring to the earlier or subsequent rounds of bidding or to the clarifications which the PNGRB may have furnished with respect to other GAs. Reliance placed by the appellant, on the judgment of this Tribunal in **Megha Engineering and Infrastructures Limited Vs. Bhagyanagar Gas Limited & Ors. (Judgment in Appeal No. 121 of 2020)** is therefore misplaced.

XXVI. CONCLUSION:

268. In the light of the afore-said findings and conclusions, the impugned order passed by the Board in case No. Legal/11/2022 dated 22.12.2022 must be, and is accordingly, set aside. Consequently the complaint filed by

the Appellant before the Board stands allowed to the extent indicated herein. We hold that the subject 19 CNG stations are all located within the then Kanchipuram district, and since the Kanchipuram district GA (GA 9.61) is co-terminus with the then Kanchipuram district, these 19 CNG stations must be held to fall within the boundaries of Kanchipuram district GA, i.e. GA 9.61. The 2nd Respondent shall forthwith cease and desist from laying, building or operating any of these 19 CNG stations.

269. In so far as the Appellant's claim for damages of 3 crores for each of the 19 CNG stations, aggregating to Rs.57 crores, is concerned, we are of the view that this relief cannot be granted in the present Appeal, since the loss, if any, suffered by the Appellant, and the quantum of damages which they may be entitled to as a result, must first be examined and determined by the PNGRB after giving both the parties a reasonable opportunity of being heard. We, therefore, grant the Appellant liberty to file a petition afresh before the PNGRB with respect to their claim for damages.

270. The Appeal stands disposed of accordingly. Pending IAs, if any, shall also stand disposed of.

Pronounced in the open court on this the **15th day of May, 2024.**

(Dr. Ashutosh Karnatak)
Technical Member

(Justice Ramesh Ranganathan)
Chairperson

REPORTABLE / ~~NON-REPORTABLE~~