

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

**APPEAL No. 588 of 2023 &
IA No. 1020 OF 2023 &
IA No. 281 OF 2024**

Dated: 08.05.2024

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

In the matter of:

SABARMATI GAS LIMITED

Through Mr. Milap Dholakia, Manager (Legal)

Plot No. 907, Sector 21,
Gandhinagar, Gujarat – 382021
Email: milap.d@gspc.in

... Appellant(s)

Versus

1. PETROLEUM AND NATURAL GAS REGULATORY BOARD

Through the Secretary

1st Floor, World Trade Centre,
Babar Road, New Delhi – 110001
Email: secretary@pngrb.gov.in

2. HINDUSTAN PETROLEUM CORPORATION LIMITED

Through K.V. Sreenivas Raju

Chief General Manager – CGD Projects
Petroleum House,
17 Jamshedji Tata Road,
Churchgate, Mumbai,
Maharashtra – 400020, India
Email: kvsraju@hpcl.in

... Respondent(s)

Counsel for the Appellant(s) : M.G. Ramachandran Sr. Adv.
Piyush Joshi
Sumiti Yadava for App.1

Counsel for the Respondent(s) : Arun Sanwal
Utkarsh Sharma
Tanuja Dhoulakhandi
Mohit Budhiraja
Sanskriti Bhardwaj
Suyash Gaur
Harshita Tomar
Kartikey Joshi for Res. 1

Sacchin Puri Sr. Adv.
Matrugupta Mishra
Swagitika Sahoo
Ritika Singhal
Vignesh Srinivsan
Nipun Dave
Ishita Thakur
Sonakshi for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellant M/s Sabarmati Gas Limited is a joint venture between *Bharat Petroleum Corporation Limited* (BPCL) and *Gujarat State Petroleum Corporation Limited* (GSPCL). It is the authorized entity for laying, building, operating or expanding city / local gas distribution network in *Sabarkantha, Mehsana* and *Gandhinagar* Geographical Area (GA) vide authorization dated 16.12.2009 duly accepted by the 1st respondent *Petroleum and Natural Gas Regulatory Board* (hereinafter referred to as "PNGRB" or the "Board") under Regulation 17 of Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local

Natural Gas Distribution Networks) Regulation, 2008 (hereinafter referred to as “CGD Authorization Regulations”).

2. The 2nd respondent *Hindustan Petroleum Corporation Limited* (HPCL) is a public sector undertaking engaged in the business of refining of crude oil and marketing of petroleum products, production of hydrocarbons etc. having its registered office at Petroleum House, Churchgate, Mumbai, Maharashtra.

3. The 1st respondent i.e. PNGRB, vide letter dated 18.08.2008, had issued provisional clearance to 2nd respondent HPCL to operate 06 Daughter Booster CNG Stations in the city of Ahmedabad in order to avoid inconvenience to CNG customers. It appears that the HPCL has commissioned one of these Daughter Booster CNG Stations under the name and style of M/s Auto Care Centre at Oram, NH-8, Taluka Prantij District Sabarkantha.

4. On 24.11.2017, the appellant wrote to the 2nd respondent HPCL stating that appellant was the authorized entity for Sabarkantha, Mehsana, and Gandhinagar (SGL GA) and the Daughter Booster CNG Station namely M/s Auto Care Centre in Taluka Prantij District Sabarkantha was encroaching upon its authorized area and asked HPCL to handover the same to it. It was also contended by the appellant that the HPCL is operating the said CNG Station without any authorization.

5. Subsequently, the appellant also wrote to the Board regarding the said unauthorized CNG Station being operated by 2nd respondent.

6. Since, the appellant did not receive any response either from the 2nd respondent or from the Board, it submitted a formal complaint in this regard to the Board alleging infringement of its rights including infrastructure as well as marketing exclusivity under the CGD Authorization Regulations in the said GA by the 2nd respondent. It sought a direction to the 2nd respondent to handover the said CNG Station under the name and style of M/s Auto Care Centre at Taluka Prantij, District Sabarkantha to it as well as other ancillary reliefs.

7. The Board took note of the minutes of meeting dated 10.08.2022 held between the officials of the *Ministry of Petroleum and Natural Gas* as well as officials of various oil marketing companies on setting up of LNG infrastructure in the country and also the submissions made by authorized representative of HPCL to the effect that the HPCL is only setting up a LNG dispensing facility at the subject CNG Station for the purpose of dispensing liquid LNG to transport sector only and held that the appellant has not been able to substantiate its case and accordingly dismissed the complaint. This order dated 13.03.2023 of the Board (hereinafter referred to as the impugned order) has been impugned by the appellant in this appeal.

8. Before us also it was vehemently canvassed on behalf of the appellant that the 2nd respondent HPCL has been operating the CNG Station at Taluka Prantij, District Sabarkantha without any proper authorization or even provisional clearance from the 1st respondent i.e. PNGRB. It is pointed out that vide letter dated 18.08.2008, provisional clearance was given by the Board to HPCL for commissioning CNG Stations within the Ahmedabad city only and it does not relate to any CNG

Station in Sabarkantha District. It is argued that the observation of the Board in the impugned order that the 2nd respondent is holding provisional clearance for the subject CNG Station in Sabarkantha District is totally erroneous as no such document was placed on record in this regard by HPCL and it also runs contrary to the contents of the Board's own letter dated 18.08.2008. It is further submitted that by operating the said CNG Station the HPCL has been infringing upon the exclusivity vested with the appellant in the SGL GA. The learned counsel for the appellant further submitted that the impugned order of the Board is also discriminatory as it runs in the teeth of two previous orders of the Board itself in *Charotar Gas Mandali Ltd. v Gujarat Gas Limited* dated 05.03.2020 and *Megha Engineering and Infrastructure Limited v Bhagyanagar Gas Limited* dated 18.02.2020 wherein the Board had ordered stoppage of operation of the unauthorized CNG Station. It is also pointed out by the learned counsel that the Board has failed to consider that the complaint of the appellant was with regards to the unauthorized CNG Station being operated by HPCL and not in relation to the LNG Station.

9. On behalf of both the respondents, it is submitted that vide letter dated 18.08.2008, provisional clearance was issued to the 2nd respondent to operate Compressed Natural Gas Distribution Network under Regulation 18(1) of CGD Authorization Regulations and the Board vide letter dated 04.02.2013 addressed to M/s Adani Gas Limited indicated about the same while referring to 18 CNG Stations (17 Daughter Booster Stations plus 01 Mother Station) in the area of Ahmedabad. It is stated that the subject CNG Station being operated by HPCL at Taluka Prantij, District

Sabarkantha was mentioned in the said letter addressed to M/s Adani Gas Limited which indicates that the Board acknowledged it to be a legal CNG Station. It is further argued that during the hearing of the complaint before the Board on 02.02.2023, a high-ranking official of HPCL gave an undertaking that the HPCL is setting up only a LNG dispensing facility at the subject CNG Station for the purpose of dispensing liquid LNG to transport segment only, and there was no reason for the Board to disbelieve the same. It is also stated that no evidence was produced by the appellant to falsify the said statement made on behalf of the HPCL that it is setting up only an LNG dispensing facility at the subject CNG Station. The learned counsel for the Board also referred to Para 8 of the reply filed by HPCL to the appellant's complaint wherein it is specifically stated that the HPCL was in process of starting LNG facility at its retail CNG Station and the LNG facility will be used only for the purpose of liquid auto fuel. It is submitted that this statement made on behalf of HPCL is in consonance of public notices dated 02.06.2020 and 23.07.2020 of the Board wherein it has allowed setting up of LNG Stations in any GA or anywhere else, even if the entity setting up the station is not the authorized entity for the concerned GA. It is argued that these public notices issued by the Board did not bar expansion of the existing CNG Stations into the LNG dispensing facilities and in view of the admission of HPCL that its prospective LNG facility at the subject CNG Station will be used only for dispensing LNG in liquid state to the transport sector and not as CNG or L-CNG, the appellant should not be having further grievance either against the Board or the HPCL.

10. We have considered the rival submissions made on behalf of the parties and have gone through the entire record including the written submissions filed by learned counsels.

11. So far as the setting up of LNG dispensing facility by 2nd respondent at the subject CNG Station in Taluka Prantij, District Sabarkantha is concerned, the appellant fairly conceded that it has no objection to the same as the same is permissible in view of public notices dated 02.06.2020 and 23.07.2020 issued by the Board. In order to clearly identify the portion of the premises where the LNG dispensing facility was set up by the 2nd respondent, the learned senior counsel appearing on its behalf made a statement before this Tribunal on 04.04.2024 to the effect that a wall separating the CNG Station and LNG Station would be erected within two weeks from that date and an affidavit in this regard shall be filed within one week. We find that an affidavit dated 08.04.2024 sworn by the Executive Director as well as authorized representative of the 2nd respondent has been filed in this regard. It has been stated in the affidavit that the construction of the wall / boundary between the subject CNG Station and LNG Station has been undertaken and the same is likely to be completed by 04.05.2024. However, the 2nd respondent has not filed a fresh affidavit to state that the construction of the wall has been completed. Let the same be now filed within two days from today positively.

12. That takes us to the main issue involved in the appeal which is whether the 2nd respondent is operating a CNG Station in the name and style of M/s Auto Care Centre at Oram, NH-8, Taluka Prantij District

Sabarkantha, and if so, whether it has got an authorization from the 1st respondent Board for the same.

13. On this aspect, we find it pertinent to reproduce Paragraph Nos. 16 and 17 of the impugned order of the Board hereunder:-

“16. The Board has vide its order dated 02.02.2023 recorded the submissions of the authorised representative of the Respondent wherein, he has referred to paragraph 12 to 15 of the Reply dated 29.12.2022 to the Complaint and has stated that the Respondent is only setting up an LNG dispensing facility at the subject CNG station for the purpose of dispensing liquid LNG to transport sector only not for any other purpose. The relevant extract of the Order dated 02.02.2023 is given below:

During the course of hearing, Mr. Animesh Kumar Sinha (GM-CGD) along with Ld. Counsel appearing on behalf of the Respondent referred to para 12 to 15 of the reply dated 29.12.2022 and stated that Respondent is only setting up an LNG dispensing facility at the subject CNG station for the purposes of dispensing liquid LNG to transport segment only not for any other purpose.

17. It would not be out of place to mention that the Complainant vide Interlocutory application (I.A.) No.

08/2023 dated 17.02.2023 titled “Application under Regulation 50 of the PNGRB (Conduct of Business, Receiving And Investigation Of Complaints) Regulations, 2007 Seeking Rectification of Order dated 02.02.2023 and for directions, along with affidavit” has submitted that the submission recorded in the second paragraph of the Board’s Order dated 02.02.2023 of Mr. Animesh Kumar Sinha(GM- CGD) is a bald statement which is not supported by any evidence and as per the settled principles of law the Board cannot place reliance on such oral averments without supporting documentary evidence. The Board is of the view that the statement made by the senior official of the company and with all the responsibility, which the Complainant has the opportunity to rebut the same and demonstrate otherwise. However, it failed to do so and therefore we are of the view that complainant’s trivializing the same by referring to it as a bald statement in absence of cogent evidences merit no attention. The Complainant, therefore failed to establish any cause of action against the Respondent.”

14. We find it ironical that the Board has proceeded to hold that the 2nd respondent HPCL is not operating a CNG Station at the site in question merely on the basis of an oral statement of an officer of the Corporation without examining the records of the case before it and by simply brushing aside the contrary statements of appellant in this regard. It is intriguing that the Board did not find it appropriate to either record the statement of the

said officer of the 2nd respondent separately in this regard or to call for an affidavit / undertaking of the said official. We find ourselves in agreement with the submission made on behalf of the appellant that the Board should not have placed reliance upon such a bald submission made on behalf of the 2nd respondent during the course of hearing on 02.02.2023. Otherwise also, what was stated on behalf of the 2nd respondent before the Board on 02.02.2023 is that the 2nd respondent is only setting up a LNG dispensing facility at the subject CNG Station for dispensing LNG to transport segment only and not for any other purpose. It is nowhere been stated that the 2nd respondent has neither set up a CNG Station at the site in question nor is operating the same. Nothing in this regard is found in Paragraph Nos. 12 to 15 of the reply filed by 2nd respondent to the appellant's complaint before the Board also, to which reference was made on behalf of 2nd respondent in making the said statement on 02.02.2023. Therefore, it is evident that there was no cogent and reliable material before the Board to conclude that the 2nd respondent is not operating a CNG Station at the site in question i.e. M/s Auto Care Centre, Taluka Prantij District Sabarkantha.

15. Further, in case the 2nd respondent was actually not running a CNG station at the said site, there was no reason or occasion for the learned counsel appearing on its behalf to state before this Tribunal on 04.04.2024 that a wall would be erected to separate the CNG Station and the LNG station. In fact, in the written submissions filed before this Tribunal, it is clearly stated on behalf of 2nd respondent that 04 Daughter Booster Stations including the subject CNG Station at Oram, Taluka Prantij District Sabarkantha i.e. M/s Auto Care Centre were commissioned in the year

2012. It is nowhere stated that the 2nd respondent has stopped operating the same at any point of time thereafter.

16. Thus, there is nothing on record to hold that the 2nd respondent HPCL is not operating a CNG Station at the subject site in Taluka Prantij, District Sabarkantha, under the name and style of M/s Auto Care Centre. Clearly, the findings in this regard contained in the impugned order are totally baseless and erroneous.

17. On the aspect of authorization of the 2nd respondent HPCL to operate CNG Station at the subject site in Taluka Prantij, District Sabarkantha, we do not find any discussion of the Board in the impugned order. At the same time, we are also unable to find anything on record to show that authorization had been granted to 2nd respondent to set up and operate a CNG Station at the said site.


18. Even though, both, the 1st respondent Board as well as 2nd respondent HPCL, have vehemently contended that the HPCL has been duly authorized by the Board to set up and operate the CNG Station at the subject site in Taluka Prantij, District Sabarkantha, yet they have neither produced on record any such authorization letter issued by the Board in favour of HPCL or any other reliable document in this regard. The only two documents upon which the learned counsels for the respondents have harped during the course of arguments are the letter dated 18.08.2008 issued by the Board to the 2nd respondent HPCL and letter dated 28.11.2013 issued by the Board to M/s Adani Gas Limited. We have

perused both these documents minutely. It would be apposite to reproduce both these letters hereinbelow: -

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Annexure R-1



PETROLEUM AND NATURAL GAS REGULATORY BOARD
1st Floor World Trade Centre, Babar Road, New Delhi - 110 001
Tel. : 011-23457700/23457744/23457751

File No.: S-Admin./II/1/2007-Vol-1 Dated : 18th August, 2008

Sh. S. Sreenivasulu
Chief Manager (Auto LPG & CNG)
Hindustan Petroleum Corporation Ltd.,
8, Shoorji Vallabhdas Marg,
Post Box No. 155,
Mumbai - 400 001

Subject: Authorisation for operating compressed Natural Gas Distribution Network in the City of Ahmedabad.

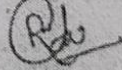
Ref.:

- Your letter ref. SA/PNGRB dated 12.05.2008 submitting your application w/r 18(1).
- PNGRB letter no. S-Admin./II/1/2007-Vol-1 dated 23.05.2008.
- Your reply vide letter no. NG/SS/SA dated 12.06.2008.
- GPCB letter no. ABD/AAP-C12/19324 dated 08.07.2008.

Sir,

This has reference to your application for seeking authorisation of the Board under regulation 18(1) of the Petroleum and Natural Gas Regulatory Board (Authorizing Entities for Laying, Building, Operating or Expanding City or Local Natural Gas Distribution Networks) Regulations 2008, for operating Ahmedabad CNG distribution network consisting of 1 No. of Mother Station & 9 Nos. of Daughter Booster (DB) Station operational in the city of Ahmedabad and also seeking permission of commissioning of 6 Nos. of additional of DB Stations. The Board has examined your application and the same is being processed as per the provisions of the relevant Regulations.

2. In the mean time on your request for permission for commissioning of 6 DB stations and with a view to avoid inconvenience to CNG customers, we hereby accord provisional clearance to HPCL for commissioning of these six DB station pending final disposal of the application for authorisation and subject to submitting an indemnity Bond in the enclosed format at Annexure-1. It is however, made clear to you that the provisional clearance shall not in any way entitle you to make any claim whatsoever in respect to authorisation on this basis, and no plea/claim shall be entertained by the Board.

Yours faithfully,

(Rajnath Ram)
Jt. Adviser (I)

11/11/08 17:10:00

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पेट्रोलियम एवं प्राकृतिक गैस विनियामक बोर्ड
Petroleum and Natural Gas Regulatory Board

प्रथम-तल, वर्ल्ड ट्रेड सेंटर, बाबर रोड, नयी दिल्ली - 110001
1st Floor, World Trade Centre, Babar Road, New Delhi - 110001

File No: S-Infra/II/1/2008-Vol.II/Ahmedabad GA

28th November, 2013

Sh. Rajeev Sharma
Chief Executive Officer,
Adani Gas Limited,
3rd Floor, SSR Corporate Park,
13/6, Sector -27B, NH- 2
Delhi Mathura Road,
Faridabad, Haryana-121002

Subject: Grant of Authorization for Ahmedabad CGD Network [comprising of Ahmedabad City & Daskroi area only and excluding 18 CNG Stations (17 DB Stations + 1 Mother stations of M/s HPCL)] to M/s Adani Gas Limited.

Sir,

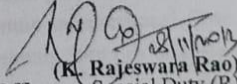
With reference to the T&C letter dated 4th February, 2013 issued by the Petroleum and Natural Gas Regulatory Board (PNGRB) and the Performance Bond submitted by M/s Adani Gas Limited vide letter dated 31st October, 2013, PNGRB is pleased to issue Grant of Authorization for CGD Network development under Regulation 18(1) of the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 for the Geographical Area of Ahmedabad in the enclosed Schedule-D format with the following project milestones to be achieved during the marketing exclusivity period of 3 years:

	Existing	1 st year (cum)	2 nd year (cum)	3 rd year (cum)
PNG domestic Connections (No.)	1,69,311	3,04,000	4,51,900	5,99,698
Steel Pipeline (Inch-KM)	1466.44	1958	2458	3086
Compression Capacity (in Kg/day)	8,08,889	Target of 3,34,200 already achieved		

Yours faithfully,

Encl: As above

के. राजेश्वर राव/K. Rajeswara Rao
ओएसडी (आर)/OSD (R)
पेट्रोलियम और प्राकृतिक गैस विनियामक बोर्ड
Petroleum & Natural Gas Regulatory Board
प्रथम तल, वर्ल्ड ट्रेड सेंटर
1st Floor, World Trade Centre
बाबर रोड, नई दिल्ली-110001
Babar Road, New Delhi-110001


(K. Rajeswara Rao)
Officer on Special Duty (R)

19. Perusal of the letter dated 18.08.2008 would reveal that the 2nd respondent had submitted an application dated 12.05.2008 under Regulation 18(1) of PNGRB Regulations, 2008 seeking authorization for operating Ahmedabad CNG distribution network consisting of 01 Mother Station and 09 Daughter Booster Stations in the city of Ahmedabad and also seeking permission for commissioning 06 number of additional Daughter Booster Stations. The Board accorded provisional clearance to HPCL for commissioning of these 06 additional Daughter Booster Stations pending final disposal of the application for authorization. It needs to note that the subject of the letter reads as “Authorization for operating compressed Natural Gas Distribution Network in the City of Ahmedabad”.

20. It is, therefore, manifest from the contents of the letter that provisional clearance was given to HPCL for commissioning of 06 Daughter Booster Stations within the city of Ahmedabad only. The letter nowhere states that permission was given to HPCL to commission a CNG Station at Taluka Prantij, District Sabarkantha, which is quite far away from the Ahmedabad city.

21. The subject of the letter dated 28.11.2013 sent by the Board to M/s Adani Gas Limited reads as “Grant of Authorization of Ahmedabad CGD Network [comprising of Ahmedabad City & Daskroi area only and excluding 18 CNG Stations (17 DB Stations + 1 Mother stations of M/s HPCL] to M/s Adani Gas Limited.” It is vehemently submitted that 18 CNG Stations of

M/s HPCL referred to in the subject of the said letter include the CNG Station at subject site in Taluka Prantij, District Sabarkantha, which clearly indicates that the same had been duly authorized by the Board. The argument, on the face of it, appears to be imaginary. The said letter nowhere mentions that the subject CNG Station at Taluka Prantij, District Sabarkantha is included in the 18 CNG Stations of HPCL as referred to in the subject of the letter. The letter is not accompanied by any list of such 18 CNG Stations being operated by HPCL. Further, the letter relates to authorization of M/s Adani Gas Limited for Ahmedabad CGD Network comprising of Ahmedabad city and Daskroi area and therefore, the 18 CNG Stations of HPCL referred to therein (which have been excluded) also would be located in the said area. Therefore, the subject CNG Station situated in Taluka Prantij, District Sabarkantha (which is inside the SGL Geographical Area) can by no stretch of imagination said to be included in those 18 CNG Stations.

22. We feel intensely intrigued by the conduct of the Board in contending vociferously that it had authorized HPCL to set up and operate CNG Station M/s Auto Care Centre, Taluka Prantij District Sabarkantha without producing any record in support thereof. The Board is an instrumentality of State and is expected to run its affairs in a transparent and unbiased manner. Being a public office, it is the repository of public trust and is obligated to act towards public good without showing any undue favour to any entity. In case, it had actually granted authorization to HPCL to

operate CNG Station M/s Auto Care Centre at Oram, NH-8, Taluka Prantij District Sabarkantha, it should have come up with either the authorization letter issued in this regard to HPCL or any other record showing that such authorization had been granted to HPCL. In the absence of a specific document showing grant of authorization to HPCL to operate the CNG Station at Taluka Prantij, District Sabarkantha, the contentions of the Board appear to be totally concocted as well as manipulated in order to show undue favour toward the 2nd respondent HPCL. We find such conduct of a public authority like Board not only unacceptable but also deplorable.

23. We, therefore, hold that the 2nd respondent is operating the CNG Station M/s Auto Care Centre at Oram, NH-8, Taluka Prantij District Sabarkantha, without any authorization from the Board. Since, the said CNG Station is located within the Sabarkantha, Mehsana, Gandhinagar (SGL) GA of which appellant is the authorized entity, the 2nd respondent has infringed the marketing as well as infrastructural exclusivity of the appellant which it enjoys as per Regulations 5, 6 & 12 of the CGD Authorization Regulations, 2008.

24. Accordingly, the appeal is hereby allowed and the impugned order of the 1st respondent Board is set aside.

25. We direct the 2nd respondent to stop operating the CNG Station M/s Auto Care Centre at Oram, NH-8, Taluka Prantij, District Sabarkantha,

forthwith and to hand over the same to the appellant within 30 days from today. The 2nd respondent shall forthwith cease and desist from marketing CNG in the said GA authorized to the appellant.

26. The appeal is disposed of along with pending applications accordingly.

Pronounced in the open court on this 08th day of May, 2024.

(Virender Bhat)
Judicial Member

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

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REPORTABLE / ~~NON-REPORTABLE~~

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