

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 8415/2009 & CM 5295/2009**

VOICE OF INDIA

..... Petitioner  
Through: Mr. Prashant Bhushan,  
Advocate.

Versus

UNION OF INDIA & ORS.

..... Respondents  
Through: Mr. A.S. Chandhiok, ASG with  
Mr. Neeraj Chaudhari, Standing  
Counsel for R-1.

Mr. Rajiv Nayar and Mr. Sandeep  
Sethi, Senior Advocates with  
Mr. Sidharth Singh, Ms. Divya  
Roy, Mr. Rakesh Dewan and  
Mr. Nikhil, Advocates for R-2 and  
R-3.

Mr. K.K. Sharma, Senior Advocate  
with Mr. Abhay Kumar, Advocate  
for R-4.

**AND**

+ **W.P.(C) 9022/2009 & CMs 6524-6526/2009**

INDRAPRASTHA GAS LTD.

..... Petitioner  
Through: Mr. K.K. Rai, Senior Advocate  
with Mr. Shiv Pandey and  
Mr. Saurav Agarwal, Advocates

Versus

PETROLEUM & NATURAL  
GAS REGULATORY BOARD  
& ANR.

..... Respondents  
Through: Mr. Sandeep Sethi, Senior  
Advocate with Mr. Sidharth Singh  
Ms. Divya Roy, Mr. Rakesh Dewan  
and Mr. Nihil, Advocates for R-1.

Mr. Abhinav Vashisht with  
Mr. Raman Kumar, Advocates for  
IOCL.

Reserved on : December 11<sup>th</sup>, 2009

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Date of Decision : January , 2010

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE MANMOHAN**

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

**J U D G M E N T**

**MANMOHAN, J :**

1. With consent of parties both the writ petitions being W.P.(C) 8415/2009 and 9022/2009 are being disposed of by a common judgment. While W.P.(C) 8415/2009 has been filed in public interest under Article 226 of Constitution challenging the illegal and arbitrary manner in which the affairs of Petroleum and Natural Gas Regulatory Board (hereinafter referred to as “Board”) constituted by the Central Government under the Petroleum and Natural Gas Regulatory Board Act, 2006 (hereinafter referred to as “PNGRB Act”) are being run by its Chairman, W.P.(C) 9022/2009 has been filed seeking quashing of public notice dated 13<sup>th</sup> February, 2009 inviting bids from interested parties for development of City Gas Distribution (hereinafter referred to as “CGD”) in Ghaziabad and also for quashing of the order/letter dated 19<sup>th</sup> March, 2009 by virtue of which Indraprastha Gas Limited’s application for authorisation in Ghaziabad has been rejected.

2. Mr. Prashant Bhushan, learned counsel for petitioner in W.P.(C) 8415/2009 submitted that in the absence of non-notification of Section 16 of the PNGRB Act, the Board constituted under the said Act had no power to grant authorisation to entities which had applied to the Board for Laying, Building, Operating or Expanding City or Local Natural Gas Distribution Networks. Mr. Bhushan drew our attention to Sub-section 3 of Section 1 of PNGRB Act, which stipulated that the said Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. He stated that the said Sub-section clearly postulated that different dates could be appointed for coming into force of different provisions. Sub-section 3 of Section 1 of PNGRB Act reads as under:-

***“1. Short title, extent, commencement and application.-***

xxxx                      xxxx                      xxxx                      xxxx

*(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:*

*Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be Construed as a reference to the coming into force of that provision.”*

3. Mr. Bhushan also drew our attention to the Gazette Notification dated 1<sup>st</sup> October, 2007 issued by the Ministry of Petroleum & Natural Gas. According to the said Notification, PNGRB Act came into force

on 1<sup>st</sup> day of October, 2007, except Section 16 thereof. The said Gazette Notification reads as under:-

*“MINISTRY OF PETROLEUM AND NATURAL GAS*

*NOTIFICATION*

*New Delhi, the 1<sup>st</sup> October, 2007*

*G.S.R.637(E).—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006), the Central Government hereby appoints the 1<sup>st</sup> day October, 2007 as the date on which the provisions of the said Act, except Section 16 thereof, shall come into force.*

*[F. No.P-23011/14/2007-Mkt.]*  
*D.N.NARASHIMA RAJU, Jt. Secy.”*

4. According to Mr. Bhushan, Section 16 read with Section 2(d)(B) of PNGRB Act made it abundantly clear that authorisation could only be given by the Board under Section 16 of the said Act. He submitted that without the exclusive and monopolistic power being conferred on the Board, it had no power to issue any authorisation to any entity.

5. Mr. Bhushan contended that the Chairman had illegally appropriated the core powers of Members of the Board to himself in order to get a free hand in taking all the important decisions on matters involving several thousands of crores of rupees. According to him, the Chairman had delegated onto himself the powers of the Board to authorise entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks, the core powers and functions of the Board, without first obtaining any general or special order in writing

as provided by Section 58 of the PNGRB Act. Section 58 of PNGRB

Act reads as under :-

***“58. Delegation-*** *The Board may, by general or special order in writing, delegate to any member or officer of the Board subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to settle a dispute under Chapter VI and to make regulations under section 61), as it may deem necessary.”*

6. Mr. Bhushan further stated that the Chairman in 12<sup>th</sup> Board Meeting held on 11<sup>th</sup> September, 2008 delegated the power of authorisation onto himself despite strong dissent by two of the Board Members. Mr. Bhushan stated that the members of the Board who opposed the proposal of Chairman to delegate all the powers in relation to authorisation, were not present in that particular meeting and the decision to delegate their powers was taken in their absence. According to Mr. Bhushan, while PNGRB Act envisaged collegiate decision-making by a multi-member Board, all the important decisions of the Board were taken by the Chairman individually without referring the same to other members of the Board. Mr. Bhushan stated that minutes of meetings were also manipulated by the Chairman. He stated that Chairman did not even record the dissent notes of members who objected to his arbitrary decisions. He further stated that respondent nos. 2 and 3 in their Counter Affidavit had admitted this fact when they stated that *“it is totally in consonance with the universal practice which is followed everywhere else that the dissent notes are not appended to the minutes of the Board meeting....”* According to Mr. Bhushan,

affairs of the Regulatory Board had been turned by the Chairman into a one man show with other members virtually having no powers in day to day affairs of the Board. He contended that important issues that should have been decided by the Board were invariably discussed in informal meetings of which no minutes or records were maintained. According to him, dissent or objections raised by members during these informal meetings were never recorded. He stated that when any issue was taken up in a Board meeting, no voting procedure was adopted although the PNGRB Act expressly provided for voting on issues on which there was disagreement, thus, all matters that came up before the Board were claimed to be unanimous even when there was disagreement amongst Board members. According to him, even written dissent notes circulated by the members were not taken on record. Further, as per Section 11 of the PNGRB Act, all the authorisations had to be given by the Board consisting of all its members and could not have been delegated to the Chairman. He submitted that the Supreme Court in a catena of cases has held that the core/essential functions cannot be delegated by the Legislature. According to Mr. Bhushan, the same principle also applied where a statutory authority had been constituted under a Statute to undertake specific functions, and such statutory functions which formed the basis of the creation of such a statutory body could not have been delegated. Mr. Bhushan submitted that the Supreme Court in the case of *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Ors.* reported in **(1974) 4 SCC 98** while discussing the law laid down on the issue of

delegation of essential legislative functions had held that delegation of the same cannot be permitted. The relevant portion of the said judgment reads as under :

*“A review of these authorities therefore leads to the conclusion that so far as this Court is concerned the principle is well established that essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the Legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. The Legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the Courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to deal including its preamble. Further it appears to us that the nature of the body to which delegation is made to also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation.”*

7. Mr. Bhushan further stated that the Chairman of the Board had delegated the powers of hearing complaints to officers of the Board. He stated that complaints had been heard and decided upon by the Secretary of the Board. Mr. Bhushan further submitted that the Secretary of the Board was incompetent to decide the applications/complaints filed by the entities to the Board as Section 24(1) of the PNGRB Act specifically provided that any complaint/dispute referred to the Board had to be adjudicated upon by a Bench comprising Member (Legal) and one or more members of the Board. Section 24(1) reads as under:

**“24. Board to settle disputes - (1) Save as otherwise**

*provided for arbitration in the relevant agreements between entities or between an entity or any other person, as the case may be, if any dispute arises, in respect of matters referred to in sub-section (2) among entities or between an entity and any other person, such dispute shall be decided by a Bench consisting of the Member (Legal) and one or more Members nominated by the Chairperson.”*

8. Mr. Bhushan further submitted that Section 58 of the PNGRB Act strictly prohibited delegation of power conferred under Section 24(1) of the PNGRB Act to any other authority. He submitted that despite this, most of the applications/complaints had been heard and decided upon by the Secretary of the Board who after passing an order placed the same before the Chairman of the Board for his approval. According to him, the PNGRB Act nowhere authorised Secretary or any other officer of the Board to adjudicate upon the applications/complaints filed by the entities before the Board. This power was only vested with the Members of the Board, it being their core function, and as such could only have been exercised by them.

9. Mr. Bhushan further contended that respondent no. 4, Mr. B.S. Negi, had abused his position as Member (Technical/Infrastructure) of the Board as his son was running a parallel consultancy services for the entities which applied to the Board for authorisation of various city gas distribution networks. In this context, he pointed out that on 23<sup>rd</sup> and 24<sup>th</sup> January, 2008 Euro-Asian Conference Cum Exhibition for city gas distributors in Delhi was jointly organised by National Engineering & General Industries (NEGI) and two other companies. He stated that the

said Company 'NEGI' belonged to the son of Mr. B.S. Negi who under the guidance of his father had been running a consultancy Company which provided consultancy services to entities which applied to the Board for authorization to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks. The conference was sponsored by oil and gas companies which fell under the regulatory purview of the Board of which Mr. B.S. Negi was Member (Technical). He stated that the Company profile, which had been downloaded by the petitioner from the website of the abovementioned company, clearly established that the said Company was directly involved in the business of providing consultancy to companies who had or were looking forward to apply to the Board for authorisation to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks. In fact, in the Company profile, the Company had boastfully stated that it had high contacts in the Government departments.

10. Mr. Bhushan further stated that the Board in its letter dated 25<sup>th</sup> August, 2009 addressed to Director (GP) of the Ministry of Petroleum and Natural Gas had admitted that abovementioned "*consultancy firm had provided market survey on non-exclusive basis for the GA of Chandigarh to a company and for GA of Allahabad (both covered in the second round), to a consultant*". This, according to Mr. Bhushan, amounted to a serious conflict of interest in the functioning of the Board and thus an inquiry, as stipulated under Section 7 of the PNGRB

Act, be initiated against Mr. B.S. Negi for abusing his position as a member of the Board. Section 7 of the said Act reads as under :-

***“7. Removal of Chairperson or any other member from office.-*** *The Central Government may remove from office the Chairperson or any other member, who--*

*(a) has been adjudged as insolvent; or*

*(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or*

*(c) has become physically or mentally incapable of acting as a member; or*

*(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or*

*(e) has so abused his position as to render his continuance in office prejudicial to the public interest:*

*Provided that no Chairperson or other member shall be removed from office under clause (d) or clause (e) unless the Central Government, after holding an inquiry by any person appointed or authority constituted for the purpose and in accordance with such procedure as may be prescribed in this behalf, is satisfied that such person ought on such ground or grounds to be removed.”*

11. Mr. K.K. Rai, learned senior counsel appearing for Indraprastha Gas Limited (hereinafter referred to as “IGL”) in W.P.(C) 9022/2009 stated that IGL had on the direction of Environment Pollution (Prevention and Control) Authority (hereinafter referred to as “EPCA”), a statutory authority constituted under Section 3 of the Environment Protection Act (Protection) 1986, prepared a plan to introduce CNG in Delhi and neighbouring NCR areas including Ghaziabad. In this connection, he referred to the following

observations of the Supreme Court in *M.C. Mehta Vs. Union of India & Ors.* reported in (2002) 4 SCC 356 wherein the Supreme Court has held that, “*the Environment Pollution (Prevention and Control) Authority is a statutory authority constituted under Section 3 of the Environment (Protection) Act, 1986, and its directions are final and binding on all persons and organisations concerned. This position has been reiterated by this Court in Sector 14 Residents’ Welfare Assn. v. State of Delhi : (1999) 1 SCC 161. It is this authority which had directed the phasing out of non-CNG buses. It is the Bhure Lal Committee which had also recommended the conversion to CNG mode and issued directions that non-CNG buses should be phased out*”. Mr. Rai further stated that EPCA has been issuing periodic directions to IGL to expedite the work of supply of CNG in Ghaziabad. In this connection, Mr. Rai referred to the minutes of various meetings held by EPCA. The relevant portion of the Minutes of the EPCA Meeting held on 31<sup>st</sup> October, 2009 reads as under :-

*“EPCA asked IGL to expedite the work in order to ensure early supply of CNG in Ghaziabad and other NCR towns as this is important for ensuring seamless movement of CNG vehicles in NCR. EPCA desired that IGL should regularly pursue concerned government agencies of U.P. and Haryana for speedy progress in their expansion programme in Ghaziabad/Noida/Greater Noida and Faridabad/Gurgaon. EPCA also requested NCRPB to write to Ghaziabad Authorities for helping IGL for early implementation of Ghaziabad CNG supply project.”*

12. Mr. Rai stated that prior to coming into force of the PNGRB Act, petitioner-IGL had not only conducted a detailed feasibility report at a

cost of Rs.28 lacs but had also after depositing Rs.1,50,00,000/-(Rupees one crore and fifty lacs) obtained a 'No Objection Certificate' for development gas distribution pipeline for Ghaziabad. He pointed out that petitioner-IGL had on 24<sup>th</sup> January, 2006 even entered into an agreement with GAIL for supply of Re-gasified Liquefied Natural Gas (RLNG) for the city of Ghaziabad.

13. Mr. Rai further stated that the pipeline through Ghaziabad was integral and contiguous to the East-Delhi network of IGL and was essential to cater to the demand of the upcoming Common Wealth Games. According to him, the CGD networks in Delhi and Ghaziabad was essentially a unified and integrated network with a common City Gate Station and Steel main pipeline.

14. Mr. Rai pointed out that prior to IGL's rejection for authorisation, IGL had not only completed two CNG Stations namely, Mohan Nagar Filling Station and Sharma Filling Station but had also purchased land for filling stations at Sanjay Nagar and Vaishali. He stated that IGL's twelve CNG stations were in advanced stages of completion and could start supplying CNG as soon as three months.

15. Mr. Rai submitted that the impugned public notice dated 13<sup>th</sup> February, 2009 inviting bids for Ghaziabad in accordance with Regulation 5(5) was illegal as the same had been issued prior to rejection of IGL's application for authorization under Regulation 18(8). According to him, prior issuance of public notice, showed that IGL's

authorisation application had been rejected with a pre-determined mind. Mr. Rai further submitted that in the absence of notification of Section 16 of the PNGRB Act, Regulations issued in 2006 were illegal being inconsistent with the said Act inasmuch as the Regulations which were subordinate legislation could not have been used to empower the Board to usurp the power of authorization.

16. Mr. Rai pointed that the PNGRB had acted contrary to the specific opinion of the then Solicitor General who had opined that in view of non-notification of Section 16 of the PNGRB Act, the power of the Board to grant authorisation had not come into force and in fact, the Board's insistence on grant of authorisation was unreasonable and without jurisdiction. He further stated that despite the Member (Legal) of the Board having brought to the notice of the Chairman the aforesaid opinion and having asked the Chairman not to proceed with the grant of authorisation in the absence of notification of Section 16, the Chairman had continued to issue authorisations.

17. Mr. Rai also submitted that the impugned letter/order dated 19<sup>th</sup> March, 2009 of the respondent-Board rejecting IGL's application for grant of authorization for Ghaziabad was in violation of principles of natural justice inasmuch as IGL had not been heard by the Board constituted under the PNGRB Act and the impugned decision had been taken by the Secretary of the Board who was merely a facilitator. Mr. Rai lastly submitted that the essential function of the Board including

the power to grant or reject authorization to entities could not have been delegated by the Board to its Chairman and assuming so, it could be done, the Chairman certainly could not have sub-delegated its power to the Secretary of the Board. He stated that inspection of the file rejecting IGL's application for authorization showed that the impugned order had never been placed before the PNGRB Board and the order prepared by the Secretary had been approved by the Chairman in the name of the Board with two minor changes.

18. Mr. A.S. Chandhiok, learned ASG appearing for Union of India submitted that in view of non-notification of Section 16, the Board was not empowered to issue authorisations for laying, building, operating or extending any pipeline as a city or local natural gas distribution networks. He stated that the Board was free to undertake preparatory work and the applications could be processed till the stage of issuance of letters of intent.

19. Regarding the delegations of powers, Mr. Chandhiok submitted that the Board was a multi-member body and it could not divest itself of its core functions by delegating the same to the Chairman.

20. As far as the allegation against Shri B.S. Negi was concerned, Mr. Chandhiok stated that the Central Government had called for comments from the Board with regard to the specific allegations against respondent no.4. He stated that the comments had been received from

the Board vide letter dated 03<sup>rd</sup> August, 2009 and the same were under consideration of the concerned Ministry.

21. On the other hand, Mr. Rajiv Nayar, learned senior counsel for the Board submitted that Section 19 of PNGRB Act was a stand-alone Section and even Section 17 read with Sections 23, 24 and 48 of PNGRB Act were independent substantive provisions. Sections 17, 19, 23, 24 and 48 read as under :-

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

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

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

*Provided that an entity laying, building, operating or expanding any city or local natural gas distribution network authorised by the Central Government at any time before the appointed day shall furnish the particulars of such activities to the Board within six months from the appointed day.*

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

*(4) Subject to the provisions of this Act and consistent with the norms and policy guidelines laid down by the Central Government, the Board may either reject or*

*accept an application made to it, subject to such amendments or conditions, if any, as it may think fit.*

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

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**19. Grant of authorization-** *(1) When, either on the basis of an application for authorisation for laying, building, operating or expanding a common carrier or contract carrier or 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 common carrier or contract carrier between two specified points, or 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 such pipelines or city or local natural gas distribution network.*

*(2) The Board may select an entity in an objective and transparent manner as specified by regulations for such activities.*

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**23. Suspension or cancellation of authorisation -** *If the Board, on an application of an affected party or on its own motion, is satisfied that the entity in favour of which authorisation has been granted under section 19 has failed to comply with any conditions of authorisation, it may, after giving an opportunity to such entity of being heard, either suspend the authorisation for such period as the Board may think fit or cancel the authorisation:*

*Provided that where the Board is of the opinion that an authorised entity persistently acts in a manner prejudicial to the interests of consumers, it may take action for the suspension of the authorisation immediately subject to the opportunity of hearing being given subsequently, after which action so taken may be confirmed or revoked.*

**24. Board to settle disputes-** *(1) Save as otherwise provided for arbitration in the relevant agreements between entities or between an entity or any other person, as the case may be, if any dispute arises, in respect of matters referred to in sub-section (2) among entities or between an entity and any other person, such*

*dispute shall be decided by a Bench consisting of the Member (Legal) and one or more members nominated by the Chairperson:*

*Provided that if the members of the Bench differ on any point or points, they shall state the point or points on which they differ and refer the same to a member other than a member of the Bench for hearing on such point or points and such point or points shall be decided according to the opinion of that member.*

*(2)The Bench constituted under sub-section (1) shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable by a civil court on any matter relating to --*

*(a)refining, processing, storage, transportation and distribution of petroleum, petroleum products and natural gas by the entities;*

*(b)marketing and sale of petroleum, petroleum products and natural gas including the quality of service and security of supply to the consumers by the entities; and*

*(c)registration or authorisation issued by the Board under section 15 or section 19.*

*(3)Notwithstanding anything contained in the Code of Civil Procedure, 1908(5 of 1908), the Board shall have the power to decide matters referred to in sub-section (2) on or after the appointed day.*

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***48. Punishment for laying, building, operating or expanding a common carrier or contract carrier without authorisation-*** *If a person lays, builds, operates or expands a common carrier or contract carrier or a city or local natural gas distribution network without obtaining authorisation required under section 19, such person shall be liable for punishment with an imprisonment for a term which may extend to three years or penalty of twenty-five crore rupees or with both, and in case of continuing contravention with additional fine which may extend to ten lakh rupees for every day during which the contravention continues."*

22. Mr. Nayar submitted that Section 16 on the one hand and Section 19 on the other hand were mutually exclusive provisions. He submitted

that Sections 23 and 24(2)(c) referred to Section 19 of the PNGRB Act, and not to Section 16 and similarly the penal provision contained in Section 48 referred to Section 19 and not to Section 16. According to him, this was a clear indicator of legislative intent that the provisions of Section 17 and 19 of the PNGRB Act were not incidental to or procedural but were substantive provisions independent of Section 16. Mr. Nayar stated that if Section 16 alone was the substantive provision, then in other provisions such as Sections 23, 24 and 48 of the PNGRB Act, the reference would have been to Section 16 and not to Section 19. Thus, he submitted that the effect of non-notification of Section 16 and its interpretation could not be guided only by reading Section 16 with the definition of 'authorised entity' contained in Section 2(d).

23. Mr. Nayar stated that if the legislative intent was to inhibit the implementation of Sections 11, 17 and 19 or for that matter even Sections 23 and 24, the notification dated 1<sup>st</sup> October, 2007 rather than restricting itself to Section 16 would have clearly spelt out that Sections 11, 17 and 19 of PNGRB Act had also not been notified. According to Mr. Nayar, the effect of non-notification of Section 16 was only that the authorisations before the appointed date would be safe and no further authorisation would be necessary from the Board unless any change in the purpose and the usage was contemplated.

24. Mr. Nayar next submitted that in statutory interpretations, one of the rules followed by the Courts was to see as to how the Government

or its concerned departments had acted in pursuance to the notification etc. Mr. Nayar stated that in the instant case, admittedly the Central Government by its letter dated 5<sup>th</sup> October, 2007 had transferred all pending applications for grant of authorisations to the Board even though it was aware that Section 16 had not been notified. According to Mr. Nayar, the Central Government by transferring all pending applications to the Board had obviously considered the other provisions as independent and mutually exclusive to Section 16. He submitted that similarly by yet another letter of February, 2009 the Central Government had asked the Board to keep certain aspects in mind while granting authorisations to the entities. Consequently, according to Mr. Nayar, the conduct of the Central Government supported the interpretation that merely because Section 16 had not been notified, it did not render the Board powerless to exercise the function of grant of authorisations by recourse to Sections 17 and 19 of the PNGRB Act.

25. Mr. Nayar next submitted that it was settled law that if a particular interpretation stalled or impeded the object of PNGRB Act and another interpretation made it workable consistent with the object of the Act enacted, then the latter interpretation was preferable to the former. Mr. Nayar submitted that if the Board was held to be powerless to grant authorisations and the Central Government had also transferred applications to the Board, then a vacuum would be created and the intent of constituting a qualified Board under the PNGRB Act would be frustrated inasmuch as the Chairperson and other members of

the Board by virtue of Section 4 of the PNGRB Act had been appointed from amongst persons of eminence in the fields of petroleum and natural gas industry, management, finance, law, administration or consumer affairs. Mr. Nayar stated that the Central Government having transferred pending applications and having never questioned the powers and jurisdiction of the Board ever since 1<sup>st</sup> October, 2007 except for the inconsistent stand for the first time half heartedly canvassed in their short counter affidavit in the present writ petition, made it obvious that the power exercised by the Board in such circumstances in any event was not illegal or invalid and the Central Government cannot, in any event, be permitted to approbate and reprobate merely because a PIL had been filed.

26. Mr. Nayar next submitted that no power had been delegated to the Secretary of the Board to hear and decide the applications/complaints. According to him, the Secretary was only scrutinising and processing complaints and petitions received from the Board in accordance with the Board's resolution. He submitted that there was no delegation of powers by the Chairperson to the Secretary to hear and decide the complaints and the Members of the Board had decided the disputes in accordance with the procedure under Section 24 of the PNGRB Act.

27. Mr. Sandeep Sethi, learned senior counsel for respondent-Board in W.P. (C) 9022/2009 submitted that all the Regulations made by the

respondent-Board had been laid before Parliament for approval by the concerned Ministry. He submitted that had there been any doubt of the legislative intent of empowering the Board to grant authorisation, the Government would not have indulged in such a futile exercise. In this connection, Mr. Sethi relied upon Section 62 of the PNGRB Act which reads as under:-

*“62. Rules and regulations to be laid before Parliament – Every rule made by the Central Government and every regulation made by the Board under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”*

28. Mr. Sethi also relied upon the Minister of State of Petroleum and Natural Gas response to a question in Parliament wherein the Minister had asserted that the PNGRB was fully empowered to grant authorisation by virtue of the PNGRB Act.

29. Mr. Sethi further submitted that in the present case the Chairman of the Board had been specifically delegated the power for taking appropriate decision on applications for grant of authorisation. According to Mr. Sethi, the said delegation was in accordance with

Sections 6, 8 and 58 of the PNGRB Act. Sections 6 and 8(3) of PNGRB Act read as under:-

**“6. Powers of Chairperson-** *The Chairperson shall have the powers of general superintendence and directions in the conduct of the affairs of the Board and shall, in addition to presiding over the meetings of the Board, exercise and discharge such other powers and functions of the Board, as may be assigned to him by the Board.*

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**8. Meetings of the Board-**

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*(3) All questions which come up before any meeting of the Board shall be decided by a majority of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.”*

30.     The relevant portion of the Minutes of the 12<sup>th</sup> Board Meeting dated 11<sup>th</sup> September, 2008 reads as under:-

**“(iv) Delegation of Powers for taking decision during processing of applications for grant of authorization.**  
*The board deliberated in detail on the issue of delegation of powers for making decisions during and after processing of applications for grant of authorization and decided to empower the Chairperson for taking appropriate decisions on the application/EOIs for grant of authorization in accordance with the provisions of PNGRB (Authorizing Entities to lay, build, operate or Expand city or Natural Gas distribution Networks) Regulations, 2008 and the PNGRB (Authorizing Entities to lay, build, operate or Expand Natural Gas Pipelines) Regulations, 2008. It was also decided that in such cases as the Chairperson may deem fit, he may refer those cases to a Committee consisting of two or more members of the board to hear the applicants and make recommendations.”*

(emphasis supplied)

31. However, Mr. Sethi stated that in practice, no major decision had unilaterally been taken by the Chairperson or anybody else, especially in matters of grant of authorisation. He stated that LOI's were only issued in a meeting where the entire Board was present.

32. Mr. Sethi lastly submitted that principles of natural justice had not been violated in the present instance as it was not mandatory in law for the entire Board to give a personal hearing to IGL. In this connection, he drew our attention to a judgment of Privy Council rendered in the case of ***Jeffs Vs. New Zealand Dairy Production and Marketing Board*** reported in (1967) 2 W.L.R. 136 wherein it has held as under:-

*“On the facts of this case it does not appear that the board asked the committee to hold the public hearing or delegated to the committee any part of its duties. Subject to the provisions of the Act and of any regulations thereunder, the board can regulate its procedure in such manner as it thinks fit (1961 Act, s. 12 (10)). Whether the board heard the interested parties orally or by receiving written statements from them is, as Hamilton L.J. said in Rex v. Local Government Board, Ex parte Arlidge, a matter of procedure. Equally it would have been a matter of procedure if the board had appointed a person or persons to hear and receive evidence and submissions from interested parties for the purpose of informing the board of the evidence and submissions (see Osgood v. Nelson and Rex v. Local Government Board, Ex parte Arlidge. This procedure may be convenient when the credibility of witnesses is not involved, and if it had been followed in this case and as a result the board, before it reached a decision, was fully informed of the evidence given and the submissions made and had considered them, then it could not have been said that the board had not heard the interested parties and had acted contrary to the principles of natural justice. In*

*some circumstances it may suffice for the board to have before it and to consider an accurate summary of the relevant evidence and submissions if the summary adequately discloses the evidence and submissions to the board.*

*Unfortunately no such procedure was followed in this case. The committee was not appointed by the board, nor was it asked by the board to receive evidence for transmission to it. The committee's report did not state what the evidence was and the board reached its decision without consideration of and in ignorance of the evidence."*

33. Mr. K.K. Sharma, learned senior counsel appearing for respondent no.4 in WP(C)8415/2009 vehemently disputed the allegations made by Mr. Prashant Bhushan against respondent no.4. In any event, he submitted that as the Central Government was already examining the allegations against respondent no.4, it would not be open for this Court in the present proceedings to re-examine the said allegations.

34. Mr. Abhinav Vashisht, learned counsel for intervenor-IOCL adopted and emphasised the arguments advanced by Mr. Rajiv Nayar.

35. Having heard the parties, we are of the view that it is through the principle of judicial review that the rule of law and other constitutional principles have to be given practical effect. Supervisory jurisdiction of a High Court has to be used to ensure that regulatory bodies, whether public or private, while performing public functions comply with the law and achieve acceptable standards of administration.

36. Upon reading of the entire PNGRB Act, we are of the view that the legislative intent behind the PNGRB Act is to provide for establishment of a multi-member Regulatory Board to regulate the refining, processing, storage, transportation, distribution, marketing, and sale of petroleum, petroleum products and natural gas so as to protect the interests of the consumers and entities engaged in specified activities relating to the said products and to ensure their uninterrupted and adequate supply in all parts of the country and to promote competitive markets.

37. On October 1, 2007, the Central Government in exercise of its powers under Sub-section 3 of Section 1 of the PNGRB Act notified all the provisions of the said Act except Section 16 which empowers the Board to authorize entities which apply to it for laying, building, operating city gas networks or common carrier pipelines. Section 16 of PNGRB Act reads as under:

***“16. Authorisation- No entity shall-***

*(a) lay, build, operate or expand any pipeline as a common carrier or contract carrier;*

*(b) lay, build, operate or expand any city or local natural gas distribution network, without obtaining authorisation under this Act:*

*Provided that an entity,-*

*(i) laying, building, operating or expanding any pipeline as common carrier or contract carrier;  
or*

*(ii) laying, building, operating or expanding any city or local natural gas distribution network,*

*immediately before the appointed day shall be deemed to have such authorisation subject to the provisions of this Chapter, but any change in the purpose or usage shall require separate authorisation granted by the Board.”*

(emphasis supplied)

38. Further, Section 2 (d) (B) of the PNGRB Act defines ‘ authorized entity’ as an entity which has been authorized by the Board under Section 16 of the Act. Thus, making it abundantly clear that an authorisation can only be given by the Board under Section 16 of the Act. Section 2 (d) (B) reads as under :

**“2. Definitions-** *In this Act, unless the context otherwise requires,-*

xxxx                      xxxx                      xxxx                      xxxx

(d)     “ *authorised entity*” means an entity-

(A)     .....

(B)     *authorised by the Board under section 16-*

(i)     *to lay, build, operate or expand a common carrier or contract carrier; or*

(ii)    *to lay, build, operate or expand a city or local natural gas distribution network;”*

(emphasis supplied)

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

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

41. The respondent Board's submission that it has the power to grant authorisation under Section 19 of the PNGRB Act and that Section 16 is a superfluous Section particularly in the light of the other provisions is untenable in law. In our opinion, Section 19 only gives the Board the power to select an entity from amongst the entities which had applied to it for seeking authorisation to lay, build, operate or expand a city or local gas distribution network or pipelines in a specified geographical area. In fact, the only purpose of Section 19 is to ensure that the Board does not grant authorisation without giving wide publicity and inviting applications from all the interested parties to maintain transparency in the grant of authorisation. This would be clear from Section 19(2), which states that "*the Board may select an entity in an objective and*

*transparent manner as specified by Regulation for such activities”.*

The transparency contemplated under Section 19(2) has been embodied in Section 19(1). Section 19 does not deal with the power of the Board to grant authorisation but lays down one aspect of the Procedure to grant authorisation. In this regard, one may refer to Section 20(3), which clearly indicates that Section 19 is a procedural provision. Section 20(3) reads as follows:

***“20. Declaring laying, building, etc., of common carrier or contract carrier and city or local natural gas distribution network-***

*xxxx                      xxxx                      xxxx                      xxxx*

*(3) The Board may, after following the procedure as specified by regulations under section 19 and sub-sections (1) and (2), by notification –*

*xxxx                      xxxx                      xxxx                      xxxx*

*(d) authorise an entity to lay, build, operate or expand a city or local natural gas distribution network.”*

*(emphasis supplied)*

42. Reference to Section 19 in Sections 23 and 48 does not empower the Board to grant authorisation which only flows from Section 16 of the PNGRB Act. Section 19 finds reference in other provisions because applications to be filed subsequent to notification of Section 16 have to be processed under Section 19. Moreover, punishment under Section 48 of the PNGRB Act would itself not be enough.

43. In our view, the Minister’s reply in Parliament as well as Government’s conduct of laying regulations before Parliament and in transferring of pending authorisation application to the Board are

irrelevant when the scheme of the Statute and expression used therein are clear and unambiguous. In fact, the Supreme Court in ***Kanai Lal Sur vs. Paramnidhi Sadhukhan*** reported in ***AIR 1957 SC 907*** has held as under:

*“6..... “it must always be borne in mind that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the grounds that such hypothetical construction is more consistent with the alleged object and policy of the Act.....”*

44. The Supreme Court in ***Dadi Jagannadham vs. Jammulu Ramulu & Ors.*** reported in ***(2001) 7 SCC 71*** has held as under:

*“13..... The Court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result.....”*

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

*“6. In view of non-notification of Section 16, it is most respectfully submitted that the view of the Central Govt. is that the Board is not currently empowered to issue authorizations for laying, building, operating or*

*expanding any pipeline as a common carrier or contract carrier or city or local natural gas distribution network, as clause (d) (B) of Section 2 of the Act defines an “authorized entity” inter alia is an entity authorized by the board under Section 16 of the Act. However, there is no impediment from taking preparatory work in this regard and applications can be processed till the stage or issuance of the Letter of Intent.”*

46. As far as the case of IGL is concerned, we have perused the Board's original file wherein IGL's application for authorisation was rejected. We find that neither IGL was ever heard by the Board nor its application was ever placed before the Board. In fact, the impugned order was prepared by the Deputy Secretary as well as DOSD(D) and after being vetted by the Secretary as well as Member (Infrastructure), the same was approved by the Chairman after effecting two minor changes. The order dated 19<sup>th</sup> March, 2009 was finally issued under the signature of Secretary purporting to be an order passed by the Board. It seems that the word 'Board' was added at the end so as to camouflage it as an order passed by the Board. In any event, as IGL was not heard by the Board, the impugned decision dated 19<sup>th</sup> March, 2009 is liable to be set aside on the sole ground that it violated the principles of natural justice. The Supreme Court in ***Gullapalli Nageswara Rao Vs. A.P. State Road Transport Corpn.*** reported in ***AIR 1959 SC 308*** has held as under:-

*“31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the*

*Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.”*

47. We are of the view that the judgment of Privy Council in ***Jeffs Vs. New Zealand Dairy Production*** (supra) is inapplicable to the present case as the statutory provisions are entirely different and the consequences of the Board’s decision have a far reaching impact. In any event, the said Privy Council’s decision was found irrelevant by the Supreme Court in the case of ***Institute of Chartered Accountants of India Vs. L.K. Ratna & Ors.*** reported in (1986) 4 SCC 537 wherein it has been held as under:-

*“2. The appellant is the Institute of Chartered Accountants of India (the "Institute"). The Institute was created as a body corporate under the Chartered Accountants Act, 1949 (the "Act"), and its members are Chartered Accountants. The affairs of the Institute are managed by a body known as the Council of the Institute, which is headed by a President and a Vice-President below him. There are three Standing Committees of the Council, and one of them is the Disciplinary Committee. The Disciplinary Committee consists of the President and the Vice-President ex-officio of the Council, two members elected by the Committee from its members and a third member nominated by the Central Government. Chapter V of the Act contains*

*provisions dealing with cases of misconduct of members of the Institute. Section 21 provides for conducting enquiries relating to such misconduct and the penalties which may be imposed, and Section 22A provides for an appeal by a member against the imposition of a penalty. As the sections are material, they may be set forth :*

*21. Procedure in inquiries relating to misconduct of members of Institute.-(1) Where on receipt of information by, or of a complaint made to it, the Council is prima facie of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed, and shall report the result of its inquiry to the Council.*

*(2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed or the complaint shall be dismissed, as the case may be.*

*(3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record a finding accordingly and shall proceed in the manner laid down in the succeeding sub-sections.*

*(4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely : .....*

xxxx                      xxxx                      xxxx                      xxxx

*13. At this point it is necessary to advert to the fundamental character of the power conferred on the Council. The Council is empowered to find a member guilty of misconduct. The penalty which follows is so harsh that it may result in his*

removal from the Register of Members for a substantial number of years. The removal of his name from the Register deprives him of the right to a certificate of practice. As is clear from Section 6(1) of the Act, he cannot practice without such certificate. In the circumstances there is every reason to presume in favour of an opportunity to the member of being heard by the Council before it proceeds to pronounce upon his guilt. As we have seen, the finding by the Council operates with finality in the proceeding, and it constitutes the foundation for the penalty imposed by the Council on him. We consider it significant that the power to find and record whether a member is guilty of misconduct has been specifically entrusted by the Act to the entire Council itself and not to a few of its members who constitute the Disciplinary Committee. It is the character and complexion of the proceeding considered in conjunction with the structure of power constituted by the Act which leads us to the conclusion that the member is entitled to a hearing by the Council before it can find him guilty. Upon the approach which has found favour with us, we find no relevance in James Edward Jeffs and Ors. v. New Zealand Dairy Production and Marketing Board and Ors. [1967] 1 AC 551 cited on behalf of the appellant. The Court made observations there of a general nature and indicated the circumstances when evidence could be recorded and submissions of the parties heard by a person other than the decision making authority. Those observations can have no play in a power structure such as the one before us.

xxxx                      xxxx                      xxxx                      xxxx

19. Upon the aforesaid considerations, we are of definite opinion that a member accused of misconduct is entitled to a hearing by the Council when, on receipt of the report of the Disciplinary Committee, it proceeds to find whether he is or is not guilty. The High Court is, therefore, right in the view on this point.”

(emphasis supplied)

48. Notings on the file after the draft order had been prepared clearly shows as to how IGL’s authorisation application was dealt with. The

relevant portion of the draft order and the notings thereon are reproduced hereinbelow :

**“Subject: Speaking Order in the case for processing of application of Indraprastha Gas Limited for the Ghaziabad CGD Network under regulation 18(1)”**

**Background:**

*M/s Indraprastha Gas Limited had submitted its application under regulation 18(1) dated 11<sup>th</sup> November, 2008 for Ghaziabad City CGD Network. The committee has examined the same under the provisions of regulation 18(1) for “Entity not authorized by the Central Government for laying, building, operating or expanding CGD network before appointed day”.*

xxxx                      xxxx                      xxxx                      xxxx

9. *M/s IGL has attended the meeting on 4<sup>th</sup> March, 2009 at PNGRB office and before submission of their claim on the application their counsel raised certain issues on behalf of m/s IGL.*

i. *The Counsel of M/s IGL objected on the authority of the committee to conduct such hearing, as contested by him, nobody other than the Board members are authorized to hold such a hearing. Their contention was overruled by Member (I) stating that the committee is a duly authorized committee under the provisions of PNGRB Act, 2006 and that the process underway is not a process of dispute settlement but to examine the application under the regulation 18(1) and also clarified that under the PNGRB Act clause 58 which “empowers the Board to delegate any members or officers of the Board for conduction of meetings by way of issue of a general order in writing”.*

xxxx                      xxxx                      xxxx                      xxxx

***After the complete analysis of the subject matter and taking a holistic approach, ~~Board before deciding has taken in to account~~ the following points. are suggested***

√ *The UPSIDC permission was granted in year 2005 to M/s. IGL for development of CGD network in Ghaziabad City. No physical progress was achieved by M/s. IGL and only 4% of financial commitment was achieved w.r.t. to its DFR till the appointed day.*

√ *PNGRB feels that even in absence of required network connectivity M/s. IGL could have started distribution of CNG by way of setting up Daughter Booster stations in the Oil Marketing Companies Retail Outlets with supply logistics maintained through mobile cascades Ex-Delhi.*

√ *The Petroleum & Natural Gas Regulatory Board (Authorizing entities to lay built operate or expand local or city gas distribution network) Regulations 2008 has been notified on 19<sup>th</sup> March, 2008 and as per the provisions contained under regulation 18(1) of the said regulations, any entity engaged in the City Gas Distribution projects needs to apply **immediately** to the PNGRB.*

√ *However M/s. IGL has neither submitted a formal application for Ghaziabad City CGD Network immediately nor even during the public consultation process of 30 days mentioned above for the reasons best known to them. As a matter of fact the application under 18(1) for Ghaziabad CGD Network was submitted by M/s IGL on 11<sup>th</sup> November, 2008 almost 8 months after notification of regulations.*

√ *The above creates a room of doubt about the sincerity & intentions of M/s IGL for Ghaziabad CGD Network.*

*The Bench Heard patiently the submissions made by M/s IGL and was of the opinion that sufficient opportunity was given to M/s IGL. However M/s IGL could not convincingly substantiate their claim on Ghaziabad CGD Network under regulation 18(1). And the Board has decided to reject the application of M/s IGL as per provisions of regulation 18(8).*

*the committee* *were heard*

*The speaking order in this case is attached for approval from competent authority.*

*sd/- 9/3/9*  
*Noor Khan*  
*Deputy Director (NK)*

*sd/- 9/3*  
*Deepak Sawant*  
*DOSD(D)*

*The order should be seen from legal angle also.*

*sd/- 13/3*  
*Secretary, PNGRB*

*Member (I) The findings of the committee have been casted in the speaking order placed in the file.*  
*Chairman in exercise of the powers delegated*

by the Board, may approve the same before it is issued under the signature of Secy. (PNGRB).

sd/- 17/3

Chairperson Order may issue as per the modified draft placed below.

sd/- 18/3/09

Member (I) I have made minor changes in 8(a) and added last sentence at (12). May like to see for incorporation.

sd/-18/3

Secy. May kindly see the two changes in the letter especially the use of the term 'Board' in the last line.

sd/- 18/3

Chairman Last line may be retained. Rest OK.

sd/- 19/3

Secy. As discussed the last line has been slightly modified keeping in view suggestion of Member (I) also. This was also discussed with OSD(B). Order in letter format may now issue.

sd/- 19/3

Chairman.

Sir, letter  
issued through  
fax/courier

sd/-19/3

Member(I)

sd/- 20/3

Secy.

DOSD(D)''

(emphasis supplied)

49. On a perusal of the PNGRB Act, we find that it provides for collegiate decision making by a multi-member Board after following the principles of natural justice. While dealing with an application for

grant of authorisation, several aspects including, legal, infrastructural, commercial, technical etc. have to be considered. Consequently, PNGRB Act mandates that the Board shall comprise persons of eminence in the fields of petroleum and natural gas industry, management, finance, law, administration or consumer affairs. In this connection, we may refer to following provisions of PNGRB Act:

**“2. Definitions-**

xxxx                      xxxx                      xxxx                      xxxx

*(f) "Board" means the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3*

xxxx                      xxxx                      xxxx                      xxxx

**3. Establishment and incorporation of the Board –**

xxxx                      xxxx                      xxxx                      xxxx

(3) The Board shall consist of a Chairperson, a Member (Legal) and three other members to be appointed by the Central Government.

**4. Qualifications for appointment of Chairperson and other members -** (1) The Central Government shall appoint the Chairperson and other members of the Board from amongst persons of eminence in the fields of petroleum and natural gas industry, management, finance, law, administration or consumer affairs;

xxxx                      xxxx                      xxxx                      xxxx

**“11. Functions of the Board.-The Board shall--**

*(c) authorise entities to--*

*(i) lay, build, operate or expand a common carrier or contract carrier;*

*(ii) lay, build, operate or expand city or local natural gas distribution network;*

xxxx                      xxxx                      xxxx                      xxxx

### **13. Procedure of the Board-**

xxxx

xxxx

xxxx

xxxx

*(3) The Board shall be guided by the principles of natural justice and subject to other provisions of this Act and of any rules made thereunder, shall have powers to regulate its own procedure including the places at which it shall conduct its business.”*

*(emphasis supplied)*

50. In fact, from the official noting on the IGL’s authorisation file it is apparent that by an indirect method of delegation, a collective decision making process by the Board has been reduced to a single man’s decision, namely, the Chairman. In our opinion, the delegation of essential and core functions to the Chairman is clearly contrary to the letter and spirit of PNGRB Act which requires that ‘Board’ must grant or reject the authorisation. Delegating this essential power to one member of the Board is not contemplated by the PNGRB Act.

51. Even Sections 6 and 8(3) of PNGRB Act relied upon by the Board’s learned senior counsel gives Chairman only the power of general superintendence and a casting vote. The PNGRB Act neither provides nor contemplates that all the powers and jurisdiction of five members of the Board would be concentrated in the hands of the Chairman alone – as has been done in the present case. In our view, the Chairman of the Board could not have delegated onto himself the core and essential function of the Board thereby rendering rest of the Board Members redundant in the decision making process. The Minutes of the 12<sup>th</sup> Board Meeting held on 11<sup>th</sup> September, 2008 also do not

indicate any ground to warrant delegation of such an essential function relating to the grant of authorisation in the hands of one person.

52. In any event, the impugned order dated 19<sup>th</sup> March, 2009 is contrary to the Board's resolution as the said resolution only empowered the Chairman for taking appropriate decision on the application for grant of authorisation but in the present instance, the Chairman did not even give a personal hearing to the IGL.

53. We are further of the view that the Chairman who was admittedly himself a delegatee, could not have further sub-delegated his power to someone else – as he did in the present case by delegating his powers to the Secretary and the Member (Infrastructure). Section 58 of the PNGRB Act only envisages delegation of powers by the Board to a member or official of the Board by general or special order in writing. There is no scope for a delegatee to sub-delegate that power. In this connection, we may refer to a judgment of the Supreme Court rendered in the case of ***Life Insurance Corporation of India & Ors. Vs. Retired Officers Association & Ors.*** reported in (2008) 3 SCC 321. The relevant portion of the said judgment reads as under :-

*“28. Contention of Mr. Patwalia that the Chairman of the Corporation having power even to fix the cut off dates for different purposes, the jurisdiction exercised by him to do so for payment of gratuity, which has a direct nexus with the revised pay of scale cannot be accepted. Once he fixes a cut off date for the purpose of giving effect to the agreement vis-à-vis the payment of arrears in terms thereof, he cannot exercise further*

*jurisdiction in respect of a matter which is not controlled by Chapter IV but is controlled by other provisions of statutes and parliamentary Acts governing the field. A delegatee must exercise its powers within the four corners of the statute. The power of a sub-delegatee is more restricted. A delegatee cannot act in violation of a statute. A sub-delegatee cannot exercise any power which is not meant to be conferred upon him by reason of statutory provisions. It must conform not only to the provisions of the regulations and the Act but also other parliamentary Acts. [See Kurmanchal Inst. of Degree and Diploma and Ors. v. Chancellor, M.J.P. Rohilkhand University : (2007) 6 SCC 35, Kerala Samsthana Chethu Thozhilali Union v. State of Kerala : (2006) 4 SCC 327, Bombay Dyeing & Mfg. Co. Ltd.(3) v. Bombay Environmental Action Group: (2006) 3 SCC 434, State of Kerala v. Unni: (2007) 2 SCC 365, State of Orissa v. Chakobhai Ghelabhai and Co. : AIR 1961 SC 284 and Shroff and Co. v. Municipal Corpn. of Greater Bombay : 1989 Supp (1) SCC 347.]”*

54. As far as the allegations against Mr. B.S. Negi are concerned, we are of the view that PNGRB Act and Rules and Regulations framed thereunder provide a specific procedure for holding an enquiry against a member of the Board. Moreover, as we find that the Ministry of Petroleum and Natural Gas is already examining the response of the Board, we refrain ourselves from commenting further except to direct the said Ministry to take an appropriate decision with regard to the allegations against Mr. B.S. Negi in accordance with law within a period of eight weeks’ from today.

55. Consequently, in view of the aforesaid, both the writ petitions being WP(C) Nos. 8415/2009 and 9022/2009 are allowed, but without any order as to costs. In view of non-notification of Section 16 of

PNGRB Act, it is held that the Board has no power to grant authorisation to entities which applied to it for Laying, Building, Operating or Expanding City or Local Natural Gas Distribution Networks. We may mention that this finding is in consonance with the Central Government's stand in the counter affidavit filed before this Court. We further quash public notice dated 13<sup>th</sup> February, 2009 as well as the order/letter dated 19<sup>th</sup> March, 2009 as the public notice had been issued prior to rejection of IGL's application for authorisation and the impugned order/letter dated 19<sup>th</sup> March, 2009 had been passed in violation of principles of natural justice and the said order/letter had not been passed by the Board as mandated by the PNGRB Act. Consequently, the multi-member Board is directed to pass an order on IGL's application after affording a personal hearing to IGL.

**MANMOHAN, J.**

**CHIEF JUSTICE**

**JANUARY 21, 2010**  
**rn/js**