

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 09.03.2018

1. Civil Writ Petition No. 14490 of 2016

Haryana City Gas Distribution Limited.Petitioner

versus

Union of India and anotherRespondents

2. Civil Writ Petition No. 26501 of 2015

Haryana City Gas Distribution Limited.Petitioner

versus

Petroleum & Natural Gas Regulatory Board and anotherRespondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE**

Present: Mr. K.K.Rai, Senior Advocate and
Mr. Puneet Bali, Senior Advocate with
Mr. Arun Gupta and Mr. S.K.Pandey, Advocates,
for the petitioners.

Mr. Puneet Gupta, Senior Penal Counsel for Union of India in
CWP No. 14490 of 2016.

Mr. Chetan Mittal, Senior Advocate with
Mr. Prashant Bezboruah, Advocate,
Mr. Rakesh Dewan, Advocate and
Mr. Udit Garg, Advocate,
for respondent No.1 in CWP No. 26501 of 2015,
for respondent No.2 in CWP No. 14490 of 2016.

Mr. Vikas Behl, Senior Advocate with
Mr. Aman Arora, Advocate for respondent No.3 in
CWP No. 26501 of 2015.

Ms. Mamta Singla Talwar, Deputy Advocate General,
Haryana.

S.J.VAZIFDAR, CHIEF JUSTICE

In Civil Writ Petition No. 26501 of 2015, respondent Nos.1 to 3 are the Petroleum and Natural Gas Regulatory Board, Department of Industries and Commerce, Government of Haryana and Bharat Petroleum Corporation Limited. In Civil Writ Petition No. 14490 of 2016, the respondents are the Union of India and the Department of Petroleum and Natural Gas Regulatory Board. Both the writ petitions are inter-connected and are, therefore, disposed of by this common order and judgment.

2. The petitioner seeks a declaration that Regulation 2(1)(b) 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 (hereinafter referred to as the Regulations) is ultra vires the Petroleum and Natural Gas Regulatory Board Act, 2006 (hereinafter referred to as 'the 2006 Act') as it defines the appointed day to mean 01.10.2007 and not 15.07.2010. A writ of mandamus is accordingly sought directing respondent No.2 to treat the appointed day as 15.07.2010 while dealing with the petitioner's application under Regulation 18 of the said Regulations for laying and operating a city gas distribution network for the geographical area of Rohtak. The petitioner also seeks a writ of certiorari to quash an order dated 30.05.2016 passed by respondent No.2 dismissing its application.

3. The petitioner has an alternate remedy of an appeal. Mr. K.K.Rai, the learned senior counsel appearing on behalf of the petitioner, however, submitted that the petitioner confines its challenge only to a question of law viz. whether the appointed day is 15.07.2007 as contended by the petitioner or 01.10.2007 as contended by the respondents.

He conceded that if the appointed day is 01.10.2007 as contended by the respondents, the petitioner would not be eligible on merits in any event. We accordingly entertained the writ petition. He submitted that it is in the interest not only of the petitioner but several other parties to have the issue as to the appointed day decided finally.

The judgment was reserved on 05.02.2018. The written submissions were filed sometime after 15.02.2018 by the petitioners. In paragraph-19, it is incorrectly stated that it was agreed by the parties that this Court would decide the vires of Regulations 2(1)(b) only and would relegate the matter to the Appellate Tribunal with respect to the impugned orders for the remaining submissions if the need so arose. It was infact stated that if the issue regarding vires of Regulations 2(1)(b) was decided against the petitioner, nothing would survive for consideration and that only if the issue was held in favour of the petitioner, would it be necessary for the Tribunal to decide the issue on-merits. This was in view of the fact that the petitioners had expressly agreed that if the appointed day is 01.10.2007, they would not be eligible.

Despite the same we would leave it open to the petitioner to challenge the impugned order before the Tribunal but only in respect of the submission that even assuming that the petitioner does not meet the eligibility criteria, it would be open to the Tribunal to grant the petitioner authorization in view of the word “may” used in Regulation 18. The petitioner contends that the mere failure to meet the eligibility criteria is not an absolute bar to the grant of authorization.

4. The question that arises for consideration is whether the appointed day for the purpose of sections 2(c) and 16 of the 2006 Act is

01.10.2007 as contended by the petitioner or 15.07.2010 as contended by the respondents. If it is 15.07.2010, Regulation 2(1)(b) of the Regulations which defines the appointed day to mean 01.10.2007 is ultra virus.

5. We have upheld the validity of Regulation 2(1)(b) as it is in consonance with the Act. The plain language of the Act expressly defines the appointed day to mean 01.10.2007. Section 2(c) defines the words “appointed day” to mean the date on which the Board is established under section 3(1). Section 3(1) provides that the Board shall be established with effect from such date as the Central Government may by notification appoint. By the notification dated 01.10.2007, the Central Government notified the establishment of the Board with immediate effect i.e. from 01.10.2007. The plain language of the provisions of the Act, therefore, indicates that the appointed day is 01.10.2007. We have rejected the petitioner’s contention that the context of the Act, however, necessitates the appointed day to mean 15.07.2010.

6. The question involves a consideration of the following provisions with emphasis supplied by us:-

(A) Petroleum and Natural Gas Regulatory Board Act, 2006:-

1. Short title, extent, commencement and application :-

- (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.

2. Definitions :-

In this Act, unless the context otherwise requires :-

- (a) & (b) xx xx xx
- (c) "appointed day" means the date on which the Board is established under sub- section (1) of section 3;
- (d) "authorised entity" means an entity-

(A) registered by the Board under section 15 -

- (i) to market any notified petroleum, petroleum products or natural gas, or
- (ii) to establish and operate liquefied natural gas terminals, or

(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;

3. Establishment and incorporation of the Board :-

- (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Board to be called the Petroleum and Natural Gas Regulatory Board.

11. Functions of the Board :-

The Board shall-

- (a) protect the interest of consumers by fostering fair trade and competition amongst the entities;
- (b) register entities to-
 - (i) market notified petroleum and petroleum products and, subject to the contractual obligations of the Central Government, natural gas;
 - (ii) establish and operate liquefied natural gas terminals;
 - (iii) establish storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations;
- (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;
- (d) declare pipelines as common carrier or contract carrier;
- (e) regulate, by regulations,-
 - (i) access to common carrier or contract carrier so as to ensure fair trade and competition amongst entities and for that purpose specify pipeline access code;
 - (ii) transportation rates for common carrier or contract carrier;
 - (iii) access to city or local natural gas distribution network so as to ensure fair trade and competition amongst entities as per pipeline access code;
- (f) in respect of notified petroleum, petroleum products and natural gas-
 - (i) ensure adequate availability;
 - (ii) ensure display of information about the maximum retail prices fixed by the entity for consumers at retail outlets;
 - (iii) monitor prices and take corrective measures to prevent restrictive trade practice by the entities;
 - (iv) secure equitable distribution for petroleum and petroleum products;
 - (v) provide, by regulations, and enforce, retail service obligations for retail outlets and marketing service obligations for entities;
 - (vi) monitor transportation rates and take corrective action to prevent

restrictive trade practice by the entities;

- (g) levy fees and other charges as determined by regulations;
- (h) maintain a data bank of information on activities relating to petroleum, petroleum products and natural gas;
- (i) lay down, by regulations, the technical standards and specifications including safety standards in activities relating to petroleum, petroleum products and natural gas, including the construction and operation of pipeline and infrastructure projects related to downstream petroleum and natural gas sector;
- (j) perform such other functions as may be entrusted to it by the Central Government to carry out the provisions of this Act.

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 authorization 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 authorization subject to the provisions of this Chapter, but any change in the purpose or usage shall require separate authorization granted by the Board.

17. Application for authorisation :-

- (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 authorization under this Act : Provided that an entity laying, building, operating or expanding any pipeline as common carrier or contract carrier authorized 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 authorization under this Act : Provided that an entity laying, building, operating or expanding any city or local natural gas distribution network authorized 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.

18. Publicity of applications :-

When an application for registration for marketing notified petroleum, petroleum products and natural gas, or for establishing and operating a liquefied natural gas terminal, or for establishing storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations, is accepted whether absolutely or subject to conditions or limitations, the Board shall, as soon as may be, cause such acceptance to be known to the public in such form and manner as may be provided by regulations.

19. Grant of authorisation :-

- (1) When, either on the basis of an application for authorization 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 sue motto 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.

(B) Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008:-

2. Definitions:

- (1) In these regulations, unless the context otherwise requires,-
 - (a) "Act" means the Petroleum and Natural Gas Regulatory Board Act, 2006;
 - (b) "appointed day" means the date of October 1, 2007 when the Central Government notified the establishment of the Petroleum and Natural Gas Regulatory Board;

3. Application:

- (1) These regulations shall apply to an entity which is laying, building, operating or expanding, or which proposes to lay, build, operate or expand a CGD network.

“5. Criteria for selection of entity for expression of interest route.

XX XX XX XX XX

(6) The Board shall scrutinize the bids received in response to the advertisement in respect of only those entities which fulfill the following minimum eligibility criteria, namely:-

(a) entity has paid the application fee alongwith the application-cum-bid as specified under the Petroleum and Natural Gas Regulatory Board (Levy of Fee and Other Charges) Regulations, 2007:

Provided that the entity submitting the bid, which has already paid the application fee at the time of submission of the expression of interest shall not pay the application fee at this stage unless there is a requirement to pay additional application fee on account of change in the authorized area;

(b) entity is technically capable of laying and building CGD network as per the following qualifying criteria, namely:-

(i) entity has on its own in the past laid and built either a **hydrocarbon steel pipeline** of a length not less than three hundred kilometers on a cumulative basis or a CGD network;

(ii) entity has a joint venture with another entity (with at least eleven percent equity holding by that entity) which in the past has laid and built either a **hydrocarbon steel pipeline** of a length not less than three hundred kilometers on a cumulative basis or a CGD network;

(iii) entity intends to lay and build proposed city or local gas distribution network on lump sum turnkey or project management consultancy basis through one or more technically competent firms which in the past have laid and built either a **hydrocarbon steel pipeline** of a length not less than three hundred kilometers on a cumulative basis or a CGD network and the entity shall also enclose a list of such firms alongwith aforesaid proof of their technical competence:

Provided that the entity shall have the freedom to choose from amongst such firms at the time of execution of the project and the Board reserves the right to cross verify the credential of the firms included in the list and seek any clarifications; or

(iv) entity has an adequate number of technically qualified personnel with experience in construction, pre-commissioning and commissioning of **hydrocarbon steel pipeline** and also has a credible plan to independently undertake and execute the CGD project on a standalone basis.

Explanation.- The entity shall have at least three technically qualified personnel on its permanent rolls having experience of not less than **three years** in the following areas, namely:-

(i) right of way acquisition or clearance securing;

(ii) design and execution of a **hydrocarbon steel pipeline** project;

(iii) pre-commissioning including hydro-testing and restoration; and

(iv) safety of **hydrocarbon steel pipeline** and installations;

(c) entity is technically capable of operating and maintaining a CGD network as per the following qualifying criteria, namely:-

(i) entity on its own has an experience of at least one year in operations and maintenance of a CGD network;

(ii) entity has a joint venture with another entity (with eleven percent holding of that entity) which has an experience of at least one year in operations and maintenance of a CGD network;

(iii) entity intends to operate and maintain the proposed CGD network through an appropriate technical assistance agreement for a period of at least one year with another party having experience of at least one year in operations and maintenance of a CGD network; or

(iv) entity has an adequate number of technically qualified personnel with experience in commissioning, and operation and maintenance (O&M) of **hydrocarbon steel pipeline** and also has a credible plan to independently undertake the O&M activities for a CGD project on a standalone basis.

Explanation.-

1. In relation to sub-clause (iii), -

a) the entity shall submit in its application-cum-bid an exhaustive list of proposed firms with whom it desires to have a technical assistance agreement alongwith the proof of relevant and credible experience of such firms and the entity may choose a firm or more from amongst the firms in this list for operation and maintenance of the proposed CGD network and the Board reserves the right to cross verify the credential of the firm or firms included in this list and seek any clarifications;

b) the entity shall also submit a credible plan along with the bid to develop an in-house O&M team for city or local gas distribution network.

2. In relation to sub-clause (iv), the entity shall have at least three technically qualified personnel on its permanent rolls having experience of not less than **three years** in the following areas, namely:-

a) commissioning of a hydrocarbon pipeline;

b) operation and maintenance of natural gas pipelines and natural gas installations including gas compressors;

c) commercial issues including gas pricing, gas measurement, accounting, billing and collection; and

d) safety of natural gas infrastructure;

(d) the entity has agreed to abide by the relevant regulations for technical standards and specifications, including safety standards;

(e) the entity has adequate financial strength to execute the proposed project, operate and maintain the same in the authorized area and shall meet the following financial criterion to qualify for bidding for a single CGD network, namely:-

Tier	Population in the authorized area [as per latest census of India] or other published records of the Central or the State Government, whichever is higher	Minimum combined net worth (*) of the entity along with its promoters available for investments in a single CGD Network duly supported by letter of comfort from promoters
(1)	(2)	(3)
I	5 million or more	= Rs.1,500 million for a population of 5 million, and proportionately higher for population of more than 5 million (\$)
II	1 million or more but less than 5 million	= Rs. 1,000 million
III	0.5 million or more but less than 1 million	= Rs. 500 million
IV	0.25 million or more but less than 0.50 million	= Rs. 250 million
V	0.1 million or more but less than 0.25 million	= Rs.100 million
	Less than 01. Million	= Rs.50 million

- (i) The calculations for combined networth shall be done as per Method-1 of Schedule K in case the entity or its promoters are companies incorporated under the Companies Act, 1956, or Method 2 of Schedule K for other categories of entities.
- (ii) The promoters undertaking in the form of letter of comfort stating that promoter’s contribution in the project shall be infused in a phased manner as per the project financing schedule must accompany the application in the format given in the application cum bid document.

For example, if the population is 12 million, then, the combined net worth shall be equal to a minimum of Rs.3,600 million (i.e., Rs.1,500 million X 12 / 5);”

18. Entity not authorized by the Central Government for laying, building, operating or expanding CGD network before the appointed day.

(1) An entity laying, building, operating or expanding a CGD network at any time before the appointed day but not duly authorized to do so by the Central Government shall apply immediately for obtaining an authorization in the form as at Schedule I.

(2) The Board may take into consideration the following criteria while considering the application for grant of authorization, namely:-

- (a) the entity meets the minimum eligibility criteria as ²⁹ specified in clauses (a) to (e) and (i) of sub-regulation (6) of regulation 5 before the appointed date and is possessing all necessary statutory clearances, permissions, no objection certificates from the Central and State Governments and other statutory authorities;
- (b) an entity which is not registered under the Companies Act, 1956 at the time of submitting the application for grant of authorization shall undertake to become a company registered under the Companies Act,1956:

Provided that the Board may exempt an entity to register under the Companies Act, 1956 on such conditions as it may deem appropriate;

(c) a satisfactory assessment of the actual physical progress made and the financial commitment thereof till immediately before the appointed day in comparison with the entity's DFR appraised by the financial institution funding the project. In case the project has not been funded by any financial institution, the Board may appraise the DFR. The DFR of the entity should clearly indicate the specified geographical area of the project and also specify the coverage proposed for CNG and PNG. In case upon scrutiny of the DFR by the Board by taking into account the geographical area, customer segments, infrastructure requirements, etc. proposed by the entity, the DFR is found to be sub-optimal and unacceptable, the Board may not consider the case of the entity for issuing the authorization;

(d) in respect of the actual physical progress made and the financial commitment thereof referred to in clause (c), a physical progress of at least twenty five percent and a financial commitment of at least twenty five percent of the capital expenditure identified for the CGD project as per the DFR immediately before the appointed day may be considered as adequate;

(e) the entity should have arranged, by way of acquisition or lease, land for CGS and procured the necessary equipment for erecting the CGS before the appointed day;

(f) the Board reserves the right to get the actual physical progress and the financial commitment certified and depending upon the progress achieved, the Board may consider authorizing the entity for the authorized area-

i) as per the geographical area in its DFR;

ii) as per the geographical area actually covered under implementation till the appointed day; or

iii) the geographical area as specified by the Board;

(g) in relation to laying, building, operating or expanding the CGD network, it is for the entity to satisfy the Board on the adequacy of its ability to meet the applicable technical standards, specifications and safety standards as specified in the relevant regulations for technical standards and specifications, including safety standards and the quality of service standards as specified in regulation 15;

(h) assessment of the financial position of the entity in timely and adequately meeting the financial commitments in developing the CGD network project as appraised by a financial institution and an examination of the audited books of accounts of the entity;

(i) firm arrangement for supply of natural gas to meet the demand in the authorized area to be covered by the CGD network;

(j) any other criteria considered as relevant by the Board based on the examination of the application.

(3) The evaluation of the application in terms of the clauses (a) to (j) shall be done in totality considering the composite nature and the inter-linkages of the criteria.

(4) The Board, after examining the application in terms of the criteria under sub- regulation (2) and also taking into account the requirements in other regulations may form a *prima-facie* view as to whether the case should be considered for authorization.

(5) In case of *prima-facie* consideration, the Board shall issue a public notice in one national and one vernacular daily newspaper (including webhosting) giving brief details of the project and seek comments and objections, if any, within thirty days from any person on the proposal.

(6) The Board, after examining the comments and objections, if any under sub- regulation (5), may either consider or reject the case for grant of authorization for the CGD network.

(7) In case it is decided to grant authorization, the same shall be in the form at Schedule D;

(8) In case of rejection of the application, the Board shall pass a speaking order after giving a reasonable opportunity to the concerned party to explain its case and proceed to select an appropriate entity for the project in terms of regulation 6.

(9) In case the entity is selected for grant of authorization for CGD network,-

(a) the network tariff and the compression charge for CNG shall be determined under the Petroleum and Natural Gas Regulatory Board (Determination of Network Tariff for City or Local Natural Gas Distribution Networks and Compression Charge for CNG), Regulations, 2008.

(b) the Board may consider grant of exclusivity on such terms and conditions as specified in the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008;

(c) the entity shall abide by the technical standards, specifications including safety standards as specified under relevant regulations for technical standards and specifications, including safety standards;

(d) the provisions under regulations 9, 13, 14, 15 and 16 shall apply to the entity.”

7. By a notification dated 01.10.2007, the Central Government appointed 01.10.2007 as the day on which the provisions of the 2006 Act except section 16 thereof shall come into force. By another notification dated 01.10.2007, the Central Government notified the establishment of the Petroleum and Natural Gas Regulatory Board (hereinafter referred to as ‘the Board’) with immediate effect. Thus on 01.10.2007, the Act of 2006 except

section 16 came into force and the Board was established. The respondents contend and in our view rightly that in view of sections 2(c) and 3(1) the appointed day is 01.10.2007.

By a notification dated 12.07.2010, the Central Government appointed 15.07.2010 as the day on which Section 16 of the Act shall come into force. The petitioner contends and in our view wrongly that the appointed day is accordingly 15.07.2010.

Section 2(c) defines the words “appointed day” to mean the date on which the Board is established under section 3(1). Section 3(1) provides that the Board shall be established with effect from such date as the Central Government may by notification appoint. By the notification dated 01.10.2007, the Central Government notified the establishment of the Board with immediate effect i.e. from 01.10.2007. The plain language of the provisions of the Act, therefore, indicates that the appointed day is 01.10.2007.

8. Mr. K.K.Rai, the learned senior counsel appearing on behalf of the petitioner, however, contended that the appointed day is 15.07.2010. He firstly contended that section 16 is the source of power to grant authorization and therefore, the Regulations could not have been framed for the purposes of section 16 prior to section 16 coming into force.

Relying upon the words “unless the context otherwise requires” from the opening part of section 2(1) and of regulation 2(1) he contended that although the plain language of the provisions of the Act and in particular section 2(c) read with section 3(1) indicate the appointed day to be 01.10.2007 the context requires the appointed day to be otherwise viz. 15.07.2010 for that is the date on which section 16 came into effect.

On this basis, he further contended as follows:-

By stipulating 01.10.2007 to be the appointed day in Regulation 2(1)(b), the regulations enacted a law with retrospective effect. Regulations in respect of a statute cannot have retrospective effect unless the statute permits the same. Neither the scheme of the Act in general nor section 16 in particular permits retrospective operation of any regulations framed under the Act. The regulations, therefore, cannot have retrospective effect. The Act confers the power to authorize under section 16. The power to authorize, therefore, came into effect on 15.07.2010 when section 16 was brought into effect. The Board being a delegate cannot frame authorization regulations to assume power of the authorization prior to the notification of section 16 of the 2006 Act. A delegate cannot make retrospective laws.

The substantive provision granting power of authorization and the authorization regulations are only in aid of section 16 of the 2006 Act. The petitioner being a pre-existing entity, its rights to apply for authorization emanates from the second proviso to section 16. Regulation-18 provides the mechanism/procedure to authorize the entities. The right to authorize emanates from the proviso to section 16; the right of the petitioner accrues by the notification of section 16 on 15.07.2010 and, therefore, the appointed day for Regulation-18 can never be a date prior to 15.07.2010. A view to the contrary renders section 16(1)(3) and the proviso to section 16 redundant.

The definition of appointed day in section 2(c) is and has to be flexible and is not necessarily the date on which the Board is established under section 3(1) of the 2006 Act. This is clear from the words in the opening part of section 2(1) “unless the context otherwise requires”. The context that requires the appointed day to be otherwise than the date on

which the Board is established is that section 16 itself stipulates the need for authorization of entities performing the work immediately before the appointed day came into force viz 15.07.2010. The Regulations cannot act retrospectively i.e. prior to section 16 coming into force. Therefore, for the purpose of sections 16(2), 17 and 18, the appointed day in section 2(c) should be 15.07.2010 and not 01.10.2007. Accordingly, the petitioner's eligibility must be determined as on 15.07.2010 and not 01.10.2007.

In Regulation 17(1) the appointed day would be 15.07.2010 as it requires the supporting documents to be submitted within 180 days from the appointed day. The appointed day, therefore, cannot obviously be 01.10.2007. Logically the capacity for authorization must be when the authority is vested with the power of authorization. An interpretation which encourages trade, commerce and survival of enterprises and not one which results in the liquidation of enterprises must be adopted. The Central Government issued a notification dated 29.10.2010 (see petition page 200) authorizing certain entities before section 16 was notified. This supports the petitioner's contention that the appointed day is not the day of the notification establishing the Board i.e. 01.10.2007 but the date on which section 16 came into force i.e. 15.07.2010.

Proceeding on the basis that the appointed day for the purpose of section 16 of the 2006 Act is as per section 2(1)(b), it is contended that respondent No.2 cannot deem the appointed day for the operation of Regulation 18 to be 01.10.2007.

9. Before dealing with these contentions, it is necessary to refer to a few facts:-

(a) By a letter dated 26.08.2005, the Government of Haryana

accorded its approval to grant the petitioner and two other companies an NOC/permission for laying a pipeline and distribution of natural gas including CNG/PNG subject to the terms and conditions stipulated therein.

Item-6 of the terms and conditions read as under:-

“6. That the companies will give an undertaking to the effect that these will comply with the provisions of the Petroleum and Natural Gas Regulatory Board Act of the Government as and when to be enacted by the Parliament and put in force.”.

The parties including the petitioner were, therefore, aware that the promulgation of the 2006 Act was imminent.

The petitioner contends that it started the work and had laid around 6 km of distribution pipeline and had been allotted and possessed land for a CNG station at Rohtak.

(b) By a letter dated 13.12.2010 the petitioner made an application under Regulation 4(i)(ii) of the 2008 Regulations for Expression of Interest (EoI) to lay and operate a city gas distribution network at Rohtak geographical area in Haryana. The petitioner stated that as per the regulations it did not meet the minimum criteria of 25% physical and financial progress but it was an established existing entity which should be deemed authorized. The petitioner stated that it was interested in and had spent Rs. 35 lacs in Rohtak city and had expressed its interest for further undertaking the project.

(c) Respondent No.2 by a notification dated 01.10.2015 invited bids from interested parties for the development of a city gas distribution network in various geographical areas in terms of Regulations 5(5).

The petitioner objected to the same contending that it was contrary to the Act as it was an authorized entity in Rohtak by virtue of

being a pre-existing entity prior to the notification of section 16 of the Act which grants power of authorization to the Board. Reliance was placed on the judgment of a Division Bench of the Delhi High Court in *Indraprastha Gas Limited v. PNGRB*, Writ Petition (Civil) No. 8415 of 2009.

(d) Respondent No.2 by a letter dated 04.11.2015 rejected the claim stating *inter-alia* that although section 16 was notified on 15.07.2010, the appointed day remained the same, namely, 01.10.2007; that natural gas is a central subject and any NOC/authorization issued by the State Government is of no consequence and any activity referred to in the Act only on the basis of authorization of the State Government is illegal. The petitioner was directed to refrain from carrying out any unauthorized activity in Rohtak.

10. The petitioner, therefore, filed Civil Writ Petition No. 26501 of 2015 in this Court *inter-alia* challenging the notification dated 01.10.2015 and the decision contained in the 2nd respondent's letter dated 04.11.2015.

(a) By an order dated 19.12.2015 a Division Bench, to which one of us (S.J.Vazifdar, ACJ) was a party, issued notice of motion and permitted the petitioner to obtain a form for the bid without prejudice to its rights and contentions in the writ petition. By an interim order dated 14.01.2016 it was *inter-alia* directed that if the petitioner established its right the same would not be affected by the bids submitted pursuant to the said notification dated 01.10.2015.

(b) During the pendency of Civil Writ Petition No. 26501 of 2015 respondent No.2 by a notification dated 29.02.2016 permitted the petitioner to file an application under Regulation 18 for Rohtak.

(c) By an order dated 08.02.2016, a Division Bench of this Court recorded that the respondents had agreed to consider the petitioner's

representation after affording it an opportunity of being heard and without being influenced by the earlier order.

(d) By an order dated 18.03.2016, the Division Bench noted that the respondents had granted the petitioner liberty to make an application and agreed to consider the same in accordance with law. The petitioner filed an application on 01.04.2016 as per the order dated 18.03.2016. By an order dated 06.04.2016, the Division Bench with a view to avoiding any delay in the matter directed the parties to appear before the Board; permitted the respondents to open the bids subject to the observations in the order and without prejudice to the rights of the petitioner in the petition and in the application made by it to the Board. The order recorded the statement of respondent No.1 that a contract with respect to Rohtak shall not be awarded till the decision of the Board and in the event of the same being adverse to the petitioner for a period of four days after the service thereof upon the petitioner. This date was extended from time to time.

11. Ultimately, respondent No.2 by the order dated 30.05.2016 impugned in Civil Writ Petition No. 14490 of 2016 rejected the petitioner's application under Regulation 18. The order proceeded on the basis that 01.10.2007 is the appointed day relevant for ascertaining the petitioner's eligibility. It is agreed that if the appointed day is 01.10.2007, the petitioner does not meet the eligibility criteria.

12. We will now deal with Mr. Rai's submissions.

13. The contention that the regulations ought not to have even been framed till Section 16 came into force is not well founded. Equally unfounded, therefore, is the contention that the regulations having been made before Section 16 came into effect are illegal.

14. As observed in Delegated Legislation in India prepared under the auspices of the Indian Law Institute, New Delhi:

“Several statutes contain an “appointed day” clause, by which power is delegated to the government to appoint a day for the Act to come into operation. In the words of Sir Cecil Carr, “The Legislature provides the gun and prescribes the target, but leaves to the Executive the task of pressing the trigger.” Such a provision is generally inserted into a statute to enable the government, before putting an Act into force, to take necessary preparatory steps for its effective implementation, e.g. setting up the administrative machinery, framing of rules, translation of the Act into various languages, printing of forms and the like.

Sometimes the commencement of an Act imposing new conditions on a section of the public may be deferred to enable the affected persons to adjust themselves to the change.

An Act may sometimes authorize the appointment of different dates (a) for the commencement of its different provisions, or (b) for its commencement in different States, or (c) for the commencement of its different provisions in different States.”

The Act of 2006 itself is an illustration of these observations. Section 3(1) thereof provides that different dates may be appointed for different provisions of this Act. The 2006 Act also provides as do several statutes that it shall come into force on such date as the Central Government may by notification in the official gazette appoint. Thus, while the 2006 Act was enacted on 31.03.2006, except Section 16 thereof, it came into force on 01.10.2007. There are innumerable legislations which come into force much after the legislation is enacted.

15. There is no reason why rules and regulations cannot similarly be made before the Act under which they are made comes into force. Such rules and regulations would come into force only after the provisions under which they are made come into force. The mere making of such rules and regulations before the Act or the relevant part thereof to which they relate

come into force does not render them illegal.

16. Our view is in consonance with and supported by Section 22 of the General Clauses Act, 1897 which reads as under:-

“22. Making of rules or bye-laws and issuing of orders between passing and commencement of enactment—

Where, by any [Central Act] or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.”

In Delegated Legislation in India, it is further observed:-

“Under S. 22 of the General Clauses, Act, 1897, rules may be made under an Act, and orders issued with respect to the application of the Act, or the appointment of officers thereunder, or the manner in which anything is to be done, even before the commencement of the Act, though such rules or orders do not take effect until the commencement of the Act. This provision thus facilitates the completion of all necessary preliminaries so that the necessary machinery may begin to function as soon as the Act comes into operation.”

We are in respectful agreement with these observations. A view to the contrary would cause unnecessary and avoidable difficulties. The objection could be overcome by the simple expedient of re-enacting the rules or regulations after the Act or the relevant provisions thereof are brought into force. The exercise is, however, cumbersome entailing an unnecessary waste of time and resources, monetary and otherwise.

17. Our view is also supported by the judgment of the Supreme Court in *Venkateswaraloo and others Vs Supdt., Central Jail, Hyderabad State and others*, AIR 1953 Supreme Court 49. The Supreme Court held:-

“ 4. It was contended on behalf of the detenus that on 22nd September, 1952, the State Government had no jurisdiction to make an order of extension so as to continue the detention beyond 1st October, 1952 viz. beyond the life of the Act then in force, and that the order extending the period of detention upto 31st December, 1952, was illegal.

In our opinion, this contention is well founded. On behalf of the State Government the order made on the 22nd September, 1952, was sought to be justified on the ground that it had power to enlarge the period of detention under the provisions of the Preventive Detention (Second Amendment) Act of 1952 and it could exercise those powers after that Act had been passed by the Parliament even though the amended Act had not yet come into force. Reliance for this proposition was placed on the provisions of Section 22 of the General Clauses Act (10 of 1897). Section 22 provides as follows:

“Where, by any Central Act or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation ... or with respect to the time when, or the place where or the manner in which ... anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.”

5. This section corresponds to Section 37 of the English Interpretation Act of 1899. It is an enabling provision, its intent and purpose being to facilitate the making of rules, bye-laws and orders before the date of the commencement of an enactment in anticipation of its coming into force. In other words, it validates rules, bye laws and orders made before the enactment comes into force provided they are made after the passing of the Act and as preparatory to the Act coming into force. It does not authorize or empower the State Government to pass substantive orders against any person in exercise of the authority conferred by any particular section of the new Act. The words of the section “*with respect to*” prescribe the limit and the scope of the power given by the section. Orders can only be issued with respect to the time when or the manner in which anything is to be done under the Act. An order for the extension of detention made under the purported exercise of the powers conferred by any of the provisions of the new Act is not an order with respect to the time when or the manner in which anything is to be done under the Act. Such an order could only be made under the Act and after the Act had come into force and not in anticipation of its coming into force. The Act having no retrospective operation, it cannot validate an order made before it came into force. It seems to us that the expression “order” in the section means an order laying down directions about the manner in which things are to be done under the Act and it is an order of that nature that can be issued before the Act comes into force but it does not mean that a substantive order against a particular person can be made before the Act comes into force. In our opinion, therefore, the contention raised on behalf of the State Government has no force and the order extending the detention of the detenus on 22nd September, 1952, upto 31st December, 1952, is illegal..... (emphasis supplied)”.

The judgment is a clear answer to Mr. Rai’s first submission.

18. The contention that the regulations must be struck down as illegal merely because they were made prior to Section 16 coming into force is, therefore, rejected.

19. The contention that the regulations have retrospective effect is not well founded. The further submissions are based on the erroneous assumption that regulations 2 and 18 are retrospective and are, therefore, also unfounded. The regulations do not operate retrospectively merely because the eligibility of an applicant for authorization is to be tested as on 01.10.2007. Regulation 18(2) stipulates the criteria which the Board may take into consideration while considering an application for grant of authorization. One of the criteria is stipulated in clause (a) of Regulation 18(2), namely, that the entity meets the minimum eligibility criteria specified in Regulation 5(a) to (e) and (i) “before the appointed date”. The appointed date under Regulation 2(1)(b) is 01.10.2007.

20. Regulation 5(6) stipulates the criteria for eligibility. The eligibility criteria is stipulated in such cases to test the ability of a contractor to perform the task and carry out the work efficiently and as required by the party issuing the contract. The importance of stipulating the eligibility criteria is obvious. The importance is far greater in contracts/works such as these which involve the interest of the public in general including public safety. One of the methods of testing the ability of a contractor to perform the work as required is to examine its past experience and performance. There are innumerable cases where the eligibility criteria relate to the contractor’s past performance. For instance when tenders are invited, the eligibility criteria often relates to the past experience of the contractor. Anyone with even a fleeting experience of such contracts would be aware of clauses therein to the effect that only bidders who have successfully performed similar contracts of a stipulated value for a stipulated number of years in the past would be eligible. Such clauses by no stretch of imagination

can be said to be illegal on the ground that they are retrospective.

21. There is no reason why legislation cannot make similar provisions. When they do they cannot be said to have retrospective effect. The legislative provisions which test the parties previous experience nevertheless operate prospectively. Regulation 5(6)(b) for instance provides that the entities technical capability of laying and building CGD network would be determined on the basis of its past experience of laying and building a hydrocarbon steel pipeline of a length not less than three hundred kilometers on a cumulative basis or a CGD network. Regulation 5(6)(b)(iv) provides that the entities technical capability of laying and building CGD network would be determined on the basis that the entity has an adequate number of technically qualified personnel with experience in the said work. Regulation 5(6)(c) stipulates that the technical capability of operating and maintaining a CDG network would be determined as per the qualifying criteria mentioned therein such as the entities experience on its own of at least one year in operations and maintenance of a CGD network. There are clauses that require the entity to have a certain number of technically qualified personnel(s).

22. If the appointed date is held to be 01.10.2007, as contended by the respondents, the eligibility would have to be determined on the basis of the entity having required the personnel(s) on that date. From this it cannot be said that the regulations have retrospective effect. These regulations merely stipulate the eligibility criteria. Past experience is a valid criteria. The question of the regulations having retrospective operation because they refer to the past experience of an entity is, therefore, unfounded.

23. The opening words of section 2(1) and Regulation 2(1) “In these regulations, unless the context otherwise requires” undoubtedly indicate that the definitions in the clauses that follow would be inapplicable in certain cases. However, any variance from the definition provided must be necessitated by the context. The definitions furnished in Regulation 2(1) are the rule and any variation thereto is the exception necessitated by the context.

24. Mr. Rai relied upon the following observations of the Supreme Court in *K.V.Muthu v. Angamuthu Ammal* 1997(2) SCC 53:-

“10. Apparently, it appears that the definition is conclusive as the word “means” has been used to specify the members, namely, spouse, son, daughter, grandchild or dependant parent, who would constitute the family. Section 2 of the Act in which various terms have been defined, opens with the words “in this Act, unless the context otherwise requires” which indicates that the definitions, as for example, that of “family”, which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the legislature.

11. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

12. Where the definition or expression, as in the instant case, is preceded by the words “unless the context otherwise requires”, the said definition set out in the section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied.

13. This Court in *K. Balakrishna Rao v. Haji Abdulla Sait* [(1980) 1 SCC 321] while considering the definition clause of this Act which is under our consideration, held: (SCC p. 337, para 24)

“A definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The opening clause of Section 2 of the principal Act itself suggests that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires.”

25. Section 2(c) of the Act itself defines “appointed day” to mean the date on which the Board is established under section 3(1). It is true that the opening words in Section 2 and Regulations 2(1) also are “In this Act, unless the context otherwise requires”. There is, however, no justification for deviating from the express and plain words in the definition of appointed day in section 2(c), namely, the date on which the Board is established under section 3(1) i.e. 01.10.2007. Retaining the appointed day as 01.10.2007 would not be repugnant to the context. Merely because section 16 was brought into effect on 15.07.2010, it does not follow that the appointed day can only be 15.07.2010. As we mentioned earlier, the suitability of a party can always be tested on the basis of its eligibility on an earlier date. The Legislature would obviously have stipulated the eligibility criteria in the context of the date on which it is to be tested. If we were to stipulate any other date, the entire intention of the Legislature would be defeated for had the Legislature stipulated any other date such as 15.07.2010, it may well have stipulated different parameters and different terms and conditions of eligibility. It follows, therefore, that 01.10.2007 as the appointed date far from being repugnant to the context is in accordance with the Legislative scheme and intent. It is axiomatic, therefore, that if 15.07.2010 is substituted as the appointed day, contrary to the plain language of the Act and the Regulations, it would be repugnant to the Legislative intent and the legislative scheme. Further, if 01.10.2007 is considered to be the appointed date, far from aiding the achievement of the purpose sought to be served by the Act, it would be repugnant thereto and would defeat the purpose of the Act.

26. In the circumstances, the context of the entire Act necessitates retaining the definition of the words “appointed day” as per the plain language of the Act and the Regulations. There is nothing in the context of any part of the Act that warrants the Court stipulating any other date including 12.07.2010 i.e. the date on which section 16 came into effect.

27. The judgment of the Supreme Court in *Youaraj Rai versus Chander Bahadur Karki (2007) 1 SCC 770* relied upon by Mr. Rai does not carry his case further. He relied upon the judgment to contend that while construing, interpreting and applying a definition the Legislative mandate and intent must be kept in mind and it must be considered whether the context requires otherwise.

28. Nor does the judgment of the Supreme Court in *Petroleum and Natural Gas Regulatory Board v. Inderprastha Gas Ltd. (2015) 9 SCC 209*, assist the petitioner’s case. Paragraph 53 of the judgment relied upon by Mr. Rai reads as follows:-

“53. In the case at hand, the Board has not been conferred such a power as per Section 11 of the Act. That is the legislative intent. Section 61 enables the Board to frame Regulations to carry out the purposes of the Act and certain specific aspects have been mentioned therein. Section 61 has to be read in the context of the statutory scheme. The regulatory provisions, needless to say, are to be read and applied keeping in view the nature and textual context of the enactment as that is the source of power. On a scanning of the entire Act and applying various principles, we find that the Act does not confer any such power on the Board and the expression “subject to” used in Section 22 makes it a conditional one. It has to yield to other provisions of the Act. The power to fix the tariff has not been given to the Board. In view of that the Board cannot frame a Regulation which will cover the area pertaining to determination of network tariff for city or local gas distribution network and compression charge for CNG. As the entire Regulation centres around the said subject, the said Regulation deserves to be declared ultra vires, and we do so.”

29. The proposition is and indeed must be accepted. We have interpreted the provisions keeping these principles in mind. Paragraphs 33 to 40 of the judgment in fact militate against Mr. Rai's submissions. It is sufficient to refer to paragraphs 33 and 35 which are as follow:-

“33. In *S.P. Gupta v. Union of India* [1981 Supp SCC 87] , after referring to various authorities, it has been held: (SCC p. 392, para 273)

“273. Thus, on a full and complete consideration of the decisions classified under the various categories, the propositions that emerge from the decided cases of this Court and other foreign courts are as follows:

‘(1) Where the language of a statute is clear and unambiguous, there is no room for the application either of the doctrine of casus omissus or of pressing into service external aids, for in such a case the words used by the Constitution or the statute speak for themselves and it is not the function of the court to add words or expressions merely to suit what the courts think is the supposed intention of the legislature.’”

34. In *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* [(2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] it has been opined thus: (SCC pp. 592-93, para 64)

“64. ... that it is not the function of the court to supply the supposed omission, which can only be done by Parliament. In our opinion, legislative surgery is not a judicial option, nor a compulsion, whilst interpreting an Act or a provision in the Act. The observations made by this Court in *Nalinakhya Bysack* [*Nalinakhya Bysack v. Shyam Sunder Haladar*, AIR 1953 SC 148] would tend to support the aforesaid views, wherein it has been observed as follows: (AIR p. 152, para 9)

‘9. ... It must always be borne in mind, as said by Lord Halsbury in *Commissioners for Special Purposes of Income Tax v. Pemsel* [1891 AC 531 at p. 549 (HL)] , that it is not competent to any court to proceed upon the assumption that the legislature has made a mistake. The court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the legislature the Court cannot, as pointed out in *Crawford v. Spooner* [(1846-49) 6 Moo PC 1 : 13 ER 582 : 4 Moo IA 179 : 18 ER 667] , aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is, as said by Lord Russell of Killowen in *Hansraj Gupta v. Official Liquidators* [(1932-33) 60 IA 13 : (1933) 37 LW 445 : AIR 1933 PC 63] , for others than the courts to remedy the defect.’”

35. After so stating the Court has referred to the observations made by Lord Diplock in *Duport Steels Ltd.* [*Duport Steels Ltd. v. Sirs*, (1980)

1 WLR 142 : (1980) 1 All ER 529 (HL)] wherein it has been ruled thus: (All ER p. 541h-j)

“... the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous *it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral.* In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount.” (emphasis supplied). ”

For the reasons already stated, there is no reason to deviate from this basic principle of interpretation. The context of the Act does not warrant it. The judgment far from supporting the petitioner's case militates against it.

30. For the same reasons the following observations of the Supreme Court in *Regional Transport Officer, Chhitoor and others v. Associated Transport Madras (P) Ltd. (1980) 4 SCC 597* do not assist the petitioner's either:-

“4. The legislature has no doubt a plenary power in the matter of enactment of statutes and can itself make retrospective laws subject, of course, to the constitutional limitations. But it is trite law that a delegate cannot exercise the same power unless there is special conferment thereof to be spelled out from the express words of the delegation or by compelling implication. In the present case the power under Section 4(1) does not indicate either alternative. The position has been considered by the High Court at length and there is no need for us to go through the exercise over again. Indeed, considerable reliance was placed by learned Counsel for the appellant on two circumstances. He argued that the impugned rule was framed in pursuance of a resolution passed by the legislature. The fact does not have any bearing on the question under consideration except for us to make the observation that the State Government should have been more careful in giving effect to the resolution and should not have relied upon its delegated power which did not carry with it the power to make retrospective rules. The second ground pressed before us by learned Counsel for the appellant is that the rules had to be placed on the table of and approved by the legislature. This was sufficient indication, in his submission, for us to infer that retrospectivity in the

rule-making power was implicit. We cannot agree. The mere fact that the rules framed had to be placed on the table of the legislature was not enough, in the absence of a wider power in the section, to enable the State Government to make retrospective rules. The whole purpose of laying on the table of the legislature the rules framed by the State Government is different and the effect of any one of the three alternative modes of so placing the rules has been explained by this Court in *Hukam Chand v. Union of India* [(1972) 2 SCC 601, 606 : (1973) 1 SCR 896, 902] . Mr Justice Khanna speaking for the Bench observed: (SCC p. 606, para 13)

The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in conformity with Section 40 of the Act. It would appear from the observations on pp. 304 to 306 of the Sixth Edition of Craies on statute law that there are three kinds of laying:

- (i) Laying without further procedure;
- (ii) Laying subject to negative resolution;
- (iii) Laying subject to affirmative resolution.

The laying referred to in sub-section (3) of Section 40 is of the second category because the above sub-section contemplates that the rules would have effect unless modified or annulled by the Houses of Parliament. The act of the Central Government in laying the rules before each House of Parliament would not, however, prevent the courts from scrutinising the validity of the rules and holding them to be ultra vires if on such scrutiny the rules are found to be beyond the rule-making power of the Central Government... (emphasis supplied)".

31. In this view of the matter even assuming that section 16 is the source of power to grant authorization, it would make no difference. The source of power to grant authorization is one thing and the criteria on the basis of which authorization is to be granted is another thing altogether.

32. The submission that the Board being a delegate cannot frame authorization regulations to assume power of the authorization prior to the notification of section 16 of the Act suffers from the same fallacy. Indeed in the absence of the power, a delegate cannot make retrospective laws. The regulations, however, are not retrospective.

33. Mr. Rai contended that logically the capacity for authorization must be when the authority is vested with the power of authorization. Firstly, for the reasons that we have already stated the stipulation of 01.10.2007 as the appointed day is not illogical or irrational. As we have also stated fixing the appointed day as 15.07.2010 would be illogical and would defeat the Legislative intent and the Legislative scheme for the determination of the eligibility. Secondly, it is for the Legislature to decide the basis on which the eligibility is to be fixed. The determination of eligibility on the basis of past experience far from being illogical is reasonable and logical. Thirdly, the language of the statutory provisions being clear, there is no scope for interference. It is not open to a Court to in effect redraft the statute.

34. The judgment of a Division Bench of the Delhi High Court in *Voice of India v. Union of India and others 2010 SCC online Delhi, 245* is of no assistance in determining the day of appointment. These issues did not arise in that matter. It was held that section 16 is the source of power as it gives statutory mandate to the Board to issue authorization and also confers a monopoly on the Boards to issue authorization. Accordingly, it was held that without the notification of section 16, the Board does not have the power to issue authorization inasmuch as there would be no ban on other entities from laying, building, operating of expanding CGD networks.

35. The learned counsel appearing on behalf of the respondents questioned the correctness of this decision. It is not necessary for us to express an opinion in that regard. The learned counsel appearing on behalf of the respondents analyzed the provisions of the Act in considerable detail. We do not for a moment suggest that the analysis is incorrect. However, for the purposes of determining the appointed day it is irrelevant whether we

follow the judgment of the Delhi High Court or accept the respondents' submission. For the reasons already stated, our view of the appointed day would remain the same irrespective of the view taken by the Delhi High Court. We have categorically held that the appointed day is 01.10.2007 despite the fact that section 16 came into force only on 15.07.2010. The power to grant authorization is an entirely different matter from the criteria on the basis of which authorization is to be granted.

36. The submission that an interpretation which encourages trade, commerce and survival of enterprises and not one which results in the liquidation of enterprises must be adopted cannot be accepted when the language of the statute is clear. We may have considered this submission only if we had any difficulty in interpreting the statute. We have none. The submission is, therefore, rejected. Moreover, this is an aspect for the Legislature to decide. Terms of eligibility would obviously be stipulated after due consideration including the view of experts. It is not for the Courts to sit in judgment in such matters and to substitute their views with those of the Legislature.

37. The reliance upon the Central Government notification dated 29.10.2010 granting authorization to GAIL Gas Ltd. and Bhagyanagar Gas Ltd. is not well founded. The order records that the Delhi High Court had by its order and judgment dated 21.01.2010 in WP (C) Nos. 9022 of 2009 and 8415 of 2009 held that in view of the non-notification of Section 16, the Board had no power to grant authorizations inter-alia for CGD networks; that these companies had requested the Ministry of Petroleum and Natural Gas to grant them authorization to carry out CGD projects in public interest and that in view of the judgment of Delhi High Court the situation prior to

the Board's assumption of power would resume which means that the power would be vested in the Ministry of Petroleum and Natural Gas, as there cannot be a vacuum. The eligibility conditions have not been referred to. The basis on which the notification was issued is not clear. This order cannot be the basis of statutory interpretation. The order offers no assistance in interpreting the provisions of the Act including sections 2(1) and Regulation 2(1). In any event in view of what we have held the order is of no assistance to the petitioners. It cannot be given precedence to our view and the statutory provisions.

38. Mr. Vikas Behl, the learned senior counsel appearing on behalf of respondent No.3 relied upon the petitioner's conduct including its application under Regulation 18 to contend that the petitioner itself construed the provisions contrary to its stand in this petition.

It is not necessary to consider this aspect for statutory interpretation is not dependent on the understanding of a private party.

39. The challenge to Regulation 2(1)(b) insofar as it defines the appointed day to be 01.10.2007 is founded on the basis that the definition of appointed day in section 2(c) ought to be 15.07.2010. This submission having been negated the challenge to the Regulation 2(1)(b) must also fail.

40. In the circumstances, the petitions are dismissed.

The only ground on which the petitioner would be entitled to file an appeal to the Tribunal is that despite the fact that the petitioner does not meet the eligibility criteria; the Tribunal may consider its application for authorization. It is made expressly clear that it will not be open to the petitioner to contend that it in any event meets the eligibility criteria on 01.10.2007.

It is not necessary to stay the operation of the order to enable the petitioner to challenge the same before the Supreme Court or even to file an appeal before the Tribunal as the steps prior to commencement of the work are likely to take considerable time. The petitioners can, therefore, always file the proceedings and seek interim orders therein.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

09.03.2018
ravinder

Whether speaking/reasoned	√ Yes/No
Whether Reportable:	√Yes/No