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

Date of Decision:16th February, 2021

+ **W.P.(C) 1629/2021 & CM APPLs.4674-75/2021**

GUJARAT GAS LIMITED

..... Petitioner

Through: Mr. Ramji Srinivasan, Senior
Advocate with Mr. Piyush Joshi, Ms.
Sumiti Yadava, Ms. Anisha
Bhattacharya and Ms. Megha
Sengupta, Advocates.
(M:9871881988)

versus

**THE UNION OF INDIA THROUGH THE SECRETARY
MOPNG & ORS.**

..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr.
Prashant Bezboruah, Mr. Amit Gupta,
Mr. Vinay Yadav, Mr. Akshay
Gadeock, Mr. Sahaj Garg and Mr. R.
Venkat Prabhat, Advocates for R-
1/UOI. (M:9811332332)
Mr. Utkarsh Sharma, Advocate for R-
1/PNGRB. (M:9312061203)
Mr. Rakesh Kumar, Sr. Officer
(Law), GAIL/R3.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed by the Petitioner – Gujarat Gas Limited, challenging the impugned order dated 26th August, 2020 passed by the Appellate Tribunal for Electricity (*hereinafter* “APTEL”).
3. APTEL, vide the impugned order, has stayed the proceedings before

the Petroleum and Natural Gas Regulatory Board (*hereinafter* “PNGRB”) and has also stayed the impugned order, dated 21st July, 2020 passed by PNGRB. By the impugned order a temporary injunction was passed against Respondent No. 3 – GAIL (India) Limited (*hereinafter* “GAIL”), directing said party to not supply gas to any customer having requirement of natural gas upto 50,000 SCMD within the geographical area of Dahej-Vagra Taluka. The order of the PNGRB dated 21st July 2020 is extracted below is as under :

“The respondent is directed not to supply the gas from its high pressure common carrier natural gas pipeline to any customer having requirement of natural gas up to 50,000 SCMD within the Geographical Area of Dahej-Vagra Taluka in terms of Regulation 3(2)(a) of the CGD Authorization Regulations, 2008.....”

4. The said order of the PNGRB was challenged before APTEL by GAIL on various grounds. A perusal of the impugned order dated 26th August, 2020, shows that APTEL had stayed the temporary injunction order passed by PNGRB, as well as the proceedings before PNGRB, primarily on two counts. First, that the Member (Legal) was not part of the quorum of PNGRB, which passed the order of temporary injunction against GAIL. Second, the impugned order was cryptic in nature and did not have any discussion as to the three essential ingredients to be satisfied for temporary injunction. APTEL has admitted the appeal before it and has directed the parties to complete the pleadings, while staying the injunction order passed by the PNGRB.

5. Mr. Ramji Srinivasan, Id. Senior counsel appearing for the Petitioner

submits that the PNGRB's order was completely justified, inasmuch as the PNGRB is competent to pass such an order in exercise of its powers under Section 21(3) read with Sections 25 and 26 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (*hereinafter "the Act"*). It is only in respect of disputes which are raised under Section 24 of the Act, that the Member (Legal) would be required to be part of the quorum of the PNGRB and not in respect of other provisions, under the Act. He further submits that the injunction order was also justified, inasmuch as GAIL's exclusivity in the geographical area of Dahej-Vagra Taluka was being violated. Since, the Petitioner was a successful bidder, it enjoyed exclusive legal right under the Act to operate in the geographical area of Dahej-Vagra Taluka, which was being violated by GAIL.

6. Considering these facts, it is submitted by Mr. Srinivasan, Id. Senior counsel, that the impugned order ought not to be interfered with. Reliance is placed by the Id. Senior counsel on another order of APTEL dated 21st October, 2020, titled *M/s Maharashtra Natural Gas Limited v. Petroleum and Natural Gas Regulatory Board*, passed in an un-connected matter where APTEL has itself, permitted PNGRB to go ahead and conduct its proceedings despite the absence of Member (Legal).

7. On the other hand, Mr. Chetan Sharma, Id. ASG appearing for GAIL and submits that first, the order passed by the PNGRB has rightly been held by APTEL to be cryptic in nature as the merits of the issues have not been dealt with and no reasons have been given. Second, GAIL has a strong case on merits and was given permission to supply the gas in the said geographical area under the Act. In these circumstances, he submits that the APTEL is justified in staying the proceedings before the PNGRB and also,

staying the operation of the impugned order of temporary injunction passed by the PNGRB. According to Mr. Sharma, Id. ASG, though the appeal before APTEL challenges only the jurisdiction of the PNGRB, the matter deserves to be also heard on merits.

8. A perusal of the order dated 21st July, 2020 passed by the PNGRB, shows that the order is completely lacking in reasons. Neither the background of the case was given, nor the reasons for granting a far reaching injunction order directing that GAIL cannot supply natural gas to the consumers in the geographical area of Dahej Vagra Taluka. Such an order could not have been passed before coming to the conclusion that the Petitioner had made out a *prima facie* case in its favour and that the balance of convenience lies in favour of the Petitioner and irreparable loss would have been incurred by the Petitioner, if the stay order was not granted – that too without hearing GAIL.

9. Further, the contention in respect of the Member (Legal) being a primary requisite for constituting the quorum for the PNGRB, appears to be clear from a reading of Section 24(1) of the Act. However, at this stage, since both the parties have no objection in appearing before the APTEL, seeking adjudication on merits, and since an examination of the scheme of the statute would be required, to give a final opinion on this issue, the Court refrains from making any observation. The said question of the requirement of a Member (Legal) for constituting the quorum of PNGRB is left open to be decided in an appropriate case.

10. In view of the present constitution of PNGRB, and the fact that the matter is now pending before APTEL, it is deemed appropriate to direct the APTEL itself to adjudicate the issues that have arisen in the Petitioner's

complaint before PNGRB, both on jurisdiction and on merits. APTEL, after hearing the parties on the merits of the complaint filed by the Petitioner, shall consider as to whether any injunction order or interim arrangement deserves to be passed in the matter. Needless to add, APTEL would give full hearing to all the parties concerned.

11. Considering that the nature of the dispute involves determining whether there would be rights, which are alleged to be violated on a daily basis, APTEL is requested to adjudicate the matter in an expeditious manner. Parties to appear before APTEL on 25th February, 2021.

12. On a query from the Court, as to the status of the appointment of Member (Legal) on the PNGRB, Mr. Sharma informs the Court that advertisement for appointment of Member (Legal) has been issued on 15th February, 2021. This is stated to be the third round of advertisements for the same. Considering the urgency involved, the Respondent would take steps to expedite the appointment of the Member (Legal) to the PNGRB.

13. This petition, along with all the pending applications, is disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 16, 2021/dk/Ap

(corrected & released on 20th February, 2021)