

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

+ **W.P.(C) 1370/2023 and CM APPLs.5100/2023,5101/2023,
7728/2023**

Date of Decision: 21.02.2023

IN THE MATTER OF:

THINK GAS LUDHIANA PRIVATE LIMITED
OFFICE AT A-49, GROUND FLOOR, LANE NO. 1,
GURU NANAK PURA, LAXMI NAGAR,
EAST DELHI 110092
THROUGH ITS AUTHORISED SIGNATORY, MR. SIDDHESH
REDKAR PETITIONER

Through: Mr.Amit Sibal, Sr.Advocate with
Mr.Ashish Wad, Mr.Piyush Toshi, Mr.Mayank
Bhargava and Abhishek Grover, Advocates.

versus

PETROLEUM & NATURAL GAS REGULATORY BOARD
THROUGH THE SECRETARY
1ST FLOOR, WORLD TRADE CENTRE, BABAR ROAD,
NEW DELHI – 110 001RESPONDENT NO.1

THE UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF PETROLEUM AND NATURAL GAS
SHASTRI BHAVAN, DR RAJENDRA PRASAD RD,
RAJPATH AREA, CENTRAL SECRETARIAT,
NEW DELHI 110001RESPONDENT NO.2

GAIL (INDIA) LIMITED
THROUGH ITS ADVOCATE MS. PURNIMA MAHESHWARI
(STANDING COUNSEL)
16, BHIKAJI CAMA PLACE,
R.K. PURAM,
NEW DELHI-110016RESPONDENT NO.3

JAY MADHOK ENERGY PVT. LTD.
HAVING REGISTERED OFFICE AT
F-249 (G.F.) NEW RAJINDER NAGAR,
NEW DELHI 110060

....RESPONDENT NO.4

JAY MADHOK HOLDINGS PVT. LTD.
HAVING REGISTERED OFFICE AT
D-143 DEFENCE COLONY
NEW DELHI – 110024

....RESPONDENT NO.5

Through: Mr.Utkarsh Sharma and Mr.Mohit Budhiraja, Advocates for R-1/PNGRB.
Mr.Sandeep Mahapatra, CGSC with Mr.Sugam Kr.Jha and Mr.Harsh Raj, Advocates for R-2.
Ms.Perna Dhall, GP for R-2.
Mr.Gopal Jain, Sr.Advocate with Mr.Nishant Awana and Mr.Rijul Uppal, Advocates for R-3/GAIL.
Mr. Rajiv Nayar, Senior Advocate with Mr. Saurav Agrawal and Mr. Anshuman Chowdhay, Advocates for R-4 & 5.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. This petition essentially seeks to challenge the order dated 13.01.2023, passed by the Secretary of respondent No.1 - Petroleum & Natural Gas Regulatory Board (PNGRB)/ Board with the further direction to place its two Expression of Interests ('EOIs') and two applications before the Board for its consideration. The petitioner has

also prayed for various other ancillary and consequential reliefs. For the sake of clarity, the entire relief clause is reproduced as under:-

"In the facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court be pleased to:

a) Issue a writ or writs, order or direction as may be considered appropriate to quash and setting aside of the PNGRB Letter dated 13.01.2023 issued by the Secretary of PNGRB and direct PNGRB to place the two EOIs dated 03.06.2020 and the two applications that were the subject matter thereof before the Board for its consideration, once it is duly constituted in a meeting held in accordance with PNGRB (Meetings of Board) Regulations, 2007, particularly Regulation 11 thereof;

b) Issue a writ or writs, order or direction as may be considered appropriate to require compliance with Regulation 11 PNGRB (Meetings of Board) Regulations, 2007 by PNGRB and hold that the members who are former Directors of Respondent No. 3/ GAIL (India) Limited have to comply with PNGRB (Meetings of Board) Regulations, 2007 and not participate in matters which directly or indirectly relate to GAIL (India) Limited;

c) Issue a writ or writs, order or direction as may be considered appropriate to quash PNGRB Letter Ref PNGRB/Monitoring/2/NGPL-DBNPL/(4)/2012 dated 28.02.2020 issued to GAIL (India) Limited by PNGRB and which was communicated to the Petitioner only on 30.09.2022;

d) Declare that the authorization Ref Infra/CGD/Bid/R-3/7/GA/Jalandhar/01/2013 dated 06.09.2013 for 355 sq. km area of Jalandhar city to "Jay Madhok Energy Private Limited led Consortium" lapsed and ceased to be valid on 08.08.2018 when Respondent No. 4/ Jay Madhok Energy Private Limited and Respondent No. 5/ Jay Madhok Holdings Private Limited were struck off and dissolved which two entities constituted the successful consortium that had ceased to exist on 08.08.2018;

e) Declare that the authorization Ref. Infra/CGD/Bid/R-3/6/GA/Ludhiana dated 25.06.2015 for 211 sq. km of

Ludhiana city to "Jay Madhok Energy Private Limited led Consortium" lapsed and ceased to be valid on 08.08.2018 when Respondent No. 4/ Jay Madhok Energy Private Limited and Respondent No. 5/ Jay Madhok Holdings Private Limited were struck off and dissolved;

f) If Prayers (d) and (e) above are granted then direct Respondent No. 1/PNGRB that : (i) the area of 211 sq.km. comprising of Ludhiana city; and (ii) the 355 sq.km. area of Jalandhar city covered by the respective authorizations, be placed for competitive bidding;

g) Direct Respondent No. 2/ Union of India to appoint the Chairman and one other Member to PNGRB who should not be from GAIL (India) Limited, so as to duly and completely constitute PNGRB; and

h) pass any other or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case in favour of the Petitioner."

2. This petition was taken up for hearing by the Coordinate Bench of this court on 02.02.2023. However, the same was directed to be listed before another Bench subject to directions by Hon'ble the Chief Justice. Accordingly, the matter was placed before this court on 06.02.2023.

3. When this matter was taken up for hearing on 06.02.2023, this court directed for the issuance of notice to the respondents. While noting the submissions advanced by learned senior counsel appearing on behalf of the petitioner, this court directed that in the meantime, any proceedings before respondent No.1/Board shall remain subject to the outcome of the instant proceedings. The matter was thereafter taken up for hearing on 14.02.2023 and on 16.02.2023. The parties filed their respective pleadings and accordingly, today, the matter is listed for consideration.

4. Shri Amit Sibal, learned senior counsel appearing on behalf of the

petitioner has raised various grievances. He has taken this court through various orders passed by different authorities. However, during the course of submission he specifically pointed out the manner in which the EOIs of the petitioner have been dealt with by the respondent No.1-Board. He points out that a detailed application was filed before the respondent No.1-Board for various reliefs, as can be seen from (*Annexure P-52*). One of the reliefs therein was to accept and proceed to implement the EOI dated 03.06.2020, filed by the petitioner in terms of the order passed by this court dated 26.02.2021. He tried to emphasize that taking into consideration, various reliefs therein, respondent No.1-Board, in terms of order dated 22.12.2022, directed the respondents to file their detailed affidavit.

5. The petitions filed by the petitioner which were registered as Legal/26/2022 and Legal/27/2022 before the Board, were directed to be taken up on 02.02.2023, at 11:00 AM. He therefore, states that on 02.02.2023, the matter could not be heard by the concerned Board. The respondent No.1-Board through its Secretary, in terms of impugned communication dated 13.01.2023, however, has unilaterally rejected his prayer. He, therefore, prays that firstly, the procedure followed by respondent No.1-Board is *dehors* the mandate of the Petroleum and Natural Gas Regulatory Board Act, 2006 (Act, 2006) and the regulations made there under and secondly, having fixed the matter for 02.02.2023, the Board could not have taken any decision on the said issue. He also, while taking this court to various grounds tries to emphasise that notwithstanding the directions issued by the Appellate Tribunal for Electricity (APTEL) in its final order dated 28.09.2022, the petitioner

still has the rights for consideration on his EOI. He has referred various provisions envisaged under the Act of 2006 and the regulations made there under.

6. Shri Utkarsh Sharma, learned counsel appearing on behalf of the respondent No.1-Board strongly objects to the submissions made by the learned senior counsel appearing on behalf of the petitioner and he submitted that the Board has dual responsibility to discharge. According to him, the action of respondent No.1-Board cannot be found fault with for the reason that the petitioner does not have any vested right for operation of any particular geographical area. He states that the EOI submitted by the petitioner since was not on the basis of any vested right and therefore, in terms of communication dated 13.01.2023, the same has rightly been rejected. He also states that the EOIs are to be considered on the regulatory side and not on the judicial side.

7. Shri Rajiv Nayar, learned senior counsel appearing on behalf of respondent No.4 and 5 states that the petitioner does not have any locus to maintain the present petition and secondly the petitioner if at all has any grievance, there is an efficacious alternate remedy under Section 33 of the Act, 2006. He also states that even respondent No.1-Board is not considering his application of transfer in terms of paragraph no. 138 of the order of the APTEL dated 28.09.2022.

8. Shri Gopal Jain, learned senior counsel appearing on behalf of respondent no.3-GAIL (India) Limited/GAIL, submits that firstly, GAIL has been unnecessarily arrayed as a party in the present petition, as GAIL is not a party in the main petition which is stated to be considered by the respondent No.1-Board and secondly, GAIL is discharging its function

strictly in accordance with law and in view of various directions issued by the Central Government and the applicable rules and regulations thereto. He therefore, states that the instant petition against GAIL (India) Limited is not maintainable. He further states that any direction to allow the petitioner to incorporate additional pleadings would be construed to be an expression, by this court.

9. I have heard submissions made by learned counsel appearing on behalf of the parties and perused the record.

10. In the final relief claimed by the petitioner in its petition no. 27/2022, stated to have been filed under Section 25 read with Section 19(2), read with Section 13(1), read with Section 13(3) and read with Section 11(c) of the Act, 2006 with various regulations of the concerned regulation, it is seen that one of the prayers made therein was to accept and proceed to implement the EOI dated 03.06.2020. The entire controversy in the present case centers around the prayer for consideration of the EOIs submitted by the petitioner from time to time. The final relief in one of the petitions i.e. Legal/27/2022, filed by respondent No.1-Board reads as under:

"2 Final Relief

a. Accept and Proceed to implement the Expressions Of Interest dated 03.06.2020 filed by the Petitioner in public interest in terms the Hon'ble Delhi High Court's Order dated 26.02.2021 in Think Gas Ludhiana Limited v. PNGRB & Ors, (WPC 2629/2021), since the "joint transfer application" is not a valid application under applicable law on account of dissolution of Jay Madhok Energy Private Limited and Jay Madhok Holdings Private Limited on 08.08.2018 and the dissolution of Ishar Gas Jalandhar Private Limited and Ishar Gas Ludhiana Private Limited on 20.04.2022 and the fact that no CGD network or assets exist

for any transfer through slump sale "on going concern no longer being possible;

b. Declare the authorisations granted to the consortium of Jay Madhok Energy Private Limited and partnership firm of Jay Madhok Holdings for Jalandhar City GA and the Ludhiana City GA are void and stand terminated in light of the CBI FIR and the fact that records show prima facie that the said authorisations having been obtained on the basis of the networth of the partnership firm Jay Madhok Holdings were in the nature of "proceeds of crime" and cannot be permitted to be held and enjoyed,

c. Declare that in light of s.3 PMLA, the transfer of the said CGD authorisations granted to the consortium of Jay Madhok Energy Private Limited and partnership firm of Jay Madhok Holdings for Jalandhar City GA and the Ludhiana City GA is prohibited and not permissible in accordance with applicable law;

d. Declare that in light of the change in shareholding of the successful bidding consortium within first five years of grant of authorisation, in violation of the limitations of Regulation 10(1) CGD Authorisation Regulations, JMEPL was no longer holding the largest interest as lead partner in the consortium for the authorisations granted for Jalandhar City GA and the Ludhiana City GA and consequently, the successful bidding consortium had ceased to exist and could not have validly incorporated itself under Companies Act, 2013 in terms of Regulation 5(6)(i) GGD Authorisation Regulations and the said authorisations granted to "Jay Madhok Energy Private Limited Led Consortium ceased to be valid and lapsed:

e. In alternate to Prayer (a), Prayer (b) and Prayer (c) above, declare that since no CGD network was developed in the Jalandhar City GA and the Ludhiana City GA for the entire duration of the marketing exclusivity period granted under Regulation 6 CGD Exclusivity Regulations, the infrastructure exclusivity did not survive the expiry of the marketing exclusivity as there was no CGD network for the duration of whose economic life the said infrastructure

exclusivity would have remained;

f. In alternate to Prayer (a), (b), (c) and (d) above, declare that in light of complete failure of the authorised entity to develop CGD network during the marketing exclusivity period in the Jalandhar City GA and the Ludhiana City GA, the infrastructure exclusivity shall be terminated in accordance with the mandate under Regulation 10(1) and Regulation 10(2) CGD Exclusivity Regulations and initiate the process for termination of the same; and

g. Pass such order in favour of the Petitioner as it deems fit and necessary in the interest of equity and justice.

11. It can also be seen that the respondent No.1- Board in terms of order dated 22.12.2022, decided to call upon the respondents to file a detailed affidavit. The order dated 22.12.2020 (Annexure P-53) is reproduced as under:-

ORDER
22.12.2022

The matter was called up today for hearing.

Heard the Parties. Issue Notice, the Ld. Counsel Ms. Aakriti Dawar lead by Ld. Sr. Counsel Mr. Parag Tripathi (Sr. Adv.) accepts the notice appearing on behalf of the Respondent(s).

Let the Respondent(s) file detailed affidavit as regards of the Company along with the complete records of any other pending civil, criminal and any other cases, on similar cause of action against "Ishar Gas Jalandhar Pvt. Ltd.", advance copy to be served to opposite party.

The Interlocutory Applications (IA) No. 72/2022 titled "Interim Application on behalf of Complainant for review of Order dated 15.12.2022 under section 13(1)(h) of the PNGRB Act with supporting affidavit" and I.A. No. 73/2022, titled "Interim Application on behalf of Complainant for review of Order dated 15.12.2022 under section 13(1)(h) of

the PNGRB Act with supporting affidavit” dated 21.12.2022, will be taken up for consideration on the next date of hearing.

List the matter on 02.02.2023 at 11:00 Hours.

Sd/- Gajendra Singh (Member-I)	Sd/- A.K. Tiwari (Member-II)	Sd/- Ajit Kumar Pande Member (Legal)"
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12. From the impugned communication i.e. 13.01.2023, it can be seen that the rejection of the EOI dated 03.06.2020, 07.12.2020 and 08.12.2020, appears to be on the premise that APTEL had revived the authorisation for the development of CGD network and the respondent No.1-Board was not inclined to accept any EOI, NOC/ permission for the said area. For the sake of clarity, impugned communication dated 13.01.2023, is reproduced as under:-

"PNGRB/Auth/1-CGD(12)/2020 (OP-945) 13 January, 2023

To

Shri Hardip Singh Rai
Director
Think Gas Ludhiana Private Limited
3rd Floor, Dhanraj Complex,
Near Gate No.2, Punjab Agricultural University Punjab
Ludhiana-141001

Subject: i. Rejection of Expression of Interest(s) dated 03.06.2020 and a copy of the same dated 05.11.2020 from you for extending your CGD Network in the Geographical Areas of Ludhiana and Jalandhar

ii. Rejection of the application dated 07.12.2020 submitted by Think Gas Ludhiana Private Limited regarding amendment in authorization of Ludhiana (except are already authorised), Barnala and Moga District and

iii. Rejection of the application dated 08.12.2020 submitted by Think Gas Ludhiana Private Limited requesting NOC/Permission

for supply/distribution of natural gas through cascades and setting up of CNG Daughter Booster stations in Ludhiana (211 sq.km. area)

Ref:

i. Think Gas Ludhiana EOI dated 03.06.2020 and a copy of the same submitted vide letter dated 05.11.2020

ii. Think Gas Ludhiana Private Limited's letters dated 07.12.2020 and 08.12.2020

Sir.

This is with reference to the Eols dated 03.06.2020 and a copy of the same submitted by you vide letter dated 05.11.2020, your letter dated 07.12.2020 and 08.12.2020 on the subject matter.

2. After considering Eol dated 03.06.2020 and letter(s) dated 07.12.2020 and 08.12.2020, the Board is of view that at this stage, Eoi dated 03.06.2020 made for Ludhiana GA and Jalandhar GA, letter dated 07.12.2020 regarding amendment in authorization of Ludhiana (except area already authorised), Barnala and Moga District and letter dated 08.12.2020 regarding request made for NOC/Permission for supply distribution of natural gas through cascades and setting up of CNG Daughter Booster stations in Ludhiana, are not sustainable, as the Hon'ble APTEL has revived the authorization for the development of CGD Network, and the Board is not inclined to accept any Eol, NOC/permission for the aforesaid areas.

3. In view of the aforesaid observations, the Board hereby rejects the following:

i. EOI dated 03.06.2020 in respect of GAS of Ludhiana and Jalandhar;

ii. Application dated 07.12.2020 submitted by you regarding amendment in authorization of Ludhiana (except area already authorised), Barnala and Moga District; and

iii. Application dated 08.12.2020 submitted by you requesting NOC/Permission for supply /distribution of natural gas through cascades and setting up of CNG Daughter Booster stations in Ludhiana (211 sq.km. area)."

13. If the scheme of the Act and the regulation is examined, the same would indicate that the Board has to follow the principles of natural justice. Section 13(3) specifically envisaged that the respondent No.1-Board shall be guided by the principles of natural justice and subject to other provisions of the Act, 2006 and of any rules made there under shall have powers to regulate its own procedure including, the place at which it shall conduct its business.

14. It is thus seen that in the instant case, having issued the notice on the petition filed by the petitioner and without awaiting the date fixed, passing adverse order by the respondent No.1-Board, is a procedure unknown to law. The communication dated 13.01.2023 ought not to have been precipitated without appropriate hearing being conducted in pending applications filed by the petitioner. Which procedure would govern the disposal of the petitioner's application could have been decided only when the petitioner was heard on 02.02.2023. The track ought not to have been changed midway. It is thus seen that the communication dated 13.01.2023 is against the principles of nature justice, the same is therefore set aside.

15. At this stage, Shri Amit Sibal, learned senior counsel appearing on behalf of the petitioner points out that notwithstanding, this court was seized with the matter, the respondent No.1-Board has proceeded to decide the application and in terms of final order dated 09.02.2023, has closed both the applications. He has specifically pointed out the order dated 02.02.2023, passed by respondent No.1-Board to indicate that the factum of the pendency of the present proceedings was brought to the notice of respondent No.1-Board. He further submits that on 09.02.2023,

the respondent No.1-Board without awaiting any decision in the pending proceedings has closed both the applications filed by the petitioner. Since this court has held that the communication dated 13.01.2022 is against the principles of natural justice and therefore, all consequential orders i.e. orders dated 02.02.2023 and 09.02.2023 are also set aside.

16. The applications filed by the petitioners before the respondent No.1-Board i.e. Legal Case No. 26/2022 and 27/2022 stand restored to their original number.

17. In view thereof, this court passes the following consequential directions:-

- (i) Let respondent No.1-Board consider and decide the application No.26/2022 and 27/2022, in accordance with law, after providing opportunity for hearing to all stakeholders.
- (ii) The petitioner would be at liberty to file an appropriate application for incorporating necessary amendments in its original application, if so desired.
- (iii) Respondents would be given an appropriate opportunity to file their response to those additional pleadings if any, in accordance with law.
- (iv) It is made clear that this court has not adjudicated upon any of the rights of the parties and has passed the present directions, keeping in mind the principles of natural justice and has left all issues open to be adjudicated on merits in accordance with law by respondent no.1-Board.

18. With the aforesaid directions, the instant petition along with pending applications, stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 21, 2023/MJ

