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

Date of Decision: 24th April, 2023

+ **W.P.(C) 4975/2023 & CM APPL.19413/2023**

THINK GAS LUDHIANA PRIVATE LIMITED Petitioner

Through: Mr. Amit Sibal, Senior Advocate with
Mr. Ashish Wad, Mr. Piyush Joshi,
Ms. Sumiti Yadava, Mr. Sidharth
Mahajan, Mr. Ajeyo Sharma, Mr.
Mayank Bhargava, Mr. Darpan
Sachdeva, Mr. Abhishek Grover &
Ms. Meghna Sengupta, Advs. (M:
9958954408)

versus

**PETROLEUM AND NATURAL GAS
REGULATORY BOARD**

..... Respondent

Through: Mrs. Divya Roy and Mr. Utkarsh
Sharma, Advocates for PNGRB. (M:
9312061203)

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J.(Oral)

W.P.(C) 4975/2023 & CM APPL.19413/2023 (seeking interim relief)

1. This hearing has been done through hybrid mode.
2. The present petition challenges the impugned order dated 21st October, 2022 issued by Respondent No. 1-Petroleum and Natural Gas Regulatory Board ('PNGRB') under Section 28 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (hereinafter referred as 'PNGRB Act').
3. The brief background of this petition is that the Petitioner- THINK Gas Ludhiana Pvt. Ltd. is an authorized entity under Section 19 of the

PNGRB Act read with 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 '*CGD Authorization Regulations*') for development of City Gas Distribution (CGD) Network in the geographical area of Jalandhar District, Kapurthala District & SBS Nagar Districts and Ludhiana District, Barnala District and Moga District. Pursuant to the said authorization dated 26th October 2018, the Petitioner supplies natural gas to its customers in these areas.

4. The case of the Petitioner is that in the city of Ludhiana, as there was no authorized entity for supply of natural gas, its customer namely Vardhaman Special Steels Limited ('*VSSL*') requested for supply of natural gas pursuant to an order passed by the National Green Tribunal ('*NGT*') dated 10th July, 2019 in the matter titled '*News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels"*' bearing *Original Application No. 1038/2018*. The Petitioner then started supply of natural gas to VSSL through trucks for consumption in Ludhiana.

5. This was perceived by the PNGRB as a violation of the authorization issued to the Petitioner and, accordingly, proceedings were commenced against the Petitioner under Section 28 of the PNGRB Act. Section 28 of the PNGRB Act is as follows:

"Section 28: Civil penalty for contravention of directions given by the Board.

In case any complaint is filed before the Board by any person or if the Board is satisfied that any person has contravened a direction issued by the Board under this Act to provide access to, or to adhere to the transportation rate in respect of a common carrier, or

to display maximum retail price at retail outlets, or violates the terms and conditions subject to which registration or authorisation has been granted under section 15 or section 19 or the retail service obligations or marketing service obligations, or does not furnish information, document, return of report required by the Board, it may, after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of civil penalty an amount which shall not exceed one crore rupees for each contravention and in case of a continuing failure with additional penalty which may extend to ten lakh rupees for every day during which the failure continues after contravention of the first such direction:

Provided that in the case of a complaint on restrictive trade practice, the amount of civil penalty may extend to five times the unfair gains made by the entity or ten crore rupees, whichever is higher.”

6. It is the contention of Mr. Amit Sibal, Id. Senior Counsel for the Petitioner, that under the PNGRB Act and the CGD Authorization Regulations, Section 28 is the consequence of proceedings under Regulation 16 of the said CGD Authorization Regulations. Thus, notice under Section 28 of the PNGRB Act could not have been issued by PNGRB without following the proper procedure as mandated under Regulation 16 of the CGD Authorization Regulations.

7. The Petitioners contend that unless and until PNGRB arrives at a satisfaction in terms of Section 28 of the PNGRB Act, following the procedure in CGD Authorization Regulations, the issuance of notice under Section 28 of the PNGRB Act is premature.

8. It is further submitted by Id. Senior Counsel for the Petitioner that in

any event, VSSL has been issued two no objection certificates ('NOCs') dated 6th February 2023 and 29th March 2023 under Regulation 3(2)(a) of the CGD Authorization Regulations by the PNGRB to purchase natural gas from the Petitioner. Thus, the supply of natural gas by the Petitioner is no longer violative of the Petitioner's authorization issued under the PNGRB Act and the CGD Authorization Regulations.

9. Ms. Divya Rao, Id. Counsel for the Respondent, on the other hand, submits that this is the second round of litigation challenging the same notice. In the earlier round, vide order dated 22nd November, 2022 passed in '*Think Gas Ludhiana Pvt. Ltd. v. Petroleum and Natural Gas Regulatory Board*' [W.P(C) 15746/2022], the Court had refused to interfere in the proceedings of the Board and had directed the Petitioner to file an affidavit giving its submissions. Since the writ petition was dismissed, the Petitioner filed a detailed reply to the notice dated 21st October 2022. Thus, after filing of the affidavit and reply dated 10th December 2022 by the Petitioner thereafter, instead of awaiting the decision of the PNGRB, the Petitioner has filed the present writ petition.

10. Heard. In the first round of litigation, in W.P(C) 15746/2022, this Court had directed, vide order dated 22nd November, 2022, as under:

"1. This writ petition is directed against a notice dated 21 October 2022 whereby the Petroleum and Natural Gas Regulatory Board [PNGRB] taking note of an allegation that the petitioner had commenced supply of natural gas to entities falling outside its authorised Geographical Area, has called upon it to appear and explain.

2. As is manifest from a reading of the aforesaid communication, it is merely a notice calling upon the petitioner to explain how it could supply natural gas to

customers and industrial clusters located beyond its own authorised geographical area. The PNGRB has also raised the issue of a No Objection Certificate having not been obtained as contemplated under Regulation 3(2)(a) of Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008.

3. Mr. Vaidyanathan, learned Senior Counsel appearing in support of the petition has drawn the attention of the Court to the Record Notes of the Hearing held on 10 November 2022 and more specifically to the recitals as appearing in paragraphs 6 and 7 to contend that the PNGRB already appears to have formed an adverse opinion in respect of the stand which the petitioner proposes to take.

4. Having carefully gone through the Record Notes of Hearing, the Court is of the considered opinion that the recitals which appear in paragraph 6 can only be recognised as the expression of a prima facie opinion since immediately thereafter the Board had directed the petitioner to make detailed submissions on affidavit. Viewed in that light, it would be incorrect to assume that the PNGRB is either inclined or predisposed to decide against the petitioner.

5. Since all contentions, on merits, are liable to be addressed before the Board at this stage, the Court finds no ground to interfere with the notice impugned.

6. The writ petition consequently fails and shall stand dismissed.”

11. As per the above order, the Ld. Single Judge had opined that the content of the notice under Section 28 which is impugned, ought to be deemed to be merely a prima facie opinion subject to the further submissions to be made by the Petitioner. Subsequent to this order being passed by the Id. Single Judge, the Petitioner has filed its affidavit and reply

dated 10th December 2022 and has also placed on record the NOCs issued by the Board to VSSL. Again, the apprehension expressed by the Petitioner is that the PNGRB has proceeded in a pre-decided manner and has already arrived at a conclusion without fully hearing to the Petitioner, that there is a violation of the PNGRB Act and the CGD Authorization Regulations by the Petitioner.

12. A perusal of the impugned notice under Section 28 of the PNGRB Act would show that a hearing has been granted to the Petitioner. A perusal of the latest order passed by the PNGRB dated 18th April, 2023 shows that detailed submissions have been called for by 28th April, 2023. The said order reads as under:

“Record notes of the hearing u/s 28 held on 18.04.2023”

1. *In line with the directions given during the hearing held on 17.01.2023, the hearing of Think Gas Ludhiana Private Limited (TGLPL) u/s 28 of the PNGRB Act, 2006, for supplying Natural Gas to Vardhman Special Steel Limited (VSSL) outside its authorised Geographical Area (GA) of Ludhiana (EAAA), Barnala & Moga Districts, was held on 18.04.2023 at 1100 hrs at PNGRB Office, New Delhi.*
2. *At the outset TGLPL submitted that since an NOC has been issued to VSSL, the proceedings may be closed.*
3. *The Board directed TGLPL to file a detailed submission by 28.04.2023 to enable the Board to take decision on hearing u/s 28.”*

13. Considering the background of this matter, and the recent order of the PNGRB dated 18th April 2023, this Court is of the opinion that the PNGRB cannot be taken to have pre-decided matter on the question of violation of the PNGRB Act and the CGD Authorization Regulations.

14. The affidavit and reply dated 10th December 2022, which have been filed by the Petitioner and the authorization issued as per the CGD Authorization Regulations, shall obviously be considered by the PNGRB. In addition, the order dated 10th July 2019 passed by the NGT, requirement of the customers and the NOCs dated 6th February 2023 and 29th March 2023, shall be kept in mind while considering whether there is any violation of the PNGRB Act and the CGD Authorization Regulations by the Petitioner at all.

15. If the PNGRB arrives at a conclusion, that the Petitioner has, in fact, violated the authorization granted, it is only then the PNGRB would proceed further to take action in the matter in terms of the applicable laws and regulations. Needless to add, a comprehensive decision on both aspects would have to be taken by the PNGRB.

16. Since the order of the PNGRB, passed under Regulation 16 of the CGD Authorization Regulations read with Section 28 of the PNGRB Act would be an appealable order to Appellate Tribunal for Electricity (APTEL) under Section 33 of the PNGRB Act, it is directed that the PNGRB shall take a comprehensive decision in this matter expeditiously.

17. If the decision is against the Petitioner, two weeks' time shall be given to the Petitioner to avail of its remedy before the APTEL. For the said intervening two weeks, no coercive steps shall be taken against the Petitioner.

18. Needless to add, this Court has not adjudicated the issues raised in the

matter on merits. Considering that the writ petition is being disposed of, the time to file the synopsis before the PNGRB, is extended till 10th May, 2023.

19. The petition, along with all pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

APRIL 24, 2023/dk/dn

