

\$~136

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 24th April, 2023

+ **W.P.(C) 4976/2023**

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.

versus

**PETROLEUM AND NATURAL GAS
 REGULATORY BOARD**

..... Respondent

Through: Mrs. Divya Roy and Mr. Utkarsh
 Sharma, Advocates for PNGRB.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petition challenges the impugned notice dated 28th March, 2023 issued by the Petroleum and Natural Gas Regulatory Board (hereinafter, '*PNGRB*') under Section 28 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (hereinafter referred as '*PNGRB Act*'). The allegation of the PNGRB against the Petitioner is that the Petitioner has started the supply of natural gas to one M/s Akal Springs Limited ('*ASL*') in the city of Ludhiana without prior authorization as per the PNGRB Act.
3. The case of the Petitioner is that in view of the NGT order 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** and in view 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 (*‘CGD Authorization Regulations’*), the Petitioner, in the absence of any other entity operating in the area, has supplied natural gas through a dedicated pipeline. Ld. counsel for the Respondent submits that this position is disputed by the Respondent as even the required procedures under the CGD Authorization Regulations for laying the natural gas pipeline are not being followed by the Petitioner.

4. Submission on behalf of the Petitioner is that without arriving at a satisfaction in terms of Regulation 16 of the CGD Authorization Regulations read with Sections 13 & 28 of the PNGRB Act, the notice under Section 28 for levying of the penalty could not have been issued. 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.”

5. Heard. A perusal of the notice dated 28th March, 2023 shows that it is a show cause notice for laying and maintaining the pipeline infrastructure outside the geographical area of Ludhiana. The said notice cannot be treated as a pre-decided notice on behalf of the PNGRB, where the PNGRB has already arrived at a satisfaction as to the violation of the PNGRB Act and CGD Authorization Regulations. The PNGRB has given opportunity to the Petitioner to explain its stand as is clear from the text of the notice itself. Accordingly, the Petitioner shall file a comprehensive reply explaining its stand in response to this notice, upon which the PNGRB shall consider as to whether the Petitioner is, in fact, in violation of the authorizations under the PNGRB Act and CGD Authorization Regulations, and if so, what would be the consequences thereto. Hearing shall also be afforded to the Petitioner before arriving at the decision in the matter. The reply/synopsis by the Petitioner shall be filed by 10th May, 2023.

6. Considering the background of this matter, 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 CGD Authorization Regulations. The authorization issued by PNGRB dated 26th October 2018, the order dated

10th July 2019 passed by the NGT, requirement of the customers, shall be kept in mind by the PNGRB to consider whether there is any violation by the Petitioner of the applicable laws and regulations. Upon the PNGRB arriving at a conclusion, that the Petitioner has, in fact, it has violated the said authorization, it is only then the PNGRB would proceed further to take action in the matter. Needless to add, a comprehensive decision on both aspects be taken by the PNGRB expeditiously.

7. Since the order of the PNGRB, which would be 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.

8. 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.

9. 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 is extended to 10th May, 2023.

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

PRATHIBA M. SINGH
JUDGE

APRIL 24, 2023/dk/dn