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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 25th May, 2023*+ **W.P.(C) 6875/2023****INDRAPRASTHA GAS LIMITED**

..... Petitioner

Through: Mr. Ramji Srinivasan, Sr. Adv., Mr. Gopal Jain, Sr. Adv, Mr. Sacchin Puri, Sr. Adv with Mr. Ankit Jain, Ms. Rimali Batra, Mr. Abhishek Lalwani, Mr. Prashant Bezboruah, Adv., Mr. Krishan Kumar, Adv., Ms. Namrata Saraogi, Adv., Ms. Shweta Arora, Adv., Ms Shruti Pandey, Adv. and Mr. Anshuman Chowdhary, Adv. (M: 9999915302).

versus

PETROLEUM AND NATURAL GAS REGULATORY BOARD

..... Respondent

Through: Mr. Sanjay Jain, ASG with Mr. Utkarsh Sharma, Mr. Nishank Tripathi and Mr. Mohit Budhiraja, Advocates for R-1. (M: 9312061203) Mr. Basava Prabhu Patil Senior Advocate with Mr. Sanjeet Singh, Sameer Rohtagi, Advocate for R-2. (M: 9811767675)

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner- Indraprastha Gas Limited (*hereinafter* "IGL") challenging the impugned order dated 24th April, 2023 passed by the Petroleum and Natural Gas Regulatory Board (*hereinafter* "PNGRB") under Regulation 19 of the PNGRB (Authorizing Entities to Lay, Build, Operate, or Expand City or Local Natural Gas

Distribution (CGD) Networks) Regulations, 2008 (*hereinafter* “Regulations”). The prayers in this writ petition are as under:-

“i. Issue any appropriate writ, order or direction under Article 226/227 of the Constitution of India and for setting aside the Order dated 24.04.2023 passed by the Petroleum and Natural Gas Regulatory Board under Regulation 19 of the PNGRB (Authorizing entities to lay, build, operate, or expand City or local natural gas distribution (CGD) networks) Regulations, 2008; and

ii. Declare that the Order dated 24.04.2023 passed by the Petroleum and Natural Gas Regulatory Board Order and the consequential actions taken by the Respondent are inter alia arbitrary and in contravention of the spirit of Article 14 of the Constitution of India, and settled principles of law; and

iii. In the interim, stay the effect and implementation of any consequential orders/actions/directions passed by the Hon’ble Petroleum and Natural Gas Regulatory Board without having jurisdiction basis the Impugned Order; ”

3. The case of the Petitioner is that in 2004 the Petitioner IGL was nominated as the implementing company for implementation of the City Gas Distribution (‘CGD’) network in Gurgaon, Faridabad and Noida.

4. The Petroleum and Natural Gas Regulatory Board Act, 2006 (*hereinafter* “PNGRB Act”) was enacted in 2006. The PNGRB was then set up in 2006 with the intention of providing uninterrupted and adequate supply of notified petroleum, petroleum products and natural gas in all parts of the country for consumers, domestic households as also for commercial consumers.

5. Applications were filed before the Supreme Court in **WP No. 13029/1985** titled ‘**M.C. Mehta v. Union of India**’ in respect of the

distribution of natural gas in Gurgaon and Faridabad and certain interim orders were passed on 4th April 2008. During this entire process, the Regulations of 2008 were also enacted and Section 16 of the PNGRB Act was notified on 15th July, 2010.

6. Further on 15th May 2008, the Ministry of Petroleum and Natural Gas vide a letter to the PNGRB clarified that IGL is the Central Government authorised entity for Delhi, Gurgaon, Faridabad and Noida. The Ministry further reiterated in the said letter that no fresh authorisation was required.

7. In the *M.C. Mehta (supra)* matter, as per the Petitioner, it's authorisation was confirmed by the Ministry of Petroleum and Natural Gas by way of an affidavit dated 24th July 2019. According to the Petitioner since the Gas distribution was already allocated to IGL, no other Company could be given an allocation. The Supreme Court disposed of the pending applications in the *M.C. Mehta (supra)* case vide order dated 6th September 2022.

8. Thereafter, in proceedings before the Appellate Tribunal (*hereinafter* "APTEL"), directions were given for consideration of all applications under Regulation 18 of the Regulations. In the process of consideration, the impugned order dated 24th April, 2023, has been passed. In effect, the impugned order directs that insofar as the applications in respect of Gurugram, Faridabad and Noida are concerned, the requirement of the Regulations for objections being called for, was exempted. The relevant portion of the impugned order reads as under:-

"PNGRB had processed 12 cases under Regulation 18 of PNGRB (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Network) Regulations, 2008. Information/applications

received under Regulation 17 and Regulation 18 of PNGRB (Authorizing entities to lay, build, operate, or expand City or local natural gas distribution (CGD) networks) Regulations, 2008 for Gurugram, Faridabad & Noida GAs are yet to be decided because the matter was already sub-judice before Hon'ble Supreme Court in "M. C. Mehta Vs UoI (WP No. 13029/1985)" since 2005.

2. Vide order dated 06.09.2022, the Hon'ble Supreme Court has disposed-off the IAs pertaining to dispute of the entities regarding authorization of the aforementioned GAs. The Hon'ble Supreme Court has directed PNGRB to proceed with its role, whether be it the present dispute or any other dispute, since the required quorum of the Board is now available. APTEL vide its order dated 30.11.2022 in APL No. 429 of 2022 has inter-alia directed as:

"I. The Board is requested to take up for consideration for appropriate orders the intimation(s) of the appellant Indraprastha Gas Limited respecting its claim of deemed authorisation concerning GAs of Gurugram, Faridabad and Noida ahead of all other pending matters relating to the said GAs;

3. A substantial time has already elapsed and consumers in these three GAs are deprived of the natural gas as compared to the consumers residing in the GA's authorised who have made submissions during the same time or on appointment of PNGRB in 2007, due to pending litigations by the entities. Board is putting its continuous efforts to decide the matter of authorization for aforesaid GAs on priority.

4. The Board is to process the information submitted under Regulation 17 and subsequently, the applications submitted under Regulation 18. In this regard the Board has foreseen a difficulty of implementation of Regulation 18(5) of PNGRB (Authorizing entities to lay, build, operate, or expand City or local natural gas distribution (CGD) networks)

Regulations, due to the overall context of the matter. So many different aspects involved on Regulatory and legal side to take this forward with an objective how quickly the CNG, PNG and gas to industrial & commercial customers can be rolled out in these GAs. Keeping this on background and the order from Hon'ble SC to address the same in given schedule, it was decided by board that the Process given under Regulation 18 (5) of PNGRB (Authorizing entities to lay, build, operate, or expand City or local natural gas distribution (CGD) networks) Regulations 2008, is not required to be followed for Gurugram, Faridabad & Noida GAs, whenever or wherever required. Since Regulation 18 (6) is a sequential step of Regulation 18 (5), accordingly, Regulation 18 (6) is also not required to be followed.

5. Accordingly, in terms of Regulation 19 of PNGRB (Authorizing entities to lay, build, operate, or expand City or local natural gas distribution (CGD) networks) Regulations, 2008, following Order is issued:

Order

For the applications submitted for Gurugram, Faridabad and Noida Geographical Area Under Regulation 18(1) of PNGRB (Authorizing entities to lay, build, operate, or expand City or local natural gas distribution (CGD) networks) Regulations, 2008, Regulation 18 (5) and Regulation 18 (6) of PNGRB (Authorizing entities to lay, build, operate, or expand City or local natural gas distribution (CGD) networks) Regulations, 2008 shall not be applied.

9. After passing the above impugned order, the PNGRB vide its orders dated 25th April 2023, granted authorisations as under:
 - i. Haryana City Gas Distribution Ltd - Gurugram – 2

- ii. Adani Total Gas Limited - Faridabad – 2
- iii. Indraprastha Gas Limited - Gurugram-1, Faridabad -1 & Noida

The grant of some of the authorisations dated 25th April 2023, are stated to be challenged by the Petitioner before APTEL. However, insofar as the exercise of powers under Regulation 19 and the impugned order dated 24th April 2023, the challenge has been raised by way of the present writ petition.

10. Mr. Ramji Srinivasan, Id. Sr. Counsel urges before the Court that the impugned order is contrary to the scheme of the PNGRB Act as also to the Regulations. Reliance is placed upon Sections 11, 16, and 17 of the PNGRB Act to highlight the functions of the PNGRB. As per Section 17(3) of the PNGRB Act, whenever any application is received, the manner in which it would have to be dealt with, is to be in terms of the Regulations. Section 18 and 19 also requires publicity to be given to the said application in terms of the Regulations. Specific reliance is also placed upon Regulation 17, 18(5) and 18(6) to highlight that there is a complete process which has been laid down in the Regulations for issuance of a public notice in two newspapers (national and vernacular) and it is only after examining comments and objections, if any received, that the authorisation can be granted.

11. Id. Sr. Counsel for the Petitioner submits that by passing the impugned order dated 24th April, 2023, Regulation 19 has been invoked which has only been provided for removal of difficulties and the same has been misused by the PNGRB for the purpose of doing away with the entire procedure prescribed under the Act as also under the Regulations. The Id. Sr. Counsel also, upon a query, submits that insofar as the consequential order which has been passed on 25th April, 2023 is concerned, an appeal has been filed before APTEL, which is the Appellate Tribunal that can entertain

challenges to the orders of the Board as per Section 33 of the PNGRB Act. However, no challenge has been raised in the said appeal before APTEL, in respect of the order dated 24th April, 2023 which has been impugned in the present writ petition.

12. It is the submission of the Id. Sr. Counsel for the Petitioner that the entire procedure prescribed under the PNGRB Act and Regulations has been by-passed. Thus, the process of issuance of authorisations consequent upon the impugned order being passed to various entities, is completely vitiated. The same would have to be dealt with only under writ jurisdiction before this Court.

13. On the other hand, Mr. Sanjay, Jain, Id. ASG appearing for the PNGRB submits that this exercise of providing authorisations in the areas of Gurugram, Faridabad and Noida has been long pending. Id. ASG further submits that all the three entities which are involved in these three areas who may have objections in respect of the authorisations issued are already interlocked in a dispute which has been pending for several years before APTEL. Currently, APTEL is completely seized of all the disputes. Thus, it is his contention that this Court ought not to entertain the present writ petition. Specific reference is made to Section 33 of the PNGRB Act which provides an appellate remedy against any order or decision made by the PNGRB.

14. Id. ASG also relies upon the order passed by the APTEL on 30th November, 2022, post the order of the Supreme Court in respect of these very areas where certain directions have been issued to the PNGRB. Pursuant to this particular order passed by the APTEL, the PNGRB has also passed directions on 25th April, 2023 dealing with all the three areas and the

authorisations issued in respect of these three areas. Since the parties are already before APTEL, it is his submission that the exercise of writ jurisdiction is not warranted in the present case.

15. Mr. Basava Prabhu Patil, Id. Sr. Counsel appearing for Respondent No. 2- Haryana City Gas Distribution Ltd. ('HCGDL') submits that the filing of this writ petition is *malafide* inasmuch as Haryana City Gas Distribution Ltd. is a party which is affected by the challenge which has been raised in this writ petition. The Petitioner has chosen not to implead Haryana City Gas Distribution Ltd. despite a caveat having been filed before the PNGRB. It is only upon the said Respondent having learnt of the filing of this writ petition and appearing on the last date that the said Company has now been impleaded. He further submits that the Petitioner's intention is to keep the authorisations under a cloud of doubt. Though the Petitioner itself has filed its appeal under Section 33 of the PNGRB Act, it chose not to get the same listed yesterday before the APTEL when other connected appeals were already listed.

16. Mr. Jain, Id. ASG has also highlighted the fact that since all the objections and authorisations are already being raised before the APTEL, the entire process of Regulation 18(5) and 18(6) would only have been a mere formality and was not required to be exercised even on merits.

17. Heard. In the applications dealing with these matters in the **M.C. Mehta (supra)** case, the Supreme Court vide its order dated 6th September, 2022 directed as under:-

"We seem to be spending time on something which we are not required to so spend!"

In a matter dealing with air pollution where to avoid large vehicular pollution, piped gas could be a

methodology used, was sought to be taken forward. It appears to us from this voluminous record that the fundamental problem was Petroleum and Natural Gas Regulatory Board was not manned by the requisite number of members who could perform the functions of the Regulator (something not new which continues in various tribunals). Thus, the apex Court has been burdened with all this, while it should be the Regulator who should be looking to the matter. From the Regulator, an appeal is provided to the appellate tribunal and only thereafter would the occasion arise for this Court to apply its mind.

We are now told that wisdom has finally dawned, to a limited extent at least by appointing three Members to the Board which is the minimum coram. We are told that there are still two vacancies in existence. We call upon the Central Government to take expeditious steps to fill in these vacancies at the earliest preferably within a period of three months so that a full functioning Board is in place.

At the inception we may note that learned ASG made a statement that the licence granted by the Government should prevail. Insofar as the learned counsel for the State is concerned, she submits that the instructions are to the limited extent that the Regulatory Body may take a call on the issue of licences issued by the Centre and the State.

We may note that the fulcrum of the submissions of Mr. Shyam Divan, learned senior counsel appearing for IGL is that it is high time that an interim order which was granted on 04.04.2008 needs to be dissolved as it was only an interim agreement. A reading of that order shows that, at that stage, the Bench considered the appropriateness of an interim arrangement but since then, much water has flowed.

We are of the view that in the present proceedings, we are not required to decide the dispute inter se the private parties which would have to be considered by

the appropriate forum, be it Regulator or anyone else.
We leave it at that.

As far as the interim order dated 04.04.2008 is concerned, 14 years have passed since the order was made and thus, we would have to provide a sun set time for this order to cease to operate making it clear that the grant or extinguishment of this order no way affects the rights and obligations of the parties who are free to take recourse to appropriate legal remedies to enforce their respective rights. In fact for that matter, even the continuation of the interim order is in the same scenario.

We consider appropriate to permit this interim order to operate for a period of one year from today in order to give time to the parties to work out their remedies. As far as the Regulator is concerned, it is free to proceed with its role with the relevant coram now available whether regarding the present dispute or any other dispute.

All pending applications stand disposed of with the aforesaid order closing the subject in question.”

18. A perusal of the above order would show that the Court has directed the appropriate forum to look into the entire dispute in respect of issuance of authorisations. Pursuant to this order, the PNGRB has undertaken the exercise and issued the impugned order dated 24th April 2023 as also the consequential authorizations dated 25th April, 2023, *qua* different geographical areas.

19. The impugned order dated 24th April, 2023 highlights one important fact i.e., in paragraph 3 it records that the consumers in the geographical areas of Gurugram, Faridabad and Noida have been continuously deprived of gas distribution compared to other geographical areas where authorised entities are already operating. The said paragraph of the impugned order is

extracted as under:

“3. A substantial time has already elapsed and consumers in these three GAs are deprived of the natural gas as compared to the consumers residing in the GA’s authorised who have made submissions during the same time or on appointment of PNGRB in 2007, due to pending litigations by the entities. Board is putting its continuous efforts to decide the matter of authorization for aforesaid GAs on priority”

20. It is the observation of this Court that more than 15 years have already passed since the setting up of the PNGRB and for whatever reason, in these areas, the authorisations have been held up. The order of the Supreme Court also reflects this without any doubt when it records that environmental concerns were raised because of which such distribution was deemed necessary to the consumers.

21. The impugned order also records the pendency of **M.C. Mehta** (*supra*) in respect of these areas, which was pending before the Supreme Court, which has now been decided. The impugned order further records that vide order dated 30th November, 2022 the APTEL has directed the Board to take up the claim of the Petitioner for deemed authorisation in respect of the areas of Gurgaon, Noida and Faridabad. The relevant extract of the order of APTEL is extracted as under:

“I. The Board is requested to take up for consideration for appropriate orders the intimation(s) of the appellant Indraprastha Gas Limited respecting its claim of deemed authorisation concerning GAs of Gurugram, Faridabad and Noida ahead of all other pending matters relating to the said GAs;”

22. A perusal of the impugned order reveals that the two main factors

which were borne in mind by the PNGRB was the interest of the consumers in these areas, and the long delay in the issuance of authorisation in these areas. The exercise of powers under Regulation 19, to exempt the prescribed procedure, could sometimes be warranted for the larger good.

23. A perusal of Section 33 of the PNGRB Act clearly shows that any order or decision is appealable to the Appellate Tribunal i.e., APTEL. This would include the decision which is impugned before this Court. If the prescribed procedure under the Act or the Regulation has not been followed by the Board, the APTEL would be fully empowered to take note of the same and adjudicate the said issue by itself. Though the remedy of a writ petition would be available under certain circumstances, it is always the discretion of the Court whether to exercise the same given the facts and circumstances of each case.

24. In the present case, the entities have been locked in disputes for more than 15 years. The Petitioner itself has been the beneficiary of the impugned order dated 24th April, 2023, as it has received authorisation in some areas. An appeal is stated to have been filed challenging the consequential order dated 25th April, 2023.

25. The prayer in this writ petition is for quashing of the 24th April, 2023 order along with other consequential actions. Entertaining of this writ petition would clearly result in multiplicity of proceedings and there is a possibility of conflicting rulings. It could also further delay the process of setting up of distribution networks in these geographical areas which would be contrary to public interest.

26. The recent decision of the Supreme Court in ***South Indian Bank v. Naveen Mittal Philip [SLP (Civil Nos. 22021-22022, date of decision 17th***

April 2023] clearly holds that when an expert body has been constituted under the statute for the purposes of adjudication of disputes, writ jurisdiction ought not to be exercised. The relevant portion of the said judgment reads as under:-

*“13. In view of the fair stand taken by the learned Senior Counsel appearing for the Appellants, we do not wish to interfere with the impugned orders passed. **We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute.** We are also constrained to take judicial notice of the fact that certain High Courts continue to interfere in such matters, leading to a regular supply of cases before this Court. One such High Court is that of Punjab & Haryana.*

*14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations. **When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation.** A question as to whether such a violation would be over a mandatory prescription as against a discretionary one is primarily within the domain of the Tribunal. So also, the issue governing waiver, acquiescence, and estoppel. We wish to place reliance on the decision of this Court in *Hari Vishnu Kamath v. Syed Ahmad Ishaque*, (1955) 1 SCR 1104.*

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16. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus is a prerogative writ. In the absence of any legal right, the Court cannot exercise the said power. More circumspection is required in a

*financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India. When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the noncompliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative. We wish to quote with profit a recent decision of this Court in **Radha Krishan Industries v. State of H.P.**, (2021) 6 SCC 771.*

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18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal."

27. In the above facts and circumstances, this Court is not inclined to entertain the present writ petition. The same is accordingly dismissed. Having held so, the remedies of the Petitioner to approach the APTEL in accordance with law and to raise all grounds which are available to it are not foreclosed.

28. The dismissal of this writ petition would not come in the way of the said objections being entertained by APTEL which would be adjudicated without being affected by this order.

29. The present petition is dismissed with all pending applications, if any, in these terms.

**PRATHIBA M. SINGH
JUDGE**

MAY 25, 2023/mr/rp
(corrected & released on 29th May, 2023)