

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

% **Judgment reserved on: 17 January 2023**
Judgment pronounced on: 15 March 2023

+ **W.P.(C) 11645/2022 & CM APPL. 34525/2022 (Interim Stay)**
AGP CITY GAS PRIVATE LIMITED & ANR.

..... Petitioners

Through: Mr. Paras Kuhad, Sr. Adv. with
Mr. Piyush Joshi, Ms. Sumiti
Yadava, Ms. Vatsla Bhatia, Mr.
Yagya Sharma, Mr. Manu
Agarwal, Mr. Jitin Chaturvedi,
and Mr. Shuaib Hussain, Advs.

versus

**PETROLEUM AND NATURAL GAS REGULATORY
BOARD & ORS.** Respondents

Through: Mr. Rahul Sagar Sahay, Mr.
Mohit Budhiraja, Ms. Taniya
Dhoulakhandi, Advs. for R-1.
Mr. Chetan Sharma, ASG with
Mr. Apoorv Kurup, CGSC with
Mr. Ojaswa Pathak and Mr.
Amit Gupta, Advs. for UOI/R-
2.
Mr. Jayant Mehta, Sr. Adv.
with Mr. Govind Manoharan
and Mr. Nakul Rajan, Advs. for
R-3.
Mr. N.L. Ganapathi and Mr.
Siddhant Garg, Advs. for R-4.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

A.	PRELUDE	Paras 1 - 3
B.	ESSENTIAL FACTS	Paras 4 - 24
C.	THE AGP SUBMISSIONS	Paras 25 - 60
D.	PNGRB SUBMISSIONS	Paras 61 - 69
E.	CONTENTIONS OF EICL	Paras 70 - 84
F.	ARGUMENTS OF GAIL	Paras 85
G.	AGP IN REJOINDER	Paras 86 - 96
H.	PNGRB AND EXCLUSIVITY – HISTORICAL BACKDROP	Paras 97 - 107
I.	CGD NETWORK AND CASCADES	Paras 108 - 117
J.	RECONCILING S. 2(i) WITH REG. 2(1)(i)	Paras 118 - 122
K.	THE PROVISO AND READINESS TO SUPPLY	Para 123 – 134
L.	THE ARGUMENT OF PROGRESSIVE EXCLUSIVITY	Para 135 – 140
M.	PROVISO AND MWP MILESTONES	Para 141 – 157
N.	BALANCING OF INTERESTS	Para 158 – 159
O.	THE ARTICLE 19(1)(g) ARGUMENT	Para 160 – 165
P.	IMPACT OF PREVIOUS FORAYS	Para 166 – 175
Q.	SHIFTING STAND OF THE BOARD	Para 176- 180
R.	CONCLUSIONS	Para 181

S.	OPERATIVE DIRECTIONS	Para 182
----	-----------------------------	----------

A. PRELUDE

1. The writ petitioner assails the validity of an order dated 09 June 2022¹ passed by the **Petroleum and Natural Gas Regulatory Board**². The aforesaid order passed on a petition preferred by the third respondent holds that the petitioner no.1 is not in readiness to supply natural gas through interconnected pipelines and that consequently, the said respondent cannot be compelled to source natural gas from the petitioner no. 1. A prayer is additionally made for the Court declaring that the petitioner no. 1, being the **Authorized Entity**³ for the **City or Local Natural Gas Distribution**⁴ for the **Geographical Area**⁵ in question, it alone is authorised to supply, market and distribute natural gas including in its liquid state to consumers located in the said authorised area.

2. The writ petition raises a significant question concerning the nature of exclusivity that can be claimed by an AE to supply natural gas in all its forms within the GA, the obligations which stand placed upon the said AE and the circumstances in which the facility of exclusivity which stands conferred could be revoked. Of equal importance are the issues relating to the policy framework as set up by the Board aimed at according an impetus to natural gas as a viable and sustainable alternative fuel source, the nascent and developing market for natural gas, the need to incentivise entities and attract investments

¹ Impugned Order

² the Board

³ AE

⁴ CGD

⁵ GA

coupled with the principal objective of increasing the share of natural gas in India's energy basket and protecting the interests of the consumers. The significance of these and other issues which arise shall come to the fore as the narrative progresses.

3. The dispute arises with respect to the GA of **Alappuzha, Kollam and Thiruvananthapuram Districts**⁶ and in respect of which the petitioner no.1 admittedly is the AE in terms of the authorisation granted to it by the Board on 29 March 2019. The Board stands constituted in terms of the provisions of the **Petroleum and Natural Gas Regulatory Board Act, 2006**⁷. In discharge of its obligations and for the purposes of regulating the various functions to be discharged by it, the Board has proceeded to frame the **PNGRB (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008**⁸, the **PNGRB (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008**⁹, the **PNGRB (Access Code for City or Local Natural Gas Distribution Networks) Regulations, 2020**¹⁰ and the **PNGRB (Guiding Principles for Declaring City or Local Natural Gas Distribution Networks as Common Carrier or Contract Carrier) Regulations, 2020**¹¹. The entire controversy which stands raised in the present writ petition revolves around the meaning to be ascribed to the phrase “City or Local Natural Gas

⁶ AKT

⁷ the Act

⁸ the Authorization Regulations

⁹ the Exclusivity Regulations

¹⁰ the Access Code Regulations

¹¹ the Guiding Regulations

Distribution Network”¹² as defined in Section 2(i) of the Act together with Regulations 2(1)(i) and 3 of the Authorization Regulations and the expression “*piped natural gas*” as appearing therein.

B. ESSENTIAL FACTS

4. Before proceeding to notice the legal questions which arise, the following essential facts would merit being noticed. On 06 April 2018, the Board issued bid documents for the 9th CGD Bid Round. An Addendum to the aforesaid bid document is stated to have been published on 31 May 2018. The said Addendum in terms of Clause 8 stipulated that the term compressed natural gas¹³, CNG Stations and natural gas would have to be understood in light of Sections 2(k), 2(l) and 2(za) of the Act.

5. On 28 September 2018, a consortium of AG&P LNG Marketing Pte. Ltd. And Atlantic Gulf and Pacific Company of Manila Inc. was declared successful in respect of the GAs of Jaisalmer, Jodhpur, Kanchipuram and Ramanathpuram. The aforesaid authorisation is stated to have been subsequently amended in favour of the petitioner no. 2 herein. The 10th CGD Bid round was launched on 06 November 2018. This included the AKT GA. The consortium of bidders noted above was identified for the said GA. The aforesaid authorisation made in favour of the bidding consortium on 26 February 2019 is stated to have been subsequently amended in favour of petitioner no.1.

¹² CGD Network

¹³ CNG

6. On 19 August 2019, the first petitioner submitted its **Detailed Feasibility Report**¹⁴ for the AKT GA. According to the said petitioner it had indicated in that DFR that supply of **Liquefied Natural Gas**¹⁵ would also be affected through trucks and that the aforesaid mode would form part of the CGD Network of the AKT GA. On 02 June 2020, the Board is stated to have issued a clarification that any entity could set up and operate an LNG Station in a GA even if it were not the AE. The aforesaid notice was thereafter clarified by a communication of 23 July 2020 issued by the Board stating that entities would be free to operate LNG Stations only for the purposes of distributing LNG in liquid state to the transport sector. It further stipulated that other than the supplies being made to the transport sector, only the AE identified for the purposes of distribution and supply of natural gas to consumers with a demand up to 50,000 SCMD would be entitled to make supplies. The aforesaid public notices came to be assailed by Gujarat Gas Ltd. by way of **W.P. (C) 1711/2021**¹⁶. While dealing with the said writ petition, the Court noted the essence of the challenge laid by the petitioner there which had asserted that by virtue of being the AE, it would have exclusive rights of running the CGD Network in the city of Rajkot and that the public notices issued clearly impinged upon the exclusivity which stood conferred upon it for the entire economic life of the project. While dealing with the said challenge, the Court on 16 February 2021 while disposing of the writ petition held as under: -

¹⁴ DFR

¹⁵ LNG

¹⁶ Gujarat Gas [I]

“6. Mr. Gourabh Banerjee, Id. Senior Counsel appears for PNGRB. His submission is that the two public notices do not impinge upon the rights of the Petitioner in any manner whatsoever. According to PNGRB, the public notices are restricted to the establishment and operation of Liquefied Natural Gas Stations (*hereinafter*, ‘LNG Stations’) for dispensing natural gas in liquid state only to the transport sector and not CNG or LCNG, which is covered in the definition of ‘natural gas’. Id. Senior counsel further submits that in any event, whenever any consumer, including an industrial consumer, has a requirement of upto 50,000 SCMD, the supply to such a consumer can only be made after authorization from the Petitioner and no third party can supply the same. Reference is made to letter dated 12th January, 2021, which reflects the understanding of the Petitioner in this regard.

7. Heard Id. Senior Counsels for the Petitioner and Respondent No.1. Under the impugned public notices, licenses are to be issued by the Petroleum and Explosives Safety Organisation (*hereinafter*, ‘PESO’), which has not entered appearance. However, the stand of the Petitioner and PNGRB is clearly contained in the public notices, as also in the letter dated 12th January, 2021. The relevant extract of letter dated 12th January, 2021 is set out hereinbelow:

“ ...

5) *In fact the PNGRB has vide Public Notice No:PNGRB/AUTH/I-CGD (02)/2020 dated 23.07.2020 ("2020 July Clarification"), clarified that only an LNG Station which dispenses LNG in liquid state only to the transport sector is being permitted to be installed vide Public Notice No: PNGRB/ AUTH/I-CGD (02)/2020 dated 02.06.2020 ("2020 June Notice"). The 2020 June Notice had stipulated that since only LNG Station dispenses natural gas in liquid form to vehicles without any pressure or conversion into gas, it is not covered in the scope of "CNG Station". Thus, only LNG Stations can be installed by an entity not being the AE for the geographical area and even then such entity will have to comply with the provisions of the PNGRB Act and other applicable regulations including the Petroleum and Natural Gas Regulatory Board (Technical Standards and Specifications including Safety Standards for Liquefied Natural Gas Facilities) Regulations, 2018 ("T4S Regulations"). A copy of the 2020 July Clarification and 2020 June Notice, is provided as Annexure C for reference.*

6) *Thus, under the PNGRB Act and the governing framework established thereunder, it is not permissible for an industrial consumer, having a requirement of upto 50,000 SCMD to establish a LNG receiving, storage and*

regassification station and receive natural gas from a third party. Such an action violates the infrastructure exclusivity vested with the authorized CGO entity. ... ”

8. A perusal of the above letter clearly shows the understanding of the Petitioner in respect to the two impugned public notices. It is clear from the Petitioner's understanding of the two public notices that the public notices only deal with LNG stations dispensing natural gas in liquid form to vehicles without any pressure or conversion into gas. Such stations would not be covered within the scope of CNG stations. Thus, as per the Petitioner itself, any industrial consumer having a requirement of up to 50,000 SCMD, cannot receive natural gas from any third party. This stand of the Petitioner is acceptable to PNGRB as being the understanding of the two impugned notices.

9. Thus, it is clarified that insofar as the two impugned public notices are concerned, if any industrial consumer has requirements up to 50,000 SCMD, such industrial consumers would only receive natural gas from the Petitioner and not from any third party. With this direction, the exclusivity of the Petitioner is adequately protected. The said exclusivity would, however, not extend to LNG stations dispensing natural gas in liquid form.

10. With these observations, the petition is disposed of. If the parties require any further clarification in respect of the two public notices, they are permitted to approach the PNGRB for redressal of their grievances in accordance with law.”

7. On 18 August 2020, the Board while responding to a communication of 08 August 2020 addressed by Honda Motorcycle & Scooter India Pvt. Ltd. took the position that as per Regulation 3(2)(a) of the Authorization Regulations, customers having requirement of natural gas up to 50,000 SCMD are to be supplied through the CGD Network. It further clarified that until the CGD Network is ready to supply natural gas, a customer, other than domestic, PNG and CNG consumer, shall have the right to source its supply from any other alternate source or supplier with the prior permission of the Board. It further stated that the aforesaid alternate source of supply would

terminate once the CGD Network is ready to supply natural gas to the said customer.

8. By way of a letter dated 16 December 2020, the third respondent approached the Board seeking permission to source LNG through tankers from Petronet Limited, Kochi or Indian Oil Corporation Ltd¹⁷, Ennore since no natural gas pipeline connection was available in the vicinity of its factory. The said communication reads as under: -

“16th December 2020

To,
The Secretary,
Petroleum and Natural Gas Regulatory Board,
1st Floor, World Trade Centre,
Babar Lane, Connaught Place,
New Delhi – 110001.

Sub: Request for permission to source LNG

Dear Sir,

We, EICL Limited, engaged in manufacturing of processed china clay and Calcined clay, installed a Liquefied Natural Gas (LNG) and re-gasification facility with LNG storage tank capacity of 110 M³ at our Speciality Product Division since no natural gas pipe line connection available at our factory premises located at Melthonnakkal, Thonnakkal P.O., Thiruvananthapuram district, Kerala.

We got license to operate this facility from PESO vide their letter no. S/HO/KL/03/224(592800) dated 03-07-2020.

Our estimated daily consumption of LNG is 3.3 metric ton in the initial phase and may go up to 7.0 metric ton subsequently.

Request your permission to source LNG through tankers from Petronet Limited, Kochi or Indian Oil Corporation Ltd, Ennore since no natural gas pipe line connection is available at the factory location.

¹⁷ IOCL

Thanking you,

Yours Faithfully

For EICL Limited
Authorised Signatories

Enc: License no S/HO/KL/03/224(S92800) from the office of Dy.
Chief Controller of Explosive, Kochi”

9. Responding to the aforesaid letter, the Board by its communication of 24 December 2020 apprised respondent no. 3 that its request had been forwarded to the AE, namely, the petitioner no. 1. The said letter of the Board reads as follows: -

“Ref: PNGRB/Monitoring/7/Misc-Consumer/(6)/2018
24th December, 2020

To,

EICL Limited

(**Kind Attn:** Shri B.S. Sunil (General Manager – Engg & Admin)
TC-79/4, Veli, Thiruvananthapuram, Kerala – 695021

Subject: Request for permission to source LNG under Regulation 3.2(a) of PNGRB’CGD Authorization Regulations

Sir,

This has reference to your communication dated 16.12.2020 and 29.07.2020 on the above subject regarding supply of natural gas at your factory premises located at Melthonnakkal, Thonnakkal in Thiruvananthapuram District. The same has been forwarded to the authorized CGD entity (AGP City Gas Private Limited) to make natural gas available to you at the earliest. The CGD entity has further been advised to create necessary infrastructure and make natural gas available to you in a time bound manner. (Copy of the letter is enclosed)

2. You are hereby advised to approach the COD entity for further follow up action in this regard. In case you still face problems in getting natural gas supply, please free to approach PNGRB once again for solution.

Encl: As above

Yours faithfully,

(U.S. Sahay)
Deputy Adviser (M)”

10. In response to the aforesaid letter of the Board, the petitioner no. 1 by its letter of 04 January 2021 apprised the Board that it had already created the necessary infrastructure in the AKT GA to supply natural gas in liquid form to LNG customers. It also disclosed that it had initiated supply in the AKT GA to other LNG customers since January 2020. The said letter further apprised the Board that respondent no. 3 had finally been able to commission its LNG storage facility only on 05 December 2020 and thus its letter seeking permission to seek supply of natural gas from an alternative source on the ground that no natural gas pipeline connection is available is incorrect and misleading. It also asserted that it was ready and willing to supply natural gas to respondent no. 3. The petitioner no. 1 also brought to the notice of the Board that an LNG supply agreement had already been submitted for the consideration of respondent no. 3. It disclosed further that it had in the month of December 2020 itself supplied 154 MT of LNG to respondent no. 3.

11. Insofar as the third respondent is concerned, it is stated to have made investments at its Thiruvananthapuram Plant commencing from 2018 for setting up an LNG storage facility. The aforesaid facility is stated to have been readied for commissioning in December 2020. It was in the aforesaid backdrop that the third respondent is stated to have approached the Board vide its letter of 16 December 2020 to be permitted to secure supply of natural gas from alternate sources.

12. On 29 January 2021, the petitioner no. 1 is stated to have submitted its LNG price proposal for the month of February 2021. The third respondent alleges that the offered price was nearly double over

what was claimed for January 2021. The petitioner no.1 and the third respondent are stated to have held several rounds of negotiation as a consequence of which the petitioner no. 1 is stated to have reduced the basic price by USD 1. The third respondent further alleges that upon due enquiry it found that the petitioner no. 1 had sourced their supply from IOCL at Ennore as against the previous supplies which had been procured from Petronet, Kochi. They also alleged that the petitioner no. 1 had fraudulently invoiced them at a much higher rate and far in excess of the procurement price.

13. Faced with the above, the said respondent is stated to have addressed communications to the Board for being permitted to source their requirement of natural gas from alternate sources. On 10 March 2021, the Board taking cognizance of the complaints which were raised by the third respondent addressed a communication to the petitioner no. 1 asserting that since it had failed to lay in place the requisite pipeline infrastructure in the AKT GA, any customer would consequently have the right to obtain supply of natural gas from an alternate source or supplier. It accordingly permitted and authorised respondent no.3 to source its supplies from alternate entities till the CGD Network is ready.

14. Upon the issuance of the said communication, the petitioner no. 1 addressed a letter dated 13 March 2021 to the Board stating that it had always been ready and willing to supply gas to customers in the AKT GA who had their own facilities to receive natural gas in its liquid form. It was essentially asserted that since it was the AE, the permission accorded to the third respondent was wholly illegal and in

violation of the Authorization Regulations. It also referred to the public notice dated 23 August 2013 in terms of which supply and distribution of natural gas through cascades was permitted. A request was accordingly made for the communication of 10 March 2021 being withdrawn.

15. The stand of the petitioners principally rested on the order dated 16 February 2021 rendered by this Court in *Gujarat Gas [I]* and which had taken on board the stand of the Board that it was not permissible for an industrial consumer having a requirement up to 50,000 SCMD to receive natural gas from a third party. It was highlighted that as per the Board itself such an action would be violative of the infrastructure exclusivity which stands conferred upon the AE. The request for withdrawal of the letter dated 10 March 2021 was again reiterated in terms of a communication dated 29 April 2021 addressed to the Board. The petitioners ultimately assailed the validity of the communication dated 10 March 2021 by preferring W.P. (C) 5283/2021 before this Court.

16. On 30 June 2021, the Board issued yet another public notice soliciting comments from all stakeholders with respect to supply of natural gas, including LNG, either by way of cascades or through any mode other than pipelines. Comments were also sought with respect to the interpretation to be accorded to the concept of exclusivity in a CGD Network. The said public notice came to be assailed by Gujarat Gas Ltd. by way of **W.P. (C) 7001/2021**¹⁸.

¹⁸ Gujarat Gas [II]

17. While dealing with the aforesaid challenge, the Court also took note of a contention addressed at the behest of the petitioners there that since the Board lacked the requisite quorum it could neither have issued the public notice nor could it take any policy decision based on comments that may be received. While dealing with the aforesaid contention, the learned Judge by its order of 26 July 2021 disposed of the writ petition observing as under: -

“5. On the other hand, learned counsel for the respondent, who appears on advance notice, while not disputing that the quorum of the respondent/Board does not exist as on date, submits that the impugned notice is merely a ministerial/procedural act, which has been done by the Secretary in order to facilitate the future decisions of the Board as and when the quorum is available. He further submits that merely because comments and views are being solicited from the stakeholders will not, in any manner, affect the existing rights of the petitioner, which would be governed by their own terms and conditions.

6. In the light of the aforesaid stand taken by the respondent, the petition is disposed of by clarifying that no decision on the views/comments which may be received by the respondent in pursuance of the impugned notice will be taken till the quorum of the respondent/Board is available. However, once the quorum of the Board is available, it will be open for the Board to take a decision whether any action is required to be taken on (i) the comments being solicited by the Secretary and (ii) the procedure to be followed for acting on those comments.

7. In the light of this order, if the respondent/Board still proceeds to hold an open house in terms of the impugned notice it will be made clear that the views of the stakeholders will be subject to the decision taken by the Board, once the quorum is available.

8. Needless to state that the impugned notice or the views/comments received pursuant thereto will not in any manner affect the existing rights of the petitioner, which will be governed by the terms and conditions of the authorisation in the petitioner's favour, and any consideration of the comments and views received will be taken only after the quorum is available.

9. The petition is accordingly disposed of in the aforesaid terms.”

18. The aforesaid order disposing of the writ petition was assailed by Gujarat Gas Ltd. by way of LPA 254/2021. On 18 August 2021, when the aforesaid appeal was called for consideration before the Division Bench of the Court, the following order came to be passed: -

“Present appeal has been filed by the Appellant assailing the order of the learned Single Judge dated 26.07.2021 whereby the learned Single Judge has disposed of the writ petition giving liberty to the Respondent to proceed to hold an Open House in terms of the impugned Notice dated 30.06.2021.

Learned Senior Counsel for the Appellant contends that the impugned Public Notice dated 30.06.2021 has been issued by the Secretary of the Petroleum and Natural Gas Regulatory Board (PNGRB) at a time, when the Respondent Board was not duly constituted and, therefore, the learned Single Judge ought to have quashed the notice as being *ultra vires* the power and functions of the Secretary in light of Section 10 of PNGRB Act, 2006. Having noted the fact that the Quorum of the Board was not complete, the learned Single Judge has permitted the Board to hold an Open House, although with a caveat that the views of the stakeholders received by the Respondent will be subject to the decision of the Board once the Quorum is available. The argument is that the learned Single Judge has failed to appreciate that the impugned Notice and thus the consequential proceedings are *void ab initio*, as having been issued when the Board was not duly constituted and thus the Notice is beyond the functions and jurisdiction of the Secretary, which are circumscribed by Section 10(1) of PNGRB Act, which mandate that its Secretary has to perform its functions under the control of the Chairperson, as specified by Regulations. Clearly, in the absence of the Chairperson of the Board, there was no Board in existence and the Secretary cannot take over the functions of a Board.

Issue notice.

Mr. Utkarsh Sharma accepts notice on behalf of the Respondent and seeks time to file written synopsis.

Let written synopsis be filed by the parties, not exceeding three pages, before the next date of hearing.

List on 30.09.2021.

In the meantime, there shall be a stay of the operation, implementation and execution of the Public Notice bearing No. PNGRB/Auth/1-CGD(07)/2021 dated 30.06.2021, which is appended as Annexure P-1 to the Memo of this appeal as well as

further proceedings pursuant thereto, as in our prima facie view, in the absence of a duly constituted Board, the impugned Notice was without jurisdiction being violative of Section 10(1) and other provisions of the PNGRB Act. We also stay the operation of the judgment dated 26.07.2021 passed in W.P. (C) No.7001/2021, impugned herein and further direct that even if the PNGRB is duly constituted during the pendency of this appeal, it shall not take any decision based on the views, comments or proceedings pursuant to the impugned Notice, without the leave of this Court.

The aforesaid interim order shall remain in force till the next date of hearing.”

19. In the meanwhile, the Board proceeded to file a short reply affidavit in the writ petition, namely, W.P. (C) 5283/2021 which had been instituted by the petitioners assailing the validity of the communication dated 10 March 2021. In the said affidavit the Board took the following stand: -

“5. That it is apposite to highlight the essential nature and meaning of the exclusivity, which is granted to the entity authorized to develop a CGD Network in a particular Geographical Area. As per the provisions of the PNGRB Act and the Regulations framed thereunder, Natural Gas Pipelines (NGPL) and Petroleum and Petroleum Products Pipelines (PPPL) are allowed either as "Common Carrier or Contract Carrier" or "Dedicated Pipelines". NGPL and PPPL may be authorized as Common Carrier or Contract Carrier from the very first day of authorization whereas Dedicated Pipelines may be converted and declared as Common Carrier or Contract Carrier by the Board. However, in case of CGD Networks, certain exclusivity period has been envisaged to be provided under the Act and Regulation framed thereunder and during such period, the CGD Network shall enjoy immunity from the purview of being declared as a Common Carrier or a Contract Carrier and only the authorised entity is allowed to use the CGD Network for supplying the gas during such period, within its authorized Geographical Area. It is only after the expiry of the exclusivity period that the CGD Networks can be declared as either Common Carrier or Contract Carrier and opened up for use by the other interested entities (shippers) for supply of gas within the authorized Geographical Area, upon payment of transportation charges to the authorised entity.

6. That a CGD Network has been defined under Section 2 (i) of the PNGRB Act to mean an interconnected network of gas pipelines and the associated equipment used for transporting natural gas from a bulk supply high pressure transmission main to the medium pressure distribution grid and subsequently to the service pipes supplying natural gas to domestic, industrial or commercial premises and CNG stations situated in a specified geographical area.

7. That over the years, CGD Networks, being an interconnected network of pipelines, have been used to transport and distribute natural gas, in the form of CNG, to domestic, industrial and commercial consumers within a geographical area. Recently, with the rise in use of Liquefied Natural Gas (LNG), various issues with regard to supply of LNG in the liquid state have been raised before the Board. First, various representations were received by the Board from entities seeking clarity with respect to establishment and operation of standalone LNG Stations in a geographical area and as to whether the same would amount to an infringement of the exclusivity of the authorised entity operating a CGD Network within that geographical area.

8. That in order to clarify the legal position in relation to the said aspect, the Board issued a Public Notice dated 02.06.2020, wherein the Board, after quoting the relevant provisions, highlighted the inherent differences which exist between CNG Stations and LNG Stations and further noted that while the Act has extensively covered CNG Stations and the mode of granting authorizations for a CGD Network, which is essential for establishment of a CNG Station, it is silent in relation to LNG Stations and the mode of authorization for setting up the same. Analyzing thus, the Board reached the conclusion that any entity can set up a LNG Station in any geographical area or anywhere else, irrespective of whether it is the authorised entity for that geographical area, subject to such entity complying with the provisions of the extant Regulations of the Board, specifically the PNGRB (Technical Standards and Specifications including Safety Standards for Liquefied Natural Gas Facilities) Regulations.

9. Subsequent to the issuance of Public Notice dated 02.06.2020, various representations/correspondences were received by the Board from several entities, requesting the Board to clarify the ambit of the Public Notice dated 02.06.2020. Pursuant to the said requests, the Board issued another Public Notice dated 23.07.2020, wherein the Board clarified that the Public Notice dated 02.06.2020 is applicable only for the establishment and operation of LNG Stations for dispensing LNG in liquid state only to transport sector, and not as CNG or L-CNG.

10. It was further clarified by the Board in the Public Notice dated 23.07.2020 that only the entity, authorized to lay, build, operate or build a CGD Network within a geographical area, shall market natural gas, up to 50,000 SCMD, to industrial and commercial customers in an authorized geographical area, during the marketing exclusivity period, which is defined under Section 2 (u) of the PNGRB (Access Code for City or Local Natural Gas Distribution Networks) Regulations as the period of exclusivity from the purview of common or contract carrier as per the Exclusivity Regulations. This clarification was issued by the Board on the basis of its understanding of Regulation 3(2)(a) of the PNGRB (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations (hereinafter referred to as the Authorization Regulations)."

20. It further went on to refer to the orders passed by the Court in *Gujarat Gas [I]*. Insofar as the AKT GA is concerned, it made the following disclosures: -

"13. That in the meanwhile, the Board had also received requests from two customers in Alappuzha, Kollam and Thiruvananthapuram GA, the same being HLL Lifecare Limited and EICL Limited, requesting for permission from the Board, in terms of proviso to Regulation 3(2)(a) of the Authorization Regulations, to permit them to get supply of LNG from any other alternate source or supplier, since the CGD Network by the authorised entity, the Petitioner herein, is not ready. The Board, after scrutinizing the Quarterly Progress Reports submitted by the authorised entity, came to the conclusion that since the CGD Network of the authorised entity is not ready, the customer may be permitted to get supply from alternative source or supplier in terms of proviso to Regulation 3(2)(a) and accordingly, the letter dated 10.03.2021 was issued to the Petitioner (authorised entity) and the two customers.

15. That subsequent to the order dated 16.02.2021 passed by this Hon'ble Court in Writ Petition (C) No. 1711 of 2021, PNGRB has also received several representations and correspondences from various entities and consumers giving their comments in respect of the Public Notices issued by the Board. The representations from the consumers inter-alia stated that the Board has committed a mistake in its interpretation of Regulation 3(2)(a) of the CGD Authorization Regulations and that the Act or the Regulations do not cast an obligation on the consumer to take natural gas from a particular entity only.

16. That the Board is presently seized of these issues and is well aware that these issues have serious and far-reaching implications and thus they need to be dealt with holistically and comprehensively, on the basis of an extensive interpretation of the various provisions of the Act, especially considering the fact that the Board has been mandated under the Act to protect the interests of both the consumers as well as the entities.

17. That the Board has the requisite quorum of two members for holding its meetings and the Board shall be considering the various issues, which inter-alia include issues pertaining to the inter-play between the exclusivity granted to an authorized CGD entity and the supply and distribution of natural gas, including LNG, through modes apart from using the pipelines constituting the CGD Network, in a holistic manner, after due deliberations with the stakeholders.

18. That till the time a decision is taken by the Board in respect of the above said issues, the Board, taking into consideration the stand taken by the Board in Public Notice dated 23.07.2020 and the assurance of the authorised entity that it is willing to supply natural gas to entities within its Geographical Area, has decided to withdraw the letter dated 10.03.2021, with liberty to pass appropriate directions based on the decisions which may be taken by the Board in respect of the above said issues.”

21. Consequent to the Board taking the position that the letter of 10 March 2021 was being withdrawn, the petitioners proceeded to have the writ petition disposed as not pressed. The Board proceeded to formally withdraw the communication of 10 March 2021 vide its letter dated 11 January 2022. The said position was also communicated to the third respondent vide the letter of the Board dated 13 January 2022.

22. It becomes relevant to note that subsequent to the issuance of the letter dated 10 March 2021, the respondent no. 3 is stated to have entered into an agreement with **Gas Authority of India Limited**¹⁹, the respondent no. 4, for supply of natural gas. GAIL in terms of its

¹⁹ GAIL

email dated 04 February 2022 and referring to the Board having withdrawn the letter of 10 March 2021 proceeded to terminate its agreement with respondent no. 3 dated 03 November 2021.

23. The aforesaid steps taken by the Board led to the third respondent filing a writ petition before the Kerala High Court assailing the validity of the decision of the Board as embodied in its letter of 11 January 2022. On 28 February 2022, an interim order was passed on the said writ petition with that High Court directing GAIL to continue to supply gas to the third respondent till the next date fixed.

24. On 08 April 2022 the Kerala High Court set aside the communication of the Board dated 11 January 2022 and accorded it liberty to draw proceedings afresh after placing all concerned parties on notice. The Kerala High Court while framing the directions for remand continued the interim order that had been passed on the said writ petition on 28 February 2022. Pursuant to the aforesaid remit, the Board commenced proceedings and granted parties time to file their respective submissions. It is on the aforesaid proceedings and after hearing respective sides that the Impugned Order of 09 June 2022 has come to be passed. The petition which had been retained on the board of that High Court was ultimately disposed on 13 June 2022.

C. THE AGP SUBMISSIONS

25. Appearing for the petitioners, Mr. Kuhad, learned senior counsel, firstly took the Court through the historical background relating to the policy initiatives adopted by the Union Government insofar as natural gas is concerned and the avowed objective to

establish a diversified energy bouquet of the country and to reduce dependence upon coal and petroleum. According to Mr. Kuhad the issue of adoption of alternate energy sources including natural gas was firstly taken up by the Supreme Court in the matter of **M.C. Mehta vs. Union of India**²⁰. According to learned senior counsel, on 25 March 2004 the Supreme Court in **Re: Special Reference No. 1 of 2001**²¹ significantly held that natural gas in all its forms would fall within the ambit of Entry 53 List 1 of the Seventh Schedule of the Constitution and thus conferring exclusive legislative competence upon the Union. It was the submission of Mr. Kuhad that the judgment of the Supreme Court referred to above was the precursor for the promulgation of the Act. Mr. Kuhad then took the Court through the Statement of Objects and Reasons and referred to the avowed objectives of the Act being the uninterrupted and adequate supply of petroleum products and natural gas in all parts of the country including remote areas at fair prices and the aim of the Legislature to promote the creation of competitive markets and providing access to common or contract carriers on a non-discriminatory basis.

26. Referring to the Preamble of the Act, Mr. Kuhad submitted that the establishment of the Board was the embodiment of the legislative intent to create an apex body conferred with the power to regulate all aspects relating to petroleum products and natural gas including refining, processing, storage, transportation, distribution and marketing thereof. The Board, according to learned senior counsel, was envisaged to protect the interest of consumers and entities and to

²⁰ (2002) 4 SCC 356

²¹ (2004) 4 SCC 489

ensure uninterrupted and adequate supply of petroleum products and natural gas in all parts of the country as also to promote the creation of competitive markets.

27. Mr. Kuhad also took the Court extensively through the Expert Committee Report embodying the recommendations framed for re-evaluating the bidding criteria and for development of CGD Networks in the country. Mr. Kuhad referred to the key focus areas of the terms of reference which were stated to be (a) the creation of robust infrastructure development across the length and breadth of the country (b) maximum penetration and availability of natural gas across all customer segments (c) pipeline availability, connectivity, access and gas charge; and (d) increased share of natural gas in the fuel consumption market. Mr. Kuhad laid emphasis on the detailed study with respect to global models of development of CGD Networks and to examine the effectiveness of current CGD parameters which was undertaken by the Expert Committee. Emphasis was laid on the following passages as appearing in the Final Report of the Committee and insofar as it pertained to the exclusivity period to be accorded to AEs:-

“Introduction

A round table discussion, chaired by Hon'ble Minister of State - Independent Charge, Petroleum and Natural Gas, was held on 26.05.2016 regarding development of Piped Natural Gas (PNG) roadmap. Pursuant to the discussion, Ministry of Petroleum and Natural Gas (MoP&NG) vide letter No. L-16021/9/2013-GP-I (pt.) dated 16th August 2016, constituted a committee to examine the City Gas Distribution (CGD) bidding related issues.

(i) Committee Members

MoP&NG nominated the following members/entities to the committee:

- (a) Secretary, Petroleum and Natural Gas Regulatory Board (PNGRB) (Convener)
- (b) Official of MoP&NG
- (c) Official of PNGRB
- (d) Representative from GAIL (India) Limited
- (e) Representative from Gujarat Gas Limited
- (f) Representative from Indian Oil-Adani Gas Private Limited (IOAGPL)

(ii) Terms of Reference (ToR) of the committee

- (a) Recommend the parameters to evaluate the geographical boundaries for a single CGD network keeping intact the techno-commercial aspects of a CGD network as well as protecting consumer interests.
- (b) Study global models of development of CGD network and evaluate the effectiveness of current CGD bidding parameters notified by PNGRB.
- (c) Recommend alternate models and criteria to award a CGD network which shall encourage public-private investment in CGD sector while keeping the consumers interests protected.
- (d) Recommend the models to enhance the gas consumption in a CGD network

(iii) Key focus areas based on ToR

- (a) Robust infrastructure development across the length and breadth of the country
- (b) Maximum penetration and availability of Gas across all customer segments
- (c) Pipeline availability, connectivity, access and gas charge
- (d) Increased share of natural gas in the fuel consumption basket

XXXX

XXXX

XXXX

C. Global Models of development of CGD network and effectiveness of current bidding parameters notified by PNGRB.

The Committee studied and deliberated on various global models. It is observed that in other gas distribution markets in developing countries and developed countries, both supply/ marketing and distribution exclusivity is for a fairly longer period. As markets mature, phased competition is

introduced on supply/marketing. The table at **Annexure-I** provides the international precedence on exclusivity.

D. Critical/Major Points of discussions

The Committee's deliberations brought the following major points with regard to CGD bidding:

I. Eligibility Conditions for bidders

- (i) Technical Eligibility
- (ii) Financial Eligibility

II. Minimum Work Programme (MWP)

III. Geographical Area (GA)

IV. Exclusivity Period (Marketing)

V. Connectivity to GA /Sub Transmission Pipeline (STPL)

VI. Bidding Criteria

E. Recommendations

.....

(iii) Geographical Area (GA)

Committee recommends that District boundary may preferably be kept as GA. It was further observed that the extant provisions in this regard are adequate which provide requisite flexibility.

(iv) Exclusivity Period (Marketing)

Committee felt that marketing exclusivity period is too short for CGD bidder's commercial benefit and insufficient to develop required infrastructure. It recommends that the marketing exclusivity period may be increased to 10 years from the date of authorization in line with the general trend and practices in other countries:

(v) Access to Third Party

Post marketing exclusivity period, access to third party to be provided by the authorized entity on non-discriminatory basis as per mandated CGD tariff regulation, in a transparent manner. Accordingly the third party access should be limited to the already laid CGD infrastructure.

(vi) Connectivity

PNGRB may ensure that the GA bid out shall have natural gas pipeline connectivity within the maximum distance of 50 km from the GA so that the connectivity and access to the GA can be provided within 270 days on non-discriminatory basis as per mandated natural gas pipeline tariff regulation, in a transparent manner. It will be imperative for the pipeline entity to extend the infrastructure, connectivity and access to the GA within 270 days at the transportation rate as may be determined by the mandated tariff regulations or on non-discriminatory basis in a transparent manner for one or multiple connectivity points available in the vicinity.

Provided where the natural gas pipeline entity is not in a position to provide the connectivity within stipulated time mentioned above, the same may be informed to the CGD entity and the PNGRB. The PNGRB may correspondingly extend the period of exclusivity based on the merits of the case equivalent to the period extended beyond the stipulated period.

XXXX

XXXX

XXXX

F. Model to increase gas consumption in CGD

To enhance the gas consumption and to move towards a gas based economy, the following suggestions are made

(i) Availability: Availability of natural gas in India primarily depends on resource endowment of the country. In India it has been observed that there is a decline in natural gas production over past few years. GoI has already initiated a policy measure in the name of HELP in March 2016, where more producer friendly pricing mechanism for capital intensive and complex exploration projects has been formulated.

Committee recommends rapid technology absorption and exploration strategy for tapping potential unconventional gas sources in the country like shale gas, to increase domestic production and availability of natural gas. Issue of natural gas availability may be mitigated through transnational pipelines and import of LNG. Underutilization of LNG regasification terminals on account of natural gas pipeline connectivity also impacts availability of natural gas.

Furtherance to this, it is also suggested that CGD gets a priority in allocation in marginal fields or a concession in bidding of marginal fields.

(ii) Affordability: For development of gas based economy, affordability of natural gas plays a vital role. Natural Gas should be affordable vis-a-vis alternative fuels. The issue of non-uniformity of Tax Structure across the States, i.e., VAT and Input Tax Credit issues, Excise Duty, Sales taxes etc. need to be addressed to enhance affordability of natural gas.

Committee recommends that on comparing overall social cost and heavy investment already made in gas based power plants, policy for generating power from a pool of Domestic and Imported gas may be formulated to increase share of natural gas in the energy basket.

The committee also recommends the inclusion of natural gas in the GST list at the lowest rate of 5% or the rate equivalent to subsidised LPG. The committee also suggests the inclusion of CGD in the direct tax provisions for tax holidays viz. 80 IA, 80 IB, etc. in the Union Budget.

The CGD sector may also be given preferences in MSME/ SSI through cheaper allocation to promote the Make in India and other initiatives and also for COGEN and CHP (Combined Heat and Power).

(iii) Accessibility: Around 15000 km of natural gas pipeline networks predominantly in Northern, Western and Southern part of the country connect almost all the major anchor load power and fertilizer consumers and existing and upcoming CGD networks. However the existing natural gas pipeline infrastructure is grossly underutilized due to poor availability of domestic gas and unaffordability of LNG.

Committee recommends that issues of availability and affordability of natural gas should be resolved to cover NE/Eastern/South-eastern states of the country.

There is a need to develop "Integrated National Gas Grid" connecting all sources with all major towns and demand centres. This shall spur growth in CGD sector, give rise to CNG corridors and increase the penetration of natural gas.

Planning of the National Gas Grid need to be done keeping in mind the national interest, GoI priority, gas sources, demand centres,

existing pipelines & capacity utilisation, future growth centres, etc. This can be done by a committee comprising all stakeholders.

Conclusion

The committee deliberated on the broader issues of CGD development based on the "Terms of Reference" issued by the Ministry of Petroleum and Natural Gas and experience gained over the number of years of the constitution of the PNGRB. The Committee jointly agreed on the recommendations mentioned herein above. The recommendations are expected to augment the developmental initiatives of the Government towards a gas based green fuel economy and in context to "Reduction in Pollution as committed in the United Nations Conference", "Gas 4 India", "Make in India", "Skill India", among others. The committee believes that the recommendations in addition to augmenting the developmental initiatives is also expected to encourage competitive bidding in CGD sector by providing an equitable platform and opportunity for existing and new players equally.

To support the drive of gas based economy the Nation needs to augment all type of energy sources to optimize India's energy mix for long term environmental sustainability and to reduce green house gas emission. It can be achieved by leveraging natural gas as a green fuel for Smart India through development of robust cross country pipeline and CGD sector at equal pace. The Indian gas market has an opportunity to transform and grow significantly which will be led by CGD."

28. The submissions with respect to exclusivity as conferred upon an AE were founded on the acknowledgment of the immense capital expenditure which is required for creation of infrastructure by private entrepreneurs and therefore the need to insulate AEs in the nascent years of implementation of the project. Mr. Kuhad laid emphasis on the fact that the capital expenditure required for the AKT GA itself was estimated to be over Rs.3,000 crores. Learned senior counsel submitted that the development of CGD Networks through private participation is a model which has been adopted globally and that the international practice has been to provide a period of exclusivity

during which an AE is obliged to create and lay down the infrastructure for distribution of natural gas and to recoup the expenditure incurred from internal accruals. Mr. Kuhad laid emphasis on the fact that the AE is not only obliged to create the minimum infrastructure, it is also placed under a duty to reach all charged areas irrespective of the level of demand and thus in effect create and lay in place infrastructure which would meet the demand of all potential consumers in the GA.

29. According to Mr. Kuhad the capital expenditure likely to be invested and spent in the creation of the specialized infrastructure is feasible only if a private entity which has undertaken that task is enabled to rely upon revenue generation as a source of capital investment itself. The concept of exclusivity, according to Mr. Kuhad, owes its genesis to Parliament as well as the Board being cognizant of the immense capital expenditure required for creation of infrastructure by a private entrepreneur without any State aid and therefore the imperative to shut out competition thus enabling the entrepreneur to recoup its investments from accruals that may be obtained from a GA.

30. Insofar as the AKT GA is concerned, it was pointed out that out of the total cost of about Rs.3,000 crores, the cost of Rs.2,650 crores is to be met from internal accruals only. This, according to learned senior counsel, required the petitioners to make an investment of approximately Rs.345 crores independently. The peculiarity of the natural gas market was also sought to be highlighted with the aid of the facts obtaining in the present case with Mr. Kuhad submitting that out of the envisaged capital expenditure of Rs.3,000 crores more than

Rs.2,300 crores was likely to be spent towards creation of infrastructure for supply to the domestic sector. It was pointed out from the DFR that the aforesaid projection was made by it bearing in mind that gas to consumers falling in the domestic sector is to be supplied at essentially an unremunerative price and thus leaving the AE to garner its internal accruals principally from industrial and commercial users. In order to offset the enormity of the capital expenditure involved, it was the submission of Mr. Kuhad, that it is imperative that the AE be granted the exclusivity to operate in the GA and to be recognized as the singular source from which natural gas in its varied forms may be obtained by customers.

31. Mr. Kuhad, referring to the Expert Committee Report, highlighted the fact that despite 8 previous CGD bidding rounds conducted between 2007-2017, the response from the private sector was tepid and only 14% of the country could be covered. This, according to learned senior counsel, was primarily due to the marketing exclusivity period at the relevant time being fixed at only 5 years. The period of 5 years, according to Mr. Kuhad, and which constituted the gestation period for the project clearly impacted the economic viability of the project and it was the aforesaid factor that led to the constitution of the Expert Committee by the Ministry of Petroleum and Natural Gas on 26 May 2016.

32. Learned senior counsel submitted that it was the recommendations submitted by the Expert Committee which were ultimately accepted by the Board and which led to substantial changes being introduced in the relevant Regulations and as a result of which

the period of exclusivity was increased from 5 years to 10 years. Mr. Kuhad also laid emphasis on the contemporaneous amendments made in the Authorization Regulations and more particularly to the definition of “*piped natural gas*” as contained therein which too was amended and an AE in terms thereof empowered to supply gas through cascades or any other permitted mode. According to learned senior counsel, it was these amended Regulations which formed the basis for the 9th, 10th and 11th CGD bidding rounds. The submission essentially was that the adoption of natural gas as an alternate energy resource is a significant shift in the energy policy adopted by the Union and that the said policy proceeds on the fundamental objective of impetus being accorded to the said source and thus result in a consequent reduction of dependence upon coal and other petroleum products. The submission was that the variety of modes available to be adopted and embraced by an AE is to aid the principal objective of increasing and broadening the reach of natural gas as a viable energy source.

33. Mr. Kuhad also referred to the following extracts as forming part of the Policy for Development of Natural Gas Pipelines and CGD Networks as notified by the Union Government on 20 December 2006.

“1. OBJECTIVE

1.1 Regulatory reforms permit and encourage market forces to enhance competition and produce a more competitive and efficient industry structure. While there is growing recognition that competition can reduce the need for regulation, in many areas there exist some areas of monopoly where the benefits of regulation potentially outweigh the cost. Natural gas pipelines infrastructure and city or local natural gas distribution networks fall under this category.

1.2 The natural gas sector is at the threshold of rapid growth in the country. With increased exploration efforts under NELP, large scale discoveries of gas in the East Coast, commissioning of the LNG import terminals in the West Coast, projected upcoming LNG terminals and the Government's initiatives in natural gas through transnational pipelines, there is an imminent need to provide a policy framework for the future growth of the pipeline infrastructure in the country with a view to facilitating the involvement of a nation-wide gas grid and the growth of city or local gas distribution networks.

1.3 The objective of the policy is to promote investment from public as well as private sector in natural gas pipelines and city or local natural gas distribution networks, to facilitate open access for all players to the pipeline network on a non-discriminatory basis, promote competition among entities thereby avoiding any abuse of the dominant position by any entity, and secure the consumer interest in terms of gas availability and reasonable tariff for natural gas pipelines and city or local natural gas distribution networks.

1.4 The Petroleum & Natural Gas Regulatory Board Act, 2006 (hereinafter referred to as the Act) provides the legal framework for the development of the natural gas pipelines and city or local gas distribution networks. This policy may be read in conjunction with the provisions in the Act and the rules and regulations framed thereunder. Unless otherwise stated, the various terms and phrases used in this policy will have the same meaning as stated in the Act and the rules and regulations framed thereunder,

xxx

xxx

xxx

3. GRANT OF AUTHORIZATION

3.1 No gas pipeline or the city or local gas distribution network will be laid, built, operated or expanded without the authorization by the Board.

Provided that such an authorization for gas pipeline shall be granted to any entity only if the design pipeline capacity is at least 33% more than the capacity requirements of the concerned entity plus the firmed up contracted capacity (termed as total capacity) and this extra capacity is available for use on common carrier basis by any third party on open access and non-discriminatory basis at transportation rates laid down by the Board. The capacity available under "open access" common carrier basis will be allocated in a transparent and objective manner in line with the regulations to be drafted by the Board in this regard.

3.2 If any issue arises relating to the gas pipeline access, capacity booking or the transportation tariff, the entities may

approach the Board who may pass such orders as deemed appropriate and fair on the facts of the case based on the provisions of the Act and the regulations.

3.3 The entity authorized to lay, build, operate or expand a city or local natural gas distribution network will need to follow the marketing service obligations as may be prescribed by the Board in accordance with the provisions of the Act. The Board may decide on the period of exclusivity to lay, build, operate or expand a city or local natural gas distribution network in accordance with its regulations in a transparent manner while protecting the consumer interest. The Board may through regulations, decide on the principles for determining the number of years for which the city or local natural gas distribution network shall be excluded from the purview of a common carrier or contract carrier being guided by various objectives in the Act and by following the principles that should be transparently and objectively stated by the Board in its regulations

3.4 Keeping in view the long term plan for the development of the natural gas sector and in public interest, the Central Government may, suo motu, form an opinion about the need for building a gas pipeline or a city or local distribution network on/in a particular route/ geographical area. In that case, the Central Government may suggest to the Board to invite applications from the interested parties in a transparent and objective manner in accordance with the provisions under the Act and as per the procedure prescribed under the regulations.

xxx

xxx

xxx

14. LONG TERM PLAN

With a view to facilitating the creation of a National Gas Grid and growth in the development of the city or local natural gas distribution networks, the Central Government may prepare a long-term perspective plan for creating gas pipeline network in consultation with the Board, State Governments, oil & gas industry, gas consuming industries and other stake- holders. The perspective plan will take into account the projected availability of gas/LNG from different sources, the demand centres and the need for Central Government intervention, if any, in making gas available to the consumers in different locations in the country. The long-term Plan will be kept in view by the Board, while authorizing/approving new gas pipelines or city or local natural gas distribution networks. The Central Government may review the perspective plan from time to time and modify the same appropriately.”

34. Learned senior counsel submitted that in case an AE is not granted the exclusive right to service all the customers situate within a GA insulated from competition it would be in no position to fund the investments which are required and create the requisite infrastructure. Turning then to the provisions of the Act itself, Mr. Kuhad submitted that the primary objective underlying the promulgation of the Act was to ensure uninterrupted and adequate supply of petroleum products and natural gas throughout the country and as an extension thereof for the creation of competitive markets which protect the interest of both customers as well as entities which undertake the obligation of laying in place the requisite infrastructure. It was highlighted that the Act formulates measures and adopts provisions which regulate all activities commencing from transportation upto the ultimate sale of petroleum products and natural gas. Emphasis was laid on the regulatory aspects of the Act extending to activities of transportation, distribution, marketing and sale as well as the entities which carry on those activities. It was submitted that the definition of natural gas as contained in **Section 2(z)(a)** clearly ropes in LNG and consequently the expression “*natural gas*” wherever occurring either in the Act or the Regulations would necessarily also include LNG within its ambit. Mr. Kuhad also laid emphasis on the fact that LNG, on account of its inherent properties, cannot be supplied through pipelines and therefore the necessity to adopt trucks and cascades as modes of supply for those whose requirement is LNG specifically.

35. Reference was also made to the provisions of Sections 14 and 15 which are extracted hereinbelow:

“14. **Register.**—

- (1) For the purposes of this Act, a register to be called the Petroleum and Natural Gas Register shall be kept at the head office of the Board containing such details of entities-
 - (a) registered for-
 - (i) marketing notified petroleum, petroleum products or natural gas, or
 - (ii) establishing and operating liquefied natural gas terminals, or
 - (iii) establishing storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations, or
 - (b) authorised for-
 - (i) laying, building, operating or expanding a common carrier, or
 - (ii) laying, building, operating or expanding a city or local natural gas distribution network, as may be provided by the Board by regulations.
- (2) A copy of any entry in the register purporting to be maintained by the Board and certified as such by an officer authorised by the Board, shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.
- (3) The register shall be open to public inspection at the head office of the Board.
- (4) Any person may, on application to the Board, and on payment of such fee as may be determined by the Board, by regulations, obtain a certified copy of any entry in the register.

15. Registration of entities.-

- (1) Every entity desirous of-
 - (a) marketing any notified petroleum or petroleum products or natural gas; or
 - (b) establishing or operating a liquefied natural gas terminal; or
 - (c) establishing storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations, and fulfilling the eligibility conditions as may be prescribed shall make an application to the Board for its registration under this Act: Provided that no registration under this Act shall be required for

any entity carrying on any activity referred to in clause (a) or clause (b) or clause (c) immediately before the appointed day but shall inform the Board about such activity within six months from the appointed day.

- (2) Every application for registration under sub-section (1) shall be made in such form and in such manner and shall be accompanied by such fee as may be determined by the Board by regulations.
- (3) The Board may, after making such enquiry and subject to such terms and conditions as it may specify, grant a certificate of registration to the entity allowing to commence and carry on the activity referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1).
- (4) The Board may, by order, suspend or cancel a certificate of registration granted under sub-section (3) in such manner as may be determined by regulations: Provided that no order under this sub-section shall be made unless the entity concerned has been given a reasonable opportunity of being heard.”

36. Insofar as the selection and identification of an AE is concerned and its power to operate in a particular GA, Mr. Kuhad referred to the provisions of Sections 16 and 19 which are extracted hereinbelow: -

“16. Authorisation:-

No entity shall-

- a) lay, build, operate or expand any pipeline as a common carrier or contract carrier,
- b) lay, build, operate or expand any city or local natural gas distribution network, without obtaining authorisation under this Act: Provided that an entity,-
 - (i) laying, building, operating or expanding any pipeline as common carrier or contract carrier; or
 - (ii) laying, building, operating or expanding any city or local natural gas distribution network, immediately before the appointed day shall be deemed to have such authorisation subject to the provisions of this Chapter, but any change in the purpose or usage shall require separate authorisation granted by the Board.

19. Grant of authorisation:-

(1) When, either on the basis of an application for authorisation for laying, building, operating or expanding a common carrier or contract carrier or for laying, building, operating or expanding a city or local natural gas distribution network is received or on *suo motu* basis, the Board forms an opinion that it is necessary or expedient to lay, build, operate or expand a common carrier or contract carrier between two specified points, or to lay, build, operate or expand a city or local natural gas distribution network in a specified geographic area, the Board may give wide publicity of its intention to do so and may invite applications from interested parties to lay, build operate or expand such pipelines or city or local natural gas distribution network.

(2) The Board may select an entity in an objective and transparent manner as specified by regulations for such activities.”

37. Learned senior counsel then drew the attention of the Court to the provisions contained in Section 20 and which directly deals with the subject of exclusivity. The said provision is extracted hereunder: -

20. Declaring, laying, building, etc., of common carrier or contract carrier and city or local natural gas distribution network:-

- (1) If the Board is of the opinion that it is necessary or expedient, to declare an existing pipeline for transportation of petroleum, petroleum products and natural gas or an existing city or local natural gas distribution network, as a common carrier or contract carrier or to regulate or allow access to such pipeline or network, it may give wide publicity of its intention to do so and invite objections and suggestions within a specified time from all persons and entities likely to be affected by such decision.
- (2) For the purposes of sub-section (1), the Board shall provide the entity owning, the pipeline or network an opportunity of being heard and fix the terms and conditions subject to which the pipeline or network may be declared as a common carrier or contract carrier and pass such orders as it deems fit having regard to the public interest, competitive transportation rates and right of first use.

- (3) The Board may, after following the procedure as specified by regulations under Section 19 and sub-sections (1) and (2), by notification,-
- (a) declare a pipeline or city or local natural gas distribution network as a common carrier or contract carrier; or
 - (b) authorise an entity to lay, build, operate or expand a pipeline as a common carrier or contract carrier; or
 - (c) allow access to common carrier or contract carrier or city or local natural gas distribution network; or
 - (d) authorise an entity to lay, build, operate or expand a city or local natural gas distribution network.
- (4) The Board may decide on the period of exclusivity to lay, build, operate or expand a city or local natural gas distribution network for such number of years as it may by order, determine in accordance with the principles laid down by the regulations made by it, in a transparent manner while fully protecting the consumer interests.
- (5) For the purposes of this section, the Board shall be guided by the objectives of promoting competition among entities, avoiding in fructuous investment, maintaining or increasing supplies or for securing equitable distribution or ensuring adequate availability of petroleum, petroleum products and natural gas throughout the country and follow such principles as the Board may, by regulations, determine in carrying out its functions under this section.”

38. According to Mr. Kuhad the stand of the respondent that the supply of LNG through cascades or trucks is wholly alien to the concept of a CGD Network is clearly misconceived. Learned senior counsel submitted that the Act defines a CGD Network in Section 2(i) to include even associated equipment used for transporting natural gas. Section 2(i) is reproduced hereinbelow:

“2(i). “city or local natural gas distribution network” means an inter-connected network of gas pipelines and the associated equipment used for transporting natural gas from a bulk supply high pressure transmission main to the medium pressure

distribution grid and subsequently to the service pipes supplying natural gas to domestic, industrial or commercial premises and CNG stations situated in a specified geographical area;

Explanation:- For the purposes of this clause, the expressions “high pressure” and “medium pressure” shall mean such pressure as the Central Government may, by notification, specify to be high pressure or, as the case may be, medium pressure;”

39. It was his submission that not only does the phrase “associated equipment” visualize a supply of natural gas through cascades and cryogenic trucks, the aforesaid position is further fortified from the definition of “*piped natural gas*” as set forth in Regulation 2(1)(i) of the Authorization Regulations. The said provision is extracted hereunder:

“2(1)(i). “piped natural gas” (hereinafter referred as PNG) means natural gas transported through pipelines [or cascades or any other permitted mode] in a CGD network for consumption by any customer in domestic, commercial or industrial segments and includes natural gas supplied to an online CNG station before its compression.”

40. Proceeding along these lines, Mr. Kuhad referred to the determinations as made by the Board itself and which according to him recognized the CGD Network also incapsulating the supply of natural gas via cascades. Learned senior counsel referred to the order of the Board dated 18 August 2020 passed in the matter of Honda Motorcycle & Scooter India Pvt. Ltd. and more particularly to the following stand as taken by the Board and as reflected in that order: -

“PNGRB/Auth/1-CGD(6)/10.03/2019

18.08.2020

To,
Honda Motorcycle & Scooter India Pvt. Ltd.,
Plot No. 109 to 142 KIADB, Narsapura Industrial Area,
Karinayakanahalli Village, Kasaba Hobli

**Malur Taluk, District Kolar,
Karnataka 563130**

(Kind Attn: Shri A. Joseph Selvaraj)

Subject: Clarification on procurement of LNG through tankers from Ennore terminal to industry at Kolar

Sir,

This is with reference to your letter no. HMSI-3F/ENV/20-21/19 dated 08.08.2020 seeking clarification on procurement of LNG through tankers from Ennore terminal to your industry at Kolar.

2. In this regard, it is informed that Consortium of AG&P LNG Marketing Pte. Ltd. & Atlantic Gulf & Pacific Company of Manila Inc. has been authorized by the PNGRB for development of CGD networks, which includes supply through Pipelines, tank trucks or tank wagons and cascades in Kolar district.

3. As per regulation 3(2)(a) 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, customers having requirement of natural gas upto 50,000 SCMD shall be supplied through the CGD network. However, it is provided that until CGD Network is ready to supply natural gas to a customer (other than domestic PNG and CNG), such customers shall have right to get the supply of natural gas from any other alternate source or supplier, with prior permission of the Board, and if, once CGD Network is ready to supply natural gas to such customer, then, such customer shall cease to get supply of natural gas from such alternate source or supplier after 30 days of receipt of notice of readiness from the CGD network.

4. If you require any further clarification, please do let us know.

Yours faithfully

(K. Kittappa)
Joint Adviser"

41. Learned senior counsel also referred to the public notice of 23 July 2020 which while dealing with the ambit of Regulation 3(2)(a) of the Authorization Regulations had held out as under: -

“23 July, 2020

Public Notice No: PNGRB/ AUTH/1-CGD (02)/2020

Pursuant to issuance of Public Notice of even number dated 02.06.2020 regarding establishment and operation of LNG Stations, certain entities have requested Petroleum and Natural Gas Regulatory Board (“PNGRB”) to clarify the ambit of the Public Notice dated 02.06.2020, with respect to the following queries;

- (a) To confirm that any entity other than authorized CGD entity for a particular geographical area is not permitted either directly or indirectly to set up LNG Stations to compress Natural Gas and dispense it as CNG (L-CNG) to the vehicles;
- (b) To Market LNG (in liquid or gas or CNG form) by any entity other than the authorised CGD entity having infrastructure and marketing exclusivity in the geographical area; to other customers including industrial and commercial customers.

2. Though Public Notice dated 02.06.2020 is quite comprehensive, it is again clarified that the afore-stated Public Notice dated 02.06.2020 is applicable only for the establishment and operation of LNG Stations for dispensing LNG in liquid state only to the transport sector and not as CNG or L-CNG.

3. As per regulation 3(2)(a) of CGD Authorisation Regulations, customers (other than PNG domestic and CNG) having requirement of natural gas up to 50,000 SCMD shall be supplied through the CGD network, during marketing exclusivity period, subject to certain conditions as provided in regulation 3(2)(a). It is hereby clarified that only authorized CGD entity can market natural gas up to 50,000 SCMD to industrial and commercial customers in an authorised Geographical Area during marketing exclusivity period of any geographical area.

Secretary”

42. Insofar as the Authorization Regulations are concerned, undisputedly the principal dispute in the present writ petition turns upon the interpretation to be accorded to Regulation 3. The said provision is reproduced hereinbelow: -

“3. Application:-

- (1) These regulations shall apply to an entity which is laying, building, operating or expanding, or which proposes to lay, build, operate or expand a CGD network.
- (2) A CGD network shall be designed to operate at a pressure as specified in the relevant regulations for technical standards and specifications, including safety standards for maintaining the volumes of supply of natural gas on a sustained basis to meet the following requirements, namely:—

- (a) customers having requirement of natural gas upto 50,000 SCMD shall be supplied through the CGD network;

[Provided that until CGD Network is ready to supply natural gas to a customer (other than domestic PNG and CNG), such customers shall have right to get the supply of natural gas from any other alternate source or supplier, with prior permission of the Board, and if, once CGD Network is ready to supply natural gas to such customer, then, such customer shall cease to get supply of natural gas from such alternate source or supplier after 30 days of receipt of notice of readiness from the CGD network.]

- (b) customers having requirement of natural gas more than 50,000 SCMD and upto 100,000 SCMD shall be supplied, [at the discretion of customer]—
 - (i) through the CGD network; or
 - (ii) through a pipeline not forming part of the CGD network;
 - (c) customers having requirement of natural gas more than 100,000 SCMD shall be supplied through a pipeline not forming part of the CGD network.”

43. Reliance was also placed on the Proviso as appended to Regulation 7(1) and which reads as follows: -

“Provided that in the case of the geographical areas of (i) Bilaspur, Hamirpur and Una District; (ii) Panchkula (except area already authorised), Shimla, Solan and Sirmaur Districts, (iii) Barmer, Jaisalmer and Jodhpur Districts, (iv) Darjeeling, Jalpaiguri & Uttar Dinajpur Districts and (v) Nainital and Bijnor Districts, it is not

mandatory to supply natural gas through steel-pipes. However, natural gas has to reach in all charge areas....”

44. On a conspectus of the aforesaid provisions, Mr. Kuhad contended that it could not possibly be argued by the respondent that the supply of natural gas through modes other than pipelines is either alien to the statutory regime or impermissible thereunder. Reference was also made to various NOCs’ which had been issued to entities for supply of LNG during the period 2013-14 and which had provided that once an AE comes to be identified for a particular GA then all supplying entities would have to obtain its prior approval and, in the absence thereof, cease effecting supplies of natural gas in the GA. Reference in this regard was made to the following recitals as appearing in an NOC which stands placed on the record: -

“Subject: NOC/Permission for merchant distribution of LNG through LNG containers having less than 450 litres capacity in the areas where Board has not yet authorised any entity for developing or operating CGD networks - Dahod (Gujarat) and Sanand (Gujarat) cities/towns.

Sir,

With reference to your letter No. JEL.PNGRB.NOC.BG dated 25th January 2014 in response to our letter of even number dated 17th January 2014 on the subject mentioned above, PNGBR hereby grants NOC/Permission for merchant distribution of LNG through LNG containers having less than 450 litres capacity in the areas where Board has not yet authorised any entity for developing or operating CGD networks in the cities/towns of Dahod (Gujarat) and Sanand (Gujarat). This NOC/Permission is subject to the terms and conditions mentioned in our letter of even number dated 17th January 2014 acceptance of which has been conveyed by you vide your above referred letter dated 25th January 2014.

2. As regards to your request to include Pithampur also in NOC/Permission, the same cannot be acceded to since Pithampur Zone is a part of the Indore CGD network of M/s Avantika Gas Limited.

Yours faithfully,

Sd/-
(K Rajeswara Rao)
OSD(R)”

45. It must at this juncture be noted that it was not the case of the petitioners that the conferment of exclusivity was not related to the various obligations which stand placed upon an AE in terms of the Act. Mr. Kuhad referring to Section 20(4) of the Act contended that the conferment of exclusivity itself is subject to various inbuilt safeguards such as exclusivity to be accorded bearing in mind the provisions contained in the Authorization and Exclusivity Regulations, the period of exclusivity being determined by the Board and the Board while conferring that statutory protection to an AE taking into consideration the paramount aspect of protection of consumer interest. Turning then to sub-section (5) Mr. Kuhad submitted that the exclusivity principles subserve various stated legislative policy objectives including promotion of competition amongst entities, avoiding infructuous investments, maintaining supplies and for securing equitable distribution and adequate availability of natural gas throughout the country.

46. Proceeding then to the Exclusivity Regulations it was contended that Regulation 5 contemplates exclusivity in the course of creation of infrastructure. Similarly, Regulation 8 specifies the various service obligation which stand placed upon an AE. Regulations 5, 6 and 8, and since they would have a bearing on the question which arises, are reproduced hereinbelow: -

“5. Exclusivity for laying, building or expansion of CGD network

- (1) The Board may allow an entity exclusivity for laying, building or expanding of CGD Network over the economic life of the project subject to the following terms and conditions, namely:-
- (a) during the economic life which is normally expected to be twenty five years of the CGD network project consisting of network of pipelines, online compressors for compressing natural gas into CNG and other allied equipments and facilities, the authorized entity shall carry out further expansions required through pipeline capacity building and CNG infrastructure as well as carry out replacements and upgradation of assets and facilities as and when necessary in order to maintain the network system integrity at all times including keeping it abreast of technical advancements and the entity shall meet the requirement for investment in pipelines and other allied equipment including online compressors for compression of natural gas into CNG which may emerge either to meet the entity's own requirements or other entities requirements post- exclusivity period as per regulation 6 besides complying with the service obligations as per regulation 8;
 - (b) The economic life of the project shall commence from,-
 - (i) in case an entity proposes to lay, build or expand a CGD network on or after the appointed day, the date of grant of authorization to the entity by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008;
 - (ii) in case an entity is laying, building or expanding CGD network before the appointed day, where the entity has either an authorization from the Central Government before the appointed day or an authorization from the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the economic life of the CGD Network project shall commence from the start-up date of the commencement of physical activities of laying, building or expanding the CGD network.
 - (c) at the end of the economic life of the project, issue of allowing further extension of the period of exclusivity or not may be considered by the Board for a block of ten

years at a time, depending on the satisfactory compliance of the service obligations and quality of service norms as specified in the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the service obligations under regulation 8 and on such terms and conditions, as it may deem fit at that point in time.

- (d) non-compliance to the provisions of clause (a) of sub-regulation (1) shall be dealt through levy of penalty and termination of the exclusivity period as per the provisions of regulation 10 and the Board reserves the right to allow any other entity to take up the activities of laying, building or expanding or replacement of assets and facilities or both in the CGD network in terms of the provisions in regulation 10.

6. Exclusivity from the purview of common carrier or contract carrier.

- (1) The Board may provide exclusivity to an entity proposing to lay, build, operate or expand a CGD network from the purview of common carrier or contract carrier for a period of five years from the date of authorization ¹[or as extended in terms of proviso to regulation 12 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 as amended by the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Amendments, Regulations, 2010] subject to the conditions that the entity meets the service obligations as stipulated under regulation 8.
- (2) In case an entity is laying, building, operating or expanding a CGD network before the appointed day and has been authorized by the Central Government or has been authorized by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the period of exclusivity from the purview of common carrier or contract carrier shall be -
 - (a) three years from the date of issue of the letter by the Board for allowing such exclusivity in case the entity has been operating the CGD network for three years or more before the appointed day;

- (b) five years from the date of issue of the letter by the Board for allowing such exclusivity in case the entity has been operating the CGD network for less than three years before the appointed day.

XXX

XXX

XXX

8. Service obligations.

- (1) The entity allowed exclusivity under regulation 6 shall comply with the following service obligations during the exclusivity period, namely:-

- (a) in respect of an entity proposing to lay, build, operate or expand a CGD network after the appointed day and which has been authorized by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the entity shall-

- (i) provide domestic PNG connections as per the bid;
- (ii) lay and build steel pipeline as per the inch-kilometer bid;
- (iii) reach all charge areas or wards in the authorized area through pipelines of adequate size to meet the demand of the consumers in these charge areas or wards; and
- (iv) provide piped natural gas connection on demand to a domestic consumer for cooking purposes within a distance of twenty five meters of the metering unit at the consumer's end till the tap-off in the pipeline:

Provided that the physical achievement shall be monitored by the Board on a quarterly basis;

- (b) in respect an entity laying, building, operating or expanding a CGD Network before the appointed day and which has been either authorized by the Central Government or by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the entity shall-
- (i) achieve the targets in respect of providing PNG domestic connections and laying and building steel pipeline inch kilometer as per sub-clauses (i) and (ii) of clause (a) of sub-regulation (1) at the levels derived based on the successful bids of similar placed cities or local areas in terms of the population as per the census of India 2001 or in the absence of such similarly placed cities or areas, the cities which come

closest to these cities or areas in terms of population by suitable extrapolation or interpolation;

- (ii) reach all charge areas or wards through pipelines of adequate size to meet the demand of the consumers in these charge areas or wards;
- (iii) provide piped natural gas connection on demand to a domestic consumer for cooking purposes within a distance of twenty five meters of the metering unit at the consumer-end till the tap-off point in the pipeline:

Provided that the physical achievement shall be monitored by the Board on a quarterly basis.

- (2) During the period of exclusivity allowed under regulation 6, the authorized entity may supply compressed natural gas for dispensing either through CNG dispensing facilities owned by itself or by any other entity and in the latter case, the other entity shall be required to pay the compression charge for CNG to the authorized entity and enter into a mutually agreeable commercial contract with the authorized entity for-
 - (a) either having the online compression facilities installed in its own dispensing facilities wherein the online compression facilities shall be owned, installed and operated by the authorized entity, or
 - (b) take delivery of CNG ex-online compressor station of the authorized entity for subsequent dispensing in the authorized area.
- (3) After the expiry of the exclusivity period allowed under regulation 6, any entity using the CGD network for transportation of natural gas may use the online compressor facilities of the authorized entity against payment of compression charge for CNG for dispensing of CNG either by itself or by any other entity.”

47. Mr. Kuhad also referred to Schedule A of the Exclusivity Regulations which spells out the rationale underlying exclusivity being granted to an AE. Schedule A reads thus: -

“Schedule A

[see regulation 4]

Rationale for allowing exclusivity to lay, build, operate or expand a CGD network

1. Exclusivity-

- a) for laying, building or expansion of the CGD network during the economic life of the project; and
 - b) in terms of an exemption from the purview of the contract carriage or common carrier for a limited period of time-
is envisaged with a view to facilitate the development of a planned and integrated CGD network with appropriate priorities for end-use of natural gas as also the network spread besides providing incentive to the entity for investing in such project.
2. Exclusivity as per sub-clause a) of clause 1 is or shall be necessary to facilitate the development and operation of an integrated network by a single entity as per the prescribed technical standards, specifications including safety standards. This shall also obviate multiple digging-up of lanes, roads, etc. in the authorized area.
 3. Exclusivity as per sub-clause b) of clause 1 is or shall be necessary due to the following reasons, namely:-
 - a) During the initial phase of the development of city or local natural gas distribution network, there shall be a need to have a close synchronization between the development of requisite infrastructure and the ramp-up in the natural gas volumes for different end-consumers in different areas. It is expected that the development of the city or local natural gas distribution network would be quicker if the same is guided by entity's own plan (which is responsible for meeting various service obligations) rather than the expectation of other potential marketers of natural gas in the network. Also, it shall be more practical for the Board to deal with one entity rather than multiple entities to ensure a strict compliance with the service obligations by the entity in the initial period;
 - b) during such limited period of exclusivity, the authorized entity could be made directly responsible for meeting the desired service obligations, viz., achieving maximum PNG domestic connections and other related aspects;
 - c) besides such an approach is also likely to incentivize investments in this capital intensive business.
 4. Ideally, while the exclusivity as per sub-clause a) of clause 1 shall be for the economic life of the project, the exclusivity as per sub-clause b) of clause 1 shall depend upon various factors, viz., the projected natural gas demand build-up in the city or local area (which in turn would depend upon the key drivers for demand in that city or local area, such as, level of

industrial or commercial activity, vehicular population and conversion of vehicles in to CNG, potential domestic PNG customers, consumer preferences, price of alternative fuels, etc.), geographical spread and population, projected capital cost of the project, investment climate, etc. However, considering that these factors shall vary from city to city, a credible assessment of exclusivity period based on these factors may not be always practical. Thus, it is proposed that the period of exclusivity at sub-clause b) of clause 1 may be limited to five years for cases where an entity proposes to lay, build, operate or expand a CGD network. However, where an entity is laying, building, operating or expanding a CGD Network before the appointed day and has been authorized by the Central Government or is authorized by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the period of exclusivity shall be for three years (if the entity has been operating for three years or more before the appointed day) or five years (if the entity has been operating for less than three years before the appointed day).

[F. No. S-Admn/II/8/2007-Vol.I]

AJAY TYAGI, Secy.”

48. It was submitted that exclusivity as is evident from para 1 of Schedule A is aimed at facilitating the development of a planned and integrated CGD Network and incentivizing the entity for investing in the project itself. Mr. Kuhad also referred to para 3 as comprised in Schedule A and submitted that an AE is accorded exclusivity to create infrastructure and to effect supply of natural gas bearing in mind the imperatives of synchronization between the creation of requisite infrastructure and increasing the distribution and consumption of natural gas volumes amongst different categories of consumers in the GA. Reliance was also placed on para 3(c) which reiterates the underlying principle of conferment of exclusivity being linked to the

undisputed fact of the creation of natural gas infrastructure being an investment intensive business.

49. The submission essentially was that unless an AE is granted exclusive rights to operate in the allocated GA it would neither be enabled to recoup even a fraction of the capital expenditure, it would also have to deal with the specter of numerous competitors who are otherwise not obliged to contribute towards the creation of infrastructure in that GA. However, and as was noticed hereinabove, Mr. Kuhad submitted that the grant of exclusivity is indelibly linked to and dependent upon the AE continuing to discharge the various obligations placed upon it and spelt out in the Act as well as Regulation 8. It was submitted that the aforesaid Regulations thus clearly balance the interests of the AE as well as the end consumer. It was further submitted that while the Board may not be empowered to regulate the price that may be charged by an AE from a consumer in the GA, Sections 11(e) and 22 lay in place a mechanism enabling the Board to regulate the fixation of transportation tariff. It was further pointed out that the Board in any case stands empowered to monitor prices and take corrective measures in case it be found that an AE was indulging in restrictive trade practices in terms of Section 11(f)(iii). Mr. Kuhad also referred to Regulation 14(5) as comprised in the Authorization Regulations and in terms of which an AE is required to maintain separate books of accounts relating to and spreading across subjects such as detailed activity-based costing records, purchase of natural gas, transportation of natural gas, transportation of CNG in cascades, marketing or distributor's commissions. The aforesaid

statutory balance, according to Mr. Kuhad, thus clearly protects and safeguards the interests of not just the entity obliged to make huge investments towards creation of infrastructure but at the same time, parallelly and contemporaneously, safeguarding the interests of the different categories of consumers in the GA.

50. Turning then to Regulation 3 of the Authorization Regulations, it was submitted that the right of a customer to identify an alternate source of supply of natural gas is pinned to the readiness of the AE to supply natural gas to a customer. It was submitted that as long as an AE is in a position to supply natural gas to a customer, it would be impermissible for any other alternate supplier being permitted to supply natural gas to consumers within the GA. According to Mr. Kuhad, the aforesaid provisions thus ensure that the principle of exclusivity is duly safeguarded and the protective shield dissipated only in a situation where an AE is unable to or not in a position to meet the demand requirements of a customer in the GA. Additionally it was submitted that the grant of such a permission would destroy the economic model adopted by the AE itself for the purposes of the project. As was noted hereinabove, it was Mr. Kuhad's principal submission that the AE is extended the exclusivity over the GA essentially to enable it to recoup at least a part of the immense capital expenditure that is incurred in the creation of a natural gas network. It is the aforesaid underlying objective which was stated to be the guiding factor of exclusivity. It was in the aforesaid context that the natural gas policy provisions were adverted to and which too had

acknowledged the exclusion of competition being necessary for the development of fledgling and evolving sectors such as natural gas.

51. Mr. Kuhad has also referred to the various determinations made by the Board from time to time, and which according to him, had accorded due recognition to the principle of exclusivity. Learned senior counsel firstly referred to Regulation 3(2) of the Authorization Regulations which specifically, according to Mr. Kuhad, contemplate exclusivity being accorded to a CGD Network. It was further submitted that Regulation 5 of the Authorization Regulations while specifying the criteria which would guide the Board for selection of an AE envisages the supply of natural gas to the City Gate including LNG supplies by tank trucks or tank wagons and CNG by cascades.

52. The submission essentially was that the supply of LNG through cascades thus finds statutory recognition both under Regulation 2(i) of the Authorization Regulations which defines the expression "*piped natural gas*" as well as Regulation 5. Reference was also made to the public notice of 26 February 2013 in terms of which various NOCs' had come to be issued by the Board during the period 2013-2015 and which had permitted various entities to transport LNG via cryogenic tankers. According to Mr. Kuhad, the aforesaid NOCs' were ordained to remain in force till such time as the Board were to identify and appoint an AE for the concerned GA. Reference was made to the following conditions which stood imposed and formed part of the indemnity bond and undertaking executed: -

"3) And whereas "the Board" has in principle decided to grant NOC to "the Entity" for marketing of LNG through cryogenic tankers from its LFF at Plot No.1433 Waghodia GIDC Industrial Estate, Waghodia, Dist. Vadodara-391 760, Gujarat, INDIA to

various industrial/commercial customers in the districts of Panchmahal (Gujarat), Silvassa (Gujarat), Sanand (Gujarat), Nashik (Maharashtra), Aurangabad (Maharashtra), Ahmednagar (Maharashtra), Jodhpur (Rajasthan) and Jaipur (Rajasthan) subject to the following terms and conditions.

- a) That "the Board" shall not in any way be held responsible for any legal action/cases arising out of the NOC granted by "the Board".
- b) That "the Entity" shall abide by the "quality of service standards" as prescribed in the Petroleum and Natural Gas Regulatory Board (Authorizing Entities for Laying, Building, Operating or Expanding City or Local Natural Gas Distribution Networks) Regulators 2008.
- c) That "the Board" shall not be made a party in any case between "the Entity" and any other person or company.
- d) That this bond shall remain in force till CGD Network Authorization is issued to any entity by "the Board" in the geographical area/districts specified above.
- e) That "the Entity" alone shall be responsible for any obligation arising out of the NOC granted to it by "the Board".
- f) That "the Entity" shall not lay any Natural Gas Pipeline (Steel or MDPE) in the geographical areas/districts specified above.
- g) That "the Entity" shall not stand discharged or released from the indemnity bond submitted herein for any claim in respect to payment/time period/performance or any obligation arising out of the NOC granted by "the Board".
- h) That in case "the Board" does not approve authorization to "the Entity" for operating CGD Network in the areas/districts specified above, "the Entity" shall indemnify the Board against any consequential losses arising out of the NOC.
- i) That "the Entity" undertakes that in case all or any of the geographical areas/districts specified above & its surroundings get covered by City Gas Distribution Networks by any entity authorized by "the Board", then

‘the Entity’ shall obtain a prior approval of the authorized entity for the respective GA/GAs for marketing of LNG.

- j) That “the Entity” fully understands that this bond in no way amount to authorization in any form whatsoever.
- k) That “the Entity” shall obtain all other approvals that may be required and abide by the statutory requirements as may be applicable.”

53. Mr. Kuhad then drew the attention of the Court to the Internal Guidelines which had been formulated by the Board for the purposes of grant of NOC/permission dated 23 August 2013 and more particularly to the following parts thereof: -

“4. Depending on the natural gas pipeline connectivity/natural gas availability, PNGRB plans to include the identified GAs in a phased manner in the CGD bidding rounds for grant of authorisation. It would take considerable time to cover all the GAs in the bidding rounds and to grant authorisations by the Board for development of CGD networks. Hence, in order to ensure availability/supply of natural gas to the customers whose requirement has to be met by the CGD network as mentioned above and to encourage development of natural gas market, PNGRB has been granting NOC/Permission on a case to case basis for (i) supply/distribution of CBM/natural gas through cascades; and (ii) setting up of CNG Daughter Booster Stations (DBS), in the areas where Board has not yet authorised any entity for developing or operating CGD networks.

5. In order to facilitate all the entities that are desirous of undertaking these activities, PNGRB has finalised these Guidelines under which NOC/Permission will be granted.

6. Entities desirous of supplying/distributing natural gas through cascades to specific customers having requirement of less than 50,000 SCMD and/or setting up of CNG Daughter Booster Stations (DBS), in an area yet to be covered under any GA authorized by PNGRB may apply to PNGRB for NOC/permission giving details such as gas source, supply methodology, volumes proposed to be supplied, details of customers, proximity of gas source to the customers, number and location of the CNG DB Stations duly earmarked on a

map, etc. and such other details that may be required by the Board while processing the request/application.

7. PNGRB will examine all such applications on case to case basis and may grant NOC/permission subject to the entity submitting the Bank Guarantee of Rs.5,00,000/- (Rupees Five Lakh) as per the enclosed Proforma and subject to the following terms & conditions:

(i) The Entity shall abide by the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006 and all the relevant Regulations notified there under from time to time.

(ii) The Entity shall undertake supply/distribution of CBM/natural gas only through cascades and/or set up only the CNG DBS at the location (s) specified and shall not either create any infrastructure other than the specified CNG DB Station (s) or lay any natural gas pipelines (Steel or MDPE) outside the premises of these DB Stations (s) in the area.

(iii) In case the area in which supply/distribution of CBM/natural gas through cascades and/or setting up of CNG DBS are allowed is covered under any authorized GA in future, then the Entity shall obtain a prior approval from the authorized entity for continuation of such activities or shall cease its activities immediately.

(iv) The Board shall not in any way be held responsible for any legal action/ cases arising out of the NOC/Permission given by it, nor shall it be made a party in any legal case between the Entity and any other entity.

(v) The Entity alone shall be responsible for any obligation arising out of grant of the NOC/Permission given by the Board.

(vi) That the Entity shall not stand discharged for any claim in respect to payment/time period/ performance or any obligation arising out of the NOC/Permission granted by the Board.

(vii) The grant of such NOC/Permission shall in no way be construed as amounting to grant of authorization in any form whatsoever for the area to the Entity under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas

Distribution Networks) Regulations, 2008. Further, in case the Board does not approve authorization in favour of the Entity subsequently, for operating CGD network in the said area, the Entity shall be responsible for any consequential losses arising out of grant of such permission/NOC.

(viii) Even if the authorized entity grants an approval to the incumbent Entity for continuing the activity in the authorized area, the incumbent Entity shall continue to be responsible for all liabilities arising out of its activities.

(ix) The Entity shall obtain all other approvals that may be required and abide by the statutory requirements as may be applicable.

(x) PNGRB reserves the right to amend/cancel the NOC/Permission at any time.”

54. Emphasis was essentially laid on the above as evidence of the Board having consistently factored in the transportation of LNG via cascades. Reliance was also placed on the Application cum Bid Document which had been published during the 8th bidding round and more particularly Clause 1.1.3 thereof which reads as under:-

“4. Application cum Bid document for 8th Round dt. Nil, 2016.

Clause 1.1.3... Various technological solutions e.g. LNG supplies by tank trucks or tank wagons, L-CNG mode. CNG by cascades, Decompression Chamber Skid etc. are already operational internationally and some of them are now even operational in the country providing natural gas to all segments of a typical CGD network. Hence, development of CGD networks through these alternate mode can also be explored by the bidders apart from the possible connectivity with existing or proposed natural gas pipeline for supply of natural gas to the city gate of the proposed CGD network in the future. Regulation 5(1) of the PNGRB (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 provides for such stipulation and hence provides the flexibility to any bidder to design the CGD network through any one of these modes or use hybrid model approach for development...”

55. Similarly, the said clause as appearing in the Bid Document of the 9th and 10th rounds was referred to and the same is extracted hereinbelow:-

“1.1.3 It is the bidder’s responsibility to obtain all information related to the present gas supply availability and pipeline connectivity and also existing customers, if any, in the specified geographical area. The bidder can also refer to list of NOCs/Permissions granted by PNGRB to various entities under the provisions of the Internal Guidelines for grant of NOC/Permission for (i) supply/distribution of CBM/natural gas through cascades; and (ii) setting up of CNG/LNG Daughter Booster Stations (DBS), in the areas where Board has not yet authorised any entity for developing or operating CGD networks at <http://www.pngrb.gov.in/CGDNOCs.html>. These NOCs/Permissions are subject to conditions contained in the Internal Guidelines and include the condition that in case the area in which supply/distribution of CBM/natural gas through cascades and/or setting up of CNG/LNG DBS are allowed is covered under any authorized GA in future, then such entity to whom NOC/Permission has been granted shall obtain a prior approval from the authorized entity for continuation of such activities or shall cease its activities immediately.”

56. Mr. Kuhad had also referred to the order of the Board dated 18 August 2020 passed in the case of Honda Motorcycle & Scooter India Pvt. Ltd. and which has been noticed in the preceding parts of this decision. Mr. Kuhad also underlined the fact that when the respondent no.3 initially applied for permission to obtain supplies from a third party in terms of its letter of 24 December 2020, the same had been duly forwarded for the consideration of the petitioner no. 1 which was the AE for the GA in question. According to learned senior counsel, there existed no justification for the Board doing a volte face and according permission to the respondent to access supplies from third parties.

57. For the purposes of appreciating the exclusivity concept as adopted, Mr. Kuhad also relied upon the following observations as appearing in *Gujarat Gas [I]*: -

“7. Heard Id. Senior Counsels for the Petitioner and Respondent No.1. Under the impugned public notices, licenses are to be issued by the Petroleum and Explosives Safety Organisation (*hereinafter*. ‘PESO’), which has not entered appearance. However, the stand of the Petitioner and PNGRB is clearly contained in the public notices, as also in the letter dated 12th January, 2021. The relevant extract of letter dated 12th January, 2021 is set out hereinbelow:

“ ...

5) *In fact the PNGRB has vide Public Notice No:PNGRB/AUTH/1-CGD (02)/2020 dated 23.07.2020 ("2020 July Clarification"), clarified that only an LNG Station which dispenses LNG in liquid state only to the transport sector is being permitted to be installed vide Public Notice No: PNGRB/ AUTH/1-CGD (02)/2020 dated 02.06.2020 ("2020 June Notice"). The 2020 June Notice had stipulated that since only LNG Station dispenses natural gas in liquid form to vehicles without any pressure or conversion into gas, it is not covered in the scope of "CNG Station". Thus, only LNG Stations can be installed by an entity not being the AE for the geographical area and even then such entity will have to comply with the provisions of the PNGRB Act and other applicable regulations including the Petroleum and Natural Gas Regulatory Board (Technical Standards and Specifications including Safety Standards for Liquefied Natural Gas Facilities) Regulations, 2018 ("T4S Regulations"). A copy of the 2020 July Clarification and 2020 June Notice, is provided as Annexure C for reference.*

6) *Thus, under the PNGRB Act and the governing framework established thereunder, it is not permissible for an industrial consumer, having a requirement of upto 50,000 SCMD to establish a LNG receiving, storage and regassification station and receive natural gas from a third party. Such an action violates the infrastructure exclusivity vested with the authorized CGO entity. ... ”*

8. A perusal of the above letter clearly shows the understanding of the Petitioner in respect to the two impugned public notices. It is clear from the Petitioner’s understanding of the two public notices that the public notices only deal with LNG stations dispensing natural gas in liquid form to vehicles without any pressure or

conversion into gas. Such stations would not be covered within the scope of CNG stations. Thus, as per the Petitioner itself, any industrial consumer having a requirement of up to 50,000 SCMD, cannot receive natural gas from any third party. This stand of the Petitioner is acceptable to PNGRB as being the understanding of the two impugned notices.

9. Thus, it is clarified that insofar as the two impugned public notices are concerned, if any industrial consumer has requirements up to 50,000 SCMD, such industrial consumers would only receive natural gas from the Petitioner and not from any third party. With this direction, the exclusivity of the Petitioner is adequately protected. The said exclusivity would, however, not extend to LNG stations dispensing natural gas in liquid form.

10. With these observations, the petition is disposed of. If the parties require any further clarification in respect of the two public notices, they are permitted to approach the PNGRB for redressal of their grievances in accordance with law.”

58. The petitioners also laid stress upon the letter dated 24 August 2021 issued by the Board withdrawing the NOC which had been granted in favour of one M/s LNG Express Private Limited and the withdrawal of the permission to supply consequent upon an AE being identified for the CGD Network in question. Mr. Kuhad then referred to the reply affidavit filed by the Board in the previous writ petition filed by the petitioner and which had specifically averred that in light of the public notice dated 23 July 2020 and the assurance of the AE that it was willing to supply natural gas to entities situate within its GA, it had decided to withdraw the letter of 10 March 2021. According to Mr. Kuhad, the aforesaid determinations by the Board itself manifest a consistent view having been taken both in respect of the exclusivity enjoyed by an AE as well as LNG being permitted to be supplied through cascades.

59. Mr. Kuhad also then referred the Court to a recent determination made by the Board and embodied in its order of 09 December 2022 passed in connection with the matters brought by the petitioner here against different entities and which had proceeded to dispose of complaints made by it in respect of supplies being affected by third parties in its GA. While dealing with issue no.1 and which related to the interpretation to be accorded upon Regulation 12 of the Authorization Regulations, the Board had held as follows: -

“It is evident from the aforesaid provision that the CGD Network is granted an exclusivity from the purview of common carrier or contract carrier for the period eight years and in case there is delay in commissioning of the transmission pipeline, then the Board can extend the exclusivity period for exemption from the purview of common carrier or contract carrier, for a period of difference in the actual and scheduled natural gas flow in the transmission pipeline serving the authorized geographical area or the date when CGD network is ready to take gas, whichever is less.”

60. Significantly, however, while dealing with the issue of whether the complainant had a cause of action against the respondent third parties before the Board and the ambit of Regulation 3(2)(a), the Board observed as follows: -

“It is evident from the aforesaid provisions, the Board determines that the Regulation 3(2)(a) of the CGD Authorization Regulations is a condition given to a CGD Network that it must be designed to operate at pressures as specified in the Petroleum and Natural Gas Regulatory Board (Technical Standards and Specifications including Safety Standards for City or Local Natural Gas Distribution Networks) Regulations (hereinafter referred to as CGD T&S Regulations), with the consideration that customers having gas requirement up to 50,000 SCMD shall be supplied through the CGD Network. It is the spirit of the proviso of the Regulation 3(2)(a) of the CGD Authorization Regulations that in case even after the authorization granted by the Board as per the extant regulation, some of the authorized CGD entities are unable to develop the requisite CGD Network and are not in a position to supply the natural gas to industrial/commercial customers. In such

case, until an authorized CGD Network (and not a CGD Entity) is ready to supply gas to customers, such customers shall have the right to get the supply of natural gas from any other alternate source/supplier with prior permission from the Board.”

D. PNGRB SUBMISSIONS

61. Appearing for the Board, Mr. Sahay, learned counsel, addressed the following submissions. According to learned counsel, the Act seeks to regulate all activities and aspects related thereto concerning natural gas. According to Mr. Sahay, the amplitude of the power which stands conferred upon the Board is evident from the Preamble itself and which envisages the creation of the Board to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum products and natural gas. The submission was that the entire gamut of activities relating to natural gas are thus to be statutorily regulated by the Board. Mr. Sahay submitted that the principal objectives of the Act are creation and development of a CGD Network which covers the entire expanse of the country together with the protection of interests of consumers. According to Mr. Sahay, the Board is statutorily obliged to ensure that customers are able to source natural gas at affordable rates and as conveniently as possible. The importance of creation of infrastructure and the development of the CGD Network, according to Mr. Sahay, was duly emphasized by the Supreme Court in **Adani Gas vs. PNGRB**²² where the following observations came to be made: -

“54. The Board has submitted with justification that in a model of cross/subsidisation, the viability of the project has to be perceived from a twenty five-year perspective. Gains in one category of users can offset the losses in another category. The CGD Authorisation Regulations are intended to subserve the object of establishing the

²² (2020) 4 SCC 529

infrastructure necessary for setting up an operational CGD network. In creating the infrastructure, the successful entity is contractually bound to set up a project for the future. The infrastructure so created would be of service to consumers or, as the case may be, users. Infrastructural projects cater to future needs and can legitimately be forward looking.”

62. Mr. Sahay submitted that Regulation 3 of the Authorization Regulations must consequently be interpreted and understood bearing in mind the aforesaid objectives. It was his submission that the Board is obliged to ensure that consumers are able to source natural gas at reasonable prices and to parallelly monitor the creation of the requisite infrastructure. The Proviso to Regulation 3(2)(a) of the Authorization Regulations is explained to be the balancing of the aforementioned two objectives and essentially stipulating that unless the CGD Network is ready to supply natural gas to the premises of a consumer, it would have the right to source the same from an alternate supplier. Mr. Sahay submitted that this is also evident from the latter part of the Proviso which prescribes that once the CGD Network is ready to supply natural gas to such a customer then it would cease to have the right to source supplies from third parties other than the AE.

63. Learned counsel further contended that exclusivity is a concept which attaches to the pipeline network rather than the AE. According to Mr. Sahay, the exclusivity which stands conferred on the pipeline network is progressive and is applicable as and when the necessary infrastructure is created and reaches the premises of a prospective customer. The concept of exclusivity, according to Mr. Sahay, is directly connected to the **Minimum Work Programme**²³ and various

²³ MWP

milestones prescribed therein being met by the AE. The submission essentially was that exclusivity would only extend to such parts of the GA which have been duly penetrated by the CGD Network and in respect of which the necessary pipeline network had been laid in place.

64. Mr. Sahay submitted that Section 2(i) of the Act while defining the expression “*city or local natural gas distribution network*” lays emphasis on the network reaching the premises of a customer. It was his submission that exclusivity, in any case, would be governed by the provisions of Section 20 and which links the concept of exclusivity to a pipeline or network which is liable to be exempted from the obligation of being declared to be a common or contract carrier. It was submitted that even Section 20(4) lays emphasis on the creation of that network and consequently Section 20 must be interpreted to mean the pipeline network being the subject of exclusivity. It was submitted that for an AE to claim exclusivity in respect of supplies, it is imperative that there be an existing pipeline. Absent that, Mr. Sahay would contend, the AE cannot claim an exclusivity to supply.

65. Turning then to the definition of ‘*marketing exclusivity*’ as defined by Regulation 3(1)(j) of the Guiding Regulations, Mr. Sahay submitted that even those provisions contemplate exclusivity being accorded to the pipeline network and thus being exempted from being declared as a common or contract carrier. Turning then to Regulations 4, 6 and 8 of the Exclusivity Regulations and Schedule A appended thereto, it was submitted that the creation and development of the CGD Network is a *sine qua non* and a necessary imperative for an AE

claiming exclusivity. Mr. Sahay also drew the attention of the Court to Regulations 10 and 12 of the Exclusivity Regulations and the power vested in the Board to cancel that privilege in case the AE fails to comply with the service obligations as set forth in Regulation 8. According to Mr. Sahay, the rationale underlying the decision of the Board is recognition of the fact that supply of natural gas through pipelines should be adopted as the safer, cost effective and acceptable mode on a long-term basis. It was submitted that the declaration of a pipeline network as a common carrier would ultimately lead to the creation of a more competitive and cost-effective eco-system for transportation of natural gas. According to Mr. Sahay the primary focus of the Board is to ensure that consumers' interests are safeguarded and they are enabled to obtain supply of natural gas through a cheaper and safer mode. It was submitted that cascades as a mode of supply should be viewed as being permissible only in places where either a pipeline structure has not been laid down or where the constraints of the terrain itself make the laying of such a pipeline network unfeasible or uneconomical. The respondent contends that the Proviso to Regulation 3(2)(a) is a reiteration of the aforestated recurring theme.

66. The submission in essence was that the mere transportability of natural gas cannot possibly be accepted as being the primary criteria relevant for the purpose of extending exclusivity to an AE. It was the contention of the Board that it is principally concerned with the creation of the CGD network and a supply by way of trucks or cascades cannot be countenanced as fulfilling the primary objectives

of the Act. It was the submission of learned counsel that if trucks and cascades were permitted to be accepted as the primary mode of supply, an AE would never make the effort to lay in place the CGD Network and thus stultify the principal objectives of the legislation. Mr. Sahay reiterated his submission that exclusivity of the pipeline network is progressive and is *co-terminus* to the reach of the pipeline network.

67. Turning then to the Impugned Order, Mr. Sahay submitted that the Board has in recognition of the primary objectives of the Act clearly taken the stand that it is concerned primarily with building a robust pipeline network in the country, to subserve public interest and to ensure the maximum possible development of the overall gas market in the country. It was submitted that the Board had categorically found that a supply of natural gas by cascades cannot be accepted to be the rule without the AE adhering to the MWP and laying in place the piped network. According to Mr. Sahay, the Board would deprecate the supply of LNG through alternate sources since that would necessarily result in the AE shifting focus from the primary objective of the Act, namely, the laying in place of a CGD Network which is ready to supply natural gas to the end customer. This position the Board takes bearing in mind the objective of encouraging investment and the creation of requisite infrastructure. Turning to the facts which weighed with the Board while passing the Impugned Order, Mr. Sahay submitted that the petitioner no. 1 was admittedly granted the authorization on 29 March 2019. It was submitted that as per the terms of the authorization, the petitioner no. 1 was obliged to

lay down 1851-inch kms of steel pipeline within eight contract years from the date of authorisation. Mr. Sahay laid emphasis on the fact that the petitioner no. 1 by the end of the first contract year had to ensure completion of 5% of the MWP. It was pointed out that the Board on requisite enquiry, however, had found that the progress report for December 2020 established that the petitioner no. 1 had not laid down any steel or MDPE pipeline in the concerned GA. Mr. Sahay further stated that the Board had found on facts that the petitioner no. 1 had been able to lay in place only 10-inch kms of steel pipeline as per the monthly progress report drawn for the period ending 31 March 2022. It was submitted by learned counsel that as per the authorisation, the petitioners had to ensure that 92.55 inch kms of pipeline being laid in place up to 28 March 2020. According to learned counsel, it was the aforesaid facts and the abject failure of the petitioners to abide by the terms of the MWP that led to the Board to conclude that it could not claim the benefit of exclusivity. Mr. Sahay also refuted the averments appearing in the additional affidavit of 09 June 2022 filed by the petitioner no. 1 before the Board and in terms of which it had been asserted that the AE had completed the laying down of 50-inch kms of steel pipeline and 39 kms of MDPE pipeline. It was argued that the aforesaid assertions were wholly unverified and in any case were not supported by the monthly progress reports.

68. Turning then to the provisions of the Act and the meaning to be ascribed to a CGD Network in light of Section 2(i), it was submitted that cascades is not a form of supply which is contemplated therein. It was further argued that the expression “*associated equipment*” as

appearing therein should not be read in a disjointed manner as suggested by the petitioners. It was submitted that the phrase “associated equipment” cannot be understood to include cascades since the aforesaid phrase is to be read as meaning equipment used for transporting natural gas from a bulk supply high pressure transmission main to the medium pressure distribution grid and thereafter to service pipes supplying natural gas to domestic, industrial or commercial premises situate in the specified GA. According to learned counsel, “associated equipment” is clearly connected to the pipeline network and cannot possibly be understood as including supply of natural gas by way of cascades and trucks. It was submitted that Section 2(i) employs the conjunctive “and” before “associated equipment” rather than “or”. This too, according to Mr. Sahay, is indicative of Section 2(i) contemplating a pipeline distribution grid as opposed to a system of supply through cascades. According to learned counsel, the submission addressed on this score on behalf of the petitioners is, in any case, liable to be rejected bearing in mind the contents of the bid document and the DFR submitted by the petitioner no. 1 itself. It was submitted that natural gas in its liquid form, namely, LNG, cannot possibly be consumed. Learned counsel would contend that LNG has to be necessarily regasified for the purposes of consumption and for which regasification plants are to be installed. The motive behind regasification is explained by learned counsel to be the fact that LNG in huge volumes can be transported in small containers only if it would be in its liquid form. It is for the aforesaid reason that cascades and cryogenic tanks are used. However, Mr. Sahay would contend that transportation of LNG in such a fashion is only permissible till the

City Gate Station. According to learned counsel, while LNG may be transported in such fashion up to the City Gate Station, it is at that point where a transfer of natural gas occurs and it is introduced into the CGD Network. Learned counsel submits that it is for the aforesaid reason that regasification plants are established thus enabling the conversion of LNG into its gaseous state and for its further distribution through the CGD Network. Learned counsel also laid emphasis on the DFR submitted by the petitioner no. 1 which according to the Board, had not contemplated the supply of natural gas in the form of LNG through cascades at all.

69. Turning then to the facts leading up to the withdrawal of the letter of the Board dated 10 March 2021, learned counsel submitted that in the course of consideration of the challenge which had been raised by the petitioners, the Board had at that time decided to withdraw the letter in order to examine and undertake a more comprehensive review of Regulation 3(2)(a). It was in the aforesaid backdrop that the Board had proceeded to withdraw that communication by way of its letter of 11 January 2022. However, according to learned counsel, the Board had to necessarily take up the aforesaid issue consequent to the directions issued by the Kerala High Court. Learned counsel further submitted that the contention of the petitioners that the Board stood restrained from expressing any view on the issue of supply through cascades in light of the order dated 18 August 2021 passed by the Division Bench in the LPA No. 254/2021 is also misconceived. It was submitted that the subject matter of those proceedings was the public notices including that dated 30 June 2021.

While dealing with those issues, Mr. Sahay submitted that this Court had merely restrained the Board from taking a position based on views or comments that may be received by it pursuant to the public notice dated 30 June 2021. According to learned counsel, the aforesaid order, however, did not restrain the Board from taking a decision in exercise of its judicial and regulatory function.

E. CONTENTIONS OF EICL

70. Appearing for the **EICL Limited**²⁴, the third respondent, Mr. Mehta learned senior counsel addressed the following submissions. EICL asserted that falling in line with the government vision of transitioning to a gas-based economy, it set up its own LNG storage and regasification facility. At the relevant point in time and since there was no AE appointed in the GA, EICL is stated to have entered into contracts with Petronet, IOCL, Ennore and M/s Gas Growers for supply and transportation respectively. It is stated to have applied for permission to secure natural gas from alternative sources to the Board vide its letter dated 16 December 2020. It is alleged that it was essentially compelled to source LNG from the petitioner no. 1 notwithstanding the choice which would otherwise inhere in a consumer to choose a supplier. It, during the course of the transactions which ensued, discovered that the petitioner was significantly overcharging EICL for LNG. It is also asserted that the petitioner no. 1 also changed their supplier from Petronet Limited, Kochi to IOCL, Ennore without justifiable cause and thus substantially increasing the procurement cost borne by the petitioner no. 1. It is the case of the

²⁴ EICL

third respondent that it was the aforesaid facts which constrained it to approach the Board for being accorded permission to source LNG from alternate sources. It is then pointed out that although initially the Board had granted the third respondent the permission as sought in terms of its letter of 10 March 2021, it subsequently proceeded to withdraw the same vide its letter of 11 January 2022.

71. According to Mr. Mehta, it was the aforesaid communication of the Board which was impugned by the third respondent before the Kerala High Court. Mr. Mehta referred to the initial interim order granted by that High Court thereby permitting it to continue sourcing LNG from GAIL, the fourth respondent herein, and which arrangement has continued during the pendency of the present proceedings. On 08 April 2022, the matter was remanded by the Kerala High Court for enabling the Board to draw proceedings afresh. The Impugned Order came to be passed in the proceedings so drawn by the Board.

72. Mr. Mehta while addressing submissions on the question of marketing exclusivity firstly submitted that neither the Act nor the Regulations can be construed as conferring an exclusive right upon an AE to market natural gas in the GA. Turning then to the provisions of the Exclusivity Regulations, it was submitted that the same envisages exclusivity to lay, build, operate and expand the CGD Network over the economic life of the project and being exempt from the purview of being declared a common carrier. Mr. Mehta submitted that Section 2(i) of the Act which employs the phrase “*associated equipment*” while defining a CGD Network cannot possibly be read in the

fragmented manner as suggested by the petitioners. According to Mr. Mehta, the Board has correctly understood the scope of Section 2(i) to mean an interconnected network of gas pipelines and ancillary equipment necessary to make that network effective and functional. It was his submission that trucks and cascades can never be considered as forming part of associated equipment.

73. The provisions of Regulation 2(1)(i) of the Authorization Regulations and which purport to define “*piped natural gas*” was explained by Mr. Mehta as being the embodiment of the Board’s decision to incentivize entities to increase natural gas consumption. According to Mr. Mehta, the aforesaid amendment cannot possibly be read as expanding the scope of the expression “CGD Network” which otherwise stands defined under the Act. The submission was that Regulation 2(1)(i) should neither be read in isolation nor should it be accorded an interpretation which may lead to it superseding the provisions contained in the parent Act itself. Emphasis was also laid on Regulation 8 of the Exclusively Regulations which again referred to the obligations placed upon an AE relating to the laying of pipelines and not contemplating any other alternative means of transporting natural gas.

74. On a more fundamental plane, Mr. Mehta would urge that the purpose and object of the Act is principally to protect the interest of the consumers by ensuring uninterrupted supply of natural gas and the promotion of competitive markets. It was submitted that if the interpretation advocated by the petitioners were to be accepted, it would permit one entity to completely monopolize operations and

supplies in the GA and thus exclude the right of the consumer to explore means of sourcing natural gas from alternate suppliers which may be ready and willing to supply natural gas on more competitive and reasonable rates. It was submitted by Mr. Mehta that the provisions of the Act must be interpreted so that a just and equitable balance is struck between the interest of the AE engaged in laying in place the CGD infrastructure on the one hand and the interest of the consumers of being enabled to obtain supply of natural gas and thus converting to a more environment friendly and sustainable energy source.

75. According to Mr. Mehta, the petitioners essentially seek to monopolize the CGD area at the cost of consumer interests. Not only this, Mr. Mehta submits that the continued insistence of the petitioner no. 1 to effect supplies through cascades and trucks is also clearly disruptive of the national goal of the creation and laying in place of a robust infrastructure for supply of natural gas and the nation thus transitioning primarily to a gas reliant economy by 2030.

76. Turning then to the Authorization Regulations, Mr. Mehta submitted that those statutory provisions relate to the exemption liable to be accorded to a CGD Network from being declared a common carrier during the period of exclusivity. Learned senior counsel submitted that this merely enables the AE to be the sole user of the pipelines during the period of exclusivity and thus enabling it to recoup the investments made. Mr. Mehta submitted that the view taken by the Board and as expressed in its Impugned Order is clearly consistent with the aforesaid objectives. It was submitted that

exclusivity in any case cannot be claimed without it being pivoted to the service obligations which stand placed upon an AE. Mr. Mehta submitted that the Act and Regulations, if interpreted in any other manner, would only lead to the creation of monopolies at the cost of consumers and to their detriment.

77. Turning then to the Expert Committee Report, Mr. Mehta submitted that its ultimate recommendations are only relevant for the purposes of identifying its opinion that the exclusivity period as prevailing at that time should be extended. Mr. Mehta submitted that the aforesaid recommendations cannot be understood to mean exclusivity over a market of natural gas in a GA but restricted to the period during which the said CGD Network would not be declared as a common carrier. Turning then to the 9th and 10th CGD bid round documents, it was submitted that even those public documents did not expand the scope of a CGD Network to include supplies through trucks and cascades. It was further contended that the Expert Committee Report cannot possibly be a guide for interpreting the provisions contained in the Regulations. According to learned senior counsel, the statutory provisions would have to be interpreted independently and the Expert Committee report cannot be used as a guide to understand the provisions of the legislation.

78. It was then submitted that the proceedings which were taken before this Court cannot possibly be read as adversely impacting the rights asserted by the third respondent since it was not a party to those proceedings. Mr. Mehta submitted that those proceedings in any case related to the validity of the public notices dated 02 June 2020 and 23

July 2020 which merely sought to initiate the process for stakeholder consultation. According to Mr. Mehta, neither the orders passed by this Court nor the injunction granted in respect of the public notices can be understood as depriving the Board of its right to discharge its adjudicatory functions under the Act.

79. Mr. Mehta submitted that more importantly the petitioner no. 1 cannot be recognized as being ready to supply natural gas since undisputedly and as the Board had found it had laid only 10-inch kms of pipeline as opposed to the milestones which had been put in place in terms of the MWP. Mr. Mehta proceeded further to contend that the material placed on the record would clearly establish that the petitioner no. 1 had sought to unjustly enrich itself and which would be evident from the following facts. It was pointed out that for the month of February 2021, the petitioner no. 1 had claimed that the increased price of USD 19.04, and which after negotiation came to be reduced by USD 1, was due to an increase in the input gas cost. It was pointed out that the delivery note for February 2021 however established that the petitioner no. 1 had sourced LNG from the Ennore terminal of IOCL. The third respondent further asserts that when it obtained the proforma invoices which IOCL, Ennore had raised upon a third party, it discovered that it had priced the supply of natural gas at USD 10.65. The aforesaid facts according to Mr. Mehta are stark evidence of the petitioner no. 1 seeking to profit and that it did so regardless of the increase in input prices or global conditions.

80. Mr. Mehta submitted that the concept of readiness to supply which underlies Regulation 3(2)(a) is clearly connected to a CGD

Network as opposed to cascades or other perceivable modes of supply. This according to Mr. Mehta is evident from those Regulations commencing with the words “*a CGD Network shall be designed....*”. It was highlighted that the aforesaid Regulation consistently employs the phrase “*CGD Network*” throughout as opposed to trucks and cascades. It was further submitted that the contention that Regulation (2)(i) of the Authorization Regulations would eclipse the provisions contained in Section 2(i) of the Act is inherently flawed since a subordinate legislation cannot possibly be interpreted contrary to the command of the parent statute or accorded a construction that leads to the subordinate rule or regulation overriding the provisions of the principal statute itself.

81. It was submitted that the amendment to the definition of “*piped natural gas*” was contemporaneously introduced along with the amendments to Regulation 3(2)(a) on 06 April 2018. It was urged that the rationale behind the aforesaid amendments have been duly explained by the Board as being restricted to addressing the purpose of amending the bidding parameters which existed at that time and the policy decision taken to accord greater weightage to a higher number of domestic PNG connections proposed in the bids. It was submitted that as per serial no. 4 of the bidding criteria, 50% weightage had been earmarked for the aforesaid purpose. The submission thus was that the amendments are liable to be appreciated in the aforesaid backdrop and limited to the objective underlying their introduction in the Authorisation Regulations. In any case, according to Mr. Mehta, the

amendments introduced could not be accepted as being a statutory sanction for supply of natural gas via trucks and cascades.

82. It was then contended that the Act and the Regulations only contemplate two kinds of exclusivity, namely, “*infrastructure exclusivity*” in terms of Regulation 5 of the Exclusivity Regulations and “*marketing exclusivity*” in terms of Regulation 6 thereof. Mr. Mehta also referred the Court to the Guiding Regulations which define the term “*marketing exclusivity*” as being exclusivity from the pipeline network being declared as a common carrier or contract carrier. This too according to Mr. Mehta is irrefutable evidence of exclusivity being correlated to the CGD Network as opposed to an AE.

83. Turning then to Section 20(4) of the Act, Mr. Mehta submitted that the said provision is the source of the power conferred upon the Board to decide on the period of exclusivity to lay, build, operate or expand a CGD Network. According to Mr. Mehta, a reading of the aforesaid provision would clearly establish that Regulation 6 which deals with the exclusivity to operate is a temporary protection accorded to the network from being declared a common or contract carrier. It was submitted that marketing exclusivity must be interpreted to mean “*an earned privilege*” and cannot possibly be claimed by an AE which has failed to lay the interconnected network of pipelines. It was further submitted that the Act as well as the Regulations interlink the CGD Network and the concept of common carrier. It was submitted that the pipeline network which is developed alone can be declared to be a common carrier or a contract carrier.

According to Mr. Mehta, the Act as well as the Regulations lay emphasis on pipelines which constitute the CGD Network. It was submitted that trucks or cascades can never be declared a common or a contract carrier. In view of the above, it was his submission that the inclusion of cascades within the meaning of a CGD Network as envisaged under the Act would be wholly violative of the statutory regime which stands constructed. It was submitted that the fact that the petitioner has failed to lay in place a pipeline leading up to the doorstep of the third respondent clearly establishes that it is not in a readiness to supply and it thus cannot possibly claim exclusivity.

84. Mr. Mehta submitted that on a more fundamental plane the interpretation as canvassed at the behest of the petitioners in respect of exclusivity, if accepted, would undoubtedly violate the fundamental right of choice which a consumer is entitled to claim by virtue of Article 19(1)(g) of the Constitution. Apart from the above, Mr. Mehta submitted that in light of the facts which establish that the petitioner no. 1 woefully failed to adhere to the contractual milestones and its attempt to indulge in profiteering clearly disentitles it from the grant of relief as claimed.

F. ARGUMENTS OF GAIL

85. Mr. Ganapathi, learned counsel appearing for GAIL, the fourth respondent here, has essentially submitted that the petitioners have deliberately attempted to short circuit the alternative remedy by adding it as a party respondent in the present writ petition even though no relief is sought against it. According to learned counsel, the petitioners have adopted the said modus only to bypass the appellate

remedy which exists by taking undue advantage of the order of the Supreme Court passed in Civil Appeal Nos. 7467-7468/2021. Insofar as the merits are concerned, GAIL has addressed submissions which essentially proceed on lines similar to those addressed on behalf of the first and third respondents.

G. AGP IN REJOINDER

86. Controverting the aforesaid submissions, Mr. Kuhad learned senior counsel in rejoinder asserted that undisputedly gas in a liquid state and compressed natural gas cannot possibly be transported via pipelines. According to Mr. Kuhad, the mode of pipelines is technically unfeasible and therefore the submissions addressed on behalf of the respondents that even LNG is liable to be transported only through the pipeline network is conceptually misconceived. It was submitted that in any case the requirement of the third respondent specifically was and consistently remained to be LNG. In view of the aforesaid, according to Mr. Kuhad, the insistence on its part of being permitted to source supplies of LNG was not only mala fide but also thoroughly misconceived. Mr. Kuhad also underlined the fact that the third respondent had while seeking permission to approach third parties unequivocally declared its requirement being that of LNG. It was further contended that the acceptance of the submission that supply of natural gas must be understood as being supplied through a pipeline network only would adversely impact the interest of various customers who may require natural gas in compressed or liquid form. According to Mr. Kuhad, if the interpretation canvassed by and on behalf of the third respondent were to be accepted, the AE would also

stand exempted from the obligation owed to a large percentage of customers who may be located in areas where due to topographical or other factors it may not be feasible to lay down pipelines at all.

87. Mr. Kuhad submitted that the obligation placed upon the AE in terms of Regulation 3(2)(a) includes its duty to design a CGD Network that would ensure supply of natural gas in all its forms and to meet the requirements of all customers. This obligation, Mr. Kuhad would submit, is clearly fortified from a reading of Regulation 2(1)(i) of the Authorization Regulations which unambiguously include transportation of natural gas through cascades. Mr. Kuhad submitted that the view expressed by the Board of Regulation 2(1)(i) being restricted to PNG connections and the adopted weightage for connections is not only misconceived but would also lead to ludicrous results. Mr. Kuhad submitted that if the view of the Board were to be accepted, it would result in two independent definitions coming to exist in respect of the CGD Network with one being for the purposes of domestic connections and a wholly different parameter being applicable to commercial and industrial consumers. Mr. Kuhad submitted that the amendments introduced in Regulation 2(1)(i) were in recognition of the wider obligation placed upon the AE to meet the requirement of all categories of customers irrespective of form, quantity or mode of transportation of natural gas.

88. Turning then to the issue of readiness to supply, Mr. Kuhad contended that if the requirement of a customer be that of LNG, and which admittedly cannot be supplied via pipelines, as long as the AE were deploying cryogenic trucks and tankers to meet the requirements

of such a customer, it could not be said that it was not in a position to supply. Mr. Kuhad further submitted that the submissions addressed by and on behalf of the Board that exclusivity is a progressive concept and connected solely with the extent to which a pipeline network is laid, merits outright rejection since the same cannot possibly be said to flow from the provisions of the Act or the Regulations. The progressive concept, Mr. Kuhad contended, would lead to wholly discordant and absurd results. The submission was that it would essentially mean that in one GA while the AE would be entitled to claim exclusivity over some pockets and areas, for the other parts there would be no exclusivity. This would obviously result in various outside entities affecting supplies without being placed under the obligation of creating an infrastructure. Mr. Kuhad argued that if such an interpretation were to be accepted it would be clearly destructive of the very ethos of the legislation.

89. Mr. Kuhad further contended that as is manifest from the language of Regulation 5(1)(a) of the Exclusivity Regulations, infrastructure exclusivity is not limited to a particular technology for transportation of gas, namely pipelines. Learned senior counsel submitted that the said Regulation's in fact oblige the AE to keep itself abreast of technical advancements and meeting all requirements for investment in pipelines and other allied equipment. It was submitted that if the CGD Network were to be understood as meaning only pipelines, it would keep the LNG infrastructure completely outside the scope of a common carrier and be contrary to larger consumer interests. According to learned senior counsel, as long as a

demand for LNG exists within a GA, it would be the duty and obligation of the AE to cater to the demands of those customers. The amendments were explained to be an attempt to grant flexibility to the AE to adopt all possible modes of supply so as to meet the demand of the maximum number of consumers in the GA.

90. Turning then to the applicability of the Proviso to Regulation 3(2)(a) in the facts of the present case, Mr. Kuhad submitted that, post the grant of authorisation, the petitioners procured twelve cryogenic trucks for transportation of LNG and entered into long-term contracts with GAIL for supply of approximately 3,000 tons of LNG per month. It was further asserted that the requisite infrastructure for supplying LNG within the AKT GA was also laid in place. The petitioner no. 1, according to Mr. Kuhad, commenced LNG supply in the GA from the month of January 2020. Based on respondent no.3's request, the petitioner no. 1 is also stated to have shared terms of supply with it. Mr. Kuhad laid great emphasis on the fact that the respondent no.3 had stated its requirement to be of LNG only. It was further submitted that pursuant to the order of the Board dated 24 December 2020, the respondent no.3 approached the petitioner no. 1 for meeting its requirements of LNG and upon acceptance of the said request, the petitioner no. 1, in fact, supplied 154 MT of LNG to it. It was in the aforesaid backdrop that Mr. Kuhad contended that the readiness of the petitioner no. 1 to effect supplies of LNG was self-evident and could not have been doubted. It was further submitted that even when the respondent no. 3 addressed a request to the Board to permit it to source LNG from Petronet or IOCL, it made no reference of its

requirement to be of natural gas in its gaseous form. In fact, Mr. Kuhad submitted that even in its communication of 25 February 2021, the third respondent reiterated its request of supply of LNG from alternate sources. It was further stated that apart from respondent no.3, the petitioner was in fact supplying LNG to various customers in the AKT GA including Kerala Minerals and Metals Limited, Kerala Ceramics Limited, English India Clay Limited and HHL Life Care Limited. Closing his submissions on this aspect, Mr. Kuhad submitted that since undisputedly, the requirement of respondent no. 3 had consistently been of natural gas in its liquefied form, the issue of a pipeline network being in existence clearly was inconsequential. In any case, Mr. Kuhad contended that it could not possibly be said that the petitioner no. 1 was not ready to effect supplies and therefore the Proviso could not have been invoked at all.

91. The submission of the respondent that exclusivity is a progressive concept or that it would come into existence in a staggered manner upon a pipeline network being laid was also controverted with Mr. Kuhad submitting that Para 7(a) and (b) of the CGD Authorisation which was granted to the petitioner would itself indicate that it was one granted to the entity itself as opposed to the network as was contended by the respondents. Mr. Kuhad laid specific emphasis on the following recitals as forming part of the authorisation: -

“7. The entity is allowed an exclusivity period under the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008, in respect of the following, namely:

(a) **300** months from the date of issue of this communication for laying, building and expansion of the CGD network; and

(b) 96 months from the date of issue of this communication in terms of an exemption from the purview of common carrier or contract carrier for the CGD network:

Provided that the entity meets the obligations in line with the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008:

Provided further that the period of exclusivity allowed under sub-clause (a) or sub-clause (b) may be terminated before the expiry of the period mentioned above in line with the provisions under Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008.”

92. It was then submitted that if the interpretation as suggested by and on behalf of the respondent no. 3 were to be accepted, it would lead to absurdities since it would amount to certain parts of the GA being covered by the exclusivity principle while others would not. This, according to learned senior counsel, would clearly be disruptive of the basic precepts of the statutory regime which has consistently recognised its cornerstone to be the creation and development of a GA as a whole. The inherent fallaciousness of this argument was also sought to be highlighted with Mr. Kuhad contending that the respondents had failed to indicate how much of an area falling on either side of a laid pipeline would be covered by the exclusivity principle. While summing up arguments on this score it was contended that the argument of progressive exclusivity is not only preposterous, it would throw the entire scheme of systematic development of GA's into disarray. More importantly, according to Mr. Kuhad, if the contention canvassed by the Board were to be accepted, it would result in multiple players being entitled to render supplies in the GA and thus completely destroying the protection and

insulation of the CGD Network as provisioned for under the Act and the Regulations.

93. It was then submitted that a CGD Network had always been treated by the Board as one which makes adequate provisions for supply of natural gas other than via pipelines both in its regulatory as well as legislative capacity. Reliance in this respect was also laid upon the Policy for Development of Natural Gas Pipelines and City or Local Natural Gas Distribution Networks and the imperatives of ensuring the availability of natural gas to as many consumers as possible in different locations throughout the country. Mr. Kuhad submitted that the concept of supply of natural gas through tank trucks, tank wagons and cascades is not only evident from Regulation 2(1)(i) itself, it is a position which was accepted even by the Board in its letter dated 18 August 2020 issued in the matter of Honda Motor Cycles & Scooter India Pvt. Ltd.

94. Addressing submissions then on the question of the alleged non-achievement of MWP targets, Mr. Kuhad addressed the following contentions. It was submitted that, based on the authorisation that was granted in its favour for the AKT GA, it had proceeded to submit Bank Guarantees for an amount of Rs.50 crores in terms of Regulation 10 of the Authorization Regulations. It was further submitted that in respect of the twelve GA's for which the petitioners had been authorised, it had cumulatively submitted Bank Guarantees totalling Rs.490 cores. Reference was also made to the binding Gas Supply Agreements which had been entered into by the petitioner no. 1 and based upon which, it had taken on binding commitments to lift a

minimum quantity of natural gas. It was pointed out that the petitioner no. 1 had undisputedly also achieved financial closure in terms of Regulation 11(3). Turning then to the DFR which had been submitted for the AKT GA, Mr. Kuhad pointed out that the same had clearly indicated the proposed transportation of LNG through trucks as per the detailed chart set forth at Page 538 of the writ petition. It was further asserted that the petitioner no. 1 has till date laid out 257.77 Inch kms of steel and 241.55 Inch kms of MBPE pipeline in the AKT GA. It was further urged that cumulatively the petitioners have till date laid up to 7071-inch kms pipeline (steel + MDPE) in the twelve GAs' for which it was authorised. It was submitted that the aforesaid steps have been taken by the petitioners despite facing various hurdles such as the unavailability of pipeline connectivity to the national grid, the delays caused by the Board in transferring authorisations in favour of the petitioner no. 1 and various other factors which are alluded to in the writ petition. It was further submitted that the transfer of authorisation was granted by the Board only on 01 September 2020 and subsequent to the start of the highly disruptive COVID pandemic and the imposition of a countrywide lock down coming into effect from March 2020 onwards.

95. Mr. Kuhad further submitted that the petitioner no. 1 also asserts that the period between 24 March 2020 to 31 March 2022 is liable to be considered as a period of force majeure and thus entitling it to the extension of MWP targets and the period of exclusivity. Mr. Kuhad has also referred to the force majeure extension as a consequence of which the second contract year would come to an end

on 31 March 2023 for which the steel pipeline target is 370.20 inch kms of steel pipeline out of which 257.77 inch kms of steel pipeline has already been laid. It was further stated that the petitioner no. 1 expects to achieve those targets within the stipulated year itself.

96. It was lastly urged that the regulatory regime provides for consequences for non-performance and a failure on the part of an AE to meet MWP targets. Reference in this regard was made to Regulations 12 and 16 of the Authorization Regulation which contemplate the imposition of penalties, reduction of the marketing exclusivity period as well as for termination of the authorisation itself. Mr. Kuhad also submitted that in terms of Regulation 10(4) of the Exclusivity Regulations also the marketing exclusivity privilege which is accorded to an AE is liable to be terminated in case the entity fails to comply with the service obligations or on account of repeated violations of the quality standards. The submission essentially was that an alleged failure to comply with MWP targets would not attract the Proviso to Regulation 3(2)(a).

H. PNGRB AND EXCLUSIVITY – HISTORICAL BACKDROP

97. The policy initiatives adopted by the Union and pertaining to natural gas being given an impetus so as to gradually reduce the burden placed on the coal and thermal power sectors was explained by Mr. Kuhad as owing its genesis to the directions issued by the Supreme Court on 21 October 1994 in *M.C. Mehta* requiring vehicles to be equipped with CNG cylinders to reduce pollution in highly polluted cities like Delhi and other metropolitan cities of the country. This Court however finds that more significant were the observations

which came to be rendered by the Supreme Court in *Re: Special Reference No. 1 of 2001*. As was noticed in **Adani Gas Ltd. v. Union of India**²⁵, the Act itself owes its genesis to the opinion rendered by the Supreme Court on that Special Reference. It would be pertinent to advert to the following passages as appearing in the decision of *Adani Gas* and which traces the history and origin of the avowed objective to adopt natural gas as an alternate and sustainable energy source: -

“Analysis and Conclusions

Re: Point 1: The scope of the “deemed authorisation” clause under the proviso to Section 16 of the PNGRB Act

55. The PNGRB Act came in the wake of declaration of law by the opinion of this Court [Gas, Petroleum and Petroleum Products, In re, Special Reference No. 1 of 2001, (2004) 4 SCC 489] under Article 143 of the Constitution of India. This Court held that Schedule VII List I Entry 53 shall regulate the development of oil fields and mineral oil resources, petroleum and petroleum products, other liquids, and substances declared by Parliament by law to be “dangerously inflammable”, and that this entry exclusively enabled Parliament alone, to the exclusion of State Legislatures to enact laws in relation to natural gas. The Special Reference became necessary due to the States asserting that by List II [Relating to “gas and gasworks”.], Entry 25 State Legislatures had exclusive domain over the subject of natural gas. The Presidential Reference was also made with respect to the competence of the Gujarat State Legislature to enact a law regulating transmission, supply and distribution of gas [Gujarat Gas (Regulation, Transmission, Supply and Distribution) Act, 2001]. This Court, in its opinion, noted that several laws relating to petroleum and petroleum products had been enacted both before and after the Constitution came into force [Notably the Petroleum Act, 1934; the Mines Act, 1952; the Mines and Minerals (Development) Act, 1957; the Oil Fields (Regulation and Development) Act, 1948; the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962; the Oil and Natural Gas Development Act, 1974; the Petroleum and Natural Gas Rules, 1959.] . This Court, after examining the previous decisions with respect to interpretation of legislative entries in the context of rival claims to exclusive power,

²⁵ (2022) 5 SCC 210

proceeded to consider what was meant by the expression “petroleum and petroleum products” and “mineral oil resources” in Entry 53 of List I.

56. After examining various technical encyclopaedias and reference books, this Court held : (SCC pp. 504 & 507-08, paras 35 & 41-43)

“35. All the materials produced before us would only show that the natural gas is a petroleum product. It is also important to note that in various legislations covering the field of petroleum and petroleum products, either the word “petroleum” or “petroleum products” has been defined in an inclusive way, so as to include natural gas. In *Encyclopaedia Britannica*, 15th Edn., Vol. 19, p. 589 (1990), it is stated that ‘liquid and gaseous hydrocarbons are so intimately associated in nature that it has become customary to shorten the expression “petroleum and natural gas” to “petroleum” when referring to both.’ The word “petroleum” literally means “rock oil”. It originated from the Latin terms *petra* and *oleum* (*petra* means rock or stone and *oleum* means oil). Thus, natural gas could very well be comprehended within the expression “petroleum” or “petroleum product”.

41. Under Entry 53 of List I, Parliament has got power to make legislation for regulation and development of oilfields, mineral oil resources, petroleum, petroleum products, other liquids and substances declared by Parliament by law to be dangerously inflammable. Natural gas product extracted from oil wells is predominantly comprising of methane. Production of natural gas is not independent of the production of other petroleum products; though from some wells the natural gas alone would emanate, other products may emanate from subterranean chambers of earth. But all oilfields are explored for their potential hydrocarbon. Therefore, the regulation of oilfields and mineral oil resources necessarily encompasses the regulation as well as development of natural gas. For free and smooth flow of trade, commerce and industry throughout the length and breadth of the country, natural gas and other petroleum products play a vital role.

42. *Cauvery Water Disputes Tribunal, In re* [Cauvery Water Disputes Tribunal, In re, 1993 Supp (1) SCC 96 (2)] , the right to flowing water of rivers was described as a right “*publici juris*” i.e. a right of public. So also the people of the entire country have a stake in the natural gas and its benefit has to be shared by the whole country. There should be just

and reasonable use of natural gas for national development. If one State alone is allowed to extract and use natural gas, then other States will be deprived of its equitable share. This position goes on to fortify the stand adopted by the Union and will be a pointer to the conclusion that “natural gas” is included in Entry 53 of List I. Thus, the legislative history and the definition of “petroleum”, “petroleum products” and “mineral oil resources” contained in various legislations and books and the national interest involved in the equitable distribution of natural gas amongst the States — all these factors lead to the inescapable conclusion that “natural gas” in raw and liquefied form is petroleum product and part of mineral oil resources, which needs to be regulated by the Union.

43. Natural gas being a petroleum product, we are of the view that under Entry 53 List I, the Union Government alone has got legislative competence. Going by the definition of “gas” as given in Section 2(g) of the Gujarat Act wherein “gas” has been defined as “a matter of gaseous state which predominantly consists of methane”, it would certainly include natural gas also. We are of the view that under Entry 25 List II of the Seventh Schedule, the State would be competent to pass a legislation only in respect of gas and gasworks and having regard to collocation of words “gas and gasworks”, this Entry would mean any work or industry relating to manufactured gas which is often used for industrial, medical or other similar purposes. Entry 25 of List II, as suggested for the States, will have to be read as a whole. The expressions therein cannot be compartmentally interpreted. The word “gas” in the Entry will take colour from the other word “gasworks”. In *Ballantine's Law Dictionary*, 3rd Edn., 1969 “gasworks” is defined as “a plant for the manufacture of artificial gas”. Similarly in *Webster's New 20th Century Dictionary*, it is defined as “an establishment in which gas for heating and lighting is manufactured”. In the www.freedictionary.com “gasworks” is explained as “a manufactory of gas, with all the machinery and appurtenances; a place where gas is generated”. The meaning of the term “gasworks” is well understood in the sense that the place where the gas is manufactured. So it is difficult to accept the proposition that “gas” in Entry 25 of List II includes natural gas, which is fundamentally different from manufactured gas in gasworks. Therefore, Entry 25 of List II could only cover manufactured gas and does not cover natural gas within its ambit. This will negative the argument of States that only they have exclusive powers to make laws

dealing with natural gas and liquefied natural gas. Entry 25 of List II only covers manufactured gas. This is the clear intention of Framers of the Constitution. This reading will in no way make that entry a “useless lumber” as feared by the States, because natural gas was never intended to be covered by that entry. It is also difficult to accept the argument of the States that all “gas” could be categorised as dangerously inflammable and thus arriving at the conclusion that natural gas is also covered in State List because this differentiation is based not on the characteristics of gas, but on the manner of its origin. Entry 25 of List II covers the gas manufactured and used in gasworks. In view of this specific Entry 53, for any petroleum and petroleum products, the State Legislature has no legislative competence to pass any legislation in respect of natural gas. To that extent, the provisions contained in the Gujarat Act are lacking legislative competence.”

57. The Court categorically held that the States had no legislative competence to enact laws on the subject of natural gas and liquefied natural gas. It also held that the Gujarat enactment of 2001, insofar as it related to natural gas or liquefied natural gas was without legislative competence and that the Act was ultra vires the Constitution. The opinion of the Court was rendered on 25-3-2004 [Gas, Petroleum and Petroleum Products, In re, Special Reference No. 1 of 2001, (2004) 4 SCC 489] . As a result, all activities relating to natural gas that relied upon authorisations by the States became exposed to the vice of illegality. Having regard to the opinion of this Court and the previous policies of the Central Government, Parliament thought it fit to enact the PNGRB Act. Significantly, this Act does not deal with any aspect relating to extraction of petroleum or liquefied natural gas. It deals with what may be termed as “downstream activities” such as refining, processing, storage, transportation, distribution, marketing and sale of petroleum and petroleum products and natural gas. The main aim of the Act is to regulate all these activities in a comprehensive and wide-ranging manner. When Parliament enacted the PNGRB Act, it was aware that several entities were in the process of setting up various kinds of networks which the law governed (i.e. transmission, storage, distribution, marketing, etc.). Parliament, therefore, devised a uniform standard by which entities that were laying networks or were in the process of setting up such activities had to be considered. The statutory device adopted was through Sections 16 and 17. By virtue of the power conferred by Section 1(3) upon the Central Government, all provisions of the PNGRB Act except Section 16 were brought into force on 1-10-2007. The intention of not bringing into force

Section 16 appears to have been to allow some breathing time to entities which were in the process of laying, building and operating any pipeline, to first apply to PNGRB. If Section 16 were to be brought into force at once, all activities which had started before the enactment of the PNGRB Act would necessarily have been rendered illegal and would have had to cease. The delayed enforcement of this provision meant that existing entities could do what was required of them in terms of other provisions of the Act and seek necessary authorisation.

58. The non-implementation or absence of enforcement of Section 16 led to a public interest litigation before the Delhi High Court [Voice of India v. Union of India, 2010 SCC OnLine Del 245]. The High Court declared that by virtue of absence of notification of Section 16, PNGRB lacked the power to grant authorisation to entities which had applied to it for laying, building, operating or expanding city or local natural gas networks. The judgment was carried in appeal by special leave [SLP (C) No. 5408 of 2010] in which notice was issued [Petroleum & Natural Gas Regulatory Board v. Indraprastha Gas Ltd., (2022) 5 SCC 292]. In the meanwhile, pending decision on the special leave petition, the Central Government brought into force Section 16 of the Act by Notification dated 12-7-2010 with effect from 15-7-2010.

59. If one considers the background of the enactment, it is evident that Parliament wished to decisively declare that only entities authorised in accordance with the provisions of the Act by PNGRB could function. Section 16 by itself does not classify or make any distinction between entities who are permitted or authorised by the Central Government or any other authority. However, by the proviso, it distinguishes two categories of entities i.e.

- (i) those laying, building, operating or expanding any pipeline as common carriers or contract carriers, and
- (ii) any city or local natural gas distribution network.

The deeming fiction, as it were, in respect of such two classes of entities, by which Adani and other interveners in its support urge to be unqualified, is created by the expression that such entities “*immediately before the appointed date shall be deemed to have such authorisation*”. However, this deeming provision is expressly made subject to the provisions of this Chapter. The chapter in question is Chapter IV.

60. Parliament enacted the PNGRB Act to regulate refining, processing, storage, transportation, distribution, marketing, and sale of petroleum, petroleum products, and natural gas excluding

the production of crude oil and natural gas. The objectives of the enactment are inter alia, setting up of the Board, regulation of refining, storage, processing, transportation, distribution, marketing, and sale of petroleum, petroleum products, and natural gas except for the production of crude oil and natural gas. An important objective is the protection of consumer's interests in certain activities related to petroleum, its products, and natural gas and ensuring a sufficient and continuous supply of petroleum, its products, and natural gas all around the country. The other important objective is promotion of competitive business.”

98. The Court has already in the preceding parts of this decision noticed the broad policy objectives for development of natural gas pipelines as notified by the Union Government on 20 December 2006. As would be evident from a reading of its extracts which have been reproduced hereinabove, the policy firstly takes into consideration the basic principle to be the encouragement of market forces so as to enhance competition and create a competitive and efficient industry structure. However, the said policy itself acknowledges that while competition and its attendant benefits can reduce the need for regulation in some areas of monopoly, the benefits of regulation in certain areas “*potentially outweigh the cost*”. The infrastructural requirements connected with the construction of a nationwide natural gas pipeline network was acknowledged to fall in the latter. The policy document recognised the said sector as being at the threshold of rapid growth. It also laid emphasis on the creation of a national gas grid which would ultimately be available to be accessed by players on a non-discriminatory basis. The Union while broadly laying out the long-term plans and objectives for the creation of a pan India gas grid recognised the necessity of creating a gas pipeline network in consultation with the Board, State Governments and other

stakeholders. It also observed that the entity which may be authorised to lay in place a CGD Network would be mandatorily obliged to follow all marketing and service obligations as may be prescribed by the Board. It also left it open for the Board to determine principles which may regulate the period of exclusivity liable to be granted.

99. The policy is thus an embodiment of the avowed national objective of the country progressing forward to adopt a more sustainable energy source. In acknowledgment of the fact that the massive capital expenditure which would be required to cover the length and breadth of the country without any form of State support, the Policy also adopts the concept of exclusivity. Exclusivity, as would be seen from the discussion which follows, is in fact a global norm and not one which is peculiar to India only. The grant of infrastructure and marketing exclusivity clearly appears to be an embodiment of the policy measure to insulate and protect an AE during the period it designs and builds the network.

100. It would be pertinent to recall that the Act itself came to be promulgated on 31 March 2006. As would be evident from a reading of its introductory title, it envisaged the establishment of the Board to regulate refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas. The only subject which was excluded was the production of crude oil and natural gas. The aforesaid is a manifestation of the intent of Parliament to empower the Board to regulate all aspects and activities relating to natural gas. The avowed objectives of the legislation are

also evident from its Statement of Objects and Reasons which are extracted hereinbelow: -

“STATEMENT OF OBJECTS AND REASONS

Consequent upon the Government decision for phased dismantling of Administered Pricing Mechanism and deregulation of petroleum sector from April 2002, marketing and pricing of all petroleum products except Public Distribution System Kerosene and LPG (Domestic) have been decontrolled with effect from the 1st April, 2002. To prevent exploration of consumers in the deregulated scenario, it is proposed to provide for a regulatory mechanism which would facilitate uninterrupted and adequate supply of notified petroleum, petroleum products and natural gas in all parts of the country, including remote areas at fair price and to promote competitive markets and access to common or contract carrier on non-discriminatory basis by all entities. With respect to such petroleum, petroleum products and natural gas as may be notified by the Government from time to time, the Bill also entails provision of retail service obligations for retail outlets and marketing service obligations for entities. It is also proposed to establish the Petroleum and Natural Gas Regulatory Board under the Bill so as to ensure that each marketing entity displays for the information of customers the maximum retail prices for the notified petroleum and petroleum products and natural gas, and take steps, in accordance with the regulations, to prevent restrictive trade practices by the entities. Provisions have been made in the Bill so as to ensure redressal of grievances and protection of consumer interest as also resolution of disputes among entities or between an entity and any other person.

2. These objectives are intended to be achieved by-

- (a) setting up of a Petroleum and Natural Gas Regulatory Board to oversee and regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas;
- (b) empowering the Central Government to broadly lay down policy framework;
- (c) making provision for the Central Government to intervene in matters adversely affecting the public interest in certain exigencies;
- (d) maintaining a data bank of information on activities relating to petroleum, petroleum products and natural gas to enable planning and development thereof;

(e) empowering the Appellate Tribunal for Electricity established under section 110 of the Electricity Act, 2003 to function as the Appellate Tribunal for the purposes of the proposed legislation.

3. The Notes on clauses explain the various provisions contained in the Bill.

4. The Bill seeks to achieve the above objects.”

101. Both the title as well as the Statement of Objects and Reasons underline the broad and fundamental policy objectives to be the creation of a pipeline infrastructure which would straddle the length and breadth of the country, ensure uninterrupted and adequate supply of natural gas designed to reach all parts of the nation including the remotest of areas at a fair price to the consumer, creation of competitive markets and with the ultimate objective being to declare the pipeline network as a common or contract carrier to be available to be accessed by all entities on a non-discriminatory basis. The legislation thus principally seeks to subserve the two fundamental objectives of laying in place a CGD Network throughout the country, to protect the interest of consumers and entities and providing them access to a sustainable and economical alternate energy source.

102. The Court has already referred to the Expert Committee Report which had been submitted on 17 January 2017. As would be evident from the ultimate recommendations which were made by that Committee and which have been extracted hereinbefore, the Expert Committee had also constituted a Sub-Committee to study how CGD Networks had come to be established and created across the globe. The said Sub-Committee after studying various international precedents noted that globally exclusivity is granted both for the

supply/marketing and distribution aspects relating to natural gas. It also noted that typically competition is introduced once the natural gas market matures. The Sub-Committee also noted that infrastructure exclusivity is conferred to operate over the term of the license period to avoid duplication of assets. Referring to the International Energy Agency's report on China's development of its domestic natural gas market, it quoted the following extracts from that report: -

“.....Protecting investment is particularly important at the initial stage of gas market development, as gas infrastructure facilities are very capital intensive with a very long pay-back period. Investors will be reassured by the existence of a legal and fiscal framework which is clear, transparent and stable, and that maximizes the prospect of a reasonable return over the long term. Historically, gas companies setting up a grass-roots transmission and distribution business in other countries (e.g. France, UK) have often been granted monopoly rights over transportation and supply within a given area and for a given period, in exchange for the fulfilment of certain obligations. In almost no instance have they been initially required to offer pipeline access to third parties. Exclusive rights were seen as necessary at an early stage of the development of the gas industry to reduce risks, and thereby to increase investment...”

....The gas industries of North America and Europe were developed on the basis of varying degrees of exclusive rights over high-pressure transmission and supply/distribution. The initial investments may not have occurred without minimum protection and the possibility for the gas utilities and producers to earn an adequate return on their investment. To develop a new gas market, a certain level of investment protection will be needed.”

103. The Sub-Committee had an occasion to review the exclusivity principle that had been adopted by various countries across the globe. While framing its recommendations in support of a longer marketing exclusivity period, the Sub-Committee observed as follows: -

“2. Recommendation of a longer Marketing Exclusivity Period

The gas marketing exclusivity period provides an incentive for the CGD companies to grow and develop rapidly the grid, connect gas customers and expedite gas sales during the mentioned period, since marketing margins are not pressed down by competition of other marketing companies, and only limited by competition with alternative fuels.

Longer exclusivity periods will promote more competitive bids by participants, who would be willing to quote a larger number of low-pressure connections.

One of the problems that has been identified in the Indian CGD scenario is the lack of growth of the network in already allocated areas. We think that increasing marketing exclusivity beyond 5 years would help promote growth and initial development of the network.

As per our experience in other countries, we recommend to extend the marketing exclusivity period to 8 years.

- Mexico: exclusivity period: 5, 12 or 0 years, depending on the auction.
- Peru: 8 years.
- Brazil (S. Paolo); exclusivity period of 12 years for large customers, continuous exclusivity for small ones.
- Brazil (Río de Janeiro, gas), Chile (power) and Panamá (power); continuous exclusivity for small customers.

In addition, CGD sector also complains for the difficulty of obtaining the multitude of licenses and authorizations required from local authorities to lay the infrastructure. Increasing the exclusivity period will provide additional relief to the entities.”

104. The Expert Committee itself had taken note of the tepid response which had been received in the earlier bidding rounds. It had taken note of the imperatives of adopting measures which would incentivise entities to participate in the creation of a nationwide seamless natural gas network. It was the aforesaid imperatives which appear to have weighed and informed its ultimate recommendations to increase the marketing exclusivity period to 10 years from the date of authorisation. The aforesaid recommendation itself was stated to be in

tune with the general trend and practices of other countries. The Expert Committee Report thus constitutes an acknowledgment of global norms which apply to infrastructure and marketing exclusivity and thus being liable to be adopted with respect to a natural gas network to provide the requisite impetus to a fledgling industry. The need to provide incentives was acknowledged to be necessary in order to attract private investment in the field, acceptance of the immense capital expenditure requirements attached to the creation of a CGD Network and thus the requirement of insulating the entity from competition so as to enable it to recoup the massive capital expenditure that may be incurred.

105. As would be evident from the disclosure of facts pertaining to the present petitioners, the total project cost itself was declared to be in the region of Rs. 3000 crores. The DFR had assessed external accruals at Rs. 345.40 crores. The remaining cost of Rs. 2650 crores was proposed to be recouped from internal accruals. The petitioner thus assessed its capital expenditure to be around Rs. 345 crores. Apart from the above it is disclosed that the laying of the network and providing of connection costs would itself entail an additional investment of Rs. 2300 crores. The petitioner had also contended that supply of natural gas to the domestic sector, and which is a mandatory obligation, is economically unviable in light of the subsidised rates at which gas is to be supplied to this category of consumers. Mr. Kuhad had contended that the bulk of the revenue which an AE earns thus comes from industrial and commercial users and it is the revenue so earned which is utilised for development of the CGD Network.

106. The need for exclusivity, according to Mr. Kuhad, flows from the aforesaid imperatives and thus enabling an AE to achieve the twin objectives of creation of infrastructure and the supply of natural gas to all customers falling in the GA. The petitioner had also asserted that pursuant to the eight CGD bidding rounds which were conducted between 2007-2017 only 14% of the area of the country could be covered. This was attributed to the limited marketing exclusivity of only five years which was provided at that time to AEs'. The recommendations of the Expert Committee and which ultimately came to be adopted and incorporated in the relevant regulations, according to the petitioners, was an acceptance of the imperative of exclusivity as being adopted bearing in mind the larger policy objectives.

107. Undisputedly, the Exclusivity and Authorization Regulations which ultimately came to be framed both adopt and incorporate principles relating to infrastructure and marketing exclusivity. The Court thus finds that both the Act as well as the Regulations have consciously embraced the global norms relating to exclusivity. In fact, the various provisions enacted in connection therewith clearly appear to be an endorsement of those norms. The exclusivity principles have evidently been introduced in acknowledgment of insulating and protecting the AE during the period that it builds up the requisite infrastructure, makes the requisite investments and sets up the pipeline network which would ultimately be declared a common carrier.

I. CGD NETWORK AND CASCADES

108. In order to evaluate the rival contentions which were addressed on the issue of a CGD Network and the meaning to be ascribed to the

same in light of the provisions of the Act and the Regulations made thereunder, it would be firstly apposite to notice the definition thereof as contained in Section 2(i). As is manifest and evident from a reading of clause (i), a CGD Network is conceived to mean an interconnected network of gas pipelines situate in a specified GA. The petitioners would contend that the phrase “*associated equipment*” would include transportation of gas through trucks and cascades. This Court, however, finds itself unable to countenance the said submission since that would clearly amount to a disjointed reading of clause (i). It becomes relevant to note that the phrase “*associated equipment*” has been used to include all equipment that may be utilized for transporting natural gas from a bulk supply high pressure transmission main to the medium pressure distribution grid and its subsequent convergence with the service pipes supplying natural gas to domestic, industrial or commercial consumers in the GA. The phrase “*associated equipment*” thus appears to have been employed in the definition to encompass all equipment which stands comprised in the interconnected network of gas pipelines and which is deployed to supply gas to consumers situate in the GA. It clearly appears to refer to allied equipment which is interconnected with the network of pipelines or embedded therein. This also appeals to reason since that phrase is used with the conjunction “*and*” rather than “*or*”. Secondly, the sentence itself is connected thereafter to the point of commencement of supply, namely, the “*bulk supply high pressure transmission main*” and ultimately terminates at “*service pipes supplying natural gas.....*”. It would thus be incorrect to read the phrase “*associated equipment*” as appearing in Section 2(i) in the

fragmented manner as suggested by the petitioners. However, the issue attains a certain degree of complexity when one proceeds to the Authorization Regulations.

109. It becomes pertinent to note that the expression “*piped natural gas*” as it originally stood envisaged the transportation of gas through pipelines only in a CGD Network. The words “*or cascades or any other permitted mode*” came to be inserted by way of the amendment which was introduced in terms of the **Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Amendment Regulations, 2018**²⁶. Regulation 2(1)(i) clearly purports to expand the various modes that may be adopted by an AE for the purposes of supply of natural gas in a CGD Network. It thus clearly represents a principled decision and policy measure adopted by the Board to expand the various modes that may be adopted and utilised for the purposes of supply of natural gas. The Regulations, it may be noted, have been framed by the Board itself in exercise of powers conferred upon it by Section 61 of the Act. It would thus clearly not be open for the Board to contend today that the supply of natural gas through cascades and trucks is a concept which is either totally foreign to or beyond the contemplation of the various modes that may be deployed in connection with the supply of natural gas. The Board also cannot possibly contend that Regulation 2(1)(i) is *ultra vires* the provisions of the Act. The amended Regulation 2(1)(i) appears to have been placed on the statute book to enable the Board to accept the

²⁶ 2018 Amendment Regulations

varied modes and means that may be deployed by an AE to enable maximum penetration amongst various pockets and areas in the GA and thus enabling a customer at the end of the line, even if it be situated in a remote or non-accessible part of the GA, to be able to source a viable and sustainable energy resource.

110. The Court also bears in mind the guidelines which had been formulated by the Board and stand embodied in its circular of 23 August 2013 which specifically attended to the various requests received by the Board for permission to supply natural gas through cascades. The Board appears to have taken cognisance of the fact that a pipeline network may not have been established or be in existence in particular areas and where consumers may have the need to source natural gas. It was in the aforesaid backdrop that the Board appears to have acceded to the request of various entities being granted NOCs' to supply and distribute natural gas to specified customers having requirements of less than 50,000 SCMD in areas yet to be covered under a GA and till such time as an AE is identified and selected.

111. This would further be evident from the stipulation that stood placed in that circular and which took care of the contingency where in future, the area for which the NOC may have been granted comes to be included in a GA and for which an AE may be appointed. Taking note of the aforesaid, it had provided that once an AE comes to be appointed, the holder of the NOC would have to obtain its prior approval for the purposes of continuing the supply of natural gas failing which those activities would be liable to be brought to a halt.

112. The aforesaid circular clearly appears to cater to a situation where a pipeline network is yet to be laid or even where the network is yet to reach the end consumer. In the course of the network evolving and ultimately being ready to supply natural gas through a piped network, the Board clearly appears to have acknowledged and accepted the supply of natural gas through cascades and trucks. What the Court seeks to emphasise is that the supply of natural gas through cascades and trucks cannot be understood to be a concept totally alien to the supply of natural gas in a GA. Holding otherwise would clearly render Regulation 2(1)(i) otiose and surplusage.

113. The Court also bears in mind the provisions contained in Regulation 5 of the Authorization Regulations which contemplates the Board carrying out a preliminary assessment for the purposes of selection of an entity and which amongst other aspects obliges the Board to examine the issue of possible connectivity with an existing or proposed natural gas pipelines for supply of natural gas to the city gate of the proposed CGD Network *“including LNG supplies via tank trucks or tank wagons and CNG by cascades”*. The Authorization Regulations thus at more than one place specifically refer to the supply of natural gas via trucks and cascades. More importantly, Regulation 2(1)(i) after referring to the supply of natural gas through pipelines employs the word *“or”* before proceeding to specify cascades or *“any other permitted mode”* in a CGD network. This too clearly appears to suggest and embody the intent of the Board to permit cascades and any other permitted modes of supply within a GA. In any case, the contention of the respondents that a supply

through trucks and cascades is prohibited or is wholly foreign to or incompatible with a CGD network is not worthy of acceptance. Regard may also be had to the Proviso to Regulation 7(1) as contained in the Authorization Regulations which too appears to acknowledge the supply of natural gas being permissible other than via steel pipelines.

114. In any case, if the contention of the Board were to be accepted and the provisions interpreted to completely exclude the option of supply of natural gas via trucks or cascades, it would clearly render Regulation 2(1)(i) hollow and inconsequential. The distinction which was sought to be drawn between an industrial and a domestic consumer and the Board urging that the additions in Regulation 2(1)(i) were only designed to cater to the needs of the latter also appears to be clearly misconceived. This since Regulation 2(1)(i) unequivocally prescribes that supply through cascades or any other permitted mode in a CGD Network for consumption would be a mode available to be adopted for “.....any customer in the domestic, commercial or industrial category”. The said Regulation thus does not appear to make any distinction between different categories of customers and in any case cannot be read as being confined to customers in the domestic category only. The acceptance of the contention as urged by an on behalf of the Board would thus clearly do violence to the plain language employed in Regulation 2(1)(i).

115. More importantly, the acceptance of the above submission addressed on behalf of the Board would clearly amount to recognising the mode of transport by trucks and cascades while being permissible

for the domestic sector, it being a methodology of supply which is clearly prohibited insofar as commercial and industrial consumers are concerned. The plain language of the Regulation dissuades the Court from accepting that distinction which was sought to be commended. Notwithstanding the avowed purpose for its introduction as was sought to be canvassed by the Board, the Regulation as it stands on the statute book does not merit that distinction being accepted. More importantly, if the aforesaid distinction were to be countenanced, it would essentially mean that an AE is not obliged to establish a pipeline structure for domestic consumers at all. A pipeline grid which connects all customers in the GA must necessarily be constructed and laid in place. This would be subject to the rider that an alternate mode of supply may be adopted in an area fraught by topographical constraints. In fact, topographical and geographical impediments may themselves justify the adoption of an alternate mode of supply.

116. Apart from the above, the aforesaid submission would also discriminate against those consumers who specifically seek LNG. If the fundamental objective were accepted to be the penetration of the network enabling it to reach the maximum number of consumers and all parts of the GA being serviced and reached, the rigid view as canvassed by the Board would not only be disruptive but also distort the primary objectives. The Court notes that the petitioners had in any case in their DFR itself referred to supply by way of cascades as would be evident from pages 551, 553, 557, 565, 578, 579, 583, 585 and 590²⁷ of the record. The Court thus finds itself unable to accept

²⁷ PDF Page Nos. of the digital record

the line of reasoning which was advanced on behalf of the Board in this regard.

117. While the Court does not intend to suggest that an AE stands absolved from the primary obligation of creating the requisite infrastructure and putting in place the pipeline framework for supply of natural gas, till such time as a piped network is ready to reach each and every consumer or customer in the GA, a supply via trucks and cascades cannot possibly be ruled out. The Court deems it necessary to observe and emphasise that the findings recorded above are not liable to be read as an endorsement of an AE adopting the mode of cascades and trucks to the complete exclusion of its obligation to lay in place the pipeline network. The Court does recognise and acknowledge the obligation of the AE to abide by the service obligations as well as its primary responsibility and duty to lay in place the pipeline network. What it seeks to underline is that a fledgling network may require a certain degree of latitude being recognised as being available to be adopted so as to cater to all categories of supply that may be required by various customers. This however and in any case would not detract from the primary duty and obligation of the AE to adhere to the MWP. The balance which is liable to be struck in this regard is discussed in the latter parts of this decision.

J. RECONCILING S. 2(i) WITH REG. 2(1)(i)

118. That takes the Court to consider the submission of a perceived inconsistency between the definition of a CGD Network under Section 2(i) of the Act and Regulation 2(1)(i) of the Authorization

Regulations. It must be borne in mind that while interpreting the provisions of statutes the first principle which Courts bear in mind is eschewing from reading competing provisions as being either inconsistent or irreconcilable. While it is true that Section 2(i) does not specifically allude to cascades or trucks, the definition “*piped natural gas*” as finding place in the Authorisation Regulations clearly envisages supply of natural gas through cascades and any other mode that may be permitted. The aforesaid expression came to be specifically included by virtue of the 2018 Amendment Regulations. If the submission as addressed by the respondents were to be accepted, it would clearly amount to rendering the 2018 Amendment Regulations superfluous and of no consequence at all.

119. Regulation 2(1)(i) clearly appears to be an expansion upon a CGD Network which stands defined under Section 2(i). While the Act contemplates the CGD Network to be an interconnected network of gas pipelines, Regulation 2(1)(i) expands the concept of that pipeline network, which would continue to be a constituent of the CGD Network, by inclusion of cascades and other permitted modes. The Regulations as per the Board itself came to be amended based upon the experience gathered by it in the previous bidding rounds and the imperatives of expanding the reach of natural gas to all categories of consumers. It clearly appears to have been introduced to cater to the needs of a nascent GA and where a network grid is yet to be fully established. Regulation 2(1)(i) thus clearly appears to be the embodiment of the intent to provide a “*play in the joints*” and provide a flexibility of approach to the Board and consequently the AE to

reach the maximum number of consumers in the GA. It merely seeks to expand upon the concept of a CGD Network as originally introduced in the Act. It must be borne in mind that Section 2 (i) has remained static and untouched since the time the Act was originally enacted in 2006. The amendments introduced in the Authorization Regulations clearly appear to be guided and forged by the experience garnered by the Board over the years.

120. The Court also bears in mind that the Regulations have been framed by the Board itself. It would be wholly preposterous for the Board to contend that “*piped natural gas*” as defined in Regulation 2(1)(i) should not be countenanced at all while examining the scope of Regulation 3. The Proviso to Regulation 3 cannot be construed or understood ignoring Regulation 2(1)(i) and the other Regulations which, as was noticed above, contemplate trucks and cascades being one of the permissible modes of supply of natural gas. For the purposes of understanding the working of Regulation 3, it would be imperative to read both Section 2(i) as well as Regulation 2(1)(i) harmoniously and in the manner indicated hereinabove.

121. The Court further notes that Section 2(i) does not employ the phrase “*piped natural gas*” at all. The said phrase had remained part of the Authorisation Regulations till it came to be expanded upon and supplemented in 2018. The Board, while incorporating those amendments, cannot possibly be assumed to have been either unconscious or ignorant of Section 2(i) as placed in the Act. It cannot now disavow the amendments which came to be introduced. In the considered view of this Court, it is a communal, combined and

cooperative interpretation which is liable to be accorded to both Section 2(i) as well as Regulation 2(1)(i) and the phrase CGD Network understood accordingly. Thus, the Court finds no conflict or irreconcilable clash between Section 2(i) of the Act and Regulation 2(1)(i) of the Authorization Regulations.

122. Before proceeding ahead, the Court observes that the dispute which forms the subject matter of the instant petition was in one sense clearly unnecessary and avoidable. Undisputedly, the respondent no.3, had always expressed a requirement of LNG. Undisputedly, LNG, in light of its inherent nature, cannot possibly be supplied through pipelines. It was not the case of the third respondent that the petitioner had either refused or failed to supply LNG. As would be explained in the latter parts of this decision, the readiness to supply which is spoken of in the Proviso to Regulation 3 is concerned with merely that, namely, whether the AE has either refused to supply or is unable to provide natural gas in the form as required by the customer. While a failure to abide by MWP norms may open an AE to various penalties and coercive action, that surely cannot be accepted as being the trigger point for invocation of the Proviso to Regulation 3. This aspect is dealt with in greater detail when the Court deals with the Proviso and its ambit hereinafter.

K. THE PROVISO AND READINESS TO SUPPLY

123. Proceeding then to the Proviso to Regulation 3 itself, it is evident from a plain reading of that provision that it would come into effect only if the CGD Network is unable to supply natural gas to the customers. The respondents, however, would contend that Regulation

3 speaks of a CGD Network and not of piped natural gas at all. It was in the aforesaid light that it was contended that for the purposes of Regulation 3, it would be the provisions of Section 2(i) alone which would have any bearing and that Regulation 2(1)(i) would have no role to play. This Court finds itself unable to countenance the aforesaid submissions for the following reasons.

124. As has been explained in the preceding parts of this decision, the ambit of Regulation 3 would have to be discerned based on a conjoint reading of Section 2(i) of the Act and Regulation 2(1)(i) of the Authorization Regulations. The Court has already held that both provisions have to be harmoniously construed and a situation of irreconcilable conflict avoided. It has on due consideration found that Regulation 2(1)(i) merely expands and enlarges upon the various modes of supply of natural gas. It has also held that the 2018 Amendments undoubtedly were necessitated and forged by the experience of the Board itself. The Court thus principally finds itself unable to accept the contention that Regulation 3 must be read in light of Section 2(i) of the Act only or in ignorance of the expression "*piped natural gas*" as defined by the Authorization Regulations.

125. The arguments addressed on this score must also be evaluated bearing in mind the irrefutable fact that the focus and thrust of Regulation 3 is the aspect of readiness to supply natural gas as opposed to the existence of a piped network reaching up to the door of the customer. Regulation 3(2)(a) contemplates the requirement of customers up to 50,000 SCMD being met through a CGD Network. Customers in the GA whose requirements exceed 50,000 SCMD are

to be supplied either through a CGD Network or through a pipeline not forming part thereof. The mode or source of supply for customers falling in that category is left to their discretion. Turning then to the Proviso, the Court notes that a customer in a GA is entitled to approach the Board and obtain supply of natural gas from any other alternate source or supplier in a situation where the CGD Network is unable to meet its requirements of natural gas. The Proviso to Regulation 3(2)(a) further uses the expression “...until the CGD Network is ready to supply natural gas”. As this Court reads Section 2(i) together with Regulation 2(1)(i) harmoniously, it would be apparent that as long as the AE is in a position to supply natural gas either through a CGD Network or cascades or any other permitted mode, it would continue to enjoy the exclusivity which stands conferred. The Court finds no justification to restrict the meaning to be accorded to “CGD Network” as occurring in the Proviso to Regulation 3(2)(a) as suggested by the respondent. Taking any other view would not only amount to ignoring the 2018 Amendment Regulations but also acknowledging the existence of an apparent, evident and irreconcilable conflict.

126. On a more fundamental plane, the Court finds that the focus of the Proviso is on the aspect of readiness to supply. As long as the AE is in a position to supply natural gas in the form required by the consumer, the Proviso would not come into play at all. To put it conversely, it is only when the AE is unable to meet the requirements of the consumer that the Board would be justified in according permission in terms as contemplated therein. The focus of Regulation

3(2)(a) clearly is the readiness of the AE to effect supplies. The Proviso would come into effect only where an AE is unable to meet the requirements of a particular consumer. The readiness to supply cannot be linked to the MWP obligations of an AE. Of course, where the requirement of a consumer is only of piped natural gas, the issue would have to be viewed and evaluated accordingly. The issue of readiness to supply would necessarily have to be examined on the facts of each particular case that falls before the Board. What needs to be emphasised is neither a failure to comply with MWP milestones nor pricing disputes can trigger the Proviso to Regulation 3(2)(a).

127. The Court also weighs in consideration the assertion of the petitioners that LNG was and continues to be supplied through cryogenic trucks and cascades. This mode of supply being permitted is clearly evident from the *pro tem* authorisations which had been granted by the Board right from 2013. The Court also takes note of a situation where a new GA is carved out. This could possibly be virgin territory where no network of pipelines exists. However, in order to cater to the needs of customers who may require natural gas, an AE would clearly be empowered to adopt other modes of transport and supply during the gestation period and as the network comes into being and takes shape. Consequently, to understand a CGD Network or a piped natural gas network as being one which can never contemplate or envisage a supply through trucks and cascades would be untenable and also impact the basic ethos of the Act and the Regulations which is aimed at increasing the consumption of natural

gas and ensuring that it takes on a larger proportion of India's energy basket.

128. The Court additionally notes that there may be various pockets and areas within a GA where it may be wholly impractical to lay a pipeline network on account of topographical constraints. If the narrow construction as advocated by the respondents were to be accepted, it would leave customers present in such areas being left to deal with a market which would be wholly unregulated. The Court also bears in mind the submission addressed on behalf of the petitioners who had submitted that LNG cannot, in any case, be supplied through a pipeline. If that were so, it would leave those customers outside the net of the regulatory regime altogether. On a consideration of all of the above, the Court finds that for the purposes of considering the aspect of readiness to supply as contemplated in the Proviso, as long as the AE has laid in place the requisite infrastructure and is in a state of readiness to effect supplies which meets the needs of the individual customer, it would be impermissible for the Board to tear down the bubble of exclusivity which stands statutorily constructed.

129. The Court then finds that the Board in a recent decision rendered on 09 December 2022 in AGP City Gas Pvt. Ltd. v. Knauf India Pvt. Ltd. & Anr. appears to have taken a new and a more nuanced position with respect to what Regulation 3(2)(a) essentially entails. This is evident from the following observations as appearing in that order: -

“37. In order to examine the issue at hand, the Regulation 3(2)(a) of the CGD Authorization Regulations, is taken into consideration, which states as under:

“Regulation 3. Application

(2) A CGD network shall be designed to operate at a pressure as specified in the relevant regulations for technical standards and specifications, including safety standards for maintaining the volumes of supply of natural gas on a sustained basis to meet the following requirements, namely:-

(a) customers having requirement of natural gas upto 50,000 SCMD shall be supplied through the CGD network;

Provided that until CGD Network is ready to supply natural gas to a customer (other than domestic PNG and CNG), such customers shall have right to get the supply of natural gas from any other alternate source or supplier, with prior permission of the Board, and if, once CGD Network is ready to supply natural gas to such customer, then, such customer shall cease to get supply of natural gas from such alternate source or supplier after 30 days of receipt of notice of readiness from the CGD network. ”

It is evident from the aforesaid provisions, the Board determines that the Regulation 3(2)(a) of the CGD Authorization Regulations is a condition given to a CGD Network that it must be designed to operate at pressures as specified in the Petroleum and Natural Gas Regulatory Board (Technical Standards and Specifications including Safety Standards for City or Local Natural Gas Distribution Networks) Regulations (hereinafter referred to as CGD T4S Regulations), with the consideration that customers having gas requirement up to 50,000 SCMD shall be supplied through the CGD Network. It is the spirit of the proviso of the Regulation 3(2)(a) of the CGD Authorization Regulations that in case even after the authorization granted by the Board as per the extant regulation, some of the authorized CGD entities are unable to develop the requisite CGD Network and are not in a position to supply the natural gas to industrial/commercial customers. In such case, until an authorized CGD Network (and not a CGD Entity) is ready to supply gas to customers, such customers shall have the right to get the supply of natural gas from any other alternate source/supplier with prior permission from the Board.

38. On observing the facts of the present case, the Board observed that neither the Respondent Knauf nor the Respondent Honda Motors, had taken the prior permission from the Board, as per the mandate of proviso of the Regulation 3(2)(a) of the CGD Authorization Regulations.

39. It is the case of the Complainant No. 1 that the Complainant No. 1 is in readiness to supply the gas to the Respondent Knauf and the Respondent Honda Motors, i) truck or cascades, ii) through CGS Station after tapping off from the trunk pipeline, or iii) through LCNG Stations where LNG will be decompressed and supplied through pipeline network, within 30 days from the date of signing of agreement. On examining the same, the Board is of view that as and when the authorized entity is supplying the natural gas either through CGS Station by making tap off point from trunk line or decompressing LNG and supplying through interconnected pipelines, and through LCNG Stations, under such circumstances only, the authorized CGD Network is deemed to be readiness to supply."

130. As is evident from the aforesaid passages of the decision taken by the Board, it appears to understand Regulation 3(2)(a) as being connected and inextricably linked to a CGD Network being ready to supply gas to customers as opposed to an AE. While it took note of the representation that the complainant, the petitioners here, were in a readiness to supply gas through trucks or cascades or through **Liquid to Compressed Natural Gas**²⁸ Stations where LNG may be decompressed and supplied through the pipeline network, on due examination the Board observed that it is only when the authorised entity is supplying natural gas either through a City Gate Station by making a tap off point from trunk line or decompressing LNG and supplying through interconnected pipelines would the authorised CGD Network be deemed to be in a position of readiness to supply. The Board lays down two broad principles on the basis of its

²⁸ LCNG

understanding of Regulation 3. It firstly holds that exclusivity is attached to the CGD Network and not the AE. Secondly, it takes the position that it is only where the AE affects supplies through the pipeline network that it would be deemed to be ready to supply.

131. The Court finds itself unable to either accept or endorse this subtly modified or modulated determination of the Board for the following reasons. Exclusivity is an exemption which is granted by the Board to the AE as part of the authorisation made in its favour. As was noted hereinabove, the statutory framework contemplates both an infrastructural exclusivity and a marketing exclusivity. Both those facets essentially represent the legislative policy of exempting a pipeline network from being declared a common or contract carrier. The bifurcation of exclusivity into infrastructural and marketing, strictly speaking, may not even be necessary since essentially what the Act and the Regulations contemplate is the network being excepted from being declared as a common or contract carrier. During the period of exclusivity, the AE is entitled not to share the pipeline infrastructure with any other agency as well as to exclusively market and distribute natural gas in the designated GA. The right of exclusivity can be claimed and stands vested in the AE. This clearly flows from the grant and the authorisation made in its favour. It is the AE which has been charged with laying the infrastructure in place and make the requisite investments so as to ensure that the CGD Network is established as per the timelines prescribed. The Court thus finds itself unable to either appreciate or comprehend the distinction which is sought to be drawn when the Board observes that exclusivity is

conferred on the CGD Network and not the AE. Exclusivity, for reasons which are evident and apparent, would obviously operate upon the network and the GA. However, the protection accorded by the grant of exclusivity would obviously be one which is claimed by the AE. The distinction which is thus sought to be drawn and highlighted by the Board is clearly of no consequence. It thus stands rejected in light of the above conclusions drawn and recorded by the Court.

132. The more fundamental mistake which the Board clearly appears to have committed is when it seems to perceive that only when all forms of natural gas is supplied through a pipeline grid, then alone can it be said that the AE is ready to supply. The aforesaid reasoning is clearly fallacious for more than one reason. Firstly, and as was observed earlier, LNG cannot possibly be supplied through pipelines. The Board in this respect observes that LNG would have to be decompressed and then supplied through pipelines for the AE to escape the rigours of the Proviso to Regulation 3. This clearly represents an attempt by the Board to reword and reinvent the statutory provision. No Regulation compels the AE to decompress LNG and then supply it through a pipeline network. The said reasoning also fails to bear in mind the need of those consumers who may specifically demand LNG. In fact, and as was noted hereinbefore, the third respondent itself had raised a specific demand for LNG. This clearly appears to have been guided by the fact that it had itself established a regassification facility. Similarly various other consumers in the AKT GA and may be even elsewhere may desire

LNG for their use. The view taken by the Board thus fails to consider the need of such consumers all together. In any case the various previous determinations made by the Board itself had accepted and acknowledged the transportation of LNG via trucks and cascades. The Court has even otherwise and on an independent review of the Act and the Regulations come to the firm conclusion that trucks and cascades would be a permissible mode of supply and the Act and the Regulation when read harmoniously unerringly buttress that conclusion. The view taken by the Board contrary to what stands recorded hereinabove is also consequently negated.

133. The Court has in the preceding parts of this decision taken note of the twin objectives of the legislation being the creation of a nationwide infrastructure which increases the reach of natural gas as an alternate energy source coupled with the protection of the rights of the ultimate consumer to receive supplies at competitive rates. The twin objectives of the Act require the Board to not only ensure that the requisite infrastructure is created in accordance with the MWP timelines but also bear in mind the immense infrastructural costs which are necessitated in the creation of a CGD Network. The exclusivity principle clearly appears to have its root and genesis in the policy makers being aware of the imperatives of insulating the AE while it undertakes the task of building up the requisite infrastructure. It is these two policy objectives which have to be continually weighed in balance.

134. The Board stands statutorily empowered to continually monitor the implementation of targets connected with the creation of a CGD

Network. It stands sufficiently empowered to monitor, supervise, control and adopt remedial or coercive measures in respect of an AE. The monitoring power also enables it to monitor and ensure that the needs of consumers are being met and that no exploitation occurs. The Act read together with the Regulations thus obligate the Board to act as the arbiter, moderate and balance the two competing facets relating to supply of natural gas. Those provisions are designed not only to safeguard the interests of an AE while it goes about creating the requisite infrastructure and shield the pipeline trellis till such time as it is readied to be declared a common carrier, they also obligate the Board to contemporaneously safeguard and secure consumer interests. It is this constant exercise of balancing of interests that should inform every decision of the Board. The Court is of the firm opinion that when construed in light of the principles enunciated hereinabove, the Act and the Regulations strike a just and reasonable balance. The implementation of the Act and the Regulations must follow the aforementioned foundational precepts. If implemented in the aforesaid light, there would be no conflict or subversion of the rights and obligations imposed upon the AE and the consumer.

L. THE ARGUMENT OF PROGRESSIVE EXCLUSIVITY

135. It would be pertinent to note that in the Impugned Order of 09 June 2022, the Board had come to conclude that the petitioner no. 1 did not have the CGD Network as contemplated under Section 2(i) and therefore it must be held that it was not in a position to supply natural gas to respondent no.3. It also took the position that supply of natural gas is not contemplated to be affected through cascades and

trucks. Those modes, according to the Board, would not form part of a CGD Network. During the course of arguments, however, the aforesaid view was given a distinct complexion with it being contended that exclusivity is a progressive concept and would be applicable dependent upon the extent of progress that may have been made by an AE while laying in place the pipeline network. The Court finds itself unable to sustain the aforesaid line of reasoning for the following reasons.

136. It must, at the outset, be noted that neither the Act nor the Regulations adopt the concept of progressive exclusivity as was canvassed for the consideration of the Court by the Board. The submission essentially was that exclusivity would only apply to those pockets of the GA where the network of pipelines may have been laid in place. The submission of a staggered or progressive exclusivity clearly appears to be misconceived when one reads Section 20(4) of the Act together with the provisions incorporated in the Exclusivity Regulations. It becomes pertinent to observe that Section 20(4) enables the Board to decide and determine the period of exclusivity which is conferred on an AE to lay, build, operate or expand the CGD Network. The aforesaid exclusivity is, undisputedly, concerned with the period during which the AE creates the requisite infrastructure as would flow from the usage of the words "*lay and build*" and extending up to the operation of the CGD Network and its expansion. Section 20(4) cannot, by any stretch of imagination, be understood or interpreted to be the repository of the progressive exclusivity concept as was advocated.

137. Turning then to the Exclusivity Regulations, it is manifest that Regulations 5 and 6 lay in place infrastructural exclusivity as well as supply and marketing exclusivity. Regulation 5 relates to exclusivity being conferred for laying, building or expanding the CGD Network over the economic life of the project. Regulation 6, on the other hand, deals with exclusivity which is granted to an entity to be freed and exempted from the common or contract carrier obligations. As was noticed in the preceding parts of this decision, the exemption from common or contract carrier obligations appears to have been adopted to secure the interests of the AE as it commences the process of creating the CGD Network and as that activity goes through its nascent years. The ultimate objective is that once the pipeline network has been duly created and the period of exclusivity comes to an end, the CGD Network which has come into being would then be declared to be a common or contract carrier. This would ultimately enable all intending suppliers to utilise the network which has been created and supply natural gas to consumers within the GA.

138. Both Regulations 5 and 6 specifically provide for the privilege of exclusivity being conferred on an entity. They do not speak of exclusivity being conferred or attached to parts of a CGD Network or pockets of a GA. It is important to bear in mind that a GA under the Act is envisaged to be a homogenous whole. It is not envisioned to be made up of pockets and boroughs. The creation of a pipeline infrastructure in a GA is a key and central component, nay, the centrepiece of the Act and the Regulations. That pipeline network must be designed so as to cover the entire GA. No provision of the

Act or the various Regulations noticed hereinabove can possibly be construed as comprehending a progressive exclusivity.

139. The concept of marketing exclusivity can also be gathered from its definition as contained in the Guiding Regulations. Regulation 3(1)(j) thereof defines it to mean the exclusivity conferred from the purview of a common or contract carrier. This too does not link the exclusivity conferred upon a particular project to move in tandem with physical progress that may be made in respect of the CGD network. This would also be evident from the following extracts of the Authorisation format which is extracted hereinbelow: -

“7. The entity is allowed an exclusivity period under the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008, in respect of the following, namely: -

- (a) _____ months from the date of issue of this communication for laying, building and expansion of the CGD network; and
- (b) _____ months from the date of issue of this communication in terms of an exemption from the purview of common carrier or contract carrier for the CGD network:

Provided that the entity meets the obligations in line with the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008:

Provided further that the period of exclusivity allowed under sub-clause (a) or sub-clause (b) may be terminated before the expiry of the period mentioned above in line with the provisions under Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Networks) Regulations, 2008.”

140. The acceptance of this submission would also lead to absurd consequences as was correctly urged by the petitioners. Mr. Kuhad, as had been noticed above, had argued that the submissions addressed on

this score fail to explain how a staggered or progressive exclusivity would be implemented. Mr. Kuhad had also argued that it was unclear as to what extent of the area falling on two sides of the pipeline network would be covered by exclusivity. The Court for all the aforesaid reasons outrightly rejects this submission as canvassed on behalf of the Board.

M. PROVISO AND MWP MILESTONES

141. That takes the Court to consider whether a purported failure to comply with MWP milestones could constitute the trigger for the Proviso to Regulation 3(2)(a) coming into play. As has been noticed in the preceding parts of this decision, the Proviso to Regulation 3(2)(a) comes into effect upon a complaint made by a customer that an AE is not ready to supply natural gas. It is the unreadiness of the AE to be in a position to meet the demands of natural gas of a customer which enables the former to approach the Board seeking permission to source natural gas from an alternate source. The Proviso principally directs an enquiry on the issue of whether the AE is in a position to supply natural gas and meet the requirements of a customer. The interplay and interaction of this aspect with MWP milestones would arise only in a situation where the AE is found to be unable to meet the requirements of a customer who requires natural gas through a pipeline. This could arise in multiple situations such as where the requirement of natural gas via a pipeline has not reached the gates of the customers' premises or where its natural gas requirements are otherwise not being met by the AE by adoption of any other permissible mode of supply. What needs to be emphasised is the

creation of the infrastructure as well as the service obligations that stand placed upon an AE are both subjects which are duly provisioned for under the Exclusivity and Authorization Regulations. In terms of Regulation 13 of the Authorization Regulations, the activities of an AE are to be regularly monitored on a monthly and quarterly basis. Similarly, Regulation 16 empowers the Board to inflict penalties in case an AE fails to abide by the terms and conditions specified in the Regulations. The said Regulation also specifies the consequences of default in achieving the cumulative work programme targets. Regulation 16 is extracted hereinbelow: -

“16. Consequences of default, pre-determined penalties and termination of authorisation procedure, -

(1) An authorised entity shall abide by all the terms and conditions specified in these regulations and any failure in doing so shall be dealt in accordance with the provisions of this regulation.

(2) Pre-determined penalty shall be levied and recovered from the entity within three months from the end of each contract year in respect of any shortfall in achieving cumulative work programme targets for that contract year computed at the rates specified below without any notice, namely:-

(a) for shortfall in achieving cumulative work programme target for each PNG connection - Rs. 750 (Rupees Seven hundred and fifty only);

(b) for shortfall in achieving cumulative work programme target for each inch-kilometer of steel pipeline - Rs. 150,000 (Rupees one lakh and fifty thousand only); and

(c) for shortfall in achieving cumulative work programme target for each [CNG station] - Rs. 20,00,000 (Rupees twenty lakh only);

and for the purpose of illustration, if the cumulative target in respect of PNG connections is 28,000 at the end of third contract year and cumulative achievement at the end of that year is 24,000, then, a pre-determined penalty of Rs.30,00,000 [i.e. (Rs.750 X (28,000-24,000))] shall be levied

within 3 months from the end of third contract year. Similar penalty shall be levied for inch-kilometer of steel pipeline and [CNG stations], in respect of each contract year.

Provided that penalty shall be applicable for default in each contract years and first deduction shall be started from second contract year onwards.

Provided further that due cognisance of force majeure duly accepted by the Board shall be taken in computing the pre-determined penalty.

(3) In case of a failure, other than those specified in sub-regulation (2), the following procedure shall be followed, namely:

(a) the Board shall issue a notice to the defaulting entity allowing it a reasonable period to fulfill its obligations;

(b) no punitive action shall be taken in case remedial action is taken by the entity to the satisfaction of the Board within such period, otherwise, following penalty shall be levied on the entity by the Board, namely:-

(i) up to an amount equal to 10% of the performance bond amount for the first default; and

(ii) up to an amount equal to 25% of the performance bond amount for each of the subsequent defaults.

(4) Any penalty levied under sub-regulation (2) or sub-regulation (3) shall initially be recovered by encashment of the performance bond. The entity shall be required to make good the performance bond to its full value within thirty days of encashment. If the entity fails to make good the performance bond within such period, the Board shall encash the remaining amount of the performance bond and may also terminate the authorisation.

(5) In case the cumulative achievement of any entity for a CGD network at the end of three contract years in a geographical area falls short of 30% of the weighted average of the cumulative work programme (computed as illustrated in this sub-regulation) in respect of PNG connections, inch-kilometer of steel pipeline and number of [CNG stations], or if in the opinion of the Board the entity has made a serious default in complying with the provisions of the Act or rules or regulations made thereunder or terms and conditions of the authorisation under these regulations, the Board may give a show cause notice to the entity asking it why its such authorisation should not be terminated due to the said default, and

after giving it a reasonable opportunity of being heard, terminate the authorisation and encash 100% of the performance bond....”

142. The Exclusivity Regulations, as was noticed hereinbefore, deal with both infrastructural exclusivity as well as exclusivity to supply and distribute. While the former stands comprised in Regulation 5, the subject of supply exclusivity is governed by Regulation 6. Regulation 8 then spells out the service obligations which stand placed upon an AE. The said Regulation reads as follows: -

“8. Service obligations.

(1) The entity allowed exclusivity under regulation 6 shall comply with the following service obligations during the exclusivity period, namely:-

(a) in respect of an entity proposing to lay, build, operate or expand a CGD network after the appointed day and which has been authorized by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the entity shall-

- (i) provide domestic PNG connections as per the bid;
- (ii) lay and build steel pipeline as per the inch-kilometer bid;
- (iii) reach all charge areas or wards in the authorized area through pipelines of adequate size to meet the demand of the consumers in these charge areas or wards; and
- (iv) provide piped natural gas connection on demand to a domestic consumer for cooking purposes within a distance of twenty five meters of the metering unit at the consumer’s end till the tap-off in the pipeline:

Provided that the physical achievement shall be monitored by the Board on a quarterly basis;

(b) in respect an entity laying, building, operating or expanding a CGD Network before the appointed day and which has been either authorized by the Central Government or by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the entity shall-

- (i) achieve the targets in respect of providing PNG domestic connections and laying and building steel pipeline inch kilometer as per sub-clauses (i) and (ii) of clause (a) of sub-regulation (1) at the levels derived based on the successful bids of similar placed cities or local areas in terms of the population as per the census of India 2001 or in the absence of such similarly placed cities or areas, the cities which come closest to these cities or areas in terms of population by suitable extrapolation or interpolation;
- (ii) reach all charge areas or wards through pipelines of adequate size to meet the demand of the consumers in these charge areas or wards;
- (iii) provide piped natural gas connection on demand to a domestic consumer for cooking purposes within a distance of twenty five meters of the metering unit at the consumer-end till the tap-off point in the pipeline:

Provided that the physical achievement shall be monitored by the Board on a quarterly basis.

- (2) During the period of exclusivity allowed under regulation 6, the authorized entity may supply compressed natural gas for dispensing either through CNG dispensing facilities owned by itself or by any other entity and in the latter case, the other entity shall be required to pay the compression charge for CNG to the authorized entity and enter into a mutually agreeable commercial contract with the authorized entity for-
 - (a) either having the online compression facilities installed in its own dispensing facilities wherein the online compression facilities shall be owned, installed and operated by the authorized entity, or
 - (b) take delivery of CNG ex-online compressor station of the authorized entity for subsequent dispensing in the authorized area.
- (3) After the expiry of the exclusivity period allowed under regulation 6, any entity using the CGD network for transportation of natural gas may use the online compressor facilities of the authorized entity against payment of compression charge for CNG for dispensing of CNG either by itself or by any other entity.”

143. Regulation 10 spells out the consequences of non-compliance with the service obligations or a failure to adhere to service standards.

That Regulation is extracted hereinbelow: -

“10. Cancellation of exclusivity.

(1) The exclusivity allowed under regulation 5 to an entity proposing to lay, build, operate or expand a CGD network after the appointed day and which has been authorized by the Board or laying, building, operating or expanding a CGD network before the appointed day and which has been authorized by the Central Government or by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, shall be terminated, either for the entire authorized area or part thereof, in case the entity either refuses or fails to lay, build or expand the CGD network to meet the natural gas demand requirements including the requirements of other entities allowed to use the CGD network post exclusivity provided under regulation 6.

(2) Non-compliance with the provisions under regulation 8 or repeated violation of the quality of service standards specified under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 shall result in cancellation of the exclusivity.

(3) The procedure with regards to the termination of exclusivity under sub-regulations (1) and (2) shall be as under, namely:-

(a) the Board shall issue a notice to the defaulting entity allowing it a reasonable time to fulfill its service obligations under these regulations and also as per the quality of service standards specified in the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008;

(b) no further action shall be taken in case remedial action to the satisfaction of the Board is taken by the entity within the specified period;

(c) in case of failure to take remedial action by the entity, the Board may encash the performance bond as per the following basis, namely:-

(i) twenty five percent of the amount of the performance bond for the first default; and

(ii) fifty percent of the amount of performance bond for the second default:

Provided that the entity shall make good the encashed performance bond in each of the cases within a week failing which the remaining amount of the performance bond shall also be encashed and the exclusivity including authorization of the entity shall be terminated;

(iii) one hundred percent of the amount of performance bond for the third default and the exclusivity shall also be simultaneously terminated;

(d) the entities authorized under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 shall also have to replenish the performance bond within fifteen days failing which their authorization shall also be terminated.

(4) The exclusivity allowed under regulation 6 to an entity either proposing to operate a CGD network after the appointed day and which has been authorized by the Board, or which is operating a CGD network before the appointed day and which has been authorized by the Central Government or the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, shall be terminated in case the entity fails to comply with the service obligations under these regulations or on repeated violations of the quality of service standards as per the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008.

(5) The procedure with regards to the termination of exclusivity under sub- regulation (4) shall be as under, namely:-

(a) the Board shall issue a notice to the entity for not meeting the service obligations under these regulations and also quality of service standards specified under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 and allow it a reasonable time to fulfill its obligations under these regulations;

(b) no further action shall be taken in case remedial action is taken to the satisfaction of the Board by the entity within the specified period;

(c) in case of failure to take remedial action, the Board may encash the performance bond on the following basis, namely:-

(i) twenty five percent of the amount of the performance bond for the first default; and

(ii) fifty percent of the amount of performance bond for the second default:

Provided that the entity shall make good the encashed performance bond in either of the cases within a week, failing which the remaining amount of the performance bond shall also be encashed and the exclusivity including authorization of the entity shall be terminated;

(iii) one hundred percent of the amount of performance bond for the third default and the exclusivity shall also be simultaneously terminated;

(d) the entities authorized under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 shall also have to replenish the performance bond within fifteen days failing which their authorization shall also be terminated;

(e) any entity losing its exclusivity allowed under regulation 5 shall also automatically lose its exclusivity allowed under regulation 6.”

144. It is thus manifest that a failure to comply with the work programme and the consequences thereof stand duly specified and laid out in the two sets of Regulations noticed above. The Board is also empowered and obliged to periodically inspect the activities of the AE and ensure that it adheres to the project milestones that may be placed. What needs to be emphasised is that if it be found that an AE has failed to adhere to the MWP, the Board stands sufficiently empowered under the Regulations to take both corrective as well as punitive action. What the Court seeks to underline is that a failure to abide by MWP milestones cannot be a ground for invoking the Proviso to Regulation 3(2)(a). While it may be permissible for the Board to initiate independent action insofar as the said issue is concerned, the Proviso to Regulation 3(2)(a) would not get triggered on that score. Regard must be had to the fact that the said provision is not a penal provision nor one which is designed to punish an AE for having failed to achieve set out targets. It is fundamentally focussed upon the needs of a particular consumer who complains that the AE in the particular GA is not ready to supply natural gas. It is thus the asserted failure of the AE to be in a position of readiness to supply alone which is germane and relevant for the purposes of that Proviso. The obvious sequitur to the above would be that the Proviso is not liable to be understood as a mode to penalise an AE for failing to conform to contractual targets.

145. Reverting then to the facts of the instant case, the proceedings themselves commenced upon an application made by the third respondent seeking permission to source LNG from an alternate

source. In the first instance and when the aforesaid request reached the Board, the respondent no.3 itself alluded to it having already installed an LNG and regasification facility. Its request specifically was for being accorded permission to source LNG through tankers from Petronet Limited, Kochi or IOCL, Ennore. The same was based on its assertion that no natural gas pipeline connection was available at its factory location. The commencement of proceedings before the Board was thus clearly not predicated by it finding that the petitioner had failed to adhere to the MWP targets. At least the respondents do not rely upon any material that may have indicated that such an enquiry had been independently initiated and was underway at the time when the representation of the third respondent reached the Board. The Court also bears in mind the undisputed fact that since the third respondent had already set up a regasification facility, it had sought permission to source LNG. LNG, in any case, could not have been possibly supplied to it via pipelines.

146. The Board on receipt of the aforesaid letter from the respondent no.3 had in clear and equivocal terms by its letter of 24 December 2020 called upon the third respondent to follow up the matter with the petitioner no. 1. The petitioner no. 1 as well as respondent no.3 admittedly struck terms and supplies too were affected. The essential dispute between the parties appears to have stemmed from a pricing dispute. It is manifest from the complaint of the third respondent as was addressed to the Board that it had sought an alternate source of supply so as to gain access to natural gas at competitive rates. This is also evident in paragraph 31 of the Impugned Order where the Board

takes note of the serious allegation of fraud, foster trade practice and extortion being alleged by respondent no.3 against the petitioner. The contention of the respondent no.3 in this respect and its allegation of excessive transportation rates being charged are also reflected in paragraph 10 of the Impugned Order.

147. The petitioner no. 1 had before the Board categorically and consistently averred that it was ready to supply LNG through cascades and trucks to the third respondent. The Board, however, while dealing with the complaint which was made, framed an issue with respect to the CGD Network being in a position to supply natural gas to the third respondent. It also framed an issue as to whether the concept of a CGD Network would include supply through cascades. It significantly took the position that the definition of a CGD Network as set out in Section 2(i) of the Act does not include the phrase "*piped natural gas*". The introduction of the phrase "*piped natural gas*" was explained by the Board to be motivated by its intent to ensure the maximum number of count connections are achieved and one which was necessitated on account of the consequential amendments in the bidding parameters which were introduced in the 9th and subsequent bidding rounds. The Board proceeded then to hold on facts that not only could cascades and trucks not be deemed to be part of CGD Network as defined, it also found that since the petitioner had only laid down 10-inch km of steel pipeline, as a necessary corollary it must be held that it was not in a position to supply natural gas and meet the requirements of the third respondent.

148. Insofar as the issue of whether cascades and trucks would be covered by the expression “*CGD Network*” is concerned, the same has already been considered and answered by the Court in the preceding parts of this decision against the Board. What needs to be additionally emphasised is and which takes the Court back to the provisions contained in the Authorization and Exclusivity Regulations is that the Proviso is not liable to be either construed or implemented as a penalty for a failure on the part of an AE to adhere to the MWP. Those aspects would have to be clearly decided bearing in mind the provisions contained in Regulation 10 of the Exclusivity Regulations as well as Regulation 16 of the Authorization Regulations. The Proviso to Regulation 3(2)(a) would be solely dependent on whether the needs and requirements of a customer in the GA are being met.

149. It must and at this stage be clarified that it cannot possibly be overemphasised that consumer interest is paramount. What the Court seeks to lay emphasis on is the need to strike a just balance between securing the investments made by the AE based on the assurances and conditions included in the bidding documents, the creation of the requisite infrastructure in the GA and the interests of the consumer. In fact, the statute itself ordains the aforesaid balance being struck and maintained. An AE cannot possibly claim to be exempt from strictly adhering to the MWP. An AE also cannot be heard to contend that it would refrain from taking appropriate steps for laying in place the requisite infrastructure in accordance with the work programme and continue to supply only through trucks and cascades. The Board

would thus be clearly entitled to ensure that the AE adheres to the MWP.

150. However, a failure to comply with the MWP cannot automatically result in the Proviso being invoked. This would clearly be detrimental to the basic and the broad policy outlines which the Act and the Regulations have constructed as was noticed hereinbefore. The Board is concerned both with the creation of the infrastructure as well as the preservation of consumer rights. While dealing with the two complementary aspects, it is also obliged to bear in mind the complexities connected with the establishment of a CGD Network. In fact, Schedule A to the Exclusivity Regulations specifically deal with and allude to this exercise of balancing of interests. The provisions contained in that Schedule lay emphasis at more than one place upon the need to incentivize entities investing in such projects. The Court has noticed Schedule A only to discern and notice the rationale underlying the policy.

151. It must also be remembered that the grant of exclusivity itself has been introduced and conferred statutory sanctity by the Board in its Regulations to be extended based on a stated and identified criteria. What the Court seeks to emphasise is that if the Board were to find that an AE is either recalcitrant or has failed to adhere to the work milestones and which may warrant action either under Regulation 10 of the Exclusivity Regulations or Regulation 16 of the Authorization Regulations, the same would not constitute a germane ground for the invocation of the Proviso to Regulation 3(2)(a). While a failure to adhere to work schedules and milestones may expose an AE to

various actions that the Board is empowered to initiate, the same cannot constitute a ground for holding that the Proviso is applicable. That Proviso would continue to be dependent upon whether the AE is in a state of readiness to effect supplies. It is only if the Board finds that the AE is not ready or unable to supply and meet the needs of the consumer that the Proviso would come into play.

152. The Court also bears in mind the allegations of fraud and overcharging which were laid by the third respondent against the petitioner no. 1 here. This is a subject which too could have been independently examined by the Board by virtue of the powers conferred upon it by Section 11(f)(iii) to (vi). Significantly, the Board has neither examined those allegations nor has it rendered any determinative findings thereon. The Court is thus left with a situation where the very premise of the complaint which was made by the third respondent has neither been evaluated nor has the Board ultimately found the petitioner no. 1 guilty of having adopted restricted trade practices.

153. In the considered opinion of this Court, the Board clearly appears to have trodden down a path which was wholly unwarranted. It was principally confronted with the complaint of the third respondent that the petitioners were overcharging and thus it being permitted to source natural gas from alternate sources. The Board failed to bear in mind that the requirement of the said respondent had consistently been of LNG. It had never been the case of the said respondent that the petitioners had either failed or refused to effect supply of LNG. The permission that it sought was itself confined to

sourcing LNG. The question of readiness to supply thus stood answered at that stage itself. The issue of whether the petitioners had adhered to the MWP targets while being an issue which could have been independently evaluated by the Board, did not constitute a ground which was either relevant or germane to answering the question which stood posited by virtue of the Proviso. If the grievance of the third respondent was with respect to the petitioners charging exorbitant prices or raising unreasonable invoices, those too were issues which could have been duly investigated by the Board. However, those were wholly irrelevant for the purposes of considering whether the petitioners were ready to supply natural gas.

154. While the Court has already found that a failure to adhere to MWP milestones would not constitute a fundamental ground to invoke the Proviso and which in any case is tethered to the concept of readiness to supply, since the said issue has been taken note of in the Impugned Order and was one which was also reiterated during the course of oral submissions, it becomes pertinent to note the following facts.

155. While passing the Impugned Order, the Board has taken the position that the monthly progress report clearly indicated that the petitioners had only laid out 10-inch km of pipeline and thus failed to adhere to the MWP targets which had been placed. The Court, however, notes that the petitioners had filed a detailed additional affidavit before the Board and which stands placed as Annexure P-61. In the said affidavit the petitioners had made the following significant disclosures. The petitioners had averred that the AKT GA is beset by

various geographical challenges and which had constrained it to additionally adopt the supply of natural gas via cryogenic trucks. The peculiarity of terrain of this GA was a factor which was alluded to in paragraph 2 of that affidavit. It was in the aforesaid backdrop that the petitioners had asserted that as per their bid document itself, they had planned and provisioned for supply of natural gas not only through a pipeline network but also via pipelines connectivity to LCNG Stations as well as cryogenic trucks. The petitioners had also asserted that in the charge area of Thiruvananthapuram [CA-16] and where admittedly the third respondent is located, it had reached the said area and was already operating several CNG Stations and was also in the process of constructing an LCNG Station. The said LCNG Station was planned to be commissioned by 15 August 2022. It was also stated that the pipeline laying work from this LCNG Station and which would proceed to cater to the demands of all consumers in CA-16 had already commenced and the pipeline network was likely to be commissioned alongside the LCNG Station. It was the stated case of the petitioners that it had designed the CGD network for AKT GA to include the delivery of LNG by trucks to the premises of those consumers who required natural gas in the liquid form. Insofar as the laying of pipeline is concerned, the petitioners had asserted that they had already laid 50 Inch KM of steel pipeline and 39 KM of MDPE pipelines. They had also referred to the permissions granted enabling them to further lay in place 40 KM of steel pipeline and approximately 900 KM of MDPE Pipelines. Significantly, however, the aforesaid facts as disclosed in the additional affidavit have neither been noticed nor considered by the Board while passing the Impugned Order.

While Mr. Sahay had argued that the aforesaid assertions had not been supported by cogent material such as quarterly work or inspection reports, it was incumbent upon the Board to have at least considered these issues which stood raised.

156. The Court notes that the petitioners have along with the Supplementary Notes of Submissions placed additional information with respect to the extent of infrastructure which had been laid in place. Those details are set out hereinbelow: -

“APPENDIX - A

Extent of pipeline network created by the Petitioners in the 12 authorised Geographical Areas - (Till December 2022) as per PNGRB Monthly report

(I) AGP City Gas Private Limited (Petitioner No. 1) – 10th Round

S. No.	GA Name	Present Contract year (End date)	MWP Targets		Actual Work done
1.	Alapuzzha, Kollam and Thiruvananthapuram Districts	2 nd Contract Year (ending on 31.03.2023)	Steel Pipeline (inch km)	370	269.94
			MDPE pipeline (inch km)	-	287.21
2.	Uttara Kannada, Haveri and Shivammogga Districts	2 nd Contract Year (ending on 30.06.2023)	Steel Pipeline (inch km)	399	585.46
			MDPE pipeline (inch km)	-	18.57
3.	Mysuru, Mandya and Chamarajanagar Districts	2 nd Contract Year (ending on 30.06.2023)	Steel Pipeline (inch km)	259	419.51
			MDPE pipeline (inch km)	-	285.08

4.	Chikkamagaluru, Hassan and Kodagu Districts	2 nd Contract Year (ending on 30.06.2023)	Steel Pipeline (inch km)	237	529.44
			MDPE pipeline (inch km)	-	0.72
5.	Kalaburagi and Vijayapura Districts	2 nd Contract Year (ending on 30.06.2023)	Steel Pipeline (inch km)	279	455.52
			MDPE pipeline (inch km)	-	9.0686
6.	Bagalkot, Koppal and Raichur Districts	2 nd Contract Year (ending on 30.06.2023)	Steel Pipeline (inch km)	396	585.22
			MDPE pipeline (inch km)	-	145.42
7.	Chittoor, Kolar and Vellore Districts	1st Contract Year (ending on 31.03.2023)	Steel Pipeline (inch km)	87	402.12
			MDPE pipeline (inch km)	-	291.94
8.	Nellore District	2 nd Contract Year (ending on 30.06.2023)	Steel Pipeline (inch km)	294	248.48
			MDPE pipeline (inch km)	-	271.33
9.	Anantapur and YSR Kadapa Districts	2 nd Contract Year (ending on 30.06.2023)	Steel Pipeline (inch km)	658	585.64
			MDPE pipeline (inch km)	-	236.02

(II) AGP CGD India Private Limited – 9th Round

S. No.	GA Name	Present Contract year (End date)	MWP Targets		Actual Work done
10.	Ramanathapuram District	3rd Contract Year (ending	Steel Pipeline	100	90.2560

		on 30.09.2023)	(inch km)		
			MDPE pipeline (inch km)	-	43.5546
11.	Kanchipuram District	1 st Contract Year (ending on 31.03.2023)	Steel Pipeline (inch km)	33	343.44
			MDPE pipeline (inch km)	-	108.4586
12.	Barmer, Jaisalmer and Jodhpur Districts	3rd Contract Year (ending on 30.09.2023)	Steel Pipeline (inch Km)	-	200.7360
			MDPE Pipeline (inch km)	-	1390.09"

157. The aforesaid facts and disclosures as made would thus clearly warrant further examination and evaluation by the Board. The Court proposes to grant the Board the liberty to duly examine the aforesaid disclosures and take such remedial action as may be warranted and considered expedient. This would also be in tune with the powers that stand conferred on the Board in terms of Regulation 13 of the Authorization Regulations and which empowers it to duly monitor the progress made by the AE and require it to ensure compliances and as per Regulation 13(3) in case of deviations or shortfalls, advise remedial action. This would, in any case, be in addition to the powers that stand conferred on the Board in terms of Regulation 16 of the said Regulations.

N. BALANCING OF INTERESTS

158. The Court has in the preceding parts of this decision taken note of the twin objectives of the legislation being the creation of a nationwide infrastructure which increases the reach of natural gas as an alternate energy source coupled with the protection of the rights of the ultimate consumer to receive supplies at competitive rates. The twin objectives of the Act require the Board to not only ensure that the requisite infrastructure is created in accordance with the MWP timelines but also bid it to bear in mind the immense infrastructural costs which are necessitated in creation of the CGD Network. The exclusivity principle clearly appears to have its root and genesis in the policy makers being aware of the imperatives of insulating or shock proofing the CGD Network while it comes into being. It is these two policy objectives which have to be continually weighed in balance.

159. The Board stands statutorily empowered to continually monitor the implementation of targets connected with the creation of a CGD Network. It stands sufficiently empowered to monitor, supervise, control and adopt remedial or coercive measures in respect of an AE. The monitoring power also enables it to track the physical progress relating to the laying of the pipeline structure as well as the needs of the consumers ensuring that supply requirements are being met and that no exploitation occurs. The Act read together with the Regulations thus obligate the Board to act as the arbiter and moderate and balance the two competing facets relating to supply of natural gas. Those provisions are designed not only to safeguard the interests of an AE while it goes about creating the requisite infrastructure and shield

the pipeline trellis till such time as it is readied to be declared a common carrier, they also obligate the Board to contemporaneously safeguard and secure consumer interests. It is this constant exercise of balancing of interests that should inform every decision of the Board. The Court is of the firm opinion that when construed in light of the principles enunciated hereinabove, the Act and the Regulations strike a just and reasonable balance. The implementation of the Act and the Regulations must follow the aforementioned foundational precepts. If implemented in the aforesaid light, there would be no conflict or subversion of the rights and obligations imposed upon the AE and the consumer.

O. THE ARTICLE 19(1) (g) ARGUMENT

160. The Court then notes the submissions addressed by Mr. Mehta flowing from Article 19(1)(g) of the Constitution. As was noted hereinbefore, it was Mr. Mehta's submission that in terms of the guarantees conferred by Article 19(1)(g), a consumer must be recognised to have the right to choose a particular supplier and thus negotiate for purchase of natural gas at an agreed price. It was submitted that the statutory provisions which apply clearly restrict that freedom of choice which stands guaranteed and conferred by that Article. In view of the aforesaid, Mr. Mehta had submitted that the rights that could be claimed by an AE cannot be conferred an interpretation or recognition which either completely annihilates the guarantees enshrined in Article 19 or renders the interest of the consumer subservient to that of the AE. Mr. Mehta further contended that if the contention of the petitioners were to be accepted it would

essentially amount to the creation of a monopoly in its favour which would clearly be violative of Article 19(1)(g) of the Constitution.

161. Mr. Mehta sought to draw sustenance for the aforesaid submissions from the decision of the Supreme Court in **State of Rajasthan Vs. Mohan Lal Vyas**²⁹. In *Mohan Lal Vyas*, the Supreme Court was called upon to consider the validity of a contract which conferred monopoly rights over a particular bus route in favour of the respondent. Holding that such a contract would not sustain upon the advent of the Constitution and would be contrary to Article 19(1)(g), the Supreme Court held as under:

“5. It is manifest that after the Constitution came into force every citizen under Article 19(1)(g) of the Constitution has the right of freedom of trade including the right to ply buses and trucks on the road. Under Article 13 the law has to be in consonance with the Constitution. It has, therefore, to be found out as to whether there is any law by virtue of which the State of Rajasthan could grant or keep alive any monopoly contract. The answer is in the negative. There cannot be any law in violation of the provisions of the Constitution. A monopoly right cannot be conferred on a citizen under the Constitution nor can it be justified under the Constitution.

6. In 1951, there was amendment of the Constitution whereby Article 19(6) provided that the monopoly rights could be created in favour of the State in respect of any trade or business. The monopoly contracts in the present case were not in favour of the State Government. Article 19(6) of the Constitution provides a reasonable restriction on the fundamental rights of citizens as contained in Article 19(1)(g). If the State obtained a monopoly it would be defensible as a reasonable restriction on the rights of citizens to carry on any business or trade and to ply buses. On the other hand, if the State conferred any monopoly right on a citizen it would be indefensible and impermissible and would be an infraction of the inviolable provision of the Constitution.

7. The Constitution forbids grant by the State to a citizen of monopoly right to carry on the business of plying buses undertaken in the

²⁹ (1971) 3 SCC 705

agreements. The manner in which the agreements were to be performed became illegal as a result of the Constitution. The agreements were therefore incapable of enforcement. The Constitution struck at the root of the agreements. The effect was that circumstances of the agreements were radically changed as a result of the Constitution and the agreements were incapable of performance under the law of the land.”

162. It would be pertinent to note that *Mohan Lal Vyas* was relied upon by Mathur J. in his opinion rendered in **Assn. Of Registration Plates Vs. Union of India**³⁰[I] to hold that the contract for manufacture of High Security License Plates to one particular entity amounted to the creation of a monopoly and would thus be violative of Article 19. However, in light of the difference of opinion between the learned Judges constituting the Bench, the matter came to be referred to a larger Bench. On that reference which now stands reported as **Assn. of Registration Plates Vs. Union of India**³¹[II], the three learned Judges of our Supreme Court while delivering judgment on this aspect held as follows: -

“1. The present writ petition along with the cases transferred from various High Courts have been placed before this Bench on a difference of opinion between Hon'ble Judges constituting the Division Bench [*Ed.: Assn. of Registration Plates v. Union of India*, decision dated 26-5-2004 of Division Bench constituted by S. Rajendra Babu, C.J. and G.P. Mathur, J., reported at (2004) 5 SCC 364.] .

2. The dispute concerns the terms and conditions of notices inviting tenders (NITs) for supply of high security registration plates for motor vehicles. The tenders have been issued by various State Governments on the guidelines circulated by the Central Government for implementing the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”) and the newly amended Central Motor Vehicles Rules, 1989 (hereinafter referred to as “the Rules”).

³⁰ (2004) 5 SCC 364

³¹ (2005) 1 SCC 679

3. The main grievance of the petitioner is that all notices inviting tenders (NITs) which have been issued by various State Governments contain conditions which seem to have been tailored to favour companies having foreign collaboration. The tender conditions are described to be discriminatory under Article 14 of the Constitution being aimed at excluding indigenous manufacturers from the tender process. In all the cases the grievance is that the work of supply of high security registration plates for all existing vehicles and new vehicles is being entrusted to a single licence plates manufacturer in a State or a region and for a long period of 15 years thus creating monopoly in favour of selected bidders to the complete exclusion of all others in the field. The contention advanced is that creation of monopoly in favour of a few parties having connection with foreign concerns is violative of the fundamental right of trade under Article 19(1)(g) and discriminatory under Article 14 of the Constitution.

40. Selecting one manufacturer through a process of open competition is not creation of any monopoly, as contended, in violation of Article 19(1)(g) of the Constitution read with clause (6) of the said article. As is sought to be pointed out, the implementation involves large network of operations of highly sophisticated materials. The manufacturer has to have embossing stations within the premises of the RTO. He has to maintain the data of each plate which he would be getting from his main unit. It has to be cross-checked by the RTO data. There has to be a server in the RTO's office which is linked with all RTOs in each State and thereon linked to the whole nation. Maintenance of the record by one and supervision over its activity would be simpler for the State if there is one manufacturer instead of multi-manufacturers as suppliers. The actual operation of the scheme through the RTOs in their premises would get complicated and confused if multi-manufacturers are involved. That would also seriously impair the high security concept in affixation of new plates on the vehicles. If there is a single manufacturer he can be forced to go and serve rural areas with thin vehicular population and less volume of business. Multi-manufacturers might concentrate only on urban areas with higher vehicular population.

41. The fifteen years' contract period has also been supported by the Union of India and State authorities. We find great substance in the submissions made on the data supplied as a justification for awarding the contract for a long period of 15 years. There would be a huge investment required towards the infrastructure by the selected manufacturer and the major return would be expected in initial period of two years although he would be bound down to render his services for future vehicles periodically for a long period. Looking to the huge investment required and the nature of the job which is most sophisticated, requiring network and infrastructure, a long-term contract, if thought viable and feasible, cannot be faulted by the court.

If there are two alternatives available of giving a short-term or a long-term contract, it is not for the court to suggest that the short-term contract should be given. On the subject of business management, expertise is available with the State authorities. The policy has been chalked out and the tender conditions have been formulated after joint deliberations between authorities of the State and the intending manufacturers. A contract providing for technical expertise, financial capability and experience qualifications with a long term of 15 years would serve the dual purpose of attracting sound parties to stake their money in undertaking the job of supply and safeguard the public interest by ensuring that for a long period the work of affixation of security plates would continue uninterrupted in fulfilment of the object of the scheme contained in Rule 50. Our considered opinion, therefore, is that none of the impugned clauses in the tender conditions can be held to be arbitrary or discriminatory deserving their striking down as prayed for on behalf of the petitioners.

44. The grievance that the terms of notice inviting tenders in the present case virtually create a monopoly in favour of parties having foreign collaborations, is without substance. Selection of a competent contractor for assigning job of supply of a sophisticated article through an open-tender procedure, is not an act of creating monopoly, as is sought to be suggested on behalf of the petitioners. What has been argued is that the terms of the notices inviting tenders deliberately exclude domestic manufacturers and new entrepreneurs in the field. In the absence of any indication from the record that the terms and conditions were tailor-made to promote parties with foreign collaborations and to exclude indigenous manufacturers, judicial interference is uncalled for.”

163. When the principles laid down in *Assn. of Registration Plates [II]* is applied to the facts of the present case, it is manifest that in terms of the Act, an AE is identified after a rigorous and detailed tendering and bidding process. It is that selected AE which is then tasked to undertake the designing of the pipeline network and creation of the requisite infrastructure in the concerned GA. It is that entity which is required to create the pipeline infrastructure by making the requisite capital expenditure without any State aid. It must be noted that as in *Assn. of Registration Plates [II]*, an AE is obliged to design and lay in place a gas network designed to meet the requirements of

all categories of consumers. The design and construction of a pipeline network is a sophisticated and technologically intensive project. It is also a long-term project spreading over twenty-five years. Bearing in mind the larger goal which infuses the legislation, namely, the creation of a national gas grid, the Act puts in place the concept of exclusivity. It is in one sense, the protection extended to the AE during the gestation period enabling it to recoup the massive capital expenditure which is likely to be incurred in the course of establishment of the pipeline network. However, the AE is parallelly placed under various obligations and duties. Those constitute the internal balances designed to protect the interest of the consumer and other stakeholders. The Court thus finds itself unable to accept the monopoly argument as was canvassed by Mr. Mehta.

164. While Mr. Mehta would be correct to a certain extent that the statutory regime does curtail the right of free choice that may otherwise have been exercisable by a consumer, it must be remembered that the rights conferred by Article 19 have always been understood to be subject to reasonable restrictions. As would be manifest from the discussion with respect to balancing of interests, an aspect which was dealt with in the preceding parts of this decision, the statutory regimen clearly aims to balance the rights of the AE as well as the consumer. That balance is evident from the obligations placed upon the AE to construct and put in place the requisite infrastructure, to effect supplies to all consumers in the GA and in order to enable it to recoup the investments that may be made, to exempt the CGD Network from being declared as a common or contract carrier during

the period of exclusivity. While those are the rights which an AE could claim, the consumer is provided the facility of an identified AE which is duly obliged to meet all demands of natural gas in the GA and meet the requirements of all domestic, industrial and commercial establishments in that area. The interest of the consumer is further safeguarded by the Proviso to Regulation 3(2)(a). The Board thus stands empowered to grant the request of a consumer to source natural gas from an alternate supplier if it finds that the AE is not in a position to meet the requirements of a particular customer. The aforesaid statutory framework has been laid in place to thus balance the policy objectives of ensuring the creation of a CGD Network and at the same time ensuring and protecting the interests of consumers. It may be noted that the Board is further conferred various regulatory powers under the Act including those which stand specified in Section 11. It not only stands conferred with the power to monitor prices and take corrective measure to prevent restrictive trade practices but also to secure equitable distribution of natural gas, to ensure retail service obligations are met as well as to monitor transportation rates that may be charged. The aforesaid checks and balances which stand incorporated in the Act as well as the Regulations thus clearly appear to balance, secure and safeguard the rights of individual consumers.

165. At the cost of repetition, it may be stated that the entire construct of the Act and the various Regulations are aimed at subserving the two principal objects of the legislation, namely, of the creation of a pan-India network for supply of natural gas increasing the share of a sustainable energy source and at the same time ensuring

that the interest of consumers is duly met by way of an uninterrupted and adequate supply of natural gas and the creation of competitive markets. The Board is thus clearly obliged to weigh these competing factors in mind while implementing the various provisions of the Act and the Regulations. The Court on an overall conspectus of all of the above finds no justification to hold that the said legislative balance would be violative of Article 19(1)(g) of the Constitution.

P. IMPACT OF PREVIOUS FORAYS

166. That takes the Court to consider whether the Board stood enjoined from passing the Impugned Order in light of the decisions rendered by this Court on the petitions preferred by Gujarat Gas Ltd. as well as the one instituted by the petitioners themselves. While the public notices as well as the orders passed on *Gujarat Gas [I]* & *[III]* as well as the writ petition preferred by the petitioner have been noticed hereinbefore, it would be beneficial to briefly recapitulate the facts surrounding the said litigation. *Gujarat Gas [I]* had impugned two public notices dated 02 June 2020 and 23 July 2020. The public notice of 02 June 2020 had on a purported review of the statutory provisions held that any entity can set up an LNG Station in any GA or anywhere else even if it not be the AE for that GA. The aforesaid public notice was thereafter and in terms of the communication of the Board dated 23 July 2020 clarified to be as applicable to the supply of LNG to the transport sector only. In *Gujarat Gas [I]* the petitioner had assailed the validity of the aforesaid two public notices contending that it clearly violated the exclusivity which it could claim by virtue of being the designated AE. It becomes pertinent to note that the

clarification of 23 July 2020 was tendered in the course of the pendency of the petition itself. The said petition ultimately came to be disposed of in light of the stated stand of the Board itself and as conveyed in terms of the public notice of 23 July 2020 that it would not be permissible for an industrial consumer having a requirement of up to 50,000 SCMD to establish an LNG receiving, storage and regasification station or to receive natural gas from a third party. The Board in that notice had proclaimed that such an action would violate the infrastructure exclusivity vested in the AE. The Court taking notice of the aforesaid stand had clarified that if any consumer had a requirement of up to 50,000 SCMD, it would be entitled to receive natural gas only from the petitioner there, namely, Gujarat Gas Ltd. and not from any third party. It further observed that the said exclusivity, however, would not extend to LNG stations dispensing natural gas in its liquid form.

167. In *Gujarat Gas [II]*, a challenge was raised to a public notice dated 30 June 2021 issued by the Board soliciting views / comments from all stakeholders with respect to the supply of natural gas including LNG by a mode other than pipelines, establishment and operation of LNG stations in a GA and the scope of exclusivity in a CGD Network. The aforesaid public notice was assailed by Gujarat Gas Ltd. on the ground that since the full complement of the Board did not exist, it would be impermissible for the Secretary to independently call for comments or take a major policy decision. While dealing with the aforesaid, the Court while disposing of the writ petition held that no decision based on the views or comments which

may be received by the Board pursuant to that public notice would be taken till its quorum is available. The learned Judge had further observed that once its quorum is complete, it would be open for the Board to take a decision whether any action is required. The aforesaid order on *Gujarat Gas [II]* was thereafter assailed by way of a Letters Patent Appeal which remains pending. However, by way of an interim order of 18 August 2021, the Division Bench had proceeded to place the public notice of 30 June 2021 in abeyance and further provided that even if the Board comes to be duly constituted during the pendency of the appeal, it shall not take any decision based on the views, comments or proceedings that may be drawn pursuant to the impugned notice without its leave.

168. It is thus evident that both *Gujarat Gas [I]* and *Gujarat Gas [II]* were dealing with proceedings that were likely to be drawn in light of the public notices dated 02 June 2020, 23 July 2020 and 30 June 2021. The orders passed on the writ petitions aforementioned thus essentially restrained the Board from taking any final decision based on any views or comments that may be received by it.

169. The writ petition preferred by the present petitioners had challenged the order of 10 March 2021 according permission to the third respondent and another entity to obtain supplies in the AKT GA from alternate sources till the CGD Network of the petitioners is ready. The aforesaid communication was ultimately withdrawn by the Board in terms of its letter dated 11 January 2022. In its affidavit that was filed in those proceedings, the Board had averred that till a final view based on the public notices is taken and since it was presently

examining the issues arising therefrom, it had decided to withdraw the aforesaid communication.

170. However, and evidently the order which stands impugned here came to be passed based on the directions issued by the Kerala High Court. The remit to the Board was based on the writ petition preferred by the third respondent assailing the validity of its action in withdrawing the order of 10 March 2021. On the aforesaid petition, the Kerala High Court initially by its order of 28 February 2022 passed an interim order directing GAIL to continue to supply gas to the third respondent here notwithstanding the letter by which that permission granted on 10 March 2021 had been withdrawn. Subsequently on 08 April 2022, the Kerala High Court upon forming the opinion that the letter of 11 January 2022 was a non-speaking order had remitted the matter for the consideration of the Board afresh after placing all parties on notice. It had also continued the interim order passed by it till a fresh decision is taken by the Board. The matter came to be ultimately disposed of on 13 June 2022 in light of the Impugned Order which came to be passed in the meanwhile.

171. From the material which has been placed on the record, it is unclear whether the Board brought the various orders passed by this Court on *Gujarat Gas [I] & [II]* or for that matter on the writ petition of the petitioners to the attention of that High Court. At least the orders passed by the Kerala High Court do not appear to indicate that they were apprised of the orders passed on *Gujarat [I] & [II]* or for that matter the restraint put in place by the Division Bench in the Letters Patent Appeal. Those orders in any case are neither noticed nor

does that High Court appear to have been called upon to consider the impact of the orders passed thereon. As was noticed hereinabove, in *Gujarat Gas [I]* a direct challenge was laid to the public notices of 02 June 2020 and 23 July 2020. In the order of 16 February 2021 passed in *Gujarat Gas [I]*, the Court had specifically recorded the stand of the Board as being that it would not be permissible for an industrial consumer having a requirement of up to 50,000 SCMD to establish an LNG receiving, storage, and regasification station or receive natural gas from a third party. It had further asserted before this Court that such an action would violate the infrastructure exclusivity vested upon the AE. The Court ultimately went on to hold that in view of the stated stand taken by the Board that if any industrial consumer has requirements of up to 50,000 SCMD, it would be entitled to receive gas only from the petitioner there, namely, Gujarat Gas Ltd., and not from any third party the grievance stood satisfied. On 30 June 2021, the Board had proceeded to issue another public notice eliciting views and comments on the various issues relating to supply of natural gas including LNG through virtual mode, cascades or any other mode other than a pipeline in an authorised GA, as well as the interpretation to be accorded to the concept of exclusivity. It was this notice which had been challenged before this Court in *Gujarat Gas [II]*. Ultimately and upon the Letters Patent Appeal, an injunction came to be issued restraining the Board from taking any further principled stand based upon the views or comments that may be received by it.

172. Of equal significance is the affidavit which thereafter came to be filed by the Board in the writ petition filed by the present

petitioners. In the said affidavit which was dated 22 December 2021 and although the same fails to make any reference to the 30 June 2021 notice, the Board averred as follows: -

“13. That in the meanwhile, the Board had also received requests from two customers in Alappuzha, Kollam and Thiruvananthapuram GA, the same being HLL Lifecare Limited and EICL Limited, requesting for permission from the Board, in terms of proviso to Regulation 3(2)(a) of the Authorization Regulations, to permit them to get supply of LNG from any other alternate source or supplier, since the CGD Network by the authorized entity, the Petitioner herein, is not ready. The Board, after scrutinizing the Quarterly Progress Reports submitted by the authorized entity, came to the conclusion that since the CGD Network of the authorized entity is not ready, the customer may be permitted to get supply from alternative source or supplier in terms of proviso to Regulation 3(2)(a) and accordingly, the letter dated 10.03.2021 was issued to the Petitioner (authorized entity) and the two customers.

14. That the Petitioner has challenged the letter dated 10.03.2021, issued by the Board, by way of the present Writ Petition on the ground that it has the exclusivity to supply natural gas within its authorized area and although the CGD Network is not complete, it is ready to supply LNG to the customers through cascades and hence, there was no occasion for the Board to issue the letter dated 10.03.2021.

15. That subsequent to the order dated 16.02.2021 passed by this Hon'ble Court in Writ Petition (C) No. 1711 of 2021, PNGRB has also received several representations and correspondences from various entities and consumers giving their comments in respect of the Public Notices issued by the Board. The representations from the consumers inter-alia stated that the Board has committed a mistake in its interpretation of Regulation 3(2)(a) of the CGD Authorization Regulations and that the Act or the Regulations do not cast an obligation on the consumer to take natural gas from a particular entity only.

16. That the Board is presently seized of these issues and is well aware that these issues have serious and far-reaching implications and thus they need to be dealt with holistically and comprehensively, on the basis of an extensive interpretation of the various provisions of the Act, especially considering the fact that

the Board has been mandated under the Act to protect the interests of both the consumers as well as the entities.

17. That the Board has the requisite quorum of two members for holding its meetings and the Board shall be considering the various issues, which inter-alia include issues pertaining to the inter-play between the exclusivity granted to an authorized CGD entity and the supply and distribution of natural gas, including LNG, through modes apart from using the pipelines constituting the CGD Network, in a holistic manner, after due deliberations with the stakeholders.

18. That till the time a decision is taken by the Board in respect of the above said issues, the Board, taking into consideration the stand taken by the Board in Public Notice dated 23.07.2020 and the assurance of the authorized entity that it is willing to supply natural gas to entities within its Geographical Area, has decided to withdraw the letter dated 10.03.2021, with liberty to pass appropriate directions based on the decisions which may be taken by the Board in respect of the above said issues.”

173. It may be noted that the Board had asserted in Para 16 of the said affidavit that it has the requisite quorum and was proposing to undertake a comprehensive review of the policy issues which stood raised. This despite the evident restraint which had come to be issued by the Division Bench of our Court in the Letters Patent Appeal. Significantly, it also took the position that since the petitioners had assured that they were willing to supply natural gas to all entities in the GA, it had decided to withdraw the letter of 10 March 2021. The aforesaid recital is liable to be read alongside the Board's asserted position of the petitioner having not achieved the progressive targets which stood placed in terms of the MWP.

174. Despite the aforesaid, the Board appears to have suffered and accepted the order passed by the Kerala High Court and proceeded to undertake the determination on the representation made by the third

respondent. Before proceeding to do so, it neither appears to have obtained the consent and permission of the Division Bench nor does it appear to have brought the aforesaid significant facts to the notice of the Kerala High Court.

175. The Court is constrained to observe that it was obligatory on the part of the Board to have duly brought these facts to the notice and attention of that High Court. However, the Court refrains from entering any further adverse comment in this regard since it has in any case duly evaluated the stand of respective parties on merits in the present decision.

Q. SHIFTING STAND OF THE BOARD

176. Before concluding, it must be observed that the present decision would not be complete if the Court were to ignore the evident vacillating stand which has been taken by the Board on the subject. This would be evident from the following facts.

177. The Board had in connection with the public notices which had been issued taken the unequivocal position that customers having a demand up to 50,000 SCMD could secure supplies of natural gas only from the AE. It had further proceeded to state and reiterate that position in *Gujarat Gas [I]*. The aforesaid stand was reaffirmed in its affidavit which was filed in the writ petition preferred by the petitioners. Insofar as the earlier round of litigation *inter partes* is concerned, it would be pertinent to recollect that the Board had proceeded to recall the order of 10 March 2021 taking into consideration the assurance of the petitioners that it was ready and willing to supply natural gas to all customers in the AKT GA. The

Board proceeded to recall its earlier order according permission to the third respondent acting on that assurance notwithstanding it finding that the petitioners did not appear to have complied with the MWP targets. It is that very aspect which has then been taken into consideration for the purposes of passing the Impugned Order.

178. In the Impugned Order, it has further proceeded to take a new position with respect to the principle of exclusivity upon a consideration of Regulations 2(1)(i) and 3(2)(a). In the Impugned Order, the Board proceeds on the premise that a supply through cascades or cryogenic trucks is not permissible under the statutory framework. That was one of the principal issues which formed subject matter of the public notices. In any case, the aforesaid stand was never expressed or taken in the earlier round of litigation which ensued between the parties. It may additionally be noted that the Board clearly stood restrained from taking any principled view on any of the issues which stood flagged in the public notice of 30 June 2021. The order passed on the Letters Patent Appeal by the Division Bench was neither questioned nor assailed. Despite the aforesaid, it has clearly proceeded to take a fundamental position on that very subject while passing the Impugned Order. The fact that LNG cannot possibly be supplied to consumers through a pipeline was neither controverted nor questioned. The Board had itself while attending to the original request made by the third respondent proceeded to redirect it to the petitioners which were the AE for the AKT GA. It was fully aware of the demand of the third respondent being specifically restricted to the supply of LNG. The Board has failed to proffer any justification for

taking a diametrically opposite view while passing the Impugned Order.

179. During the course of oral submissions, a new twist to the concept of exclusivity was sought to be advocated with learned counsel appearing for the Board speaking of exclusivity being a progressive and staggered concept. This twist upon Regulation 3(2)(a) finds no whisper or resonance in the Impugned Order. The Court has already noticed that as far back as from 2013, the Board had been continually granting NOCs' enabling third parties to effect supplies of LNG via cryogenic trucks. In fact, the terms and conditions of those NOCs' itself contemplated such a practice being continued subject only to the solitary rider of the holder of the NOC obtaining the consent of the AE who may come to be appointed subsequently.

180. The Court deems it necessary to observe that the meaning to be ascribed to statutory provisions should not be continually fiddled with by regulatory authorities so as to create a pall of confusion and uncertainty. Stakeholders in any sector expect a degree of reliability and assuredness when it comes to the statutory regime which governs. They model their activities based upon a stated position which has come to prevail. In fact, the same has a significant bearing on the compliances liable to be affected by the industry. The meaning to be ascribed to a statutory provision is not a work in progress. It must be enunciated with certainty and clarity. While it is true that the Board in the Impugned Order has referred to both the supply of natural gas through a pipeline network as being the only mode of supply permitted under the Act and the Regulations as well as to Regulation

2(1)(i) having no role to play whilst interpreting Regulation 3, the same clearly represented a shift in the position that prevailed at that time. This is manifest from the position that it took in *Gujarat Gas [I] & [II]* as well as the writ petition filed by the petitioners. It also appears to be a shift from what the public notices seemed to suggest. The Court desists from entering any further comment on this except to reiterate that the Board would be well advised to articulate its policy measures in clear, certain and unequivocal terms. The Court has in any case and on an independent review come to the definitive conclusion, for reasons recorded hereinabove, that the view as expressed by the Board is wholly unsustainable and is liable to be set aside.

R. CONCLUSIONS

181. In summation, the Court records its conclusions as follows: -

- A. The National Gas Policy identifies the fundamental objectives of India's stated shift towards more sustainable fuel sources to be the encouragement of market forces so as to enhance competition and creation of a competitive and efficient industry structure. However, the said policy itself acknowledges that while competition and its attendant benefits can reduce the need for regulation in some areas of monopoly, the benefits of regulation in certain areas "*potentially outweigh the cost*". The infrastructural requirements connected with the

construction of a nationwide natural gas pipeline network was acknowledged to fall in the latter.

- B. The policy document recognised the said sector as being at the threshold of rapid growth. It also laid emphasis on the creation of a national gas grid which would ultimately be available to be accessed by players on a non-discriminatory basis. The policy is thus an embodiment of the avowed national objective of the country progressing forward to adopt a more sustainable energy source.
- C. In acknowledgment of the massive capital expenditure required to cover the length and breadth of the country without any form of State support, the Policy also adopts the concept of exclusivity. Exclusivity is in fact a global norm and not one which is peculiar to India only. The grant of infrastructure and marketing exclusivity clearly appears to be an embodiment of the policy measure to insulate and protect an AE during the period it designs and builds the network thus helping it recoup a part of the enormous capital expenditure required to design and build a CGD Network. The exclusivity principle also appears to have been adopted in order to incentivise investors to enter the fray and help in the creation of a nationwide gas pipeline network.

- D. Both the title as well as the Statement of Objects and Reasons underline the broad and principled policy objectives to be the creation of a pipeline infrastructure which would straddle the length and breadth of the country, ensure uninterrupted and adequate supply of natural gas designed to reach all parts of the nation including the remotest of areas at a fair price to the consumer, creation of competitive markets with the ultimate objective being to declare the pipeline network as a common or contract carrier to be available to be accessed by all entities on a non-discriminatory basis.
- E. The legislation thus principally seeks to subserve the two fundamental objectives of laying in place a CGD Network throughout the country, to protect the interest of consumers and entities and providing them access to a sustainable and economical alternate energy source.
- F. The phrase “*associated equipment*” as appearing in Section 2(i) appears to have been employed to encompass all equipment which stands comprised in the interconnected network of gas pipelines and which is deployed to supply gas to consumers situate in the GA. It clearly appears to refer to allied equipment which is interconnected with and embedded in the network of pipelines. This also appeals to reason since

that phrase is used with the conjunction “*and*” rather than “*or*”.

- G. Secondly, the sentence itself is connected thereafter to the point of commencement of supply, namely, the “*bulk supply high pressure transmission main*” and ultimately terminates at “*service pipes supplying natural gas.....*”. It would thus be incorrect to read the phrase “*associated equipment*” as appearing in Section 2(i) in the manner as suggested by the petitioners. The said phrase thus cannot be interpreted to include trucks or cascades.
- H. While Section 2(i) of the Act speaks only of a network of pipelines, Regulation 2(1)(i) purports to expand the various modes that may be adopted by an AE for the purposes of supply of natural gas in a CGD Network. It thus clearly represents a principled decision and policy measure adopted by the Board to expand the various modes that may be adopted and utilised for the purposes of supply of natural gas.
- I. The Regulations, it may be noted, have been framed by the Board itself in exercise of powers conferred upon it by Section 61 of the Act. It would thus clearly not be open for the Board to contend today that the supply of natural gas through cascades and trucks is a concept which is either totally foreign to or beyond the contemplation of the various modes that may be

deployed in connection with the supply of natural gas. The Board also cannot possibly contend that Regulation 2(1)(i) is *ultra vires* the provisions of the Act.

- J. The amended Regulation 2(1)(i) clearly appears to have been placed on the statute book to enable the Board to accept the varied modes and means that may be deployed by an AE to enable maximum penetration amongst various pockets and areas in the GA and thus enabling a customer at the end of the line, even if it be situate in a remote or non-accessible part of the GA, to be able to source a viable and sustainable energy resource.
- K. The Board while issuing the 2013 circular appears to have been cognizant of the fact that a pipeline network may not have been established or be in existence in particular areas and where consumers may have the need to source natural gas. It was in the aforesaid backdrop that the Board appears to have acceded to the request of various entities being granted NOCs' to supply and distribute natural gas to specified customers having requirements of less than 50,000 SCMD in areas yet to be covered under a GA and till such time as an AE is identified and selected.
- L. The Court has additionally found that the Authorization Regulations at two places specifically

refer to the supply of natural gas via trucks and cascades. More importantly, Regulation 2(1)(i) after referring to the supply of natural gas through pipelines employs the word “*or*” before proceeding to specify cascades or “*any other permitted mode*” in a CGD network. This too clearly appears to suggest and embody the intent of the Board to permit cascades and any other permitted mode of supply within a GA. In any case, the contention of the respondents that a supply through trucks and cascades is prohibited or wholly foreign to a CGD network is not worthy of acceptance.

- M. In any case, if the contention of the Board were to be accepted and the provisions interpreted to completely exclude the option of supply of natural gas via trucks or cascades, it would clearly render Regulation 2(1)(i) hollow and inconsequential.
- N. The submission that Regulation 2(1)(i) was intended to permit cascades and trucks only for supply to domestic consumers is unmerited. This since Regulation 2(1)(i) unequivocally prescribes that supply through cascades or any other permitted mode in a CGD Network for consumption would be a mode available to be adopted for “*.....any customer in the domestic, commercial or industrial category*”.

- O. The said Regulation thus does not appear to make any distinction between different categories of customers and in any case cannot be read as being confined to customers in the domestic category only. The acceptance of the contention as urged by an on behalf of the Board would thus clearly do violence to the plain language employed in Regulation 2(1)(i).
- P. The contention of progressive exclusivity is unmerited. If the contention of the respondent were to be accepted it would clearly amount to recognising the mode of transport by trucks and cascades while being permissible for the domestic sector, it being a methodology of supply which is clearly prohibited insofar as commercial and industrial consumers are concerned. If the aforesaid distinction were to be countenanced, it would essentially mean that an AE is not obliged to establish a pipeline structure for domestic consumers at all.
- Q. The scope of Regulation 2(1)(i) would have to be gathered from the language in which it stands couched and placed on the statute book as opposed to the purported intent of the Board to permit the adoption of cascades as a mode of supply only to the domestic sector. Quite apart from the fact that the attention of the Court was not drawn to any contemporaneous material that may have lent credence to the aforesaid

submission, the provision as ultimately placed on the statute book clearly does not support the interpretation that was sought to be advocated. The Court in any case finds no justification to insert such a distinction in Regulation 2(1)(i).

- R. A pipeline grid which connects all customers in the GA must necessarily be constructed and laid in place. This would be subject to the rider that an alternate mode of supply may be adopted in an area fraught by topographical constraints. In fact, topographical and geographical impediments may themselves justify the adoption of an alternate mode of supply. If the fundamental objective were accepted to be the penetration of the network enabling it to reach the maximum number of consumers and all parts of the GA being serviced and reached, the rigid view as canvassed by the Board would not only be disruptive but also distort the primary objectives.
- S. Regulation 2(1)(i) clearly appears to be an expansion upon a CGD Network as defined under Section 2(i). While the Act contemplates the CGD Network to be an interconnected network of gas pipelines, Regulation 2(1)(i) expands the concept of that pipeline network, which would continue to be a constituent of the CGD Network, by inclusion of cascades and other permitted modes. The Regulations as per the Board itself came to

be amended based upon the experience gathered in the previous bidding rounds and the imperatives of expanding the reach of natural gas to all categories of consumers. It clearly appears to have been introduced to cater to the needs of a nascent GA and where a network grid is yet to be fully established.

- T. Regulation 2(1)(i) thus clearly appears to be the embodiment of the intent to provide a “*play in the joints*” and provide a flexibility of approach to the Board and consequently the AE to reach the maximum number of consumers in the GA. It merely seeks to expand upon the concept of a CGD Network as originally introduced in the Act.
- U. It must be borne in mind that Section 2 (i) has remained static and untouched since the time the Act was originally enacted in 2006. The amendments introduced in the Authorization Regulations clearly appear to be guided and forged by the experience garnered by the Board over the years.
- V. For the purposes of understanding the working of Regulation 3, it would be imperative to read both Section 2(i) as well as Regulation 2(1)(i) harmoniously and in the manner indicated hereinabove. The Court notes that Section 2(i) does not employ the phrase “*piped natural gas*” at all. The said phrase had remained part of the Authorisation Regulations till it

came to be expanded on and supplemented in 2018. In any case, it cannot be assumed that the Board was oblivious of Section 2(i) when it reframed Regulation 2(1)(i). It cannot now disavow the amendments which came to be introduced.

- W. Both Section 2(i) and Regulation 2(1)(i) are liable to be accorded a harmonious interpretation and the phrase CGD Network understood accordingly. In the considered view of this Court, it is a communal, combined and cooperative interpretation which is liable to be accorded to both Section 2(i) as well as Regulation 2(1)(i) and the phrase CGD Network understood accordingly. Thus, the Court finds no conflict or irreconcilable clash between Section 2(i) of the Act and Regulation 2(1)(i) of the Authorization Regulations.
- X. The Court finds no justification to restrict the meaning to be accorded to “CGD Network” as occurring in the Proviso to Regulation 3(2)(a) as being governed solely by Section 2(i) of the Act. Taking any other view would not only amount to ignoring the 2018 Amendment Regulations but also acknowledging the existence of an apparent and evident irreconcilable conflict.
- Y. The Proviso to Regulation 3(2)(a) uses the expression “...until the CGD Network is ready to supply natural

gas”. As this Court reads Section 2(i) together with Regulation 2(1)(i) harmoniously, it would be apparent that as long as the AE is in a position to supply natural gas either through a CGD Network or cascades or any other permitted mode, it would continue to enjoy the exclusivity which stands conferred.

- Z. On a more fundamental plane, the Court finds that the focus of the Proviso is on the aspect of readiness to supply. As long as the AE is in a position to supply natural gas in the form required by the consumer, the Proviso would not come into effect. To put it conversely, it is only when the AE is unable to meet the requirements of the consumer that the Board would be justified in according permission in terms as contemplated therein.
- AA. The focus of Regulation 3(2)(a) clearly is the readiness of the AE to effect supplies. The Proviso would come into effect only where an AE is unable to meet the requirements of a particular consumer. The readiness to supply cannot be linked to the MWP obligations of an AE. Of course, where the requirement of a consumer is only of piped natural gas, the issue would have to be viewed and evaluated accordingly. What needs to be emphasised is neither a failure to comply with MWP milestones nor pricing disputes can trigger the Proviso to Regulation 3(2)(a).

- BB. The Court additionally notes that there may be various pockets and areas within a GA where it may be wholly impractical to lay a pipeline network on account of topographical constraints. If the narrow construction as advocated by the respondents were to be accepted, it would leave customers present in such areas being left to deal with a market which would be wholly unregulated. The Court also bears in mind the submission addressed on behalf of the petitioners who had submitted that LNG cannot, in any case, be supplied through a pipeline. If that were so, it would leave those customers outside the net of the regulatory regime altogether.
- CC. The right of exclusivity can be claimed and stands vested in the AE. This clearly flows from the grant and the authorisation made in its favour. It is the AE which has been charged with laying the infrastructure in place and make the requisite investments so as to ensure that the CGD Network is established as per the timelines prescribed. The Court thus finds itself unable to either appreciate or comprehend the distinction which is sought to be drawn when the Board observes that exclusivity is conferred on the CGD Network and not the AE.
- DD. Exclusivity, for reasons which are evident and apparent, would obviously operate upon the network

and the GA. However, the protection accorded by the grant of exclusivity would necessarily be one which is claimed by the AE. The distinction which is thus sought to be drawn and highlighted by the Board is clearly of no consequence.

- EE. The submission of a staggered or progressive exclusivity would clearly fall foul of Section 20(4) of the Act read with the provisions incorporated in the Exclusivity Regulations. Exclusivity is, undisputedly, concerned with the period during which the AE creates the requisite infrastructure as would flow from the usage of the words “*lay and build*” and extending up to the operation of the CGD Network and its expansion. Section 20(4) cannot, by any stretch of imagination, be understood or interpreted to be the repository of the progressive exclusivity concept as was advocated.
- FF. The Court is also of the firm opinion that the staggered exclusivity which was spoken of by the Board would not only be violative of the plain language of the statute as explained in the body of the judgment, it would also be impractical and lead to absurd consequences.
- GG. A GA in terms of the Act as well as the Regulations is contemplated to be a homogenous whole. The statutory regime does not recognise pockets or boroughs of

exclusivity. The exclusivity is to extend to the GA as a whole. No provision of either the Act or the various Regulations can possibly be construed as supportive of the progressive or staggered exclusivity theory as was advocated at the behest of the Board.

HH. It is the unreadiness of the AE to be in a position to meet the demands of natural gas of a customer which enables the latter to approach the Board seeking permission to source natural gas from an alternate source in terms of the Proviso. The Proviso principally directs an enquiry on the issue of whether the AE is in a position to supply natural gas and meet the requirements of a customer. The interplay and interaction of this aspect with MWP milestones would arise only in a situation where the AE is found to be unable to meet the requirements of a customer who requires natural gas through a pipeline.

II. What needs to be understood is that the creation of the infrastructure as well as the service obligations that stand placed upon an AE are both subjects which are duly provisioned for under the Exclusivity and Authorization Regulations. Those Regulations empower the Board to monitor, supervise, call for reports and take such remedial or coercive action as may be warranted. However, a failure to meet MWP

targets or pricing disputes cannot constitute the trigger for the Proviso to Regulation 3(2)(a).

- JJ. Regard must also be had to the fact that the said provision is not a penal provision or one which is designed to punish an AE for having failed to achieve set out targets. It is fundamentally focussed upon the needs of a particular consumer who complains that the AE in the particular GA is not ready to supply natural gas. It is thus the asserted failure of the AE to be in a position of readiness to supply alone which is germane and relevant for the purposes of that Proviso. The obvious sequitur to the above would be that the Proviso is not liable to be understood as a mode to penalise an AE for failing to conform to contractual targets.
- KK. It must also be remembered that the grant of exclusivity itself has been introduced and conferred statutory sanctity by the Board in its Regulations to be extended based on a stated and identified criteria. What the Court seeks to emphasise is that if the Board were to find that an AE is either recalcitrant or has failed to adhere to the work milestones and which may warrant action either under Regulation 10 of the Exclusivity Regulations or Regulation 16 of the Authorization Regulations, the same would not constitute a germane ground for the invocation of the Proviso to Regulation 3(2)(a).

- LL. While a failure to adhere to work schedules and milestones may expose an AE to various actions that the Board is empowered to initiate, the same cannot constitute a ground for holding that the Proviso is applicable. That Proviso would continue to be dependent upon whether the AE is in a state of readiness to effect supplies. It is only if the Board finds that the AE is not ready or unable to supply and meet the needs of the consumer that the Proviso would come into play.
- MM. Applying the principles enunciated in *Assn. of Registration Plates [II]* to the facts of the present case, the Court notes that it is manifest that in terms of the Act, an AE is identified after a vigorous and detailed tendering and bidding process. It is that selected AE which is then tasked to undertake the creation of the requisite infrastructure in the concerned GA. It is that entity which is required to create the pipeline infrastructure by making the requisite capital expenditure without any State aid. It must be noted that as in *Assn. of Registration Plates [II]*, an AE is obliged to design and lay in place a gas network designed to meet the requirements of all categories of consumers. The design and construction of a pipeline network is a sophisticated and technologically intensive project. It is also a long-term project spreading over twenty-five

years. Bearing in mind the larger goal which infuses the legislation, namely, the creation of a national gas grid, the Act puts in place the concept of exclusivity. It is in one sense, the protection extended to the AE during the gestation period enabling it to recoup the massive capital expenditure which is likely to be incurred in the course of establishment of the pipeline network. However, the AE is parallelly placed under various obligations and duties. Those constitute the internal balances designed to protect the interest of the consumer and other stakeholders. The Court thus finds itself unable to accept the monopoly argument as was canvassed.

NN. While an impression may be gathered that the statutory regime curtails the right of free choice that may otherwise have been exercisable by a consumer, it must be remembered that the rights conferred by Article 19 have always been understood to be subject to reasonable restrictions. As would be manifest from what stands set out in the judgment, the statutory regimen clearly aims to balance the rights of the AE as well as the consumer. That balance is evident from the obligations placed upon the AE to construct and put in place the requisite infrastructure, to effect supplies to all consumers in the GA and in order to enable it to recoup the investments that may be made, to exempt

the CGD Network from being declared as a common or contract carrier during the period of exclusivity. While those are the rights which an AE could claim, the consumer is provided the facility of an identified AE which is duly obliged to meet all demands of natural gas in the GA and meet the requirements of all domestic, industrial and commercial establishments in that area.

- OO. The interest of the consumer is further safeguarded by the Proviso to Regulation 3(2)(a). The Board thus stands empowered to grant the request of a consumer to source natural gas from an alternate supplier if it finds that the AE is not in a position to meet the requirements of a particular customer. The aforesaid statutory framework has been laid in place to thus balance the policy objectives of ensuring the creation of a CGD Network and at the same time ensuring and protecting the interests of consumers.
- PP. It may be noted that the Board is further conferred various regulatory powers under the Act including those which stand specified in Section 11. It not only stands conferred the power to monitor prices and take corrective measure to prevent restrictive trade practices but also to secure equitable distribution of natural gas, to ensure retail service obligations are met as well as to monitor transportation rates that may be charged.

QQ. The aforesaid checks and balances which stand incorporated in the Act as well as the Regulations thus clearly appear to secure and safeguard the rights of individual consumers. The argument resting on Article 19(1)(g) is thus liable to be negated on the aforesaid score.

S. OPERATIVE DIRECTIONS

182. Accordingly and for all the aforesaid reasons, the writ petition is allowed. The impugned order of 09 June 2022 shall stand quashed. In light of what was recorded in Para 157, the Court reserves liberty to the Board to re-evaluate the issue of MWP targets and take such further steps as may be warranted in the facts and circumstances of the case. In case any proceedings are drawn in this respect, the Board shall move forward with due notice to the petitioners and in accordance with law.

YASHWANT VARMA, J.

MARCH 15, 2023

SU/neharsk/bh