



2024:DHC:6148



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

Date of decision: 14th AUGUST, 2024

IN THE MATTER OF:

+ **W.P.(C) 15285/2023 & CM APPL. 61267/2023**

IMC LIMITED

..... Petitioner

Through: Mr. Ramji Srinivasan, Sr. Advocate
with Mr. Saurav Agarwal, Mr.
Trinath Tadakamalla, Ms. Utsha
Dasgupta, Ms. Nisha Bhatia, Mr.
Samyak Bilala, Mr. Anshuman
Choudhary and Ms. Namrata,
Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Apoorv Kurup, CGSC with Mr.
Gurjas Singh Narula, Ms. Nidhi
Mittal, Mr. Akhil Hasija, Ms. Aanchal
and Ms. Gauri Goburdhan, Advocates
and Mr. Rudra Paliwal, GP.
Ms. Madhavi Divan, Sr. Advocate
with Mr. Rahul Sagar Sahay, Mr.
Prince Singh, Ms. Sonali Malhotra,
Ms. Sanskriti Bhardwaj, Ms. Harshita
Tomar and Ms. Sakshi Singh,
Advocates for R-2.
Mr. Abhinav Vasisht, Sr. Advocate
with Mr. Prashant Bezboruah and Ms.
Akshita Sachdeva Jaitly, Advocates
for R-3.

+ **W.P.(C) 2896/2024 & CM APPLs. 11960/2024, 11961/2024**

INDIAN OIL CORPORATION LIMITED

..... Petitioner

Through: Mr. Abhinav Vasisht, Sr. Advocate
with Mr. Prashant Bezboruah and Ms.



2024:DHC:6148



Akshita Sachdeva Jaitly, Advocates.

versus

PETROLEUM AND NATURAL GAS REGULATORY BOARD

..... Respondent

Through: Ms. Madhavi Divan, Sr. Advocate with Mr. Rahul Sagar Sahay, Mr. Prince Singh, Ms. Sonali Malhotra, Ms. Sanskriti Bhardwaj, Ms. Harshita Tomar and Ms. Sakshi Singh, Advocates for R-1.

Mr. Ramji Srinivasan, Sr. Advocate with Mr. Saurav Agarwal, Mr. Trinath Tadakamalla, Ms. Utsha Dasgupta, Ms. Nisha Bhatia, Mr. Samyak Bilala, Mr. Anshuman Choudhary and Ms. Namrata, Advocates.

Mr. Apoorv Kurup, CGSC with Mr. Gurjas Singh Narula, Ms. Nidhi Mittal, Mr. Akhil Hasija, Ms. Aanchal and Ms. Gauri Goburdhan, Advocates and Mr. Rudra Paliwal, GP.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present writ petitions raise an important question of law of public importance as to whether after the enactment of the Petroleum and Natural Gas Regulatory Board Act, 2006 (*hereinafter referred to as the 'PNGRB Act'*), can entities lay a captive pipeline for transport of its petroleum and petroleum products without the authorization of the Petroleum and Natural Gas Regulatory Board (*hereinafter referred to as the 'PNGRB'*).
2. This judgment disposes of two writ petitions, one filed by IMC



Limited (*hereinafter referred to as the 'Petitioner'*) and the other filed by Indian Oil Corporation Limited (*hereinafter referred to as the 'IOCL'*).

3. Since the issues raised in both the writ petitions are common, with the consent of the parties, the writ petitions are being disposed of *vide* a common judgment.

4. The facts of the case as stated by the Petitioner in its writ petition, i.e., W.P.(C) 15285/2023, are that the PNGRB issued an application-cum-bid document for grant of authorization for laying, building, operating or expanding a pipeline 14 kms. from outside the boundary of Ennore Port to Manali Industrial Area. The bid document was amended and the length of the pipeline which was originally fixed at 14 kms. from outside the boundary of Ennore Port was extended to a point within the Ennore Port and was extended from 14kms. to 21 kms. The Petitioner submitted its Expression of Interest to the PNGRB.

5. Material on record indicates that both the Petitioner and the IOCL sought for authorization from the Board to lay down the said pipeline. The Petitioner was successful and was given the Letter of Authorization on 18.12.2015 to lay down the said pipeline.

6. It is the case of the Petitioner that in October, 2023, i.e., after about 8 years after the Letter of Authorization was given to the Petitioner, the IOCL started laying down two multi product petroleum and petroleum products pipelines of 30" diameters and 10.5 kms. length from KPL Jetty to Vellur Terminal which is operated by IOCL. The IOCL is also laying down three pipelines of 24" diameter and 9kms. length from Vellur Terminal to Manali Industrial Area. All the pipelines are being laid without getting any authorization from the PNGRB.

7. Material on record indicates that PNGRB *vide* a communication dated



13.12.2023 has directed the IOCL to stop laying these pipelines with immediate effect since the IOCL has not taken authorization from the PNGRB for laying down the said pipeline.

8. IMC Limited has approached this Court by filing W.P.(C) 15285/2023 with the following prayers:

“a) transfer to itself the Petition dated 07.11.2023 filed by the Petitioner under Section 24 and 25 of PNGRB Act, 2006 before the PNGRB Board/Respondent No. 2 and grant the following reliefs prayed therein:

(i) Direct IOCL to immediately stop the construction of the Unauthorized Pipelines in respect of transportation of petroleum and petroleum product for the route between Ennore Port and Manali Industrial Area, Tamil Nadu which was already covered by EPMPL authorized to the Petitioner by the Hon'ble Board.

(ii) Prohibit IOCL from undertaking construction of the Unauthorized Pipelines in respect of transportation of petroleum and petroleum product for the route between Ennore Port and Manali Industrial Area, Tamil Nadu which was already covered by EPMPL authorized to the Petitioner by the Hon'ble Board.

(iii) Impose a penalty and take any other action as the this Hon'ble Court deems fit against IOCL for violating Section 16 of the PNGRB Act, by constructing the pipeline without authorization of the PNGRB Board.

(iv) Direct IOCL to compensate the Petitioner under Section 21(3) of the PNGRB Act for damages caused to the Petitioner by continuous infringement of the Petitioner's rights by IOCL's construction of Unauthorized Pipelines leading to financial and business losses to the Petitioner.



OR, in the alternative

b) grant the following protective reliefs to the Petitioner till the PNGRB is duly constituted by the Respondent No. 1 and capable of constituting a bench and adjudicating the Petitioner's Petition dated 07.11.2023 under Section 24 and 25 of the PNGRB Act:

iii) issue appropriate writ or directions to restrain the Respondent No. 2, PNGRB from granting any approval or authorization to Respondent No. 3 in respect of the Unauthorized Pipelines in respect of transportation of petroleum and petroleum product between for points the route between Port and Manali Industrial Area, Tamil Nadu which was already covered by EM Pipeline authorized to the Petitioner by the PNGRB.

iv) issue appropriate writ or directions to restrain (or direct Respondent No. 2 to restrain) IOCL from undertaking the construction of the Unauthorized Pipelines in respect of transportation of petroleum and petroleum product between for points the route between Ennore Port and Manali Industrial Area, Tamil Nadu which was already covered by EM Pipeline authorized to the Petitioner by the PNGRB.

c) issue appropriate writ or directions to Respondent No. 1 to immediately take steps for expeditious appointment of Member (Legal) on the PNGRB Board.

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

9. IOCL has approached this Court by filing W.P.(C) 2896/2024 for setting aside the Communication dated 13.12.2023 issued by PNGRB



directing the IOCL to stop laying down the pipelines on the ground that regulating the laying down of pipelines which are meant for captive use and for transportation of the products of the IOCL from the jetty to its terminal is outside the purview of the PNGRB Act, and therefore not within the jurisdiction of the Board.

10. The transportation of petroleum and petroleum products was governed by the Petroleum Act, 1934. The Parliament had also enacted Petroleum & Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962. The object of the Act was to provide for the acquisition of right of user in land for laying petroleum pipelines for transport of petroleum and minerals and for matters connected therewith.

11. In the year 2002, the Ministry of Petroleum and Natural Gas of the Government of India brought out Guidelines for Laying Petroleum Products Pipeline (*hereinafter referred to as the '2002 Guidelines'*) on 20.11.2002. In the said 2002 Guidelines, petroleum products pipelines were categorized in three compartments; (i) pipelines originating from refineries, whether coastal or inland upto a distance of 300 kms. from the refinery; (ii) pipelines dedicated for supplying product to a particular consumer, originating either from a refinery or from company's terminal; and (iii) pipelines originating from refineries exceeding 300 kms. in length and pipelines originating from ports, other than those specified in (i) and (ii) above.

12. The land for these pipelines is acquired under the provisions of Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962. This act remains in force even as of date. The 2002 Guidelines also provided for the procedure to be followed for acquiring right of user in land for laying down pipelines under the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 for pipelines originating from refineries exceeding 300



kms. length and pipelines originating from ports other than pipelines originating from refineries upto a distance of 300 kms. from the refinery and pipelines dedicated for supplying the product to particular consumer either from the refinery or the company's terminal. The procedure indicates that the proposal for laying down a common usage product pipeline could originate from any single interested party or a joint venture. The Ministry of Petroleum and Natural Gas would publicize the proposal inviting the Expression of Interest. The procedure given in the 2002 Guidelines has been described in the following manner:-

" 3.1 A proposal for laying common usage product pipeline could originate from any single interested party or a joint-venture (herein after referred to as proposer).

3.2 The Ministry of Petroleum and Natural Gas shall publicize, in such manner as the Ministry may decide, the proposal inviting expression of interest, within a period of three months from anyone interested in the proposal. In case any company is interested in taking any capacity in the pipeline, it could express its interest and enter into "take or pay" or any other mutually agreeable contract with the proposer. The pipeline size and design would be finalized by the proposer after taking into consideration all such requests.

3.3 In case, no expression of interest is received from any industry player within a period of three months of publicizing the proposal, the proposer would be at liberty to go ahead with the project.

3.4 The designed pipeline capacity would be at least 25% more than the capacity requirement of the proposer and of those who take capacity Under clause 3.2, as may be decided by the Ministry of Petroleum and Natural Gas.

3.5 The ownership of the pipeline would be that of the



proposer or as may be decided by the proposer, irrespective of whether the other industry player(s) take pipeline capacity or not.

3.6 The excess capacity; as mentioned in clause 3.4, would be available for use by anyone, other than the owner and those taking capacity under clause 3.2, at the approved tariff, as per the provisions under clause 4, on "common carrier" basis i.e. capacity would be made available to anyone interested and offering to pay the tariff. In case such demand exceeds this excess capacity, the allocation of the excess capacity would be pro-rated amongst the interested users other than the owner and those taking capacity under clause 3.2. "

13. The 2002 Guidelines also provided that they will remain in force till Petroleum Regulatory Board is constituted and after the Board is constituted, the Right of User and land for laying petroleum product pipelines will be granted by the Ministry of Petroleum and Natural Gas, subject to the fulfilment of requirements under the petroleum regulatory law. Clause 6.1 and Clause 6.2 of the 2002 Guidelines reads as under:-

" 6.1 These guidelines will remain in force till the Petroleum Regulatory Board is constituted.

6.2 After Petroleum Regulatory Board is constituted, the RoU in land for laying petroleum product pipelines will be granted by the Ministry of Petroleum & Natural Gas, subject to fulfillment of requirements under the petroleum regulatory law. "

14. Pursuant to the 2002 Guidelines, the PNGRB Act was brought into force. The Preamble and the Statement of Object and Reason of the PNGRB Act reads as under:-

"An Act to provide for the establishment of Petroleum and Natural Gas Regulatory Board to regulate the



refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto"

"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 exploitation 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."

15. It is pertinent to mention at this juncture that though the Statement of Object and Reason states that the object of the PNGRB is to oversee and regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum and petroleum products and natural gas, the PNGRB Act deals only with two types of pipelines which has been defined as common carrier and contract carrier. The relevant provisions of the PNGRB Act which are necessary for the adjudication of the issue raised in the writ petitions read as under:-

"2. Definitions.

xxx

(d) "authorised entity" means an entity—

(A) registered by the Board under Section 15—

(i) to market any notified petroleum, petroleum products or natural gas, or

(ii) to establish and operate liquefied natural gas terminals, or

(B) authorised by the Board under Section 16—

(i) to lay, build, operate or expand a common carrier or contract carrier, or

(ii) to lay, build, operate or expand a city or local natural gas distribution network;

xxx



(j) “common carrier” means such pipelines for transportation of petroleum, petroleum products and natural gas by more than one entity as the Board may declare or authorise from time to time on a non-discriminatory open access basis under sub-section (3) of Section 20, but does not include pipelines laid to supply—

(i) petroleum products or natural gas to specific consumer; or

(ii) crude oil;

Explanation.—For the purposes of this clause, a contract carrier shall be treated as a common carrier, if—

(i) such contract carrier has surplus capacity over and above the firm contracts entered into; or

(ii) the firm contract period has expired.

xxx

(m) “contract carrier” means such pipelines for transportation of petroleum, petroleum products and natural gas by more than one entity pursuant to firm contracts for at least one year as may be declared or authorised by the Board from time to time under sub-section (3) of Section 20;

xxx

(p) “entity” means a person, association of persons, firm, company or co-operative society, by whatsoever name called or referred to, other than a dealer or distributor, and engaged or intending to be engaged in refining, processing, storage, transportation, distribution, marketing, import and export of petroleum, petroleum products and natural gas including laying of pipelines for transportation of



petroleum, petroleum products and natural gas, or laying, building, operating or expanding city or local natural gas distribution network or establishing and operating a liquefied natural gas terminal;

xxx

11. Functions of the Board.—*The Board shall—*

(a) protect the interest of consumers by fostering fair trade and competition amongst the entities;

(b) register entities to—

(i) market notified petroleum and petroleum products and, subject to the contractual obligations of the Central Government, natural gas;

(ii) establish and operate liquefied natural gas terminals;

(iii) establish storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations;

(c) authorise entities to—

(i) lay, build, operate or expand a common carrier or contract carrier;

(ii) lay, build, operate or expand city or local natural gas distribution network;

(d) declare pipelines as common carrier or contract carrier;

(e) regulate, by regulations,—

(i) access to common carrier or contract carrier so as to ensure fair trade and competition amongst



entities and for that purpose specify pipeline access code;

(ii) transportation rates for common carrier or contract carrier;

(iii) access to city or local natural gas distribution network so as to ensure fair trade and competition amongst entities as per pipeline access code;

(f) in respect of notified petroleum, petroleum products and natural gas—

(i) ensure adequate availability;

(ii) ensure display of information about the maximum retail prices fixed by the entity for consumers at retail outlets;

(iii) monitor prices and take corrective measures to prevent restrictive trade practice by the entities;

(iv) secure equitable distribution for petroleum and petroleum products;

(v) provide, by regulations, and enforce, retail service obligations for retail outlets and marketing service obligations for entities;

(vi) monitor transportation rates and take corrective action to prevent restrictive trade practice by the entities;

(g) levy fees and other charges as determined by regulations;

(h) maintain a data bank of information on activities relating to petroleum, petroleum products and natural gas;



(i) lay down, by regulations, the technical standards and specifications including safety standards in activities relating to petroleum, petroleum products and natural gas, including the construction and operation of pipeline and infrastructure projects related to downstream petroleum and natural gas sector;

(j) perform such other functions as may be entrusted to it by the Central Government to carry out the provisions of this Act.

xxx

16. Authorisation.—*No entry 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.

xxx

17. Application for authorisation.—*(1) An entity*



which is laying, building, operating or expanding, or which proposes to lay, build, operate or expand, a pipeline as a common carrier or contract carrier shall apply in writing to the Board for obtaining an authorisation under this Act:

Provided that an entry laying, building, operating or expanding any pipeline as common carrier or contract carrier authorised by the Central Government at any time before the appointed day shall furnish the particulars of such activities to the Board within six months from the appointed day.

(2) An entry which is laying, building, operating or expanding, or which proposes to lay, build, operate or expand, a city or local natural gas distribution network shall apply in writing for obtaining an authorisation under this Act:

Provided that an entity laying, building, operating or expanding any city or local natural gas distribution network authorised by the Central Government at any time before the appointed day shall furnish the particulars of such activities to the Board within six months from the appointed day.

(3) Every application under sub-section (1) or sub-section (2) shall be made in such form and in such manner and shall be accompanied with such fee as the Board may, by regulations, specify.

(4) Subject to the provisions of this Act and consistent with the norms and policy guidelines laid down by the Central Government, the Board may either reject or accept an application made to it, subject to such amendments or conditions, if any, as it may think fit.

(5) In the case of refusal or conditional acceptance of an application, the Board shall record in writing the grounds for such rejection or conditional acceptance,



as the case may be.

18. Publicity of application.—When an application for registration for marketing notified petroleum, petroleum products and natural gas, or for establishing and operating a liquefied natural gas terminal, or for establishing storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations, is accepted whether absolutely or subject to conditions or limitations, the Board shall, as soon as may be, cause such acceptance to be known to the public in such form and manner as may be provided by regulations.

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.

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 exclusively 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 infructuous 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.

21. Right of first use, etc.—*(1) The entity laying, building, operating or expanding a pipeline for transportation of petroleum and petroleum products or laying, building, operating or expanding a city or local natural gas distribution network shall have right of first use for its own requirement and the remaining capacity shall be used amongst entities as the Board may, after issuing a declaration under Section 20, determine having regard to the needs of fair competition in marketing and availability of petroleum and petroleum products throughout the country:*

Provided that in case of an entity engaged in both marketing of natural gas and laying, building, operating or expanding a pipeline for transportation of natural gas on common carrier or contract carrier basis, the Board shall require such entities to comply with the affiliate code of conduct as may be specified by regulations and may require such entity to separate the activities of marketing of natural gas and the transportation including ownership of the pipeline within such period as may be allowed by the Board and only within the said period, such entity shall have right of first use.



(2) An entity other than an entity authorised to operate shall pay transportation rate for use of common carrier or contract carrier to the entity operating it as an authorisation entity.

(3) An entity authorised to lay, build, operate or expand a pipeline as common carrier or contract carrier or to lay, build, operate or expand a city or local natural gas distribution network shall be entitled to institute proceedings before the Board to prevent, or to recover damages for, the infringement of any right relating to authorisation.

Explanation.—For the purposes of this sub-section, “infringement of any right” means doing of any act by any person which interferes with common carrier or contract carrier or causes prejudice to the authorised entity.

xxx

61. Power of Board to make regulations.

xxx

(2) (e) regulating open access to and transportation rate for the common carrier or contract carrier or city or local natural gas distribution network and other matters referred to in clause (e) of Section 11;

xxx

(2)(p) the manner of selection of an entity under sub-section (2) of Section 19;

xxx

(2)(r) the guiding principles to be followed by the Board and the objectives for declaring, or authorising to lay, build, operate or expand a common carrier or contract carrier for declaring, or authorising to lay,



build, operate or expand a city or local natural gas distribution network, under sub-section (5) of Section 20;"

16. Under the regulation making power, the PNGRB has brought out the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand Petroleum or Petroleum Products Pipelines) Regulations, 2010 (*hereinafter referred to as the '2010 Regulations'*). The relevant portion of the said Regulations which are necessary, reads as under:-

"2. Definitions.

xxx

(d) "development of petroleum and petroleum product pipeline" means laying building operating or expanding a petroleum products pipeline shall be a period of twenty five years commencing from

(i) the date of grant of authorization to the entity by the Board in case an entity proposes to lay, build or expand a petroleum and petroleum products pipeline on or after the appointed day

(ii) the start-up date of the commencement of physical activities of laying, building or expanding the petroleum or expanding a petroleum and petroleum products pipeline before the appointed day and the entity has either an authorization from the Central Government before the appointed day or an authorization from the Board under these regulations:

Provided that at the end of the aforesaid period of twenty five years, extensions of the period of economic life may be considered by the Board for a block of ten year at a time depending on the satisfactory compliance of the service obligations under these



regulations and on such terms and conditions, as it may deem fit at that point in time.

xxx

(i) “petroleum and petroleum products pipeline” means any pipeline including a branch or spur lines for transport of petroleum and petroleum products and includes all connected infrastructure such as pumps, metering units, storage facilities at originating, delivery tap off points or terminal stations and the like connected to the common carriers or contract carriers including line balancing tanks and tankage required for unabsorbed interface, essential for operating a pipeline system but excluding pipelines, which are dedicated for supply of petroleum products to a specific consumer which are not for resale:

Provided that the transporter may own, hire outsource or use on hospitality basis such connected facilities on non discriminatory basis

xxx

3. Applicability.—*These regulations shall apply to an entity—*

(a) which is laying, building, operating or expanding or which proposes to lay, build, operate or expand a petroleum and petroleum products pipeline for transporting one or more petroleum products including LPG and LNG, or

(b) which proposes or is directed by the Board to convert a dedicated or contract carrier pipeline for supply of petroleum products to a specific consumer into a common or contract carrier petroleum and petroleum products pipeline as the case may be.

4. Initiation of proposal through expression of interest route or suo-motu by Board.—*(1) An entity*



desirous of laying, building, operating or expanding a petroleum and petroleum products pipeline shall submit an expression of interest to the Board in the form of an application at Schedule A along with an application fee as specified under the Petroleum and Natural Gas Regulatory Board (Levy of fee and Other Charges) Regulations, 2007 as amended from time by the Board.

(2) The Board may suo-motu initiate a proposal inviting entities to participate in the process of selection for an entity for laying, building, operating or expanding petroleum and petroleum product pipeline along any route.

5. Criteria for selection of entity for expression of interest route.—(1) *In case the expression of interest fulfills the minimum eligibility criteria and the requirements list out at sub-regulation 6, the Board shall 10[webhost the same at PNGRB's website giving wide publicity regarding] receipt of an expression of interest and commencement of public consultation period of thirty days.*

(2) During the period of public consultation process, any person, authority or entity may submit in writing to the Board its views, if any on the expression of interest;

(3) The Board may web-host all comments received to facilitate possible contracts for capacity booking by different entities with the entities that may be interested in the development of petroleum and petroleum products pipelines so as to facilitate coming up of an optimum sized petroleum and petroleum products pipeline through the bidding process as stated in Regulation 7;

(4) The Board shall, based on the views received within a period of thirty day after the last day of the public consultation period decide—



(a) not to allow the proposed petroleum and petroleum products pipelines if, it is convinced that, instead of laying, building or expanding the proposed petroleum and petroleum products pipeline, the projected potential demand could be better met in cost-effective manner by expansion of an existing pipeline or any other ground; or

(b) to go ahead with the proposal with or without modification

Provided that the Board in deciding so shall be guided by one or more of the following objective, namely:

(i) promoting competition among entities;

(ii) avoiding infructuous investment

(iii) maintaining or increasing supplies or for securing equitable distribution or ensuring adequate availability of petroleum products throughout the country;

(iv) protection of consumer interest;

(v) facilitating rapid development of petroleum and petroleum products pipeline infrastructure.

(5) The Board may, within the period specified in sub-regulation (4), 11[webhost], the proposal for the development of petroleum and petroleum products pipeline 12[on PNGRB's website] and incite bids for the same.

(6) The Board shall scrutinize the bids received response to the advertisement in respect of only those entities which fulfill the following minimum eligibility criteria namely:



(a) entity has paid the application fee along with the application-cum-bid as specified for trunk lines as specified under Regulation 3 of the Petroleum and Natural Gas Regulatory Board (Levy of Fee and Other Charges) Regulations, 2007 as amended from time to time by the Board

(b) entity is technically capable of laying and building petroleum and petroleum products pipeline as per the following qualifying criteria, namely:

(i) entity has on its own, either departmentally or through contractors hired by it, in the past, laid and built either a hydrocarbon pipeline of a length not less than three hundred kilometers on a cumulative basis or a city or local natural gas distribution network;

(ii) entity has a joint venture with another entity (with at least eleven per cent, equity holding by that entity) which in the past has either laid and built a hydrocarbon pipeline of a length not less than three hundred kilometers on a cumulative basis or a city or local natural gas distribution network;

(iii) entity intends to lay and build proposed petroleum, petroleum products pipeline on lump sum turnkey or project management consultancy basis through one or more technically competent firms, which in the past have laid and built a hydrocarbon pipeline of a length not less than three hundred kilometers or a city or local natural gas distribution network and the entity shall also enclose a list of such firms along with aforesaid proof of their technical competence:

Provided that the entity shall have the freedom to choose such firms at the time of execution of the project and the Board reserves the right to cross verify the credential of the firms included in the list



and seek clarifications; or

(iv) entity has an adequate number of technically qualified personnel with experience in construction and pre-commissioning of hydrocarbon pipeline to independently undertake and execute the petroleum and petroleum products pipeline project on standalone basis;

Explanation.—The entity shall have at least three technically qualified personnel on its permanent rolls having experience of not less than one year in the following areas namely:

(a) right of way acquisition or clearance securing;

(b) design and execution of hydrocarbon pipeline project

(c) pre-commissioning including hydra-testing and restoration and

(d) safety of hydrocarbon pipeline and installations

(c) entity is technically capable of operating and maintaining petroleum and petroleum products pipeline as per the following qualifying criteria, namely:

(i) entity on its own has an experience of at least one year in operations and maintenance of a petroleum and petroleum products pipeline of a length not less than three hundred kilometers on a cumulative basis;

(ii) entity has joint venture with another entity (with at least eleven per cent holding of that entity) which has an experience of at least one year in operations and maintenance of a petroleum and petroleum products pipeline.



(iii) entity intends to operate and maintain the proposed petroleum, petroleum products pipelines through an appropriate firms' technical assistance agreement for a period of at least one year with another party having experience of at least one year in operations and maintenance of a petroleum and petroleum products pipeline; or

(iv) entity has an adequate number of technically qualified personnel with experience in commissioning operation and maintenance (O&M) of petroleum, petroleum products pipeline and also has a plan to independently undertake the O&M activities of petroleum, petroleum products pipeline on a standalone basis

Explanation.—1. In relation to sub-clause (iii),

(a) the entity shall submit in its application-cum-bid and exhaustive list of proposed firms with whom it desires to have a technical assistance agreement along with the proof of relevant experience of such firms and the entity may choose a firm or more from amongst the firms in this list for operation and maintenance of the proposed petroleum and petroleum products pipeline and the Board reserves the right to cross verify the credential of the firm of firms included in this list and seek any clarifications

2. In relation to sub-clause (iv), the entity shall have at least three technically qualified personnel on its permanent rolls having experience of not less than one year in the following areas, namely:

(a) commissioning of a hydrocarbon pipeline

(b) operation and maintenance of petroleum and petroleum products pipelines and petroleum products installations

(c) commercial and transport management issues



including pricing measurement accounting, billing and collection and

(d) safety of petroleum products infrastructure

(d) the entity has adequate financial strength to execute the proposed petroleum, petroleum products pipeline project and operate and maintain the same and shall meet the following financial criterion to qualify for bidding for a single petroleum, petroleum products pipeline, namely:

<i>Range of estimate pipeline length including branch lines (in kilometers) (#)</i>	<i>Minimum combined net worth (*) of the entity along with its promoters available for investments in a single petroleum and petroleum products pipeline duly supported by letter of comfort from promoters (in million of rupees per kilometer of estimated pipeline length)</i>
<i>1,001 and above</i>	<i>7.00</i>
<i>251-1000</i>	<i>6.00</i>
<i>Up to 250</i>	<i>5.00</i>

() combined net worth (equity share capital plus free reserves, but excluding revaluation reserves) to be adequately represented by cash funds, which shall be available as bridge finance and as promoters equity contribution in the project as certified by a Chartered Accountant based on the latest financial position of the entity and its promoters.*

(#) a fraction of the length in two decimals place less



than 0.50 kilometer shall be ignore and equal to 0.50 kilometer or more shall be rounded off to next 1 kilometer

(e) the entity, on being declared as a successful bidder and not being a company registered under the Companies Act, 1956, shall convert itself into a company registered under the Companies Act, 1956

(f) the entity shall have a plan for utilization of the capacity in the proposed petroleum and petroleum products pipeline

(g) the entity shall furnish a bid bond in the form of Bank Guarantee along with the submission of the application-cum-bid under sub-regulation (7) of an amount determined as per the length of the proposed petroleum and petroleum products pipeline as per the applicable category indicated below:

<i>Pipeline Length including branch lines (in kilometers)(#)</i>	<i>Amount of bid bond (in million of rupees)</i>
<i>equal to 1,001 or more</i>	150
<i>between 251 and 1000</i>	80
<i>less than or equal to 250</i>	20

(#) a fraction of the length in tow decimals place less than 0.50 kilometer shall be ignore and equal to 0.50 kilometer or more shall be rounded off to next 1 kilometer.

(h) entity submitting the bid should not have charges framed under Chapter IX of the Act or have been punished or imposed any penalty under Section 28;

(i) the entity agrees to build extra capacity in the petroleum and petroleum products pipeline as per the



following basis, namely:

(i) the capacity of petroleum and petroleum products pipeline shall be an aggregate of the following namely:

(A) capacity requirement of the entity

(B) firmied-up contracted capacity with other entities; and

(C) at least twenty five per cent of the sum of (A) and (B) as an extra capacity.

Explanation.—The capacity shall be approved by the Board as per the basis specified in the relevant regulations for determining the capacity of petroleum and petroleum products pipeline.

(ii) the capacity mentioned at item (C) of sub-clause (i) shall be available for use as common carrier by an third party on open access and non-discriminatory basis;

(j) in case the entity submitting the bid does not fulfill the requirements of any criteria under clauses (a) to (j), the bid submitted by it shall be summarily rejected and a communication in this regard shall be sent to it and the financial bid shall not be opened for that entity;

(k) the bid bond shall be—(i) encashed if an entity submitting the bid walks out;

(ii) released in respect of the unsuccessful entity submitting the bid;

(iii) retained till the specified performance bond is furnished at the time of authorization by the successful bidder.



(7) The application-cum-bid shall be submitted in two parts in the form as specified in Schedule B in separate property earmarked and sealed envelopes, namely:

(a) Part I (Technical bid) covering general particulars of the applicant and technical details of the project (including minimum eligibility criteria) under sub-regulation (6);

(b) Part II (Financial bid) covering the details under Regulation 10.

(8) A time period of one hundred and twenty days shall be allowed for submission of the application-cum-bid for grant of authorization for laying, building, operating or expanding the petroleum and petroleum products pipeline and any application-cum-bid received after the notified date and time shall not be considered. However, the Board may extend the date for submission of bid as deemed fit.

6. Invitation by Board for laying, building, operating or expansion of petroleum and petroleum products pipeline.—The Board may sub-moto by living interested parties either through submission of expression of interest (EOI) or through participation in the process of selection, through an open advertisement from a view regarding the development of a petroleum and petroleum products pipeline in a specific area, region or route, and in such a case, the procedure as specified in Regulation 5 shall apply.

xxx

17. Entities authorized by the Central Government for laying, building, operating or expanding petroleum and petroleum products pipeline before the appointed day.—(1) The entity shall submit relevant information along with supporting documents in the form as per



Schedule H.

(2) The entity shall abide by the technical standards, specifications including safety standards as specified under the relevant regulations.

(3) The Board shall monitor the actual progress made by the entity in the activities of laying, building or expanding the petroleum and petroleum products pipeline on a quarterly basis with reference to the period of commissioning, the targets specified in the in the DFR of the project, and the terms and conditions of the authorization with a view to avoiding any time or cost over-runs which may adversely affect the petroleum and petroleum products pipeline tariff:

Provided that in case of any delay in the commissioning of the petroleum and petroleum products pipeline or meeting any target beyond that specified in the authorization, the Board reserves the right to.—

(a) not consider the additional costs attributable to the time over-run while fixing the petroleum and petroleum products pipeline tariff as specified under clause (5); or

(b) encash the performance bond or bank guarantee, if any and advise the Central Government for cancellation of the authorization.

(4) The Board shall approve the petroleum and petroleum products pipeline tariff to be charged by the entity based on the methodology as specified under the relevant regulations on determination of petroleum and petroleum products pipeline tariff.

(5) The activities of the entity may be subject to such other regulations as may be applicable as per the provisions of the Act.



18. Entity not authorized by the Central Government for laying, building, operating or expanding petroleum and petroleum products pipeline before the appointed day.—(1) An entity laying, building, operating or expanding petroleum and petroleum products pipeline at any time before the appointed day not duly authorized to do so by the Central Government shall apply immediately for obtaining on authorization in the from as per Schedule I.

(2) The Board may consider the following criteria while considering the application for grant of authorization, namely:

(a) the entity meets the minimum eligibility criteria as specified in clauses (a) to (e) and (i) of sub-regulation (6) of Regulation 5 before the appointed date and is possessing all necessary statutory clearances, permissions, no objection certificates from the Central and State Governments and other statutory authorities;

(b) an entity which is not registered under the Companies Act, 1956 at the time of submitting the application for grant of authorization shall undertake to become a company registered under the Company Act, 1956:

Provided that the Board may exempt an entity to register under the Companies Act, 1956 on such conditions as it may deem appropriate;

(c) a satisfactory assessment of the actual physical progress made and the financial commitment thereof till immediately before the appointed day in comparison with the entity's DFR appraised by the financial institution funding the project. In case the project has not been funded by any financial institution, the Board may appraise the DFR. The DFR of the entity should clearly indicate the specified



length, route and capacity of the proposed petroleum and petroleum products pipeline;

(d) in respect of the actual physical progress made and the financial commitment thereof referred to in clause (c), a physical progress of at least twenty five percent and a financial commitment of at least twenty five percent of the capital expenditure identified for the petroleum and petroleum products pipeline project as per the DFR immediately before the appointed day may be considered as adequate;

(e) the Board reserves the right to get the actual physical progress and the financial commitment certified and depending upon the progress achieved, the Board may consider authorizing the entity for laying, building, operating or expanding the petroleum and petroleum products pipeline.—

(i) as per the route and length as specified in its DFR;

(ii) as per the route or length actually covered under implementation till the appointed day; or

(iii) as per the route or length specified by the Board;

(f) in relation to laying, building, operating or expanding the petroleum and petroleum products pipeline, it is for the entity to satisfy the Board on the adequacy of its ability to meet the applicable technical standards, specifications and safety standards as specified in the relevant regulations for technical standards and specifications including safety standards;

(g) assessment of the financial position of the entity in timely and adequately meeting the financial commitments in developing the petroleum and products pipeline project as appraised by a financial institution and an examination of the audited books of accounts of



the entity.

(h) the booking of the capacity in the petroleum and petroleum products pipeline should be equal to at least fifty percent of the sum of the own capacity requirements of the entity and firmied-up contracted capacity and the agreements in this regard should have been entered in a transparent manner and based on the principle of at an arm's length;

(i) the entity shall submit copies of the agreements for transportation or supplying of petroleum products by the petroleum and petroleum products pipeline for he firmied-up contracted capacity specified under clause (h) to the Board; and

(j) any other criteria considered as relevant by the Board based on the examination of the application.

(3) The evaluation of the application in terms of the clauses (a) to (j) of sub-regulation (2) shall be done in totality considering the composite nature and the inter-linkages of the criteria.

(4) The Board, after examining the application in terms of the criteria under sub-regulation (3) and also taking into account the requirements in other regulations may form a prima-facie view as to whether the case should be considered for authorization.

(5) In case of prima-facie consideration, the Board shall issue a public notice in one notional and one vernacular daily newspaper (including webhosting) giving brief details of the project and seek comments and objections, if any, within thirty days from any person on the proposal.

(6) The Board, after examining the comments and objections, if any, under sub-regulation (5), may either consider or reject the case for grant of authorization



for the petroleum and petroleum products pipeline.

(7) In case it is decided to grant authorization, the same shall be in the form at Schedule D;

(8) In case of rejection of the application, the Board shall pass a speaking order after giving a reasonable opportunity to the concerned party to explain its case and proceed to select an appropriate entity for the project in terms of Regulation 6.

(9) in case the entity is selected for grant of authorization for laying, building, operating or expanding petroleum and petroleum products pipeline,—

(a) the petroleum and petroleum products pipeline tariff shall be determined under the relevant regulations on determination of petroleum and petroleum products pipeline tariff;

(b) the entity shall abide by the technical standards, specifications including safety standards as specified under relevant regulations for technical standards and specifications including safety standards;

(c) the Board shall monitor the actual progress made by the entity in the activities of laying building or expanding the petroleum and petroleum products pipeline on a quarterly basis, with reference to the period of commissioning, the targets specified in the DFR of the project and the terms and conditions of the authorization with a view to avoiding any time or cost over-runs which may adversely affect the petroleum and petroleum products pipeline tariff:

Provided that in case of any delay in the commissioning of the petroleum and petroleum products pipeline or meeting any target beyond that specified in the authorization, the Board reserves the



right to not consider the additional costs attributable to the time over-run while fixing the petroleum and petroleum products pipeline tariff as specified under sub-regulation (a);

(d) the entity shall abide by the provisions under the relevant Regulations an access code and declaring petroleum and petroleum products pipelines as common carrier or contract carrier;

(e) the provisions under Regulations 8, 9, 13, 14, 15 and 16 shall apply to the entity.

19. Provisions relating to dedicated pipelines for transport of petroleum products.—*(1) In respect of dedicated pipelines existing before the appointed day, the following provisions shall apply, namely.—*

(a) entity having dedicated pipeline to transport petroleum products to a specific customer before the appointed day shall submit details of the pipeline length, route, capacity and customers served along with the DFR of the project to the Board within sixty days of notification of these regulations;

(b) Board may web-host details of dedicated pipeline seeking comments of general public with a view to ascertain whether such pipeline needs' to be converted into petroleum and petroleum products pipeline in public interest;

(c) The Board may, based on the examination of the comments received, direct the entity to convert such pipeline into petroleum and petroleum products pipeline in overall public interest:

Provided that the entity shall be given an opportunity to present its case;

(d) The entity may also submit its proposal to



convert its dedicated pipeline into petroleum and petroleum products pipeline to the Board along with the complete details and justifications and the Board may web-host details of dedicated pipeline seeking comments of general public with a view to ascertain whether such pipeline needs to be converted into petroleum and petroleum products pipeline in public interest and the Board may, based on the examination of the comments received and in overall public interest, issue grant of authorization to the entity for conversion into a petroleum and petroleum products pipeline.

(2) In respect of dedicated pipelines proposed to be laid, built, operated or expanded after the appointed day, following provisions shall apply, namely.—

(a) the entity proposing to lay, build, operate or expand a dedicated pipeline to transport petroleum products to a specific customer and is not for resale after the appointed day shall submit details on pipeline length, route. Capacity and details of the customers served along with the DFR of the project to the Board at least thirty days before the proposed commencement of laying and building of the dedicated pipeline;

(b) Board may web-host details of the proposed dedicated pipeline seeking comments of general public with a view to ascertain whether, instead of a dedicated pipeline, the public interest would be better served if a petroleum and petroleum products pipeline is laid, built, operated or expanded;

(c) in case, based on the examination of the comments received, the Board is of the view that instead of a dedicated pipeline, petroleum and petroleum products pipeline would better serve the public purpose the Board shall advise the entity appropriately within sixty days of the receipt of the



information from the entity;

(d) in case, despite receiving the advice from the Board under clause (c), the entity still wishes to lay, build, operate or expand a dedicated pipeline, it may do so:

Provided that simultaneous to the entity building a dedicated pipeline, the Board may, on suo-motu basis, decide to issue to expression of interest for laying, building, operating or expanding petroleum and petroleum products pipeline:

Provided further that the entity shall not be allowed to apply to the Board for conversion of its dedicated pipeline into petroleum and petroleum products pipeline for a period of five years from the date of the commissioning of its dedicated pipeline;

(e) the Board may, in respect of a dedicated pipeline laid, built, operated or expanded after the appointed day, direct the entity to convert dedicated pipeline into petroleum, petroleum products pipeline as per the following procedure, namely:

(i) the Board may web-host details of dedicated pipeline seeking comments of general public with a view to ascertain whether such pipeline needs to be converted into petroleum and petroleum products pipeline in public interest;

(ii) the Board may, based on the examination of the comments received, direct the entity to convert such pipeline into petroleum and petroleum products pipeline in overall public interest:

Provided that the entity shall be given an opportunity to present its case.

(3) In case a dedicated pipeline is converted into



petroleum and petroleum products pipeline under sub-regulations (1) to (2), the provisions under the sub-regulation (9) of Regulation 18 shall apply to such pipeline."

17. It is pertinent to mention that after the PNGRB invites interested parties for submitting Expression of Interest to the participation of selection through an open advertising, the Board tabulates the criteria and compare all financial bids meeting the eligibility requirement criteria under Regulation 7 of the 2010 Regulations. Necessary bonds to be submitted by the party is given in Regulation 8 and Regulation 9 which deals with grant of authorization. The same are not being reproduced as they are not relevant for the instant case.

18. The endeavour by this Court is to analyse these provisions for coming to a conclusion as to whether the Board has the power to regulate pipelines which are being laid/intended to be laid by an entity for transporting its own petroleum and petroleum products, which are also sometimes referred as captive pipelines, in common parlance.

19. It is the case of the Petitioner that after the enactment of the PNGRB Act, transportation is completely regulated by the PNGRB and that IOCL could not have laid down any pipeline without taking permission or authorization from the PNGRB. Reliance has been placed on Clause 6.1 and Clause 6.2 of the 2002 Guidelines to contend that once the PNGRB was constituted, then the 2002 Guidelines does not survive and the PNGRB being the Regulator, will have the final say in all matters that are covered under the PNGRB Act and right of user of land can be given only to a person who gets the authorization from the PNGRB. It is the case of the Petitioner that if entities are allowed to operate without the involvement of the regulator, then the whole object of creating a Regulator would be



defeated.

20. It is the case of the Petitioner that the concept of captive pipeline cannot continue after enactment of the PNGRB Act and captive self use pipeline has been done away with. It is the case of the Petitioner that a reading of the Regulations would lead only to one conclusion that even if an entity would desire to lay down a pipeline for self use, then it has to be a common carrier which has the capacity to be used by other entities as well. The argument advanced is that therefore a standalone self use pipeline is no more contemplated under the PNGRB Act.

21. To buttress this submission, reliance has been placed on Section 20 of the PNGRB Act to state that the Board has the power to declare any existing pipeline as a common carrier in a manner as is prescribed under Section 20 of the PNGRB Act. It is contended that Section 20 of the PNGRB Act is a very strong indicator that after the commencement of the PNGRB Act, only common carrier and contract carrier pipelines can be laid down by entities for transportation of petroleum and petroleum products and even the existing pipelines which were captive pipelines can be converted to a common/contract carrier in a manner as has been provided for in Section 20 of the PNGRB Act.

22. The learned Counsel for the Petitioner places reliance on Section 21 of the PNGRB Act stating that the effect of Section 21 PNGRB Act is that the entity laying, building, operating or expanding a pipeline for transportation of petroleum and petroleum products shall have the right to first use for its own requirement and the remaining capacity shall be used amongst entities as the Board may after issuing declaration under Section 20 of the PNGRB Act determine having regard to the needs of the competition in marketing and availability of petroleum and petroleum products



throughout the country. It is, therefore, stated that the effect of Section 21 of the PNGRB Act is that pipelines can be laid for transportation of petroleum and petroleum products having provision of carrying petroleum and petroleum products for more than one entity.

23. The Petitioner also places reliance on Section 2(i) of the 2010 Regulations that a petroleum and petroleum products pipeline means a pipeline for transportation of petroleum and petroleum products and what is excluded are only those pipelines which are dedicated for supply of petroleum products to a specific consumer which are not for re-sale. It is contended that since IOCL intends to sell the petroleum products which is transported to the Vellur Terminal for re-sale purposes also, it would squarely be covered under the new regime warranting authorization from PNGRB. It is contended that the definition of the petroleum and petroleum products pipeline includes all pipelines which means any pipeline including a branch or spur line. It is stated that any kind of pipeline which is used for transportation of petroleum and petroleum products are covered under the petroleum products pipeline except those which are dedicated for supply to specific consumer and that too not for re-sale.

24. It is contended that since the definition of petroleum products pipeline in 2010 Regulations uses the expression "means and includes" and therefore the definition of petroleum products pipeline is exceedingly wide and IOCL could not have laid down its pipeline without getting the authorization of the PNGRB. It is the contention of the Petitioner that after the PNGRB Act came into force, every pipeline has to be only a common carrier and even after a person intends to lay down a pipeline for its own use, it can only have the right of first use and the entity laying down the pipeline would have to carry the petroleum product of other entities also in its pipeline as directed



by the PNGRB.

25. It is the case of the Petitioner that the self use captive pipelines have been subsumed under Section 21 and after the lapse of the Guidelines since the concept of common carrier and contract carrier has been done away with, there was no need to specify it in the Act that captive carrier has been done away with. The Petitioner places reliance on a judgment of the Apex Court in Avishek Goenka v. Union of India & Anr., **2012 (5) SCC 321**, to contend that something which is permitted is provided under the Act, and that which has not been specifically stated would be deemed to be excluded. It is stated that larger interest must be given preference over individual interest. It is stated that the IOCL in the present case is in violation of pressing its individual interest over the public interest and IOCL's attempt to circumvent the bidding procedure by justifying the laying of their pipeline by stating that the same is for personal use cannot be sustained.

26. It is the case of the Petitioner that the PNGRB Act has been brought in to protect the interest of the consumers and to promote competitive markets. It is the contention of the Petitioner that since the Statement of Object and Reason and the Preamble of the Act provides that the purport is to increase competition in transportation of the petroleum and petroleum products, obviously the Legislature intended to do away with the concept of captive pipelines and, therefore, captive pipelines have not been mentioned in the PNGRB Act. It is stated that if the captive pipelines continue to exist even after the introduction of the PNGRB Act and the PNGRB and if captive pipelines are outside the ambit of the Regulator, then the entire purpose of the PNGRB Act gets defeated. The purport of the PNGRB Act is to set up a single Regulator to facilitate uninterrupted supply of petroleum and petroleum products in all parts of the country at fair price in order to



promote competitive market and access to monopolistic infrastructure in the nature of common carrier / contract carrier on a non-discriminatory basis by all entities.

27. It is the contention of the Petitioner that the very object of the PNGRB Act is to bring in common carrier and contract carrier for the purpose of increasing competition and it would fail if captive pipelines are permitted to be laid down.

28. It is contended by the Petitioner that the Supreme Court in Adani Gas Limited v. Union of India, (2022) 5 SCC 210, recognized that the PNGRB Act had been specifically enacted to authorize laying down of only common/contract carrier pipelines which was not provided for under the Petroleum Rules and the Apex Court explicitly stated that the Parliament had enacted the PNGRB Act to regulate all activities pertaining to regulating, refining, transportation, distribution, etc. of petroleum and petroleum products in a comprehensive manner and that under Section 16 and 17 of the PNGRB Act, the Parliament devised a uniform standard which was to be followed by entities. It is stated that it was the Parliament's intent to promote competitiveness in the market through a bidding process and an entity which is unsuccessful, such as IOCL in the present case, ought not be allowed to lay their private pipeline as this would defeat the purpose of the PNGRB Act. The Petitioner by placing reliance on BSNL v. TRAI, (2014) 3 SCC 222 and Prakash Gupta v. SEBI, (2021) 17 SCC 451, contends that all kinds of authorization including transportation can only be carried out with the authorization of the PNGRB. It is, therefore, stated that PNGRB being a sectoral regulator, has been entrusted with the power to make appropriate regulations to ensure the objectives of the PNGRB Act.

29. The PNGRB has supported the contentions of the Petitioner. It is



contended that PNGRB was established under the PNGRB Act to regulate the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas, excluding production of crude oil and natural gas, so as to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets, to avoid infructuous investments and for matters connected therewith or incidental thereto.

30. It is stated that PNGRB Act and the Regulations made thereunder do not recognize the very concept of a "captive pipeline" for transportation of petroleum and petroleum products and, therefore, under the regulatory scheme, there cannot be any "captive pipeline" for transportation of petroleum and petroleum products. Reliance has been placed on PNGRB (Guiding Principles for Declaring or Authorizing Petroleum and Petroleum Products Pipelines as Common Carrier or Contract Carrier) Regulations, 2012 (*hereinafter referred to as the '2012 Regulations'*) and the PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Petroleum and Petroleum Products Pipelines) Regulations, 2010.

31. It is stated that the sector, broadly, has three divisions - upstream (from exploration till refinery), mid-stream (transportation), and downstream (distribution and retail). It is stated that under the regulatory scheme, the Directorate General of Hydrocarbons is responsible to oversee the upstream sector, while an independent regulator, i.e., PNGRB, which has been established and made responsible to oversee the mid-stream and downstream activities related to petroleum, petroleum products and natural gas.

32. It is stated that there no question of government or any other body



acting as a parallel Regulator as any such interpretation would fundamentally impair the ability of PNGRB to fulfil its mandate under the PNGRB Act because the PNGRB Act holistically requires PNGRB to regulate the field, encourage competition ensure adequate and uninterrupted supplies to the farthest areas, avoid infructuous investment and ensure access to the infrastructure on a non-discriminatory basis by all entities and its mandate extends to all entities defined under Section 2(p) of the PNGRB Act, whether authorized or unauthorized.

33. It is further contended that the object behind creating PNGRB was to attract investment in the sector to avoid infructuous investments and to provide fair competition to the market which will lead to rejection and rationalization of prices borne by the consumers. The purport of the Act is to create a network of pipelines to transfer petroleum and petroleum products across the nation which can be used by everyone and in non-discriminatory open access basis. It is stated that the purport of the scheme of the PNGRB Act is that no entity will create a pipeline infrastructure only for its transport and it has to keep an additional capacity of at least 25% of sum of a) capacity requirements of the entity; and b) firmed-up contracted capacity with other entities for use by others on a non-discriminatory open access basis (common carrier) or for others on firm contracts basis (contract carrier). It is stated that under the PNGRB Act there are no "captive pipelines" for transportation of petroleum and petroleum products. It is contended that the PNGRB Act or the Regulations do not even mention the term "captive pipelines", which shows clear intention not to recognize the very concept. It is stated that all pipelines have the potential to be used by more than one entities/shippers/consumers and the entities cannot themselves decide whether it should be a common/contract carrier and even



in contract carrier, extra capacity is deemed to be "common carrier". It is stated that there is no contemplation of establishment of captive pipelines, as the concept itself has been rendered obsolete. It is stated that there is no parallel regime under which such captive pipelines can be authorised. The PNGRB Act governs the entire sphere with regard to such downstream activities.

34. It is the contention of the Petitioner and the PNGRB that the object of permitting laying down of only common/contract carrier pipelines in future was to promote competition amongst the entities in order to reduce the costs of transportation, avoiding infructuous investments and maintaining increased supplies, to secure equitable distribution and to ensure adequate availability of petroleum and petroleum products throughout the country. It is stated that by permitting laying down of captive pipelines will result increase in infructuous investments.

35. It is stated that in line with the object of the PNGRB Act and the Regulations, the Board always mandates that additional capacity of at least 25% of sum of a) capacity requirements of the entity; and b) firm-up contracted capacity with other entities which has to be built in while designing and constructing a pipeline (Regulation 5 (6) (i) of the 2010 Regulations, the bid condition stipulates that the entity agrees to build extra capacity (at least 25%) in the petroleum and petroleum products pipelines).

36. It is contended by the PNGRB that the concept of captive pipelines are a dying concept and slowly and slowly the Board is taking steps to convert existing pipelines into contract carrier. It is further contended that this intention to bring dedicated pipeline to an end is revealed by the PNGRB by bringing out the Petroleum and Natural Gas Regulatory Board (Guiding Principles for Declaring or Authorising Petroleum and Petrol



Products Pipelines as Common Carrier or Contract Carrier) Regulations, 2012.

37. *Per contra*, it is the contention of the IOCL that there is nothing in the PNGRB Act which prohibits laying down of pipelines where one entity transports its own goods. The IOCL contends that the very definition of common carrier shows that these pipelines are for transportation of petroleum and petroleum products and natural gas by more than one entity. Emphasis has been laid on the words "more than one entity" to show that the purport of the PNGRB Act is to regulate those pipelines which are being used by more than one entity and, therefore, it is contended that the Board cannot regulate pipelines which are specifically laid by an entity for transporting its own goods. It is stated that even the definition of contract carrier shows that contract carrier are those pipelines for transportation of petroleum and petroleum products by more than one entity pursuant to contracts entered into for at least one year as may be declared authorized by the Board from time to time under Section 20(3) of the Act.

38. It is stated that captive and self use pipeline have not been defined under the PNGRB Act and, therefore, the PNGRB Act and the Board does not deal with laying down of such pipelines and, therefore, it is outside the ambit of the Board and the PNGRB Act. It is stated that the entities which are laying down its own pipelines for transporting its own products do not require authorization as they are neither contract carriers nor common carrier. It is contended that the fact that the Board can exercise its powers under Section 20 and 21 of the PNGRB Act and follow a procedure by declaring existing pipelines as a common carrier itself postulates that there is no prohibition in laying down pipeline for transportation of goods and the Board can in exercise of its jurisdiction under Section 20 of the PNGRB Act



decide to declare a pipeline as a common carrier by following the procedure laid down under Section 20 of the PNGRB Act. It is stated that Section 21 of the PNGRB Act also does not lead to a conclusion that the concept of captive pipelines or pipelines for transportation of own goods have been done away with. After the pipeline is laid, then the Board can exercise its jurisdiction under Section 20 of the PNGRB Act and in case the Board exercises its powers under Section 20 of the PNGRB Act, then the right of first use is not taken away from the entity which has laid down pipeline for transportation of its own goods. It is contended that this does not mean that every pipeline has to be a common carrier or contract carrier and even a party who wants to lay down a pipeline for its own use has to get authorization from the Board leaving provision for transportation of the products of other entities. It is contended that even if an entity wants to lay down its own pipeline, then Regulations 8, 9 and 10 of the 2010 Regulations will not apply since these Regulations are only for the purpose of common carrier and contract carrier.

39. The Union of India has supported the contentions of the IOCL. The contention of the Union of India is that the framework of the Act and the Regulation is for grant of authorization and laying down common carrier or contract carrier and the framework for laying down the pipeline under the PNGRB Act governs or applies only to those pipelines that impacts the consumers. It is the contention of the Union of India that when an entity wants to transport its own goods by laying down its own pipeline, then there is no impact on the consumer. It is stated by the Union of India that Section 2 read with Sections 11 & 16 of the PNGRB Act specifically limits the authorizing power of the Board to only two types of pipelines, namely:- (i) common carrier, and (ii) contract carrier. It is stated that throughout the



legislation, the Parliament has only mentioned these two types of pipelines for transporting petroleum and petroleum products as being within the purview of the Board. It is stated that even during discussions on the Bill, the Group of Ministers had recommended retaining the provision of ‘authorization’ only for the laying of a “common carrier” and a “contract carrier” pipelines (and city or local gas distribution network pipelines). It is stated that though the concept of ‘dedicated’ pipelines are noted in the PNGRB Act, they are excluded from the concept of a “common carrier” or “contract carrier” as per Section 2(j)(i) of the PNGRB Act and are, therefore, not regulated by the Board.

40. It is further contended that as per Regulation 19 of the 2010 Regulations, an entity can lay a ‘dedicated’ pipeline even against the advice of the Board and if the entity goes against the advice of the Board, it cannot request for conversion of its pipeline to a common carrier for a period of 5 years. It is stated that the scheme of the PNGRB Act unmistakably points to the conclusion that the Board has no power to authorise pipelines for petroleum and petroleum products which do not qualify as a common carrier or a contract carrier and, therefore, the laying of ‘captive’ pipelines also fall outside the purview of the Board both, on a plain textual reading and on a survey of the scheme of the PNGRB Act, and therefore, the PNGRB Act does not require entities to seek authorization/registration of captive pipelines from or with the Board.

41. Heard learned Counsels for the parties and perused the material on record.

42. The principal argument of the Petitioner and the PNGRB is that post the PNGRB Act, the concept of captive pipeline has been done away with and the entire regime is now oriented towards pipelines which are either



common carrier or contract carrier which is meant to be used by more than one entity.

43. The Petitioner and the Board has placed reliance on the Statement of Object and Reason to contend that the purport of establishing the Board is to regulate the processing, distribution, sale of petroleum and petroleum products and natural gas excluding production of crude oil and natural gas in order to protect the interests of the consumers and entities engaged in specified activities of marketing, selling, transporting of petroleum and petroleum products and those also otherwise involved in the business of transportation etc. of natural gas. This is to ensure that there is an uninterrupted supply of petroleum products in the country to avoid infructuous investments and for matters connected therewith or incidental thereto.

44. It is stated that the PNGRB Act under which the Board has been constituted was intended to substitute the erstwhile *ad hoc* regime and set up PNGRB as the sole Regulator insofar as the refinery, distribution and sale of petroleum and petroleum products, natural gas excluding production of crude oil and natural gas. It is, therefore, contended that no pipeline can be laid down for transportation without the permission of the PNGRB as PNGRB is the sole Regulator for transportation of petroleum and petroleum products excluding crude oil and natural gas. The role of the Government is limited only to ensure safety of pipelines under the 2002 Guidelines and there cannot be a parallel regime under which an entity can lay down a pipeline and that no one can be permitted to lay down a pipeline without the authorization of the PNGRB. It is contended that any alternate view would be contrary to the object for which the PNGRB Act was created and brought and brought into force. Any contrary decision would be contrary to the



object for which the PNGRB has been created.

45. It is the case of the Petitioner and the PNGRB that under the new regime, only a common carrier or contract carrier pipeline is used for carrying the petroleum and petroleum products for more than one entity. To buttress this argument, the Petitioner has placed reliance on the Petroleum and Natural Gas Regulatory Board (Guiding Principles for Declaring or Authorizing Petroleum and Petroleum Products Pipelines as Common Carrier or Contract Carrier) Regulations, 2012.

46. This Court is unable to accept the submission of the Petitioner and the PNGRB. No such intention can be gathered from the Act. The PNGRB does not repeal the Petroleum Act, 1934. Had the intention of the Legislature been that PNGRB was to be the sole Regulator of all the pipelines, it would have said so in so many words. Neither the Statement of Object and Reason nor the Preamble lead to such interpretation that the purpose was to exclude/prohibit use of any captive pipeline. Even assuming that it was the intention of the Legislature, this Court while exercising its jurisdiction under Article 226 of the Constitution of India while interpreting the PNGRB Act cannot gather such intention and is bound by the text of the Statute.

47. Undoubtedly, Courts can resort to adopt the interpretation of a Statute by rectifying construction which is one of the tools of interpretation under the Mischief Rule (Heydon's Principle), but Courts cannot stretch it by reading something into the Statute which is just not provided for. The Apex Court in P K Unni v. Nirmala Industries & Ors., (1990) 2 SCC 378, has observed as under:-

"15. The court must indeed proceed on the assumption that the legislature did not make a mistake and that it intended to say what it said : See Nalinakhya Bysack v. Shyam Sunder Haldar [(1953) 1 SCC 167 : 1953 SCR



533, 545 : AIR 1953 SC 148] . Assuming there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. No case can be found to authorise any court to alter a word so as to produce a *casus omissus* : Per Lord Halsbury, *Mersey Docks and Harbour Board v. Henderson Brothers* [(1888) 13 AC 595, 602 : 4 TLR 703] . “We cannot aid the legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there” : *Crawford v. Spooner* [(1846) 6 Moore PC 1, 8, 9 : 4 MIA 179] .

16. Where the language of the statute leads to manifest contradiction of the apparent purpose of the enactment, the court can, of course, adopt a construction which will carry out the obvious intention of the legislature. In doing so “a judge must not alter the material of which the Act is woven, but he can and should iron out the creases.” : Per Denning, L.J., as he then was, *Seaford Court Estates Ltd. v. Asher* [(1949) 2 All ER 155, 164] . See the observation of Sarkar, J. in *M. Pentiah v. Muddala Veeramallappa* [(1961) 2 SCR 295, 314 : AIR 1961 SC 1107] .

17. In the construction of the relevant provisions, we see no contradiction or ambiguity or defect or omission. We see no merit in the argument that Article 127 must override Rule 92(2) of Order XXI in respect of limitation. We view both the provisions as prescriptive of time for different purposes, and of equal efficacy and particularity. The maxim *generalia specialibus non derogant* has no relevance to their construction. Nor does the principle in *Heydon case* [(1584) 3 Co Rep 7a : 76 ER 637] offer any help on the point in issue. The mischief which the legislature had



*set out to remedy by amendment of Article 127 is what is stated in the objects and reasons clause. That object was accomplished by prescribing a longer period for filing an application to set aside a sale in execution of a decree. Furthermore, as already seen, by amendment of Rule 92(2) of Order XXI an opportunity was accorded to the depositor to make good the deficiency in the deposit made by him due to arithmetical or clerical mistake on his part. In no other respect did the legislature evince an intention to extend the period prescribed for making the deposit. It would perhaps have been better, more logical, reasonable and practical, as stated by the Kerala High Court in *Dakshayini v. Madhavan* [AIR 1982 Ker 126 : 1981 Ker LT 861] , to enlarge the period for making the deposit so as to make it identical with that prescribed for making the application, and such extended period would have better served the object of the amendment, namely, ameliorating the plight of the judgment-debtor, but such are matters exclusively within the domain of legislation by Parliament and the court cannot presume deficiency and supply the omission. The legislature did not do more than what it did. It has, in our view, accomplished what it had set out to achieve. No more no less."*

(emphasis supplied)

48. Even assuming that the Act is defective inasmuch as it does not in strict terms prohibits laying down a captive pipeline, it is not permissible for the Court to repair a defective Act of the Parliament. The Court would always like to allow intention of a Statute to override the defects in its wording but the ability to do so is limited by the regularized canons of interpretation. The Court may for example prepare an alternative construction which is less fitted to the words but better fitted to the intention of the Act but the Courts cannot provide for an alternative construction which would amount to Legislation for a *casus omissus*. The Apex Court in



Shri Ram Ram Narain Medhi v. State of Bombay, AIR 1959 SC 459, has observed as under:-

"10. It is well settled that these heads of legislation should not be construed in a narrow and pedantic sense but should be given a large and liberal interpretation. As was observed by the Judicial Committee of the Privy Council in British Coal Corporation v. King [(1935) AC 500, 518] :

“Indeed, in interpreting a constituent or organic statute such as the Act, that construction most beneficial to the widest possible amplitude of its powers must be adopted.”

11. The Federal Court also in the United Provinces v. Atiq Begum [(1940) FCR 110, 134] pointed out that none of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. This Court in Navinchandra Mafatlal v. CIT [(1955) 1 SCR 829, 836, 837] , also expressed the same opinion and stated:

*“The cardinal rule of interpretation, however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider, that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon words so that the same may have effect in their widest amplitude.”
(See also Thakur Amar Singhji v. State of Rajasthan [(1955) 2 SCR 303, 329] .)*

xxx

26. It was vehemently urged before us by learned counsel for the petitioners that the expression “estate” aptly applied only to lands held by the various tenure holders of alienated lands above referred to, and that it



could not apply to the holdings of occupants who had merely a right of occupancy in specific pieces of unalienated lands. The word “estate” had been defined in the Bombay Land Revenue Code, 1879 in Section 2(5) to mean: “any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same,” and would prima facie cover not only an interest in alienated lands but also in unalienated lands. It was however urged that the expression “estate” should be construed in a narrower sense having regard to the legislative history and particularly to the fact that the lands held by the tenure-holders of alienated lands only had prior to 1879 been recognized as estates and the holding of an occupant was not treated as such. The distinction thus sought to be made between holders of unalienated lands and holders of alienated lands is not of much consequence because even in regard to unalienated lands besides the occupants, there were tenure-holders called Bhagdars and Narwadars and Khotas who had interests in lands held by them under those several tenures which lands were unalienated lands. The interests which these tenure-holders enjoyed in the lands held by them were “estates”, and it could not therefore, be predicated of the expression “estate” that it could only be used in connection with alienated lands. If this distinction was, therefore, of no avail, we have only got to consider if there is any reason why a narrow interpretation should be put upon the expression “estate” as suggested by the petitioners. Reliance was placed by the learned counsel for the petitioners on a decision of this Court in Hariprasad Shivshankar Shukla v. A.D. Divikar [(1957) SCR 121, 132] where the word “retrenchment” as defined in Section 2(oo) and the word “retrenchment” in Section 25-F of the Industrial Disputes Act, 1947, as amended by Act 43 of 1953 were held to have no wider meaning than the ordinary accepted connotation of those words and were held to mean the discharge of surplus labour or staff by the employer for any reason whatsoever,



otherwise than as a punishment inflicted by way of disciplinary action, and did not include termination of services of all workmen on a bona fide closure of industry or on change of ownership or management thereof. Even though the word “retrenchment” was defined as meaning the termination of services by an employer of the workmen for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, which words were capable of including within their scope the termination of services of all workmen on a bona fide closure of industry or on change of ownership or management thereof, the word “retrenchment” was construed in a narrow sense because the word “retrenchment” connoted in its ordinary acceptance that the business itself was being conducted and a portion of the staff or labour force was discharged as surplusage. This Court observed in the course of the judgment at p. 132:

“In the absence of any compelling words to indicate that the intention was even to include a bona fide closure of the whole business, it would, we think, be divorcing the expression altogether from its context to give it such a wide meaning as is contended for by learned counsel for the respondent. What is being defined is retrenchment, and that is the context of the definition. It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptance of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptance of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined.”

Reliance was also placed on a decision of the Court of Appeal in England in Re The Vexatious Actions



Act, 1896 In re Bernard Boaler [(1915) 1 KB 21] where the words “legal proceedings” were held not to include criminal proceedings, in spite of the words being prima facie capable of including the same. Kennedy, C.J. expressed his view at p. 32, that it was impossible to say that the meaning of the expression “legal proceedings” was in itself and by itself clear and unambiguous and followed the dictum of Lord Esher in Rex v. City of London Court [(1982) 1 QB 273, 290] :

“If the words of an Act admit of two interpretations then they are not clear; and if one interpretation leads to an absurdity and the other does not, the Court will conclude that the legislature did not intend to lead to an absurdity, and will adopt the other interpretation.”

Scrutton, J. also expressed the same opinion at p. 41:

“I find general words used in the Act capable of two meanings, a wider and a narrower one. On the whole, I think the language is more suited to the narrower than the wider meaning. The narrower meaning will affect the liberties of the subject to some extent; the wider meaning will most seriously affect the liberties of the subject in a matter, his personal liberty and safety, which I see no reason in the Act to believe was in the contemplation of the legislature. I decline to make this more serious interference with the liberty of the subject, unless the legislature uses language clear enough to convince me that that was its intention, and I think ample meaning is provided for its words, and ample remedy is provided for the grievance in respect of which Parliament was legislating by putting the narrower construction on the general words it has used.”



49. In Gujarat Steel Tubes Limited & Ors. v. Gujarat Steel Tubes Mazdoor Sabha & Ors., **1980 (2) SCC 593**, the Apex Court has observed as under:-

"104. This long excursion has become important because, once in a while, social legislation which requires sharing of social philosophy between Parliament and the Judiciary, meets with its Waterloo in the higher courts because the true role of interpretation shifts from Judge to Judge. We are clearly of the view that statutory construction which fulfils the mandate of the statute must find favour with the Judges, except where the words and the context rebel against such flexibility. We would prefer to be liberal rather than lexical when reading the meaning of industrial legislation which develops from day to day in the growing economy of India. The necessary conclusion from this discussion is that the expression "tribunal" includes, in the statutory setting, an arbitrator also. Contemporaneous para-legislative material may legitimately be consulted when a word of wider import and of marginal obscurity needs to be interpreted. So viewed, we are not in a "sound-proof system" and the I.L.O. recommendation accepted by India and the Objects and Reasons of the amending Act leave no doubt about the sense, policy and purpose. Therefore Section 11-A applies to the arbitrator in the present case and he has the power to examine whether the punishment imposed in the instant case is excessive. So has the High Court, if the award suffers from a fundamental Law."

50. In Union of India & Anr. v. Deoki Nandan Aggarwal, **1992 Supp (1) SCC 323**, the Apex Court has observed as under:-

"14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as "more than five years" and as "more than four years"



in the same paragraph for the period subsequent to November 1, 1986. It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities. Vide P.K. Unni v. Nirmala Industries [(1990) 2 SCC 378, 383-84 : (1990) 1 SCR 482, 488] , Mangilal v. Suganchand Rathi [(1964) 5 SCR 239 : AIR 1965 SC 101] , Sri Ram Ram Narain Medhi v. State of Bombay [1959 Supp 1 SCR 489 : AIR 1959 SC 459] , Hira Devi (Smt) v. District Board, Shahjahanpur [(1952) 2 SCC 154 : 1952 SCR 1122, 1131 : AIR 1952 SC 362] , Nalinakhya Bysack v. Shyam Sunder Halder [(1953) 1 SCC 167 : 1953 SCR 533, 545 : AIR 1953 SC 148] , Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha [(1980) 2 SCC 593 : 1980 SCC (L&S) 197 : (1980) 2 SCR 146] , G. Narayanaswami v. G. Pannerselvam [(1972) 3 SCC 717 : (1973) 1 SCR 172, 182] , N.S. Vardachari v. G. Vasanthai Pai [(1972) 2 SCC 594 : (1973) 1 SCR 886] , Union of India v. Sankal Chand Himatlal Sheth [(1977) 4 SCC 193 : 1977 SCC (L&S) 435 : (1978) 1 SCR 423] and CST v. Auriaya Chamber of Commerce, Allahabad [(1986) 3 SCC 50, 55 : 1986 SCC (Tax) 449 : (1986) 2 SCR 430, 438] . Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the



scheme, will not also come under the principle of affirmative action adopted by courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power."

51. In Kanta Devi v. Union of India, **2003 (4) SCC 753**, the Apex Court has observed as under:-

"8. ... It is not a case of casus omissus as contended. A construction which requires for its support addition of words has to be avoided. The words of a statute never shared, in interpretation, be added or subtracted from without almost a necessity. It is contrary to all rules of construction to read words into a statute unless it is absolutely necessary to do so. Courts cannot reframe the words used by the legislature as they have no power to legislate. A matter which, for the sake of argument, should have been provided but has not been provided for in a statute cannot be supplied by the courts as to do so will be legislation and not construction. (See Johnson v. Moreton [(1978) 3 All ER 37 : 1980 AC 37 : (1978) 3 WLR 538 (HL)] and Baliram Waman Hiray (Dr) v. Justice B. Lentin [(1988) 4 SCC 419 : 1988 SCC (Cri) 941 : AIR 1988 SC 2267] .) There is no presumption that a casus omissus exists, and language permitting the courts should avoid creating a casus omissus where there is none. Therefore, the conclusion of the Division Bench in holding that the order of dismissal passed by the DIG was legal, does not suffer from any infirmity to warrant interference."

52. Similarly, in Sangeeta Singh v. Union of India & Ors., **2005 (7) SCC 484**, the Apex Court has observed as under:-

"10. Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole, appear to be well settled. Under the first principle a casus omissus cannot be supplied by



*the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J. in *Artemiou v. Procopiou* [(1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)] (All ER p. 544 I) "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* [1963 AC 557 : (1963) 1 All ER 655 : (1963) 2 WLR 559 (HL)] where at AC p. 577 he also observed : (All ER p. 664 I) "This is not a new problem, though our standard of drafting is such that it rarely emerges.""]"*

53. In PT Rajan v. TPM Sahir & Ors., **2003 (8) SCC 498**, the Apex Court has observed as under:-

*"50. The Court cannot, it is trite, supply casus omissus. Reference in this regard may be made to *Baliram Waman Hiray (Dr) v. Justice B. Lentin* [(1988) 4 SCC 419 : 1988 SCC (Cri) 941 : AIR 1988 SC 2267] wherein it was observed: (SCC p. 443, para 27)*

"27. Law must be definite, and certain. If any of the features of the law can usefully be regarded as normative, it is such basic postulates as the



requirement of consistency in judicial decision-making. It is this requirement of consistency that gives to the law much of its rigour. At the same time, there is need for flexibility. Professor H.L.A. Hart regarded as one of the leading thinkers of our time observes in his influential book 'The Concept of Law', depicting the difficult task of a judge to strike a balance between certainty and flexibility:

'Where there is obscurity in the language of a statute, it results in confusion and disorder. No doubt the courts so frame their judgments as to give the impression that their decisions are the necessary consequence of predetermined rules. In very simple cases it may be so; but in the vast majority of cases that trouble the courts, neither statute nor precedents in which the rules are legitimately contained allow of only one result. In most important cases there is always a choice. The judge has to choose between alternative meanings to be given to the words of a statute or between rival interpretations of what a precedent amounts to. It is only the tradition that judges 'find' and do not 'make' law that conceals this, and presents their decisions as if they were deductions smoothly made from clear pre-existing rules without intrusion of the judge's choice.' ”

(See also Kanta Devi v. Union of India [(2003) 4 SCC 753 : 2003 SCC (L&S) 592] .)

51. In Tarulata Shyam v. CIT [(1977) 3 SCC 305 : 1977 SCC (Tax) 445] it was held that if there be a casus omissus, the defect can be remedied only by legislation and not by judicial interpretation."

54. It is also well settled that even assuming that the Petitioner is correct to state that the Statement of Object and Reason and other circumstances does indicate that the PNGRB would alone regulate transportation of



petroleum and petroleum products, the Preamble and the Statement of Object and Reason alone cannot be the only guiding factor.

55. It is well settled that the Preamble can be read along with other portions of the Act to find out the purpose and correct interpretation of the provisions, which by themselves may have ambiguous meaning. The Preamble, however, is not a provision of law and does not hold the same weightage as the actual text that is found within the Statute.

56. In the opinion of this Court, the Preamble and the Statement of Object and Reason alone cannot lead to a conclusion that the PNGRB was to be construed as the sole Regulator for regulating of all kinds of pipelines since the Act only deals with common carrier and contract carrier without there being any provision in the Act.

57. The Apex Court in Aswini Kumar Ghose & Anr. v. Arabinda Bose & Anr., 1952 (2) SCC 237, has observed as under:-

"32. As regards the propriety of the reference to the Statement of Objects and Reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those Objects and Reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature for they do not form part of the Bill and are not voted upon by the members. We, therefore, consider that the Statement of Objects and Reasons appended to the Bill should be ruled out as an aid to the construction of a statute."



58. In State of West Bengal v. Union of India, AIR 1963 SC 1241, the Apex Court held that the Statement of Object and Reason accompanying a Bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the Statute and they cannot be used except for understanding the background and the antecedent state of affairs leading up to the legislation.

59. The general rule of interpretation is that the language employed is primarily determining factor to find out the intention of the Legislature. It is well settled that the first and primary rule of construction is that the intention of the Legislature, which is found in the words of the Legislature itself. *"If the Legislature did intend that which it has not expressed clearly; much more, if the Legislature intended something very different; if the Legislature intended something pretty nearly opposite of what is said, it is not for the Judges to invent something which do not meet with the words of the text."* [Refer to:- Crawford v. Spooner (1846-50) 4 Moo IA 179].

60. The Apex Court has now categorically held that when the telling meaning of the Statute used a particular state of affairs, Courts are not required to guess or suppose the intention and policy underlying the Statute and the Statement of Object and Reason which accompanies the Bill on the Floor of the House of the Legislature. It is only when the plain meaning of the Statute creates an ambiguity or uncertainty, then the Court may rely on the Statement of Object and Reason for ascertaining the true intention of the Legislature. [Refer to:- SS Bola & Ors. v. B D Sardana & Ors., 1997 (8) SCC 522].

61. The reliance placed by the Petitioner on the Petroleum and Natural Gas Regulatory Board (Guiding Principles for Declaring or Authorizing Petroleum and Petroleum Products Pipelines as Common Carrier or Contract



Carrier) Regulations, 2012, is also misplaced. It is well settled that Regulations cannot have a wider ambit than the Statute, and the extent of power delegated to an authority can be gauged only from a statute and not from the Regulations. In fact, while deciding the power of the PNGRB to fix or regulate the Maximum Retail Price and whether the PNGRB is empowered to fix or Maximum Retail Price at which the gas to be sold to the entities such as Indraprastha Gas Limited to the consumers and as to whether the PNGRB is empowered to fix any tariff or compression charge for an entity having its own distribution network, the Apex Court in Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Limited & Ors., **2015 (9) SCC 209**, has held as under:-

"27. It is relevant to note here that the High Court, while appreciating the language employed in the said Section 11 has held that: (Indraprastha Gas Ltd. case [2012 SCC OnLine Del 3215] , SCC OnLine Del para 11)

"11. We are of the opinion that none of the aforesaid clauses can be construed as prescribing price control/regulation as a function of the Board. Clause (a) while prescribing protection of interest of consumers limits the same to, by fostering fair trade and competition amongst entities engaged in distributing, dealing, transporting, marketing gas. The function of the Board thereunder is of regulating the inter se relationship of entities under the Act and not to regulate/control the relationship between the entities under the Act and the consumers. Similarly, clause (f) while prescribing function of monitoring prices limits the same to taking corrective measures to prevent restrictive trade practices by the entities. Thus, only if the Board finds that the marketers of gas in a particular area have formed a cartel or are indulging in any other restrictive trade practices, is the Board



empowered to monitor prices. Such is not the case of the Board in the present instance. The petitioner even though till date the exclusive marketer of gas in Delhi, has not been accused of any restrictive trade practice and the power exercised also is not in the name of monitoring price. Another sub-clause of clause (f) of Section 11 confers function on the Board to ensure display of information about maximum retail price. Again, had the intent of the legislature been to confer the power on the Board to fix the maximum retail price, nothing prevented the legislature from providing so expressly. Instead, functions of enforcing retail service obligations and marketing service obligations only have been conferred by the legislature. The definition of retail service obligations and marketing service obligations in Sections 2(zk) and (w) also do not include obligation to sell at the prices fixed by the Board.”

28. The aforesaid analysis of the High Court is in consonance with the provision and the expression “subject to” as used in Section 22 for the said provision makes it graphically clear that Section 22 has to yield to Section 11 of the Act which deals with the powers and functions of the Board. Section 11(e) only uses the words “common carrier” or “contract carrier”. Even if one applies the concept of “subject-matter”, in essentiality it is the “common carrier” and the “contract carrier”. The dictionary clause of the said expression conveys a different meaning and it does not include an entity which utilises the pipelines for its own use. The submission of Mr Datar is that after exclusivity period is over, the Board has the power, also cannot be treated to be correct, for such a power has not been conferred on the Board under Section 11. As is perceptible the provision deals with the entity when it engages itself as a part of its pipeline as a common carrier or contract carrier and not the consumers. It is submitted by the learned Senior



Counsel appearing for the respondent that a person owning his own carrier, after the exclusivity period may have the potentiality to enter into business of the “common carrier” or “contract carrier” and at that juncture to maintain the competitive prospects, regard being had to the consumer interest, the Board may determine the price of the same, but a significant one, that does not clothe the Board with the power to command the entity to put/reflect it as a part of the bill to the consumer. It is urged that the Board does not have the power to fix the tariff charges in that regard.

29. Mr Datar, learned Senior Counsel would submit that when the Board is established under a statute and has the power to regulate solely because there is no mention of entity that owns its own pipeline, it is inapposite to say that the Board cannot determine the price and indicate the cost incurred in this regard in the bill given to the consumer. It is his further submission that the consumer has a right to know. The learned Senior Counsel would go to the extent of saying that it is a casus omissus and, therefore, the court must adopt the principle of purposive interpretation and it can do so filling up the gap to have the necessitous fruitful interpretation. Mr Salve and Mr Tripathi, per contra, would submit that the legislature has deliberately not done it and, in any case, the Court should not read such a concept into it. Ms Pinky Anand, learned ASG relying on the affidavit filed by the Union of India, would submit that the legislature has not given the said power to the Board. It is seemly to state that even if a stand is taken by the Union of India, in respect of an interpretation of a statutory provision, that does not mean that the same is the correct interpretation because it is well settled in law that no one can speak on behalf of the legislature. It is the court which is the final interpreter.

30. Keeping that in view, we have to scrutinise whether in such a situation this Court can implant words in the



provision, as canvassed by Mr Datar. In this regard we may, with profit, refer to certain authorities in the field. In CST v. Parson Tools and Plants [(1975) 4 SCC 22 : 1975 SCC (Tax) 185] , the Court has held that: (SCC p. 28, para 16)

“16. If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so ‘would be entrenching upon the preserves of legislature’ [At AIR p. 65 in Prem Nath L. Ganesh Dass v. Prem Nath L. Ram Nath, AIR 1963 Punj 62 : 64 Punj LR 975, per Tek Chand, J.]”

31. In Board of Muslim Wakfs v. Radha Kishan [(1979) 2 SCC 468] , it has been observed that: (SCC p. 481, para 29)

“29. While it is true that under the guise of judicial interpretation the court cannot supply casus omissus, it is equally true that the courts in construing an Act of Parliament must always try to give effect to the intention of the legislature. In Crawford v. Spooner [(1846-49) 6 Moo PC 1 : 13 ER 582 : 4 Moo IA 179 : 18 ER 667] the Judicial Committee said: (ER p. 585)

‘... we cannot aid the legislature's defective phrasing of the Act, we cannot add, and mend, and, by construction, make up deficiencies which are left there.’

To do so would be to usurp the function of the legislation. At the same time, it is well settled that in



construing the provisions of statute the courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective. Thus, an attempt must always be made to reconcile the relevant provisions so as to advance the remedy intended by the statute.”

32. In this context, we may usefully refer to the authority in *CIT v. National Taj Traders* [(1980) 1 SCC 370 : 1980 SCC (Tax) 124] wherein it has been clearly laid down that two principles of construction i.e. one relating to *casus omissus* and the other in regard to reading of the statute as a whole have been well settled. The Court has reproduced few passages from *Maxwell on Interpretation of Statutes* at pp. 33 and 47, as has been stated in *Canada Sugar Refining Co. Ltd. v. R.* [1898 AC 735 (PC)] , by Lord Davey and proceeded to state thus: (*National Taj Traders* case [(1980) 1 SCC 370 : 1980 SCC (Tax) 124] , SCC p. 376, para 10)

“10. ... In other words, under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. ‘An intention to produce an unreasonable result’, said *Danckwerts, L.J.*, in *Artemiou v. Procopiou* [(1966) 1 QB 878 : (1965) 3 WLR 1011 : (1965) 3 All ER 539 (CA)] , ‘is not to be imputed to a statute if there



is some other construction available’. Where to apply words literally would ‘defeat the obvious intention of the legislation and produce a wholly unreasonable result’ we must ‘do some violence to the words’ and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC [1963 AC 557 : (1963) 2 WLR 559 : (1963) 1 All ER 655 (HL)] where at AC p. 577 he also observed: ‘this is not a new problem, though our standard of drafting is such that it rarely emerges’.) In the light of these principles we will have to construe sub-section (2)(b) with reference to the context and other clauses of Section 33-B.”

33. *In S.P. Gupta v. Union of India [1981 Supp SCC 87] , after referring to various authorities, it has been held: (SCC p. 392, para 273)*

“273. Thus, on a full and complete consideration of the decisions classified under the various categories, the propositions that emerge from the decided cases of this Court and other foreign courts are as follows:

‘(1) Where the language of a statute is clear and unambiguous, there is no room for the application either of the doctrine of casus omissus or of pressing into service external aids, for in such a case the words used by the Constitution or the statute speak for themselves and it is not the function of the court to add words or expressions merely to suit what the courts think is the supposed intention of the legislature.’”

34. *In Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. [(2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] it has been opined thus: (SCC pp. 592-93, para 64)*

“64. ... that it is not the function of the court to supply the supposed omission, which can only be



done by Parliament. In our opinion, legislative surgery is not a judicial option, nor a compulsion, whilst interpreting an Act or a provision in the Act. The observations made by this Court in Nalinakhya Bysack [Nalinakhya Bysack v. Shyam Sunder Haldar, (1953) 1 SCC 167 : AIR 1953 SC 148] would tend to support the aforesaid views, wherein it has been observed as follows: (AIR p. 152, para 9)

‘9. ... It must always be borne in mind, as said by Lord Halsbury in Commissioners for Special Purposes of Income Tax v. Pemsel [1891 AC 531 at p. 549 (HL)] , that it is not competent to any court to proceed upon the assumption that the legislature has made a mistake. The court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the legislature the Court cannot, as pointed out in Crawford v. Spooner [(1846-49) 6 Moo PC 1 : 13 ER 582 : 4 Moo IA 179 : 18 ER 667] , aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is, as said by Lord Russell of Killowen in Hansraj Gupta v. Official Liquidators [(1932-33) 60 IA 13 : (1933) 37 LW 445 : AIR 1933 PC 63] , for others than the courts to remedy the defect.’”

35. *After so stating the Court has referred to the observations made by Lord Diplock in Duport Steels Ltd. [Duport Steels Ltd. v. Sirs, (1980) 1 WLR 142 : (1980) 1 All ER 529 (HL)] wherein it has been ruled thus: (All ER p. 541h-j)*

“... the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and



unambiguous it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount.”

(emphasis supplied)

36. *Recently, in Sarah Mathew v. Institute of Cardio Vascular Diseases [(2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] , while interpreting Section 468 CrPC, the Court has opined: (SCC p. 99, para 45)*

“45. It is argued that a legislative casus omissus cannot be supplied by judicial interpretation. It is submitted that to read Section 468 CrPC to mean that the period of limitation as period within which a complaint/charge-sheet is to be filed, would amount to adding words to Sections 467 and 468. It is further submitted that if the legislature has left a lacuna, it is not open to the court to fill it on some presumed intention of the legislature. Reliance is placed on Shiv Shakti Coop. Housing Society [Shiv Shakti Coop. Housing Society v. Swaraj Developers, (2003) 6 SCC 659] , Bharat Aluminium [(2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] and several other judgments of this Court where doctrine of casus omissus is discussed. In our opinion, there is no scope for application of doctrine of casus omissus to this case. It is not possible to hold that the legislature has omitted to incorporate something which this Court is trying to supply. The primary purpose of construction of the statute is to ascertain the intention of the legislature and then give effect to that intention. After ascertaining the legislative



intention as reflected in the Forty-second Report of the Law Commission and the Report of the JPC, this Court is only harmoniously construing the provisions of Chapter XXXVI along with other relevant provisions of the Criminal Procedure Code to give effect to the legislative intent and to ensure that its interpretation does not lead to any absurdity. It is not possible to say that the legislature has kept a lacuna which we are trying to fill up by judicial interpretative process so as to encroach upon the domain of the legislature. The authorities cited on doctrine of casus omissus are, therefore, not relevant for the present case.”

37. We have referred to the aforesaid passage as the Constitution Bench [(2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] has given emphasis on primary purpose of construction of statute to ascertain the intention of the legislature, harmonious construction of the various provisions of CrPC and for ensuring that the interpretation does not lead to any absurdity. That apart, the Court has also categorically observed that it is not a case where it can be said that the legislature has kept a lacuna which the Court is trying to fill up by judicial interpretative process so as to encroach upon the domain of the legislature. In the case at hand, in the schematic context of the Act and upon reading the legislative intention and applying the principle of harmonious construction, we do not perceive inclusion of the entities which are not “common carriers” or “contract carriers” would be permissible. They have deliberately not been included under Section 11 of the Act by the legislature and the said non-inclusion does not lead to any absurdity and, therefore, there is no necessity to think of any adventure.”

(emphasis supplied)

62. The Apex Court in Petroleum and Natural Gas Regulatory Board v.



Indraprastha Gas Limited & Ors., 2015 (9) SCC 209, has in no uncertain terms held that this Act was only meant to regulate common carrier and contract carrier and it cannot be applied to any other pipeline which is not a common carrier or a contract carrier, and that regulatory provisions are always subject to the actual text of the Statute.

63. This Court is not persuaded with the attempt of the Petitioner and the PNGRB to gather from the attendant circumstances to come to a conclusion that the intention of the Act was to do away with/prohibit entities from transporting their own petroleum and petroleum products by laying down their own pipeline which is not discernible from a reading of the PNGRB Act.

64. Section 16 of the PNGRB Act in no uncertain terms only states that no entity shall lay, build, operate or expand any pipeline as a common carrier or a contract carrier. Had the intention of the Legislature been to do away with/prohibit captive pipeline, it could have simply said that no entity shall lay, build, operate or expand any pipeline without obtaining authorization under the PNGRB Act.

65. The fact that the PNGRB Act revolves around the common carrier and contract carrier, shows that the intention of the Legislature was to ensure that common carrier and contract carrier do not abuse their monopolistic position by obtaining undue benefits from other entities which in turn can have a detrimental impact to the consumers.

66. The purport of giving the PNGRB the control only over contract carrier and common carrier is to ensure that ultimately the consumer is not affected by such carriers which have been authorized by the PNGRB to lay down pipelines. Section 17 of the PNGRB Act once again deals only with authorization by the PNGRB for an entity laying, building, operating or



expanding or which proposes to lay, build, operate or expand a pipeline as a common carrier or a contract carrier.

67. One of the purposes for which the PNGRB Act was enacted is to ensure transportation and regular supply of petroleum and petroleum products to such of those entities who cannot lay down their own pipeline and get easy access of the products to the pipelines at reasonable costs and that they are not forced to employ other measures like trucks etc. for transportation of the petroleum and petroleum products which can be more expensive and would ultimately affect the consumers. The PNGRB has the power to declare an existing pipeline for transportation of petroleum and petroleum products as a common carrier / contract carrier for which procedure has been laid down under Section 20 of the PNGRB Act indicates permissibility of laying down captive pipelines. Section 20 of the PNGRB Act only indicates that if there is an existing captive pipeline on the day on which the PNGRB exercises its power under Section 20, then it may after giving adequate notice etc., by following the procedure under Section 20(2) and 20(3) convert an existing captive pipeline to a common/contract carrier.

68. Both the Petitioner and the Board have attempted to convince this Court to read into the Act, something which is textually absent. There is no explicit bar to laying of captive pipelines provided anywhere in the Act. In the opinion of this Court, a conjoint reading of the definition of ‘common carrier’ and ‘contract carrier’ along with the Section 16 makes the intention of the legislature crystal clear. The Legislature has clearly taken an effort to specifically include the concept of “more than one entity” as a user base for pipelines defined as common carrier or contract carrier. Section 16 of the Act, only requires entities to obtain authorisation from the Board if they wish to lay a common carrier or a contract carrier.



69. Section 20 of the PNGRB Act gives power to the PNGRB to declare any existing pipeline as a common carrier. As stated above, this power is exercised in terms of the procedure laid down in Section 20 itself. This Court is of the opinion that the term existing pipeline should be interpreted to mean that the existing pipeline whether laid before or after the advent of the PNGRB Act but on the day when the PNGRB chooses to exercise its power under Section 20. The contention of the learned counsel for the Petitioner that Section 21 of the PNGRB Act is an indicator that after the advent of the PNGRB Act, the concept of captive pipelines has been given a complete go-bye cannot be accepted. Section 21 in fact indicates that if a person lays down a captive pipeline even after the introduction of the act then the board can, after following the procedure under Section 20 of the PNGRB Act declare it to be a common carrier. However the entity which has laid down the pipeline will have the right of first use. It does not lead to a conclusion that even for laying down its own pipeline for transporting its goods, it must be a contract/common carrier and there cannot be a captive pipeline.

70. A closer look at the 2010 Regulations reveal that the Board itself is of the opinion that it does not have any jurisdiction to deal with dedicated pipelines/captive pipelines. Regulation 19 of the 2010 Regulations deals with dedicated pipeline for transport of petroleum products. There is no definition of dedicated pipeline. Even assuming that dedicated pipeline and captive pipeline are used interchangeably, Regulation 19(2) of the 2010 Regulations deals with such of those dedicated pipelines for transportation of products only to a specific consumer and not for re-sale. In this case the IOCL is transporting its own petroleum and petroleum products. Admittedly the petroleum products which are to be transported in the pipelines laid



down by them are also for resale.

71. *De hors* the PNGRB Act, Regulation 19 read in its entirety does not expressly state that without the authorization of the PNGRB, an entity cannot lay down its own pipeline. Regulation, in 19(2)(d) itself makes it clear that any entity desirous of laying down a dedicated pipeline is free to ignore any advice or opinion of the PNGRB and if it chooses to ignore the advice, the only downside is that such entity cannot move an application for being recognised or authorised as a common carrier for a period of five years.

72. The contention of the learned Senior Counsel for the Petitioner that IOCL had participated in the process for grant of authorization for laying down the petroleum products pipeline from Ennore Port-Manali Industrial Area, which was instead awarded to the Petitioner. The contention that establishes that no entity can lay a pipeline without authorisation of the Board, cannot be accepted. No doubt, the IOCL would have wanted to have a common carrier possibly as a mode of earning revenue which it could have earned by transporting petroleum and petroleum products belonging to other entities, but that by itself does not mean that the IOCL cannot lay down its own captive pipeline. The fact of the matter is that there is no explicit bar under either the PNGRB Act, or any of the Rules, which forbids entities from laying down captive pipelines for their own consumption.

73. This Court at this juncture is not going into the issue regarding the delay of seven years on the part of the Petitioner to start even laying down its own pipeline which could be one of the factors, which lead IOCL to take a decision to start laying down its own pipeline. The contention of the Board that the Board would be handicapped in not knowing the exact picture regarding the products which are being supplied/transported in the captive



pipelines which will hinder the effective performance of the Board which according to the Board is super regulator, cannot be accepted. The IOCL is transporting its own petroleum products from its own jetty to the terminal.

74. At this juncture, it is relevant to refer to the Petroleum and Natural Gas Regulatory Board (Guiding Principles for Declaring or Authorizing Petroleum and Petroleum Products Pipelines as Common Carrier or Contract Carrier) Regulations, 2012. Clauses 3 to 7 and 10 of the said Regulations read as under:-

"3. Scope.

These regulations shall apply to an entity-

(a) which proposes to lay, build, operate or expand a petroleum and petroleum products pipeline and has been authorized to do so under the relevant regulations for authorizing entities to lay, build, operate or expand petroleum and petroleum products pipelines;

(b) which has been laying, building, operating or expanding petroleum and petroleum products pipeline before the appointed day and has been authorized under the relevant regulations for authorizing entities to lay, build, operate or expand petroleum and petroleum products pipelines; or

(c) which has been authorized by the Central Government before the appointed day and accepted by the Board for laying, building, operating or expanding petroleum and petroleum products pipeline under the relevant regulations for authorizing entities to lay, build, operate or expand petroleum and petroleum products pipelines.

4. Objectives for declaring petroleum and petroleum products pipeline as common carrier or contract carrier.



(a) Petroleum and Petroleum products Pipelines are an efficient, economical and safe mode of bulk transportation of petroleum and petroleum products from a refinery or an installation to a demand centre over a particular route. Therefore, consumer interest is best served by promoting competition, compliance with environmental and safety statutes and avoiding infructuous investments by optimum utilization of infrastructure of petroleum and petroleum products pipelines.

(b) The concept of allowing capacity in a petroleum and petroleum products pipeline to be utilized by any entity on a non-discriminatory basis through contract carrier or common carrier arrangements with entities laying, building, operating or expanding petroleum and petroleum products pipelines shall lead to development of competitive markets.

5. Contract carrier system for petroleum and petroleum products pipelines.

(a) A contract carrier system implies that the capacity in petroleum and petroleum products pipeline, over and above the entity's own requirement, shall be available to any other entity subject to the latter entering into a contract for transportation of quantity of petroleum and petroleum products of a mutually agreed quality for a period of minimum one year on such other terms and conditions as may be mutually agreed subject to the provisions of regulations notified from time to time under the Act and on payment of petroleum and petroleum products pipeline tariff as authorized under the Petroleum and Natural Gas Regulatory Board (Determination of Petroleum and Petroleum Products Pipeline Transportation Tariff) Regulations, 2010.

(b) The contract for transportation of petroleum and petroleum products in petroleum and petroleum



products pipeline shall be independent of the activity of marketing of petroleum and petroleum products.

6. Common carrier system for petroleum and petroleum products pipelines.

(a) A common carrier system implies that the capacity in a petroleum and petroleum products pipeline, over and above the entity's own requirement, shall be available to an entity subject to the latter entering into a contract for transporting quantity of petroleum and petroleum products of a mutually agreed quality for a period of less than one year, on such other terms and conditions as may be mutually agreed, and subject to the provisions of regulations notified from time to time under the Act and on payment of petroleum and petroleum products pipeline transportation tariff as authorized under the Petroleum and Natural Gas Regulatory Board (Determination of Petroleum and Petroleum Products Pipeline Transportation Tariff) Regulations, 2010:

Provided that if the common carrier capacity is not fully utilized, the entity may contract the same for a period of one year or more, subject to the stipulation that in case another entity seeks booking of the same for a period of less than one year, the request shall be accommodated after pro-rating the same from the common carrier capacity already contracted to other entities for a period of one year or more:

Provided further that pro-rating the common carrier capacity shall not exceed ten per cent of the total common carrier capacity.

Explanation- For the purpose of these regulations, entity laying, building, operating or expanding a common carrier or contract carrier petroleum and petroleum products pipeline shall have right of first use for its own and its affiliates' requirement and



shall be limited to the right of first use. Such right of first use shall not be deemed to be preferential access.

(b) The contract for transportation of petroleum and petroleum products in a petroleum and petroleum products pipeline shall be independent of the activity of marketing of petroleum and petroleum products;

(c) Common carrier capacity available in petroleum and petroleum products pipeline at any given point in time shall be allocated to any other entity seeking booking of the same on a non-discriminatory "first-come-first-served" basis.

(d) When the extra capacity in a petroleum and petroleum products pipeline to be provided on a common carrier basis is less than twenty five percent of the sum of the capacity requirements of the entity and the firmed up contracted capacity with other entities, the same will be made available - (i) on expiry of firm contracts, or (ii) by way of expansion of capacity in the petroleum and petroleum products pipeline:

Provided that when the common carrier capacity is less than ten percent of the sum of the capacity requirements of the entity and the firmed up contracted capacity with other entities, the Board may on a suo motu basis and after following the due process of public consultation require an entity to build extra capacity on such time lines and other terms and conditions as may be specified by the Board.

7. General principles for common or contract carrier capacity.

(a) Entity laying, building, operating or expanding petroleum and petroleum products pipeline shall publish the common or contract carrier capacity



available in the petroleum and petroleum products pipeline on its website and follow the procedure specified in the relevant regulations on access conditions for petroleum and petroleum products pipeline.

(b) Entity laying, building, operating or expanding petroleum and petroleum products pipeline shall allocate the common or contract carrier capacity available on a transparent basis by maintaining a record of the applications received and the basis of allocation and also publish the information on its website as per Annexure-1.

xxx

10. Declaring of existing pipeline for transportation of petroleum and petroleum products as a common or contract carrier.

(1) If the Board is of the opinion that it is necessary or expedient to declare an existing pipeline for transportation of petroleum and petroleum products as a common or contract carrier,-

a) it may give wide publicity of its intention to do so by inviting objections and suggestions within a period of not less than one month from the date of invitation;

b) the Board shall also provide the entity owning the petroleum and petroleum products pipeline an opportunity of being heard within a minimum notice period of twenty one days from the close of the invitation for objections and suggestions.

(2) After considering the objections and suggestions received and after hearing the entity owning the petroleum and petroleum products pipeline under sub-regulation (1), the Board may declare the pipeline as a



common or contract carrier subject to such terms and conditions as it may fix.

(3) Notwithstanding anything in sub-regulation (1) and sub-regulation (2), the entity may, on a suo motu basis, apply to the Board seeking declaration of a petroleum and petroleum products pipeline as a common or contract carrier and the Board after giving an opportunity of hearing to the entity, shall, within a period of fifteen days from the receipt of such an application, declare the relevant petroleum and petroleum products pipeline as a common or contract carrier on such terms and conditions as it deems fit. "

75. The Apex Court in PNGRB v. IGL (supra) has dealt with the issue as to whether regulations can be used to interpret something in the Act which is not present in Act. The Apex Court in the said judgment has observed as under:-

"43. In addition to the aforesaid there are various Regulations dealing with the procedure of determination. Mr Datar, learned Senior Counsel, would submit that Section 61 of the Act has to be read in consonance with the Objects and Reasons of the Act and when the Board has the power to frame regulations to carry out the purposes of the Act, it has framed the Regulations in accordance with the legislation and the High Court has totally flawed in declaring it as ultra vires.

44. We have already dealt with the purport of Section 11, adverted to the facet how the words "subject to" have to be interpreted, functions of the Board, and provisions relating to exclusivity, definitions of "common carrier" and the "contract carrier". Section 61 is a provision that enables the Board to frame Regulations. If on reading of the statute in entirety,



such a power does not flow, a delegated authority cannot frame a regulation as that would not be in accord with the statutory provisions nor would it be for the purpose of carrying on the provisions of the Act.

45. *In St. Johns Teachers Training Institute v. NCTE [(2003) 3 SCC 321 : 5 SCEC 391] it has been observed that: (SCC p. 331, para 10)*

“10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions or the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details.”

46. *In Kunj Behari Lal Butail v. State of H.P. [(2000) 3 SCC 40] it has been ruled that: (SCC p. 46, para 13)*

“13. It is very common for the legislature to provide for a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.”

47. *In State of Karnataka v. H. Ganesh Kamath*



[(1983) 2 SCC 402 : 1983 SCC (Cri) 514] it has been stated that: (SCC p. 410, para 7)

“7. ... It is a well-settled principle of interpretation of statutes that the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.”

48. In Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi [(1975) 1 SCC 421 : 1975 SCC (L&S) 101] : (SCC p. 433, para 18)

“18. ... statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature. Rules and regulations made by reason of the specific power conferred by the statute to make rules and regulations establish the pattern of conduct to be followed.”

49. In General Officer Commanding-in-Chief v. Subhash Chandra Yadav [(1988) 2 SCC 351 : 1988 SCC (L&S) 542 : (1988) 7 ATC 296] , it has been held as follows: (SCC p. 357, para 14)

“14. ... before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule-making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void.”

50. Similar view has been expressed in State of T.N. v. P. Krishnamurthy [(2006) 4 SCC 517] and in Union of India v. S. Srinivasan [(2012) 7 SCC 683 : (2012) 2 SCC (L&S) 433] wherein it has been held that: (S.



Srinivasan case [(2012) 7 SCC 683 : (2012) 2 SCC (L&S) 433] , SCC p. 690, para 21)

“21. ... If a rule goes beyond the rule-making power conferred by the statute, the same has to be declared ultra vires. If a rule supplants any provision for which power has not been conferred, it becomes ultra vires. The basic test is to determine and consider the source of power which is relatable to the rule. Similarly, a rule must be in accord with the parent statute as it cannot travel beyond it.”

51. In Indramani Pyarelal Gupta v. W.R. Natu [AIR 1963 SC 274] , the Court has held that one of the tests to determine whether a statutory body is vested with a particular power is to see whether exercise of such power is contraindicated by any specific provision of the enactment bringing such statutory body into existence. In Tata Power Co. Ltd. v. Reliance Energy Ltd. [(2009) 16 SCC 659] , it has been ruled that save and except for the exercise of regulatory power which is specifically recognised by the statute, it is not open to the regulatory body to exercise a power which is not incorporated in the statute.

52. In this context, it is fruitful to refer to the authority in Academy of Nutrition Improvement v. Union of India [(2011) 8 SCC 274] . The two-Judge Bench was dealing with the issue of constitutional validity of the Prevention of Food Adulteration (Eighth Amendment) Rules, 2005. After discussing at length from various angles, the Court held that: (SCC pp. 296-97, paras 66-67)

“66. Statutes delegating the power to make rules follow a standard pattern. The relevant section would first contain a provision granting the power to make rules to the delegate in general terms, by using the words ‘to carry out the provisions of this Act’ or ‘to carry out the purposes of this Act’. This is



usually followed by another sub-section enumerating the matters/areas in regard to which specific power is delegated by using the words ‘in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters’. Interpreting such provisions, this Court in a number of decisions has held that where power is conferred to make subordinate legislation in general terms, the subsequent particularisation of the matters/topics has to be construed as merely illustrative and not limiting the scope of the general power. Consequently, even if the specific enumerated topics in Section 23(1-A) may not empower the Central Government to make the impugned rule (Rule 44-I), making of the rule can be justified with reference to the general power conferred on the Central Government under Section 23(1), provided the rule does not travel beyond the scope of the Act.

‘But even a general power to make rules or regulations for carrying out or giving effect to the Act, is strictly ancillary in nature and cannot enable the authority on whom the power is conferred to extend the scope of general operation of the Act. Therefore, such a power “will not support attempts to widen the purposes of the Act, to add new and different means to carrying them out, to depart from or vary its terms”.’

[See Principles of Statutory Interpretation by Justice G.P. Singh, 12th Edn., p. 1009 referring to Shanahan v. Scott [(1957) 96 CLR 245] and Utah Construction and Engg. (P) Ltd. v. Pataky [1966 AC 629 : (1966) 2 WLR 197 : (1965) 3 All ER 650 (PC)] .]

67. Rule 44-I is not a rule made or required to be made to carry out the provisions of the Act, having regard to its object and scheme. It has nothing to do



with curbing of food adulteration or to suppress any social or economic mischief.”

On the basis of the aforesaid analysis, the Court opined that: (Academy of Nutrition Improvement case [(2011) 8 SCC 274] , SCC p. 297, para 68)

“68. We have already noticed that as at present there is no material to show that universal salt iodisation will be injurious to public health (that is to the majority of populace who do not suffer from iodine deficiency). But we are constrained to hold that Rule 44-I is ultra vires the Act and therefore, not valid.”

*53. In the case at hand, the Board has not been conferred such a power as per Section 11 of the Act. That is the legislative intent. Section 61 enables the Board to frame Regulations to carry out the purposes of the Act and certain specific aspects have been mentioned therein. Section 61 has to be read in the context of the statutory scheme. **The regulatory provisions, needless to say, are to be read and applied keeping in view the nature and textual context of the enactment as that is the source of power. On a scanning of the entire Act and applying various principles, we find that the Act does not confer any such power on the Board and the expression “subject to” used in Section 22 makes it a conditional one. It has to yield to other provisions of the Act. The power to fix the tariff has not been given to the Board. In view of that the Board cannot frame a Regulation which will cover the area pertaining to determination of network tariff for city or local gas distribution network and compression charge for CNG. As the entire Regulation centres around the said subject, the said Regulation deserves to be declared ultra vires, and we do so.”***

(emphasis supplied)

76. A perusal of the 2012 Regulations does give an indication that the



Board had framed these Regulations under Section 61 of the PNGRB Act on an assumption that all pipelines which are now proposed to be laid, ought to be contract carrier or common carrier pipelines. These Regulations have been made in exercise of powers conferred under Section 61 of the PNGRB Act. Section 61 of the PNGRB Act gives the power to the PNGRB to make Regulations. A perusal of Section 61(2)(e),(p),(q),(r) of the PNGRB Act shows that they only give power to the PNGRB to make regulations insofar as the common/contract carrier are concerned and these regulations cannot be construed to indicate the scope and ambit of the PNGRB Act that the PNGRB Act was meant to totally prohibit the laying down of captive pipelines.

77. As stated above, Section 61 of the PNGRB Act only deals with common carrier and contract carrier pipelines and not with the captive pipelines. In case the Legislature is of the opinion that captive pipelines have to be done away with, then it had to explicitly state so in the Statute.

78. The Petitioner and the Board have been unsuccessful in persuading this Court to read into the Statute, something which is not present. This Court cannot read a bar into the statute, as it would amount to supplying the *casus omissus*, which is not permissible. A reading of the Statute does not give an indication that captive pipelines have been done away with/prohibited.

79. A peculiar situation has arisen before this Court today. The Board tasked with the Regulation of Downstream movement of Petroleum and Natural Gas, and the Union of India have taken diametrically opposite stands. This Court is of the opinion that the interest of the entire industry relating to the transportation of petroleum and petroleum products would perhaps be best served if the PNGRB and the Union of India through the



Ministry of Petroleum and Natural Gas could sit together and identify exactly what the regulatory board's role is, and examine that if any amendments are required to the PNGRB Act and / or the Regulations made thereunder.

80. Though the Petitioner and PNGRB has very strenuously contended that the object behind dispensing with the captive pipelines in totality is to avoid infructuous investments which is clear from a reading of Section 20 of the PNGRB Act. However, as rightly contended by the learned Counsel for the Union of India that the business consideration for laying down a captive pipeline is different from the business consideration for laying down a common/contract carrier pipeline as small entities will not prefer laying down captive pipelines as they may not be commercially viable. At the same time, it has also to be ensured that these entities get the benefit of the common carrier and supply of their products to meet the requirements of the competitive markets.

81. It is submitted by the Union of India that the laying of a captive pipeline and a common/contract carrier pipeline are undertaken with different business objectives. It is stated that while the laying of captive pipelines is for evacuation and transportation of petroleum and petroleum products to one's own premises, common/ contract pipelines are laid with the intention of earning (through tariff) from the service of transportation of petroleum and petroleum products to consumers/ customers. It is stated that as far as the latter is concerned, as per Regulation 4 of the 2010 Regulations, laying of petroleum product pipelines is undertaken when either an entity submits an expression of interest or the Board *suo motu* initiates a proposal inviting entities to participate in the process of selection of an entity for laying, building, operating or expanding petroleum and petroleum products



pipeline along any route. In furtherance of the same, an entity proposing to lay, build or operate a petroleum and petroleum product pipeline through the expression of interest route has to furnish details such as petroleum products availability position, potential demand of petroleum products *en route* the petroleum and petroleum product pipeline, assessment of total volume for transportation in the proposed petroleum and petroleum products pipeline, technical specifications of the project attaching the copy of the DFR, etc. to the Board.

82. The Union of India submits that while deciding any such application, the Board has to consider the criteria laid down in Regulation 5(6) of the 2010 Regulations, such as technical capability, financial capability, detailed feasibility report, etc., and therefore, when a common/ contract carrier petroleum product pipeline is proposed to be laid, the Board scrutinizes every proposal, including the feasibility of all such projects, as per the extensive criteria laid down in the 2010 Regulations.

83. It is further submitted that Section 21 of the PNGRB Act provides an entity laying a 'common carrier' pipeline, the right of first use and as per the 2010 Regulations, an entity operating a 'common carrier' pipeline is only mandated to provide a minimum of 25% of the total pipeline capacity as a 'common carrier'. Therefore, up to 75% of the capacity of the pipeline remains with the entity operating the said pipeline with the right of first use throughout the entire economic life of the petroleum product pipeline. In addition, such an entity can also enter into firm contracts i.e., contracts for more than one year as per the 'contract carrier' principal defined under the scheme of the PNGRB Act to enable capacity utilization.

84. The Union of India has further relied on Regulation 5(3) of the 2010 Regulations, to submit that the Board may web-host all comments received



to facilitate possible contracts for capacity booking by different entities with the entities that may be interested in the development of petroleum and petroleum products pipeline so as to facilitate coming up of an optimum sized petroleum and petroleum products pipeline through the bidding process.

85. It is further submitted that the first proviso to Regulation 6(a) of the 2012 Regulations provides that if the common carrier capacity is not fully utilized, the entity may contract the same for a period of one year or more, subject to the stipulation that in case another entity seeks booking of the same for a period of less than one year, the request shall be accommodated after pro-rating the same from the common carrier capacity already contracted to other entities for a period of one year or more and that pro-rating the common carrier capacity shall not exceed ten per cent of the total common carrier capacity. It is stated that even if the common carrier capacity is not utilized, an entity is free to enter into firm contracts so that any such capacity is not underutilized.

86. It is stated that Regulation 6(c) of the 2012 Regulations provides that common carrier capacity available in petroleum and petroleum products pipeline at any given point in time shall be allocated to any entity seeking booking of the same on a non-discriminatory '*first-come-first-serve*' basis and any entity using the common carrier and contract carrier capacity of a pipeline is required to pay tariff to the entity operating the said pipeline infrastructure, which is determined by the Board as per the PNGRB (Determination of Petroleum and Petroleum Products Pipeline Transportation Tariff) Regulations, 2010 and based on factors stipulated in Section 22 of the PNGRB Act. It is stated that an entity proposing to lay, build, or operate a common/ contract carrier petroleum product pipeline



considers the aforementioned factors while determining the feasibility of a pipeline project.

87. The Union of India submits that, in such circumstances, it is not likely that keeping captive pipelines outside the purview of the Board may lead to a situation where all entities would prefer laying such pipelines instead of common/ contract carrier pipelines and thereby potentially rendering the purpose of the PNGRB Act nugatory. The Union of India relies on the judgment passed by the Apex Court in Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers & Ors., (2003) 6 SCC 659, the relevant portion of the judgment reads as under:-

“27. Laws ought to be, and usually are, framed with a view to such cases as are of frequent rather than such as are of rare or accidental occurrence; or, in the language of the civil law, jus constitui oportet in his quae ut plurimum accidunt, non quae ex inopinato; for, neque leges neque senatus consulta ita scribi possunt ut omnis casus qui quandoque in sediriunt comprehendantur, sed sufficit ea quae plerumque accidunt contineri; laws cannot be so worded as to include every case which may arise, but it is sufficient if they apply to those things which most frequently happen...”

88. As rightly contended by the Union of India that an entity which feels that it has firm contracts for supply of its products and intends to lay down a pipeline to supply its own products, there is nothing in the PNGRB Act which stops from doing so and it is the business consideration of that entity, and therefore, that investment cannot be said to be an infructuous investment.

89. In any event, if there is a requirement for another pipeline in the same



route, the Board can exercise its jurisdiction under Section 20 of the PNGRB Act and convert the captive pipeline to a common carrier or if the Board is of the opinion that there are enough entities for whose purpose a pipeline is required to be laid down, it will follow the 2010 Regulations calling for expression of interest for laying down its own pipelines.

90. The argument of the Petitioner that while calculating their financials, the Petitioner had taken into account the requirement of the IOCL and had made its bid accordingly and, therefore, now the IOCL cannot be permitted to lay down its own pipeline as it affects its business interests is not relevant for interpreting the provisions of the PNGRB Act.

91. The Union of India in its written submissions has enumerated list of several captive pipelines which have been laid down after the enactment of the PNGRB Act without getting authorization from the Board. The Union of India is also correct in stating that in some places only captive pipelines are viable and common/contract carrier pipeline is not viable because nobody is interested to lay down a pipeline, for example, Paradip-Hyderabad pipeline; Paradip-Somnathpur Haldia pipeline and Koyali-Ahmednagar Solapur pipeline laid by IOCL, Ramanmandi-Bahadurgarh pipeline and Ramanmandi-Bathinda-Sangrur pipeline laid by the HPCL.

92. The Union of India has also given several examples where captive and common/contract carrier pipelines have been laid side by side and running parallel for a significant length to same locations from the beginning to the end after the PNGRB Act has come into force.

93. Though all these are not relevant for interpreting the PNGRB Act but it does substantiate that the contention of Union of India that the concept of captive pipelines has not been given a complete go-by after the enactment of the PNGRB Act is correct. As stated earlier, since the Union of India and the



2024:DHC:6148



Board are singing different tunes, it is time for both of them to come together and take a decision which would be in the best interests of the country, keeping in mind the objectives for which the Board was formed or suggest any amendments to the existing legislation or regulations framed thereunder.

94. This Court is of the opinion that there is no authorization required by the IOCL from the PNGRB for laying down a pipeline for transporting its petroleum and petroleum products from its own jetty to the terminal.

95. In view of the above, the Communication dated 13.12.2023 issued by the PNGRB to the IOCL, which is under challenge in W.P.(C) 2896/2024, is set aside and consequently, the writ petition is allowed. Pending application(s), if any, stand disposed of.

96. Resultantly, W.P.(C)15285/2023 filed by IMC Limited stands dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 14, 2024

hsk