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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 208/2024 & CM APPL. 14812/2024, CM APPL. 14813/2024,
CM APPL. 14814/2024

INDIAN OIL CORPORATION LIMITED

..... Appellant

Through: Mr. Abhinav Vashisht, Sr. Advocate
with Mr. Prashant Bezboruah, Ms.
Akshita Sacheva Jaitly, Advocates

versus

**PETROLEUM AND NATRUAL GAS REGULATORY BOARD
NEW DELHI & ORS.**

..... Respondents

Through: Mr. Rahul Sagar Sahay, Mr. Mohit
Budhiraja, Ms. Harshita Tomar, Mr.
Prince Kumar Singh, Advocates for
PNGRB
Mr. Apoorv Kurup, Ms. Gauri
Goburdhun, Advocates for R-2.
Mr. Ramji Srinivasan, Sr. Adv. with
Mr. Saurav Agrawal, Mr. Trinath
Tadakamalla, Ms. Utsha Dasgupta,
Ms. Nisha Bhatia, Ms. Namrata
Saraongi, Advocates for R-3

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Date of Decision: 22nd March, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGMENT**MINI PUSHKARNA, J:**

1. The present appeal challenges the judgment dated 08th February, 2024



passed by the learned Single Judge in *W.P.(C) 15285/2023*. Vide the said judgment, the learned Single Judge has granted a stay, thereby restraining the appellant herein from proceeding further with laying down of the pipeline from Ennore Port to Manali Industrial Area, Chennai, Tamil Nadu during the pendency of the writ petition.

2. Pursuant to a bidding process, respondent no.3-IMC Limited was authorized on 18th December, 2015 by respondent no.1, i.e., Petroleum and Natural Gas Regulatory Board (“PNGRB”) to lay, build and operate the Ennore Port-Manali Industrial Area petroleum products pipeline.

3. The appellant, Indian Oil Corporation Limited (“IOCL”) is a Public Sector Undertaking (“PSU”). The appellant had also participated in the aforesaid bid process of PNGRB, but was unsuccessful. However, subsequently the appellant-IOCL started laying a pipeline at Ennore Port, grass root terminal at Vallur (Chennai). The said pipeline is along the very same route on which the respondent no. 3-IMC Limited has been authorized to lay, build and operate the pipeline. The said work was started by the appellant on 22nd August, 2023 and as on date, the appellant is stated to have constructed 10 Kms of the pipeline, which as per the appellant is a captive pipeline for its self use.

4. Since the appellant-IOCL started constructing the pipeline along the very same route on which respondent no.3-IMC Limited had been authorized to lay, build and operate the pipeline, the respondent no.3 approached this Court by filing a writ petition, being *W.P.(C) 15285/2023*.

5. When the said petition was listed for hearing before the learned Single Judge, the learned Single Judge by judgment dated 08th February, 2024, allowed the application, being *CM No. 7081/2024* filed on behalf of



respondent no.3-IMC Limited, thereby restraining the appellant-IOCL from proceeding further with the laying down of the pipeline from Ennore Port to Manali Industrial Area, during the pendency of the writ petition. Against the said judgment dated 08th February, 2024 passed by the learned Single Judge, the present appeal has been filed.

6. Learned Senior Counsel appearing for the appellant has raised the following contentions:

6.1 The stay against the appellant has a cascading effect on its firm commitments and has effectively jeopardized the project of the appellant costing approximately Rs. 2,577 Crores (Rupees Two Thousand Five Hundred and Seventy Seven Crores).

6.2 The appellant, which is a PSU, has already spent about Rs. 996 Crores. Thus, irreparable harm/loss would be caused to the appellant if the impugned judgment is not stayed during the pendency of the present appeal. Every day the work stays stagnant, the loss is mounting for the appellant.

6.3 The laying of the pipeline undertaken by the appellant-IOCL, are for the exclusive use of IOCL and are being laid for transportation of its own petroleum products between its own facilities.

6.4 The pipelines are being laid as part of the captive system of IOCL and are neither dedicated pipelines, which cater to a single consumer nor are they common/contract carrier lines. Since the said pipelines do not fall within the ambit of the definition of common/contract carrier, provisions of Section 16(a) of the Petroleum and Natural Gas Regulatory Board Act, 2006 ("PNGRB Act"), do not apply.

6.5 No provision of the PNGRB Act or its congruent Regulations, require IOCL to take authorization for such pipelines. For captive/self use pipelines,



meant only for the own use of IOCL, no authorization is required from the PNGRB. The captive/self use pipelines of the appellant are outside the purview of the PNGRB Act.

6.6 Respondent no.3-IMC Limited has not laid even a single inch of pipeline in more than eight years from the date of its authorization on 18th December, 2015. Therefore, respondent no.3-IMC Limited could not possibly suffer any irreparable loss due to the construction of the appellant's pipelines, which in any case do not entail transportation of products to any third party and are not in conflict with the common carrier pipeline of respondent no.3.

7. Per contra, learned counsel appearing for respondent no.3-IMC Limited has raised the following submissions:

7.1 By letter dated 18th December, 2015, PNGRB granted authorization to the respondent no.3 for laying the pipelines in the area in question. Whereas, there is no authorization in favour of the appellant for laying the pipelines in the area in question.

7.2 By letter dated 07th November, 2023, PNGRB sought explanation from the IOCL as regards laying of the petroleum and petroleum products pipelines by it, without obtaining necessary authorizations from PNGRB.

7.3 These petroleum and petroleum product pipelines have to be regulated by the PNGRB and cannot criss-cross the whole country. Preamble to the PNGRB Act itself provides in categorical terms that the said Act regulates *inter-alia* the transportation and sale of petroleum and petroleum products.

7.4 PNGRB by its letter dated 13th December, 2023 has directed the appellant-IOCL to stop the laying of the pipelines in question, with immediate effect.



7.5 The appellant-IOCL has subjected itself to jurisdiction of the PNGRB in laying of dedicated pipeline, as can be seen from the letter dated 20th March, 2020 issued by the PNGRB to the appellant with regard to laying of natural gas pipeline from Dahej to Koyali Refinery.

8. Learned counsel appearing for respondent no.1-PNGRB has submitted that the action by the appellant-IOCL is not in consonance with the provisions of PNGRB Act. The appellant has not approached the PNGRB for authorization with respect to subject pipelines. Therefore, the PNGRB had initiated action against the appellant in the right earnest. Further, the contention of the appellant regarding captive pipelines cannot be accepted, as the whole purpose of laying pipelines is for purposes of onward transmission of petroleum and petroleum products for resale.

9. We have heard learned counsel for the parties and have perused the record.

10. At the outset, this Court notes that by its judgment dated 08th February, 2024, the learned Single Judge has restrained the appellant herein from further laying down the pipeline in question, considering the stand taken by the PNGRB that only respondent no.3-IMC Limited had been authorized to lay down the pipeline. Thus, the learned Single Judge has held as follows:

“xxx xxx xxx

17. A perusal of Section 16 of the PNGRB Act shows that no entity can lay, build or operate or expand any pipeline as a common carrier or contract carrier without the authorization by the Board. The authorization to lay, build and operate the pipeline from Ennore Port to Manali Industrial Area has been given to the Petitioner. Respondent No.3/IOCL was an unsuccessful bidder in the tendering process.



18. At this juncture, it is pertinent to mention that Respondent No.3/IOCL had sought permission from the PNGRB in 2017 for laying down a self-use pipeline between Dahej and Koyali Refinery and Respondent No.3 was granted permission to lay down such pipeline. No such permission has been sought by Respondent No.3/IOCL for laying down the pipeline in question.

19. Material on record and particularly the letter dated 02.12.2017 sent by the Respondent No.3/IOCL to the Secretary, PNGRB shows that Respondent No.3 for their requirement of capacity augmentation of Koyali refinery and had approached the PNGRB for laying down the Dahej-Koyali Refinery Captive Natural Gas Pipeline. The action of Respondent No.3 to proceed ahead to lay down the pipeline from Ennore Port to Manali Industrial Area, therefore, is prima facie contrary to their own understanding of the scheme of the PNGRB Act.

20. In view of the categorical stand taken by the PNGRB that only the Petitioner has been authorized to lay down the pipeline and that an irreparable loss will be caused to the Petitioner if the pipeline is laid down by Respondent No.3, this Court is inclined to grant a stay as prayed for by the Petitioner in the instant application being CM APPLN.7081/2024 and is inclined to pass an order restraining Respondent No.3/IOCL from proceeding further with the laying down of the pipeline from Ennore Port to Manali Industrial Area during the pendency of the writ petition.

xxx xxx xxx''

(Emphasis Supplied)

11. Perusal of the aforesaid, manifests that there is a *prima facie* finding given by the learned Single Judge.

12. A specific query was put to the appellant as to whether if the appellant was allowed to continue to lay the pipelines in question during the pendency of the writ petition, it was ready to undertake that it shall transfer the said pipeline to the respondent no.1-PNGRB at a cost to be determined by PNGRB, in the eventuality of the appellant suffering an order against it in



the writ petition. However, learned Senior Counsel appearing on behalf of the appellant, upon instructions, stated that appellant-IOCL, being a PSU, cannot give such an undertaking.

13. Thus, this Court finds no justification in allowing the appellant to continue with laying the pipeline in question during the pendency of the writ petition, especially when the conflicting claims between the parties and legal right of the appellant to lay pipelines for its own self use, as contended in the present case, without authorization of PNGRB, are still to be considered and decided.

14. During the course of hearing, this Court was informed that the writ petition was listed before the learned Single Judge on 13th March, 2024, wherein, the learned Single Judge has laid a schedule of regular hearing of the matter, so as to render final judgment in the said writ petition by 10th April, 2024.

15. This Court also notes that the impugned judgment passed by the learned Single Judge is dated 08th February, 2024, while the present appeal came to be filed only on 02nd March, 2024 and was listed for the first time only on 12th March, 2024. The work of laying the pipelines in question is in abeyance since the aforesaid judgment dated 08th February, 2024. When the learned Single Judge has already laid down a schedule of hearing and is expected to decide the matter finally within a short time, this Court finds no merit in the case canvassed by the appellant to vacate the stay as granted by the learned Single Judge and allow the appellant to continue laying the pipelines during the pendency of the writ petition.

16. Accordingly, the present appeal is dismissed along with the pending applications.



17. However, it is clarified that nothing contained herein shall be construed as an expression of opinion on the merits of the case.

MINI PUSHKARNA, J

ACTING CHIEF JUSTICE

MARCH 22, 2024/au/ak