



\$~37 and 38

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

+ **LPA 265/2024 & CM APPL. 19908-19910/2024**

BHARAT PETROLEUM CORPORATION LTD Appellant

Through: **Mr. Rajshekhar Rao, Senior Advocate
with Ms. Prachi Vashisht and Mr.
Kushagra Pandit, Advocates**

versus

RELIANCE INDUSTRIES LTD & ANR. Respondent

Through: **Mr. Ramji Srinivasan, Senior
Advocate with Mr. K.R. Sasiprabhu,
Mr. Vishnu Sharma, Mr. Tushar
Bhardwaj, Mr. Prakhar Agarwal and
Ms. Namrata Saraogi, Advocates for
R-1
Ms. Sonali Malhotra and Ms. Jyoti
Jha, Advocates for R-2- PNGRB**

38

+ **LPA 269/2024 & CM APPL. 20169-20171/2024**

**HINDUSTAN PETROLEUM CORPORATION
LIMITED Appellant**

Through: **Mr. Rajshekhar Rao, Senior Advocate
with Mr. T. Sundar Ramanathan, Mr.
Krishan Singhal, Ms. Sukanya
Viswanathan, Mr. Dushyant Kaul and
Mr. Rajarshi Roy, Advocates**

versus

**PETROLEUM AND NATURAL GAS REGULATORY BOARD
AND ANOTHER Respondent**

Through: **Ms. Sonali Malhotra and Ms. Jyoti
Jha, Advocates for R-1-PNGRB**



Mr. Ramji Srinivasan, Senior Advocate with Mr. K.R. Sasiprabhu, Mr. Vishnu Sharma, Mr. Tushar Bhardwaj, Mr. Prakhar Agarwal and Ms. Namrata Saraogi, Advocates for R-2

%

Date of Decision: 04th April, 2024.

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

JUDGMENT

MANMOHAN, ACJ: (ORAL)

**CM APPL. 19909-10/2024 (for exemption) in LPA 265/2024
CM APPL. 20170-71/2024 (for exemption) in LPA 269/2024**

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

**LPA 265/2024 & CM APPL. 19908/2024
LPA 269/2024 & CM APPL. 20169/2024**

1. The present appeals filed under Clause X of the Letters Patent read with Section 10 of Delhi High Court Act, 1966, impugns the common judgment dated 28th February, 2024 ('impugned judgment') passed in Writ Petition (C) No. 15994 of 2023 and Writ Petition (C) No.15976 of 2023, whereby the learned Single Judge has dismissed the said writ petitions, filed by the Appellant(s), and upheld that the order(s) both dated 8th November, 2023 passed by the Appellate Tribunal for Electricity ('APTEL') allowing the impleadment of M/s Reliance Industries Limited ('RIL').
2. The facts of the case to the extent relevant for the present appeal are that RIL on 07th November, 2016 submitted a request to Petroleum and



Natural Gas Regulatory Board ('PNGRB') for declaring the pipelines ("ATF Pipeline") originating from refineries of Appellant(s) i.e., Hindustan Petroleum Corporation Ltd. and Bharat Petroleum Corporation Ltd. carrying Aviation Turbine Fuel (ATF) to Mumbai International Airport, be converted into common carrier or contract carrier under the Petroleum and Natural Gas Regulatory Board Act, 2006 ('PNGRB Act')

3. Pursuant to the said request through letter dated 7th November, 2016, PNGRB issued a Public Notice dated 04th May, 2018 ('Public Notice') for intention to declare the ATF pipeline from the Mumbai refineries of the Appellant(s) to the Mumbai International Airport as a common/ contract carrier in terms of Section 20 of the PNGRB Act. In the said Public Notice suggestions and objections, from any person likely to be affected by such decision were also invited by the PNGRB. Various entities¹ including RIL had given their comments and suggestions to the said Public Notice whereas Appellant(s) herein had objected to the same and prayed for withdrawal of the said Public Notice issued by the PNGRB.

4. The Appellant(s) filed Review Application before the PNGRB challenging the issuance of the public notice, which was dismissed vide order dated 21st February 2019 and against which an appeal being Appeal No. 161/2019 was also filed before the APTEL. Vide Order dated 28th September, 2022, the said appeal was dismissed as withdrawn by the APTEL, with liberty to the Appellant(s) herein to submit a comprehensive response to the Public Notice.

¹ 13 entities



5. Pursuant to the said order of APTEL and after considering the written response of Appellant(s) being filed, PNGRB passed separate order(s) dated 14th July, 2023 declaring the ATF pipeline of the Appellant(s), along-with associated storage facility, as a common/contract carrier under Section 20 of the PNGRB Act; and aggrieved by the same, the Appellant(s) filed their respective appeal before the APTEL challenging the said order dated 14th July, 2023 passed by the PNGRB.

6. During the pendency of the said appeal, RIL filed separate application before the APTEL for impleading itself as a party to the appeal(s) proceedings on the ground that it is a proper and a necessary party. The said application(s) were allowed by APTEL vide separate order(s) dated 08th November, 2023, which was the subject matter of challenge in the writ petition(s). The learned Single Judge dismissed their writ petition and held that the order(s) of the APTEL did not warrant any interference under Article 226 of the Constitution and that the orders were not which would require interference under Article 227 of the Constitution.

7. Learned Senior Counsel for the Appellant(s) states that the learned Single Judge failed to appreciate that for the purpose of declaration of a ATF pipeline as a common carrier, the *lis* is only between the PNGRB and the entity, who has laid down the pipeline; and there is no role of any other party.

7.1. He states that the impugned order dated 8th November, 2023 passed by the APTEL was in excess of jurisdiction as it sought to change the nature of proceedings before it to an appeal arising from adversarial proceedings, whereas, the appeal was only in relation to regulatory action of the PNGRB.



7.2. He states that the impugned order of the APTEL wrongly justified impleadment of RIL on the basis of their representation dated 7th November, 2016. He states that the appeal filed by the Appellant(s) herein before the APTEL contains no reference to the said representation and no allegation has been raised against RIL.

7.3. He states that RIL is merely one of the 13 participants, who furnished comments and suggestion in respect of the Public Notice dated 14th July, 2023 and RIL had no role beyond submitting the representation. He states that the PNGRB's separate order(s) dated 14th July, 2023 was a communication addressed solely to the Appellant(s) as it only affected the Appellant(s). He states that RIL therefore could not be considered as a proper party in the appeal(s). He states that infact the APTEL's order fails to record whether RIL is a proper or a necessary party.

7.4. He states that the interest of RIL and all other stakeholders is being espoused by the PNGRB in the appeal(s) and therefore, there was no legal basis for impleading RIL. He states PNGRB represent the balance and collective interest of all the stakeholder. He states that by permitting their impleadment, the appeal(s) has turned into direct dispute between the Appellant(s) and RIL. He states that RIL has no legal right to a declaration under Section 20 of the PNGRB Act. He states mere likelihood of a gain in future cannot be the basis for RIL to seek impleadment.

8. We have heard the learned senior counsel for the Appellant(s) and perused the record.

9. We may note at the outset that vide APTEL's order dated 8th November, 2023, though, RIL has been impleaded in the Appeal(s), it has



been given a restricted right to file its reply in support of the separate order(s) dated 14th July, 2023 passed by the PNGRB. APTEL has clarified that RIL will not be entitled to any relief in the appeal independent of, or even as the consequence of, the order dated 14th July, 2023.

10. APTEL while considering the application for impleadment has reviewed the record and opined that since the entire process of declaring the ATF pipeline as a common carrier was initiated at the instance of RIL, it was of the opinion that the presence of RIL would enable it to effectively adjudicate upon all matters in dispute and it was also of the opinion that RIL has an interest in sustaining the order dated 14th July, 2023. The relevant paras of the impugned order of the APTEL dated 8th November, 2023 reads as under: -

“In the IA filed by them, seeking their impleadment, the applicant has also stated that they were granted authorisation by the Central Government to market Aviation Turbine Fuel in the country; the authorisation is valid up to 30.11.2025; they have set up 28 Aviation Fuel Stations across the country, and are selling ATF to airline customers; they are a major producer and supplier of A TF, and are aggrieved by the Appellant's posing a major entry barrier, to them and others, to supply ATF to their customers.

It is clear, from the aforesaid, that the order, now under appeal before us is the culmination of the process initiated by the applicant, in the letter addressed by them to the PNGRB on 07.11.2016, to have the subject pipeline declared as a common carrier pipeline. The applicant is a competitor, and is evidently interested in sustaining the order impugned in this appeal, since that would enable them, among others, to enjoy the benefit of the subject pipeline being declared a common carrier pipeline. While we may not be understood to have expressed any opinion on the merits of the appeal, since we are at present concerned only with the question whether or not the applicant should be impleaded and arrayed as Respondent No. 2 in this appeal, it is relevant to note that, in case of the Appellant's success in the main appeal, the applicant would undoubtedly suffer substantial prejudice in having to continue incurring the huge cost of transporting Aviation Turbine Fuel to the Airport.



The voluminous material placed on record, some of which have been referred to hereinabove in this order, show that the presence of the applicant would enable this Tribunal to effectively adjudicate upon all matters in dispute in the appeal. We see no reason, in such circumstances, to deny the applicant's request to be impleaded and arrayed as Respondent No. 2 in this appeal.

We see no justification in acceding to the Appellant's request that the applicant be permitted to intervene, instead of being impleaded as a Respondent in the appeal, since that would, in effect, deny them the opportunity to file their reply to the appeal filed by the Appellant. Suffice it, instead, to make it clear that, as a consequence of their being impleaded as the 2nd Respondent in this appeal, the applicant would only be entitled to support the impugned order passed by the PNGRB, and shall not be entitled to claim any relief in the appeal independent of, or even as a consequence of, the impugned order.

(Emphasis Supplied)

11. The learned Single Judge after perusing the record has opined that in view of the public interest involved in the declaration of the ATF pipeline as a common carrier and considering the stand of RIL, opined that the impugned order passed by APTEL does not require interference under Articles 226 or 227 of the Constitution. The relevant findings of learned Single Judge read as under:-

"18. Applying the aforesaid law laid down by the Apex Court, this Court is of the opinion that the reasoning given by the Tribunal that the purpose of establishing the Board under the PNGRB Act amongst others, is intended to protect the interest of the consumers and entities engaged in specified activities while also promoting competitive markets. Further, looking into the reason given by the Board, accepting the views that for most of the stakeholders fuel costs, being 40% of the total operating cost, would reduce while open access would further promote competition and allow price reduction, translating to lower airfare over a period of time. It is also clear that the users of the pipeline would be able to import Aviation Turbine Fuel (ATF) to meet their requirements and utilize the pipeline infrastructure to transport Aviation Turbine Fuel (ATF) to the airport with ease and at a lower cost for which purpose the Respondent No.2, at whose instance the entire procedure was initiated, should be made a party to the proceedings at hand. Therefore such a stand, in the impugned order, cannot be said to be



so perverse which would require interference under Article 227 of the Constitution of India.

19. The facts as stated in the writ petition shows that in the public consultation process many of the stakeholders, including the Respondent No.2, had expressed their views on the need to declare the subject pipelines as common carrier pipelines. The Tribunal had noted that the Respondent No.2 in its submissions/suggestions had submitted that laying of another pipeline would result in infructuous investment as surplus capacity was available in the existing pipeline and using the surplus capacity would bring reduction in the infrastructure cost to be incurred by Aviation Turbine Fuel (ATF) suppliers, besides the travelling air passengers deriving immense cost benefits.

23. **If the Petitioners had the right to file an appeal against the Order of the Board had the Board had taken a stand that the pipeline is not a common carrier then surely the Respondent No.2 who was one of the chief principal objectors in the public notice and had also given suggestions that the pipeline should be made as a common carrier has the right to be impleaded as a party to the proceedings.** Looking at the object of the Act, the question which is before the Board and the public interest that is involved, this Court is of the opinion that the decision taken by the Tribunal 'in impleading the Respondent No.2 as a party to the proceedings does not require any interference under Article 226 of the Constitution of India.'"

(Emphasis Supplied)

12. Both, APTEL and the learned Single Judge have after examining the record arrived at the concurrent finding that the presence of RIL will enable the Tribunal to effectually adjudicate the questions involved in the appeal. It is well settled that addition of parties is a question of judicial discretion, which has to be exercised by the Court/Tribunal in view of the facts and circumstances of a particular case. A party can be joined as a respondent even though the petitioner does not deem it appropriate to implead the said party, if the Court/Tribunal is of the opinion that such a party will enable the Court/Tribunal to effectually adjudicate the issues involved in the proceedings. In the facts of this case, the findings of the Tribunal and



learned Single Judge show that they both considered RIL to be ‘proper party’² in the proceedings.

13. The impugned order of impleadment is within the jurisdiction of the Tribunal and has been passed in the exercise of its discretion after appreciating the facts of this case. We are unable to accept the submission of the Appellant(s) that the said order is without jurisdiction. The Appellant(s) have failed to show any irregularity by the Tribunal in the exercise of its discretionary jurisdiction; as noted above, the Tribunal has given sufficient reasons for allowing the impleadment of RIL. The exercise of jurisdiction by the Tribunal has already been reviewed by the learned Single Judge, who has examined the reasons and found them just.

14. As noted above, the Tribunal has granted a limited right to RIL so as to support the impugned order passed by PNGRB, thus, balancing the rights of the Appellant(s) herein. We find no illegality in the orders passed by the Tribunal and learned Single Judge, so as to exercise our appellate jurisdiction. Accordingly, the present appeals are dismissed along with pending applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 4, 2024/rhc/ms

² Anil Kumar Singh vs. Shivnath Mishra Alias Gadasa Guru (1995) 3 SCC 147, para 10