



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

Date of decision: 28th FEBRUARY, 2024

IN THE MATTER OF:

+ **W.P.(C) 15976/2023 & CM APPL. 64276/2023**

BHARAT PETROLEUM CORPORATION LIMITED Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. T. Sundar Ramanathan, Mr.
Vivek Pandey, Ms. Sukanya
Viswanathan, Ms. Aastha Sardana,
Mr. Krishan Singhal, Mr. Sumer Dev
Sethi, Ms. Shreya Sethi, Ms. Riya
Kumar, Mr. Rajat Navet and Mr.
Kushagra Pandit, Advocates.

versus

RELIANCE INDUSTRIES LIMITED & ANR. Respondents

Through: Mr. Ramji Srinivasan, Sr. Advocate
with Mr. K. R. Sasiprabhu, Mr.
Tushar Bhardwaj and Mr. Vikas
Sharma, Advocates.
Ms. Sonali Malhotra, Ms. Nidhi
Narwal, Mr. Mohit Budheraja and
Mr. Kartikey Joshi, Advocates for
PNGRB.

+ **W.P.(C) 15994/2023 & CM APPL. 64334/2023**

HINDUSTAN PETROLEUM CORPORATION LIMITED

..... Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. T. Sundar Ramanathan, Mr.
Vivek Pandey, Mr. Krishan Singhal,
Ms. Sukanya Viswanathan, Ms. Riya
Kumar and Ms. Shreya Sethi,
Advocates.



versus

PETROLEUM AND NATURAL GAS REGULATORY BOARD &
ANR.

..... Respondents

Through: Mr. Ramji Srinivasan, Sr. Advocate
with Mr. K. R. Sasiprabhu, Mr.
Tushar Bhardwaj and Mr. Vikas
Sharma, Advocates.

Ms. Sonali Malhotra, Ms. Nidhi
Narwal, Mr. Mohit Budheraja and
Mr. Kartikey Joshi, Advocates for
PNGRB.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioners herein, Bharat Petroleum Corporation Limited (BPCL) and Hindustan Petroleum Corporation Limited (HPCL) have approached this Court challenging an Order dated 08.11.2023 passed by the Appellate Tribunal for Electricity (*in short* 'APTEL') in I.A. No.2113/2023 in Appeal No.697/2023 & I.A. No.2112/2023 in Appeal No.698/2023 allowing an application for impleadment filed by Reliance Industries Limited.

2. Before the APTEL, the Petitioners had challenged an Order dated 14.07.2023 passed by the Petroleum and Natural Gas Regulatory Board (*in short* 'PNGRB') declaring the Petroleum and Petroleum Product Pipeline (ATF Pipeline) from the Mumbai refineries of the Petitioners to the Mumbai International Airport including all connected infrastructures defined in PPPL Authorization Regulations as common/contract carrier under Section 20 of the PNGRB Act, 2006 read with Regulation 10 of the PNGRB (Guiding



Principles for Declaring or Authorizing Petroleum and Petroleum Products Pipelines as Common Carrier or Contract Carrier) Regulations, 2012.

3. Shorn of details, the facts leading to the instant writ petitions as stated by the Petitioners are as follows:-

- i. It is stated that the Petitioners' commissioned a pipeline for its exclusive use for transporting Aviation Turbine Fuel (ATF) produced at Mumbai refinery of the Petitioners to their storage tanks located at Mumbai International Airport.
- ii. It is stated that there was a proposal for a combination between Mumbai International Airport Limited, Indian Oil Corporation Limited and the Petitioners herein for creation of the Mumbai Aviation Fuel Farm Facility Limited. The Competition Commission of India (CCI) *vide* Order dated 29.09.2014 permitted the combination which is called as the Mumbai Aviation Fuel Farm Facility Limited (*hereinafter called as the 'Aviation Facility Limited'*).
- iii. The Aviation Facility Limited informed Respondent No.2/PNGRB that the facility and the infrastructure could be used by any of the ATF suppliers in an open access and arm's length basis upon payment of regulated common fee.
- iv. It is stated that on 07.11.2016, Respondent No.1/Reliance Industries Limited (*in short 'RIL'*) submitted a request to the PNGRB for declaring the two pipelines, i.e., ATF pipeline emanating from the refineries of the Petitioners culminating into the Mumbai International Airport as a common carrier or contract carrier under the PNGRB Act.



- v. The Petitioners were informed by the Board regarding the request received from RIL regarding the declaration of the ATF pipelines emanating from the Petitioners refinery as a common carrier pipeline and asked the Petitioners to submit certain clarifications. According to the Petitioners, the clarifications were supplied.
- vi. The PNGRB issued a notice being Public Notice No. Infra/PPL/50/HPCL/MUMBAI-ATF/01/2018 on 04.05.2018 for declaration of the ATF pipelines, from the Mumbai refineries of the Petitioners to the Mumbai International Airport, as common/contract carriers under Section 20 of the PNGRB Act. The public notice also invited suggestions, including objections, from any person(s) or entity likely to be affected by such a decision. Several entities including RIL gave their comments and suggestions to the said Public Notice.
- vii. The Petitioners objected to the said Public Notice declaring the two ATF pipelines as common carriers and prayed for withdrawal of the said Public Notice by the PNGRB. The Petitioners also filed a petition before the PNGRB challenging the issuance of the said Public Notice stating that the Board had formed his opinion without giving the Petitioners any opportunity before issuance of the said Public Notice.
- viii. The review petition was dismissed by the Board *vide* Order dated 21.02.2019 against which an appeal being Appeal No.161/2019 was filed before the APTEL. *Vide* Order dated 28.09.2022, the said appeal was dismissed as withdrawn by the APTEL, with liberty to the Petitioners herein to submit its updated



- comprehensive response to the Public Notice dated 04.05.2018, declaring the ATF Pipeline as a common carrier and also directed the Board to consider the objections or suggestions received by the Board from the Petitioners and from other persons.
- ix. Pursuant to the said Order, the Petitioners gave their written submissions and ultimately *vide* Order dated 14.07.2023, the PNGRB decided to declare the ATF pipelines of the Petitioners as a common/contract carriers which is the subject matter of appeal before the APTEL.
- x. Pending the said Appeal, the RIL filed an application before the APTEL for impleading itself as a party to the proceedings on the ground that it is a proper and a necessary party. The said applications for impleadment by the RIL were opposed by the Petitioners and by the order impugned herein, the applications of the RIL have been allowed by the APTEL, leading to the filing of the instant writ petitions.
4. Mr. Sandeep Sethi, learned Senior Counsel for the Petitioners, contends that under the Scheme of PNGRB Act and the Regulations in question, particularly Section 20 of the PNGRB Act, for declaring a petroleum pipeline as a common/contract carrier does not envisage impleadment of any third party. It is contended that Section 20(1) of the PNGRB Act provides that if the Board is of the opinion that it is necessary or expedient to declare an existing petroleum pipeline for transportation of petroleum, petroleum products and natural gas or an existing city or local natural gas distribution network as a common/contract carrier or to regulate or allow access to such pipeline or network, it will give a 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 the decisions but Section 20(2) of the PNGRB Act restricts the hearing only to the entity owning the pipeline and no one else. It is contended that when there is no hearing envisaged under Section 20(2) of the PNGRB Act then the corollary or the sequitur is that the RIL cannot maintain an application for impleadment before the APTEL and therefore it is neither a necessary nor a proper party to the proceedings.

5. To buttress his submission, learned Senior Counsel for the Petitioners also relies on Regulation 10(1) of the PNGRB (Guiding Principles for Declaring or Authorizing Petroleum and Petroleum Products Pipelines as Common Carrier or Contract Carrier) Regulations, 2012, stating that Regulation 10(1) also mandates a hearing only to the entity which has laid down the pipeline and to no one else. It is, therefore, stated that for purposes of declarations as to whether the pipelines should be declared as a public carrier or contract carrier, the *lis* is only between the Board and the persons who has laid down the pipeline and the role of all others is limited only to give their suggestions in response to a public notice and the Scheme of the PNGRB Act does not envisage a hearing to any other person.

6. Learned Senior Counsel for the Petitioners has contrasted the provisions of the 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'*) with the PNGRB (Guiding Principles for Declaring City or Local Natural Gas Distribution Networks as Common Carrier or Contract Carrier) Regulations, 2020 (*hereinafter referred to as 'the 2020*



Regulations'). He contends that under Regulation 6(1) and 6(3) of the 2020 Regulations, objections are invited from all persons/entities affected but Regulation 6(5) of the 2020 Regulations grants an open house meeting to all persons/entities who state their objections and suggestions. He, therefore, contends that wherever the Legislature wanted to give a hearing to all persons, it has specifically made provisions for a hearing of the persons and where it did not want it to make an open house hearing, then consciously the Legislation has not made it as a part of the Regulations. He, therefore, states that when the RIL was not entitled to a hearing before the PNGRB, it automatically is not entitled to any hearing before the APTEL.

7. Mr. Sethi further states that the effect of permitting impleadment of such parties will open the floodgates of all necessary parties including airlines who would be the ultimate consumers of the ATF to interfere in the proceedings which is not postulated under the Act. He contends that the PNGRB is both a Regulator and an Adjudicator and has a unique position under the Act of wearing two hats. He states that the scheme of the PNGRB Act makes a clear distinction of the Board as a Regulator and as an Adjudicator. He states that under the Regulatory regime, the PNGRB issues a public notice and invites objections and suggestions but in its Adjudicatory *avatar*, the PNGRB hears only the party which needs to be heard, which in this case are the Petitioners who laid the pipelines, and need not hear any other party even if they give their objections under the Regulatory regime. Mr. Sethi, therefore, states that the impugned order cannot be sustained as it has the effect of altering the nature of proceedings before the APTEL.

8. Mr. Sethi further contends that the decision of the APTEL to uphold or not to uphold the decision of the PNGRB dated 14.07.2023 declaring the



ATF pipeline as a common carrier will not cause prejudice to RIL and since no prejudice is caused to the RIL, it cannot be a necessary or a proper party under the *lis*.

9. *Per contra*, Mr. Ramji Srinivasan, learned Senior Counsel for the Respondent/RIL, contends that the two Regulations are incomparable because under the 2020 Regulations, the involvement of the stakeholders which comprises of various entities, shippers and consumers at large whereas in the 2012 Regulations, the stakeholders are less, specific and restricted only to marketing and distribution of petroleum products and, therefore, the contention of the Petitioners in comparing the two Regulations cannot be an apt guideline to decide as to whether RIL can be impleaded as a party or not.

10. Mr. Ramji Srinivasan, learned Senior Counsel for Respondent/RIL, states that the entire process was initiated at the instance of RIL, and, therefore, it cannot be stated that RIL does not have any stake in the *lis*. He further states that the submission of the Petitioners, that RIL could not be aggrieved by any order of the APTEL, is incorrect. Mr. Srinivasan draws the attention of this Court to Section 33 of the PNGRB Act which provides for an appeal from a decision of the Board. He states that Section 33 of the PNGRB Act postulates that any person aggrieved by an order of the Board may prefer an appeal. He, therefore, contends that if the Board had taken a decision not to declare the pipelines in question as a contract carrier, then RIL could certainly have maintained an appeal against such a decision and if RIL could have maintained an appeal against the said decision, then it automatically becomes a necessary and a proper party before the APTEL. He submits that RIL can maintain an application for impleadment as well.



He also states that the power of the High Court while exercising its jurisdiction under Article 227 of the Constitution of India is extremely narrow and the order of the APTEL is not so perverse that this Court should substitute its own conclusion to one arrived at by the APTEL which has allowed the application for impleading RIL in the appeals filed by the Petitioners herein.

11. Heard learned Counsel for the parties and perused the material on record.

12. The Tribunal while deciding the application for impleadment has placed reliance upon the preamble of the PNGRB Act. The Tribunal held that the PNGRB Act has been established to protect the interest of the consumers and entities engaged in specified activities and to promote competitive markets. The Tribunal was of the opinion that the Impugned Order under appeal before the Tribunal records that during the public consultation process many of the stakeholders had expressed their views on the need to declare the subject pipeline as a common carrier pipeline. Comments were received from 13 entities and the same were hosted on the website of the PNGRB and the Petitioners, Appellants before the Tribunal, also gave their comments and views. The Tribunal held that most of the stakeholders, including the Petitioner herein, have expressed that the fuel cost are almost 40% of the total cost for entities operating out of the Mumbai International Airport, and hence open access would promote competition and allow price reduction, translating to lower airfare over a period of time. It will also allow operators to import Aviation Turbine Fuel (ATF) to meet their requirements and utilize the pipeline infrastructure to transport ATF to the airport with ease and at a lower cost. The Tribunal was



also of the opinion that looking at the nature of risk and the fact that the entire proceedings have been initiated at the instance of RIL, i.e., Respondent No.2 herein, the Respondent No.2 ought to be impleaded as Respondents to the proceedings. The Tribunal was also of the opinion that looking at the voluminous material placed on record and the fact that the Respondent No.2 would represent the interest of the potential users of the carrier, the Respondent No.2 must be impleaded as a party.

13. The short question which arises for consideration is as to whether the Order of the Tribunal is so perverse or the view taken by the Tribunal is such which would require interference under Article 226 of the Constitution of India.

14. It is well settled that the power to issue a writ of certiorari under Article 226 of the Constitution of India and the supervisory jurisdiction under Article 227 of the Constitution of India are to be exercised very sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. It has been held by the Hon'ble Apex Court in a number of Judgments that while exercising jurisdiction under Article 226 of the Constitution of India for issuing a writ of certiorari or under Article 227 of the Constitution of India for supervisory jurisdiction, care, caution and circumspection need to be exercised and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings, the High Court must avoid to interfere in such proceedings.



15. It is also well settled that the High Court while exercising jurisdiction under Article 226 of the Constitution of India for issuing a writ of certiorari should not convert itself into a court of appeal to correct errors which are of technical nature. The Apex Court in State of A.P. v. Chitra Venkata Rao, (1975) 2 SCC 557 has observed as under:

“23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477 : (1964) 5 SCR 64]”

16. Similarly, the Apex Court in Estralla Rubber v. Dass Estate Private Limited, 2001 (8) SCC 97, explained the scope and ambit of Article 227 of the Constitution of India and has observed as under:



"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

7. This Court in Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand [(1972) 1 SCC 898 : AIR 1972 SC 1598] in AIR para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case Waryam Singh v. Amarnath [AIR 1954 SC 215 : 1954 SCR 565] . This Court in Bathutmal Raichand Oswal v. Laxmibai R.



Tarte [(1975) 1 SCC 858 : AIR 1975 SC 1297] has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order."

17. The Apex Court in Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil, (2010) 8 SCC 329, after placing reliance on a number of Judgments, has observed as under:-

"49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over



the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh [AIR 1954 SC 215] and the principles in Waryam Singh [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, “within the bounds of their authority”.

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a



possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain



public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality.”
(emphasis supplied)

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.

20. The Apex Court in Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay, (1992) 2 SCC 524, while deciding a issue as to who would be a proper party in a suit relating to a property and those in which the subject matter of litigation is a declaration as regards status or legal character, has observed as under:

“13. A clear distinction has been drawn between suits relating to property and those in which the subject matter of litigation is a declaration as regards status or legal character. In the former category, the rule of present interest as distinguished from the commercial interest is required to be shown before a person may be added as a party.

14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main



*objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. **The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in Amon v. Raphael Tuck & Sons Ltd. [(1956) 1 All ER 273 : (1956) 1 QB 357] , wherein after quoting the observations of Wynn-Parry, J. in Dollfus Mieg et Compagnie S.A. v. Bank of England [(1950) 2 All ER 605, 611] , that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:***

“The test is ‘May the order for which the plaintiff is asking directly affect the intervenor in the enjoyment of his legal rights’.”

(emphasis supplied)



21. Learned Counsel for the Respondent is also correct in contending that if the Board had taken a decision that the pipeline is not a common carrier then the Respondent No.2 which was the initiator of the entire proceedings and one of the objectors has a right to file an appeal. Section 33(1) of the Petroleum Act, 1934 provides that any person who is aggrieved by the Order of the Tribunal can prefer an appeal. The scope and ambit of the term ‘any person’ in the context of the Competition Act, 2002 has been observed by the Apex Court in Samir Agrawal v. CCI (Cab Aggregators Case), (2021) 3 SCC 136. The relevant portion of the said Judgment reads as under:

“21. Clearly, therefore, given the context of the Act in which CCI and NCLAT deal with practices which have an adverse effect on competition in derogation of the interest of consumers, it is clear that the Act vests powers in CCI and enables it to act in rem, in public interest. This would make it clear that a “person aggrieved” must, in the context of the Act, be understood widely and not be constructed narrowly, as was done in Adi Pherozshah Gandhi [Adi Pherozshah Gandhi v. Advocate General of Maharashtra, (1970) 2 SCC 484]. Further, it is not without significance that the expressions used in Sections 53-B and 53-T of the Act are “any person”, thereby signifying that all persons who bring to CCI information of practices that are contrary to the provisions of the Act, could be said to be aggrieved by an adverse order of CCI in case it refuses to act upon the information supplied. By way of contrast, Section 53-N(3) speaks of making payment to an applicant as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II of the Act, having been committed by an enterprise. By this sub-section, clearly, therefore, “any person” who



makes an application for compensation, under sub-section (1) of Section 53-N of the Act, would refer only to persons who have suffered loss or damage, thereby, qualifying the expression “any person” as being a person who has suffered loss or damage. Thus, the preliminary objections against the informant/appellant filing information before CCI and filing an appeal before NCLAT are rejected.”

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.

24. The writ petitions are dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 28, 2024

hsk