

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI**

(APPELLATE JURISDICTION)

**Appeal No. 265 of 2019 &
IA Nos. 1339, 1340 & 1407 of 2019**

Dated: 15th November, 2019

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson,
Hon'ble Mr. B.N. Talukdar, Technical Member (P&NG)**

In the matter of:-

GSPL INDIA TRANSCO LIMITED)
Through Mr. Nilesh Patel, Company Secretary)
GSPL Bhawan, North Wing, Plot No. E-18,)
GIDC Electronic Estate)
Nr. E-7 Circle, Sector-26, Gandhinagar-382028))
Gujarat, India) **...Appellant**

AND

- 1. PETROLEUM AND NATURAL)**
GAS REGULATORY BOARD,)
First Floor, World Trade Center,)
Babar Road, New Delhi-110001)
- 2. RAMAGUNDAM FERTILIZERS &)**
CHEMICALS LIMITED.)
Through Mr. Nirlep Singh Rai, CEO)
4th Floor, Mohta Building,)
4, Bhikaji Cama Place, ,)
R.K. Puram, New Delhi-110066) **...Respondents**

Counsel for the Appellant(s) : Mr. M. G. Ramachandran, Sr. Adv.
Mr. Piyush Joshi
Ms. Sumiti Yadava
Mr. Abhishek Prakash
Ms. Meghna Sengupta

Counsel for the Respondent(s) : Mr. Prashant Bezboruah for R-1

Mr. AVS Subramanyam
Mr. Niraj Kumar R-2

JUDGMENT

Per Hon'ble Mr. B. N. Talukdar, Technical Member, (Petroleum and Natural Gas)

1. The Appellant, GSPL India Transco Ltd., is a company incorporated by a consortium led by Gujarat State Petronet Limited (GSPL) in accordance with the terms and conditions stated in the MoU dated 23.04.2010 for implementation of the Mallavaram-Bhopal-Bhilwara-Vijaipur Pipeline (MBBVPL) Project. The Appellant is accordingly engaged in the laying, building, operating and expanding the MBBVPL common carrier pipeline.
2. The Respondent No. 1, the Petroleum and Natural Gas Regulatory Board (the Board) is a statutory body constituted under the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006 ("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 and for matters connected therewith or incidental thereto.

3. The Respondent No.2, M/s Ramagundam Fertilizers and Chemicals Ltd (RFCL) is a Joint Venture Company of National Fertilizers Limited (NFL), Engineers India Ltd.(EIL) and Fertilizer Corporation of India Ltd.(FCIL). It was incorporated on 17th Feb, 2015 for setting up of gas based urea manufacturing plant at Ramagundam with capacity of 2,200 MTPD Ammonium Unit and 3,850 MTPD Urea Plant at an estimated project cost of Rs. 6,120 crores.
4. In the instant appeal, the Appellant has challenged certain specific decisions of the Respondent No. 1, the Board

communicated to the Appellant vide its letter No. Infra/PL/Monitoring/MBBVPL/05 dated 21.06.2019.

5. The impugned decisions of the Board were communicated vide para 4 and 7 of the letter and the impugned decisions by the Board were as under:

- The Board has rejected the Appellant's application dated 29.05.2017 for laying a 29.5 Km long dedicated pipeline from the tap-off point located at Intermediate Pigging Station-03 (IPS-03) of the MBBVPL to RFCL premises.
- The Board has stated that Regulation 21(3) and 2(1)(h) of the Petroleum and Natural Gas Regulatory Board (Authorising Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008 will be applicable to the 29.5 Km long pipeline laid to RFCL premises.
- The Board has alleged that laying of 18" x 363 Km long pipeline by the Appellant as part of MBBVPL has violated the authorization granted to the Appellant for laying of the MBBVPL.

6. The gist of the facts of the case is as under:

- (i) The Board on 07.07.2011 granted authorization to M/s Gujarat State Petronet Ltd (GSPL) to lay, build, operate or expand natural gas pipeline along the route of Mallavaram (Andhra Pradesh) – Bhopal(MP) – Bhilwara (Rajasthan)-Vijaipur(MP) under the PNGRB (Authorising entities to Lay, Build, Operator or Expand Natural Gas Pipelines) Regulations, 2008. Subsequently, on 27.07.2012, the Board transferred the above authorization in favour of M/s GSPL India Transco Limited (GITL), the Appellant pursuant to a request made by GSPL.
- (ii) On 08.07.2016, the Appellant and Respondent No.2, RFCL signed a Gas Transportation Agreement(GTA) to transport gas to RFCL's new ammonia and urea plants at the existing site of Fertilizer Corporation of India Ltd's (FCIL) Ramagundam unit. The Appellant has signed the agreement as transporter and RFCL as the shipper of gas. The Appellant will supply gas to RFCL from its MBBVPL common carrier pipeline from its tap-off point located at Intermediate Pigging Station-03(IPS-03).

(iii) After signing the GTA, RFCL requested Appellant vide letter dated 30.08.2016 to take up the matter of transportation tariff with the Board and intimate the Board's decision to it. On 29.05.2017, the Appellant sent an application to the Board for developing a dedicated pipeline of 29.5 Kms of 18" diameter from MBBVPL tap-off point (TPS-03) to RFCL's plant at Ramagundam under Regulation 19(2) Of the PNGRB Authorisation Regulations and submitted a detailed feasibility report on the proposal. On 14.06.2017, the Board thereafter sought the following documents and clarifications from the Appellant :

- Documentary evidence in support of the agreement between the customer and the transporter/shipper for supply of gas.
- Clarifications as to why the proposed pipeline could not be considered as a spur line as opposed to dedicated line in accordance with Regulation 21(3) read with 2(1)(f) of the Authorisation Regulation.

(iv) On 17.06.2017, the Appellant provided the clarifications to the Board stating that the proposed pipeline is a dedicated pipeline since it is planned to deliver gas only to a specific customer viz., RFCL for its own use and not for resale. As per the Appellant, the Regulation 2(1)(f) does not include a dedicated pipeline in the definition of natural gas pipeline. The Board on 24.07.2017, responded to the Appellant's letter asking for additional clarifications on the proposal and also mentioned that since the Board did not have proper quorum to hear the matter, the proposal would be discussed by the Board once the quorum is met. Additional clarifications that the Board asked for comprised of the following:

- The statutory basis by which the proposed pipeline can have a separate legal characteristic from the main pipeline.
- The implications of transportation tariff for the specified customer which may draw gas from the proposed pipeline.

- The modalities of access to the third party customers to market gas situated along the proposed pipeline.
- (v) The Appellant on 10.08.2017, responded to the Board on the above issues and on 27.12.2017, the Appellant requested the Board to hear the proposal along with its views submitted on 10.08.2017 since the requisite quorum of the Board was now met. Accordingly, a progress review meeting was held by the Board on 09.01.2018 mainly with respect to the Appellant's main MBBVPL project and minutes recorded. Subsequently on 05.02.2018, the Appellant wrote to the Board submitting the requisite information/clarifications sought by the Board vide the minutes of the meeting. During 30.07.2018 – 18.10.2018, the communications between RFCL and the Board continued on MBBVPL including transportation tariff of the proposed 29.5km pipeline.
- (vi) Communication continued between the Board and the Appellant on the subject till 25.04.2019 and on 25.04.2019, the Appellant inter alia stated that the

board in some other cases, issued acceptance to dedicated pipeline emanating from a common carrier pipeline. The Appellant also contended that as per Regulation 19(2)(c) of the Authorisation Regulations, in absence of advice from the Board within 30 days of application, the dedicated pipeline of the Appellant would be deemed to be accepted by the Board and the tariff would be the mutually agreed tariff between the Appellant and RFCL. Later, on 21.06.2019, the Board issued the impugned order to the Appellant regarding the Appellant's application for laying the dedicated pipeline and hence the instant appeal by the Appellant to Appellate Tribunal for Electricity.

7. We have heard Mr. M. G. Ramachandran, learned senior counsel appearing for the Appellant and perused the written submissions made by the Appellant. The gist of submissions is as under :

- (a) The Respondent Board has erroneously and without any legal basis, rejected and disposed the Appellant's application dated 29.05.2017 for laying a 29.5 km pipeline from the tap-off point located at

Intermediate Pigging Station-03 (IPS-03) of MBBVPL after a lapse of 2 years from the date of application and after the said pipeline has already been laid by the authorized entity as a dedicated pipeline. The Board was required to advise the Appellant on the application within 30 days of the application as per Regulation 19(2) of the Authorisation Regulations which the Board did not do. Hence, the dedicated pipeline is deemed to be accepted by the Board w.e.f. 10.09.2017 as per Regulation 19(2)(e) of the Authorisation Regulations.

- (b) Under Regulation 2(1)(f) of the PNGRB Authorisation Regulations, a "natural gas pipeline" includes spur-lines but excludes "dedicated pipeline laid to transport natural gas to a specific customer to meet his requirement and not for resale". A bare perusal of the said regulation clearly indicates that a 'dedicated pipeline' is essentially a pipeline laid to transport natural gas to a specific customer for its own requirement and not for resale. Therefore as per Regulation 2(1)(f) of the PNGRB Authorisation

Regulations, the proposed pipeline of 29.5 km is undoubtedly a dedicated pipeline as it is being laid to transport natural gas to a "specific customer" i.e., RFCL, for RFCL's own consumption and not for resale.

- (c) The Respondent Board has erroneously considered the proposed pipeline to be a spur-line under Regulation 21(3) of the PNGRB Authorisation Regulations, which reads as :

"(3) Laying of spur lines :

No separate authorization is required for laying spur-lines originating from the authorized natural gas pipelines within its tariff zone as per clause (h) of sub-regulation (1) of regulations (2) and during its economic life, so long as the usage or purpose of the pipeline already authorized is not changed subject to the spur-lines meeting all requirements provided in clause (o) of regulation 2 of the Petroleum and Natural Gas Regulatory Board (Determining Capacity of Petroleum, Petroleum Products

and Natural Gas Pipeline) Regulations, 2010 defining spur lines".

What follows from a bare reading of the above regulation is that Regulation 21(3) is applicable to spur lines. In this regard it may be noted that as per Regulation 2(1)(f) of the PNGRB Authorisation Regulations, a spur-line is a "natural gas pipeline". However, as per the same Regulation 2(1)(f) a dedicated pipeline is not a "natural gas pipeline". Therefore, a dedicated pipeline not being a "natural gas pipeline", cannot be considered to be a spur line under any circumstance.

In the light of the above, Regulation 21(3) of the PNGRB Authorisation Regulations is inapplicable.

- (d) The Appellant has signed the GTA on 08.07.2016 with RFCL to lay the 29.5 km long line as a dedicated pipeline which becomes clear from clause 6.5 which reads as under:

"6.5 Dedicated Pipeline Rate:

Upon receipt of PNGRB approval, the Dedicated Pipeline Rate shall be determined

by the Transporter in accordance with "Petroleum and Natural Gas Regulatory Board (Protection of Consumer Interest in respect of Dedicated Pipeline for Natural Gas) Guidelines 2010 and amendments thereof.

Both the parties further agree that if such Dedicated Pipeline is subsequently declared as "Common Carrier Pipeline", the same shall be governed by relevant PNGRB regulations. For the purposes of this Clause 6.5 Common Carrier Pipeline shall be in accordance with the Petroleum and Natural Gas Regulatory Board Act, 2006 (NO. 19 OF 2006), notified via Gazette Notification dated 31st March 2006 and amendments thereof."

- (e) Under the PNGRB Act, Dedicated Pipeline has been recognized as an exception to common carrier/contract carrier pipeline. The term 'Common

Carrier' has been defined in Section 2 (j) of the PNGRB Act as under:

*"(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 a 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."*

- (f) The 29.5 km line cannot be treated as a spur line as contended by the Board since this line has a different source and has compressors.

'Spur-Line' has been defined in the PNGRB (Determining Capacity of Petroleum Products and Natural Gas Pipeline) Regulations, 2010 as under:

*"(o) "spur-line" means a pipeline necessarily originating or branching out from the trunk or transmission pipeline or sub-transmission line or another spur line or from a terminal station on the existing transmission or trunk pipeline with diameter and capacity not greater than the trunk or transmission pipeline but having no compression facility for supply of natural gas to one or more consumers. **Any pipeline having a separate gas source or a compressor shall not be treated as a spur-line.** The length of spur-line may not depend upon the length of the trunk pipeline. A spur-line must use the capacity*

of trunk pipeline in order to transport gas. Spur line includes branch line also;"

(g) It is settled position that a dedicated pipeline can be a line originating from the regulated pipeline and irrespective of length, even if the length otherwise falls within the extent specified for a spur-line. In this regard, following judgment is relied upon.

- GAIL India Ltd Vs. Shyam Industries, (2012) SCC Online APTEL 49, at Para 30 (Page 9) read with the decision of the PNGRB dated 25.05.2011 paras 34 to 41.

(h) The Board itself has approved dedicated pipelines within the tariff zone of common carrier pipeline in a number of cases, viz., GAIL(India) Ltd's Gujarat Regional Pipeline network, Common carrier network of GAIL's KG basin, East West Natural Gas Pipeline, GSPL's Mora Sajod Pipeline etc.

(i) As regards the violation of the MBBVPL authorization, the Appellant has not violated any authorization

terms and conditions. The authorization does not stipulate to lay a 42" diameter pipeline. There is no violation of developing a pipeline of the required capacity which is the parameter appears in the authorization and not the diameter of the pipeline. The 18" diameter line is accordingly laid to cater for the capacity. If in future, additional capacity is required , it will be fulfilled by laying an additional loop line as and when required.

8. We have heard Mr. Prashant Bezbourah, learned counsel appearing for the Board. We have also perused the submissions made by the Board. The gist of submissions is as under :

- (i) The present appeal deserves to be dismissed without even considering the merits on the ground of suppression/concealment of material documents and facts. The Appellant has not placed the facts and documents before the Tribunal, the correspondences that took place between the Appellant and M/s Indian Oil Corporation Ltd (IOCL) which should have revealed that there were more than one potential

customers for the 29.5 km pipeline on the date of filing the appeal. Referring to IOCL's letter dated 13.09.2018, the Appellant wrote to IOCL on 15.09.2018 stating that it shall be pleased to provide connectivity to IOCL CGD Project from tap-off point at IPS-03 of MBBVPL. On 02.05.2019, however, IOCL wrote back to the Appellant saying that connecting from IPS-03 would not be feasible and instead was proposing to have the connectivity from Ramagundam. In this connection, IOCL also had written to the Board on 17.05.2019 requesting to have the connectivity from Ramagundam to its CGD projects. The Appellant did not accede to IOCL's request to give connectivity from Ramagundam as it would have stopped the Appellant to call the 29.5 km line a dedicated line.

- (ii) The Appellant has also suppressed/concealed various office memoranda and minutes of meetings held at Niti Ayog to discuss various issues, viz., revival of the closed urea plant of RFCL at Ramagundam, completion of the Appellant's gas pipeline to

Ramagundam, tariff for the 29.5 km pipeline and amendments in the GTA between the Appellant and RFCL etc. Niti Ayog was advised by the Principal Secretary to the Prime Minister in a meeting held on 03.12.2018 to resolve all the above issues in consultation with various stakeholders. Subsequently, a committee was also constituted on 23.07.2019 headed by Mr. Dharampal, Additional Secretary, Ministry of Chemicals and Fertilizers to resolve the pending issues between the Appellant and RFCL where the Appellant is also a member of the committee. Once the Board declared the 29.5 km line as a spur line and not a dedicated line, the committee constituted was inter alia to consider amendments to the GTA signed between the Appellant and RFCL accordingly.

- (iii) The Appellant has also not disclosed its own letter dated 29.06.2017 addressed to the Board where it clearly stated that the Appellant shall lay approximately 363 km 18" pipeline from

interconnection points to RFCL plant as a part of MBBVPL.

- (iv) The position of law is well settled, in terms of various judgments of the Hon'ble Supreme Court of India, that when the Petitioner does not come to the Hon'ble Court with "clean hands", suppresses material facts and abuses the process of the Hon'ble Court, it is disentitled to obtain any relief from the Hon'ble Court. It is, therefore, most humbly submitted that the present Stay Application and the Appeal itself may be dismissed by this Hon'ble Tribunal.

In relation to the submissions made above, the Board relies on the Judgments of the Hon'ble Supreme Court of India in the case of K.D. Sharma Vs. Steel Authority of India Ltd. (2008) 12 SCC 481 (Paras 34 to 52 pages 492 to 497 of the Judgment) and Dalip Singh Vs. State of Uttar Pradesh and Others – (2010) 2 SCC 114 (Paras 1 to 10 pages 116 to 119 of the Judgment).

- (v) Declaring the 29.5 km line as a dedicated line would defeat the purpose of the Act and Regulations as all such dedicated pipelines would be out of the purview of PNGRB. Instead of paying a reasonable tariff, RFCL would end up paying a substantially higher tariff. In all likelihood, the higher tariff paid by RFCL would have to be subsidized by the Ministry of Chemicals and Fertilizers. The ultimate impact of the higher tariff would also be passed on to the end consumer thereby substantially harming public interest.
- (vi) Appellant was authorized to lay the MBBVPL on 07.07.2011 and the completion schedule was 36 months from the date of authorization. The project is not yet complete.
- (vii) Paragraph 11 of the grant of authorization would clearly show that the Appellant agreed to be bound by the provisions of the Authorisation Regulations and the service obligations specified in Schedule 'J' to the PNGRB Authorisation Regulations. Clause 1(g) of

Schedule 'J' of the Authorisation Regulations states as under :

"Shcedule 'J'

1. General

.....

.....

- (g) The entity shall be under an obligation to provide connectivity to the consumer within a tariff zone in a natural gas pipeline on receipt of a specific request, the consumer undertaking to pay the applicable natural gas pipeline tariff, subject to availability of capacity and the technical and economic viability of the proposed connectivity."

The connectivity to RFCL comes under the second tariff zone of the MBBVPL and hence the Appellant is bound to provide connectivity to RFCL through a spur line from the common carrier MBBVPL. The 'tariff zone' definition is given in 2(1) of the Authorisation Regulations which reads as under :

"2. Definitions

(1).....

(h) "tariff zone" means the zone-

(i) of a length of three hundred kilometers each along the route of the natural gas pipeline from the point of origin till the end point :

Provided that the last zone of the natural gas pipeline may be of a length of three hundred kilometers or less;

(ii) a corridor along the natural gas pipeline with a width of upto ten percent of the total length of the natural gas pipeline without including the length of the spur lines or fifty kilometers measured from the nearest point on the surface of the natural gas pipeline on both sides, and including the point of origin and the end point of the natural gas pipeline, whichever is less, and

-

(a) the first tariff zone shall be counted with reference to any zone in which the point of injection of natural gas into the natural gas pipeline falls; and

(b) the subsequent tariff zone or tariff zones, as the case may be, shall be counted separately on either side along the contractual path for delivery of natural gas in the natural gas pipeline:

Provided that the natural gas pipeline tariff for transport of natural gas from the same source shall be uniform for all the customers located within the zone:

Provided further that the entity shall supply natural gas to any customer located in the zone subject to the techno-commercial feasibility of laying, building, operating or expanding a new spur line from the natural gas pipeline.

Explanation-

For the purposes of this clause, the point of origin and the end point in the natural gas pipeline as also the sequential numbering of the tariff zone or tariff zones, as the case may be, shall be indicated in the letter of authorization or fixation of the natural gas pipeline tariff by the Board."

- (viii) As per Clause 17.2.2 in the Application-cum-Bid Document (ACBD) issued for MBBVPL also inter alia state that the spur-lines shall be provided by the authorized entity as per customer's requirement en-route the pipeline in line with the provisions of the relevant Regulations.

As per this clause, 29.5 km line cannot be claimed as a dedicated line. It is a spur-line of the MBBVPL.

- (ix) The MBBVPL project was awarded to the Appellant through a competitive bidding process where the Appellant bid tariff for different zones. These quoted tariff by the Appellant cannot be changed so long as the line, including the spur lines, lie within the tariff zones. The Appellant, therefore, cannot charge

different tariff for the 29.5 km line since this line comes under the tariff zone as a spur-line. The Appellant is trying to call the 29.5 km line a dedicated line so that it can claim a higher tariff compared to the quoted tariff in the MBBVPL bidding.

- (x) Clause 20.2.2 of the ACBD states that the basic price in Indian Rupees should be quoted for the activities as per scope of the work as defined at clause 17. Hence, it is clear that it is the responsibility of the entity to connect the customers en-route the pipeline as per their requirement and the future cost of which the Appellant should have considered while quoting the tariff in the bidding process.
- (xi) Regulation 19(2) is not applicable to call the 29.5 km line to be a dedicated line since the Appellant won the MBBVPL project after a transparent bidding process.
- (xii) The Appellant has time and again assured the Board that it is willing to provide access to third parties to the 29.5 km pipeline which automatically disqualifies the line to be called a dedicated line since it will supply gas to more than one consumer. The claim of

the Appellant that the 29.5 km line is a dedicated line is not sustainable by its own undertakings/statements to the Board.

(xiii) The issue of laying spur lines in the MBBVPL project was clarified to all potential bidders during the bidding process as under :

"A specific query was asked by various entities during the bidding process of MBBVPL as under:

"Whether the spur-lines shall be provided by the authorized entity as per the customer's requirement en-route the pipeline, clarify whether the bidder is required to consider capital cost for spur lines while bidding and incorporate the same in FR to be submitted along with the bid."

PNGRB, vide letter dated 01.04.2010 (serial number 7) issued a clarification as under:

"Yes, the bidder is required to consider capital cost for spur-lines while bidding and incorporate the same in the FR to be submitted along with the bid. **It is further clarified that there will not be any additional tariff for such**

investment in future. However, the subsequent addition of spur-lines shall have to be undertaken to serve the consumers en-route the pipeline."

(xiv) As regards para 7 of the impugned order, it is submitted that laying of the 18" x 363 km MBBVPL is a complete violation of terms and conditions of authorization. The Appellant is laying the 18" x 363 km pipeline from interconnection point of RGTIL and MBBVPL to RFCL plant. The Appellant has deviated from the conditions on which the entity has won the bid. The Appellant has reduced the size of the main trunk pipeline from 42" to 18" and also shifted the originating point from Mallavaram to Kunchanapalli.

(xv) The total length of the main trunk pipeline to be quoted by any bidder at the time of bidding of MBBVPL was fixed as 1585 km. Accordingly, the Appellant also envisaged 1585 kms as trunk pipeline in the bid. The Appellant submitted its DFR along with its bid and as per the DFR, the Appellant considered laying of 42" diameter line for the first

600 kms, 36" for the next 300 kms, 30" for next 146 kms and 24" for remaining 539 kms.

9. We have heard Mr. Niraj Kumar, learned counsel appearing for Respondent No. 2, RFCL and perused the written submissions. The gist of the submissions is as under:

- (i) In terms of the Gas Transmission Agreement (GTA), the Appellant has to obtain necessary authorization from the Board with regard to the 29.5 km pipeline. RFCL agreed in terms of Clause 6.5 of the GTA dated 08.07.2016 that the transmission rate shall be as approved by the Board.
- (ii) The 29.5 km line definitely falls within the ambit of 21(3) of the PNGRB(Authorising Entities to Lay, Build, Operate and Expand Natural Gas Pipelines) Amendment Regulations, 2014. It does not fall within the ambit of Regulation 19(2). Regulation 21(3) deals with spur-line and Regulation 19(2) deals with dedicated line.
- (iii) Regulation 21(3) stipulates that if the spur-line falls within the tariff corridor, then no specific authorization is required for laying the spur line which

is applicable in the present case. If the spur- line falls outside the corridor, then an application for authorization has to be made to the Board and 60 days' time is provided to the Board for conducting public consultation and pass an order. If the order is not passed within 60 days, the regulations specifically provide for deemed provision. The statute here provides for a deemed approval. Contrary to this, in Regulation 19(2)(c) where an application seeking authorization for laying of dedicated pipeline is to be examined by the Board and to be advised to the entity within a period of 30 days, no deemed approval provision is stipulated in the Regulation. It is a case of deliberate exclusion in the Regulation. It means the Board has power to advise beyond 30 days also. Regulation 19(2)(c) states that the Board may advise the entity appropriately within 30 days. The reason for such exclusion of deemed approval is that if the Board finds a larger public cause for declaring a pipeline as a common carrier pipeline or a

part of a common carrier pipeline, viz., spur-line, then it can do so.

(iv) In the above context, the judgment of the Hon'ble Supreme Court of India in *Avishek Goenka vs Union of India & Ors* 2012 (5) SCC 275 (Full Bench) is relied upon, para 11 of which reads as follows :

"11. From the above provisions, it is clear that the Rules deal with every minute detail of construction and maintenance of a vehicle. In other words, the standards, sizes and specifications which the manufacturer of a vehicle is required to adhere to while manufacturing the vehicle are exhaustively dealt with under the Rules. What is permitted has been specifically provided for and what has not been specifically stated would obviously be deemed to have been excluded from these Rules. It would neither be permissible nor possible for the Court to read into these statutory provisions, what is not specifically provided for."

In fact Regulation 19(2)(c) has to be read in conjunction with Regulation 19(2)(f) which stipulates that even dedicated pipeline can be converted into a common carrier pipeline in public interest. Hence, an inference can be drawn that the laying of a dedicated pipeline is not a matter of right.

- (v) Regulation 2(o) of the PNGRB(Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010 defines 'spur line' and it states that a spur line can supply natural gas to one or more consumers. Merely because a line is laid to supply gas to a specific consumer does not construe that the line is a dedicated line.
- (vi) Since the MBBVPL is a bid out natural gas pipeline for which the Appellant quoted the transportation tariff, and duly authorized accordingly by the Board, the Appellant now cannot change the tariff for the spur line. It is also clear from the Capacity Tranche (CT) agreement dated 08.07.2016 signed alongwith the GTA between RFCL and the Appellant. In clause 13,

it was agreed that transmission tariff shall be applicable as approved by the Board for MBBVPL.

The above clearly demonstrates that the tariff chargeable under the GTA shall be regulated tariff as declared by the Board.

IN OUR CONSIDERATIONS

10. The Appeal is concerning the laying of the 18" x 29.5 km line by the Appellant from the tap-off point located at the Intermediate Pigging Station – 03 (IPS-03) of the MBBVPL to Ramagundam Fertilizer and Chemicals Ltd (RFCL). So far as the issue is concerned, this line is, however, very much linked to the common carrier pipeline MBBVPL being laid by the Appellant. This pipeline is still under construction though it was scheduled to have been completed by July, 2014.
11. As per the prayer, the issues that need to be resolved are two, which are as under:
 - (i) Whether the 18" x 29.5 km pipeline is a dedicated pipeline or a spur-line of the main MBBVPL; and
 - (ii) Whether the 18" x 363 km pipeline laid by the Appellant has violated the terms and conditions of

authorization for the MBBVPL which would attract initiation of action by the Board against the Appellant.

12. The laying of 29.5 km line also involves the consumer of gas that will be transported through this line since depending on declaration of the line as dedicated or spur-line, the transmission tariff will vary and this tariff is going to affect the gas consumers. The consumer as on date of the appeal is the RFCL who is the 2nd Respondent now after due impleadment.
13. As regards the first issue as above, it would be necessary to go through the relevant regulations of the PNGRB along with the relevant Sections of the PNGRB Act, 2006 and examine the issue vis-à-vis the arguments and submissions made by the Appellant, the Board and RFCL. It would also be necessary to examine the relevant clauses of the GTA signed by the Appellant and RFCL while dealing with the instant case.
14. To lay the MBBVPL, authorisation was granted by the Board On 07.07.2011. As per the Board, the authorized size of the pipeline was 42" with length of 1585 km having the originating point at Mallavaram. The Appellant has developed the first phase of the pipeline with a length of 363 km originating from Kunchanapalli, the interconnection point of RGTIL and MBBVPL

instead of Mallavaram to RFCL. The size of the pipeline is 18" against 42". The scheduled duration to complete the MBBVPL was three years from the date of authorization, i.e., by July, 2014, which is not complete as yet.

15. On 29.05.2017, before completion of the MBBVPL, the Appellant wrote to the Board indicating to lay a dedicated pipeline of 29.5 km length from MBBVPL's tap-off point, IPS-03, to RFCL's plant at Ramagundam. Here starts the dispute between the Appellant and the Board regarding this 29.5 km line.
16. The Appellant's contention is that it made its application to the Board to lay the 29.5 km line as a dedicated line under Regulation 19(2) of the PNGRB Authorisation Regulations, 2008 and as per Regulation 19(2)(c), the Board should have advised the Appellant within 30 days of the date of application appropriately, which the Board did not do. It is therefore, deemed to have been accepted by the Board. The Board's understanding is, however, totally contrary to the Appellant's understanding of the regulation. The Board's contention is that on expiry of 30 days from the date of application, it is nowhere stipulated in the regulations that the proposal on laying a dedicated pipeline is deemed to be accepted by the Board. On

this contradiction, we have examined the Regulation 19(2)(c) which reads as under :

“19. Provisions relating to dedicated pipelines for transport of natural gas.

(1)

(2)

(a)

(b)

(c) *In case, based on the examination of the comments received, the Board is of the view that instead of a dedicated pipeline natural gas pipeline would better serve the public purpose it may advise the entity appropriately within thirty days of the receipt of the information from the entity.”*

We note from above that the above regulation does not talk of any “deeming provision” for not advising the applicant by the Board within 30 days of application.

17. The above contention of the Board has also been iterated by RFCL. RFCL says that ‘deeming provision’ was deliberately excluded from the Regulation 19(2)(c). RFCL further contends

that in case of laying of spur-lines, the 'deeming provision' is included in the Regulation 21(3) of the PNGRB Authorisation Regulations. We have examined this Regulation which reads as under:

"21. Provisions regarding tie-in connectivity or extension of natural gas pipeline or laying of spur-lines.

(1)

(2)

(3) Laying of Spur-Lines :

No separate authorization is required for laying spur-lines originating from the authorized natural gas pipelines within its tariff zone as per clause (h) of sub-regulation (1) of regulation (2) and during its economic life, so long as the usage or purpose of the pipeline already authorized is not changed subject to the spur-lines meeting all requirements provided in clause (o) of regulation 2 of the PNGRB(Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipeline) Regulations, 2010, defining spur-line:

Provided that if a spur-line is proposed beyond the limits of tariff zone, the admissible tariff shall be the applicable tariff of the tariff zone from which the tap-off for the spur-line is taken; Provided further that in such instances beyond tariff corridor, the entity initiating the request shall inform the Board of its intentions along with the full details on the spur-line length, route, capacity and details of the customers to

be served and the Board after public consultation shall give its decision to the entity within sixty days of the receipt of the request. In case, no communication is sent by the Board in the aforesaid sixty days, the above request shall be deemed to be approved for authorization."

We note from above that 'deemed authorisation' provision is there in case of laying spur-line beyond tariff corridor.

18. The Appellant's contention is that if a line transports gas to a specific customer to consume for its own use and not for resale, as per Regulation 2(1)(f) of PNGRB Authorisation Regulations, the line is a dedicated line, but a spur-line is required to supply gas to more than one customer. The Board's contention is that simply because the 29.5 km line is laid to transport gas to a specific customer at this point of time, it can not be called as a dedicated line because a spur-line also can transport gas to a single customer as per Regulation 2(1)(o) of PNGRB(Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipelines) Regulations, 2010. We have examined both the above regulations which read as under:

Regulation 2(1)(f) of PNGRB Authorisation Regulations, 2008 :

2. Definitions

(1).....

(f) *"natural gas pipeline" means any pipeline including spur-lines for transport of natural gas and includes all connected equipment and facilities, such as, compressors, storage facilities, metering units etc, but excludes—*

(i) dedicated pipeline laid to transport natural gas to a specific customer to meet his requirement and not for resale;"

Regulation 2(1)(o) of PNGRB (Determining Capacity of Petroleum, Petroleum Products and Natural Gas Pipelines) Regulations, 2010:

"2. Definitions.

(1).....

.....

(o) "spur-Line" means a pipeline necessarily originating or branching out from the trunk or transmission pipeline or sub-transmission line or another spur-line

or from a terminal station on the existing transmission or trunk pipeline with diameter and capacity not greater than the trunk or transmission pipeline but having no compression facility for supply of natural gas to one or more consumers. Any pipeline having a separate gas source or a compressor shall not be treated as a spur-line. The length of spur-line may not depend upon the length of the trunk pipeline. A spur-line must use the capacity of trunk pipeline in order to transport gas. Spur-line includes branch lines also;"

We note that above definition of spur-line defeats the claim of the Appellant saying that a pipeline transporting gas to a specific customer is a dedicated line. The line can be a spur-line also as per the definition of spur-line. It has also been brought to our notice by the Board that the Appellant itself has time and again assured the Board that the Appellant is willing to provide access to third parties to the 29.5 km pipeline. It

means, in future, more customers of gas may draw gas from the 29.5 km line.

19. At this point itself, let us discuss the issue of compression facilities. The Appellant contends that a spur-line cannot have compression facilities installed on it. On this issue, we observe that the Appellant casually mentioned about these facilities in its submission dated 02.08.2019. There is no details of these facilities installed and even the location where it is installed. The learned counsel appearing for RFCL in the Court mentioned that there is no compressor installed in the 29.5 km line to RFCL. As per our opinion, if it is on the main MBBVPL, the issue would need to be viewed from a different angle. In absence of any details of installation of compressors, we are not considering this aspect while deciding the matter. Since the 29.5 km pipeline is laid when the common carrier MBBVPL is still under construction, we need to examine whether laying of this line is under the ambit of the terms and conditions of authorization of the MBBVPL.
20. Laying of the MBBVPL was awarded to the Appellant after following an open and competitive bidding process. The Bid No. BID/NGPL/02/2009/1/MBBVPL was floated in 2009 and

authorization was accorded to the Appellant by the Board on 07.07.2011. We have studied the relevant sections of the Application-cum-Bid Document (ACBD). The bid was floated under two bid systems, ie., Technical Bid and Financial Bid. In Section II, scope of work was defined clearly as to what exactly has to be done in the project. The relevant portion of Scope of work is as under:

"17.3 *Scope of Work:*

17.3.1 The entities bidding for this work shall be required to lay, build, operate or expand the natural gas pipeline to meet requirement of natural gas in industrial, commercial segments and CGD network etc., falling along the route of the proposed natural gas pipeline.

17.2 *Natural Gas Pipeline to be authorized:*

17.2.1

17.2.2.....

The spur-lines shall be provided by the authorized entity as per the

customer's requirement en-route the pipeline in line with the provisions of the relevant regulations.

.....

17.2.3 *It is the bidder's responsibility to obtain all information related to present gas supply position and existing and future customers, if any, falling along the route of the proposed natural gas pipeline."*

As regards the Financial Bid, following has been noted by us:

"20.2 Evaluation of Financial Bids.

20.2.1

20.2.2 *The basic prices in Indian rupees should be quoted for the activities as per scope of work defined at clause 17. Bidders shall indicate their rates/prices in clear/visible figures as well as in words.....*

20.2.3.....

20.2.4.....

20.2.5.....

20.2.6 *Bidder with the highest composite score shall be declared as successful in the bid."*

As pointed out by the Board, we have also examined Schedule 'J' of PNGRB Authorisation Regulations as referred at para 11 of the Authorisation accorded on 7.7.2011 :

"Schedule 'J':

1. General

.....

.....

(g) The entity shall be under an obligation to provide connectivity to the consumer within a tariff zone in a natural gas pipeline on receipt of a specific request, the consumer undertaking to pay the applicable natural gas pipeline tariff, subject to availability of capacity and the technical and economic viability of the proposed connectivity."

21. On conjoint reading of all above, it appears that the winning bidder is required to provide gas supply connectivity through spur-lines in future too and consequently the cost of laying these spur-lines would necessarily be considered in the financial bid. Let us now examine the definition of 'tariff zone' which is very much pivotal to above understanding. The definition of 'tariff zone' as given in 2(1) of the Authorisation Regulations reads as under :

"2. Definitions

(1).....

(h) "tariff zone" means the zone-

(i) of a length of three hundred kilometers each along the route of the natural gas pipeline from the point of origin till the end point :

Provided that the last zone of the natural gas pipeline may be of a length of three hundred kilometers or less;

(ii) a corridor along the natural gas pipeline with a width of upto ten percent of the total length of the natural gas pipeline without

including the length of the spur lines or fifty kilometers measured from the nearest point on the surface of the natural gas pipeline on both sides, and including the point of origin and the end point of the natural gas pipeline, whichever is less, and

-

(a) the first tariff zone shall be counted with reference to any zone in which the point of injection of natural gas into the natural gas pipeline falls; and

(b) the subsequent tariff zone or tariff zones, as the case may be, shall be counted separately on either side along the contractual path for delivery of natural gas in the natural gas pipeline:

Provided that the natural gas pipeline tariff for transport of natural gas from the same source shall be uniform for all the customers located within the zone:

Provided further that the entity shall supply natural gas to any customer located in the zone subject to the techno-commercial feasibility of laying, building, operating or expanding a new spur line from the natural gas pipeline.

Explanation-

For the purposes of this clause, the point of origin and the end point in the natural gas pipeline as also the sequential numbering of the tariff zone or tariff zones, as the case may be, shall be indicated in the letter of authorization or fixation of the natural gas pipeline tariff by the Board."

From the above definition, it is understood that the tariff zone includes the corridor along the route of the main pipeline upto 10 percent of the length of the pipeline or 50 km from the surface of the pipeline measured both sides of the pipeline including the point of origin and the end-point of the pipeline whichever is less. In the instant case, if the length of the pipeline is considered as 363 km, then the acceptable length

becomes 10% of this length, i.e., 36.3 km against the 29.5 km line to the RFCL plant. If we consider the total length of the pipeline as 1585 km as per authorization, then allowable length becomes 50 km against 158.5 km considered as 10% of the total length. In both the cases, the 29.5 km line falls under the tariff zone. In this context, we also note that the Board on 14.06.2017 after about 2 weeks from the date of application (29.05.2017) of the Appellant to lay the 29.5 km line, asked clarification from the Appellant as to why the proposed line could not be considered as a spur-line as opposed to a dedicated line in accordance with Regulation 21(3) read with Regulation 2(1)(f) of the Authorisation Regulations.

22. On the above issue of spur-line, the Board has brought to our notice that for the issue of laying spur-lines, there were clarifications sought by the potential bidders during the bidding process. The basic clarification was concerning the issue whether the authorized entity would be required to provide connectivity to the en-route customers of gas and whether the cost of such spur-line would need to be factored in the feasibility report to be submitted along with the bid. The Board

categorically replied to this query and we have noted the reply of the Board which reads as under:

"Yes, the bidder is required to consider capital cost for spur-lines while bidding and incorporate the same in the FR to be submitted along with the bid. It is further clarified that there will not be any additional tariff for such investment in future. However, the subsequent addition of spur-lines shall have to be undertaken to serve the consumers en-route the pipeline."

It also becomes apparent from above that the winning bidder is supposed to provide gas connectivity through spur-line in future too.

23. Above issue, however, would also need to be examined from the point of view of the contractual provisions made in the GTA signed between the Appellant and RFCL. The referred clause of the GTA by both the Appellant and RFCL is Clause 6.5 which reads as under:

"Dedicated Pipeline Rate

Upon receipt of PNGRB approval the Dedicated Pipeline Rate shall be determined by the Transporter in accordance with "Petroleum and Natural Gas

Regulatory Board (Protection of Consumer Interest in respect of Dedicated Pipelines for Natural Gas) Guidelines 2010 and amendments thereof".

Both the parties further agree that if such Dedicated Pipeline is subsequently declared as "Common Carrier Pipeline" the same shall be governed by relevant PNGRB regulations. For the purposes of this Clause 6.5 Common Carrier Pipeline shall be in accordance with The Petroleum and Natural Gas Regulatory Board Act, 2006 (No. 19 of 2006), notified via Gazette Notification dated 31st March, 2006 and amendments thereof."

It appears from above that the Board only has to decide the status of the line whether it is a dedicated line or spur-line. Whenever it is declared by the Board that the line is a part of the common carrier, then both parties agree to accept the common carrier tariff. The Board has finally declared the 29.5 km line as a spur-line and hence both the parties are required to accept the common carrier tariff.

24. In the above context, RFCL also has brought to our notice Clause 13 of the Capacity Tranche (CT) agreement dated

08.07.2016 signed between the Appellant and RFCL along with the GTA, where it is mentioned that the transportation rate would be determined by the Board. On this issue, we also note from the Appeal Paper Book at para 7.5 that RFCL sent a letter (Ref : RFCL/GTA-GITL/2016/02) dated 30.08.2016 to the Appellant, requesting the Appellant to take up the matter pertaining to transportation tariff with the Respondent Board for approval and intimate the Respondent Board's decision to RFCL. From above, it again appears that the onus of deciding the transportation tariff lies on the Board.

25. The Appellant contends that a dedicated line can also originate from a regulated pipeline (common carrier) and in the present case, the 29.5 km line is originating from the MBBVPL and hence it can still be a dedicated line. The Appellant has relied upon the judgment, viz., GAIL India Ltd vs. Shyam Industries (2012) SCC Online APTEL 49 at para 30 (page 9) read with the decision of the PNGRB dated 25.05.2011 (para 34-41).
26. In the above case, the linked judgment of APTEL is in Appeal No. 86 of 2011 in the matter of GAIL India Ltd vs. Shyam Industries & Ors. It is to be noted that the issues are not identical in Appeal No. 86 of 2011 before APTEL and in the

instant appeal. As recorded in the judgment in Appeal No. 86 of 2011, all the lines of the Respondents were laid in 1990's – much before the common carrier concept / PNGRB Act, 2006 and Regulations thereof came into existence. These lines were laid in short distances to supply gas to specific consumers from the fields of ONGC. The Board itself has stated, as recorded in the judgment, that these lines are dedicated lines and not spur-lines of common carrier, whereas in the instant case, the Board has declared that the Appellant's 29.5 km line to RFCL is a spur-line of MBBVPL. Circumstances under which this line has been declared as a spur-line are different. In the instant case, the main common carrier MBBVPL is still under construction and the Appellant is required to provide all spur-lines enroute the MBBVPL as per terms and conditions of authorization. At this point of time, laying a dedicated line from the main MBBVPL is untenable.

Even otherwise, to apply the decisions of the referred judgment, the Appellant has to come with facts and figures in respect of the instant case as an independent matter to have a legal view as to whether it is similar to the matter under the judgment referred or otherwise. The status of those dedicated

lines vis-à-vis the common carrier line at that point of time would also need to be examined with the current status of the 29.5 km line with respect to the common carrier line, i.e., MBBVPL.

27. The Appellant also contends that a pipeline having a separate gas source shall not be treated as a spur-line and the line to RFCL has a different gas source which is coming from the RGTIL. The Board's argument is different. As per the Board, a common carrier line can have different gas sources depending on different inlet points. Moreover, no gas source was mentioned in the bid document for MBBVPL. As per the Board, gas is coming from MBBVPL to the 29.5 km line as well as to other spur-lines. A similar contradiction has also been highlighted by the Appellant regarding approval of dedicated pipelines by the Board lying within the tariff zone of common carrier lines. The Board has argued that in these cases, the common carrier lines were not based on "tariff bidding" process but on "cost plus" basis. The situation and circumstances are totally different.

28. One more issue that has remained to be discussed which is the allegation of the Board that the Appellant has suppressed/concealed certain material documents and facts while bringing the appeal before the Tribunal. As per the Board, the main concealments are in regards to the following:

- (i) M/s Indian Oil Corporation's request to provide gas connectivity from the tap-off point at IPS-03 of MBBVPL and later from Ramagundam, i.e., the end-point of the 29.5 km line instead of IPS-03 for its CGD project. The Appellant did not agree to IOCL's request, otherwise the 29.5 km line would have more than one customer.
- (ii) Various office memoranda and minutes of meeting held at Niti Ayog to discuss various issues. These issues inter alia include completion of the Appellant's gas pipeline to Ramagundam and tariff thereon and amendments in the GTA between the Appellant and RFCL after decision of the Board on the status of the 29.5 km pipeline to Ramagundam. As per the Board, a committee was also constituted to resolve the above issues on 23.07.2019 headed by Additional

Secretary, Ministry of Chemicals and Fertilizers, where the Appellant is also a member of the Committee. The Appellant states that once the Board has declared the 29.5 km line as a spur-line, the Committee was to consider inter alia amendments to the GTA between the Appellant and RFCL accordingly. Niti Ayog was involved in the above issues as per advice of the Government vide a meeting held by the Principal Secretary to the Prime Minister on 03.12.2018.

- (iii) The Appellant's letter dated 29.06.2017 addressed to the Board stating that it shall lay a 18" x 363 km line to RFCL from interconnection points of MBBVPL.

We have examined these concealments and noted to be serious in nature but considering the overall merits of the case, we are not inclined to dismiss the Appeal on the basis of suppression/ concealments of facts/documents as contended by the Board.

29. To consolidate our thoughts, we have also considered the Extraordinary Notification of Government of India dated 20.12.2006 on policy for development of natural gas pipelines and city or local natural gas distribution networks which is read

in conjunction with the PNGRB Act, 2006 and the relevant regulations framed thereunder.

We are inclined to consider the content of para 1.3 under item 'Objective of the Notification', which reads as under:

"1. **OBJECTIVE:**

.....

.....

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

We observe that the 29.5 km line to RFCL as a spur-line, would have supplied natural gas to the consumer, viz., RFCL at a

reasonable price as quoted by the Appellant in its bid for MBBVPL.

30. Considering all the contentions and arguments advanced by the rival parties along with the provisions under relevant PNGRB Regulations etc., we do not find much reasons to get inclined to accept the Appellant's contention that the Board having failed to advise the Appellant appropriately within 30 days of its application to lay the 29.5 km line as dedicated line, it is deemed to have been accepted by the Board as a dedicated line.

In this regard, we have also taken reference of the judgment of the Supreme Court of India in Avishek Goenka vs. Union of India & Ors 2012 (5) SCC 275 (Full Bench) dated 27.04.2012 in WP(C) No. 265 of 2011. Para 11 of the judgment reads as under :

"11. From the above provisions, it is clear that the Rules deal with every minute detail of construction and maintenance of a vehicle. In other words, the standards, sizes and specifications which the manufacturer of a vehicle is required to adhere to while manufacturing the vehicle are exhaustively dealt with under the Rules. What

is permitted has been specifically provided for and what has not been specifically stated would obviously be deemed to have been excluded from these Rules. It would neither be permissible nor possible for the Court to read into these statutory provisions, what is not specifically provided for."

31. To rely on this judgment, we consider that in the instant case, Regulation 19(2)(c) of the PNGRB Authorisation Regulations, 2008 is pertinent. Since in this regulation, there is no 'deeming provision' after expiry of 30 days from the date of application by the Appellant to lay the 29.5 km line as dedicated line, it would neither be permissible nor possible for us to read into the statutory provisions, what is not specifically provided for. We have only drawn the principle of law from this judgment to the instant matter. Had the Legislature intended to mean so, it would have kept the 'deeming provision' in Regulation 19(2)(c) like the way it has kept in Regulation 21(3) of the PNGRB Authorisation Regulations, 2008.
32. We have also noted in the letter dated 29.06.2017 written by the Appellant to the Board on "Development of the MBBVPL" wherein the Appellant categorically stated that as a part of

phased development of MBBVPL, it is building the Kunchanpalli-Ramagundam pipeline.

The relevant para of the letter reads as under:

"As you are aware, GSPL India Transco Ltd (GITL) is implementing Mallavaram-Bhopal-Bhilwara-Vijaipur Natural Gas Pipeline (MBBVPL) project. We would like to inform you that GITL is going ahead with development of MBBVPL in a phased manner.

.....

.....

As part of phased development of MBBVPL, GITL has taken up development of pipeline upto RFCL on fast track basis and aims to complete the same by September, 2018. Under this, GITL shall lay approx 363 km (18" dia) of pipeline from interconnection point to RFCL plant. The said interconnection point at village Kunchanpalli (West Godavari, AP) where MBBVPL and RGTIL's EWPL cross each other, is approx 89 km from Mallavaram. Please refer map attached as Annexure-1.

In this regard, please note that development of this pipeline Section is along the original route. Also, GITL

shall build the authorized capacity over a period by laying loop line of required size."

From above, it becomes clear that the Appellant has constructed the 18" line from Kunchanapalli to Ramagundam as a first phase construction of the common carrier MBBVPL. It indicates that 29.5 km line is a spur-line and not a dedicated line.

33. We have reasons to believe that the Board had been intimating to the Appellant that the 29.5 km line to RFCL could come under the category of spur-line based on relevant regulations and the authorization granted to the Appellant for laying MBBVPL. This becomes very clear from the letter of the Board dated 14.06.2017 addressed to the Appellant within 30 days of the application to the Board vide letter dated 29.05.2017 for the Board's perusal. In the letter dated 24.07.2017, the Board also intimated that under regulation 21(3), no separate authorization is required for laying spur-lines originating from the authorized natural gas pipelines within its tariff zone as per clause (h) of sub-regulation (1) of regulation (2). The Board also mentioned in the same letter that at that point of time, the

quorum of three members in the Board was not available to consider the proposal for final decision.

34. Now coming to the impugned decision of the Board as per paragraph 7 of the impugned order, the Board's contention is that the Appellant has violated the terms and conditions of the authorization granted to the Appellant in regards to the MBBVPL and also its own DFR considerations while laying the 18" x 363 km line from Kunchanapalli. The Appellant has reduced the size of the main trunk pipeline from 42" to 18" and also shifted the originating point from Mallavaram to Kunchanapalli without taking any approval from the Board. The Appellant envisaged to lay the MBBVPL for a length of 1585 km as per the bid document. The Appellant's DFR considers different sizes of the MBBVPL for different sections of the line which it has violated while laying the line in reality.
35. On above, the Appellant contends that the size of the MBBVPL was not mentioned in the authorization granted by the Board and only capacity of the pipeline was mentioned. Moreover, the Appellant could expand the capacity of the pipeline in future by looping the line if so required.

36. On the above issues, we do not find much pleadings / arguments advanced by both the rival parties, viz., the Appellant and the Board. In the impugned order also, the Board has not issued any decisive order as to which action it would take for violating the terms and conditions of authorization granted for the MBBVPL. It has only said as to why this violation should not attract action against the Appellant as per the relevant regulations. The impugned order also does not carry much reasons as to why action can be taken against the Appellant.

We therefore, feel, we should not interfere in the matter at this stage. This issue deserves to be referred back to the Board. Having regards to the facts and circumstances of the case in our considered opinion, the other appeal to quash the impugned order passed by the Board vide para 4 of the order does not sustain and deserves to be dismissed.

ORDER

- (i) The appeal challenging the impugned order passed by the Board vide para 4 of the order rejecting the application

made by the Appellant to lay the 29.5 km long pipeline from MBBVPL to RFCL is dismissed.

- (ii) The matter regarding laying of the 8" x 363 km pipeline by the Appellant attracting action against the Appellant as per para 7 of the impugned order of the Board is remanded to the Board with a directive to hear the Appellant afresh and pass an order in accordance with law. The Board will pass the order within 3 months from today.

37. The appeal No. 265 of 2019 is disposed of in the aforesaid terms. Needless to say that IA Nos. 1339, 1340 and 1407 of 2019 do not survive and are disposed of, as such.

38. There is no order as to cost.

Pronounced in the Open Court on this **15th** day of **November, 2019**.

B.N. Talukdar
Technical Member (P&NG)

Justice Manjula Chellur
Chairperson

✓ **REPORTABLE/~~NON-REPORTABLE~~**