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

+ W.P.(C) 11645/2022, CM APPLs. 34525-26/2022

AGP CITY GAS PRIVATE LIMITED & ANR. Petitioners

Through: Mr. Paras Kuhad, Sr. Adv. with Mr. Piyush Joshi, Mr. Manu Agarwal, Ms. Sumiti Yadava, Ms. Meghna Sengupta, Mr. Jitin Chaturvedi, Mr. Shuain Hussain, Mr. Abhijit Mittal and Ms. Vatsla Bhatia, Advs.

versus

PETROLEUM AND NATURAL GAS REGULATORY BOARD & ORS. Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Arkaj Kumar, Ms. Tanya Aggarwal, Mr. Nishank Tripathi and Mr. Rahul Sagar Sahay and Mr. Mohit Budhiraja, Advs. for PNGRB.
Mr. Apoorv Kurup, CGSC with Ms. Nidhi Mittal and Mr. Ojaswa Pathak, Advs. for UOI.
Mr. Jayant Mehta, Sr. Adv. with Mr. Govond Manoharan and Ms. Shivalika Rudrabtla, Advs. for R-3.
Mr. N.L. Ganapathi and Mr. Sidhant Garg, Advs. for R-4.

**CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA**

**ORDER
22.08.2022**

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Let all the noticed respondents file their replies on the writ petition on or before the next date fixed.



Prima facie, the Court finds that the writ petition raises substantial questions which would warrant further consideration. Mr. Kuhad, learned senior counsel appearing in support of the writ petition, has referred firstly to the Expert Committee Report which had adopted the global norms for City Gas Distribution [CGD] projects and which envisaged the grant of “*marketing exclusivity*” to agents in each Geographical Area. According to Mr. Kuhad, the recommendations of the Expert Committee which were duly adopted by the Petroleum and Natural Gas Regulatory Board [“PNGRB”] also stand reflected in the relevant provisions of the Bid Documents and would clearly establish that the order impugned in the present writ petition would merit being set aside.

According to Mr. Kuhad the stand as taken by the PNGRB in the previous litigations initiated before this Court would also establish that it had been its categorical understanding that the right of market exclusivity as conferred on a CGD could not be diluted in any manner. Reliance is specifically placed upon the order dated 16 February 2021 passed on the writ petition preferred by Gujarat Gas in which the Court had recorded the undertaking of the PNGRB that no industrial consumer would be permitted to source LNG from a third party. Mr. Kuhad also drew the attention of the Court to the order dated 18 August 2021 passed in LPA No. 254 of 2021 in which the Public Notice dated 30 June 2021 issued by the PNGRB formed subject matter of challenge and in which it was restrained from taking any decision based upon views or comments that it may receive in response thereto. It becomes pertinent to note that the aforesaid Public Notice had invited comments and suggestions with respect to exclusivity of a CGD network amongst other issues and which may have a bearing on the



challenge raised in the present writ petition. The submission is that the provisions of Regulation 3(2)(a) of the **Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008** [“2008 Regulations”] and the Proviso thereto cannot be interpreted as countenancing the order as passed by the PNGRB.

Mr. Jain, the learned ASG, on the other hand, contends that the claim of marketing exclusivity is also tethered with and indelibly linked to a corresponding obligation of a CGD to ensure that the network itself is established and put in place in accordance with the stipulated time frames that are prescribed. The learned ASG submits that the statutory regime under which the PNGRB operates sufficiently empowers it to frame directions as contained in the impugned order bearing in mind the interests of the industrial customer and the individual fact situation which may obtain in a particular case. It was further contended that the facts relating to progress made and targets achieved by the petitioner as found by the PNGRB in the present case, clearly warranted the grant of permission as is embodied in the order impugned.

Mr. Mehta, learned senior counsel appearing for respondent No. 3 would contend that the plain language of Regulation 3(2) of the 2008 Regulations and its Proviso would evidence the grant of a choice upon the consumer to obtain natural gas from a source other than through the designated CGD in facts and circumstances which are contemplated therein.

These and other issue would clearly warrant further consideration. The Court however notes that pursuant to litigation initiated by the third respondent before the Kerala High Court, an interim order was passed on a



writ petition commanding GAIL to continue its supply to the said respondent. That position was maintained even when the writ petition was ultimately disposed of with liberty being granted to the PNGRB to hear parties and pass an order afresh. As a result of those interim orders, the position which emerges is that GAIL presently is continuing its supply to respondent No. 3. It would therefore appear to be inexpedient to disrupt the position that exists and prevails today and at least till this matter is taken up for consideration on the next occasion.

Consequently, while a status quo with respect to supply by GAIL to respondent No. 3 shall be maintained in the facts and circumstances of the present case and bearing in mind the issues that are raised, PNGRB shall stand restrained from granting any further No Objection Certificates in the Geographical Area in question till the next date of listing. The Court further observes that the issues which would arise from the supply of LNG by GAIL to respondent No. 3 and which may include the question of whether any further relief is liable to be accorded to the petitioner in case it succeeds, shall abide by the final result of the present writ petition.

List on 26.09.2022.

YASHWANT VARMA, J.

AUGUST 22, 2022
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