Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4910 OF 2015
[Arising out of SLP (Civil) No. 22273 of 2012]

Petroleum and Natural Gas Regulatory Board … Appellant

Vs.

Indraprastha Gas Limited & Ors. … Respondents

J U D G M E N T

Dipak Misra, J.

The present appeal, by special leave, calls in question the legal defensibility and the tenability of the judgment and order dated 01.06.2012 passed by the High Court of Delhi in W.P.(C) No. 2034 of 2012 whereby the Division Bench has ruled that Petroleum and Natural Gas Regulatory Board (for short, "the Board") is not empowered to fix or regulate the maximum retail price at which gas is to be sold by entities such as Indraprastha Gas Ltd, to the consumers and further the Board

is also not empowered to fix any component of network tariff or compression charge for an entity having its own distribution network. On the aforesaid foundation, the High Court has opined that the provisions of Petroleum and Natural Gas Regulatory Board (Determination of Network Tariff for City or Local Natural Gas Distribution Networks and Compression Charge for CNG) Regulations, 2008 (hereinafter referred to as "the Regulations") as far as it is construed to empower the Board to fix the tariff is unsustainable and accordingly as a sequitur the order dated 9.4.2012 to the extent of fixing the maximum retail price or requiring the respondents to disclose the entire tariff and the compression charges to its consumers, is not in consonance with the Petroleum and Natural Gas Regulatory Board Act, 2008 (for brevity "the Act"), and accordingly quashed the same.

2. The facts which are essential to be adumbrated are that the respondent invoked the jurisdiction under Article 226 of the Constitution assailing the order dated 9.4.2012 issued by the Board under Section 22 of the Act determining the network tariff and compression charges for CNG in respect of Delhi City Gas Distribution (CGD) network of the petitioner at Rs.38.58 per MMBtu and Rs.2.75 per kg. respectively w.e.f. 01.04.2008 and directing the petitioner therein to recover the said network tariff and compression charges for CNG separately through an invoice, without any premium or discount on a non-discriminatory basis and to appropriately reduce the selling price of CNG from the date of issuance of the order. Be it noted, the Board left the modalities and time frame for refund of differential network tariff and the compression charges for CNG recovered by the petitioner therein w.e.f. 1.4.2008 in excess from its consumers to be decided subsequently. The said order was criticized on many a ground. The principal contention was that the Board does not have the power to direct the writ petitioner, the respondent

no. 1 herein, while charging its consumers, to disclose the network tariff and the compression charges and also to fix the said network tariff and compression charges in any particular manner.

3. The said stand was resisted by the learned counsel for the Board contending, inter alia, that Regulations 3 and 4 of the Regulations apply to the entities like the writ petitioner; that the Board has the power to ask the writ petitioner, the respondent herein, to submit the network tariff and compression charges for CNG as per the Quality Regulations for approval of the Board; that the entity having accepted the said term as a condition for obtaining exclusivity is bound by the contractual obligation with the Board and is now estopped from challenging the power of the Board; that the objects and reasons of the Act is to protect interests of the consumers and regard being had to the statutory context when an action is taken, no flaw could be found with the same; that Sections 2(i), (m) and (w) of the Act are all intended to ensure that the consumer is not exploited; that Section 2(zn) of the Act defines

the transportation rate and in the interpretative expanse, the order passed by the Board is absolutely defensible; that as per Section 11(e), the Board is empowered to regulate, inter alia, the transportation rates; that Section 61(2), especially, clauses (n), (t), (za) empower the Board to make regulations qua transportation tariff and any other matter which is required to be or may be specified by the Regulations or in respect of which provision is to be made by the Regulations; that keeping in view the objective of the Act, the Regulations permit the Board to fix the network tariff and the compression charges and the action of the Board so fixing the network tariff and the compression charges cannot be interfered with; and that the Regulations framed by the Board are consistent with the Act.

4. The High Court observed that the question for adjudication was basically whether the Act authorises the Board to pass such an order and whether the intention of the legislature is to confer the power of price fixation on the Board. The High Court referred to Section 11 of the Act and came to hold that:-

> "We thus conclude that PNGRB Act does not confer any power on the Board to fix/regulate price of gas as has been done vide the impugned order dated 9th April, 2012. Having held so, we do not deem it necessary to deal with the other Regulations impugned in the writ petition and suffice it is to state that any provision therein having the effect of empowering the Board to fix the price or the network tariff or compression charges for CNG, as long as not transportation rate, is beyond the competence of the Board and ultra vires the PNGRB Act and of no avail."

And again:-

> "We thus allow this writ petition to the extent of holding that the Petroleum and Natural Gas Regulatory Board is not empowered to fix or regulate the maximum retail price at which gas is to be sold by entities as the petitioner, to the consumers. We further hold that the Board is also not empowered to fix any component of network tariff or compression charge for an entity such as the petitioner having its own distribution network. The provisions of the Regulations (supra) in so far as construed by the Board to be so empowering it are held to be bad/illegal. Accordingly, the order dated 9th April, 2012 to the extent so fixing the maximum retail price or requiring the petitioner to disclose the network tariff and compression charges to its consumers is struck down/quashed."

5. Criticizing the judgment and order passed by the High Court, Mr. Arvind Datar, learned senior counsel for the appellant, has raised the following submissions:-

(a) There is a presumption of validity of subordinate legislation, and as long as the parent Act enables the framing of regulations they are valid. When section 2(zn), 22(1), 61(2)(e), 61(2)(t) of the Act empower the Board to frame regulations for all three categories, namely, common carrier, contract carrier and city or local natural gas distribution network, the Regulations are valid. The High Court has incorrectly held that these regulations are *ultra vires* the parent Act without referring to any specific section or provision. That apart, on a reading of the provisions of the Act it is also noticeable that there is no postulate that the power to frame the transportation rate/transportation tariff can only be exercised only when the city network becomes a common carrier or contract carrier.

(b) While the city networks get market exclusivity for 3/5 years, they get infrastructure exclusivity for

25 years with further extension of 10 years at a time and the fixation of transportation rate/ transportation tariff has to be determined for the network of pipelines irrespective of whether they are common carriers, contract carriers or city networks. The Act and Regulations contemplate fixation of transportation rate/transportation tariff even at the stage of city network. It is quite clear that when the city network becomes a common carrier after the exclusivity period, the said transportation rate which is determined at the city network stage itself, would apply for carrying the gas of other suppliers under section 21(2).

(c) The High Court has erroneously opined that the transportation rate provided for is the rate to be charged by one entity under the Act from another for transporting/carrying/moving gas of the other, for such a conclusion is completely contrary to the definition contained in section 2 (zn). The

transportation rate has to be determined even for city networks under sections 22(1), 61(2)(e) and 61(2)(t) and that is the rate which can also be claimed from other gas suppliers but that does not mean that no transportation rate can be determined unless and until the pipeline becomes a common carrier. The High Court has flawed in holding that any provision therein having the effect of empowering the Board to fix the price or the Network Tariff or the Compression Charges for CNG, as long as not transportation rate, is beyond the competence of the Board and ultra vires the Act, and it is because though the Board cannot fix the selling price or monitor the selling price as natural gas has not been notified, yet the Board has the power, and indeed the duty, to fix the network tariff and compression charges (which are nothing but the transportation rate/transportation tariff) under the Act.

(d) The High Court has committed gross illegality in its analysis while stating that the Board is not empowered to fix any component of Network Tariff or Compression Charge for any entity such as the respondent herein having its own distribution network. It has also faulted in opining that the provisions of the Regulations insofar as construed by the Board to be so empowering it are illegal. These findings recorded by the Division Bench are contrary to the provisions of the Act, for the Board can fix the transportation rate/transportation tariff and the fact that the rate will become applicable after expiry of the period of exclusivity does not make the Regulations themselves bad or illegal and it is absolutely clear that source of power comes from the provisions engrafted under Sections 2(zn), 22(1), 61(2)(e) and 61(2)(t) of the Act as they confer power on the Board to frame regulations for all three categories.

(e) The omission of 'city network' in Section 11(e)(ii) is only accidental, and if the provisions of the Act are read as a whole, the power of the Board is clear as crystal for determining the transportation rate/transportation tariff for all categories. If the contention of the respondents is accepted, it will amount to rewriting the provision as "transportation rates after city network becomes a common carrier or contract carrier".

(f) The view expressed by the High Court to the extent that the Board is not empowered to fix any component of Network Tariff or Compression charge for an entity such as the respondent that has its own distribution network is fallacious, for the said findings are not in accord with to the provisions of the Act, and if the submissions are accepted, the Regulations will become applicable only after the period of exclusivity. The Central Government had supplied subsidized gas to the authorised entities to

ensure that consumers do not have to pay a high cost for both piped natural gas (used for domestic purposes) and compressed natural gas (used for transportation) and has made it mandatory for the respondents to disclose the break up. Quite apart from that, Section 21(1) that stipulates right of first use after the exclusivity period and Section 21(2) which provides that other entities are liable to pay minimum transportation rate for using the common carrier, do not indicate that the Board has no power to fix the transportation rate/ tariff during the exclusivity period or that it would apply to only the gas transported for other entities. The respondent company is obliged to indicate the transportation rate/tariff as soon as it is determined. Even if the respondent's contention is accepted, the rate/tariff has to be indicated after the exclusivity period not only for the gas of other entities but also for the gas that is supplied by the authorised entity itself.

Section 20(4) mandates the Board to fully protect consumer interest while granting exclusivity to the city network and the consumer interest is protected by the Board determining the transportation tariff being applicable to and being indicated for all the gas transported in the city network, whether it belongs to other entities or to the entity owning and operating the city network.

6. Mr. Harish Salve and Mr. Parag S. Tripathi, learned senior counsels, resisting the submissions raised by Mr. Datar, learned senior counsel for the appellant-Board, have raised the following contentions.

(A) As per the schematic intendment of the Act, after the expiry of period of exclusivity under Section 20(4), the Board, if decides, in exercise of the statutory powers under Section 20-22, can declare the network as a common/contract carrier, and then alone, in respect of third party suppliers of gas, who seek to use the excess capacity in the

pipeline of the network, the Board may fix the transportation rate, which the 1st respondent may charge from such a third party supplier. The consumers of natural gas, whether of the first respondent, or of the third party supplier of gas, does not enter into the scene at all and has no role to play whatsoever. The transportation in question whether by the network while supplying to its consumers or by a common/contract carrier in respect of the third party suppliers are the rates and costs of transportation relevant only to the owner/supplier of the gas and the said rate has no meaning or relevance as far as the consumer, who is the purchaser of such gas, is concerned, other than the fact that the transportation expenses would also form a part of the consolidated final price which would be raised and recovered by respondent as also third party supplier from the respective consumers.

(B). The definition of Common Carrier in Section 2(j) and Contract Carrier in Section 2(m) postulate certain conditions and the definition of city or local natural gas distribution network in Section 2(i) does not contain the said crucial twin conditions. That apart, Section11(a) and Section 11(e) permit the issuance of regulations which determine access and the transportation rate for Common Carrier or Contract Carrier, and the said provision limits the power of the Board to issue regulations only in respect of access to the network and not for the transportation rate for the network and, therefore, the stand of the appellant that there is an accidental omission is unacceptable because the intention of the legislature is absolutely clear and unambiguous.

(C). The power can only be exercised in respect of common carrier/contract carrier if it is a network in respect of which the power is sought to be exercised

and then also as a first step the network must be declared or authorised as a common carrier or a contract carrier within the meaning of Sections 20-22; and, therefore, as far as a network is concerned, there is no right to determine transportation rate. Such power is specifically limited in respect of common/contract carrier under Section 11(e)(ii). The very concept of transportation rate which is defined in Section 2(zn) makes it clear that it is the rate for moving each unit of petroleum, petroleum products or natural gas as may be fixed by the Regulations and Section 21(2) which uses the expression 'transportation rate', has three elements, which makes it clear that the transportation rate has relevance only in respect of the rates payable by a third party entity, which is utilizing the excess capacity in the existing pipeline of a common/contract carrier and the Board does not have the power to determine the transport rate.

(D). The Board has been empowered by Regulations to determine the exclusivity period under Section 20(4) of any pipeline. The effect of this declaration of exclusivity is that under Sections 20 – 22, during the period of exclusivity, the Board is disabled from declaring such pipeline, whether existing or a new one, as a common/contract carrier; and once a pipeline is declared to be a common carrier/contract carrier, it is required to make available its excess capacity as a part of the open access regime, to any third party supplier of gas. Such a third party may either be an importer or purchaser or a producer of gas seeking to transport its gas using the pipeline of any other entity. Therefore, critical scanning of Section 20 to 22 do not confer any power on the Board to fix the transportation tariff. Section 22(1) makes it clear that the right to fix transportation tariff is subject to other conditions of the Act and when the provisions

contained in Sections 2(j), 2(m), 2(i), 2(zn), 11(e), 11(f)(iii), 11(f)(vi) and 22(2) are read in a conjoint manner, it is graphically clear that the Board has not been conferred the power to fix the transport tariff by the legislature and, therefore, it cannot do so by a regulation. The reliance by the Board on Section 61(2) (q) & (t) is misplaced, for Section 61(1) of the Act permits the Board to make regulations consistent with the Act and the Act which confers power on the Board to frame the Regulations does not empower it to do so. That apart, Section 61 deals with the general regulation making power of the Board in terms of the Sections specified in the Act; and Section 61(2)(q) and (t) relate back to Section 22(1) which itself is "subject to" the other provisions of the Act and, hence, even if Section 61(t) is read with Section 22(1), it would not override Section 11(e) read with Section 2(zn) and 21(2) of the Act.

7. In reply to the aforesaid submissions, Mr. Datar, learned senior counsel has canvassed the following propositions:-

(I) The contentions urged by the respondent are untenable, for the transportation rate has to be determined on the basis of voluminous data, which has to be collected, collated and analyzed and unless the rate is fixed even during the five year period, there will be no rate available for the common carrier at the end of the exclusivity period and it will be absurd to suggest that the entire exercise has to begin only after the city network becomes a common carrier. The transportation rate has to be determined for a network of pipelines under Section 2(zn) and is not a separate determination for city networks, common carrier or contact carrier as the object of determining the rate is also to determine the rate at which the cost of transportation is permitted to be recovered and it has to be done in a reasonable manner as

mandated under Section 22(2)(b). The omission of "city or local gas distribution network" in Section 11(e)(ii) is clearly accidental because in the Act as well as Regulations, three categories viz. common carrier, contract carrier and city or local gas distribution network have been used together, and the purpose becomes manifest on a perusal of Section 61(2)(e) which specifically refers to Section 11(e).

(II) The Board as a regulator has the obligation to ensure that the consumers are not exploited and under Section 20(4) the Board grants monopoly for 25 years with further extension of 10 years at a time and barring unforeseen circumstances, such a network will have exclusive infrastructure monopoly for several decades. Therefore, in the factual matrix, the Board has a duty to ensure that consumer interest is protected during the monopoly period, as mandated under Section 20(4) and that

can be done by ensuring the investment by the gas company in the transportation infrastructure of the city network is recovered in a reasonable manner for all the gas transported in the city network over the economic life of the network. It is not the stand of the Board that it does not have the power to monitor the Maximum Retail Price (MRP) however, the transportation rates/tariff would indicate it is the price charged to the consumer so that it does not result in excessive profiteering and under these circumstances, it is the duty of the respondent to reveal the transportation prices to the Board as well as to the consumers.

(III) Section 20(4) gives the right to the Board to grant exclusivity to the city or local natural gas distribution network for such period as the Board may decide and once it has the power to give exclusivity to a city or local natural gas distribution network owning entity so that only it can lay, build

and operate such network in a geographical area and under these circumstances it becomes the duty of the Board and as per the stipulations under Section 20(4) it has to be done in a transparent manner protecting the consumer interest. In addition to it, the duty is cast on the Board under Section 20(5) to be guided by the objectives of promoting competition among the entities, avoiding infructuous investment, maintaining or increasing supplies or for securing equitable distribution or ensuring adequate availability of natural gas throughout the country and, therefore, the Board can determine the transportation rate/tariff. If the stand of the respondent is accepted, the consumers would never know the transportation rate, since it is possible that in many cases there may not be any other gas supplier who is using the network of pipelines after the exclusivity period.

8. Having enumerated the submissions in reply by the first respondent, we must record the submissions of the second respondent, that is, Union of India. The following proponements have been urged by Ms. Pinky Anand, learned ASG.

(i) There is no legislative intent for allowing the Board to determine the pricing of gas, i.e. the price which the entity charges from the ultimate customers. The Act, while protecting the interests of the consumers, has not empowered the Board to fix the price at which the entities will sell the petroleum products or natural gas to the consumers, for the MRP is to be fixed by the entity.

(ii) As regards the applicability of transportation tariff determined through the Regulations, it is clear from the provisions of the Act that such transportation tariff is applicable only in respect of an outside entity that is willing to use the CGD network and that such tariff is payable by that

entity to CGD network operator. The transportation tariff notified through the Board Regulations is not applicable for CGD entity when it transports its own gas for supply to individual customers.

(iii) The Board is merely authorised to monitor prices and is required to ensure fair competition amongst entities that are supplying CNG or PNG to the end consumers. The Act provides for fair competition by allowing entry to a third party for supplying gas to the end consumers on a non-discriminatory open access basis and in the said process the third party is required to pay transportation tariff to the CGD operator at the rates notified by the Board. The purpose of notification of the said rate is to prevent the CGD operator from putting up any kind of entry barrier in the form of a higher transportation tariff for the third party.

(iv) Section 22 of the Act read with Section 20, 21 and 2(zn) of the Act, the Board is empowered to regulate the transportation rate or transportation tariff only for a city or local natural distribution network subject to the provisions as provided in the Act. When such city or local natural gas distribution network is declared as a common carrier or a contract carrier by the Board and it is used by any other entity on common carrier or contract carrier basis, then only as per the provisions of the Act, the Board is only entitled to fix, by regulations, the transportation rate or the transportation tariff which the entity owning and operating as a city or local natural gas distribution network would charge from other entities which use its network on common carrier or contract carrier basis for transporting their gas.

(v) The Board is not empowered to fix the price at which entities will market or sell the notified

petroleum products or natural gas. The MRP is to be fixed by the entity. The Board shall only monitor the prices and take corrective measures to prevent restrictive trade practices by the entities. As regards regulation of the activities of transmission and distribution of petroleum products and natural gas, the Board will oversee access to pipelines and city or local natural gas distribution networks on non-discriminatory, common carrier/contract carrier principle for ensuring a level playing field for all entities. That apart, the concept of allowing capacity in a city or local natural gas distribution network to be used by any third party entity on non-discriminatory common carrier/contract carrier principle shall incetivize emergence of independent marketers of natural gas. Such independent marketers shall enter into transportation contracts with the entity, owning and operating the city or local natural gas distribution network for

transportation of their gas. This, in turn, will foster fair trade and competition in marketing amongst entities

(vi) The Board is entitled to fix the transportation rate for gas transmission and distribution in all cases where gas is transported on common carrier or contract carrier principle. The transportation rate so fixed by regulator shall be paid by the third party entities to the entity, owning and operating the city or local natural gas distribution network for transporting their gas on common carrier/contract carrier principle. Thus, by observing non-discriminatory open access to pipelines and city or local natural gas distribution networks on common carrier/ contract carrier principle at the transportation rates fixed by regulations, a level playing field shall be ensured for all the entities engaged in marketing and sale of natural gas. In such a market condition, gas-on-gas competition

and the inter-fuel competition will lead to emergence of fair trade and competition amongst entities, which in turn, will protect the interest of consumers.

9. Mr. K.K. Venugopal, learned senior counsel appearing for the intervenor, Central U.P. Gas Ltd., has contended that the Board does not have the power to fix MRP and the distribution entity has a fundamental right to carry on the trade, subject to restriction under Article 19(1)(g) of the Constitution and in the case at hand, the Act, does not confer any power on the Board to fix the MRP, but on the other hand, it expressly provides for the MRP to be fixed by the entity themselves as per Section 2(x) of the Act. Learned senior counsel would contend that once the Board has no jurisdiction/ authority to fix the MRP, it is not entitled to fix any element/ component of the MRP as it would bring an anomalous situation. The submission of the Board that the distribution entity can charge the MRP, but it has the power to regulate the component, that is, the transportation charges is a futile exercise, a brutum fulmen,

for the simple reason that however low may be the component of MRP determined by the Board, the authorised entity can virtually ignore the same. It is argued by him that the Board is a creature of the Act and it can only exercise its functions in accordance with and within the four corners of the said Act and it cannot prescribe what it calls network tariff and compression charge under the Regulations, because the statute refers to fixation of "transportation tariff/ transportation rate" but does not mention of 'network tariff' or 'compression charges'. In the absence of any power conferred under the Act to frame regulations in that regard, the Regulations clearly transgress the enactment and hence, the Regulations to that extent are ultra vires. It is urged by him that 'network tariff' is not the same as 'transportation rate' and the Board cannot assume such an authority by employing a different analogy. Placing reliance on Section 11(e)(ii), it is argued by the learned senior counsel that the said provision which provides for Board's function and empowers the Board to frame regulations, employs the words 'transportation rates

for common carrier or contract carrier' and they remotely do not purport to fix rates for 'network tariff' or 'compression charges' for city gas distribution network. In addition, it is propounded by him that reliance on Sections 21(2) and 22(1) and all other provisions are absolutely misconceived and the assumption that the Board as a regulator to look after consumer interests, cannot travel beyond the statutory limit.

10. Dr. Jatin Thukral, who has been allowed to intervene, has referred to the background of the Act and on that foundation has canvassed that "transportation rate" is inseparably related to open access for every commercial gas distribution entities to either common carrier or contract carrier or city or local natural gas distribution regard being had to the manner in which the said words have been employed by the legislature in various provisions of the Act. It is his further submission that Section 61(2)(t) is controlled by sub-section 22(1) which in turn is guided by Section 22(2) and all the provisions are associated with common or contract carriers only and by no stretch of imagination, it confers any

power on the Board to fix transportation rate, as it is only referable to the rate charged by one commercial entity from any commercial entity for using its gas transportation networks. In essence, his submission is that the appeal is devoid of merit and deserves to be dismissed.

11. Before we proceed to appreciate the rivalised contentions raised at the Bar, it is seemly to state that in terms of Section 22 of the Act, the Board has framed the Regulations. Placing reliance on the Regulations, the Board has issued the order dated 9.4.2012, which deals with the Network Tariff for City or Local Natural Gas Distribution Network and Compression Charge for CNG in respect of the Delhi CGD Network of Indraprastha Gas Limited (IGL). Clause 1 deals with the Regulatory Framework. Clause 1.1 reads as follows:-

> "1.1 In terms of Sections 22 of the PNGRB Act, 2006, the Board is entrusted with the responsibility to lay down the transportation tariff for city or local natural gas distribution network. As per the relevant provisions of the PNGRB (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 read with the said statutory provisions, the Board is empowered to determine the Network Tariff and

> Compression Charge for CNG to be charged by the entity laying, building, operating or expanding City or Local Natural Gas Distribution Network either before the appointed day or on a day subsequent thereto."

After so stating, the Board has proceeded to provide the methodology for determination of the network tariff and compression charge for the CGD network which has been stipulated in the Regulation dated 19.3.2008. The relevant part of the order, we may profitably reproduce:-

> "3.19 As per the provisions of the PNGRB (Determination of Network Tariff for City or Local Natural Gas Distribution Networks and Compression Charge for CNG) Regulations, 2008 the actual performance with respect to the capital and operating costs during the previous review period against the identified parameters shall be monitored and the variations shall be adjusted in the calculations on a prospective basis considering the remaining period of economic life of the CGD project.
>
> 3.20 After the above mentioned adjustments, the reconciliation of which is provided in Annexure-2, the network tariff and compression charge for CNG in respect of the Delhi CGD network of IGL is given in the table below:

Sl No.	Particulars	Network Tariff (Rs/MMBTU)	Compression Charge for CNG (Rs./Kg)
1	Submitted by IGL	104.05	6.66
2	As determined by the Board after moderations	38.58	2.75

4. Decision

4.1 While the PNGRB (Determination of Network Tariff for City or Local Natural Gas Distribution Networks and Compression Charge for CNG) Regulations, 2008 were notified on 19th March 2008, for the purpose of ease in calculations, the applicable network tariff and compression charge for CNG determined by the Board shall be applicable from 1st April, 2008. Accordingly, the Network Tariff and the Compression Charge for CNG in respect of the Delhi CGD Network of IGL shall be Rs.38.58 per MMBTU and Rs.2.75 per KG respectively with effect from 1st April, 2008.

4.2 As per the provisions of the PNGRB (Authorizing Entities to Lay, Build Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, IGL shall recover the Network Tariff and Compression Charge for CNG separately through an invoice without any premium of discount on a non-discriminatory basis. Further, in conformity with the decision conveyed vide letter dated 23.5.2011 mentioned in para 2.3 above, the difference between the Network Tariff and Compression Charge for CNG submitted by IGL and that determined by the Board as given in the table above would be reflected through appropriate reduction in selling

> prices from the date of issuance of this Order. The modalities and time frame for refund of differential Network Tariff and the Compression Charge for CNG for the period from 01.4.2008 till the date of issuance of this Order shall be decided and advised by the Board subsequently."

12. As the factual matrix uncurtains, the issuance of the said order compelled the 1st respondent to approach the High Court seeking its quashment principally on the ground that such a power has not been conferred by the Act and the Board, by framing the resolutions cannot arrogate such power to itself in the absence of the source of power. That was the substratum of challenge before the High Court where the Board failed to support and sustain its order and the 1st respondent succeeded in its assail and the contentions raised before this Court are fundamentally embedded on the said fulcrum. Mr. Datar, learned senior counsel, apart from many a provision, has also commended us to the objects and reasons of the Act to highlight the role of the Board as a regulator. In view of the said submission, we think it apt to refer to the objects and reasons of the Act. It reads as follows:-

> "An Act to provide for the establishment of Petroleum and Natural Gas Regulatory Board 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."

13. Bearing the purpose of the Act in mind, we shall refer to the relevant provisions of the Act. Section 1(4) provides that the Act applies to refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas. Section 2(d) of the Act defines authorised entity to mean that any entity registered by the Board under Section 15 to market any notified petroleum, petroleum products or natural gas, or to establish and operate liquefied natural gas terminals.

14. Section 2(i) of the Act on which emphasis has been laid defines "city or local natural gas distribution network", relevant part of it reads as under:-

> "2(i) "city or local natural gas distribution network" means an interconnected network of gas pipelines and the associated equipment used for transporting natural gas from a bulk supply high pressure transmission main to the medium pressure distribution grid and subsequently to the service pipes supplying natural gas to domestic, industrial or commercial premises and CNG stations situated in a specified geographical area."

15. Section 2(j) and 2(m) define 'common carrier' and 'contract carrier' respectively. They read as follows:-

> "2(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 nondiscriminatory 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 –

(a) such contract carrier has surplus capacity over and above the firm contracts entered into; or

(b) the firm contract period has expired.

2(m) "contract carrier" means such pipelines for transportation of petroleum, petroleum products and natural gas by more than one entity pursuant to firm contracts for at least one year as may be declared or authorised by the Board from time to time under sub-section (3) of section 20."

16. The aforesaid definitions basically deal with pipelines and they are regulated under the Act. The dictionary clause speaks of the nature of activity. There is a noticeable difference between common carrier pipeline and contract carrier pipeline on one hand and "a city of local natural gas distribution network" on the other. On a perusal of the definitions of the common carrier and contract carrier, it is demonstrable that they refer to pipelines for transportation of petroleum or petroleum products and natural gas by more than one entity. The definition "city or local gas distribution network" means an interconnected network of gas pipelines and the associated equipment used for transporting natural

gas from a bulk supply high pressure transmission main to the medium pressure distribution grid and subsequently to the service pipes supplying natural gas to domestic, industrial or commercial premises and CNG stations situated in a specified geographical area. It deals with specified geographical area. It does not refer to a pipeline or transport of natural gas. It is specifically a pipeline network for transport of natural gas to its own consumers. This being the position, as per the dictionary clause, it is pertinent to refer to Section 20 that provides for declaring, laying, building, etc. of common carrier or contract carrier and city or local natural gas distribution network. The said provision is as follows:-

> "20 **Declaring, laying, building, etc., of common carrier or contract carrier and city or local natural gas distribution network:-**
>
> (1) If the Board is of the opinion that it is necessary or expedient, to declare an existing pipeline for transportation of petroleum, petroleum products and natural gas or an existing city or local natural gas distribution network, as a common carrier or contract carrier or to regulate or allow access to such pipeline or network, it may give wide publicity of its intention to do so and invite objections and suggestions within a specified time from all persons and

entitles likely to be affected by such decision.

(2) For the purposes of sub-section (1), the Board shall provide the entity owning, the pipeline or network an opportunity of being heard and fix the terms and conditions subject to which the pipeline or network may be declared as a common carrier or contract carrier and pass such orders as it deems fit having regard to the public interest, competitive transportation rates and right of first use.

(3) The Board may, after following the procedure as specified by regulations under section 19 and sub-sections (1) and (2), by notification,-

(a) declare a pipeline or city or local natural gas distribution network as a common carrier or contract carrier; or

(b) authorise an entity to lay, build, operate or expand a pipeline as a common carrier or contract carrier; or

(c) allow access to common carrier or contract carrier or city or local natural gas distribution network; or

(d) authorise an entity to lay, build, operate or expand a city or local natural gas distribution network.

(4) The Board may decide on the period of exclusivity to lay, build, operate or expand a city or local natural gas distribution network for such number of years as it may by order, determine in accordance with the principles laid down by the regulations made by it, in a transparent manner while fully protecting the consumer interests.

(5) For the purposes of this section, the Board shall be guided by the objectives of

> promoting competition among entities, avoiding in fructuous investment, maintaining or increasing supplies or for securing equitable distribution or ensuring adequate availability of petroleum, petroleum products and natural gas throughout the country and follow such principles as the Board may, by regulations, determine in carrying out its functions under this section."

On a reading of the aforesaid provision, it is clear as day that the Board has been conferred with the power to declare an existing pipeline for transportation of petroleum, petroleum products and natural gas or an existing city or local natural gas distribution network as a common carrier or contract carrier and regulate or allow access to such pipeline or network. Sub-Section (1) prescribes for giving wide publicity of the Board's intention. Sub-Section (2) stipulates affording of opportunity of hearing to the pipeline or network for fixing terms and conditions subject to which pipeline or network be declared as common carrier or contract carrier. The Board has been authorised, after following due procedure as specified by Regulations under Section 19 and under sub-Sections (1) and (2) by notification to declare a pipeline or

city or local natural gas distribution network as a common carrier or contract carrier and do certain acts. Sub-Section (4) enables the Board to decide on the period of exclusivity to lay, build, operate or expand a city or local natural gas distribution network for such number of years. The objectives by which the Board is to be guided are promoting competition among entities, avoiding infructuous investment, maintaining or increasing supplies or securing equitable distribution or ensuring adequate availability of petroleum, etc.

17. Section 21 deals with right of first use, etc. The said provision reads as follows:-

"21. **Right of first use, etc.**:-

(1) The entity laying, building, operating or expanding a pipeline for transportation of petroleum and petroleum products or laying, building, operating or expanding a city or local natural gas distribution network shall have right of first use for its own requirement and the remaining capacity shall be used amongst entities as the Board may, after issuing a declaration under section 20, determine having regard to the needs of fair competition in marketing and availability of petroleum and petroleum products throughout the country: Provided that in case of an entity engaged in both

marketing of natural gas and laying, building, operating or expanding a pipeline for transportation of natural gas on common carrier or contract carrier basis, the Board shall require such entities to comply with the affiliate code of conduct as may be specified by regulations and may require such entity to separate the activities of marketing of natural gas and the transportation including ownership of the pipeline within such period as may be allowed by the Board and only within the said period, such entity shall have right of first use.

(2) An entity other than an entity authorised to operate shall pay transportation rate for use of common carrier or contract to the entity operating it as an authorised entity.

(3) An entity authorised to lay, build, operate or expand a pipeline as contract carrier or to lay, build, operate or expand a city or local natural gas distribution network shall be entitled to institute proceedings before the Board to prevent, or to recover damages for, the infringement of any right relating to authorization.

Explanation:- For the purposes of this sub-section, "infringement of any right" means doing of any act by any person which interferes with common carrier or contract carrier or causes prejudice to the authorised entity."

The aforesaid provision stipulates the right of first use and also prescribes certain conditions.

18. Section 22 on which reliance has been placed deals with transportation tariff. The said provision is reproduced below:-

"22. **Transportation tariff**:-

(1) Subject to the provisions of this Act, the Board shall lay down, by regulations, the transportation tariffs for common carriers or contract carriers or city or local natural gas distribution network and the manner of determining such tariffs.

(2) For the purposes of sub-section (1), the Board shall be guided by the following, namely:-

(a) the factors which may encourage competition, efficiency, economic use of the resources, good performance and optimum investments;

(b) safeguard the consumer interest and at the same time recovery of cost of transportation in a reasonable manner;

(c) the principles rewarding efficiency in performance;

(d) the connected infrastructure such as compressors, pumps, metering units, storage and the like connected to the common carriers or contract carriers;

(e) benchmarking against a reference tariff calculated based on cost of service, internal rate of return, net present value or alternate mode of transport;

(f) policy of the Central Government applicable to common carrier, contract carrier and city or local distribution natural gas network."

On a plain reading of the aforesaid, it is manifest that the Board has the power to provide by Regulations the transportation tariff for common carrier or contract carrier or city or local natural gas distribution network and the manner of distribution of such tariffs.

19. The question that arises for consideration is whether reading of the aforesaid provisions namely, Sections 20 to 22 of the Act, it can be construed that they confer any power on the Board to fix the transportation tariff of a consumer of natural gas. We have also referred to sub-Section (4) of Section 20 which confers the power on the Board to decide the period of exclusivity and the network of a common/contract carrier. Section 21, as indicated earlier, deals with the right of first use. The transportation tariff, which finds place in Section 22(1), commences with the words "subject to the provisions of this Act". The said provision confers power on the Board to lay down, by regulation, the transportation tariff for common carriers or contract carriers or city or local

natural gas distribution network and the manner of determination of such tariffs.

20. At this stage, it is necessary to appositely understand the said expression. In ***The Commissioner of Wealth Tax, Andhra Pradesh, Hyderabad v. Trustees of H.E.H. Nizam's Family (Remainder Wealth Trust), Hyderabad***[1] this Court was dealing with the expression "subject to" in the context of the Wealth Tax Act, 1957. Section 3 of the said Act imposed the charge of wealth tax subject to other provisions of the Act. In that context, the Court opined that Section 3 has to be made expressly subject to Section 21 and it must yield to that Section insofar as the latter makes a special provision for assessment of a trustee of a trust. In ***Ashok Leyland Ltd. v. State of T.N. and Another***[2], it has been held that "subject to" is an expression whereby limitation is expressed. In ***K.R.C.S. Balakrishna Chetty and Sons & Co. v. The State of***

1 (1977) 3 SCC 362

2 (2004) 3 SCC 1

Madras[3], this Court was interpreting Section 5 of the Madras General Sales Tax Act, 1939 wherein the Legislature had appended the expression "subject to" and while interpreting the said words, the Court ruled that they are meant to effectuate the intention of law and the correct meaning of the expression is "conditional one".

21. In ***South India Corporation (P) Ltd. v. Secretary, Board of Revenue, Trivandrum and another***[4], the Constitution Bench has ruled that the expression "subject to" in the context convey the idea of a provision yielding place to another provision or other provision to which it was made subject to. In ***B.S. Vadera and another v. Union of India and others***[5], this Court while dealing with the expression "any rule so made shall have effect, subject to provisions of any Act occurring in the proviso to Article 309" ruled that:-

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3 AIR 1961 SC 1152

4 AIR 1964 SC 207

5 AIR 1969 SC 118

> "**24.** It is also significant to note that the proviso to Article 309, clearly lays down that 'any rules so made shall have effect, subject to the provisions of any such Act'. The clear and unambiguous expressions, used in the Constitution, must be given their full and unrestricted meaning, unless hedged-in, by any limitations. The rules, which have to be 'subject to the provisions of the Constitution, shall have effect, 'subject to the provisions of any such Act'. That is, if the appropriate legislature has passed an Act, under Article 309, the rules, framed under the proviso, will have effect,-subject to that Act; but, in the absence of any Act, of the appropriate legislature, on the matter, 'in our opinion, the rules, made by the President, or by such person as he may direct, are to have full effect, both prospectively, and, retrospectively. Apart from the limitations, pointed out above, there is none other, imposed by the proviso to Article 309, regarding the ambit of the operation of such-rules."

22. Regard being had to the aforesaid interpretation, we have to scan the anatomy of Section 11 of the Act, for it has immense signification. The said provision deals with the functions and powers of the Board. The said provision is extracted below:-

> "**11 <u>Functions and powers of the Board</u>**
> The Board shall-
> (a) protect the interest of consumers by fostering fair trade and competition amongst the entities;

(b) register entities to-

(i) market notified petroleum and petroleum products and, subject to the contractual obligations of the Central Government, natural gas;

(ii) establish and operate liquefied natural gas terminals;

(iii) establish storage facilities for petroleum, petroleum products or natural gas exceeding such capacity as may be specified by regulations;

(c) authorise entities to-

(i) lay, build, operate or expand a common carrier or contract carrier;

(ii) lay, build, operate or expand city or local natural gas distribution network;

(d) declare pipelines as common carrier or contract carrier;

(e) regulate, by regulations,-

(i) access to common carrier or contract carrier so as to ensure fair trade and competition amongst entities and for that purpose specify pipeline access code;

(ii) transportation rates for common carrier or contract carrier;

(iii) access to city or local natural gas distribution network so as to ensure fair trade and competition amongst entities as per pipeline access code;

(f) in respect of notified petroleum, petroleum products and natural gas-

(i) ensure adequate availability;

(ii) ensure display of information about the maximum retail prices fixed by the entity for consumers at retail outlets;
(iii) monitor prices and take corrective measures to prevent restrictive trade practice by the entities;
(iv) secure equitable distribution for petroleum and petroleum products;
(v) provide, by regulations, and enforce, retail service obligations for retail outlets and marketing service obligations for entities;
(vi) monitor transportation rates and take corrective action to prevent restrictive trade practice by the entities;

(g) levy fees and other charges as determined by regulations;

(h) maintain a data bank of information on activities relating to petroleum, petroleum products and natural gas;

(i) lay down, by regulations, the technical standards and specifications including safety standards in activities relating to petroleum, petroleum products and natural gas, including the construction and operation of pipeline and infrastructure projects related to downstream petroleum and natural gas sector;

(j) perform such other functions as may be entrusted to it by the Central Government to carry out the provisions of this Act."

Sub-section (e) of Section 11 of the Act is pertinent to appreciate the controversy. It empowers the Board to regulate,

by regulations, in respect of certain aspects. Section 11(e) (ii) confers power on the Board to determine transport rates for common carrier or contract carrier. Sub-section (f) of Section 11 allows the Board to regulate in respect of notified petroleum, petroleum products and natural gas and sub-section (e) (iii) of Section 11 empowers the Board to regulate, by regulations, access to city or local natural gas distribution network so as to ensure fair trade and competition amongst entities as per pipeline access code. It is relevant to note here that the High Court, while appreciating the language employed in the said provision has held that:-

> "We are of the opinion that none of the aforesaid clauses can be construed as prescribing price control/regulation as a function of the Board. Clause (a) supra while prescribing protection of interest of consumers limits the same to, by fostering fair trade and competition amongst entities engaged in distributing, dealing, transporting, marketing gas. The function of the Board thereunder is of regulating the inter se relationship of entities under the Act and not to regulate/control the relationship between the entities under the Act and the consumers. Similarly, Clause (f) while prescribing function of monitoring prices limits the same to taking corrective measures to prevent restrictive trade practices by the entities. Thus only if the Board

> finds that the marketers of gas in a particular area have formed a cartel or are indulging in any other restrictive trade practices, is the Board empowered to monitor prices. Such is not the case of the Board in the present instance. The petitioner even though till date the exclusive marketer of gas in Delhi, has not been accused of any restrictive trade practice and the power exercised also is not in the name of monitoring price. Another sub-clause of clause (f) of Section 11 confers function on the Board to ensure display of information about Maximum Retail Price. Again, had the intent of the legislature been to confer the power on the Board to fix the Maximum Retail Price, nothing prevented the legislature from providing so expressly. Instead, functions of enforcing retail service obligations and marketing service obligations only have been conferred by the legislature. The definition of retail service obligations and marketing service obligations in Sections 2(zk) and (w) also do not include obligation to sell at the prices fixed by the Board."

23. The aforesaid analysis of the High Court is in consonance with the provision and the expression "subject to" as used in Section 22 for the said provision makes it graphically clear that Section 22 has to yield to Section 11 of the Act which deals with the powers and functions of the Board. Section 11 (e) only uses the words "common carrier" or "contract carrier". Even if one applies the concept of "subject matter", in

essentiality it is the “common carrier” and the “contract carrier”. The dictionary clause of the said expression conveys a different meaning and it does not include an entity which utilizes the pipelines for its own use. The submission of Mr. Datar is that after exclusivity period is over, the Board has the power also cannot be treated to be correct, for such a power has not been conferred on the Board under Section 11. As is perceptible the provision deals with the entity when it engages itself as a part of its pipeline as a common carrier or contract carrier and not the consumers. It is submitted by the learned senior counsel appearing for the respondent that a person owning his own carrier, after the exclusivity period may have the potentiality to enter into business of the “common carrier” or “contract carrier” and at that juncture to maintain the competitive prospects, regard being had to the consumer interest, the Board may determine the price of the same, but a significant one, that does not clothe the Board with the power to command the entity to put/reflect it as a part of the bill to

the consumer. It is urged that the Board does not have the power to fix the tariff charges in that regard.

24. Mr. Datar, learned senior counsel would submit that when the Board is established under a statute and has the power to regulate solely because there is no mention of entity that owns its own pipeline, it is inapposite to say that the Board cannot determine the price and indicate the cost incurred in this regard in the bill given to the consumer. It is his further submission that the consumer has a right to know. Learned senior counsel would go to the extent of saying that it is a *casus omissus* and, therefore, the court must adopt the principle of purposive interpretation and it can do so filling up the gap to have the necessitous fruitful interpretation. Mr. Salve and Mr. Tripathi, per contra, would submit that the legislature has deliberately not done it and, in any case, the Court should not read such a concept into it. Ms. Pinky Anand, learned ASG relying on the affidavit filed by the Union of India, would submit that the legislature has not given the said power to the Board. It is seemly to state that even if a

stand is taken by the Union of India, in respect of an interpretation of a statutory provision, that does not mean that the same is the correct interpretation because it is well settled in law that no one can speak on behalf of the legislature. It is the court which is the final interpreter. Keeping that in view, we have to scrutinize whether in such a situation this Court can implant words in the provision, as canvassed by Mr. Datar.

25. In this regard we may, with profit, refer to certain authorities in the field. In ***CST* v. *Parson Tools and Plants*[6],** the Court has held that if the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so 'would be

6 (1975) 4 SCC 22

entrenching upon the preserves of legislature'. In ***Board of Muslim Wakfs v. Radha Kishan***, it has been observed that:-

> "While it is true that under the guise of judicial interpretation the court cannot supply casus omissus, it is equally true that the courts in construing an Act of Parliament must always try to give effect to the intention of the legislature. In *Crawford* v. *Spooner*[7] the Judicial Committee said:
>
> > "We cannot aid the legislature's defective phrasing of an Act, we cannot add and mend and by construction, make up deficiencies which are left there."
>
> To do so would be to usurp the function of the legislation. At the same time, it is well settled that in construing the provisions of statute the courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective. Thus, an attempt must always be made to reconcile the relevant provisions so as to advance the remedy intended by the statute."

26. In this context, we may usefully refer to the authority in ***CIT v. National Taj Traders***[8] wherein it has been clearly laid down that two principles of construction i.e. one relating to

7 (1846) 6 Moore PC 1 : 13 ER 562

8 (1980) 1 SCC 370

casus omissus and the other in regard to reading of the statute as a whole have been well settled. The Court has reproduced few passages from Maxwell on Interpretation of Statutes at pages 33 and 47, as has been stated in ***Canada Sugar Refining Co. Ltd. v. R., by Lord Davey***[9] and proceeded to state thus:-

> "In other words, under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in *Artemiou* v. *Procopiou* (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words"

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9 1898 AC 735

> and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke* v. *IRC* (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".] In the light of these principles we will have to construe sub-section (2)(*b*) with reference to the context and other clauses of Section 33-B."

27. In ***S.P. Gupta v. Union of India***[10], after referring to various authorities, it has been held:-

> "Thus, on a full and complete consideration of the decisions classified under the various categories, the propositions that emerge from the decided cases of this Court and other foreign courts are as follows:
>
> > "Where the language of a statute is clear and unambiguous, there is no room for the application either of the doctrine of *casus omissus* or of pressing into service external aids, for in such a case the words used by the Constitution or the statute speak for themselves and it is not the function of the court to add words or expressions merely to suit what the courts think is the supposed intention of the legislature. …""

28. In ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.***[11] it has been opined thus:

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10 (1981) Supp. SCC 87

11 (2012) 9 SCC 552

"...... that it is not the function of the court to supply the supposed omission, which can only be done by Parliament. In our opinion, legislative surgery is not a judicial option, nor a compulsion, whilst interpreting an Act or a provision in the Act. The observations made by this Court in *Nalinakhya Bysack*[12] would tend to support the aforesaid views, wherein it has been observed as follows:

> "*9.* ... It must always be borne in mind, as said by Lord Halsbury in *Commissioners for Special Purposes of Income Tax* v. *Pemsel*[13], that it is .not competent to any court to proceed upon the assumption that the legislature has made a mistake. The court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the legislature the Court cannot, as pointed out in *Crawford* v. *Spooner*[14], aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is, as said by Lord Russell of Killowen in *Hansraj Gupta* v. *Official Liquidators of Dehra Dun-Mussoorie Electric Tramway Co. Ltd.*[15], for others than the courts to remedy the defect.""

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12 AIR 1953 SC 148

13 1891 AC 531, at p. 549 (HL)

14 (1846-49) 6 Moo PC 1 : 13 ER 582 : 4 MIA 179 : 18 ER 667

15 (1932-33) 60 IA 13 : AIR 1933 PC 63

After so stating the Court has referred to the observations made by Lord Diplock in Duport Steels Ltd.[16] wherein it has been ruled thus:

> "… the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous *it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral*. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount."
>
> (emphasis supplied)

29. Recently, in ***Sarah Mathew v. Institute of Cardio Vascular Diseases***[17]***,*** while interpreting Section 468 CrPC, the Court has opined:-

> "It is argued that a legislative casus omissus cannot be supplied by judicial interpretation. It is submitted that to read Section 468 CrPC to mean

16 (1980) 1 WLR 142 : (1980) 1 All ER 529 (HL)

17 (2014) 2 SCC 62

that the period of limitation as period within which a complaint/charge-sheet is to be filed, would amount to adding words to Sections 467 and 468. It is further submitted that if the legislature has left a lacuna, it is not open to the court to fill it on some presumed intention of the legislature. Reliance is placed on *Shiv Shakti Coop. Housing Society*[18], *Bharat Aluminium*[19] and several other judgments of this Court where doctrine of casus omissus is discussed. In our opinion, there is no scope for application of doctrine of casus omissus to this case. It is not possible to hold that the legislature has omitted to incorporate something which this Court is trying to supply. The primary purpose of construction of the statute is to ascertain the intention of the legislature and then give effect to that intention. After ascertaining the legislative intention as reflected in the Forty-second Report of the Law Commission and the Report of the JPC, this Court is only harmoniously construing the provisions of Chapter XXXVI along with other relevant provisions of the Criminal Procedure Code to give effect to the legislative intent and to ensure that its interpretation does not lead to any absurdity. It is not possible to say that the legislature has kept a lacuna which we are trying to fill up by judicial interpretative process so as to encroach upon the domain of the legislature. The authorities cited on doctrine of casus omissus are, therefore, not relevant for the present case."

18 (2003) 6 SCC 659

19 (2012) 9 SCC 552

30. We have referred to the aforesaid passage as the Constitution Bench has given emphasis on primary purpose of construction of statute to ascertain the intention of the legislature, harmonious construction of the various provisions of the CrPC and for ensuring that the interpretation does not lead to any absurdity. That apart, the Court has also categorically observed that it is not a case where it can be said that legislature has kept a lacuna which the Court is trying to fill up by judicial interpretative process so as to encroach upon the domain of the legislature. In the case at hand, in the schematic context of the Act and upon reading the legislative intention and applying the principle of harmonious construction, we do not perceive inclusion of the entities which are not "common carriers" or "contract carriers" would be permissible. They have deliberately not been included under Section 11 of the Act by the legislature and the said non-inclusion does not lead to any absurdity and, therefore, there is no necessity to think of any adventure.

31. We must take note of certain situations where the Court in order to reconcile the relevant provision has supplied words and the exercise has been done to advance the remedy intended by the statute. In ***Surjit Singh Kalra v. Union of India***[20], a three-Judge Bench perceiving the anomaly, held:-

> "True it is not permissible to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words" (Craies *Statute Law*, 7th edn., p. 109). Similar are the observations in *Hameedia Hardware Stores* v. *B. Mohan Lal Sowcar*[21] where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See: *Sirajul Haq Khan* v. *Sunni Central Board of Waqf*[22].)"

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20 (1991) 2 SCC 87

21 (1988) 2 SCC 513, 524-25

22 1959 SCR 1287 : AIR 1959 SC 198

32. We have referred to the aforesaid authority as Mr. Datar has respectfully urged that omission in Section 11 is accidental. The test that has been laid down in ***Surjit Singh Kalra*** (supra) and other decisions of this Court, we are afraid, do not really support the submission of Mr. Datar. By no stretch of imagination, we can conceive that non-conferment of power on the Board, in particular regard, is accidental. The legislative intention is absolutely clear and simple and, in fact, does not call for adoption of any other construction to confer any meaning to the existing words. Thus, the said submission leaves us unimpressed.

33. Having dealt with this facet, it is appropriate to refer to Section 61, which deals with the power of the Board to make Regulations. Sub-section (1) of Section 61 stipulates that the Board may, by notification, make regulations consistent with the Act and the Rules made thereunder to carry out the provisions of the Act. Sub-section (2) of Section 61 stipulates that without prejudice to the generality of the foregoing power, such Regulations may provide for all or any of the following

matters and the matters have been enumerated thereafter. Mr. Datar has emphasised on Section 61(2)(t), which reads as follows:-

> "(t) the transportations tariffs for common carriers or contract carriers or city or local natural gas distribution network and the manner of determining such tariffs under sub-section (1) of section 22."

34. On a scrutiny of the said provision, we notice that it deals with transportation tariff for "common carrier" and "contract carrier" or "city or local natural gas distribution network" and the determination has to be done as per sub-section (1) of Section 22. Be it noted, in pursuance of the said provision, regulations, namely, Petroleum and Natural Gas Regulatory Board (Determination of Network Tariff for City or Local Natural Gas Distribution Networks and Compression Charge for CNG) Regulations, 2008 which we have already referred to as "the Regulations" have been framed. Emphasis has been laid on Regulation 2(e) and 2(g), which read as follows:-

> "(e) "compression charge for CNG" means a charge (excluding statutory taxes and levies) in

> Rs./Kg for online compression of natural gas into compressed natural gas (hereinafter referred to as CNG) for subsequent dispensing to consumers in a CNG station.
>
> (g) "Network tariff" means the weighted average unit rate of tariff (excluding statutory taxes and levies) in rupees per million British Thermal Units (Rs./MMBTU for all the categories of consumers of natural gas in a CGD Network."

35. Regulation 4 reads as follows:-

> "**4. Determination of network tariff and compression charge for CNG.**
> The network tariff and compression charge for CNG in respect of an entity covered clause (a) or clause (b) of sub-regulation (1) of regulation 3 shall be determined as per the procedure at Schedule A."

In addition to the aforesaid there are various Regulations dealing with the procedure of determination. Mr. Datar, learned senior counsel, would submit that Section 61 of the Act has to be read in consonance with the objects and reasons of the Act and when the Board has the power to frame regulations to carry out the purposes of the Act, it has framed the Regulations in accordance with the legislation and the High Court has totally flawed in declaring it as ultra vires.

36. We have already dealt with the purport of Section 11, adverted to the facet how the words "subject to" have to be interpreted, functions of the Board, and provisions relating to exclusivity, definitions of "common carrier" and the "contract carrier". Section 61 is a provision that enables the Board to frame Regulations. If on reading of the statute in entirety, such a power does not flow, a delegated authority cannot frame a regulation as that would not be in accord with the statutory provisions nor would it be for the purpose of carrying on the provisions of the Act. In ***St. Johns Teachers Training Institute v. National Council for Teacher Education***[23] it has been observed that:-

> "A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions or the enabling Act but to supplement

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23 (2003) 3 SCC 321

> it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details."

37. In ***Kunj Behari Lal Butail v. State of H.P.***[24] it has been ruled that it is very common for the legislature to provide far a general rule-making power to carry out the purpose of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the test of having been so framed as to fall within the scope of such general power confirmed. If rule-making power is not expressed in such a usual general form then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act. In ***State of Karnataka v. H. Ganesh Kamath***[25] it has been stated that it is a well-settled principle of interpretation of statutes that the conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels

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24 (2000) 3 SCC 40

25 (1983) 2 SCC 402

beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto."

38. In ***Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi***[26]

> "....statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature. Rules and regulations made by reason of the specific power conferred by the stature to make rules and regulations establish the pattern of conduct to be followed".

39. In ***General Officer Commanding-in-Chief v. Subhash Yadav***[27], it has been held as follows:-

> ".....before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule-making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void."

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26 (1975) 1 SCC 421

27 (1988) 2 SCC 351

40. Similar view has been expressed in ***State of T.N. v. P. Krishnamurthy***[28] and in ***Union of India v. Srinivasan***[29] wherein it has been held that:-

> "...If a rule goes beyond the rule-making power conferred by the statue, the same has to be declared ultra vires. If a rule supplants any provision for which power has not been conferred, it becomes ultra vires. The basic test is to determine and consider the source of power which is relatable to the rule. Similarly, a rule must be in accord with the parent statute as it cannot travel beyond it."

41. In ***Dr. Indramani Pyarelal Gupta v. W.R. Natu***[30], the Court has held that one of the tests to determine whether a statutory body is vested with a particular power is to see whether exercise of such power is contra-indicated by any specific provision of the enactment bringing such statutory body into existence. In ***Tata Power Company Limited v. Reliance Energy Limited***[31], it has been ruled that save and

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28 (2006) 4 SCC 517

29 (2012) 7 SCC 683

30 AIR 1963 SC 274

31 (2009) 16 SCC659

except for the exercise of regulatory power which is specifically recognized by the statute, it is not open to the regulatory body to exercise a power which is not incorporated in the statute.

42. In this context, it is fruitful to refer to the authority in ***Academy of Nutrition Improvement v. Union of India***[32]. The two-Judge Bench was dealing with the issue of constitutional validity of Prevention of Food Adulteration (Eighth Amendment) Rules, 2005. After discussing at length from various angles, the Court held that:-

> "Statutes delegating the power to make rules follow a standard pattern. The relevant section would first contain a provision granting the power to make rules to the delegate in general terms, by using the words "to carry out the provisions of this Act" or "to carry out the purposes of this Act". This is usually followed by another sub-section enumerating the matters/areas in regard to which specific power is delegated by using the words "in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters". Interpreting such provisions, this Court in a number of decisions has held that where power is conferred to make subordinate legislation in general terms, the subsequent particularisation of the

32 (2011) 8 SCC 274

matters/topics has to be construed as merely illustrative and not limiting the scope of the general power. Consequently, even if the specific enumerated topics in Section 23(1-A) may not empower the Central Government to make the impugned rule (Rule 44-I), making of the rule can be justified with reference to the general power conferred on the .Central Government under Section 23(1), provided the rule does not travel beyond the scope of the Act.

> "But even a general power to make rules or regulations for carrying out or giving effect to the Act, is strictly ancillary in nature and cannot enable the authority on whom the power is conferred to extend the scope of general operation of the Act. Therefore, such a power 'will not support attempts to widen the purposes of the Act, to add new and different means to carrying them out, to depart from or vary its terms'."

Rule 44-I is not a rule made or required to be made to carry out the provisions of the Act, having regard to its object and scheme. It has nothing to do with curbing of food adulteration or to suppress any social or economic mischief."

On the basis of the aforesaid analysis, the Court opined that:-

"We have already noticed that as at present there is no material to show that universal salt iodisation will be injurious to public health (that is to the majority of populace who do not suffer from iodine deficiency). But we are constrained to

> hold that Rule 44-I is ultra vires the Act and therefore, not valid."

43. In the case at hand, the Board has not been conferred such a power as per Section 11 of the Act. That is the legislative intent. Section 61 enables the Board to frame Regulations to carry out the purposes of the Act and certain specific aspects have been mentioned therein. Section 61 has to be read in the context of the statutory scheme. The regulatory provisions, needless to say, are to be read and applied keeping in view the nature and textual context of the enactment as that is the source of power. On a scanning of the entire Act and applying various principles, we find that the Act does not confer any such power on the Board and the expression "subject to" used in Section 22 makes it a conditional one. It has to yield to other provisions of the Act. The power to fix the tariff has not been given to the Board. In view of that the Board cannot frame a Regulation which will cover the area pertaining to determination of network tariff for city or local gas distribution network and compression charge for CNG. As the entire Regulation centres around the said

subject, the said Regulation deserves to be declared ultra vires, and we do so.

44. Ex consequenti, we find no substance in this appeal and accordingly the same stands dismissed without any order as to costs.

.................................J.
[Dipak Misra]

.................................J.
[Uday Umesh Lalit]

New Delhi
July 1, 2015