

Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 34/2009

and

Appeal No. 35/2009

Dated: 6th May, 2009

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. Mahesh B.Lal, Technical Member**

IN THE MATTER OF:

APPEAL NO. 34/2009

***Ghanshyam Rohitbhai Mehta
Bhavesh Rohitbhai Mehta
Resi. 29, Karanpara, 'Krishna Nivas'
Rajkot 360001, Gujarat
Through their C.A. Residing at
Karanpara 29, 'Krishna Nivas'
Rajkot 360001, Gujarat***

AND

APPEAL NO. 35/2009

Smt. Meenaben Maganlal Mehta
Through C.A.Kalpesh Vijaybhai Shah
14, Jagnath Plot, R.K.Appartments
4th Floor, Block 7A, Rajkot
Gujarat 360001.

Versus

..... Appellants

1. Resident Manager
Secon Private Ltd.
1st Floor, Giriraj Apartment
52, Shrinagar Society, Dinesh Mill Road
Akota, Vadodara 390020 Gujarat
2. Gujarat State Petronet Ltd.
(Subsidiary Co. of Gujarat State Petroleum
Corporation Ltd.) 5th Floor, GSPC Bhavan

* The cause title at page 1 and the date in para 3 at page 8 are corrected as per Order of this Tribunal dt. 7.10.2009 and the corrections are shown in Bold and Italics.

Behind Adhyog Bhavan, Sector-II,
Gandhinagar-382011, Gujarat

3. Petroleum & Natural Gas Regulatory Board
1st Floor, World Trade Centre
Babar Lane, Barakhamba Road
New Delhi-110001

..... Respondents

Appellants(s) : Mr. Rohitbhai Mehta, Party in Person

Counsel for the Respondent(s) : Mr. Aspi N.Kapadia for Resp.2
Mr. Sunil Kumar Rai, for Resp.3

Per Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson

Judgment

Both the above Appeals are being disposed off through this common order as the issue in both the Appeals is the same.

The Appellants filed two different complaints before the Petroleum Board, challenging the provisions contained in the Gujarat Water and Pipelines (Acquisition of Rights of User in Land) Act, 2000 as unconstitutional and ultra-vires on the ground that to frame the law on petroleum and natural gas, it is only the Government of India that possesses the exclusive powers and the State Government is not competent to frame such law. In these Petitions, the Appellants/Complainants prayed for direction to the Respondent Company i.e. the Gujarat State Petronet Ltd. (GSPL) and their sub-contracting firm M/s. Secon Ltd., so as to restrain them from laying the pipelines in the lands belonging to the Appellants, without the authorization from the Regulatory Board under the Petroleum and Natural Gas Regulatory Board (PNGRB) Act.

The above complaints were however, dismissed by the Board by the orders dated 12/11/08. Challenging the same, the Appellants have filed these Appeals No. 34 and 35 of 2009. The short facts are as follows:

1. The Appellants are joint owners of the agricultural lands situated in District Rajkot, Gujarat. The Gujarat Water and Gas Pipelines (Rights of User) Act 2000 was enacted by the State Government of Gujarat for laying pipelines for supply of natural gas for promoting environmentally friendly fuel so as to make it available to the public.
2. Under this Act, the GSPL, the R-2 herein requested the Government of Gujarat to give the contract for laying pipelines. Accordingly, a notification was issued on 7/6/05, declaring the intention to acquire the lands in various areas, including those of the Appellants and invited objections from the owners of the lands concerned. In pursuance of the said notification, several persons including the Appellants appeared before the Authority constituted by the State Government and placed their objections before it as against the said acquisition.
3. Ultimately, the said Authority decided to acquire the lands by overruling the said objections and vested the lands with the Respondent company for laying the pipelines underneath the lands belonging to the various owners. On the basis of this Order, the Government of Gujarat issued a notification on 2/12/2005 declaring that the right of user of the land is acquired in respect of the lands for laying the pipelines. Thereafter, the said lands were

handed over to the Respondent company, which undertook the work of laying pipelines for the project in Gujarat state.

4. It is only subsequent to the above, the Petroleum Act has been enacted by the Parliament and the assent of the President was obtained on 31/3/06 under which the PNGRB (Petroleum Board) has been constituted. In the meantime, the Respondents in pursuance of the Order of acquisition have laid more than 1100 kms. of pipelines till now. At this stage, the Appellants, challenging the provisions of the State Act, filed the Petition before the Petroleum Board to declare this Act as unconstitutional and to direct the Respondents to refrain from laying the pipelines. As indicated above, these complaints were dismissed by the Petroleum Board by the Order dated 12/11/08 which are the subject matter of challenge before this Tribunal in these Appeals.

Reiterating the contentions urged before the Board, the party in person on behalf of the Appellants would contend that the Tribunal as well as the Board have got the Authority to restrain the Respondents from laying pipelines under Section 16 of the Act especially when the Respondent companies cannot claim that the lands have been acquired as per the State Act i.e. the Gujarat Water and Gas (Acquisition of Rights of User) Act, 2000, as it was not validly passed. According to him, the State Government has no competency to enact the said Act, as the Act dealing with this subject can be enacted only by the Government of the Union of India and not by the State Government. The party in person has also cited the Supreme Court Judgment in Special Reference No.1/2001 dated 25/3/2004 to substantiate his plea.

Shri Aspi M.Kapadia, the Ld. Counsel appearing for the Respondents would submit that the said State Act has been held valid by the Order of Gujarat High Court, which has not been appealed against and the Supreme Court Judgment referred to by the party in person, would not be of any use in this case, as in the said case, the Supreme Court had not dealt with this Act, and therefore, the complaints before the Board as well as the Appeals before the Tribunal, are not maintainable.

We have heard both and carefully considered their contentions. Before dealing with the question raised in this case, one other aspect has to be referred at this stage.

It is noticed that along with these Appeals, the Appellants have filed interim petition for waiver of court fee as they are unable to pay the same. With reference to this Petition, it is contended by the Learned Counsel for the Respondents that even though under the Electricity Act, the rules have been framed and Rule 55 of the Appellate Tribunal (Procedure, Forms and Record of Proceedings) Rules 2007 has provided for waiver of fees, the similar rules have not been framed under the Petroleum Board Act, and in the absence of these specific rules empowering this Tribunal to waive the fee, this Tribunal has no jurisdiction to waive the court fee.

We are of the view that we need not go into the said aspect in these Orders as we are more concerned with the jurisdiction of the Board as well as this Tribunal, to deal with the relief sought for by the Appellants. Now we will deal with the jurisdiction issue.

At the outset, it shall be stated that the Petroleum Board Act 2006 was brought into force only on 31/3/06 by which the Board has been constituted. In this case, the Gujarat Water and Gas Pipelines (Acquisition of Rights of User in Land) Act 2000 was brought into force in 2000 itself. As per this Act, the notification had been issued by the State of Gujarat on 7/6/05 declaring its intention to lay pipelines in the lands including the lands of the Appellants. Thereupon, the State Authority constituted under the Act invited objections from the land owners, heard all the parties including the Appellants and recorded their objections. After observing all the required formalities, the Authority passed the Order of Acquisition after over-ruling the said objections.

Consequently, the Government of Gujarat issued a notification on 2/12/05 under Section 6 of the Act, declaring that the Rights of User in respect of the lands by the Respondent is acquired. Upon issuance of such notification, the Rights of User of the lands belonging to various owners including the Appellants were vested with the Gujarat State Petronet Ltd. the Respondent herein. On the basis of the said notification, the Gujarat State Petronet Ltd., the Respondent started the work of laying the pipelines.

In the meantime, the Authority also fixed the compensation for the affected land owners including the Appellants. Under the Act, the land owners have got a right to approach the District Collector, if they are not satisfied with the quantum of compensation fixed. Similarly, if the land owners have got any grievance against the whole acquisition proceedings, they are at liberty to file Writ Petitions before the High Court of Gujarat under Article 226 of the Constitution of India. Admittedly, the Appellants have not chosen to resort to these remedies.

Instead, the Appellants filed a Civil Suit before the Civil Court, Rajkot in C.S.No.609/07 in respect of the same cause of action praying for mandatory injunction restraining the respondents from laying the pipelines in the lands belonging to them. During the pendency of the suit, the Appellants sought for interim injunction restraining them from laying the said pipelines. However, the Trial Court, after hearing the parties, dismissed the said injunction petition on 2/11/07. Against the said Order of the Civil Court, the Appellants filed Civil Appeal No. 106/07 before the District Court, Rajkot. The said Appeal was also dismissed, by the District Court. Having failed in their attempts in the Civil forums, the Appellants have approached the Board for a direction for restraining the Respondents from laying the pipelines under Section 16 of the Petroleum Act.

The main contention urged by the party in person appearing for the Appellant is that the Respondents cannot lay the pipelines without the authorization of the Board under Section 16 of the Act and that the Respondents cannot claim the right of user of the lands on the basis of the acquisition proceedings, since they are illegal in view of the fact that the State Act is not valid in law in the light of the Judgment of the Supreme Court.

The above contentions do not merit acceptance for the following reasons:

1. Even before the Petroleum Board Act 2006 was brought into force i.e. on 31/3/06, the acquisition proceedings of the lands belonging to the Appellants have been completed by the competent Authority under the

- State Act, in favour of the Respondents on 2/12/2005. After declaration of the Orders by the State Governments, the Respondents commenced operations of laying the pipelines and the project of laying pipelines between Rajkot-Jamnagar section is almost complete as on 4/7/08. Therefore, the acquisition proceedings which were done by the State Authority under the State Act in the year 2005 cannot be challenged before the Board under the Petroleum Board Act, 2006 which has been constituted only on 31/3/06.
2. Either the Board or the Tribunal cannot go into the validity of the Order of acquisition by the State Government passed under the State Act. Similarly, the State Act also cannot be questioned either before the Board or this Tribunal on the ground that the State Government has no competence to enact this law. This point has to be decided either by the High Court or by the Supreme Court.
 3. The Judgment rendered by the Supreme Court, cited by the party in person would not apply to this case, as the said Judgment has dealt with some other State Act, not this Act in question. Further, it is noticed as pointed out by the Counsel for the Respondent that the very same State Act has been questioned in the Gujarat High Court which in turn by Orders dated **5/9/05** in Civil Applications No. 18013, 18015 etc. of 2005 has upheld the validity of this Act. As against the Order, no appeal has been filed before the Supreme Court.
 4. It is contended by the party in person that the Board alone has got the Authority to restrain the Respondents from laying the pipelines under Section 16 of the Act. This contention also has to be rejected in view of

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the fact that the Board Act has been introduced only in 2006 and the Board has been constituted only on 31/3/06 under the notification, and the Acquisition Order was passed by the State Government long back. Further, it is noticed that even though the Act was brought into force by the notification dated 1/10/07, Section 16 of the Act has not been brought into force. Hence, Section 16 of the Petroleum Board Act will be of no help for the Appellants.

5. In addition to the above, as mentioned, the Appellants have already chosen to go to the Civil Court and filed a suit where the issue with reference to the same cause of action is pending. Therefore, it has to be held that the Board as well as this Tribunal have no jurisdiction to deal with the issue raised in this case.

In view of the above, these Appeals are dismissed as not maintainable.
No costs.

(Mahesh B. Lal)
Technical Member

(Justice M.Karpaga Vinayagam)
Chairperson

Dated: 6th May, 2009

REPORTABLE