

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

(APPELLATE JURISDICTION)

**I.A. NO.148 OF 2016 in
D.F.R. NO. 2588 of 2015**

Dated: 27th May, 2016.

**Present: Hon'ble Smt. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. B.N. Talukdar, Technical Member(P&NG).**

IN THE MATTER OF:

1. Mahanagar Gas Ltd.)
MGL House, G-33 Block)
Bandra-Kurla Complex, Bandra(East))
Mumbai-400 051.)
)
....Appellant(s)/
Applicant(s)

Versus

1. Petroleum and Natural Gas Regulatory)
Board)
First Floor, World Trade Centre,)
Babar Road, New Deli-110001)
)
2. GAIL (India) Ltd.)
GAIL Bhawan, 16 Bhikaji Cama Place,)
RK Puram, New Delhi - 110066)
)
3. ONGC Limited)
Jeevan Bharti, Tower – II,)
124 Indira Chowk,)
New Delhi – 110001)
.....Respondent(s)

Counsel for the Applicant(s) : Mr. Gourab Banerji, Sr. Adv.
Mr. Trinath
Ms. Riddhi S
Mr. Vyom Shah
Ms. Manisha Singh

Counsel for the Respondent(s) : Mr. Sumit Kishore
Ms. Aparna Vohra for R.1

Mr. Ravi Prakash
Ms. Iti Agarwal for R.2

Mr. Sunil Kr. Jha
Mr. T.N. Durga Prasad
Mr. Shaantanu Jain for R.3

ORDER

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI – CHAIRPERSON

1. There is 31 days' delay in filing the present appeal. The Appellant/Applicant has therefore filed this application praying that delay may be condoned.

2. In the application it is stated that the Applicant had first approached the Delhi High Court by way of a writ petition challenging the impugned order dated 15/10/2015 passed by the 1st Respondent. At that time there was no Petroleum Bench available in this Tribunal. On 30/11/2015 the Delhi High Court disposed of the said writ petition directing the Applicant to prefer an appeal before this Tribunal as Appellate Authority of PNRGB within two weeks from the date of the order. Direction was given that this Tribunal upon becoming functional shall take up the appeal and application for interim relief as expeditiously as possible. Further direction was given that the appeal if filed within two weeks shall be considered on merits without going into the aspect of limitation. It is stated in the application that pursuant to the above directions passed by the Delhi High Court the Applicant has filed this appeal. The delay is not intentional or deliberate and therefore it may be condoned.

3. A reply is filed by Respondent No.3 opposing the condonation of delay. It is stated in the reply that the Applicant has challenged two different orders passed by the 1st Respondent. This is evident from the prayers of the appeal memo. The

Applicant has challenged order dated 15/10/2015 and order dated 3/5/2011 whereby Uran Trombay pipeline was declared as Common Carrier by the 1st Respondent. It is stated that order dated 3/5/2011 was not challenged by the Applicant. No review of that order was also sought. In any case almost five years after the order dated 3/5/2011 no challenge can be raised against it as the said challenge would be barred by limitation. The Applicant is therefore in the garb of challenging the order dated 15/10/2015 challenging the order dated 3/5/2011. It is submitted that therefore the application for condonation of delay may be rejected.

4. The Applicant has filed a rejoinder to the reply filed by Respondent No.3. It is stated in the rejoinder that the Applicant is not challenging the order dated 3/5/2011 passed by the 1st Respondent. It is merely seeking a declaration that the pipeline in question is a dedicated pipeline of Respondent No.2. It is further stated that the Applicant was not even aware about the order dated 3/5/2011 until the tariff order was passed on 30/12/2013. The Applicant had no knowledge about order dated 3/5/2011 and therefore he could not have challenged it. The

Applicant raised the issue of the pipeline being dedicated pipeline immediately upon coming to know of the tariff order dated 30/12/2013. It is also submitted that if this Tribunal comes to the conclusion after hearing arguments that the Applicant is in fact trying to challenge the order dated 3/5/2011 under the garb of challenging the order dated 15/10/2015, it may reject the Applicant's challenge to the order dated 3/5/2011 when the appeal is finally heard. However, since sufficient case is made out the delay may be condoned and the Applicant be given the chance to prove its case.

5. We have heard learned counsel for the Applicant and learned counsel for the 3rd Respondent. They have reiterated the submissions incorporated in their respective pleadings which we have reproduced in the preceding paragraphs. The order of the Delhi High Court is reproduced in the instant interim application. The Delhi High Court has granted liberty to the Applicant to file an appeal before this Tribunal. The Delhi High Court has observed that if the appeal is filed it is to be considered on merits without going into the aspect of the limitation. The Delhi High Court's this direction will have to be kept in mind while dealing

with this application. It is also clear that by the impugned order dated 15/10/2015 the 1st Respondent has dismissed the Applicant's complaint wherein it had sought clarification regarding applicability of the tariff order dated 30/12/2013 passed by the 1st Respondent in respect of Uran Trombay natural gas pipeline. Since the Applicant's complaint is dismissed the Applicant can certainly approach this Tribunal to challenge the said order as per Section 111 of the Electricity Act,2003 and Section 33 of the Petroleum and Natural Gas Regulation Board Act,2006. Whether this is an attempt to file an appeal against the order dated 3/5/2011 passed by 1st Respondent is matter which will have to be decided at the final hearing of the appeal. At this stage no such conclusion can be drawn. So far as appeal against order dated 15/10/2015 is concerned there is only 31 days' delay in filing the appeal. The said delay has been properly explained. The Applicant cannot be denied its right to challenge the said order. The delay will have to be therefore condoned. However, if there is an attempt to challenge the order dated 3/5/2011 belatedly after the limitation period is over as suggested by Respondent No.3, it will be open to Respondent No.3 to agitate the issue at the stage of final hearing of the

appeal. This Tribunal at the stage of final hearing will examine the said grievance of Respondent No.3.

6. In view of the above delay in filing the appeal is condoned. The application is disposed of.

7. Registry is directed to number the Appeal and list it for admission on **08/07/2016**.

8. Pronounced in the Open Court on this **27th day of May, 2016**.

B.N. Talukdar
[Technical Member]

Justice Ranjana P. Desai
[Chairperson]

~~REPORTABLE~~ / NON-REPORTABLE