BEFORE THE PETROLEUM AND NATURAL GAS REGULATORY BOARD, NEW DELHI

IN THE MATTER OF

M/s Assam Bought Leaf Tea Manufacturers Association .................. Complainant / Petitioner

Versus

M/s Assam Gas Company Ltd. ...........................................Respondent

FACTS OF THE CASE:

1. The Petitioner Association, which is a registered Society under the Society Registration Act and was incorporated for promoting the interest of the individual tea manufacturers in Dibrugarh area (State of Assam), has filed this petition under Section 11 (a), 12, 22, 24 & 25 of the Petroleum & Natural Gas Regulatory Board (PNGRB) Act, 2006 (hereinafter referred to as “The Act”) against the respondent, which is an Undertaking of the Government of Assam and is engaged in the business of supply of gas in the State.

2. The members of the petitioner Association require the supply of gas for manufacturing of tea for which the Ministry of Petroleum & Natural Gas (Govt. of India) has allocated 0.775 MMSCUD of natural gas to be supplied to the tea manufacturers in the area and the respondent has also created a network of gas supply pipes in the State.

3. It is contended by the complainant that as a consequence of enforcement of the Act, the respondent has to be considered as a regulated entity and is obliged to comply with the provisions of the said Act and the rules and regulations framed thereunder. The respondent has also to ensure strict compliance of the Petroleum and Natural Gas Regulatory Board
(Technical Standards and Specifications including Safety Standards for City or Local Natural Gas Distribution Networks) Regulations, 2008 (hereinafter called the "Technical Standards Regulations") which were notified on 27.8.2010 and provide for detailed terms and conditions of the technical and safety standards.

4. The complainant, by referring to Regulations 5 & 7 of the Technical Standards Regulations contended that the installation of Pressure Regulators is an integral part of CGD network and the respondent is obliged to install it but the respondent has been calling upon the consumers vide communication dated 13.1.2012 and 8.8.2012, to install the pressure regulators at their own cost and expense for taking supply. However, this demand of the respondent was contested and replied by the petitioner, vide letter dated 17.1.2013, but the respondent, thereafter, opted unlawful stand and intimidated the members of the petitioner vide letter dated 31.1.2013 that the obligation of installation of pressure regulator lies on the individual consumer under the Technical Standards Regulation and the supply of gas shall be discontinued, if they fail to install the pressure regulator for receiving gas supply. The complainant lastly, stated that the above action and threat, on the part of the respondent amounts to arm-twisting the consumers to comply with the demands of the respondent irrespective of the fact that the same is its own responsibility. Further, the tariff, presently charged by the respondent for transportation of gas, is also excessive as against the regulated tariff which is required to be worked out on the basis of the relevant regulations.

5. By placing reliance on the above facts and circumstances, the complainant sought a declaration that the responsibility of installation of equipment and facilities lies on the respondent and the respondent's action of requiring the individual consumer for installation of equipment and facilities is illegal and also requested to issue a direction that the
respondent shall not discontinue the supply of gas to the members of the petitioner’s Association.

6. The respondent, while rebutting the petitioner’s contentions, stated that the respondent, in terms of the provision of Technical Standards Regulations, has already taken necessary action by providing isolation valve at the delivery point of its pipeline and thus, ensured strict compliance of the Regulations but beyond this point, the consumers including the members of the petitioners have to have their own infrastructure / IPRS / control system which exists in the premises of individual consumer.

7. The respondent by drawing attention on Schedule 1 (D) (vi) contended that a bare reading of this Regulations reveals that it casts upon a duty on the consumer to ensure that the IPRS installation is approved by an independent certified third party agency, prior to the transportation and supply of gas to it, by the respondent.

8. It is also stated by the respondent that most of the members of the petitioner had constructed their IPRS and gas safety room etc. as the same is part of their property and is also beyond the scope of City Gas Distribution system. It added that most of the members of the Petitioner’s Association have entered into agreements with the respondent confirming that the respondent will provide gas from its pipeline system up to the offtake point at the boundary of the factory premises and the consumers will provide and operate their pipeline and control system from this offtake point upto the point of consumption of gas at the consumer’s factory.

9. The respondent, with a view to corroborate its intention, cited the letter dated 3.11.2010 issued by the Secretary of this Board whereby it was clarified that the IPRS and
the downstream network owned and operated by the customer should be certified by a third party and the customer shall comply with the technical and safety standard, as laid down in the Technical Standards Regulations. The consumers have accordingly given effect to the required upgradation of their IPRS and have also furnished the compliance report to the respondent.

10. The petitioner, in response to the contentions made by the respondent, stated in its rejoinder affidavit that the consumers had installed adequate safety devices – as per the drawing furnished by the respondent, at the time of initial drawl of piped natural gas. The existing Control Room has adequate Filters and Valves including to cut-off and isolate the premises from the main gas pipeline in case of any exigencies. The intent, purpose and rationale of the Technical Standards need to be considered for the equipment already installed and particularly the fact that the members of the petitioner used to take supply of piped natural gas and consumed between 3000 to 6000 SCMD and that too, at very low pressure of between 0.4 to 0.6 kg / CM² which is very low as compared to the threshold of 0.50 MMSCD and considering the nature and purpose of the equipments and their safety purposes, the installation of the existing safety filters and valves need to be sufficient for complying with the Technical Standards Regulations.

11. It is reiterated by the petitioner that the installation of the IPRS does not become obligation of the consumers merely because the same is installed separately for each individual consumer. The obligated entity under the Regulations is the respondent and it is for the respondent to install the IPRS in accordance with law as integral part of its City Gas Distribution Network.
12. The petitioner alleged that the insistence of installation of the IPRS by the respondent is not being applied on all the consumers; it is merely confined to the tea manufacturers.

13. It is also reiterated that the existence of a provision of owning the IPRS by the consumers does not place a mandate on the consumers for owning the IPRS in all the cases, because the primary obligation to install IPRS is on the regulated entity i.e. the respondent.

14. On the basis of pleadings of the parties, the issue deserving consideration may be identified as under :-

- Whether the IPRS is an integral part of CGD network and the entity is obliged to install it as pleaded by the complainant.
  
  OR

- The installation of IPRS depends upon the contractual obligation, if it has been specified in the agreement.

15. We have heard Ld. Counsel for both the parties at considerable length and perused the evidence available on record.

16. Ld. Counsel for the complainant, at the very inception submitted that the relevant Regulations need to be interpreted in a manner so as to achieve the object of the enactment and could accordingly supplement the gap, if any. Significantly, Schedule 1 (D) of the Technical Standards Regulations suggests that pressure regulators are integral part of the CGD network and is owned, operated and maintained by the Entity, authorized by the Board.
17. Ld. Counsel also submitted that this Board has the power to ensure enforcement of the Regulations from the Entity alone and is not expected under law to regulate the affair of the individual consumer.

18. Ld. Counsel drew our attention on the Notes which reveal that "the consumer shall be responsible for ensuring the separation distances for customer owned IPRS" and contended that such Notes have to be read in the context of Technical Standards Regulations and the Act. Moreover, the Notes nowhere reveal that the customer shall necessarily own and operate IPRS and the Entity has no obligation with regard to IPRS and probably, because of this reason, Ld. Counsel for the respondent conceded, during the course of hearing, before this Bench that the Notes provide an option regarding installation of the IPRS and it can be installed either by the consumer or the Entity.

19. Ld. Counsel further submitted that IPRS is definitely a part of the CGD network irrespective of the fact, by whom it is owned.

20. Ld. Counsel also pointed out that the kind of regime of customer owned and operated IPRS existed before the enforcement of the Act and all the agreements, as have been referred to and relied upon by the respondent, relate to that period but as a consequence of the enforcement of the Act and Regulations, the intention of casting this obligation on the Entity is manifest because the safety aspects which are required for the network are to be complied-with by the Entity engaged in the business of transmission of natural gas and that alone has to ensure integrated safe and secure operation of the network. The consumers cannot be expected to ensure compliance of the safety measures because they are neither engaged in the
business of such transmission nor have the expertise of operating and maintaining any part of the network.

21. Ld. Counsel lastly submitted that the Technical Standards Regulations casts an obligation on the respondent to provide and maintain the IPRS and such statutory obligation cannot be transferred or shifted even by mutual consent or by entering into agreement.

22. On the contrary, Ld. Counsel for the respondent submitted that the Technical Standards Regulations do not specifically provide that the Entity will have to make necessary modification / upgradation under all circumstances and in case, where IPRS are owned by the customers, the responsibility to make upgradation will also lie on them.

23. Ld. Counsel strived to focus our attention on the fact that all the Tea Estates own their own IPRS which are installed in their respective factory premises and the tea manufacturers have entered into agreements with the respondent to provide gas till the boundary of their premises and as such, they are bound to perform their obligation as required under Schedule 1 (D) of the Regulation.

24. Ld. Counsel lastly submitted that the IPRS is the property of Tea Estates and that has to be maintained by their respective owners and the respondent has the power to direct them for upgrading their IPRS and in case, they fail to carry out the desired upgradation, the authority of the respondent to discontinue the gas supply cannot be denied or challenged; and moreover, the members of the petitioner are bound to abide by the terms and conditions of the agreement which in no way is repugnant to any statutory provision.
25. On hearing Ld. Counsel for both the parties, it has to be determined first, that as to whether the ‘consumer’ stands covered within the definition of **Entity** and the Board is competent to issue any direction to the consumer or the **Entity** alone, is obliged under law to abide by the Board’s direction. It is also to be considered that IPRS is an integral part of the CGD network or not or the individual consumer is obliged to install, operate and maintain it at its own cost. The ancillary issue would also arise that the obligation of installation of IPRS can be shifted or not by mutual consent or agreement.

26. To resolve the said issues, the true meaning of ‘**Entity**’ and the ‘**CGD Network**’ is to be seen which have been defined in the Act as under:

**Section 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.

**Section 2 (p)**

"**entity**" means a person, association of persons, firm, company or cooperative society, by whatsoever name called or referred to, other than a dealer or distributor, and engaged or intending to be engaged in refining, processing, storage, transportation, distribution, marketing, import and export of petroleum, petroleum products and natural gas including laying of pipelines for transportation of petroleum, petroleum products and natural gas, or laying, building, operating or
expanding city or local natural gas distribution network or establishing
and operating a liquefied natural gas terminal;

27. The members of the petitioner are neither engaged nor intend to be engaged in such
activities which are pre-requisites of becoming an entity and as such the members of the
petitioner who are engaged in the activities of tea manufacturing cannot be treated as an
'entity'.

28. It is also pertinent to state that the Entity alone is to be held liable under Regulation 7
(3) of Technical Standards Regulations for making deviation or shortfall in achieving the
targets for implementing the specified standards.

29. It is thus implicit that the entity is obliged under law and not the consumer to ensure
compliance of the technical standard and specification including safety standards.

30. Furthermore, requirement of Technical Standards Regulations apply to all pipelines,
distribution mains and piping facilities downstream of inlet isolation valve of city gate station
(CGJ) upto and including consumer meter for commercial or industrial customer and upto
final isolation valve including connecting hose to gas appliance for domestic consumer, as
evident from Regulation 4 (b) of these Regulations. Moreover, Regulations 2 (n), (p) and (r)
of the Technical Standards Regulations lead to suggest that CGD network consists of three
parts i.e. primary network, secondary network and tertiary network and it requires to ensure
uninterrupted gas supply to service line.

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31. Likewise, Regulation 6 of the Technical Standards Regulations refers to the technical standard and specification for city or local natural gas distribution network as specified in all the Schedules including Schedule 1 (D).

32. A harmonious study of all the above referred provisions make it clear that the entity is primarily obliged to deliver gas to the end consumer and is also obliged to ensure the technical standard and specification. However, the obligation to install IPRS and its operation and maintenance can be shifted to consumer by way of mutual agreement and admittedly, prior to enforcement of the Technical Standards Regulations, the consumers and the respondent had entered into such agreements.

33. Keeping in view the agreements, as entered into between the consumers and the respondent, the following Notes were incorporated in Schedule 1 (D) of the Technical Standards Regulations:-

- The consumer, shall be responsible for ensuring the separation distances for customer owned IPRS.
- Customer shall ensure that IPRS installation has been independently approved by certified third party agency before the entity supplied the gas.
- The consumer shall ensure re-certification once in 3 years.

34. We thus, conclude and hold that in cases, where the consumer owns the responsibility of installation and maintenance etc. of IPRS it will be liable to make compliance of the requirements, as stated in the above Notes. However, respondent / entity is bound to ensure
the technical standards and specifications including safety standard even of such infrastructure, which is owned by the consumers.

35. We also hold that if the replacement / upgradation of consumer owned IPRS is required that will have to be made by the consumer but in absence of such mutual agreement, the respondent entity shall be responsible and obliged of installation of equipment and facilities including the installation of IPRS and the consumer cannot be forced by the respondent to own this responsibility or obligation. In view of above findings, the petition / complaint is disposed off as under :-

ORDER

The respondent, in absence of mutual agreement with the consumers, w.r.t. installation and maintenance etc. of IPRS, is obliged to install equipment and facilities and to comply with the provisions of the Technical Standards Regulations and any action of the respondent including discontinuing the supply of gas on this ground would be contrary to law.

The parties shall bear their own cost.

\[Signature\]
(K.K. Jha) 31.1.14
Member (KKJ)

\[Signature\]
(Subhash Chandra) 21.1.2014
Member (Legal)