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 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 transportation of gas in the State of Assam.

2. The members of the petitioner Association require the supply of gas for manufacturing of tea for which the Union Government has made allocation of the Piped Natural Gas (PNG) to the tea industry under the Administered Price Mechanism (APM) and allowed fiscal concession in the form of discount to accelerate growth and creation of employment opportunities in the backward Northeastern Region. The respondent in contravention of the Central Government’s policy entered into Agreements for supply of PNG to commercial and industrial consumers other than the tea industry out of the allocated quantity of natural gas.
3. The petitioner contends that upon coming into force of the Petroleum & Natural Gas Regulatory Board Act, 2006 (hereinafter called ‘the Act’) and the constitution of the Petroleum & Natural Gas Regulatory Board (hereinafter referred to as ‘the Board’), the respondent has become a regulated entity and is required to comply with the rules and regulations framed by the Board. Further the pipeline network tariff that the respondent is entitled to charge, from its consumers is also to be determined by the Board and the network tariff would be worked out after taking into account the legitimate and reasonable costs and expenses incurred by the respondent in the transportation of natural gas to the consumers through its network pipelines.

But, despite creation of the Board, which is vested with the statutory function of determination of the transportation tariff with effect from 20th Nov., 2008, the respondent, despite being under statutory obligation to get the transportation tariff determined by the Board has not taken any steps for the same and is continuing to impose and levy the transportation charges arbitrarily on the consumers including the members of the petitioner’s association.

4. It is also contended that the multiplicity of the transmission charges for the PNG has also been disclosed by the Controller & Auditor General (CAG) in its report which also disclosed that the respondent has installed compressors in excess of their requirement and quoted the relevant extract of the report of the CAG as under:

"The volume of gas transported during 2004-09 increased by 14 per cent, whereas the TC levied during the same period showed an increase of 82 per cent. Main reasons
for the disproportionate increase in revenue were excess levy of TC by inflating the cost of supply system revamped during the period, levy of TC on avoidable infrastructure additions made as part of revamping of the supply system, upward revision of TC on renewal of existing agreements with consumers etc."

5. It is also stated that the transmission charges being levied by the respondent neither have any justification or rationale nor co-relate with the capital cost and operation and maintenance cost incurred by the respondent in effecting transportation of PNG for supply to the consumers.

6. It is also contended that the respondent has entered / is entering into agreements with the Gas Grids (comprising of multiple consumers) or with individual consumers, wherein the proposed month-wise volume of PNG consumption is stated, as the booking quantity. The respondent is insisting on consumers to pay a premium of 25% over and above the transmission charges, if the drawl of PNG exceeds 120% of the booked quantity, in any month. This is beyond any logic – as the PNG is being drawn from the network of pipelines, the costs (capital and revenue) of which, have already been factored, for computing the initial transmission charges. Therefore, this levy of a premium, over and above the transmission charges, is totally unjust.

7. Moreover, the transmission charges as are being presently levied by the respondent has no adjustment, towards the calorific value of the PNG being delivered to the consumers. The gas price being recovered for onward payment to the gas provider (M/s Oil India Ltd. / M/s Oil & Natural Gas Corpn. Ltd.) – has an adjustment with the calorific value of the PNG being supplied. Therefore, the interim / finally determined transmission charges for the PNG
needs to be with an adjustment towards the calorific value of the supplied gas as the quantum of consumption of the PNG by the consumers would have direct relation with the calorific value of supplied gas. The consumers would need to draw a higher volume of PNG, if the calorific value of the supplied gas, is lower than the average calorific values of the gas, being presently supplied.

8. It is also contended that the respondent has itself got a study conducted through a consultant, M/s CRISIL, on the tariff that ought to be applicable for the transportation of gas, through network of pipelines, based on the costs and expenses and as per the report submitted by M/s CRISIL to the respondent, the transmission / transportation charges of PNG were reported much lower than being presently charged by the respondent, from the consumers.

Besides, the respondent is unauthorizedly levying a ‘Marketing Margin’ on gas supplies to the Tea Consumers – whereas, no marketing efforts, have been made by the respondent towards marketing of the PNG and that too, to its existing consumers.

9. The petitioner lastly stated that the respondent is also providing new connections to the tea industry and while providing new connections for PNG, it is recovering substantial amount from the prospective tea industry consumers by way of capital contribution, in addition to the refundable security deposit, calculated on 3 months peak consumption of PNG and the transmission charges.

10. On the basis of above averments, the petitioner has requested to issue a direction to the respondent to approach the Board and to provide there all details of the capital...
expenditure, operation and maintenance expenses and other relevant documents including the report prepared by M/s CRISIL (Consultant) for getting the transportation tariff determined.

The petitioner further requested to issue a direction to the respondent to refund the excess charges collected from the consumers with interest w.e.f. 20\textsuperscript{th} Nov., 2008.

It lastly requested to pass a provisional tariff order for the transmission charges of network pipelines, to be levied by the respondent on the members of the petitioner, in line with the provisional tariff order issued by the Board, in the case of Agartala Regional Natural Gas Pipeline of GAIL, effective from 20\textsuperscript{th} November, 2008.

11. The respondent, by filing a written reply, admitted the fact that it is a Government of Assam Undertaking incorporated under the Companies Act, 1956 and it, by executing MOUs with Oil India Ltd. on sector-wise basis purchases gas for different gas-grids and thereafter, transports natural gas through its pipeline network to the consumers including the members of the petitioner’s association.

12. It denied the allegation of levying excessive and arbitrary transportation charges of the gas and stated that the invoices are raised as per the agreements entered and executed between the respondent and the consumers and are kept uniform in the same financial year and the practice, as was being adopted in the past, no longer exists.

13. On the issue of allocation of piped natural gas to the tea industry by the Union Government under the Administered Price Mechanism (APM), the respondent stated that the Ministry of Petroleum & Natural Gas (MOP&NG) vide various notifications, as issued from time to time, determines the price of gas for the consumers and the respondent receives the
allocated gas from the nominated fields of Oil India Ltd. and ONGC Ltd. and then recovers the same price from its downstream consumers. It further stated that allocation of APM gas is made for small scale consumers covering the consumers of tea sector by the MOP&NG. It denied of making separate allocation by the Government specifically in favour of Tea Sector.

14. The respondent also denied the allegation of the petitioner of its being passive for getting the network tariff determined under the relevant Regulations. It stated that the application along-with requisite information has already been furnished to the Board for tariff determination.

15. Moreover, the transmission charges are being evaluated by the respondent by adopting the same yardsticks viz. capital investment and the expenses incurred on the maintenance and operation of the pipeline network, salary and wages etc. which are applied by the Board while determining the tariff.

16. The respondent, in response to the petitioner’s contention on the report of the Controller & Auditor General (CAG) regarding the respondent’s network and the increase of 82% of the transmission charges during the year 2004-09, stated that the compressors have been installed for its dedicated consumers which do not have relevance for fixing the transmission charges.

17. On the issue of dis-proportionate increase in revenue on account of excessive transmission charges, it clarified that the requirement of one of its dedicated industrial consumer BVFCL, had substantially increased resulting in increase in the transmission charges during the year 2008-09 to the extent of 220% as compared to the year 2004-05.
18. The respondent admitted the petitioner’s contention of charging premium on new consumers and explained that the levy of premium on transmission charges is being made only to safeguard the consumer suffering from low gas pressure problem resulting in over drawl of gas by other consumers in the same network beyond their booked quantity.

19. Likewise, on the issue of adjustment towards the Calorific Value of the piped natural gas, the respondent submitted that the Calorific Value determines the quantity of gas actually consumed by a customer and gas price is adjusted as per the actual Calorific Value which finally goes to the producer of gas. Moreover, the respondent does not have any scope of adjustment of the transmission charges against variation of Calorific Value of gas as it has the entire control over the Calorific Value and the pipelines are designed to carry the required quantum of gas irrespective of Calorific Value.

20. The respondent did not deny the fact of getting a study conducted through a consultant, M/s CRISIL regarding tariff that ought to be applicable for the transportation of gas but submitted that since the tariff has to be levied, as determined by the Board, so there was no necessity to make the consultant’s report public.

21. The respondent, on the issue of collecting capital contribution from the existing consumers, stated that its contribution was considered at that time when the capital investment for the particular project was very high and the return on investment was comparatively low but for the last 10 years, no such contribution is being collected.
22. On the issue of collection of the refundable security deposit, the respondent stated that this deposit is being taken for realization / adjustment of unclesed dues towards the consumers and it pays 3% interest per annum on such deposit.

23. The respondent firstly stated that this complaint / petition has been filed merely to mislead this Board by making frivolous statement which does not find support by any valid document.

24. The petitioner Association, in the rejoinder affidavit, reiterated its allegations and specifically pointed out that the respondent, in its written statement has admitted of following the discriminatory practices and levying the tariff charges arbitrarily. The respondent not only failed to justify the tariff charges being levied, it rather submitted evasive response with regard to the report of Controller & Auditor General and the report of its own consultant, ‘CRISIL’. The respondent further admitted the collection of premium on transportation charges and the security deposit but failed to justify the payment of interest merely @ 3% per annum on such deposit, which ought to have been higher, as compared to the prevailing rate of interest in the market.

25. The petitioner’s Association contended that on the commencement of the Act and the notification of the relevant Regulations, the respondent was obliged to approach the Board within specified period for getting the tariff determined but it failed to do so for considerably long period and only on hue and cry of the consumers, it moved application before the Board and that too ‘incomplete’ with a view to cause further delay. In the meantime, the respondent coerced the consumers to enter into the agreements which were unilaterally prepared by it and on that basis, levied the transportation charges arbitrarily.
26. The petitioner at last asserted, that the evidence, relating to the uniformity and fairness of the transportation charges, was within the possession of the respondent, but it preferred to withhold that documentary evidence and submitted merely oral submissions and this conduct of the respondent makes its contentions inadmissible and unacceptable.

27. We have heard Ld. Counsel for both the parties at length and also perused the evidence and the submission on record.

28. Before proceeding any further, the views may be expressed about the misappropriation of allocated natural gas by the respondent; report of CAG about unwarranted installation of compressors and levying excessive transportation charges; collection of premium of 25% over and above, the transmission charges; implementation of consultant’s (CRISIL) report; levying of marketing margin and the collection of security deposit while providing new connection.

29. On the issue of marketing margin, the main contention of the respondent is that the Board has no jurisdiction to fix the price of natural gas because the respondent, which is a gas marketing company, purchases gas from the procurement source and markets the same to its consumers including the members of the petitioner’s association and is within the city gas distribution network and thus, it transports its own gas.

At the very outset, it is relevant to state that the petitioner / complainant has no where prayed the Board for fixing the price of natural gas nor we are inclined to enter into this subject. So far as the marketing of gas to the members of the petitioner’s association is concerned, the
contents of the written statement of the respondent are sacrosanct which reveal that the APM gas is allocated by the Ministry of Petroleum & Natural Gas and its price is also fixed by the Ministry and the respondent merely procures it from OIL & ONGC and transmits the same at the same price to the consumers in whose favour the allocation was made by the Central Government and as such, the role of the respondent in the instant matter is merely of a transporter.

30. It may be stated that during the course of hearing on 13.2.2014, we were told that a copy of the report of the consultant (CRISIL) has been furnished by the respondent in the Board along with tariff application where-upon, Ld. Counsel for the complainant was allowed to inspect that report and to submit written submission in respect thereto, in addition to the submissions on other issues. Nothing concrete has been brought to our notice in respect of this report which could have been advantageous to the complainant.

31. Likewise, the explanation with regard to the report of CAG has been rendered by the respondent and otherwise too, this issue does not appear to have any significance at this stage because the application for tariff determination is admittedly lying pending with the Board and whatever tariff is determined by the Board will be applicable with effect from the date of notification of the relevant Regulation i.e. 20.11.2008 and the respondent will be liable to make adjustments accordingly.

32. The respondent has not only denied the allegation of mis-appropriation of allocated gas (APM), it rather contended that the allocated gas is transmitted and provided to the consumers in the manner and at the price as directed and decided by the Central Government. Despite this specific contention of the respondent, the complainant / petitioner could not
furnish any evidence to substantiate its allegation and as such, this allegation is liable to be ignored.

33. On the issue of charging premium from the new consumers, the respondent has stated that the premium on transmission charges is being levied with a view to safeguard the consumers' suffering from low gas pressure problem resulting in over-drawl of gas by other consumers in the same network beyond their booked quantity. This explanation leads to an assumption that levying of the premium is in the interest of the consumers who may be affected by over-drawl and act as deterrent on errant behaviour of consumers. However, if any such consumer lodges a complaint and challenges this justification of respondent, the Board may take cognizance of this fact.

34. On the issue of collecting capital contribution from the existing consumers, the respondent has specifically stated that for the last 10 years, no such contribution is being collected. The complainant could not rebut this assertion of the respondent by adducing any evidence.

35. Likewise, the respondent while admitting the fact of collection of refundable security deposit, explained that this deposit is being taken for adjustment of uncleared dues towards the consumers and an interest of 3% per annum is paid to the depositors.

The intention and object beyond this collection of refundable security deposit does not appear to be the matter of concern for the Board in view of the explanation as rendered by the respondent.
36. The only issue deserving consideration for the Board remains the excessive and arbitrary transmission charges which are allegedly being levied by the respondent on the consumers.

On this issue, it may be stated that undisputedly the respondent’s application for tariff determination is lying pending with the Board and whatever the tariff is determined by the Board will be applicable from the date of the notification of the relevant Regulation i.e. 20.11.2008 and the respondent will be liable to make adjustments with the consumers accordingly.

The complainant alleges that the respondent has deliberately submitted incomplete application and did not furnish the requisite information to the Board with a view to cause further delay so that it could continue levying arbitrarily tariff charges.

37. In view of above, it appears to be appropriate that the respondent be directed to furnish all the requisite information to the Board, if not furnishes earlier, and to make the application complete in all respects within a specified period and the Board may also be required that as soon as the application is made complete and the requisite information is furnished, the tariff be determined within specified period.

With above observations and findings, the complaint / petition is disposed off as under:

ORDER

The respondent (AGCL) is directed to furnish all the requisite information to the Board for determination of tariff, if not furnished earlier, and to make the tariff application complete in all respects within a month from today. If it fails to do so within this specified period, the
Board shall determine the tariff on the basis of available information and to the best of its judgment.

The Board is also required to dispose off the tariff application within a period of 3 months.

We do not find any basis to pass provisional order for the transmission charges of network pipeline to be levied by the respondent on the members of the petitioner’s association and the petitioner’s prayer in this regard is rejected.

The parties shall bear their own cost.

(K.K. Jha)  
Member (KKJ)  

(Subhash Chandra)  
Member (Legal)