

M/S O.N.G.C. LTD.

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v

ASSN. OF NATURAL GAS CONSUMING INDUSTRIES AND ORS.

APRIL 12, 2004

[S. RAJENDRA BABU, DR. AR. LAKSHMANAN
AND G.P. MATHUR, JJ.]

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Natural gas—Price fixation by ONGC—Upheld by Court—Interest on differential amount—Two drug manufacturing companies disputing calculation of arrears of principal amount—Held, demands made by applicants have not been considered effectively by ONGC—Interest to be paid by them would be payable at stipulated rate but at simple rate of interest and not compoundable—ONGC shall also examine the other points raised by applicants—Interest.

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Appellant-ONGC increased the price of gas which gave rise to a number of writ petitions before the High Court. Pending litigation, gas price was regulated by interim orders of the High Court and the Supreme Court. Ultimately, the price fixed by ONGC was upheld by the Supreme Court. As regards the claim of ONGC for interest on the late payment of differential amount, the Court held that interest would be paid at the rate and manner specified in the contract. However, it was made clear that the case of the two drug manufacturing companies, namely, 'SCS' and 'AL' would be dealt with separately. The two companies filed the present IAs. disputing the demands raised by the ONGC.

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It was contended for the applicants that the ONGC while calculating the arrears of principal amount applied a higher rate of price contrary to the decision of the Court. It was contended for applicant 'AL' that arrears derived on account of short liftment were calculated by ONGC using rate for actual supply which included the sales tax and royalty on short-lifted quantity; that ONGC failed to consider their request for reduction of contracted quantity from 60,000 cubic meters to 50,000 cubic meters per day, therefore, ONGC should recompute the demand in this regard, and that as per the *force majeure* clause in the contract, ONGC was required to bill on actual usage quantity during the period of strike and furnace collapse.

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A Disposing of the I.As, the Court

HELD: 1. In neither of the cases has ONGC considered the demands made by the applicants effectively, and determined the amount of arrears due from them without making appropriate adjustments for the money paid by them. The representations made by both these companies have been dealt with in usual bureaucratic style without due consideration to the points raised. The points raised by them both in regard to the payment of interest and in regard to other aspects are of substantial nature and cannot be brushed aside but need to be considered by ONGC appropriately. [5-C-E]

C 2. So far as interest is concerned, though this Court stated in the order made on 26.7.2001, that interest is payable in terms of clause 5 of the contract but that was in the normal circumstances arising in the case. The two applicants are drug manufacturing companies and prices at which they sell their goods are fixed by the Drug Price Control Orders, which had taken into consideration the price at which the gas was supplied, which now gets enhanced by reason of the orders of this Court. Therefore, in the totality of the circumstances, interest shall be payable by these two companies at the rate as stipulated in clause 5 of the contract but at simple rate of interest and not compoundable. ONGC would reduce their claim to that extent in the demands made by them. [5-E-H]

E 3. In case of 'AL', ONGC shall also examine the points raised as regards (i) the exclusion of the royalty and sales tax on the damages for short liftment; (ii) the effect of their letter seeking for reduction of supply from 60,000 cubic meters to 50,000 cubic meters per day; and (iii) claim made on the basis of *force majeure* clause; and thereafter redetermine the arrears payable by them along with interest. [6-A]

CIVIL APPELLATE JURISDICTION : I.A. Nos. 355-365 of 2002.

IN

G I.A. Nos. 190-200.

IN

Civil Appeal, Nos. 8530-40 of 1983.

H From the Judgment and Order dated 30.7.83 of the Gujarat High Court

in S.C.A. Nos. 883, 913/79, 1897/81, 2316, 2384, 2445, 2470, 2977, 4194, A
4520, and 2542 of 1982.

With I.A. Nos. 333-343/2002 in I.A. Nos. 190-200 in C.A. Nos. 8530-
40 of 1983.

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V. Pal Singh, Ms. Pratibha Jain, Sushil Kumar Jain, Vinay Garg, Shri Narain, C
Sandeep Narain, Ms. Anjali Jha, Ms. B. Vijayalakshmi Menon, A. Deb Kumar,
Sudarsh Menon, B.S. Sharma, K.V. Mohan, P.H. Parekh, Ms. Ranjeeta
Rohatgi, Pramod B. Agarwala, Ms. Aparna Bhat and Ms. P. Ramesh Kumar
for the appearing parties.

The Judgment of the Court was delivered by D

RAJENDRA BABU, J. A batch of writ petitions was filed in the High
Court of Gujarat challenging the increase in the price of gas and by an
interim order, the High Court directed ONGC to supply gas at the old rate
of Rs.504/- per 1000 M3. Subsequently, by another order made on 29.10.1982,
the price was raised to Rs. 1000 per 1000 M3. By an order made on 30.7.1983, E
the High Court allowed the writ petitions and set aside the price which had
been determined by ONGC. Pursuant to a certificate of fitness, appeals were
filed in this Court and this Court continued the interim order granted by the
High Court and thereby the respondents in the appeals received gas for which
they paid a price of Rs. 1000 per 1000 M3.

This Court, on 4.5.1990, by judgment upheld the prices fixed by ONGC
and allowed the appeals. After the appeals were allowed, ONGC became
entitled to receive the difference in the price of gas supplied. ONGC, in
addition to the said principal amount, also demanded interest thereon in
terms of Clause 5.02 of the contract. When payment was not made in
accordance with their demands, I.A. Nos.1-11 and 23-33 were filed in this
Court and this Court, by an order made on 6.4.1993, passed the orders for
categorising the respondents into three categories. The first category being
where the principal amount was allowed to be paid in instalments. Where
such offer was not made, this Court made it clear that ONGC was entitled to
recover the entire dues. The third category is of such cases where the H

A companies concerned have become sick and proceedings were pending before BIFR under the SICA. Subsequently, it was directed that these IAs will remain pending and would be listed for hearing for directions regarding payment of interest after the principal amount is paid. But in some of the cases, there is no dispute that the payment of principal amount has been made in terms of this Court's order.

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Thereafter, applications in I.A.Nos. 190-200 were filed by ONGC claiming interest on the balance principal amount in terms of this Court's order dated 4.5.1990. This Court, after examining the matter, held as under:

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“.....ONGC was under an obligation by virtue of the interim orders to comply with the terms of the earlier contracts and to supply gas in the manner provided thereunder. This part of the contract was performed by the ONGC who thus became entitled to recover from the industries the price which had originally been charged by them. For the late payment of the amount, the contract in clause 5 had contemplated payment of interest at the rate and the manner specified therein.....”

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However, it was made clear therein that the cases of Sarabhai Common Services and Alembic Chemicals Ltd. [now known as 'Alembic Ltd.'] will be dealt with separately and now these applications have come up for consideration.

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There is a serious dispute between ONGC and the applicants as regards the demands raised by ONGC. It is contended that the ONGC while calculating the arrears of principal amount has applied for a higher price contrary to the decision of this Court and hence the arrears of principal amount had to be recalculated by applying the correct rate/price in accordance with the order of this Court; that the arrears claimed on account of short-liftment have been calculated by ONGC using the rates for actual supply which include the element of sales tax and royalty on the short-lifted quantities; that the money payable for short-liftment of gas less than the minimum quantity of gas agreed to be purchased is neither delivered nor supplied and hence cannot be treated as sale and in such a case neither royalty nor tax is leviable and, therefore, they contend that the statement of arrears which contained the element of royalty and sales tax will have to be recalculated by excluding the same; that they had made a request by a letter dated 24.6.1985 for reduction in the contracted quantity from 60000 cubic meters per day to 50,000 cubic meters per day; that since the matter was sub-judice before this Court, the

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change in the contracted quantity could not be done. Therefore, they claim that this aspect has to be considered now that the matters have been disposed of by ONGC and thereafter to re-compute the demands. In addition, it is also contended that the contract provides for *force majeure* and strike by workmen and furnace collapse are covered by this clause and ONGC is required to bill on actual usage quantity during the period of strike and furnace collapse. Again on the plea that the matter was pending before this Court, this aspect was not examined by ONGC. In these circumstances, it is submitted that the applicant is entitled to relief. A B

A similar application has also been made by M/s Sarabhai Common Services contending that the interest payable by them on the amounts due will have to be taken note of and there have been representations made by both M/s Sarabhai Common Services and also by Alembic Ltd. However, in neither of the cases has ONGC considered the demands made by them effectively and thereafter determined the amount of arrears due from them without making appropriate adjustments for the money paid by them pursuant to the orders of the Court or further claims arising therefrom. The representations made by both these companies have been dealt with in usual bureaucratic style without due consideration to the points raised. We find that the points raised by them both in regard to the payment of interest and in regard to other aspects are of substantial nature and cannot be brushed aside as has been done now but needs to be considered by ONGC appropriately. C D E

So far as interest is concerned, though this Court stated in the order made on 26.7.2001, that interest is payable in terms of clause 5 of the contract as contract continued to be in force till the matters were finally disposed of by this Court, but that was in the normal circumstances arising in this case. We may notice that these two cases where Sarabhai Common Services and Alembic Chemicals Ltd. [now known as 'Alembic Ltd.'] are drug manufacturing companies and prices at which they sell their goods are fixed by the Drug Price Control Order, which had taken into consideration the price at which the gas was supplied, which now gets enhanced by reason of the orders of this Court. F G

Therefore, in the totality of the circumstances, we think, interest shall be payable by these two companies at the rate as stipulated in clause 5 of the contract but not compoundable but simple rate of interest. To that extent, we allow the applications filed by Sarabhai Common Services and direct ONGC to reduce their claim to the extent in the demands made by them. In case of H

- A M/s Alembic Ltd. ONGC shall examine other points raised by them as regards:
(i) the exclusion of the royalty and sales tax on the damages for shortliftment;
(ii) *the effect of their letter seeking for reduction of supply from 60000 cubic meters per day to 50,000 cubic meters per day; and (iii) claim made on the basis of force majeure clause and thereafter redetermine the arrears payable by them along with interest.*
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The applications accordingly stand disposed of in terms of the aforesaid directions.

R.P.

I.As. disposed of.