CASE NO.:
Transfer Case (crl.) 355-365 of 2002

PETITIONER:
M/s ONGC Limited

RESPONDENT:
Assn. Of Natural Gas Consuming Indus. & Ors.

DATE OF JUDGMENT: 12/04/2004

BENCH:
S. RAJENDRA BABU, DR. AR. LAKSHMANAN & G.P. MATHUR.

JUDGMENT:
J U D G M E N T

IN

I.A. NOS. 190-200

IN

CIVIL APPEAL NOS. 8530-40 OF 1983

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

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 1000M3. By an order made on 30.7.1983, 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 1000M3.

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 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.

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:

"\005\005\005. 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\005..."

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.

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 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 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 this 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.

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 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, 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 that extent in the demands made by them. In case of 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 short-liftment; (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 re-determine the arrears payable by them along with interest.

The applications accordingly stand disposed of in terms of the aforesaid directions.