

A

O.N.G.C. AND ANR.

v.

ASSN. OF NATURAL GAS CONSUMING INDS. AND ORS.

JULY 26, 2001

B

[B.N. KIRPAL AND N. SANTOSH HEGDE, JJ.]

*Contract Act, 1872*

C

*Interest—Contracts for supply of natural gas—Agreement clause stipulating rate of interest on delayed payment—Expiry of contract—Demand for enhanced price for renewal of contract—High Court by interim order directing continuation of supply of gas at the existing rate—Subsequently, Supreme Court upholding the demand for enhanced price—Suppliers claim for interest on delayed payment of the principal amount—Entitlement of—*

D

*Held, in view of the interim order of Court, the contract between the parties and terms thereunder were Impliedly renewed—Thus, supplier entitled to claim interest on delayed payment of principal amount as specified in the agreement clause—On the principle of restitution also supplier entitled to be compensated—Doctrine of restitution—Applicability.*

E

*Words and Phrases :*

*“as at present”—Meaning of.*

F

**Agreements were entered into between the applicant Oil and Natural Gas Commission and respondents for supply of natural gas. Agreement clause 5.01 read with clause 5.02 stipulated the price payable and also rate of interest in the event of delayed payment. The contracts between the parties came to an end on 31.3.1979 and applicant proposed to renew the contract but at the enhanced rates, which was challenged by respondents in writ petitions. High Court passed an interim order directing the applicant to continue the supply of gas at the old rate. Subsequently, High Court allowed the writ petitions of respondents and set aside the price increase. However, on appeal, this Court upheld the revised prices proposed by applicants. Consequently, applicants filed the present I.As claiming interest on delayed payment of the principal amount.**

G

H

**On behalf of the applicant it was contended that in view of the agreement**

between the parties, the respondents were liable to pay interest on the basis of terms of clause 5.02 of the agreement; that on the principle of restitution, respondents should pay interest on the principal amount since they had got an advantage of not paying the amount by virtue of the order of this Court. A

On behalf of the respondents it was contended that since the contracts between the parties came to an end on 31.3.1979 there was no liability to pay interest; that since the judgment of this Court had not specifically required the payment of any interest, the question of complying with the terms of clause 5.02 of the agreement did not arise. B

Allowing the I.As., the Court

HELD : 1.1. Applicant-Oil and Natural Gas Commission is entitled to claim interest from the respondents for the delayed payment of the principal amount at the rate specified in clause 5.02 of the agreement between the parties. [55-E] C

1.2. It is true that the contracts between the parties came to an end on 31.3.1979. Thereafter the gas would have been supplied only if a fresh written contract had been entered into which was not done. The respondents, however, chose to approach the High Court which required the applicant to continue the supply of gas at the old rate. The effect of this clearly was that except with regard to the amount of price which was payable and which was in dispute, the rest of the terms of the agreements which had been entered into between the parties were impliedly continued. It is for this reason that in its order the Court used the expression on the same terms "as at present." D E

[55-E-G]

1.3. This Court upheld the price which was charged by the applicant and did not give any specific direction requiring payment of the principal amount of the interest to be paid. Merely because this was not done, does not mean that the right of applicants to get the money due to it had come to an end. The clear implication of the disposal of the appeals would be that the interim orders which had prohibited the applicant from realising any sum in addition to the one fixed by the interim order came to an end and the applicant would thereafter claim the money due to it. Applicant 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 applicant who 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 rate and H

A manner of payment of interest which would be a correct measure in determining the quantum of restitution. [56-F-H; 57-A]

B 2. On the principle of restitution also, the applicant is entitled to be compensated. Where, as a result of interim orders of this Court, payment is not made but subsequently after the case is disposed of money is required to be paid then the recipient would be entitled to charge interest by way of restitution. In the instant case, even if in the main judgment no direction was given by this Court with regard to the payment of interest, the applicants cannot be deprived of their right to claim restitution. [55-H; 56-A]

C *Kerala State Electricity Board v. MRF Ltd.*, [1996] 1 SCC 597; *Gursharan Singh and Ors. v. NDMC and Ors.*, [1996] 2 SCC 459; *Kanoria Chemicals and Industries Ltd. and Ors. v. U.P.S.E.B. and Ors.*, [1997] SCC 772; *Calcutta Jute Manufacturing Co. and Anr. v. Commercial Tax Officer and Ors.*, [1997] SCC 262; *Kartar Singh alias Narain Singh and Ors. v. State of Punjab*, [1995] 4 SCC 101 and *Agricultural and Processed Food Products v. Oswal Agro Furane and Ors.*, [1996] 4 SCC 297, relied on.

D *O.N.G.C. and Anr. v. Asson. of Natural Gas Consuming Inds. and Ors.*, [1990] Suppl. SCC 397 = [1990] 3 SCR 157, referred to.

E CIVIL APPELLATE JURISDICTION : I.A. Nos. 190-200.

IN

Civil Appeal Nos. 8530-8540 of 1983.

F 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, 2194, 4520 and 2542 of 1982.

G K.N. Raval and Mukul Rohtagi, Additional Solicitor Generals, B. Sen, M.L. Varma, R.F. Nariman, Mahendra Anand, Shahid Rizvi, K.R. Sasiprabhu, Manish Garg, C. Mukhopadhyaya, Rakesh K. Sharma, Mrs. Manik Karanjawala, Ms. Pratibha Jain, Arun K. Sharma, Ms. Vandana Sharma, Ms. Vishwa Pal Singh, Nagendra Singh, Vinay Kumar Garg, Sushil Kumar Jain, Shri Narain, Sandeep Narain, Rajan Narain, Ms. B. Vijaya Lakshmi Menon, Sunil Dogra and Ms. Manu Nair, for the appearing parties.

H The Judgment of the Court was delivered by

**KIRPAL, J.** The only question which arises for consideration in these applications filed by the Oil & Natural Gas Commission (for short "ONGC") relates to the demand of interest from the respondents subsequent to the appeal with regard to fixation of price of natural gas having been decided by this Court. A

Briefly stated the facts are that the respondents had entered into agreements with the applicant whereby they had agreed to take natural gas from the applicant for the purpose of the industries run by them. It is not in dispute that there were written contracts executed between the applicant on the one hand and the various companies, namely, the respondents on the other. The agreements, in question, have stipulated the price payable and also contained terms *inter alia* to the effect as to when the payment would be made and, in the event of failure to make the payment, the rate of interest which should be paid. This was provided in clauses similar to Clauses 5.01 read with Clause 5.02 which read as follows: C

"5.01 The SELLER Shall issue and send to the BUYER invoices covering the total quantity of GAS delivered hereunder by the SELLER during each month for payment. The BUYER shall pay in full within ten (10) days of the receipt of such invoice the amount so mentioned in such invoices. For this purpose a month would commence at 0700 hours of first day of "a month" and end at 0700 hours of the first day of the following month. In case there is any dispute regarding the quantities of GAS supplied, the BUYER shall not withhold payment on this ground. After making full payment, the BUYER shall lodge his claims to the SELLER giving full particulars within a period of (14) fourteen days from the date of making the payment. D E

5.02 The BUYER shall pay interest on all delayed payments at the rate of half (1/2%) percent higher than the rate of interest payable by the SELLER on cash credit facility from the State Bank of India from time to time. Delayed payment means any payment not received within the period in clause 5.01 mentioned above." F

The contracts came to an end on 30th March, 1979 and the applicant proposed that the contract should be renewed but at the enhanced price of gas. The respondents thereupon filed a writ petition before the Gujarat High Court challenging the increase in the price of gas as fixed. By an interim order, the High Court directed the applicant to supply gas at the old rate of Rs. 504 per 1000M<sup>3</sup>. Subsequently, by an order dated 29th October, 1982, G H

A the High Court increased the interim price to Rs. 1000 per 1000M3.

By judgment dated 30th July, 1983, the High Court allowed the writ petition and set aside the price which had been determined by the applicant. Pursuant to a certificate of fitness having been granted appeals were filed in this Court. The interim orders of the High Court continued to remain in operation and the respondents received the gas for which it paid interim price of Rs. 1000 per 1000M3.

By judgment dated 4th May, 1990 reported as 1990 Suppl. SCC 397, this Court upheld the prices fixed by the appellant and allowed the appeals filed by O.N.G.C.

During the pendency of these appeals, on 15th April, 1987, an interim order was passed which was similar in terms to the one which had been passed by the High Court, namely, that the supply of gas to the respondents shall not be discontinued and they would be charged at the rate of Rs. 1000 per 1000 cubic metres.

After the appeals were allowed, the applicants herein became entitled to receive the difference in the price of gas. The applicants in addition to the said principal amount also demanded interest thereon in terms of the aforesaid clause 5.02. When payment was not made, IA Nos. 1-11 and 23-33 were filed in this Court. On 6th of April, 1993, this Court considered the case of the respondents and put them in three different categories. It is not necessary to deal with this in any great extent except to note that the principal amount was allowed to be paid in instalments as far as Category-I cases were concerned but in the other cases who did not offer to pay off the principal amount in instalments the O.N.G.C. was entitled to recover the entire dues. The third category related to those cases who because of the 'financial constraints had become sick. While allowing the payment of the principal amount by instalments in order dated 6th April, 1993, it was observed that after the principal amount had been paid, the applications were to be listed for further directions including the directions regarding payment of interest claimed by ONGC. In a subsequent order of 10th August, 1993 in IAs 1-11, it was directed that the said IAs will remain pending and would be listed for hearing regarding directions concerning payment of interest after the principal amount is paid.

It is not in dispute that the payment of the principal amount has been made in terms of this Court's aforesaid order of 6th April, 1993. It is thereafter

that the present applications have been filed claiming interest on the balance amount of principal which was paid as a consequence of this Court's judgment dated 4th May, 1990. A

Mr. B. Sen, the learned senior counsel appearing for the O.N.G.C., submits that the amount of interest which is payable should be calculated on the basis of the terms of aforesaid clause 5.02. He contends that this was the term which was agreed to between the parties and the respondents knew about by the same. In the alternative, it is submitted, that on the principle of restitution, inasmuch as the respondents had got an advantage by order of the Court of not paying the amount demanded by the O.N.G.C., the respondents should pay interest on the amount they were ultimately required to pay because O.N.G.C. had been deprived of the use of the said money. For the purpose of computing the amount of interest by way of restitution, he submits that the Court should take into consideration that the parties had earlier agreed that the rate of interest would be as specified in the aforesaid clause 5.02. B C

Mr. M.L. Verma, the learned senior counsel for the respondents, submitted that the interest was not payable because the contracts had come to an end on 31st March, 1979. He further submits that the judgment dated 4th May 1990 did not require the payment of any interest and therefore the question of the respondents being required to comply with the terms of aforesaid clause 5 does not arise. D

In our opinion, the O.N.G.C. is entitled to claim interest from the respondents for the delayed payment of the principal amount. It is true that the contracts between the parties came to an end on 31st of March, 1979. Thereafter the gas would have been supplied only if a fresh written contract had been entered into which was not done. The respondents, however, chose to approach the High Court and by order dated 30th March, 1979 the Court permitted the respondents herein to pay on the same terms "as at present" and O.N.G.C. was required to continue to supply the gas. The effect of this clearly was that except with regard to the amount of price which was payable, which was in dispute, the rest of the terms of the agreements which had been entered into between the parties were impliedly continued. It is for this reason that in the order dated 30th March, 1979 the expression used is on the same terms "as at present". In a sense, by an order of the Court, the contracts continued or were renewed. E F G

Even if this be not so, there can be little doubt that on the principle of restitution the O.N.G.C. is entitled to be compensated. It is now well-settled H

A by series of decisions of this Court that where as a result of interim orders of this Court, payment is not made but subsequently after the case is disposed of money is required to be paid then the recipient would be entitled to charge interest by way of restitution. For this Mr. B. Sen had drawn our attention to *Kerala State Electricity Board v. MRF Ltd.*, [1996] 1 SCC 597; *Gursharan Singh and Ors. v. NDMC and Ors.*, [1996] 2 SCC 459; *Kanoria Chemicals and Industries Ltd. and Ors., v. U.P.S.E.B. Ors.*, [1997] 5 SCC 772; *Calcutta Jute Manufacturing Co. and Anr. v. Commercial Tax Officers and Ors.*, [1997] SCC 262; *Kartar Singh alias Narain Singh and Ors. v. State of Punjab*, [1995] 4 SCC 101 and *Agricultural and Processed Food Products v. Oswal Agro Furane and Ors.*, [1996] 4 Scc 297. It would be sufficient to refer here to one passage from the decision in the *Gursharan Singh's* case (supra) Where at page 466 the Court observed as follows:

D “In view of the legal maxim “actus curiae neminem gravabit” which means that an act of court shall prejudice no man, NDMC is justified in making a claim for interest over the arrears which have remained unpaid for more than 12 years because of the interim orders passed by this Court. This aspect of the matter has been examined by this Court in the case of *Raj Kumar Dey v. Tarapada Dey*, [1987] 4 SCC 398. Although in the interim orders it has not been stated that in event of dismissal of the appeals and the writ petition, the appellants and the writ petitioner shall be liable to pay interest over the arrears of the licence fee, but that shall not debar this Court from passing any order in respect of payment of reasonable interest over the said amount.”

F From the aforesaid decisions, it is clear that even if in the main judgment on 4th May, 1990 no direction was given with regard to the payment of interest, the O.N.G.C. cannot be deprived of its right to claim restitution. The said decision upheld the price which was charged by the O.N.G.C. and did not give any specific direction requiring payment of the principal amount or the interest to be paid. Merely because this was not done, does not mean that the right of O.N.G.C. to get the money due to it had come to an end. The clear implication of the disposal of the appeals would be that the interim orders which had prohibited the O.N.G.C. from realising any sum in addition to the one fixed by the interim order came to an end and the O.N.G.C. would thereafter claim the money due to it. O.N.G.C. 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 there under. This part of the

contract was performed by the O.N.G.C. 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. This would be, in our opinion, a correct measure in determining the quantum of restitution. A

For the aforesaid reasons, we allow these application and hold that the O.N.G.C. is entitled to claim interest from the respondents at the rate specified in clause 5 of the erstwhile agreements but the cases of respondents - Sarabhai Comon Services and Alembic Chemicals Ltd. (now known as "Alembic Ltd.") are dealt with separately and are adjourned by eight weeks. B

It is evident that by now the amount payable by the respondents has become quite large. Mr. B. Sen in all his fairness submits that as was done by the interim order of 6th April, 1993 with regard to payment of the balance sum of principal amount, in the case of interest also this Court may, similarly, permit the payment of interest within a period of five years. C

We, therefore, hold that if within two months from today undertakings are furnished by the Managing Directors of the respondents-Companies that the amount of the interest claimed by the O.N.G.C. would be paid in instalments, the said industries would be entitled to pay interest in 60 monthly instalments. The instalments would commence one month after the undertaking is so furnished. In such an event there will be no further interest on the amount payable, but in the case of any two defaults the whole amount due would become immediately payable. The payments should be made by the 10th day of every calender month. If no such undertaking is given within a period of two months from today. O.N.G.C. would be entitled to recover the entire amount due and payable as determined by this order and till payment is received the defaulter would be liable to pay interest upon it at the rate specified in the aforesaid clause 5. D E F

The amount payable as of today will be intimated by the O.N.G.C. to the industries within two weeks from today. In case there is no dispute with regard to the calculation of the amount demanded the respondents would be at liberty to approach this Court within two weeks of the demand so raised. Securities shall continue till the entire payment is made. I.As, are allowed. G

S.V.K.

I.As allowed.