1983 (2) GLR 1437 : 1983 GLH(NOC) 14

GUJARAT HIGH COURT

Hon'ble Judges:N.H.Bhatt and J.P.Desai JJ.

Association Of Natural Gas Consuming Industries Of Gujarat Versus Oil And Natural Gas Commission Limited

SPECIAL CIVIL APPLICATION No. 883 of 1979 ; *J.Date :- JULY 30, 1983

- OIL AND NATURAL GAS COMMISSION ACT, 1959 Section - 14
- CONSTITUTION OF INDIA Article - 14 , 226

Oil and Natural Gas Commission Act, 1959 - S. 14 - Constitution of India - Art. 14, 226 - power of disposal of natural gas by ONGC - whether said power is discretionary - duty of public body or corporation when power is conferred on it - concept of public utility - ONGC supplies gas as part of its statutory and incidentally commercial activities - whether ONGC is within purview of MRTP Act - consideration as to liability to act reasonably - interference with executive functions - permissibility of - rule of reasonableness - power of High Court thereof - fixation of price - 30 time rise in price of gas by ONGC in span of decade - words 'reasonableness of rates' - meaning of - held, it is duty of ONGC to dispose of its gas in best possible manner to maximum advantage of nation and citizens and when it is possible to divert that gas to industries and consumers.

Reference to MRTP Act in instant case is out of place.

Liability to act reasonably even in matter of executive functions is innate - ONGC has obligation to charge reasonable price.

High Court in exercising jurisdiction under Art. 226 needs not embark upon technical assignment of fixing price of commodity like gas - High Court can interfere when any executive function offends rule of reasonableness and it can also declare that action ultra vires - even if piece of legislation does not provide for state agency to act reasonably. one must read into it provision of that nature.

This 30 times rise in span of decade would be indicative of prima facie unreasonable character of escalations - action of ONGC in charging rate in respective cases is ex facie unreasonable and to that extent their demand for said price is set aside - it is open to ONGC to deal with question of price fixation in any one of three modes suggested by this court - petition disposed of accordingly.

Cases Referred To :

1. Ajay Hasia V/s. Khalid Mujib, AIR 1981 SC 487
2. D.R.Venkatachalam V/s. Dy.Transport Commissioner, AIR 1977 SC 842
3. M:s. Pannalal Binjraj And Others V/s. Union Of India, AIR 1957 SC 397

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4. M:s. Prag Ice & Oil Mills V/s. Union Of India, AIR 1978 SC 1296
5. Premier Automobiles V/s. Union Of India, AIR 1972 SC 1690
6. Ramana Dayaram Shetty V/s. The International Airport Authority Of India & Ors., AIR 1977 SC 1628
7. Saghir Ahmad V/s. State Of U.P., AIR 1954 SC 728

Cited in :

1. (REFERRED TO) :- Ambica Mills Limited Vs. Steel Authority Of India Limited, 1986 GLH 235 : 1985 (2) GLR 664 : 1985 GLHEL_HC 200508
2. (Referred to) :- Textile Labour Association Vs. Official Liquidator, 2004 (3) GLH 416 : 2004 (4) GLR 2993 : 2004 (3) GCD 2390 : 2004 (9) SCC 741 : 2004 (4) Scale 414 : 2004 (2) LLJ 760 : JT 2004 (Supp1) SC 1 : 2004 AIR SC 2336 : 2004 (3) SCR 1161 : 2004 (1) SCR 1161 : 2004 AIR SCW 2422 : 2004 (101) FLR 627 : 2004 (3) Supreme 206 : 2004 (4) SLR 542 : 2004 (120) CC 505 : 2004 (2) UJ 1196 : 2004 (18) AllIndCas 675 : 2004 (2) LabLN 825 : 2004 (51) SCL 791 : 2004 (3) BankCas 424 : 2004 (7) SRJ 339 : 2004 (2) CompLJ 409 : 2004 (2) CCC 127 : 2004 (4) SLT 542 : 2004 (4) JCR(SC) 186 : 2004 (16) IndLD 725 : 2004 (60) CorLA 1 : 2004 (4) ACE 458 : 2004 CLC 741 : 2004 (1) DT(SC) 357 : 2004 GLHEL_SC 31862

Equivalent Citation(s):

1983 (2) GLR 1437 : 1983 GLH(NOC) 14
JUDGMENT :-
N.H.BHATT, J.

1 The first of the above petitions namely the special civil application No. 883 of 1979 is filed by The Association of Natural Gas Consuming Industries of Gujarat a society registered under the Societies Registration Act, 1860 and by various industrial concerns nine in number. All except the petitioner No. 2 M/s. Jayant Paper Mills Ltd. which is situated at Surat industries are situate at Baroda. The other petitions are filed by other industries consuming natural gas as their fuel. All these petitioners of all these petitions have been being supplied gas by the respondent. The Oil & Natural Gas Commission which is a statutory corporation brought into being under the Provisions of the Oil & Natural Gas Commission Act, 1959. The respondent shall hereinafter be referred to as the the O.N.G.C. for brevitys sake. After the exploration of oil in the Ankleshwar Region the Gujarat industries started receiving gas from the O. N. G. C. In most of the oil fields situated in Gujarat gas is received along with crude oil but in Cambay area, gas is received unaccompanied by crude oil This combustible gas is known as Associated Gas when it is received along with crude and it is known as natural gas pure and simple when from the wells only gas is received. For the purposes of this petition we shall refer to this gas supplied by the O.N.G.C. as gas. After the various industries situated in the Gujarat State Region started receiving gas a question arose amongst the O.N.G.C. and the State of Gujarat aspousing the cause of various industrial units in Gujarat as to the fair price at which such gas should be made available to the consumers in Gujarat. After some negotiations, the question of fair and reasonable price of gas was referred to the sole arbitration of Dr. V.K.R.V. Rao at the instance of the Union Government and the State Government. The said expert economist Dr. Rao had given his award on 23-9-1967 determining the price of natural gas to be supplied to the consumers in Gujarat at Rs. 50.00 per 1000 cubic meters ex-well head to which royalty sales-tax depreciation and the transport charges were permissible to be added. The said award however was to be operative upto 31-

3-1971 that is for the period of five years and thereafter the question of price fixation was left to be dealt with afresh on thorough review of the all-round situation. Thus upto 31-3-71 the well-head price continued to be Rs. 50 per 1000 cubic metres but thereafter for the period from April 1971 to December 1975 the well head price was increased to Rs. 66.00 for the same volume by the O.N.G.C. The petitioners complained that after December 1975 the O.N.G.C. adopted allegedly arbitrary and unreasonable attitude and despite repeated requests by the various gas consuming industries to give a break-up of the price demanded by the O.N.G C. the latter did not oblige and did not disclose how the escalated rate was being demanded. It is the say of the petitioners that the policy of entering into contract for five years also was given a go-bye and year-to-year contracts were insisted upon and just at the nick of the expiry of the years period the O.N.G.C. used to almost constrain the industries to enter into contracts for supply of gas at the arbitrarily high rates. The petitioners alleged that this pattern of the tactics adopted by the O.N.G.C. was evident from the fact that from 1-1-76 to 31-3-76 the price was fixed at Rs. 322.00; for the period from 1-4-76 to 31-12-76 the price insisted upon was Rs. 340.42; for the period from 1-1-77 to 31-3-77 the price was demanded at the rate of Rs. 351.00; for the period from 1-4-77 to 31-12-77 it was Rs. 371.16; from 1-1-78 to 31-3-78 it was Rs. 382.15 and then for the period from 1-4-78 to 31-3-79 the price sought to be agreed was Rs. 504.00 per 1000 cubic metres. The petitioners of these petitions complained that after 1975 the O.N.G.C. had then started acting in a most capricious and arbitrary manner in almost extracting the unreasonable price of the associated gas to the consuming industries in Gujarat though to the Gujarat Electricity Board the gas was being supplied at the rate of Rs. 155.00 and to the Gujarat State Fertiliser Corporation a State owned concern at Rs. 320.00 for the same volume. The petitioners of the first petition No. 883 of 1979 therefore approached ultimately this court when according to them the O.N.G.C. went on escalating the rates year after year without disclosing how they were working out the said price. The petitioners grievance in this regard is that the O.N.G.C. which upto 31-12-75 was supplying the details of the break-up including the well-head price had stopped that practice and being virtually a monopolistic agency in the supply of gas had acted in a high-handed manner. The petitioners of the first petition therefore ultimately approached this court in March 1979 with the following prayers:

> " (a) That this Hon ble Court be pleased to issue a writ of or in the nature of mandamus as any other appropriate writ direction and/or order under Art. 226 of the Constitution of India directing the respondents to supply the break-up and the data on the basis of which the price structure is arrived at by it for supply of associated gas to the petitioners and the gas consuming industries of Gujarat and to fix the price after giving reasonable opportunity to the concerned industries or their representative association i.e. the 1st petitioner herein to discuss and negotiate the fixation of fair and reasonable and just price for such supply of gas to the industries and to fix the minimum guarantee quantity at 75% of the contract and to permanently restrain them from discontinuing the supply of the said gas;
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> (b) This Hon ble Court be pleased to restrain the respondents their agents and/or servants from discontinuing the supply of gas to the petitioners Nos. 2 to 10 on such terms as this Hon ble Court thinks fit and proper by an order and injunction of this Hon ble Court pending the hearing and final disposal of this petition;"

2 Prayer (a) set out above also deals with another facet of the grievance of these petitioners in all these petitions. Formerly, the minimum guarantee quantity insisted upon was 75% of the

contracted quantity but thereafter the O. N. G. C. insisted on raising the said guarantee to 90% and this is also sought to be arrested by these petitioners.

3 During the pendency of this petition from the year 1979 to 1982 much water flew beneath the bridge. When the petition was filed the price fixed with the industries was Rs 504.00 per 1000 cubic metres but with the passage of lime and years it came to R. 741 from 1-4-81 to 31-12-81 and to Rs. 2095.70 for the period between 1-1-82 to 31-12-82 and ultimately it is stated to be R. 2400.00 per 1000 cubic metres.

4 As there was a long journey of this litigation these changes came to be effected. The parties have produced their affidavits time and again and the latest position emerging from the final record of all these petitions deals with the situation as was available at the time these petitions came to be heard in the month of July 1983. We shall deal with the various facets of this evidentiary material in the form of affidavits and counter affidavits in order to highlight what the grievances of the various petitioners are and what the say of the O. N. G. C. in respect of these various stages has been or is.

5 The first question that we would like to deal with which is a procedural one is that as per the business Rules of this High Court such matters should ordinarily be heard by a Single Judge of this court but as some of those matters have already been dealt with by the Division Bench ultimately by administrative orders this whole group of petitions has been posted for hearing before us as the Division Bench of this court. The learned counsels appearing for the respective parties at the outset of the hearing of this group agreed that these matters may be heard by us sitting as a Division Bench of this court. We make this position clear lest at some subsequent stage a question may be raised that the hearing of these petitions by the Division Bench robbed them of the right of appeal one way or the other in the form of the Letters Patent Appeals.

6 The submissions advanced before us on behalf of the petitioners of these petitions can be broadly summed up as follow:

(a) The O. N. G. C. being a State and a 'public utility' is not at liberty to charge any fantastic price at its caprice but is bound by law or at any rate by the Constitutional mandate to act reasonably and should not behave like a private entrepreneur;

(b) It is not open to the O.N.G.C. to practise discrimination in the matter of supply of an essential commodity like gas between consumers and consumers as is being done by the O.N.G.C. in respect of the supply of gas;

(c) The O.N.G.C. as the executive limb of the Union of India is any rate bound to act reasonably even in the matter of fixation of price particularly so when it has got the monopoly of dealing with the gas in the State of Gujarat;

(d) On being called upon by a rule nisi of this court the O.N.G.C. was bound to file a return placing all its cards on the table and the various affidavits filed on behalf of the O.N.G.C. on the record of these petitions are all illusory in description and this amounts to unfairness to the court;

(e) The O.N.G.C. has acted ex-facie and patently unreasonably in fixing the 90% as the minimum guarantee price in the matter of supply of gas; and

(f) The court in the above circumstances should strike out the price demanded from the various petitioners at the relevant time of filing the petitions and the O.N.G.C. should be directed by a writ of mandamus of this court to charge only reasonable price as fixed by getting an arbitration resorted to or by soliciting appointment of a Commission as was done in the past by appointing Dr. Rao as an Arbitrator or by reviewing the position of price fixation after hearing the persons likely to be adversely affected in the matter and deciding the question of price fixation on its own reasonably with reference to the proper data and material (it was conceded before us that the petitioners were amenable to any one of the three courses to be elected by the O.N.G.C. in its discretion).

7 On behalf of the O.N.G.C. it was contended that the O.N.G.C. was not a State and therefore inhibitions contained in Art. 14 of the Constitution of India were not applicable to it. It was also broadly denied that the O.N.G.C. could be said to be a monopolistic agency in India in so far as in Assam and Rajasthan the Indian Oil Corporation was a similar entrepreneur though it was not disputed that as far as Gujarat State region is concerned it was the only agency exploring the resources and exploiting the mineral oil and associated gas or natural gas available from the earth. It was also contended that the O.N.G.C. was free to arrive at its own ex-parte decision regarding the price structure and the various customers had no right to call for the data from it. It was also inter alia contended on behalf of the O.N.G.C. that equivalent price of alternative fuel that would be consumed by the other industries like furnace oil or coal and also the international prices are the relevant criteria and that the O. N. G. C. had acted on that material for demanding the prices at the rates set out in the affidavits from time to time and that the O.N.G.C. owed no obligation to anyone to lay bare the data on the basis of which it was fixing its prices from time to time. It was also denied that the O.N.G.C. was in any way unreasonable in enhancing the minimum guarantee at 90%. Thus the petitioners grievances and grounds were denied in toto by the O.N.G.C.

8 Before we embark on the actual points canvassed before us we would like to make certain factual and legal position clear. It was conceded before us at the time of the hearing though it was disputed at the stage of filing the returns that the O.N.G.C. for the purpose of the Constitution is a State. It was also not seriously disputed before us that in the Region of the State of Gujarat no other agency either private or public is operating in the field of oil exploration. It was also not disputed before us that the O.N.G.C. and the parties had entered into various contracts set out in the petitions from time to time almost at the closing of the period of the contract so as to make the rate available as per the say of the O.N.G.C. It was also not disputed that there was an Arbitration Award of Dr. V. K. R. V. Rao but it was emphasised before us at the time of the hearing that the principles governing price fixation were changing in this fast changing world and that the data adopted by Dr. V. K. R. V. Rao in his award which was accepted and acted upon for short duration would not be binding for all time to come. It was also alleged that these various petitioners of these petitions were trying to reap undue advantage vis-a-vis other industries who could not be supplied gas for want of its limited supply that those industries are consuming furnace oil for their purposes and that the petitioners who wanted gas almost at a throw away price were trying to enrich themselves at the cost of other competitors in the market. The innuendo was that they wanted to continue to dominate the market of the goods manufactured by them vis-a-vis other brethren of theirs who were comparatively less blessed in not getting the gas supply to them. It was also stated that Government was contemplating of stopping all supplies to private agencies but this was a passing threat made in the course of the hearing with which we are not concerned and therefore we do not deal with this last mentioned argument at all.

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9 The first and foremost question that falls for our determination in this group of petitions is whether the O.N.G.C. can be said to be a public utility or not because of its activity to sell gas. Though it was very streneously urged by the Advocate General appearing for the O.N.G.C. that it was not a public utility we find it absolutely difficult to subscribe to his view point. It is the common ground that prior to this statutory Corporation came into existence with effect from 18-9-1959 as per the provisions of the Oil & Natural Gas Commission Act, 1959 the Union of India had already started its operations in the field. The preamble of the Act mentions that it was enacted to provide for the establishment of a Commission for the development of petroleum resources and the production and sale of petroleum and petroleum products produced by it and for matters connected therewith. Sec. 14 of the Act occurring in Chapter III captioned as powers and functions of the Commission specifically provides that the Commission was competent to take such steps as it thought fit for various aspects of its operations including the work of transport and disposal of natural gas and refinery gases produced by the Commission. So it cannot be denied that disposal of natural gas and refinery gases is one of the functions of this Commission. It is to be noted with pertinence that natural gas whenever available cannot be stored. It has got to be consumed or burnt away. It is a side product of the exploration of oil resources. The Parliament was conscious of this character of gas and therefore it cast a duty on the Commission to make provisions for disposal of the gas. It cannot do to say that disposal of gas is one of the discretionary functions of the O. N. G. C. or that it is a provision which is enabling in character. Whenever any power is conferred on a public body or Corporation there is inherent in it and coupled with it a duty to act according to law. No public agency can get away from its functions by arrogating to itself a spacious argument that a particular function which it can undertake is only its discretionary function and that it is free to carry out that function or not to carry out the same in its absolute despotic discretionary. We reiterate that every public power ordinarily would be inextricably interwoven with a public duty. It was not fortunately argued before us that the O. N. G. C. Like a private entrepreneur could burn away its gas and refuse to supply it to any-one. Public resources are the properties in final analysis of the people at large. Public agencies are created and clothed with certain powers also in order to see that those public resources go to the benefit of the public and are not squandered away. So we do not uphold the argument of the Advocate General that the powers and functions of the O. N. G. C. set out in the preamble of the Act and more elaborately set out in sec. 14 of Chapter III of the Act are only enabling provisions having nothing to do with the corresponding obligations of the O. N. G. C. We would therefore hold that it is the duty of the O. N. G. C. to dispose of its gas in the best possible manner to the maximum advantage of the Nation and its citizens and when it is possible to divert that gas to industries and consumers it is the bounden duty of the O. N. G. C. to do the same. As a matter of fact this O.N.G.C. is supplying its gas to the Gujarat Electricity Board Gujarat Industrial Development Corporation Gujarat State Fertiliser Corporation and to the Baroda Municipal Corporation (for the purpose of supplying gas to the house holders) and to industries.

10 What is a public utility ? The term has itself well defined connotation in the jurisprudencial world. In Corpus Juris Secundum Vol. 73 at p. 990 it is defined as a business or organisation which regularly supplies the public with some commodity or service such as electricity gas water transportation or telephone or telegraph service. It is further stated that it is an essential requirement that a business or enterprise even if private enterprise must in some way be impressed with a public interest before it may become a public utility. Accordingly whether the operator of a given business or enterprise is a public utility depends on whether or not the service rendered by it is of a public character and of public consequence and concern which is a question necessarily dependent on the facts of the

particular case..... the owner or a person in control of a property becomes a public utility only when and to the extent that his business and property are devoted to a public use. The test is therefore whether or not such person holds himself out expressly or impliedly as engaged in the business of supplying his product or service to the public as a class or to any limited portion of it as contradistinguished from holding himself out as serving or ready to serve only particular individuals .....The public or private character of the enterprise does not depend however on the number of persons by whom it is used but on whether or not it is open to the use and service of all members of the public who may require it to the extent of its capacity.

11 In American Jurisprudence 2 Edition Vol. 64 also practically the similar exposition is there. We however would like to refer to its page 551 in particular. There it is observed; In respect of the public service or use of public utilities the word public does not mean the whole public nor does it mean all the people in a certain area or political subdivision. Rather, It means individuals in general without restriction or selection to the extent that the capacity of the utility may admit of such service or use. Accordingly, the use and enjoyment of the utility service may be local and limited in the territory served and the fact that the service is limited to a particular district or a part of a town does not prevent the Organisation or business from being a public utility.

12 In our view there is no escape from the conclusion that the O.N.G.C. which supplies gas as a part of its statutory and incidentally commercial activities cannot seriously dispute its character as a public utility. Simply because the Government had in its Industrial Policy Resolutions respectively dated 6-4-1948, 30-4-56 and 18-2-70 which were brought to our notice viewed these operations as core Industries would not change the character of the services rendered by it. As a matter of fact the Industrial Policy Resolution dated 30-4-1956 in paragraph 6 itself envisages the Industrial Policy of the Govt. in the background of the adoption of the socialist pattern of society as the national objective. It further envisages the taking up on hand all industries of basic and strategic importance or in the nature of public utility services in the public sector. The argument that gas is a national product and not a local peoples wealth is beside the point. We may not give any importance to the phrase known as proximate resource but the fact remains that commodities like gas calling for prompt utilisation at comparatively less cost would surely enure for the benefit of the people who are in the vicinity of the gas fields. There is no question of parochial approach in this regard. The argument that the petitioners who were fortunate enough to have this supply of gas as their fuel by adapting their mechanical set up to the consumption of this fuel stand better off than other less fortunate brethren of theirs in the locality is also an argument absolutely wide the mark. A public utility cannot from the very nature of things be expected to answer the demands beyond its capacity. When the O.N.G.C. had gas to offer to the industries for consumption and to householders also for consumption it obviously by resort to the yardstick of reasonableness would adopt the principle of first come first served. Those who stand in queue later on and therefore do not get the benefit because of the want of availability of the extra supply cannot have their cause pleaded by the O.N.G.C.

13 The learned Advocate General invited our attention the United States Supreme Court Reports 73 Law Edition page 396 where it has been mentioned that the primary duty of a public utility is to serve on reasonable terms all those who desire the service it renders. The emphasis sought to be laid was that the undertaking must be open to one and all as it is in the case of supply of electricity or transport facilities. We do not think that catering to the needs of one and all without reference to the limits of resources to serve is an essential element of a public utility.

Shri K. S. Nanavati
Sr. Advocate

14 The next argument was that monopolistic or otherwise character of the O.N.G.C. should be a determinative factor along with other factors and as the O.N.G.C. could not be termed to be a monopoly because of the provisions of Art. 19(6) of the Constitution of India it could not be termed as a public utility. This argument has little scope in the present consideration. All that Art. 19(6) of the Constitution says is that when the State undertakes in the wider public interest the monopolistic operations no one would be permitted to complain that his right to pursue any occupation is by that monopoly jeopardised. We do not say that the O.N.G.C. is a monopoly in that sense of the term. It is referred to as a monopoly only for the limited purpose of showing that it is a solitary agency producing gas and capable of disposing it to the needy citizens of the area round about and the emphasis was that being the unraveled king in the field it cannot arrogate to itself the arbitrary power to deal with the matters in its domain according to its sweetwill and caprice. Reference to the Monopolies and Restrictive Trade Practices Act, 1969 also in this connection is out of place.

15 It was alleged that the supply of gas is not the main undertaking of this Organisation because of the total value of the output gas is worth only 6.31%. Hardly has this anything to do with the point on hand. The figure 6.31% in terms of volume of gas is insignificant. What is important to call this O. N. G. C. a public utility is not the proportion of gas to crude brought out by this O. N. G. C. but it is because of the nature of service that is being imparted by it to the Section of the people here.

16 It was then alleged that O.N.G.C. was not a conventional or a commercial trader and therefore what could be thought of in the context of such business enterprises should not be imported while dealing with its case. This argument is also non-germane to the facts of the case.

17 It was then alleged that O.N.G.C. is under the direct control of the Central Government in its Ministry of Petroleum and therefore also it cannot be said to be a public utility. In the context of price fixation it was stated that whatever were the authorities and citations referred to on behalf of the petitioners they were pertaining to private companies against whom suits were filed and that unless a State or its instrumentality is under some statutory obligation to have the price fixed in a particular manner as per the law dealing with it there is no question of raising the question of price fixation on the allegedly spacious plea that it is a public utility. This argument need not detain us longer because if there is no specific provision dealing with acting reasonably in the matter of price in order to escape the attraction of the charge of hostile discrimination a public body is under an obligation to act reasonably. In this connection we would like to refer to certain authorities of the Supreme Court. The leading case on the point is the case of RAMANA DAYARAM SHETTY V. THE INTERNATIONAL AIRPORT AUTHORITY OF INDIA & ORS. AIR 1977 SC 1628 Bhagwati J. speaking for the Bench consisting of Three Judges squarely deals with the question and his enunciation of law would answer various arguments that were advanced before us by the learned Advocate General for and on behalf of the O.N.G.C. His Lordship firstly poses the questions that had arisen before the Supreme Court. He says What are the constitutional obligations on the State when it takes action in exercise of its statutory or executive power ? Is the State entitled to deal with its property in any manner it likes or award a contract to any person it chooses without any constitutional limitations upon it? What are the parameters of its statutory or executive power in the matter of awarding a contract or dealing with its property? His Lordship then stated that those questions fell in the sphere of both administrative law and constitutional law and they special significance in a modern welfare State which was committed to egalitarian values and dedicated to the rule of law.

After introducing the subject in this vivid manner His Lordship ultimately in paragraphs 11, 12 and 13 of the judgement has observed as follows:- (Emphasis is supplied by us)

> "11. To-day the Government in a welfare State is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, Contracts, licences, quotas, mineral rights, etc. The Government pours forth, wealth money, benefits services, contracts, quotas and licences. The valuables dispensed by Government take many forms but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits cash grants for political sufferers and the whole scheme of State and local welfare. Then again thousands of people are employed in the State and the Central Government and local authorities. Licences are required before one can engage in many kinds of businesses or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largess in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for mining and other purposes. These resources are available for utilisation by private Corporations and individuals by way of lease or licence. All these mean growth in the Government largess and with the increasing magnitude and range of governmental functions as we move closer to a welfare State more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account can it be said that they do not enjoy any legal protection? Can they be regarded as gratuity furnished by the State so that the State may withhold grant or revoke it at its pleasure? Is the position of the Government in this respect the same as that of a private giver ? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view it has developed new forms of protection. Some interests in Government largess formerly regarded as privileges have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining structuring and checking Government discretion in the matter of grant of such largess. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will.....
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> 12.....It was argued for the Govt. that no person has a right to enter into contractual relationship with the Government and the Govt. like any other private individual has the absolute right to enter into contract with any one it pleases. But the Court speaking through the learned Chief Justice responded that the Govt. is not like a private individual who can pick and choose the person with whom it will deal but the Govt. is still a Government when it enters into contract or when it is administering largess and it cannot without adequate reasons exclude any person from dealing with it or take away largess arbitrarily. The learned Chief justice said that when the Govt. is trading with the public the democratic form of Govt. demands equality and absence of arbitrariness and discrimination in such transactions...The activities of the Government have a public element and therefore there should be fairness and

equality. The State need not enter into any contract with anyone but if it does so it must do so fairly without discrimination and without unfair procedure. This proposition would hold good in all cases of dealing by the Govt. with the public where the interest sought to be protected as a privilege. It must therefore be taken to be the law that where the Government is dealing with the public whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess the Govt. cannot act arbitrarily at its sweet will and like a private individual deal with any person it pleases but its action must be in conformity with standard or norm which is not arbitrary irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs contracts quotas licences etc. must be confined and structured by national relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases the action of the Government would be liable to be struck down unless it can be shown by the Govt. that the departure was not arbitrary but was based on some valid principle which in itself was not irrational unreasonable or discriminatory.

13....It was in pursuance of the policy envisaged in this and subsequent resolutions on Industrial Policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions. Ordinarily, these functions could have been carried out by Govt. departmentally through its service personal but the instrumentality or agency of the Corporations was resorted to in these cases having regard to the nature of the task to be performed. The corporations acting as instrumentality or agency of Government would obviously be subject to the same limitations in the field of constitutional and administrative law as Government itself though in the eye of the law they would be distinct and independent legal entities. If Government acting through its Officers is subject to certain constitutional and public law limitations it must follow a fortiori that Government acting through the instrumentality or agency of corporations should equally be subject to the same limitations ."

18 The above judgement had then come to be accepted by the Five Judges of the Supreme Court in the case of AJAY HASIA V. KHALID MUJIB, AIR 1981 SC 487. It is therefore evident that the liability to act reasonably even in the matter of executive functions is innate because of the all pervading principle of fair play which is tantamount to acting without practising discrimination. An act either statutory or executive can be said to be offending the guarantee of equality before law and therefore the rule of law even if it is possible that without the guidelines of reasonableness such powers are likely to be abused. In other words reasonableness is to be read necessarily into in order to avoid the risk of any statutory or executive action being thrown over board on the ground that it offends the provisions of Art. 14 of the Constitution of India.

19 The above discussion would show that apart from O.N.G.C.'s sale of gas being a public utility calling for the requirement of supplying its gas at reasonable rates to all people who seek the consumption subject to the limits of the suppliers resources the duty to charge only reasonable prices for the supply of public services or public properties to the citizens of India is the obligation of the O.N.G.C. Even for a moment it cannot be disputed that if the O.N.G.C. gives its gas at comparatively less price to public bodies like Gujarat Electricity Board and Gujarat State Fertiliser Corporation or the Gujarat Industrial Development Corporation it cannot be said that it acts discriminatingly vide the judgement of the Supreme

Court in the case of D. R. VENKATACHALAM V. DY. TRANSPORT COMMISSIONER, AIR 1977 SC 842. There it has been held that the special status of a Government owned transport undertaking in a welfare State is obvious. Its functional motto is not more profits at any cost but service to citizens first and in a far larger measure than private companies and individuals although profitability is also a factor even in public utilities. To classify State Transport systems on a separate footing is realistic and is ordinarily no sin before the principle of equality before the law. It is because of this that we say that we are not going to entertain the complaint of the petitioners that these public bodies were being treated differently or move favourably in the matter of price but at the same time we would draw support from this authority for the proposition which we are going to examine while dealing with the question of price fixation that the functional motto of all such Organisations like the O.N.G.C. is not more profits it any cost but service to citizens is the first and in a far larger measure although profitability may be a factor found in public utilities to some extent.

20 In the course of his submissions the learned Advocate General had submitted that the prayers as put forward in these petitions particularly for a writ of mandamus or for a writ of the like nature could not be granted and hence the petitions were liable to be rejected in limine. His argument was that fixation of price is essentially a legislative function and the courts cannot arrogate to themselves what is falling within the exclusive domain of the legislatures. As far as the latter submission of the learned Advocate General is concerned we are in agreement with him. Even Mr. Singhvi appearing for some of the petitioners and whose arguments were adopted fully by the other learned advocates appearing in other petitions made it clear at the outset that no petitioner wanted the court to embark on that delicate job of fixation of price. No doubt the judgement of the Supreme Court in the case of PREMIER AUTOMOBILES V. UNION OF INDIA, AIR 1972 SC 1690 was referred to by Mr. Singhvi in the course of his submissions. In that case the Supreme Court had taken upon itself the fixation of price but it was with the concession of all the concerned parties. The Supreme Court has made this position clear in the latter decision in the case of M/S. PRAG ICE & OIL MILLS V. UNION OF INDIA AIR 1978 SC 1296. There in paragraph 34 of the said judgement it has been stated that that judgement was not to provide a precedent for anything similar to be done by the courts in other cases. Para 36 of that judgement also makes it clear that unless by the terms of a particular statute or order price fixation is made a quasi judicial function for specified purposes or cases it is really legislative in character in the type of control order which is now before us because it satisfies the tests of legislation. We would therefore agree with the learned Advocate General that this court has neither legal authority nor the competence to embark upon the technical assignment of fixing the price of a commodity like gas because of a number of factors having their interplay in that fixation. It is however, truism to state that any executive action if it offends the rule of reasonableness permeating our entire constitution is come across the High Court exercising its powers under Art. 226 of the Constitution of India can intervene and declare that action ultra vires. The powers of the High Court under Art. 226 of the Constitution of India are not limited to the prerogative writs but it has got power to issue any order or direction and if the petitioners contention in these petitions about the prices being unreasonable comes to be sustained this High Court would certainly be competent to intervene and declare that fixation is arbitrary and unlawful.

21 The learned Advocate General in this connection had invited our attention to the Halsbury's Laws of England 4 Edition Vol. I paragraph 80 and onwards and some other citations under the caption Judicial Remedies. He emphasised in particular that a writ of mandamus or a writ of the like nature is such as could be granted to compel the performance

of duties of a public nature. There cannot be any controversy on this proposition but we have already held above that the duty of the O. N. G. C. by statute and from the very nature of its constitution is to perform certain duties and in order to enable it to perform those duties various enabling provisions are made therein in the Act that has given birth to it. It cannot do to say that the price fixation is provided for in statutes dealing with Tramways Electricity road transport and as the Act in question is silent about the price fixation it should be assumed as a matter of necessary corollary that the Parliament did not want any factors on the power of the O. N. G. C. in respect of prices. As already said by us above acting reasonably even in the matter of executive action is the spirit of the constitution which Tramways all State actions either statutory or executive. Even if any piece of legislation does not provide for a State agency to act reasonably one must read into it a provision of that nature in order to make that Act not running counter to the Constitution.

22 This brings us to the next question; Can there be an obligation on the part of the O. N. G. C. to charge only reasonable prices ? We would refer to Corpus Juris Secundum already referred to by us above in another context. At page 1032 under the caption reasonableness of rates it has been stated: in any event the rate must be just and reasonable both as to the utility or investors on the one hand and as to the public or consumers on the other. Hence the rate must not be so low as to be confiscatory or so low as to be unjust or unreasonable even though not confiscatory or on the other hand so high as to be unjust or oppressive or as to exceed the value of the service to the consumers not in the aggregate but as individuals. In other words the reasonable rate lies somewhere between the lowest rate that is not confiscatory and the highest rate that is not excessive or extortionate .....Although they are by no means controlling the consumers ability to pay and the value of the service are factors to be considered and a rate for particular service may be reasonable from the standpoint of the utility with respect to the cost of the service and yet be unreasonable from the standpoint of the consumer because in excess of the value of such service to him. The discussion is rounded off by observing that "a reasonable rate is not a particular decimal, but is one that falls within the zone of reason, it is a field rather than a mathematical point.

23 The learned Advocate General in this connection had invited our attention to United States Supreme Court Reports 38 Lawyers Edition page 1014, United States Supreme Court Reports 41 Lawyers Edition p. 560 and United States Supreme Court Reports 73 Lawyers Edition p. 390. Referring to the first of these three cases he tried to urge that a suit is the only remedy in such cases. This argument also has been primarily dealt with by us. What would be done by recourse to a suit could be done by recourse to a writ petition subject of course to certain self-invited and self-imposed restrictions by the High Courts in exercise of their writ jurisdiction. We do not think that elaborate references to these and other authorities referred to by the learned Advocate General is called for because the duty to act reasonably of prices in matters falls directly from the State's duty to act reasonably and also from the fact that the States agency has undertaken to provide the citizens with public services.

24 The further question that would now fall to be decided by us is as to on whom does the onus lie to convince the consciencess of the court that the O. N. G C. has acted in any way unreasonably and unjustly in the matter of fixing its prices from time to time as said here in above. Mr. Singhvi for the petitioners did not dispute the proposition that initially it is for the petitioners before the High Court to make the court feel that pinch of course prima facie. In the case of M/S. PANNALAL BINJRAJ AND OTHERS V. UNION OF INDIA, AIR 1957 S.C. 397 it is held as follows :-

" It is pointed that it will be next to impossible for the assessee to challenge a particular order made by the Commissioner of Income-tax or the Central Board of Revenue as the case may be as discriminatory because the reasons which actuated the authority in making the order will be known to itself not being recorded in the body of the order itself or communicated to the assessee. The burden moreover will be on the assessee to demonstrate that the order transfer is an abuse of power vested in the authority concerned. This apprehension is however ill-founded. Though the burden of proving that there is an abuse of power lies on the assessee who challenges the order as discriminatory such burden is not by way of proof to the hilt...If in a particular case the assessee seeks to impeach the order of transfer as an abuse of power pointing out circumstances which prima facie and without anything more would make out the exercise of the power discriminatory qua him it will be incumbent on the authority to explain the circumstances under which the order has been made. The court will in that event scrutinise these circumstances having particular regard to the object sought to be achieved by the enactment of sec. 5 of the Act as set out in para 4 of the affidavit of Shri V. Gauri Shanker Under Secretary Central Board of Revenue quoted above... and it is not satisfied that the order was made by the authorities in bona fide exercise of the power vested in them under sec. 5 of the Act it will certainly quash the same.... "

25 To the same effect is the earlier view of the Supreme Court in the case of SAGHIR AHMAD V. STATE OF U. P., AIR 1954 S.C. 728. In para 23 it has been observed as follows :

" There is undoubtedly a presumption in favour of the constitutionality of a legislation. But when the enactment on the face of it is found to violate a fundamental right guaranteed under Art. 19(1)(g) of the Constitution it must be held to be invalid unless those who support the legislation can bring it within the purview of the exception laid down in clause (6) of the Article. If the respondents do not place any materials before the court to establish that the legislation comes within the permissible limits of clause (6), it is surely not for the appellants to prove negatively that the legislation was not reasonable and was not conducive to the community."

26 The above observations made in different context are good guidelines of law when any statutory or executive action is challenged. Keeping these guidelines before our eyes, we proceed to examine the question whether the petitioners have prima facie showed that the action of the O.N.G C. in escalating the prices from year to year is tending to be unreasonable or arbitrary.

27 In this connection it is to be noted with pertinence that there was reference to arbitration of Dr. V.K.R.V: Rao whose report was made available to us at the time of the hearing and which report was relied upon by both the sides. The O.N.G.C. was a party to those arbitration proceedings and also to the award. Various view points that were pressed into service before us for the O.N.G.C. were placed before that eminent arbitrator. The stature of his personality could be seen from the fact that after the matter was referred to him in arbitration he had come to be appointed as the Minister of the Union Government and despite his being so closely associated with the Government all the parties had reposed implicit faith in him and had asked him to go ahead with arbitration which his report discloses conclusively was carried out by him with exemplary ability and impartiality. Before him the O.N.G.C. had pleaded that the price of the basic commodity was to be determined on the basis of import

parity that the cost of production of gas could not be zero because it was available while exploring oil that if cost plus formula was to be followed account must be taken of the enormous expenditure that had to be incurred on exploration other areas and this amount was required to be amortised. Ultimately the Arbitrator had taken certain general factors into consideration which he reproduced in sec. 6 of his report. He held that Cambay and Ankleshwar fields in Gujarat could not be taken in isolation that the net receipts calculated after allowing not only for operational and developmental expenditure on its producing fields but also amortisation of its expenditure in other areas also was required to be taken into account over and above sale taxes royalties and transport charges which were required to be included in the sale price. Ultimately he took into account the pit head price of gas in paragraph 7. He laid down the following basic formula:- "The cost of production at the well head consists of the following items:-

1. Depletion of the field;

2. Amortisation of expenditure incurred in other areas;

3. Depreciation of fixed assets in non-producing areas;

4. Operational cost including depreciation charges on fixed equipment;

5. Interest on loan capital;

6. Return of equity capital.

For determining the sale price addition will have to be made for royalty payable to the State Government sales tax payable to the State Government other local taxes if any and transportation costs to the consumer fence if delivery is to be given there. Then finally the award portion is to be found in sec. 8 of that report and in final analysis he fixed Rs. 50.00 per 1000 cubic metres of gas as its well head price to which 100.00 royalty sales tax and costs of transport were to be added. The price fixed by him was to be operative for a period of five years ending with March 1971 with a recommendation that a new price should be worked out for the further five years period beginning with April 1971 after undertaking a thorough review of the actual position regarding output outlay and demand during the period covered by the award.

28 It is to be noted with pertinence that this award was acted upon and it can be said to be a reasonable basis for fixing the price. Till the year 1975 that is even after the period of the award the break-ups of the prices were given in the bills sent to the consumers but thereafter the O.N.G.C. appears to have thrown to winds all those prima facie reasonable criteria for arriving at a price to be charged by a public undertaking like the O.N.G.C. We cannot but lose sight of the fact that the gas which was priced at Rs. 50.00 per 1000 cubic metre upto the year 1971 came to be charged at the rate of Rs. 93.07 at the end of December 1975 and thereafter it shot up to Rs. 504.00 for the period from 1-4-78 to 31-3-79. The rise ex-facie appears to be abnormal. We have already shown above that thereafter it reached the level of Rs. 700.00; Rs. 1000.00 and it has jumped to the figure of-Rs. 2400 during the pendency of this petition. To an ordinary man in the street and to a man with common sense this 30 times rise in the span of a decade would be indicative of the prima facie unreasonable character of the escalations. Further the O.N.G.C.'s readiness to enter into 10 years contract with a co-operative body namely the Amul Dairy for the period of 10 years at the contracted price of

Rs. 741.00 per 1000 cubic metres is also suggestive of the arbitrary way of action on the part of the O.N.G.C. vide page 189 of the case file before us. Item No. 10 there shows that a contract was entered into with Amul Dairy to supply it gas at the rate of Rs. 741.00 per 1000 cubic metres for a period of a decade. If the O.N.G.C. thought that there would be rapid rises year after year and it had done so from 1975 and onwards it could not enter into a contract for a decade even if there is 5% escalation every year provided for. This solitary instance in our view is further clearly indicative of the handling of its price structure by the O.N.G.C. in an arbitrary and capricious manner. It cannot do to say that those who enter into three or more years contract would stand to gain. If the gain is within reasonable limits it can be appreciated but the O.N.G.C. which tried to paint unsuccessfully before us a picture of the allegedly reasonable jumps in the structure of prices year after year could not have been oblivious of the fact that contracting for such long periods would be highly detrimental to the interests of the O.N.G.C. The fact that such contracts were entered into despite knowledge of the different direction in which the winds were allegedly blowing would prima facie indicate that the persons incharge of the affairs of the O.N.G.C. treat this commodity under their monopolistic control as a subject matter of their choice-dealing. We are therefore more than satisfied that the petitioners have been successful in showing prima facie that the O.N.G C. which is an organ of the Union of India for all practical purposes and was under the charge of the Minister of the Central Government-the Central Government always crying from the top of the roof that price line must be kept at the reasonable level so that dearness is not rampant-had been acting unreasonably in raising the prices year-after-year without any even ex-facie justifiable reasons and therefore it can be shown to have acted arbitrarily as would be done by a profit minded private entrepreneur in a society where laissez-faire rule prevails.

29 It will be therefore for the O.N.G.C. to show prima facie inference that is liable to be raised is wiped out. We are sorry to say that the affidavits filed on behalf of the O.N.G.C. do not endeavour in that direction. At page 44 of this compilation? the O.N.G.C. tried to justify their action by recourse to the price of the gas in U.S.A. The affidavit states as follows:

> " To-day the price of gas in USA has increased to Rs. 1400-1600 per 1000 M3 (cubic metres) i.e. from mere Rs. 44.00 to Rs. 1600.00 per 1000 M3. While determining the price of gas Dr. Rao has assessed 80% value of RFO for gas and fixed the rate of royalty Rs. 6.00 per 1000 M3 gas because of royalty on oil was Rs. 7.50 per tonne though as per Petroleum Natural Gas Rules royalty should have been Rs. 5.00 1000 M3 but he made it Rs. 6.00 1000 M3 on the above consideration. The price of RFO has increased during this period i.e. 1967 to 1981 from Rs. 73.00 to over Rs. 2000.00 per tonne."

Then at page 57 of the compilation they stated as follows :

> "I say that for most of the private industries in Gujarat the alternative fuel to gas is furnace oil or LSHS (Low Sulpher Heavy Stock). I say that LSHS which is being supplied to Gujarat Electricity Board for Dhuvaran power house at the price fixed by Hidayatulla Award would not be available at the same price to private industries...I say that furnace oil would cost more than Rs. 2200/ K L. which is equivalent to about 1000 M3 of gas to thermal equivalence. I further say that LSHS would also cost more than Rs. 2200.00 per tonne which is equivalent to about 1000 M3 of gas in terms of thermal equivalence."

Then at page 71 of the compilation they stated as follows :

> "I say that Dr. Rao has compared the price of gas with price of gas in USA which was 15% less than what he fixed in India and on the same principle the price of gas should be now Rs. 2000.00 per 1000 M3."

Then at page 72 it is stated as follows :

> "I say that the alternative fuel LSHS/furnace oil available to the petitioners is almost three times costlier in terms of thermal equivalence and therefore the petitioners are being benefit enormously on account of non-fixation of price of gas equivalent to furnace oil in terms of thermal equivalence or non-fixation of gas price as compared to USA as was done by Dr. Rao in fixing the price of gas. I reiterate that Dr. Rao has fixed the high price of gas in India as compared to USA price of gas which has now increased to more than 32 times the price prevailing when Dr. Rao fixed the price of gas in India."

30 From the above extracts from the affidavit-in-reply filed in June 1981 it is crystal clear that instead of adopting the reasonable course of fixation of gas price on the basis of well-head value plus all other relevant factors including reasonable profit it has been harped time and again that because the coal and furnace oil would cost very high to the petitioners if they were required to switch over to them they should not make any grievance about the high prices demanded by the O. N. G. C. We fail to understand how the price of coal and furnace oil can be made the sole or substantial basis for the purpose of fixing the gas price. Had any private entrepreneur acted in this fashion we would have perhaps branded him as a profiteer and a blackmarketeer. Simply because the O.N.G C. is the agency or the instrumentality of the Union of India it cannot act in this fashion. We are surprised to find that in the course of the hearing before us a comparison was sought with the price of the imported gas into United States of America vide page 272 of the compilation. In our view this is ex-facie unreasonable Secondly 10% royalty is being given to the State of Gujarat and it is an admitted position that 10% royalty is to be worked out on the basis of the well-head price or value. A well known method is there to arrive at the well-head price. It was not certainly to the advantage of the O. N. G. C. and therefore a queer method admittedly was adopted to arrive at the notional pit-head value for the purpose of working out 10% royalty of the State of Gujarat. Instead of working out the well-head price by the known standards of economists and also of common sense they tried to workout the well-head price for the purpose of royalty backward as for example they would take Rs. 2000.00 per 1000 cubic metres as sale price. From this they will deduct the sales tax cost of transportation etc. and will arrive at an artificial well-head price or value for the purpose of royalty. The State of Gujarat which on the earlier occasions stood firmly by the consumers in the State of Gujarat including the State undertakings obviously is interested in having higher royalty with the result that against this mighty O. N. G. C. the battle is left to be fought by private entrepreneurs singlehandedly.

31 As against page 272 of the compilation referring to the import price of gas sought to be relied upon the World Oil Magazine was brought to our notice. Page 138 thereof was there and it showed that even for U.S.A. well-head price had increased from $ 1.40 per MCF at the end of the year 1982 estimated price of $ 2.55 per MCT which we were told at the Bar came to Rs. 800.00 or Rs. 900.00 per 1000 cubic metres. There was no controversy before us about the working out of that price in the Indian terminology. This also would show that this mighty O.N.G.C. was out to put forward any argument before this court in order to justify its action.

32 In above view of the matter we have no hesitation in stating that the action of the O.N.G.C. in charging at the relevant time the price of gas at the relevant rate is shown to be arbitrary and unreasonable and to that extent the price complained of by the petitioners will be required to be set aside.

33 One point canvassed by the petitioners remains to be stated for its being rejected. They had made grievance that instead of 75% as the minimum contracted quantity it was raised to 90% irrespective of the consumption. The O.N.G.C. has proved that looking to the nature of the commodity which is required to be flared up if not consumed this escalation was necessary and justifiable. We accept that argument and therefore that part of the prayer put forward by the petitioners will be required to be rejected.

34 One more argument also is there. The petitioners wanted to compare the price of gas in Gujarat with comparatively low price of gas charged by this very O.N.G.C. in Assam. The affidavit-in-reply shows that Assam is a comparatively less developed State the demand for gas there is far less than the quantity available for sale and that if associated gas is not sold at concessional rate it will be required to be burnt away. Because of this peculiar situation in Assam the prices in Assam cannot be said to be discriminatory on the part of the O.N.G.C. In our discussion regarding the unreasonable act on the part of the O.N.G.C. we have left charging of lower prices in Assam out of consideration.

35 If the O. N G. C. were acting fairly and reasonably there was nothing to prevent them from placing all their cards on the table of the court. They did not put the price structure that possibly be worked out on the lines similar or akin to those suggested by Dr. V. K. R. V. Rao in his award. Nor did they put forward any other reasonable criteria for price fixation All throughout they harped on the thermal equivalence and furnace oil equivalence and the prices in U. S. A and the prices of crude but did not allow the court to have the bare glimpse of what could possibly be the well-head price of gas by makine allowance for amortisation and all other conceivable factors having their sway in the ultimate price fixation. This also is indicative of the unreasonableness on their part and we would say that Mr. Singhvi was justified in complaining that the return filed by the O.N.G.C. in this group of petitions was far from being satisfactory and therefore was liable to be brandished as no real return at all

36 Now we come to the last part of this judgment. It is regarding what relief should be granted in this group of petitions. We have already said above that the action of the O.N.G.C. in charging the rate in the respective cases is ex-facie unreasonable and to that extent their demand for the said price is set aside. The O.N.G.C however shall be at liberty to get the price for that period and subsequent period fixed according to the reasonable and rational norms and for that purpose it is open to the O.N.G.C. to follow any one of the following three courses:

> (i)They may request the Central Government to appoint a Commission for the purpose of deciding the price of gas from time to time including the time for which we have set aside their demand of price involved the provisions of the Commission of Inquiry Act or any other law;
>
> (ii) They may invoke the arbitration of some eminent economist in consultation with the petitioners; or

(iii) They may themselves decide the price after bringing to their consideration all relevant factors and for that purpose they may hear fully and effectively the petitioners and other persons likely to be affected thereby; If the last of the above three courses is adopted by the O.N.G.C. for deciding the price structure afresh it would be in their interest to give hearing to the persons likely to be affected so that the possibility of a new round of litigation is avoided. We reiterate that as far as the petitioners are concerned they are amenable to any of the three modes which the O.N.G.C. may choose to adopt.

37 We accordingly set aside the prices demanded by the O.N.G.C. from these petitioners in this group of petitions leaving it open to the O.N.G.C. to deal with the question of price fixation in any one of the three modes suggested by us. The petitions are accordingly partly allowed. Rule is accordingly made absolute in all these petitions with costs.

38 The civil Applications In view of the final decision do not survive and stand disposed of and till the new price fixation is had the price charged last from these petitioners under the respective contracts with them shall continue to operate between the parties subject to adjustments in future after prices are fixed as stated above.

39 Before we part with these matters we would put on record our deep appreciation of the able assistance rendered to us by the learned advocates appearing for the respective parties in this group of Petitions.

40 At this stage the learned Advocate General for the O.N.G.C. has orally applied for leave under Art. 133 of the Constitution of India. Though we have rejected the contentions put forward on behalf of the O.N.G.C. and though we have rested our judgement on the principles laid down by the Supreme Court We would still say that the application of those principles in the matter of price fixation has come up before this court and possibly other High Courts also for the first time. In this sense we are inclined to say that there does arise a substantial question of general importance in this group of petitions and it is required to be decided by the Supreme Court in order to put a quietus to the whole controversy once for all. The leave is therefore granted as prayed for.

41 In order to enable the O.N.G.C. to have a proper interim relief or any other relief from the Supreme Court we direct that the interim relief operative so far shall continue to operate for the period of two months from today on assurance by the learned Advocate General for the O.N.G.C. that if the Supreme Court by interim order makes any other provision or ultimately the petitioners grievance is upheld by the Supreme Court whatever overpayments can be found out will be adjusted towards the future claim from the respective petitioners.

42 Certified copies if applied for urgently shall be made available to both the sides on priority basis.