HIGH COURT OF GUJARAT

GAS AUTHORITY OF INDIA LIMITED
Versus
ESSAR STEEL LIMITED

Date of Decision: 04 May 2004

Citation: 2004 LawSuit(Guj) 317

Hon'ble Judges: C K Buch

Eq. Citations: 2004 2 GLR 1642, 2004 3 GLH 423, 2005 1 GCD 468

Case Type: Civil Application; Special Civil Application

Case No: 9096 of 2003; 3348 of 2001

Subject: Constitution

Editor's Note:
Contribution of India, 1950 - Art 14, 226 - Outstanding amount is due and payable - Delaying the payment of huge amount - Contract of gas supply has come to an end in respect of domestic unit - Language of demand-cum-disconnection notice under challenge can be said to be harsh - Because it straight away tells about and too a running concern providing employment to thousands of people - Merely because the interim relief granted earlier by the Court is existing today should not take this Court to conclusion of confirmation as if the petitioner has a good case and scope of success at the ultimate end - When this Court prima facie is of the view that the impugned demand-cum-disconnection notice is based on price fixed which has a logic and is appropriate in circumstances and is not unreasonable - It would not be justified to stall the execution of such notice - Citizen entered into a contract is terminated by Company with out complying instruction issued by Government - Writ petition can be filed invoking jurisdiction of Court under Art 226 of Constitution - Held, Ad interim relief stand vacated - Disposed

Acts Referred:
Constitution of India Art 226, Art 14

Advocates: Kirit N Raval, Rakesh Gupta, Trivedi & Gupta, P Chithambaram, K S Nanavati, Nanavati Associates, Mukesh R Shah

Cases Referred in (+): 10

C. K. BUCH, J.

[1] Applicants are original respondent Nos. 3, 4 and 5 of Special Civil Application No. 3348 of 2001. Contesting opponents, namely, opponent Nos. 1 and 2 are original petitioner Nos. 1 and 2 of the said petition, opponent Nos. 3 and 4, original respondent Nos. 1 and 2 of the said petitioner are joined as party respondents in the Civil Application moved for vacating ad interim relief, as they are parties in the main petition, and being proper parties, in light of the nature of relief prayed.

[2] The said Special Civil Application No. 3348 of 2001 (hereinafter referred to as main petition) has been preferred in connection with the matter relating to an erstwhile contract agreement, which was, at relevant point of time, executed and operated between applicant No. 1 Gas Authority of India Ltd. (hereinafter referred to as 'G.A.I.L.') and opponent No. 1-M/s. Essar Steel Ltd. (hereinafter referred to as 'E.S.L.') for sale supply of gas, and as per the agreed contractual terms and conditions of the agreed consideration was to be paid as stipulated in agreement by opponent No. 1 E.S.L. The main petition was listed for admission hearing before this Court on 5-5-2001, some days prior to summer vacation, and on that date, this Court, while issuing notice, returnable on 25-6-2001, granted ad interim relief ex-parte directing the respondents that : "in the meanwhile, the operation of the impugned demand/disconnection notice dated 1-5-2001 shall remain stayed till the next date of listing". Legality, validity as well as proprietary of the notice issued by applicant No. 1 G.A.I.L. to respondent No. 1 E.S.L. has been challenged on various grounds, whereby, G.A.I.L. has asked E.S.L. that the outstanding amount of Rs. 124.5587 crores up to first fortnight of April, 2001, being due and payable, be paid. The respondent No. 1-E.S.L. was further asked to open irrevocable stand by revolving letter of credit in terms of the contract, failing which, or, on refusal and/or negligent, the G.A.I.L. shall be constrained to disconnect the cash supply to E.S.L. w.e.f. 00:00 hours of 9-5-2001 without further intimation. Notice discloses one aspect that there was some exchange of correspondence between these two Companies in reference to the request made earlier by the applicant company. Operation of this notice and demand made by applicant No. 1 company came to be stayed by way of an interim arrangement vide abovesaid order.

[3] On receipt of the notice and order of this Court, applicant G.A.I.L. filed Civil Application being Civil Application No. 5710 of 2001 praying that the ad interim relief ex-parte prohibitory order may kindly be vacated under Art. 226(3) of the Constitution of India. This application was moved on 24th May, 2001. On 4-6-2001, this Court

(Coram : D. H. Waghela, J.), passed an order and extendend the interim relief granted earlier, on conditions in main petition up to 22-6-2001. Opponent No. 1-E.S.L., thereafter, filed an application being Civil Application No. 6287 of 2001 seeking modification in the order dated 4-6-2001. Civil Application Nos. 5710 of 2001 and 6287 of 2001 along with main petition, both were listed for hearing on 21-6-2001, and the order came to be passed on that day, extending the interim relief granted earlier, up to 13-7-2001. It is relevant to note that the order passed by the Court on 4-6-2001 (Coram : D. H. Waghela, J.), has been referred in the order dated 21-6-2001 and certain statements made by the learned Counsel appearing for the parties including the learned senior Counsel appearing for respondent-E.S.L. was considered. This Court, vide order dated 25-9-2001, dealing with hearing of Civil Application No. 5710 of 2001, filed by the present applicants, passed a detailed order. Respondent No. 1-E.S.L. moved a Misc. Civil Application No. 1697 of 2001 praying for modification/review, and if required, recall of the order dated 25-9-2001. Thereafter, vide order dated 25-10-2001, this Court (Coram : K. M. Mehta, J.), passed an order clarifying an important aspect that the order was not argued with regard to prima facie case and grant of interim relief on the basis thereof, but was argued only to the extent whether the interim relief deserves to be vacated in view of G.A.I.L.'s contention that the applicant company has not complied with condition No. 2 of the order dated 4-6-2001 by not furnishing the irrecovable stand by revolving letter of credit for an amount of Rs. 14.35 crores and it was decided that the ad interim relief continues and would remain in force till 30-11-2001. So, the ad interim relief protection granted vide order dated 4-6-2001 was to continue till further orders. Applicants have referred other two orders passed on 30-10-2001, whereby, the Court has disposed of Misc. Civil Application No. 1807 of 2001 with the interim order granted earlier to be continued till 30-11-2001.

[4] The grievance of the applicants in the present application is that the original petitioner/opponent No. 1-E.S.L. is coming out with one application after the other under one or the other pretext and keeps on delaying the payment of huge amount of about 124 crores. It is contended that the contract of gas supply has come to an end from 9-9-2001 in respect of domestic unit, and subsequently, on and from 31-3-2002, the contract of gas supply in respect of export-oriented unit also has come to an end. However, the applicant company has continued the gas supply to the petitioners of main petition because of the present proceedings and for due deference to the Court. Learned Senior Counsel has taken me through the basic contentions raised by the applicant in the present application and has pointed out certain aspects in the background of facts and circumstances emerging from the main petition and the affidavit of resistance filed by the other side. It would be appropriate to refer the contentions raised in Para 11 of the present application being relevant, wherein the applicants have said that :

"In the affidavit filed by present applicant Company in response to original main petition being Spl.C.A. No. 3348 of 2001, even the maintainability of the petition itself is contested and opposed by present applicant Company on diverse grounds contending, inter alia, that the subject petition is not maintainable and/or does not deserve to be entertained. Amongst different grounds urged with reference to the contention/objection as regards maintainability of the petition, present applicant company has also submitted that the petition is not maintainable in view of the Arbitration Clause/ agreement in the said erstwhile contract. This apart, it has also been submitted that the subject-matter involves various factual and disputed aspects, and therefore, also the petition is not maintainable.

The applicant submits that the subject petition was taken up for final hearing before Hon'ble Mr. Justice Kundan Singh and after the petitioners' side concluded the arguments, the Hon'ble Court reserved the judgment. However, subsequently, it was notified that the subject petition is not to be treated as part-heard and the same had been reserved for judgment. Subsequently, the subject petition came to be again listed for final hearing, however, it could not be, thereafter, taken up for final hearing. In the meanwhile, around 29-5-2003, the opponent No. 1 herein moved a Civil Application which came up, during summer vacation before Hon'ble Mr. Justice K. A. Puj. The Hon'ble Court issued notice thereon making the notice returnable on 9-7-2003 while recording the statements by Counsel of present applicant and the opponent No. 1 herein, i.e. applicant of the said Civil Application. Thereafter, the subject petition and civil application came to be listed for hearing/final hearing on 9-7-2003 and due to paucity of time, the matters could not be taken-up for hearing/final hearing. Subsequently, the subject petition and the connected but pending Civil Application(s) came to be listed, afresh for final hearing before the Hon'ble Court (Coram : Hon'ble Mr. Justice A. R. Dave). Unfortunately, due to paucity of time, the subject-matters could not be taken up for final hearing. In such circumstances, a request dated 6-9-2003 came to be submitted by and on behalf of present applicants requesting that the Hon'ble the Chief Justice may kindly be pleased to pass appropriate order assigning the subject-matter before an appropriate Court for early final hearing. The applicants herein were constrained to submit the said request since the non-payment, by present opponent No. 1 company of the huge amounts which have long outstanding is causing insurmountable difficulties and hardships to the applicant company, and ultimately its public exchequer which is also suffering due to the non-payment by the opponent No. 1 company. It is in background of such facts and circumstances, that the applicant prefers present application."

For short, it is prayed that the original petitioner of the main petition E.S.L. be directed to clear the huge outstanding dues and to pay the amount as mentioned in the demand/disconnection notice dated 1-5-2001 or to pass any other appropriate orders deemed fit in facts and circumstances of the case.

[5] Opponent Nos. 1 and 2 have filed their affidavit-in-reply along with the Annexures and have submitted that the Civil Application deserves to be rejected. I have gone through the facts and circumstances stated in the affidavit-in-reply and other aspects emerging from documents produced in support of the submissions made in the reply-affidavit. Learned Senior Counsel Mr. K. S. Nanavati, when, he was taking me through the relevant factual aspects in reference to the relevant contract agreements, has submitted a chart with a view to assist the Court, so that the Court can appreciate the very nature of dispute between the parties in the present proceedings. Undisputedly, there is no dispute qua transport charges of 0.35 Million Standard Cubic Meters per day (hereinafter referred to as M.S.C.M.D.) of gas supply agreement dated 20-10-1986 on fallback basis (as and when available basis) which has been converted into supply on firm basis by subsequent agreement dated 6-8-1987. One another dispute between the parties is pending with the Supreme Court, whereby, the action of the Union of India is under judicial scrutiny because the Government specifically directed that H.B.J, transfer charges is payable for the allocation of 0.7 M.S.C.M.D. on firm basis and the similar quantity of 0.7 M.S.C.M.D. on fall-back basis. The allocation is not in dispute, and therefore, there is no dispute as to payment of transfer charges. However, the act of withdrawal of the allocation by the present application No. 1 G.A.I.L. in the month of June, 2002 is challenged. Mr. Nanavati has clarified that this very supply/allocation was earlier made available vide letter dated 21-12-1998 on fall-back basis and it was agreed that the respondent E.S.L. would be supplied 1.4 M.S.C.M.D. gas on fall-back basis. This portion was divided into two parts when a formal contract order entered into between the parties on 29-6-2000. So, it is submitted that the dispute before this Court and the nature of relief prayed, relates to transfer charges. It is contended that 0.35 M.S.C.M.D. was converted from fall-back basis into firm basis because of the improved availability of the gas, and while converting the nature of allocation/supply, Government has not ordered payment of transfer charges and has declared that it is not payable, even then, applicant No. 1 G.A.I.L. demands transfer charges for this very supply. According to Mr. Nanavati, if the accounts are settled in light of the letters received by Government of India and declarations made by the Government of India, the respondent E.S.L. would be entitled to get refund in respect of payment of Rs. 124 crores demanded under the captioned notice dated 1-5-2001.

[6] Learned Senior Counsel Mr. Kirit Raval has submitted that the nature of orders passed by the Court in the present proceedings, while dealing with the earlier Civil

Applications and Misc. Civil Applications filed, are self-explanatory and it would not be legal or proper to say that the present application is not maintainable, and this Court, on earlier occasions, has recorded a finding to the effect that ad interim relief granted earlier ex-parte, and thereafter, modified vide order dated 4-6-2001, is made absolute or is to continue till the main petition is decided either. According to Mr. Raval, in view of the ratio of the decision of the Supreme Court in case of Oil And Natural Gas Commission & Anr. v. Association of Natural Gas Consuming Industries of Gujarat & Ors., reported in AIR 1990 SC 1851, there is no scope of success to the petitioner in light of the contentions raised and relief prayed in the main petition. By putting Para 16 of this decision, it is argued that there is no scope of hearing the petition finally and the present applicant G.A.I.L., had approached this Court with all anxiety, preferring an application under Art. 226(3) of the Constitution of India, this Court can vacate the ad interim relief granted earlier by the Court, evaluating the prima facie case of the original petitioner and the point of balance of convenience on merits. Referring to the facts averred in reply-affidavit Para 3, it is submitted that the changed scenario cannot be ignored, and there is a substantial change in the terms and the status of the parties prior to renewal and thereafter. The say of opponent E.S.L. is that the power for allocation of any specific quality of gas and the price of supply thereof, are vested only with the Union of India, and hence, it is not open for the applicant company to charge H.B.J, pipeline price for supply of gas to the petitioner company despite the fact that, no gas, whatsoever, is being supplied to the petitioner company from the said H.B.J, pipeline. The gas is supplied to the petitioner company from the "land-fall point", wherefrom, the petitioner is required to transport the same over a distance of approximately 18 kms. through its own pipelines, which are laid down by the E.S.L. It is contended that, by spending about Rs. 15 Crores in the year 1990, E.S.L. has laid down its own pipeline and it is maintained by E.S.L.. It is the back-bone of the argument that there is a strong prima facie case, because for the very reason, the petitioner company is liable to pay the price for supply of gas at the basic consumer price on "land-fall point" and not the H.B.J, pipeline price, since, the petitioner company is not an Ex. H.B.J, pipeline consumer of gas. Strength of the case of the petitioner before vacating the interim relief should be appreciated on facts available on record. It is argued that respondent company, being an agency and instrumentality of Union of India, is bound by the pressing orders issued by Union Government, and therefore, this Court can direct respondent-G.A.I.L. to act in accordance with the pressing orders and, can simultaneously issued mandatory directions to Government of India to the effect that the directions given by Government of India vide orders dated 21-5-1999 and 5-7-1999, are complied with.

[7] Mr. Raval has heavily assailed the contentions raised in reply-affidavit and has submitted that there is no question of keeping unhealthy standard and has adopted

policy to extend the contracts for short duration of three to six months and keeps the original petitioner E.S.L. under threat. Mr. Raval has also pointed out that Civil Application No. 46 of 2003 filed by present applicants on 3-12-2002 is still pending. Two applications of similar relief can be heard simultaneously and decided, but this Court should reach to a conclusion, whether the ad interim relief granted earlier, requires to be confirmed or, to be vacated on the merit of the case, placed by the original petitioner before the Court.

[8] Learned Senior Counsels appearing for the parties have taken this Court through sequence of orders passed earlier and the phraseology used by the Court and the nature of submissions made before the Court when the earlier orders came to be passed. According to Mr. Raval, this is a case, wherein, no ad interim relief could have been granted to the petitioner, and especially when the conditions imposed by the Court, even while extending the ad interim relief, if is not found fully complied, such interim relief cannot be permitted to be continued for indefinite period. Mr. Raval has taken me to the gas payment condition No. 12.01 of the contract and the billing pattern agreed between the parties (pages 67, 68 and 75) and the supplementary contract agreement entered into between the parties. It is averred that the ratio of the decision of the Apex Court in the case of Kanoria Chemicals & Industries Ltd. & Ors. v. U. P. State Electricity Board & Ors., 1997 (5) SCC 772 would be squarely applicable to the facts of this case, wherein, the Apex Court has observed that :

> "The learned Counsel for the appellants in the appeals before us rely upon the portions underlined in the above passage as a decision supporting their contention that where the operation of Government order is stayed, no surcharge can be demanded upon the amount withheld. We find it difficult to agree. In our respectful opinion, the underlined portions do not constitute the decision of the Court. They merely refer to the fact that the Board itself did not make a demand for surcharge amount in respect of the period covered by the stay under its own understanding of the effect of the stay order granted by the High Court and that if was justified in its opinion. The demand was, the Court pointed out, in respect of the period covered by the order of injunction granted by this Court. This Court held expressly that the grant of an injunction does not relieve the consumers of their obligation to pay the charges at the enhanced rates, and therefore, the demand for surcharge/interest for such period is not illegal. The portions underlined cannot be understood as laying down the proposition that in respect of the period covered by the stay, no demand can be made. No such proposition can be deduced from the said passage for the reason that the liability for the said (sic. period) was not at all in issue in the said decision. Unless put in issue and pronounced upon, it cannot be said that there was a decision on the said issue. There was no lis between the parties with

respect to the period covered by the stay order of the High Court. If so, it cannot be said that any decision was rendered by this Court on the said issue or aspect, as it may be called. We, therefore, agree with the High Court that Adoni Ginning cannot be read as laying down the proposition that the grant of stay of a notification revising the electricity charges has the effect of relieving the consumers/petitioners of their obligation to pay late payment surcharge/ interest on the amount withheld by them even when their writ petitions are dismissed ultimately. Holding otherwise would mean that even though the Electricity Board, who was the respondent in the writ petitions succeeded therein, is yet deprived of the late payment surcharge which is due to it under the tariff rules/regulations. It would be a case where the Board suffers prejudice on account of the orders of the Court and for no fault of its. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the notification revising the rates and fails in his attack upon the validity of the notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions of supply-which terms and conditions indeed form part of the contract of supply entered into by him with the Board. We do not think that any such unfair and inequitable proposition can be sustained in law. No such proposition flows from Adoni Ginning. It is a matter of common knowledge that several petitioners (their Counsel) word the stay petition differently. One petitioner may ask for injunction, another may ask for stay of demand notice, the third one may ask for stay of collection of the amount demanded and the fourth one may ask for stay of the very notification. Such distinctions are bound to occur where a large number of writ petitions are filed challenging the same notification. The interim orders made by the Court may also vary in their phraseology in such a situation. Take this very case : While the consumers had asked for stay of operation of the Government order revising the rates, those very consumers asked for an injunction when they came to the Supreme Court. Furthermore, as pointed out rightly by the High Court, the orders of stay granted by the High Court in writ petitions questioning the validity of the Notification dated 21-4-1990 were not uniform. In the case of writ petition filed by the Eastern U.P. Chamber of Commerce and Industry, Allahabad, the operation of the notification was stayed while in the case of the writ petition filed by the Employers' Association of Northern India, it was directed that "effect shall not be given to the Notification dated 21st April, 1990 as against the petitioner : while clarifying at the same time that "in the event of failure of the writ petition, the petitioner shall deposit with the relevant authority within a period of one month from the date of dismissal of the writ petition the difference between the amount of electricity dues to be paid hereinafter by the petitioners under our orders and the sum which may be calculated on the basis of the impugned notification". The words

"sum which may be calculated on the basis of the impugned notification" in the later order clearly mean and include the late payment surcharge as well. The acceptance of the appellants' argument would thus bring about a discrimination between a petitioner and a petitioner just because of the variation of the language employed by the Court while granting the interim order though in substance and in all relevant aspects, they are similarly situated. It is equally well setded that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the Court in such a case to put the parties in the same position they would have been but for the interim orders of the Court. Any other view would result in the act or order of the Court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the Courts. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered by the order of stay because the operation of the very notification revising/ enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the appellants. It is ununderstandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon, when both the enhancement and the late payment surcharge are provided by the same notification - the operation of which was stayed."

[9] He has also placed reliance on a decision which deals with the contractual application reported in case of Food Corporation of India & Ors. v. Jagannath Dutta & Ors., AIR 1993 SC 1494. Relevant Para 5 is quoted as under :

"We are of the view that the High Court was not justified in quashing the impugned notice especially when the terms and conditions of the contract permitted the termination of the agreement by either of the parties. The High Court should not have gone into the question of contractual obligation in its writ jurisdiction under Art. 226 of the Constitution. Even otherwise, the High Court misread the documents on the record and grossly erred in reaching the conclusion that no policy decision was taken by the F.C.I. to terminate the storage agencies in the State of West Bengal. We may refer to some of the documents on the record."

[10] He also placed reliance on a decision in case of State of Madhya Pradesh & Ors. v. M/s. M. V. Vyavsaya & Co., AIR 1997 SC 993. The relevant Para 18 is quoted as under :

"A perusal of the orders extracted hereinabove show that the learned single Judge - it appears that almost all the orders are made by the same learned Judge (T. S. Doabia, J.), has not kept in view any of the norms governing the exercise of writ

jurisdiction of the High Court. The relevant facts were seriously disputed before him, each, party alleging that the other has violated the terms and conditions of licence and the rules the repeated interim orders passed permitting the supply of liquor to the writ petitioner, sale of liquor by the writ petitioner under the supervision of the authorities, partial deposits of the amounts with the authorities and release of the balance of the amounts to the writ petitioner, appointment of an Advocate commissioner to act as a "conduit" between the State and the writ petitioner and appointing a "commission" comprising of two Advocates to look into and decide the daily disputes arising between the parties-are all the outcome of a total disregard of the norms governing the writ jurisdiction. We are surprised that such orders could ever have been passed by the High Court was to dismiss the writ petition at the very inception when it was brought to their notice that it involved disputed questions of fact. It is equally relevant to notice that in none of the orders mentioned hereinabove has the learned Judge recorded any finding that the State or its authorities have acted in contravention of the law or that they have failed to perform any of their duties enjoined by any of the relevant statutory provisions. Similarly, no finding is recorded that the licensee (respondent herein) has done what all it had to do under the terms of the contract and the law. Indeed, at one stage, the respondent-firm admitted that it is in arrears of exercise revenue but it blamed it on the alleged wrongful acts of the authorities. Yet, the learned Judge went on supervising the case on an almost day-to-day basis. This was certainly no part of the High Court's function. It has also resulted in substantial loss of revenue to the State-to the people."

[11] Under the guise of praying protection of constitutional right or any other right, allegedly flowing from so-called promise given by Union of India to respondent No. 1, the original petitioner, according to Mr. Raval, cannot pray specific performance of the contract or rewrite the agreement in terms, which respondent E.S.L. interprets and the applicant G.A.I.L. cannot be asked to perform in a particular manner. Mr. Raval, has, while developing his argument, has pointed the terms of the contract agreement and the other facts emerging from the correspondence and the word 'paid' used in the relevant document and it is submitted that it would not be logical or legal to say that the ad interim relief granted earlier has been extended till hearing and disposal of the main petition or when Civil Application No. 46 of 2001 is pending, this being successive application, is not maintainable. The Court can pass a consolidated order as both these applications are pending and the nature of last order passed in Civil Application No. 46 of 2001 is of tentative nature and the same is passed being hopeful that the main petition shall be heard and decided at the earliest. It is on record that various attempts have been made by the parties to see that the matter is heard and decided in reasonable period of time, and once the petition was also heard at length, I am told

that it was argued for several days and it was kept for judgment, but as the learned Judge has released the matter, now the same shall have to be heard again. According to Mr. Raval, certain amounts being paid regularly against the charges/allocation of gas, would not disentitle applicant G.A.I.L. in assailing the right flowing from the agreement/contract nor it would put respondent E.S.L. on a pedestal despite of not paying the amount demanded by the G.A.I.L. in accordance with the contract and in terms of agreement. The dispute raised by original petitioner, according to Mr. Raval is neither bona fide nor genuine.

[12] Learned Senior Counsel Mr. P. Chidambaram for Nanavati Associates, on behalf of respondent Nos. 1 and 2 has advanced further more submissions on the adjourned date of hearing, and after taking the entire sequence of earlier orders passed on 5-4-2001, 4-6-2001, 25-9-2001, 25-10-2001, 30-10-2001 and 29-5-2003, has contended that the net position of 4-6-2001 is still continued. The respondent E.S.L. has neither attempted to protect the litigation nor acted mala fide for the purpose. On the contrary, the main petition was heard on merit, but the learned single Judge, after some interval, has released the matter which was kept for judgment. Referring the contentions in Civil Application No. 46 of 2003 and the prayer advanced in the said application, it is argued that the present application, that is, Civil Application No. 9096 of 2003 being not maintainable, requires dismissal. There is no legal or valid reason for this Court to alter the existing situation which has been made effective by an order of this Court vide order dated 25-10-2001, especially, when no appeal against the order extending the interim relief granted on 4-6-2001 till further orders. The effect of the order cannot be ignored, and it should be construed that the Court was not inclined to alter the situation pending disposal of the main petition. For convenience, I would like to reproduce the relevant part of the order passed by this Court (Coram : K. M. Mehta, J.), on 25-10-2001, disposing of the Misc. Civil Application No. 1697 of 2001.

> "It is true that the matter was not argued on merits and regarding grant of interim relief on the ground of prima facie case etc. as it is evident from the perusal of the counter reply to the written submissions as filed on behalf of the applicant-company.
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> In view of the aforesaid circumstances, I grant tie of 5 weeks time i.e. till 30-11-2001 for furnishing the letter of credit for the amount of Rs. 14.35 Crores and the ad-interim relief continues and would remain in force till 30-11-2001 and on that the applicant company tendering the said irrevocable stand by revolving letter of credit, the ad-interim relief granted earlier and as continued vide order dated 4-6-2001, shall continue till further orders."

12.1 Learned Senior Counsel Mr. P. Chidambaram has submitted that the operative part having effect on the controversy before this Bench requires to be read in two different parts : the first part of the order grants permission to furnish the letter of credit for the amount of Rs. 14.35 crores within five weeks, i.e. up to 30-11-2001 and continuing the ad interim relief till 30-11-2001 and, the second part of the order says that, on tendering the said irrevocable stand by revolving letter of credit, the interim relief granted on 4-6-2001 was to continue till further orders; that means till disposal of the main petition. On one hand, the present applicants have not taken this order to higher forum and on the other hand, voluntarily argued the main petition on merit before the learned single Judge. The contentions of the applicants should not be accepted that even today, the situation exists is because of an ad-interim order. But, on the contrary, the present application should be rejected treating the same as not entertainable. It may be held that this an interim arrangement by an order and the same has to continue till disposal of the main petition.

12.2 It is argued that the applicants have prayed a discretionary relief, and that too, when the main petition is pending for final hearing when there is a contempt proceeding initiated by respondent No. 1 E.S.L. vide Civil Application No. 3526 of 2003. Undisputedly, this Court (Coram : K. A. Puj, J.), has issued a notice to show cause to the applicants vide order dated 29-5-2003. Till this contempt is purged, the applicants should not be granted any discretionary relief in light of settled legal position. In support of this submission, learned Senior Counsel Mr. P. Chidambaram has taken me to the relief para of the Civil Application moved by respondent E.S.L. and has submitted that till date the applicants or any of them has not even cared to file reply in this contempt proceeding. So, it would not be either justified or proper to pass any discretionary order in favour of such applicants. Learned Senior Counsel Mr. P. Chidambaram has placed reliance on the ratio of the decision in case of In Re. Anil Panjwani, reported in 2003 (7) SCC 375.

12.3 By showing a copy of application served to respondent No. 1 E.S.L. by the present applicants in the month of August, 2003, it is argued, but for the reasons best known to the applicants, this application was not moved by the applicants, wherein, the applicants were to make attempt to pray same type of relief which has been prayed in the present application and the earlier application, i.e. Civil Application No. 46 of 2003. No formal orders have been passed in Civil Application No. 46 of 2003 and the same was kept with the main petition on the day on which the main petition was taken up for final hearing. So, such successive application, whether, would lie, is a question. In the main petition, Court has issued notice. Therefore, the relief prayed in the main petition should be taken as relevant while

considering the strength in the case of the petitioners, and order, when challenged, and has been stayed, even by way of an interim arrangement, the same should be ordered to continue fixing the hearing of the main petition at the earliest.

12.4 The conduct of the applicants is not bona fide. No party can be allowed to give threat to the other side to withdraw the petition or the proceedings initiated by that party. When the grant/allocation of gas is by Central government, the administration of threat to withdraw the main petition would seriously prejudice the respondent E.S.L. and his right to have regular supply of gas on payment of agreed price/consideration. Placing reliance on the ratio of the decision in case of Pratap Singh & Anr. v. Gurbaksh Singh, AIR 1962 SC 1172, it is submitted that O.N.G.C. as well as G.A.I.L., applicant No. 1, both having status of Union of India within the meaning of Art. 12/14 of the Constitution of India being instrumentality of Union of India. So, the language used in the captioned notice dated 1-5-2001 makes present applicants disentitle in praying their relief of the present nature when present application on merit is pending for final hearing. He has taken me through the relevant Paragraphs 8, 9 & 10 of the cited decision in the case of Pratap Singh (supra) which runs as under :

"(8) We now come to the second point which is of a more substantial nature. We have already quoted the terms of the circular letter dated January 25, 1953. There was some argument before us as to whether the said circular letter contained executive instructions only or laid down a rule as to a condition of service. Our attention was drawn to some institutions, or departments of Government, where a rule in similar terms laid down as one of the conditions of service that it is improper for a Government servant to take recourse to a Court of law before he has exhausted the normal official channels of redress. Learned Advocates for the parties were, however, agreed that no rule laying down the conditions of service of Government servants serving in the department to which the respondent belonged imposed an obligation similar to that imposed by the circular letter. We have, therefore, proceeded in this case on the footing that the circular letter contained executive instructions only and did not embody a rule governing the conditions of service. Therefore, we have not thought it necessary to consider what the position would be if such a rule were made a condition of employment for certain Government servants. Other considerations would then arise, such as the authority of the rule-making power to make such a rule, and we must make it clear that we are expressing no opinion on those other considerations.

(9) Assuming that the circular letter contained certain executive instructions, what then it is the position? It should perhaps be made clear at the very outset that the question before us is not so much the validity of the circular letter in the abstract,

but the propriety of the action taken against the respondent on the basis of the circular letter at a time when his suit was awaiting decision in the Court of the Senior subordinate Judge at Amritsar. It must not, however, be assumed that we are holding the circular letter to be valid in the sense that compliance with it will, in no circumstances, amount to Contempt of Court.

We do not come to any such conclusion. The argument before us is that the circular letter did not impose an absolute ban on a Government servant seeking redress of his grievances arising out of his employment or service conditions in a Court of law; it is submitted that all that it did was to ask Government servants to exhaust first the normal official channels of redress before proceeding to a Court of law. The emphasis, it is stated, is on propriety and discipline in the conduct of a Government servant; and it has been submitted that judged from that point of view, the circular letter cannot be said to constitute an interference with the course of justice in any Court of law. Theoretically and in the abstract, this may be true; and if the circular letter merely lays down that ordinarily a Government servant should exhaust his departmental remedies before going to a Court of law, no objection can be taken to it. Speaking generally, a Government servant does not ordinarily go to Court, unless and until he fails to get what he considers to be justice from the departmental authorities. But we have to consider in this case a somewhat different problem, namely, the action taken against the respondent during a pending litigation, as though going to a Court of law before exhausting departmental remedies must in all cases be visited with punishment.

(10) What, after all, is Contempt of Court?

"To speak generally, Contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation," (Oswald's Contempt of Court, 3rd Edition, page 6.)

We are concerned in the present case with the second part, namely, "to interfere with or prejudice parties litigant during the litigation." In the case under our consideration the respondent had instituted a suit in the Court of the Senior Subordinate Judge, Amritsar, in respect of his grievance that a certain sum of money was being illegally deducted from his salary. On behalf of the respondent, it was alleged that he had no further departmental remedies to exhaust, inasmuch as the order by which a part of his salary was being deducted was a final order made by the Punjab Government after considering the respondent's explanation. On behalf of the appellants it has been contended that the respondent had still a further remedy by way of an appeal to the Governor. That is a matter with which

we are not really concerned, as it relates to the question whether the respondent had or had not violated the terms of the circular letter. We are concerned with the action that was taken against the respondent on the footing, right or wrong, that he had violated the instructions of the circular letter. His suit was pending in the Court of the Senior Subordinate Judge, Amritsar. When the summons in the suit was served on the Government, the Under Secretary to Government, drew the attention of one of the appellants to the circular letter and asked the latter to intimate to Government what action he proposed to take against the respondent. Appellant Pratap Singh then forwarded the memorandum of the Under Secretary to the Conservator of Forests, South Circle, and in his forwarding endorsement Pratap Singh directed that the respondent should be proceeded with in accordance with the instructions in the circular letter and that a copy of the proceedings recorded and orders passed should be forwarded to him. It appears, therefore, that appellant Pratap Singh was not merely content with forwarding the memorandum of the Under Secretary. He directed his subordinate officer to take action against the respondent. In accordance with that direction a proceeding was drawn up against the respondent and the appellant Bachan Singh was asked to enquire into it. The appellant Bachan Singh then drew up a charge-sheet and in that charge-sheet it was stated that the respondent had gone to a Court of law before exhausting all his departmental remedies. What would be the effect of these proceedings on the suit which was pending in the Court of the Senior Subordinate Judge, Amritsar? From the practical point of view, the institution of the proceedings at a time when the suit in the Court of the Senior Subordinate Judge, Amritsar, was pending could only be to put pressure on the respondent to withdraw his suit, or face the consequences of disciplinary action. This, in our opinion, undoubtedly amounted to contempt of Court. There are many ways of obstructing the Court and "any conduct by which the course of justice is prevented, either by a party or a stranger, is a contempt; thus the use of threats, by letter or otherwise, to a party while his suit is pending; or abusing a party in letters to persons likely to be witnesses in the cause, have been held to be contempts." (Oswald's Contempt of Court, 3rd Edition page 87). The question is not whether the action in fact interfered, but whether it had a tendency to interfere with the due course of justice. The action taken in this case against the respondent by way of a proceeding against him, can in our opinion, have only one tendency, namely, the tendency to coerce the respondent and force him to withdraw his suit or otherwise not press it. If that be the clear and unmistakable tendency of the proceedings taken against the respondent, then there can be no doubt that in law the appellants have been guilty of contempt of Court, even though they were merely carrying out the instructions contained in the circular letter."

12.5 He has also placed reliance on one more decision in case of Biman Krishna Bose v. United India Insurance Co. Ltd. & Anr., 2001 (6) SCC 477; wherein, the conduct of nationalised insurance company has been condemned by the Supreme Court. Relevant Para 3 of the said decision is quoted as under :

"Under Sec. 9 of the General Insurance Business (Nationalisation) Act, 1972 (hereinafter referred to as "the Act"), General Insurance Corporation of India (in short G.I.C.) was set up as a government company for the purpose of superintendence, control and carrying out the business of general insurance in the country. Under Sec. 24 of the Act, the acquiring companies were given the exclusive privilege to carry on general insurance business in India. Under Sec. 3(a) of the Act, an acquiring company has been defined to mean any Indian insurance company in which any other company has been merged in pursuance of the amalgamation scheme formulated under the Act. The respondent Insurance Company is one of such acquiring companies. A perusal of the provisions of the Act makes it evident that it is only the acquiring companies which have exclusive privilege of carrying on the general insurance business in India, under the supervision and control of General Insurance Corporation of India. Excepting the acquiring companies, no other company in the private sector has a right and privilege to carry on general insurance business in India and to that extent the acquiring companies have a monopoly over such business. In such a situation, acquiring companies have the trappings of "the State" being other authorities under Art. 12 of the Constitution of India. The acquiring companies thus being "the State" under Art. 12 of the Constitution are expected to act fairly and reasonably. In the present case, what we find is that the respondent Insurance Company refused to renew the insurance policy of the appellant on the ground of his past conduct. The past conduct attributed is that the appellant had gone in litigation for payment of his claim lodged by him with the respondent Insurance Company. If an insured lodges a claim with the company and the company does not honour the claim, the insured is left with no alternative but to knock the doors of a Court of law. Merely because the appellant had approached the Consumer Forum and this Court for redressal of his grievance, can such an act be attributed as bad record as to disentitle the appellant to get his policy renewed? The answer is "no". Where an insurance company under the provisions of the Act has assumed monopoly in the business of general insurance in the country and thus acquired the trappings of the "State" being other authorities under Art. 12 of the Constitution, it requires to satisfy the requirement of reasonableness and fairness while dealing with the customers. Even in an area of contractual relations, the State and its instrumentalities are enjoined with the obligations to act with fairness and in doing so, can take into consideration only the relevant materials. They must not take any

irrelevant and extraneous consideration while arriving at a decision. Arbitrariness should not appear in their actions or decisions. In the present case, what we find is that arbitrariness is writ large in the actions of the respondent Company when it refused to renew the mediclaim policy of the insured on the ground of his past conduct i.e. having gone into litigation for payment of his claim against the respondent company. We are, therefore, in agreement with the view taken by the High Court that the order of the respondent Company refusing to renew the mediclaim policy of the appellant was unfair and arbitrary."

12.6 One more point developed by Mr. Chidambaram before this Court is that payment at the current rate is being paid. The price, even if, is in controversy, the supply of gas allocated by Government of India cannot be discontinued. This is not a case of known payment of price, but is a case of dispute cropped up on controversy as to price. So, if the say of E.S.L. is accepted on resolution of the controversy, then E.S.L. shall be entitled to refund of a handsome amount of about Rs. 50 Crores, and the conduct of applicants disentitle them from asking for that very amount and praying for the same or similar relief in the successive application. Obviously therefore, this application cannot be granted. Pressing orders are issued by Government of India. G.A.I.L. is an instrument and applicant No. 1 G.A.I.L. itself cannot adjudicate the controversy on price and only this Court is legally entitled to resolve this controversy, especially when respondent No. 1 company is transporting gas from 'land-fall point' to the points of actual consumption. It is submitted that this Court should reject the application and should hold that in light of the nature of controversy and other facts emerging from the various documents, the main petition requires to be heard. When allocation of gas is not cancelled by Government of India, any of applicant No. 1 G.A.I.L. leading to deprivation of use of this allocated gas would become highly prejudicial, and therefore also, this application requires to be rejected.

12.7 The last point argued by Mr. Chidambaram is that the principle of legitimate expectation would apply in the present case and respondent No. 1 E.S.L. can legitimately expect the renewal, the huge industry employing thousands of people directly or indirectly, cannot be asked to close down its activity suddenly. The ratio of the decision in case of Kumari Shrilekha Vidyarthi & Ors. v. State of U.P. & Ors., 1991 (1) SCC 212 would be appreciated in the present case. He has taken me through the relevant Paragraphs 21, 22 and 24 of the said decision which are quoted as under :

"(21) The Preamble of the Constitution of India resolves to secure to all its citizens justice, social, economic and political; and equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution

contains 'Directives Principles of State Policy' which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action, to realize the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Art. 14 of non-arbitrariness which is basic to rule of law - from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the constitutional scheme to accept the argument of exclusion of Art. 14 in contractual matters the scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

(22) There is an obvious difference in the contracts between private parties and contracts to which the State is a party. Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited, and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Art. 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Art. 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Art. 14 of non-arbitrariness at the hands of the State in any of its actions.

(24) The State cannot be attributed the split personality of Dr. Jekyll and Mr. Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Art. 14 of the Constitution, and thereafter, permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Art. 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Art. 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity."

While elaborating this point, it is argued that even Union of India is supposed to renew the allocation of gas. When the agreed amount of value of the gas is paid, G.A.I.L. ought not to have issued notice for disconnection of gas supply.

[13] For short, the say of Mr. Chidambaram is that this is not a case of non-payment of dues but is a case of controversy on the point of payment of transportation charges. So, according to Mr. Chidambaram, this Court should hold that the ratio of decision in case of M. P. Oil Extraction & Anr. v. State of M. P. & Ors., 1997 (7) SCC 592 would help the respondent No. 1 E.S.L. as the same makes the prima facie case of the main petitioner stronger.

[14] Considering the said orders passed in the main petition and other miscellaneous proceedings taken out by the parties, it is abundantly clear that the order passed by this Court staying the implementation of the captioned notice dated 1-5-2001 issued by original respondent No. 1 G.A.I.L. is an ex-parte order. The language of the captioned notice can be said to be of a bill of demand-cum-notice of termination of the arrangement worked out which envisages by party obligations in terms of the agreement and subsequent writings including documents between the parties. An application under Art. 226(3) came to be moved by G.A.I.L. as it was under apprehension that the matter may not be heard for reasonable long period on merit even on the point of interim relief as it is pointed out by Mr. Kirit Raval. The order dated 4-6-2001 passed by this Court referred hereinabove in reality though has an

effect of order is a recording of consensus arrived at between the Counsel for immediate purpose. The Court has recorded that the learned Counsel appearing for the opponent company has made a statement to abide by certain conditions and the same have been accepted by the learned Counsel for the applicants. This creates an obligation in the eye of law. The words "limited consensus arrived at for immediate purpose" and the words "accepted by the learned Counsel for the applicants" are of great importance. Three terms are narrated in the order and they are reproduced here for convenience :

> (i) That the opponent Company shall pay and continue to pay the charges for gas as per the current bills being issued by the applicants regularly and such payments shall be without prejudice to their (sic.) and contentions.
>
> (ii) That the opponent Company shall open and submit a letter of credit strictly in accordance with the terms of the contract within a period of 15 days from today; and
>
> (iii) That the opponent Company shall, without prejudice to its rights and contentions, deposit a sum of rupees one crore with the applicants within a period of 15 days from today.

[15] Undisputedly, the petitioner E.S.L. was directed to deposit a sum of Rs. 1 Crore with the applicants within 15 days from the date of order and they are deposited. The opponent company, i.e. E.S.L. was put under obligation to open and submit a letter of credit in accordance with the terms of contract within 15 days from the date of order, i.e. 4-6-2001 and also to pay current bills issued by the applicants regularly, but it was subject to the rights and contentions raised by E.S.L. in the main petition. This application preferred under Art. 226(3) of the Constitution was not treated disposed of but it was prior to listing the same for further orders on 20-6-2001. Before any formal further order could be passed in Civil Application No. 5710 of 2001 moved under Art. 226(3) of the Constitution, an application for modification in the order passed by the Court on 4-6-2001 was moved by the E.S.L. being Civil Application No. 6287 of 2001 and also prayed for interim relief. This application was moved on 19-6-2001. The date is relevant as because the application filed for vacating stay was listed on 20-6-2001 as per the order of 4-6-2001. It seems that the matters were listed on 21-6-2001 before the Court. During hearing, this Court (Coram : K. M. Mehta, J.), was apprised by the predicament position of G.A.I.L. as it has entered into similar type of contracts/agreement with other consumers, undisputedly, till 19-6-2001, i.e. a date previous to the date of hearing of the application moved under Art. 226(3) of the Constitution. Condition No. 2 imposed by the Court, suggested by the G.A.I.L. and accepted by E.S.L. was not complied with. On that day, i.e. 21-6-2001 this Court could

have vacated the interim relief granted earlier ex-parte. The stand taken by the E.S.L. before the Court was that as per the letter of G.A.I.L. dated 29-6-2000, they are prepared to give stand by letter of credit for Rs. 14.35 Crores. The Court, by overruling objections raised by the G.A.I.L. through its Counsel Mr. Kamal Trivedi, in light of the rival contentions raised extended the time for compliance qua condition No. 2 of the Court's order dated 4-6-2001 till 11-7-2001. It seems that to avoid hardship, the interim relief granted earlier was extended up to 13-7-2001. The matters were adjourned to 11-7-2001.

[16] Civil Application No. 5701 of 2001 filed by G.A.I.L. came to be heard by this Court and the same has been decided vide C.A.V. order dated 25-9-2001. It was submitted by G.A.I.L. in nutshell before the Court that the ad interim relief injunction granted ex-parte vide order dated 5-5-2001 in favour of the petitioner came to be vacated forthwith and E.S.L. be directed to comply with the orders passed by 4-6-2001 and 21-6-2001. It was submitted further that unless and until E.S.L. purges the contempt by furnishing three different requisite letters of credit, it does not deserve any relief whatsoever. It is relevant to note that E.S.L. has furnished the last letter of credit for an amount of Rs. 14.35 Crore under the contract dated 29-6-2000, but the question that needs to be scrutinised is whether it would absolve it from its obligation in complying the earlier orders passed by the Court or from disconnection of gas supply on account of non-payment of huge outstanding dues of Rs. 124.55 crore. Some part of Para 8 of the order passed by the Court on 25-9-2001 requires to be reproduced for the sake of brevity :

> ".....In my view, after obtaining interim relief from this Court in the month of May, 2001, ultimately on 4th June, 2001, before this Court the originally petitioner Company agreed for the three conditions which has been mentioned in the order of this Court dated 4th June, 2001. In my view, when Gas Authority of India Ltd., is obtaining irrevocable stand by revolving letter of credit from all its consumers then it will not be possible for G.A.I.L. to have a separate letter of credit from the petitioner company particularly when they have already agreed before this Court on 4th June, 2001, to furnish the irrevocable stand by revolving letter of credit in this behalf.
>
> ".....In my view, when the matter reached hearing before this Court, the petitioner had agreed to comply with the terms and conditions contained in the contract which has been recorded by D. H. Waghela, J., in his order dated 4-6-2001, and therefore, petitioner cannot wriggle out from the said contractual decision in this behalf. In fact, petitioner failed and neglect to prove prima facie case in his favour. Petitioner also failed to prove irreparable injury, loss and hardship which was ensue to the petitioner if interim injunction as prayed for is not granted. On the other

hand, the Gas Authority of India Ltd., which is a Government of India Corporation have proved strong prima facie case in their favour. Respondent No. 3 further proved that if interim injunction as prayed for may be granted then they will suffer irreparable injury, loss and hardship which cannot be compensated in terms of money, when they have already entered into contract with various dealers for entering into irrevocable stand by revolving letter of credit, it will not be possible for them to have a different standard and measures with the petitioners who are also one of the customers of the respondents. The respondent No. 3 has to assure that as and when they supply of the amount which the petitioner has to pay is to be secured in this behalf. This irrevocable stand by revolving letter of credit is nothing but a security of payment which respondent No. 3 desires to obtain from the petitioner in this behalf particularly when the amount is perfectly justified in insisting for irrevocable stand by revolving letter of credit to be executed by the petitioner in this behalf."

[17] The time to furnish irrecovable stand by revolving letter of credit was extended up to 30-10-2001 on the request made on behalf of E.S.L. It is true that the ad interim relief granted earlier and clarified subsequently vide order dated 4-6-2001 was ordered to be operated up to 30-11-2001. So, it can be said that even if E.S.L. fails in furnishing the letter of credit of a nationalised bank situated at Hazira in favour of G.A.I.L., even then the interim relief was to continue for 31 days more. But, it can be legitimately concluded that the application moved under Art. 226(3) by G.A.I.L. came to be concluded with the finding recorded on 25-9-2001. The resultant effect of the order is that the directions given by the order dated 25-9-2001 if complied then the interim relief granted ex-parte on 5-6-2001 can continue till disposal of the petition. Failure would lead to vacation of interim relief including the clarified extension granted on consensus dated 4-6-2001 on 30-11-2001. Therefore, any other protection granted and prohibitory passed, extended cannot be equated with the relief granted to the petitioner either ex-parte or by parte on the strength of the prima facie case pleaded before the Court at subsequent stage in the said proceedings unless a fresh orders on changed circumstances or facts brought to the notice of the Court by the party praying for any interim relief or protection is passed. Petitioner E.S.L. does not bank upon any new fresh facts or circumstances than already pleaded earlier or the facts/documents already placed before the Court.

[18] E.S.L. before 30-10-2001, the last day specified by the Court for giving irrevocable stand by revolving letter of credit moved one Misc. Civil Application being No. 1697 of 2001 and prayed for recalling of the order dated 25-9-2001, and ultimately held that the matter was not argued with regard to prima facie case and grant of ad interim relief. But it was argued only to the extent whether the interim relief deserves

to be vacated in view of the contentions raised by original respondent No. 3 G.A.I.L. under Art. 226(3) for non-compliance of condition No. 2 imposed by the Court vide order dated 4-6-2001, i.e. by not furnishing the irrevocable stand by revolving letter of credit in terms of the contract. It was specifically contended by E.S.L. itself in this Misc. Civil Application that prima facie strength in the case of the main petitioner was neither argued nor evaluated when Civil Application No. 5710 of 2001 was heard and decided on 25-9-2001. By placing this say it could obtain the order of 25-10-2001 whereby the Court granted time up to 30-11-2001 to E.S.L. for furnishing the letter of credit for the amount of Rs. 14.35 crore and the ad interim relief was ordered to be continued and remained in force till that date. It is observed by the Court that "ad interim relief granted earlier and continued vide order dated 4-6-2001 shall continue till further orders". It is rightly argued by Mr. Kirit Raval that this Court has neither ever confirmed the ex-parte interim relief granted nor has ever said that the interim relief shall remain in force till hearing and disposal of the main petition, either directly or indirectly. Even though, it is true that the ad interim arrangement worked out by the Court was in force till date of hearing of present application. So, it would be difficult for the Court to accept the say of learned Senior Counsel Mr. P. Chidambaram that this Court has already passed an order to continue the interim relief till disposal of the petition or the intention of the Court was to continue the relief till the main petition is heard on merit. Order dated 30-10-2001 passed in Misc. Civil Application No. 1807 of 2001 in Civil Application No. 5710 of 2001 would not help the petitioner so far as the stand taken by E.S.L. in raising preliminary objection as to maintainability of the present application or the factual as well as legal strength placed before the Court by the applicants of Civil Application No. 46 of 2003. Misc. Civil Application No. 1807 of 2001 was moved for more than one relief, and I would like to reproduce the relief prayed in the application :

4. The applicants therefore most humbly and respectfully pray that :-

A. Your Lordships may be pleased to allow this Miscellaneous Civil Application;

B. Your Lordships may be pleased to direct that the applicant company shall be permitted to furnish the irrevocable stand by revolving letter of credit by 15-11-2001 instead of 30-10-2001 and that subject to the said condition the interim order as granted earlier shall continue till 30-11-2001.

C. Such other and further reliefs as may be deemed just and proper in the facts and circumstances of the present case may kindly be granted."

However, the Court has granted reliefs in following terms :

"The applicants are allowed to furnish the irrevocable stand by revolving letter of credit by 19-11-2001. The interim order as granted earlier shall be continued till

30-11-2001."

[19] This relief, in light of the observations made by the Court in the very order that learned Senior Counsel Mr. K. S. Nanavati he has not pressed any other relief prayed in the application. It would not be legally correct to say that on compliance of the order passed on 30-10-2001 in Misc. Civil Application No. 1807 of 2001 would make the ad interim relief either confirmed in favour of the original petitioner till hearing and disposal of the petition or it would put G.A.I.L. under legal obligation not to press vacation of the interim relief granted ex-parte or this conduct of original petitioner would any way effect adversely to the contentions raised by G.A.I.L. or other respondents in their reply-affidavit in the main petition or the say in the present application. On the contrary, the language of the order passed by this Court in Civil Application No. 3526 of 2003 brought to the notice of this Court by learned Senior Counsel Mr. P. Chidambaram, who takes this Court to a prima facie finding that the order of issuance of notice in the contempt proceeding initiated by the above application was obtained on an assurance given to the Court by learned Senior Counsel Mr. K. S. Nanavati because the order says that "in the meanwhile Mr. Gupta, learned Advocate for respondent No. 3 as well as learned senior Counsel Mr. K. S. Nanavati makes a statement that their client would be complying with the directions contained in the interim order passed in the main matter". It would be proper to keep restraint by not saying anything qua the relief prayed in the above contempt application and the effect of the order passed by the Court on 29-5-2003 while issuing notice. But as this Bench is called upon to record a finding on a technically legal issue raised by learned Senior Counsel Mr. P. Chidambaram that until and unless the contempt is purged by respondent G.A.I.L., his say on merit cannot be legally considered, is not found acceptable. The decisions cited by learned Senior Counsel, resisting the application on this technical ground are not found applicable. The first decision cited is in the case of Anil Panjwani, reported in 2003 (7) SCC 375, where the Apex Court has observed that it is no rule of law and certainly not a statutory rule that a contemner cannot be heard unless the contempt is purged. It has only developed as rule of practice for protecting the sanctity of the Court proceedings and the dignity of the Court that a person who is prima facie guilty of having attacked the Court may be deprived of the right of participation in hearing lest he should misuse such opportunity unless he has agreed to disarm himself. The Court would not be unjust in denying hearing to one who has shown his lack of worth by attacking the Court unless he is agreed to beat a retreat and the Court is convinced of the genuineness of such retreating. It would all depend on the facts and circumstances of a given case and the nature of contempt under inquiry. It would enable the Court exercising its discretion either way. So, first of all unless the Court is convinced that in the present case the applicant G.A.I.L. has committed a contempt and is placed under inquiry, which has created a circumstance

under which the G.A.I.L. should be deprived of any hearing or the discretionary relief. The applicant cannot be denied that his say may be considered. It is true that one contempt application has been moved and this Court has issued a notice to show cause but yet the contempt proceedings have not been initiated nor the application has been admitted on merit. In the cited decision, the Apex Court had reached to a conclusion on set of facts available on record that this is a flexible rule of practice and not a rigid rule of law. The discretion shall have to be guided and governed by the facts and circumstances of a given case where the Court may form an opinion that the contemner is persisting in his behaviour and initiation of proceedings in contempt has had no deterrent or reformatory effect on him and/or if the disobedience by the contemner is such that so long as it continues its impact on the orders in respect of him and Court would be justified in withholding access to the Court or participation in the proceedings from the contemner. It is true that in the present case the E.S.L. has not submitted that the G.A.I.L. should not be permitted to participate in the proceeding and the submissions advanced by learned Senior Counsel Mr. Chidambaram is limited to the fact that the G.A.I.L. being contemner and the Court has issued notice to show cause against G.A.I.L., then, atleast, it should not be granted any discretionary relief.

[20] Placing reliance on the decision reported in case of Pratap Singh & Am. v. Gurbaksh Singh, AIR 1962 SC 1172, it is submitted that no party can be allowed to administer threat to the other side to withdraw the petition/suit. When the grant of natural gas is by the Central Government and O.N.G.C. being an instrumentality of the State, the conduct of G.A.I.L. in asking the petitioner E.S.L. to withdraw the litigation by itself is a contempt or atleast condemnable action, such a party cannot be granted any discretionary relief. The Apex Court in the above cited decision has observed in Para 32 that :

> "32. In, In re : The William Thomas Shipping Co. Dillon (H.W.) & Sons Ltd. v. The Company : In re : Sir Robert Thomas, 1930:2 Ch. 368, it was said at page 376 :
>
> "I think that to punish injurious misrepresentation directed against a party to the action, especially when they are holding up that party to hatred or contempt, is liable to affect the course of justice, because it may, in the case of a plaintiff, cause him to discontinue the action from fear of public dislike, or it may cause the defendant to come to a compromise which he otherwise would not come to, for a like reason;"
>
> This would make publication of injurious misrepresentations against a party to an action, contempt of Court, if they had a tendency to cause that party to come to a compromise which he otherwise would not come to. The facts of the present case do not, if any way correspond to this case, even if on his own, Gurbaksh Singh, to

avoid Departmental action, discontinues the suit, as the action taken does not in any way make such injurious misrepresentation of the party, if any, as would hold him up to hatred or contempt."

[21] The initiation of contempt proceedings against respondent by petitioner E.S.L. is an undisputed fact but the totality takes me to a conclusion that the petitioner cannot be declared successful on the point that the application moved for alleged contempt is decided on merit and/or the alleged contempt is purged because it is relevant to note that this Court has issued notice on the statement made by learned Senior Counsel Mr. K. S. Nanavati, that their clients would be complying with the direction contained in the interim order passed in the main matter, means the issuance of notice was conditional and qualified. So, on the date of application, technically, the petitioner had no scope to initiate the contempt proceedings as itself had not complied the direction issued by the Court in the interim order in the main matter till the date of filing of the contempt petition.

[22] O.N.G.C. and G.A.I.L. both are of different status and created by two statutes and the area of their operation are also different. In this situation, the act of writing a letter asking E.S.L. to withdraw the litigation, the substantive petition filed is contemptuous. The language of the letter, according to Mr. Chidambaram expresses a clear threat and this conduct disentitles G.A.I.L. from any discretionary relief that too when the G.A.I.L. is being paid the usual charges in compliance of the orders passed by the Court and the agreement between the parties. While developing these arguments, placing reliance on the decision reported in 2001 (6) SCC 477, it is pointed out that O.N.G.C. as well as G.A.I.L. both are 'State' within the meaning of Arts. 12 and 14 of the Constitution of India. The cited decision is in case of a Insurance Company-Nationalised, and it is submitted that the conduct of G.A.I.L. should be a 'moral' conduct.

I have carefully considered the ratio of the decision and the observations made by the Apex Court in Para 32 of the decision.

[23] The ex-parte injunction granted after some modification, and relaxation granted by the Court is even operative today. Payment of current rates is being paid. Even if price is under controversy, it is not the say of G.A.I.L. that it is not being paid at current rate. The pricing orders are being issued by the Central Government and the G.A.I.L. is an instrument of Central Government. When the petitioner has approached this Court by filing a substantive petition for adjudication, placing reasonable and arguable case, then the applicant G.A.I.L. should not be permitted to ask payment of any amount especially when its conduct itself has disentitled G.A.I.L. for such discretionary relief. When E.S.L. is anxious to see that the main petition is heard then

it should be heard and for no fault on the part of the petitioner the hearing is protected. The allocation of gas is not cancelled by the State Government and the price of gas is fixed, the applicant G.A.I.L. should not be permitted to press for the relief under which it can discontinue the supply of gas to petitioner.

[24] Having considered the various orders passed by this Court in reference to the dispute brought before this Court by E.S.L. in the main petition and in the ancillary/supplementary proceedings initiated by the parties, mainly by E.S.L. and G.A.I.L., it is apparent that though except the first ex-parte interim relief order passed by the Court in favour of the petitioner, other orders are passed after hearing the parties, and therefore, the directions issued or obligation coasted by the subsequent orders passed are binding. But, it is apparently clear that the interim relief, the day on which the Civil Application No. 46 of 2003 came to be filed, the interim relief granted by the Court was of the nature of ad interim arrangement worked out by the Court modifying the first ex-parte order granting interim protection. It is legally difficult for the Court to say that, at any point of time, the parties have agreed to the position that the interim arrangement worked out by the Court and extended by the Court till further orders are passed in the matter as an effect of confirmation of the ad interim relief granted. On the contrary, it emerges from record that the relief prayed in Civil Application No. 46 of 2003 was not seriously pressed because the Court had assured the hearing of main petition, but ultimately, the petition could not be heard and decided well within time. It is true that it was possible for G.A.I.L. to continue the ad interim relief arrangement for some time and to get the entire dispute resolved on hearing and disposal of the main petition, and therefore, order of extension of ad interim relief arrangement till further orders would not disentitle G.A.I.L. in filing one another Civil Application praying same or similar relief. It can be argued and also held that by moving Civil Application No. 9096 of 2003, the applicant G.A.I.L. has pressed into service its grievance that Civil Application No. 46 of 2003 now requires to be decided and further orders as prayed in the application be passed. Therefore, both the Civil Applications are placed for hearing simultaneously. For the sake of argument, it is expected that the subsequent application is not maintainable, even then an application to hear Civil Application No. 46 of 2003 on merit and/or to pass further orders in the said application can be positively moved. It will be difficult to expect that Civil Application No. 46 of 2003 has been heard and a conclusive decision has been ever recorded by this Court. On the contrary, the orders passed by this Court dated 25-9-2001 and 25-10-2001 referred hereinabove indicates that the prima facie case, i.e. strength as well as scope of success in the substantive petition was never argued and the petitioner E.S.L. is enjoying interim relief without establishing strength in his case and also the point of balance of convenience. Pendency of more than one dispute; one of which is pending before the Apex Court as mentioned earlier by itself would not add

any strength in the case of the E.S.L. When the petitioner is asked about its strength and the scope of success in the main petition and also to demonstrate that the balance of convenience is in favour of the petitioner, then at that stage whether the petitioner can be permitted to put a case of justification saying that, as the ad interim arrangement is being continued till the date on which Civil Application No. 9096 of 2003 came to be moved then this Court without entering into merit of two Civil Applications craving vacation of interim relief should be ignored and the case of the petitioner should be heard on merit. Treating the ad interim relief granted as confirmed/approved by the Court is the question. The applicant G.A.I.L. has rightly submitted that it apprehends further protection of hearing of the petition and it may seriously prejudice the applicant G.A.I.L. in future and further proceedings especially when it is dealing with number of consumers availing supply of gas on the basis of the contract entered into by such consumers with the Central Government and/or O.N.G.C. etc. Merely because price of gas, as per contract are being paid on current rate or the price of gas is fixed by the Central Government, by itself would not add any strength in the case of the petitioner. It is true that the petitioner E.S.L. has made necessary arrangement to lift the gas from land fall point to the actual place of consumption, i.e. site of the industry. Undisputedly, the E.S.L. is lifting natural gas from land-fall point some where near Hazira, Bijapur, Jagdishpur pipeline (hereinafter after referred to as H.B.J, pipeline) and regulated by the applicant G.A.I.L. The documents dealing with the supply page 70 and one of such contract executed in the month of July, 1996 page 121 and the scope of refixation of price emerging from the relevant document (page 72 of reply-affidavit) are throwing light on basic facts. The price can be divided in two different parts, namely the land-fall point price and H.B.J, pipeline price and the scope of refixation. It is also true that there is a government committee for fixation of price of natural gas etc. I have considered the schedule submitted by the learned Senior Counsel appearing for the petitioner E.S.L. but it will be difficult to conclude at this stage that the applicant G.A.I.L. is attempting recovery of the price higher than fixed by the pricing order or the demand is higher than actually agreed or contracted price, either in the name of H.B.J, transportation charges or otherwise. If the say of the petitioner E.S.L. is accepted that unless government specifically permits such additional price by specific orders, no such demand can be raised, then it would be practically allowing the petition while dealing with the supplementary proceeding moved in the nature of prayer to grant interim relief. The say of petitioner is that it is not getting gas from H.B.J, pipeline and H.B.J. transportation charges is payable by consumers for getting their supply through H.B.J. pipeline, and therefore, H.B.J. transportation charges cannot be recovered either from the petitioner or any of the consumers like the petitioner, is a point of debate. Such demand cannot be said to be contrary to pricing order. The say of the petitioner E.S.L. is based on an inference or presumption that levy of such transportation charges can be permitted only by

Government or unless government so permits G.A.I.L. cannot raise any bill under the head of transportation charges. There is a strength in the submission of the applicant G.A.I.L. that the pricing orders applied to the "originally contracted quantity". The principle laid down by the ratio of the decision reported in AIR 1996 Bombay 20, prima facie would help the applicant G.A.I.L. So, the say of petitioner E.S.L. is not found prima facie acceptable that the G.A.I.L. is trying to get the enhanced price under the guise of transportation charges indirectly which it cannot do directly. The attempt to recover the amount payable by E.S.L. on serving the demand notice-cum-bill under challenge the main petition, does not look like an act or circumventing price order whether transportation charges can be recovered without any doing any transportation is a question raised by the petitioner in the main petition and the controversy at present brought before the Court in the main petition is undisputedly limited. It is the say of the petitioner that quantity of 0.35 M.M.S. M.C.D. converted from fall back into firm basis and surplus gas supply on fall back ad hoc basis from July, 1997 was required to be supplied at the price fixed by the pricing order by government or as per demand raised by G.A.I.L. According to the petitioner, the present controversy does not cover transportation charges demanded by G.A.I.L. and paid by E.S.L. wherever government has while allocating quantity imposed a condition that because H.B.J, price or H.B.J. transportation charges will be payable by E.S.L. because of the price fixed by the government. Even for the sake of argument, it is expected that on reconfirmation done subsequently of this quantity into fall back and the G.A.I.L. is no longer making any supply under this agreement even then there is logic behind the demand/bill raised by the applicant G.A.I.L. I have carefully considered a letter dated 5-7-1999 addressed to G.A.I.L. by the Government of India directing refund and declaring that the H.B.J, transportation charges are not payable by petitioner E.S.L. and the letter dated 14-8-2000 to G.A.I.L. by the government clarifying the view of Ministry of Law & Refund and asking G.A.I.L. to refund the amount. Letter dated 16-3-2001 (page 369) is relevant which is in the nature of opinion by law ministry. The plain reading of the substantive petition and the reply-affidavit filed by E.S.L. is based on the logic of justification and propriety on the inference that government's directions are in respect of additional quantity of gas covered by 17-7-1996 agreement and ad hoc supplies thereafter and not in respect of original contract quantity is sought to be misrepresented by G.A.I.L. The question which needs prima facie scrutiny is that the dispute raised by the petitioner is of seeking enforcement of Government's decisions, directions and pricing orders or it is a dispute in the realm of commercial contract. The petitioner has attempted to say that if the case falls in the realm of commercial contract, then the High Court has jurisdiction to interfere if the Government or the instrumentality of it is acting in an arbitrary or unfair manner. The petitioner basically pleads that demand of transportation charges from petitioner who is not a H.B.J. consumer and is getting supply from a land-fall point should not be victimized by the applicant G.A.I.L.

exercising hostile discretion. The argument advanced by Mr. Chidambaram, learned Senior Counsel has also touched one of the principle of legitimate expectation laid down by the Apex Court in number of decisions and one of such decision cited is 1999 (4) SCC 427, and it is submitted that the petitioner has right to compel applicant G.A.I.L. to adhere to the pricing orders and not commit breach thereof by imposing recovery of Rs. 1150/- per 1000 C.M.D. gas. More than the price fixed under the pricing order but the Court is not attracted with this submission in view of the accepted proposition of law in this regard because it clearly/prima facie emerges that the dispute falls in the realm of commercial contract and it is difficult to say prima facie that this case is of hostile discrimination or of imposing and recovering higher price under the guise of H.B.J. transportation charges etc.

[25] While evaluating the prima facie case of petitioner E.S.L. Shipping Ltd., the point as to scope of refixation of price (page 72 of reply-affidavit) can be looked into to some extent. Land fall price, H.B.J. Pipeline price and the point of refixation if considered in reference to the quantity of supply and the status, i.e. 'firm' or 'as and when available basis', it will be difficult to conclude at this stage that the demand is ex facie bad or illegal. It may be held on merit at the end of a litigation by a competent Court that the price may be different for a purchaser who lifts the gas from land-fall point. Thus, the consumers who have delivered the gas at a place other than land-fall point merely because price is fixed by Government of India would not add any strength in the prima facie case of the petitioner E.S.L.. On the point on demand made to refund certain amount and the decision of the committee formed by the Government, if looked into in the background of the entire report (page 479 and page 480) it can be said that there is scope for interpretation. But, it would be premature to say at this stage that the say of the Committee is a charter for respondent G.A.I.L.. It can be argued that an opinion of ministry or say intimation sent to respondent G.A.I.L. in the form of opinion would not render by itself the action of G.A.I.L. arbitrary. The fact that at present, transportation charges are being paid by the petitioner would not help the petitioner but would tilt the balance in favour of respondent G.A.I.L.. To appreciate the submissions of learned Senior Counsel Mr. Chidambaram and Mr. K. S. Nanavati, the Court has considered the agreements including the first order dated 30-1-1987 (page 477) which says that the decision of the price is with the Government, and other aspects, i.e. supply on fall back basis, supply on firm basis, the delivery (page 68 Clause 4) and the alleged reaffirmation of the say and stand emerging from background (Annexure-II/11) including price order, revised scheme and plant enhancement in case of further transportation. Undisputedly, the marketing function is with respondent G.A.I.L. and on the day of petition the G.A.I.L. was very well there in full control of supply and marketing. It is true that G.A.I.L. is an activity of the Government of India and can be said to be a State, technically within the meaning of

Art. 12 of the Constitution of India, but unless the Court is convinced prima facie that the conduct of respondent G.A.I.L. is any way arbitrary or discriminatory or a mala fide or otherwise contrary to even the commercial policy that a Government Company should implement or the action is against the public interest or policy which would not be proper to stall an administrative action taken under a contract or one or more clauses of contract as to whether their interpretation has given rise to a cause is the question that can be answered while dealing with the petition on merit. I would like to keep restraint in dealing on this issue elaborately because the Court is at present dealing with the issue of prima facie case and balance of convenience in the background of the case pleaded by the petitioner and the main relief claimed. Even for the sake of argument the say of learned Senior Counsel Mr. Chidambaram is accepted that this is a case wherein the doctrine of legitimate expectation has a room to play and so also the doctrine of promissory estoppel. The language of the demand-cum-disconnection notice under challenge can be said to be harsh because it straightaway tells about the termination of entire supply and that too a running concern providing employment to the thousands of people. But, it would be difficult to make the interim relief confirmed till the hearing and disposal of the petition because there is no scope for this Court to say prima facie that the quality clause is being given go by. On the contrary, the say of the G.A.I.L. is that it is compelled to issue such a demand-cum-disconnection notice because it is not possible for G.A.I.L. to give different treatment to the petitioner E.S.L. On the contrary, that would lead to a wrong action. Under the guise of equity, the concept of equal treatment cannot be given go by and it would be illegal for the Court to say that two wrongs would make one right decision. In the same way, the petitioner cannot pray by introducing element of some discrimination based on which any interim relief should be granted enlarging the concept of equity. It is not the case of the petitioner that it is being discriminated and none other in the whole country has been charged in the manner in which the petitioner is being served with such impugned notice. The concept of equal treatment or special treatment on the logic of Art. 14 cannot be pressed into service in such or similar cases. If hypothetically it is accepted that perhaps respondent G.A.I.L. is doing something wrong in either accepting or not accepting the opinion expressed by the committee appointed by the Government, the say of the respondent G.A.I.L. shall have to be appreciated in its own perspective and respondent Company like G.A.I.L. cannot be asked to introduce a concept of negative equality. On the contrary, on such or similar concept the petitioner has admitted to convince this Court that it has enough strength in the case placed before the Court. Whether the decision is a action which can be brought under a judicial review invoking jurisdiction of the Court vested under Art. 226 read with Art. 14 is a question which needs to be answered. Undisputedly, it is as per the settled proposition of law, certain triable issues would not create a case prima facie in favour of such petitioner. The scope of success at the element of mala fide or of a ulterior

motive and after going through the record placed before the Court, it is not possible to say at this stage that the petition is whimsical and totally contrary to the wish or desire of the Central Government or any of its department.

[26] At present, I am not inclined to pass any comment as to the stake of the amount involved in the matter and the attempt of protection of litigation made in the matter, but one thing is certain that in complying the interim orders passed by this Court, the petitioner Company is not found meticulous. Even it has attempted to raise issue as to the type of bank guarantee and also as to the amount of bank guarantee. But, it is true that this would not affect the merit of the case of the petitioner. It would be difficult for the Court to say at this stage that the petitioner Company's conduct was not bona fide. Known principle in this field is that such petitioners should approach the Court with clean hands. The concept of clean hand says that it should not be dirty or coloured. It is not necessary when the prima facie case is being evaluated that it should be clean as autoclave. Of course, the yardsticks in each field are taking different shapes and size, so far as fairness and value-based living in the society and various fields are concerned even the commercial as well as legal field have not been spared. We are heading towards a time when the Courts would be insisting that the ad interim relief should approach the forum with utmost clean hand and with all transparency and should place a case before the Court claiming his success in the litigation as one can expect in logarithm. The illusory difference or discrimination placed to get a judicial or special treatment normally would not attract Art. 14. Readiness to press the final hearing, would, by itself, not entitle a party to get the extension of interim relief till the disposal of the main matter nor would add any strength in the say, that is prima facie case. Merely because the interim relief granted earlier by the Court is existing today should not take this Court to conclusion of confirmation as if the petitioner has a good case and scope of success at the ultimate end.

[27] The decision of the Apex Court reported in AIR 1990 SC 1851 (supra) would help the respondent G.A.I.L. wherein, in Paragraph 27, the Apex Court has observed that :

> "There is no doubt that Dr. Rao made the cost plus method the basis of his award in preference to the basis of thermal equivalence of alternate fuel (which we shall refer to as thermal equivalence basis). But at least two important aspects have to be kept in mind in assessing the applicability of the same principle in the present context. In the first place, as explained earlier, Dr. Rao was concerned primarily with an issue raised by the public of Gujarat as against the O.N.G.C.. He was really adjudicating upon the price which the O.N.G.C. should charge to public sector undertakings catering to the essential needs of the State. In that context, his objective was, understandably, to fix the price as low as possible. The consumers under consideration by him represented the public need of the State of Gujarat,

and as against such public interest, the O.N.G.C.'s profit requirements paled into insignificance. He proceeded, more or less, on the footing that the O.N.G.C. was obliged to supply gas for meeting those essential purposes. Secondly, Dr. Rao also agrees that the thermal equivalence basis is a recognised method for fixation of price, that it has a relevance and that it has to be taken into account in determining the price for gas supply. We also wonder, whether in the present set up of the O.N.G.C. with a vast expansion of its exploratory activities, enough data are available to work out a price on the cost plus basis. Any such computation will have to provide adequately for future explorations, infructuous expenditure, expenditure on modern up-to-date machinery and research and above all expenditure that will be necessary to reach the gas to the consumers. In these circumstances, the cost plan basis fixed by Shri Rao in the background of the real nature of the dispute before him three decades ago cannot be taken as conclusive in the present situation. Here, we are dealing with a price to be fixed under a contract between the O.N.G.C. and one set of industries in the State who wish to make a change over from the furnace oil system to that of gas supply with a view to increase their own profitability and gain an advantage, if possible, over other industries in the State. In this context, we think, O.N.G.C. is entitled to a larger latitude and charge a price which the market can bear. The only restriction is that, being a State instrumentality, it should not be a whimsical or capricious price but should be one based on relevant considerations and on some recognised basis."

[28] The Apex Court was called upon to decide whether cause plus basis or thermal equivalence basis is more appropriate and the Apex Court observed that :

"We cannot say for the reasons set out below that O.N.G.C. has acted arbitrarily in fixing the price on thermal equivalence basis. The fact that it has not done it on the cause plus basis does not vitiate the price fixation."

[29] In the present case also, the decision of the respondent G.A.I.L. is based on relevant material and under some known principle. When marketing and distribution to consumers of gas is being attained by respondent G.A.I.L. and the G.A.I.L. would be justified while preparing deal for supply and distribution if the same is not totally contrary to the contract entered into. When this Court prima facie is of the view that the impugned demand-cum-disconnection notice is based on the price fixed which has a logic and is appropriate in circumstances and is not unreasonable or capricious, it would not be justified to stall the execution of such notice.

[30] The ratio of the decision in case of Kanoria Chemicals (supra) squarely cuts atleast the prima facie case of the petitioner.

[31] In case of Food Corporation of India (supra) relied upon by the respondent G.A.I.L. deals with the principle of contractual obligation.

[32] In case reported in AIR 1997 SC 993 (supra), the Apex Court was dealing with grievance part by the State of M. P. In this petition, the respondent firm had admitted that it is in arrears of excise revenue. In the present case, the petitioner E.S.L. says that if his say is accepted then it would be entitled for certain amount of refund, otherwise the demand is unreasonably high and also illegal and unauthorised. However, during hearing, it has impliedly accepted that petitioner E.S.L. is ready to furnish bank guarantee of some crores. Whether resolution of such a dispute can form part of the High Court's function, is a question which shall have to be resolved at the final hearing. The petitioner has approached this Court as if a specific performance of the contract as per his interpretation should be made. Impliedly it is prayed that the contract needs rewriting or new interpretation and it is asked in the petition that respondent G.A.I.L. should specifically perform the contract as per the say and interpretation of various clauses referred to in the petition and other documents produced. The Courts are not supposed to direct the Government instrumentality or any company where the Government is holding liability shared to perform specifically a contract. The impugned notice simply states the stand taken by respondent G.A.I.L.. It is a notice of demand simpliciter which says that unless the demanded amount is paid there may not be continuance of supply. Whether such a notice can be said to be a threat would also be a question. It is difficult to hold that the impugned notice is either arbitrary or whimsical prima facie, because such demand-cum-disconnection notice issued either by Government or its department or any supplier, that may be Government company or private company.

[33] It is true that a citizen who is entered into a contract with Government owned company and such contract is terminated by the company without complying the instructions issued by the Government to such company regarding the conduct of the business of the company can file a writ petition invoking jurisdiction of the Court under Art. 226 of the Constitution of India and it is not necessary to file a suit. But, in the present case, the petitioner has made a grievance, impliedly of breach of promise on the part of the respondent G.A.I.L., and it is contended that this breach has resulted into serious prejudice and predicament. But, undisputedly, the contract entered into between the petitioner and O.N.G.C. on first occasion, and thereafter, subsequent renewals even after the entry of G.A.I.L. cannot be said to be a contract entered into in exercise of a statutory power. Even a contract entered into between a Government company and a citizen or any private party in the background of certain statutory rules framed under a law but the very contract may have different facets where the contract entered into between the State or its instrumentality and the person aggrieved is non-

statutory and of purely contractual, then the rights and liabilities of the parties would be governed by the terms of contract. In case of M. S. Desai & Co., reported in 1987 (1) GLR 375, Division Bench of this Court has divided such cases while dealing with the issue of maintainability of writ petition against the State authorities, in three categories. Prima facie, it appears that the present case would fall in category 3 described in the said petition. So, it is held that the petitioner has no strong prima facie case nor balance of convenience in its favour. So, ad interim relief which has remained in existence till date, requires to be vacated, and therefore it is vacated. Order accordingly. Notice discharged.

[34] When the Court is called upon to decide the various issues brought by the petitioner invoking jurisdiction of this Court under Art. 226 of the Constitution of India and where the ad interim relief has remained in force till date, that too, for a long period of time, this Court can do a special favour to the petitioner-Company and can say that the impunged demand-cum-disconnection notice may not be executed or implemented, especially when this Court has made certain observations while dealing with Civil Application No. 5710 of 2001 filed by petitioner in the order dated 25-9-2001 (Coram : K. M. Mehta, J.) provided that the petitioner Company, considering the strength in the case of respondent G.A.I.L., submit a letter of credit strictly in accordance with terms of contract in the nature of irrevocable stand by revolving letter of credit as a security for the remaining amount (deducting the amount for which such irrevocable stand by revolving letter of credit has been given) because the amount is large and it may be possible for the petitioner Company to pay the entire amount to respondent G.A.I.L. immediately. Such letter of irrevocable stand by revolving letter of credit can be offered for remaining amount within 15 days from today. It would be appropriate and otherwise justified in directing the respondent not to execute the impugned demand-cum-disconnection notice till 15th June, 2004.