

CIVIL APPLICATION*Before the Hon'ble Mr. Justice C. K. Thakker.*ALEMBIC CHEMICAL WORKS CO. LTD. & ANR. v. GAS
AUTHORITY OF INDIA LTD. & ANR.*

Constitution of India, 1950 - Art. 226 - Ex-parte ad-interim relief granted in favour of the petitioner against respondent No. 1 - Respondent No. 2 not party in that petition - Order not limited - Respondent No. 2 filing Civil Applications in Hon'ble Supreme Court in some other proceedings - Petitioner one of the defaulters in paying up the dues of respondent No. 2 - O.N.G C. - Supreme Court permitted O. N. G. C., to take appropriate proceedings for recovery of the dues-Petitioner being one of the defaulters, the O.N.G.C. discontinued the gas supply - Against the action of discontinuance of the gas supply, in view of the order of ex-parte ad-interim order, the petitioner approached the Court for a direction to the O.N.G.C. to continue the supply of gas and to restore status quo ante as on the day on which the order in favour of the petitioner was passed - Held, in the facts of the case, interim relief as prayed for by the petitioner cannot be granted, grant of any interim relief would amount modifying the order passed by the Supreme Court.

Prima facie it appears to Court that the party against whom *ad-imerim* relief was granted by this Court as early as on January 6, 1993 and was in operation could not have discontinued supply of gas on May 15, 1993, without approaching this Court by filing an application or getting *ad-interim* relief vacated. Therefore, application requires to be admitted. (Para 5)

At the same time, however, Court cannot ignore the fact that the petitioners are defaulters. The point is finally concluded by the Hon'ble Supreme Court in *O.N.G.C. v. Association of Natural Gas Consuming Industries of Gujarat*, AIR 1990 SC 1851. The principal amount due and payable by the petitioners has not been disputed by them. They were not prepared to pay that amount even by instalments. The Hon'ble Supreme Court, therefore, permitted the Commission to take appropriate proceedings for recovery. The Hon'ble Supreme Court also allowed the Commission to discontinue supply of gas. Now, if the submission of the learned Advocate of the petitioner is accepted and supply of gas is ordered, it would amount to modification of the order passed by the Hon'ble Supreme Court inasmuch as the Hon'ble Supreme Court allowed the respondent No. 2 to discontinue supply of gas to the petitioners and that order stands today and is very much effective. In my opinion, direction to the respondents No. 1 to restore supply of the gas to the petitioners would result into alteration of the order of the Supreme Court. When the Hon'ble Supreme Court permitted O. N. G. C. to discontinue supply of gas, this Court will not direct the first respondent, who according to it, is getting supply of gas through respondent No. 2 to continue supply of gas to the petitioners. (Para 6)

O.N.G.C. v. Association of Natural Gas Consuming
Industries of Gujarat (1), relied on.

*Decided on 17-6-1993. Civil Application No. 1053 of 1993 in Special Civil Application No. 61 of 1993, application for restoring the *status quo ante*.

(1) AIR 1990 SC 1851.

K. S. Nanavati, for the Petitioners.

M/s. Trivedi, Gupta & Dave, for Respondent No. 1.

Bharat B. Naik, for Respondent No. 2.

THAKKER, J. Rule.

I have heard the parties regarding interim relief. Mr. K. S. Nanavati, learned Counsel for the petitioners submitted that *status quo ante* as on January 6, 1993 when initially the order was passed by this Court (Coram : D. G. Karia, J.) in the main matter, *i.e.* Special Civil Application No. 61 of 1993 may be restored. It is an admitted fact that *ex-parte ad-interim* relief as prayed for by the petitioners in the petition was granted on January 6, 1993. when notice was issued by this Court in the main matter. It was made returnable on January 18, 1993. Mr. Nanavati stated that the Gas Authority of India, respondent No. 1 herein, (sole respondent then in the petition) was served with the order immediately. The statement that respondent No. 1 was served and was aware of *ad-interim* order passed by this Court is not disputed even by the learned Counsel for the first respondent. It is also an admitted fact that the first respondent appeared in this Court and *Vakalatnama* was also filed on behalf of the first respondent. Mr. Nanavati stated that *ad-interim* relief was not limited. It is operative till today. In spite of continuation of *ad-interim* relief and appearance by the first respondent through Counsel, the first respondent without issuing any notice, calling for any reply or complying with the principles of natural justice, illegally and flouting the order of the Court, discontinued supply of gas with effect from May 15, 1993. Mr. Nanavati submitted that though the matter was *sub-judice* and *ad-interim* relief was operative, neither permission of the Court was taken for such act nor application for vacating and/or modifying *ad-interim* relief was made by the first respondent. Relying upon certain decisions, Mr. Nanavati submitted that in these circumstances, unless *status quo ante* is restored, this Court may not permit the first respondent to argue the matter on merits. Only after restoration of *status quo ante*, the Court may allow the authority to make submissions.

2. Mr. Trivedi for *M/s. Trivedi, Gupta & Dave*, on behalf of the first respondent, on the other hand, submitted that the petitioners are defaulters. The point is finally concluded by the decision of the Hon'ble Supreme Court in the case of *O. N. G. Commission v. Association of Natural Gas Consuming Industries of Gujarat & Ors.*, reported in AIR 1990 SC 1851. Drawing my attention to the said decision as also to an order dt. April 5, 1993 passed in Interlocutory Application Nos. 1-11 & 23-33 in Civil Application Nos. 8530-40 of 1983, Mr. Trivedi submitted that the Hon'ble Supreme Court granted benefit of supply of gas to certain respondents on the terms and conditions mentioned in the order. He submitted that the petitioners were before the Hon'ble Supreme Court. The Hon'ble Supreme Court specifically held regarding the defaulters who did not pay the amount due and payable by them and also did not show readiness and willingness to pay even the principal amount which was not

disputed by the respondents that their cases were not required to be considered at all. On the contrary, the Hon'ble Court permitted O.N.G.C., respondent No. 2 herein to take appropriate proceedings for recovery of dues. Mr. Trivedi, therefore, submitted that taking into account the orders passed by the Hon'ble Supreme Court in the above matters, as also the orders passed by the Hon'ble Supreme Court on April 29, 1993, wherein also it was mentioned that O.N.G.C. is entitled to take steps for discontinuing supply of gas, that no relief as prayed for by the petitioners can now be granted. He further submitted that respondent No. 1, who is supplying gas through respondent No. 2, can take an action which has been taken on May 15, 1993 and the first respondent has neither flouted the order of the Court nor committed any illegality in taking such step. There was no need to issue any notice or to observe principles of natural justice inasmuch as the point was finally concluded by the Supreme Court in the above matters. In view of the orders passed by the Hon'ble Supreme Court, *ad-interim* relief granted by this Court stood *impliedly* vacated.

3. Mr. B. B. Naik, learned Counsel for the respondent No. 2 also supported Mr. Trivedi and adopted all the arguments advanced by Mr. Trivedi and submitted that when the above applications were filed before the Hon'ble Supreme Court, the attention of the Hon'ble Supreme Court, was invited to the fact that such *ad-interim* order was passed by this Court in Special Civil Application No. 61 of 1993. The said fact is reflected in para 3 in Interlocutory Application Nos. 1-11 referred to above (page 296). He submitted that in spite of that, the Supreme Court permitted the second respondent to discontinue supply of gas and in these circumstances the petitioners cannot make any grievance.

4. In the facts and circumstances of the case, I am of the opinion that no interim relief as prayed for by the petitioners can be granted. But at the same time, I am satisfied that the application requires to be admitted and Rule is required to be issued in view of the following circumstances :

- (1) It is an admitted fact that substantive petition being Special Civil Application No. 61 of 1993 was filed by the petitioners and *ad-interim* relief was granted on January 6, 1993.
- (2) The sole respondent in that petition at that time was Gas Authority of India. (now Respondent No. 1).
- (3) *Ad-interim* relief was not for a limited period.
- (4) The order passed by this Court was served on the sole respondent immediately.
- (5) In view of *ad-interim* relief granted by this Court, supply of gas was continued.
- (6) The sole respondent, Gas Authority of India, entered its appearance in January 1993.
- (7) O.N.G.C. (now Respondent No. 2) was not in the picture at all at that time.

- (8) The matter was adjourned from time to time and at no point of time, Gas Authority of India filed any application in this Court for vacating *ad-interim* relief.
- (9) Looking to the record, it appears that O.N.G.C. (respondents No. 2 herein) wrote a letter to the first respondent (Gas Authority of India) (Page 81) that Gas Authority of India should discontinue supply of gas "with immediate effect" to the consumers mentioned in the said letter. It is an admitted fact that the names of the petitioners were mentioned in the said letter.
- (10) O.N.G.C. was not a party respondents in main petition (Special Civil Application No. 61 of 1993), but O.N.G.C. was aware of *ad-interim* injunction granted in favour of the petitioners in Special Civil Application No. 61 of 1993 and O.N.G.C. drew the attention of the Hon'ble Supreme Court about that order in applications filed before the Supreme Court (Page 296) but O.N.G.C. also did not file any application to be joined as party in Special Civil Application No. 61 of 1993 till the action of discontinuation of gas took place on 15-5-1993.
- (11) It appears that only by an order dt. May 24, 1993 O.N.G.C. was joined as party respondent No. 2, *i.e.*, after everything was over and supply of gas was discontinued.
- (12) In my opinion, it is dangerous to allow any party to contend that an order of injunction passed by a competent Court though not vacated, stood *impliedly* overruled in view of subsequent orders passed in different proceedings at the instance of third party.

5. In view of the above circumstances, *prima facie* it appears to me that the party against whom *ad-interim* relief was granted by this Court as early as on January 6, 1993 and was in operation could not have discontinued supply of gas on May 15, 1993, without approaching this Court by filing an application or getting *ad-interim* relief vacated. In my opinion, therefore, application requires to be admitted.

6. At the same time, however, I cannot ignore the fact that the petitioners are defaulters. The point is finally concluded by the Hon'ble Supreme Court in *O.N.G.C.'s case* (supra). The principal amount due and payable by the petitioners has not been disputed by them. They were not prepared to pay that amount even by instalments. The Hon'ble Supreme Court, therefore, permitted the Commission to take appropriate proceedings for recovery. The Hon'ble Supreme Court also allowed the Commission to discontinue supply of gas. Now, if the submission of Mr. Nanavati is accepted and supply of gas ordered, it would amount to modification of the order passed by the Hon'ble Supreme Court inasmuch as the Hon'ble Supreme Court allowed the respondent No. 2 to discontinue supply of gas to the petitioners and that order stands today and is very much effective. In my opinion, direction to the respondents No. i to restore supply of the gas to the petitioners would result into alteration of the order of the Supreme Court. When *the* Hon'ble Supreme Court permitted O.N.G.C. to

discontinue supply of gas, this Court will not direct the first respondent, who according to it, is getting supply of gas through respondent No. 2 to continue supply of gas to the petitioners. Again, this Court cannot be oblivious of the fact that even principal amount due and payable by the present petitioners is very huge as is clear from the figures mentioned by the Hon'ble Supreme Court and is part of the record of this application (Page 32). In these circumstances, in my opinion, no mandatory relief can be granted in favour of the petitioners. Hence, interim relief is refused.

7. Mr. Nanavati submitted that an application has been made by the petitioners before the Hon'ble Supreme Court for appropriate reliefs by getting the orders passed by the Hon'ble Supreme Court clarified and/or modified. He further submitted that the petitioners were in financial difficulty and could not pay the amount and if supply of gas will not be continued, irreparable injury and loss will be caused to them and it will not be in the larger public interest. In my opinion, in view of the orders passed by the Hon'ble Supreme Court, it is but proper that all these facts may be brought to the notice of the Hon'ble Supreme Court and not to this Court. In these circumstances, I do not think it proper to grant temporary relief by directing the respondent authorities to maintain *status quo ante* for some time and, hence, that prayer is also rejected.

8. The learned Counsel for the petitioner further submitted that the petitioners have filed a substantive petition before the Hon'ble Supreme Court challenging the basis on which the prices of the gas had been fixed relying upon subsequent development after decision of the Supreme Court in *O.N.G.C.'s case* (supra). I am not expressing any opinion, since that question also can be decided only by the Hon'ble Supreme Court.

Application rejected.

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CRIMINAL APPELLATE

Before the Hon'ble Mr. Justice K. J. Vaidya.

STATE OF GUJARAT v. B. S. THAKKAR, MANAGER,
DIGVIJAY CEMENT CO. LTD.*

Criminal Procedure Code, 1973 (II of 1974) - Sec. 378 - Factories Act, 1948 (VI of 1948) - Sec. 92 - Sec. 92 providing for minimum sentence of fine not less than Rs. 25,000/-, accused sentenced to pay fine of Rs. 200/-only - Such practice is deprecated - The order passed by the trial Court is not only unduly lenient and manifestly illegal but is also perverse - This is not only ridiculous but the mockery of justice - 'Plea of guilty' of the accused should always be recorded so that he can be heard on the point of sentence - Rojkam proceedings should be regularly maintained and forwarded with the record of the case.

*Decided on 19-4-1993 J. Criminal Appeal No. 21 of 1985 against the judgment dated 5-11-1984 passed in Criminal Case No. 4036 of 1984 passed by Chief Judicial Magistrate, Ahmedabad (Rural) at Narol acquitting the accused.