

Indian Oil Corporation Ltd.

Vs

Industrial Gases Ltd. and Another

Civil Miscellaneous Petition No. 2900 of 1987

(A. P. Sen, V. B. Eradi JJ)

08.04.1987

### ORDER

1. After hearing Shri V. N. Kowa, learned counsel for the Indian Oil Corporation Ltd. and Shri A. K. Ganguli, learned counsel appearing for the Industrial Gases Ltd., we feel that this application for clarification must be allowed. There is no doubt or difficulty as to the scope of reference to the umpire as per the terms of this Court's order dated December 17, 1980 appointing Shri H. R. Khanna, ex-Judge of this Court, as an umpire. The terms of the reference are sufficiently comprehensive to include the power to fix the rate of supply of electricity by the Indian Oil Corporation Ltd. for the period of supply under the terms of the agreement. The court's order appointing Shri H. R. Khanna as the umpire specifically mentions that he would have the jurisdiction and power to adjudicate upon all the disputes which had been referred to late Shri P. K. Sarkar, a retired Judge of the Calcutta High Court. We find that the High Court by its order dated July 14, 1975 had interpreted the scope of the reference so as to include the claims arising for the subsequent period also and the said order is binding as between the parties. The operative portion of the order passed by the High Court reads as under :

"There may be successive claims for successive periods but if all the claims of same nature are raised within the periods fixed under the said agreement, in my view, having regard to the special type of agreement, the claims for the subsequent period may also be included in one reference otherwise it would be contrary to the general principles of preventing multiplicity of proceedings, which, in my view, should also include arbitration proceedings before an arbitrator or umpire."

The contention of Shri A. K. Ganguli, learned counsel for the respondents that to constitute a valid reference it cannot be said that a dispute has arisen between the parties within the meaning of the arbitration clause merely because there is failure to pay during the subsequent period, cannot be disputed. But the question is as to the applicability of that principle to the facts of the present case. The question does not arise here in view of the plain terms in which the High Court had delineated the scope of the reference made to the arbitrator or the umpire. It is quite apparent that the jurisdiction of the arbitrator or the umpire was wide enough to include claims with regard to the subsequent periods. We accordingly allow the application for clarification in terms of the prayer contained therein.

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