Oil and Natural Gas Commission and Another

Vs

Association of Natural Gas Consuming Industries of Gujarat and Others

Civil Appeals Nos. 8530-40 of 1983

(S. Ranganathan JJ)

04.05.1990

JUDGMENT

RANGANATHAN, J.-

1. These are eleven appeals preferred by the Oil and Natural Gas Commission (ONGC, for short) from a judgment and order, dated July 30, 1983, of a Division Bench of the High Court of Gujarat at Ahmedabad in a batch of writ petitions, in Association of Natural Gas Consuming Industries of Gujarat v. O. N. G. C. The appeals are pursuant to a certificate of fitness granted by the High Court.

2. The ONGC was initially a department of the Government of India but, in view of its expanding activities in the search for strategic and vital materials like oil, petroleum and its products it was set up as a body corporate. It is now a statutory corporation constituted by and under the Oil and Natural Gas Commission Act (Central Act 43 of 1959, hereinafter referred to as 'the Act'). The Act provides for the establishment of a Commission "for the development of petroleum and petroleum products produced by it and for matters connected therewith". Section 2 (f) of the Act defines 'petroleum' as having the same meaning as the Petroleum Act, 1934 (Act 30 of 1934) and as including 'natural gas.' The Commission established under the Act took over the previously existing organisation with effect from September 18, 1959.

3. Some of the provisions of the Act which are relevant for our present purposes may be set out here. Chapter III which deals with the powers and functions of the Commission consists of Sections 14 and 15. Section 14 reads thus :

> "14. Functions of the Commission.-(1) Subject to the provisions of this Act, the functions of the Commission shall generally be to plan, promote, organise and implement programmes for the development of petroleum resources and the production and sale of petroleum and petroleum products by it and to perform such functions as the Central Government may, from time to time, assign to the Commission.
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> (2) In particular and without prejudice to the generality of the foregoing provision, the Commission may take such steps as it thinks fit -
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> (a) for the carrying out of geological and geophysical surveys for exploration of petroleum;

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(e) for the transport and disposal of nature gas and refinery gases produced by the Commission :

Provided that no industry, which will use any of these gases as a raw material, shall be set up by the Commission without the previous approval of the Central Government.

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(h) to perform any other function which is supplemental, incidental or consequential to any of the functions aforesaid or which may be prescribed".

Section 15 empowers the Commission to exercise all such powers as may be necessary of expedient for the purpose of carrying out its functions under the Act. Such powers include the disposal of any property, right or privilege, the original or book value of which exceeds such amount as may be prescribed, or where no such amount has been prescribed, exceeds ten lakhs of rupees and this power could be exercised after obtaining the previous approval of the Central Government [clause (c)]. Chapter IV of the Act deals with finance, accounts, audit and reports. Sections 16 and 17 deal with the capital of the Commission and the vesting, in the Commission, of the previous set up in this regard. Section 23 of the Act requires the Commission to furnish to the Central Government such returns and statements and such particulars in regard to any proposed or existing programme for the development of petroleum resources and the production and sale of petroleum and petroleum products produced by the Commission as the Central

"25. Contracts. - (1) The Commission may enter into contracts for the purpose of performing its functions under this Act :

Provided that provision therefor exists in the budget approved by the government.

(2) Contracts made on behalf of the Commission shall not be binding on it unless they are executed by a person duly authorised by it.

(3) A person authorised by the Commission to enter into any contract on its behalf shall not be personally liable for any assurance or contract made on its behalf and any liability arising out of such assurance or contract shall be discharged from the Fund."

The statute, it may be observed, neither imposes a specific duty on the ONGC to supply its products to consumers at large nor contains any provisions regarding the fixation of prices for the commodities made available by the ONGC for sale.

4. In the course of its drilling and exploration of Oil, the ONGC discovered oil-bearing fields in Cambay and Ankleshwar region in 1959 and 1961 respectively. In most of the oil fields situated in Gujarat, gas comes out along with crude oil and is commonly known as "associated gas". In Cambay area, gas is unaccompanied by crude oil and is known as "free gas". This is easily combustible and can be used as domestic as well as industrial fuel. We are concerned here with both these commodities which are generally known as 'natural gas' and we shall refer to them compendiously as 'gas'.

5. In October 1961, ONGC first thought of the idea of using natural gas in addition to fuel oil in industries. It had detailed discussions with the Gujarat State Electricity Board (GSEB) and it was agreed between them that gas should be supplied to the GSEB at a price related to fuel oil price on the basis of thermal value equivalence. On this basis, an agreement was entered into between them in March 1963 whereunder the price of fuel oil was fixed at Rs. 77.26 per tonne including rail freight; and, based on this price and thermal value equivalence, the price of Cambay gas was fixed at Rs. 80.14 per 1000 cubic metres (hereinafter referred to as 'the Unit') and of Ankleshwar gas at Rs. 106.66 per unit, rounded off to Rs. 80 and Rs. 100 per unit respectively. The ONGC began to supply gas from Cambay region to Dhruvan Power Station in 1964 and from Ankleshwar to Uttaran Power Station in 1965. The ONGC also entered into discussions with the Gujarat State Fertiliser Corporation (GSFC) and ultimately it was agreed

6. Despite the above agreements, however, the concerned parties were not all very happy. The GSFC resented the fact that discount was not given to them as bulk purchasers and that the prices charged for the Trombay fertiliser factory and power house at Bombay were substantially lower than the prices that the ONGC charged them. Eventually, public discontent was expressed over the alleged high price that was being charged for gas by the ONGC to these organisations. It was felt that the ONGC was denying to them the advantage they should have obtained by the discovery of gas in the region of their operation. It was also felt that this treatment resulted in discrimination against them in comparison with advantages enjoyed by other States due to the availability of fuel resources such as coal or hydro-power within their areas. In view of these expressions of public feeling, the question of fixing a proper price for the gas was taken up the Government of Gujarat with the Government of India, Eventually, as no agree

7. At that time, there were very few industries set up in and around Vadodara and these depended, besides electricity, on other forms of energy generated through coal or furnace oil. In July 1967, the supply of gas to some of these industries in and around Vadodara city was started, initially as a temporary measure pending the effective materialisation of the Gujarat Fertiliser Corporation demand, after which the industries were to go over to fuel oil if gas could no longer be supplied. After a series of discussions, the Federation of Gujarat Mills and Industries agreed to a price of Rs. 100 per unit of Ankleshwar gas for this supply. The charging of ten rupees less per unit supplied to the Fertiliser Corporation was justified on the ground that such differentiation was consistent with general practice where a petroleum feed stock is used for chemical industry. Among the industries that thus received gas supply were the ten respondents (respondents 2 to 10 in these appeals) who have formed themselves, in Sep

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Period	Price of supply
January 1, 1976 to March 31, 1976	Rs. 322.63
April 1, 1976 to December 31, 1976	Rs. 341.45
January 1, 1977 to March 31, 1977	Rs. 351.00
April 1, 1977 to December 31, 1977	Rs. 371.16
January 1, 1978 to March 31, 1978	Rs. 382.15

April 1, 1978 to March 31, 1979	Rs. 504.00

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8. According to the ONGC, the price demanded from these industries had initially been based on alternative fuel cost i. e. the cost which these industries would have had to pay for fuel oil if no supply of gas had been available. Later, up to December 1975, the price was based on the cost of production, as determined by the award. After the expiry of the period of operation of the award, the basis for calculation of price was revised on the basis of the thermal equivalence of coal price. The rates of supply from April 1, 1978 as fixed above from time to time were also made subject to an automatic annual escalation at 5 per cent. The contracts, as already mentioned, were annual and contained no term for renewal. On the expiry of each contract, a fresh contract had to be entered into and, naturally, the new contract stipulated prices for supply that were prevalent at the time of the respective contracts. It may be mentioned that the existing contracts with the various consumers had lapsed by efflux of time on

9. Aggrieved by the steady rise in the prices, Writ Petition No. 833 of 1979 was filed by the respondents in the Bombay High Court in March 1979. In this writ petition it was prayed that the ONGC should be directed (a) to continue to supply the gas to them despite the contracts in their favour having lapsed; (b) to supply the break-up and the data on the basis of which the price structure was arrived at and to fix the price after giving reasonable opportunity to the concerned industries or their associations; (c) to discuss and negotiate a fair, reasonable and just price for supply of gas; (d) to restrict the minimum guaranteed quantity of offtake to 75 per cent of the contracted quantity (this was because the ONGC had been insisting on raising the said guarantee to 90 per cent) and; (e) to stop charging discriminatory prices for the supply to the respondents in comparison with the price charged to public sector undertakings. Pending the hearing and final disposal of the petition, an interim order was sought

10. On March 30, 1979, the court passed an interim order permitting the petitioners to continue to pay "on the same terms as at present" i. e. at Rs. 504 in some cases and a slightly different figure in other cases. Sub-sequently, however, with the passage of time the price of gas was stepped up by the ONGC in the following manner :

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Period	Amount
April 1, 1981 to December 31, 1981	Rs. 741.00
January 1, 1982 to December 31, 1982	Rs. 2095.70
January 1, 1983	Rs. 2403.03
February 15, 1983	Rs. 2503.03
March 17, 1985	Rs. 2878.00

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We are told that the sudden jump in prices w. e. f. January 1, 1982 was consequent on the decision

of the ONGC to change the basis of fixation of price, once again, to furnace oil equivalence. In view of this increase in the prices demanded by it from other parties, who according to the ONGC were willing to pay the price asked for, an application was made to vacate or modify the interim order dated March 30, 1979. On November 5, 1982, the Division Bench of the High Court, after pointing out the various difficulties and questions raised by the case thought it would be fit and proper to direct the ONGC not to discontinue the supply of gas but to continue to supply it at the rate of Rs. 1000 per unit till November 30, 1983 (unless the petition was disposed of in the meanwhile), subject to adjustment being made in case this Court or the machinery evolved at the time of final disposal of the petition determined the price of gas at a different rate. In other words, if, higher rate, the writ petitioners would be ob

11. It has taken six years since then for these petitions to come up for hearing and till now the respondents have continued to pay at the rate of Rs. 1000 per unit. It has been stated before us that some of the respondents have failed to pay even at the rate of Rs. 1000 as directed by this Court and that this Court had to direct, by its orders dated April 15, 1987 and October 30, 1987, that the respondents "will not charge, encumber or alienate, except with the leave of this Court, any of their immovable assets included in the respective undertakings and that they will make their immovable assets available for discharging the respective liabilities on account of the difference in the price of (all) the gas supplied to them (and) further during the pendency of the appeals as determined by the orders made by the court while disposing of the appeals."

12. In order to complete the narration of relevant facts, it may be mentioned here that, though natural gas, being a "petroleum product" falls within the scope of the Essential Commodities Act and though control orders have been issued under the said Act regulating the supply and distribution of several petroleum products, it is only by an order dated January 30, 1987 that the price of gas has been fixed by the government at Rs. 1400 per unit which, together with taxes, comes to about Rs. 1848 per unit. It may also be mentioned that, while on the one hand the said fixation of price has been challenged by the petitioners and certain other industries before the Gujarat High Court, the government, on the other hand, is in the process of revising the prices, perhaps to a higher figure, in consultation with the Bureau of Industrial Costs and Prices. In the petitions which are pending before the Gujarat High Court an interim price of Rs. 1000 has been fixed following the orders in the matters now before us. The re

13. A prayer was made by the union of India to transfer to this Court the writ petition subsequently filed challenging the price fixation of January 30, 1987 but this request was declined on August 4, 1988. This Court observed that, after these appeals are disposed of, the High Court can proceed to dispose of the said writ petitions in accordance with the judgment. The position, therefore, is that we are not concerned in these appeals with the period beyond January 30, 1987 when the jurisdiction to fix prices came to be vested in the Central Government. We are concerned in these matters only with the period from the date of expiry of the contracts in favour of each of the respondents to January 30, 1987 and with the following questions : (a) whether the ONGC is at liberty to fix its own price for the gas or should be directed to fix the price in any particular manner; (b) whether the ONGC can be directed to supply data and the break-up for the price charged and to negotiate the price with the parties concern

14. It is unnecessary at this stage to set out the various contentions raised by the parties before the High Court as they will have to be discussed in come detail later. Here it may be sufficient to summarise the effect of the High Court's judgment in disposing of these writ petitions. The High Court held;

(i) The ONGC is a public utility undertaking and has a duty to supply gas to anyone who requires it so long as there is enough supply available;

(ii) Price fixation is generally a legislative function. But the ONGC, being a State instrumentality, is bound to act reasonably in the matter of fixation of price; such price is bound to be determined by following any one of the modalities suggested in the judgment of the High Court;

(ii) There was no discrimination by the ONGC between the public sector undertakings on the one hand and the respondents undertakings on the other in charging differential prices;

(iv) The clause regarding minimum guarantee was valid and enforceable.

However, in view of its finding that the ONGC is a public utility undertaking, the court took the view that it should supply gas to the respondents subject to the availability of gas supply and also that such supply should be made at a price which was to be determined in one of the four different methods set out in paragraph 36 of the judgment. It was also observed by the court that, the respondents were agreeable to price fixation by any one of three of the said methods. The concluding portion of the judgment, reads thus :

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

(i) They may request the Central Government to appoint a Commission for the purpose of deciding the prices of gas from time to time, including the time for which we have set aside their demand of price, invoking the provisions of the Commissions of Inquiry Act or any other law;

(ii) They may invoke the arbitration of some eminent economist in consultation with the petitioners; or

(iii) They may themselves decide the price, after bringing to their consideration all relevant factors and for that purpose they may hear fully and effectively the petitioners and other persons likely to be affected thereby :

If the last of the above three courses is adopted by the ONGC for deciding the price structure afresh, it would be in their interest to give hearing to the persons likely to be affected so that the possibility of a new round of litigation is avoided. We reiterate that as far as the petitioners are concerned, they are amenable to any of the three modes which the ONGC may choose to adopt.

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

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

15. Shri. B. Sen, who appeared for the ONGC, made it clear at the outset that he was not disputing the propositions (a) that the ONGC is 'State' within the meaning of Article 12 of the Constitution; and (b) that it has a duty to act reasonably and fairly so as not to infringe the provisions of Articles 14 and 19 and also in consonance with the directive principles of State Policy set out, inter alia, in Articles 38 and 39 (b) of the Constitution. His challenge is, primarily, to the finding of the High Court that the ONGC is a 'public utility undertaking' which was bound to supply gas at the request of any member of the public at large and to its direction that it should continue to supply gas to the respondents at an uncertain price till the price is fixed in accordance with the procedure outlined by it, notwithstanding that the contracts under which the respondents procured such supplies have expired long ago. He also contests the correctness of the High Court's conclusion that the price of gas must be dete

16. The discussion in the judgment of the High Court and, to some extent, the discussions before us have touched several aspects of the principles to be kept in mind for price fixation of essential commodities basic to public need and, in doing so, have, in our opinion, travelled beyond the framework and scope of the questions that arise for consideration in this case. It is necessary to remember that the writ petitioners are a few industrial houses which had entered into contracts with the ONGC for supply of natural or associated gas. These were ordinary commercial counteracts entered into by private treaty between the ONGC and these respondents to sell and buy certain goods produced by the ONGC at the prices stipulated in the contracts. Looked at purely from the contractual angle, the ONGC was perfectly at liberty to stop the supply on the expiry of the relevant contract and refuse to supply further unless a fresh contract could be entered into agreeing upon a price for such supply. Assuming that the ONGC

17. It is clear that, in giving directions as above, the court was considerably weighed by its conclusion that the ONGC is a public utility undertaking which is bound to supply gas to all who demand such supply subject only to the availability of enough gas. Dr. Chitale, for the respondents, strongly supported this viewpoint. He urged that it is well settled law that at public utility cannot arbitrarily discontinue its supply or services merely because the customer is unwilling to pay the price asked for as unconscionable and unreasonable. He submitted that this, indeed, is not a modern rule of constitutional law but an ancient rule of public law. He referred in this context to the early decisions of the King's Bench Division in Bolt v. Stennett 2 followed in Allrutt v. Inglis 3 as laying down the basic principle in this regard. This principle, he said, has also been applied by the American courts in Ira Y. Munn v. People 4, United Fuel Gas Co. v. Railroad Commission of Kentucky 5, Los Angeles Gas & Electric

18. As already stated, the ONGC does not dispute the proposition that it is a State instrumentality and that its actions ares subject to review under Articles 14 and 19 of the Constitution; it only refutes the suggestion that it has become a public utility undertaking with an obligation to supply gas to any consumer on reasonable conditions as to price etc. It is contended by Sri. K. Parasaran and Sri. B. Sen that the ONGC is not a 'public utility' under a duty to supply gas to members of the public. It is argued that in English common law, the expression has a specific connotation; it refers to an entity dealing in a commodity which is commonly used by the members of the public and under a duty, in terms of a statute, licence or franchise obliging it to supply the commodity to the

public at large. Thus, for example, in England the Public Health Act, 1936, the Electricity Act, 1947 and the Gas Act, 1948 provide examples of a duty cast on suppliers of water, electricity or gas. So also, in India, the Indian E

19. As far as we have been able to see, there is no statutory definition of 'public utility' in the context of any Indian enactment that may be relevant for our present purpose. There is a definition of "public utility service" in Section 2 (n) of the Industrial Disputes Act, 1947 which, inter alia, covers "any industry which supplies power, light or water to the public" and certain notified industries. It is arguable whether supply of natural gas is included in this definition for, though 'power' connotes generally any form of energy available for doing work, it is normally related to such energy made available by mechanical or electrical means (vide Webster Comprehensive Dictionary, vol. 2, p. 990). It is also a moot question whether that definition can be appropriate in the context with which we are concerned.

20. Dr. Chitale cited profusely from American jurisprudence (2d vol. 64) on the subject of public utilities. Some of these passages may be usefully quoted. At page 549, it discusses the definition and nature of a public utility. The passage runs thus :

> "1. Definition and nature
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> A "public utility" is a business or service which is engaged in regularly supplying the public with some commodity or service of public consequence, such as electricity, gas, water, transportation, or telephone or telegraph service. Publicly owned utilities are those owned by public corporations such as municipal public utility districts and public utility districts. Apart from statutes which the public utilities which are within the purview of such statutes, it would be difficult to construct a definition of a public utility which would fit every conceivable case, but there are certain considerations that are of aid in determining whether a specific organization or business is a public utility. As its name indicates, the term "public utility" implies a public use and service to the public, and indeed, the principal determinative characteristic of a public utility is that of service to, or readiness to serve, an indefinite public (or portion of the public as such) which has a legal right to demand and receiv

The mere fact that a corporation declares itself to be a public utility does not make it such. In determining whether or not a company is a public utility, the law looks at what is being done, not what it asserts it is doing. Nor will the legislative declaration that a certain business shall be deemed a public utility make it such if, in fact, the business as conducted is not impressed with a public use or carried on for the public benefit, since it is beyond the power of the State by legislative edict to make that a public utility which in fact is not, and to take private property for public use by its fiat that the property is being devoted to public use. Furthermore, a dedication of private property to public utility service will not be presumed from the fact that the product and service of the use of such property is the usual subject matter of utility service; neither does such presumption arise from the sale by private contract of such product and service to utility corporations for purposes of resale.

A business affected with a public interest is not necessarily a public utility or public service commission. The fact that a business is affected with a public interest means that it may be regulated for the public good but does not imply that is under a duty to service the public".

Black's Law Dictionary (5th edn.) defines a "public utility" thus at p. 1108 :

> "Public Utility : A privately owned and operated business whose services are so essential to the general public as to justify the grant of special franchises for the use of public property or of the right of eminent domain, in consideration of which the owners must serve all persons who apply, without discrimination. It is always a virtual monopoly.

A business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need, such as electricity, gas, water, transportation or telephone or telegraph service. Gulf States Utilities Co. v. State 10. Any agency, instrumentality, business, industry or service which is used or conducted in such manner as to affect the community at large, that is, which is not limited or restricted to any particular class of the community. The test for determining if a concern is a public utility is whether it has held itself out as ready, able and willing to serve the public. A term implies a public use of an article, product, or service, carrying with it the duty of the producer or manufacturer, or one attempting to furnish the service, to serve the public and treat all persons alike, without discrimination. It is synonymous with "public use", and refers to persons or corporations charged with the duty to supply the public with the sue of property or facilitie

The Corpus Juris Secundum (vol. 73, p. 990) also carries like definitions.

21. Once a concern is found to be a public utility, at least two consequences follow. One is a general duty to serve which is described in American Jurisprudence thus :

> "16. General duty to serve

The primary duty of a public utility is to serve on reasonable terms all those who desire the service it renders, and it may not choose to serve only the portion of the territory covered by its franchise which is presently profitable for it to serve. Upon the dedication of a public utility to a public use and in return for the grant to it of a public franchise, the public utility is under a legal obligation to render adequate and reasonably efficient service impartially, without unjust discrimination,. and at reasonable rates, to all members of the public to whom its public use and scope of operation extend who apply for such service and comply with the reasonable rules and regulations of the public utility. This obligation is one implied at common law and need not be expressed by statute or contract, or in the charter of the public utility. The fact that the franchises granted to the company do not expressly impose upon it the obligation to serve all persons in the locality does not relieve the company, nor

The second constraint is in regard to the rates that can be charged by such an undertaking :

> "A public utility may, in the absence of a legislative prescription or limitation of rates, fix and exact reasonable rates for services furnished in which respect the reasonableness of the rate is to be considered in relation to the value of the property used by the utility in the public service. Thus, in the absence of legislation, carriers are ordinarily entitled to establish such rates and to adopt such policy of ratemaking as they may deem best. They may voluntarily render service for less than they could be compelled to accept.
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> The right of a public utility or carrier to set its own rates is subject to the limitation that such rates must be non-discriminatory and reasonable.
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> This obligation to furnish service at a reasonable price is implied by law and is incurred by acceptance of the franchise and privilege to serve the public. Furthermore, there is authority to the effect that a public utility must give a consumer the benefit of the most favourable rate which he is entitled to receive".

22. We do not think that ONGC satisfies the primary conditions enunciated above for being a public utility undertaking as it has not so far held itself out or undertaken or been obliged by any law to provide gas supply to the public in general or to any particular cross-section of the public. The proviso to Section 14 (1) (e) of the Act which lays down that the setting up of industries to be run with the aid of gas was not to be undertaken by the ONGC without the Central Government's approval also gives an indication that the supply of gas to various industries on a general basis was not in the immediate contemplation of the Act but was envisaged as a future expansion to be initiated with Central Government's approval. Perhaps a stage in the developmental activities of the ONGC will soon come when such an obligation can be inferred but, at present, the ONGC supplies gas only to certain selected contractees. It does not supply gas to the public either in the sense that any individual member of the public or a

23. The main activity of the ONGC is that of exploration and prospecting for petroleum and petroleum products. So far as gas, which is a by-product, is concerned the ONGC has not so far been able voluntarily or constrained statutorily to harness and utilise its production for consumption by the public. Even as per the information placed on record by the respondents about 3000 million cubic metres of gas were burnt in 1985-86 due to the inability of the ONGC to harness it for industrial or domestic use. Such large scale utilisation will involve capital outlay to a considerable extent particulary for the laying of pipe lines to convey the gas to sites of its user. The quantity of gas which is put to such use at present is in insignificant part of the gas that is being produced and so far the government does not appear to have called upon the ONGC to draw up or submit to the government under Section 23 of the Act any programme of sale of natural gas to the public generally or even to some categories of public c

24. We do not, however, think that it is at all necessary for us to delve further into the above concept or express any final opinion as to whether the ONGC is a public utility or not because the claim of the respondents is for a continuance of the present system followed by the ONGC of supplying gas to select customers on the basis of contracts entered into with them. They only want the price to be regulated by the court; they do not challenge, for obvious reasons, the system of distribution thus far adopted by the ONGC. If the argument that the ONGC is a public utility is accepted, then the first consequence to follow will be that gas should be made available by it to all persons who need it for use. It cannot be supplied by the ONGC to only a few public sector undertakings like the GSEB and GSFC or only to a few industries like those of the respondents or only to a few municipalities like the Vadodara Municipality for domestic supply, at its sweet will and pleasure. It would then be open to all undertakin because they had entered into temporary contracts for supply of gas with the ONGC, could still insist on continued supply to themselves on "the first come, first served" basis, to the exclusion of later arrivals on the scene. If, as suggested by the respondents, the ONGC is to be treated as a public utility and the price of gas is bound to be on cost plus basis, it may be that quite a few other industries would like to avail themselves of such supply. They have perhaps kept out so far only because the supply price based on alternative fuel price is not acceptable to them. They are keeping out only because they are under the impression that the ONGC is entitled to supply gas to persons with whom it has entered into commercial contracts and on the terms of supply envisaged in those contracts. The treatment of the ONGC as a public utility undertaking for the supply of gas will raise innumerable basic questions totally inconsistent want to be continued. It will transpose the area

of controversy to a totally diff

25. In this context, we should like to point out once again that the ONGC does not dispute that the price to be charged by it for gas supply should have some basis and not be arbitrary or unconscionable. Their stand before the High Court (vide para 29 of the judgment) and before us has been that the prices are fixed by them from time to time on a well recognised principle viz. on the basis of the alternative fuel cost which the consumers may have to incur had they not been in receipt of gas supply. Assuming this to be correct, is there any illegality in the procedure adopted by them? - that is the question. The respondents contend, and the High Court has held, that there is. According to them, a public sector undertaking must supply its goods at a price which will cover their cost and leave them a reasonable margin of profit and no more. Dr. Chitale says that this is the only reasonable way of price fixation and refers to the award in support of this proposition. He points out that this is the basis incorpor

26. We shall first consider the findings in the award. Dr. V. K. R. V. Rao was arbitrating on a dispute between the ONGC and the Gujarat State Government as to the price at which gas was to be supplied by the ONGC. Though the dispute arose as a result of the dissatisfaction of the GSEB and the GSFC with the prices charged by the ONGC, the terms of reference to Dr. Rao were very much wider. They read :

> "The point at issue is the price that should be charged by the ONGC for gas that may be supplied after taking into consideration the volume and pressure of gas supplied to any particular party and the distance to which it has to be carried. You may also indicate if ONGC should offer any differential rates in respect of gas supplied to :
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> #(a) Undertakings for the generation of power(b) Fertiliser plants(c) State projects(d) Private sector industries(e) Domestic fuel."##
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> The contentions urged by the two parties arrayed before the arbitrator and set out in Section IV of the award also covered a very wide ground. The award starts with a discussion of certain general considerations and while doing so, dealing with a contention comparing the price fixation in Assam and Gujarat, the award says :
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> "The Gujarat contention that in fixing the price of gas in Gujarat, note should be taken of the price fixed by Oil India for the sale of Assam gas to the Assam Electricity Board at 25 paise per cubic foot cannot be dismissed as lightly as the ONGC seem to have done. Nor can it be contended by Gujarat that if a mistake has been made once in one area, that therefore it should be extended to other areas. It must be added also that the price of gas in Assam and in Gujarat is not on all fours for the reasons that I shall mention later. All the same, one cannot ignore the relevance of the Assam gas price, even though the remedial action required is perhaps more on the Assam side than on the ONGC attitude in Gujarat. I shall have something to say on the question later on in this report, though it is not strictly within the terms of reference given to the arbitrator.
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> I am not prepared to accept the ONGC contention that because they are all India agency expected to function as a commercial undertaking in the public sector, they are entitled to take no account of the fact that the cost of power generation is high in Gujarat, that this has hampered the possible development of some industries for

> which Gujarat has natural resources and that public opinion in Gujarat has a natural expectation of a reduction in the cost of power production on account of the discovery of gas in their area. After all the ONGC is an enterprise in the public sector and is expected to take public interest into account and not be exclusively concerned with commercial considerations that would be more appropriate to a private enterprise. Moreover, there, as in the United States, the gas industry is in the private sector, there is also governmental regulation through the Federal Power Authority in the public interest. I believe that Gujarat has a valid point in urging that advantages that accrue to th

At p. 16 the report deals with the contention that the price of gas should be based on the price of substitute products in the following words :

> "As regards the ONGC contention that the price of gas should be based on the price of substitute products and that this is the practice generally followed in the oil industry, I am not prepared to accept the ONGC contention. While the price of substitutes undoubtedly would determine the demand price for gas, the position becomes different when prices are sought to be fixed and not left to market forces; and prices have to be fixed because the ONGC is virtually a monopoly at least as far as Gujarat is concerned; there is no market price in the normally understood sense of the term as emerging from sales by competing sellers; the ONGC is a public sector enterprise, and considerations of public policy cannot be considered irrelevant in the fixation of prices. Above all it has always been the practice in India, when prices are fixed, to base it on the cost of production plus a reasonable profit and this has been what the Tariff Commission has been doing all these years in regard to other commodities. Under the c

Again, at p. 18, the basic formula is expounded as follows :

> "I have already indicated my thinking on the question of prices of substitute materials on the basis of thermal equivalence in the concluding para of the previous section. Gas pricing in relation to the prices of substitute materials is understandable in foreign countries, where gas has been deliberately pushed into the fuel market by pipeline companies which have constructed long and expensive pipelines and sold gas at a price lower than that of alternative fuels in order to capture and retain the market. In fact, the price of gas in the initial stages was much less than that of competing alternative fuels and not on par with their prices. With the growing recognition of the special advantages obtained by the use of gas in manufacturing operation where close control of heat and cleanliness of operation are essential and worth paying for or in commercial and residential cooking, water heating and space heating, gas prices have been steadily rising over the last few years. Thus while crude oil wholesale price
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> The only other basic formula is the one advanced by the Gujarat Government, namely, 'that the only rational approach to the pricing of gas is via the cost plus profits formula'. And it is the cost plus profit formula that I propose to adopt as the primary base for determining my award on the price of gas in Gujarat. Having said this, I must hasten to add that this does not mean my acceptance either of the connotation that the Gujarat Government gives to this formula in terms of the content

postulated for the cost of production and profit or the figures they have put forward for the price of gas on the basis of their interpretation of the content of cost of production and profit. What I accept is the principle of cost of production plus reasonable profit and not the interpretation that is sought to be given to this principle by the Gujarat Government".

The second part of the issue referred to the arbitration was disposed of summarily by the award, in a few words :

"Finally, on the question whether there should be any differentiation between the prices to be charged for power generation, fertilisers, and other industries, I am not in favour of any such differentiation, as it would only introduce an unnecessary complication in the pricing machinery and my award is primarily based on estimated cost of production plus reasonable profit. If, however, in order to regulate supplies in adjustment to different intensities of demand from the different users of gas, some premium or discount becomes necessary on the price suggested by me this would not be inconsistent with my award provided the total receipts do not exceed the amount that would accrue from the application of my award on the price of gas :.

Dr. Chitale naturally placed considerable reliance on this award. He contended that the reasoning of the award is impeccable and that the considerations that impelled Dr. Rao to adopt the cost plus basis are more weightly in today's context and in the background of the State's duties under Articles 38 and 39 (b) of the Constitution.

27. There is no doubt that Dr. Rao made the cost plus method the basis of his award in preference to the basic 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 ONGC. He was really adjudicating upon the price which the ONGC 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 ONGC's profit requirements paled into insignificance. He proceeded, more or less, on the footing that the ONGC was obliged to supply gas for meeting those essential pu 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 theses circumstances, the cost plus 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 ONGC 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 in advantage, if possible, over other industries in the State. In this context, we think ONGC 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

28. While the cost plus basis is a recognised basis for fixation of prices of essential commodities or for the services rendered by a public utility undertaking, it would not, in our view, be correct to treat it as the only permissible basis in all situations. On behalf of the ONGC it has been pointed out that

even in the fixation of prices of essential commodities like levy sugar, the concept of cost plus is not necessarily the only method of fixing the price for the commodity. In considering the question whether the price fixation in that case was based on proper principles and by following correct methods in accordance with Section 3 (3-C) of the Essential Commodities Act, this Court observed in the Anakapalle case 18 p. 899 : (SCC p. 450, para 28)

> "While examining question No. 3 learned Solicitor General has reminded us that 'cost plus' cannot always be the proper basis for price fixation. Even if there is not price control each until will have to compete in the market and those units which are uneconomic and whose cost is unduly high will have to compete with others which are more efficient and the cost of which is much lower. It may be that uneconomic units may suffer losses but what they cannot achieve in the open market they cannot insist on where price has to be fixed by the government. The Sugar Enquiry Commission in its 1965 report expressed the view that 'cost plus' basis for price fixation perpetuates inefficiency in the industry and is, therefore, against the long term interest of the country".

29. The court quoted from a study prepared in collaboration with the Institute of Chartered Accountants of India : (quoted at SCC pp. 450 51, para 30)

> "[C]osts alone do not determine the prices. Cost is only one of the many complex factors which together determine prices. The only general principle that can be stated is that in the end there must be some margin in prices over total costs, if capital is to be unimpaired and production maximised by the utilisation of internal surpluses... while the 'cost plus' pricing method is the most common, it may be argued that it is not the best available method because it ignores demand or fails to adequately reflect competition or is based upon a concept of cost which is not solely relevant for pricing decision in all cases. What is essential is not so much of current or past costs but forecast of future cost with accuracy... Generally pricing should be such as to increase production and sales and secure an adequate return on capital employed".

Again, in a somewhat different context in relation to a State transport undertaking, this Court observed, in D. R. Venkatachalam v. Deputy Transport Commissioner 19. (SCC p. 2798, para 9)

> "... the special status of a government owned transport undertaking in a welfare State is obvious... Its functional motto is not more profits at any cost but service to citizens first and in a far larger measure than private companies and individuals, although profitability is also a factor even in public utilities".

30. These passages indicate that cost plus is not a satisfactory basis in all situations. The basis may need to be made more stringent in some situations and more broad-based in others. May be the cost plus is in ideal basis where the commodity supplied is the product of a monopoly vital to human needs. In that context the price fixed should be minimum possible as the customer or consumer must have the commodity for his survival and cannot afford more than the minimum. The producer should not, therefore, be allowed to get back more than a minimum profit. Indeed, in certain situations, it may even be inequitable to fix varying prices on the basis of the cost of each individual manufacturer and thus encourage inefficiency; it may be necessary to base it uniformly for a whole industry on the cost of the most efficient manufacturer as has been done in the case of drugs (vide Cynamide case 17). It was so vital that the goods should be available to the common man that the

prices were statutorily fixed so low as to

31. The notion that the cost plus basis can be the only criterion for fixation of prices in the case of public enterprises stems basically from a concept that such enterprises should function either on a no profit - no loss basis or on a minimum profit basis. This is not a correct approach. In the case of vital commodities or services, while private concerns must be allowed a minimal return on capital invested, public undertakings or utilities may even have to run at losses, if need be and even a minimal profit margin for themselves. But given a favourable area of operation, "commercial profits" need not be either anathema or forbidden fruit even to public sector enterprises.

32. A publication on Public Enterprises by the Indian Institute of Public Administration, produced before us elaborates on the above aspects. It also gives an interesting analysis of pricing policies adopted in respect of various commodities. It is unnecessary to touch upon all the details. It is sufficient, for our present purposes, to say that the monograph points out, a propose such pricing policy, that several State undertakings are already earning profits and the general policy has been accepted that the maximum economic returns should be secured from all public enterprises, whether these are operated by the Central or State Governments directly or through corporation or companies and that the surplus of public enterprises will have to play an increasing part in financing economic development under the various National Plans. It proceeds to say (at p. 173) :

> "A growing source of governmental revenue in many countries is the profits of public undertaking. In underdeveloped countries public enterprises fostered on public revenues are expected to play a more positive rule in financing the countries' development than similar enterprises do in developed economies. In determining the price policies of these undertakings considerations of maximising revenue will not play as important a part as profits do in private enterprises, but within the limits set by the necessity to foster economic development, their price policies are designed to bring in some profits to the countries' general revenues. Public enterprises in the underdeveloped areas are to break ground in projects which are the core of development. If such projects are to be financed on an increasing scale, the price policies have to be so designed that significant surpluses are left with the projects to be employed either for their own expansion or for financing the expansion of other projects. In other words,

33. The Krishan Menon Committee of State Undertakings (November 1959), the booklet to point out, enunciated the following pricing policy for public enterprises :

> "We have stressed in these pages the importance of incentive and healthy competition and emphasised that concerns must be able to stand on their own legs for efficient and proper conduct of business... The considerations that should govern prices appear to be the prices and other factors as well. The decision as to what economy in cost has to be passed on to the consumer on the one hand or should benefit the taxpayer on the other and the likelihood of non availabilities and, therefore, of scarcities in the near future has also to be considered. The principle of 'what the traffic can bear' has also to be taken into account".

Dr. V. K. R. V. Rao has been quoted again as saying :

> "As regards profits, it should be pointed out that contrary to some popular notions on

> the subject, profits have an important place in a socialist society, the difference between the economic price and the social price would be what may be called the planned profit and this would largely correspond to the excise duties and sales tax and other indirect taxes that are imposed in a capitalist society. These planned profits being no more than a way of mobilising resources and making them available to the community for purposes both of investment and maintenance expenditure. Profits also have another important role to play insofar as they relate to the economic price itself. The economic price fixed at any particular moment of time is obviously based on the capital, technique and productivity of the given base period when this price is fixed; any improvement in productivity is bound to lead to a decrease in the cost production and in turn this would lead to the emergence of a surplus within the economic price its

34. In another article on "The Public Sector in India", quoted in Issues in Public Enterprise by Sri. K. R. Gupta, Dr. Rao is quoted as saying (at p. 84) :

> "... the pricing policy should be such as to promote the growth of national income and the rate of this growth... public enterprises must make profits and the larger the share of public enterprises in all enterprises, the greater is their need for making profits. Profits constitute the surplus available for savings and investment on the one hand and contribution to national social welfare programme on the other; and if public enterprises do not make profits the national surplus available for stepping up the rate of investment and the increase of social welfare will suffer a corresponding reduction... Hence the need for giving up the irrational belief that public enterprise should, by definition, be run on a no-profit basis".

35. In the light of the foregoing discussion, we are of opinion that it would not be right to insist that the ONGC should fix oil (sic natural gas) prices only on cost plus basis. Indeed, its policy of pricing should be based on the several factors peculiar to the industry and its current situation and so long as such a policy is not irrational or whimsical, the court may not interfere.

36. The question of fixation of a fair and reasonable price for goods placed on the market has come up for consideration of Parliament and courts in different contexts. Price fixation, it is common ground, is generally a legislative function. But Parliament generally provides for interference only at a stage where in pursuance of social and economic objectives or to discharge duties under the Directive Principles of State Policy, control has to be exercised over the distribution and consumption of the material resources of the community. Thus while Parliament has enacted the Essential Commodities Act, it has left it to the discretion of the executive to take concrete steps for fixing the prices of essential commodities as and when necessity arises, by promulgating Control Orders in exercise of the powers vested in the Act. Various types of foodgrains, sugarcane and drugs have come under the purview of such control orders for consideration of the courts. There has also been such fixation of price under the In e decisions hold that the cost plus method is the only relevant method for fixation of prices. On the contrary, there are indications in some judgments to indicate that not a minimum but a reasonable profit margin is some judgments to indicate that not a minimum but a reasonable profit margin is permissible. Even in relation to a public utility undertaking like the State Electricity Boards where the duty not to make undue profits by abusing its monopoly position is clear (vide Jagadamba Paper Industries Pvt. Ltd. v. Haryana State Electricity Board) this Court said, in Kerala State Electricity Board v. M/s S. N. Govinda prabhu & Bros. : (SCC pp. 207-08, 210, 212-14, paras 5, 7, 8 and 10)

"Now, a State Electricity Board created under the provisions of the Electricity Supply Act is an instrumentality of the State subject to the same constitutional and public law limitations as are applicable to the government including the principle of law which inhibits arbitrary action by the government. (See Rohtas Industries Ltd. v. Bihar State Electricity Board.) It is a public utility monopoly undertaking which may not be driven by pure profit motive - not that profit is to be, shunned but that service and not profit should inform its actions. It is not the function of the Board to so manage its affairs as to earn the maximum profit : even as a private corporate body may be inspired to earn huge profits with a view to paying large dividends to its shareholders. But it does not follow that the Board may not and need not earn profits for the purpose of performing its duties and discharging its obligations under the stature. It stands to common sense that the Board must manage its affairs on sound economic

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7. A plain reading of Section 59 (as amended in 1978) plainly indicates that it is the mandate of Parliament that the Board should adjust its tariffs so that after meeting the various expenses properly required to be met a surplus is left. The original negative approach of functioning so as not to suffer a loss is replaced by the positive approach of requiring a surplus to be created.

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Under the above provision, the Board is under a statutory obligation to carry on its operations and adjust its tariffs in such a way to ensure that the total revenues earned in any year of account shall, after meeting all expenses chargeable to revenue, leave such surplus as the State Government May, from time to time, specify. The tariff fixation has, therefore, to be so made as to raise sufficient revenue which will not merely avoid any net loss being incurred during the financial year but will ensure a profit being earned, the rate of minimum profit to be earned being such as may be specified by the State Government.

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8. Shri. Potti, learned counsel for the consumers placed great reliance on the observations of this Court in Kerala State Electricity Board v. Indian Aluminum Co., Bihar State Electricity Board v. Workmen and P. Nalla Thampy Thera v. Union of India to contend that the Electricity Board was barred from conducting its operations on commercial lines so as to earn a profit.

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We do not think that any of these observations is in conflict with what we have said. Pure profit motive, unjustifiable according to us even in the case of a private trading concern, can never be the sole guiding factor in the case of a public enterprise. If profit is made not for profit's sake but for the purpose of fulfilling, better and more extensively, the obligation of the services expected of it, it cannot be said that the public enterprise acted beyond its authority. The observations in the first case which

> were referred to us merely emphasised the fact that the Electricity Board is not an ordinary trading corporation and that as a public utility undertaking its emphasis should be on service and not profit. In the second case, for example, the court said that it is not expected to make any profit and proceeded to explain why it is not expected to make a profit by saying that it is expected to extend the supply of electricity to unserved areas without reference to considerations of loss. It is of inte
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> 'The facile assumption by the Tribunal that the interest should not be taken into account in working out the profits is not borne out by the provisions of the statute.'

In the third case, the Court appeared to take the view that the railway rates and fares should cover operational expenses, interest on investment, depreciation and payment of public obligations. It was stated more than once that the total operational cost would include the interest on the capital outlay out of the national exchequer. While the Court expressed the view that there was no justification to run a public utility monopoly service undertaking should ever be geared to earn profits to support the general revenue of the State.

We are of the view that the failure of the government to specify the surplus which may be generated by the Board cannot prevent the Board from generating a surplus after meeting the expenses required to be met. Perhaps, the quantum of surplus may not exceed what a prudent public service undertaking may be expected to generate without sacrificing the interests it is expected to serve and without being obsessed by the pure profit motive of the private entrepreneur. The Board may not allow its character as a public utility undertaking to be changed into that of a profit motivated private trading or manufacturing house. Neither the tariffs nor the resulting surplus may reach such heights as to lead to the inevitable conclusion that the Board has shed its public utility character. When that happens the court may strike down the revision of tariffs as plainly arbitrary. But not until then. Not, merely because a surplus has been generated, a surplus which can by no means be said to be extravagant. The court will th

37. We are not called upon here, in the view we take, to decide whether the cost plus basis or the thermal equivalence basis is more appropriate. All that we wish to say is that, having regard to the basis on which the claims of the respondents have proceeded thus far, our task is a very limited one. We cannot say, for reasons set out below, that the ONGC has acted arbitrarily in fixing the prices on the thermal equivalence basis; the fact that it has not done it on cost plus basis does not vitiate the price fixation. The only question we have to address ourselves to is as to whether the ONGC has fixed a price based on relevant materials and on some known principle. At the outset, one must notice that the price is not directly and specifically related to or based on any unreasonable margin of profit. There is nothing to indicate that the ONGC was prompted, in fixing its prices, on the one and only consideration of deriving maximum profits for itself. On the other hand, it appears to have been guided by the n

38. At this stage of development of the industry, we think a much wider latitude is permissible in the fixation of prices than the imposition of a "no profit, no loss" basis or a "cost plus" basis on the producer. In fixing the prices, it is legitimate for the ONGC to take into account the fact that its supplies are restricted only to a few industries that have entered into contracts with it. Like industries, producing the same or similar commodities, are carrying on business with other sources of energy such as coal or furnace oil and the supply of gas is intended to supplement that source of energy. Oil and the supply of gas is intended to supplement that source of energy. The supply of gas to a few chosen industries at a much lower rate than what the companies may have to pay for an

alternative fuel may indeed lead to cries of discrimination as the ONGC is scarcely in a position to supply gas to all industries and replace furnace oil as a source of energy altogether. Also, it must be kept in mind that exp

39. We should once again like to emphasise that different considerations may perhaps have to prevail if the treatment of ONGC as a public utility is taken to its logical conclusion but that is not the basis on which the present writ petitions can be decided. Even at present the ONGC is supplying to public sector undertakings at a much lower price. That has not been challenged by those organisations and the differentiation has also been upheld, in principle, by the High Court, rightly in our opinion. Fortunately, with the discovery of more and more oil wells in various parts of the country the economy of the country is booming and gas supply may also become more plentifully available in course of time. The time will perhaps soon come for the evolution of proper schemes of distribution and price control. We are now concerned, however, with the price fixation regarding supply to a few parties who considered it all right to enter into contractual agreements for supply of gas to them on the basis of the price fix

40. Having dealt with the principle issue, we may now refer to certain subsidiary matters touched upon in the course of arguments :

> (i) A point was made about the ONGC's right to insist on a minimum offtake guarantee to the extent of 90 per cent. This has been upheld by the High Court and there is no appeal (the cross-appeals having, be no doubt that the High Court was right in its conclusions on this issue. If any authority regarding the rationale of such a clause is needed, it is to be found in the decision of this Court in Amalgamated Electricity Co. Ltd. v. Jalgaon Borough Municipality 28.
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> (ii) A statement was filed before us to show that if the prices had been determined on the basis of the thermal equivalence of coal, they would have been much smaller. This statement has been filed before us for the first time an its correctness would need verification. It is, however, unnecessary to go into this question. The acceptability of this argument may depend, inter alia on how for the coal basis is relevant for the industries located in Vadodara where the principle alternate fuel is fuel oil. It is possible that this is one alternative that may be available and it was open to the petitioners to have had discussions and mediations with the ONGC for alternation of the prices on that footing. The ONGC has fixed prices on the basis of the thermal equivalence of furnace oil which, by and large, was the source of energy tapped by the local industries. There being no irrationality in adopting this basis, it is not open to us to say that the basis of thermal equivalence of coal should be adopted rather tha
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> (iii) A point was made that the ONGC is charging different prices to different industries. The answer of the ONGC is that, save in the case of certain public sector enterprises, their prices are fixed on the basis of the prices prevalent on the thermal equivalence of fuel oil basis as on the date the relevant, contract is entered into. This has not been shown to be wrong. The only discrimination urged at the stage of the High Court was in regard to the disparities in prices between supply to public sector undertakings and private industries. Though the award, towards the end, suggested that there should be no such differentiation, it is now well settled that a favourable treatment of public sector organisations, particularly ones dealing in essential

commodities or services, would not be discriminatory. Also, this differentiation, as already pointed out, has been upheld by the High Court, we think rightly. No tangible material has been brought to our notice which would support the plea of unfair discriminati

(iv) A point has been made that the ONGC had entered into a contract for a ten year period with the Amul Dairy for supply of gas at Rs. 741 per unit which demonstrates the unreasonableness of the prices charged to the respondents. We do not agree. We have already pointed out that the ONGC is supplying gas to certain public sector undertakings at much lower rates and that this differentiation has been upheld. Though the Amul Dairy is a cooperative society it deals with a basic need of society and stands on no different footing from Electricity Boards or Fertiliser Corporations of Municipal Corporations. The instance of the Amul Dairy cannot, therefore, be treated as an index of the unreasonableness of the price charged from the respondents particularly when the basis of fixation has been explained and is an intelligible and rational one.

(v) Reference has been made to the price of gas in Assam and U. S. A. So far as the former is concerned, the High Court has, rightly in our view, discarded the comparison. So far as the latter is concerned, the point made by the ONGC was that Dr. Rao had fixed the price of gas in India in 1967 at 15 per cent below the then U. S. price and that on the same basis the price of Rs. 2000 per unit today could not be said to be unreasonable as prices in U. S. A. have also shot up about thirty fold in the meantime. We find no effective reply to this argument. The High Court has just brushed it aside by reiterating that the well-head prices alone would be the reasonable basis for fixation of price.

(vi) The High Court in its judgment has observed :

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

We think this criticism is not justified. The stand of the ONGC was that it had fixed the prices on the thermal equivalence basis and this has not been controverted or found against. It was the respondents' case that the cost plus price would work out much cheaper and the onus was on them to prove it. We fail to see how the blame for not allowing the court to have a glimpse of what could possibly be the well-head price of gas can be put at the doors of the ONGC. However, this aspect is irrelevant as the case throughout has proceeded on the assumption that the cost plus basis would yield lower figures and the question debated was whether the ONGC could discard this and adopt

the thermal equivalence basis.

> (vi) Turning now to para 36 of the judgment of the High Court, we may observe that theses directions do not survive in view of the conclusion we have reached that the prices demanded by ONGC are based on proper and relevant criteria. However, we may observe that directions (i) and (ii) in this paragraph virtually throw open the entire issue for fresh discussion. It may have been helpful if such a direction had been given before the hearing of the writ petitions but the exercises would now be futile. Having reached the conclusion that the cost plus was the only proper basis of fixation of price, the High Court should perhaps have directed the ONGC to charge prices on that basis and given a reasonable time to work out the said price and implement the direction. Instead, the High Court appears to have, by its directions in para 36, left the matter at large for it asks the ONGC to get the price fixed "according to the reasonable and rational norms". We do not also see any justification for [providing that the pr
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> (VIII) On behalf of the ONGC, it has been pointed out that a sum of Rs. 14.35 crores is outstanding for the period from December 1982 to August 1989 from eighteen concerns, even on the basis of the interim prices at which the ONGC has been supplying them gas under the orders of this Court, primarily due to shortfalls in the guaranteed offtake and that four concerns, who have stopped taking supply of gas, are in arrears to the tune of about Rs. 12 lakhs. We need hardly say that the ONGC will be at liberty to take immediate steps to recover the charges due from the respondents in the light of this judgment.
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> (ix) We wish to add that we are not called upon to, and do not, express any opinion regarding the notification dated January 30, 1987 of the government issued subsequently fixing the price at Rs. 1400 plus. We do not know the circumstances or the statutory authority or the basis on which the said price fixation was made and that is totally outside the purview of these appeals.

41. This concludes a discussion of all urged before us. For the reasons detailed above, we allow appeals and uphold the prices charged by the ONGC for supply of to the various respondents. We however, make no order regarding costs.

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