



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

MEDIA SUMMARY – JUDGMENT DELIVERED

IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 10 May 2018

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

PG GROUP (PTY) LTD & OTHERS

v

NATIONAL ENERGY REGULATOR OF SA & ANOTHER

In March 2013, the National Energy Regulator of South Africa (NERSA) granted an application made to it by Sasol Gas Limited to determine a tariff of maximum prices for piped-gas. The seven appellants, all large scale consumers of piped-gas, complained that the new tariffs had led to a substantial increase in the prices they were paying which were unreasonable and irrational. They therefore applied to the Gauteng Division of the High Court, Pretoria to review and set aside NERSA's decision.

That court did not enter into the merits of the debate. Instead it declined to hear the matter, holding that there had been an unreasonable delay between the time the methodology upon to determine the maximum prices had been decided upon in October 2011 and the launching of the review application some two years later.

The appellants appealed to the SCA against this decision, contending both that the High Court had erred in not hearing the case and that, on the merits of the matter, the maximum price determination ought to have been set aside.

In the SCA the respondents further argued that the maximum price application NERSA had granted related only to the period 1 July 2017 to 30 September 2018 and that the court should decline to hear the matter as the price determination had now become moot. The Supreme Court of Appeal however rejected this. It concluded not only that there was considerable public interest in whether the basic methodology which NERSA had adopted and probably would use again in the future was valid, but that the matter was not solely academic as an order was sought that if the review was succeed any maximum prices for the period in question would have to be again determined with retrospective in effect. Consequently the matter was not moot.

The SCA also held that the court a quo had erred in regarding the question of delay from the determination of the methodology to be used. It found that the determination of the methodology could not be regarded as administrative action which determine the outcome of Sasol Gas' maximum price application as it did not have a 'direct and immediate' consequence for individuals. Also,

no finality had been reached on how prices would be assessed using the methodology, and that in any event the methodology as decided upon in March 2011 had not in fact been applied.

The circumstances under which the maximum prices had been determined was then examined and the SCA concluded that the decision which had been taken had not been rational, *inter alia*, as it was a process on which NERSA had set out to combat the unreasonably high prices which were being charged but resulted in substantial increases above the monopolistic prices it had concluded were already too high. The SCA held that NERSA had committed a fundamental error in this regard by making use of a basket of fuel alternatives as a reference point to determine a competitive price for piped-gas as the mere fact that those sources of energy were not been used by consumers was in itself an indication that they were too expensive. To use them as a yardstick was simply illogical.

In these circumstances, and taking further additional factors into account, the SCA concluded that NERSA's decision in regard to the determination of maximum prices fell to be reviewed and set aside. An appropriate order in those terms was made.