

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

C.P No.D-2038 of 2021

(Nadeem Muhammad versus Federation of Pakistan & Others)

DATE

ORDER WITH SIGNATURE OF JUDGE

Present:

Aftab Ahmed Gorar, J.

Agha Faisal, J.

1. For orders on M.A No.10386/2021
2. For orders on office objection(s)
3. For orders on M.A No.10387/2021
4. For orders on M.A No.10388/2021
5. For hearing of main case

28.12.2021

Mr. Noor Ahmed Memon, Advocate

1. Granted.
2. Deferred.
3. Granted, subject to all just exceptions.

4&5. The petitioner, a customer of the respondent no. 4 Sui Southern Gas Company Limited (“SSGC”), operates a factory / commercial enterprise and is aggrieved at the temporary suspension of natural gas thereto by SSGC, on account of a national shortage, vide its letter dated 10.12.2021 (“Impugned Letter”).

At the very onset the petitioners’ counsel was confronted with respect to the maintainability hereof; *inter alia*, since the ostensible rationing of available natural gas supplies appears to be a policy matter; the relationship between the petitioner and SSGC is admittedly contractual in nature; the allegations raised appear to be factual in nature requiring detailed deliberation; and how a writ could be issued to a private respondent. Petitioners’ counsel remained unable to satisfy this Court in respect of the questions of maintainability raised.

It was brought to our attention that SSGC is temporarily implementing a priority of supply scheme so that the sectors most vulnerable may have primary access to supply of natural gas. The verbiage of the Impugned Letter demonstrates that primacy is being accorded to the domestic consumers, the needs whereof have been given precedence over commercial consumers, hence, the temporary suspension of supply. In view of the national shortage of natural gas supplies, the apportionment of priority is *prima facie* a policy matter. The august Supreme Court has maintained that categorization of natural gas consumers is a policy issue¹. The policy, under challenge, appears to protect vulnerable domestic consumers and the same demonstrates no manifest discrimination as the structure appears to be reasonably classified based upon social and economic priorities. Since the gas pricing structure is *prima facie* a policy driven decision, which merits interference only if demonstrably contrary to fundamental rights², it is opined that while the petitioner

¹ Per Mansoor Ali Shah, J in *Sui Northern Gas Pipelines Limited vs. Federation of Pakistan (Civil Appeal 159-L of 2018)*.

² *Master Motor Corporation (Pvt.) Ltd vs. Federation of Pakistan & Others* reported as 2020 CLC 117.

has claimed to be financially challenged by the temporary suspension of supply thereto, he has failed to demonstrate that the priority structure, as envisaged vide the Impugned Letter, is arbitrary, discriminatory or contrary to any fundamental rights³.

In response to our query, it was admitted that the petitioner had a contractual agreement for supply of natural gas with SSGC, even though the petitioner had conspicuously omitted to annex the pertinent instrument with this petition. The Impugned Letter expressly refers to the respective gas supply agreement and stipulates that it has an express condition therein that supply will only be made on “*as and when available basis*”. Notwithstanding the existence of any dispute resolution fora / mechanism in the agreement *inter se*, it is trite law that agitation of contractual disputes is deprecated in the exercise of writ jurisdiction⁴.

Various factual controversies were raised, by the petitioners’ counsel, which merit no consideration in writ jurisdiction in any event⁵. Even otherwise the petitioners’ counsel remained unable to substantiate the invocation of writ jurisdiction against a private respondent, *inter alia* on the anvil of the functions test⁶ or otherwise.

In view hereof, we are constrained to observe that the petitioner’s counsel has been unable to set forth a case for the invocation of the discretionary⁷ writ jurisdiction of this Court, hence, the listed petition, and accompanying application, is hereby dismissed *in limine*.

JUDGE

JUDGE

Sajjad Ali Jessar

³ *Sindh Petroleum & CNG Dealers Association & Others vs. Federation of Pakistan & Others* reported as 2020 CLC 851.

⁴ *PLD 2011 SC 44 & PLD 2007 SC 642*.

⁵ *2015 PLC 45&2015 CLD 1257*.

⁶ *PLD 1975 Supreme Court 244; 2000 SCMR 928; PLD 2002 Supreme Court 326; PLD 2005 Supreme Court 806; 2019 SCMR 221*.

⁷ *Per IjazUl Ahsan J. in Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.