

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 2507 of 2019
CP No. D- 2508 of 2019

BEFORE :

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Petitioners: M/s. Sui Southern Gas Company Limited
through Mr. Farmanullah Khan, Advocate.

Mr. Ashfaq Nabi Qazi, Assistant Attorney
General

Date of hearing 11.11.2021

Date of decision: 25.11.2021

ORDER

ADNAN-UL-KARIM MEMON, J:- Through the captioned constitutional petitions the petitioners have prayed as under:-

- i. Declare that respondent No.2 has no jurisdiction to entertain gas consumers' complaints against the petitioner company.
- ii. Declare that the proceedings initiated by the respondent No.1 before the respondent No.2 in respect of the disputes regarding billing etc., are bad in law without jurisdiction, ultra vires, Corum non-judis, unlawful and of no effect.
- iii. Restraining the respondent No.2 from undertaking further proceedings in Claim No. 17/2019 and restrain him from receiving the complaints and entertaining the same against the petitioner company in the matter covered under the special law i.e. Gas (Theft, Control and Recovery) Act, 2016 and OGRA Ordinance, 2002.

2. Both the captioned Constitutional Petitions are being disposed of by this Single Order, as the common question of law and facts are involved therein.

3. Brief facts of the case are that petitioner M/s. Sui Southern Gas Company Limited is incorporated under the Companies Act 1913 (now Companies Act, 2017) being engaged in transmission/supply and sale of natural gas to the provinces of Sindh and Baluchistan,

whose shares are being freely sold and purchased at all stock exchanges of Pakistan; the company is being managed by Board of Directors elected under the provisions of Companies Act and with its Articles of Association and it does not perform functions in connection with the affairs of Federation, a Province or Local Authority; that most of the UFG generate from dilapidated/deteriorating pipelines, leaking joints, gas theft by tampering the meters, and illegal connections; and old malfunctioning metering equipment.

4. The petitioner company initiated online and remote monitoring of industrial and commercial gas meters as part of the effort to reduce gas theft. It is averred on behalf of the company that there is a huge amount due against consumers of gas who either indirectly through tempering of gas meters and other equipment and/or directly stealing the gas through rubber pipes etc., which cause serious damage to the financial condition of the petitioner-company.

5. To provide protection both to the gas consumer and gas utility companies, the Government of Pakistan enacted The Gas (Theft Control and Recovery) Act, 2016. The procedure of Constitution of Gas Utility Courts is provided under Section 3 of the Act of 2016 and under the said Section Federal Government in consultation with the Chief Justice of High Court of Sindh was pleased to constitute Gas Utility Courts and appointed District and Sessions Judges for each of the districts in the Province of Sindh to adjudicate the matters arising out of Act of 2016.

6. Per learned counsel for the petitioner-company, respondent No.1 being aggrieved by and dissatisfied with the legal action of petitioner-company, filed private claim No.17 of 2018 before learned Consumer Court / respondent No.2, under Section 26 of the Sindh Consumer Protection Act, 2014 with a prayer to call the petitioner and direct them to settle the accounts with the private respondent as per exact consumption of gas; and, to take legal action against the petitioner-company regarding illegal action of mixing the water in the oil. It is further averred that after service, the petitioner-company filed written statement as well as application under Order VII Rule 11 CPC for rejection of claim of respondent No.1 on the ground of lack of jurisdiction; that respondent No.1 filed objection to the petitioner's application and the learned Court, after hearing the parties dismissed

the application of the petitioner-company under Order VII Rule 11 CPC vide order dated 11.9.2019 despite knowing that there is Special Law for resolution of dispute between the petitioner-company and its consumers for which the Honorable Chief Justice of Sindh, had already constituted the Courts headed by learned District Judge. The petitioner being aggrieved by and dissatisfied with the order dated 11.9.2019 filed the instant petitions.

7. Mr. Farmanullah Khan learned counsel for the petitioner-company has argued that learned Consumer Court / respondent No.2 had no jurisdiction to entertain the cases of petitioner-company under Sindh Consumer Protection Act, 2014; that respondent No.2 has miserably failed to appreciate that the legislature has enacted the law for resolution of grievance of the petitioner's consumers and for this purpose if a dispute arises between the petitioner company and its consumers, the special courts have been established which are functioning. In support of his contentions, learned counsel heavily relied upon the order dated 21.5.2019 passed by Honorable Supreme Court in the case of Sui South Gas Company Limited v. Hafiz Muhammad Babar and others bearing CP No. 1370/2019 and held that even the High Court has no jurisdiction under Article 199 of the Constitution of Pakistan, 1973 to entertain the matters covered under 'The Gas (Theft, Control, and Recovery) Act 2016; that the judgment referred by the petitioner-company before respondent No.2 mentions that the Consumer Courts have no jurisdiction in the matter but respondent No.2 did not discuss the same and passed the impugned order which is not sustainable in law and this court has inherent powers under the Constitution to correct the wrongs committed by the subordinate courts or any other forum subordinate to it. In support of his contention learned counsel has relied upon the case law reported in 2017 SCMR 1218, PLD 2019 Lahore 429, PLD 2018 Islamabad 51, 2018 CLD 203, 2019 CLD 242, 2013 SCMR 338, 2014 SCMR 1524, PLD 2014 Lahore 635, 2015 PLC (C.S) 1182; 2016 CLC 1104, 2019 PLC 38, 2014 SCMR 535, 2012 SCMR 669, PLD 2015 Lahore 31, PLD 2019 Lahore 376, 2017 CLC 411, 2012 CLD 1428, PLD 2016 Lahore 168 & 2017 CLC 1160 and the unreported Judgment of Islamabad High Court passed in W.P. No. 67 of 2019.

8. Primarily, the legislature in its wisdom has introduced a new regime intending to effectively prosecute / deal with the cases of theft of valuable national resource as well as recovery of outstanding

arrears by setting up tribunals comprising of a District & Sessions Judge with exclusive jurisdiction to follow procedures speedy as well as expeditious in jurisdictions both civil as well as criminal. The new law comprehensively deals with the cases of theft, tampering with auxiliary or distribution gas pipelines, and with meters thereof including causing wastage or damage thereto. It sets up a tribunal comprising of a District & Sessions Judge to prosecute both offenses as well as claims for recovery of loss to the public exchequer. The new regime under exclusive jurisdiction solely deals with the cases of gas with no change in the generic character of the offenses earlier enlisted under Chapter XVII A of the Pakistan Penal Code, 1860 except that it provided a new mechanism for assumption of exclusive jurisdiction by the Gas Utility Court to try offenses as a Court of Session under the Code of Criminal Procedure, 1898 (Act V of 1898), however, it required a complaint, in writing by a person authorized in this behalf by a Gas Utility Company.

9. In the wake of the supply / provision of natural gas as a new source of energy to the domestic and commercial consumers, the Pakistan Penal Code, 1860 was amended through Criminal Law (Amendment Act) 2011 (Act XX of 2011) to incorporate a penal regime to cope with cases of theft, pilferage, interference, and tampering, etc. with the distribution system and matters ancillary therewith, covering wide spectrum of products under the definition of petroleum. It provided a mechanism for the prosecution of offenses set out in the newly inserted chapter i.e. Chapter XVII A. Through Act No. XI of 2016, the parliament enacted The Gas (Theft, Control & Recovery) Act 2016 which came into force throughout Pakistan on 23rd of March, 2016.

10. In principle, the Sindh Consumer Protection Act, 2014 is enacted to provide and protect the rights and interests of consumers in the Province of Sindh; and, protection and promotion of the rights and interests of the consumers, speedy redress of consumer complaints and for matters connected therewith. Whereas the petitioner-company does not perform functions in connection with the affairs of Province of Sindh, thus the applicability of the provisions of Sindh Consumer Protection Act, 2014 in the affairs of the petitioner-company does not call for; The legislature has enacted The Gas (Theft, Control & Recovery) Act 2016, which came into force throughout Pakistan on 23rd of March, 2016, for resolution of the

grievance of the petitioner's consumers and for this purpose if any dispute arises between the petitioner-company and its consumers, the special courts have been established, comprising a District & Sessions Judge to prosecute both offenses as well as claims for recovery of loss to the public exchequer.

11. In view of the above discussion these petitions are allowed in the terms that the matter pending before respondent No.2 under Section 26 of the Sindh Consumer Protection Act, 2014 is remitted to the court of learned District judge having jurisdiction to try the case. The learned District Judge is directed to decide the matter between the parties after providing opportunity of hearing to all concerned within a reasonable time.

JUDGE

JUDGE

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