

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Present: Mr. Justice Salahuddin Panhwar
Mr. Justice Abdul Mobeen Lakho

C.P.No.D- 337 of 2016
C.P.No.D-1686 of 2021

Petitioners: Asadullah through Mr. Qurban Ali Malano,
advocate (*in C.P.No.D-337/2016*)

Allah Bux and others through Mr. Muhammad
Qayyum Arain, advocate (*in C.P.No.D-1686/2021*)

Respondents: Mr. Nisar Ahmed, Asst. Attorney General
Mr. Ashok Kumar Jamba, advocate for SSGC

Date of hearing: 9th March 2023

Date of judgment: 23rd August 2023

J U D G M E N T

Salahuddin Panhwar, J.- By the dint of this Judgment, I intend to decide captioned Petitions, as the same involve similar questions of law and fact.

2. Briefly the succinct facts of C.P.No.D-337 of 2016 are that the Petitioner is aggrieved by non-provision of natural gas facility to their village, which is situated at the distance of 2.0 kilometer from the main line. It is further stated that due to political influence and pressure the Respondents No.3 to 6 provided gas facilities at the village Khush Khair Muhammad Faqir, which are situated at a distance of 9.0 kilometers from the main line; that on 11.01.2013, the villagers submitted an application to the Respondent No.6, but no fruitful result could be achieved and till date no gas is provided to the petitioner's village, which is fundamental right of the Petitioner as well as other villagers as enshrined under Articles 4 and 25 of the Constitution; that the funds which were sanctioned for the gas pipeline have been utilized by providing gas facility to one village only. Hence the petitioners filed instant petition with following prayers:

- (a) That this Honourable Court may kindly be pleased to declare that the act of Sui Gas Respondents regarding discrimination

with the petitioner and co-villagers is totally illegal, unlawful and without due course of law.

- (b) That this Honourable Court may kindly be pleased to direct the Respondent No.2 to conduct enquiry as well as audit of the amount which was sanctioned for installment of Sui Gas pipeline to the village of petitioner and other nearby villages which are included in the project.
- (c) That this Honourable Court may kindly be pleased to direct the Sui Gas Respondents No. 4 to 7 to provide Gas to the village of petitioner without any discrimination.
- (d) To grant any other equitable relief, which has not been specifically prayed for, which this Honourable Court deems fit and proper in the circumstances of the above case.

3. The relevant facts narrated in C.P.No.D-1686 of 2021 are that petitioners are residing in Village Allah Rakhio Laghari, Village Arbi Laghari, Village Soomar Fakeer Mahar, Village Achhi Masjid 1 & 2, Village Haji Hussain Laghari, Village Mian Sahib Ahmed Pirzado and Village Ahmed Laghari, all Taluka Daharki, District Ghotki, since their forefathers consisting of more than 1200 houses, wherein no gas is being provided; that main gas pipeline and well No.6 of Mari Gas Company is available at the distance of zero point to 1 Km from the petitioners' villages, but even then no gas is provided to the villages which is their fundamental right; that petitioners and others approached to the Respondents No.3 to 10 for installation of gas connection to petitioners' villages, but the respondents no heed was paid to their request; that in the year 2020-21 the Federal Government sanctioned gas connection to the above said villages and also released amount to this effect as well as layout plan of existing and proposed gas line for above said villages was prepared but even then the respondents failed to provide gas connection to the villagers till date; that as per policy of SSGS, if the villages/houses are available at the distance of zero point to five kilometers from the main pipe line of the gas, then the gas connection is to be provided to them, however, petitioners' villages are within the prescribed distance to the main pipe of gas, but the respondents are reluctant to provide gas supply to petitioners' villages; that the villages which are situated beyond the prescribed distance have been provided gas connection by the respondents due to political influence, hence, having no other alternate remedy, the petitioner have approached this Court with the following prayers:

- a) To declare the act of the respondents for not providing/installing the gas connection at the villages i.e. village Allah Rakhio Leghari, village Arbi Laghari, Village Soomar Fakeer Mahar, Village Acchi Masjid 1 & 2, village Haji Hussain Laghari, village Mian Sahib Ahmed Pirzado and village Ahmed Laghari, all Taluka Daharki, District Ghotki of petitioners situated at the distance of zero point from the main pipe line of gas as well as well No.6, Mari Gas company is null and void.
- b) To direct the respondents to provide/ install the Sui Gas connection at the above said villages of the petitioners which is very nearer to the main gas pipe line as well as Well No. 6 installed by SSGC.
- c) To grant any other relief which deems fit and proper under the circumstances of the case.

4. Notices were issued to the respondents. SSGC filed their comments.

5. Learned counsel appearing for the petitioners mainly argued that though the villages of the petitioners are located at very near distance but the gas is not being provided to them and the gas is being provided to the villages due to political pressure and influence, hence it is prayed that petitions may be allowed and the gas may be provided to the petitioners' villages.

6. Conversely, learned counsel appearing for SSGC that gas is being provided to the villages as per policy and no indiscriminate installation of gas pipeline is being undertaken and as soon as funds are made available to them, the gas pipeline shall be installed.

7. Learned Attorney General has adopted the arguments submitted by learned counsel for the SSGC and has further stated that gas is being provided to the villages which are in grave need and the petitioners' villages will also be provided after obtaining approval from the competent authority and no discrimination is being undertaken in the provision of the gas to the villages.

8. Heard and perused the record.

9. Initially it has been argued by learned counsel for the SSGC that instant petitions are not maintainable as no writ lies against SSGC as it is purely a public company and is not a wing of the Federal Government, however, record reflects that since the main grievance of the petitioners is not against SSGC but is with regard to violation of the fundamental rights of the petitioners. The High Court

may issue any directions, as may be appropriate for the enforcement of any of the Fundamental Rights conferred by the Constitution to any person or authority exercising any power or performing any function in (or in relation to) any territory within its jurisdiction (which includes but is not limited to any Government). The amplitude of Article 199(1)(c) of the Constitution is wider than the other parts of Article 199 of the Constitution and is not restricted to public functionaries only but even it could extend to private parties, as long as there is a question of enforcement of fundamental rights under the Constitution. Reliance is placed on the case reported as **Human Rights Commission of Pakistan**¹. In the present petitions, the petitioners prayed for provision of gas to their villages, which are situated within the prescribed distance, from where gas and oil are being explored, we hold that the aforesaid petitions are maintainable before this Court under Article 199 of the Constitution of Pakistan and the objection raised on behalf of respondent SSGC is hereby repelled.

10. With regard to the prayer of the petitioners, it would be pertinent to mention here in the case of **Abdul Hakeem Khoso, Advocate**², the apex Court passed certain directions for undertaking social welfare work including provision of gas to the villages where oil and gas is being explored. Being relevant paragraphs are reproduced herewith:-

“18. It is also worth mentioning that Mr. Hakeem Khoso brought to light a directive issued by the Prime Minister dated 15-9-2003 which stipulated that "The Prime Minister has been pleased to direct that gas be provided to villages falling in the radius of 5-KM from the gas source (Zamzama Gas Field, Tehsil Johi, District Dadu, Sindh). **Prime Minister was further pleased to announce that this principle would apply to all gas fields and that gas may be provided to all the surrounding localities/villages falling in the radius of 5 km of all Gas Field, on priority basis.**" (*emphasis added*). The reply filed by the MPNR on 29-6-2013 stated that the "Prime Minister's directives [were] pertaining to the villages in the gas producing field Zamzama District Dadu and not for those Blocks which are situated in District Sanghar". The Ministry's stance is a clear deviation from the express words of the Prime Minister's directive as highlighted above.”

¹ Human Rights Commission of Pakistan and 2 others v. Government of Pakistan and others. [PLD 2009 SC 507].

² [PLD 2014 Supreme Court 350],

In paragraph 22, sub-clause (k) of the above referred judgment, it has been directed by the apex Court as under:

(k) The Ministry of Petroleum and Natural Resources shall, ensure implementation of the Prime Minister's directive of 15-9-2003 and **provide gas to "all the surrounding localities/villages falling within the radius of 5km of all Gas Fields, on priority basis" as directed, in accordance with law."**

11. It is an admitted position that the villages of the petitioners are situated within 5 K.M of the main gas pipeline, which fact is not controverted by counsel appearing for the SSGC. As mentioned above, the apex Court has already directed in the case of **Abdul Hakeem Khoso Advocate** (*supra*) that Prime Minister's directives of 15-9-2003 shall be implemented by the Ministry of Petroleum and Natural Resources and gas shall be provided to **"all the surrounding localities/villages falling within the radius of 5km of all Gas Fields, on priority basis"** in accordance with law, but the respondents have failed to provide gas to the petitioners' villages and such lethargic attitude of the respondent is not sustainable on the touchstone of Articles 9 and 25 of the Constitution of Islamic Republic of Pakistan. Even otherwise, the judgment of the apex Court of Pakistan can be enforced under Article 187(2) of the Constitution. Accordingly, captioned petitions are allowed and the respondents are directed to provide gas to the petitioners' villages on priority basis. Compliance report to this effect shall be submitted through MIT-II of this Court.

JUDGE

JUDGE

