

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-5841 of 2018 along with
C.P. Nos. D-5528, D-5529, D-5530, D-5531,
D-5532, D-5533, D-5534, D-6866 of 2019
and D-2859 of 2021 .

Date	Order with Signature of Judge
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PRIORITY

1. For orders on Misc.No.13200/2021
2. For orders on Misc.No.11353/2021
3. For orders on Misc.No.11342/2021
4. For orders on Misc.No.11343/2021
5. For orders on Misc.No.6526/2020.
6. For orders on Misc. No.35078/2019.
7. For orders on Misc. No.22829/2019
8. For orders on Misc. No.22831/2019
9. For hearing of Misc. No.18920/2019
10. For hearing of Misc. No.18922/2019
11. For orders on Misc. No.13614/2019
12. For orders on Misc. No.395/2019
13. For orders on Misc. No.39356/2018
14. For orders on Misc. No. No.39357/2018
15. For orders on Misc. No.36802/2018.
16. For hearing of case.

27.03.2023.

Petitioner Roshan Ali Lakhan in person (CPD No.5841/18)
Mr. Muhammad Imran Qureshi, Advocate for Petitioner.
M/s. Bilal Ahmed Khan and Ali Tahir Soomro, Advocates for
Respondent Nos.27 & 29.
Mr. Mahmood, Advocate for Respondent OGDCL
M/s. Asim Iqbal and Farmanullah, Advocates for SSGCL & OGRA
Barrister Zeeshan Adhi, Additional Advocate General Sindh.
Barrister Sami Hasnain Zahid, Legal Consultant, PDMA
Muhammad Riaz, Acting General Manager, Abdul Waheed Jumani,
Acting General Manager, Ahmed Ali Bhutto, Chief Engineer, Abrar
Bashir, Deputy Chief Manager, Ammar Butt, Manager Legal and
Raja Love Khush, Deputy Manager (Legal),
Dr. Liaquat Ali Abro, Consultant Law to Chief Secretary,
All the DCs or their ADC's are present.

Muhammad Karim Khan Agha, J. Pursuant to order dated
19.12.2022, SSGCL received an amount of Rs.660.25 million
from the Federal Government being their share of the
assignment which SSGCL is now undertaking to supply gas
in the villages as per schedule. SSGCL has submitted its
report which in essence states that it is continuing to make

progress however it is facing a short fall of Rs.423.726 million which is a share of Government of Pakistan on account of increase cost and depreciation of rupees etc. The SSGCL had requested to Ministry of Petroleum, Islamabad for their share but did not receive any response. On the next date of hearing, Secretary Ministry of Petroleum shall ensure that Rs.423.726 million being the share of Government of Pakistan is paid to SSGCL so that it can continue and complete the work as per agreed schedule. On the next date of hearing, Secretary, Ministry of Petroleum, Government of Pakistan, Islamabad shall file its compliance report in respect of this issue.

2. With regard to Article 158 of the Constitution and the distribution of gas, we have been informed that Mr. Makhdoom Ali Khan, senior counsel and amicus curie in respect of this issue is on general adjournment, as such, an adjournment is sought on his behalf.

3. On last date of hearing, the Addl. Advocate General Sindh had placed before us a letter written to the Chief Secretary dated 29.11.2022 which contained various annexures seeking instruction as to how Government of Sindh intended to proceed in view of Article 158 of the Constitution due to severe gas shortage in the province of Sindh.

4. The learned Advocate General Sindh has filed before us the brief showing measures taken by the Government of Sindh at the Council of Common Interest (CCI) to have Article 158 of the Constitution enforced which unequivocally states as under:

"158. Priority of requirements of natural gas. The Province in which a well-head of natural gas is situated shall have precedence over other parts of Pakistan in meeting the requirements from that well-head, subject to the commitments and obligations as on the commencing day."

5. We have gone through the Minutes of the CCI which we have before us which cover approximately the last three years. It seems that no resolution has been made to this clear constitutional command whatsoever during this three year period and even in one part of the Minutes, it is stated that Article 158 of the Constitution was added for province of Baluchistan which does not appear to have been objected to the Government of Sindh. It appears that no meaningful progress is being made before Council of Common Interest in terms of Article 158 of the Constitution and it appears that the CCI prima facie does not seem to be able to effectively deal with a clear command of the Constitution and thereby resolve the issue of primary in gas distribution between the provinces.

6. Learned Addl. A.G. states that Government of Sindh shall continue its best efforts for the enforcement of Article 158 of the constitution for the benefit of the people of Sindh who, even during the holy month of Ramadan, due to shortage of gas, are unable in many cases to cook a meal at Sehr or prepare a cup of tea at Iftar. We have been informed by learned Addl. A.G. Sindh that the matter was referred by the Supreme Court of Pakistan to CCI for resolving the issue. It appears that after five years nothing has been achieved and nothing is likely to be achieved in the near future. The Government of Sindh under these circumstances might want to consider approaching the Supreme Court again for implementation of Article 158 of the Constitution as it is quite apparent that no resolution or implementation in respect of the same is likely to be made via the CCI which indicates that Article 158 of the Constitution is redundant which can never be the case in the Constitution as no Article can be held to be redundant. In this case the language of Article 158 of the Constitution is clear and unambiguous and does not need

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any interpretation. In any event we leave this issue upto Government of Sindh as it represents the people of Sindh whom it is accountable and are responsible to provide them basic needs so that they can at least cook for themselves.

7. It may be noted that much has already been discussed in this respect in order dated 14.03.2022 which only illustrates that this Court and the Government of Sindh is only going around in circles without producing any worthwhile result.

8. Learned Addl. Advocate General has referred to Note for Chief Minister by Energy Department, Government of Sindh dated 13.03.2023 whereby specific directions have been sought from the Chief Minister including whether to move the Supreme Court under Article 184 of the Constitution in order to get the judicial interpretation of Article 158.

9. On the next date of hearing, learned Addl. A.G. shall place on record copy of the summary and decision made therein before this Court.

10. On last date of hearing we had dealt with flood affectees which we had observed by and large the DCs had managed the situation during the winter months with the assistance of PDMA. Learned counsel for PDMA has stated that 80% of the flood relief work has been completed and the remaining work of dewatering is underway thereafter rehabilitation of those most seriously affected by the flood who had lost their houses. A copy of report of DG PDMA is taken on record.

11. Most of the DCs have filed their report in respect of the funds from the E&P companies a majority of which are not particularly satisfactory. On the next date of hearing all the DCs shall file their further progress reports regarding the work which has been carried out regarding the E&P funds

along with before and after photographs once again countersigned by the Focal Person being Secretary Energy.

12. We have been informed by the Focal Person that water is still lying from the flood in the following districts:

- i. District Naushero Feroz
- ii. District Khairpur
- iii. District Ghotki
- iv. District Dadu
- v. District Sujawal
- vi. District Badin
- vii. District Qambar Shahdadkot
- viii. District Sanghar, AND
- ix. District Mirpur Khas

13. In addition to their reports regarding the use of E&P companies funds the DCs of those areas shall ensure that all the water has been removed prior to the next date of hearing and produce a report showing if any water still remains/lying in the area along with photographs and how the DCs intend to dispose of such water.

14. A copy of this order shall be sent through facsimile to Secretary, Ministry of Petroleum, Government of Pakistan, Secretary Finance, Government of Pakistan, Secretary Energy, Focal Person as well as Chief Secretary, Government of Sindh for information and compliance.

To come up on **8th August, 2023 at 11:00 a.m.**