

**IN THE HIGH COURT OF SINDH AT KARACHI**

**C.P No.D-4811 of 2013.**

**Present:**

**Mr. Justice Sajjad Ali Shah, C. J.  
Mr. Muhammad Junaid Ghaffar**

**Muhammad Nasir-----Petitioner  
Versus  
Ministry of Petroleum and Natural Resources  
& another-----Respondents**

**C.P No.D-4812 of 2013.**

**Muhammad Nasir & others -----Petitioners  
Versus  
Ministry of Petroleum and Natural Resources  
& another-----Respondents**

**C.P No.D-4813 of 2013.**

**Haseeb Ahmed Polani & others -----Petitioners  
Versus  
Ministry of Petroleum and Natural Resources  
& another-----Respondents**

**Date of hearing: 23-12-2015**

**Date of Judgment: 22-01-2016**

**Petitioners: Through Mr. Obaid-ur-Rehman Khan,  
Advocate in CP No. 4811 of 2013**

**Through Mr. Muhammad Ishaq  
Memon, Advocate in CP Nos. 4812 &  
4813 of 2013.**

**Respondent No.1: Through Mr. Asim Mansoor, DAG.**

**Respondent-SSGC: Through Mr. Asim Iqbal, Advocate.**

**JUDGMENT**

**Muhammad Junaid Ghaffar, J.** Through this common judgment we intend to decide all the three aforesaid petitions, wherein, a common question of law is involved as all the petitioners are aggrieved by non-

supply of gas connections to their residential Apartments / projects on the basis of policy directives dated 04.10.2011 issued by respondent No.1.

2. Precisely, the facts as stated in C.P No.D-4811 of 2013 are that on 21.09.2011 an application was made by the petitioner to respondent No.2 for supply of gas connections to 40 residential flats in their project namely "Falak Residency". Thereafter a reminder application dated 17.10.2012 was also made to respondent No.2. In C.P No.D-4812 of 2013 such application was moved on 20.06.2010, whereby, the respondent No.2 was requested to provide gas connections to 66 residential flats in the project named "Falak Arcade", which was followed by subsequent Reminders dated 27.01.2011, 07.06.2011, 26.09.2011 and 17.10.2011. It is further stated that respondent No.2 vide its quotation of charge dated 05.12.2011 asked the petitioner to pay the same, however, such quotation was never received by the petitioner. Similarly in C.P No.D-4813/2013 the application for gas connections was made on 27.11.2011 for 27 apartments in the project named "Sapphire Residency". All these petitioners have not been provided gas connections since long precisely on the ground that respondent No.1 vide Letter dated 04.10.2011 has imposed a moratorium on new gas connections to High Rise buildings, hence instant petitions.

3. Counsel for the petitioners has contended that firstly the moratorium dated 04.10.2011 is illegal and void ab-initio as it is ultra-vires to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, being discriminatory in nature and without any intelligible differentia or reasonable grounds. Counsel has further contended that since high-rise buildings have not been clearly and specifically defined in the impugned moratorium, therefore, the respondent No.2 on their own, have exercised discretion without any lawful authority, whereby they are giving gas connections to building having a maximum of ground plus four stories, whereas, buildings having more than four floors have been categorized by them as high-rise buildings. Per Counsel such unfettered discretion exercised by respondent No.2 is illegal and in violation of settled proposition of law enunciated by the Hon'ble Supreme Court in its various judgments. Per Counsel such exercise of discretion is discriminatory as a sub-class of persons has been created by respondent No.2 within the same class without any

intelligible differentia. Counsel has further contended that if moratorium is to be placed, then it should be across the board to conserve natural gas, whereas, notwithstanding the moratorium, gas connections are being provided to residential houses having multiple connections and so also to residential buildings having four floors. In support of his contention the Counsel has relied upon the cases of ***Shehla Zia vs. Federation of Pakistan (PLD 1994 SC 694)***, ***Human Rights Case No.14392 of 2013 (2014 SCMR 220)***, ***I.A. Sherwani and other vs. Government of Pakistan and others (1991 SCMR 1041)*** and ***Waris Meah vs. State and Another (PLD 1957 SC 157)***.

4. Conversely, Counsel for respondent No.2 (SSGC) has contended that instant petitions are not maintainable as no writ lies against SSGC, whereas, this court cannot examine the vires of policy issued by the Federal Government. He has further contended that insofar as SSGC is concerned, they are abiding by the directives of respondent No.1, whereas, the moratorium has been imposed to conserve gas throughout the entire country and is not restricted for Karachi only. Similar contention has been raised by the learned DAG on behalf of respondent No.1 by stating that this is a policy decision taken by the Federal Government, to meet the increasing shortfall of natural gas.

5. We have heard all the learned Counsel as well as the learned DAG and have perused the record. Though an objection on behalf of the Respondent No.2 has been raised regarding maintainability of instant petitions on the ground that no writ lies against SSGC as it is a Public Company and is not an attached wing of the Federal Government, however, since the main grievance of the petitioners is not against SSGC but is in respect of the moratorium issued by respondent No.2 against whom a writ petition is very much competent, as such we need not dilate upon this issue. Even otherwise the primary issue in the instant petitions is regarding violation of the fundamental rights of the petitioners, whereas, it is the management and usage of the natural resources of the Country by the State through its instrumentalities (SSGC), and therefore this Court under Article 199 of the Constitution can exercise such discretionary jurisdiction to put the things in order. The Hon'ble Supreme Court in the case of ***Khwaja Muhammad Asif Vs. Federation of Pakistan (PLD 2014 SC 206)*** has been pleased to observe that *Natural gas and LPG extracted therefrom are precious mineral resources vesting in the State and ultimately in the People, SSGCL is a State*

*enterprise in which the majority shareholding is held by the Government, SSGCL is therefore, not free to deal with such assets whimsically or in utter disregard of the fiduciary duty owed to the nation. Nor, we may add, does SSGCL have unfettered discretion to deal with national assets in a manner that does not protect and advance the best interest of SSGCL as a fiduciary and repository of the interest of the people of Pakistan who are, through the Government, beneficial owners, not only of the mineral resources of the country but also of a majority interest in SSGCL.”* Accordingly we hold that the aforesaid petitions are competent before this Court under Article 199 of the Constitution of Pakistan and the objection raised on behalf of respondent No.2 in this context is hereby repelled.

6. Adverting to the merits, on perusal of the record it appears that the precise controversy before us is that whether the moratorium dated 04.10.2011 is applicable on the case of the petitioner(s), who had in fact applied for gas connections much prior to the date of moratorium (except in C.P No.4813 of 2013), and secondly, whether the moratorium in question is discriminatory in nature and has violated the fundamental rights guaranteed under Article 25 of the Constitution of Pakistan or not. Insofar as the first proposition is concerned, this Court on 10.10.2014 had passed a detailed order, whereby, such issue was discussed in detail, and reads as under:-

“However, since the request of the petitioner was received before the imposition of moratorium, therefore, the respondent vide their letter dated 05.12.2011 i.e. after imposition of moratorium and completion of their planning proposal sent a quotation of Rs.134,033/- for new connection to be deposited in favour of the Sui Southern Gas Company Limited (SSGCL) so that new gas connection could be provided. However, according to the petitioner, this letter was not received by them which led them to file the instant petition seeking direction for installation of sui gas connection. Mr. Asim states that in case the petitioner would have made payment in consequence to their demand dated 05.12.2011; gas connection would have been provided. However, at present connection could not be provided on account of moratorium imposed by the Government of Pakistan vide their letter dated 4.10.2011.

Perusal of the letter dated 04.10.2011 of Ministry of Petroleum & Natural Resources imposing moratorium reflects that in all cases where consumers/customers had applied for new gas connection and had made payments, were not included in the moratorium and the Sui Southern Gas Company Ltd. were directed to provide gas connection to such consumers notwithstanding moratorium, which fact alone is sufficient to demonstrate that the application of moratorium was prospective. All present also accede to this proposition. In the circumstances, we are of the tentative view that the moratorium imposed by the Government of Pakistan would not apply to the Petitioner.”

Perusal of aforesaid order reflects that we have already observed that the moratorium would be prospective in nature. It has specifically dealt with such situation in respect of gas connections to CNG Sector and others, and therefore in our view, the petitioners who had already applied for gas connections to respondent No.2 prior to the date of moratorium dated 04.10.2011, would not be covered by such directions of respondent No.1, as the impugned moratorium can only be applied prospectively and not retrospectively. Accordingly we hold that insofar as petitioners in CP No. 4811 and 4812 of 2013 are concerned, since admittedly they had applied for supply of Gas connections prior to the issuance of the impugned moratorium dated 4.10.2011, their case would fall outside the scope of the said moratorium and are accordingly entitled / eligible for Gas connection(s) notwithstanding the moratorium.

7. The other issue which has been raised on behalf of the petitioners is in respect of discrimination and classification of high rise buildings by respondent No.2 on its own. In fact this was also dilated upon in the Order dated 10.10.2014 in the following terms:-

“It has also come to our notice that the residential project comprising of ground plus four even after the imposition of moratorium are being provided with new gas connection and so also the consumers/customers which require gas to their residence. On our query that as to how gas connections are being provided to buildings comprising ground + 4, Mr. Asim contended that “high rise” means a building which has more than four floors, however, such definition does not find support either from the letter of the Ministry imposing moratorium or from the definition of “high rise” itself, which means a building having many storeys it could be four, forty or even more. Additionally, if instead of 14 storey building as of the petitioner, four buildings having ground + 4 would have been constructed on the same area, the respondents would have allowed gas connections to all. To us, it appears that moratorium policy of Government of Pakistan is not only discriminatory but lacks application of mind and or reason. To examine this aspect let notice be issued to the Additional Attorney General for Pakistan. Mr. Obaid-ur-Rehman Khan after going through the statement filed by the Sui Southern Gas Company today in Court states that the petitioner would deposit a sum of Rs.134,033/- plus Rs.156,000/- and would further comply with all the formalities.”

8. It would not be out of place to observe that the moratorium itself does not specifically deals with the issue that as to whether which of the building(s) will be classified as a high-rise building(s) and this has perhaps led to the situation, whereby, respondent No.2 on its own has made certain classifications of persons to whom the gas connections can be given or not. The idea and purpose of the moratorium is to conserve natural gas and perhaps the way and in the manner, it has

been imposed, leaves no doubt in our minds that many gates have been kept open for the authorities concerned, to grant or refuse a gas connection. Such categorization of persons ought to have been done by having a reasonable classification, which could pass the litmus test prescribed by the Hon'ble Supreme Court in its various judgments including the judgment in the case of ***I.A. Sherwani and others (supra)***, wherein, the Hon'ble Supreme Court has laid down certain parameters in the following manner:-

*(i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;*

*(ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;*

*(iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;*

*(iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;*

*(v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25:-*

*(vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;*

*(vii) that in order to make a classification reasonable, it should be based--*

*(a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;*

*(b) that the differentia must have rational nexus to the object sought to be achieved by such classification.*

9. Similarly in the case of ***Inamur Rehman Vs Federation of Pakistan & others (1992 SCMR 5632)*** the Hon'ble Supreme Court has been pleased to observe that "There can be no cavil against this proposition as it is a well-recognized rule of Constitutional interpretation that there is a presumption in favour of the Constitutionality of a legislative enactment but if there is on the face of a statute no classification at all and no possible differentia, with reference to the object of the enactment as regards the persons or persons subjected to its provisions, then the presumption is

*displaced. We cannot be asked to presume that there must be some undisclosed or unknown reasons for subjecting certain individuals to discriminatory treatment, for, in that case we will be making a travesty of the fundamental right of equality before law enshrined in the Constitution. Reference was also made by him to Jibendra Kishore v. Province of East Pakistan PLD 1957 SC (Pak) 9 and Wais Meah v. The State PLD 1957 SC (Pak) 157. The propositions relied upon are also undisputed that equality before law as contemplated by Article 25 does not mean equality of operation of legislation upon all citizens of the State. But in this case, it has been demonstrated that certain individuals or a group of people, without any rational basis have been denied the equal protection of law in the matter of legislation available to the generality of the other citizens of the State.”*

10. The Hon’ble Supreme Court in the case of **Government of NWFP Vs Meejee Flour and General Mills (Pvt) Limited., Mardan (1997 SCMR 1804)**, while referring to the principles of structured discretion has observed that *“Wherever wide-worded powers conferring discretion exist, there remains always the need to structure discretion and it has been pointed out in the Administrative law Text by Kenneth Clup Davis (page94) that the structuring of discretion only means regularizing it, organizing it, producing order in it so that decision will achieve the high quality of justice. The seven instruments that are most useful in the structuring of discretionary power are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedure. Somehow in our context, the wide worded conferment of discretionary powers or reservation of discretion, without framing rules to regulate its exercise, has been taken to be an enhancement of the power and it gives that impression in the first instance but where the authorities fail to rationalize it and regulate it by Rules, or policy statements or precedents, the Court have to intervene more that often than is necessary, apart from the exercise of such power appearing arbitrary and capricious at times.”*

11. It is of utmost importance in the given facts of the present petitions that we must examine the implication of Article 9 of the Constitution, which provides that *“No person shall be deprived of **life** or liberty save in accordance with law”*. The right to life includes the right to livelihood. It is to be appreciated that the right to livelihood includes the means of living and the right to livelihood must be regarded as a part of the right to life. Here depriving from the means of livelihood (*Non supply of Gas connections*) in fact amounts to depriving the petitioners from the right to life, as without effective means of livelihood, no person

can live. Depriving a person from his livelihood is in fact amounting to depriving from right to life, and would amount to violation of the fundamental right guaranteed under Article 9 of the Constitution. It is not only that a person is entitled for his life and livelihood under Article 9 *ibid*, and it is not merely the physical existence that matters, but quality of life is also of utmost importance. We need not go in to the details as to what would be the quality of life without any Gas connection of a citizen who happens to be the resident of 5<sup>th</sup> floor of a residential building constructed after the date of moratorium i.e. 4.10.2011. In our view the denial of Gas connection is denial of life as it is to be understood in its fullness and richness within the ambit of Article 9 of the Constitution. We are also of the view that though the impugned moratorium is not a law as contemplated in Article 9 *ibid*, but, even otherwise, the safeguard and exception in Article 9 “*save in accordance with law*” means that such law must be reasonable, fair, just and must not be arbitrary, whimsical and fanciful.

12. Though we of the considered view that policy matters are not to be interfered with by the Courts normally and judicial restraint must be exercised, except where basic and fundamental rights guaranteed under the Constitution are being violated as in such circumstances and situations, the authority and jurisdiction of the Courts is not ousted absolutely. We have examined and perused the impugned moratorium in its entirety, and, the same appears to have been issued without any proper rationalization as natural gas cannot be conserved in such a manner, whereby, the gas connections as well as supply is provided to better placed Consumers of the same sector / class in which poor are deprived. A domestic Consumer living in a bungalow of 2000 Sq. Yards is provided with the Gas connection, whereas, a poor domestic consumer living on 5<sup>th</sup> Floor in a small apartment building is denied the same facility. Moreover, respondent No.1 in its comments has not even bothered to defend such action except that the same has been issued due to increasing gas shortfall, whereas, no other ground has been raised nor any proper Para-wise reply has been filed by them except “**No comments**”. This non seriousness on the part of respondent No.1 speaks for the callous and non-responsive attitude in attending matters of such importance and serious nature involving important and pivotal questions affecting a large number of citizens of this Country on the one hand, and of the State and management of its affairs in respect of natural resources of this Country, on the other. Though the question of



supply of gas to other sectors is directly not in dispute before us but still we are of the opinion that while issuing such policies, the respondent No.1 has to take into account that supply of natural gas to the citizens of this country for its domestic consumption is of utmost priority without any discrimination and it is the responsibility of the State to provide such basic utility. It is not that this country does not have enough production of natural gas for domestic consumers, however, over the years its usage by the industrial as well as CNG sector has over burdened the supply mechanism and has in fact created a shortfall compelling the government to resort to alternative measures including importation of LNG as well as utilization of solar energy. This mismanagement has led to a situation, whereby, the citizens of the Country are now being denied gas connections for domestic consumption, which otherwise is their fundamental right under the Constitution. It is also pertinent to observe that if such moratorium is to be placed then it should be across the board, with no exception(s), (like closure of Gas to all persons of similar category or class), as presently it appears that the gas connections are available to residential houses without any restrictions as well as to residential buildings having ground plus four floors, but not to residents of a building residing on the 5<sup>th</sup> Floor. This rationale is not at all understandable. Such restriction placed on residential buildings having more than four floors would not, in any manner, conserve the supply of natural gas, as other residential houses and apartments are being regularly supplied gas connections. This to our understanding is discriminatory in nature as there is no restriction and or ban on construction of residential building(s) having more than four floors, as in fact the projects under discussion have been granted all requisite permission(s) and NOC's by all concerned. A citizen residing on the 5<sup>th</sup> Floor of a residential building cannot be deprived of its fundamental rights and allowed to be discriminated on the basis of a classification arrived at by Respondent No.2, without any lawful authority, and or basis, whereas, even otherwise, Respondent No.1 has not been able to reasonably justify the moratorium on High Rise buildings on the touchstone of a policy decision which prima facie appears to be without any basis or rationale and or any supporting material. The respondent No.1 ought to have come forward with some cogent and substantial material which compelled the State to issue the impugned moratorium, including the quantity of Gas saved, thereafter, and, further, how much quantity of

Gas was being supplied out of such conservation, if any, to the other Sectors including the Industrial / CNG Sector. In fact the Government must set its priorities keeping in view the fact that Gas supply to Domestic Consumers is of utmost importance and is a basic need. We believe that the State must take cogent initiatives for uninterrupted supply of Gas to domestic consumers on priority, but to our dismay, it appears that none has so far been taken, and instead a complete ban has been imposed on Gas connections to a certain class of people without explaining / and or giving any justifiable reason. Moreover, the moratorium was imposed in 2011, whereas, now we are in 2016, but unfortunately nothing has been placed before us that as to why the moratorium still continues, and, whether it was ever revisited and scrutinized from any angle to accord some relief to the deprived citizens of this County.

13. In view of hereinabove facts and circumstances of the case, we are of the view that the moratorium dated 4.10.2011 insofar as it directs that "*Natural Gas through Sui transmission system will not be provided to high rise buildings.....*" cannot be sustained on the touchstone of Articles 9 and 25 of the Constitution of Islamic Republic of Pakistan and is accordingly set aside. It is further held that the classification of residential building having more than four floors as a *high rise building* by respondent No.2 is without any lawful authority and hence being illegal is also hereby set aside.

14. All the petitions are allowed and the respondents are directed to provide Gas connections to the petitioners forthwith.

Dated: 22.01.2016

Judge

Chief Justice