

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 2970 of 2021
Suit No. 2971 of 2021

Date	Order with signature of Judge
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1.Suit No. 2970 of 2021

- 1.For order on CMA No.22105/2021
- 2.For order on CMA No.22106/2021

2.Suit No. 2971/2021

- 1.For order on CMA No.22103/2021
- 2.For order on CMA No.22104/2021

16.12.2021

M/s. Abid S. Zuberi, Ayan M. Memon, Ali Zuberi, Hasaan Nadeem Qamar and Muhammd Nawaz Khan, Advocates for the plaintiffs

1. Urgency granted.
2. Learned counsel for the plaintiffs submit that plaintiffs are leading General Industries (non-export) based in Karachi and other parts of the province of Sindh creating thousands of job opportunities, as well as contributing billions of rupees as tax revenues for the national exchequer, greater than any other province of the country. Learned counsel draws court's attention to Article 158 of the Constitution of Islamic Republic of Pakistan, 1973 where framers of the Constitution envisaged that provinces in which well-heads of natural gas were situated shall have precedence over other parts of Pakistan in meeting their own requirements of gas. Learned counsel having read the said Article of the Constitution states that at present approximately 72% of the natural gas is being produced from the well-heads situated within the province of Sindh, while total consumption of gas within the Province does not exceed more than 46% (i.e. the province produces more gas that its consumes).

Learned counsel by pacing reliance on the case of Fashion Knit Industries v. SSGC Limited (2017 CLCN 141) stated that this High Court

has already upheld Art. 156 and declared “Sunday Closure Notices” issued by the SSGC illegal, unlawful and ultra vires to the Constitution as Art. 156 required the province in which a well-head of natural gas was situated to have precedence over other part of Pakistan in meeting the requirements from that well-head. Not only so, per learned counsel the said judgment also declared gas as “essential commodity” and held that *no government could take away from one thing, and provide it to other*. Per learned counsel these are not only the views expressed by this court, as in the case of *Cherat Cement Company Nowshera v. Pakistan through Secretary Ministry of Petroleum and Natural Resources* (2016 PLD 32) Hon’ble Peshawar High Court having observed that instead of giving precedence to petitioner’s cement manufacturing unit, the units in other Provinces were given preference and petitioner was deprived of its legal and constitutional right whilst the province had surplus gas over and above its own consumption, held that manufacturing units situated in Khyber Pakhtunkhwa Province should have precedence over such units located outside the Province, and by allowing the petition directed the authorities to act in accordance with law and Constitution and forthwith supply gas to cement manufacturing unit of the petitioner. The same Court, per learned counsel in the case of *Lucky Cement Limited v. Federation of Pakistan* (2011 PLD 57), where petitioners sought direction to authorities to ensure uninterrupted supply of natural gas in conformity with mandate of Art. 158 of the Constitution directed the authorities to adhere to letter and spirit of Art.158 of the Constitution while dealing with petitioners and all stake-holders in the Province vis-a-vis the supply of gas. Per learned counsel similar were the views expressed by the Hon’ble Islamabad High Court in the case of *Shandar Petroleum/CNG v. Federation of Pakistan* (2012 CL 1714), except the Hon’ble High Court refused relief claimed by the plaintiff by observing that Capital Territory of Islamabad was not a province to fulfill requisite of Article 158. To conclude with,

learned counsel placed reliance on the case of *Engro Fertilizers Limited v. Islamic Republic of Pakistan* (2012 PLD 50) where my lords in Paragraph 35 held that *“when Article 158 and Article 172 are read together leaves no doubt in mind, that mineral, oil and natural gas produced in any province vest in the Province producing it and the Federal Government jointly and equally. However, Article 158 clearly mandates that in case of natural gas, as against the mineral and oil, the Province in which a well head is situated shall have precedence over other parts of Pakistan in meeting the requirement from the well head situated in that particular Province”*. Per learned counsel policy regarding supply and distribution of natural gas as shown from foregoing fell within Constitutional framework, and for the reasons enumerated in the foregoing where an inherent element of unreasonableness has been successfully demonstrated, violation of a fundamental right and provisions of Art.158 of the Constitution have created actionable wrongs, needed to be rectified through these suits.

Learned counsel as second leg of his arguments, refers to Article 154 wherein Council of Common Interest is mandated to formulate policies in relation to matters falling in Part 2 of the Federal Legislative List and enables CCI to exercise supervision and control over related institutions. Per learned counsel, Part-2 includes the subject of “natural gas” alongwith other minerals and states that framers of the Constitution not only well understood the need of supply of gas in accordance to Article 158, but also felt it necessary that the business of supply of gas be regulated by the Council of Common Interest, which per learned counsel, as given in Article 153 is to including Prime Minister as well as Chief Ministers of four provinces besides three Additional Members from the Federal Government

Legislative subjects, per learned counsel under Part-II of the Federal Legislative List require a coordinated and intergovernmental policy. CCI is thus mandated to formulate and regulate policies in

relation to matters in Part-II of the Federal Legislative List and to exercise supervision and control over related institutions. Gas being a related subject, falls under the supervision and control of the CCI and any disturbances in gas supplies, which to effect across the board, must be subservient to CCI's nod, which institution aims to encourage cooperative federalism and strengthens provincial autonomy at the same time. Per learned counsel in the case of Punjab Higher Education Commission v. Dr. Aurangzeb Alamgir (2017 PLD 489) Hon'ble Lahore High Court has held that CCI alone be let to formulate and regulate policies in respect of matters falling in Part-II of the Federal Legislative List as the Constitutional wisdom behind it is to embed and mainstream participatory and cooperative federalism in nation's governance as such policies, with constitutional fiat behind them, are aimed to set footprint of provincial autonomy and federalism.

With this background, learned counsel refers to annexure P-4 available at page No. 55 which is a plan presented to the Cabinet on the matter of Load Management for the Month of December, 2021 to January, 2022 wherein it was decided that gas will be provided to General Industries (non-export) on weekly rotational basis with one day off for each sector, however, per learned counsel, the ill fated actual supply and forementioned policy are tangently opposed as SSGC which supplies gas to the Province of Sindh and Balochistan, where total demand of non-export Process and Captive Industries for the month of December, 2021 - January, 2022 (each) stood at 190 MMCFD, Government decided to supply 0 MMCFD of gas, making curtailment of 100% (i.e. a complete black-out of gas), while in contrast thereof, SNGPL that supplies gas to the consumers of Province of Punjab and Khyber Pakhtunkhuwa, for the total demand of 118 MMCFD for the same period, curtailment is only made to the tune of 85 MMCFD, making available 33 MMCFD of gas for the consumers in those provinces. Learned counsel contends that such a divergence and discriminatory

treatment in demand and supply of gas consumers between different provinces is not only violative of the defendant No.1's policy, the said scheme is also violative of Articles 153 and 154 of the Constitution as the instant matter ought to have been placed before the Council of Common Interest (Defendant No.4) for the reasons mentioned earlier. It seems even after inclusion of clause (3) in Article 172 of the Constitution by the 18th Amendment, Chairman Senate vide his Ruling dated 23.01.2018 titled "Operationalization of joint ownership of mineral oil and natural gas" has penned down that the intent of the drafters of the 18th Constitutional Amendment read with the proceedings of the Implementation Commission (constituted in terms of clause 9, Article 270 AA of the Constitution) clear the mist that when clause (3) in Article 172, Constitution, 1973, was inserted, the intent of the legislation was to provide equal ownership of mineral oil and natural gas within the province or territorial waters adjacent to a province as the federation was yet required to exercise the authority in executive, administrative and regulatory spheres jointly and equally with the provinces, in terms of the new role of the federation and the provinces, as conceived by clause (3) of Article 172, Constitution, 1973, and a new mechanism was to be devised to exercise joint authority by the federation and the provinces with regard administration and regulation of oil and gas sector. Per learned counsel, for this reason the Implementation Commission recommended that that a Regulatory Authority be established through an act of parliament giving due representation and share to the provinces, and since it transpired that the office of Director General Petroleum Concessions was assumed by the federal government as a substitute of the said Regulatory Authority, provinces have been consistently complaining about no or minimal consultation with them regarding the decisions being taken with regard to the oil and gas sector, as evident from the said Ruling.

With this background, learned counsel draws court's attention to

the impugned notice available at page 49 (annexure P-2) wherein 100% closure for all General Industries (non export including captive power units) is announced by the Defendant No.3 SSGC scheduled to start from 11.12.2021 till further notice, where per learned counsel, attribution towards the domestic consumers of Balochistan in the said notice is blatantly false as total consumer needs for the province of Balochistan are only a fraction (about 6%) of country's total output, whilst Balochistan remains the second largest producer of gas as number of well-heads in the said province are only second to Sindh. Not only so, per learned counsel defendant No.3 in the impugned notice even has not even stated that when gas supply will be normalized. Learned counsel contends that for the reasons mentioned in the foregoing, subject notice is issued in utter violation and utmost disregard to the framework laid down by the Constitution, as well as, aimed to disturb inter-provincial harmony. Learned counsel contends that such abrupt and uncertain closure of gas would not only bring the business sector to a halt, but will also result in joblessness as well as pushing the plaintiffs into defaulting on the investment made in their business, least to say.

Contentions raised by the learned counsel merit considerations. Issue notice to the defendants as well as Attorney General under Order XXVII-A CPC for 11.01.2022, in the meanwhile the defendants are restrained from giving any effect to the impugned notice dated 10.12.2021 (annexure P-2) till the next date of hearing, as well as, they are restrained from disconnecting gas being supplied to the plaintiffs subject to payment of currently monthly bills by the latter.

Office is directed to place copy of this order in suits listed above.

JUDGE