

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 611 of 2022

[Western Textile Industries *versus* The Federation of Pakistan and another]

And

Suit No. 610 of 2022

[Union Fabrics Private Limited *versus* The Federation of Pakistan and another]

- Date of hearing : 19.05.2022 and 01.06.2022.
- Date of Decision : 31.08.2022.
- Plaintiff(s) : Western Textile Industries and Union Fabrics Private Limited (**in both suits**) through Mr. Ali Nawaz Khuhawar, Advocate.
- Defendant No.1 : The Federation of Pakistan, through Mr. Ghulam Mohiuddin, Assistant Attorney General for Pakistan.
- Defendant No.2 : Sui Southern Gas Company, through M/s. Ameer Nausherwan Adil and Ghazi Khan Khalil, Advocates, along with M/s. Bilal Farooq Alvi, Senior Legal Counsel, SSGCL Department, and Nadra Tabassum, Deputy Manager, SSGCL, present.

ORDER

Muhammad Faisal Kamal Alam, J: - Both the Injunction Applications – C.M.A.Nos.6503 and 6505 of 2022, in the above two Suits are decided by this common Order.

2. As per the basic facts of plaints in both suits, Plaintiffs are manufacturers, exporters and licensed as an Export Oriented Unit (“**EOU License**”) under the Government Notification and as such utilities connections of Plaintiffs are registered with the Ministry of Commerce and Textile, entitling them to export oriented tariffs on the supply of Utilities, that is, Gas, RLNG and Electricity. Plaintiffs and DefendantNo.2 (*Sui Southern Gas Company*) executed a Contract for the supply of Natural Gas;

both the Contracts for the Supply of Gas For the Industrial Use [GSAs], are appended with the plaints as **Annexures ‘C’**. It is claimed that with the passage of time, sanctioned gas load has been increased by the Defendants after fulfilling requisite formalities, including the payment of enhanced Gas Security Deposit [GSD], and currently, both the Plaintiffs [of Suits numbers 610 and 611 of 2022] are entitled to the supply of 37,882 and 9166 MMBTU [respectively] of Gas, per month, being the **Sanctioned Load**. On 24.01.2022, in the case of Western Textile Industries (in Suit No.611 of 2022) and 03.02.2022 (in the case of Union Fabrics Private Limited – Plaintiff in Suit No.610 of 2022), *purportedly*, gas supply to the respective industrial Units were disconnected by the representatives of Defendant No.2 without any prior notice, which caused immense loses to both Plaintiffs as their production had stopped. Although, gas supply was restored after few days, but in the intervening period both Plaintiffs’ representatives were coerced to sign the Undertakings for supply of RLNG for “*additional gas volume other than sanctioned monthly volume*”, dated 28.01.2022 (in Suit No.611 of 2022) and 08.02.2022 (in Suit No.610 of 2022), which UNDERTAKINGS [Annexures M and M/1 of the plaints] have been impugned in both the present *Lis*, so also the interlocutory applications under consideration, on the ground that they have adversely affected the business operations of Plaintiffs and is not only violative of the supply of Gas Supply Agreements (*ibid*), Articles 9, 18 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973 (“**Constitution**”), relating to the fundamental rights of citizens, *inter alia*, for doing lawful business and trade activities, but also breaches the Notification dated 24.02.2022, which was issued by Ministry of Energy, Petroleum Division, Government of Pakistan, available in record as Annexure P/1, at page-549 of the Court file. It is necessary to mention that in Suit No. 610 of 2022

[Union Fabrics Private Limited] the Contract for Supply of RLNG is also questioned on the above grounds.

3. Learned counsel for Plaintiffs has also referred to the judgment handed down by the learned Division Bench of this Court in number of petitions, *inter alia*, observing, on the information given by present Defendant No.2, that 15 percent of the Gas produced in Sindh is exported to other Provinces, which if continued, the Province of Sindh might suffer gas load shedding in the Summer. It was further observed that this action of Federal Government is violative of Article 158 of the Constitution. Copy of the judgment is available at page-175 of the Court's file. It is stated that once the Committee has been constituted to decide the present Issues, then there was no justification for compelling the Plaintiffs to sign the above Undertaking / Indemnity for supply of RLNG Plaintiffs' counsel has cited the following case law_

- i. **1992 S C M R 1852**
[*Government of Pakistan versus M.I. Cheema, Dy. Registrar, Federal Sariat Court and others*];
- ii. **2021 M L D 1049**
[*Security Organizing System Pakistan (Pvt.) Ltd. through Chief Operating Officer versus National Bank of Pakistan through President and 6 others*]

4. The above case law cited in support of arguments, that at this interlocutory stage, interim injunction can be granted, even it could be equated with the final relief, if the circumstances exist and the refusal of interim relief would result in the frustrating the entire suit proceeding. It is a common prayer in both injunction applications, that the operation of the impugned Undertakings (*supra*) given by Plaintiffs, be suspended so also the bills for the month of February and March, 2022, besides, Defendants be restrained from interrupting the supply of Natural Gas, imposition of

general RLNG tariff rates and other charges in pursuance of the impugned Undertakings and Bills.

5. Contesting Defendant No.2 – SSGCL has rebutted the arguments of Plaintiffs and has raised serious question about the maintainability of present *Lis*, primarily, on the ground that in terms of Section 11 of the Oil and Gas Regulatory Authority Ordinance, 2002 (“**OGRA Law**”), issues of the nature should be agitated before the Oil and Gas Regulatory Authority and not through the present proceeding. Learned counsel for Defendant No.2 has relied upon the following reported decisions_

- i. **2021 S C M R 2094**
[*General Manager, SNGPL, Peshawar versus Qamar Zaman and others*];
- ii. **2018 S C M R 1012**
[*Oil and Gas Regulatory Authority through Secretary versus Sui Southern Gas Company Limited and others*];
- iii. **2019 C L C 1998**
[*Muhammad Azam Khan Niazi versus General Manager, SNGPL, Islamabad*];
- iv. **2021 C L C 851**
[*Sahibzada Nisar Ahmad Jan versus Sui Northern Gas Pipeline Ltd., through General Manager*]; and
- v. **P L D 2021 Islamabad 378**
[*Messrs Sui Southern Gas Company Limited through Attorney versus Oil and Gas Regulatory Authority through Chairperson and 2 others*].

6. It is argued that since Plaintiffs have breached the agreed load for the provision of gas as mentioned in the above **GSA**, hence, upon the instructions of the Federal Government, a separate RNLG Contract is to be signed after competing requisite formalities; while clarifying that such instructions is a uniform policy for all the consumers / customers; however, pending formalities, the UNDERTAKINGS are given by the Plaintiffs for the supply of RLNG, in the event the Plaintiffs exceed their respective sanctioned load in terms of the above GSA. It has been categorically denied that any duress or intimidation was caused to Plaintiffs for signing the

above documents, viz. Undertakings / Indemnity for additional RLNG Load. Clauses 17 and 18 of the GSA are cited, in support of the stance, that Defendant No.2 reserves the right to terminate the GSA, if it is found that consumers (in the present case Plaintiffs) have made any alteration, addition or extension to the existing natural gas Installation, without obtaining prior approval of Defendant No.2. Main stance of Defendant No.2 [SSGCL] is mentioned in Paragraph 6 of its Counter Affidavit; *inter alia*, that in the year 2017, the Federal Government relaxed the earlier moratorium on enhancement of gas load, subject to the condition that load enhancement will only be allowed by allocation of RLNG volumes.

7. Précis of the case law cited by learned counsel for Defendant No.2 is, that since under the above referred OGRA Law, Oil and Gas Regulatory Authority has ample powers to determine any nature of the dispute between a licensee (Defendant No.2) and the Customer / Consumer (present Plaintiffs) hence the present suits are not maintainable. A specific reference has been made to Section 43 of the OGRA Law, which has an overriding effect and has been so interpreted by different Courts, including the Honourable Supreme Court, which to a question, has answered in the affirmative, that although jurisdiction of Civil Court being plenary in nature, has not been specifically ousted in the above Law, yet the exclusive jurisdiction vested in the concerned Authority in the Special Law [OGRA Law] would also bar the jurisdiction of a Civil Court. It is held that under the Complaint Resolution Procedure Regulations, 2013 (for Natural Gas, Liquefied Petroleum Gas [LPG], Compressed Natural Gas [CNG] and Refined Oil Products) - **Regulations, 2003**, even an injunctive relief can be granted by the Authority.

8. Undoubtedly, the provisions of OGRA Law and its purposive interpretation given by the Courts, have comprehensively elaborated the

statutory scheme. However, in the present cases, issue of implementation of Policy concerning RLNG is to be considered, coupled with the fact, that Plaintiffs have seriously disputed the Undertakings given by them for supply of RLNG and the apprehended discontinuance of Gas Supply, as it was done before. Therefore, in my considered view, the facts of present case fall within the exception to the Rule laid down in the above Case Law relied upon by the learned Advocate of Defendant No.2, and the plaints of both these Suits should not be rejected at this stage.

9. Similarly, the assertion of Plaintiffs, that the Undertakings for the provision of RLNG have been taken by Defendant No.2, by exercising coercive measures and duress, cannot be decided at this stage, as it is a triable issue for which evidence is to be led. Fact of the matter is that since gas connection has been restored and both the Industrial Units of Plaintiffs are running, thus, presently, injunctive relief is declined.

10. Before disposing of both the Injunction Applications, in view of the above discussion, it must be reiterated, that Defendants have to formulate and implement a Policy, which should not result in the closure of businesses of consumers, including present Plaintiffs, as it would violative of Articles 18 and 24 of the Constitution, *inter alia*, relating to trade, business and proprietary rights. However, both the Plaintiffs are at liberty to invoke the jurisdiction of Oil and Gas Regulatory Authority, in accordance with the above Statute and other Regulations and if representations are filed, same should be decided expeditiously by the OGRA.

11. Both applications stand disposed of.

Judge

Karachi.
Dated: 31.08.2022.

Riaz / P.S.