

## THE HIGH COURT OF SINDH, KARACHI

### Present:

Mr. Justice Adnan Iqbal Chaudhry.

- Suit No.2580 of 2021 : Al-Karm Towel Industries Private Limited and others versus Federation of Pakistan and others.
- Suit No.2719 of 2021 : Rashid Silk Mills versus Federation of Pakistan and others.
- Suit No.2720 of 2021 : Liberty Mills Limited versus Federation of Pakistan and others.
- Suit No.2721 of 2021 : Artistic Fabric & Garment Ind. (Pvt.) Ltd., versus Federation of Pakistan and others.
- Suit No.2897 of 2021 : AZ Textile versus Federation of Pakistan and others.
- For the Plaintiffs : M/s. Taimur Ali Mirza and Ali Nawaz Khuhawar, Advocates.
- For FOP : Mr. Bilal Khilji, Assistant Attorney General for Pakistan a/w Mr. Mansoor Ahmed, MIS Officer, MTO, FBR.
- For the Defendants : M/s. Ghazi Khan Khalil and Ameer Nausherwan Adil, Advocates for the Defendants 4 and 5 [SSGC] in **Suit No.2580 of 2021 & Suit No.2719 of 2021.**
- Mr. Kashif Hanif, Advocate for the SSGC a/w Mr. Bilal Farooq Alvi, Senior Legal Counsel SSGC, Legal Department.
- Dates of hearing : 07-04-2022, 14-04-2022, 25-04-2022, 12-05-2022 & re-hearing on 25-02-2023.

### ORDER

**Adnan Iqbal Chaudhry J.-** These suits pray *inter alia* for a declaration “that the Plaintiffs are entitled to the supply of Re-Gasified Liquefied Natural Gas [RLNG] at \$ 6.50 per MMBTU”. In that vein the Plaintiffs have moved miscellaneous applications for restraining the Sui Southern Gas Company Ltd. from billing the Plaintiffs for RLNG in excess of \$ 6.50 per MMBTU, and from taking coercive action for

recovering the bills in excess thereof. By consent of learned counsel, all such applications pending in these suits were taken up for hearing together.

2. The Plaintiffs are export-oriented manufactures who are enrolled with the Federal Board of Revenue under Circular No. 04/2020 as persons who are eligible for concessionary tariff of electricity, gas and RLNG under a policy decision dated 02-12-2020 of the Economic Coordination Committee [ECC] of the Cabinet. The Plaintiffs consume RLNG through the distribution network of the Sui Southern Gas Company Ltd. under contracts of gas-supply with the latter.

3. By way of context, the legal framework for fixing the sale price of RLNG has evolved as follows:

- (i) The power to fix the sale price of a 'petroleum product' was with the Federal Government under section 2(4) of the Petroleum Products [Petroleum Levy] Ordinance, 1961;
- (ii) By SRO 405(I)/2015 dated 07-05-2015,<sup>1</sup> 'RLNG' was added to the list of petroleum products as entry 25 in the First Schedule to the Ordinance of 1961. That SRO also added SSGC and SNGPL at entries 13 and 14 to the companies regulated by way of the Second Schedule to said Ordinance;
- (iii) By SRO 971(I)/2015 dated 30-09-2015,<sup>2</sup> issued under section 8 of the Ordinance of 1961, read with sections 6(2)(r) and 21(2)(b) of the OGRA Ordinance, 2002, the Federal Government delegated to the OGRA powers under the Ordinance of 1961 in respect of RLNG *viz.* the power to fix its sale price subject to the policy guidelines of the Federal Government.<sup>3</sup>
- (iv) On 28-02-2022, the Oil and Gas Regulatory Authority (Second Amendment) Act, 2022 was enacted<sup>4</sup> to amend the OGRA Ordinance, 2002 to include 'RLNG' in the definition of 'natural gas'<sup>5</sup>; and to add section 43B which stipulates that: "Notwithstanding anything to the contrary contained in this Ordinance or any other law for the time being in force, the Authority, in accordance with the policy guidelines issued by the Federal Government from time to time, shall determine

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<sup>1</sup> The Gazette of Pakistan dated 11-05-2015.

<sup>2</sup> The Gazette of Pakistan dated 01-10-2015.

<sup>3</sup> Liquefied Natural Gas (LNG) Policy, 2011.

<sup>4</sup> Published in the Gazette on 05-03-2022

<sup>5</sup> Clause (xvii) of section 2(1) of the OGRA Ordinance, 2002.

and notify the sale price of RLNG to be charged by a licensee from its consumer.”

4. At the time relevant to these suits, the Oil and Gas Regulatory Authority (Second Amendment) Act, 2022 had not been enacted, and the sale price of RLNG was determined by OGRA in exercise of powers delegated under the Petroleum Products [Petroleum Levy] Ordinance, 1961 which were subject to the policy guidelines of the Federal Government.

5. In its meeting held on 16-08-2021, the ECC considered the summary of the Ministry of Commerce, dated 10-08-2021, titled “Continuation of Concessional Rates of Electricity and RLNG to Export Oriented Sectors”, and approved para 5 thereof which proposed *inter alia* that: “RLNG may be provided at US\$ 6.5/MMBTU all-inclusive to export oriented sectors during Financial Year 2021-22.” After this decision was ratified by the Federal Cabinet on 24.08.2021, the Ministry of Energy (Petroleum Division) instructed the Sui Northern Gas Pipeline Ltd. [SNGPL] *vide* letter dated 08-09-2021 to implement the same. Apparently, no such instruction was issued to the Sui Southern Gas Company Ltd. [SSGC] who continued to bill the Plaintiffs for RLNG at the higher rate/tariff determined by the OGRA.

6. It is the case of the Plaintiffs that ECC’s decision dated 16-08-2021 approving RLNG at the concessionary rate of USD 6.5 per MMBTU for financial year 2021-22, is applicable not only to eligible consumers of SNGPL in Punjab, but also to eligible consumers of SSGC in Sindh. In the alternate it is contended that such decision of the ECC is discriminatory of the Plaintiffs and infringes Article 25 of the Constitution of Pakistan. Learned counsel for the Plaintiffs added that in 2023 the ECC has extended the concessionary tariff of RLNG to eligible consumers of SSGC as well, which fact reinforces the case of the Plaintiffs.

7. It is the case of the Defendants that the summary of the Ministry of Commerce over which the ECC gave its decision dated

16-08-2021, was moved only for eligible export-oriented manufacturers receiving RLNG through SNGPL in Punjab; that such fact was evident from the title of the decision itself *viz.* “*Continuation of Concessional Rates .....*”, which was a continuation of the RLNG rate of USD 6.5 per MMBTU that had been earlier fixed for certain export-oriented sectors of Punjab by ECC’s decision dated 17-09-2018.

8. Along with its written statement the Federation has produced ECC’s earlier decision dated 17-09-2018 which reads *inter alia* :

“Gas supply to the industrial sector [exporters of five zero-rated sectors namely: textile (including jute) carpets, leather, sports and surgical goods], in the Punjab will be revised from 28:72 to 50:50 for domestic gas and RLNG respectively. The weighted average gas tariff of such consumers shall be US\$ 6.5 per MMBTU. Gas price of similar consumers of SSGC and those of SNGPL in Khyber Pakhtunkhwa will remain unchanged.”

9. ECC’s decision dated 16-08-2021 when read with its previous decision dated 17-09-2018 reflects *prima facie* that its latter decision to continue the rate of RLNG @ 6.5 per MMBTU was dealing only with the supply of RLNG by SNGPL to certain export-oriented sectors in Punjab. The SSGC too affirms that. Therefore, the first submission of learned counsel for the Plaintiffs, that ECC’s decision dated 16-08-2021 was applicable also to the SSGC, is not convincing.

10. Regards the argument that the ECC has subsequently decided in 2023 to extend the concessionary regime of RLNG to eligible consumers of SSGC as well, suffice to state that if there is such a decision it would apply prospectively unless expressly made effective retrospectively. Since it was not contended by learned counsel that the subsequent decision of the ECC (if any) is effective retrospectively, it would have no bearing on the impugned decision which was for financial year 2021-22.

11. The other submission of learned counsel for the Plaintiffs was that ECC’s decision dated 16-08-2021 discriminated against the Plaintiffs who too were export-oriented manufacturers eligible for the

concessionary rate of RLNG. While learned counsel acknowledged that the decision to give such concession to export-oriented manufacturers only in Punjab was a matter of Government policy, they submitted that a policy that infringes the fundamental right in Article 25 of the Constitution of Pakistan can be checked by the Court. On the other hand, learned counsel for the Defendants, so also the learned Assistant Attorney General distinguished export-oriented manufacturers in Punjab from those in Sindh so as to explain why the concessionary rate of RLNG was proposed only for the former and not for the latter.

12. From the pleadings of the parties, documents on the record, and submissions of learned counsel, I have gathered as follows. LNG is imported into Pakistan to meet the shortfall in the supply of indigenous gas (sui gas). It is obviously a more expensive fuel. On arrival, LNG is converted to RLNG and then added to or mixed with indigenous gas to meet the shortfall in the distribution network of SSGC and SNGPL. For various categories of industrial consumers, where consumption of gas exceeds the sanctioned load, the consumer is then billed for that excess consumption at the higher tariff for RLNG which is determined by OGRA. Since shortfall in indigenous gas in Punjab is far greater than that in Sindh, a greater input/mix of RLNG is required in the system of SNGPL for Punjab, thereby driving-up gas bills of consumers over there. In this way, export-oriented manufacturers in Punjab were paying a higher price for gas than those in Sindh, and it was to reduce such disparity that a subsidy was approved by the Federal Government in the RLNG rate for said consumers in Punjab. *Prima facie*, such classification is reasonable, based on intelligent differentia, and does not amount to discrimination with the Plaintiffs. In fact, to give the Plaintiffs the same subsidy would restore the disparity and nullify the purpose of ECC's decision dated 16-08-2021.

13. For the foregoing reasons, the Plaintiffs do not make out a *prima facie* case for the grant of temporary injunctions/relief. The

applications listed below are therefore dismissed, and the differential of gas bills deposited by the Plaintiffs with the Nazir of the Court shall be released to the SSGC along with any profit accrued thereon.

In Suit No. 2580/2021: CMA Nos. 19168/2021, 20712/2021, 20713/2021;  
In Suit No. 2720/2021: CMA Nos. 20066/2021, 20862/2021, 20861/2021;  
In Suit No. 2719/2021: CMA Nos. 20064/2021, 20858/2021, 20859/2021;  
In Suit No. 2721/2021: CMA Nos. 20068/2021, 20855/2021, 20856/2021;  
In Suit No. 2897/2021: CMA Nos. 21558/2021.

**JUDGE**  
signed: 11-03-2023

Announced by & on: