

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:

Mr. Justice Mohammad Shafi Siddiqui

Suits Nos. 67 of 2016 and 1497, 2550, 2551 of 2015 and 25, 26, 27, 38, 68, 69, 70, 71, 87, 91, 92, 106, 107, 108, 110, 145, 149, 150, 163, 164, 176, 181, 182, 189, 191, 194, 210, 213, 219, 224, 227, 248, 255, 265, 292, 298, 299, 307, 322, 325, 327, 328, 376, 398, 482, 501, 511, 562, 661, 638, 1279, 1377, 1393, 1442, 1449, 1501, 1535, 1562, 1588, 1593, 1632, 1641, 1680, 1683, 1686, 1713, 1715, 1756, 1769, 1802, 1814, 1895, 1961, 2005, 2038 of 2016.

Fashion Knit Industries and
other plaintiffs in respective suits

Versus

Sui Southern Gas Company Limited

Date of hearings: 01.03.2016, 11.03.2016, 01.04.2016, 24.08.2016, 31.08.2016, 26.09.2016, 18.10.2016

Plaintiffs' through: Mr. Tasawwur Ali Hashmi Advocate, Mrs. Naveen Merchant Advocate along with Mr. Salim Ghulam Hussain Advocate, Mr. Amin M. Bandukda Advocate, Ms. Sofia Saeed Shah Advocate, Mr. Ovais Ali Shah Advocate, Mr. Muhammad Najeeb Jamali Advocate, Mr. Faiz Durrani and Mrs. Samia Durrani and Mr. Manzoor-ul-Haq Advocates, Ms. Lubna Pervez Advocate, Mr. Naeem Suleman Advocate, Mr. Arshad Hussain Shahzad Advocate, Mr. S. Mohsin Ali Advocate, Mr. Mehmood Abbas Advocate, Mr. Faheem Memon Advocate, Mr. Yousuf Moulvi Advocate, Mr. Muhammad Shahid Qadeer Advocate, Mr. M.R. Sethi Advocate, Mr. Kashan Ahmed Advocate, Mr. Shahzad Raheem Advocate, Mr. Qazi Ajmal Kamal Advocate, Mr. Darvaish K. Mandhan Advocate, Mr. Abdul Hayee Shaikh Advocate, Mr. Salman Yousuf Advocate, Mr. Junaid M. Siddique Advocate, Ms. Zara Tariq Advocate, Mr. Mukhtar Ahmed Advocate.

For defendant: Mr. Asim Iqbal along with M/s. Farmanullah, Tahir Abbasi and Naresh Aruwani Advocates.

On Court Notice: Mr. Salman Talibuddin Addl. Att. General along with Ms. Zara Tariq Advocate and Mr. Abdul Qadir Leghari, standing counsel.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This bunch of suits involve a common question as to whether defendant was justified in issuing impugned notice to all industrial concerns for Sunday closure of gas supply. These impugned notices are being issued periodically in the newspapers and

hence the date may not be relevant and important for the purposes of deciding the controversy involved; it is the text of the impugned notice which is under challenge. The text of the impugned notice is as under:-

“All industries including captive power plants will remain closed according to below mentioned schedule...”

2. The common question of law/issue was framed by consent of all learned counsels which are as under:-

1. Whether Sunday Gas Closure notice impugned in all these suits is illegal, unlawful and contrary to law and discriminatory?
2. What should the decree be?

3. All the counsels have agreed that since the controversy only involves a question of law hence this bunch of cases may be decided on the basis of material documents available on record and the law applicable thereto. Accordingly, some of the learned counsels such as Mr. Tasawwur Ali Hashmi, Mrs. Naveen Merchant, Mr. Ovais Ali Shah, Mr. Amin M. Bandukda and Mr. Muhammad Najeeb Jamali have raised common contentions and hence their arguments are sum up herein below. In reply to these arguments on behalf of plaintiffs, Mr. Salman Talibuddin, Addl. Attorney General, and Mr. Asim Iqbal appearing for defendants have argued on behalf of the defendants which are also sum up hereunder.

4. Plaintiffs' counsels have argued that the impugned notices under challenge are ambiguous for they appear to direct the industrial users to shut down their factories. These directives or command do not fall within the domain or jurisdiction of the defendant and therefore the notices are ex-facie illegal. The impugned notices are also challenged on the strength of Article 24-A of General Clauses Act as it is devoid of any reasoning. These impugned notices do not show whether the concerned ministry or the regulatory authority i.e. OGRA has the approval of such

closure and that such approval is based on law or that it is being issued under their own authority.

5. Since the plaintiffs have filed these suits only against defendant SSGC therefore at the relevant time this Court felt necessary to issue notices to learned Addl. Attorney General to assist the Court.

6. The ultimate questions that require consideration are:-

- (i) Whether defendant (SSGC) was justified and/or has lawfully issued notice of Sunday Gas Closure and is not violative of Article 24-A of General Clauses Act?
- (ii) Whether submission regarding shortage of gas to industries is untenable in view of express provision of Article 158 of the Constitution of Pakistan and availability of Gas within the wellheads situated in province of Sindh?
- (iii) Whether allocation of gas without any policy being set out and promulgated is contrary to Article 153 and 154 of the Constitution of Pakistan?
- (iv) Whether the interpretation of Article 158 of the Constitution of Pakistan requires any other meaning in terms of Constitution being considered as a living Constitution?

7. It is argued by learned counsels for the plaintiffs that the purpose behind Sunday Gas Closure is to cater demand of other provinces. Learned counsels for plaintiffs submitted that the controversy in relation to Article 158 has already been decided in cases of Rakesh Kumar Ukrani v. Federation of Pakistan (2016 CLC 1152), Cherat Cement Company v. Pakistan (PLD 2016 Peshawar 32), Engro Fertilizers Limited v. Pakistan (PLD 2012 Sindh 50) and in an unreported case titled as SITE Association v. Federation of Pakistan in C.P. No.D-1314 of 2010 by a Division Bench of this Court.

8. It is argued that an agreement/contract, decision or even policy is subservient to Article 158 read with Article 153 and 154 of the Constitution of Pakistan. Learned counsels submitted that the

interpretation of Article 158 is not ambiguous that it requires any stretched interpretation to the desire of the defendants and have relied upon the case of Rehmat Khan v. Abdul Razzaque (1993 CLC 412), Dr. Zahid Jawed v. Dr. Tahir Raza Chaudhry (PLD 2016 SC 637), Bank of Punjab v. Haris Steel (PLD 2010 SC 1109).

9. Insofar as Article 172(3) of the Constitution of Pakistan is concerned it is contended that it only pertains to ownership of gas. The question as to priority from the wellhead situated within a province is a separate issue and dealt with by another Article independently. Learned counsel for the plaintiffs lastly argued that unless policy under Article 153 and 154 of the Constitution is framed, keeping in mind the applicability of Article 158, the Sunday Gas Closure notice is patently illegal, without jurisdiction and without lawful authority.

10. In defence learned Addl. Attorney General at the very outset submitted that this Court is not competent to resolve the matter as it is subjudice before the Council of Common Interest. It is argued that the Council of Common Interest in terms of Article 154 is the competent authority to formulate and regulate policy in relation to matters in Part 2 of the Federal Legislative List. It is further claimed that the committee in its meeting held on 22.09.2016 discussed the issues pertaining to the precedence of supply of gas under Article 158 of the Constitution and import of LNG and associated matters which are substantially subjudice in these proceedings. In this regard since it is claimed to be within the domain of Council of Common Interest and also in view of the observation of the Hon'ble Supreme Court in Human Right Case No.14392 wherein it is observed that the Court exercises judicial restraint in the matter of government policy in case any fundamental rights are violated therefore this Court should refrain from interfering with such

constitutional rights which touches the policy matters to be framed by the Council of Common Interest. Counsel further relied upon the case of Watan Party v. Federation of Pakistan reported in PLD 2006 SC 697 that while exercising powers of judicial review it is not the function of the Court ordinarily to interfere in the policy making domain of the executive.

11. So also in the case of Mian Muhammad Nawaz Sharif v. President of Pakistan reported in 1993 SCMR 473 it is held that the CCI is an important constitutional institution which iron out differences, problems and irritants between the provinces inter se and the provinces and the federation in respect of the matter specified in Part 2 of Federal Legislative List. Learned Addl. Attorney General has further relied upon the case of Gadoon Textile Mills v. WAPDA reported in 1997 SCMR 641.

12. In addition to the above learned Addl. Attorney General further argued that Article 158 of the Constitution appears to suggest that the province of Sindh shall have precedence over all other provinces of Pakistan in meeting the requirement from that wellhead. It is argued that previous proceedings insofar as the interpretation of this Article is concerned reiterated the plain reading and interpretation of this article and held that the authority should adhere to the letter and spirit of Article 158 of the Constitution in relation to supply of gas. Similarly, learned Addl. Attorney General submitted that in case of Engro Fertilizer v. Islamic Republic of Pakistan reported in 2012 CLD 50 the learned Division Bench held that Article 158 and 172 are read together and there is no doubt that the minerals and natural gas produced in any province vests in that province and the Federal Government jointly and equally and the learned Division Bench held that Article 158 clearly directs that the province in which a wellhead is situated shall have precedence over other parts of Pakistan in meeting the requirement from wellhead

situated in that particular province. Similarly, the learned Addl. Attorney General also discussed the case of *Shandar Petroleum v. Federation of Pakistan* reported in 2012 CLD 1714 and *M/s Lucky Cement v. Secretary Ministry of Petroleum* reported in PLD 2011 Peshawar 57. However, learned Addl. Attorney General made an attempt to distinguish the aforesaid judgment by arguing that these are based on general arguments and in fact the two arguments were left unattended by the Court i.e. the concept of evolving Constitution and the role of the Court in balancing conflicting provisions of the Constitution of Pakistan.

13. He submitted that the two important arguments that require consideration is that the Constitution is a living organism and that the conflicting provisions of the Constitution should be interpreted in a way that a balanced interpretation in terms of the structural concept of the Constitution be evolved. It is claimed that the Constitution though is a written instrument but may be interpreted or read down in order to give constitutional provisions more pragmatic and logical meaning. It is argued that the concept of originalism and living constitutionalism are different and distinct that when interpreting the relevant provisions the interpreters stick to the original meaning of text in originalism whereas in the living constitutionalism a system of constitutional development is to be kept in consideration to produce new constitutional construction. In this regard learned counsel has relied upon the case of *Mahmood Khan Achakzai v. Federation of Pakistan* reported in PLD 1997 SC 426 and submitted that the Hon'ble Supreme Court while discussing the concept of living Constitution held that it is the experience of the past, desires of present nation and last but not least the hope for future. The Hon'ble Supreme Court further held that a Constitution is a document for all times. It cannot be rigid because such rigidity if confronted with social and political needs of the time is likely to create cracks in it.

Additionally as argued it was held by the Hon'ble Supreme Court that although rigidity is a feature of the Constitution but flexibility must be introduced by Courts as a rigid constitution may provoke violence. Such observations were held by Hon'ble Supreme Court, while referring to "Introduction to the study of the law of Constitution" by A.V. Dicey, 9th Edition.

14. The next point that is argued by learned Additional Attorney General is that in case of conflicting provisions of the Constitution specially when it pertains to fundamental right of a citizen, a harmonious and balance view be formed. He relied upon Article 38(d) of the Constitution to claim that the State shall provide basic necessities of life such as food, clothing, housing, education and medical relief for all citizens irrespective of sex, cast and creed or race as are permanently and temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment. It is claimed that the availability of gas to every citizen is now being considered as a basic necessity of life and is an inviolable duty of the State. He argued that while considering Article 38 and 158 of the Constitution with all practical approaches and realities should be reconciled and a balanced interpretation be given. Learned Addl. Attorney General claims that there is a basic fundamental conflict in between the two Articles.

15. It is claimed that in the year 2004-05 there was sharp increase of shortfall in the natural gas and there was demand of demand of 6000 MMCFD against supply of 4000 MMCFD while the unconstrained demand of gas was estimated to 8000 MMCFD or more than double the domestic production. It is claimed that a rigid interpretation of Article 158 would entail depriving gas supply to meet the basic requirement of life to a vast majority of population in terms of above statistic. He thus claimed

that a clear case of conflicting article can be seen if a rigid interpretation is given.

16. In support of above learned Addl. Attorney General relied upon the case of *Muslim League (Nawaz) v. Federation of Pakistan* reported in PLD 2007 SC 642 wherein it has been observed that while interpreting fundamental rights guaranteed by the Constitution cardinal principle has always to be borne in mind that these guarantees to individuals are subject to overriding necessity or interest of the community and that a balance has to be struck between these rights of individuals and the interest of the community. In any serving interest of community, an individual or a member of individuals have to be put to some inconvenience and loss by placing restriction of some of their rights guaranteed by the Constitution, the restrictions can never be considered unreasonable. In the similar way counsel has also relied upon the case of *Shaheen Cotton Mills v. Federation of Pakistan* reported in PLD 2011 Lahore 120. With these two additional submissions which were not considered, as claimed by learned Addl. Attorney General, in the earlier decisions, he submitted that a pragmatic and flexible approach in interpreting and applying Article 158 of the Constitution be taken.

17. Mr. Asim Iqbal, learned counsel appearing for the defendant Sui Southern Gas Company Limited, submitted that the defendant is only a marketing company and whatever supply being made to it is being catered to the consumers. He further argued that they cannot supply to the consumers more than what they get from the source. It is the concerned Ministry of Petroleum who has taken the decision insofar as the supply/distribution of gas, which is being implemented by the defendant. However, per learned counsel, the defendant has no concern as to the policy which is being maintained by the concerned Ministry and

in case additional supply is made to the defendant they would cater to the ever-increasing demand of consumers of this province.

18. I have heard the learned counsel for the parties as well as learned Addl. Attorney General and perused the material available on record and so also the law cited by them.

19. After hearing the learned counsel at length substantially there are four additional questions which require consideration:

- i) Whether defendant (SSGC) was justified and/or has lawfully issued notice of Sunday Gas Closure and/or is not violative of Article 24-A of General Clauses Act?
- ii) Whether submission regarding shortage of gas to industries is untenable in view of express provision of Article 158 of the Constitution of Pakistan and availability of Gas within the wellheads situated in province of Sindh?
- iii) Whether allocation of gas without any policy being set out and promulgated is contrary to Article 153 and 154 of the Constitution of Pakistan?
- iv) Whether the interpretation of Article 158 of the Constitution of Pakistan requires any other meaning in terms of Constitution being considered as a living Constitution?

These questions are somehow interlinked and are being answered independently as well as jointly.

20. The first question, which requires consideration, is a justification of the authority i.e. defendant (SSGC) in issuing impugned public notice. The text of subject notice for Sunday Gas Closure is very relevant and essential which is impugned by the plaintiffs in this bunch of suits. For the convenience the same is reproduced as under:-

*“Monday, January 04, 2016
Attention:
All Industrial Sector Associations
Dear Sir(s)
One day Industrial Gas Holiday Notification For: Sunday,
January 10, 2016*

All industries including captive power plants will remain closed according to the below mentioned schedule:

Sunday, January 10, 2016 from 7.00 a.m. to Monday, January 11, 2016 till 7.00 a.m. (24 hours)

You are requested to kindly inform your valued members to comply with and strictly observe the above schedule.

SSGC surveillance team will be monitoring compliance and have been fully authorized to disconnect gas supply for 48 hours of any customer found violating the above schedule.

Your cooperation/full support in the matter is solicited and shall be highly appreciated.

With regards

For: Sui Southern Gas Company Limited

DMG (CNG)”

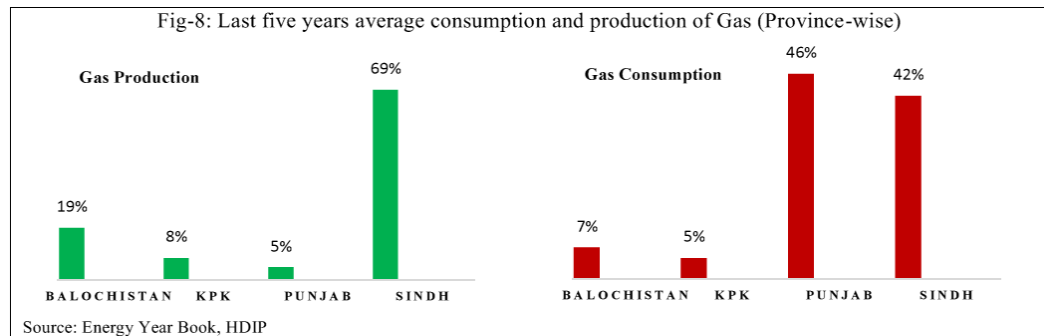
21. It does not say as to under whose authority this notification has been issued. Defendant is only a licensee for marketing/distributing natural gas hence if at all they derive any authority it is in pursuance of a license executed by OGRA; it cannot be stretched down to an extent that the defendant would at its own decide the issue of Sunday Gas Closure. Learned Addl. Attorney General has not been able to point out as to whether it is in pursuance of any order, recommendation or direction from Ministry of Petroleum. He has also not been able to point out that any policy has been framed in this regard. Plain language of the Sunday Gas Closure notice does not demonstrate that the defendant derived any authority in pursuance of any notification or circular by the concerned Ministry nor the license itself authorizes defendant or anybody else to issue such notice.

22. Insofar as these points are concerned I would score of this proposition that the defendant has any right and entitlement for issuance of such notice of Sunday Gas Closure and it is not only illegal and unlawful but also ultra vires the law and the Constitution. It is not the mandate of the defendant SSGC. It is also hit by provisions of Article 24-A of the General Clauses Act. Public functionaries are required to

provide reasoning and also to state facts whereby authority is being derived.

23. Contentions of learned Addl. Attorney General however are very relevant for the purposes of the present controversy that the subject policy as to distribution of natural gas within the wellheads situated in some of the provinces is pending before Council of Common Interest. If such policy has not yet been framed how and in what manner the distribution of the gas from the wellheads situated in one province is being distributed and marketed is a mystery. It is yet a question/anomaly that needs to be resolved. The submission of learned Addl. Attorney General that this Court has no jurisdiction to decide such questions being policy matter is untenable. Firstly the policy has not yet been framed and secondly even if such policy is framed, it is to be structured in a manner that it respects each living Article of the living Constitution, as claimed by learned Addl. Attorney General.

24. In terms of license agreement the licensee (defendant) is required to distribute and market natural gas in accordance with the requirement of consumers which it should demand from the Exploration & Production (E&P) companies. It seems that no attempt/exercise has been carried out by the defendant to cater the ever increasing demand of their consumers within the area specified in their license. The consumption as shown in the statistics of Pakistan Economic Survey of 2014-15 shows the average production of gas in the province of Sindh as 69% of the total production of Pakistan and the average consumption, as shown in Pakistan Economic Survey is 42%. A plain reading of this Economic Survey would show that there is no scarcity of gas in Sindh as far as Sunday Gas Closure is concerned. A chart showing five year consumption with production, as shown in Economic Survey is as under:-



25. The other questions arising out of Article 158 of the Constitution are relevant for the purposes of deciding present controversy and its interpretation, as desired by the learned Addl. Attorney General. I would now deal with other two limbs. Let's read Article 158 of the Constitution to ascertain its scope and applicability to cater the requirement of the citizens. Article 158 is reproduced as under:-

“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 the well-head, subject to the commitments and obligations as on the commencing day.”

26. It has been argued that this Article 158 of the Constitution is to be read with Article 172 of the Constitution. Article 172 originates in Chapter 3 of the Constitution. It relates to properties, contracts, liabilities etc. Article 172 of the Constitution of Pakistan provides that any property which has no rightful owner shall if located in a province vest in the government of that province and in every other case in the Federal Government.

27. Insofar as Section 172(2) is concerned it relates to all lands, minerals and other things of value within the continental shelf or underlying the ocean beyond the territorial waters of Pakistan shall vest in the Federal Government. This sub-article of Article 172 is not relevant for the purposes of this controversy as nothing is being extracted at present from a continental shelf which otherwise is discussed by learned Bench of this Court in a judgment in the case of The Member (L.U) Board

of Revenue Sindh v. KPT Officer Cooperative Housing Society Ltd. & others, passed in High Court Appeal No.236 of 2009.

28. Sub-article 3 of Article 172 is relevant as it relates to the ownership of the natural gas. In terms thereof the ownership of mineral, oil and natural gas within the province or the territorial waters adjacent thereto jointly and equally vests with the province and the Federal Government. This however does not require any interpretation of the continental shelf and the territorial limits of such continental shelf in the present proceedings. After reading all three sub-articles of Article 172 it seems that these at the most relates to the ownership of mineral, oil and natural gas and have no relevance as such as to the prioritized requirement of natural gas, as enshrined in Article 158 of the Constitution. These articles for the present controversy are not liable to be read in conjunctive; they are independent and to be read independently.

29. Article 158 is arising out of Chapter which pertains to relations between federation and all provinces. Let's examined the language of Article 158 to see if any absurdity or rigidness could be seen. The province in which wellhead of natural gas is situated shall have precedence over other parts of Pakistan in meeting the requirement from the wellhead subject to the commitments and obligations as on the commencing day. A plain reading of this Article would not show any rigidness or absurdity. The arguments of learned Addl. Attorney General that since this Constitution came into being in 1973 when the framers of the constitution had not foreseen the requirement and the situation under consideration therefore this Article of the Constitution is to be interpreted while considering it as a living Constitution so that the fundamental rights of other citizens of the province may not be violated. His contention was that if plain meaning is attached to Article 158,

Article 9 of the Constitution shall be violated, which relates to life and liberty of a citizen.

30. The main contention of learned Addl. Attorney General was that these energy sources are so essential that without it a life of a human being cannot be imagined. There is no cavil to the submission of the learned Addl. Attorney General that life without such necessity, such as natural gas which are no more considered as a luxury, should be provided and ought to have been, but this only leads to a conclusion as to the failure of the government to provide necessities of life. The government cannot absolved from its liabilities/responsibilities just by distributing the resources available within provinces amongst the citizens and deprive less privileged class on account of non-availability of enough resources in Pakistan. This is only lack of their commitment and obligation. The essential commodities to live a life in this era is responsibility of the government and they cannot be discharged from such liability on account of this doctrine that they would take away from one and provide it to others. The basic requirement such as energy is to be catered by the Federal Government. It seems that they have failed to implement their contracts of providing other alternate energy within time and within their obligations/ commitments.

31. While framing Article 158, the framers were fully aware of a situation prevailing today. Had they not been they would not have provided a solution that in case of such a situation, the province in which a wellhead of natural gas is situated shall have precedence over other part of Pakistan in meeting the requirements from the wellhead. This Article cannot be construed as a rigid one; it has its political consideration and wisdom therefore the argument of the learned Addl. Attorney General that this Article is to be interpreted by considering the Constitution of Pakistan as a living Constitution so that the present

requirement be met, has no application. This Article 158 took an early birth to cater for today's controversy, as I see this article had been framed as the framers had foreseen this issue and hence it was taken care of at the relevant time and had not left the present situation unattended.

32. In the case of Dr. Zahid Jawed v. Tahir Riaz Chaudhry reported in PLD 2016 SC 637, it has been observed as under:-

“It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the Court must give effect to each words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. It is also a settled proposition of law that the provisions of the statute have to be read as a whole and in its context. When language of the provision is plain and unambiguous the question of supplying casus omissus does not arise. The Court can interpret a law but cannot legislate. It is a familiar rule of interpretation that the word used by legislature must be construed according to its plain natural meaning and that legislature never use redundant or surplus words/phrases.”

33. This question of interpretation has also come up before different Benches/superior Courts who have come up with the observation that Article 158 of the Constitution is to be implemented in its letter and spirit as there is no rigidity or ambiguity, which require an interpretation other than the meaning that it carries. Such judgments are as under:-

- i) Cherat Cement Company Ltd. v. Nowshera (PLD 2016 Peshawar 32)]
- ii) Lucky Cement Company Limited v. Federation (PLD 2011 Peshawar 57).
- iii) Shandar Petroleum v. Federation of Pakistan (2012 CLD 1714
- iv) Ramesh Kumar Ukrani v. Federation of Pakistan (2016 CLC 1152)
- v) Pakistan Chest Foundation v. Government of Pakistan (1997 CLC 1379)
- vi) Muhammad Akram v. Selection Committee (2003 CLC 18)

34. In the case of Cherat Cement Company (Supra) it has been held that:-

“This conduct on the part of respondents is clearly in violation of letter and spirit of the judgment of this court delivered in the case of Messrs Lucky Cement Limited through General Manager v. Federation through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and others (PLD 2011 Peshawar 57), laying down that under Article 158 of the Constitution of Islamic Republic of Pakistan, 1973, the Province in which a well-head of natural gas was situated shall have precedence over other parts of Pakistan in meeting the requirements from the well-head. There is no dispute, rather admitted by the respondents, that the province of Khyber Pakhtunkhwa had surplus gas over and above its own consumption. In such a situation, the Cement Manufacturing Unit situated in the province should have had precedence over cement manufacturing units outside the province, but record speaks otherwise, as instead of giving precedence to the petitioner's cement manufacturing unit, the units in the other province were given precedence and the petitioner deprived of its legal and constitutional right.”

35. In the case of Lucky Cement (Supra) it has been held by learned Division Bench of Peshawar High Court as under:-

“9. A look at Article 158 leaves no doubt that 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 the well-head subject, of course, to the commitment and obligation which existed on the commencing day of the Constitution. Nothing in black and white has been brought on the record as could show any such commitment or obligation restricting the requirements of the Province. Yes Article 172(3) provides that the mineral oil and natural gas within the Province shall vest jointly and equally in that Province and the Federal Government but this Article does not say anywhere that the requirements of the Province in which a well-head of natural gas is situated shall not have precedence over other parts of Pakistan in meeting the requirements from the well-head. Granted that the petitioner entered into agreements with respondent No.4 wherein they themselves agreed for supply of gas for nine months but these agreements being against the mandate of the Constitution shall have no force altogether, especially when it is not disputed that the gas produced in the Province is more than its requirements. Needless to say that only those agreements are binding on the parties which are in accordance with law of the land in general and provisions of the Constitution in particular.”

36. In the case of Shandar Petroleum (Supra) it has been held as under:-

“24. In other words, previously the ownership of gas was with the Federal Government, but still priority was given to the Province where the well-head of the natural gas is situated. It means that if well-head of the gas is situated in a particular Province, then the requirement of that particular Province is to be met first. This matter has nothing to do with the ownership of Federal Government regarding the natural resources. Under the 18th Amendment, Article 172 was amended and Sub-Article 3 was added to it, which provides as follows:--

"Subject to the existing commitments and obligations, mineral oil and natural gas within the Province or the territorial waters adjacent thereto shall vest jointly and equally in that Province and the Federal Government."

25. By addition of Sub-Article 3, the ownership of mineral oil and natural gas has been given to the Province as well as the Federal Government, but Article 158 was not amended in the same way and no priority was given to any other Province or even to the Federal Government. The old priority remained the same.

26. To say that, since the Federal Government along with the Provincial Government is owner of natural gas, therefore, Article 158 would apply to the Federal Territory, again is neither correct nor appeals to a prudent mind. The Constitution has provided the priority in a specific manner and the same priority cannot be extended by way of judicial pronouncement or by amending the Constitution. Judicial pronouncement is only for the interpretation of constitutional provisions, but through judicial pronouncement, nothing can be added to the Constitution or even in any other laws.”

37. In a recent judgment of learned Division Bench of this Court in the case of Ramesh Kumar Ukrani (Supra) has held that:-

“34. This Court in the judgment reported in PLD 2012 Sindh Karachi 50 while relying upon the judgment in PLD 2011 Peshawar 57 of M/s. Lucky Cement Ltd. v. Federation through the Secretary of Ministry of Petroleum and Natural Resources, has held that authority should adhere to letter and spirit of Article 158 of the Constitution while dealing with petitioners and all stake-holders in the Province vis-à-vis the supply of gas.”

38. In the case of Pakistan Chest Foundation (Supra) it has been held as under:-

“....The basic rule of interpretation is that if the language of any provision of the Constitution is plain then it does not require to be interpreted with meanings which are not evident from the language. It is not allowable to interpret what has no need of interpretation. Similarly, effect has

to be given to every part, and every word of P the Constitution. The Courts always avoid construction which renders any provision meaningless or inoperative and they must lean in favour of a construction which will render every word of the Constitution operative rather than making any word idle and nugatory....”

39. In the case of Muhammad Akram (Supra) learned Division Bench of Baluchistan High Court has held as under:-

“13. An elementary rule of interpreting the provisions of Constitution is to give effect to every part and every word of the Constitution. The Courts to reconcile Constitutional provisions harmoniously, instead of pointing out inconsistencies and contradictions between different provisions. The Courts to avoid interpretation which renders any article meaningless or inoperative, thus should construe the provisions which will render every word operative rather than leaning in favour of one which may render some words idle and inoperative.”

40. Thus, in the light of above discussion I am of the view that the impugned Sunday Closure Notices are illegal, unlawful and ultra vires the Constitution and Issue No.1 is thus answered in affirmative and the suits are accordingly decreed with no orders as to costs.

Dated: 11.11.2016

Judge