

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 1100 OF 2011

Sui Northern Gas Pipelines Limited.
Vs.
Oil and Gas Regulatory Authority (OGRA) & another.

Petitioner: **Mr. Ahmed Ejaz Yousaf and Ms. Zaitoon Hafeez, Advocates.**

Respondent No.1: **Syed Faisal Bukhari, L.O. (OGRA).**

Date of Decision: **05.03.2020.**

LUBNA SALEEM PERVEZ, J. Through instant writ petition filed under Article 199 of the Constitution of Pakistan, the Petitioner has assailed order passed the Appellate Authority of OGRA in Appeal No. 38/2008 dated 14.05.2009 filed by Respondent No.2, whereby, order passed by the Designated Officer in Complaint No. 871/2007 dated 31.07.2008 has been modified.

2. Brief facts of the case are that on the allegation of installation of gas meter with connivance of Petitioner's staff, running in reverse direction, Respondent No. 2 (Bismillah CNG) received gas bill amounting to Rs. 4,980,825/- for the period from 11.03.2005 to 13.06.2005 from the Petitioner on 27.05.2007, in lieu of alleged gas pilferage charges and tempering with the meter. Respondent No. 2 filed Complaint No. 871/2008 before Deputy Executive Director (Tech-Complaints) (*hereinafter referred to as the "Designated Officer"*), OGRA, against the tempering and pilferage of gas charges. The Designated Officer, while confirming tempering and pilferage charges, vide order dated 31.07.2008, ordered calculation of the charges on the basis of consumption in succeeding

years i.e. from 01.05.2005 to 12.06.2005. Respondent No. 2, preferred appeal under section 12(1) of OGRA Ordinance 2002 against the said order before the Respondent No.1, who vide order in Appeal No. 38/2008 dated 14.05.2005 further modified the order passed by the Designated Officer dated 31.07.2008 by directing to charge the bill only for the volume of 604 HM³ for period 01.05.2005 to 12.06.2005 payable by the Respondent No.2 after adjustment of payment already made. Hence, present petition against the order dated 14.05.2009.

3. Learned Counsel for the Petitioner argued that officially the supply of gas started on 28.05.2005, but the Respondent No. 2 was using the gas prior to provision of official gas connection and gas meter was installed with connivance of Petitioner's staff for showing reverse running, whereafter, said staff members were demoted by the Petitioner after proving the allegation. Learned counsel further argued that Respondent No. 2 was involved in the tampering of the meter and gas theft and charges in this regard were computed through fact finding inquiry on the basis of meter reading cards, EVC data and history of consumption of preceding and succeeding months in accordance with the OGRA Procedures for Dealing With Theft of Gas Cases. Learned counsel contended that analysis report of Chief Engineering dated 06.09.2005 proved tempering and pilferage in the meter but the Designated Officer has taken the lenient view without any lawful reason thereby reducing charges for the period from 01.05.2005 to 12.06.2005 and thereafter, further relief allowed by the Appellate Authority of OGRA vide impugned order No. 38/2008, dated 14.05.2009 is also unjustified and not sustainable in the eye of law.

4. Conversely, learned Law Officer for Respondent No. 1 supported the impugned order and submitted that Petitioner has no *locus standi* to file the

instant Petition being not aggrieved with the impugned appellate order. Learned Law Officer submitted that allegation of pilferage was not proved against Respondent No. 2 as the analysis report of Chief Engineer dated 06.09.2005 bears the remarks that "twist Tight sealed were ok" and that the meter was removed from the premises of Respondent No. 2 in 2005, whereas, the impugned bill creating pilferage charges of Rs. 4,980,825/- was issued on 21.07.2007. Learned Law Officer further submitted that the law provides alternate remedy of review under section 13 of the OGRA Ordinance 2002 to the Petitioner, therefore, the Petition is not maintainable in law.

4. Arguments of the Learned Counsel for the Parties have been heard and relevant record including the impugned order has been perused with their able assistance.

5. Perusal of the impugned order revealed that after official activation of supply of gas Respondent No. 2 within 5/6 days reported the fault of reverse running of the meter to the Petitioner. Later on the gas supply was also disconnected, however, after payment of pilferage charges of Rs. 63,420/- worked out by petitioner, the problem was rectified and supply was resumed. The Petitioner subsequently issued the impugned gas bill pilferage alleging recovery charges of Rs. 4,980,825/- contested to the Respondent No.2. Examination of as well as the impugned orders transpired that the impugned order has been passed by considering all the necessary record and after through scrutiny of the data pertaining to the pilferage and tempering charges leveled against the Respondent No.2 by the Petitioner. Learned Counsel for Petitioner made arguments mainly relating to facts of the case and *prima facie* required the court to re-examine the record and evidence regarding pilferage and tempering charges, whereas, no legal or jurisdictional error has been pointed out in the impugned order dated 14.05.2009. It is observed that the decision of Appellate

Authority to reduce the charges was purely based on the consumption history, average gas flow and ratio of consumption for working out actual liability of the Respondent. Moreover, as submitted by the Learned Law Officer for Respondent No.1, Section 13 of the OGRA Ordinance 2002 provides for review against the impugned order thus alternate remedy is also available to the Petitioner. Reference in this regard is made to the following unreported judgments, whereby, the similar issue has been decided and covers the present controversy on all fours:-

“Sui Northern Gas Pipelines vs. Oil and Gas Regulatory Authority, etc” (W.P No. 151618/2018) wherein it has been observed as under:-

“A bar review of the order shows that the petitioner was heard and was able to provide all its documents and information on the basis of which as finding of fact was made that the meter replacement advice and report did not contain any remarks that the meter was tampered with. In fact to the contrary it stated that the meter was OK. Therefore, in the opinion of the Designated Officer and the Authority, the marks on the meter being relied upon were placed after the meter replacement. As such it appears that the petitioner is trying to raise a factual controversy before this Court which cannot be decided in constitutional jurisdiction. The competent forum has looked into the matter, considered the documents as well as the version of the Petitioner and decided the matter based on the available record. There is nothing in support of the contentions of the petitioner. The petitioner is merely disagreeing with the decision of the OGRA and the Authority which is not a justifiable reason for the petition to be entertained. No illegality has been made out in the impugned order.

Under the circumstances, no case for interference is made out. Petition is dismissed in limine.”

W.P No. 28062 of 2016 in which it has been observed as follows:-

“This contention of the petitioner is totally misconceived and this prayer of the petitioner cannot be granted. The petitioner had challenged the order of order of 24.06.2014 and 28.10.2015 before the competent authority in terms of the statutory remedy available to it.

4. *Under the circumstances, the petitioner is not entitled to the relief claimed. So far as the impugned order dated 08.04.2016 is concerned, no illegality has been made out against the said order. The petitioner admits that there is no ground or new evidence available to it and the petitioner merely seeks re-appraisal of the original evidence.*

5. *In view of the aforesaid, no case for interference is made out, Petition is dismissed.”*

6. For the foregoing reasons, I am of the considered view that present petition is not maintainable in view of the settled principle of law that matters, wherein alternate remedy is available and involve factual controversies requiring appreciation of evidence, are out of the domain of constitutional jurisdiction

under article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

Hence, instant writ petition is accordingly dismissed.

(LUBNA SALEEM PERVEZ)
JUDGE

*Adnan**