

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.67/2019

Sui Southern Gas Company Limited
versus

Oil and Gas Regulatory Authority through its Chairperson & 2 others

Petitioner by: Mr. Asim Iqbal, Advocate High Court.

Respondents No.1 & 2 By: Dr. Yasser Aman Khan, Advocate
High Court.

Respondent No.3 Barrister Muhammad Mumtaz Ali,
AAG.

Date of Hearing: 03.12.2020.

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, Sui Southern Gas Company Limited/petitioner has assailed the exercise of jurisdiction by the OGRA (respondent) in matters falling within the purview of Gas (Theft Control and Recovery) Act, 2016. The petitioner has also prayed for issuance of direction to the OGRA not to entertain any such complaint dealing with the situation provided under the Gas (Theft Control and Recovery) Act, 2016.

2. Learned counsel for petitioner contends that petitioner is a public limited company incorporated under the Companies Act, 1913 (now Companies Act, 2017), providing gas connection to consumers through a contract, as such, a special law i.e. Gas (Theft Control and Recovery) Act, 2016 (*hereinafter referred to as "Act of 2016 or Act"*) was promulgated to settle the issues of gas theft pursuant to filing of complaints; that Section 2(h) of the Act provides the definition of gas utility companies, which covers SSGCL, SNGPL as well as other similar companies, similarly, the

definition of consumer has been provided in terms of Section 2(b) of the Act, which means a person, who receives a supply of gas under the gas sale agreement for specific purpose of consumption; that after promulgation of the Act of 2016, a special mechanism has been provided to deal with issue relating to *sum due* as referred in Section 2(o) of the Act, which covers all such amount, inclusive of applicable Government taxes, recoverable from a person who purchases or receives gas for self consumption or sale for vehicular use or a person whose premises is connected with the network of the Gas Utility Company, lawfully or unlawfully, even certain offences have been defined with reference Section 2(r) which deals with tampering or temper of the gas supply line, including interference or creating hindrance in flow of metering of gas power by unauthorized entry or access. A specialized offence of Section 2(s) has also been referred which covers the unauthorized use of gas; that all these specialized offences have been established to be settled through Gas (Theft Control and Recovery) Act, 2016 and OGRA has no domain or jurisdiction to deal with such kinds of specialized issues, although the OGRA is dealing with all these issues prior to promulgation of the Act of 2016; that in terms of Section 6 of the OGRA Ordinance, 2002 all kinds of complaints and disputes have to be resolved by the OGRA authority and mechanism of complaint has been provided in terms of Sections 11 & 12, even a review of authority decision has been provided in Section 13, whereby certain overlapping jurisdiction is visible, but after the promulgation of special law the jurisdiction of OGRA stands excluded; the petitioner has heavily relied upon PLD 2018 Islamabad 51 (SNGPL vs. Director (Legal) President Secretariat (Public), Islamabad), PLD 2019

Islamabad 1 (FGEHF v. Malik Ghulam Mustafa), PLD 2010 Lahore 353 (A. Rehman Malik v. State), PLD 2019 Sindh 624 (Muslim Commercial Bank Ltd. v. Federation of Pakistan), PLD 2006 SC 249 (Tanveer Hussain vs. Divisional Superintendent, Pakistan Railways) and 2017 SCMR 1218 (Syed Mushahid Shah v. FIA).

3. Conversely, learned counsel for respondents No.1 & 2/OGRA contends that the OGRA was constituted under OGRA Ordinance, 2002 to protect the public interest while respecting individuals' interest and provide effective and efficient regulations; that the Ordinance has provided adequate means and skills to exercise its statutory power and objectively perform its statutory functions under the rules and regulations as the OGRA has an autonomy and independence manifested in the law and even same has been acknowledged by the superior Courts in cases reported as PLD 2012 SC 132 (Muhammad Yasin vs. Federation of Pakistan), PLD 2013 SC 224 (Engineer Iqbal Zafar Jhagra v. Federation of Pakistan), 2016 PLC (CS) 48 Islamabad (Federation of Pakistan v. Saeed Ahmed Khan), 2015 CLC 1797 (Federation of Pakistan v. Saeed Ahmad Khan) and PLD 2017 Islamabad 207 (Muhammad Nawaz v. Principal Secretary to Prime Minister of Pakistan); that OGRA Ordinance, 2002 provides legal regulatory framework, whereby an exclusive power has been extended to OGRA for grant of license for carrying out regulated activities and regulating such activities which could not be covered under the Gas (Theft Control and Recovery) Act, 2016, therefore, arguments rendered by petitioner for exclusion of OGRA's jurisdiction is not justified; that complaint resolution regulations have also been framed to resolve certain controversy and disputes qua the violations of licensee and the

jurisdiction of OGRA could not be curtailed by virtue of Gas (Theft Control and Recovery) Act, 2016; that judgment rendered by this Court, reported as PLD 2018 Islamabad 51 (SNGPL vs. Director (Legal) President Secretariat (Public), Islamabad), only settles the jurisdiction with reference to the powers provided to the President of Pakistan under the Federal Ombudsmen Institutional Reforms Act, 2013 *vis-a-vis* the Gas (Theft Control and Recovery) Act, 2016, as such, the jurisdiction of OGRA has not been ousted in any manner. The respondents No.1 & 2 have relied upon 2018 SCMR 1012 (OGRA v. SSGCL), 2019 CLC 851 Islamabad (Al-Muiz-1 CNG v. Federation of Pakistan), PLD 2020 Lahore 367 (SNGPL v. OGRA), 2019 CLC 1247 Lahore (Bhimra Textile Mills (Pvt.) Ltd. v. OGRA), 2019 CLC 1998 Islamabad (Muhammad Azam Khan Niazi v. General Manager, SNGPL, Islamabad), PLD 2018 Islamabad 51 (SNGPL v. Director (Legal), President Secretariat (Public), Islamabad), 2016 CLC 562 Islamabad (SNGPL v. OGRA), 2011 MLD 1402 Lahore (Anjum Niaz Ch. v. Managing Director, SNGPL), 2017 CLC 745 Lahore (SNGPL v. Muhammad Riaz Bhatti), 2017 CLC 411 Lahore (SNGPL v. Nasir Mehmood Khan), 2016 YLR 1 Lahore (Rana Textile Ltd. v. SNGPL), 2015 MLD 1029 Lahore (SNGPL v. Wafaqi Mohtasib), PLD 2012 Lahore 554 (Samina Anwaar Ullah Khan v. General Manager, SNGPL), 2015 MLD 1514 Lahore (Mehran Filling Station v. OGRA), 2009 CLD 710 Karachi (Mst. Ghazala Hassan v. City District Government, Karachi), 2015 YLR 600 Karachi (Hascol Petroleum Ltd. v. Federation of Pakistan) and PLD 2015 Balochistan 110 (SNGPL v. Arbab Najeebullah).

4. Learned AAG in attendance contends that law has to be interpreted in order to protect its constitutionality and the Court should not declare

any law void unless strong and exceptional reasons and circumstances are highlighted; that OGRA Ordinance, 2002 and Gas (Theft Control and Recovery) Act, 2016 are two special statutes, which provide different jurisdictions to deal with the issues relating to regulated activity as well as to theft of gas under two different regimes and as such, both the laws are not overlapping each other, rather they are supplementing each other; that both the laws provided overriding clauses and in such circumstances the later in time shall prevail to the extent of subject not earlier provided; that the object and purpose of the Gas (Theft Control and Recovery) Act, 2016 are of limited concept, which have no conflict with the provisions of OGRA Ordinance, 2002 as the OGRA Ordinance, 2002 primarily deals with regulated activity defined by the apex Court in 2018 SCMR 1012 (OGRA v. SSGCL); that both the laws have special procedure to deal with the subjects provided therein and the overlapping areas in both laws are billing and overcharging, connection and disconnection of services and metering concepts, therefore, it is necessary to settle these thin lines as to when a person aggrieved of any action of the gas utility company can approach both the forums and no restriction could be imposed upon an individual from exercising his authority in this regard.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner SSGCL has primarily disputed the exercise of jurisdiction by OGRA under the OGRA Ordinance, 2002 mainly on the ground that after promulgation of Gas (Theft Control and Recovery) Act, 2016, the jurisdiction of OGRA is impliedly barred to deal with affairs provided in the Act of 2016. In order

to resolve the controversy, it is necessary to compare the jurisdiction provided in both the laws through a judicial prism:

Gas (Theft Control and Recovery) Act, 2016	OGRA Ordinance, 2002
Preamble: WHEREAS it is expedient to prosecute cases of gas theft and other offences relating to gas and to provide for a procedure for expeditious recovery of amounts due, value of gas, fines, penalties and other outstanding amounts payable and sums due to Gas Utility Companies and for matters ancillary and related thereto;	Preamble: WHEREAS it is expedient to foster competition, increase private investment and ownership in the midstream and downstream petroleum industry, protect the public interest while respecting individual rights and provide effective and efficient regulations and for matters connected therewith or incidental thereto;
Section 2(b) Consumer Section 2(c) Distribution pipelines Section 2(g) Gas Sales Agreement Section 2(h) Gas Utility Company Section 2(o) Sums Due Section 2(r) Tempering or Temper Section 2(s) Unauthorized Use of Gas	Section 2(i) Authority Section 2(iv) Consumer Section 2(v) Crude Oil Section 2(vii) Distribution Section 2(x) Installations Section 2(xi) License Section 2(xiii) LPG Section 2(xiv) LNG Section 2(xv) Marketing of refined oil produces Section 2(xvii) Natural Gas Section 2(xxi) Oil Section 2(xxiii) Petroleum Section 2(xxv) Pipeline Section 2(xxxii) Regulated Activity Section 2(xxxix) Tariff Section 2(xl) Transmission Section 2(xli) Transportation
Section 3. Constitution of Gas Utility Courts	Section 3. Establishment of Authority
Section 4. Jurisdiction	No specific provision
Section 5. Powers of Gas Utility	Section 6. Powers and Functions of the

Courts	Authority
Section 6. Procedure for complaints and suits for default before Gas Utility Courts.	Section 11. Complaints
Section 10. Execution of Decree	No specific provision
Section 13. Appeal	Section 12. Appeal, etc. Section 13. Review of Authority decision
Offences Section 14. Tampering with gas pipelines, etc. Section 15. Tampering with auxiliary or distribution pipelines of gas. Section 16. Tampering with gas meter by domestic consumer, etc. Section 17. Tampering with gas meter by industrial or commercial consumer, etc. Section 18. Damaging or destroying the transmission or transportation lines, etc. Section 19. Penalty for maliciously wasting gas or injuring works. Section 20. Penalties not to affect other liabilities. Section 21. Penalty for offence not otherwise provided for and offences by bodies corporate. Section 22. Suspension of supply of gas.	Section 25. Offences Section 26. Cause damage to facility, plant or equipment, etc. Section 27. Recovery of the value of petroleum stolen, etc. Section 28. Offences by companies etc. Section 29. Cognizance of offence
Power of Search and arrest Section 23. Power to search in case of theft and suspected theft.	No specific provision
Section 24. Arrest for offence against certain sections.	No specific provision

Recoveries Section 26. Recovery of sums recoverable under certain provisions of this Act	Section 37. Recovery of arrears
Section 27. Charges for supply of gas recoverable as arrears of land revenue.	
Section 29. Bar of Jurisdiction	No specific provision
Section 31. Act to override other laws.	Section 43. Ordinance to override other laws.

HISTORY OF OGRA ORDINANCE, 2000

7. Perusal of above two laws in essence provides different dimensions while dealing with the issues relating to natural gas. However, it is important to mention the history of OGRA Ordinance, 2002, which has been established through *OGRA Ordinance, 2000*, which is earlier in time and it has been promulgated in order to foster the competition, improve efficiency and availability of natural gas, transportation as well as distribution of services in Pakistan, though it has provided certain offences, but primarily it is meant to tackle the concept of licensing system to private companies for the purpose of regulated activity in terms of Section 2(xx), whereby all kinds of transmission, distribution or sale of natural gas by any person and the purification of natural gas by existing company has been regulated, even the OGRA authority can deal with the sale prices, tariff and shall also determine the revenue from an individual consumer to wholesaler. Similarly, Section 4 of the OGRA Ordinance, 2000 provides all powers, including but not limited to grant, issue, renewal of license, even modify, amend or suspend or cancel or terminate the license for the undertaking of any unregulated activity in order to protect the

interest of consumer. The OGRA is equipped with issues to resolve complaints and other claims against licensee for contravention of provision of the Ordinance in terms of Section 4(2)(j)(k), which also covers a dispute between licensee and consumer. The most important function which has been performed by the OGRA is to determine the rate of return of each licensee in consultation with Federal Government for regulated activity. Similarly, in terms of Section 5 of the OGRA Ordinance, 2000 the Federal Government has a key position to issue guidelines to authority on matter of policy, which cover supply of gas to particular area and shall also provide the policy regarding the financial viability criteria or considering the economic viability to supply gas in a particular area. OGRA shall also deal with tariff or individual tariff activity and pricing for retail consumer in terms of Sections 18 and 19 and fix the terms and conditions of license in terms of Section 20. Any amount on the part of licensee, if due, could also be recovered as arrears of land revenue in terms of Section 28, which equipped the OGRA to proceed in that manner, however the determination of those charges and amounts is the sole prerogative of the OGRA, whereby any person who is aggrieved with the determination of OGRA has not been provided remedy of appeal under the OGRA Ordinance, 2000.

PROMULGATION OF OGRA ORDINANCE, 2002

8. Due to certain defects in previous law, OGRA Ordinance, 2002 has been promulgated in order to foster competition, increase private investment and ownership in midstream and downstream petroleum industry. The Authority has been defined in terms of Section 3 of the

Ordinance, comprising of the Chairman along with three Members i.e. Member Oil, Member Gas & Member Finance, having expertise in the relevant field and of known integrity. The Authority is equipped with powers to decide all kinds of issues as defined in Section 6, which includes but not limited to grant, issue, renew, modify, amend, extend, suspend, cancel, or re-issue or revoke or terminate any license for the undertaking of any regulated activity. Similarly, the Authority is also equipped with powers to fix the terms and conditions of the license, as such, it shall also monitor and enforce compliance of license conditions. In order to settle the dispute of licensee, the Authority is equipped with powers to resolve it in terms of Section 6(2)(i) and shall also resolve dispute between licensee or any other person with reference to Section 6(2)(k) of the Ordinance. The primary object of the OGRA Ordinance, 2002 is to deal with the regulated activity, which is only to be carried out by the licensee under this law, however the Authority is empowered to deal with the distribution of natural gas, LNG & LPG as well as to deal with pipelines, refined oil products, refineries, strategic petroleum storage, tariff as well as transmission and transportation of oil, natural gas, etc. in terms of Section 2(xl) and (xli), whereby all these activities fall within the definition of regulated activity. Section 7 provides the concept of tariff for regulated activity which is a sole jurisdiction of the OGRA, including but not limited to pricing for retail consumer for natural gas in terms of Section 8, even the prescribed price and sale price has also been fixed in terms of Section 8(6)(f) & (g) of the Ordinance.

9. On the other hand, the Gas (Theft Control and Recovery) Act, 2016 deals with the prosecution of those cases of gas theft and other offences

which were prescribed in said special law, including the recovery of the amount due, value of gas, fines, penalties and other outstanding amounts payable and sums due to gas utility companies. The primary factor for enactment of this law is to protect the rights of distribution companies known as gas utility companies in terms of Section 2(h) of the Act. Though certain powers are available to deal with the issues of similar nature under the OGRA Ordinance, 2002, but when the instances of theft had increased and loss was directly attributing to the companies, different consumers and even to the national exchequer, the legislation has been promulgated in order to curb and eliminate the theft of the natural gas in Pakistan. There are growing complaints regarding gas theft and even the companies, like the petitioner company, were suffering at the hands of those persons or companies for tempering with the pipelines and metering equipments and are involved in theft of natural gas, whose price was being paid by someone else.

10. The wisdom behind the legislation of any law is to deal with specific situation, however when there are two special laws in field, the principle of interpretation comes into play and to cater such type of proposition where two overlapping jurisdictions are involved under two different statutes, it is the rule that incorporated law in existence *vis-a-vis* the new law on the subject has to be given a harmonious and consistent meaning. Reliance is placed upon 1990 SCMR 183 (Abdul Razzak Khokhar v. Province of Punjab). Though the primary rule is that the statute, which is complete in nature, is to be construed according to its own terms and not with reference to another statute to whittle down the beneficial provision of the former. Similarly, the rights which were already given by one statute

could not be taken away by another statute, but the simple principle of interpretation is that a statute later in date shall prevail. Reliance is placed upon 1992 SCMR 227 (Matloob Hassan v. Broke Bond Pakistan Limited, Lahore). As such, the Gas (Theft Control and Recovery) Act, 2016 is later in time with a particular specialty to prosecute those involved in gas theft, which is not the subject exclusively falls within the provisions of the OGRA Ordinance, 2002.

11. While dealing with the issue, it is necessary to apply the cardinal and well settled principle of interpretation, which requires that purposive, rather than a lateral approach of interpretation, be adopted as held in 1992 SCMR 710 (Federation of Pakistan v. M/s Noori Trading Corporation (Pvt.) Ltd.), PLD 1998 Lahore 92, 2018 SCMR 1885 (Saif-ur-Rehman v. Additional District Judge, Toba Tek Singh) and 2019 SCMR 859 (Dr. Tariq Iqbal v. Government of KP). As such, there is no denial that the tone and tanner of OGRA Ordinance, 2002 are clearly beneficial in nature for the purpose of regulated activity in Pakistan *vis-a-vis* rights of licensee, consumer and other companies with the aim to achieve the increased price investment as well as foster competition, which is not the mandate of the Gas (Theft Control and Recovery) Act, 2016. This Court is mindful of fact that interpretation which advances the purpose of the Act is to be preferred, rather the interpretation which defeats its object.

12. While considering the question raised in instant writ petition, it is necessary to look into the reasons for which instant writ petition has been filed, whereby the learned counsel for petitioner has mainly argued that certain complaints were being filed by different consumers, even same are appended with this petition, which primarily demonstrates that a

residential gas consumer is aggrieved with action of SSGCL, who has replaced his meter for checking purpose and later on consumer was arrested and FIR was lodged. Similarly, in another complaint a consumer had received a letter with the subject of “commercial use of gas – tempering of meter illegal” and some of the consumers have referred in their complaints regarding detection bills, which were not agreed by the consumers and as such, the Authority of OGRA at Regional Office, Karachi has decided the complaints with the direction to the SSGCL to restore the gas meters and also determine certain charges against the consumers. The orders reflect that OGRA has protected the company policy, as such, the entire background of this case demonstrates that the SSGCL is aggrieved with actions taken by the OGRA, when any consumer has raised the complaint regarding its overbilling, defective metering equipment or flow of gas supply, per se, they contended that all these factors could only be determined by the Gas Utility Court under the provisions of Gas (Theft Control and Recovery) Act, 2016 and not by the OGRA, the said argument of the petitioner company is not warranted under the law as the question of jurisdiction with reference to complaints filed by consumers fall within the mandate of OGRA, which has further been highlighted through a procedure provided in Complaint Resolution Procedure [for Natural Gas, Liquefied Petroleum Gas (LPG), Compressed Natural Gas (CNG) and refined oil products] Regulations, 2003, and as such, there is no bar for invoking the jurisdiction of OGRA.

13. While considering the offences referred in Gas (Theft Control and Recovery) Act, 2016 in terms of Sections 14, 15, 16, 17, 18, 19, 20, 21 and 22, the analogy laid down by the legislature is to deal with tempering or

attempt to do tempering of any installations, main pipeline of transmission or transportation through which theft of gas is being committed and similarly, where distribution system was damaged, gas meter or regulator has been tempered, whether industrial, commercial or other kinds of consumers, or where gas has been wasted. All these offences have been declared cognizable and non-bailable in terms of Section 24 of the Gas (Theft Control and Recovery) Act, 2016. However, while comparing these specific offences with offences provided in OGRA Ordinance, 2002, which include the offences referred in Section 25 of the OGRA Ordinance, 2002, qua the regulated activity or interference or causing damage to facility, plant, equipment or material or causing any physical damage to any property or person or stealing of petroleum, the jurisdiction of OGRA is available, however while comparing the concepts of offences referred in both the laws, the very root difference reflected is the gas theft and stealing of petroleum products and in this regard the Gas (Theft Control and Recovery) Act, 2016 is the special legislation to deal with the offences of gas theft only and it does not cover the regulated activities of petroleum products, even the OGRA is equipped with the powers to prosecute the persons involved in damaging the main plant facility of those products, which fall under the regulated activity i.e. under the license of the OGRA, as such, there is no transgression in the statute of OGRA Ordinance, 2002 where the offence of gas theft is referred, per se, similar is the case with Gas (Theft Control and Recovery) Act, 2016, which does not bar the OGRA to exercise its jurisdiction qua the function and powers enumerated under the OGRA Ordinance, 2002, therefore, it is required that the interpretation has to be given effect which may preserve the rights and no interpretation

to contrary shall be adopted, especially when it relates to a right of a licensee, hence the OGRA has superior jurisdiction qua the licensee, though the relationship of SSGCL (petitioner) with its consumer is based upon a contract, which is intra-parties and as such, the consumer is not a licensee of OGRA, rather he is a sub licensee of a company to whom a licence is granted by the OGRA.

14. This Court is mindful of the fact that the Courts are not being prevented from adopting beneficial construction as against the lateral one, particularly when such beneficial construction advances the intention and object of legislation and also to facilitate the administration of justice. Reliance is placed upon 1982 SCMR 582 (Kadir Bux vs. Province of Sindh). It is also settled principle that where cognizance existed in two statutes, repugnancy test is to be adopted i.e. when the two provisions of law were irreconcilable and could not co-exist, therefore, while applying this principle as held in 1993 SCMR 941 (Cantonment Board v. District Sanitary and Food Inspector, Peshawar), I have compared the offences provided in both the legislations, whereby tempering qua petroleum products is considered as an offence in the OGRA Ordinance, 2002, and as such, when any complaint is filed before the OGRA for tempering relating to the charges referred in Section 25 of the OGRA Ordinance, 2002, they have an exclusive jurisdiction, per se, there is no repugnancy in between two laws, especially when the later in time i.e. Gas (Theft Control and Recovery) Act, 2016 exercise its jurisdiction in a separate sphere. It is the legislative intent and purpose which must be given effect to and not thwarted on any vague and nebulous theoretical concept as claimed by the petitioner.

15. Learned counsel for respondents has also argued his case in order to protect the jurisdiction of OGRA and contended that OGRA Ordinance, 2002 provides the mechanism in the Complaint Resolution Procedure [for Natural Gas, Liquefied Petroleum Gas (LPG), Compressed Natural Gas (CNG) and refined oil products] Regulations, 2003, for regulated activity, which further demonstrates that it relates to transmission, distribution and sale of natural gas through a license which falls within concept of regulated activity requiring a license as held in 2018 SCMR 1012 (OGRA vs. SSGCL). While going through Regulation 3 of the Regulations of 2003, it appears that any person may submit an application to Registrar for any act or thing done or omitted to be done by the licensee or a dealer or an alleged violation of Ordinance, Rules or Regulations, order of authority or terms and conditions of the license, even for the billing, connection and dispute of connection of services, metering, undue delay in providing services, safety practices, quantity and quality of natural gas, LPG, CNG or any other discriminatory practices, therefore, these questions have exclusively been dealt with by the OGRA and as such, the objection raised by the petitioner is not legally justiciable. The rights of consumers have to be given protection under the constitutional mandate and as such, the OGRA in terms of OGRA Ordinance, 2002 is the custodian and regulator of consumers, who have specifically promulgated the concept of complaint resolution in terms of the Regulations of 2003, which cover the natural gas, liquid petroleum and compressed natural gas, which is within the domain of OGRA as held in 2019 CLC 851 Islamabad (Al-Muiz-1 CNG v. Federation of Pakistan), and even the public interest has to be protected by the OGRA. Reliance is placed upon PLD 2020 Lahore 367 Lahore

(SNGPL v. OGRA), where clause 19 of the contract between the licensee company SNGPL has been referred and tempering with meter and regulator has been declared in the domain of OGRA on the basis of terms of contract, though there is no bar for prosecution of gas theft offence provided in the Gas (Theft Control and Recovery) Act, 2016.

16. I have gone through numerous judgments where jurisdiction of OGRA has been given protection with reference to the regulated activity, even the Natural Gas Regulatory Authority (Licensing). Rules, 2002 further highlighted the concept of regulated activity within the exclusive domain of OGRA under the provisions of OGRA Ordinance, 2002. Reliance is placed upon 2019 CLC 1247 Lahore (Bhimra Textile Mills (Pvt.) Ltd. vs. OGRA).

17. Similarly, this Court in unreported judgment, passed in case of *Rana Muhammad Ashraf Khan vs. Federation of Pakistan* [W.P. No.4510/2016] has protected the jurisdictional concept in the following manner:

“Section 5 of the referred Act, provides for the powers of Gas Utility Courts; in this behalf under sub-section (5) which is subject to sub-section (6), no Court and authority is to have or exercise any jurisdiction with respect to any matter to which the jurisdiction of the Gas Utility Court extends under the Act. In sub-section (6) notwithstanding sub-section (5) the right of the gas utility company and a gas consumer is to seek any remedy before any tribunal, forum or Court shall remain unimpaired. Similarly, under Section 6(1) of the Act, wherein a person is involved in an offence under this Act or where there are some dues are recoverable from any person or where consumer has a dispute regarding bill or metering against a gas utility company a consumer or gas utility company may file a complaint or a suit before the Gas Utility Court. The combined reading of Sections 5 and 6 shows that any remedy which is available to a gas consumer in any law (including OGRA Ordinance, 2002) remains unaffected even after establishment of Gas Utility Courts. In view of the above position of law, decision rendered by respondent No.2 is in field and is binding on respondent No.3 and 4.”

18. While dealing with the proposition in hand, the question of jurisdiction has already been dealt with by the Islamabad High Court, in judgment reported as 2019 CLC 1998 Islamabad (Muhammad Azam Khan Niazi vs. General Manager SNGPL, Islamabad), in the following manner:

13. Section 43(1) of the OGRA Ordinance, 2002, *inter alia*, provides that OGRA shall be exclusively empowered to determine the matters in its jurisdiction as set out in this Ordinance. Under section 6 of the OGRA Ordinance, 2002, one of the powers and functions of OGRA is to "resolve complaints and other claims against licensees for contravention of the provisions of this Ordinance, rules or regulations." Under section 42(1) of the OGRA Ordinance, 2002, OGRA has been empowered to make regulations, not inconsistent with the provisions of the said Ordinance or the rules, for the carrying out of its functions under the said Ordinance. As per Section 42(2)(e) of the OGRA Ordinance, 2002, OGRA can make regulations with respect to the "procedure for resolving disputes amongst the licensees, consumers and licensees, and users of open access facilities". Learned counsel for the appellant does not dispute that the respondent was a "licensee" as defined in the OGRA Ordinance, 2002.

14. In exercise of the powers conferred by Section 42 of the OGRA Ordinance, 2002, OGRA has made Complaint Resolution Procedure (for Natural Gas, Liquefied Petroleum Gas (LPG), Compressed Natural Gas (CNG) and refined oil products) Regulations, 2003 ("the 2003 Regulations"). These Regulations provide for a mechanism for any person, including gas consumers, to submit applications/complaints with OGRA against a licensee on any of the following matters:-

- (a) any act or thing done or omitted to be done by a licensee or dealer in violation or alleged violation of the Ordinance, rules, regulations, order of the Authority or terms and condition of the license;
- (b) non-compliance by the licensee or dealer with the service standards in the areas including but not limited to;
 - (i) billing and overcharging;
 - (ii) connection and disconnection of service;
 - (iii) metering;
 - (iv) undue delay in providing service;
 - (v) safety practices; or
 - (vi) quantity and quality of natural gas, LPG or CNG being supplied; or
- (c) discriminatory practices of the licensee or dealer.

(d) *for redressal of complaints in respect of matters relating to easements as given in section 32 of the Ordinance.*

15. *The 2003 Regulations also require a licensee/gas utility company, such as the respondent, to establish a complaints resolution system with the approval of OGRA for addressing the complaints of gas consumers. A gas consumer cannot file a complaint before OGRA unless he has sought redress from the licensee pursuant to the complaint resolution system. It is only in the event where the complainant has failed to obtain redress from the licensee, that he can submit a complaint to OGRA pursuant to the 2003 Regulations. On the receipt of a complaint by OGRA, the same is required to be forwarded to a designated officer at OGRA for further action. The designated officer can require the licensee against whom the complaint is filed to respond to the complainant within a stipulated period. The designated officer at OGRA has been given wide ranging powers including the power to inspect any site, and to arrange a meeting between the complainant and a licensee. In terms of Regulation No.8(2) of the said Regulations, the designated officer of OGRA is required to conclude his actions and notify the complainant and the licensee in writing of his decision within ninety days of the admission of the complaint. The designated officer at OGRA has also been empowered to issue temporary injunctions. The decision on a complaint under the 2003 Regulations is appealable under Regulation No.9.*

19. In view of above authoritative judgment of this Court, it has been settled by now that any aggrieved person, who is a consumer, if intended to approach the OGRA under the complaint resolution system, he has to approach at the first instance to the licensee i.e. SNGPL or SSGCL (gas utility company), as the case may be, whereafter he is permitted to approach the OGRA pursuant to Regulations of 2003. Even the regulations define the issues which could be dealt with by an aggrieved person as also referred in Para-14 of the aforesaid judgment, which is the exclusive domain of OGRA to deal with and as such, these particular instances are referred in Regulation 3 of the OGRA Complaint Resolution Procedure [for Natural Gas, LPG, CNG and refined oil products] Regulations, 2003.

20. In view of above reasons, it can easily be deduced from the comparison of these exclusive subjects, which fall within the purview of OGRA Ordinance, 2002 read with OGRA Complaint Resolution Procedure [for Natural Gas, LPG, CNG and refined oil products] Regulations, 2003, the subject referred in Regulation 3 is previously in exclusive domain of OGRA, which could not be agitated before any other Court, however after the promulgation of Gas (Theft Control and Recovery) Act, 2016, the subject provided in Regulation 3 were also covered under the latter Act, though there is no bar of jurisdiction in OGRA Ordinance, 2002, therefore, certain findings on these subjects given by the OGRA have persuasive value to be considered by the Gas Utility Courts while adjudicating upon the rights of the parties or prosecuting any person.

21. While putting in juxtaposition the special subject of OGRA Ordinance, 2002, even the OGRA Complaint Resolution Procedure [for Natural Gas, LPG, CNG and refined oil products] Regulations, 2003, which deal with specific subjects *vis-a-vis* the concept referred in Gas (Theft Control and Recovery) Act, 2016 qua the offences as well as *dispute regarding billing or metering against the gas utility company in terms of Section 6 of the Act*, certain similar questions and situations crop up, in such eventuality when two special laws deal with similar situation then question of jurisdiction has to be seen in the light of its nature, object, scope and remedial portion provided therein in ordinary meaning to understand its true legislative intent. It has also been settled that special statute prevails over general statute and similarly, general provision and special provision in same statute would have different effect, when the plain and simple meaning of provision of law is clearly understandable

without any ambiguity then nothing is to be presumed or imported from outside. Reliance is placed upon 2014 SCMR 671 (The State vs. Syed Baqir Ali Naqvi).

22. While dealing with the proposition it has been observed that certain similar subjects are available in both the laws, therefore, this grey area requires an interpretation with reference to its remedies, therefore, comparison of both laws in that specific portion is as under:

OGRA Ordinance, 2002	Gas (Theft Control and Recovery) Act, 2016
<p>Section 11. Complaints (1) Any interested person may file a written complaint with the Authority against the licensee for contravention of any provision of this Ordinance or of any rule of regulation.</p> <p>Regulation 3 of the Complaint Resolution Procedure [for Natural Gas, LPG, CNG and refined oil products] Regulations, 2003:</p> <p>Nature of Complaints.—Any person may submit an application with the Registrar for –</p> <p>(a) any act or thing done or omitted to be done by a licensee or dealer in violation or alleged violation of the ordinance, rules, regulations, order of the Authority or terms and condition of the license.</p> <p>(b) non-compliance by the licensee or dealer with the service standards in the areas including but not limited to;</p>	<p>Section 6. Procedure for complaints and suits for default before Gas Utility Courts.—(1) Where a person is involved in an offence under this Act or where there are sums due or recoverable from any person, or where a consumer has a dispute regarding <i>billing or metering against a Gas Utility Company</i>, a consumer or Gas Utility Company, as the case may be, may file a complaint or suit, as the case may be, before a Gas Utility Court as prescribed by the Code of Civil Procedure, 1908 (Act V of 1908) or the Code of Criminal Procedure, 1898 (Act V of 1898).</p>

<p>(i) billing and overcharging; (ii) connection and disconnection of service; (iii) metering; (iv) undue delay in providing service; (v) safety practices; or (vi) quantity and quality of natural gas, LPG or CNG being supplied; or (c) discriminatory practices of the licensee or dealer. for redressal of complaints in respect of matters relating to easements as given in section 32 of the Ordinance.</p>	
<p>Regulation 9. Appeal: If the complainant or the licensee is not satisfied with the decision under these regulations, within thirty days of the decision, either party may appeal against the decision to the Authority pursuant to section 12 of the Ordinance. The memorandum of appeal shall be fixed alongwith fee prescribed in the rules</p>	
<p>Section 12. Appeal, etc. of OGRA Ordinance, 2002: (1) Any person aggrieved by any order or decision of the delegates of a power delegated by the Authority under Section 10 may, within thirty days of the receipt of such decision or order, prefer appeal to the Authority and Authority shall hear and decide the appeal within ninety days from the date of its presentation. (2) In relation to any decision concerning a regulated activity, the High Court may, if it is satisfied that no other adequate</p>	<p>13. Appeal.—(1) Any person aggrieved by any judgment, decree, sentence or final order passed by a Gas Utility Court may, within thirty days of such judgment, decree, sentence or final order, prefer an appeal to the High Court. (6) No appeal, review or revision shall lie against an order accepting or rejecting an application for leave to defend, or any interlocutory order of the Gas Utility Court which does not dispose of the entire case before the Gas Utility Court.</p>

<p>remedy is provided, on application of an aggrieved party, make an order;</p> <p>(a) Directing the Authority to refrain from doing anything it is not permitted by law to do, or to do anything the Authority is required by law to do; or</p> <p>(b) Declaring that any act done or proceeding taken by the Authority has been done or taken without lawful authority and is of no legal effect.</p> <p>(3) Where-</p> <p>(a) An application is made to a High Court for an order under sub-section (2); and</p>	
<p>Section 13. Review of Authority Decision. The Authority may review, rescind, change, alter or vary any decision, or may rehear an application before deciding it in the event of a change in circumstances or the discovery of evidence which, in the opinion of the Authority, could not have reasonably been discovered at the time of the decision, or (in the case of a reasonably) at the time of the original hearing if consideration of the change in circumstances or of the new evidence would materially alter the decision.</p>	

23. While comparing these two mechanisms provided in both these statutes which are overlapping jurisdiction, especially when a consumer is aggrieved with over-billing dispute with the gas utility company or a licensee as the case may be, he has multiple remedies i.e. (a) he should approach the gas utility company at first instance or (b) he can approach

the OGRA authorities by filing complaint in terms of Section 11 of the OGRA Ordinance, 2002 being an interested person and his complaint has to be dealt with in terms of Regulations, 2003, however if an order has been passed adverse to the consumer he has a remedy of appeal in terms of Regulation 4 and similar remedy is also available to licensee to approach the Authority against the decision of designated officer in terms of Section 12 of the OGRA Ordinance, 2002, however at that stage the decision of authority stands final and no further remedy is available to the consumer or the licensee company before the Hon'ble High Court as Section 12(2) only provides a right to further appeal before the Hon'ble High Court concerning any decision to a *regulated activity*, whereby the billing dispute of a consumer does not fall within the concept of regulated activity as OGRA Ordinance, 2002 revolves around regulated activity of a licensee as under the said law only a licensee can perform the regulated activity in terms of Section 2(xxxii), which is not available to a consumer, who entered into a relationship with the licensee on the basis of a contract, therefore, his remedy ends at that stage.

24. Another important situation raised a different question as to whether the consumer who has been given protection in terms of OGRA Ordinance, 2002 qua his rights against the licensee company through the complaint resolution mechanism but he has simultaneously been given another remedy in terms of Section 6(1) of the Gas (Theft Control and Recovery) Act, 2016 to file a complaint being a consumer qua his dispute regarding billing or metering against gas utility company, in such eventuality the doctrine of elections comes into play as to whether the consumer when opted for one remedy whether he is barred to raise similar

question through second remedy. The answer to this proposition has been considered in the light of doctrine of election of remedies.

25. Another important aspect is the overriding clause of Section 31 of the Gas (Theft Control and Recovery) Act, 2016 *vis-a-vis* Section 43 of the OGRA Ordinance, 2002, whereby both the laws contain the concept of *override other laws*, however on comparison of both these provisions the interpretation has to be given effect on the principle that when there is conflict between two special laws containing overlapping jurisdiction, statute later in time overrides the statute prior in time. Reference in this behalf is made to 2017 SCMR 1218 (Syed Mushahid Shah v. FIA), therefore, there is no cavil to proposition that Gas (Theft Control and Recovery) Act, 2016 is the law later in time, which prevails on the general law i.e. OGRA Ordinance, 2002 only to the extent of offences as well as billing and metering related issues defined in Gas (Theft Control and Recovery) Act, 2016 for the prosecution of individuals on offences mentioned therein and declaration qua civil rights not otherwise.

26. The most interesting feature qua the difference between the two laws i.e. Gas (Theft Control and Recovery) Act, 2016 *vis-a-vis* OGRA Ordinance, 2002 is the inherited legal jurisdiction, whereby the Gas Utility Court has been constituted in terms of Section 2(i) read with Section 3 of the Gas (Theft Control and Recovery) Act, 2016 having exclusive jurisdiction in terms of Section 4, even a complete code of procedure has been provided in terms of Section 5(1)(a) & (b), which includes the Code of Civil Procedure, 1908 as well as Code of Criminal Procedure, 1898. Such aspect demonstrates that while exercising powers under the Gas (Theft Control and Recovery) Act, 2016 to deal with issues relating to the

prosecution of offences referred in this Act, a mechanism for a criminal trial has to be adopted under the Code of Criminal Procedure, whereas while dealing with the issues relating to *sum due or recoverable from any person, or where a consumer has a dispute regarding billing or metering against gas utility company* and vice versa in terms of Section 6(1) of the Act, the Gas Utility Court has to adopt the procedure of a civil trial under the Code of Civil Procedure, 1908 and to proceed in a manner while considering the pleadings i.e. plaint, written statement, framed issue(s) and to record evidence, on the basis of same a decree be passed. Such exhaustive procedure has further been given extended powers under Section 10 of the Gas (Theft Control and Recovery) Act, 2016 qua the execution mechanism, which includes but not limited to attachment, sale and auction of the property by the Court. In this backdrop, the comparison of this procedural diversity and complete mechanism demonstrates that the OGRA authority under the OGRA Ordinance, 2002 has no attributes of a Court, rather it is an administrative authority, which is not equipped with the mechanism provided under the Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1898 for conducting a trial, even the OGRA could not be considered as parallel judicial system, rather its quasi judicial function gives a limited effect, therefore, such manifest difference of a quasi judicial forum and a court gives an overriding and prevailing effect to a judgment, order or exercise of jurisdiction qua the offence related activity or a right of consumer or gas utility company in a declaratory manner, which shall prevail in all circumstances. Reference to this effect is made to PLD 2019 Sindh 624 (M/s Muslim Commercial Bank Limited vs. Federation of Pakistan). Even it has not been denied that OGRA is equipped with

certain powers to resolve the disputes in terms of the OGRA Complaint Resolution Procedure [for Natural Gas, LPG, CNG and refined oil products] Regulations, 2003, whereby billing and metering related issues were referred, but in this comparison the OGRA authorities while exercising their powers in resolving disputes, though acting in certain capacity and functions of the Court, but the same does not come within the administrative supervision of a High Court in terms of Articles 202 and 203 of the Constitution of the Islamic Republic of Pakistan, 1973, hence there is no cavil to proposition that the decision of the OGRA in terms of billing and metering *vis-a-vis* issues covered under the Gas (Theft Control and Recovery) Act, 2016 does not supersede or prevail upon the findings of the Gas Utility Court.

27. The powers conferred under the Gas (Theft Control and Recovery) Act, 2016 qua the declaratory right of consumers of gas utility company for the purpose of billing and metering could further be assailed in appeal while considering the same as a decree or an order in terms of Section 13 of the Gas (Theft Control and Recovery) Act, 2016 before the High Court, whereby the procedure in terms of Order XLIII Rule 3 of the Code of Civil Procedure, 1908 is applicable. Contrary to the said concept there is no further appeal in similar matter when jurisdiction in terms of Section 12 of OGRA Ordinance, 2002 was exercised, rather the decision of the authority attains finality, as a result whereof the only limited scope available is the concept of judicial review in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. However, the consumer or a gas utility company thereafter can approach the Gas Utility Court under the Gas (Theft Control and Recovery) Act, 2016, hence this comparative analysis

gives an extra authority to the Gas Utility Court in comparison to the OGRA authorities. The Hon'ble Balochistan High Court in case reported as PLD 1983 Quetta 52 (Mir Rehman Khan v. Sardar Asad Ullah Khan) while dealing with similar proposition has held that:

"The question for determination as to which forum is a court and which is not a Court, is mainly dependent on the manner and method in which proceedings are regulated before that forum, which are not bound by any law with regard to procedure and evidence, as such they only settle the disputes but do not administer justice according to law, therefore, they are not termed as courts, as such, the Courts are such organs of the State which follow legally prescribed scientific methodology as to procedure and evidence in arriving at just and fair conclusions."

28. The nutshell of above discussion gives rise to a situation that the findings of the Gas (Theft Control and Recovery) Act, 2016 qua its offences *vis-a-vis* the civil rights with respect to the billing and metering in terms of dispute of a gas utility company or a consumer, as the case may be, overrides the effect of OGRA Ordinance, 2002, as such, the judgment, decree or order of any nature of the Gas Utility Court prevails upon the findings of the OGRA given under the OGRA Ordinance, 2002.

29. The only question which remains is the intent of consumer or the gas utility company, as the case may be, being a juristic personality, qua its option to approach the forum available under the OGRA Ordinance, 2002 or under the Gas (Theft Control and Recovery) Act, 2016, whereby the OGRA Ordinance, 2002 does not provide any remedy to the gas utility company, except in a case where a decision of a designated officer has been passed in the OGRA Complaint Resolution Procedure [for Natural Gas, LPG, CNG and refined oil products] Regulations, 2003 while exercising powers in terms of Section 12 of the OGRA Ordinance, 2002, but

in case of Gas (Theft Control and Recovery) Act, 2016 the gas utility company can also approach directly being an aggrieved person for any dispute qua billing and metering or a sum due or recovery. In such eventuality, the doctrine of election of remedy comes into the way, whereby a person being consumer or a gas utility company or an aggrieved person has a choice to elect one of the many remedies concurrently invoked against one and the same issue, as multiple and simultaneous proceedings may be hit by principle of *res subjudice* or where one of the proceedings is taken to its logical conclusion then other pending proceedings for similar relief may be hit by principle of *res judicata*. Giving choice to elect a remedy from amongst several co-existent and/or concurrent remedies does not frustrate or deny right of a person to choose any remedy, which best suits under the given circumstances, but to prevent recourse to multiple or successive redressal of singular wrong or impugned action before the competent forum / original appellate jurisdiction, such rule of prudence has been evolved by the courts of law to curb multiplicity of proceedings. As long as party does not avail of the remedy before the court of competent jurisdiction, all such remedies are open to be invoked. Once election is made, then the party generally, cannot be allowed to hop over and shop for one after another co-existent remedy. Reliance is placed upon 1992 SCMR 1908 (Mst. (Fehmida Begum vs. Muhammad Khalid, etc). After exhausting remedies from the court of law against the impugned order or action, a person could not be allowed to go on expedition to venture another remedy for the same malady, which

though available was not invoked, as such, permitting such course would be nothing but abuse of the process of law and would amount to encourage multiplicity of proceeding, which could not be approved. Reliance is placed upon PLD 2018 SC 828 (Trading Corporation of Pakistan vs. Devan Sugar Mills Limited, etc.). It was also held that when a special forum has been provided and equipped with all kinds of powers and aggrieved person has invoked such remedy, be deemed to have given up and forfeited his right to the other remedy.

30. The above referred principles to elect remedy are based upon the legal maxims i.e. (a) *Electio semel facta, et placitum testatum, non patitur regressum* [A choice once made, and a plea witnessed or intent shown, allows no going back], (b) *Electio semel facta non patitur regressum* [An election once made cannot be re-called] and (c) *Electa una via, non datur recursus ad alteram* [When one way has been chosen, no recourse is given to another].

31. In view of above legal principles, it is not settled that when a consumer or gas utility company has opted to approach the Gas Utility Court under the Gas (Theft Control and Recovery) Act, 2016, they are debarred to approach the OGRA authorities after the findings given by the Gas Utility Court as the principle of *res judicata* is applied in such situation, though on the findings of OGRA, such principle is not applicable to the Gas Utility Court.

32. In view of above discussion, this Court comes to the following interpretations qua the disputes of jurisdiction as well as the remedies available to consumers, licensee company as the case may be:

- a) Any offence relating to tempering (offences of Gas (Theft Control and Recovery) Act, 2016) shall exclusively be triable by gas utility court and OGRA has no jurisdiction in this regard.
- b) A dispute qua billing and metering, which is also a subject matter of OGRA Ordinance, 2002 under Regulation 3 of the OGRA Complaint Resolution Procedure [for Natural Gas, LPG, CNG and refined oil products] Regulations, 2003, which is also available in terms of Section 6(1) of the Gas (Theft Control and Recovery) Act, 2016, whereas a consumer, if approaches the OGRA authorities at first instance in terms of Section 11 of OGRA Ordinance, 2002 read with Regulations of 2003, any final decision passed in appeal by OGRA authorities under Section 12 shall be further agitated by consumer or gas utility company before the Gas Utility Court in terms of Section 6 of the Gas (Theft Control and Recovery) Act, 2016, being its independent remedy. In such eventuality, findings of OGRA authorities will be considered as a decision as to whether same was passed in accordance with law or otherwise and findings of Gas Utility Court in shape of decree will be considered as a declaration for upholding the decision of OGRA or otherwise. The final verdict of the Gas Utility

Court in this regard under the Gas (Theft Control and Recovery) Act, 2016 will prevail.

- c) Where a consumer or the licensee company approaches the Gas Utility Court under Gas (Theft Control and Recovery) Act, 2016 at first instance before raising of dispute before the OGRA, the jurisdiction of OGRA will not be exercised by virtue of doctrine of election of remedies, though the OGRA has an authority to consider this aspect independently being a regulator, but the final verdict of Gas Utility Court will prevail in this regard and parallel proceedings are not permissible over and above the proceedings of Gas Utility Court.
- d) The gas utility company is not entitled to raise a dispute of regulated activity under the Gas (Theft Control and Recovery) Act, 2016 before the Gas Utility Court as it exclusively falls within the domain of OGRA.
- e) On the basis of any report or on complaint, if OGRA authorities come to a conclusion that any offence in terms of Section 25 of the OGRA Ordinance, 2002 has been committed by any undertaking, company, licensee, person qua a regulated activity, causing damage to any facility, plant, equipment, material or a property or stealing of petroleum, the OGRA authorities can prosecute such person under the provision of Sections 25 & 26 of the OGRA Ordinance, 2002 and no court shall take cognizance of such offences in terms of Section 29 of the OGRA Ordinance, 2002.

- f) Any complaint qua the offence defined in Sections 14 to 19, 21 of the Gas (Theft Control and Recovery) Act, 2016 shall exclusively be triable by the gas utility court, however all these punishments/penalties shall be considered in addition to similar type of prosecution under other laws in terms of Section 20 of the Gas (Theft Control and Recovery) Act, 2016.
- g) Once an order, judgment or decree has been passed under the Gas (Theft Control and Recovery) Act, 2016, it creates a bar to review such order in any manner by OGRA under the OGRA Ordinance, 2002 on the principle of *res judicata*, no consumer, gas utility company or the OGRA authorities can re-agitate, re-consider or re-examine such decision under the law (Regulation 4(d) of the OGRA Complaint Resolution Procedure [for Natural Gas, LPG, CNG and refined oil products] Regulations, 2003).
33. In view of above settled terms, the instant writ petition is hereby **DISPOSED OF**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: _____.

JUDGE

Khalid Z.