

Judgment Sheet
**IN THE PESHAWAR HIGH ABBOTTABAD BENCH
JUDICIAL DEPARTMENT**

Cr.Appeal No. 49-A/2016.

JUDGMENT

Date of hearing.....**05.05.2016**.....

Appellant _____

Respondents. _____

IKRAMULLAH KHAN, J.- Through the instant appeal, appellants have questioned the validity and legality of the impugned judgment/order dated 28.03.2016 rendered by learned Judge, Consumer Court, District Haripur, whereby the appellants were directed to restore the gas supply to respondent concern to the extent of 14 MCF and to receive amount of Rs. 2,19,359/13.

In essence, a complaint under Section 13 of the Khyber Pakhtunkhwa Consumer Protection Act, 1997 was instituted by the respondent before the learned Judge, Consumer Court with the following prayer:-

“Declaration to the effect that act of respondent No. 1 whereby he on basis of pure mala-fide, illegality, unlawfully and using his power in an absolute disregard to norms of justice is illegality and unlawfully bent upon personally to disclose the glass manufacturing unit situated at industrial estate Hattar by petitioner by:-

- i. Illegally and unlawfully disconnecting the gas supplies of petitioner And*

ii. *By sending wrong gas to bill for the month of December 2015, is illegal, unlawful, without lawful authority, without jurisdiction, arbitrary, mala-fide, perverse, in utter violation of law and rules, consequently, of no legal effect And praying that correct gas bill be graciously sent. Furthermore, any other relief which the Hon'ble Court deem fit and proper may also be graciously awarded.*

2. *Permanent injunction restraining defendants not to send any bill with excessive, illegal and unlawful readings strictly in accordance with law and rules on the subject.*

2. During the course of pendency of the complaint *ibid*, thereafter, on conclusion of evidence, on behalf of respondent-company the learned Judge, Consumer Court on 25.03.2016 made direction for restoration of the Gas Supply to respondent and case was adjourned to 13.04.2016 but, without any plausible reason, the record was requisitioned on 28.03.2016 by the learned Judge, and on the request of learned counsel for respondent, the impugned judgment was passed.

3. Learned counsel for appellants contended that, the impugned judgment is without jurisdiction, against law and facts on record as, the learned judge could not pass declaratory nature of orders, while, the jurisdiction of consumer Court is limited and could exercise the powers, as envisaged thereunder section 15 of the KPK Consumer Protection Act, 1997.

4. On the other hand, learned counsel for respondent argued that no appeal could be entertained against an interlocutory order

passed by the Consumer Court, therefore, the appeal filed by the appellants is not maintainable, to be dismissed accordingly. Further contended that as the matter purely pertaining to supply of services, where respondent is consumer while appellants are service provider, therefore, the impugned judgment is passed/rendered by a competent Court, could not be interfered with by this court as no any illegality or irregularity has been occasioned thereof.

5. I have heard learned counsel for parties and have gone through the record.

6. The record reveals that respondent has challenged the gas bill issued to respondent by appellants-department for the month of December, 2015 and has sought declaration in that regard, that the same be declared illegal.

7. As it is crystal clear therefrom the facts alleged by respondent, that the matter in issue is directly and exclusively pertaining to providing of service as mentioned in clause (n) of section 2 of the KPK Consumer Protection Act, 1997 (Consumer Act), the manner in which the complaint shall be made as prescribed thereunder sub-section (2) of Section 14 of the Consumer Act shall be followed by the Court, which reads as:-

“The (Court) shall if the complaint received relates to goods in respect of which the produce specified in sub-section (1) cannot be followed, or if the complaint relates to any service,

(a). refer a copy of such complaint to the opposite party directing him to give his version of the case

within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the (court; and

(b). on receipt of the defence of the opposite party, if any, under clause (b), proceed to settle the dispute on the basis of evidence produced by both the parties.

Provided that if the opposite party does not deny or dispute the allegations made in the complaint or fails to present his case within the specified period, the dispute shall be settled on the basis of the evidence brought by the (complainant).

8. The above mentioned provision of law, has specifically, provided a procedure to be adopted by the Court and have got no any power or jurisdiction to pass any kind of direction, whatsoever, of the kind either to restore or disconnect any services or make any direction for payment in installment or reduced rate or to make direction to any department in case of supply of energy to enhance the load, without giving its findings in view of the provision contained in section 15 of the KPK Consumer Act, 1997 which reads as:-

“S.15(1) If after the proceedings conducted under section 14 the (Court) is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any or all of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following actions namely.

(a). to remove defect from the goods in question;

(b). to replace the goods with new goods of similar description which shall be free from any defect;

(c). to do such other things as may be directed for adequate and proper compliance with the requirements of section 4, section 5 or section 6;

(d). to pay such amount as may be awarded by it as compensation to the consumer for any loss or negligence of the opposite party.

9. However, the Consumer Court could punish such a defaulter or a person responsible for causing any infringement of rights of Consumer in view of the provision contained in section 16 of the Consumer Act, but in the case in hand the respondent has not registered any such grievance, which may give jurisdiction to the consumer Court with regard to any defect in the goods or services provided to the respondent by appellants. The matter is purely pertaining to dispute over, the gas bill for the month of December, 2015, which could not be resolved by the learned Consumer Court below. However, even if the jurisdiction is assumed and it was found that, the respondent has received an excessive amount, could be recovered in view of clause (c) of sub section (1) of section 15 of the KPK Consumer Act, 1997.

Clause (c) of section 14 of the consumer Act, placed some embargo, on the power of the Consumer Court to fulfill requirement so mentioned, therefore, if any defect in the goods is complained, which reads as:-

Section 14 (c) *“Where the (complaint) alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the (court) shall*

obtain sample of the goods from complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to a laboratory along with a direction to make an analysis or test, whichever may be necessary with a view to finding out whether such goods suffer from any defect and to report its findings thereon to the (court) within a such period as may be extended by the (court);

10. As, respondent on one hand was stated to be defaulter to pay Rs.97,69,020/- while on the other hand, he had used, unsanctioned excessive load, for which he had not paid, such complicated and technical question could not be resolved by consumer Court as, jurisdiction conferred upon it, is not that of a civil court, except those powers mentioned thereunder sub-section 3 of section 14 of the Act *ibid*.

11. So far as the maintainability of the appeal against the interim order passed by the Consumer Court is concerned, no any bar could be placed on appeal against any order passed by the consumer Court in view of section 17 of the Consumer Act, which reads as:-

“S.17.- Any person aggrieved by an order made by the (Court) may prefer an appeal against such order to the (High Court) within period of thirty days from the date of the order, and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), in respect of appeal to the High Court shall mutatis mutandis, apply.

12. The contention of learned counsel for respondent that an appeal shall be preferred only against the order passed thereunder section 15 or 16 by the Consumer Act is misconceived. No any bar has been placed to challenge an interlocutory order, otherwise, the verse of section 17 of the Act, may be drafted as:

“Any person aggrieved by a final order made by the Court may prefer an appeal against such order to the (High Court) within period of thirty days from the date of the order, and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), in respect of appeal to the High Court shall mutatis mutandis, apply”.

13. No words could be introduced or the plain meaning occurred therein a statute could not be so construed or interpreted to give a new and altogether a different interpretation to frustrate the law.

14. The jurisdiction of the Consumer Court is not exhaustive but limited to the extent and manner as provided thereunder clause (o) of section 2 and sections 4, 5, 6 and 7 of the Act while the provision contained in section 3 of the Consumer Act has not excluded the application of any other law for the time being enforced for redressal of any grievance. Section 9 of CPC, otherwise, confers, exclusive and general jurisdiction upon the Civil Court, if the cognizance of a particular dispute has not been ousted or barred.

15. Reference may be given herein to the judgment of this Court rendered in case titled “*M/s. Nulab CNG filling station Vs.*

Managing Director, Sui Northern Gas Pipeline limited and 4 others reported as PLD\d 2013 Peshawar 09.

16. The Hon'ble Lahore High Court in case titled "*Sui Northern Gas Pipe Lines limited through its General Manager vs Shahzada Khush Bakht Khan*" P.LJ 2015 Lahore 183 is as under:-

"the bare reading of these section reveals that the Consumer Court established under Punjab Consumer Protection Act, 2005 is not a Court of general jurisdiction. It is its duty to examine the allegations raised in the complaint in order to determine its jurisdiction. Prayer for cancellation of gas bill or revising of gas bill by a gas company could not have conferred jurisdiction upon the consumer court and the same falls outside the purview of this special tribunal".

17. No any distinction could be placed between Section 31 of the Punjab Consumer Protection Act, 2005 and Section 15 of the KPK Consumer Act 1997, while section 31 of the Punjab Consumer Act conferred somewhat advanced/exhaustive jurisdiction upon the Consumer Act as mentioned therein clause (f) to (K) of section 31. .

18. It would be not out of context, to give reference to the OGRA Ordinance, 2002 whereas section 43 of the Ordinance ibid has given overriding effect with regard to other laws which reads as:-

The provisions of this Ordinance, the rules and regulations, and any licences issued thereunder shall have effect notwithstanding anything to the contrary contained in any other law, rule or regulation, for the

time being in force, and any such law, rule or regulation shall, to the extent of any inconsistency, cease to have any effect on the commencement of this Ordinance and the Authority. Shall, subject to the provisions of this ordinance be exclusively empowered to determine the matters in its jurisdiction as set out in this Ordinance.

(2) Nothing in this Ordinance,, or any repeal effected thereby, shall affect or be deemed to affect anything done, action taken, proceedings commenced, directions given, instruments executed or orders, rules or regulations issued under or in pursuance of any law repealed or amended by this Ordinance and any such thing, actions, proceedings, directions, instruments or orders shall, if in force on the commencement of this Ordinance, continue to be in force and have effect as if the same were respectively done, taken, commenced, given, executed or issued under this Ordinance.

19. Whereas, section 42 of the Ordinance, 2002 has conferred power upon the Authority to make Regulation, which reads as:-

“The Authority may, by notification in the official Gazette, make regulations, not inconsistent with the provisions of this Ordinance or the rules, for the carrying out of its functions under this Ordinance:-

(2). In particular and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:-

(a). maintenance and submission of records by any person involved directly or indirectly in a regulated activity and the inspection of the records by the Authority:

(b). establishment of technical standards and their monitoring for the design, construction, testing, operation, maintenance and abandonment of a regulated activity;

(c). administration of the Oil and Gas Regulatory Authority Fund;

(d). establishment of terms and conditions of employment and remuneration policies for staff, consultants and advisers of the Authority;

(e). procedure for resolving disputes amongst the licensees, consumers and licensees, and users of open access facilities;

(f). procedure, processes and practice for carrying out functions of the Authority.

(g). procedure for appeal of decision or order made by delegates pursuant to section 10;

(h). prescription of forms and procedures for an application for a regulated activity and the time for submission; and

(i). any other matter incidental or consequential to the performance of the functions of the Authority. ”

20. The Authority mentioned therein the ordinance 2002, has made the Complaint Resolution Procedure (for Natural Gas, Liquefied Petroleum Gas (LPG) and compressed Natural Gas (CNG) Regulations, 2003, while Section 3 of the Regulation provides as under:-

Nature of Complaints. *Any person may submit an application with the Registrar for*

(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.*
- 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*
- vii. Discriminatory practices of the licensee or dealer.*

21. The grievance of any aggrieved person could be resolved through the mechanism provided thereunder the Ordinance, 2002 and the Regulations mentioned hereinabove, while section 43 of the Ordinance has excluded the operation of any other law, in matters specifically provided thereunder the Regulation etc.

22. Article 143 of the Constitution of Islamic Republic of Pakistan has in very wide command has specified that in case, of any conflict between Federal and Provincial laws, the former would be applied. As the OGRA Ordinance is a Federal law and keeping in view the overriding effect as envisaged thereunder Section 43 of the Ordinance, 2002, questions, disputes and all connected matters, whose cognizance has been conferred upon the

authority under OGRA Ordinance, shall be resolved by it, while it is also otherwise, settled principle of law, that the provision of a special law on a subject excludes the application of General law to such subject. As the OGRA ordinance is a special law and so far as the petroleum and its products including Sui Gas, is concerned, the jurisdiction of the consumer Court in matters, not specifically mentioned thereunder, the Consumer Protection Act 1997 is ousted by virtue of section 43 of the OGRA Ordinance. Reference be given to the case law reported as PLD 1985 SC 159 titled “*Inspector General of Police, Punjab Lahore Vs. Mushtaq Ahmad Warraich*”.

23. Before passing with this judgment, it would be appreciated that the Federal Government has enacted a fresh Act, called the Gas (Theft Control and Recovery) Act, 2016, the pre-amble of which reads as:-

“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, while section 6 of the Act ibid stipulates as:-

(I). 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 billing or metering against a Gas utility company, 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).

24. Keeping in view the ordinary effect of section 43 of the OGRA Ordinance, 2002 and the Regulations framed thereunder, or in view of section 6 of the Gas (Theft Control and Recovery) Act, 2016, are to apply in matters pertaining to billing of Gas and not the provisions of KPK Consumer Protection Act, 1997.

25. Thus the jurisdiction assumed by the learned Judge Consumer Court District, Haripur in the instant matter is without jurisdiction, lawful Authority and the impugned judgment/order passed by it is a nullity in the eye of law, which is hereby set aside by accepting this appeal and consequently, the very complaint filed by the respondent has become redundant and is dismissed accordingly.

26. However, respondent may approach, in this regard for redressal of his grievance if any and if so advised, before competent forum/Court.

Announced:
05.05.2016.

JUDGE