

JUDGMENT SHEET

**PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

**Cr.A. No. 117-M/2019
With Cr.M No. 81-M/2019**

JUDGMENT

Dates of hearing: 21.02.2020 & 28.02.2020

**Appellants: (Mr. Taj Ali Khan & others) by Barrister
Asad-ur-Rehman.**

**Respondent:- (Dr. Khalid Mahmood) by Mr.
Aurangzeb, Advocate.**

WIQAR AHMAD J.- This order is directed to dispose of the appeal filed by appellants under section 17 (2) of the Khyber Pakhtunkhwa Consumers Protection Act, 1997 (hereinafter referred to as "*the Act*").

2. It was contended by appellants in their appeal that respondent filed a complaint bearing No. 1/III of 2010 on 21.12.2010 before learned Consumer Court Swat against them under section 13 of the Act. It was alleged by respondent in his complaint that he was consumer of respondents/company namely "*Sui Northern Gas Pipeline Limited*" (hereinafter referred to as "*SNGPL*") and had been regularly paying his gas bill, but despite that the respondents had considerably reduced gas pressure in the area, due to which he as well as general public were facing great hardships,

especially during winter season. Respondents on appearance contested the complaint by filing their reply. The learned Consumer Court vide order dated 08.03.2011 while deciding complaint of respondent/complainant directed the appellants to remove deficiency in supply of gas to consumers and they were further ordered to return the amount of bills for previous three months. Feeling aggrieved from said order, the appellants filed an appeal before this Court, which was partially allowed vide order dated 24.04.2012. Respondent/complainant then filed another application on 22.12.2014 for implementation of this Court order as well as order of Consumer Court Swat. Said application was disposed by learned Consumer Court on 05.05.2015 with directions to appellants to provide the requisite standard of gas to respondents/consumers. Respondent filed another application on 13.12.2017 for implementation of earlier orders of the Consumer Court. Said application was once again disposed of by learned Consumer Court vide order dated 15.03.2018 with direction to appellants to complete all the running and proposed projects in the area within shortest possible time. Respondent filed yet another application on 17.12.2018 for initiation of proceedings against the appellants in

view of non-compliance of this Court order as well as earlier orders of the consumer Court Swat under section 16 of the Act. The learned Consumer Court vide the impugned order dated 08.02.2019 accepted the application of respondent and the appellants were punished with imposition of fine of Rs. one million. They were further directed to pay Rs. one million separately to respondent/complainant and other consumers of the affected area. Feeling aggrieved therefrom, appellants filed the instant appeal with the following prayer;

“ In view of the above submissions, it is respectfully prayed that the impugned order dated 08.02.2019, may kindly be set aside by admitting the instant appeal in the larger interest of the Public and the area and to encourage SNGPL to work with dedication.

Any other relief which this Hon'ble Court deems fit may also be granted.”

3. Arguments heard and record perused.

4. Perusal of record reveals that complaint of respondent had been allowed vide order dated 08.03.2011 of the Court of learned Sessions Judge/Consumer Court Swat to the effect that appellants were directed to remove deficiency in supply of required quantity of gas to the houses of consumers/complainants within seven days and to return the amount of bills paid by consumers/complainants during previous three months.

Appeal filed there-against was partially allowed by this Court vide judgment dated 24.04.2012 wherein order of the learned Consumer Court was maintained to the extent of removal of deficiency in supply of required quantity of gas to the houses of consumers/complainants, but second part of the order regarding return of amount of bills to complainants/consumers for the previous three months was set aside. Complainant has filed an application for implementation of said judgment, in which substantial proceedings had been conducted wherein the appellants had been submitting their progress reports from time to time. It was finally disposed of vide order dated 05.05.2015 of the Consumer Court Swat by reiterating the directions to provide gas to consumers according to the demand and required standard of pressure for house consumption. Respondent No. 1 then filed another application on 17.12.2018 for implementation of earlier judgment of the consumer Court as well as for punishing respondents/appellants for their default in supply of gas to consumers. The learned consumer Court vide its order dated 08.02.2019 imposed a penalty of Rs. one million against the appellants. Compensation in the sum of Rs. one million was separately ordered to be paid to the complainant/respondent No. 1 and other

consumers of the affected areas in equal shares. The appellants were further directed to act upon and comply the earlier order of the consumer Court as modified in appeal. Copy of the judgment was sent to District Officer Revenue Swat for realization of the amount of fine etc by adopting the processes provided for recovery of arrears of land revenue under the Land Revenue Act, 1967.

5. Perusal of record reveals that respondents/appellants have been appraising the Consumer Court regarding the steps being taken for implementation of the original order as modified by this Court in appeal. Those steps have also been reproduced in the impugned judgment from reply filed by the appellants before the Court. Learned counsel for appellants has also filed a detailed statement of the steps taken to resolve low pressure issue at Swat since 2011 with CM No. 63-M of 2020, which are reproduced hereunder for ready reference;

S.No	Project Details	Total cost in Millions	Funded by	Date of Initiation	Date of completion	Remarks
1	6 inch Diameter x 2.6 KMs Operational Phase from Peshawar road Mingora to People Chowk Mingora	11.15	SHGPI	26.01.2011	13.03.2015	Line was laid to resolve the low pressure problem of consumers at tail end of Mingora City. The laying of line was delayed due to NOC issues with IHA. Already

Nawab (S.B.) Hon'ble Mr. Justice Wiqar Ahmad

						attached in Court file at page No. 63 & 72 duly attested by Registrar Consumer Court Malakand Division as well.
2	Upgradation of SMS Swat	5.067	SNGPL	07.08.2013	30.06.2014	SMS Swat was upgraded five times to its actual capacity that can cater the load of Swat for 50 years approximately. Already mentioned on page No. 63 of the Court file duly attested by Registrar Consumer Court Malakand Division too.
3	4 inch Diameter x 0.6 KMs operational phase at Dojangi Amankot Mingora	2.05	SNGPL	27.10.2014	30.06.2015	Both the operational phases were laid to resolve the low pressure problem at Mingora City and Saidu Sharif. Already mentioned on page No. 53, 63 & 70 duly attested by Registrar Consumer Court Malakand Division.
4	4 inch Diameter x 0.6 KMs operational Phase at Aqba road Saidu Sharif	2.05	SNGPL	27.10.2014	30.06.2016	
5	Looping of old network with newly laid operational Phase at Mingora and Saidu Sharif	0.45	SNGPL	13.02.2015	27.03.2015	Looping carried out to resolve low pressure problems of various pockets of Mingora & Saidu Sharif. Already mentioned on page No. 66, 67, 68, 69, 77, 83 and 85 duly attested by Registrar Consumer Court Malakand Division.
6	12 inch Diameter x 104.2 KMs Additional Transmission spur from Mardan to Swat	2276	SNGPL	11.11.2015	18.02.2019	Progress submitted to Consumer Courts on regular basis, mentioned from page No. 56 to 102. The expected date of completion was 30.06.2018, however


						due to general election 2018, whereby development works were stopped ..
--	--	--	--	--	--	---

It is apparent that the appellants have taken a lot of measures for addressing the problem of low gas pressure by spending millions of rupees thereon. It is also common knowledge that our country has been suffering from acute shortage of sources of energy like gas, petroleum products and electricity etc. The problem is multi-dimensional and appellants cannot be held solely responsible for the same. The problem is also not limited to respondents or the area comprising of the union council to which respondents belonged, but is a national phenomena. Appellants have taken substantial steps in compliance with original judgment in the case in hand and cannot be held to have infringed rights of the consumers/respondents, deliberately, making them liable for imposition of the penalty under section 16 of the Act.

6. Section 16 of the Act is penal as well as remedial in nature. It is penal in the sense that it provides punishment for seven days or fine which may extend to fifty hundred thousand rupees but not less than ten thousand rupees, or both, in its sub-section (1),


while a punishment of rigorous imprisonment for seven years as well as a fine of twenty hundred thousand, but less than ten thousand rupees, has been provided under its sub-section (2). It is remedial in nature, because it provides a guarantee for enforcement of protection of the rights of consumers as well as compensating them for the loss or damage cause to them. It also provides for confiscation of any goods or material which is deemed necessary for protection of the rights of consumers as well as removal of defects of the product involved or replacement thereof. Beside section 16, the whole Act is remedial and a beneficial legislation. Apart from its numerous sections, its preamble may be referred in this regard, which read as follows;

“ Preamble... Whereas it is expedient to provide for healthy growth of fair Preamble, commercial practice, the promotion and protection of legitimate interests of consumers and speedy redressal of their complaints and matters arising out of or connected therewith.”



There is no cavil to the maxim “*actus non facit reum nisi mens sit rea*” which means that an act is not criminal unless there is a criminal intent. I am conscious that the rule of criminal liability emerging from operation of the maxim and applicable in other cases may not be made applicable to an offence under section 16 of the Act. Complainant or prosecution may not be burdened to prove *mens rea* for proving the

commission of an offence under section 16 of the Act. Remedial statutes require a different treatment. "There are many statutes" as explained by S.M. Zafar in his book Understanding Statutes, "which are both penal and remedial, with the penal and remedial provisions so interlocked that a separation may be impossible. Some Courts are inclined to exercise the penal features of statute of this type and thus subjecting to strict construction, other Courts construe the statute as penal statute when its remedial features are invoked. It is suggested that the latter rule is preferable if the rule of strict construction is to be qualified." The subject has been dealt with in "Maxwell on the Interpretation of Statutes" (Twelfth Edition by P.St. J. Langan) in the following manner;



"Where the subject-matter of the statute," said Lord Evershed (at p. 174), "is the regulation for the public welfare of a particular activity. Statutes regulating the sale of food and drink are to be found among the earliest examples. It can be and frequently has been inferred that the legislature intended that such activities should be carried out under conditions of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it displaces the ordinary presumption of mens rea. But it is not enough merely to label the statute as one dealing with a grave social evil and from that to infer that strict liability was intended. It is pertinent also to inquire whether putting the defendant under strict liability will assist in the enforcement of the regulations. That means that there must be something he can do, directly or indirectly which will promote the observance of the regulations. Unless this is so, there is no reason in penalizing him,

and it cannot be inferred that the legislature imposed strict liability merely in order to find a luckless victim. According to Lord Evershed, then, two conditions must be satisfied if the presumption as to mens rea is to be rebutted; strict liability must be "required to give practical effect to the legislative intention," and the person charged with a breach of the statutory requirements must have had some opportunity of furthering their observance."


The Hon'ble Apex Court in its judgment given in the case of "Nasir Abbas v/s The State and another" reported as 2011 SCMR 1966 had held that an act does not make a person guilty unless the mind is also guilty and that *actus reus* must be accompanied by *mens rea* for constituting a criminal liability except the situation where it is a case of strict liability wherein absence of *mens rea* may not be fatal to prosecution. Relevant part of observation of the Hon'ble Apex Court is reproduced hereunder for ready reference;

"The age old Latin phrase epitomizes this concept, "actus non facit reum nisi mens sit rea", which means that the act does not make a person guilty unless the mind be also guilty. Actus reus in simple parlance is the actual act of committing some offence contrary to the law of the land and mens rea is the intent to commit the said offence. If either of the elements is missing, the conduct would not attract a penal provision unless it is a case of strict liability wherein the absence of mens rea may not be fatal to the prosecution."

A similar view was expressed by the Hon'ble Karachi High Court in the case of "Syeda Waheeda Shah v/s Election Commission of Pakistan" reported as 2013 PLD 117 by observing that absence of proof of *mens rea* in offences of strict liability

would not be fatal to prosecution, rather only proof of *actus reus* would be sufficient. The case in hand would not require application of the maxim *stricto sensu* but at least two conditions as explained by Lord Evershed in the case of "Vane v/s Yiannopoulos" reported as (1965 A.C. 486 per Lord Evershed P. 500), must be satisfied if the presumption as to *mens rea* is to be rebutted, viz,

- (a) *strict liability must be required to give practical effect to the legislative intention;*
- (b) *the person charged with a breach of the statutory requirements must have had some opportunity of furthering their observance;*



In the case in hand, strict liability is very much forthcoming from relevant provisions of the Act but the fact that the appellants/company had the opportunity of furthering their observance, may not be taken to such an effect, so as to subject them to a burden, which in the normal course of events, could not have been discharged by them. As stated earlier, energy crises is a national issue and its redressal by providing gas with full pressure to the consumers, who are respondents herein, was not readily doable for the appellants. It is however clear from the steps which they have taken and reproduced hereinabove that they

have done substantial progress towards the said end and they have also committed to be doing the same in future on a number of occasions before the consumer Court, as well as this Court.

7. In light of what has been discussed above, the appeal in hand is allowed by setting aside judgment dated 08.02.2019 of the learned Consumer Court Swat. Appellants are however expected to keep on implementing the main judgment and redressing grievances of all the consumers in the area including the respondents.

Announced
Dt. 28.02.2020

JUDGE

Office
02/4
W/R