

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE YAHYA AFRIDI
MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO.3598 OF 2020

(Against the Order dated 16.11.2020 passed by
Islamabad Lahore High Court, Rawalpindi
Bench in F.A.O.No.162/2019)

Sui Northern Gas Pipelines Limited, through its General Manager,
Rawalpindi

...Petitioner

VERSUS

Muhammad Arshad

...Respondent

For the Petitioner: Raja Zubair Hussain Jarraal, ASC

For Respondent: Malik M. Taimur Naseem, ASC

Date of Hearing: 20.09.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the Order dated 16.11.2020 passed by the Lahore High Court, Rawalpindi Bench ("**High Court**") in F.A.O. No.162/2019 whereby the First Appeal filed by the petitioner was dismissed.

2. The transitory facts of the case are that the respondent filed a Civil Suit for declaration, perpetual injunction and mandatory injunction against the General Manager, Chief Engineer and Area Manager of the petitioner i.e. Sui Northern Gas Pipelines Limited ("**SNGPL**"), with the prayer that the gas utility bill was wrongly calculated and should be corrected as per actual consumption. A further relief was also sought for permanent injunction from recovery of the bill amount and disconnection of gas supply to the premises. The civil suit was decreed by the Additional District Judge/Gas Utility Court, Rawalpindi *vide* Judgment dated 19.06.2017 and, as a result thereof, the gas consumption bill challenged in the suit was set aside, while SNGPL was found entitled to recover the cost of the meter.

3. The learned counsel for the petitioner referred to Section 13 of the Gas (Theft Control and Recovery) Act, 2016 ("**2016 Act**") and argued that the appeal was filed before the High Court in terms of Section 13 of

the 2016 Act which provides that any person aggrieved by any judgment, decree, sentence or final order passed by the Gas Utility Court may, within 30 days, prefer an appeal to the High Court. He further contended that, in terms of sub-section 2 of Section 13 of the 2016 Act, the petitioner had already served notice of filing of appeal to the respondent by dint of registered post but, despite service of notice to the respondent as per the aforesaid provision, the learned High Court non-suited the petitioner on the ground that appropriate notice was not issued in terms of Section 13 read with Order XXXXIII, Rule 3 of the Code of Civil Procedure, 1908 ("**CPC**"). Therefore, he contended that it is a fit case of remand to the High Court.

4. The learned counsel for the respondent argued that the learned Trial Court, after recording evidence, rightly concluded that the petitioner/defendant failed to lead any convincing evidence to dismiss the suit of the respondent/plaintiff. He also relied on the Standard Operating Procedure (SOP) for dealing with theft of gas cases approved by the Oil and Gas Regulatory Authority ("**OGRA**") and argued it was not adhered to by the petitioner.

5. Heard the arguments. A survey of the impugned order divulges that, no doubt, the learned High Court took up the niceties of Section 13 of the 2016 Act read with Order XXXXIII, Rule 3, CPC and observed that the petitioner failed to establish the service through registered post, but we have also noted that the petitioner was not non-suited on this ground alone, rather the learned High Court also considered the judgment rendered by the Trial Court on merits and, for this reason, the findings recorded by the Trial Court in Paragraph 13 of the judgment were also reproduced by the learned High Court in Paragraph 5 of the impugned order, and in the concluding paragraph it was held that nothing was brought on record by the appellant (present petitioner) to show that the calculation, based on which recovery was proposed, was correct. It was further held that the mere submission that tampering of meter and load was admitted did not require the Trial Court to calculate the charges itself and this was not an issue framed for adjudication either.

6. The verdict of the Trial Court depicts that nine issues were settled and evidence was led by the parties. The petitioner/defendant took the defense that the gas meter installed at the premises of the respondent was found to be tampered with and the Meter Inspection Report dated

22.11.2012 was also produced as Ex-D4, while the calculation sheet of pilferage charges amounting to Rs.12,36,212/-, assessed by the Assessment Committee was produced as Ex-D5. The learned Trial Court, while dealing with Issue No.1, held that, according to Ex-D5, the pilferage charges were calculated on the basis of connected load, therefore the respondent/plaintiff should have also submitted the details of appliances, equipment and devices by means of which the respondent/plaintiff was consuming gas. It was further observed by the Trial Court that the raiding team should have prepared an inventory of that equipment and the same should have been submitted in evidence, but the evidence produced by the petitioner/defendant was silent with regard to the connected load, nor was it checked at the site. Hence, the learned Trial Court concluded that when there was no assessment of connected load at the site, the Assessment Committee was quite unable to make any calculation or assessment of pilferage charges. However, the learned Trial Court observed that according to Ex-D4 (inspection report of meter) the gas meter was found to be tampered with, therefore the respondent/plaintiff was directed to pay the cost of the meter as assessed by the petitioner *vide* Ex-D5.

7. OGRA has approved the "*Procedure for Dealing with Theft of Gas*" in 2005 and conveyed the same to its licensees, including the petitioner, for dealing with cases of gas theft [Ref: <https://bk.ogra.org.pk/images/data/downloads/1388575503.pdf>]. According to the definition provided in the "*Procedure for Dealing with Theft of Gas Cases*" hosted at the OGRA website, the 'theft of natural gas' means the use/consumption of gas in an unauthorized/un-lawful manner for which the user/consumer has neither been billed, nor he/she has paid for such consumption and also provides the possible instances of acts which are tantamount to theft. The aforesaid Procedure addresses several aspects of gas theft, *inter alia*, the action that can be taken by the company in case of theft, such as conducting a raid at the premises and/or disconnecting gas supply to such subscriber; however, in the present controversy, Clause (F) of the said Procedure, which is germane to the "*Assessment of Value of Gas Stolen and Recovery: Meter Tampering Cases*", is quite relevant and provides that when any consumer is

established to be involved in gas theft either by way of tampering with the meter or instruments installed/mounted on or along the meter (i.e. volume corrector, or pressure-temperature recorder), or any act mentioned in clauses "A", "C" or "G", the volume of gas stolen by consumer shall be assessed while taking into consideration the following:

1. Period / duration of suspected theft will be assessed on direct and circumstantial evidence taking into account the reports of previous checking/ inspection of site by company's technical staff/officer, checking of meter by metering workshop officials. Unless the circumstances specifically necessitate, the period of suspicion shall be counted from the period the consumption behavior of the consumer has shown decline over the normal/connected load or consumption pattern of the past period till the date of raid/confirmation of pilferage. The assessed volume/BTUs shall be compatible with highest consumption of corresponding months in previous three years or on subsequent replaced meter's consumption, provided that the suspected period shall not exceed 12 months.
2. Connected load (connected load shall be based on appliances actually installed and taking load of each in comparison to predetermined load of each appliance). The connected load will be assessed by three members committee comprising of one representative each from Engineering, Sales and Billing Sections.
3. Working hours (the assessed working hours shall be based on type of business. Reference of sales survey report specifying number of hours may be made). The working hours will also be assessed by a three members committee comprising of one representative each from Engineering, Sales and Billing Sections.
4. The Gas flow rate shall be recorded as registered by the installed meter which will later be flow proved at Metering Workshop to determine the accuracy of measurement, within two weeks.
5. Assessed period of consumption through tempered meter (the assessment will be made taking into consideration the prominent "dips" in billed volume / BTUs. The period of claim will be last three / five years. In case the period of pilferage is determine more than 12 months, the period of claim will be restricted up to 12 months.
6. The amount to be charged for previous period shall be based on the prevalent sale prices.
7. Flow proving report / meter inspection report in meter testing shop
8. The reconnection of a registered consumer shall be carried out when recovery of at least 25% of the amount levied has been made along with "reconnection charges" as well as written agreement between the company and consumer on the amount agreed upon and mode of payment.
9. An in-house committee headed by a Senior General Manager and comprising Senior level representatives from Finance/Billing, Audit, Distribution, Measurement and Theft Control Department shall be constituted to review the appeals of the consumers charged

for theft of gas. The alleged consumer shall have the right to be present before the review committee for presentation of his case.

In case of domestic consumers, the available record alone shall not form basis of recovery because in domestic consumption weather/seasonal affects have significant bearing, therefore consumption of the corresponding months too shall be considered for assessing charges to be claimed for the period as is determinable, however, not exceeding 12 months. (Ref: <https://bk.ogra.org.pk/images/data/downloads/1388576006.pdf>)

8. In the aforesaid Procedure, one of the paramount factors required to be examined was the connected load based on appliances actually installed and required taking the load of each in comparison to the predetermined load of each appliance which was to be assessed by a three member committee comprising one representative each from Engineering, Sales and Billing Sections. No inventory of the appliances was produced, if any, prepared by the Raiding Team. Neither it was established in the evidence by the petitioner's department that the aforesaid procedure was followed in letter in spirit before fixing the liability of dues, nor it was pleaded that the liability was assessed *vis-à-vis* the actual load after physical examination and verification of all appliances and equipment installed or in use at the respondent's premises.

9. According to Article 117 of the Qanun-e-Shahadat Order, 1984, if any person desires a court to give a judgment as to any legal right or liability, depending on the existence of facts which he asserts, he must prove that those facts exist and the burden of proof lies on him. The lawsuits bring to an end on preponderance of evidence in which the Court has to see which party has discharged the onus of proof. Merely submitting the calculation sheet of the dues on account of alleged pilferage was not sufficient; the learned Trial Court not only settled the issues but also allowed an equal opportunity to both parties to lead evidence. The aspect of whether the liability was assessed according to the sanctioned load or not was to be proved in the Trial Court and such calculation sheet cannot be considered as the gospel truth unless the raiding team ascertained the actual load and consumption according to the appliances and equipment being used by the subscriber and confronted the subscriber or their representative at the time of raid in the case of theft of gas or tampered meter. The turn of phrase "burden of proof" entails the burden of substantiating a case. The meaning of "*onus probandi*" is that if no evidence is produced by the party on whom the burden is cast, then such issue must be found against him.

Lawsuits are determined on preponderance or weighing the scale of probabilities in which the Court has to see which party has succeeded to prove his case and discharged the onus of proof. The legal principle "separate the grain from the chaff" obligates the Court to scrutinize and evaluate the evidence recorded in the *lis* and judge the quality, and not the quantity, of evidence which has been done properly in the case without any non-reading or misreading of evidence by the Trial Court or the High Court concurrently.

10. In the wake of the above discussion, we do not find any illegality or perversity in the impugned order passed by the learned High Court and therefore we are not inclined to grant leave to appeal. The Civil Petition is dismissed accordingly.

Judge

Judge

Judge

Islamabad
20th September, 2023
Khalid/Faaiza
Not approved for reporting.