

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik

CIVIL PETITIONS NO.797 OF 2021, 1799-L, 171-L & 172-L OF 2022 AND 1657-L OF 2021

[Against judgment dated 13.12.2020, passed by the Islamabad High Court, Islamabad in W.P. No.67 of 2019 and judgment/order dated 24.8.2021, 6.12.2021 and 17.6.2021, passed by the Lahore High Court, Lahore, in W.Ps. No.51129 of 2021, 45581 of 2020, 12959 of 2021 and 45590 of 2020, respectively]

CP.797 of 2021	Oil and Gas Regulatory Authority through its Chairperson and another Vs. Sui Southern Gas Company Limited through its Chairperson and another
CP.1799-L of 2022	Oil and Gas Regulatory Authority, Islamabad through its Registrar Vs. Sui Northern Gas Company Limited through its Chairperson and another
CP.171-L of 2022	Oil and Gas Regulatory Authority, Islamabad through its Registrar and another Vs. Sui Northern Gas Pipelines Limited and others
CP.172-L of 2022	Oil and Gas Regulatory Authority through its Registrar and another Vs. Sui Northern Gas Pipelines Limited through General Manager and others
CP.1657-L of 2021	Oil and Gas Regulatory Authority, Islamabad through its Registrar and another Vs. Sui Northern Gas Company Limited through its Chairperson, Lahore and others

For the Petitioners (OGRA)	: Mr. Haroon Dugal, ASC Kashif Iqbal, JED (OGRA) Javed Iqbal, L.O. Munawar Sajjad Gondal, A.R.
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For the Respondents (SSGCL) (SNGPL)	: Mr. Umer Sharif, ASC (through video link from Karachi) Mr. Farmanullah, ASC (through video link from Lahore)
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Date of Hearing	: 31.01.2023
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JUDGMENT

AYESHA A. MALIK, J.- The Civil Petitions before us have a common Petitioner, the Oil and Gas Regulatory Authority (**OGRA**) constituted under the Oil and Gas Regulatory Authority Ordinance,

2002 (**Ordinance**) which is aggrieved by the impugned judgment and orders which find that the Gas Utility Court under the Gas (Theft Control and Recovery) Act, 2016 (**2016 Act**) has exclusive jurisdiction to prosecute disputes of consumers. The distinct facts of each of the Civil Petitions are briefly outlined below:

Civil Petition No.797 of 2021:

This Civil Petition has arisen from judgment dated 13.12.2020 passed by the Islamabad High Court, Islamabad in Writ Petition No.67 of 2019 filed by the Sui Southern Gas Company Limited (**SSGCL**), which has assailed the jurisdiction of OGRA to adjudicate complaints relating to the matters within the purview of the 2016 Act. The High Court decided that the Gas Utility Court has exclusive jurisdiction in the matters stated under the 2016 Act which include billing and metering disputes.

Civil Petition No.1799-L of 2021:

This Civil Petition has arisen from order dated 24.08.2021 passed by the Lahore High Court, Lahore in Writ Petition No.51129 of 2021 filed by Aruj Garments Accessories Limited, a consumer of natural gas for industrial purposes, against OGRA and the Sui Northern Gas Company Limited (**SNGPL**). Aruj Garments Accessories Limited through its writ petition sought expeditious redressal of a complaint filed by it which was pending before OGRA, and sought OGRA and SNGPL to refrain from taking any coercive action against it. The High Court while dismissing the writ petition held that the 2016 Act provides adequate alternate remedy to Aruj Garments Accessories Limited before the Gas Utility Court in disputes relating to billing and metering. Therefore, the writ petition was not maintainable before the High Court.

Civil Petitions No.171-L & 172-L of 2022 and 1657-L of 2021:

These Civil Petitions have arisen from orders dated 06.12.2021 and 17.06.2021 passed by the Lahore High Court, Lahore in Writ Petitions No.45581 of 2020, 12959 of 2021 and 45590 of 2022, respectively, which have been filed by SNGPL against OGRA and two consumers of natural gas that filed complaints regarding excessive billing before OGRA and obtained favourable orders. Aggrieved by these orders, SNGPL through its writ petition challenged the said orders praying therein that the same be set aside being without lawful authority and without jurisdiction. The High Court, while relying on its judgment dated 08.02.2017 passed in Writ Petition No.6940 of 2013,

upheld its view that the dispute with regard to billing or metering falls within the purview of the Gas Utility Court and allowed the petition.

Aggrieved by the aforementioned judgment and orders (collectively, **impugned judgments**) of the Islamabad High Court and Lahore High Court (collectively, **High Court**) OGRA has approached this Court praying that the impugned judgments be set-aside. The issue before this Court pertains to the jurisdiction of OGRA to decide consumer complaints under the Ordinance and the Complaint Resolution Procedure [for Natural Gas, Liquefied Petroleum Gas (**LPG**), Compressed Natural Gas (**CNG**) and refined oil products] Regulations, 2003 (**Regulations**) as OGRA's case is that OGRA has concurrent jurisdiction with the Gas Utility Court with respect to the prosecution of disputes of consumers.

2. The case of OGRA is that, as the regulator of the petroleum industry, it was exclusively empowered to resolve disputes in respect of activities it regulates which included complaints filed by consumers against its licensees. Now, pursuant to the 2016 Act, OGRA enjoys concurrent jurisdiction with the Gas Utility Court, as the jurisdiction of the Gas Utility Court is subject to Section 5(5) and (6) of the 2016 Act which provides that a gas consumer can seek any remedy before any other court, tribunal or forum as is available under the law. Hence, the argument is that the 2016 Act cannot curtail OGRA's jurisdiction. It was also asserted that OGRA provides a timely and efficient means of resolving disputes and this role of OGRA should be recognized and upheld by the Court.

3. SSGCL and SNGPL argued that the 2016 Act is a special law, and also later in time, which provides a detailed mechanism for redressal of consumer complaints including issues of billing and metering. Therefore, jurisdiction vests in the Gas Utility Court alone to resolve disputes pertaining to consumer complaints and the orders given by OGRA are without jurisdiction.

4. The powers and functions of OGRA are set out in Section 6 of the Ordinance and Section (6)(2)(i) and (k) provides that OGRA shall resolve complaints and other claims against licensees for contravention of the provisions of the Ordinance, rules or regulations and shall resolve disputes between licensees, between licensees and any other person regarding a regulated activity. As per the Ordinance, a regulated activity is anything that requires a license. In this context, OGRA is the license issuing authority and is responsible to resolve

disputes where breach of the terms of the license or terms of the Ordinance, rules or regulations have been alleged. Section 11 of the Ordinance allows any interested person to file a complaint with OGRA against the licensee for contravention of any provision of this Ordinance or of any rule or regulation. On receipt of a complaint, OGRA shall provide an opportunity to the complainant as well as to the licensee, or any other person against whom such complaint has been made to state its case before taking any action thereon. Section 42(2)(e) of the Ordinance grants OGRA the power to make regulations for resolving disputes between a licensee and the consumer pursuant to which the Regulations were notified. The Regulations provide for a detailed mechanism to resolve complaints against the licensee. The nature of complaints before OGRA provided under Regulation 3 are such that any person can submit an application to the registrar regarding any act or omission by a licensee or dealer that violates the Ordinance, rules, regulations, an order of OGRA or license terms. A complaint can also be filed for non-compliance with service standards which includes billing, connection and disconnection of service, metering, undue delays in providing service, safety practices, quantity and quality of natural gas, LPG or CNG, or discriminatory practices of the licensee or dealer. As per the Regulations, a right of appeal is available under Section 12 of the Ordinance. Important to note is that the Regulations do not provide any punishment for the complaints filed under Regulation 3. Instead, the designated officer is to render a decision in an effort to resolve the dispute as per Regulation 7(2) by proposing a remedy and giving an implementation plan. The only punishment prescribed under the Ordinance is under Section 25 which states that any person who undertakes any regulated activity in contravention of this Ordinance or recklessly undertakes such regulated activity or interferes with regulated activity shall be punishable with imprisonment for a term which may extend up to three years or with a fine or with both. Therefore, OGRA regulates its activities under the Ordinance and can hold a person responsible and liable to punishment with reference to regulated activities.

5. The 2016 Act, on the other hand, is a special statute which as per its preamble *to provide for prosecution of cases of gas theft and other offences relating to gas and to provide a procedure for recovery of amounts due*. Section 3 of the 2016 Act constitutes the Gas Utility Courts and Section 4 confers exclusive jurisdiction upon the Gas

Utility Court with respect to all matters that are covered by the 2016 Act including tampering with gas pipelines, its distribution, gas metering or damaging or destroying the transmission or transportation lines, or maliciously wasting gas or injuring works. Section 6 of the 2016 Act provides for procedure for complaints and suits for default before the Gas Utility Courts and provides that *where a person is involved in an offence under this Act ... or where a consumer has a dispute regarding billing or metering against a Gas Utility Company, a consumer or Gas Utility Company ... may file a complaint ... before a Gas Utility Court* and this provision of the 2016 Act then goes on to lay down the procedure for such complaint or suit. Importantly, Section 31 of the 2016 Act provides that the Act shall have an overriding effect notwithstanding anything contained in any other law.

6. Therefore, the 2016 Act vests exclusive jurisdiction with the Gas Utility Court to resolve all matters defined in Section 2, enumerated in Sections 14 to 19 as it has an overriding effect over all laws. The question before us is the effect of Section 5(5) and 5(6) of the 2016 Act and whether the said sections confer concurrent jurisdiction on OGRA. For ease of reference, the Section is reproduced below:

"5. Powers of the Gas Utility Court.

(5) Subject to sub-section (6), no court or authority shall have or exercise any jurisdiction with respect to any matter to which the jurisdiction of a Gas Utility Court extends under this Act.

(6) Nothing in sub-section (5) shall be deemed to affect.

(a) the right of a Gas Utility Company and a gas consumer to seek any remedy before any other court, tribunal or forum including official liquidator or receiver that may otherwise be available to it under the law; or

(b) the powers of the Gas Utility Company, or jurisdiction of any Gas Utility Court as is referred to in clause (a) to require the transfer to a Gas Utility Court of any proceedings pending before any such court immediately before the coming into force of this Act. "

Section 5(5) clarifies that for matters which fall under the jurisdiction of the Gas Utility Court, it enjoys exclusive jurisdiction and no other court or authority can exercise jurisdiction with respect to these matters. Section 5(6)(a), however, allows the Gas Utility Court or consumer to seek remedy before any other forum prescribed under any law which will include OGRA. However, pursuant to this provision OGRA does not enjoy concurrent jurisdiction with the Gas Utility

Court. It is clear that the purposes of both of the statutes under consideration are different. The Ordinance was enacted to provide for the establishment of OGRA and to define its functions and jurisdiction for regulating its activities. Whereas, the 2016 Act was enacted to provide for prosecution of cases of gas theft and other offences relating to gas and to provide a procedure for recovery of amounts due. Therefore, even though the Ordinance gives OGRA the power to resolve dispute of consumers, it is a dispute resolution forum, where the issues provided for in the Regulations can be settled amicably by OGRA between the consumer and the gas company. It is not a court and cannot prosecute the matter like the Gas Utility Court. Consequently, Section 5(6) of the 2016 Act, in our opinion, clarifies that the gas company or a consumer may seek any remedy before any court, tribunal or forum which may otherwise be available to it under the law, however, the Gas Utility Court is the only court which can prosecute cases of gas theft and the offences as prescribed under Sections 14 to 19 of the 2016 Act. Accordingly, if a consumer does not want to prosecute a case before the Gas Utility Court, they may approach OGRA for resolution of their dispute.

7. In view of the foregoing, it is clear that while OGRA may entertain complaints against a licensee under the Regulations, it does not enjoy concurrent jurisdiction with the Gas Utility Court which has exclusive jurisdiction to adjudicate upon all matters under the 2016 Act. OGRA is, at best, a dispute resolution forum where disputes may be resolved informally, however, the Gas Utility Court is a court with all its inherent powers which has the authority to adjudicate upon and award punishment against offences made out under the 2016 Act.

8. Accordingly, the titled civil petitions being meritless are dismissed and leave declined.

JUDGE

Bench-V
Islamabad
31.01.2023
'APPROVED FOR REPORTING'
Alizeh/Azmat*

JUDGE