

**P L D 2020 Sindh 242**

**Before Mohammed Karim Khan Agha and Omar Sial, JJ**

**QURBAN ALI SHAH and others---Petitioners**

**Versus**

**FEDERATION OF PAKISTAN through Federal Secretary and others---Respondents**

Constitutional Petitions Nos.D-1731 of 2014, D-5841 of 2018 along with Constitutional Petitions Nos.D-5528, D-5529, D-5530, D-5531, D-5532, D-5533, D-5534 and D-6866 of 2019; decided on 3rd February, 2020.

**(a) Constitution of Pakistan---**

---Art. 90(1)---Directive issued by the Prime Minister---No binding effect---Directive of the Prime Minister on its own had no legal binding effect; it was merely an administrative order which the Prime Minister was at liberty to follow up and ensure its implementation through his good offices and take whatever action in accordance with law that he deemed appropriate in order to have his directive complied with.

**(b) Constitution of Pakistan---**

---Arts. 153, 154 & Fourth Sched. Pt. II, Sr No. 2---Council of Common Interest (CCI), powers of---Scope---Natural gas---Council of Common Interest (CCI) could formulate and regulate policies in respect of Gas, however making decisions regarding who paid for such policies was outside the domain of the CCI if an existing law passed by an Act of Parliament or regulation or rule or policy stemming from such law was already in the field dealing with the issue.

**(c) Constitution of Pakistan---**

---Arts. 153, 154 & 187(1)---Council of Common Interest (CCI), powers of---Scope---Supreme Court, judgment of---Judgment of the Supreme Court which had reached finality could not be set aside, changed, modified or varied by the Council of Common Interest---Judgments of the Supreme Court which had attained finality were absolutely legally binding on those who they affected, who must comply with the same or potentially face action under the law for such non-compliance.

**(d) Constitution of Pakistan---**

---Arts. 187 & 189---High Court bound by judgment/directions of the Supreme Court---High Court had no authority under the Constitution to determine whether a direction of the Supreme Court had been passed legally or not or was implementable---Under the Constitution a High Court was bound by a Supreme Court judgment once it had reached finality and was bound to follow it and implement it.

**(e) Constitution of Pakistan---**

---Arts. 154 & 187(2)---Natural Gas Regulatory Authority (Licencing) Rules, 2002, R. 20(v)--Natural Gas Allocation and Management Policy, 2005, Para. 6.2---Council of Common Interest, powers of---Scope---Implementation of judgment of the Supreme Court (to be bound)

by the High Court---Ministry of Petroleum and Natural Resources was directed by the Supreme Court to provide gas to all the surrounding localities/villages falling in the radius of 5 km, of all Gas Fields, on priority basis---Subsequently Council of Common Interest (CCI) decided that expenditure involved in provision of gas to localities was to be borne by the gas distribution companies---Held, that the decision of the CCI was not legally binding on the distribution companies when the Supreme Court in its judgment had already placed the obligation on the Federal Ministry of Petroleum and Natural Resources in accordance with law---Besides the Parliament by way of confirmation had not turned the decision of the CCI into a binding Act of Parliament---Gas distribution company was ready to carry out directions of the Supreme Court provided that the Federal Government provides the amount over and above the eligible cost criteria---High Court found such approach "in accordance with the law" as required by the directions given by the Supreme Court and directed the Federal Government to release funds to the gas distribution company within seven days and suspended the show cause notice for contempt of court issued to the concerned Federal Secretary.

Perusal of Rule 20(v) of the Natural Gas Regulatory Authority (Licencing) Rules, 2002, and paragraph 6.2 of the Natural Gas Allocation and Management Policy, 2005, showed that distribution companies were prima facie liable to provide gas to areas which met the cost criteria and that they were not obliged to pay for the provision of gas if to do so would be over and above the cost criteria unless the Federal Government made up the difference. From the record of present case it appeared that the gas distribution company had been proceeding on this basis and that in the past when the amount was over and above the eligible criteria the Federal Government had been making up the difference by way of grants which had enabled the gasification of some villages which fell outside the criteria.

Gas distribution company informed the court that in respect of the remaining villages in the Province which fell within the directions of the Supreme Court, they were ready, willing and able to carry out such directions provided that the Federal Government provide, as they had done in the past, the amount over and above the eligible criteria which was in the region of Rs.4.912 Billion. Such approach was "in accordance with the law" as required by the Supreme Court judgment being implemented in present proceedings.

Decision of the CCI where by cost of provision of gas was placed on the gas distribution company was not legally binding on the distribution companies when the Supreme Court in its judgment had already placed the obligation on the Federal Ministry of Petroleum and Natural Resources in accordance with law. Furthermore, the Parliament by way of confirmation had not turned the decision of the CCI into a binding Act of Parliament.

By way of a last and final chance, by showing judicial restraint, to enable the Ministry of Petroleum and Natural Resources to comply with directions of the Supreme Court, the High Court suspended the issuance of the show cause notice for contempt of court to the Secretary Ministry of Petroleum and Natural Resources and directed that the Federal Government shall pay the gas distribution company an amount of Rs.4.912 Billion within 7 days of the date of present order; that the distribution company was to commence work on the gasification of the remaining relevant villages in the Province within 7 days of the receipt of the said funds from the Federal Government which shall be completed within 6 months of the commencement of the work so that the Federal Ministry of Petroleum and Natural Resources through the distribution company could comply with directions of the Supreme Court in the most cost

effective, expeditious and efficient manner to the benefit of the concerned villagers so that they may realize their fundamental right to life in its full meaning; that in the event that the Federal Government did not pay the amount of Rs. 4.912 billion to the distribution company within 7 days, the show cause notice issued to the Secretary Ministry of Petroleum and Natural Resources shall stand revived and he shall appear before the High Court in person and explain why he should not be proceeded with for contempt of court for violating directions of the Supreme Court which had remained unimplemented for the last 6 years.

**(f) Constitution of Pakistan---**

---Art. 9---Right to life---Scope---Right to have natural gas---Such right particularly in cold areas during winters, especially when gas fields were located within 5 km of a village, was a fundamental right of such villagers, which formed part of the right to life guaranteed under the Constitution and which was also in consonance with an Islamic welfare state.

Makhdoom Ai Khan, Senior Advocate Supreme Court as Amicus Curie.

Salman Talibuddin, Advocate-General, Sindh.

Farmanullah, Associate of Asim Iqbal, for OGRA and SSGCL.

Ms. Rozeena Issa, Associate of Khaleeq Ahmed for Mari Petroleum.

Obaid-ur-Rehman Khan, for Plish Gas Company.

Manal Wasiq Khan for Respondent Nos.27 and 29.

Mahmood Ali and Zain-ul-Abidin Soomro for OGDCL.

Mahmood Ali Abbasi, Advocate.

Kashif Pracha, Deputy Attorney General-I along with Kashif Ali Director (Technical) DGPC and Syed Ejaz Ali Shah Legal Advisor DGPC.

Shahid Yousuf, DG (Gas) Petroleum Division.

Usman Arif Rai, Dy. Director (Legal) Ministry of Energy (Petroleum Division).

Abdul Qadir Javed, AC (Revenue) Malir.

Date of hearing: 27th January, 2020.

**ORDER**

**Implementation of Supreme Court Judgment dated 27-12-2013.**

**MOHAMMED KARIM KHAN AGHA. J.**---This court has been given the task of implementing the Supreme Court judgment dated 27.12.2013 (the Supreme Court Judgment) where certain directions were given in para. 22 of that judgment which need to be implemented by the concerned stakeholders. The directions to be implemented largely concerned the utilization by districts in each province of monies which were provided to the Districts by the E@P companies for (a) Social Development Welfare Projects (b) Marine Research and (c) Production Bonus' which when totaled up amounted to millions of US\$ dollars. The Government of Pakistan had made guidelines for the process to be adopted in deciding how to use these funds for the local area and the purposes for which these amounts could be utilized.

2. After about a year of this court implementing the Supreme Court Judgment a large number of districts have now slowly but surely started complying with the guidelines and undertaking the social welfare projects for the benefit of the local community.

3. One aspect of the Supreme Court Judgment despite a lapse of over 6 years is not being implemented which is Para 22 (k) which for ease of reference we set out below:

"(k) The Ministry of Petroleum and Natural Resources shall, ensure implementation of the Prime Minister's directive of 15.9.2003 and provide gas to "all the surrounding localities/villages falling within the radius of 5km of all Gas Fields, on priority basis" as directed, in accordance with law" (bold added)

4. As the direction clearly mentions this was based on the Prime Minister's directive of 15.9.2003 to provide gas to all the surrounding localities/ villages falling within the radius of 5km of all Gas Fields.

5. This directive of the Prime Minister has not been implemented for the last 16 years and the directive of the Supreme Court for the last 6 years.

6. Following the directive of the Supreme Court a decision of the Counsel of Common interests (CCI) was made on 24-11-2017 to the effect that the provision of gas as per the Prime Ministers Directive and the Supreme Court Judgment was to be borne by the distribution companies. Namely SSGCL and SNGCL.

7. Based on the CCI decision both the Government of Pakistan Ministry of Energy/Petroleum and the Government of Sindh has been requesting the SSGCL to comply with the decision of the CCI and thereby implement the Supreme Court Judgment in terms of para 22 (k).

8. On the other hand the SSGCL, supported by OGRA, has taken the view that it is not legally obliged to implement this decision unless the Federal Government make up any shortfall in areas where it is not economically viable for the SSGCL to provide gas as per the provisions of the law.

9. Thus, we have reached a position of stale mate where in effect the Supreme Court Judgment in terms of para 22 (k) is not being implemented because each side is taking a different legal interpretation of the issue which is mainly on account that both the Federal Government and the distribution companies lack sufficient funds for the purpose.

10. In this backdrop to enable us to determine the legal position and where the responsibility lies for providing the relevant funds for the implementation of Para 22 (k) of the Supreme Court Judgment by order dated 07.10.2019 this court issued notice to both the Attorney General of Pakistan and Advocate General of Sindh to assist us under Order XXVII-A, C.P.C. and later by order dated 25.11.2019 appointed Mr. Makhdoom Ali Khan Sr.ASC as amicus curiae to assist us on this issue and in particular on:

- (a) The role of the CCI
- (b) Since the CCI is a constitutionally created body consisting of all Chief Ministers of each Province and the Prime Minister representing the Federation what are the legal effect and consequences of a decision of the CCI?
- (c) Is a decision of the CCI legally binding?
- (d) If so how can a decision of the CCI be enforced? And through what means.

- (e) If a decision of the CCI has no binding legal effect in their view taking into account the above discussion and any other relevant law which Ministry, body, organization is responsible for the provision of gas under the law in accordance with para 22 (k) of the Supreme Court Judgment to all the surrounding localities/villages falling within the radius of 5km of all Gas Fields and at whose expense.

11. Learned counsel for the Ministry of Petroleum Government of Pakistan submitted that the CCI decision was binding on the Gas distribution companies and it was fully implementable by the concerned province which in this case was the Government of Sindh (GOS). He further submitted that the decision of the CCI was in conformity with the direction given by the Supreme Court in Para 22 (k) of the Supreme Court Judgment and as such it was the obligation of SSGCL to provide the gas and pay for its provision as per decision of the CCI. In support of his contentions he placed reliance on *Gaddon Amazai Textile Mills v. WAPDA* (1997 SCMR 641) and *Watan Party v. Federation of Pakistan* (PLD 2006 SC 697)

12. On the other hand learned counsel for SSGCL and OGRA submitted that the Supreme Court Judgment at Para 22 (k) had placed the obligation to provide the gas squarely on the Ministry of Petroleum Government of Pakistan and that through a decision of the CCI the Federal Government could not pass on its burden to the SSGCL. He stressed that a decision of the CCI could not take preference over a Supreme Court Judgment which had reached finality and had already placed the responsibility of the provision of Gas on the Ministry of Petroleum especially as the SSGCL was 75% owned by the Federal Government and as such it was unfair to place this financial obligation on non Federal Government private share holders. He further submitted that if the CCI decision was complied with this would also lead to an increase in the gas tariff for the whole of Pakistan which would not be fair as even gas consumers who did not have an E&P Gas Company operating in its area would have to pay an increased tariff without receiving any benefit. Even otherwise he stressed that the CCI decision was contrary to the Supreme Court Judgment at Para 22 (k) which stated that the provision of the gas had to be made in , "accordance with the law" and that the relevant laws governing SSGCL did not permit such an onerous obligation to be placed on the SSGCL.

13. Learned AG Sindh submitted that the Prime Minister's original directive to provide gas to villages within 5 KM of gas fields was not legally binding and was not implementable and in fact was an unlawful directive which was void and as such could not be made a part of the Supreme Court Judgment vis-a-vis its implementation. This was further supported by the fact that that para 22 (k) used the wording "in accordance with law" and thus since the prime ministers directive was not in accordance with law it was non implementable. He conceded that decisions of the CCI were binding on the Federation but in this case since the original directive of the Prime Minister was void ab initio in this case it would not be binding on either the Federation or the Province of Sindh. In addition since the CCI's decision in effect would lead to the levying of taxes to pay for the provision of gas it was once again not binding since the CCI had no power to levy taxes. Even if this court did find that the Prime Minister's directive was enforceable through para 22(k) of the Supreme Court Judgment para 22 (k) itself made it clear that the obligation to carry out and pay for the implementation of the direction lay on the shoulders of the Federal Government and not provincial government pursuant to the wording of para 22(k). With regard to the implementation of the decision of the CCI he referred to Section 11 of the Rules of Procedure of the CCI 2010 which provided a mechanism for the implementation of the decisions of the CCI which had been legally made which was through

the concerned department of the Federal Government or the Chief Secretary of the Province as the case may be. In support of his contentions he placed reliance on *U.N.R Rao v. Indira Gandhi* (AIR 1971 SC 1002) and *Gaddon Amazai Textile Mills v. WAPDA* (1997 SCMR 641)

14. Learned Attorney General for Pakistan had been put on notice on a number of occasions by this Court so that we could benefit from his assistance but unfortunately he did not put in an appearance.

15. Learned Amicus curiae Mr.Makhdoom Ali Khan submitted that on a plain reading of para 22(k) the Ministry of Petroleum and Natural Resources had been directed to provide the gas to all the surrounding localities/villages falling within the radius of 5KM of all gas fields.

16. That since the Ministry of Petroleum and Natural Resources had admittedly failed to comply with this direction they had violated the Supreme Court directive and were subject to the legal consequences for this violation especially as this court was in effect an executing court of the Supreme Court Judgment in terms of Article 187(2) of the Constitution as was made clear in the Supreme Court Order dated 05.07.2018 referring this matter to this court for implementation.

17. With regard to other aspects of the case he submitted that the Supreme Court Judgment which we are implementing was reported in PLD SC 2014 P.350 which at P.362 had discussed the Prime Minister's directive and as such was fully aware of it. That the Federal Government was a party to the proceedings and were well aware of the directions in the Supreme Court Judgment but had not reviewed the same and as such the Supreme Court Judgment had reached finality and as such no body or authority could amend the Supreme Court Judgment at this stage.

18. With regard to the decision of the CCI he was of the view that this Constitutional body acted through an executive authority and its decisions could not trump either legislation made by Parliament or the judgments/decisions of the Supreme Court. In this respect he placed reliance on *Industrial Relations Advisors' Association v. Federation of Pakistan* (PLD 2010 Kar. 328) and *Pakistan Medical and Dental Council v. Muhammed Fahad Malik* (2018 SCMR 1956).

19. Articles 153 and 154 of the Constitution which established and set out the functions of the CCI did not provide it with any legislative authority and its role was primarily supervision and regulation in terms of policy but it could not override directions given by the Supreme Court in any of its orders or judgments but in any event the directions of the Supreme Court Judgment at Para 22 (k) it self made it clear that the direction was to be implemented in accordance with law.

20. In his view the Ministry of Petroleum and Natural Resources had simply taken the position that the CCI prevailed in the given circumstances but had not disputed the Supreme Court direction which could not be overridden by the CCI decision.

21. In his view the arguments by the Government of Sindh that in effect the para 22(k) of the Supreme Court Judgment was not enforceable as the Prime Minister's directive was void in the first place was not an issue which this court could look into as this court was bound to follow the orders/judgments of the Supreme Court as per the mandate of the Constitution and not to sit in judgment over them.

22. We have heard the parties, perused the record and considered the relevant law.

23. At the outset we need to consider Para 22(k) of the Supreme Court Judgment since it is this para 22(k) which we are implementing which for ease of reference is once again set out below:-

"(k) The Ministry of Petroleum and Natural Resources shall, ensure implementation of the Prime Minister's directive of 15.9.2003 and provide gas to "all the surrounding localities/villages falling within the radius of 5km of all Gas Fields, on priority basis" as directed, in accordance with law". (bold added).

24. The first point to note in para 22(k) is that the Ministry of Petroleum and Natural Resources were to ensure implementation of the Prime Minister's directive of 15.9.2003.

25. As mentioned earlier this court is acting as an implementation bench in respect of the Supreme Court Judgment. This is made clear by the order of the Supreme Court dated 05.07.2018 which transferred this case to us and is set out below for ease of reference.

### **"ORDER"**

**MIAN SAQIB NISAR, CJ.**

Const. Petition 112 of 2015:-

2. We have heard the petitioner. Let this matter be sent to the High Court of Sindh who shall, in terms of Article 187(2) of the Constitution, take into consideration and decide if any direction issued by this Court vide order dated 27.12.2013 has been implemented in letter and spirit or is being violated. Disposed of accordingly."(bold added)

26. Article 187 of the Constitution provides as under;

"187. Issue and execution of processes of Supreme Court. (1) Subject to clause (2) of Article 175, the Supreme Court shall have power to issue such directions, order or decrees as may be necessary for doing complete justice in any case or matter pending before it, including an order for the purpose of securing the attendance of any person or the discovery or production of any document.

(2) Any such direction, order or decree shall be enforceable throughout Pakistan and shall, where it is to be executed in a Province, or a territory or an area not forming part of a Province but within the jurisdiction of the High Court of the Province, be executed as if it had been issued by the High Court of that Province.

(3) If a question arises as to which High Court shall give effect to a direction, order or decree of the Supreme Court, the decision of the Supreme Court on the question shall be final."

27. It is apparent from the order of the Supreme Court dated 05.07.2018 read with Article 187 (2) of the Constitution that in effect this court is executing the directions contained in the Supreme Court Judgment.

28. Since it is an admitted position that para 22 (k) of the Supreme Court Judgment has not been complied with/ implemented despite a lapse of more than 6 years, it is clear that the Ministry of Petroleum and Natural Resources is in violation of the Supreme Court Judgment para 22 (k) and as such a show cause notice be issued against the Secretary Ministry of

Petroleum and Natural Resources Government of Pakistan for his explanation as to why he has failed to comply with para 22 (K) of the Supreme Court Judgment.

29. Despite this being the case we have still examined the direction in para 22 (k) and the arguments made before us by learned counsel for the parties upon which we set out our findings.

30. The Prime Ministers directive of 15.09.2003 to which para 22(k) direction referred is set out below for ease of reference:

"Top Priority

PM's Directive  
PRIME MINISTER'S SECRETARIAT (PUBLIC)  
ISLAMABAD

No.1 (1) M-IV/ 2003 Dated: 15 September, 2003

Subject: ANNOUNCEMENT BY PRIME MINISTER ON THE EVE OF INAUGURATION CEREMONY OF ZAMZAMA GAS FIELD - PROVISION OF GAS TO VILLAGES FALLING IN THE RADIUS OF 5- KM FROM THE GAS SOURCE.

The Prime Minister has been pleased to direct that gas be provided to villages falling in the radius of 5-km from the gas source (Zamzama Gas Field, Tehsil Johi, District Dadu, Sindh). Prime Minister was further pleased to announce that this principle would apply to all gas fields and that gas may be provided to all the surrounding localities / villages falling in the radius of 5 km, of all Gas Fields, on priority basis.

2. The Ministry of Petroleum and Natural Resources should ensure the implementation of the directive and a compliance report be submitted to this Secretariat by September 30,2003. (Bold added)

Malik Asif Hayat  
Additional Secretary (IA)  
Ph.9221035

Secretary,  
Ministry of Petroleum and Natural Resources,  
Islamabad.

31. In essence the Prime Minister's Directive re iterates Para 22 (k) of the Supreme Court Judgment which we are implementing. Namely that the Ministry of Petroleum and Natural Resources is directed to provide gas to all the surrounding localities/villages falling in the radius of 5 km, of all Gas Fields, on priority basis.

32. In our view the directive of the Prime Minister on its own has no legal binding effect. It is merely an administrative order which the Prime Minister is at liberty to follow up and ensure its implementation through his good offices and take whatever action in accordance with law that he deems appropriate in order to have his directive complied with.

33. It appears that neither the Prime Minister who issued the directive nor future Prime Ministers have followed up on implementing this directive in its entirety.

34. The position in our view, after para 22 (k) of the Supreme Court Judgment, has however changed as in effect the Prime Ministers directive has now been embodied in a Supreme Court Judgment whereby The Ministry of Petroleum and Natural Resources has been directed by the Supreme Court to ensure the implementation of the Prime Minister's directive and gas is provided to "all the surrounding localities villages falling within the radius of 5km of all Gas Fields, on priority basis" as directed, in accordance with law"

35. Since the Prime Minister's directive has been incorporated in a legally binding Supreme Court judgment such directive now has to be carried out in terms of para 22(k) of the Supreme Court Judgment especially as the Supreme Court Judgment has reached finality and no party (including the Federation who were fully aware of its consequences as they were a party in the proceedings) ever filed any review petition against para 22(k) which as such they accepted. Any failure to comply with the Supreme Court Judgment will lead to their own separate legal consequences for those who fail to comply with the same as already decided above vis a vis the show cause notice to the Secretary Ministry of Petroleum and Natural Resources.

36. In our view with regard to whose responsibility it is to carry out the para 22(k) of the Supreme Court Judgment a plain reading of that judgment places the obligation squarely on the shoulders of the Ministry of Petroleum and Natural Resources Government of Pakistan subject to this decision being carried out in accordance with law.

37. It appears that the Government of Pakistan through the Ministry of inter Provincial Co-Ordination took this issue of providing gas as per the Supreme Court Judgment to the Council of Common Interests for a decision.

38. It appears that keeping in view the aforementioned direction of the Supreme Court and the Prime Minister's directive which the Supreme Court referred to in its judgment since this matter related to the Federal Government and all the provinces it was placed before the Council of Common Interests (CCI) for its decision on how best to proceed with implementing the Prime Ministers directive and the directions of the Supreme Court contained in the Supreme Court Judgment. The CCI is a constitutional body created under Article 153 of the Constitution with its function and rules of procedure being set out under Article 154 of the Constitution.

39. Articles 153 and 154 of the Constitution are set out below for ease of reference;

"153.(1) There shall be a Council of Common Interests, in this Chapter referred to as the Council, to be appointed by the President.

(2) The Council shall consist of-

(a) the Prime Minister who shall be the Chairman of the Council;

(b) the Chief Ministers of the Provinces; and

(c) three members from the Federal Government to be nominated by the Prime Minister from time to time.

(3) .....

(4) The Council shall be responsible to [Majlis-e-Shoora (Parliament)] [and shall submit an Annual Report to both Houses of [Majlis-e-Shoora (Parliament)].

154. Functions and rules of procedure. - (1) The Council shall formulate and regulate policies in relation to matters in Part II of the Federal Legislative List and shall exercise supervision and control over related institutions.]

(2) The Council shall be constituted within thirty days of the Prime Minister taking oath of office.

(3) The Council shall have a permanent Secretariat and shall meet at least once in ninety days.

Provided that the Prime Minister may convene a meeting on the request of a Province on an urgent matter.]

(4) The decisions of the Council shall be expressed in terms of the opinion of the majority.

(5) Until [Majlis-e-Shoora (Parliament)] makes provision by law in this behalf, the Council may make its rules of procedure.

(6) [Majlis-e-Shoora (Parliament)] in joint sitting may from time to time by resolution issue directions through the Federal Government to the Council generally or in a particular matter to take action as [Majlis-e-Shoora (Parliament)] may deem just and proper and such directions shall be binding on the Council.

(7) If the Federal Government or a Provincial Government is dissatisfied with a decision of the Council, it may refer the matter to [Majlis-e-Shoora (Parliament)] in a joint sitting whose decision in this behalf shall be final." (bold added)

40. On 24-11-2017 when this issue was brought before the CCI at its 34th Meeting the following decision was made by the CCI which is set out below for ease of reference;

"34th MEETING OF THE COUNCIL OF COMMON INTERESTS (CCI)

Case No.CCI/1/2017 Dated 24- 11.2017	Recommendations of the Inter Provincial Coordination Committee (IPCC) and Sub- Committee of CCI
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(iii) Supply of Gas to Localities / Villages in 5 KM radius of Gas Producing Fields.

#### DECISION

The CCI decided that the expenditure involved in provision of gas to localities within 5 km radius of gas producing fields would be borne by distribution companies. In case of Balochistan, if no village is located within the 5 KM radius, the provision of gas to nearest Tehsil/ District Headquarter would be ensured. The cost over and above the criteria will also be borne by gas utility companies which will be recovered through tariff adjustment. This however, will apply only to the locality / villages which fall within the 5 km radius of gas producing fields. It was also decided that the present per consumer cost spectrum (which is Rs.54,000 for Sindh, Rs.108,000 for Punjab and Rs.270,000 for Khyber Pakhtunkhwa and Balochistan, respectively) will be revised keeping in the view inflation and other relevant factors for which the provincial governments will submit their proposals to the Petroleum Division for submission of a consolidated report to the CCI in its next meeting." (bold added)

41. On the basis of this CCI decision both the Ministry of Petroleum GOP and Government of Sindh have been pressing through numerous communications the SSGCL in Sindh to implement the Supreme Court Judgment in respect of supplying gas to any localities/villages falling within the radius of 5km of all Gas Fields on priority basis.

42. Initially it appears that the SSGCL agreed with the Ministry of Petroleum GOP to carry out this direction based on a 10 year plan vide its letter dated 31-7-2019 (during the course of these implementation proceedings) addressed to Ministry of Energy Petroleum Division which is set out below for ease of reference.

"SSGC  
Sui Southern Gas Company Limited

Sales/5KM/ Radius/19

July 31, 2019

Mr. Shahid Yousaf  
Directorate General Gas  
Ministry of Energy  
Petroleum Division  
Islamabad.

**SUBJECT: SUPPLY OF GAS TO LOCALITIES / VILLAGES IN 5-KM RADIUS OF GAS PRODUCING FIELDS**

Reference: Letter No.NG(II)/15(27)/2018-Zamzama dated  
31.07.2019

Dear Sir,

This is with reference to above letter on the noted subject:

We are enclosing herewith the plan for implementation of CCI's decision for supply of gas to 528 villages/localities within 5-km radius of gas producing fields in Sindh as prepared and expanded up to 10 years (Annexure A). Keeping in view the company's operational capacity as well as financial constraints and time period involved as well as codal formalities for execution of village gasification schemes.

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Syed Shehryar Kazmi  
General Manager Incharge (CS)  
(For Managing Director) "

43. The SSGCL in view of their response dated 30-09-2019 whilst hearing these petitions have now gone back on that decision/commitment and their implementation plan which they agreed with the Ministry of Petroleum and have instead stated-that they have insufficient funds as set out in their final paragraphs of their response in respect of Para's 4 and 6 of comments filed by Secretary Ministry of Energy (Petroleum Division) in the following terms;

"It is further to inform that SSGCL never ever bore the expenses of over and above cost criteria share for the purpose of gasification of Villages/Localities/Cities/Areas. Those Schemes which meet the per customer cost criteria of Rs.54000/- and Rs.270,000/- for the Sindh and Balochistan Provinces respectively, are considered feasible schemes and undertaken through company's own resources. On the other hand, those schemes which do not meet per customer cost criteria are considered unfeasible schemes and are undertaken by SSGCL on cost sharing basis i.e. over and above cost criteria share is provided as a grant by the Government forums and SSGCL invests within criteria cost share accordingly.

The company/SSGCL is not in a financial position to supply Natural Gas to the respective areas unless the financial arrangements (over and above cost criteria share) is made by the Federal / Provincial Government as per policy/ criteria laid down by the Government of Pakistan or if OGRA in accordance to CCI directions adjust expenditure in the revenue requirement of the company in order to undertake the said implementation plan "(bold added)

44. In addition, the SSGCL had asked OGRA's guidance on the following two issues concerning this matter, which are set out as under for ease of reference:

- (i) As to whether the schemes lying above cost criteria as approved by Federal Government would be allowed in revenue requirement of the company and,
- (ii) Whether the implementation of the CCI's decision violates the NGRA Rules and Natural Gas Allocation Policy, 2005.

45. OGRA has filed comments/objections on behalf of OGRA on Chief Secretary's Report dated 20-09-19 which has reproduced a letter of SSGCL which was written in the wake of the decision of the CCI which was reproduced as under in its comments to para 2(b) to (c);

"SSGCL vide its letter dated 31.07.2019 (Annexure OGRA/C) while referring to decision of the Council of Common Interest (CCI) dated 21.08.2017 (Annexure OGRA/D) has quoted Rule 20(v) of NGRA Licensing Rules 2002 and Para 6.2 of Natural Gas Allocation and Management Policy 2005 which state as under:

Rules 20(v) of NGRA Licensing Rules 2002.

"to provide transmission or distribution service or make sales of natural gas to all persons who meet the eligibility criteria laid down by the Authority on the basis of the policy guidelines issued by the Federal Government in this behalf; Provided that if the Authority agrees with the licensee that it is not financially viable for the licensee to provide transmission or distribution service or make sales of natural gas in a particular area unless the Federal Government makes special financial arrangements with the licensee, the licensee shall not be obliged to provide transmission or distribution service or make sales of natural gas in the said area unless the required financial arrangements are made by the Federal Government "

Para 6.2. of Natural Gas Allocation and Management Policy 2005

"For supply of gas to those economically backward areas, which do not meet cost criteria determined by the Federal Government for supply of gas, the Federal and/or

Provincial Government(s) will make available the resources to the extent of the amount over and above criteria limit".(bold added)

46. It appears therefore that OGRA's stance is that the cost of gasification of villages will be borne by SSGCL if it is within the given criteria and that SSGCL has already carried out 114 such gasification of villages in Sindh which are within 5 KM of the gas field and that it is committed to gasifying the remaining such villages in Sindh provided that the Federal Government by way of grant provide the amount over and above the eligible criteria which it had been doing in the past.

47. The next issue before us therefore appears to be what is the legal effect of the decision of the CCI and in particular whether it can modify or supersede a direction of the Supreme Court which Supreme Court Judgment has reached finality as admittedly no party to those proceedings (including the Federation) filed any review against the Supreme Court judgment in which the Federation was a party and would have been aware of para 22 and in particular para 22 (k) which it is deemed to have accepted.

48. In our view the CCI is a Constitutional body which has been established under the Constitution to formulate and regulate policies in relation to matters in Part II of the Federal Legislative List and shall exercise supervision and control over related institutions.

49. Admittedly gas forms a part of Part II of the Federal Legislative List which at serial No. 2 provides as under;

2. Mineral oil and natural gas; liquids and substances declared by Federal Law to be dangerously inflammable

Serial Nos. 3, 6,13 and 18 which are also set out below may also be of some relevance while dealing with this issue.

3. Development of Industries, where development under Federal control is declared by Federal law to be expedient in the public interest; institution, establishments bodies and corporations administered or managed by the Federal Government immediately before the commencing day, including the West Pakistan Water and Power Development Authority and West Pakistan Industrial Development Corporation; all undertaking, projects and schemes of such institutions, establishments, bodies and corporations, industries, projects and undertaking owned wholly or partially by the Federal or by a corporation set up by the Federation.

6. All regulatory authorities established under a Federal law.

13. Inter-provincial matters and co-ordination

18. Matters incidental or ancillary to any matters enumerated in this part.

50. Thus, it would appear that the CCI can formulate and regulate policies in respect of Gas.

51. In our view making decisions of who pays for such policies is outside the domain of the CCI if an existing law passed by an Act of Parliament or regulation or rule or policy stemming from such law is already in the field dealing with this issue which is the situation in this case especially as para 22 (k) of the Supreme Court Judgment is to be carried out in

accordance with law and Article 5 of the Constitution which requires obedience to the Constitution and the law.

52. Furthermore and more significantly, in our view a judgment of the Supreme Court which has reached finality cannot be set aside, changed, modified or varied by the CCI. The Judgments of the Supreme Court having attained finality are absolutely legally binding on those who they affect who must comply with the same or else potentially face action under the law for such non-compliance. Furthermore, we, as a High Court, have no authority under the Constitution to determine whether a direction of the Supreme Court has been passed legally or not or is implementable. Under the Constitution a High Court is bound by a Supreme Court Judgment once it has reached finality and is bound to follow it and implement it as we are currently doing.

53. It is also notable that the CCI also placed the responsibility of payment on the distribution companies without serving on them notice to be heard by the CCI let alone hearing them before it reached its decision however in our view this lack of notice is not of much significance based on the particular facts and circumstances of this case as the majority shareholder of SSGCL is the Federal Government which was fully represented at the CCI meeting through the Prime Minister in the Chair and three other Federal Ministers and would have been aware of the consequences of the decision on the SSGCL.

54. In short we do not find the decision of the CCI legally binding on the distribution companies when the Supreme Court Judgment through para 22(k) has already placed the obligation on the Ministry of Petroleum and Natural Resources Government of Pakistan and Parliament by way of confirmation has not by way of an enactment turned the decision of the CCI into a binding Act of Parliament.

55. An analysis of the CCI decision also does not simply place the cost on the distribution companies. An important, but largely ignored, part of the decision reads as under;

"The cost over and above the criteria will also be borne by gas utility companies which will be recovered through tariff adjustment. This however, will apply only to the locality/villages which fall within the 5 km radius of gas producing fields. It was also decided that the present per consumer cost spectrum (which is Rs.54,000 for Sindh, Rs.108,000 for Punjab and Rs.270,000 for Khyber Pakhtunkhwa and Balochistan, respectively) will be revised keeping in the view inflation and other relevant factors for which the provincial governments will submit their proposals to the Petroleum Division for submission of a consolidated report to the CCI in its next meeting." (bold added)

56. Thus, even if the distribution companies were obliged to pay for the provision of gas to villages within a 5KM radius of a gas field any amount over and above the cost criteria would be met by tariff adjustment (which would presumably impact on consumers) and the present per consumer cost spectrum (which is Rs.54,000 for Sindh, Rs.108,000 for Punjab and Rs.270,000 for Khyber Pakhtunkhwa and Balochistan, respectively) will be revised keeping in the view inflation and other relevant factors and presumably such revision would fall on the shoulders of the already over burdened consumers.

57. Thus, even if it can be said that the cost of the provision of gas to villages within a 5KM radius of a gas field was the obligation of the distribution company as per the CCI decision (which we do not believe to be legally binding in its present form in the face of para

22(k) of the Supreme Court Judgment) even then the distribution companies could recoup their costs over and above the eligible criteria from the over burdened consumer.

58. Turning to another important aspect of para 22(k) of the Supreme Court Judgment which states that the provision of gas to villages within a 5KM radius of a gas field must be done "in accordance with the law."

59. Having found the CCI decision not to be legally binding in its current form it therefore falls on the Ministry of Petroleum and Natural Resources Government of Pakistan as per the direction of the Supreme Court in para 22(k) of the Judgment which we are implementing to bear the cost "in accordance with law"

60. So what does the law say on this issue?

As submitted by SSGCL and OGRA the Licensing Rules 2002 and Para 6.2 of Natural Gas Allocation and Management Policy 2005 state as under:

Rules 20(v) of NGRA Licensing Rules 2002.

"to provide transmission or distribution service or make sales of natural gas to all persons who meet the eligibility criteria laid down by the Authority on the basis of the policy guidelines issued by the Federal Government in this behalf;

Provided that if the Authority agrees with the licensee that it is not financially viable for the licensee to provide transmission or distribution service or make sales of natural gas in a particular area unless the Federal Government makes special financial arrangements with the licensee, the licensee shall not be obliged to provide transmission or distribution service or make sales of natural gas in the said area unless the required financial arrangements are made by the Federal Government .....

Para 6.2. of Natural Gas Allocation and Management Policy-2005

"For supply of gas to those economically backward areas, which do not meet cost criteria determined by the Federal Government for supply of gas, the Federal and/or Provincial Government(s) will make available the resources to the extent of the amount over and above criteria limit". (bold added)

61. This appears to indicate to us that the distribution companies are prima facie liable to provide gas to areas which meet the cost criteria and that they are not obliged to pay for the provision of gas if to do so would be over and above the cost criteria unless the Federal Government made up the difference.

62. From the record it would appear that the SSGCL has been proceeding on this basis and that in the past when the amount was over and above the eligible criteria the Federal Government has been making up the difference by way of grants which has enabled the gasification of some villages which fall outside the criteria.

63. SSGCL has informed us in respect of the remaining villages in Sindh which fall within para 22(k) they are ready, willing and able to carry out para 22(k) of the Supreme Court Judgment provided that the Federal Government provide, as they had done in the past, the amount over and above the eligible criteria which is in the region of Rs.4.912 Billion.

64. We find such approach to be "in accordance with the law" as required by Para 22 (k) of the Supreme Court Judgment.

65. The Federal Government has stated that it has no funds to make any such grant. That however is not the concern of this court. The concern of this court is to implement para 22(k) of the Supreme Court Judgment keeping in view that the right to gas especially in sold areas during winter especially when gas fields are located within 5KM of a village is a fundamental right of the said villager which forms a part of the right to life which is guaranteed under the Constitution and which is in consonance with an Islamic Welfare State which this government is laudably intent on providing based on the State of Madina.

66. Thus, by way of a last and final chance, by showing judicial restraint, to enable the Ministry of Petroleum and Natural Resources to comply with para 22(k) of the Supreme Court Judgment we suspend the issuance of the show cause notice to the Secretary Ministry of Petroleum and Natural Resources which we had issued earlier in this order and hereby direct the Federal Government to pay to SSGCL an amount of Rs.4.912 Billion within 7 days of the date of this order and direct the SSGCL to commence work on the gasification of the remaining relevant villages in Sindh within 7 days of the receipt of the aforesaid funds from the Federal Government which shall be completed within 6 months of the commencement of the work so that the Ministry of Petroleum and Natural Resources Government of Pakistan through the SSGCL can comply with para 22(k) of the Supreme Court Judgment in the most cost effective, expeditious and efficient manner to the benefit of the concerned villagers so that they may realize their fundamental right to life in its full meaning.

67. In the event that the Federal Government does not pay the aforesaid RS 4.912 Billion to the SSGCL within 7 days of the date of this order the show cause notice issued to the Secretary Ministry of Petroleum and Natural Resources shall stand revived and on 17.02.2020 he shall appear before this court in person and explain why he should not be proceeded with for contempt of court for violating para 22 (k) of the Supreme Court Judgment which has remained unimplemented for the last 6 years.

68. We also note that Article 158 of the Constitution provides as under;

"158. The Province in which a well-head of natural gas is situated shall have precedence over other parts of Pakistan in meeting the requirements from that well-head, subject to the commitments and obligations as on the commencing day."

69. Thus, since according to SSGCL roughly 70% of the gas produced in Pakistan comes from gas fields in the Province of Sindh and keeping in view the 18th, Amendment which has aimed to give more provincial autonomy there should be no shortage in' providing such gas to the villages in the Province of Sindh as the main issue which we have discussed and addressed above is one of cost and not of availability.

70. A copy of this order shall be sent to Secretary Ministry of Petroleum and Natural Resources Government of Pakistan and Chairman/ MD SSSGL for information and compliance.

71. On the next date of hearing the Secretary Ministry of Petroleum and Natural Resources Government of Pakistan shall appear in person and submit his compliance report that Rs.4.912 Billion has been handed over to the SSGCL for the gasification of villages or else his reply to show cause notice and each District in Sindh shall file further update reports on the projects which are being carried out in their district for the local people out of the funds being provided by the E&P companies.

72. A copy of this order shall be sent to faxsimile to the Secretary Ministry of Petroleum and Natural Resources Government of Pakistan, the Chief Secretary GOS, the focal person (Secretary Energy GOS), Chairman SSGCL, Chairman OGRA and all DC's in Sindh for information and compliance who shall also all be in attendance before this court on the next date of hearing..

73. To come up on 17.02.2020 at 11:10 am.

MWA/Q-3/Sindh

Order accordingl