

JUDGMENT SHEET

**PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)**


W.P. No. 2752-P/2022

JUDGMENT

Date of hearing: **24.08.2022**

Petitioners: by Mr. Yasir Saleem, Advocate.

Respondent: by Aftab Ahmad Durrani, Advocate.

 **SHAHID KHAN, J-** This order is directed to dispose of the subject petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 of SNGPL through Incharge Sui Gas Office, Charsadda (petitioners herein) against Gul Hakeem (hereinafter respondents) against the order of the learned Gas Utility Court, Charsadda dated 10.06.2022, whereby, right of defence under Order 8 Rule 10 C.P.C of petitioners/SNGPL was struck off.

2. It's so happened, the respondent/plaintiff (Gul Hakeem) approached Gas Utility Court, Charsadda for declaration coupled with permanent injunction to the effect that he is valid & lawful licensee/consumer of SNGPL vide Consumer # 4671 0040000 and in this regard proper contract has been executed in the year 2006, whereas, the petitioner regularly paid his utility bills @ HM3.

However, the petitioner realized visible difference/enhancement in his consumption bill and came to know that he is charged @ RLNG tariff. Act on the part of the respondents is claimed to be the sheer violation of the contract between the parties.

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3. The learned trial Court put the respondents/SNGPL on notice and legal advisor of the respondents put his appearance, however, written statement could not be furnished despite of availing due opportunities followed by notice under Order 8 Rule 10 C.P.C. On the date fixed (30.05.2022), the respondents/SNGPL was unattended, the learned trial Court highlighted that notice under Order 8 Rule 10 C.P.C has been duly served on Umer Khitab, Sale Officer, SNGPL, Charsadda but failed to furnish written statement and the Court repeatedly called the event but in vain, as such, exercised its jurisdiction under Order 8 Rule 10 C.P.C followed by to struck off right of defence of the petitioners/ SNGPL accordingly.

4. Feeling aggrieved therefrom, petitioners/SNGPL approached this Court through subject petition with the following prayer: -

“It is, therefore, respectfully prayed that on acceptance of this Constitution petition, the order dated 10th June, 2022 of learned ADJ-I/Gas Utility Court, Charsadda may kindly

be set aside and the petitioners/SNGPL may kindly be allowed to defend their case and file their written statement/leave to defend.”

5. Learned counsel for the petitioners/SNGPL is focal & consistent on the proposition that to furnish defence and contest the claim of the respondents is the inherent right of the company provided by the statute on subject and Constitution of the country in respect of the petition/suit/claim pending before the learned Gas Utility Court, Charsadda. Not to furnish the written statement/written reply in compliance with the order of the Court was no way willful & deliberate rather it could have not been furnished at the first instance on account of complete strike on the date fixed (10.06.2022) on the call of the Pakistan Bar Council, Khyber Pakhtunkhwa Bar Council & Charsadda Bar Association, as a result of it, learned Advocates in general were not attending the Court, as such, to struck off right of defence of the petitioners/SNGPL, knowingly to be general strike, the learned Gas Utility Court has not exercised its jurisdiction in accordance with law and on this score the impugned order of the learned Gas Utility Court is not tangible. Concluded, right of defence is the inherent right of the petitioners/SNGPL, in the interest of justice a fair chance may be allowed to the petitioners/SNGPL to meet the ends of justice. The impugned order of the learned trial Court is unjust, illegal, unlawful and

8/5/22

outcome of misuse of jurisdiction, therefore, not tangible and on acceptance of the appeal in hand needs to be set aside followed by allowing a fair chance to the petitioners/SNGPL to defend the cause & claim of the respondent.

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6. Learned counsel for the respondent/plaintiff has very fairly conceded that right of defence is the inherent right of the opposite party but the petitioners/SNGPL has availed the subject right and avoided to furnish their written statement in compliance with the repeated positive directions of the learned trial Court followed by due notice under Order 8 Rule 10 C.P.C, duly served on a responsible official/officer of the company. Added, conduct and demeanor of the petitioners/SNGPL as not to furnish written statement in compliance with the positive directions of the Court, the Court has exercise its jurisdiction in accordance with law and the petition in hand being without any substance is wroth dismissal.

7. In view of the submissions at the bar and record made available, it is hard fact that the appellant despite of the positive directions of the learned trial Court failed to furnish written statement followed by exercising jurisdiction under Order 8 Rule 10 C.P.C, the

learned trial Court opted to struck off right of defence of the appellant.

8. There is no denial to the preposition that a right of defence is the inherent right of every person, particularly, in the circumstances where set of allegations against him is furnished in a plaint. It is floating fact on surface of the record that the petitioners/SNGPL put its appearance through representative before the learned trial Court and written statement could not have been furnished and the learned trial Court vide order # 12 dated 30.05.2022 put the representative of the SNGPL & Legal Advisor on notice under Order 8 Rule 10 C.P.C, wherein, it has been specifically highlighted to be a final opportunity to furnish the written statement, failing which right of defence can be struck off. On the next date & day of hearing, the petitioners/SNGPL was unattended and the learned trial Court exercised its jurisdiction under Order 8 Rule 10 C.P.C and right of defence of the petitioners/SNGPL was struck up accordingly. Prima facie impugned order of the learned trial Court revealed that the petitioners/SNGPL has availed due opportunities but for the reason best known to it, written statement could not have been furnished.

8/5/22

9. It is hard fact that SNGPL is a limited company but lion & major shares of the subject company are of the Government of Pakistan. Close perusal of the record would transpire that the learned trial Court in its order # 12 dated 30.05.2022 highlighted of the oral notice under Order 8 Rule 10 C.P.C to the then defendants, however, it does not reflect that the subject notice has been delivered to the duly appointed representative of the petitioners/SNGPL or its counsel. Other than it, copy of the subject notice is not part & parcel of the record.

8/5/22

10. In the circumstances where record made available does not speak of the copy of the notice under Order 8 Rule 10 C.P.C to the then defendants/SNGPL through its counsel or representative, strong presumption can go in favour of the petitioners/SNGPL that the notice under Order 8 Rule 10 C.P.C has not been served. The Court is conscious enough that proceedings of the Court has got presumption of truth but in the circumstances where the observations of the learned trial Court in his order # 12 dated 30.05.2022 just highlight about the notice under Order 8 Rule 10 C.P.C is given orally to the defendants, whereof, neither specific name and designation of the person/defendant has been highlighted nor particulars of the counsel or representative have been highlighted, such observations shall favour the

petitioners/SNGPL and to invoke penal consequences against the petitioners/SNGPL shall not meet the ends of justice.

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11. No doubt, the learned trial Court in the subject order has also directed his official/Muharrir for the issuance of notice under Order 8 Rule 10 C.P.C to the officer/official concerned of the SNGPL but copy of the subject notice is not part & parcel of the record. Reliance can be placed from *PLD 2001 Lahore 143* as under: -

“...O. VIII, R,10---Written statement called by the Court---Failure to file such statement---Provisions of O. VIII, R.10 C.P.C---Applicability---Provision of O.VIII R.10 C.P.C are penal in nature and have to be strictly constituted and whenever a reasonable doubt arises regarding their interpretation/implementation the same have to be resolved in favour of the victim.”

12. The peculiar facts & circumstances coupled with the chequered history of the subject event has driven the Court to the conclusion to exercise inherent jurisdiction to prevent the abuse of process of Court to achieve the ends of justice. (*PLD 1994 Peshawar 161*).

13. However, it would be injustice as not to compensate the respondent for the fruitless litigation in

the meanwhile, as such the petition in hand is allowed and impugned order dated 10.06.2022 is set aside subject to payment of cost of Rs:10,000/- (Ten thousands) payable to the respondent/consumer on resume of the proceedings before the learned trial Court.

ANNOUNCED

Dt: 24.08.2022



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