

Judgment Sheet  
IN THE LAHORE HIGH COURT AT LAHORE  
JUDICIAL DEPARTMENT

WP No.38735/2017

Arshad Javaid Ghuman

*Versus*

Additional District and Sessions Judge, Lahore etc.

**J U D G M E N T**

Date of Hearing	<b>18.3.2019</b>
Petitioner By:	Mr. Ansar Ali Sidhu and Ms. Saira Sabir, Advocates.
Respondents By:	Mr. Anwaar Hussain and Mr. Imran Khan Klair, Advocates for Respondent No.2.

**Ayesha A. Malik J:** Through this petition, the Petitioner has impugned order dated 8.4.2017 passed by Respondent No.1, Additional District Judge, Lahore.

2. The case of the Petitioner is that he was an employee of Respondent No.2, Sui Northern Gas Pipelines Limited (“SNGPL”) as Superintendent Accounts. SNGPL lodged an FIR against the Petitioner and others on the charge of embezzlement and fraud for which criminal trial is pending. In the meantime, Respondent No.2 filed a suit for recovery along with damages titled *Sui Northern Gas Pipelines Limited v. Five Star Zone (Pvt.) Limited etc.* on 18.6.2016 against the Petitioner and others which is pending in the Gas Utility Court. In the suit, Respondent No.2 seeks to recover an amount of Rs.120,840,27/- from the Petitioner. Hence the Petitioner moved an application stating therein that the Gas Utility Court did not have jurisdiction under the Gas (Theft Control and Recovery) Act, 2016 (“**Gas Theft Act**”) to proceed against the Petitioner. The said application was dismissed vide the impugned order dated 8.4.2017. Hence the instant Petition.

3. Learned counsel for the Petitioner argued that the Gas Theft Act is meant for prosecution of cases of gas theft and other offences relating to theft of gas so as to recover the value of the gas consumed, any fines, penalty or outstanding amounts due for gas theft. The court cannot exercise jurisdiction over the Petitioner and others in the suit, from whom Respondent No.2 seeks to recover allegedly embezzled amount. Learned counsel submits that a clear reading of Section 2(o) read with Section 6 of the Gas Theft Act makes the purpose of the law very clear, hence Respondent No.2 cannot seek to recover amounts from the Petitioner on charges of embezzlement and fraud through the Gas Utility Court.

4. Report and parawise comments have been filed on behalf of Respondent SNGPL. Learned counsel for Respondent SNGPL stated that Respondent No.2 filed a suit for recovery of amounts from various ex-employees and contractors on the charges of fraud and embezzlement. During the pendency of the suit vide an administrative order dated 8.2.2017 passed by the District and Sessions Judge, Lahore the said suit was withdrawn from the civil court and transferred to the court of Respondent No.1. On 9.3.2017 counsel for Respondent No.2 recorded his objection to the jurisdiction of the court that is Respondent No.1 in the given matter. It was submitted that Respondent No.1 may refer the matter to the High Court as a reference in terms of Section 113 of Civil Procedure Code, 1908 but the submission was repelled orally that it is not the function of the court to make references and also that it is a cumbersome and time consuming process. Learned counsel submitted that Respondent No.1 has wrongly assumed jurisdiction to try the suit filed by the Respondent No.2 which is against the explicit provisions of the Gas Theft Act. He argued that Respondent No.1 failed to appreciate that every matter pertaining to the Respondent No.2, be it statutory contractual or criminal is not necessarily triable by the Gas Utility

Court rather only such cases are trainable by Respondent No.1 which fall within the jurisdiction of Respondent No.1 under the Gas Theft Act. Hence Respondent No.2 has no objection to the acceptance of the titled petition.

5. Heard. Record perused. The basic issue before the Court is with respect to the jurisdiction of the Gas Utility Court constituted under the Gas Theft Act. In terms of the preamble of the Gas Theft Act, the objective of the law is to prosecute cases of gas theft and other offences relating to gas in order for the Gas Utility Court to recover amounts due to it for consumption of gas. Respondent No.1 relied upon the term *other offences relating to gas* as provided in the preamble, in order to justify its exercise of jurisdiction. However, this appears to be misconceived and against the mandate of the law. In terms of Section 3 of the Gas Theft Act, the Gas Utility Courts are constituted by notification in the official gazette and in terms of Section 4, these courts have exclusive jurisdiction with respect to all matters covered under the Gas Theft Act. Section 4(2) of the Gas Theft Act provides that *the Court having jurisdiction under this Act shall be a Gas Utility Court having jurisdiction in the place in which the Gas Utility Company, consumer, gas producer or offender, as the case may be, is situated*. Hence the Section itself clarifies that the jurisdiction of the court is limited to disputes of the Gas Utility Company, consumers or gas producers or offenders. The term 'consumer' is defined under Section 2(b) of the Gas Theft Act which essentially means a person who has received supply of gas. Although the term 'gas producer' is not defined, the term 'gas' is defined under Section 2(e) of the Gas Theft Act to mean *natural gas, liquefied petroleum gas, air mix liquefied petroleum gas, liquefied natural gas, regasified liquefied natural gas and compressed natural gas*. Hence any person who produces any of the items defined in Section 2(e) would be a gas producer for the purposes of the Gas Theft Act. So far

as ‘offender’ is concerned, the Gas Theft Act provides for offences related to gas, being unauthorized use of gas, tampering with gas meters or pipelines or with the distribution of gas causing damage to transmission or transportation lines or for wasting gas. The offences are specified in the Gas Theft Act and reference to offences under the Gas Theft Act means offences provided for under the Gas Theft Act. Hence the Gas Utility Court can exercise jurisdiction over a consumer, a gas producer or an offender as provided under the Gas Theft Act. In terms thereof the Petitioner is neither a *consumer* nor a *gas producer* or an *offender* under the Gas Theft Act. Hence the Gas Theft Act has no jurisdiction over the Petitioner.

6. The procedure for complaints and suits filed before the Gas Utility Court is provided under Section 6, in terms of which a person involved in an offence under the Gas Theft Act or where sums are due or recoverable from any person or where the consumer has a dispute regarding billing or metering against the Gas Utility Company, a complaint/suit can be filed before the Gas Utility Court. ‘Sums due’ is defined in Section 2(1)(o) of the Gas Theft Act to mean amounts recoverable from a person *who purchases or receives gas or a person on whose premises gas connection is installed and includes arrears of gas charges, meter rental, related fixed and variable charges and gas theft claims*. In terms of this definition, the Gas Utility Court is required to hear complaints and disputes with respect to amounts stated to be due or recoverable where there is purchase and use of gas for self-consumption or sale for vehicles use. In terms of this definition, the Gas Utility Court cannot seek to recover amounts alleged to have been embezzled or stolen by the employees of a Gas Utility Company or contractors, as in this case. The court further fortified while reading Section 6(3) of the Gas Theft Act which clearly provides that in the plaint for recovery instituted by a Gas Utility Company it shall specifically state the *quantity of gas*

*consumed or extracted by the defendant* from the Gas Utility Company, the amounts paid against the gas consumed and the balance amount due to the Gas Utility Company for the supply, consumption or extraction of gas due to the Gas Utility Company. Therefore the Gas Utility Company can claim sums due from its consumer or a person for the supply, consumption or extraction of gas before the Gas Utility Court. In such cases, the defendant will also have to specifically provide, in the leave to defend application, how much gas was supplied and consumed by the defendant, what amounts have been paid and what amounts are disputed by the defendant. On the basis of the documents provided, the Gas Utility Court can pass a judgment and decree against the defendant with specific mention of what amounts are due for gas consumed or extracted by the defendant. Hence the intent and purpose of the law is clear whereby the legislature vested jurisdiction in the Gas Utility Court to recover dues from consumers of Gas Utility Company.

7. There is nothing in the law which allows a Gas Utility Company to file claims before the Gas Utility Court alleging embezzlement, fraud and misappropriation of funds by its employees. This is a special court constituted under a special law for a specific purpose being the recovery of amounts and dues for the consumption and extraction of gas. Hence the purpose of the law is to ensure that consumers of gas to pay the Gas Utility Company for the gas that they have consumed. The use of the term 'gas theft and other offences relating to gas' in the preamble does not under any circumstances grant jurisdiction to the Gas Utility Court to recover claims of embezzlement for the Gas Utility Company. The court has limited jurisdiction to try suits or complaints which arise out of dispute related to consumption of gas by a consumer or person on whose premises a gas connection is fixed and used. The order impugned before the Court has relied upon the preamble of the Gas Theft Act as

well as definition of ‘sums due’ to justify its exercise of jurisdiction. In this regard, it is noted that the term ‘sums due’ is related to amounts due against consumption of gas and will include other charges such as meter rental, late payment charges they have claimed by the Gas Utility Company or all of which are related to the consumption of gas by the defendant from the Gas Utility Company. In this regard, the impugned order is totally misconceived and against the mandate of the law and has failed to duly appreciate the objective of the Gas Utility Act and the purpose of constituting the Gas Utility Court.

8. In view of the aforesaid, the instant petition is **allowed** and the impugned order dated 8.4.2017 passed by Respondent No.1 is set aside.

(AYESHA A.MALIK)  
JUDGE

**Approved for Reporting**

JUDGE