

2012 CLD 1714

[Islamabad]

Before Riaz Ahmad Khan, J

Messrs SHANDAR PETROLEUM/CNG through
Managing Partner and 46 others—Petitioners

versus

FEDERATION OF PAKISTAN

through Ministry of Petroleum and 2 others —Respondents

Writ Petitions Nov. 3128, 3144, 3145, 3156, 3160, 3161.
3171, 3172, 3173. 3177, 3191, 3203, 3204, 3206, 3210,
3236, 3254, 3255. 3258, 3260, 3292. 3299, 3311 and 3312
of 2011, decided on 23rd December, 2011.

(a) Contract Act[IX of 1872]

—S. 3—Compressed Natural Gas (CNG) Supply Stations, setting up of—Incentive provided by Government Inviting general public to invest in CNG Sector—Suspension of gas supply to such Stations by Government due to load-shedding— Validity— Conversion to gas was required to minimize use of petrol and diesel— Policy and procedure for establishment of CNG Stations could not be considered as an incentive—Anything mentioned in policy regarding use of CNG could not be taken as an incentive on part of Government or a promism with a person wanting to establish CNG Station, [p.1727]A & B

PLD 2007 SC 642; 1978 SCMR 327; 1966 SCMR 680; PUD 1973 SC 49r PLD 2011 Lah. 120; PLD 2002 Lah. 359; 1995 CLC 1687; PLD 20 H SC 44; AIR 1977 SC 1496; AIR

1990 SC 1851; 2008 SCMR 17; 3007 PTI 1005; 2010 MLD 690; AIR 1991 SC 14; 2006 YLR 229; 348 U.S. 483 (1955); 174 U.S. 96 (1899) and 2011 YLR 1491 ref.

(b) Constitution of Pakistan—

—Art. 158 & 172—Islamabad Capital Territory Administration) Order (18 of 1980), Art.2—Natural gas, well-head of—Priority given to a Province to meet its requirement from much well-head situated in its territory—Extending much priority to other Provinces) or Islamabad Capital Territory by Judicial pronouncement— Scope...Such priority given to a Province specified in Art. 138 of the Constitution could not be given to any other Province or Federal Government despite .addition of Sub-Article 3 to Art. 172 of the Constitution—Such priority provided in a specific- manner by the Constitution could not be

extended by way of judicial pronouncement—Nothing could be added to the Constitution or any" other laws by way of Judicial pronouncement for same being meant only for interpretation of constitutional provisions— Executive authority of Capital Territory vested in the President as same was not part of Punjab—Capital Territory could not be equated with Khyber Pakhtunkhwa as Federal Government would not mean such territory—No Article of the Constitution provided such priority to Capital Territory of Islamabad—Principles.

[pp. 1728, 1729, 1730] C, D. K. F & G

(c) Constitution of Pakistan—

Arts. 23, 24 199—Constitutional jurisdiction of High Court—Scope policy introduced by Government—Court could scrutinize and strike down such policy, if it found the same to be arbitrary, unreasonable or violative of law or Constitution, but could not give policy or substitute same by introducing a new policy. [p. 1730] H

PLD 2007 SC 642, 1998 SCMR 327 and 1986 SCMR 680
ril.

Makhdoom Alt Khan, Barrister Khurrara M, Haahmi, Saad M. Haahmi, Sajid ur Rehman Mashwani, Umair A. Rishi, Hyder Ali Khan and Shahzaib for Petitioners (In Writ Petitions Nos.3128, 3171 and 3172, 3236 of 2011).

Syed Hassan All Raza for Petitioners (In Writ Petition No.3144of2011).

Ch. Abdul Rehman Bajwa for Petitioners (In Writ Petitions Nos\3160. 3177 and 3210 of 2011).

Barrister Sajeel Shehryar for Petitioners (in Writ Petition No.3,173 of 2011).

Syed Intikhab Hussain Shah for Petitioners (in Writ Petitions Nos.3191, 3254. 3255, 3258 and 3312 of 2011).

Muhammad Ilyas Sheikh and Rubina Shaheen for Petitioners (In Writ Petition No. 3292 of 2011).

Tahir Afzal Abbasi for Petitioners (in Writ Petition No.3203of2011).

Muhammad Iqbal, Representative of Petitioner (In Writ Petition No.3204 of 2011).

Syed Intikhab Hussain Shah on behalf of Ayyaz Shaukat for Petitioners (In Writ Petitions Nos.3206 and 3156 of 2011).

Sheikh Muhammad Suleman for Petitioners (In Writ Petition No.3145 of 2011).

Naveed Malik, Yasir Raja and Qazi Hafeez for Petitioners (In Writ Petitions Nos.3161, 3260 and 3299 of 2011).

Raja Amjad Mehmood for Petitioners (in Writ Petition No.3311 of 2011).

Agha Sikandar, President, CNG Association for Petitioners.

Noor-ul-Amin. Vice-President, C.N.G. Association I.C.T. for Petitioners.

Mirsa Mahrnood Ahmad for M/O Petroleum. Asim

Haieez for SNGPL.

Muhammad Abld Raja, D.A.-G., Rizwan ul Haq, Principal Law Officer, OGRA, Rehan Nawaz, General Manager. SNGPL for Respondents.

Misbah Gulnar Sharif, for OGDCL (in Writ Petition No.3144.of 2011)

Date of decision: 23rd December, 2011.

JUDGMENT

RIAZ AHMAD KHAN, J.—This Judgment is directed to dispose of Writ Petition No. 3128 of 2011 as well as Writ Petitions Nos. 3144, 3145, 3156, 3160, 3161, 3171, 3172, 3173, 3177, 3191, 3203, 3204, 3206, 3210, 3236, 3254, 3255, 3258, 3260, 3292, 3299, 3311 and 3312 of 2011. as common question of law and facts is involved in these writ petitions.

2. Brief, facts of the case are that petitioners in all the writ petitions own C.N.G. Stations, situated in Islamabad Capital Territory .According to the petitioners, Initially respondent No.1 offered different Incentives to them and in response to those Incentives, petitioners invested huge amount in the C.N.G. business, which goes up to Crores and accordingly, C.N.G. Stations were established. The installation of C.N.G. requires land, purchase of C,N.G. compressors, machinery, equipments, tools, hiring of technical manpower and providing on the job training etc. and since the land situated at Islamabad is comparatively very expensive, so petitioners investment, in comparison to other C.N.G. investors of the country, was much higher. Since most of the C.N.G. owners are not rich people; so most of them had obtained loans from different banks for investment in the business. The grievance of the petitioners is that the Government in September 2006 introduced Natural Gas Allocation and Management Policy, 2005, in which the priority order for Gas supply was fixed.

3. According to the petitioners, the C.N.G. Sector was placed in category 4, domestic and commercial sector was given the first preference, fertilizer and industrial sector was given second preference and Independent Power Plants

given fourth preference, whereas the C.N.G. should have been given the first preference or at least should have been placed along with the domestic sector. Acting upon the said Policy, the Government started gas load shedding for three days in a week, which for all practical purposes, amounts to closing the business of the petitioners. With the said load-shedding, the petitioners business has been ruined and they are not in a position to pay back their .installments or even to run their day-to-day affairs. In the said Policy it was also provided that in case of non-cooperation, the gas supply would be disconnected for at least 7 days at a stretch along with other strict action. This notification was challenged before this Court in all above said writ petitions.

4. Learned counsel for the petitioners contended that Sui Northern Gas Pipelines Limited (S.N.G.P.L) had created a different zone at Islamabad, which included Islamabad as well as areas from Jhelum to Attock, Rawalpindi to Murree and Azad Jammu Kashmir. In such a way, the Islamabad Capital Territory has been made part of Punjab and the restrictions imposed in Punjab have been imposed on Islamabad as well. According to learned counsel for the petitioners, Islamabad is Federal Capital Territory and is not part of Punjab. Islamabad should not have been made part of Punjab, rather Islamabad Capital Territory should have been equated with Rhyber Pakhtunkhwa, where the said Load Management Policy had not been imposed. It was further submitted that Article 158 of the Constitution of Islamic Republic of Pakistan, 1973 provides as follows:--

"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.

5. Article 172(3) of the Constitution of Islamic Republic of Pakistan, 1973 provides as under:—

"Subject to the existing commitments and obligations, mineral oil and natural gas within the Province or the territorial waters adjacent thereto shall vest Jointly and equally in that Province and the Federal Government." .

6. In such a way, the well-head of gas available in K.P.K. was the ownership of that Province as well as the Federal Government and if under Article 158, the Province of K.P.K. had the precedence, then the Federal Capital Territory also had the precedence, as because of ownership of Federal. Government, preference to Federal Capital Territory was to be given. Learned counsel contended. that it was provided in a letter written by Secretary, Ministry of Petroleum and Natural Resources that C.N.G. being the sole raw material and C.N.G. sector having no alternate options to run their business, would not be treated. at par with other sectors having alternate means, for the purpose of load-shedding and would be given higher gas priority as compared to other sectors.

7. It was further submitted that admitted position in the present case is that total consumption of C.N.G.in

Islamabad is about 15 MMCFD, whereas total loss of gas is 45 MMCFD, which means that the respondents SNGPL Department is in league with consumers for stealing the gas and daily 45 MMCFD gas is stolen, for which no payment is made to the Government. According to learned counsel, if the Government could bear the loss .of 45 MMCFD, then why 15 MMCFD could not be provided to C.N.G. stations. Learned counsel further submitted that Oil and Gas Regulatory Authority (OGRA) had provided licenses to the petitioners for establishing and running business of C.N.G; and the same could not be destroyed by unjust and unlawful orders of the respondents. Learned counsel also submitted that since it has been admitted by the respondents that the petitioners have got no other alternate business, as gas is the only material, which is being sold by the petitioners and if the same is not supplied that would amount to depriving petitioners of their property without paying the compensation, the same is, therefore, violative of Articles 23 and 24 of the Constitution of Islamic Republic of Pakistan, 1973. It was further contended that the Policy, which is arbitrary in nature and violative of Articles of the Constitution of Islamic Republic of Pakistan, cannot be implemented and is liable to be struck down.

8. On the other hand, learned counsel for the respondents contended that the petitioners had established the business at their own. The Government or the respondents had never made any representation to the petitioners for Investing in this business. No incentive was ever given and no promise was ever made and therefore, the petitioners, had started the business at their own risk and cost. It was further submitted that in the N.O.Cs. issued to the petitioners, it was clearly provided by S.N.G.P.L. that the Company would provide gas under this offer, purely on *am and when, available*' basis and in particular no gas may be supplied during the peak winter months of December¹ February each year. As far as, the Policy is concerned, 80% of the petitioners had established their G.N.G. stations after the Policy of 2005 and they were aware of provisions of N.O.C. as well as Gas Management Policy, but havlngtrfl these factors in their mind, they invested in the said business. The petitioners were well aware of the risks involved and now they cannot challenge the same. Learned counsel further submitted that the total production of gas is 4.2 Billion Cubic Feet, whereas the demand was 8 Billion Cubic Feet. The gap between demand and supply was about 1.1 Billion Cubic

Feet.It was further submitted that in the winter season, the demand goes up and it becomes Impossible for the Government to supply gas in accordance with the demand. It was because of that compulsion, the said Load Management Policy was introduced in the year 2005. Although in the N.O.C.as well as In contract, it was provided that it was the sole prerogative of the. Government to stop the gas to C.N.G. stations In the month of December to February, but the Government never acted upon that and gas stations were facilitated up to maximum. It was also added that at present, no gas is supplied to Fertilizer Industry and the said Industry has almost comes to a standstill.

9.Learned counsel further submitted that creation of Islamabad zone was only an administrative measure and certain areas had been added to it. Islamabad Capital Territory could not be equated with K. P. K. for the reason that the Province of K.P.K. was consuming 45 to 50% of the gas it produces. The remaining gas is given to Federal Government. The Province of Sindh is consuming 61% gas of what it produces. The maximum gas is being produced in Pakistan by the Province of Sindh, Where 72% of gas is produced. Learned counsel further submitted that the Province of Punjab consumes 8.2 times more than what it produces and practically no gas is produced in the Province of Punjab, whereas consumption is much higher. The same is the case with Islamabad Capital Territory, where no gas is produced, but the consumption is very high. It was because of this that Islamabad was attached with the Province of Punjab and not the other Provinces, as two areas had similarity in all respects. Learned counsel further submitted that Article 158 of the Constitution of Islamic Republic of Pakistan provided that the Province in which a well-head of natural gas is situated shall have precedence over other parts of Pakistan, but the word "parts" does not mean Provinces so the argument of learned counsel for the petitioner that the parts meant provinces and according to Article 158 of the Constitution of Islamic Republic of Paklstan, the Province of K.P.K. or other Provinces which were producing gases, had precedence over Province of Punjab, but not Islamabad, as Islamabad is not Province, is not correct. Learned counsel further submitted that according to Article 172(3) no doubt that the ownership of natural gas was given to the concerned Province as well as to the Federal Government, but it did not mean that by Federal Government the Islamabad Capital Territory is meant.

10. Regarding the Policy of 2005, learned counsel submitted that the said Policy was formulated by keeping in view many factors. According to Policy, the cement sector was placed at Serial No. 6, which meant that in case of management, first of all supply to cement sector would be cutoff. It was decided that the domestic and commercial consumers would get continuous gas supply, but commercial consumers meant small shopkeepers and not big Industries. Thereafter, the priority was given to Fertilizer Sector for the simple reason that gas is the only raw material used for production of fertilizer and fertilizer by itself is Used

for development of Agriculture Sector, so being value-added commodity, the same was given preferences. The third priority was given to Independent Power Plants as well as WAPDA, as they were to produce electricity and then fourth priority was given to C.N.G. It was also kept in mind that by curtailing the gas supply, how much gas can be saved and utilized by other sectors. Even in the Industrial Sector, it was kept in view that the gas would be supplied to those Industries to which earlier promise had been made and where no such promise was made, those Industries consumers were separated. As such, it cannot be said that the Policy was unreasonable or arbitrary. Since the respondents were not acting upon the provisions provided in the N.O.C. as well as the contract by completely stopping the supply of gas to the C.N.G. stations from December to February, so the respondents in such a way, were going out of the way to accommodate the petitioners. According to learned counsel for the respondents, the consumption chart shows that the business of C.N.G. stations in the previous months had gone on the higher side and it cannot be said that loss has been caused to the petitioners by the respondents. Learned counsel in support of his contentions referred to PLD 2007 SC 642, 1978 SCMR 327, 1986 SCMR 680, PLD 1973 SC 49, PLP 2011 Lahore 120, PLD 2002 Lahore 359, 1995 CLC 1687, PLD 2011 SC 44, AIR 1977 SC 1496, AIR 1990 SC 1851, 2008 SCMR 17, 2007 PTD 1005,

2010 MLD 690, AIR 1991 SC 14, AIR (sic) Delhi 445, 2006 YLR 229, 348 U.S. 483 (1955) and 174 U.S. 96 (1899).

11. Learned counsel for respondent No. 3 submitted that the petitioners do not have absolute right, as they are only licensee and licensee cannot claim protection under Article 24 of the Constitution of Islamic Republic of Pakistan. Learned counsel in support of his contentions referred to

2011 YLR 1491.

12. I have *heard*, learned counsel for the parties and have also perused the record.

13. The requirements. for establishment of C.N.G. stations are as follows:--

- (1) *Formation of a company and its registration as joint stock/'private limited/partnership air proprietor-ship entity.*
- (2) *Select a consultant for project assistant if required.*
- (3) *Registration of CNG Company With Oil and Gas Regulatory Authority (OGRA).*
- (4) *Selection of location for suitable site for CNG Station; In close vicinity to natural gas pipeline.
Access to petrol vehicles in reasonable numbers.*
- (5) *Selection of CNG Station equipment*
- (6) *Completion of legal formalities for establishment of CNG Station with under mentioned departments:

District Authority for Civil construction approval.

Department of Explosive in the Ministry of Industries for Ideation of CNG equipment

Approval for utilities, natural gas /electricity and water from relevant authorities.*

(7) *Award of contract for:*

Civil Construction. ,

Purchase of CNG Station and Vehicle conversion equipment

(8) *Hiring of technical manpower and providing on the job training at some established CNG entity/HDIP.*

(9) *Installation of CNG Station equipment*

(10) *Purchase of tools for CNG Kit Installation.*

(11) *Startup of CNG Station and installation of CNG kits in vehicles.*

14. These requirements also include obtaining the license from OGRA and executing contract with SNGPL. The SNGPL earlier had old contracts, which included clauses regarding

Interruption In supplies and one clause regarding company's right to reduce/interrupt/suspend supplies, which reads as follows:--

INTERRUPTION IN SUPPLIES

(19) The company shall have the Right to dose or interrupt gas supply to the Consumers premises for short periods for carrying out necessary extension, repair and/or alteration, work in the company's pipelines, equipments and devices.

COMPANY'S RIGHT TO REDUCE/INTERRUPT/ SUSPEND SUPPLIES

(20)As the production of gas from wells, Purification Plants and conveyance of it over long distances or subject to accidents, interruption failure and the lines, to breaking, freezing and closing which cannot be foreseen or prevented by any reasonable care or expenditure and the supply of gas and transportation facilities, therefore, are limited, the Company does not by this contract undertake to furnish to .the Consumer full uninterrupted of supply of gas but only to furnish such supply and for such length of time as it reasonably can; and it is expressly agreed by the Consumer that the Company shall not be liable for any loss, damage; or injury that may result either directly or indirectly due to interruption in the supply of gas, or in the discontinuance thereof from any cause whatsoever. The Company shall in its sole judgment have the right to reduce or interrupt or completely suspend gas supply due to any of the aforesaid reasons to its Consumers and shall be sole Judge with, regard to such conditions.

CURTAILMENT OF SUPPLIES

(21) The Company shall have tile right to curtail deliveries of gas to Consumers contracting to purchase in excess of 1,000,000 cu.ft. per month or its equivalent in metric measure whenever and to the extent necessary in its sole' Judgment the protection of service to its other Consumers may require. The Company shall be the sole judge with

regard to such conditions and curtailment of deliveries.

15. The new contract, which has also been executed with many of the petitioners, includes Clause-14, which reads as follows:

14.COMPANY'S RIGHT TO REDUCE/INTERRUPT/CURTAIL SUPPLIES

- (i) As the production of natural gas from wells, purification plants and conveyance of it over long distances are subject to accidents, interruptions and failures and the lines and equipment to malfunctioning, braking, freezing, failures and closing which cannot be foreseen or prevented by any reasonable care or expenditure and as the supply off natural gas and transportation facilities are limited, the Company does not by this Contract undertake to furnish to the Consumer a full and uninterrupted supply of natural gas but only to furnish such supply and for such length of time as it reasonably can; and it is expressly agreed to by the Consumer that the Company shall not be liable for any loss, damage, of injury that may result either directly or indirectly from shortages or interruptions in the supply of natural gas, or from discontinuance thereof due to said reasons or as a result of labor strikes, lockouts, riots, civil commotions, hostilities, wars, epidemics, calamities, natural disasters or causes beyond the ordinary reasonable control of the Company. The Company shall in its sole judgment have the right to reduce or interrupt or completely suspend natural gas supply due to any other aforesaid reasons to the Consumer and shall be the sole Judge; with, regard to such conditions.
- (ii) The Company shall have the right to close or interrupt natural gas supply to the Consumer 'precise for short, periods for carrying out necessary extension/repair and/or alteration, work in the Company's pipeline, equipment and devices with *the* prior notice to the Consumer.
- (iii) The Company shall have the right to curtail and/or to discontinue deliveries of natural gas to the Consumer whenever and to the extend necessary in its sole Judgment for the protection of service to its other Consumers it may require. The Company shall be the sole Judge with regard to such conditions and curtailment of deliveries.
- (iv) The gas shall be supplied as per the Natural Gas Allocation Policy or any other relevant policy issued by the Government or any other Authority from time to time,

16 There is no denial of the fact that the petitioners are signatories of either of these contracts and they have also fulfilled the aforementioned requirements provided in the procedure for establishment of C.N.G. stations.

17 Since the gas supply is reduced in winter because of gap in demand and supply, so most of the people get affected with the shortage of gas supply. According to the respondents, there is a gap of 1.1 Billion Cubic Feet in demand and supply. It is pertinent to mention that most of the gas is produced in the Province of Sindh, however, overall situation is that the Province of K.P.K. consumes about 50% of what it produces. Similarly, the Province of Sindh consumes 61% of what It produces, whereas the Province of Punjab including 'Islamabad and Rawalpindi

consumes 8.2% more than what it produces. The figures regarding Province of Balochistan were not produced, however, it was stated at bar that the consumption in Balochistan was much less than its production of gas- In such a way, the surplus gas produced in all the three; Provinces goes to the Federal Government. The Sui-Gas Authorities for administrative purposes have extended the area of Islamabad including area from Jhelum to Attock, Rawalpindito Murree and Azad Jammu and Kashmir.

18 It was because of above said situation that in the Province of Punjab, the necessity of introduction of Natural Gas Allocation and Management Policy, 2005 arose. The present Policy has categorized different consumers with the object that in case of shortage, the consumer placed at the lowest would be stopped or curtailed supply of gas and if, even then the shortage remains, then the second from the bottom

19 would be stopped supply of gas and so on. The said list is as follow:--

Sr. No.	Category of Consumers	Priority Order
1.	Domestic and Commercial Secretors	First
2.	(i) Fertilizer Sector; and (ii) Industrial Sector to the extent of	Second
3.	Independent Power Plants as well as WAPDA and KESC's Power Plants having firm gas supply commitment	Third
4.	General Industrial and CNG Sectors	Fourth
5.	(i) WAPDAs and KESC Power Plants other than those listed against Sr.No.3 above.	Fifth
6.	Cement Sector	Sixth

19. The present position is that domestic consumers in Punjab including Islamabad are getting 687 Million Metric Cubic Feet per Day (MMCFD) and Commercial Sector is getting 70

MMCFD. Fertilizer Sector is getting zero per cent gas and supply of gas has been completely stopped to them. The same is the case with the Industrial Sector, which is getting 2/3 MMCFD. The independent Power Plants with whom the supply was guaranteed in the contract are getting 299 MMCFD. The General Industrial consumers are getting 370 MMCFD: It is, however, to be noted that only in Islamabad the consumption of CNG Stations is 200 MMCFD, but this figure is for the whole of Punjab, whereas only in Islamabad Capital Territory, the consumption of CNG is from 15 to 40 MMCFD, as it varies from season to season as well as day to day. Both the parties, however, admitted that the consumption is 15 MMCFD in Islamabad. WAPDA and KESC Power Plants are getting zero. Similarly, the Captive Power Sector and Cement Sector have completely been stopped supply of gas. As such, in Islamabad the CNG Sector is getting 200 MMCFD against the demand of 230 MMCFD. The figures regarding Islamabad were disputed by the learned counsel for the petitioners for the reason that respondents had attached the data up to October, 2010 with the written statement and data thereafter was not available. Learned counsel for the petitioners contended that since the documents have not been produced, though the petitioners had made a proper demand for that, so the presumption would be that those documents would have favoured the version of the petitioners and that is the reason that those documents have not been produced. Since it is admitted that the total demand for supply of gas to the CNG Stations is not being met, therefore there is no need to step into that controversy. It is admitted that the petitioners want that there should be no gas holiday and this demand is denied by the respondents. In view of the above said Policy, three days ban in a week has been imposed upon the CNG Stations regarding supply of gas. It was also proposed at bar that the respondents are ready to stop supply of 'gas consecutively for two days and then three hours in the morning and three hours in the evening on alternate days, which as a whole, would make stoppage of supply for three days in a week, but the said arrangement was not accepted by the petitioners.

20. The grievances of the petitioners is that" the procedure for establishment of C.N.G. Stations, as provided earlier, puts certain obligations on the part of the petitioners and if they are not fulfilled, CNG Station could not be established. The said Policy, where the requirements have been given, provided the priority of the natural gas connection to CNG. It was

also provided that the Federal Government would provide a package of incentives and recommendation for replacement of diesel oil with CNG, so this Policy along with procedure for establishment has to be taken as incentive provided by the Government to invite the general public to Invest in CNG Sector. Learned counsel advancing this argument submitted that once an incentive was provided, then the petitioners could not be denied the supply of gas;

21. I do not agree with the contention of learned counsel for the petitioners, as the procedure for establishment of CNG Stations cannot be considered as an incentive. Similarly, anything mentioned in the Policy regarding use of CNG, cannot be taken as a promise or an incentive on the part of the Government. There is no doubt that the Government had been trying to minimize the use of petrol and diesel and for that purpose conversion to gas was required and it was in that perspective that the Policy was Introduced but that cannot be taken as a promise with any person who wanted to establish CNG Station. As such, it cannot be said that the petitioners acting upon the promise, made by the Government or respondents, established C.N.G. Stations.

22. Learned counsel for the petitioners also submitted that the S.N.G.P.L. by making an administrative unit of Punjab Included Federal Territory of Islamabad In that unit and in that way, the Federal Territory of Islamabad was categorized with Punjab, which resulted in denial of constitutional rights to the petitioners. Advancing this argument learned counsel submitted that the Capital Territory should be clubbed with K.P.K. and as there is no Gas Management Policy In K.P.K., so in the same manner Islamabad should also be exempted and placed outside the ambit of any Policy. The fact is that Article 158 of the Constitution of Islamic Republic of Pakistan provided priority of requirements of natural gas. For the sake of convenience, the same is reproduced hereunder:--

"The Province in which a well-head of natural gas la 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."

23. This Article was there in Constitution from the very beginning. Along with Article 158, Article 172 was also provided, which reads as follows:--

172 (1) Any property which has no rightful owner shall, if located in a Province, vest in the Government of that Province, and in every other case, in. the Federal Government.

(2) All lands, minerals and other things of value within the continental shelf or underlying the ocean (beyond) the territorial waters of Pakistan shall vest in the Federal Government.

24. In other words, previously the ownership of gas was with the Federal Government, but still priority was given to the Province where the well-head of the natural gas is situated. It means that if well-head of the gas is situated in a particular Province, then the requirement of that particular Province is to be met first. This matter has nothing to do with the ownership of Federal Government regarding the natural resources. Under the 18th Amendment, Article 172 was amended and Sub-Article 3 was added to it, which provides as follows:--

"Subject to the existing commitments and obligations, mineral oil and natural gas within the Province or the territorial waters adjacent thereto shall rest jointly and equally in that Province and the Federal Government."

25. By addition of Sub-Article 3, the ownership of mineral oil and natural gas has been given to the Province as well as the Federal Government, but Article 158 was not amended in the same way and no priority was given to any other Province or even to the Federal Government. The old priority remained the same.

26. To say that, since the Federal Government along with the Provincial Government is owner of natural gas, therefore, Article 158 would apply to the Federal Territory, again is neither correct nor appeals to a prudent mind. The Constitution has provided the priority in a specific manner and the same priority cannot be extended by way of judicial pronouncement or by amending the Constitution, Judicial pronouncement is

only for the interpretation of constitutional provisions, but through judicial pronouncement, nothing can be added to the Constitution or even in any other laws.

27. The contention of learned counsel for the petitioners is that the Federal Government being owner, the Federal Territory of Islamabad is to be equated with KPK, is not correct 'for the simple reason that the Federal Government does not mean Federal Territory of Islamabad. Learned counsel for the petitioners, In this respect, submitted that section 2 of the Islamabad Capital Territory (Administration) Order, 1980 provided that the executive authority of the Federation in respect of Islamabad Capital Territory shall be exercised by the President, so by virtue of this Article Islamabad is to be considered as territory of Federal Government and therefore, entitled to the same concession as prevailing in KPK. In fact by virtue of the above said Order of 1980, it can be said that the Islamabad Capital Territory is an entity which is not part of Province of Punjab and the only difference is that the executive authority exists in the president, but no such inference can be drawn that Islamabad Capital Territory is the only Territory belonging to the Federal Government.

28. Learned counsel for the petitioners also submitted that in Article 158, wherein it is provided that the Province in which the well-head of natural gas is situated, shall have precedence over other parts of Pakistan, the parts in this Article would be Provinces and since Islamabad is not a Province, therefore, it would not be under Article 158 of the Constitution that Islamabad is to be given preference, rather it would be on the basis of Article 172 that Islamabad Capital Territory would have the equal status like the Province of K.P.K., because under Article 172(3) of the Constitution, the Federal Government as well as the Government of K.P.K. are the owners, therefore, the Federal Government being owner, Islamabad Capital Territory will also have priority in the requirement of natural gas. This argument cannot be considered as valid for the simple reason that how under Article 158, the word "part" is to be considered as Province and secondly, how by addition of Sub-Article 3 in Article 172, Islamabad Capital Territory is to be given preference over other parts of the country. For that purpose, a new Article is to be added in the Constitution; that since Islamabad Capital Territory is an entity and the executive authority of the same vests in the Federal Government, therefore,, Islamabad

Capital Territory will have the priority, over- other parts of the country. It is to rewrite the Constitution, but by no stretch of Imagination it can be considered as interpretation ' of Constitution. The simple proposition is that under Article 158 of the Constitution, priority of requirement has been provided to the Province where gas is produced and. since there is no such Article in the Constitution, which provides similar priority to Capital Territory of Islamabad, so same facility cannot be provided to Federal Capital Territory of Islamabad.

29. As far as Policy of 2005 regarding the Gas Management Is concerned, the case of the petitioner is that the same is arbitrary, unfair, unreasonable and violative of Articles 23 and 24 of the Constitution. Admittedly, it is prerogative, of the Government to introduce any Policy for achieving certain objects. The Courts have no right to give Policy or to substitute the Policy of the Government by Introducing a new Policy. If the Policy is arbitrary, unreasonable or if the object of the Policy is against some law or violative of any Article of Constitution, then the Courts have the authority to interfere and scrutinize-the Policy on the touchstone of arbitrariness, unreasonableness or violation-of law. If no such infirmity is found in the Policy, then the same can neither be struck down nor altered. In this respect, I have sought guidance from PLD 2007 SC 642, 1998 SCMR 327 and 1986 SCMR, 680.

30. In the present base, admitted position is that there is gas shortage in the Province of Punjab including the Federal Capital Territory of Islamabad. In order to create the balance between demand and supply some Policy was required to be introduced. As such, the object of the impugned Policy cannot be questioned.

31. Since OGRA or SNGPL or the Government had never made any promise with the petitioners, so respondents were not under any obligation to provide the gas as promised, because there was no such promise. The available gas is to be distributed among different consumers, which has also been admitted by the learned counsel for the petitioners. In this respect, the grievance of the petitioners is that they should have been placed at Serial.No.1 of the category of consumers or should have been; clubbed along with domestic consumers which means that if gas supply is to be stopped or

curtailed, the CNG owners, should be the last in the that list, whereas presently they have been placed at serial No. 4. The reason put forward by the petitioners are that they have invested a huge amount, the gas is the only product, which the petitioners have to sell and if the same is not supplied to them, their whole business would be ruined and it would mean, that they have been deprived of their property without any compensation. It was further submitted that the commercial consumers have been placed at Serial No. 1, whereas petitioners are also involved in commercial activity, so they could not be discriminated against other people similarly placed. The argument of the learned counsel for the petitioner was rebutted by the respondents in the following manner:

- **The Policy of 2005 was introduced in the wake of extraordinary situation arisen and envisaged due to widening gap between the demand and supply of Natural Gas and depletion of resources.**
- **The categorization of various sectors was based upon rational and reasonable classification. Cement Sector though commercially viable sector but placed in the least important category.**
- **Likewise other sectors were categorized according to their importance in terms of value addition contribution to the economy and requirement needs. Fertilizer plants are one such instance, which manufactures, fertilizers for use for agriculture growth.**
- **The placing of CNG at lfo.4 in the policy has a complete rational basis for various factors including the following**
 - (a) **Since the CNG station owners were never guaranteed steady and consistent supply of Gas,**
 - (b) **In CNG sector Gas is not a raw material to produce any produce but in fact, they buy gas and sell gas.**
 - (c) **NO value addition to the economy takes place therefore, the contribution to the economy is of lower level.**

- (d) Alternative fuel for consumers of CNG in the shape of petrol/diesel is readily available.**
- (e) CNG stations as in many cases is being done, may also engage in the dealership and sale of petrol/diesel.**
- (f) CNG sector consumes 200 MMCFD therefore, its logical that its load management would contribute in controlling demand supply gap rather than commercial which is only 70 MMCFD including hostels, schools, small shops and tan doors etc.**
- (g) CNG by the nature of their business uses compressors and suck natural gas which could be available for other consumers therefore, its management is more contributing towards load management than other sectors.**
- (h) The objective of the Policy is to regulate and manage the natural gas in a manner as to achieve maximum public good.**

32. Keeping In view the reasons, put forward by the respondents, it cannot be said that the Policy is arbitrary or un-reasonable. There is no doubt that Article 24 of the Constitution provides that no person shall be deprived of his property save In accordance with law but in the instant case, the petitioners are not being deprived of anything illegally. Similarly, under Article 23 every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, but the same is subject to reasonable restrictions imposed by law in the public interest. In the present case, the impugned Policy imposes a restriction, but the same is in the larger public interest, as the object of the policy is to benefit all the consumers. In fact the real grievance of the .petitioners is that In comparison to the petitioners, all other consumers should be ignored, which is neither fair nor just.

33. The argument that the petitioners are being deprived of their property without payment of compensation is not correct, because the contract which was executed between the petitioners and the SNGPL clearly provided that the petitioners were never promised regarding uninterrupted supply of gas for the whole year. It was provided in the contract that the supply of gas can be stopped from December to February, so even on

the basis of contractual obligations, the respondents were not bound to provide uninterrupted supply of gas throughout the year to the petitioners. In this respect, the learned counsel for the petitioners contended that there is no doubt that the contract provided clauses by virtue of which the supply of gas could be stopped, but it was an authority with the government and the respondents are bound to exercise this discretion fairly Justly and not in arbitrary manner. I agree with the contention of the learned counsel, however, the existence of aforementioned clause in the contract proves the fact that the petitioners have no absolute, right of continuous supply, of gas and the supply can be stopped by the respondents. In case of stoppage of supply of gas, it would be for the consumers or the petitioners in the present case to prove that the supply of gas has been stopped in arbitrary manner and with some ulterior motives, but in absence of any evidence to that effect simply on the basis of presumption, it cannot be said that the supply of gas has been stopped arbitrarily.

34. For what has been discussed above, these writ petitions are devoid of merits and are hereby dismissed.

SAK/29/ISL

Petitions dismissed.