

THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry

Set-II Gas-tariff vires		
1.	Suit No. 1803 of 2020	Karam Ceramics Ltd. & others v. Federation of Pakistan & others
2.	Suit No.1783 of 2020	National Petrocarbon (Pvt.) Ltd. v. Federation of Pakistan & others.
3.	Suit No.1506 of 2021	M.Y. Bari Mills (Pvt.) Ltd. and another v. Federation of Pakistan & others.
4.	Suit No.1827 of 2020	Gamalux Oleo Chemicals (Pvt.) Ltd. v. Federation of Pakistan & others.
5.	Suit No.1378 of 2021	Lucky Tex Pakistan (Pvt.) Ltd. v. Federation of Pakistan & others.
6.	Suit No.1798 of 2020	Nagina Cotton Mills Ltd. and others v. Federation of Pakistan & others.
7.	Suit No.2060 of 2020	The Times Press (Pvt.) Ltd. and another v. Federation of Pakistan & others.
8.	Suit No.2959 of 2021	Archroma Pakistan Ltd. v. Federation of Pakistan & others.
9.	Suit No.1513 of 2021	Classic Denim Mills (Pvt.) Ltd. and others v. Federation of Pakistan & others.
10.	Suit No.1761 of 2021	Al-Rahim Textile Industries Ltd. v. Federation of Pakistan & others.
11.	Suit No.1818 of 2020	Al-Momin Packaging Industries (Pvt.) Ltd. and others v. Federation of Pakistan & others.
12.	Suit No.2070 of 2020	Novatex Limited & another v. Federation of Pakistan & others.
13.	Suit No.2136 of 2020	Burraq Engineering (SMC-Pvt.) Ltd. and another v. Federation of Pakistan & others.
14.	Suit No.2043 of 2020	Oil World (Pvt.) Ltd. and others v. Federation of Pakistan & others.
15.	Suit No.1386 of 2021	Stallion Textiles (Pvt.) Ltd. and others v. Federation of Pakistan & others.
16.	Suit No.1820 of 2020	Matco Foods (Pvt.) Ltd. v. Federation of Pakistan & others.
17.	Suit No.123 of 2021	Memon Health and Education Foundation v. Federation of Pakistan & others.
18.	Suit No.1800 of 2020	Kompass Pakistan (Pvt.) Ltd. and others v. Federation of Pakistan & others.
Against retrospective effect only		
19.	Suit No.[-] 2432 of 2020	Crafters International v. Federation of

		Pakistan & others.
20.	Suit No.2079 of 2020	Naveena Industries Ltd. v. Federation of Pakistan & others.
21.	Suit No.1097 of 2021	Lucky Energy (Pvt.) Ltd. v. Federation of Pakistan & others.
22.	Suit No.[-] 2411 of 2020	Yunus Textile Mills Limited v. Federation of Pakistan & others.
23.	Suit No.[-] 2409 of 2020	Lucky Textile Mills Ltd. v. Federation of Pakistan & others.
Set-IIA Captive power definition		
24.	Suit No.1905 of 2020	Karam Ceramics Ltd. and others v. Federation of Pakistan & others.
25.	Suit No.677 of 2021	Sarhad Plastic Industries (Pvt.) Ltd. and another v. Federation of Pakistan & others.
26.	Suit No.988 of 2021	Dairyland (Pvt.) Ltd. and others v. Federation of Pakistan & others.
27.	Suit No.978 of 2021	Al-Muqet Textiles (Pvt.) Ltd. and another v. Federation of Pakistan & others.
28.	Suit No.979 of 2021	Unique Weaving v. Federation of Pakistan & others.
29.	Suit No.1373 of 2021	Shakeel Ashfaq v. Federation of Pakistan & others.
30.	Suit No.1864 of 2021	Pakistan Flour Mills v. Federation of Pakistan & others.
31.	Suit No.255 of 2021	ANA & Batla Industries (Pvt.) Ltd. and another v. Federation of Pakistan & others.
32.	Suit No.702 of 2021	Zahra Industries (Pvt.) Ltd. and another v. Federation of Pakistan & others.
33.	Suit No.1083 of 2021	Stallion Textiles (Pvt.) Ltd. and others v. Federation of Pakistan & others.
34.	Suit No.2432 of 2021	Archroma Pakistan Ltd. v. Federation of Pakistan & others.
35.	Suit No.282 of 2021	Classic Denim Mills (Pvt.) Ltd. and others v. Federation of Pakistan & others.
36.	Suit No943 of 2021	Faisal Spinning Mills Ltd. v. Federation of Pakistan & others.
37.	Suit No.1051 of 2021	Texcool Industries v. Federation of Pakistan & others.
38.	Suit No.1434 of 2021	Al-Abbas Fabrics (Pvt.) Ltd. and others v. Federation of Pakistan & others.
39.	Suit No.973 of 2021	Amin Textile Mills (Pvt.) Ltd. and others v. Federation of Pakistan & others.
40.	Suit No.958 of 2021	Ehsan Sons (Pvt.) Ltd. and others v. Federation of Pakistan & others.

41.	Suit No.1023 of 2021	Nadeem Textile Mills Ltd. and others v. Federation of Pakistan & others.
42.	Suit No.1465 of 2021	Century Engineering Industries (Pvt.) Ltd. v. Federation of Pakistan & others.
43.	Suit No.970 of 2021	Siddiqsons Limited v. Federation of Pakistan & others.
44.	Suit No.1217 of 2021	S.N.N. International (Pvt.) Ltd. v. Federation of Pakistan & others.
45.	Suit No.1900 of 2020	Ihsan Sons (Pvt.) Ltd. v. Federation of Pakistan & others.
46.	Suit No.566 of 2021	Sultan Oxygen (Pvt.) Ltd. and others v. Federation of Pakistan & others.
47.	Suit No.1848 of 2020	Plastiflex Films (Pvt.) Ltd. and others v. Federation of Pakistan & others.
48.	Suit No.1160 of 2021	M.N. Textiles (Pvt.) Ltd. v. Federation of Pakistan & others.
49.	Suit No.766 of 2021	Winner Foods Limited and others v. Federation of Pakistan & others.
Set-IIB Gas-tariff vires & Captive Power definition		
50.	Suit No.1790 of 2020	Artistic Milliners (Pvt.) Ltd. and others v. Federation of Pakistan & others.
51.	Suit No.1797 of 2020	National Refinery Limited and others v. Federation of Pakistan & others.
52.	Suit No.2037 of 2020	Metco Textile (Pvt.) Ltd. and others v. Federation of Pakistan & others.
53.	Suit No.1804 of 2020	Pakistan Cables Limited v. Federation of Pakistan & others.
54.	Suit No.1838 of 2020	Yassir Fruit Juices (Pvt.) Ltd. v. Federation of Pakistan & others.
55.	Suit No.1799 of 2020	Amreli Steel Ltd. and others v. Federation of Pakistan & others.
56.	Suit No.1837 of 2020	Pakistan Beverages Limited v. Federation of Pakistan & others.
57.	Suit No.2056 of 2020	Denim Clothing Company (Pvt.) Ltd. and others v. Federation of Pakistan & others.
58.	Suit No.1624 of 2021	Mount Fuji Textiles Ltd. v. Federation of Pakistan & others.
59.	Suit No.1793 of 2020	Shabbir Tiles and Ceramics Limited v. Federation of Pakistan & others.
60.	Suit No.1420 of 2021	Al Muqet Textiles (Pvt.) Ltd. and others v. Federation of Pakistan & others.
61.	Suit No.1821 of 2020	Hub Poly Packages (Pvt.) Ltd. and others v. Federation of Pakistan & others.
62.	Suit No.2061 of 2020	International Steel Limited v. Federation of Pakistan & others.
63.	Suit No.1839 of 2020	Pakola Products Limited v.

		Federation of Pakistan & others.
64.	Suit No.114 of 2021	Towellers Limited and others v. Federation of Pakistan & others.
65.	Suit No.1948 of 2020	General Tyre & Rubber Company of Pakistan Ltd. and others v. Federation of Pakistan & others.
66.	Suit No.2057 of 2020	Artistic Denim Mills Ltd. and others v. Federation of Pakistan & others.
67.	Suit No.1801 of 2020	Popular Food Industries (Pvt.) Ltd. and others v. Federation of Pakistan & others.
68.	Suit No.2069 of 2020	Nova Leathers (Pvt.) Ltd. and others v. Federation of Pakistan & others.
69.	Suit No.947 of 2021	Lucky Textile Mills Ltd. and another v. Federation of Pakistan & others.
70.	Suit No.2074 of 2020	Al-Karam Towel Industries and another v. Federation of Pakistan & others.
71.	Suit No.1310 of 2021	Lotte Chemical Pakistan Ltd. v. Federation of Pakistan & others.
Set-I Moratorium on Captive Power		
72.	Suit No. 588 of 2021	Indus Dyeing & Manufacturing Co. Ltd. & others v. Federation of Pakistan & others
73.	Suit No.746 of 2021	ANA & Balta Industries (Pvt.) Ltd. and others v. Federation of Pakistan & others.
74.	Suit No.799 of 2021	J. Sons Industries v. Federation of Pakistan & others.
75.	Suit No.617 of 2021	ABS Products Pakistan (Pvt.) Ltd. and others v. Federation of Pakistan & others.
76.	Suit No.[-] 1642 of 2021	A-I, Bravo Industries v. Federation of Pakistan & others.
77.	Suit No.628 of 2021	Matco Foods Limited v. Federation of Pakistan & others.
78.	Suit No.1200 of 2021	Meraj Limited and others v. Federation of Pakistan & others.
79.	Suit No.770 of 2021	Bikiya Industries (Pvt.) Ltd. v. Federation of Pakistan & others.
80.	Suit No.597 of 2021	Carisons Industries (Pvt.) Ltd. and others v. Federation of Pakistan & others.
81.	Suit No.952 of 2021	Stallion Textile (Pvt.) Ltd. and another v. Federation of Pakistan & others.
82.	Suit No.802 of 2021	M.Y. Bari Mills (Pvt.) Ltd. v. Federation of Pakistan & others.
83.	Suit No.672 of 2021	Artistic Denim Mills Ltd. v. Federation of Pakistan & others.
84.	Suit No.631 of 2021	United Gypsum (Pvt.) Ltd. and others v. Federation of Pakistan & others.

85.	Suit No. 1644 of 2021	D.G. Khan Cement Co. Ltd. and another v. Federation of Pakistan & others.
86.	Suit No.605 of 2021	Taqees (Pvt.) Ltd. & others v. Federation of Pakistan & others.
87.	Suit No.2835 of 2021	Shujaabad AGRO Industries (Pvt.) Ltd. & another v. Federation of Pakistan & others.
88.	Suit No.[-] 1197 of 2021	Feroze 1888 Mills Ltd v. Federation of Pakistan & others.
89.	Suit No.715 of 2021	Essa Industries (Pvt.) Ltd., v. Federation of Pakistan & others.
90.	Suit No.[-] 1998 of 2021	Aftab Ahmed Khan v. Federation of Pakistan & others.
91.	Suit No.771 of 2021	Al-Noor Oil Extraction Plant (Pvt.) Ltd & others v. Federation of Pakistan & others.
92.	Suit No.[-] 1199 of 2021	Muhammad Tariq Chapra v. Federation of Pakistan & others.
93.	Suit No.1526 of 2021	Gamalux Oleochemicals (Pvt.) Ltd v. Federation of Pakistan & others.
94.	Suit No.707 of 2021	Sind Feed & Allied Projects and others v. Federation of Pakistan & others.
95.	Suit No.1545 of 2021	Poly Ozone (Pvt.) Ltd v. Federation of Pakistan & others.
96.	Suit No.867 of 2021	Meskey & Femtee Trading Company (Pvt) Ltd & others v. Federation of Pakistan & others.
97.	Suit No.2953 of 2021	Rehmpack (Pvt.) Ltd and another v. Federation of Pakistan & others.
98.	Suit No.629 of 2021	Hiba Weaving Mills (Pvt.) Ltd & others v. Federation of Pakistan & others.
99.	Suit No.708 of 2021	Pakistan Beverage Ltd. v. Federation of Pakistan & others.
100.	Suit No.912 of 2021	United Towel Exporters (Pvt.) Ltd. v. Federation of Pakistan & others.
101.	Suit No.909 of 2021	Duke Textile & another v. Federation of Pakistan & others.
102.	Suit No.750 of 2021	M/s. Textile Industries v. Federation of Pakistan & others.
103.	Suit No.321 of 2022	Siddiq Sons Denim Mills Ltd v. Federation of Pakistan & others.
104.	Suit No.1486 of 2021	S.B. Textile Mills v. Federation of Pakistan & others.
105.	Suit No.789 of 2021	Mianoor Textile Industries (Pvt.) Ltd and others v. Federation of Pakistan & others.
106.	Suit No.1642 of 2021	Decent Packages (Pvt) Ltd v. Federation of Pakistan & others.
107.	Suit No.787 of 2021	Fine Towels and others v. Federation of Pakistan & others.
108.	Suit No.709 of 2021	Pakola Products Ltd v. Federation of

		Pakistan & others.
109.	Suit No.687 of 2021	Quality Dyeing & Finshing (Pvt) Ltd and another v. Federation of Pakistan & others.
110.	Suit No.842 of 2022	Getz Pharma (Pvt) Ltd v. Federation of Pakistan & others.
111.	Suit No.876 of 2021	Four Season Garment & another v. Federation of Pakistan & others.
112.	Suit No.1055 of 2021	Proper Dyeing and Washing v. Federation of Pakistan & others.
113.	Suit No.1520 of 2021	Al-Hamd Textiles Connection v. Federation of Pakistan & others.
114.	Suit No.805 of 2021	The Times Press (Pvt.) Ltd. and others v. Federation of Pakistan & others.
115.	Suit No.1120 of 2021	Keystone Enterprises (Pvt.) Ltd. v. Federation of Pakistan & others.
116.	Suit No.2747 of 2021	Kompass Pakistan (Pvt) Ltd. v. Federation of Pakistan & others.
117.	Suit No.2855 of 2021	Rainbow High Tech Engineering Company (Pvt.) Ltd v. Federation of Pakistan & others.
118.	Suit No.1258 of 2021	Burraq Engineering and others v. Federation of Pakistan & others.
119.	Suit No.671 of 2021	Prime Coat (Pvt.) Ltd and others v. Federation of Pakistan & others.
120.	Suit No.1436 of 2021	Continental Biscuits Ltd. v. Federation of Pakistan & others.
121.	Suit No.776 of 2021	Transpak (Pvt.) Ltd. and another v. Federation of Pakistan & others.
122.	Suit No.1519 of 2021	Pearl Confectionery (Pvt.) Ltd. v. Federation of Pakistan & others.
123.	Suit No.1177 of 2021	International Textile Ltd. v. Federation of Pakistan & others.
124.	Suit No.1494 of 2021	AIK Industries (Pvt.) Ltd. v. Federation of Pakistan & others.
125.	Suit No.1247 of 2021	Pioneer Cables Ltd. and another v. Federation of Pakistan & others.
126.	Suit No.1024 of 2021	D.S. Motors (Pvt.) Ltd. v. Federation of Pakistan & others.
127.	Suit No.[-] 3238 of 2021	United Tubes Private Ltd. v. Federation of Pakistan & others.
128.	Suit No.1105 of 2021	Silver Textile Company and another v. Federation of Pakistan & others.
129.	Suit No.2591 of 2021	Crescent Enterprises v. Federation of Pakistan & others.
130.	Suit No.980 of 2021	Global Exports and others v. Federation of Pakistan & others.
131.	Suit No.1017 of 2021	Frieslandcampina Engro Pakistan Ltd. v. Federation of Pakistan & others.
132.	Suit No.685 of 2021	Standard Colours & Chemicals Corporation v. Federation of Pakistan & others.
133.	Suit No.2850 of 2021	International Steels Ltd. v. Federation of Pakistan & others.

134.	Suit No.1419 of 2021	M.M. Rice Mill (Pvt.) Ltd. and another v. Federation of Pakistan & others.
135.	Suit No.634 of 2021	Unique Weaving v. Federation of Pakistan & others.
136.	Suit No.217 of 2022	Hamdard Laboratories (Waqf) Pakistan v. Federation of Pakistan & others.
137.	Suit No.705 of 2021	Lucky Textile Mills Ltd. and another v. Federation of Pakistan & others.
138.	Suit No.683 of 2021	Dawood Meat Company (Pvt.) Ltd. and others v. Federation of Pakistan & others.
139.	Suit No.967 of 2021	Ahmed General Mills and another v. Federation of Pakistan & others.
140.	Suit No.1201 of 2021	Bajwa Spinning Mills Pvt. Limited v. Federation of Pakistan & others.
141.	Suit No.678 of 2021	Nabiqasim Industries (Pvt.) Ltd. and others v. Federation of Pakistan & others.
142.	Suit No.2436 of 2021	Atlas Engineering (Pvt.) Ltd. v. Federation of Pakistan & others.
143.	Suit No.1342 of 2021	Rasheed Enterprises and others v. Federation of Pakistan & others.
144.	Suit No.2026 of 2021	Pak Chromical Ltd. and others v. Federation of Pakistan & others.
145.	Suit No.1113 of 2021	Nafeesa Textiles Ltd. and another v. Federation of Pakistan & others.
146.	Suit No.1469 of 2021	Danpak Food Industries (Pvt.) Ltd. v. Federation of Pakistan & others.
147.	Suit No.1446 of 2021	Amir Rice Export & Import Co. v. Federation of Pakistan & others.
148.	Suit No.1532 of 2021	Golden Textile Mills Ltd. and another v. Federation of Pakistan & others.
149.	Suit No.748 of 2021	Danpak Food Industries (Pvt.) Ltd. v. Federation of Pakistan & others.
150.	Suit No.684 of 2021	Shahira Textile Industries and others v. Federation of Pakistan & others.
151.	Suit No.1645 of 2021	A.A. Spinning Mills Ltd v. Federation of Pakistan & others.
152.	Suit No.742 of 2021	Hilton Pharma (Pvt.) Ltd., and others v. Federation of Pakistan & others.
153.	Suit No.849 of 2021	Anoud Textile Mills Ltd. and others v. Federation of Pakistan & others.
154.	Suit No.649 of 2021	Rajby Textile (Pvt.) Ltd and others v. Federation of Pakistan & others.
155.	Suit No.1536 of 2021	Safi Texcel Limited v. Federation of Pakistan & others.
156.	Suit No.1032 of 2021	Meko Denim Mills (Pvt.) Ltd. and others v. Federation of Pakistan & others.
157.	Suit No.676 of 2021	Ghani Glass Ltd. and others v. Federation of Pakistan & others.
158.	Suit No.1308 of 2021	Mayfair Limited v. Federation of Pakistan & others.

159.	Suit No.1029 of 2021	Marral Textile Mills Ltd. and another v. Federation of Pakistan & others.
160.	Suit No.179 of 2021	Mapak Edible Oils (Pvt.) Ltd. and others v. Federation of Pakistan & others.
161.	Suit No.1222 of 2021	Fanz Spinning Mills v. Federation of Pakistan & others.
162.	Suit No.615 of 2021	Quetta Textile Mills Ltd and others v. Federation of Pakistan & others.
163.	Suit No.1531 of 2021	Nishat Chunian Limited and others v. Federation of Pakistan & others.
164.	Suit No.1666 of 2021	Shafi Spinning Mills Ltd. and another v. Federation of Pakistan & others.
165.	Suit No.[-] 1241 of 2021	Naveena Experts Ltd and others v. Federation of Pakistan & others.
166.	Suit No.[-] 1092 of 2021	Quality Textile Mills Ltd. and others v. Federation of Pakistan & others.
167.	Suit No.668 of 2021	Sadiq Gasoline (Gas Engine) v. Federation of Pakistan & others.
168.	Suit No.865 of 2021	Mustafa & Co. (Pvt.) Ltd. and others v. Federation of Pakistan & others.
169.	Suit No.703 of 2021	Al-Karam Towel Industries and others v. Federation of Pakistan & others.
170.	Suit No.1278 of 2021	Superior Textile Mills Ltd. v. Federation of Pakistan & others.
171.	Suit No.1480 of 2021	Sohail Textile Mills Limited and another v. Federation of Pakistan & others.
172.	Suit No.1059 of 2021	Khalid Nazir Spinnings Ltd. v. Federation of Pakistan & others.
173.	Suit No.3038 of 2021	Adnan Power (Pvt.) Ltd. and others v. Federation of Pakistan & others.
174.	Suit No.1307 of 2021	Quetta Textile Mills Ltd. and others v. Federation of Pakistan & others.
175.	Suit No.1198 of 2021	Green House Limited v. Federation of Pakistan & others.
176.	Suit No.[-] 1397 of 2021	Union Fabric Ltd. and others v. Federation of Pakistan & others.
177.	Suit No.1261 of 2021	Tariq Spinning Mills and others v. Federation of Pakistan & others.
178.	Suit No.652 of 2021	Grand Industries (Pvt.) Ltd. and others v. Federation of Pakistan & others.
179.	Suit No.659 of 2021	Quick CNG Station and others v. Federation of Pakistan & others.
Set-IA		
180.	Suit No.589 of 2021	Olympia Power Generation (Pvt.) Ltd. and others v. Federation of Pakistan & others.
181.	Suit No.651 of 2021	Bhanero Energy Limited and others v. Federation of Pakistan & others.

182.	Suit No.673 of 2021	Lucky Energy (Pvt.) Ltd. v. Federation of Pakistan & others.
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For the Plaintiffs:

M/s. Abid S. Zuberi, Ayan Mustafa Memon, Ali Abid Zuberi, (*assisted by Muhammad Arif Ansari Hasan Qamar and Muhammad Nawaz Khan*) Rashid Anwar, Ali Mehdi, Navin Merchant and Salman Yousuf, Ameen M. Bandukda, Ali Qamar Askary, Adeela Ansar, Ms. Tehmina Ashraf, Muhammad Anas Makhdoom and Ahmed Farhaj, Ovais Ali Shah and Maryam Riaz, Khilji Fahad Arif, Soofia Saeed a/w Sobia Mehak and Tasleem Hussain, Aijaz Ali Siyal, Faiz Durrani, Samia Faiz Durrani, Ghulam Muhammad, Sher Hussain Laghari, Saad Fayyaz, Shaheer Roshan Shaikh, Khawaja Aizaz Ahsan, Imran Ali Abro, Aftab Hussain, Zuhaib Hassan Abro, Sami-ur-Rehman Khan, Syed Mohsin Ali, Naeem Suleman, Arshd Hussain Shahzad, Basim Raza, Ali Nawaz Khuhawar, Khalid Mehmood Siddiqui, Ghulam Rasool Korai, Noor Nabi and Jamil Ahmed, Muhammad Haroon Shaikh, Abdul Shakoor, Darvesh K. Mandhan, Shariq Razzak, Advocates.

For the Defendants:

M/s. Ijaz Ahmed Zahid, Waqar Ahmed, Hashmatullah Haleem, Kashif Hanif, Sarmad Ali and Javed Ali (*alongwith Asad Abbas Naqvi, Legal Counsel - SSGC, Bilal Farooq Alvi Sr. Legal Counsel, SSGC, Nadra Tabassuim Deputy Manager Legal SSGC*) Asim Iqbal, Farmanullah Khan, Syeda Maryam Mastoor, Furqan Ali, Advocates for OGRA, SNGPL, SSGC, and M/s. Khaleeq Ahmed, DAG, Khilji Bilal, Assistant Attorney General for Pakistan and Amer Zeb Khan, Assistant Attorney General for Pakistan.

Dates of hearing:

07-02-2022, 11-02-2022, 01-03-2022,
04-03-2022, 07-03-2022, 09-03-2022,
14-03-2022, 17-03-2022, 18-03-2022,
22-03-2022, 29-03-2022, 05-04-2022,
08-04-2022 & re-hearing on 15-12-2022.

JUDGMENT

Adnan Iqbal Chaudhry J. - The Plaintiffs operate industrial units which utilize natural gas through the distribution network of the Sui Southern Gas Company Ltd. under contracts of gas-supply. Some of the Plaintiffs use natural gas in their manufacturing process and some also use natural gas to generate electricity. In Suit No. 1800/2020 and Suit No. 1801/2020, some of the Plaintiffs operate more than one industrial unit, one supplied gas by the

Sui Southern Gas Company Ltd. [SSGC] and the other by the Sui Northern Gas Pipeline Ltd. [SNGPL]

Suits of Set-II, Set-IIA and Set-IIB

2. By Notification No. OGRA-10-3(8)/2020 dated 23-10-2020, issued under section 8(3) of the Oil and Gas Regulatory Authority Ordinance, 2002 [OGRA Ordinance], the Oil and Gas Regulatory Authority [OGRA] notified the tariff of natural gas for retail consumers [impugned gas-tariff notification]. For General Industrial consumers the tariff was increased from Rs. 1021 to Rs. 1054 per MMBTU, and for Captive Power (General Industry) it was increased from Rs. 1021 to Rs. 1087 per MMBTU. The suits of Set-II challenge the *vires* of said gas-tariff as applicable to General Industrial consumers and Captive Power (General Industry).

In the suits of Set-IIA, the issue is to the definition of 'Captive Power Plant' [CPP] given in the impugned gas-tariff. These Plaintiffs contend that it is unlawful to include within that definition those industrial consumers who use gas for generating electricity only for self-consumption and do not sell such electricity onwards, and consequently that such consumers cannot be charged the higher tariff for a CPP.

The suits of Set-IIB challenge both the *vires* of the gas-tariff and the definition of CPP therein.

Suits of Set-I and Set-IA

3. On 21-01-2021, the Cabinet Committee on Energy [CCoE] decided to impose a moratorium on the supply of natural gas to CPPs. The suits of Set-I challenge that decision [impugned moratorium] and pray for following declarations with consequential relief: that the moratorium is not applicable to those industrial consumers who use gas to generate electricity only for self-consumption and not for its sale; alternatively, that it is unlawful to categorize such consumers as CPPs; and that the moratorium is otherwise unlawful.

Amongst the suits of Set-I, the Plaintiffs of Suit No.970/2021 and Suit No.978/2021 are export oriented industries, which are bifurcated in the gas-tariff as 'Export Oriented (General Industry)' and 'Export Oriented (Captive)'. The latter of course also use gas to generate electricity for

self-consumption and therefore have the same case as the other plaintiffs of Set-I for challenging the moratorium.

Amongst the suits of Set-I, the Plaintiffs of Suit No.668/2021 and Suit No.659/2021 are operating CNG stations. Apart from the gas used for CNG, they also use gas for generating electricity for self-consumption in running the station. The moratorium is on the latter use of gas. Therefore, these Plaintiffs too have the same case as the other plaintiffs of Set-I.

There are then the suits of Set-IA (Suit No.s 589/2021, 651/2021 and 673/2021) where the Plaintiffs use gas to generate electricity exclusively for onward sale and not for self-consumption. They contend that they too cannot be categorized as CPPs as the definition thereof entails that the electricity so generated is used primarily for self-consumption, and consequently the moratorium cannot be extended to them as well.

Thus, as in the suits of Set-IIA, the definition of 'Captive Power Plant' given in the impugned gas-tariff is the central issue also in the suits of Set-I and Set-IA.

Scheme for determining the gas-tariff for retail consumers

4. To give context to the pleadings, issues and submissions of learned counsel, it is expedient to first narrate the scheme for determining the gas-tariff for retail consumers as it existed on or before the impugned gas-tariff dated 23-10-2020.

4.1 The mechanism for determining the gas-tariff for retail consumers is set-out in section 8 of the OGRA Ordinance and the Natural Gas Tariff Rules 2002 [**Tariff Rules**]. The structure of the tariff is based on the 'total revenue requirement' of the licensee (SSGC/SNGPL). Per section 8(6)(h) of the Ordinance, "total revenue requirement means for each financial year, that total amount of revenue determined by the Authority for each licensee for natural gas so as to ensure it achieves the rate of return provided in its license for natural gas."

4.2 Rule 4(2) of the Tariff Rules requires the licensee to file a petition with OGRA by 1st December each year so as to enable OGRA to "estimate" the licensee's total revenue requirement for one financial year or more. Such estimate, which is also referred to by OGRA as 'ERR', is determined under section 8(1) of the Ordinance read with Rule 18(1) of the Tariff Rules,

and on that basis the OGRA is required, no later than 3 days, to advise the Federal Government the “prescribed price of natural gas for each category of retail consumer for natural gas”. As per section 8(6) of the Ordinance:

“(a) ‘category of retail consumer for natural gas’ means a category of retail consumers for natural gas designated as such by the order of the Federal Government;”

“(f) ‘prescribed price’ means the amount under this section, which represents the amount a licensee for natural gas would be entitled to receive from each category of its retail consumer for natural gas in order to achieve its total revenue requirement.”

4.3 Since determination under section 8(1) of the Ordinance is only an ‘estimate’ of the total revenue requirement of the licensee for that financial year, section 8(2) read with Rule 4(3) requires the licensee to file another petition, apparently at the end of that financial year, so as to enable OGRA to review the total revenue requirement of the licensee after incorporating the actual changes in the well-head prices and other relevant factors¹, and to determine the licensee’s revised total revenue requirement for that financial year, also referred to by OGRA as ‘FRR’. Thereupon, no later than 3 days, the OGRA is required by section 8(2) read with Rule 18(1) to advise the Federal Government the “revised prescribed prices for the licensee for natural gas”.

4.4 On receiving the prescribed price from OGRA under section 8(1) of the Ordinance, or the revised prescribed price under section 8(2), as the case may be, section 8(3) read with Rule 18(2) stipulates that the Federal Government shall within forty [40] days “advise the Authority (OGRA) of minimum charges and the sale price for each category of retail consumer for natural gas for notification in the official Gazette by the Authority of the prescribed price as determined in sub-sections (1) and (2), the minimum charges and the sale prices for each category of retail consumers for natural gas.”² “Sale Price” is defined by section 8(6)(g) of the Ordinance to mean the price at which the licensee is authorized to sell natural gas to consumers.

¹ ‘Cost of imported gases’ has been added *vide* Oil and Gas Regulatory Authority (Second Amendment) Act, 2022.

² The following proviso has been added to section 8(3) *vide* Oil and Gas Regulatory Authority (Amendment) Act, 2022: “Provided that the Federal Government shall ensure that the sale prices so advised are not less than the revenue requirement determined by the Authority.”

4.5 If the Federal Government does not advise the sale price of gas to OGRA within 40 days as required by section 8(3) of the Ordinance, AND if the prescribed price determined by OGRA for any category of consumer under sections 8(1) or 8(2) is higher than the last notified sale price for that category of consumer, then section 8(4) read with Rule 18(4) requires OGRA to notify the higher prescribed price as the sale price of gas.³

4.6 A shortfall in the licensee's total revenue requirement for a financial year is carried forward by it in the petition for revenue requirement for the next financial year, and adjustments required to be made for the previous financial year are addressed by OGRA in determining the revenue requirement of the licensee for the next financial year.⁴

4.7 The scheme of tariff determination, to the extent of the prescribed price of gas, allows for consumer participation. Therefore, upon admitting a petition of a licensee for revenue requirement, the OGRA may under Rule 5(4) of the Tariff Rules issue notice, including notice by publication to "all persons affected by or interested in the petition, who in the opinion of the Authority are likely to be effected or interested". Under Rule 7, the OGRA may grant leave to intervene to any interested person who desires to participate in the proceedings. Under Rule 10, the OGRA may hold a hearing of the petition.

4.8 As per sections 2(xxxix) and 7(1), read with section 2(xxvi) of the OGRA Ordinance, any tariff determined or approved by OGRA under the Ordinance is subject to the policy guidelines of the Federal Government. Section 21 of the Ordinance empowers the Federal Government to issue such policy guidelines.

4.9 It is the policy of the Federal Government to keep the sale price of gas for certain consumers at the lowest, such as Domestic Consumers and Special Commercial Consumers (Roti Tandoors). That is done by giving a cross-subsidy to them at the cost of other categories of consumers as

³ Section 8(4) stands substituted by the Oil and Gas Regulatory Authority (Amendment) Act, 2022 to read: "If the Federal Government fails to advise the Authority within the time specified in sub-section (3), the category wise prescribed prices so determined by the Authority under sub-sections (1) and (2), as the case may be, shall be notified by the Authority as the category wise sale prices."

⁴ Clause 1.4.14 of the tariff formula titled '*The Tariff Regime for Regulated Natural Gas Sector*' dated 01-06-2018.

envisaged in Rule 17(1)(b) of the Tariff Rules. Rule 17 of the Tariff Rules highlights the criteria for determining the gas-tariff.

4.10 Section 8(5) of the Ordinance requires each licensee to pay to the Federal Government a “development surcharge” in respect of each unit of gas sold. Per section 8(6)(b) of the Ordinance, “development surcharge means the amount payable by each licensee for natural gas and calculated in accordance with the rules and which represent, in respect of each category of retail consumer for natural gas to which it is applicable, the amount, if any, by which the sale price exceeds the prescribed price.”⁵

Issues

5. In challenging the gas-tariff dated 23-10-2020, some of the Plaintiffs had also taken the ground that in view of Article 154 of the Constitution of Pakistan, the sale price of gas could not have been fixed by the Federal Government without the concurrence of the Council of Common Interests. Since that issue has already been decided in the negative by this Bench in *Shujabad Agro Industries (Pvt.) Ltd. v. Federation of Pakistan* (SBLR 2022 Sindh 1585), *albeit* presently suspended in appeal before a Division Bench, learned counsel for the Plaintiffs did not agitate that ground here for settlement of issues. With facts and documents admitted and with consent of all learned counsel, all of these suits were heard for final determination on issues of law recorded in the leading Suit No. 1803/2020 *vide* orders dated 25-01-2022, 07-03-2022 and 14-03-2022. Those issues are renumbered as follows:

- (i) Whether the gas-tariff notification dated 23-10-2020 has been determined in violation of sections 7 and 8 of the OGRA Ordinance, 2002 and/or Rule 18 of the Natural Gas Tariff Rules, 2002 ? If so, to what effect ?
- (ii) Whether the increase in the sale price of gas under the gas-tariff dated 23-10-2020 is confiscatory ? If so, to what effect ?

⁵ Section 8(5) stands substituted by the by the Oil and Gas Regulatory Authority (Amendment) Act, 2022 as follows: “Each licensee for natural gas shall pay to the Federal Government the development surcharge in respect of each unit of natural gas sold in a manner as prescribed by the Federal Government under the Natural Gas (Development Surcharge) Ordinance, 1967 (I of 1967) and the rules made thereunder. Any amount paid by a licensee under this sub-section shall be an expenditure for which allowance shall be made in computing profits or gains under the Income Tax Ordinance, 2001 (XLIX of 2001) for the purposes of this sub-section.”

- (iii) Whether the provision for 'development surcharge' under section 8 of the OGRA Ordinance, 2002 is without guidelines and amounts to excessive delegation of legislative power ? If so, to what effect ?
- (iv) Whether notification dated 23-11-2020 for provisional (*category-wise*) prescribed price issued by OGRA under section 8(3) of the OGRA Ordinance, 2002 is arbitrary and/or without lawful authority ?
- (v) Whether the impugned gas-tariff notification dated 23-10-2020 cannot be applied retrospectively ?
- (vi) Where the Plaintiffs use gas for generation of electricity for self-consumption and not for its sale, whether their classification as 'Captive Power (General Industry)' in the gas-tariff dated 23-10-2020 is contrary to the judgment of the Supreme Court in C.A. No.159-214 of 2018, the provisions of the Regulation of Generation, Transmission & Distribution of Electric Power Act, 1997, and/or infringes Articles 18 and 25 of the Constitution ? If so, to what effect ?
- (vii) Whether the CCoE's moratorium decision dated 21-01-2021 is applicable to the Plaintiffs who use gas for generation of electricity for self-consumption and not for its sale ? If so, whether that decision is hit by the doctrine of promissory estoppel, or other-wise by the law stated in issue No. (vi) above ?
- (viii) Whether the Plaintiffs who are engaged in production of power for onward supply to other entities without any self-consumption can be categorized as 'Captive Power Producers' ?
- (ix) To what relief, if any, are the Plaintiffs entitled to ? and what should the decree be ?

Submissions on gas-tariff vires

6. On the *vires* of the impugned gas-tariff, submissions on behalf of the Plaintiffs were led by Mr. Abid S. Zuberi, Mr. Owais Ali Shah and Mr. Raashid Anwar Advocates. Other learned counsel adopted the same. The submissions were as follows:

- (i) that when OGRA's decision dated 14-07-2020 was that the average prescribed price of gas should be revised downwards, the increase in the sale price of gas had no basis; and that such increase was arbitrary and confiscatory;
- (ii) that the sale price of gas had been increased only to generate development surcharge for the Federal Government; that the OGRA Ordinance, the Tariff Rules and the Natural Gas (Development Surcharge)

Ordinance, 1967 did not provide any criteria for development surcharge, and therefore it was excessive delegation of legislative power; and that the raising of revenue for the Federal Government was not criteria for determining the gas-tariff under sections 7 and 8 of the Ordinance;

(iii) that OGRA's decision dated 14-07-2020 had determined only the 'average' prescribed price of gas and not the prescribed price for 'each category of retail consumer' as required by section 8(1) of the OGRA Ordinance and Rule 18(1) of the Tariff Rules; resultantly, the Federal Government could not have advised any sale price of gas, in that the latter is linked to and dependent upon the former;

(iv) that *ex post facto* notification dated 23-11-2020 issued by OGRA to notify the category-wise prescribed price of gas was contrary to section 8 of the OGRA Ordinance; that in effect, OGRA had surrendered to the Federal Government its statutory function of determining the category-wise prescribed price;

(v) that the Federal Government's advice dated 22-10-2020 to notify the sale price of gas had come much after the period of 40 days fixed for such purpose in section 8(3) of the OGRA Ordinance; that said time-line was mandatory, and on the expiry thereof the Federal Government had become *functus officio* for advising the sale price of gas; thus the impugned gas-tariff was without jurisdiction;

(vi) that the impugned gas-tariff cannot be given effect retrospectively as held in the case of *Sindh Petroleum & CNG Dealers Association* (2020 CLC 851); that costing of products by industrial consumers is on the existing/notified price of gas, and therefore fixing the sale price of gas retrospectively is to their detriment;

(vii) for the submission that the time-line of 40-days in section 8(3) of the Ordinance was mandatory, learned counsel relied on *Pakistan Beverage (Pvt.) Ltd. v. Federation of Pakistan* (SBLR 2016 Sindh 1268), and the judgment of the Division Bench of this Court in appeal in *Sui Southern Gas Company Ltd. v. Federation of Pakistan* (PLD 2017 Sindh 733). Regards the latter Division Bench judgment of this Court in *Sindh Petroleum & CNG Dealers Association v. Federation of Pakistan* (2020 CLC 851), which had held that such time-line was not mandatory but only directory, learned counsel submitted to that extent the latter judgment was *per incuriam* as the latter Division Bench was bound by the earlier Division Bench as held in *Ardeshir Cowasjee v. KBCA* (PLD 1999 SCMR 2883).

7. For the Defendants, submissions were led by Mr. Ijaz Ahmed, learned counsel for the SSGC, with additional submissions by Mr. Asim Iqbal, learned counsel for OGRA, and Mr. Bilal Khilji, learned Assistant Attorney General on notice under Order XVII-A CPC. Their submissions were as follows:

(i) that the impugned gas-tariff was notified by OGRA pursuant to the advice of the Federal Government under section 8(3) of the OGRA Ordinance, given *vide* letter dated 22-10-2020, and after the same had been ratified by the Federal Cabinet on 06-10-2020;

(ii) that though such advice was delayed by 58 days or so, the time-line prescribed in section 8(3) of the Ordinance was not mandatory but only directory as held in *Sindh Petroleum & CNG Dealers Association* (2020 CLC 851); that the earlier Division Bench judgment (PLD 2017 Sindh 733) had not given any finding on the effect of such time-line, and thus the question of conflicting judgments did not arise;

(iii) that the determination of category-wise prescribed price was only a calculation exercise, the absence of which did not prejudice the Plaintiffs and did not vitiate the proceedings; that in any case, by a subsequent notification dated 23-11-2020 the OGRA had also notified the category-wise prescribed price;

(iv) that the Plaintiffs had not challenged the prescribed price determined by OGRA, but only the sale price of gas determined by the Federal Government; that fixation of the sale price of gas was a matter of Government policy, a matter beyond judicial intervention;

(v) that regards the development surcharge, the Plaintiffs have not challenged the *vires* of section 8(6) of the OGRA Ordinance, and therefore the argument that it was excessive delegation of legislative power is pointless; that the development surcharge is eventually passed on to the Provinces under President Order No.1/1991 and under Article 160 of the Constitution of Pakistan;

(vi) that any increase in the sale price of gas cannot be termed as confiscatory because under Article 172(3) of the Constitution of Pakistan natural gas is the property of the Federation and the Province concerned, and the gas-tariff is the price of such property;

(vii) that since the impugned gas-tariff was based on computations relating to a certain time period, it was made applicable retrospectively to cover that time-period; that retrospective effect of a notification can only be

questioned where vested rights are affected, whereas the Plaintiffs cannot claim any vested right in the gas-tariff.

Submissions on 'Captive Power' definition

8. As to the definition of a 'Captive Power Plant' [CPP], submissions on behalf of the Plaintiffs were led by Mr. Ayan Mustafa Memon, with Mr. Annas Makhdoom and Mr. Raashid Anwer making additional submissions as follows:

- (i) that though the Plaintiffs of Set-IIA and Set-IIB use gas also for generating electricity, but that is only for self-consumption and not for sale; that such consumers were held not to be captive power by the Supreme Court *vide* judgment dated 10-05-2019 in Civil Appeals No.159-L to 214-L of 2018 titled *Sui Northern Gas Pipelines Limited, Lahore v. Bulleh Shah Packaging (Pvt.) Ltd. [Bulleh Shah]*, followed by this Court in *Quetta Textile Mills Ltd. v. Federation of Pakistan* (2020 CLC 1414);
- (ii) that in any case, the definition of 'CPP' in the impugned gas-tariff does not follow the guidelines laid down by the Supreme Court in *Bulleh Shah*; that the test of 'core business' laid down in *Bulleh Shah* had nonetheless to be applied; that unless the Plaintiffs are granted a license to generate electricity under the NEPRA Act, 1997, they are not CPPs under said Act, and consequently, they cannot be categorized as CPPs under the OGRA Ordinance;
- (iii) that even after the definition of CPP in the impugned gas-tariff, the OGRA itself had held *vide* decision dated 26-02-2021 that the definition of a CPP shall continue to be as per *Bulleh Shah*;
- (iv) that under section 8(6)(a) of the OGRA Ordinance, it was the Federal Government, not OGRA, who had to define a 'CPP', and therefore the impugned definition issued by OGRA was without jurisdiction.

9. Mr. Ijaz Ahmed, learned counsel for the SSGC replied that the case of *Bulleh Shah* was not relevant to these suits as manifest from the order passed on review petitions there against; that in *Bulleh Shah*, industrial consumers before the Court were allowed only one gas connection under a contract for industrial use, whereas the Plaintiffs here have more than one gas connection, both for industrial use as well as for power generation and under separate contracts; that it is the connection for power generation that is categorized as CPP; that *Bulleh Shah* dealt with the situation where no

definition of CPP was available in the OGRA regime; that after the definition in the OGRA regime, a definition cannot be imported from the NEPRA regime, and in that regard he cited *Mukhtar Hussain Shah v. Saba Imtiaz* (PLD 2011 SC 260).

10. Mr. Kashif Hanif, learned counsel for the SSGC in other suits, submitted that the definition of 'CPP' in the impugned gas-tariff had not been settled by OGRA but by the Federal Government pursuant to the judgment in *Bulleh Shah*. In that regard he placed on the record letter dated 29-06-2019 issued by the Ministry of Energy, Petroleum Division. He pointed out that the definition of CPP in Regulation 2(k) of the NEPRA Regulations, 1999 has since been amended. He submitted that the increase in the sale price of gas for CPPs was a policy decision by the Federal Government, and relied on *Shujabad Agro Industries (Pvt.) Ltd. v. Federation of Pakistan* (SBLR 2022 Sindh 1585) to submit that the present suits bring no ground to interfere with such policy. Mr. Furqan Ali, learned counsel for the SNGPL, adopted these submissions. The learned Assistant Attorney General further submitted that after the definition of CPP was provided by the Federal Government in the gas-tariff, OGRA's decision dated 26-02-2021 where it continues to define CPP as per *Bulleh Shah*, is erroneous and without jurisdiction.

Submissions on the impugned moratorium on CPPs

11. Regards the suits of Set-I which challenged the moratorium dated 21-01-2021 on the supply of gas to CPPs, the first leg of submissions on behalf of the Plaintiffs, made by Mr. Raashid Anwer Advocate, were the same as for the plaintiffs of Set-IIA, viz that a CPP is to be defined as per *Bulleh Shah*. The other leg of his submission was that the CCoE was not competent to unilaterally order gas closure and override gas-supply contracts; that the moratorium was without assigning reasons and not backed by any law; that it was the Federal Government itself that had earlier encouraged the Plaintiffs to invest in gas generators for fuel, and after the Plaintiffs had acted to their detriment, the impugned moratorium was barred by promissory estoppel; and that the K-Electric does not have adequate electricity nor the distribution network to meet the electricity

requirements of the Plaintiffs. All other learned counsel representing the Plaintiffs adopted these submissions.

With regards to the suits of Set-IA, where the Plaintiffs claim to use gas to generate electricity exclusively for onward sale, Mr. Raashid Anwer Advocate submitted that they too cannot be categorized as CPPs for they do not meet the primary test of self-consumption as per the case of *Bulleh Shah*. He submitted that though NEPRA had categorized these Plaintiffs as 'isolated generation companies' who do not need a distribution license, they actually fall within the category of Independent Power Producers [IPPs]; that the question whether they were IPPs or CPPs or simply General Industrial consumers, was pending before the Supreme Court in Civil Appeal No. 856/2017 where an interim order was operating directing that these Plaintiffs be billed as General Industrial consumers. He submitted that the moratorium was a *fait accompli* for the Plaintiffs who use gas to generate electricity for onward sale.

12. Responding to the suits of Set-I and Set-IA, Mr. Kashif Hanif, Mr. Furqan Ali Advocates and the learned Assistant Attorney General submitted that the CCoE's decision to impose the moratorium was a policy matter, made in view of depleting gas reserves and to give priority to domestic consumers; that the same had been ratified by the Federal Government; that in matters of Government policy the Courts do not usually interfere; and that the argument of promissory estoppel is unsubstantiated. Reliance was placed on *Shujabad Agro Industries (Pot.) Ltd. v. Federation of Pakistan* (SBLR 2022 Sindh 1585). Regarding the suits of Set-IA, attention was drawn to *Bhanero Energy Ltd. v. SSGC Ltd.* (PLD 2017 Sindh 520) and judgment in appeal reported as *Olympia Power Generation (Pot.) Ltd. v. SSGC Ltd.* (PLD 2017 Sindh 73), where it had been held that these Plaintiffs were CPPs, not IPPs.

Opinion of the Court

Issue No.(i):

Whether the gas-tariff notification dated 23-10-2020 has been determined in violation of sections 7 and 8 of the OGRA Ordinance, 2002 and/or Rule 18 of the Natural Gas Tariff Rules, 2002 ? If so, to what effect ?

Issue No.(iv):

Whether the notification dated 23-11-2020 for provisional (category-wise) prescribed price issued by OGRA under

section 8(3) of the OGRA Ordinance, 2002 is arbitrary and/or without lawful authority ?

Issue No. (ii):

Whether the increase in the sale price of gas under the gas-tariff dated 23-10-2020 is confiscatory ? If so, to what effect ?

Effect of 'downward adjustment' in prescribed price:

13. For an estimate of its total revenue requirement (ERR) for FY 2020-21 under section 8(1) of the OGRA Ordinance, the SSGC filed a petition before OGRA under Rule 4(2) of the Tariff Rules on 31-01-2020. The petition was amended on 12-05-2020. OGRA determined that petition by decision dated 14-07-2020 estimating that there was a surplus of Rs. 6,586 million in SSGC's revenue requirement for FY 2020-21. After making 'a downward adjustment' the OGRA determined the 'average' prescribed price of gas at Rs. 750.90 per MMBTU. However, it did not go on to determine the prescribed price for 'each category of retail consumer' as required by section 8(1) of the Ordinance and Rule 18(1) of the Tariff Rules. Despite the passage of 40 days prescribed in section 8(3) of the Ordinance, the Federal Government did not advise the sale price of gas. That advice was eventually given by letter dated 22-10-2020 after ratification by the Cabinet on 06-10-2020. Based on that advice, the OGRA notified the impugned gas-tariff on 23-10-2020 under section 8(3) of the Ordinance whereby the sale price of gas was increased as mentioned in para 2 above. The tariff was made effective retrospectively from 01-09-2020. On 23-11-2020, the OGRA issued another notification for the prescribed price of gas for each category of consumer. It is in this background that the Plaintiffs of Set-II and Set-IIB have impugned the gas-tariff notification dated 23-10-2020.

14. The principal argument of the Plaintiffs was that when OGRA had determined that the prescribed price of gas is to be decreased, the increase in the sale price of gas by the impugned gas-tariff was completely arbitrary, and contrary to the criteria of tariff determination in section 7 of the Ordinance. That argument is derived from para 10.4 of OGRA's decision dated 14-07-2020 which reads as follows:

"10.4 The petitioner's net operating income is estimated at Rs. 283,870 million, as against the revenue requirement of Rs. 270,182 million, and thus there is a surplus of Rs. 6,586 million in its estimated revenue requirement for the said year. In order to adjust this surplus, the Authority hereby

makes a downward adjustment of Rs. 18.30 per MMBTU on a provisional basis in its average prescribed price for the said year (**Annexure A**).”

The relevant extract of Annexure A to the above determination is as follows:

“A: Computation of Estimated Revenue Requirement for the Said Year

Particulars	The Petition	The Adjustment	Determined by the Authority	
Gas Volume - MMBF	373,249		373,249	
BBTU	359,812		359,812	
..	
..	
..	
J	Total Shortfall/(Surplus) J= (H+I) (including prior year)	30,711	(37,297)	(6,586)
K	Increase/(decrease) in average prescribed price owing to previous year shortfall (Rs./MMBTU)	85.35	(103.66)	(18.30)
L	Total estimated revenue requirement (including prior year shortfall)	317,187	(47,005)	270,182
M	Average Prescribed Price upto 01-7-2020 (Rs. Per MMBTU)	881.54	(131)	750.90

15. To answer the Plaintiffs’ argument, it is important to first highlight what is meant by the ‘prescribed price of gas’. As explained by clause 1.2.5 of the tariff formula titled ‘*Tariff Regime for Regulated Natural Gas Sector in Pakistan*’ dated 01-06-2018, the gas-tariff is designed such that after the revenue requirement of the licensee is determined in ‘Rupees’, it is converted/translated into ‘prescribed price’ in ‘Rupees per MMBTU’; hence the definition of ‘prescribed price’ in section 8(6)(f) of the Ordinance to mean the amount “which represents” the amount a licensee would be entitled to receive from each category of its retail consumer in order to achieve its total revenue requirement. In other words, the ‘prescribed price of gas’ denotes the revenue requirement of the licensee for that financial year.

16. Keeping in view the aforesaid design of the gas-tariff, it is manifest in items ‘K’, ‘L’ and ‘M’, of Annexure A above, that the “downward adjustment” in para 10.4 of OGRA’s decision dated 14-07-2020 was in fact a downward adjustment in the revenue requirement of Rs. 881.54 per MMBTU that had been pleaded/prayed by the SSGC in its revenue petition, which was not accepted by OGRA who estimated that SSGC’s

revenue requirement for that year could be met by an average prescribed price of Rs. 750.90 per MMBTU. The Plaintiffs misconstrue OGRA's refusal to grant SSGC's prayer as a decrease in SSGC's revenue requirement from the previous financial year, and consequently to mean no increase in the sale price of gas. It will be seen that in the previous gas-tariff notification dated 09-08-2019 when the sale price of gas for General Industrial consumers was Rs. 1021 per MMBTU, the average prescribed price / revenue requirement of SSGC for FY 2019-20 was Rs. 737.65 per MMBTU as compared to Rs. 750.90 per MMBTU for FY 2020-21. Therefore, SSGC's revenue requirement for FY 2020-21 had in fact increased from the preceding year along with the prescribed price. A consequent increase in the sale price of gas was therefore inevitable i.e. unless the Federal Government decided not to as a matter of policy. Therefore, the argument that the sale price of gas had been increased arbitrarily, does not have force. The corollary argument, that the increase in the sale price of gas was exorbitant to the point of being confiscatory, also has no force when the Plaintiffs made no attempt to demonstrate that the increase could or should have been anything less.

Effect of the time-line prescribed in section 8(3) of the Ordinance:

17. The second ground taken by the Plaintiffs under Issue No.(i) was that the advice of sale price by the Federal Government by letter dated 22-10-2020 was beyond the mandatory time-line of 40 days fixed in section 8(3) of the Ordinance and Rule 18(2) of the Tariff Rules, and where after OGRA did not have jurisdiction to notify any fresh sale price of gas under section 8(3) of the Ordinance. The delay was apparently of 58 days or so. However, it has been held by a learned Division Bench of this Court in *Sindh Petroleum and CNG Dealers Association v. Federation of Pakistan* (2020 CLC 851) that the time-line prescribed in section 8(3) of the Ordinance is not mandatory but only directory, and therefore a delayed advise and the consequent gas-tariff notification cannot be annulled on that ground. Against that, counsel for the Plaintiffs submitted that since an earlier Division Bench had held to the contrary in *Sui Southern Gas Company Ltd. v. Federation of Pakistan* (PLD 2017 Sindh 733), the latter judgment was *per incuriam* as the latter Division Bench was bound by the earlier. In my view, that argument may have been worthwhile had the latter Division Bench not considered the earlier judgment, which it did and distinguished as follows:

“10. It had been argued on behalf of the petitioners that an earlier Division Bench of this Court, while seized of a High Court Appeal in *SSGC v. Pakistan*, had upheld the judgment of a learned Single Judge setting aside the notification fixing gas prices for the year 2014-2015, inter alia, on the ground that the timelines prescribed for notification of the gas prices were not adhered to and since such timelines constitute mandatory provisions of the law, and not directory, hence, any determination in transgression of the said timelines is void. Upon reading the aforesaid judgment it is observed that the decision therein was predicated upon the 2014-2015 notification having failed at the benchmark set out by the august Supreme Court in the case of *Mustafa Impex Karachi v. Government of Pakistan and others* reported as PLD 2016 Supreme Court 808 ("*Mustafa Impex*"), as it was found that the advice of the Federal Cabinet was absent from proceedings culminating in the aforesaid determination. In the present facts and circumstances the decision of the Federal Cabinet, prior in time to the Impugned Notification, had been placed before us and the veracity thereof was not controverted by any of the counsel. It is thus our view that the judgment in *SSGC v. Pakistan* is distinguishable in the present facts and circumstances.”

When the latter judgment (2020 CLC 851) had considered and distinguished the earlier judgment (PLD 2017 Sindh 733) there is no question of any conflict or the latter being *per incuriam*. The latter judgment is binding precedent for the proposition that the time-line in section 8(3) of the Ordinance is not mandatory. In the present suits as well, it is not disputed that the impugned gas-tariff had been notified after approval of the Federal Cabinet and thus met the requirement of *Mustafa Impex*. Therefore, bound by the judgment of the Division Bench in *Sindh Petroleum and CNG Dealers Association* (2020 CLC 851), the impugned gas-tariff notification cannot be annulled for failing to adhere to the time-line in section 8(3) of the Ordinance.

Failure to notify category-wise prescribed price and its effect:

18. The last ground taken by the Plaintiffs under Issue (i) was to OGRA’s failure to determine in its decision dated 14-07-2020 the prescribed price of gas for ‘each category of retail consumer’ (or ‘category-wise prescribed price’). It was contended that in the absence of such determination the sale price of gas advised by the Federal Government and notified by OGRA *vide* impugned gas-tariff notification was contrary to section 8(1) of the Ordinance and Rule 18 of the Tariff Rules.

19. Section 8(1) of the OGRA Ordinance read with Rule 18(1) of the Tariff Rules stipulates that OGRA shall estimate the total revenue requirement of each licensee, “and on that basis advise the Federal

Government the prescribed price of natural gas for each category of retail consumer for natural gas". Per Rule 18(2): "The Federal Government shall consider the Authority's determination referred to in sub-rule (1)" while advising the sale price. The criteria for determining the gas tariff set-out in Rule 17(1) of the Tariff Rules stipulates *inter alia* :

"(b) tariffs should clearly identify any inter-class or inter-region subsidies resulting from the policy guidelines of the Federal Government and should be set in a manner so as to provide such subsidies transparently;

(l) tariffs should be comprehensible and should explicitly state each component thereof;"

20. Previous decisions of OGRA on the record show that simultaneously with the average prescribed price, it also determined the category-wise prescribed price as required by section 8(1) of the OGRA Ordinance. Admittedly, that was not done by OGRA in its decision dated 14-07-2020 where it determined only the average prescribed price of gas, and therefore the category-wise prescribed price was not before the Federal Government when it issued its advice dated 22-10-2020 for notifying the sale price of gas. It was one month after the sale price had been notified by the impugned gas-tariff dated 23-10-2020 that OGRA issued another notification dated 23-11-2020 to notify the prescribed price of gas for each category of consumer. Apparently, the latter notification had a dual purpose; first, to address OGRA's failure to determine the category-wise prescribed price under section 8(1) of the Ordinance; and secondly, to address its failure to 'notify' that prescribed price alongside the sale price as required by section 8(3) of the Ordinance.

21. Mr. Ijaz Ahmed Advocate sought to explain OGRA's failure to determine the category-wise prescribed price at the required stage by drawing attention to para 11.1 of OGRA's decision dated 14-07-2020 which reads:

"11.1. Prescribed price shall be re-adjusted by the Authority upon the receipt of sales price advice by the Federal Government under section 8(3) of the OGRA Ordinance".

Learned counsel submitted that the advice of the sale price received from the Federal Government usually entails an adjustment in the category-wise prescribed price, and for this reason OGRA decided to wait for the sale price. He submitted that once the average prescribed of gas had been

determined, the category-wise prescribed price was only a calculation exercise, which could have been made later on and was so made by the subsequent notification dated 23-11-2020. Such submission, in my view, is an understatement. Apparently, when the average prescribed price of gas is adjusted amongst the categories of consumers, including the adjustment for inter-class subsidies envisaged in Rule 17(1)(b) of the Tariff Rules, the resulting category-wise prescribed price is no-where near the average prescribed price. To illustrate, the average prescribed price determined by OGRA was Rs. 750.90 per MMBTU, but after making the required adjustments, the category-wise prescribed price notified on 23-11-2020 for General Industrial consumers came to Rs. 986.65 per MMBTU, and for Domestic Consumers who consumed upto 1 hm³ per month, Rs. 300 per MMBTU. Thus, for the ordinary consumer, the average prescribed price is hardly any disclosure until OGRA specifies the prescribed price of gas for each category of consumer. Needless to state, as also manifest in Rule 17(1)(b) of the Tariff Rules, the purpose of the given scheme is to ensure transparency in determining the gas-tariff.

22. Failure to adhere to the scheme of gas-tariff determination, intended or unintended, has technical consequences as well. If the prescribed price for each category of consumer is not advised by OGRA to the Federal Government under section 8(1) read with Rule 18(1), that information is not readily available with the Federal Government to 'consider' under Rule 18(2), and then the Federal Government may not be readily or adequately equipped to advise under section 8(3) "the sale price for each category of retail consumer". Further, the prescribed price required to be notified by OGRA under section 8(3) or under section 8(4) is the one determined by it under section 8(1) i.e. for each category of consumer. If that is not in place at the stage of section 8(1), then OGRA is not readily equipped to notify the same under section 8(3), and more importantly, OGRA then is in no position to fulfil the mandate of section 8(4) to notify the prescribed price as the sale price in the event that provision is triggered. Therefore, OGRA's decision to withhold the category-wise prescribed price until the advice of sale price from the Federal Government, was contrary to section 8(1) of the OGRA Ordinance and Rule 18(1) of the Tariff Rules.

23. This brings us to the more crucial part of Issue No. (i), viz “to what effect?”, and to the alternative argument that OGRA’s failure to determine the category-wise prescribed price at the required stage was an irregularity which did not prejudice the Plaintiffs and therefore did not vitiate the impugned gas-tariff.

24. It was held in *Khalil Khan v. Nazir* (PLD 1997 SC 304) and that even “a void order is not always to be struck down regardless of the consequences of such decision, but that a void order shall be struck down provided there is no statute or principle of law which would make it unjust or inequitable to strike it down.”

In *Province of Punjab v. Muhammad Zafar Bukhari* (PLD 1997 SC 351) it was observed:

“A study of various cases decided by this Court would show that before a person can be permitted to invoke the discretionary powers of a Court, it must be shown that the order sought to be set aside had occasioned some injustice to the parties. If it does not work any injustice to any party rather it cures a manifest illegality then the extraordinary jurisdiction ought not be allowed to be invoked PLD 1973 SC 236 (258); likewise in the case of *Begum Shamsun Nisa v. Said Akbar Abbasi and another*, PLD 1982 SC 413, it was held that the High Court in exercise of its discretionary jurisdiction is not bound to interfere in all circumstances and it would have been proper exercise of its discretion, if it had not interfered with the order of the Chief Settlement Commissioner in that case even if it felt that the order of the Chief Settlement Commissioner whereby he rendered the order of the Settlement Commissioner as null and void, was not strictly legal". Again this Court refused to intervene where the grant of relief would amount to retention of ill-gotten gains or would lead to injustice or aiding the injustice. See *Gul Muhammad v. Addl. Settlement Commissioner*, 1985 SCMR 491; *Nazim Ali etc. v. Mustafa Ali etc.*, 1981 SCMR 231; *Wali Muhammad and others v. Sheikh Muhammad and others*, PLD 1974 SC 106; *Meraj Din v. Director, Health Services*, 1969 SCMR 4; *Tufail Muhammad v. Muhammad Ziaullah Khan*, PLD 1965 SC 269; *Azmat Ali v. Chief Settlement and Rehabilitation Commissioner*, PLD 1964 SC 260. The object of the superior Courts while exercising its discretionary jurisdiction is to foster justice, preserve rights and to right a wrong and keeping this object in view, it may in equity set aside or annul a void judgment or enjoin enforcement by refusing to intervene in the circumstances of the case before it.”

25. The principle laid down in the above precedents is that even where the order of an authority is illegal or irregular, it is not always necessary to strike it down, rather the test is to see whether it would be unjust not to strike it down. Though that principle was discussed by the Supreme Court in the context of writ jurisdiction, in my view it would also apply while considering discretionary relief under the Specific Relief Act, 1877. That principle is then embodied in Rule 21 of the Tariff Rules as follows:

“21. Effect of irregularity in proceedings. – No proceedings shall be invalid by reason of any defect or irregularity unless the Authority, on an objection taken by any party, declares that substantial injustice has been caused by such defect or irregularity or there are otherwise sufficient reasons for declaring so, and the Authority may, in such an event, make such orders as it deems appropriate for the rectification of such defect or irregularity”.

26. As discussed at the outset, the gas-tariff has two chief components. The first is the determination of the prescribed price, and the second, the sale price of gas. The former is determined by OGRA whereas the latter by the Federal Government, unless of course the circumstances trigger section 8(4) of the Ordinance. The Plaintiffs took no issue to the average prescribed price determined by OGRA at Rs. 750.90 per MMBTU. It was not shown to the Court that against OGRA’s failure to determine the category-wise prescribed price at the required stage, the Plaintiffs had filed any objection with OGRA under Rule 21 of the Tariff Rules. The category-wise prescribed price for the Plaintiffs worked-out in the subsequent notification dated 23-11-2020 was not greater than the previous notified sale price, and thus it was not a case where section 8(4) of the Ordinance could have been triggered. The Plaintiffs also made no attempt to demonstrate that the category-wise prescribed price worked-out in the subsequent notification dated 23-11-2020 could have been anything less. Rather, their case is simply that in the absence of the category-wise prescribed price no increase could have been made by the Federal Government in the sale price of gas. As already discussed in para 16 above, with the increase in the average prescribed price of gas from Rs. 737.65 per MMBTU in FY 2019-20, to Rs. 750.90 per MMBTU in FY 2020-21, there was apparent justification for increasing the sale price of gas in FY 2020-21. Therefore, there was no injustice to the Plaintiffs by the fact that OGRA did not determine the category-wise prescribed price at the stage it should have. Striking down the impugned gas-tariff in such circumstances would mean that the Plaintiffs keep on paying the previous sale price of gas as in FY 2019-2020 without any increase and at the expense of the exchequer and the SSGC, a relief to which they are otherwise not entitled.

27. In view of the foregoing, Issue No.(i), Issue No.(iv) and Issue No.(ii) are answered as follows: OGRA’s decision to withhold the prescribed price for each category of consumer until the notification dated 23-11-2020,

though contrary to section 8(1) of the OGRA Ordinance and Rule 18(1) of the Tariff Rules, it did not cause any injustice to the Plaintiffs. The impugned gas-tariff dated 23-10-2020 and the subsequent notification dated 23-11-2020 are therefore saved under Rule 21 of the Tariff Rules. The Plaintiffs could not establish that the increase in the sale price of gas by the impugned gas-tariff was confiscatory.

Issue No. (iii):

Whether the provision for 'development surcharge' under section 8 of the OGRA Ordinance, 2002 is without guidelines and amounts to excessive delegation of legislative power ? If so, to what effect ?

28. The 'development surcharge' under section 8(5) of the OGRA Ordinance is the amount payable by the licensee (SSGC/SNGPL) to the Federal Government in respect of each unit of gas sold during the calendar month, and is booked as an expense for the purposes of the licensee's income tax. Per section 8(6) of the Ordinance, 'development surcharge' represents, in respect of each category of consumer to which it is applicable, "the amount, if any, by which the sale price exceeds the prescribed price". Thus, if the prescribed price for a category of consumer is determined by OGRA say at Rs. 90 per MMBTU, and the Federal Government determines the sale price thereof at a higher amount, say Rs. 100 per MMBTU, then the amount of Rs. 10 exceeding the prescribed price is the development surcharge which is to be remitted by the licensee to the Federal Government. In other words, the development surcharge is built into the sale price of gas if the latter is higher than the prescribed price, and is therefore part of the gas-tariff. It was held in *Gadoon Textile Mills v. WAPDA* (1997 SCMR 641) that where surcharge by the WAPDA was in substance part of the electricity tariff, it did not amount to a tax. The case of *Flying Cement Company v. Federation of Pakistan* (PLD 2016 Lahore 35) relied upon by Mr. Abid Zuberi Advocate is distinguishable. There, the surcharge on the electricity tariff was held to be unconstitutional after finding that under the scheme of the NEPRA Act the electricity tariff was in the exclusive domain of NEPRA, and surcharge thereupon by the Federal Government did not constitute part of the tariff but was independent of it.

29. In essence, the argument of learned counsel for the Plaintiffs was that since the OGRA Ordinance does not provide a criterion for

determining the sale price of gas, the development surcharge could mean any amount determined arbitrarily by the Federal Government. But then such argument fails to appreciate that the reason why the OGRA Ordinance does not 'fix' a criterion for determining the sale price of gas and the development surcharge, is because under said Ordinance the decision to increase or not to increase the sale price of gas is recognized as a matter of Government policy. That recognition is expressed in section 21(2)(b) of the Ordinance as follows:

- "21. Powers of the Federal Government to issue policy guidelines.-(1)** The Federal Government may, as and when it considers necessary, issue policy guidelines to the Authority on matters of policy not inconsistent with the provisions of this Ordinance or the rules and the Authority shall comply with the policy guidelines in the exercise of its powers and functions and in making decisions.
- (2) Without prejudice to the generality of the foregoing, the Federal Government may issue policy guidelines in relation to -
- (a)
 - (b) pricing of petroleum including development surcharge as defined in section 8 and the petroleum development levy as defined in the petroleum Products (Petroleum Development Levy) Ordinance, 1961 (XXV of 1961)
 - (c)"

Note that the word 'petroleum' first appearing in section 21(2)(b) (underlined above) is defined in section 2(1)(xxiii) to mean "crude oil, refined oil products and natural gas."

30. The decision of the Federal Government to increase or not to increase the sale price of gas over and above the prescribed price for any financial year, is obviously driven by financial, economic and political implications, and of a precious natural resource that is becoming dearer by the day, hence a matter of policy. The competence of the Federal Government to make such policy is not an issue in these suits. Section 21(2)(b) of the Ordinance is not in question. It is then settled law that a Court will not ordinarily interfere with a matter of Government policy unless it is demonstrated that such policy infringes fundamental rights.⁶ The only grievance of the Plaintiffs seems to be that Government policy to increase the sale price of gas for industries results in increased cost of production. But then, that cost is passed on by the Plaintiffs to the end consumer of their

⁶ *Watan Party v. Federation of Pakistan* (PLD 2013 SC 167); and *Dossani Travels (Pvt.) Ltd. v. Travel Shop (Pvt.) Ltd.* (PLD 2014 SC 1).

product, and thus hardly any ground for interfering with Government policy.

Regards the Natural Gas (Development Surcharge) Ordinance, 1967, learned counsel Mr. Owais Ali Shah and Mr. Ijaz Ahmed both were of the view that after the OGRA Ordinance, the Ordinance of 1967 does not hold the field on development surcharge. However, having examined that provisions of the Ordinance of 1967 would not turn the finding arrived above, I do not see the need to examine that submission.

For the foregoing reasons, Issue No. (iii) is answered in the negative.

Issue No.(v):

Whether the impugned gas-tariff notification dated 23-10-2020 cannot be applied retrospectively ?

31. For the determination of this issue, the case of *Sindh Petroleum and CNG Dealers Association v. Federation of Pakistan* (2020 CLC 851) is again binding authority. There, the same question with regards to a previous gas-tariff notification issued under the OGRA Ordinance was decided by a learned Division Bench of this Court to hold as follows that it cannot be applied retrospectively:

“32. There is also an ancillary issue to consider before parting with this issue, i.e. retrospective effect of the Impugned Notification. While the Impugned Notification was issued on 04th October 2018, it sought to be enforced with effect from 27th September 2018 and it is this issue of retrospectivity that needs to be addressed. Learned counsel for the petitioners had cited the judgment of the august Supreme Court in *Anoud Power Generation Limited and others v. Federation of Pakistan and others* reported as PLD 2001 Supreme Court 340 in order to argue that the Impugned Notification could not have been given retrospective effect. In the aforesaid pronouncement it had been maintained that a notification cannot operate retrospectively and that benefits accruing in favour of a party, per an earlier notification, shall subsist unless the same is rescinded or modified.

The learned counsel representing the Federation, OGRA and SSGC did not advance any arguments to substantiate the basis upon which the Impugned Notification could be given retrospective effect. Learned counsel for the said respondents have also failed to refer to any provisions of the OGRA Ordinance and / or the Tariff Rules to justify the retrospective effect contemplated in the Impugned Notification.

33. The principle of *nova constitutio futuris formam imponere debet, non praeteritis* denotes that a new law ought to regulate what is to follow and not the past. Mian Saqib Nisar, J (as he then was) deliberated upon the effect of this principle, in *Zila Council Jhelum v. Pakistan Tobacco Company Limited* and another reported as PLD 2016 SC 398, and observed, in the context of statutes, that a statute cannot be applied retrospectively in the absence of an express enactment or necessary intendment, especially where it may effect vested rights, past and closed transactions or facts or events that have already occurred.

In the present facts and circumstances it is not a statute itself but a notification that seeks to take effect retrospectively. No provision of the governing statute, or rules made pursuant thereto, has been highlighted before us to demonstrate the existence of any provision empowering the notification of prices with retrospective effect. Therefore, it is our considered view that the Impugned Notification would take effect from the date that it was notified."

32. Given the binding precedent above, submissions to the contrary made by Mr. Ijaz Ahmed Advocate were futile. The impugned gas-tariff notification cannot be made effective retrospectively from 01-09-2020. It would take effect from 23-10-2021, the date it was notified. Issue No. (v) is answered accordingly.

Issue No. (vi):

Where the Plaintiffs use gas for generation of electricity solely for self-consumption and not for its sale, whether their classification as 'Captive Power (General Industry)' in the Impugned Notification dated 23-10-2020 is contrary to the judgment of the Supreme Court in Civil Appeal No. 159-L to 214-L of 2018, the provisions of the Regulation of Generation, Transmission & Distribution of Electric Power Act, 1997, and/or infringes Articles 18 and 25 of the Constitution ? If so, to what effect ?

33. The definition of 'Captive Power Plant' [CPP] in the impugned gas-tariff, which is apparently with reference to the categories of 'Captive Power (General Industry)' and 'Export Oriented (Captive)', is as follows:

"Captive Power Plant/Unit means an industrial undertaking/unit carrying out the activity of power production (with or without co-generation) for self-consumption and/or for sale of surplus power to a Distribution Company or bulk-power consumer" (hereinafter 'the impugned definition').

This definition was carried forward from previous gas-price notifications dated 29-06-2019 and 09-08-2019. However, at that time the sale price of gas for 'Captive Power (General Industry)' was the same as that for 'General Industrial', and thus no issue was taken to that definition. It came to be an issue when the impugned gas-tariff dated 23-10-2020 increased the sale price of gas for Captive Power (General Industry) more than that for General Industrial, and the Plaintiffs of Set-IIA and Set-IIB were then billed by the SSGC at the higher rate.

34. It is not a disputed fact that the Plaintiffs of Set-IIA and Set-IIB fuel industrial units with gas supplied to them by the SSGC and generate electricity for self-consumption. As per the impugned definition of CPP,

even if the Plaintiffs do not sell any part of the electricity they generate, the word 'or' brings them squarely within that definition. The primary submission of the Plaintiffs was that the impugned definition is contrary to the judgment of the Supreme Court in Civil Appeals No. 159-L to 214-L of 2018, *Sui Northern Gas Pipelines Ltd. v. Bulleh Shah Packaging (Pvt.) Ltd.*, which had held that unless generation of electricity for self-consumption is with the intent to sell the surplus electricity, that cannot be categorized as 'Captive Power' but only as 'General Industrial'. The alternative submissions were that the impugned definition was contrary to the provisions of the NEPRA Act; that it infringes fundamental rights of the Plaintiffs in Articles 18 and 25 of the Constitution of Pakistan; and that, in view of section 8(6)(a) of the OGRA Ordinance, a definition for CPP was in the domain of the Federal Government not OGRA.

35. Adverting to the last submission first, Mr. Kashif Hanif, learned counsel for SSGC, had placed in Suit No. 588/2021 letter dated 29-06-2019 issued by the Ministry of Energy- Petroleum Division to OGRA, and the latter's notification of the same date, which show that it was in fact the Federal Government, and not OGRA, who had determined the impugned definition of 'CPP' in exercise of power under section 8(6)(a) of the OGRA Ordinance, which was then notified by OGRA in issuing the gas-tariff dated 29-06-2019. Therefore, the argument that the impugned definition was determined by OGRA and hence without jurisdiction, is misconceived.

Underlying contracts and scope of the dispute:

36. Before moving ahead, it is important to highlight the specific controversy in these suits. Natural gas is supplied by the SSGC to the Plaintiffs under a gas-supply agreement [GSA]. A GSA for 'Power Generation' is separate from a GSA for 'Industrial Use' with a separate gas connection. A GSA for 'Industrial Use' is for the use of gas generally for industrial process, e.g. for boilers. A GSA for 'Power Generation' is for using gas to fuel generators for generating electricity but restricts the use of such electricity to that very premises, i.e. for self-consumption, and prohibits its sale to any other party.⁷ Most of the Plaintiffs of Set-IIA and Set-IIB have

⁷ "The Company shall supply gas for power generation against unconditional undertaking by the Consumer that power so generated will be used only at the above mentioned premises of the Consumer, will be for his own industrial activity and will not be sold to any other party. In the

GSAAs both for Power Generation and Industrial Use and consequently both types of gas connections. However, the present dispute is only over the categorization of gas connections for Power Generation as 'captive power'. It is accepted by the SSGC in para 3 of its written statement in Suit No. 1905/2020 that pursuant to the impugned definition only those gas connections have been charged the tariff for CPP which are for 'Power Generation', not those which are for 'Industrial Use'.

Genesis of the definition of CPP:

37. 'Captive power' was designated as a 'category of retail consumer for natural gas' by the Federal Government in exercise of powers under section 8(6)(a) of the OGRA Ordinance. Chronologically, though the term 'captive power' was not defined in the OGRA Ordinance or the Tariff Rules, it was generally understood in the gas sector to be an industrial consumer who used gas-supply to generate electricity in-house for self-consumption. That is evident from clause 3.1.6 of the Natural Gas Allocation and Management Policy, 2005. Application forms submitted by the Plaintiffs to the SSGC for a 'Power Generation' connection and their approval by the SSGC, all refer to such gas connection and its use as 'captive power generation'.

38. It was on 09-07-2008 that a definition of 'Captive Power Plant' was inserted as Regulation 2(k) in the NEPRA Licensing (Application and Modification Procedure) Regulations, 1999 [NEPRA Regulations, 1999] to read as follows:

"2(k) 'Captive Power Plant' means industrial undertakings or other businesses carrying out the activity of power production for self-consumption, who intend to sell the power, surplus to their requirement, to a Distribution Company or bulkpower consumer."

Apparently, this definition was necessitated in the NEPRA regime⁸ and not in the OGRA regime because it was the former that regulated/licensed the sale of electricity. The words "who intend to sell the power, surplus to their requirement" were meant to bring under the licensing regime of NEPRA only that captive power plant which 'intended' to sell a part of the electricity generated by it.

event of violation of this condition gas supply will be disconnected without notice and entirely at the risk and cost of the Consumer."

⁸ Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997.

39. Adverting now to the case-law cited by the Plaintiffs. In W.P. No. 3973/2016 and connected petitions, the question that came up before the Lahore High Court was whether during the period from 23-08-2013 to 30-06-2014, the industrial consumers before it could be categorized as, and billed at, the higher tariff for a CPP when they were being supplied gas by the SNGPL only under a GSA for 'Industrial Use', but the co-generation plant installed by them utilized the resulting steam also to generate some electricity, which was used by them for self-consumption. By judgment dated 09-01-2018, the Lahore High Court, placing reliance on the definition of CPP in Regulation 2(k) of the NEPRA Regulations, 1999, held that since such consumers did not sell any part of the electricity that they generated, they could not be categorized as CPP for the gas-tariff. The SNGPL appealed to the Supreme Court by Civil Appeals No. 159-L to 214-L of 2018, *Sui Northern Gas Pipelines Ltd. v. Bulleh Shah Packaging (Pvt.) Ltd. [Bulleh Shah]*. There, the peculiar facts laid before the Supreme Court were that: "There is no provision allowing for the categorization of a single consumer under multiple categories or multiple gas meters for a retail natural gas consumer."⁹ Given such representation, it was held by judgment dated 10-05-2019 that:

"9. With the single category and single meter requirement of the tariff structure, multiple usage of natural gas within the industrial unit for the industry and the captive self-consumption is an internal arrangement of the consumer, therefore, only core business of the consumer is to be recognized for the purpose of categorization. In other words, addition of a captive power for self-consumption to the industrial process of the respondent consumer does not alter the category or the tariff of the industrial consumer, unless and until the 'captive power plant' assumes its own commercial identity and sells electricity to a third party duly licensed by NEPRA.

.....

13. Federation and OGRA may want to review the tariff structure and clearly provide the basis of categorization, factoring in technologies like cogeneration and distinguish between an industrial process and an independent business unit e.g. a captive power plant that also sells electricity.

14. On the basis of the record before us, we conclude that respondent consumers with a contract for supply of natural gas for industrial use and having in-house electricity generation facility for self-consumption (with or without co-generation) falls within the category of industrial consumer and are subject to the corresponding tariff, unless the generation facility is a Captive Power Plant as per NEPRA Regulations."

⁹ See para 8 of the judgment.

The SNGPL sought a review of the above findings. Though the review petitions were dismissed *vide* order dated 16-08-2019, but it was clarified by the Supreme Court that:

“... the judgment under review deals only with industrial consumers utilizing gas supplied to them with or without cogeneration of power. However, it does not apply to or cover the cases of those industrial consumers who had originally obtained licenses/connections for captive power generation”.

40. While the case of *Bulleh Shah* was pending before the Supreme Court, the NEPRA Act was substantially amended by Act No. XII of 2018, assented on 27-4-2018. The amendments relevant for the present purposes were as follows:

(a) sub-section (ia) was inserted in section 2 of the NEPRA Act to define ‘captive generating plant’ as follows:

“(ia) ‘captive generating plant’ means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant setup by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association.”

(b) Section 14-C was added to provide that where a captive generating plant supplied electricity through the grid, it would be regulated as a ‘generating company’, i.e. it would be required to obtain a license from NEPRA. A corresponding definition of “electric power supplier” was added by sub-section (xa) in section 2 of the NEPRA Act to define it as “a person who has been granted a license under this Act to undertake supply of electricity.”

The above amendments clarified that a ‘captive generating plant’ [CPP] was a power plant set up to generate electricity primarily for own use, and only to the extent it also supplied electricity through the grid was to be regulated by a license from NEPRA.

Since a revised definition of CPP had been inserted in the parent statute, it had overridden the definition of CPP appearing in Regulation 2(k) of NEPRA Regulations, 1999. Said Regulations were subsequently repealed and replaced on 17-06-2021 by NEPRA Licensing (Application, Modification, Extension and Cancellation) Procedure Regulations, 2021 which also defined a CPP as in section 2(iiia) of the NEPRA Act. It is correct, as pointed out by learned counsel for the Defendants, that the new

definition in section 2(iia) of the NEPRA Act was not noticed in *Bulleh Shah*, but that is presumably so because the controversy there related to the tariff period between 23-08-2013 and 30-06-2014 which was prior to such amendment.

41. As apparent from the judgment in *Bulleh Shah*, there were two features peculiar to that case and distinguish it from the present suits. Firstly, there, consumers who were held not be CPPs, were those who were receiving gas under a GSA for '*Industrial Use*' and had no GSA for '*Power Generation*', and it was represented to the Court that the OGRA regime did not envisage a separate or additional gas connection/meter for generating electricity for self-consumption i.e. for '*Power Generation*'. It was in these circumstances, where gas through a single '*industrial*' connection could not be measured/metered separately for the part used in industrial process and the part used for generating electricity, the Court applied the test of '*core business*' of the consumer to categorize it for the purposes of the gas-tariff. Therefore, the case of *Bulleh Shah* had no application to those industrial consumers who were using gas under a GSA/connection for '*Power Generation*' such as the Plaintiffs, and it is not precedent for not categorizing the Plaintiffs as CPPs. That much was clarified by the Supreme Court itself by order dated 16-08-2019 passed on the review petitions in stating that its judgment did not apply to those industrial consumers who had connections for captive power generation.

Secondly, *Bulleh Shah* was in circumstances when there was no definition of a CPP in the OGRA regime, and when the definition of a CPP in the NEPRA regime was as per Regulation 2(k) of the NEPRA Regulations, 1999. As already noted, Regulation 2(k) was overridden w.e.f. 27-04-2018 when section 2(iia) was inserted in the NEPRA Act to give a fresh definition for a CPP. Thereafter, pursuant to the observation in *Bulleh Shah* that the Federal Government needs to bring clarity to the category of CPP in the gas-tariff, the Federal Government went ahead and provided a definition for CPP (the impugned definition). Once that definition was provided, reliance by the Plaintiffs on *Bulleh Shah* is misplaced.

42. The other case cited by the Plaintiffs was that of *Quetta Textile Mills Ltd. v. Federation of Pakistan* (2020 CLC 1414) where a learned single judge of this Court relied on *Bulleh Shah* and the definition of CPP in Regulation 2(k) of NEPRA Regulations, 1999 to hold that even use of gas under a GSA for

'Power Generation' could not be categorized as captive power for billing such consumers at a higher rate. But there again, the Court was dealing with the gas-tariff dated 23-08-2013 i.e. with a controversy that was prior to the definition of CPP in section 2(iiia) of the NEPRA Act, and when the impugned definition of CPP in the OGRA regime did not exist. Therefore, the case of *Quetta Textile Mills* too does not have any bearing on these suits. Same goes for OGRA's decision dated 06-07-2020 which was given with regards to the gas-tariff dated 23-08-2013. As regards OGRA's decision dated 26-02-2021 which defined a CPP contrary to the definition provided in the gas-tariff, that is neither subject matter of these suits nor binding on this Court.

43. The Plaintiffs had then sought to argue that the impugned definition of CPP does not adhere to the guidelines given in para 13 of *Bulleh Shah*, viz. that in defining a CPP for the gas-tariff the Federal Government may factor in technologies like co-generation and distinguish between an industrial process and the business of sale of electricity by a CPP. However, a bare perusal of the impugned definition shows that the aspect of co-generation was considered and has been consciously included. While a CPP with co-generation technology is said to be more efficient and economical for the consumer, learned counsel did not explain how that would impact the price of gas supplied to such a plant. Nevertheless, it would be policy decision of the Federal Government to classify separately those CPPs which employ co-generation technology. Since the SSGC accepts that the impugned definition does not extend to gas connections under a GSA for 'Industrial Use', those too stand distinguished. In other words, the guidelines in *Bulleh Shah* have been adverted to in the definition of CPP given in the gas-tariff.

44. The argument that the impugned definition of CPP is contrary to the NEPRA Act is also misconceived. The impugned definition has been given by the Federal Government in exercise of powers under section 8(6)(a) of the OGRA Ordinance, not the NEPRA Act. Secondly, if the Plaintiffs were to rely on the NEPRA Act for what is a CPP, then section 2(iiia) thereof clearly states that a CPP is "a power plant set up by any person to generate electricity primarily for his own use", which definition is destructive of the case of the Plaintiffs of Set-IIA and Set-IIB.

45. The last part of Issue No. (vi) is whether the classification of the Plaintiffs as CPP instead of General Industrial infringes fundamental rights guaranteed under Articles 18 and 25 of the Constitution of Pakistan. Suffice to observe that Article 18 of the Constitution is subject to qualifications prescribed by law, and Article 25 of the Constitution allows for a reasonable classification based on intelligent differentia.¹⁰ The distinction between General Industrial consumers and CPPs receiving gas under separate and distinct GSAs having already been highlighted in para 36 above, the intelligent differentia in the classification is manifest.

46. For the forgoing reasons, the impugned definition of CPP in the gas-tariff was arrived at lawfully. Even if the Plaintiffs of Set-IIA and Set-IIB use gas for generating electricity solely for self-consumption, and do not sell any part thereof, they are still within that definition of CPP when receiving gas under a GSA for 'Power Generation'. Such classification is not contrary to the case of *Bulleh Shah*, the NEPRA Act, nor Articles 18 and 25 of the Constitution of Pakistan. Issue No. (vi) is answered in the negative.

Issue No.(vii):

Whether the CCoE's moratorium decision dated 21-01-2021 is applicable to the Plaintiffs who use gas for generation of electricity for self-consumption and not for its sale ? If so, whether that decision is hit by the doctrine of promissory estoppel, or other-wise by the law stated in issue No. (vi) above?

47. The impugned decision of the CCoE dated 21-01-2021 to impose a moratorium on the supply of natural gas to CPPs is as follows:

"Dated: 21st January, 2021

MORATORIUM ON SUPPLY OF GAS TO
INDUSTRIAL UNITS FOR SELF-
GENERATION OF ELECTRICITY

DECISION

The Cabinet Committee on Energy (CCoE) considered the summary dated 19th January, 2021 submitted by the Petroleum Division titled 'Moratorium on Supply of Gas to Industrial Units for Self-Generation of Electricity' and approved the proposal as contained at para-6 of the summary with the following modifications/directions:

I. Captive Power Plants Connected with Power Grid (Having Electricity connections):

¹⁰ I.A. Sherwani v. Government of Pakistan (1991 SCMR 1041).

- (i) *Date for disconnection of gas supplies to Captive Power Plants (non-export industry) will be 01.02.2021.*
- (ii) *Date for disconnection of gas supplies to Captive Power Plants (Export Industry) will be 01.03.2021.*
- (iii) *For those units who have electricity connections but the sanctioned load is less than their requirement, they shall be required to immediately apply for enhancement of load and the respective DISCO shall be required to provide such enhancement expeditiously. Until such enhancement, they shall be provided gas, provided they shall first fully utilize their existing sanctioned load and once the load enhancement is done, the gas connection will be disconnected.*
- (iv) *Before disconnecting gas supply to those industrial units, the relevant DISCO would confirm in writing its technical ability to serve the sanctioned power load.*

II. *Captive Power Plants Non-connected with Power Grid (Having No Electricity Connections):*

- (i) *All such Captive Power Plants (Export/ Non-Export industry) shall submit their applications to respective Electricity Distribution Company (DISCO) for grid connectivity by 31.03.2021.*
- (ii) *DISCOs shall expeditiously process the applications and in any case before 01.12.2021. Until the electricity connection is operative, the gas companies will not disconnect gas supplies to such units which have applied for a connection by the due date (31-3-2021) and have not been provided the same by the DISCO.*

III. *Captive Power Plants (Having Co-generation facility):*

If a Captive Power Plant claims to be a co-generation unit, it shall make such declaration latest by 01.02.2021. NEECA will conduct a third-party audit of all such Captive Power Units (Export/Non-Export) claiming to have co-generation facility within 3 months in order to avoid rent seeking capacity against continued gas supply to such units. If the audit confirms cogeneration facility, gas supply will continue but otherwise it will be disconnected. Power Division shall finalize the detailed and transparent mechanism for third party audit within one week."

The above decision was issued after it was ratified by the Federal Cabinet on 25.01.2021 with a modification in the date in para I(ii), which was then communicated by the Ministry of Energy (Petroleum Division) to the SSGC and SNGPL vide letter dated 01-02-2021 with instructions to implement the same.

48. The Plaintiffs of Set-I, who admittedly use gas to generate electricity for self-consumption, contended that notwithstanding the definition of CPP in the gas-tariff and the unambiguous language of the above moratorium, the moratorium cannot be made applicable to them as they are not CPPs within the meaning of *Bulleh Shah*. Therefore, to that extent, the argument of these Plaintiffs to escape the moratorium was the same as of the Plaintiffs of Set-IIA and Set-IIB to challenge the definition of CPP, and one which I

have already addressed under Issue No. (vi) above. In fact, in many of the suits, Plaintiffs of Set-I are also amongst the Plaintiffs of Set-IIA and Set-IIB. Accordingly, the first part of Issue No. (vii) stands answered, i.e. the Plaintiffs of Set-I fall within the definition of CPP given in the gas-tariff, and the impugned moratorium is applicable to them even if they do not sell any part of the electricity generated by them for self-consumption.

49. The remaining part of Issue No.(vii) is whether the impugned moratorium can be challenged on the principles of promissory estoppel and vested rights or for infringing fundamental rights, in that the Plaintiffs contend that they had invested in gas generators pursuant to the erstwhile policy of the Government which had encouraged the use of gas for self-generation of electricity.

50. The policy of the Government on the allocation of natural gas to CPPs was laid down in the Natural Gas Allocation & Management Policy, 2005 [**Gas Policy**] which specified inter alia as follows :

“3. GAS ALLOCATION CRITERIA

.....

3.1.6 Gas supply to all consumers in Captive Power Sector will be made after first meeting the requirement of Domestic, Fertilizer, Commercial, Industrial, and Power (both WAPDA/KESC and IPPs) Sectors on the following basis:

- (a) Those dual fired power plants with a capacity of upto 50 MW, which employ combined cycle or cogeneration technology, shall be encouraged for allocation of gas. In order to ensure the optimal gas use for power generation, industrial units collectively setting up merchant power plants for self-consumption only will also be included in this category.
- (b) Gas supply for self-power generation would be on “as and when available basis” at different locations.

.....

4. PROPOSED LOAD MANAGEMENT POLICY

To ensure optimal utilization of natural gas for the best socio-economic development of the country, the merit gas dispatch order outlined in sub-sections below will be observed during high demand and/or short supply periods.

4.1 For the consumers connected to the system, following priority order will be observed by Gas Utility Companies:

Sr. No.	Category of Consumers	Priority Order
1	Domestic and Commercial Sectors	First
2	i) Fertilizer Sector; and ii) Industrial Sector to the extent of their process gas	Second

3	<i>Independent Power Plants as well as WAPDA and KESC's Power Plants having firm gas supply Commitment under GSAs.</i>	<i>Third</i>
4	<i>General Industrial and CNG Sectors</i>	<i>Fourth</i>
5	<i>i) WAPDA's and KESC Power Plants other than those listed against Sr. No.3 above. ii) Captive Power Sector</i>	<i>Fifth</i>
6	<i>Cement Sector</i>	<i>Sixth</i>

The priority order set-out in clause 4.1 of the Gas Policy was revised from time to time, last by the Federal Government by letter dated 15-10-2018, and CPPs were never above priority No.3 and remain below the domestic sector, commercial sector, power sector and zero rated general industry.¹¹

51. Therefore, since 2005, Government policy on supply of natural gas to CPPs has been that :

- (a) supply of natural gas to CPPs would be after meeting the demand of the domestic sector, commercial sector and power sector;
- (b) thereafter, those CPPs would be given preference which had a dual firing capacity, and which optimized the use of gas by employing combined cycle or co-generation technology or which are set up collectively by industrial units;
- (c) and finally, supply of gas to CPPs would be on "*as and when available basis*".

The GSAs between the Plaintiffs and the SSGC for '*Power Generation*' also explicitly state that for the months of March to November, gas will be supplied on "*as and when available basis*"; that during the months of December, January and February, the SSGC "*will keep the consumer's gas-supply disconnected*"; and that "*The Consumer will make dual firing arrangements to avoid loss of production as and when gas is not available*".¹²

Therefore, neither the Gas Policy nor the GSAs of the Plaintiffs had ever promised/committed indefinite or uninterrupted supply of gas for generating electricity, rather such supply was always conditional. In such circumstances, the Plaintiffs cannot assert a 'right' to receive gas for captive

¹¹ *Shujabad Agro Industries (Pvt.) Ltd. v. Federation of Pakistan* (SBLR 2022 Sindh 1585).

¹² Clause 1 of the GSAs: "*Gas supply will be provided by the Company on 'as and when available' basis only during the period from March to November each year. The Consumer will make dual firing arrangements to avoid loss of production as and when gas is not available during March to November and also during December to February when the Company will keep the Consumer's gas supply disconnected at his cost each year.*"

power use, and reliance on the doctrine of promissory estoppel and vested rights is completely misconceived.

52. It will be seen that while the decision in clauses I and II of the impugned moratorium is to discontinue supply of gas to CPPs after giving them an opportunity to switch to electricity as source of energy, at the same time clause III of the decision excludes those CPPs from the moratorium which use co-generation technology *albeit* subject to an audit thereof. Co-generation technology, also known as a CHP (combined heat and power) produces electrical energy simultaneously with utilizable steam heat and thus produces more energy from the same volume of gas. It is therefore manifest that the intent of the moratorium is to optimize the use of depleting natural gas reserves and to rationalize the supply of gas to CPPs by requiring them to employ co-generation technology. The moratorium is clearly in the national interest. Further, as highlighted above, when the Gas Policy had specified as far back as 2005 that only those CPPs would be preferred for supply of gas which employed co-generation technology, I do not see how the Plaintiffs who do not use such technology can now take issue to the moratorium.

53. In view of the forgoing, the Plaintiffs have no basis to challenge the moratorium dated 21-01-2021 on principles of promissory estoppel, vested rights or fundamental rights. The second part of Issue No. (vii) is answered in the negative. The first is answered in para 48 above.

Issue No. (viii):

Whether the Plaintiffs who are engaged in production of power for onward supply to other entities without any self-consumption can be categorized as 'Captive Power Producers' ?

54. This issue is peculiar to the suits of Set-IA (Suits No. 589/2021, 651/2021 and 673/2021) where the Plaintiffs claim that they use gas to generate electricity not for self-consumption but for onward sale. Their submission was that they too cannot be categorized as CPPs for they do not meet the primary test of self-consumption as held in *Bulleh Shah*; and thus it was unlawful to impose upon them the impugned moratorium dated 21-01-2021.

55. As already discussed under Issue No. (vi), after a definition for 'CPP' was provided in the OGRA regime in the year 2019, reliance on *Bulleh Shah* or on Regulation 2(k) of the NEPRA Regulations, 1999 is misplaced. The definition of CPP in the gas-tariff, reproduced in para 33 above, includes the sale of electricity generated from gas to a Distribution Company or bulk-power consumer, be that in addition to self-consumption or without it. The Plaintiffs of Set-IA were covered by that definition when the impugned moratorium dated 21-01-2021 was issued. In fact, even prior to that definition, most of the Plaintiffs of Set-IA were held to be CPPs as against IPPs in *Bhanero Energy Ltd. v. SSGC Ltd.* (PLD 2017 Sindh 520), and then by a Division Bench of this Court in *Olympia Power Generation (Pvt.) Ltd. v. SSGC Ltd.* (PLD 2017 Sindh 73), *albeit* it is informed that such matter is in appeal before the Supreme Court and by virtue of an interim order the appellants there are being billed at the tariff applicable to General Industrial consumers.

56. Here, it needs to be observed that the contention of the Plaintiffs of Set-IA that they are peculiar category of gas consumer, is a creation of their own. Their GSA with the SSGC for 'Power Generation' i.e. for captive power use, does not permit them to sell electricity to third parties and categorically restricts it "for own use" and at the premises at which the gas connection is provided. Apparently, most of these Plaintiffs construed "own use" to include associated companies operating industrial units in their vicinity. Since the supply of electricity by these Plaintiffs to their consumers was *via* private property and through the grid, the NEPRA had termed them as 'isolated generation companies' so as to say that they did not need to apply for a license to supply electricity. But the fact of the matter remained that their GSA with SSGC was not for selling electricity generated from gas.

57. Be that as it may, the decision of NEPRA relied upon by these Plaintiffs was way back in the year 2004. As discussed under Issue No.(vi) above, the NEPRA Act was amended in 2018. When the impugned moratorium was issued on 21-01-2021 the definition of CPP in section 2(iiia) of the NEPRA Act, reproduced in para 40 above, included a power plant set-up by an association of persons for generating electricity primarily for use of members of such association, with a 'person' defined in section 2(xxi) to include a company. Therefore, even under the NEPRA Act the Plaintiffs of Set-IA were CPPs when the impugned moratorium was issued, and

reliance on a prior decision of NEPRA or on proceedings pending before the Honourable Supreme Court on a different matter, one that precedes the aforesaid amendments to the statute, does not save them from the impugned moratorium dated 21-01-2021. The argument of these Plaintiffs that the impugned moratorium is only on CPPs which use electricity for 'self-consumption' in fact cuts the other way when it is their own case that supply of electricity by them to their consumers amounts to self-use.

Issue No.(viii) is answered in the affirmative.

Issue No.(ix):

To what relief, if any, are the Plaintiffs entitled to ? and what should the decree be ?

58. Having decided the above Issues against the Plaintiffs, except the Issue of retrospectivity of the impugned gas-tariff, the following decrees are passed:

- (i) The suits of Set-II and Set-IIB are decreed as follows:
 - (a) It is declared that the impugned gas-tariff notification dated 23-10-2021 is applicable prospectively from 23-10-2020, not retrospectively from 01-09-2020. The distribution company viz. the SSGC or SNGPL as the case may be, is directed to adjust the gas bills of the Plaintiffs for the month of October 2020 accordingly, if not already adjusted.
 - (b) For the other prayers, the suits are dismissed and interim orders, if any, stand vacated. Consequently, the security deposited by the Plaintiffs with the Nazir of this Court for securing the differential gas bills shall be encashed and paid to the distribution company, the SSGC or the SNGPL as the case may be.
- (ii) Suits of Set IIA are dismissed and interim orders, if any, stand vacated. Consequently, the security deposited by the Plaintiffs with the Nazir of this Court for securing the differential gas-bills shall be encashed and paid to the distribution company, the SSGC or the SNGPL, as the case may be.
- (iii) Suits of Set-I and Set-IA are dismissed and interim orders, if any, stand vacated.

JUDGE
signed: 18-02-2023

Announced on: