

IN THE NAME OF ALLAH, THE MOST BENEFICENT, THE MOST
MERCIFUL

IN THE COURT OF TUFAIL AHMAD
ADDITIONAL DISTRICT JUDGE-I/UTILITY COURT,

MARDAN

Case No.118/1neem of 2021

Date of original institution: 16/04/2018

Date of institution: 15/10/2024

Date of decision: 04/02/2025

M/S Gul CNG Filling Station, Swabi Road, Par Hoti,
Mardan through Munir Khan s/o Haji Rahim Gul r/o
Sikandari Road Par Hoti, Mardan.

..... (Plaintiff)

...VERSUS...

- i. Sui Northern Gas Pipeline Limited (SNGPL) through its
General Manager, Office at 33-B/2 Phase-V, Hayat Abad,
Peshawar.
- ii. Director General, Federal Investigation Agency (FIA),
Peshawar.
- iii. SHO PS FIA, Peshawar.

..... (Defendants)

SUIT OF DECLARATION AND TEMPORARY
INJUNCTION

JUDGMENT

04/02/2025

1. The plaintiff, M/S Gul CNG is a consumer of the
defendants and connection for supply of gas meter was provided
for CNG Station. He instituted the suit in hand under The Gas
(Theft Control and Recovery) Act, 2016 against the defendants for
declaration to the effect that the amount of Rs.8,888,750/-
assessed against him in the monthly bill of August 2013 along
with Rs.3,579,466/- as tariff difference is illegal, wrong and liable
to be set aside.

2. *Resume* of facts of the case in hand as evinces from the contents of the amended plaint are that the suit in hand for declaration-perpetual injunction was instituted by the plaintiff wherein it is averred that the plaintiff being consumer of the defendants was running a lawful business of CNG Station as per the terms and conditions agreed upon between them since 2009. The defendants installed meter to his premises and the plaintiff paid all his monthly bills for the consumed gas. It is contended in the amended plaint that the plaintiff cleared all his monthly bills regularly and never defaulted in payment of the bills. The issuance of bill in the name of the plaintiff is wrong and illegal as he has never been involved in pilferage of gas and the consumption assessed against him for that reason is illegal and liable to be set aside. He further averred that on 06.09.2013, defendants No. 2 and 3, along with other officials, raided the filling station, removed the gas meter, and took it with them. They subsequently registered a frivolous and fabricated case against the plaintiff's employees vide FIR No. 121/2013 dated 06.09.2013. Therefore, their actions and the false criminal case should be declared null and void. During the pendency of the suit, defendant No. 1 imposed a penalty of 18% amounting to Rs.13,419,990/- on the total amount of Rs.74,555,500/-. Thereafter, the defendants altered the tariff status of the plaintiff, resulting in a tariff difference of Rs. 35,794,466/-. The plaintiff subsequently filed an amendment application, which was allowed vide order dated 09.06.2015. Therefore, the penalty

amount and tariff differences, totaling Rs. 13,419,990 and Rs. 35,794,466, along with other disputed amounts, are liable to be set aside. He further prayed for a permanent mandatory injunction, restraining the defendants from recovering any amount from the plaintiff in terms of fines, arrears, or penalties until the final disposal of the case. Additionally, he requested that the defendants immediately restore the meter and gas supply to the plaintiff. It is averred in the plaint that the defendants were asked time and again to accept the legal and lawful request of the plaintiff but they refused, hence, the present suit.

3. The suit in hand was instituted before learned Civil Judge, Mardan; the defendants were summoned; they attended the court and the case was fixed for submission of written statement. The defendant submitted written statement along with reply to the application for grant of status quo. Thereafter, the case was fixed for evidence, in the meantime, the learned trial court has raised objection regarding jurisdiction of the court because that court has got no jurisdiction to entertain the suit regarding the subject matter in light of judgment of Worthy Peshawar High Court in Cr. No.272-P/2016 with C.M No.443-P/2016, therefore, the instant suit was returned to the plaintiff under 07 rule 10 CPC vide order dated 27.03.2016. Thereafter, the case file was filed before the court of Learned AD & SJ-I/Gas Utility Court, Mardan after promulgation of the Gas (Theft Control and Recovery), Act, 2016.

4. The learned trial court summoned the defendants, who appeared and contested the suit. After hearing the arguments of both parties, the trial court dismissed the suit vide judgment and decree dated 18.03.2019. Feeling aggrieved of the dismissal judgment dated 18.03.2019 of this court, the plaintiff preferred the appeal before the worthy Peshawar High Court, Peshawar and accordingly the worthy Appellate Court vide its judgment dated 30.09.2024 accepted the appeal of the plaintiff by remanded back the case to the trial court with the directions for decision afresh, after seeking amendment in the plaint by arraying SNGPL as one of the defendants.

5. After remand of the instant case from the worthy appellate court, the plaintiff submitted amended plaint as per the directions of worthy appellate court and the name of SNGPL was added in the panel of defendants. The contested defendants submitted reply thereto and sought amendment to the application for leave to defend while the remaining defendants, i.e. FIA were placed exparte vide order dated 02.01.2024; the plaintiff submitted reply thereto and the said application of the defendants was allowed by this court vide order dated 09.01.2025.

6. From divergent pleading of the parties, this Court framed the following issues.

ISSUES:-

- 1) Whether plaintiff has got cause of action?

- 2) Whether bill of August 2013 for Rs.8,888,750/- to the plaintiff is illegal against law and facts?
- 3) Whether the meter of the plaintiff was tempered one during laboratory test and the plaintiff was right charged at the rate of 18%?
- 4) Whether the tariff of plaintiff was changed from industrial tariff to CNG tariff in accordance with law?
- 5) Whether amount of Rs.1341990/- as penalty and Rs.3579466/- as tariff difference are illegal?
- 6) Whether plaintiff regularly paid dues to SNGPL including consumption bill worth Rs.12,014,082/-?
- 7) Whether meter of plaintiff was found tempered?
- 8) Whether the plaintiff is entitled to the decree as prayed for?
- 9) Relief.

7. Both the parties were allowed to produce their evidence as per issues. Plaintiff/M/S Gul CNG through attorney Raees Ahmad appeared as APW-1 in support of his case, thereafter, plaintiff closed his evidence. The defendant's counsel recorded his statement that he does not want to lead further evidence and rely on the evidence already recorded by them.

8. Arguments of learned counsels for the parties were heard and record perused. My findings on above issues are as under;

ISSUES NO. 2, 3, 4, 5, 6 & 7

Issue No.2 Whether bill of August 2013 for Rs.8,888,750/- to the plaintiff is illegal against law and facts?

- Issues No.3 Whether the meter of the plaintiff was tampered one during laboratory test and the plaintiff was right charged at the rate of 18%?*
- Issue No.4 Whether the tariff of plaintiff was changed from industrial tariff to CNG tariff in accordance with law?*
- Issue No.5 Whether amount of Rs.1341990/- as penalty and Rs.3579466/- as tariff difference are illegal?*
- Issue No.6 Whether plaintiff regularly paid dues to SNGPL including consumption bill worth Rs.12,014,082/- ?*
- Issue No.7 Whether meter of plaintiff was found tampered?*

(As these issues are inter connected, therefore, taken together for discussion)

9. The plaintiff, through the instant suit, has impugned the monthly gas bill issued by the defendants for August 2013, amounting to Rs. 8888570/-, along with an additional sum of Rs. 3579466/- subsequently added under the head of tariff difference. The plaintiff asserts that it has been a regular and bona fide consumer, making timely payments without any instance of gas theft or meter tampering. It is contended that the plaintiff's original gas meter was removed and replaced with a meter designated for a CNG Station on 24.05.2013. Thereafter, on 06.09.2013, pursuant to directions from Defendant No. 2, Defendant No. 3, accompanied by other officials, conducted a raid at the plaintiff's filling station and confiscated the gas meter. Following this, a criminal case was registered against the plaintiff's employees under FIR No. 121/2013, dated 06.09.2013. The plaintiff further avers that from 24.05.2013 until the lodging of the FIR, regular gas bills totaling Rs. 12,014,082/- were issued,

all of which were duly paid, leaving no outstanding arrears. In view thereof, the bill for August 2013, which reflects an exorbitant and unjustified charge of Rs. 8,888,750/-, is alleged to be unlawful and ultra vires. The defendants, however, maintain that the impugned amount was lawfully imposed as a penalty for gas theft, as the plaintiff's meter was allegedly found to be tampered with.

10. In support of its claim, the plaintiff produced a sole witness, Raees Ahmad, who appeared as APW-1 in the capacity of a special attorney. In his deposition, APW-1 reiterated the averments contained in the plaint, maintaining that the plaintiff had regularly paid its gas bills and was not involved in any act of gas theft or meter tampering. Conversely, the defendants produced Mudassar Noor, Executive Engineer, Distribution Incharge Metering Section, Sui Northern Gas Pipelines Limited (SNGPL), as DW-1, who testified that the plaintiff, M/s Gul CNG, was a registered consumer of the defendants, and that gas meter No. 2080144 had been installed at the plaintiff's premises on 01.06.2012. DW-1 further deposed that during a routine inspection by an inspection team under his supervision, the plaintiff's gas meter was found to be suspect, and in accordance with company policy, it was replaced and sent to the Central Laboratory for analysis. The witness stated that the Central

Laboratory, being an ISO-certified and internationally recognized testing facility, conducted a detailed examination of the meter and subsequently issued a laboratory report, which was exhibited as Ex DW-1/1. According to DW-1, the laboratory report and Meter Inspection Report (MIR) concluded that the plaintiff's gas meter had been tampered with, particularly with its Electronic Volume Corrector (EVC), allowing the passage of unregistered gas volumes. As a consequence, the plaintiff was charged for a volume of 2983 HM³ under Clause 27 of the Gas Sales Agreement. The witness further asserted that the volume assessment was determined by the Detection and Evaluation Committee in a formal meeting, wherein the plaintiff was provided an opportunity to present its defense but failed to substantiate its position regarding the tampering allegations. Additionally, DW-1 testified that a further opportunity of personal hearing was granted to the plaintiff at the highest adjudicatory forum of SNGPL, i.e., the Head Office in Lahore, on 18.10.2013. However, the plaintiff, once again, failed to furnish any satisfactory explanation regarding the allegations of tampering. Consequently, the disputed amount was finalized and charged against the plaintiff. The witness further deposed that due to an initial, the plaintiff was inadvertently charged under the industrial tariff; however, this error was later rectified, and the correct CNG

tariff was applied. DW-1 elaborated that the impugned charges were calculated based on the plaintiff's average consumption over the preceding three years, as per the methodology established under SNGPL's standard assessment procedures. The discrepancy between the past three years' billing history and the period in which the meter was found suspect was accounted for in the assessment. In support of his testimony, DW-1 produced and exhibited relevant documentary evidence, including the replacement advice, site report, billing history, two assessment worksheets, and the official report of the Head Office Detection and Evaluation Committee, collectively marked as Ex DW-1/3 to Ex DW-1/8. The witness asserted that all due procedures were followed in accordance with the company's established protocols and that the plaintiff was afforded ample opportunity to contest the findings before the appropriate forums. However, the plaintiff's inability to present a satisfactory defense led to the imposition of the disputed amount. The allegations of arbitrary billing were therefore denied, with the defendants maintaining that the charges were lawfully assessed based on conclusive technical findings, procedural compliance, and established contractual obligations under the Gas Sales Agreement.

11. The plaintiff contended that the criminal case instituted against it for the alleged offenses of meter tampering and gas theft

had been dismissed by the competent court of law, thereby rendering the imposition of the disputed amount on account of gas theft unlawful and without legal justification. It was argued that, in light of the criminal case's dismissal, the basis for levying the impugned charges against the plaintiff stood nullified, as no conclusive finding of gas theft had been established before a court of law. The plaintiff further asserted that there was no reference to the term "suspected" or "tampering" in Ex.DW-1/4, nor in the meter replacement advice, thereby raising serious doubts as to the veracity of the allegations made by the defendants. It was specifically highlighted that an inspection of the plaintiff's CNG station had been conducted on 08.05.2013, yet the gas meter was only replaced on 24.05.2013. The plaintiff questioned the rationale behind this delay, asserting that if the defendants had indeed found the meter to be suspect during their initial visit, there was no justifiable reason for them to have waited for a period of seventeen days before replacing it. Such an unexplained lapse, according to the plaintiff, cast a shadow of doubt on the entire inspection proceedings conducted by the defendants. Additionally, the plaintiff pointed out that, as per Ex.DW-1/1, the date of receipt of the gas meter by the Central Laboratory was recorded as 06.06.2013. However, no explanation was provided as to where the meter was kept during the intervening period between its

removal and its receipt by the laboratory. The plaintiff contended that such an unwarranted delay in sending the meter for examination constituted a material irregularity that severely undermined the credibility and reliability of the subsequent inspection report. The plaintiff further argued that Ex.DW-1/4 did not contain any explicit mention of meter tampering or theft, which contradicted the defendants' claim that the impugned charges were based on conclusive findings of gas theft. Furthermore, the plaintiff referred to its billing history, demonstrating that the gas volume had remained consistently high throughout the relevant period and that the plaintiff had duly made significant payments for such consumption, thereby negating any inference of concealed gas usage. The plaintiff alleged that it had been wrongly charged for excess volume and incorrect tariff calculations, resulting in an unjust financial burden. It was further contended that, since the criminal proceedings concerning the same transaction had culminated in the plaintiff's favor, it significantly weakened the defendants' position in justifying the recovery of the disputed amount. Conversely, the defendants asserted that the First Information Report (FIR) had been registered in connection with a second gas meter, which was removed and seized by the Federal Investigation Agency (FIA) officials from the plaintiff's CNG station. The defendants

maintained that this second meter had been installed in place of the earlier meter, which had been removed by the Sui Northern Gas Pipelines Limited (SNGPL) inspection team. They further argued that the Meter Inspection Report (MIR) pertained to the original meter, which was confiscated and subsequently sent to the Central Laboratory for testing. The defendants maintained that the plaintiff had been rightly charged under the applicable provisions of the Gas Sales Agreement for gas theft and meter tampering, and that the imposition of the disputed amount was lawful and binding. They argued that the dismissal of the criminal case did not automatically absolve the plaintiff of civil liability for the disputed charges, as the assessment of gas theft and billing adjustments was conducted under the contractual terms governing the relationship between the parties. The defendants thus contended that the plaintiff remained liable to pay the impugned amount as per the findings of the laboratory report and the subsequent adjudication by the Detection and Evaluation Committee.

12. A careful perusal of the case record reveals that the primary issue raised by the plaintiff pertains to the legality and validity of the impugned charges reflected in the gas bill for the month of August 2013, which, as per the defendants, represent a penalty imposed on the plaintiff for gas theft. The plaintiff, in support of

its contention, has produced only a solitary witness, namely, the special attorney of the plaintiff, whose statement was recorded as PW-1. However, apart from this testimonial evidence, the plaintiff has failed to produce any substantive documentary or technical evidence to disprove the allegations of meter tampering and gas theft. Conversely, the defendants have placed on record several documentary exhibits, including the Meter Inspection Report (MIR), meter replacement advice containing the number and reading of the replaced meter, a proforma for industrial inspection, billing history, and an assessment sheet. These documents, collectively, serve as strong evidence in support of the defendants' claim that the disputed charges were imposed in consequence of findings that indicated meter tampering and unauthorized gas usage. As regards the plaintiff's assertion that Ex.DW-1/1 and Ex.DW-1/4 do not explicitly mention the words "suspect," "theft," or "tampering," it is pertinent to note that the technical findings recorded in Ex.DW-1/1 provide clear indications of interference with the gas meter's operational integrity. Specifically, the report states that the counter main driving gear supporting spring was found disengaged, the vent hole of the Electronic Volume Corrector (EVC) was tampered with and subsequently re-fixed using adhesive, and the counter body was found to be disengaged. Furthermore, the report indicates that access to the pulsar magnet

was obtained through the vent hole, enabling unauthorized restriction or stoppage of the registration of gas flow from the EVC and the meter counter. These technical observations, in their entirety, establish the presence of external manipulation, thereby substantiating the defendants' claim that the plaintiff engaged in gas theft through meter tampering. Given these findings, the plaintiff's contention that the documents in question do not explicitly use the words "suspect" or "theft" is of little consequence, as the nature of the technical anomalies detected in the meter inspection report speaks for itself and leads to a reasonable inference of unauthorized interference.

13. Furthermore, the plaintiff has contended that the dismissal of the criminal case against it should operate as a bar against the defendants' claim for recovery of the disputed amount. However, this argument is devoid of merit. The record unequivocally establishes that the MIR pertains to the meter which was initially removed by SNGPL officials, whereas the First Information Report (FIR) was registered in respect of a different meter, which was subsequently installed in place of the original one and was later seized by the Federal Investigation Agency (FIA). The discrepancy between the two meters, as well as the fact that the FIR was lodged after the issuance of the MIR, renders the dismissal of the criminal case inconsequential to the present civil

proceedings. Moreover, the judgment dated 06.07.2018, passed by the learned Tribunal and duly placed before this Court by the plaintiff, explicitly mentions the meter number in relation to which the FIR was registered. Thus, the dismissal of the criminal case does not impugn the findings of the MIR report, nor does it nullify the assessment sheet prepared in respect of the earlier removed meter. As for the plaintiff's objections regarding the delay in replacing the meter and its subsequent dispatch to the Central Laboratory, DW-1 has satisfactorily explained during cross-examination that industrial meters are procured from the Regional Meter Shop, Islamabad, and that a formal request had to be made for a replacement meter, which took approximately ten days. This explanation justifies the delay in replacing the meter and negates any inference of procedural impropriety on the part of the defendants. While the delay in sending the removed meter to the laboratory may be regarded as an irregularity in procedural compliance by SNGPL officials, such a lapse, in itself, does not vitiate the credibility of the examination conducted at the Central Meters Workshop, which is a recognized testing facility under the defendants' purview. The plaintiff has neither attributed mala fides to the SNGPL officials involved in the inspection process nor has it furnished any substantive proof to establish that the laboratory's findings were manipulated or incorrect. In the absence of any

concrete evidence to demonstrate that the meter inspection report and laboratory findings were tainted with bias or procedural irregularities amounting to bad faith, the claim of the plaintiff seeking to nullify the impugned charges does not hold legal weight. Hence, in view of the comprehensive technical and documentary evidence placed on record by the defendants, the claim of gas theft and meter tampering stands established, warranting the imposition of the disputed charges against the plaintiff.

14. Upon careful evaluation of the evidence presented, this Court finds that the defendants have produced strong and cogent documentary evidence in support of their claim, which remains uncontroverted by the plaintiff. The evidence adduced by the defendants, including the Meter Inspection Report, meter replacement advice, billing history, and assessment sheets, carries greater evidentiary value than the solitary oral testimony of APW-1, who is merely the special attorney of the plaintiff. In view of the unimpeachable documentary evidence placed on record, this Court is of the considered opinion that the plaintiff was rightly charged in the disputed bill for gas theft in accordance with Clause 27 of the Gas Sales Agreement. Given the plaintiff's failure to substantiate his claim through any reliable or cogent evidence, he is held not entitled to the relief sought in the present suit. Issues

are decided accordingly in the light of above discussion and decision.

ISSUE NO.1

Issue No.1 Whether plaintiff has got cause of action?

Issue No.8 Whether the plaintiff is entitled to the decree as prayed for?

15. As per my detailed discussion on issues No.2 to 7, the plaintiff has failed to prove his case, therefore, he has got no cause of action to file the instant suit. Issues are decided in negative.

RELIEF

16. As a sequel to my above discussion, the suit of the plaintiff stands dismissed. Costs shall follow the event.

17. This file be consigned to record room after its necessary completion and compilation.

ANNOUNCED

04/02/2025

[Tufail Ahmad]
Additional District Judge-I,
Utility Court, Mardan

CERTIFICATE:

Certified that this order consists of (17) pages. Each page has been read, checked, corrected wherever necessary and signed by me.

[Tufail Ahmad]
Additional District Judge-I,
Utility Court, Mardan