

IN THE HONOURABLE LAHORE HIGH COURT, LAHORE

Writ Petition No. 11814/2015

Engro Powergen Qadirpur Limited (formerly Engro Energy Limited),
through Syed Muhammad Ali, its Chief Executive Officer/authorized
signatory, 4th Floor, The Harbour Front Building, HC # 3, Marine Drive,
Block 4, Clifton, Karachi.

...Petitioner

VERSUS

1. Federation of Pakistan, through Secretary, Law & Justice Division,
Ministry of Law & Justice, Pak Secretariat, Islamabad.
2. Ministry of Petroleum and Natural Resources (MNPR), through its
Secretary, 'A' Block, Pak Secretariat, Islamabad.
3. Sui Northern Gas Pipelines Limited (SNGPL), through its Managing
Director, 21 Kashmir Road, Lahore.
4. National Transmission & Dispatch Company Limited
(NTDC)/CPPA, through its Managing Director, WAPDA House, The
Mall Road, Lahore.
5. National Electric Power Regulatory Authority (NEPRA), through its
Chairman, NEPRA Town, Ataturk Avenue (East), C-5/1, Islamabad.

...Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN, 1973

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No:

W.P. No. 16814 of 2015

Engro Powergen Qadirpur Versus
Ltd.

FOP etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary.
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04.06.2015. Mr. Mansoor Usman Awan, Advocate for the petitioner
M/s. Nasar Ahmed and Imran Aziz, learned Deputy
Attorney Generals for Pakistan

The petitioner is, inter-alia, aggrieved of the first proviso to Section 3 of the Gas Infrastructure Development Cess Act, 2015 ("GIDC Act, 2015"). The argument of the learned counsel for the petitioner is that the first proviso excludes industrial sector from the recovery of the GIDC. However, the petitioner and others, who are in the business of power production by utilizing natural gas, have not been granted the said benefit, which is discriminatory and violative of the rights available to the petitioner under the Constitution. He further submits that demand raised by SNGPL for recovery of GIDC due from 2013 to May, 2015 in lump-sum cannot be met in view of the fact that the petitioner had never recovered the same from NTDC, which is the sole purchaser of electricity produced by the petitioner. He further maintains that the said recovery could not be affected in view of the fact that NEPRA had not revised the tariff of the petitioner to factor in GIDC, which was

subject matter of litigation and various restraining orders were passed by various High Courts. In this regard, the Ministry of Petroleum and Natural Resources had also issued letters directing that GIDC may not be recovered.

2. The dispute at present appears to be that the petitioner, who is a power producer and supplies its entire power to NTDC is not able to recover the said amount from NTDC. However, SNGPL, under instructions from Ministry of Petroleum and on the basis of GIDC Act, 2015, is claiming the said amount.

3. The learned Deputy Attorney General for Pakistan submits that the questions raised relate to financial and policy matters, which can best be resolved by the Regulatory Authority, which has the necessary statutory mandate to do so.

4. Heard. Record perused.

5. The dispute relates to the ability of the petitioner to pay the amount being claimed by SNGPL, which is a pass-through item and is to be recovered from NTDC, and the inability of NTDC to pay such amount on account of the fact that it did not recover the same from Distribution Companies. The Distribution Companies were to recover the same from consumers of electricity.

This creates a complicated situation having serious and long term implications for all concerned parties. It needs resolution on a policy level involving all necessary parties including the petitioner and other similarly placed power producers, NTDC, the Ministry of Petroleum and Natural Resources and the Regulatory Agency i.e. NEPRA, which is the competent forum to do so. It can, in consultation with all stake holders, spell out a workable solution.

6. In this view of the matter, I am inclined to refer this petition alongwith its annexures to respondent No.5. The said respondent shall issue notice to the afore-noted parties, examine the matter and decide the same in accordance with law keeping in view the grievance of the petitioner agitated through this petition.

7. This Court is sanguine that owing to the urgency and importance of the matter as well as the fact that the petitioner is being pressed to pay substantial amounts by way of GIDC from 2013 to May 2015 in lump sum by June 15, 2015, NEPRA shall consider the possibility of passing fair and equitable orders under the law and resolving the matter in a manner, which is in consonance with the law, rules and regulations as expeditiously as

possible and preferably by 15.06.2015, which is the due date for payment of the amounts being claimed by Respondent No.3 (SNGPL) by way of arrears of GIDC.

8. The office as well as the learned Deputy Attorney General for Pakistan shall immediately communicate a copy of this order to the Chairman NEPRA through fax message and a hard copy shall be sent through courier service.

9. With the above direction, this petition is *disposed of*.

Copy Dasti.

Amal
15/06/15

(IJAZ UL AHISAN)
JUDGE