

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.1791 of 2023

Sui Northern Gas Pipelines Ltd V/S Wafaqi Mohtasib etc

J U D G M E N T

Date of hearing	15.11.2023
Petitioner(s) by	Mr. Jamal Mehmood Butt, Advocate.
Respondent(s) by	Malik Muhammad Siddique Awan, Additional Attorney General alongwith Mr. Arshad Mahmood Malik and Tahir Raheel Awan, Assistant Attorney Generals. Mr. Asim Shahbaz Malik, Advocate for Respondent No.1/Ombudsman. Mr. Ahmad Nawaz Khan, Advocate for Respondent No.2 M/s Muhammad Wasiq Hassan and Hassan Mabroor, for Respondent No.3.

JAWAD HASSAN, J. By way of this constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “*Constitution*”) the Petitioner has called in question the vires of order dated 03.02.2023, whereby the President Secretariat (Public), Aiwan-e-Sadr, Islamabad maintained the findings of the Respondent No.1/Wafaqi Mohtasib (Ombudsman) (the “*Ombudsman*”) passed in terms of order dated 23.08.2022.

I. CONTEXT

2. Precisely the facts necessary for adjudication of instant petition are that the Respondent No.3, due to delay on the part of Petitioner in issuance of gas connection, filed a complaint for the said very purpose before the “*Ombudsman*”. Initially, the said complaint was closed with certain directions vide order dated 14.06.2022 however, a review petition filed by the Respondent No.3 before the “*Ombudsman*” was

accepted vide order dated 23.08.2022. The Petitioner being aggrieved of aforesaid order then filed representation before the Respondent No.2 who dismissed it through the impugned order dated 03.02.2023, hence this petition.

II. ARGUMENTS OF THE PARTIES.

3. Learned counsel for the Petitioner *inter alia* contends that the “Ombudsman” was not vested with any jurisdiction to entertain the complaint filed by the Respondent No.3 and as such the impugned orders passed by it are without jurisdiction; that the Respondent No.3, instead of approaching the Respondent No.4/OGRA under Section 42(e) of the Oil and Gas Regulatory Authority Ordinance, 2002 (the “**Ordinance**”) which provides a mechanism for resolution of complaints between a consumer and the Petitioner, has approached the wrong forum for resolution of the matter; that the Ministry of Energy has imposed a ban on new gas connections to domestic sector, pursuant thereto the request of the Respondent No.3 could not be acceded to. The counsel for the Petitioner has placed reliance on “OIL AND GAS REGULATORY AUTHORITY through Chairperson and others versus SUI NORTHERN GAS COMPANY LIMITED through Chairperson and others” (2023 SCMR 908), “WAFaqi Mohtasib Secretariat, Islamabad and others versus SNGPL, Lahore and others” (PLD 2020 Supreme Court 586) and “Messrs RANA TEXTILES LTD. through Chief Executive versus SUI NORTHERN GAS PIPELINES LTD. through Authorized Attorney and others” (2016 YLR 1).

4. Conversely, learned counsel for Respondents contended that the issue in hand clearly falls within the jurisdiction of the “Ombudsman” and thus he has rightly exercised his jurisdiction. They have argued that the impugned orders do not suffer from any error or jurisdictional defect hence, this petition is not maintainable.

5. I have heard the arguments of learned counsel for the parties and perused the record.

III. DETERMINATION

6. The heart of controversy revolves around in this petition is whether the “*Ombudsman*” has jurisdiction to entertain a complaint over a matter regarding installation of gas connection and to pass order thereon. Pertinently the office of “*Ombudsman*” was created under Article 3 of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 (the “***Order***”), preamble whereof, provides for the appointment of the Wafaqi Mohtasib (Ombudsman) to diagnose, investigate, redress and rectify any injustice done to a person through mal-administration. The object of the “*Order*” was to rectify and injustice done to a person through maladministration on the part of any Agency. The purpose thus was to undo the administrative excesses from within the administration so that justice could be made available to the wronged persons without such persons being forced to knock at the doors of the Courts of law. Though the preamble to a statute is not an operational part of the enactment but it is a gateway, which discusses the purpose and intent of the legislature to necessitate the legislation on the subject and also sheds clear light on the goals that the legislator aims to secure through the introduction of such law. The preamble of a statute, therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law. Reliance in this regard is placed on “DIRECTOR GENERAL, FIA AND OTHERS Versus KAMRAN IQBAL and others” (2016 SCMR 447) whereby the Supreme Court held that *“indeed, preamble to a Statute is not an operative part thereof, however, as is now well laid down that the same provides a useful guide for discovering the purpose and intention of the legislature”*. The word ‘Agency’ is defined under Article 2(1) of the “*Order*” which means a Ministry, Division, Department, Commission or office of the Federal Government or statutory body, corporation or other institution established or controlled by the Federal Government but does not include the Supreme Court, the Supreme Judicial Council, the Federal Shariat

Court or a High Court”. The status of the Petitioner as a company and its owning and controlling by the Federal Government has already been determined by the Supreme Court of Pakistan in “THE MANAGING DIRECTOR, SUI SOUTHERN GAS. CO. LTD. versus SALEEM MUSTAFA SHAIKH and others” (PLD 2001 SC 176) whereby it has been held that *“the petitioner was a company owned and controlled by the Federal Government, therefore, it could not be expected from the Government to enact rules and then not to enforce the same or to violate merely because the rules did not have the status of statutory rules”*. The said view was further adopted by this court in “SUI NORTHERN GAS PIPELINES LIMITED versus WAFaqi MOHTASIB and others” (PLD 2019 Lahore 169) holding the Petitioner within the definition of “Agency” under the “Order. From a bare reading of Article 2(1) of the “Order” as well as the dictum laid down in above said judgments, the Petitioner being an “Agency” was amenable to the jurisdiction vested in the “Ombudsman” under the “Order”.

7. The counsel for the Petitioner strenuously argued that the Respondent No.3 should have approached the Respondent No.4 having exclusive jurisdiction in terms of Section 42(2)(e) of the “Ordinance”, if he had grievance, but he rather opted to approach the “Ombudsman” and also the gas connection cannot be installed due to ban imposed by the Ministry of Petroleum vide its letter dated 03.12.2021. Needless to say that the Respondent No.4/OGRA has nothing to do with imposition of ban on gas connection as Section 4(2)(e) of the “Ordinance” only deals with procedure for resolving disputes amongst the licensees, consumers and licensees, and users of open access facilities but in the case in hand, the Respondent No.3 was neither the licensee nor consumer as he was not provided gas connection despite fulfilling the requirements of the Petitioner by depositing first demand notice on 13.10.2021 and second on 02.12.2021 regardless of the fact that he first time applied for new gas connection in 2019, hence the provisions of the “Ordinance” does

not attract in the present case and substantial right in favour of the Respondent No.3 accrued after fulfilling requirements of the Petitioner by depositing payment before the cutoff date 12.11.2021 that is prior to imposition of ban on 03.12.2021. Reliance is placed on judgment passed by Division Bench of this Court in “CHIEF EXECUTIVE, GEPCO and 3 others versus ASGHAR ALI RANA” (2018 YLR 1391) whereby it has been observed as under:

“The order dated 13.04.2017 passed by this Court in the instant Appeal reveals that in compliance of this Court's order the demand notice dated 12.04.2017 amounting to Rs.2,40,500/- has been delivered to the Appellants/Department in the Court, therefore, now the Respondent cannot be denied from issuance of electricity connection as a substantial right has been accrued in his favour. Undeniably, the Respondent is the citizen of this country and the Constitution guarantees fundamental rights to every citizen. This Court is meant to protect and enforcement of the fundamental rights of the citizens which are being infringed by anyone. To enjoy the facility of electricity is fundamental right of the all the citizens under the Constitution and particularly, in the present era when life seems to be impossible without electricity. The Respondent has given application for Domestic Three Phase Connection for his house which is admittedly his fundamental right, as such the learned Single Judge has rightly observed in the impugned order that to provide electricity to the Respondent is his fundamental right which cannot be denied in any manner and has also placed reliance on the case titled Mehar Muhammad Nawaz, Ex-OG-I, Small Business Finance Corporation Multan v. Managing Director, Small Business Finance Corporation and 2 others 2009 SCMR 187”.

8. It is pertinent to mention here that the “Ombudsman” vide its order dated 23.08.2022 has only recommended the Petitioner to install gas connection in favour of the Respondent No.3 and such recommendations are of recommendatory in nature and not a

judgment/decision as held by Division Bench of this Court in “MUHAMMAD YOUSAF versus THE SECRETARY FINANCE etc” (PLD 2021 Lahore 156) by holding that *“in order to constitute a Court in stricto sensu, it should have power to give a decision or a definite judgment, which has finality and authoritativeness therefore, office of Wafaqi Mohtasib is neither a Court nor Judicial Tribunal within the scope of Article 175 of the Constitution”*. Moreover, it is emphasized that the matter agitated in the complaint was related to non-provision of new gas connection which has been denied by the Petitioner and such action of the Petitioner being “Agency” in terms of Section 2(1) of the “Order” if appearing to be unreasonable, unjust, oppressive and arbitrary shall amount to maladministration falling within the ambit of Article 9 of the “Order” for the purpose of exercise of jurisdiction by the “Ombudsman” in the matter to undo an act of administrative excess therefore, the “Ombudsman” has rightly observed that “the complainant should not be penalized of such a ban where he paid Urgent Fee before cutoff date i.e. 12.11.2021” and such observation are in consonance with observation given by Division bench of this Court in “CHIEF EXECUTIVE, GEPCO case, mentioned supra. In this view of the matter, the Court is of the firm view that the impugned orders do not suffer from any legal infirmity or jurisdictional defect. Needless to add that judgments referred to by the learned counsel for the Petitioner cannot be relied upon being distinguishable from the facts and circumstances of the case in hand as each and every case has its own merits.

9. In view of above, this petition holds no merit hence the same is hereby dismissed.

(JAWAD HASSAN)
JUDGE