

Form No:HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT,

BAHAWALPUR BENCH, BAHAWALPUR.

JUDICIAL DEPARTMENT

Case No. **Writ Petition No.9424 of 2024**

M/s Khan Petroleum Services versus Government of the Punjab, etc.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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05.12.2024 Mr. Shabbir Ahmad Awan, Advocate for the petitioner
Rai Mazhar Hussain Kharal, Assistant Advocate General
with Dr. Farhan Farooq, Deputy Commissioner,
Bahawalpur and Zubair Abbas, District Officer
(Industries), Bahawalpur

Through this petition filed in terms of Article 199 of
the Constitution of Islamic Republic of Pakistan, 1973, the
petitioner has made the following supplication: -

“Under the above circumstance it is therefore, respectfully prayed that by accepting this writ petition, the impugned order No.DO/IPWM/BWP/437-38 dated 29.10.2024 regarding sealing of lawful petrol pump of petitioner as well as order No.DO/IPWM/BWP/451 dated 13.11.2024 passed by respondent No.3, whereby the petitioner has been imposed the penalty of Rs.10,00,000/- (One Million) U/S 44 of the Pakistan Petroleum (Refining, Blending and Marketing) Rules 1971 and the respondent No.7 is directed to recover fine from petitioner within two days, in case of non-payment of fine within stipulated time the petitioner will be sentenced to one year imprisonment, hence both impugned orders may kindly be set-aside and declare as illegal, against the law, without lawful authority having no legal effect and in operative upon the rights of the petitioner and the appellant may be exonerated from the charges and the petrol pump of the appellant may kindly be de-sealed in the interest of justice

It is further prayed that the operation of impugned the impugned order No.DO/IPWM/BWP/437-38 dated 29.10.2024 and 13.11.2024 passed by respondent No.3 may kindly be suspended till the final decision of above titled writ petition.

Any other consequential relief, which this Hon’able Court deems fit may also kindly be granted to the petitioner, in the interest of justice.”

2. On the first date of hearing i.e. 18.11.2024, report and parawise comments were called from respondents No.3 and 4, subject to maintainability of the instant writ petition. In compliance of the above order of this Court, respondents No.3 and 4 have jointly submitted their report and parawise comments, which have already been made a part of the file.

3. With regard to the maintainability of writ petition in hand, learned counsel for the petitioner has argued that since the impugned orders have been passed without any lawful authority, therefore, the petitioner is left with no alternate, efficacious and speedy remedy except to invoke the constitutional jurisdiction of this Court. So far as the merits of the case are concerned, he contended that the impugned orders have been passed on wrong premise of law and the same, being *ultra vires*, cannot sustain in the eye of law.

4. On the other hand, learned Assistant Advocate General has supported the impugned orders and prayed for dismissal of writ petition on the point of maintainability with the assertion that the petitioner, if feels aggrieved of the impugned order, may avail the remedy of filing an appeal before the Oil and Gas Regulatory Authority (OGRA).

5. I have heard the learned counsel for the petitioner as well as learned Assistant Advocate General assiduously and gone through the documents appended with the file of this writ petition.

6. Before pondering upon the respective contentions of learned counsel for the petitioner as well as learned Assistant Advocate General in respect of maintainability of this writ petition, I would like to observe here that the Constitution of Islamic Republic of Pakistan, 1973 (the “Constitution”) has provided safeguard to certain fundamental rights of every citizen of the country. Amongst

those, the right to freedom of trade, business or profession is guaranteed under Article 18 of the “Constitution”, which is reproduced as infra:-

Freedom of trade, business or profession

18. Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business: Provided that nothing in this Article shall prevent—

- (a) *the regulation of any trade or profession by a licensing system; or*
- (b) *the regulation of trade, commerce or industry in the interest of free competition therein; or*
- (c) *the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.*

Article 199 of the “Constitution” empowers this Court to issue directions and pass appropriate orders for the protection of rights of any aggrieved party from violation at the hands of public functionaries, who have upper hand in affairs of the people and may misuse their power or authority vested in them. The nature and scope of the Constitutional jurisdiction of this Court has been extensively discussed by the Supreme Court of Pakistan in the case of “Export Promotion Bureau and others vs. Qaiser Shafiullah” (1994 SCMR 859) in the following words:-

“Constitutional jurisdiction is not designed and intended to be used as a substitute for a regular appeal or to be equated with a regular appeal. In a Constitutional petition the High Court cannot interfere with a finding of fact merely on the ground that the reasons which found favour with the Authority whose order is under scrutiny were not such which would have been accepted by the High Court. The Constitutional jurisdiction can be invoked to rectify jurisdictional defects. It is to be pressed into service against an order which is without jurisdiction or tainted with malice or is violative of a provision of the Constitution/Law and not to correct a finding of fact. However, even in Constitutional jurisdiction the High Court may interfere with a finding

of fact, if it is founded on no evidence or is contrary to the evidence.”

In another case titled as “Dilawar Jan vs. Gul Rehman and 5 others” (**PLD 2001 Supreme Court 149**), Hon’ble Full Bench of the Supreme Court of Pakistan did not agree with the contention raised by learned counsel for the petitioner of said case that the High Court has transgressed its limits by striking down the order of the competent forum in exercise of jurisdiction as conferred under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 for the simple reason that “it is an omnibus Article under which relief can be granted to the citizens of the country against infringement of any provisions of law or the Constitution”. In this case-law, the Supreme Court of Pakistan has further observed as under:-

“We are conscious of the fact that the learned High Court in exercise of Constitutional jurisdiction cannot sit as a Court of appeal but where order passed by Court, suffers from any jurisdictional defect or violates any, provision of law, invocation of Constitutional jurisdiction would be justified and if the error is so glaring and patent that it may not be acceptable that in such an eventuality the High Courts have interfered when finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where unreasonable view on evidence has been taken, In this regard reliance can be placed on PLD 1978 Quetta 17 + (PLJ 1978 Quetta 72(DB). "It is by now settled law that the High Courts in exercise of their Constitutional jurisdiction do not normally interfere with the finding on fact but if the decisions are based in disregard of the provisions of law, or, are based on misreading or insufficient or inadmissible evidence the superior Courts have interfered with such decisions and findings in order to advance the cause of justice. Reference may be made to (i) Nasreen Fatima v. Principal, Bolan Medical College PLD 1978 Quetta 17, (ii) Imtiaz Bashir v. Special High Powered Committee PLD 1978 Quetta 131, (iii) Haleema Bai v. Settlement Commissioner 1987 MLD 3215. (Ali Nawaz v. Member, Board of Revenue PLD 1989 Kar. 237). The said view also finds support from the following authorities:--

(i) *Saeeda Fatima v. Abdul Hamid PLD 1983 SC 258;*

- (ii) *Gulzar Ahmad v. State PLD 1985 Lah. 353;*
- (iii) *Ahmeden Bibi v. Rustam Ali PLD 1989 Lah. 531*
- (iv) *Abdul Aziz v. Bashir Ahmad 1989 CLC 103*

7. There is no cavil to the proposition that failure on the part of a statutory functionary or a Court to make a visible effort with diligent application of mind to adjective assertion or to strive in search of truth for dispensing justice would tantamount to failure to exercise jurisdiction in the eye of law.

There is no cavil to the proposition that writ petition under Article 199 of the “Constitution” is only competent when no alternate or efficacious remedy is provided under the law. Wisdom behind this scheme of law is that where a specific remedy is provided, the aggrieved person is normally encouraged to avail such remedy instead of invoking writ jurisdiction of this Court. The availability of an alternative adequate and effective remedy, however, would not impair the High Court's authority to consider a constitutional petition under Article 199 of the "Constitution," where the sole question for decision-making is whether the Court's discretion should be used in a given case under the relevant circumstances. Reliance is placed on the case-law reported as "Government of Punjab through Minster for Revenue, Board of Revenue, Lahore and others vs. Messrs Crescent Textile Mills Limited" (**PLD 2004 Supreme Court 108**). Further guidance can also be sought from a recent pronouncement of the Supreme Court of Pakistan in the case-law titled as "Muhammad Safeer and others vs. Muhammad Azam and others" (**PLD 2024 Supreme Court 838**), wherein it has been held as under:-

"4. We have noted that the High Court, without adverting to the grounds expressly taken by the petitioners in their petition, concluded that the remedy by way of review provided under section 8 of the Act of 1957 was adequate and efficacious for the purposes of entertaining the petition under Article 199 of the Constitution. It is settled law that the rule that the High Court will not ordinarily entertain a petition under Article 199 when an adequate remedy is available and

such remedy only regulates the exercise of constitutional jurisdiction and does not affect its existence. When the law provides an adequate remedy, constitutional jurisdiction under Article 199 will ordinarily only be exercised in exceptional circumstances. The exceptional circumstances which may justify exercising jurisdiction when an adequate remedy is available are when the order or action assailed before the High Court is palpably without jurisdiction, manifestly mala fide, void or coram non judice. The tendency to bypass a statutory remedy is ordinarily discouraged so that the legislative intent is not defeated. The High Court, while exercising its discretion, must take into consideration the facts and circumstances in each case in order to determine whether the remedy provided under the statute is illusory or not. These principles have been consistently highlighted by this Court.”

In simple words, writ jurisdiction is to be pressed into service against an order, which is without jurisdiction or tainted with malice or is in violation of the provisions of Constitution or law and also to rectify the jurisdictional defects *qua* the functions in connection with the affairs of the State authorities. For reference, Article 199(1)(a) of the “Constitution” is reproduced hereunder:-

“Jurisdiction of High Court 199. (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,—

(a) on the application of any aggrieved party, make an order—

(i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect;

7. Now adverting to the proposition in the present case, it is the stance of respondent No.3 (Deputy Commissioner,

Bahawalpur) that under Rule 43A of the Pakistan Petroleum (Refining, Blending and Marketing) Rules, 1971 (the “Rules of 1971”), he has been designated to exercise any power or perform any function as is to be exercised or performed by the Director General Oil or OGRA and in such scenario, he has passed the impugned orders in accordance with the provision of Rule 44 of the “Rules of 1971”. Learned Assistant Advocate General, while endorsing the stance of respondent No.3, has added that a remedy of filing appeal against the impugned orders has been provided under the law, for the reason, same cannot be set aside in writ jurisdiction, however, he remained unable to point out any specific provision in the “Rules of 1971” to substantiate his contention that a remedy of filing appeal against the impugned orders is available to the petitioner. At fag-end, he has pointed out that the appeal can be filed under section 12 of the Oil and Gas Regulatory Authority Ordinance, 2002 (the “Ordinance of 2002”), but he could not controvert that such an appeal is provided against the order or decision of the delegatee of a power delegated by the Authority under section 10 of the “Ordinance of 2002” which is not the issue involved in the present case, according to which respondent No.3 has passed the impugned orders under Rule 44 of the “Rules of 1971” and not in pursuance of delegation of powers under section 10 of the “Ordinance of 2002”.

Besides, it is noteworthy that the “Rules of 1971” were formulated by the then Federal Government in exercise of the powers conferred by section 2 of the Regulation of Mines and Oil-Fields and Mineral Development (Government Control) Act, 1948 read with section 3 thereof, but with the passage of time, law has developed in our country and the rules relating thereto have been refurbished through the Pakistan Oil (Refining,

Blending, Transportation, Storage and Marketing) Rules, 2016 (the “Rules of 2016), which have been made by the Oil and Gas Regulatory Authority, with the approval of the Federal Government, in exercise of the powers conferred by section 41 of the “Ordinance of 2002”. As the “Rules of 2016” have been given overriding effect upon the “Rules of 1971”, therefore, everything had to be done by the concerned authority in pursuance of the “Rules of 2016” as well as the “Ordinance of 2002”.

Being so, the question has become very simple that whether respondent No.3 had been vested with any power to pass the impugned orders within the scope of “Rules of 2016” or the “Ordinance of 2002”. To resolve this controversy, I have to refer the definition of term “Authority”, which was previously set out in Rule 2(b) of the “Rules of 1971” as under:-

“Definitions.- In these rules, unless there is anything Repugnant in the subject or context,-

- (a)
- (b) “AUTHORITY” in relation to,-
 - (i) rules 7, 8, 9, 10, 11, 11A, 13, 20, 22, 30, 30A, 30B, 31, 33A, 39 and 43C means the Director General Oil;
 - (ii) rules 16, 16B, 17, 18, 26, 27, 28, 33, 35, 36, 38, 40, 41, 41A and 43 means the Oil and Gas Regulatory Authority; and
 - (iii) rules 14, 24, 32, 34 and 42 means both Director General Oil and the Oil and Gas Regulatory Authority;

In view of Rule 43A of the “Rules of 1971”, the District Coordination of the district may have exercised certain powers relating to rules 34, 35, 36, 38 and 43, which otherwise had to be exercised by the Director General Oil and the Oil and Gas Regulatory Authority in view of Rule 2(b) of the “Rules of 1971”. But after promulgation of the Oil and Gas Regulatory Authority Ordinance, 2002, the definition of “Authority” has been substituted as “Oil and Gas Regulatory Authority established under section 3 of the

“Ordinance of 2002”. In this regard, section 2(1)(i) of the “Ordinance of 2002” reads as infra: -

“Definitions.”--- (1) In this Ordinance, unless there is anything repugnant in the subject or context,---

(a) “Authority” means the Oil and Gas Regulatory Authority established under section 3;”

Section 44(3)(a) of the “Ordinance of 2002”, is also quite relevant qua the definition of term “Authority”, which is reproduced as under: -

“44. Repeal and savings.-

(1)

(2)

(3) (a) The definition for “Authority” set out in the rules referred to in clause (b) shall be substituted by the following definition, namely:---

“Authority” means the Oil and Gas Regulatory Authority established pursuant to the Oil and Gas Regulatory Authority Ordinance, 2002”;

(b) the substitution referred to in clause (a) shall apply to the following rules, namely:-

(i) the Pakistan Petroleum (Refining, Blending and Marketing Rules, 1971;

(ii) the Compressed Natural Gas (Production and Marketing) Rules, 1992; and

(iii) the Liquefied Petroleum Gas (Production and Distribution) Rules, 2001; and

At this stage, I would also like to refer here section 10(1) of the “Ordinance of 2002”, which deals with the delegation of powers, and the same is reproduced as under:-

“Delegation of powers.” (1) The Authority may, by general or special order, delegate to any officer of the Authority the power to exercise on behalf of the Authority any of its powers, duties or functions under this Ordinance subject to such conditions as it may think fit to impose.”

Keeping in view the above-noted provisions of law, learned Assistant Advocate General has been asked time and again to produce any order of the authority i.e. “the Oil and Gas Regulatory Authority” through which any powers exercisable in pursuance of the “Ordinance of 2002” and the “Rules of 2016”, have been delegated to respondent

No.3 (Deputy Commissioner, Bahawalpur) and in response, he has apprised the Court that no such order regarding delegation of powers to respondent No.3 has been issued by the “Authority”. In this way, I am of the firm view that respondent No.3 (Deputy Commissioner, Bahawalpur) or any officer subordinate to him, unless and until specifically delegated powers under the “Ordinance of 2002” and the “Rules of 2016” were not competent to act being the Inspecting Officer(s).

To fortify my above view, I deem it appropriate to refer here section 44(3)(c) of the “Ordinance of 2002” which envisages that the “Rules of 1971” shall stand repealed to the extent that any rules promulgated pursuant to this Ordinance provide for the matter relating to refining and blending of petroleum, in the case of the “Rules of 1971”, which could remain operative only to the extent they are not inconsistent with the “Rules of 2016”. Since an explicit procedural and enforcement mechanism has been mentioned in Rules 54 and 55 of the “Rules of 2016”, superseding similar provisions under the “Rules of 1971”, so the “Rules of 2016” have to be followed in such circumstances, therefore, the acts which have been done as per the “Rules of 1971” have no legal backing. For the purpose of clarity, Rules 54 and 55 of the “Rules of 2016” are reproduced hereunder:-

“54. Entry and inspection.”--- (1) Any person including any District Coordination Officer authorized in writing by the Authority (hereinafter called “Inspection Officer”) may at any reasonable time ---

- (a) enter, inspect and examine any premises, facility or installations, owned or operated by an oil marketing company, refinery, blending plant, reclamation plant or grease plant;
- (b) take sample free of any charge or check specifications of oil, produced locally or imported, and for the time being in the possession, custody or control of a person engaged in any regulated activity; and
- (c) make such examination or inquiry, as he considers necessary, for ensuring that the

provisions of these rules, or any order made thereunder are being fully observed.

(2) *Notwithstanding the provisions of sub-rule (1), all members of the Authority shall be deemed to have the authorization and powers of Inspection Officer.”*

“55. Authorization of the Authority--- (1) *The Inspection Officer may further check and satisfy himself that the provisions of the Ordinance and these rules and the decisions made by the Authority are complied with in letter and spirit by all and sundry, provided that such Inspection Officer may take any action in accordance with the Ordinance and these rules and the decisions made by the Authority, in emergency and on the spot, if he considers such action on his part is necessary and thereafter report forthwith to the Chairman and as soon as possible necessary and thereafter report forthwith to the Chairman and as soon as possible to the Authority for ratification unless the Chairman issues appropriate orders or directions or does not consider it necessary to submit the matter to the Authority.”*

From the above, it is abundantly clear that the District Coordination Officer or, as the case may be, the Deputy Commissioner does not have any power, except on the basis of an authorization in writing by the “Authority”, to act being an Inspection Officer. However, it has been frankly conceded by learned Assistant Advocate General that no such authorization in writing had been given by the “Authority” to respondent No.3 (Deputy Commissioner, Bahawalpur), therefore, no doubt is left in my mind that his actions *qua* the passing of impugned orders in respect of sealing the business premises of the petitioner as well as imposing fine upon him are *ultra vires*. In the given state of affairs, it can be further observed here that the petitioner has rightly pressed into service the writ jurisdiction of this Court against the impugned orders, which are not only without jurisdiction but also are in violation of the provisions of the “Ordinance of 2002” as well as the rules made thereunder i.e. the “Rules of 2016”.

8. I am also mindful of the fact that through order No.DO/IPWM/BWP/437-38 dated 29.10.2024, respondent No.3 has directed the Assistant Commissioners concerned

to immediately seal the business premises of the petitioner M/s Khan Petroleum Service as well as M/s Hamza Hassan Petroleum Service while exercising powers under Rule 44 of the “Rules of 1971”, but no such power is vested with him in the aforesaid Rule. In a similar way, respondent No.3 has imposed the penalty of Rs.10,00,000/- (One Million) upon the petitioner M/s Khan Petroleum Service through order No.DO/IPWM/BWP/451 dated 13.11.2024, under Rule 44 of the “Rules of 1971”, payable within two days or in default thereof the owner/manager of M/s Khan Petroleum Service will undergo one year imprisonment, but here again no such penalty is provided in the above mentioned Rule. For the guidance of respondent No.3 and all other concerned, Rule 44 of the “Rules of 1971” is reproduced as infra:-

“44. Penalty for breach of rules.- Any person who contravenes the provisions of any of these rules shall, without prejudice to any other action that may be taken under these rules in relation to the contravention, be punishable for every breach with imprisonment for a term which may extend to three years, or with five (which shall not be less than fifteen thousand rupees) or with both.”

Now the penalties with regard to contravention of any provision or rule are provided in Rule 69, Chapter-XI of the “Rules of 2016”, which reads as infra: -

“69. Penalty--- (1) Subject to sub-rule (2), a person, who contravenes any provision of the Ordinance, these rules, terms and conditions of the license, or the decisions of the Authority shall be punishable with fine which may extend to ten million rupees and in case of a continuing contravention with a further fine which may extend to one million rupees for every day during which such contravention continues.

(2) In imposing any fine under these rules, the Authority shall keep in view the principle of proportionality of the fine to the gravity of the contravention. Prior to imposing the fine, the Authority shall, in writing, require the person liable to be affected to show cause in writing as to why the fine may not be imposed.”

Through Notification No.OGRA-12(07)/2020-SBR dated 14.05.2020, imposition of penalty on Oil Marketing Companies (OMC) due to overcharging, less filling and quality failure at retail outlets has been approved by the Authority, whereby maximum amount of penalty on an OMC upon violations observed at one outlet per inspection has been fixed @ Rs.1.000 Million.

When Rules 55 and 69(2) of the “Rules of 2016” are read together, it becomes easier to understand that after authorization in writing being an Inspection Officer in terms of Rule 54 of the “Rules of 2016”, respondent No.3 still has no independent power to impose penalties under the “Ordinance of 2002” or the “Rules of 2016” rather he is only obliged to submit a report to the “Chairman” and the “Authority” as referred in section 3 of the “Ordinance of 2002” and it is left with the “Authority” that it shall require the person liable to be affected, to show cause in writing as to why the fine may not be imposed, prior to imposing fine upon him, the quantum of which is also prescribed in Rule 69 of the “Rules of 2016” as well as Notification No.OGRA-12(07)/2020-SBR dated 14.05.2020.

9. Last but not the least, it is a sorry state of affairs that respondent No.3 has passed the impugned order No.DO/IPWM/BWP/451 dated 13.11.2024 while carrying the proceedings in a manner of summary trial, whereby he imposed the penalty of Rs.10,00,000/- (One Million) upon the petitioner M/s Khan Petroleum Service, to be paid within two days or in default thereof the owner/manager of M/s Khan Petroleum Service has to undergo one year imprisonment, but respondent No.3 has completely ignored the relevant provisions given in Chapter-XXII of the Code of Criminal Procedure (Act V of 1898) while conducting summary trial, in the light of which the penalty of Rs.10,00,000/- or imprisonment of one year in default

thereof could not have been imposed by respondent No.3 through summary trial of the petitioner. On this score as well, the impugned order resulting into imposition of fine of Rs.10,00,000/- (One Million) or imprisonment for a period of one year in default thereof is also clearly without jurisdiction.

10. As an outcome of the above discussion, I hold that after promulgation of the Oil and Gas Regulatory Authority Ordinance, 2002 and making as well as approval of the Pakistan Oil (Refining, Blending, Transportation, Storage and Marketing) Rules, 2016, respondent No.3 being the Deputy Commissioner of Bahawalpur district was not authorized to seal the business premises of the petitioner or impose any penalty upon him in terms of Rule 44 of the Pakistan Petroleum (Refining, Blending and Marketing) Rules, 1971, as these rules have already been overridden by the provisions contained in the “Ordinance of 2002” as well as the “Rules of 2016”. Having held so and since no remedy is available to assail the impugned orders passed by respondent No.3 under Rule 44 of the “Rules of 1971”, the matter involves in this writ petition falls within the purview of Article 199(1)(a) of the “Constitution”, which aspect has made the instant writ petition fully competent and maintainable before this Court. It is also held that since the impugned orders i.e. order No.DO/IPWM/BWP/437-38 dated 29.10.2024 and order No.DO/IPWM/BWP/451 dated 13.11.2024 are *ultra vires* as have been passed by respondent No.3 without any lawful authority, hence, the same cannot sustain in the eye of law to the extent of present petitioner.

11. Consequently, I accept this writ petition and set aside the impugned order No.DO/IPWM/BWP/437-38 dated 29.10.2024 to the extent of present petitioner as well

as the impugned order No.DO/IPWM/BWP/451 dated 13.11.2024.

**(Muhammad Tariq Nadeem)
Judge**

APPROVED FOR REPORTING.

**(Muhammad Tariq Nadeem)
Judge**

Announced and dictated on 05.12 .2024

Prepared and signed on 23.12.2024.

مقدس