

Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 2537 OF 2012

M/s Sardar Khan (Pvt.) Limited

Vs

Oil and Gas Regulatory Authority through its Chairman, etc.

PETITIONER BY: Malik Qamar Afzal, Advocate

RESPONDENTS BY: Mr. Tariq Aziz, Advocate for respondents
No. 1 and 2.
Ch. Hafeez Ullah Yaqoob, Ms. Zaitoon
Hafeez and Mr. M. Aslam Karai Baloch,
Advocates for respondent No.3.

DATE OF DECISION: 18.11.2021

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BABAR SATTAR, J.- The petitioner has impugned letters dated 24.07.2012 pursuant to which respondent No.1 has revoked CNG Provisional License granted to M/s Sardar Khan (Pvt.) Ltd. in Khasra No. 689, 682, 687, 688, MSA Kallar Kahar, South Bound, District Chakwal and revoked CNG Production and Marketing License granted to M/s Sardar Khan (Pvt.) Ltd.

2. Learned counsel for the petitioner submitted that the petitioner had been granted license dated 20.06.2006 for the purpose of storing, filling and distribution of Compressed Natural Gas (CNG) under Compressed Natural Gas (Production and Marketing) Rules, 1992 ("**CNG Rules**"), which was to expire on 22.02.2020 (license for mother CNG station). And that respondent No.1 granted license dated 23.01.2007, which was a provisional

license to install CNG filling station under CNG Rules (provisional license for daughter CNG station). He submitted that these licenses were unlawfully revoked by respondent No.1 through the impugned letters on the basis that the daughter CNG station was being operated by the petitioner through supply of gas from the mother CNG station without complying with the requisite formalities and without grant of No Objection Certificate (NOC) by Sui Northern Gas Pipelines Limited (SNGPL). He submitted that the lack of issuance of NOC by SNGPL could not be a valid basis for issuance of the impugned letters as the petitioner had complied with all formalities for purposes of issuance of license and the only formality pending was the issuance of NOC by SNGPL, which was in the nature of a procedural NOC as opposed to a substantive NOC, and in the internal noting file it had been observed by SNGPL that the gas company had the capacity to supply gas to the mother and daughter CNG stations. And that consequently the petitioner had substantially complied with requirements for issuance of license to the daughter CNG station. He submitted that there had been no formal refusal from SNGPL stating that NOC could not be granted to the petitioner and in the absence of such refusal, respondent No.1 ought not to have revoked the provisional license issued to the daughter CNG station.

3. Learned counsel for the respondents submitted that respondent No.1 was vested with exclusive jurisdiction to grant or revoke licenses under section 23 of Oil and Gas Regulatory Authority Ordinance, 2002 (**"OGRA Ordinance"**) and that provisions of the OGRA Ordinance had been given overriding effect under section 43 of the said statute. He contended that the petitioner was operating

the daughter CNG station in breach of provisions of the OGRA Ordinance, the Rules and Regulations made thereunder and express directions of respondent No. 1, which was the frontline regulator in relation to supply and distribution of oil and gas. He submitted that in view of the operation of daughter CNG station without a valid license, the impugned letters had been issued in accordance with law revoking the provisional license granted to the daughter CNG station and the license granted to the mother CNG station. He submitted that the license of daughter CNG Station stood revoked in 2012, and the license of the mother CNG station, revoked through the impugned letters, also stood expired as per terms of the original license on 22.02.2020. That the petitioner had failed to file an application with respondent No.1 seeking a renewal of the licenses and consequently the petition had now become infructuous. He submitted that to the extent that the petitioner contended that NOC of CNG supply company had now been procured, the said NOC had been procured from EGas (Private) Limited, which had only been granted permission by Oil and Gas Regulatory Authority (OGRA) to supply gas to industrial consumers and thus EGas (Private) Limited could not supply gas to the CNG stations in view of the decision of OGRA dated 21.05.2021. The contention of the petitioner that it was presently in compliance with requirements for grant of license was without merit. He further submitted that the petition was not maintainable in view of sections 12 and 13 of the OGRA Ordinance, which provided a remedy against cancellation or revocation of a license. He further submitted that to the extent that the petitioner was aggrieved by non-provision of NOC by SNGPL, it had an effective remedy under Rule 8 of CNG Rules. Given that these

statutory remedies had not been availed by the petitioner, the petition was not maintainable. He relied on **Anjum Niaz Chaudhry Vs. Managing Director, Sui Northern Gas Pipelines Limited (2011 MLD 1402)**, **Samina Anwaar Ullah Khan Vs. General Manager, SNGPL, Lahore and others (PLD 2012 Lahore 554)**, **Muhammad Azam Khan Niazi Vs. General Manager, SNGPL, Islamabad (2019 CLC 1998)**, **Sahibzada Nisar Ahmed Jan Vs. Sui Northern Gas Pipelines Ltd. (2021 CLC 851)** and **General Manager, SNGPL, Peshawar Vs. Qamar Zaman and others (Civil Petition No. 509-P/2012)**.

4. Sections 12 and 13 of the OGRA Ordinance state the following:

12. Appeal, etc.-(1) Any person aggrieved by any order or decision of the delegates of a power delegated by the Authority under section 10 may, within thirty days of the receipt of such decision or order, prefer appeal to the Authority and Authority shall hear and decide the appeal within ninety days from the date of its presentation.

(2) In relation to any derision concerning a regulated activity, the High Court may, if it is satisfied that no other adequate remedy is provided on application of an aggrieved party, make an order-

(a) directing the Authority to refrain from doing anything it is not permitted by law to do, or to do anything the Authority is required by law to do; or

(b) declaring that any act done or proceeding taken by the Authority has been done or taken without lawful authority and is of no legal effect

(3) Where -

(a) an application is made to a High Court for an order under sub section (2); and

(b) the making of an interim order would have the effect prejudicing or interfering with the carrying out of a public work of otherwise being harmful to public interest or

State property impeding the assessment or collection of public revenues the Court shall not make an interim order unless the Attorney General has been given notice of the application with a copy thereof to the Authority and the Attorney General or any person authorised by him in that behalf has had an opportunity of being heard and the Court, for reasons to be recorded in writing, is satisfied that the interim order-

(i) would not have such effect as aforesaid; or

(ii) would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction.

(4) An interim order made by a High Court on an application made to it to question the validity or legal effect of any order, proceeding taken or act done by the Authority shall cease to have effect on expiration of a period of six months following the day on which it is made, unless the case is finally decided, or the interim order is withdrawn, by the Court earlier.

(5) Every case in which on application under sub-section (2) the High Court has made an interim order shall be disposed of by the High Court on merits within six month from the day on which it is made, unless the High Court is prevented from doing so for sufficient cause to be recorded.

13. Review of Authority decision.- *The Authority may review, rescind, change, all or vary any decision, or may rehear an application before deciding it in the event of change in circumstances or the discovery of evidence which, in the opinion of a Authority, could not have reasonably been discovered at the time of the decision, or the case of a rehearing at the time of the original hearing if consideration of the change in circumstances or of the new evidence would materially alter the decision.*

5. Section 8 of Compressed Natural Gas (Production and Marketing) Rules, 1992 states the following:

8. Revocation or amendment of licenses. *(i) The Authority may, if in its opinion the public interest so requires, revoke a license in any of the following cases, namely:-*

(a) Where the licensee, in the opinion of the Authority makes willful and unreasonably prolonged

default in doing anything required of him under the license granted to him or by these rules and has been informed in writing to that effect by the Authority,

(b) Where the licensee violates any of the terms and conditions of this license and is so informed in writing and does not rectify the violation within the time specified,

(c) Where the licensee is, in the opinion of the authority, unable by reason of his insolvency fully and efficiently to discharge the duties and obligations imposed on him by his license.

(ii) Where, in the opinion of the Authority, the public and national interest so require the Authority may, instead of revoking a license under sub -rule (1), permit it to remain in force in relation to the whole or any part of the area of operation with such alteration or amendments in the terms and conditions of the license as it thinks fit to make or upon such new terms and conditions as it may impose upon the licensee.

(iii) In case of revocation of a license or any alteration or amendment in the terms and conditions thereof, an appeal shall lie from the decision of the Authority to the Federal Government.

6. It was laid down by the august Supreme Court in **General Manager, SNGPL, Peshawar Vs. Qamar Zaman and others (Civil Petition No. 509-P/2012 decided on 07.07.2021)** that OGRA Ordinance provided an exclusive remedy for grievances arising in relation to the said Ordinance and even the jurisdiction of civil courts was ousted in relation to such disputes. It was further held by the learned Lahore High Court as well as this Court in **Samina Anwaar Ullah Khan Vs. General Manager, SNGPL, Lahore and others (PLD 2012 Lahore 554)** and **Muhammad Azam Khan Niazi Vs. General Manager, SNGPL, Islamabad (2019 CLC 1998)**, that statutory remedies provided under the

OGRA Ordinance and CNG Rules, 1992 are adequate remedies and in the event that a petitioner failed to avail such remedies, its writ petition would not be maintainable. This principle was most recently reiterated by this Court in **Sahibzada Nisar Ahmed Jan Vs. Sui Northern Gas Pipelines Ltd. (2021 CLC 851)**, while relying on the judgments of the august Supreme Court, in the following terms.

8. I am fortified by the law laid down by the Hon'ble Supreme Court of Pakistan in case titled as "Mst. Kaniz Fatima V. Muhammad Salim (2001 SCMR 1493)" in which it was authoritatively held by the Hon'ble Supreme Court Pakistan that "where a particular statute provides a self-contained machinery for the determination of questions arising under the Act and where law provides a remedy by appeal or revision to another Tribunal fully competent to give any relief any indulgence to the contrary by the High Court is bound to produce a sense of distrust in statutory Tribunals and constitution petition without exhausting remedy provided by the statute would not lie in the circumstances". The same principle has been enunciated in PLD 2010 Supreme Court 969 titled as "Muhammad Abbasi v. S.H.O. Bhara Kahu and 7 others", wherein it was held that "in our view where alternate remedy is more convenient, beneficial and likely to set the controversy at naught completely, jurisdiction under Article 199 cannot be exercised". In another case titled as, "Rana Aftab Ahmad Khan v. Muhammad Ajmal and another" (PLD 2010 Supreme Court 1066), it was held that "we have considered the above and are constrained to hold that the constitutional jurisdiction (reference Article 199) of the High Court in all the cases cannot be invoked as a matter of right, course or routine, rather such jurisdiction has certain circumventions which the Court is required to keep in view while exercising the extraordinary discretionary power".

9. The petitioner's dispute could be redressed by filing a complaint under section 3 of Complaint Resolution Procedure (for Natural Gas, Liquefied Petroleum Gas (LPG), Compressed Natural Gas (CNG) and Refined Oil Products) Regulations, 2003. Furthermore, section 9 of Regulations provides for an

appeal against the order, if the complainant is not satisfied with the decision, therefore, the 2003 Regulations provide for an adequate remedy to the petitioner for non-provision of gas connection and as such there is no basis to invoke the extraordinary jurisdiction of this Court.

7. In view of the above, it is obvious that the petitioner had an effective remedy against revocation of license under sections 12 and 13 of the OGRA Ordinance, which it failed to avail. Further, to the extent that the petitioner was aggrieved by non issuance of NOC by SNGPL, it had an effective remedy under Rule 8 of CNG Rules, which it also failed to avail. In view of the law laid down by the august Supreme Court as well as this Court, the instant petition is not maintainable for having been filed without availing adequate statutory remedies provided by law, and is therefore **dismissed**.

(BABAR SATTAR)
JUDGE

Saeed.