

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

OGRA Application No. 01 of 2018

Attock Petroleum Limited

Versus

OGRA, etc.

OGRA Application No. 02 of 2018

Attock Petroleum Limited

Versus

OGRA, etc.

OGRA Application No. 03 of 2018

Attock Petroleum Limited

Versus

OGRA, etc.

OGRA Application No. 04 of 2018

Attock Petroleum Limited

Versus

OGRA, etc.

OGRA Application No. 05 of 2018

Attock Petroleum Limited

Versus

OGRA, etc.

OGRA Application No. 06 of 2018

Attock Petroleum Limited

Versus

OGRA, etc.

OGRA Application No. 07 of 2018

Attock Petroleum Limited

Versus

OGRA, etc.

OGRA Application No. 08 of 2018

Attock Petroleum Limited

Versus

OGRA, etc.

Applicant by: **Mr. Ali Sibtain Fazli and Mr. Abad ur Rehman, Advocate.**

Respondents by: **Mr. Shuja Ullah Gondal, Advocate.**

Date of Decision: **20.06.2019.**

MOHSIN AKHTAR KAYANI, J:- Through this common judgment, I intend to decide all the captioned OGRA applications as common question of law and facts are involved in all these applications.

2. The applicant Attock Petroleum Limited has assailed the order dated 27.01.2017, passed by respondent No.3 Executive Director Enforcement OGRA, which was further upheld by respondent No.2 appellate authority of OGRA vide order dated 04.04.2018, whereby penalty was imposed upon the applicant in violation of Pakistan Petroleum (Refining, Blending and Marketing) Rules, 1971 and OGRA Ordinance, 2002 and during the hearing

of appeal the appellate authority of OGRA dismissed the appeal mainly on the ground that an amount of Rs.1,00,000/- as processing fee has not been deposited by the appellant/applicant.

3. Learned counsel for the applicant contends that applicant has not been given due opportunity of hearing on merit rather applicant was non-suited on hyper-technical ground; that levy of processing fee by the OGRA authority is not available under the law and such charges could not be imposed as the same were imposed upon the internal administrative decision of the OGRA without any decision of the OGRA authority under the Ordinance of 2002.

4. Conversely, learned counsel for the respondents contends that applicant was notified through different letters that processing fee has been imposed on filing of appeal or review petition and the levy of fee upon appeal or review petition has been approved vide order dated 28.10.2015 by the OGRA; that respondents' authority has placed detail of different companies from whom such fee has been charged.

5. Arguments heard, record perused.

6. From the perusal of record, it has been observed that appellant is mainly aggrieved with the decision passed by respondent No.3 Executive Director Enforcement OGRA and same was assailed before the appellate authority of OGRA but the appeal was dismissed mainly on the ground that applicant has not paid processing fee when the appeal has been filed in compliance of direction of the OGRA.

7. I have gone through the relevant provisions of OGRA Ordinance, 2002 where powers and functions in terms of Section 6(3) have been defined whereby OGRA can impose and collect fee and other charges which are subject to making of rules, whereas rule making powers to OGRA authority

is provided in Section 41 of the OGRA Ordinance, therefore, application of levy charges and fee could only be imposed if the same has been approved by the Federal Government and subject to notification in the official gazette.

8. Keeping in view the above background, I have asked the learned counsel for the respondents to submit order of OGRA authority whereby fee against the appeal has been prescribed after the approval of Federal Government, however, no such notification of approval has been placed on record, although the OGRA authority is receiving such kind of fee through which they are regulating their internal affairs including cost of litigation, expenses and their other expenses.

9. It is trite law that things should be done in a manner as the same have been prescribed in the Act or in the rules and it is not the discretion of the authority to charge any kind of fee without approval of the Federal Government as envisaged in the provisions of OGRA Ordinance, 2002. The exercise of discretionary powers by the OGRA authority seems to be arbitrary and capricious. The wisdom behind the provision of Section 6(3) of OGRA Ordinance, 2002 is clear as the same empowers the OGRA authority to impose any charge and levy fee but the same is subject to rules, however, no such rule for imposition of charges or fee has been referred by the respondents side, therefore, I have no hesitation to hold that respondents have not settled the imposition of charges of the appeal in accordance with prescribed manner given in the law as approval of the Federal Government has not been placed on record.

10. The respondents have come forward with the stance that Section 6(2) (h & p) of OGRA Ordinance, 2002 if read with Section 41 of the Oil & Gas Regulatory Authority Ordinance, 2002 empowers the Authority to frame

rules in order to cater the above mentioned functions. Whereas Section 6(2) (h & p) of OGRA Ordinance, 2002 are re-produced hereunder for guidance:-

6. Powers and functions of the Authority:- (1) *In addition to such others powers and functions as may be imposed on it or transferred under this Ordinance, the Authority shall be exclusively responsible for granting licenses for the carrying out of regulated activities and regulating such activities.*

(2) *Without prejudice to the generality of foregoing, the Authority shall:-*

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h) *Monitor and enforce compliance by licensees with the conditions of licenses;*
- (i)
- (j)
- (k)
- (l)
- (m)
- (n)
- (o)
- (p) *Prescribe fines for contravention of the provisions of this ordinance, rules, regulation and terms and conditions of a license or a decision of the Authority;*

Whereas Section 41 of Oil & Gas Regulatory Authority Ordinance, 2002 reads as under:-

41. Power to make rules---(1) *The Authority may, with the approval of the Federal Government, which approval shall not be unduly delayed or unreasonably withheld, make rules for carrying out the purposes of*

this Ordinance. On approval of rules by the Federal Government, the Federal Government shall notify the same in the official Gazette.

11. Learned counsel for the respondents when confronted that as per stance of respondents whether any rules have been framed by the Authority, he could not produce any rule to substantiate the respondents stance. In such eventuality when no rules have been framed by the Authority, then any decision taken by the Authority under Section 6(2)(h & p) read with Section 41 of the Ordinance *ibid* shall have no legal backing and would be null and void. Therefore, levy of charges as fee under the name and style of processing fee is not valid and the order passed by respondent No.2/ appellate authority is hereby set aside, hence, the matter is remanded to respondent No.2 to decide the appeal in accordance with law on merit. However, if any processing fee has been approved by the OGRA subject to rules and decision of the Federal Government, the same shall be charged from the applicant/appellant for filing of appeal or review petition, therefore, all the captioned applications stand allowed in above terms.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on 28.06.2019.

JUDGE

Zahid