

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1930 of 2021
M/s OPI Gas (Private) Limited
Versus
Government Holdings (Pvt.) Limited and others

| S. No. of order / proceedings | Date of order / Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|-------------------------------|-----------------------------|--|
| | 05.07.2021 | M/s Khurram M. Hashmi and Noman A. Farooqi, Advocates for the petitioner. M/s Abuzar Salman Khan Niazi and Wasim Abid, Advocates for respondent No.1. |

Through the instant writ petition, the petitioner (OPI Gas (Private) Limited) assails the letter dated 28.05.2021 from respondent No.1 (Government Holdings (Pvt.) Limited), whereby the agreement between the petitioner and respondent No.1 for the supply of Liquefied Petroleum Gas ("LPG") from the Makori Gas Field was not extended beyond 12.05.2021.

2. Learned counsel for the petitioner submitted that even though the term of the contract between the petitioner and respondent No.1 came to an end on 12.04.2019, the contractual relationship between the said parties continued until the issuance of the impugned letter dated 28.05.2021; that if respondent No.1 stops selling LPG to the petitioner, the consumers would suffer; that under the Liquefied Petroleum Gas (Production and Distribution) Policy, 2016 ("the 2016 Policy"), respondent No.1 is bound to sell LPG through a competitive bidding process; that respondent No.1, as a public sector exploration and production company, could not escape its said obligation under the 2016 Policy by transferring its rights to another company in which the Government does not have any direct

or indirect shareholding; and that in any case, respondent No.1 should be directed to continue the contractual arrangement for the sale of LPG with the petitioner until this Court decides OGRA Applications No.13/2018, etc. and writ petitions against the order dated 22.06.2018 passed by the Oil and Gas Regulatory Authority (“O.G.R.A.”), whereby exploration and production companies had been ordered to sell LPG to marketing and distribution companies through a reverse bidding process, and not by accepting payments as signature bonus. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for respondent No.1 submitted that the instructions to bidders constitute the agreement between the petitioner and respondent No.1; that the term of the said agreement was five years; that respondent No.1 had extended the term of the said agreement by two years; and that at best the decision taken by respondent No.1 not to extend the term of the said contract beyond 12.05.2021 is a dispute which can be resolved in accordance with the arbitration agreement contained in clause 11 of the said contract, and not through the constitutional jurisdiction of this Court. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. Vide advertisement dated 21.02.2014, respondent No.1 invited bids from companies holding a valid LPG license for the purchase /

uplift of respondent No.1's share of LPG produced from TAL Block, District Karak, Khyber Pakhtunkhwa. The total quantity of LPG available with respondent No.1 for which the bids were invited was forty-five metric tons daily. This quantity was offered in nine separate lots of five metric tons for a period of five years. The terms and conditions of the agreement were set out in the *"bid documents and instructions to bidders"* issued by respondent No.1. The last date for the submission of the bids was 14.03.2014.

6. The petitioner participated in the said bidding process, and vide respondent No.1's letter dated 15.05.2014 was declared as the successful bidder for lifting ten million metric tons of LPG per day. The term of the agreement was five years which was due to expire on 14.05.2019. The agreement between the parties was to be in accordance with the LPG purchase agreement contained in the bid documents and instructions to bidders.

7. The five-year agreement between the petitioner and respondent No.1 expired on 14.05.2019. The petitioner had requested respondent No.1 to extend the term of the agreement till the depletion of the reservoir. Vide letter dated 12.04.2019, respondent No.1 extended the term of the agreement for a period of two years effective from 13.05.2019. In the said letter, it was also mentioned that the extension would either for two years or until the decision of the Court on OGRA Applications and writ petitions challenging the order dated 22.06.2018 passed by the O.G.R.A. on the subject of the sale of LPG to buyers on the basis of signature bonus,

whichever is earlier. Respondent No.1 continued supplying LPG under the agreement to the petitioner until the issuance of the impugned letter dated 28.05.2021.

8. The terms and conditions on which the two-year extension in the term of the contract was granted to the petitioner are clearly set out in respondent No.1's letter dated 12.04.2019. Clause-vii of the said letter provides that all the terms and conditions of the agreement dated 15.05.2014 shall remain in force and effect unless earlier terminated by respondent No.1. The petitioner not just accepted the terms and conditions set out in the said letter but also acknowledged that the extension in the agreement was an interim / ad-hoc arrangement.

9. This Court, in exercise of its Constitutional jurisdiction, cannot direct respondent No.1, the shareholding whereof is 100% owned by the Federal Government, to continue its contractual relationship with the petitioner despite the fact that the period for which the contract was extended has lapsed on 12.05.2021. Respondent No.1 is correct in asserting that since the two-year period of extension had lapsed on 12.05.2021, therefore, the contractual arrangement between the parties for the sale of LPG had come to an end.

10. If the petitioner is of the view that the decision of respondent No.1 not to further extend the term of the contract is in violation of the provisions of the contract, at best, the petitioner's remedy lies in damages and not by seeking a writ of mandamus directing respondent No.1 to continue its contractual relationship with the

petitioner. Such dispute can be resolved in accordance with the arbitration clause (clause 11) of the contract.

11. Ordinarily, the High Court, in exercise of its jurisdiction under Article 199 of the Constitution, does not entertain a petition filed by a petitioner seeking the enforcement of its rights under a contract executed with an instrumentality of the State. Although sub-constitutional legislation cannot curtail the jurisdiction of this Court under Article 199 of the Constitution, and there are numerous precedents where this Court has exercised its Constitutional jurisdiction in contractual matters where the executive acts in an irrational, illegal or procedurally irregular manner, or in excess of jurisdiction, the facts of the case at hand are not such where this Court ought to exercise its Constitutional jurisdiction.

12. It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the Constitutional jurisdiction of the High Court for the issuance of a writ. It is also well settled that where there exists an arbitration agreement, the parties are required to get their disputes arising out of the contract adjudicated by the domestic forum created by them. The respondents have correctly asserted that the existence of an arbitration clause in the contract between respondent No.1 and the petitioner leaves no option to the Writ Court but to point to the parties in the direction of arbitration. There is a catena of case law in support of proposition that where there is an arbitration clause in the contract between the parties, a writ

petition cannot be instituted to question the termination of the contract and or to seek specific performance of the contract. In the case of Mumtaz Ahmad Vs. Zila Council, Sahiwal (1999 SCMR 117), it has been held as follows:-

“7. The petitioners had voluntarily executed the lease agreements without any duress, compulsion or threat and had not only agreed to pay instalments for the months of July, August and September, 1997 alongwith other dues, but had actually deposited the same at the time of assuming work under the lease agreements. They were, therefore, not justified to take exception to those payments at the fag-end of the lease period. Anyhow, if they had any grievance, they could have invoked the Arbitration clause and referred the matter to the Arbitrator or file appeal under the relevant rules, but in view of the availability of these remedies, they could not have invoked the writ jurisdiction. Hence, the Intra-Court Appeals filed by the petitioners were rightly dismissed and in consequence these petitions are dismissed.”

(Emphasis added)

Law to the said effect has also been laid down by the Superior Courts in the cases of Abdul Qayyum Khan Vs. District Officer, Passenger and Freight (2003 MLD 670), Messrs Frontier Construction Company Vs. Bahauddin Zakariya University (2006 MLD 978), Muhammad Hayat Khan Vs. Tehsil Municipal Administration (2009 YLR 2259), Signage Security System Vs. CDA and others (2010 CLC 567), Mst. Zahida Maqbool Vs. Member (Colonies) Board of Revenue (2010 YLR 1734), Messrs Muhammad Siddiq Chaudhry Vs. Higher Education Commission (2011 CLC 863), Wajahat Ali Vs. Government of Khyber Pakhtunkhwa (2013 YLR 2132), N.A.A. Consulting Engineers Vs. Metropolitan Corporation (2014 MLD 1795), Gandapur Construction Company Vs. Government of Khyber Pakhtunkhwa (2014 CLD 400), Uch Power (Pvt.) Ltd. Vs. Government of

Pakistan, Federal Board of Revenue (2017 PTD 1215), and M/s Bisra Stone Lime Company Limited Vs. Orissa State Electricity Board (AIR 1976 SC 127).

13. As regards the petitioner's complaint that respondent No.1 might not carry out sale of LPG through a competitive process or that it had assigned its rights to sell its share of the LPG from the Makori Field to another joint venture partner, which is a private sector exploration and production company, the petitioner ought to take such complaint to the Regulator but cannot expect such complaint to form the basis of a direction to respondent No.1 to continue selling LPG to the petitioner under a contractual arrangement which has already expired.

14. In view of the above, the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*