

Form No: HCJD/C-121

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

ICA No.12/2020

M/s Shaheen Freight Services

Versus

Oil and Gas Development Company Limited, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	09-09-2020	Mr Kashif Ali Malik, Advocate for appellants in ICAs No.12 and 11 of 2020. Mr Shams Iqbal Khattak, Advocate for appellant in ICA No.23/2020. Mr Umair Majeed Malik, Advocate for respondent/OGDCL. Mr Rafaqat Bashir Advocate for respondent/NLC.

Through this consolidated order, we will decide the Intra Court Appeals listed in **Annexure 'A'** attached hereto.

2. The appellants, through these appeals have challenged consolidated judgment, dated 10-01-2020, passed by the learned Single Judge in W.P. No.4698/2018, etc. The appellants are "carriage contractors". They had participated in the bidding process for which advertisements were published by the Oil and Gas Development Company Limited (*hereinafter referred to as the 'Company'*) on 16-06-2017. The bidding process was completed

on 28-12-2017. The appellants had participated in the proceedings and after being declared successful, respective contracts were executed for carriage of crude oil and condensate. M/s National Logistic Cell was also declared successful and consequently contract was executed between the latter and the Company. The appellants belatedly filed their respective constitutional petitions, i.e. in December, 2018. The petitions were dismissed vide the impugned consolidated judgment, dated 10-01-2020.

3. The learned counsels have been heard at length. They were not able to satisfy this Court regarding delay in challenging the proceedings, which had concluded on 28-12-2017. Moreover, the contractual relationship between M/s National Logistic Cell and the Company has remained valid since 2001. Through the constitutional petitions the petitioners were in fact, indirectly challenging the validity of the contractual relationship between M/s National Logistic Cell and the Company. It is noted that the Company is a profit earning juridical person and obviously it enjoys freedom to take decisions accordingly. The learned counsels have argued that it is binding on the Company to award contracts in a

transparent manner through a competitive process. There is no cavil to this proposition because public funds are involved. However, the freedom of entities, such as the Company, to take decisions and formulate policies regarding its financial and commercial interests cannot be interfered with. As a juridical person, the Company is accountable through the mode of internal as well as external audit. Would it be justified for a constitutional court to interfere in the financial and commercial decisions of a commercial profit earning entity? We are afraid that the answer is in the negative. In this case the Company has a contractual relationship with M/s National Logistic Cell and this Court cannot substitute its own opinion for that of the Company so as to conclude whether validity or extension of contract is in consonance with the commercial interests of the Company. This Court, therefore, directly or indirectly, cannot interfere with the existing contractual relationship between M/s National Logistic Cell and the Company.

4. The august Supreme Court in the case titled '*Secretary to the Government of the Punjab, Forest Department, Punjab, Lahore through Divisional Forest Officer v. Ghulam Nabi and 3*

others' [PLD 2001 SC 415] has laid down the guidelines for exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and the relevant portion thereof is reproduced as follows.-

"High Court, cannot come to rescue of a person seeking its stamp or approval for order or action which was patently unjust, being without jurisdiction and hence void ab initio. (1986 CLC 54). Therefore, High Court is not bound to grant relief to a petitioner simply because he was legally entitled to it, if the grant of such relief is immoral, unfair or against the dictates of good conscience and fairplay". (1990 MLD I 2192 (DB)). It hardly needs any elaboration that High Court is not obliged to press into service its Constitutional jurisdiction in every case in which illegality or void action or order is impugned. The Court is to see, whether the grant of relief prayed for will foster the cause of justice or will it perpetuate injustice. If the Court finds that in a given case though the action taken by the authority is illegal but setting aside of such an illegal action would result in miscarriage of justice instead of advancing the cause of justice, the Court may decline to press

into service its Constitutional jurisdiction.”

5. We have not been able to persuade ourselves that the impugned consolidated judgment, dated 10-01-2020 suffers from any legal infirmity requiring interference. Moreover, we are also of the opinion that any interference by this Court while exercising jurisdiction under Article 199 of the Constitution in commercial decisions of a profit earning juridical person, such as the Company, may prejudice its financial interests and thus harm public interest. The appeals are, therefore, without merit and accordingly dismissed.

(CHIEF JUSTICE)

(LUBNA SALEEM PERVEZ)
JUDGE

Luqman Khan/*