

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

ICA No.231-2010

Pakistan State Oil

Vs.

Petrosin Gas Pakistan Pvt. Ltd. & Another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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27.02.2020 Mr. Shahid Hamid, Advocate for appellant.
Nemo for respondents.

AAMER FAROOQ J. This appeal is directed against judgment dated 12.07.2010, whereby writ petition filed by respondent No.1. (W.P. No.2321-2010), was allowed.

2. The facts, in brief, are that respondent No.1, being a Company, is engaged in the business of marketing and distribution of Liquefied Petroleum Gas (LPG). Respondent No.1 is a public limited company and the largest one in the sector of distribution of *inter alia* petroleum and similar items in the country. After negotiations, appellant and respondent No.1 entered into an agreement dated 25.03.2010, whereby respondent No.1 was to establish Outlets all over Pakistan. The agreement was for a period of ten years. In exercise of Article 7 of the said agreement, the appellant terminated the agreement,

which became the subject matter of petition under Article 199 of the Constitution (W.P. No.2321-2010); the said writ petition was allowed by Judge-in-Chambers vide impugned judgment dated 12.07.2010.

2. During course of proceedings in the instant appeal, notices were issued to respondent No.1 but consistently, report was received that respondent No.1 does not exist in Pakistan. On the request of learned counsel for the appellant, effort was made to have service effected upon respondent No.1 through substituted mode by way of newspaper proclamation. Since no one entered appearance on behalf of respondent No.1 despite publication in daily 'Dawn' dated 06.11.2019, this Court ordered respondent No.1 to be proceeded *ex parte* vide order dated 20.11.2019.

3. Learned counsel for the appellant *inter alia* contended that business of appellant includes distribution and marketing of LPG; agreement was for a period of ten years and said period is going to expire on 24.03.2020. Under Articles 4 & 5 of the agreement, respondent No.1 was required to open and operate around 400 PSO retail Outlets. It was submitted that agreement was terminated after six weeks of coming into existence, however,

stance of respondent No.1 was that expense of around Rs.815 million was incurred. It was contended that since respondent No.1 had monetized its claim, alternate and efficacious remedy for claim of compensation or referring the matter to alternate dispute resolution was available. It was further contended that specific performance of agreement could not have been sought. Learned counsel contended that it is trite law that where dispute is purely contractual, a petition under Article 199 of the Constitution, is not maintainable. It was further contended that agreement was reached after negotiations, which now under the PPRA law, needs to be struck down in any way. Learned counsel, in support of his contentions, placed reliance on cases reported as 'M.A. Naseer Vs. Chairman, Pakistan Eastern Railways and others' (PLD 1965 Supreme Court 83), 'Messrs Pakistan Associated Construction Limited Vs. Asif H. Kazi and another' (1986 SCMR 820), 'Nizamuddin and another Vs. Civil Aviation Authority and 2-others' (1999 SCMR 467), 'Petrosin Corporation Pvt. Ltd Singapore and 2-others Vs. Oil and Gas Development Company Limited through Managing Director, Islamabad' (2010 SCMR 306),

Suo Moto Case No.5 of 2010 (PLD 2010 Supreme Court 731).

4. Arguments advanced by learned counsel for the appellant have been heard and the documents, placed on record, examined with his able assistance.

5. Undoubtedly the controversy, in hand, is in the nature of contractual dispute. It is trite law that where dispute qua the parties is purely contractual, a petition under Article 199 of the Constitution, is not maintainable unless Government Department or a functionary have performed their duties in an arbitrary and unlawful manner.

6. Respondent No.1 asserted in writ petition that it had incurred a sum of Rs.815 millions pursuant to its obligation under the agreement hence was entitled to have specific enforcement of agreement under section 12 of Specific Relief Act; where monetary compensation is not an adequate remedy only then specific performance of agreement is to be made. In the instant case, respondent No.1, by its own assertion, has claimed that an amount has been incurred and loss accrued to it hence an alternate and efficacious remedy, by making a claim for compensation or referring the matter to the alternate dispute resolution, was available. Under the terms

of agreement, either side had a right to terminate the contract, which accordingly was done by the appellant. Nothing is available on record to show that appellant, while terminating the contract, acted in a whimsical, capricious or unlawful manner; therefore, the judgment impugned is not sustainable.

7. In view of above, instant appeal is allowed and impugned judgment dated 12.07.2010 is set aside; consequently, writ petition filed by respondent No.1 stands dismissed.

(GHULAM AZAM DAMBRANI)
JUDGE

Zawar

(AAMER FAROOQ)
JUDGE