

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

ICA No. 404 of 2014

M/s Al-Muiz-1 CNG, Fateh Jang

Vs

Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of hearing	Order with signature of Judge and that of parties or counsel where necessary.
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01) **03-7-2014.** Malik Qamar Afzal Advocate, for the appellant.

Instant Intra Court Appeal is directed against order dated 04-6-2014, passed by learned Single Judge in Chambers, whereby writ petition No.2736/2014, filed by the appellant and others, was dismissed.

2. The relevant facts are that the appellant invoked jurisdiction of the High Court under Article 199 of Constitution of the Islamic Republic of Pakistan, 1973, seeking issuance of an appropriate writ against respondent No. 3, Sui Northern Gas Pipeline Limited. The grievance of the appellant was against the schedule notified by the said respondent, for the supply of Natural Gas. It is the case of the appellant/petitioner that the quantity of gas supplied has been curtailed illegally.

3. Learned Single Judge in Chambers dismissed the writ petition on the sole ground that the respondents were vested with powers to formulate policies and notify schedule for supply of CNG at CNG Stations.

4. At the very outset, learned counsel for the appellant/petitioner was asked to assist this Court regarding competence of the Intra Court Appeal under Section 3 of Law Reforms Ordinance,

1972. The learned counsel referred to Section 12 of the Oil and Gas Regulatory Authority Ordinance, 2002 (hereinafter referred to as “Ordinance”) and contended that the right of appeal was not available in order to challenge the schedule notified by respondent No. 3. The learned counsel also forcefully contended that petitions and appeals of similar nature have been entertained and as such instant appeal is also maintainable.

5. The arguments of learned counsel for the appellant/petitioner are not tenable as the Ordinance provides for an elaborate procedure for redressal of grievances which includes a right of appeal and review. Respondent No. 3 is a licensee of the Oil and Gas Regulatory Authority (hereinafter referred to as the “Authority”) established under the Ordinance. The Ordinance provides for an efficacious, alternate remedy in case of grievances against the licensee, such as respondent No. 3. The Oil and Gas Regulatory Authority, in exercise of its powers under Section 42 of the Ordinance has made regulations titled *Complaint Resolution Procedure for Natural Gas Liquefied Petroleum Gas (LPG) and Compressed Natural Gas (CNG) Regulations, 2003* (hereinafter referred to as “Regulations”). Sections 11 & 12 of the Ordinance read with the Regulations provide for an elaborate procedure. Regulation 3 of the Regulations, inter alia, provides for complaint redressal where the grievance relates to quantity and quality of Natural Gas Supplied by the licensee.

6. Section 11 read with the Regulations has vested powers in the Delegatee for the purposes of any complaint. The appeal under Section 12 of the Ordinance, against any order passed by the delegatee under Section 11 of the Ordinance read with the Regulations, is before the Authority. Furthermore, Sub Section 2 of Section 12 of the

Ordinance provides for invoking jurisdiction of the High Court in relation to any decision concerning regulated activity.

7. Section 11 and Section 12 are interdependent and an integral part of the appeal process. Moreover, Section 13 of the Ordinance provides for review of Authority's decision.

8. Proviso of Sub Section 2 of Section 3 of Law Reforms Ordinance, 1972 places a bar on the maintainability of an Intra Court Appeal, where the order impugned before the High Court under Article 199 of Constitution of the Islamic Republic of Pakistan, 1973 arises out of any proceedings in which the law applicable provided for at least one appeal [or one revision or one review] to any Court, Tribunal or Authority against the original order.

9. As discussed above, the provisions of the Ordinance provide for a comprehensive and efficacious mechanism for redressal of grievances against a licensee or in case of a regulated activity, which includes a right of appeal and review. The order of schedule of supply of Natural Gas, impugned by the appellant before this Court in its exercise of jurisdiction under Article 199 of Constitution of the Islamic Republic of Pakistan, 1973, falls within the ambit of the proviso of Sub Section 2 of Section 3 of Law Reforms Ordinance, 1972, as the Ordinance provides for an elaborate mechanism of redressal of grievance, which includes an appeal and review. The appellant/petitioner by invoking the jurisdiction of the High Court under Article 199 of the Constitution had bypassed the efficacious alternate remedy provided under the Ordinance.

9. It may also be noted that even otherwise, the petition dismissed by the learned Single Judge in Chambers was not maintainable under Article 199 of the Constitution. It is a settled law that the existence of an efficacious alternate remedy is a bar to the exercise

of jurisdiction of the High Court under Article 199. The Hon'ble Supreme Court has consistently held that the tendency to bypass statutory forums must be discouraged as it defeats the legislative intent. The damage caused in by passing the statutory forums has been aptly highlighted in the words of the then Chief Justice of Pakistan, Mr Muhammad Munir, in case of *Tariq Transport Company, Lahore Versus Sargodha Bhera Bus Service*, PLD 1958 S.C. 437, as follows:

“I consider it to be wrong on principle for the High Court to entertain petitions for writs, except in very exceptional circumstances, in the law, provides a remedy by appeal to another Tribunal fully competent to award the requisite relief. Any indulgence to the contrary by the High Court is calculated to create distrust in statutory tribunals of competent jurisdiction and to cause an undeserved reflection on their honesty and competency and thus to defeat the legislative intent.”

10. In light of the above discussion, we are of the view that the instant Intra Court Appeal is not competent and therefore, the same is dismissed in limine.

(NOOR-UL-HAQ N. QURESHI) (ATHAR MINALLAH)
JUDGE JUDGE

Announced in open Court, on 07th July, 2014.

JUDGE

CHIEF JUSTICE