JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

OGRA APPLICATION NO. 07/2020

M/S GAZCON CNG.
Vs.
OIL AND GAS REGULATORY AUTHORITY THROUGH CHAIRMAN AND ANOTHER.

Applicant by	**:**	**Barrister Afan Khan.**
Respondents by	**:**	**Mr. Yasir Aman Khan, Advocate.** (For Respondent No.1) **Barrister Sohail Nawaz.** (For Respondent No.2)
Date of hearing	**:**	**20.01.2022.**

SAMAN RAFAT IMTIAZ, J. Through the instant application under Section 12(2) of the Oil and Gas Regulatory Authority Ordinance, 2002 ("OGRA Ordinance"), the Applicant/Petitioner has assailed the Order dated 14.05.2020 ('Impugned Decision") passed by the Respondent No. 1 (conveyed to the Applicant through letter No. OGRA-App-26-4(239)/2019-CNG dated 01.06.2020 received on 02-06-2020), whereby Respondent No. 1's earlier decision imposing regularization charges of Rs. 1,000,000/- upon the Applicant on account of violation of Rule 11 of CNG Marketing Rules, 1992 / regulatory decisions of the Authority/licensing conditions etc., was upheld and Applicant's Review Petition was disposed of.

2. Brief facts, as per contents of the Application, are that the Applicant operates a CNG Station by the title of *"Gazcon CNG"* at Pasroor Road, Sialkot District, Punjab under CNG Marketing License No. CNG-18(3221)/2006 granted by the Respondent No. 2 on 27th November, 2007. Due to shortage of CNG in 2011, the Applicant found it difficult to continue running the CNG Station profitably and decided to install a petrol pump at the aforementioned site and in this regard entered into a Dealership Agreement with M/s Attock Petroleum Ltd.

3. According to the Applicant, it applied to the Respondent No.1 in November, 2013 for alteration of works i.e., addition of an Attock Petroleum Limited petrol pump at their CNG Station site but despite their repeated efforts their application could not be decided due to various reasons beyond the control of the Applicant

including incomplete quorum of the Respondent No. 1, etc., and as such, the matter faced an inordinate delay.

4. Per Applicant the Applicant undertook all necessary legal formalities needed for the purpose of alteration of works including obtaining approval from Chief Engineer Explosives that was granted vide letter dated 24.06.2014. According to the said approval, the works were required to be completed within six months therefore the applicant started the work in order to stay within the said timeframe. After completion of the works by the Applicant the Chief Inspector Explosives granted a new license on 02.06.2015.

5. According to the Application, Respondent No.1 vide decision dated 20.06.2017 decided to regularize all CNG stations which had installed petrol pumps without prior permission for alteration of works subject to payment of regularization Fee of Rs. 500,000/-. This decision was communicated to the Applicant vide letter dated 07.07.2017 ("First Amnesty Scheme") despite the fact that Applicant's application regarding approval for installation of Petrol Pump at the CNG Station site was pending with the Respondent No.1 for nearly four years.

6. The Applicant filed a review on 15-08-2017 with respect to the fees payable under the said First Amnesty Scheme.

7. In the meantime, the Applicant's attention was drawn to an advert in The Business Recorder dated 30th November 2019 with an Amnesty Scheme ("Second Amnesty Scheme") permitting regularization for those CNG Licensees who have made alteration of works provided a fee of Rs. One Million is paid along with submission of prescribed documents. The last date of the Second Amnesty Scheme was set as 31st December, 2019. The Applicant paid the amount mentioned above under protest. The matter was heard on 23-01-2020 and Respondent No. 1 passed the Impugned Decision on 14-05-2020. Hence, the instant application whereby the Applicant has not only prayed, *inter alia,* for the Impugned Decision to be set aside but also for its application for alteration of works filed in November, 2013 to be accepted and for an order for the return of the amount of Rs. 1,000,000/- paid under protest.

8. Learned counsel for the Applicant, *inter alia*, submitted that the Impugned Decision is a non-speaking order, which has been passed without application of judicial mind and it is in violation of Article 12 of the Constitution of the Islamic Republic of Pakistan, 1973. Learned Counsel submitted that at the most, the

Respondent No. 1 can impose a penalty of Rs. 50,000/- under Rule 20 of the CNG (Production and Marketing) Rules, 1992 ("CNG Marketing Rules"). He further contended that the parent statute of the said rules i.e., the Regulation of Mines and Oil-Fields and Mineral Development (Government Control) Act, 1948 ("1948 Act") confers rule making authority under Section 2 thereof upon the Government, however, no rules enhancing the penalty as given in Section 20 of the CNG Marketing Rules have been framed by the Government to date. Therefore, the demand of Rs. 500,000/- under the First Amnesty Scheme and for Rs. 1,000,000/- under the Second Amnesty Scheme which has been upheld by the Impugned Decision is beyond the powers of the Respondent No. 1 and constitutes extortion. As such, the Applicant has prayed for setting aside of the Impugned Decision.

9. Learned counsel for the Respondent No. 1 opposed the arguments of the Applicant and supported the Impugned Decision as being lawful and justified, based on cogent reasons and result of proper application of judicial mind. He submitted that as mentioned in the Impugned Decision, the Applicant requested Respondent No. 1 for alteration of works vide letter dated 13-12-2013. Petitioner was advised on 26-12-2013 to file fresh request with necessary changes. However, on 18-05-2016, Respondent No. 1 received report that the Applicant's CNG station had already been converted into Attock Petroleum retail outlet. Since the Applicant was found in violation of rules, a show cause notice was issued on 10-10-2016. The Applicant deposited an amount of Rs. 50,000/- as penalty. However, the Applicant was informed vide letter dated 04-01-2017 that its request for alteration cannot be acceded to as certain restrictions were imposed on certain OMCs since 02-12-2015 for expansion of their retail network throughout the country and therefore the Applicant was directed to remove the petrol pump within 30 days of the issuance of the said letter. The Applicant filed a review petition on 02-02-2017.

10. In the meantime, certain decisions were taken by the Respondent No. 1 regarding regularization as a number of other CNG stations were in the same situation. Copies of the relevant decisions taken by the Respondent No. 1 regarding imposition of regularization charges and periodic enhancement thereto were provided during arguments. It may be seen from such copies that Respondent No.1 in its Regulatory Meeting No.12 of 2016 held on 20.12.2016 decided that no regularization of violation will be granted to those CNG Stations where alteration in works (addition of petrol pump) has been taken without permission of Respondent No.1 in violation of Rule 11 of the CNG Marketing Rules, 1992.

Subsequently, such decision was reviewed/revisited by Respondent No.1 in its Meeting No.1 of 2017 held on 14.06.2017. In this meeting, keeping in view the investment made by the companies, Respondent No.1 decided that requests of all CNG Stations be regularized subject to payment of regularization fee of Rs. 500,000/- in case a CNG Station has added a petrol pump without obtaining prior permission for alteration of works from Respondent No.1.

11. As per the case history given in the Impugned Decision, the Applicant's review petition dated 02-02-2017 against removal of petrol pump from its CNG station was disposed of accordingly. However, Applicant filed review petition on 15-08-2017 against imposition of "regularization charges" of Rs. 500,000/-.

12. In the meantime, Respondent No.1 in its regulatory Meeting held on 14.02.2019 decided that all requests for regularization after 14.02.2019 shall be subject to payment of regularization charges of Rs.1,000,000/-. Despite communication of the same, the Applicant did not deposit such charges within the prescribed period of time.

13. Thereafter, Review Petition of the Applicant was fixed before Respondent No.1 for hearing on 09.07.2019 however, it was revealed that the matter is *sub judice* before the Honourable Islamabad High Court. Since two parallel proceedings could not take place simultaneously, the Applicant was directed to withdraw his case from the Honourable Court if he wanted to proceed further before Respondent No.1. The Applicant provided proof of such withdrawal on 18.11.2019.

14. In the meantime, however, the Respondent No. 1 in its Regulatory Meeting No.25 of 2019 on 29.10.2019 had held that all pending requests received till 31.12.2019 shall be regularized subject to payment of regularization charges of Rs.1,000,000/-. The Applicant vide letter dated 27.12.2019 submitted regularization charges of Rs.1,000,000/- with a request to decide its pending Review Application. Thereafter, matter was heard on 23.01.2020 and the Impugned Decision was passed on 14.05.2020.

15. Learned counsel for the Respondent No. 1 submitted that reliance on the 1948 Act by the Applicant was misplaced as the said law has been superseded by the OGRA Ordinance. Learned counsel further submitted that the imposition of Rs. 500,000/- earlier and Rs. 1,000,000/- currently is not a penalty under Rule 20 of the CNG Marketing Rules, which are admittedly still in force and effect rather it

is a "regularization charge" imposed under the authority conferred pursuant to sub-section (3) of Section 6 of the OGRA Ordinance read with sub-sections (1) and (2)(a) thereof.

16. Learned counsel for Respondent No.1 also contended that the instant application is not maintainable in view of the fact that an application under Section 12(2) of the OGRA Ordinance is only maintainable in relation to any decision concerning a regulated activity in the event that there is no other adequate remedy provided. In support of this proposition, the learned counsel relied upon the cases of *Oil and Gas Regulatory Authority through Secretary versus Sui Southern Gas Company Ltd. and others , 2018 SCMR 1012; M/s Al-Muiz-1 CNG, Fateh Jang versus Federation of Pakistan and others, 2019 CLC 851; Muhammad Azam Khan Niazi versus General Manager, SNGPL, Islamabad, 2019 CLC 1998; SNGPL versus OGRA and others, PLD 2013 Lahore 289; SNGPL versus OGRA and another, 2016 CLC 562;* and *Sui Southern Gas Company Ltd (SSGCL) versus OGRA, PLD 2017 Sindh 567.* Learned counsel prayed for dismissal of titled application as being devoid of any merit.

17. Learned counsel for the Respondent No. 2 submitted that he is only representing a pro forma party and as such adopted the arguments presented on behalf Respondent No. 1.

18. While exercising his right of rebuttal, the learned counsel for the Applicant pointed out that even if the impugned regularization charge/fee is under the OGRA Ordinance, the imposition of fees and other charges under Section 6(3) of the OGRA Ordinance is required to be in accordance with rules. Whereas, rules may only be made by the Respondent No. 1 with the prior approval of the Federal Government as per Section 41 of the OGRA Ordinance. Per legal counsel no such rules have been framed yet.

19. As per the findings and observations of the Respondent No. 1 as recorded in the Impugned Decision, with regard to the Applicant's contention that they had completed/deposited documents with the Respondent No. 1 much prior to the decision of the Respondent No. 1 for imposition of regularization charges, the Respondent No. 1 observed that no written permission was granted to the Applicant and mere submission of documents cannot be considered as permission by the Respondent No. 1. As for the objection of the Applicant for allowing certain other CNG stations to install petrol pumps without regularization charges, the

Impugned Decision records that subsequently, the Respondent No. 1 reviewed its earlier decision in this regard and imposed regularization charges on all the CNG stations named by the Applicant, thereby eliminating all discrimination. After considering all the facts/ record, other related merits, arguments exchanged, the Respondent No. 1 observed that there is no material change in circumstances in the review petition and the case for waiver of regularization charges could not be established, and as such the earlier decision dated 13-11-2019, whereby Rs. 1,000,000/- was imposed as regularization charges upon violation of the rule 11 of CNG Rules 1992/regulatory decisions of the Authority/licensing conditions etc., by installing petrol pump at his CNG Station without prior permission of the Authority was upheld.

20. Arguments advanced on behalf of learned counsel for the parties have been heard and record perused with their able assistance.

21. I will first take up the objection regarding maintainability of the instant application as raised by the learned counsel for the Respondent No. 1 on the ground that adequate remedy is available in view of which recourse to the provisions of Section 12(2) of the OGRA Ordinance is not permissible.

22. The cases cited by the Respondent No. 1's counsel in this regard discuss the maintainability of an application under Section 12(2) of the OGRA Ordinance in view of remedies available under Sections 11 and 13 of the OGRA Ordinance. The former provides for complaints to be filed with the Respondent No. 1 against a licensee whereas the latter empowers the Respondent No. 1 to review, rescind, change, alter or vary any decision or rehear an application before deciding it in the event of a change in circumstances or discovery of new evidence where such new evidence would materially alter the decision.

23. The instant application filed by the Applicant/Applicant, on the other hand, is not a complaint against a licensee therefore the remedy under Section 11 of the OGRA Ordinance is not available. As far as the remedy under Section 13 is concerned, the Applicant has already availed it. In fact, it is the decision of the Respondent No. 1 in respect of the Applicant's review petition which the Applicant has impugned in the instant application under Section 12(2). Even otherwise, the Applicant in the instant case is not seeking a review, rescission, change, alteration or variation of any decision or rehearing of an application as a consequence of a change in circumstances or discovery of new evidence.

24. I have also taken note of the remedy provided under sub-section (1) of Section 12 of the OGRA Ordinance, whereby an appeal may be preferred to the Respondent No. 1 in case of a grievance by an order or decision of the delegatees of a power delegated by the Respondent No. 1 under Section 10 of the OGRA Ordinance. However, neither the imposition of the impugned regulatory charges nor the Impugned Decision have been taken by any delegatee in exercise of powers delegated to it under Section 10 of the OGRA Ordinance and therefore, such remedy is also not available to the present Applicant for the alleged cause of action as per the instant application.

25. As such, the case law cited by the learned counsel for the Respondent No. 1 in respect of maintainability of the instant Application is not relevant with the exception of the case of *Sui Southern Gas Company Ltd (SSGCL) versus OGRA*, PLD 2017 Sindh 567, wherein the Honorable Sindh Court dispelled a similar objection regarding maintainability of an application under Section 12(2) of the OGRA Ordinance before it and held that it was within the jurisdiction of the High Court in terms of Section 12(2) of the OGRA Ordinance to see whether or not the procedural requirements as required under the said Ordinance had been followed by Respondent No. 1 and to such extent the petitioner had no adequate remedy other than recourse to Section 12(2) of the OGRA Ordinance.

26. The Applicant through the instant application seeks a determination as to whether or not imposition of ‘regularization charges’ by the Respondent No. 1 for violation of Rule 11 of the CNG Rules, 1992 is within the parameters stipulated in the OGRA Ordinance. This Court finds that such determination is indeed within the scope of Section 12(2) of the OGRA Ordinance as there is no other remedy provided within such law to cater to the same. As such, this application is maintainable as no other adequate remedy is provided.

27. Now coming to the merits of the case, in answer to a query both the learned counsel for the Applicant as well as the Respondent No. 1 clarified that the petrol pump which was installed at the Applicant’s CNG station was under a dealership agreement with the M/s Attock Petroleum Ltd., who had a valid license issued by the Respondent No. 1 for the purpose of running a petrol pump. Therefore, while the petrol pump was being run under a valid license, the issue is that installation thereof at the Applicant’s CNG station constituted alteration of “works” which required prior permission from the Respondent No. 1. The term “works” has been

defined in Rule 2(k) of the CNG Marketing Rules, 1992 to "*include pipelines, machinery, or equipment including civil works established or installed, owned, controlled, operated or managed in connection with the compression of natural gas for the purpose of storage, filling or distribution of CNG"*.

28. There appears to be no dispute that the Applicant was not authorized under its license to alter the works at its CNG station without prior permission from the Respondent No. 1. Indeed, perusal of the said license attached with the Application shows that under condition no. (iv), the Applicant was required to get prior permission of the Respondent No. 1 in writing as per Rule 11 of the CNG Marketing Rules for any alteration, in addition to, or extension of the works of the Applicant's CNG station. In this regard, Rule 11 of the CNG Marketing Rules is reproduced herein below:

> *"11. Addition to or extension of the works - A licensee shall not make any alteration in, addition to, or extension of, his works as given in his plan and approved by the Authority, unless such alteration, addition or extension is authorized by the Authority."*

29. The Applicant contends however, that the maximum penalty for breach of rules has been provided in Rule 20 of the CNG Marketing Rules is reproduced herein below:

> *"20. Penalty for breach of rules.- Whosoever commits a breach of these rules shall without prejudice to any other action that may be taken against him , be punishable for every such breach with fine which may extend to fifty thousand rupees."*

In view thereof, the learned counsel for the Applicant argued that the demand of Rs. 1,000,000/- which has been paid under protest is in excess of permissible limits stipulated in the CNG Marketing Rules, 1992 and does not only constitute extortion but is also discriminatory to the Applicant in view of the fact that the Respondent No. 1 has already held in other cases that application of regularization fee cannot be made retrospectively where the requirements for the addition of petrol pump were completed much before the decision dated 20-06-2017 to impose regularization charges. Insofar as the latter objection is concerned, it has been answered comprehensively in the Impugned Decision, whereby it has been observed that any discrimination as objected to by the Applicant has been eliminated by the Respondent No. 1 after reviewing its decision by imposing regularization charges on all the CNG stations mentioned by the Applicant.

30. The question before this Court is whether the imposition of regularization charges by the Respondent No. 1 in the amount of Rs. 1,000,000/- vide decisions dated 14.02.2019 and October 29, 2019 in respect of violation of Rule 11 of the CNG Marketing Rules, 1992 is in accordance with the provisions of the OGRA Ordinance.

31. Indeed Rule 20 of the CNG Marketing Rules, 1992 provides a maximum of Rs. 50,000/- for any penalty that may be imposed by the Respondent No. 1 for breach of rules which would also include Rule 11. However, as noted above, the learned counsel for the Respondent No. 1 submitted that the imposition of Rs. 500,000/- earlier and Rs. 1,000,000/- currently is not a penalty under Rule 20 of the CNG Marketing Rules, 1992 rather it is a "regularization charge" imposed under the authority conferred pursuant to sub-section (3) of Section 6 of the OGRA Ordinance read with sub-sections (1) and (2)(a) thereof, which are reproduced hereunder:

> *"**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 licences for the carrying out of regulated activities and regulating such activities.*
>
> *(2) Without prejudice to the generality of the foregoing, the Authority shall-*
>
> > *(a) in the Manner prescribed in the rules, grant, issue, and renew licence, modify, amend, extend, suspend, review, cancel and reissue, revoke or terminate any licence for the undertaking of any regulated activity and to prescribe requirements to be satisfied by applicants for the grant of licence;*
>
> *(3) The Authority shall impose and collect such fees and other charges in respect of any of its functions at such rates as may be determined, from time to time by the Authority in accordance with the rules."*

32. By way of background, it may be seen that under sub-section 1 of Section 6 of the OGRA Ordinance, the Respondent No. 1 is exclusively responsible for granting licenses for carrying out regulated activities and regulating such activities. The term "regulated activity" has been defined under sub-section xxxii of Section 2 of the OGRA Ordinance to mean an activity requiring a license. Sub-section 2(a) of Section 6 of the OGRA Ordinance, *inter alia*, authorizes the Respondent No. 1 to grant licenses for the undertaking of any regulated activity. A license is compulsorily required under sub-sections 2(b) and (d) of Section 23 of the OGRA Ordinance for the construction or operation of CNG storage facility or undertaking

the transportation, filling, marketing or distribution of CNG. Therefore, it is a *function* of the Respondent No. 1 to grant licenses for the construction or operation of a CNG storage facility or for the purpose of undertaking transportation, filling, marketing, or distribution of CNG.

33. As may be seen from the reproduction herein above, sub-section 3 of Section 6 empowers the Respondent No. 1 to impose and collect fees and other charges in respect of any of its *functions* at such rates as may be determined, from time to time, by the Respondent No. 1 in accordance with rules. Therefore, Respondent No. 1 *is* empowered to impose and collect fees and other charges in respect of construction or operation of a CNG storage facility or for the purpose of undertaking transportation, filling, marketing, or distribution of CNG. However, such power is to be exercised in accordance with rules.

34. The rule making authority is given in Section 41 of the OGRA Ordinance, the relevant provisions of which are reproduced hereunder:

> *"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**.
>
> (2) Without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-
>
> (a) determination (where applicable) of rates and tariffs for regulated activities;
>
> (b) the terms and conditions for the grant, extension, modification amendment, issuance, renewal, suspension, review, cancellation and reissue, revocation, termination or transfer of a licence and including provision of information or records;
>
> (c) provision of fines for contravention of this Ordinance, the rules, the regulations and terms and conditions of licences;
>
> (k) levy of fees;…"

35. Perusal of the above shows that rules can indeed be made by the Respondent No. 1 for carrying out the purposes of the OGRA Ordinance however, they cannot be made by Respondent No. 1 without the prior approval of the Federal Government. Upon such approval, the rules are notified by the Federal Government in the official Gazette. As noted above, learned counsel for the Applicant stated that no rules have been notified in respect of regularization charges in the amount of Rs. 500,000/- or Rs. 1,000,000/- in respect of

unauthorized alteration of works by licensees at CNG stations and the said position has not been refuted by the learned counsel for the Respondent No. 1. The Impugned Decision also does not refer to any rules on the basis of which the purported regularization charges have been imposed. No such rules have been referred to by the Respondent No. 1 in its comments filed before this Court. Rather such imposition appears to be based only on decisions taken by the Respondent No. 1 unilaterally.

36. The learned counsel for the Respondent No. 1 has cited a number of judgments including *All Pakistan ZTBL Workers Union (CBA) and others versus Federation of Pakistan and others, 2021 PLC 1; Commissioner of Inland Revenue, Sialkot and others versus M/s Allah Din Steel and Rolling Mills and others, 2018 SCMR 1328; Wi-Tribe Pakistan Ltd. versus Federation of Pakistan and another, PLD 2009 Islamabad 41; Zia Ghafoor Paracha versus The Chairman Board of Intermediate and Secondary Education, Rawalpindi and others, 2002 PLC(C.S.) 1571; Kohinoor Chemical Co. Ltd. versus Karachi Municipal Corporation, PLD 1978 Karachi 872; M.U.A. Khan versus Rana M. Sultan and another, PLD 1974 SC 228;* and *Muhammad Nawaz Khan versus Ghulam Farid and another, PLD 1963 SC 623* wherein it has been held by various Courts that mere non framing of rules/regulations may not render the provisions of the OGRA Ordinance nugatory, redundant, unworkable or void. The glaring distinction between the facts of such cases and the instant case is that none of the aforementioned matters involved a provision of law which conferred a power that could only be exercised subject to framing of rules rather the general rule making authority was being used as a pretext for not taking action mandated by another provision under the same law. In such circumstances the respective Courts very rightly held on the basis of the use of the words *"may make rules"* that the power to make rules only indicates that in case such rules are made, the purposes of the statute would be effected in accordance with such rules. In essence where rules have not been framed, an enabling provision that empowers rule- making cannot be used as an excuse not to exercise authority under another provision unless rule making is a condition precedent to such exercise. In the instant case, the very provision that empowers the Respondent No. 1 to impose levies contains the condition that such imposition will be in accordance with rules. When the law provides a certain mode of doing a thing or for taking an action, it has to be done in that manner alone. Therefore, in the facts and circumstances of the case, it is clear that imposition of fees and other

charges under sub-section 3 of Section 6 of the OGRA Ordinance can only be undertaken by the Respondent No. 1 in accordance with rules.

37. The learned counsel for the Respondent No. 1 has also cited a number of judgments including unreported case of *Khyber Medical University, etc. versus Aimal Khan, etc. passed by the Hon'ble Supreme Court of Pakistan in C.P.No. 3429/2021; Mian Irfan Bashir versus The Deputy Commissioner (D.C) Lahore and others PLD 2021 SC 571; Chief Executive Officer, Multan Electric Power Company Ltd. Khanewal Road, Multan versus Muhammad Ilyas and others, 2021 SCMR 775; National Engineering Services Pakistan (NESPAK) Pvt. Ltd. and others versus Kamil Khan Mumtaz and others, 2018 SCMR 211; Dossani Travels Pvt. Ltd. and others versus M/s Travels Shop (Pvt) Ltd. and others, PLD 2014 SC;1* and *James L. Kisor versus Robert Wildie, Secretary of Veterans Affairs, 2019 SCMR 1229 [Supreme Court of the United States]*, whereby it has been held that technical or policy matters are left to be dealt with by technical experts/regulators/competent authorities under the law. There is no cavil to such proposition, however, the matter before this Court in the instant application is neither technical nor a policy matter and falls strictly within the domain of this Court's jurisdiction under Section 12(2) of the OGRA Ordinance as discussed in detail herein above.

38. This Court, therefore, holds that the Respondent No. 1 is not empowered to impose or to collect any fees or charges under Section 6(3) of the OGRA Ordinance without making rules in accordance with Section 41 of the OGRA Ordinance. As such, the imposition of 'regularization charges' pursuant to Section 6(3) of the OGRA Ordinance in the amount of Rs. 1,000,000/- or any amount, whatsoever, for the regularization of the Applicant's unauthorized alteration of works at its CNG station in violation of Rule 11 of the CNG Marketing Rules, 1992 without making rules in accordance with Section 41 of the OGRA Ordinance is held to be ultra vires thereof.

39. In view of the foregoing, the Respondent No. 1 is liable to refund the amount of Rs. 1,000,000/- paid by the Applicant as regularization charges which are held ultra vires vide this judgment. However, the consequence of such refund would be that the Applicant's application for alteration of works/review petition shall be deemed pending as this Court can also not lose sight of the fact that in response to such application the Applicant was required to remove the petrol pump

and the review application against such order was not decided by the Respondent No. 1 on merits. Rather it was disposed of in terms of the Respondent No. 1's decision to regularize all such CNG stations who had undertaken alteration of works (i.e. addition of petrol pumps) without permission in consideration of payment of the regularization fee which has been held ultra vires vide this judgment. In case of refund of such consideration, the application for alteration of works/review petition shall be decided by the Respondent No. 1 on merits in accordance with the law.

40. Consequently, the instant petition is partly allowed to the extent that the Impugned Decision is, hereby, set aside and the Respondent No. 1 is directed to refund the amount of Rs. 1,000,000/- paid by the Applicant as regularization charges, being ultra vires the OGRA Ordinance and to decide the Applicant's application for alteration of works at its CNG station/review petition in accordance with the law.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on **12th April, 2022.**

JUDGE

Approved for Reporting
Blue Slip added.