

IN THE SUPREME COURT OF PAKISTAN
(Review/Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE JAMAL KHAN MANDOKHAIL
MRS. JUSTICE AYESHA A. MALIK

C.R.P.540/2023

(For review of judgment dated 07.02.2023
passed by this Court in
C.P.L.A.3113/2020.)

And

C.M.A.5277/2023

In C.R.P.NIL/2023

In C.P.L.A.3113/2020

(Against order dated 30.09.2020 passed by
the Islamabad High Court, Islamabad in
W.P. No.1381/2020.)

Oil & Gas Regulatory Authority, Islamabad	...	Petitioner C.R.P.540/2023
Hydrocarbon Development Institute of Pakistan (HDIP), through its Director General, Islamabad	...	Applicant C.M.A.5277/2023
Vs		
Gas & Oil Pakistan Limited, Lahore and another	...	Respondents

For the Petitioner : Ch. Hafeez Ullah Yaqub, ASC
C.R.P.540/2023

For the Applicant : Mr. Rehan-ud-Din Khan, ASC
C.M.A.5277/2023

For the Respondents : Ch. Hafeez Ullah Yaqub, ASC
C.M.A.5277/2023

Mr. Rehan-ud-Din Khan, ASC
C.R.P.540/2023

Date of Hearing : 14.02.2025

ORDER

Munib Akhtar, J.: There are before us two matters both seeking to review the judgment of the Court dated 07.02.2023 in CP 3113/2020 (titled *Oil and Gas Regulatory Authority v Gas and Oil Pakistan Ltd. and another*). The judgment under review had refused to grant leave to appeal against a decision of the Islamabad High Court whereby a writ petition filed by Oil and Gas Pakistan Ltd.

(herein after the “contesting respondent”) had been allowed. The respondents in the writ petition had been the Oil and Gas Regulatory Authority (“OGRA”) and the Hydrocarbon Development Institute of Pakistan (“Institute”). Both are statutory bodies created by and under eponymously titled statutes being, respectively, an Ordinance of 2002 (“2002 Ordinance”) and an Act of 2006 (“2006 Act”). It is pertinent to note that the leave petition in this Court had been filed only by OGRA; the Institute had not sought leave to appeal. Against the judgment refusing leave to appeal OGRA has lodged a review petition (CRP 540/2023) while the Institute has filed an application (CMA 5277/2023) seeking permission to present a review petition. These are the two matters that fall to be decided.

2. The facts may be stated briefly. It appears that OGRA initiated certain action against the contesting respondent under the Pakistan Oil (Refining Blending, Transportation, Storage and Marketing) Rules, 2016 (“2016 Rules”) which have been framed by the Authority in terms of statutory powers conferred on it by the 2002 Ordinance. For purposes thereof samples had to be drawn from the petroleum products of or held by the contesting respondent. For this purpose, OGRA authorized the Institute to enter the contesting respondent’s premises and take the samples on its behalf. On the basis of such sampling a fine was imposed by OGRA on the contesting respondent. In the High Court, the action and consequent fine were challenged on the ground (as now relevant) that as a matter of law the Institute could not have been authorized by OGRA to act on its behalf. As noted, the challenge succeeded. OGRA sought leave to appeal against the judgment of the High Court. While refusing leave to appeal this Court, after reviewing the relevant statutory provisions (being principally rule 54 of the 2016 Rules and certain clauses of s. 4 of the 2006 Act), concluded that as a matter of law and on the proper interpretation of the provisions involved the High Court had reached the correct conclusion. Leave to appeal was therefore refused.

3. We first take up the review petition filed by OGRA (CRP 540/2023). It was pointed out to learned counsel that the judgment under review had proceeded solely on a consideration of a pure question of law, i.e., as to whether the relevant statutory

provisions had been correctly interpreted by the High Court in concluding that the Institute could not have acted on behalf of (or have been so authorized by) OGRA. The answer given was in the affirmative. That was the sole basis of the judgment under review. It was this conclusion that learned counsel sought to challenge. In our view when the decision (more formally, the *ratio decidendi*) turns solely on a pure question of law, and all the more so when that question is exclusively a matter of statutory interpretation, it is not enough for the review petitioner to contend that the interpretation is incorrect. To allow such a ground to be taken would be, in effect, to allow the review petitioner to reargue the case. In such circumstances, in our view, the ground for review would have to be that the decision was *per incuriam*; it is difficult to conceive of any other reviewable ground being available. As to what renders a decision *per incuriam* is well established and those principles need not be rehearsed here. It suffices to note that when we invited learned counsel to take us to that part of the review petition where such a ground had been set up he was, with respect, quite unable to do so. No such ground (which, as noted, could be the only viable ground (if at all any) in the present circumstances) having even been presented it was not possible for the review petition to succeed. Accordingly, it stood dismissed and it was so announced at the conclusion of the hearing.

4. We turn to the application presented by the Institute (CMA 5277/2023). As noted, the Institute did not seek leave to appeal in this Court against the decision of the learned High Court. As such, insofar as it was concerned, the matter attained finality. The only ground taken in the application (i.e., for the Institute to be allowed to seek a review of the judgment of this Court) was that it had been condemned unheard inasmuch as no notice had been issued to it. With respect, this ground is hardly sustainable. In the leave petition presented by OGRA the Institute was the second respondent (the first being of course the contesting respondent). When the leave petition was taken up, counsel for the petitioner (i.e., OGRA) was in attendance and heard. Thereupon the petition was dismissed. No notice was issued to either of the respondents. This is entirely in keeping with the practice and procedure of the Court. It is hardly open to a person who was party to the

proceedings in the High Court and was heard there (as was the situation in the case at hand) but chose not to assail the latter's decision in this Court to then turn around and complain, on some other party's leave petition, that the same was dismissed without notice to it. Such a contention, especially in the context of seeking to invoke the review jurisdiction of the Court, is wholly bereft of merit and ought, with respect, to be given short shrift. The application was accordingly dismissed and it was so announced at the conclusion of the hearing.

5. Both matters stand dismissed in the above terms.

Judge

Judge

Judge

Islamabad, the
14th February, 2025
Naveed/*

Approved for reporting