

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Amin-ud-Din Khan

Civil Petition No.205-L of 2017

*(on appeal from the order of Lahore High Court, Lahore
Dated 13.12.2016, passed in W.P. No.36461 of 2016)*

Wafaqi Mohtasib Secretariat, Islamabad, etc.

.....Petitioners

Versus

SNGPL, Lahore, etc.

.....Respondents

For the petitioners: Hafiz Ahsaan Ahmad Khokhar, ASC
Mr. Imtiaz A. Shaukat, AOR
Mr. M. Usman Arif, DAG.

For the respondents: Mr. Umar Sharif, ASC.

Date of hearing: 11.08.2020

ORDER

Syed Mansoor Ali Shah, J.- Brief facts of the case are that Respondent No.2, an industrial gas consumer, approached the *Wafaqi Mohtasib* (Ombudsman) to complain about the excessive gas billing by Sui Northern Gas Pipeline Ltd. (SNGPL), Respondent No.1 and the “mal-administration” at the hands of its officials. In the “Findings Recommendations” issued by Wafaqi Mohtasib’s Secretariat dated 28.10.2014 the complaint of Respondent No.2 against Respondent No.1 was rejected finding no mal-administration on the part of Respondent No.1. Thereafter, the Respondent No.2 filed a review and in its “Revised Findings” and “Final Recommendations for Implementation” issued by the Wafaqi Mohtasib’s Secretariat on 26.02.2016, Respondent No.1 was recommended to reconsider the matter by adopting proper procedure and take disciplinary action against the delinquent officers, etc. Respondent No.1 challenged these Recommendations of the Ombudsman before the High Court and vide impugned order dated 13.12.2016 the High Court¹ held that the disputes pertaining to detection bills on allegations of meter tampering fell within the exclusive jurisdiction of the Oil and Gas Regulatory

¹ In W.P.No. 36461/2016

Authority ("**OGRA**") under the Oil and Gas Regulatory Authority Ordinance, 2002 ("**Ordinance**") and Ombudsman had no jurisdiction over such like matters. The writ petition was decided through the impugned order in favour of Respondent No.1 on 13.12.2016 and the said order, as per the learned counsel for the parties has not been challenged before this Court by the parties.

2. The petitioner before us is the Wafaqi Mohtasib's Secretariat (not the Ombudsman) with the prayer that order of the High Court be set aside. The alleged grievance of the petitioner, as disclosed in the petition, arises from the curtailment of the jurisdiction and powers of the Ombudsman in matters pertaining to gas detection bills and meter tampering which fall under the OGRA Ordinance. Without going into the merits of the case or commenting upon the merits of the impugned judgment, the primary question before us is whether Wafaqi Mohtasib's Secretariat (or for that matter even the Ombudsman) could maintain the instant petition by challenging the order of the High Court whereby the jurisdiction and powers of the Ombudsman under the Establishment of the office of the Wafaqi Mohtasib (Ombudsman) Order, 1983 ("**Order, 1983**") read with the Federal Ombudsman Institutional Reforms Act, 2013 ("**Act**") have been interpreted and determined. How is the Wafaqi Mohtasib's Secretariat or the *Wafaqi Mohtasib* (Ombudsman) aggrieved by the impugned order ? And more importantly, can the Ombudsman and his secretariat be aggrieved of an order which interprets and determines the jurisdiction and powers of the *Wafaqi Mohtasib* under the Order and the Act ?

3. Perusal of Order, 1983 reveals that Wafaqi Mohtasib's Secretariat is not a legal entity, infact it is not a defined term under Order, 1983² and does not enjoy any legal status or the power to sue or be sued under the law. Wafaqi Mohtasib's Secretariat is at best an administrative term and refers to the establishment of the offices of the Ombudsman under Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003. The filing of the instant petition by the Wafaqi Mohtasib's

² "Secretariat" is defined in Regulation 2(m) of the Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003 to mean: "the entire establishment of Mohtasib, including the Head Office and Regional Offices."

Secretariat is, therefore, hopelessly misconceived as it has no *locus standi* to maintain the instant petition.

4. Assuming, for the sake of argument, that the petition was filed by the Ombudsman, as he was arrayed as a respondent in the writ petition. Still the question arises, whether the Ombudsman is an aggrieved person in the instant matter ? The answer to this question requires an understanding of the distinction between the two roles enjoyed by the Ombudsman under Order, 1983. One is personal, that relates to the terms and conditions of service of the Ombudsman; while the other is the neutral quasi-judicial institutional role (or statutory) of the Ombudsman to “redress and rectify” mal-administration. In the first case the Ombudsman can be (personally) aggrieved regarding any order that affects his terms and conditions of service under Order, 1983, as that would be affecting his *rights* to service under the law. However, in the second case, the Ombudsman, cannot be said to be aggrieved, if the *powers* to redress mal-administration vested in him under the law are modified (enhanced or curtailed) by the Parliament or through interpretation of the constitutional court. Challenging the powers would be challenging the law and intent of the Parliament. Ombudsman, being a creature of the statute, cannot challenge the *powers* vested in him by the legislature, however, the parties to the proceedings may bring such a challenge. The *powers* enjoyed by the Ombudsman cannot be confused with his *rights* under the law.

5. Another way to look at it is that a neutral quasi judicial adjudicatory forum created under a statute cannot become a party to the proceedings brought before it. Such a forum is to simply to redress mal-administration by exercising its *powers* under the law. The Ombudsman by law and by design is not empowered to defend its decisions before a higher forum by becoming a party to the proceedings. This would totally tarnish its neutrality.

6. For the above reasons, even the Ombudsman has no *locus standi* to challenge an order passed by the constitutional court that interprets its jurisdiction or powers under the law.

Therefore, the instant petition filed by the Wafaqi Mohtasib's Secretariat is hopelessly misconceived and not maintainable.

7. The filing of this petition by the Wafaqi Mohtasib's Secretariat through its Secretary has left us concerned and disturbed. We, therefore, direct the Ombudsman to hold an inquiry into the matter and submit a report to this Court within two months from today as to who had authorized the filing of the instant petition and the action taken against the concerned officials.

8. This hopelessly misconceived petition passes for frivolous litigation and has resulted in wasting the time of the court. Therefore, this petition is dismissed with costs of Rs.100,000/- imposed under Order XXVIII, Rule 3 of the Supreme Court Rules, 1980. The costs shall be deposited with any approved, recognized and well-known Charitable Organization and receipt thereof be submitted with the Deputy Registrar of this Court (Lahore Registry) within two months from today. In case of failure to comply with the directions in this paragraph or paragraph 7 (above), the office shall fix this petition before the Court for necessary orders. Leave is, therefore, declined and this petition stands dismissed with costs.

Judge

Lahore,
11th August, 2020.
Approved for reporting
Iqbal

Judge