

IN THE HIGH COURT OF SINDH, KARACHI

**M.A. No.31 of 2019**

**Present: Mr. Justice Nazar Akbar**

Appellants : M/s. Mehran Oils (Pvt) Limited  
through Mr. Shahenshah Hussain Advocate.

**Versus**

Respondent : Oil & Gas Regulatory Authority,  
Through Mr. Asim Iqbal, Advocate.  
Mr. Ishrat Zahid Alvi, Asst: Attorney General.

Date of hearing : **12.03.2020**

Date of Judgment : **18.05.2020**

**J U D G M E N T**

**NAZAR AKBAR, J:-** The appellant is aggrieved by the decision/direction of the Respondent whereby an additional condition on the licence of appellant for Lube Oil Blending Plant to upgrade its equipment has been imposed in accordance with **Rule 12(1)** read with Schedule-V, Part-A and/or Part-B of the Rules of 2016 within one year, followed by a warning that in case of failure by **17.7.2019**, stern action will be initiated without any further notice. The said decision/ direction of the Respondent was conveyed to the appellant through letters dated **11.01.2018** and **15.3.2019**. Therefore, the appellant having no other remedy filed instant Misc: Appeal under **Section 12(2)** of the Oil & Gas Regulatory Authority Ordinance, 2002 (the OGRA Ordinance) against the said decision with the prayer that this Hon'ble Court may be pleased to restrain the Respondent from taking any adverse action against the appellant on that account.

2. The brief facts leading to this Miscellaneous Appeal are that the appellant is a private limited company dealing in the blending and selling of lube oil products. The appellant in **May 1983** applied to the then Ministry of Petroleum & Natural Resources (Technical Wing), Islamabad, and with approval vide letter dated **19.07.1984** the appellant setup a lube oil blending plant at Hyderabad and since then the appellant is carrying on its business in accordance with law. In the year 2002 a new law known as Oil & Gas Regulatory Authority Ordinance 2002 (OGRA Ordinance, 2002) was enacted to regulate petroleum industry and under **Section 3** thereof an authority called 'Oil and Gas Regulatory Authority' (OGRA) was established. The Authority under **Section 6** of OGRA Ordinance, 2002 is *exclusively responsible for granting licences for carrying out of regulated activities and regulating activities*. However, according to **Section 45** of OGRA Ordinance, 2002, all persons including the appellant lawfully carrying on regulated activities were protected and deemed to have been validly carrying on such regulated activities pursuant to the OGRA Ordinance on the same terms and conditions which were applicable to them before the commencement of the OGRA Ordinance with one formal condition that all such person shall apply for licence in accordance with the relevant Rules. The Authority under **Section 41** *ibid* after 14 years framed rules called the 'Pakistan Oil & Gas (Refining, Blending, Transportation, Storage & Marketing) Rules 2016 (hereinafter the **Rules of 2016**). The appellant, being an existing blending plant applied for licence in compliance of **Section 45(2)** of the OGRA Ordinance read with **Rules 13(2)** of the Rules of 2016 on the format set out in **Part-D** of **Schedule-I** within ninety days. The Respondent vide letter dated **08.3.2017** issued formal licence to the appellant. The appellant as ever carrying on its business in

accordance with the terms of the licence and is also maintaining the prescribed standard and specification of petroleum products. It is further averred that the Respondent served upon the appellant a letter dated **11.01.2018** purportedly issued in exercise of power under **Section 6(2)(a)** of the OGRA Ordinance read with **Rule 13** of the Rules directing up-gradation of the equipment of the blending plant in accordance with **Rule 12(1)** read with **Schedule-V Part-A** and **Part-B** within one year. In response thereto, the appellant approached the Respondent through letter dated **28.7.2018** explaining the factual position that the appellant's licence is under **Rule 13(2)** of the Rules of 2016 and it is perpetual in nature and requested for withdrawal of said demand. However, the Respondent ignored appellant's reply and through another letter dated **15.03.2019** threatened that stern action would be taken for not complying with direction contained in the letter dated **11.01.2018**. The appellant, therefore, through letter dated **20.04.2019** replied the last letter of the Respondent and to avoid any mischief filed the instant Miscs: Appeal.

3. The Respondent has filed objections wherein, amongst others, raised a preliminary legal objection that the instant Misc: Appeal is not maintainable as the appellant has two remedies available to him under **Section 11** and **12(1)** of the OGRA Ordinance, 2002. The Respondent also denied all other averments of the instant Misc; Appeal and contended that the appellant has been maliciously trying to intermingle the existing lube oil manufacturing plants and the new lube oil manufacturing plants, on the contrary both are governed and maintained through entirely different criterion and rules. The existing plants are allowed to continue the operation as before the date of

notification of the Rules of 2016, whereas, the new lube oil manufacturing plants are bound as per law to construct or operate the plants in accordance with **Schedule-V, Part-A** (for blending) and **Part-B** (for reclamation and Grease plants). The Respondent averred that while removing the anomaly and in exercise of its powers conferred under **Section 6(2)(a)** of OGRA Ordinance, 2002 read with **Rule 13** of the Rules of 2016 has imposed additional condition on all existing licensed lubricant plants vide letter dated **11.01.2018**. Besides, the Respondent also got the same instructions published in daily newspapers dated **20.07.2018** for the notice of public at large in general and the Respondent provided ample opportunity for about one year to all the licensees including the appellant for the implementation of the mandatory condition as described in the letter dated **11.01.2018** wherein a deadline for implementation of the condition was notified as **10.01.2019** and despite all sincere efforts by the Respondent a number of licensees were reported for non-compliance of the instructions duly issued by the Respondent. Therefore, the Respondent initiated a drive of conducting the visits at the site of such plants and in this context on **19.02.2019** joint visit was conducted by the Respondent along with a third party Inspector i.e Hydrocarbon Development Institute of Pakistan (HDIP) and the plant/laboratory of the appellant was found deficient in two equipments namely Atomic Absorption Spectrophotometer to determine metal content Ca, Zn and Mg and Cold Cranking Simulator as mentioned in **Schedule V, Part-A** (for blending plant), therefore, the appellant was advised to upgrade the plant and laboratory vide letter/reminder dated **15.03.2019**. The Respondent, therefore, prayed for dismissal of the instant Misc: Appeal.

4. I have heard learned counsel for the parties and requested them to kindly file written synopsis of their contentions. Only learned counsel for the appellant has filed written arguments and learned counsel for the Respondent has not filed written arguments, therefore, I would rely on contents of objections to the appeal as contentions of the Respondent.

5. On the point of jurisdiction learned counsel for the appellant has contended that the appellants are not aggrieved by order or decision of any delegatee to whom any powers were delegated by the authority under **Section 10** of the OGRA Ordinance, 2002. The two letters do not refer to anyone said to have exercised power as delegatee for giving directions to the licensees to upgrade their plants and laboratories. Learned counsel for the Respondent has not denied the fact that impugned order/directions have not been given by someone to whom the Authority by general or special power has delegated the power to decide the up-gradation of plants and factories. Nor the letters through whom the licensees have been asked to upgrade equipment discloses that such decision has been taken by someone who was authorized to act in terms of **Section 10** of the OGRA Ordinance. Therefore, the contention of Respondent in para (d) of their objections to appeal that appellant had adequate remedy under **Sub-section (1) of Section 12** of the OGRA Ordinance is totally misconceived. The provisions of **Sub-section (1) and (2) of Section 12** of OGRA Ordinance are independent to each other. It is very clear from reading of the two subsections which are reproduced below:-

**12. Appeal, etc : -- (1)** Any person aggrieved by any order or decision of the delegates of a power delegated by the Authority under section 10 may, within thirty

days of the receipt of such decision or order, prefer appeal to the Authority and Authority shall hear and decide the appeal within ninety days from the date of its presentation.

- (2) In relation to any decision concerning a regulated activity, the High Court may, if it is satisfied that no other adequate remedy is provided, on application of an aggrieved party, make an order-
- (a) directing the Authority to refrain from doing anything it is not permitted by law to do, or to do anything the Authority is required by law to do; or
  - (b) declaring that any act done or proceeding taken by the Authority has been done or taken without lawful authority and is of no legal effect.

In the case in hand the decision conveyed to the appellant through the impugned letters seems to have been taken by the Authority itself in exercise of the powers conferred on the authority under **Section 6(2)(a)** of the OGRA Ordinance and Sub-section (1) of Section 6 *ibid* states that *“the Authority shall be exclusively responsible for granting licences for the carrying out of **regulated activities and regulating such activities**”*. In Section 12(1) on appeal is provided against **“any order or decision of the delegatee”**, whereas in Section 12(2) the phrase used is **“any decision concerning a regulated activity”**. The terms “order or decision of the delegatee” is not defined in the OGRA Ordinance, whereas “decision” taken by the Authority has been defined in **Section 2(vi)** *ibid*. It is relevant to reproduce definition of word “decision” in the given facts of the case which reads as follows:-

- (vi) **“decision”** means an order, determination, direction or decision **of the Authority** made in accordance with this Ordinance, rules and regulations, and “decide” shall mean the **action taken by the Authority** to arrive at such decision;

The bare reading of the impugned letter dated **11.01.2018** reveals that the Authority after making the rules under **Section 41** of the OGRA Ordinance by invoking provisions of **Section 6(2)(a)** *ibid* has taken a decision concerning a regulated activity for those licensees who were granted licence *to construct or operate new oil blending plants* to upgrade the equipment of the plants and factories. The reference to **Rule 12(1)** and **Part-A** and **Part-B** of **Schedule-V** of the Rules of 2016 is the distinguishing feature to understand the applicability of the decision, if at all, taken by the Authority to upgrade the plants and factories. There is no reference to any Order or decision of delegatee under **Section 10** of the OGRA Ordinance in any of the correspondence or public notices dated **20.7.2018** to identify the person as delegatee who had issued such directions. The bare reading of **Section 12** makes it clear that when the decision is **“concerning a regulating activity”** which adversely affects the licensee, the said aggrieved licensee can approach the High Court as no other adequate remedy is provided in the OGRA Ordinance, 2002 to deal with such decision of the Authority. The very language of **Section 12(2)** is somewhat in line with the provisions of **Article 199** of the Constitution of Islamic Republic of Pakistan, 1973 whereby an aggrieved person having no adequate remedy can approach the High Court for directions to the (Authority) the Government functionaries to refrain from doing anything it is not permitted by law to do or to do anything the Authority (the functionary) is required by law to do. In view of this discussion I hold that the objection as to the maintainability of the instant appeal is not sustainable.

6. The other contention of learned counsel that the Respondent has issued public notice (annexure R/4) and provided an opportunity

of one year for implementation of mandatory condition takes us nowhere. The public notice (annexure R/4) was addressed to the lubricant manufacturing plants who were holding licences to *construct or operate new blending plants* under **Rule 12(1)** of the Rules of 2016 read with **Schedule-V Part-A** and/or Part B. There is no reference to the lubricants manufacturing plant operating on a formal licence under **Rule 13(2)** read with **Schedule-I Part-D** of the Rules of 2016. The two schedules (**Schedule-V**, Part-A and **Schedule-I** Part-D) points towards entirely different requirements to qualify to meet the criteria for licence. Therefore, it is misconceived to claim that the public notice (Annexure R/4) was also addressed to and/or applicable to the appellant who is admittedly running the business of blending of lube oils products since 1983 and to whom the Authority has granted licence under **Rule 13(2)** read with **Part-D** of **Schedule-I** of the Rules of 2016. Likewise the report of joint inspection by Respondent with staff of Hydrocarbon Development Institute of Pakistan (HDP) points out deficiency mentioned in **Schedule-V, Part-A** also supplement the contention of appellant that any additional condition for the licence under **Rule 12(1)** of the Rules of 2016 is not applicable to the licence of the appellant. It is clearly admitted position that licence of the appellant is according to the format set out in **Part-D of Schedule-I** read with **Rule 13** and not under **Rule 12(2)** of the Rules of 2016 and, therefore, even otherwise the licence of appellant is out of the purview of decision/direction of the Authority which requires the licensee to adhere to the requirement of **Schedule-V, Part-A** of the Rules of 2016 said to have been pointed out by the third party.



7. Yet another aspect of the case is that the appellant's licence was continuation of an already existing licence according to the provisions of **Section 45** of the OGRA Ordinance. The **Section 45** *ibid* and **Rule 13** of the Rules of 2016, both begin with the phrase "*notwithstanding anything contained in this Ordinance*" (OGRA Ordinance). **Section 45** of the OGRA Ordinance, 2002 and **Rule 13** of the Rules of 2016 are reproduced below:-

**45. Application to existing operations: ---**

(1) *Notwithstanding anything contained in this Ordinance*, all persons lawfully carrying on regulated activities immediately before the commencement of this Ordinance shall be deemed to be validly carrying on such regulated activities pursuant to this Ordinance:

- (a) in case of all persons, other than those undertaking the transmission, distribution or sale of natural gas, on such terms and conditions as were applicable to them on the date of commencement of this Ordinance; and
- (b) in case of all persons undertaking the transmission, distribution or sale of natural gas, on such terms and conditions as were applicable to them pursuant to this Ordinance and the relevant rules,

on the condition that all such persons shall apply for licences in accordance with the relevant rules.

(2) **Upon application for issuance of licences** being made to the Authority by-

- (a) person, other than those undertaking the transmission, distribution or sale of natural gas, **such persons shall be issued licences by the Authority, on the terms and conditions applicable to them on the date of commencement of this Ordinance;** and
- (b) all persons undertaking the transmission, distribution or sale of natural gas shall be issued licences by the Authority on the terms and conditions applicable to them pursuant to this Ordinance and the relevant rules.

**Rule 13(1) and (2)** are reproduced below:-

**13. Criteria for grant of licence to existing blending plant, reclamation plant or grease plant.-(I) *Notwithstanding anything contained in Rule 12 regarding criteria for grant of licence for blending plant, reclamation plant or grease plant,* all persons lawfully carrying on the construction or operation of the aforesaid regulated activity immediately before the commencement of the Ordinance **shall be deemed** to be validly carrying on such regulated activity pursuant to the Ordinance and **on such terms and conditions as were applicable to them on the date of the commencement of the Ordinance, provided that all such persons shall apply, on the format set out in Part D of Schedule I for the grant of licences in accordance with these rules,** within ninety days of the commencement thereof.**

**(2)** Upon the making of applications to the Authority for the grant of licences, **such persons shall be granted licences by the Authority on the terms and conditions applicable to them on the date of the commencement of the Ordinance,** provided that if the existing oil blending plant, reclamation plant or grease plant fails to establish or maintain the terms and conditions of its construction or operation, as applicable to it on the date of the commencement of the Ordinance, the Authority shall either specify such other terms and conditions and for such period as it deems appropriate or may take further action in accordance with these rules.

The use of the phrase “notwithstanding anything contained in the Ordinance” and its repetition in relevant rule of the Rules of 2016 clearly indicates that the decision and directions contained in the letters dated **11.01.2018** and **15.3.2019** were not applicable to the appellant since the appellant falls within the category of **existing operations/existing blending plants** which were in the field before the commencement of the OGRA Ordinance.

8. The appellant’s licence has continued as it was before the commencement of the OGRA Ordinance and that is why the terms and conditions of licence under **Rule 13(2)** of the Rules of 2016 on the format out in **Part-D of Schedule-I** are entirely different from the

licences granted to the **new** lubricant manufacturing plants under **Rule 12(1)** of the Rules of 2016 on the undertaking given by them to meet the requirement as set out in **Schedule-V Part-A and/or Part-B**. This clearly suggests that there are two different categories of lubricant manufacturers; one who were in existence prior to commencement of OGRA Ordinance, 2002 and their licences under **Section 45** ibid were protected and such licensees were exempted from the application of the provisions of the OGRA Ordinance, 2002 and that is why even the terms and conditions of their licences as set out in Part-D of Schedule-I of the Rules of 2016 are different than the terms and conditions of licences granted to the **new oil blending plants** on the undertaking given by them to meet the requirement set out in **Part-A and/or Part-B of Schedule-V** of the Rules of 2016. The non-obstinate clause has been repeated by the Rules making Authority while making the rules in exercise of powers conferred on the Authority wherever it refers to the **existing lubricant blending plant** amounts to acknowledgement of the Authority that the OGRA Ordinance and its Rules shall not affect/or apply on the existing Lube Oil blending plant.

9. In view of the above factual and legal position any attempt of the Authority to amend/modify or change the criteria and/or terms and conditions of licence of the appellant would be in violation of the provisions of **Section 45** of the OGRA Ordinance as well as **Rule 13** of the Rules of 2016. Therefore, the contentions of the learned counsel for the Respondent that the directions to upgrade equipment by the Lubricant Manufacturing Plant in accordance with **Rule 12(1)** of the Rules of 2016 read with **Schedule-V Part-A** and/or Part-B was also applicable to the appellant is contrary to the law as well as the

Rules of 2016. In this context the contents of annexure R/4 and R/5 also very clearly negates the arguments advanced by the learned counsel for the Respondent.

10. The crux of the above discussion is that the Respondent is hereby directed to refrain from applying the so-called additional condition on the licensees to whom licences were granted under **Rule 13** of the Rules of 2016 including the appellant since they were already carrying out regulated activities of running lube oil blending plants immediately before the commencement of the OGRA Ordinance, 2002 and requirement of **Part-A** of **Schedule-V** of **Rule 12(1)(c)** of the Rules of 2016 are not enforceable against them. Consequently, the instant Misc: Appeal is allowed with no order as to cost.

JUDGE

Karachi, Dated:-18.05.2020

Ayaz Gul