

IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
Mr. Justice Muhammad Shafi Siddiqui, CJ &  
Mr. Justice Jawad Akbar Sarwana.

**Constitutional Petition No.D-4510 of 2024**

Adeel Khan  
Versus  
Federation of Pakistan and others

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Date of hearing: 16.09.2024  
Date of Short order: 16.09.2024  
Date of Reasons: 19.09.2024

Mr. Umer Ilyas Khan, advocate for the Petitioner.

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

**Muhammad Shafi Siddiqui, CJ.-** Petitioner in this petition has challenged the vires of Rules No.33, 42, 43, 44, 45, 46 and 47 of the Pakistan Oil (Refining, Blending, Transportation, Storage and Marketing) Rules, 2016 [Rules, 2016], notified through SRO No.44(I)/2016 dated 22.01.2016 mandating requirement of licence for import, sales, distribution etc. of grease as being ultra vires.

2. It is contended that the Oil and Gas Regulatory Authority Ordinance, 2002 [OGRA Ordinance, 2002] does not enable the Authority to regulate oil products/byproducts such as grease, which is a subject matter of this petition. Petition disclosed that the petitioner has imported a consignment of grease from China vide Bill of Lading No.A9024070890 dated 24.07.2024. It is further claimed in the petition that they have imported more than 100 consignments of grease and were released without any question or issue of importability in terms of Import Policy Order. The subject consignment could not be released to the petitioner on account of the hold/ detention which could only be relaxed subject to the

availability of import licence to be issued by Respondent No.2 under OGRA Ordinance, 2002 and Rules, 2016.

3. We have heard the learned counsel and perused the material available on record.

4. The importability and the import licence are two different and distinct subjects. Importability alone does not mean that goods cannot be regulated via licence. The importability of subject goods may have been ratified by the import policy, however, its importability could always be subject to licence to be issued by the Authority as required under the law. The only concern of the petitioner's counsel is that the OGRA does not regulate the products and byproducts of oil/crude oil and hence the Rules framed under the OGRA Ordinance, 2002 could not eclipse the frame and mandate of the Ordinance and as attempted by petitioner's counsel that the Rules have travelled beyond the frame of the Ordinance.

5. Section-2(v) of the Ordinance describes "crude oil" as all petroleum other than refined oil products and natural gas, and which at standard atmospheric conditions of pressure and temperature is in a fluid phase, including condensate. Similarly, definition in Section-2(xxi) describes "oil" which means all types of petroleum with the exception of natural gas, LPG, LNG and CNG; Section-2(xxiii) describes "petroleum" which means crude oil, refined oil products and natural gas; Section-2(xxx) describes "refined oil products" which means products that result from the refining of crude oil and includes, inter alia, furnace oil, motor gasoline, diesel, lubricating oils and other blended products, kerosene, jet fuel and LPG; whereas, "regulated activity" within the

definition in Section-2(xxxii) means an activity requiring a licence. The licence is required to be issued under Section-23 of the OGRA Ordinance, 2002.

6. Keeping in mind the frame of the Ordinance, the Rules were framed on 22<sup>nd</sup> January, 2016. Rule-33 requires that no person shall undertake the marketing of petroleum products without obtaining a licence from the Authority, whereas, Rule-42 restricts the oil marketing company or authorized importer from importing petroleum products of a quality other than the laid down specifications. Each imported consignment of petroleum products shall be subject to quality clearance from the approved laboratory in accordance with the procedure and testing charges as prescribed by the Authority from time to time; Rule-43 describes licence that no person shall undertake lubricant marketing without obtaining a licence from the Authority. Needless to say that the definition in Rule-2(xiv) of the Rules describes the lubricant as defined lubricating oils or greases of laid down specifications produced locally or imported; Rule-44 is meant for an application for licence to undertake lubricant marketing; whereas, Rule-45 discuss the criteria for grant of licence to new lubricant marketing companies; Rule-46 discuss the criteria for grant of licence to existing lubricant marketing companies; whereas, Rule-47, which is a last of the challenged rules, restricts the import for its onward sale in Pakistan which do not conform to the specifications prescribed therefor.

7. The substantive argument of the learned counsel for the petitioner is that these Rules overlap the frame of the Ordinance, as the Ordinance itself does not encompass the byproducts of

crude oil. We are unable to conceive this argument, as the definition of a crude oil which is being regulated by OGRA includes all petroleum other than refined oil products. This would not exclude the regulator that is OGRA to regulate any product/byproduct of oil, framed under the OGRA Ordinance, 2002.

8. We do not find the challenged Rules identified above to be beyond the scope of the OGRA Ordinance, 2002 and subject goods were rightly regulated by the OGRA through a licence to be issued by them as required under Section-23 of the OGRA Ordinance.

9. These are the reasons for our short order dated 16.09.2024 whereby this petition was dismissed.

Dated: - 19.09.2024

CHIEF JUSTICE

JUDGE

Ayaz Gul