JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

OGRA Application No.02 of 2020
M/s Abid CNG Station
Versus
Oil and Gas Regulatory Authority and another

Dates of Hearing: 28.04.2022 & 29.04.2022.
Applicant by: Barrister Sohail Nawaz.
Respondents by: Mr. Muhammad Sohaib Sheikh, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant application filed under Section 12(2) of the Oil and Gas Regulatory Authority Ordinance, 2002 (**"OGRA Ordinance"**), the applicant, M/s Abid CNG Station, impugns the order dated 24.01.2020 passed by the "Authority" as defined in Section 2(1)(i) of the said Ordinance, whereby the Authority's earlier order dated 12.06.2018 was reviewed and amended by imposing regularization charges of Rs.500,000/- on the applicant.

2. The facts essential for the disposal of the instant application are that on 13.08.2007, the applicant was granted a provisional licence by Oil and Gas Regulatory Authority (**"OGRA"**) to install a Compressed Natural Gas (**"CNG"**) Filling Station under the CNG (Production and Marketing) Rules, 1992 (**"1992 Rules"**). The said licence was valid for a period of two years.

3. On 19.10.2015, the applicant applied to OGRA for permission to install a petrol pump at its CNG Filling Station. The applicant had obtained a No Objection Certificate (**"NOC"**) from M/s Admore Gas (Pvt.) Ltd. for the installation of a petrol pump. Vide letter dated 20.04.2016, OGRA turned down the applicant's said application on the ground that M/s Admore Gas (Pvt.) Ltd. had not been allowed to expand its retail network in the country.

4. It is an admitted position that the applicant went ahead and established a petrol pump at its CNG Filling Station without having obtained OGRA's permission. When OGRA came to know about this, it directed the applicant, vide letter dated 02.03.2017, to remove the petrol pump installed at its CNG Filling Station within a

period of thirty days. In the said letter, it is mentioned that the applicant had entered into a lease agreement with an oil marketing company and had converted its CNG Filling Station into M/s Admore Gas (Pvt.) Ltd.'s retail outlet without prior permission of OGRA, and had thereby violated Rules 9 and 11 of the 1992 Rules. The said letter was based on OGRA's decision dated 20.12.2016 (which is not on the record). OGRA also sent letter dated 19.05.2017 to M/s Sui Northern Gas Pipelines Limited ("SNGPL") directing the latter to immediately disconnect the gas supply to the applicant's CNG Filling Station.

5. Aggrieved by OGRA's letter dated 02.03.2017, the applicant preferred an "appeal" before OGRA praying for a reconsideration of its decision regarding removal of the petrol pump from the applicant's CNG Filling Station. Furthermore, the applicant prayed that the matter be regularized by granting permission to the applicant for the installation of a petrol pump at its CNG Filling Station.

6. Vide letter dated 11.07.2017, OGRA informed the applicant that the former had reviewed and revisited its earlier decision dated 20.12.2016 conveyed to the applicant vide letter dated 02.03.2017. The latest decision of the Authority was taken on 20.06.2017, and the same is reproduced in the said letter dated 11.07.2017. For ease of reference, the Authority's decision dated 20.06.2017 is as follows:-

> ***"The 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 prior permission of the Authority and Rs.200,000/- in case a CNG station has added an equipment without obtaining prior permission of the Authority. All CNG stations should be apprised of this decision and advised to refrain from unauthorized activity in future lest such fees are increased by the Authority henceforth."***

7. Due to the said decision, the applicant's appeal was disposed of by OGRA as having been rendered infructuous.

8. The applicant preferred a review application before OGRA seeking for the decision regarding the imposition of the regularization fee of Rs.500,000/- to be reviewed. The said review application was disposed of vide order dated 12.06.2018 and

conveyed to the applicant vide OGRA's letter dated 13.06.2018. Paragraphs 16 to 18 of the said decision contained the operative part of the said decision. For the purposes of clarity, the said paragraphs are reproduced herein below:-

> ***"16. Arguments heard. Record perused. The Authority observed that the petitioner did complete all requirements of addition of petrol pump at its site much before the decision of the Authority dated 20-6-2017. Hence the applicability of said decision can't be legally made effective retrospectively. The penalty imposed at the petitioner i.e. Rs.50,000/- may be realized. The regularization fee of Rs.500,000/- is not applicable upon the petitioner retrospectively.***
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> ***17. Keeping in view the facts/merits of the case and arguments of the petitioner, the Authority of the view that since the petitioner has furnished all relevant documents along with processing fee for permission of alteration in CNG works and submitted the same on 19-10-2015 before the Authority's decision taken in Regulatory Meeting No. 01 of 2017 held on June 14, 2017 therefore, the decision of the Authority warrants review under section 13 of OGRA Ordinance, 2002. In view of aforesaid, it is decided that the petitioner will submit penalty of Rupees 50,000/- under Rule 20 of CNG (Production & Marketing) Rules, 1992 for violation of Rule-11 of CNG (Production & Marketing) Rules, 1992 within 15 days of the issuance of this decision in order to regularize the addition of petrol pump/retail outlet at its existing CNG Station.***
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> ***18. Instant review petition is disposed of in terms of para 17 above."***

9. OGRA reviewed its earlier decision dated 12.06.2018 vide subsequent decision dated 24.01.2020, whereby the earlier decision was amended and it was decided to impose regularization charges of Rs.500,000/- on the applicant. The said decision has been assailed in the instant application.

10. Learned counsel for the applicant, after narrating the facts leading to the filing of the instant application, submitted that OGRA's earlier decision dated 12.06.2018 was a decision on the applicant's "review petition" against the imposition of regularization fee of Rs.500,000/-; that the said regularization fee was imposed on the applicant vide OGRA's decision dated 20.06.2017; that vide the said decision dated 20.06.2017 conveyed to the applicant vide OGRA's letter dated 11.07.2017, OGRA's earlier decision dated 20.12.2016 had been reviewed / revisited; that OGRA could not review its decision taken on an earlier review petition; that the essential precondition for

reviewing OGRA's earlier decision had not been fulfilled in the case at hand; that for OGRA to review its earlier decision, there had to be a change in circumstances or the discovery of evidence which in the opinion of OGRA could not have reasonably been discovered at the time of the earlier decision; and that a second review by OGRA was not permitted under the law. Learned counsel for the applicant prayed for the application to be allowed and for the impugned decision dated 24.01.2020 to be set-aside and for OGRA's earlier decision dated 12.06.2018 to be restored. In making his submissions, learned counsel for the applicant placed reliance on the judgments in the cases reported as Sarfraz Vs. Senior Member, Board of Revenue (2020 YLR 1232), Dr. Munawar Ahmed Vs. Muhammad Aslam (2017 MLD 84), M. Aslam through legal heirs Vs. Member Board of Revenue (2017 YLR 2447) and Abdul Rehman Qureshi Vs. Auditor-General of Pakistan (2012 PLC (CS) 805).

11. On the other hand, learned counsel for OGRA submitted that the applicant had clearly violated Rules 9 and 11 of the 1992 Rules and had breached the conditions of its licence by installing a petrol pump at its CNG Filling Station without obtaining prior approval of OGRA; that OGRA had taken a policy decision to regularize the petrol pumps established at CNG Filling Stations without OGRA's permission by imposing a regularization fee of Rs.500,000/- on all licencees, including the applicant; that since the applicant had not obtained OGRA's permission before installing a petrol pump at its CNG Filling Station, it could not escape its liability to pay regularization fee; that under Section 13 of OGRA Ordinance, OGRA was well within its rights to have reviewed its earlier decision dated 12.06.2018, whereby the applicant was absolved from the payment of regularization fee; that the applicant had filed an "appeal" on 30.03.2017 against OGRA's decision directing the applicant to remove the petrol pump from its CNG Filling Station; that in the said appeal, the applicant had requested OGRA to *"regularize the matter"* by granting permission for the installation of a petrol pump at its CNG Filling Station; and that the impugned decision can be treated as

allowing the applicant's request for regularization *albeit* subject to the payment of regularization fee. Learned counsel for OGRA prayed for the application to be dismissed.

12. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

13. The facts leading to the filing of the instant application have been set out in sufficient detail in paragraphs 2 to 9 above, and need not be recapitulated.

14. The provisional licence dated 13.08.2007 was issued by OGRA to the applicant for the establishment of a CNG Filling Station at Jalal Pur Pirwala Road, Shujabad, District Multan. On 26.08.2014, a licence for compression of natural gas for the purpose of storing, filling and distribution of CNG was granted to the applicant. The said licence has a validity period of fifteen years. By virtue of the said licence, the applicant is permitted to store, fill and distribute CNG in automotive vehicles at its CNG Filling Station. The said licence was not for the establishment or installation of a petrol pump. It is not disputed that without having obtained OGRA's permission for installing a petrol pump at the CNG Filling Station, the applicant went ahead and installed the same by entering into an agreement with M/s Admore Gas (Pvt.) Ltd. OGRA's designated third party inspector (i.e., Hydrocarbon Development Institute of Pakistan) had reported on 08.11.2016 that the applicant's CNG Filling Station had been converted into M/s Admore Gas (Pvt.) Ltd.'s retail outlet. The installation of a petrol pump at the applicant's CNG Filling Station without OGRA's permission was a clear transgression of Rules 9 and 11 of the 1992 Rules which are reproduced herein below:-

> ***"9. Licensee not to sell, assign, transfer, convey or lease his license or works– No licensee shall, without the previous approval in writing of the Authority,***
>
> ***(a) Sell, assign, transfer, convey or lease his license or his works or any interest therein in whole or in part;***
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> ***(b) Enter into any agreement or contract for-***
>
> ***(i) the amalgamation of his works with those of any other person or corporation; or***
>
> ***(ii) the operation of his works by any other person or corporation;***
>
> ***(c) Mortgage or otherwise create a charge upon the works or any interest Therein.***

> ***11. <u>Addition to or extension of the works</u> - 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."***

15. OGRA's decision not to permit the applicant to install a petrol pump at its CNG Filling Station as well as OGRA's direction to the applicant to remove the petrol pump installed at its CNG Filling Station were assailed by the applicant before OGRA. The applicant, in its appeal dated 30.03.2017, had specifically requested OGRA to *"regularize the matter"* by granting permission for the installation of a petrol pump at the applicant's CNG Filling Station. The proceedings culminated in OGRA's decision dated 20.06.2017 (conveyed to the applicant vide OGRA's letter dated 11.07.2017), whereby OGRA reviewed its earlier decision not to allow the applicant to install a petrol pump at its CNG Filling Station. Vide the said decision dated 20.06.2017, all CNG Stations where petrol pumps had been established without OGRA's permission were regularized subject to the payment of regularization fee of Rs.500,000/-. OGRA's decision to impose a regularization fee on the applicant was assailed in a review petition filed by the applicant under Section 13 of the OGRA Ordinance. Vide OGRA's decision dated 12.06.2018 (conveyed to the applicant vide OGRA's letter dated 13.06.2018), it was held *inter alia* that the regularization fee of Rs.500,000/- was not applicable on the applicant, and that a penalty of Rs.50,000/- be imposed on the applicant.

16. The said decision dated 12.06.2018 has been reviewed by OGRA through the impugned decision dated 24.01.2020 by again imposing the regularization fee of Rs.500,000/- on the applicant.

17. Indeed, the applicant had violated Rules 9 and 11 of the 1992 Rules by installing a petrol pump at its CNG Filling Station without OGRA's permission but OGRA had regularized this aberration by imposing a regularization fee of Rs.500,000/- on the applicant. This decision to impose a regularization fee was reviewed by OGRA through its decision dated 12.06.2018 which sets out the reasons why the imposition of the said fee was not applicable on the applicant. In the said decision, it was mentioned

that the applicant had completed all requirements for the installation of a petrol pump at its site much before OGRA's decision dated 20.06.2017 to impose a regularization fee on the applicant. The impugned decision dated 24.01.2020 does not address this aspect of the case at all. OGRA appears to have lost sight of the fact that its earlier decision dated 12.06.2018 was on the applicant's review application. There is no provision in the OGRA Ordinance for a decision taken by OGRA on a review application to be reviewed again. In other words, there is no provision in the said Ordinance for a second review application. Section 13 of the OGRA Ordinance empowers OGRA / Authority to review, rescind, change, alter or vary any decision, or may rehear an application before deciding it in the event of a change in circumstances or the discovery of evidence, which in the opinion of OGRA / Authority could not have been reasonably discovered at the time of the decision or (in case of a rehearing) at the time of the original hearing if consideration of the change in circumstances or of the new evidence would materially alter the decision. Section 13 gives OGRA the power to review *"any decision"*, which would include an appellate decision taken by OGRA under Section 12(1) of the OGRA Ordinance or a decision under any other provision of the said Ordinance but would not extend to a decision already taken on a review petition under Section 13 of the said Ordinance.

18. It is well settled that the remedy of a review is a substantive right like that of the remedy of an appeal and has to be specifically conferred by statute. No Court or Authority has an inherent power to review its own order. Reference in this regard may be made to the law laid down on the judgments in the cases reported as S.A. Rizvi Vs. Pakistan Atomic Energy Commission (1986 SCMR 965), Riaz Hussain Vs. Board of Revenue (1991 SCMR 2307), Hussain Bakhsh Vs. Settlement Commissioner, Rawalpindi (PLD 1970 S.C. 1), Mst. Maqsoodan Bibi Vs. Mst. Bhano (PLD 1965 Lahore 183), Ferozuddin Vs. Mazhar Hussain Shah (PLD 2009 Karachi 397) and Ch. Ijaz Sarwar Vs. Nadeem Farooq (2004 CLC 1525).

19. The power of review is to be exercised strictly within the parameter laid down in the statute. Admittedly, there is no provision in the OGRA Ordinance empowering OGRA to review its earlier decision passed on a review petition. *Quasi* judicial authorities cannot assume powers of review which must be specifically conferred on them by a statute. The right to file a review petition or institute review proceedings is not an unending right and therefore OGRA's impugned decision passed in review proceedings initiated by OGRA with respect to a decision taken by OGRA on the applicant's review application was non-est and liable to be quashed.

20. Assuming that OGRA Ordinance did contain a provision for a second review, a review petition under Section 13 of the said Ordinance would be competent on the discovery of a new and important matter or evidence which, after exercise of due efforts and diligence, was not in the knowledge of the party seeking review at the time of the hearing of the case. In the case at hand, in the impugned decision dated 24.01.2020, it has not been mentioned as to which new evidence had been discovered or what the change in circumstances were that caused OGRA to review its earlier decision dated 12.06.2018. OGRA's decision to regularize petrol pumps that had been established at CNG Filling Stations without OGRA's permission was already in the field when OGRA's earlier decision dated 12.06.2018 was given. This circumstance was admittedly known to OGRA when the said decision dated 12.06.2018 was given and therefore, could not have formed the basis for reviewing the said decision. The absence in the impugned decision as to the discovery of new evidence or the change in circumstances is an added reason why the impugned decision cannot be sustained. The power of OGRA to review its earlier decision can be exercised only in the event of a change in circumstances or the discovery of evidence which could not have reasonably been discovered at the time of the decision under review. This essential condition for the exercise of the power of review by OGRA has not been satisfied in the case at hand.

21. In view of the above, the instant application is allowed; OGRA's decision dated 24.01.2020 is set-aside; and OGRA's earlier decision dated 12.06.2018 is restored. The applicant remains under an obligation to discharge its liability of paying the penalty of Rs.50,000/- if not paid already. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 12.05.2022.

(JUDGE)

Ahtesham*

APPROVED FOR REPORTING

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