JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION. NO. 801 OF 2025

PETROSIN CNG (PRIVATE) LIMITED

VS

OIL AND GAS REGULATORY AUTHORITY (OGRA), ETC.

Petitioner by:	**Mr. Afnan Karim Kundi, Misbah ul Mustafa and Adeel Aftab Chaudhry, Advocates.**
Respondents by:	**Mr. Muhammad Shoaib Sheikh, Advocate for Respondent No.1.** **Sardar Taimoor Aslam, Barrister Omer Malik, Mian Haseeb Ali Bhatti, Advocates for Respondent No.1-A.** **Mr. Irfan Ali Siddiqui, Deputy Secretary, Respondent No.2.**
Date of hearing :	**17.04.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as **"Constitution"**), the Petitioner [Petrosin CNG (Private) limited] has prayed for the following: -

a) Declare that impugned inaction of the Respondent No. 1 (OGRA) is in violation of the Constitution of the Islamic Republic of Pakistan, Oil and Gas Regulatory Authority Ordinance, 2002, the Compressed Natural Gas (Production and Marketing) Rules, 1992, the Natural Gas Regulatory Authority (Licensing) Rules, 2002, Flare Gas Policy, 1998 and the Flared Gas (FG) Utilization Guidelines, 2016 approved by the Council of Common Interests;

b. Direct the Respondent No. 1 (OGRA) to expeditiously decide and allow application dated 20.12.2017 hearing reference No.PCNG/CORP/0111 filed by the Petitioner wherein it had requested for issuance of a license for the Compression, Storage, and Sale of Flare Gas' as all the requirements of law have already been fulfilled; and

c. Restrain the Respondent No. 1 (OGRA) from taking any adverse action against the Petitioner including, in particular, undermining in any manner the Petitioner's Gas Sale Purchase Agreement dated 29.04.2022 with the supplier of gas on the basis of delay in grant of license to the Petitioner by OGRA.

2. The brief facts of the case as per the contents of the instant Petition are that the Petitioner, namely, Petrosin CNG (Pvt.) Ltd., is a private company limited by shares, registered under the Companies Ordinance, 1984 (now repealed and replaced by the Companies Act, 2017), with the object of carrying out the business of storing, filling, and distributing Compressed Natural Gas **("CNG")**. The Petitioner started its business operations of purchasing and selling Flare Gas in 2016 under the Flare Gas Policy, 1998. Prior to the entry of the Petitioner in 2016, a company namely, EGAS (Private) Limited ("EGAS") had commercial arrangements with MEL and MOL regarding the sale and purchase of Flare Gas from the subject field. EGAS was off-taking this gas without a license from OGRA, as the arrangements were made under the Flare Gas Policy, 1998, in the larger national interest of preserving domestic energy resources and protecting the environment. After EGAS exited, the Petitioner entered into a Gas Sale and Purchase Agreement dated 11.05.2016 ("GSPA 2016") with MEL and its partner, MOL Pakistan Oil and Gas Co. B.V. Under the GSPA 2016, the Petitioner was entitled to off-take 100% of the gas produced from the Halini Field by both MEL and MOL. Subsequently, upon the expiry of GSPA 2016 and following certain disputes with MOL, MOL's share was reduced, and the Petitioner was left with 60% of the gas produced from the subject field. For the sale of its 40% share in the gas production from the Halini Field, MOL entered into an agreement dated 09.08.2021 with GAP Distribution and Marketing (Private) Limited ("GAP"). The Respondent No. 1 (OGRA) granted a license to GAP on 23.07.2024 for the sale of Flare Gas from the same field. The Petitioner, on 20.12.2017, applied to OGRA for the issuance of a license for the 'Compression, Storage, and Sale of Flare Gas' under application No. PCNG/CORP/0111 under the NGRA Licensing Rules, 2002. Despite fulfilling all requirements, including those related to safety and regulatory compliance, the said application has not been decided to date. The Petitioner, being aggrieved by the impugned inaction of Respondent No. 1, has filed the instant petition.

3. The Petitioner's counsel argued that OGRA's inaction in processing the Petitioner's license application is unlawful, violating various legal provisions, including the Constitution and relevant regulatory laws. This delay undermines the Petitioner's right to conduct lawful business under Article 18 and violates Articles 23 and 24. Despite significant investment based on expected licensing, OGRA has failed to act within a reasonable timeframe, causing financial harm. The Competition

Commission of Pakistan has also criticized OGRA's inaction. The delay appears to be driven by malice, especially since a competitor was granted a license despite applying later. OGRA's conduct is arbitrary, discriminatory, and contrary to its statutory duty to regulate and protect stakeholders' interests.

4. Counsel for Respondent No. 1 argued that the Petitioner deliberately concealed the existence of a pending civil suit titled **("Petrosin CNG vs. OGRA")** on the same subject, violating principles of good faith and the doctrine of clean hands, thereby rendering the writ petition liable to dismissal. Superior courts have consistently held that constitutional jurisdiction under Article 199 is not maintainable where factual controversies exist or alternative remedies are available (PLD 1989 SC 166, PLD 1973 SC 236, PLD 2017 Sindh 567, PLD 2018 SC 828, 2019 CLC 1247). The Petitioner, having already chosen a civil remedy, is barred under the Doctrine of Election from pursuing another parallel proceeding for the same relief. Moreover, an alternate and efficacious remedy was available under Section 12 of the OGRA Ordinance, making the petition premature. The Respondent issued multiple notices requesting compliance for license issuance, including submission of various technical and safety documents. Despite several opportunities, including a final notice dated 15-04-2022, the Petitioner failed to comply and instead sought judicial intervention to maintain gas supply without a valid license. The Petitioner's use of flare gas at CNG stations poses significant safety risks due to its toxic and variable composition. OGRA permits flare gas usage only in specific industries, not CNG stations, owing to public safety concerns. Given these facts, the petition lacks merit and is liable to be dismissed with costs.

5. Counsel for Respondent No. 1-A argued that the Petitioner engaged in willful concealment and misrepresentation by failing to disclose multiple earlier civil suits filed on the same issue i.e., the alleged stoppage of gas supply and the licensing dispute. Despite having obtained injunctive relief in those cases through questionable means, the Petitioner falsely certified in the present constitutional petition that no other proceedings were pending. This certification was misleading and aimed at securing similar relief from a different court after facing adverse outcomes in earlier suits. OGRA further highlighted that the Petitioner continued to conceal the dismissal of its injunction application, the pendency of appeals, and the filing of a fresh suit on the same subject matter. That such conduct of the Petitioner

constitutes a blatant abuse of the judicial process, perjury under the Pakistan Penal Code, and contempt of court. In the last, learned counsel requested to dismiss the petition with exemplary costs and to initiate legal action against the Petitioner for its fraudulent conduct and deliberate misuse of legal remedies.

6. On behalf of Respondent No.2, it is argued that the Council of Common Interests **(CCI)** is a constitutional body set up under Article 153 of the Constitution. The Council is headed by the Prime Minister as its Chairman, while the Chief Ministers of the Provinces and three Members nominated by the Prime Minister from the Federal Government, are its Members. Article 154(1) provides that the CCI shall formulate and regulate policies in relation to matters enumerated in Part-II of the Federal Legislative List (FLL) and shall exercise supervision and control over related institutions. As per Rules of Procedure of CCI, 2010 (amended up to 22.4.2021), Respondent No.2, the Secretariat of CCI, headed by its Secretary, performs the secretarial work for CCI including convening meetings, processing the Agenda items presented by the Federal Ministries/Divisions and Provincial Governments, recording and circulating minutes and decisions, and monitoring implementation of the decisions. According to Rule-11 of the Rules of Procedure of the CCI, 2010, implementation of the CCI decision is the responsibility of the Ministry/Division/Province concerned. The Supreme Court of Pakistan in its judgment reported as *Messrs Gadoon Textile Mills and others versus WAPDA and others* (1997 SCMR 641) has held that the CCI is supposed to formulate and regulate general policy matters in Part II of the FLL and it is not required to make decisions as to the day-to-day working. The Supreme Court vide its judgment in 2018 SCMR 1956 has further held that CCI has no role in the legislative process with respect to the matters enumerated in the FLL, Part-II, rather it is restricted to formulation and regulation of policies in relation to the said matters. As per Rules of Business, 1973, all matters relating to oil, gas, and minerals at the national and international levels, including policy, legislation, planning regarding exploration, development, production, import, export, refining, distribution, marketing, transportation, and pricing of all kinds of petroleum and petroleum products, are dealt with by Petroleum Division. Whereas, in terms of Section 22 of OGRA Ordinance, 2002, the OGRA has the exclusive power, to grant, issue, renew, extend, modify, amend, suspend, review, cancel and reissue, revoke or terminate, a license in respect of any regulated

activity. In the last, it is prayed that the Writ Petition may please be disposed of accordingly.

7. I have heard the learned counsel for the parties and perused the record with their able assistance.

8. The perusal of the record shows that the Petitioner applied to OGRA for issuance of the license for the 'Compression, Storage, and Sale of Flare Gas vide application No.PCNG/CORP/0111 dated 20.12.2017, under the NGRA Licensing Rules, 2002 (hereinafter referred to as "**NGRA Rules, 2002**"). After the exchange of several correspondences inter se the parties, the hearing for the grant of license to the Petitioner was fixed by the Authority/Respondent No. 1 on 28-04-2021, wherein the Petitioner was directed to submit a) valid executed GSA with MPCL in respect of Halini Well X-1 field; b) latest gas specification report; and c) safety compliance certificate. After hearing the parties at length and perusing the evidence, the Authority/Respondent No. 1 rendered its final determination on 15-04-2022, wherein the Petitioner was again directed to submit the abovementioned documents for the grant of license within thirty days of its decision. The Petitioner as well as Respondent No. 1-A vide letter dated 10-05-2022 submitted the requisite documentation, thereby fulfilling the necessary codal formalities. It is essential to note herein that despite submitting all the documents on 10-05-2022, in accordance with the directions given in the final decision of the Authority under Rule 15 of the NGRA Rules, 2002, the license was still not granted to the Petitioner.

9. Moreover, instead of granting the license to the Petitioner in accordance with the timeframe envisaged in the statutory provisions, the Authority/Respondent No. 1 fixed another round of hearing on 28-02-2023 in order to rehear the same matter. It is pertinent to mention herein that the Authority/Respondent No. 1 was bound under the law to adjudicate upon the application of the Petitioner within six months of the date of filing of the application for the grant of license. Under Rule 15 (2) of the NGRA Rules, 2002, the word "shall" has been used, which renders the provision to be mandatory in nature. For ready reference, the said Rule is reproduced hereunder:

> *"15. Decisions of the Authority. - (2)* ***The Authority shall decide an application within six months of the date of filing of the application****:*

> *Provided that, the Authority may, only for causes beyond its control, extend the said six months period by a further period of one month, provided further that, the* ***Authority shall not extend the time for its final determination in a proceeding beyond an aggregate period of six months****. The reasons for such extension in time shall be recorded in writing."*

10. Although the Authority can extend the said six months' time period in reaching its final determination, certain conditions have been placed under the aforementioned Rule for implementing such extension. These conditions are the following:-

a) Time can only be extended for causes beyond its control;

b) Six months period can be extended for a further period of one month only;

c) Shall not extend the time for its final determination in a proceeding beyond an aggregate period of six months;

Hence, Rule 15 (2) of NGRA Rules, 2002 imposes a mandatory embargo upon the Authority to conclude its proceedings within a period of six months, and such extension cannot go beyond an aggregate of six months. It is a settled principle of law that if the law requires a thing to be done in a particular manner, it must be done in that manner only and not otherwise. Reliance in this regard is places upon *Secretary, Ministry of Finance versus Muhammad Anwar,* **2025 SCMR 153**, *Nadir Khan versus Qadir Hussain,* **2024 SCMR 770**, *Tri-Star Industries Private Limited versus Trisa Burstenfabrik AG Triegen,* **2023 SCMR 1502**. The relevant portion from the case of Tri-Star Industries Private Limited is reproduced hereunder:-

> *"Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law without deviating from the prescribed procedure, and where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all."*

Hence, Respondent No. 1 seems to have acted in oblivion of the law and rules, thereby traveling beyond the ambit of its lawful authority, which is the negation of the principle of law. It is worth mentioning here that Respondent No. 1 also failed to record its reasons in writing for extending the time period in deciding the application of the Petitioner, thereby acting in a perfunctory manner. The Court in case of *Tri-Star Industries Private Limited (supra*) further mentioned that:

> *"A perusal of Rule 76 clearly expounds that, while exercising power to grant the extension of time, the Registrar must be satisfied that the*

> *circumstances are such as to justify an extension of time with a further rider that the extension granted shall not exceed a period of more than one month at a time, provided that the total period of such extensions shall not exceed six months against each statutory period prescribed.* ***The exactitudes of the aforesaid rule accentuate that before granting extension, the Registrar should act with proper application of mind inasmuch as the powers conferred by the Rule do not permit the Registrar to entertain and grant extension in a mechanical or perfunctory manner, rather he should be satisfied that the extension is justified.****"*

11. Furthermore, the Authority can only reopen a hearing after showing good cause and recording reasons thereof. Nothing on record apparently shows why the matter, once already decided, was reopened after such a long period of time, that too, without recording its reasons and showing any good cause. For ready reference, Rule 10 of NGRA Rules, 2002 is reproduced hereunder:-

> *"10. Hearings by the Authority. — (9) The Authority shall declare close of evidence following the submission of all the evidence by the parties. A party shall not present additional evidence after it has closed its evidence* ***nor may any hearing be reopened after having been closed, except upon motion and the showing of good cause.*** *The Authority shall give notice to all parties of its ruling upon such motion."*

Against the notice of holding another public hearing on 28-02-2023, the Petitioner filed the appeal under Section 12(1) of the Oil and Gas Regulatory Authority Ordinance, 2002 (hereinafter referred to as "**OGRA Ordinance**"), which has never been fixed for hearing till date. Due to this, litigation inter se the parties began, causing further delay in the grant of license. It is pertinent to mention herein that vide letters dated 05-11-2024 and 17-12-2024, the Petitioner informed Respondent No. 1 that all cases have been withdrawn from the Courts, with a request to proceed further in accordance with the law and applicable procedure.

12. Taking up the objection regarding maintainability of the instant Writ Petition, as raised by the learned counsel for the Respondents, on the ground that adequate remedy is available to the Petitioner, hence, recourse to the High Court is not permissible. In this regard, it is essential to refer to the relevant portion of Section 12 of the OGRA Ordinance in order to ascertain the jurisdiction of this Court. For ready reference, the relevant portion of the same is reproduced herein 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****"*

Bare reading of Section 12(2) of the OGRA Ordinance shows that it is within the jurisdiction of the High Court to ascertain whether or not the procedural requirements as required under the said Ordinance have been followed properly by Respondent No. 1, and that the Petitioner has no adequate remedy other than recourse to Section 12(2) of the OGRA Ordinance. This Court is of the view that where the procedural requirements have been flouted, the Court may provide indulgence. Therefore, the jurisdiction under section 12(2) of the Ordinance 2002 is limited to the extent that this Court could only apply judicial review as to whether the procedural requirements, as required under the Ordinance 2002, Rules, and Regulations, have been followed.

13. As already noted above, Respondent No. 1 has defied the mandatory provisions of the NGRA Rules, 2002 by flouting the procedural requirements on its mere whims and fancies. The Petitioner had moved an application for the grant of license on 20.12.2017, and after a lapse of seven years and four months, the matter remains pending, even after rendering the final decision on 15-04-2022. Reliance in this regard is placed upon *Messrs Mehran Oils (Pvt.) Limited Versus Oil and Gas Regulatory Authority, Islamabad,* **PLD 2021 Sindh 67**, wherein it has been observed as under:-

> *"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."*

14. In light of the above findings, this Court is fortified to conclude that the inaction on the part of Respondent No. 1, as against the statutory provisions, has caused an inordinate delay in granting the license to the Petitioner. The action of Respondent No. 1 is also against Articles 4, 5 and 18 of the Constitution as it is the inalienable right to be treated in accordance with the law, to enter upon any lawful profession or occupation, and conduct any lawful trade or business. The Respondent No. 1 is hereby also directed to expedite the process and decide the application dated 20-12-2017 qua issuance of the license within one month, strictly in accordance with the law and as per the procedure enshrined in the governing rules and policies. However, it has been observed by this Court with grave concern that the Petitioner has filed multiple suits at varied times before different forums to obtain injunctive orders. Such conduct of the Petitioner has been deprecated, therefore, a cost of Rs.1,00,000/- is being imposed in this regard.

15. The Respondent No. 1 is hereby further restrained from taking any adverse action against the Petitioner until the application is decided. Before parting with the judgment, it is pertinent to mention herein that the matter pertaining to Flare Gas is rather serious and crucial, therefore, it must be dealt with as per the governing policies keeping in view the safety measures. The Respondent No. 1 had granted a license to GAP on 23.07.2024 for the sale of Flare Gas from the Halini field, the same one for which the Petitioner has applied. However, it is to be noted here that the license to GAP was granted to the extent of industrial usage, and not for CNG.

16. For the foregoing reasons, the instant Writ Petition is **disposed of** accordingly.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open court on this _____ day of May 2025.

JUDGE

//Sajid//*