

IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Ali Mazhar** and **Agha Faisal, JJ.**

Constitution Petition No. D-2165 of 2012

M/s. Naushehro Feroze-1
Versus
Federation of Pakistan and Others

For the Petitioner : Mr. Khalid Jawed
Advocate

For the Respondent No.1 : Mr. Asim Mansoor Khan
Deputy Attorney General

For the Respondents : Mr. Asim Iqbal, Advocate &
Nos. 2 & 3 Mr. Farmanullah, Advocate

Date of Hearing : 23.05.2018

JUDGMENT

Agha Faisal, J: This petition, filed in 2012, seeks this Court's edict upon whether the petitioner is entitled to a natural gas connection / supply for its compressed natural gas filling station located at Naushehro Feroze ("**CNG Station**").

2. Mr. Khalid Jawed, Advocate set forth the case for the petitioner and the particulars thereof are delineated herein below:

i. It was submitted that the petitioner, a registered partnership firm, applied for the grant of a license to establish a Compressed Natural Gas ("**CNG**") filling station at Naushero Feroze in 2007. After acquiring the requisite piece of land for the proposed CNG Station, the petitioner was granted a

provisional license in regard thereof by the respondent No.3, Oil and Gas Regulatory Authority (“**OGRA**”), in June 2007.

ii. Thereafter, the petitioner obtained the required no objection certificates in respect of the proposed CNG Station from the District Coordinator Officer and also the Taluka Municipal Administration.

iii. The petitioner then undertook the construction of the CNG Station and installed the requisite equipment and machinery thereat after importing the same from overseas.

iv. It was contended that an electricity connection for the proposed CNG Station was also obtained from the Hyderabad Electric Supply Corporation and a no objection certificate / approval for sanction and energization of electricity connection was also obtained from the Electric Inspectorate of the Government of Sindh.

v. It was submitted that since the connection of natural gas was delayed by the respondent No.2, Suit Southern Gas Company (“**SSGC**”), the provisional license issued by OGRA was going to expire and thus the petitioner applied for a renewal for the same. The said renewal of the provisional license was granted by OGRA vide its letter dated 15.04.2011.

vi. It was argued that while all requisite undertakings for the proposed CNG Station had been completed by the petitioner, the no objection certificate from the SSGC and the actual gas connection / supply therefrom remained due and outstanding.

vii. It was thus contended that the proposed CNG Station of the petitioner was completed in all respects except the natural gas connection, which was being delayed and denied without any lawful justification.

viii. The petitioner prayed *inter alia* for a declaration affirming its entitlement to a natural gas connection and for a direction instructing the respondents to provide the required natural gas connection and supply thereto.

3. Mr. Asim Iqbal, learned counsel for SSGC and OGRA, submitted in response that the petition is vexatious, frivolous and even otherwise the petitioner's claim therein is not tenable in law. The learned counsel sought the dismissal of the present petition and his arguments in respect thereof are encapsulated herein below:

i. It was submitted that the petitioner was granted a provisional license to establish the CNG Station within a period of two years, with effect from 08.06.2007, on complying certain terms and conditions but that the petitioner failed to establish the CNG Stations within the period prescribed in the said provisional license.

ii. Upon the failure of the petitioner to complete the civil works within the prescribed time frame the petitioner applied for an extension of its provisional license. OGRA accepted the request of the petitioner and granted an additional one year extension in the provisional license but the petitioner once again failed to honor its obligation.

iii. Notwithstanding the foregoing, upon the request of petitioner, OGRA granted another two years' extension to the petitioner. Learned counsel submitted that the provisional

license granted to the petitioner, inclusive of extensions / renewals thereto, expired on 07.06.2012 and since that time no application for the extension of the provisional license has been received by OGRA.

iv. It was pointed out that during the period under deliberation herein the Government of Pakistan imposed a moratorium on new gas connections vide Ministry of Petroleum & Natural Resources letter dated 18.04.2011, and the present respondents were informed accordingly.

v. Subsequently, the Ministry of Petroleum & Natural Resources (Policy Wing), vide its letter dated 04.10.2011, informed the respondents that the honorable Prime Minister has been pleased to approve the following modifications to the earlier imposed moratorium:

Moratorium on CNG gas connections has been lifted on the following categories, priority wise:

1st. CNG Stations where meters have been installed but gas supply have not been commissioned. (Priority 1 and with immediate effect).

2nd. CNG Stations who have paid the connection charges/security deposit but meters have not been installed. (Priority 2 and the process to be completed within a period of three months).

3rd. CNG Stations where gas pipelines have been laid with 100% cost recovery, in advance from stations but demand notice have not been issued. (Priority 3 and the process to be completed within a period of six months).

vi. The learned counsel stated that pursuant to Rule 7 of the Compressed Natural Gas (CNG) (Production and

Marketing) Rules 1992 notified on 13.05.1992 vide SRO 714 (I) / 92 issued in exercise of powers conferred by Section 2 of the Regulation of Mines and Oil Fields and Mineral Development (Government Control) Act 1948 (“**Rules**”) the petitioner was required to apply for the renewal of its provisional license three months prior to its expiry. The relevant provision of the Rules is reproduced herein below:

“7. Period of License- (iii) Every licensee desiring to have his license renewed shall make an application in that behalf to the Authority not less than three months preceding the expiry of the period for which license is valid.”

vii. It was submitted that it is a matter of record that no application had been received by OGRA, from the petitioner, in terms of the aforesaid rule at the requisite time or at any time after the expiry of the petitioner’s provisional license on 07.06.2012 and as a consequence thereof the provisional license, earlier granted to the petitioner, expired on 07.06.2012.

viii. It was argued that the petitioner cannot be provided gas connection in absence of a valid and subsisting CNG (Production & Marketing) license. The learned counsel referred to the relevant provision of law, being Rule 3 of the Rules, in such regard and the same is reproduced herein below:

“3. License compulsory. No person or corporation shall, without first obtaining a license from the Authority, undertake, or cause to be undertaken under any agreement, the operation or construction of works connected with compression of natural gas for the purpose of storing, filing of distribution of CNG.”

- ix. It was contended that due to the scarcity of natural gas coupled with an increase in the demand of the same in the domestic sector, the Government of Pakistan on 18.04.2011 and 23.04.2011 issued a policy decision which was later amended vide policy dated 04.10.2011. According to the amended policy only those CNG stations that had completed their civil works, including installation of equipment, by 30.09.2011 were to be provided with gas.
- x. It was stated that the Petitioner did not qualify in that category as it has failed to complete its CNG Station by 30.09.2011. It was submitted that the petitioner took 06 years to complete its CNG Station and by that time the Government of Pakistan, due to the scarcity of natural gas, had changed its policy for the supply of natural gas to CNG stations and SSGC, being a licensee of OGRA, is duty bound to act in accordance to the policies and directives issued by the Government of Pakistan
- xi. It was further demonstrated that on the direction of this Honorable Court's order dated 13.03.2018, the petitioner's case was duly considered by OGRA and a decision was rendered in such regard dated 08.05.2018 ("**OGRA Decision**"), after providing the required opportunity of hearing to the petitioner. The said decision was placed before the Court and it demonstrated that OGRA had denied the petitioner's case for the grant of a CNG connection / supply.
- xii. It was then pointed out any person aggrieved by the decision of OGRA was entitled to assail the same in appeal

in the manner prescribed In Rule 7(v), which stipulates as follows:

“7. Period of license (v) In case of refusal to renew a license an appeal shall lie from the decision of the Authority to the Federal Government.”

- xiii. It was next argued that the Honorable Supreme Court, in Suo Moto case No. 01 of 2013, directed the Federal Investigation Agency to investigate the issuance of CNG licenses on unlawful political considerations. In such regard OGRA submitted over 1451 files of CNG stations before the honorable Court.
- xiv. It was submitted that the Honorable Supreme Court also observed in its order dated 15.04.2013 that “*In view of the fact that there is an allegation of lack of transparency for granting the CNG licenses as well as non-availability of the gas, we direct OGRA not to grant any CNG license to any one of the said 200 applicants till the final disposal of this case*”.
- xv. Learned counsel submitted that the petitioner’s case fell squarely within the category under scrutiny by the honorable Supreme Court. It was thus contended that notwithstanding the fact that the present petition is not maintainable and liable to be dismissed, in the event that the petitioner is aggrieved by the OGRA Decision dated 08.05.2018, the petitioner is within his rights to prefer an appropriate appeal and not seek to assail the same in the present petition.

4. The primary issue to be determined herein is whether it was just and appropriate for this Court to determine the legality of the respondents' denial of the CNG connection / supply to the petitioner.

5. The OGRA Decision clearly stated that the request of the petitioner for grant of CNG (production and marketing) license under the prevalent policy of Federal Government cannot be considered as petitioner does not qualify / meet criteria for the grant of such license.

6. The criteria for the grant of a CNG (production and marketing) license is defined in the letter of the Ministry of Petroleum and Natural Resources No.CNG-7(8)/11-Vol-1-MPM dated 04.10.2011 ("**Directive**"). The relevant content of the Notification is reproduced herein below:

"I am directed to inform that while considering the Summary submitted by Ministry of Petroleum & National Resources on the above submit, the Honourable Prime Minister has been pleased to approve the following:

I. CNG Sector

a. Moratorium on CNG gas connections has been lifted on the following categories, priority wise:

1st CNG Stations where meters have been installed but gas supply have not been commissioned. (Priority 1 and with immediate effect).

2nd CNG Stations who have paid the connection charges/security deposit but meters have not been installed. (Priority 2 and the process to be completed within a period of three months).

3rd CNG Stations where gas pipelines have been laid with 100% cost recovery, in advance, from stations but demand notices have not been issued. (Priority 3 and the process to be completed within a period of six months).

b. Ban on Issuance of new provisional licenses of CNG Stations shall continue. Further, renewal or extension of existing provisional licenses will not be allowed except in those cases where the station is 100% complete in terms of installation of equipment and civil works and

OGRA has already carried out inspection before the date of approval of the summary i.e. 30.09.2011.

(Underline added for emphasis.)

- c. Shifting of CNG Stations and site change of provisional licenses shall not be allowed except in cases of those operational CNG Stations which are forced by the government to close their CNG Stations for various reasons i.e. widening of road, construction of bridges, security reasons. However, shifting shall be limited within the same region and would be subject to provision of prior NOC limited within the same region and would be subject to provision of prior NOC from gas utility companies and within the maximum gas load prior to closure.
- d. No gas generators at CNG Stations are allowed.
- e. Gas will be supplied to CNG Stations in Balochistan which are already in pipeline. No new application will be entertained.
- f. The operational CNG Stations would remain within their sanctioned load.

II. Commercial/Industrial Sectors.

- a. Moratorium imposed on new commercial and industrial connections has been extended for one year except for those who have paid the connection charges/security deposit or have deposited 100% cost of line pipe to be laid for them.
- b. Moratorium at 'a' above will not be applicable in the province of Balochistan. However, for industrial connections, the Minister for Petroleum & Natural Resources will decide on case to case basis.
- c. The gas connections of strategic nature will be allowed on case to case basis.
- d. No new applications for the industrial / commercial will be entertained except Roti Tandoor (stand alone).
- e. Natural gas through the Sui transmission system will not be provided to high rise buildings and new housing schemes. These will be encouraged to energize their customers through LPG, LNG and Alternate Energy sources.

III. Development Schemes.

Gas development schemes will be prioritized as under:

- (i) Only ongoing development schemes will be executed.
- (ii) The schemes where work has yet to commence (funding received) will be initiated after completion of ongoing schemes.

- (iii) No new gas development scheme will be allowed till implementation of previous directives/commitments as indicated at para (i) and (ii) above.
- (iv) Gas producing units shall be exempted from Moratorium as indicated at para (iii) above. Preference will be given to the village/towns located in the vicinity of gas fields.

Campaign to Convert Existing Gas Geysers:

Sui Companies will launch a campaign and undertake to convert existing gas geysers to solar system and instant water heaters.

1. You are requested to take further necessary action in compliance to said decisions of the Honourable Prime Minister accordingly under intimation to this office at the earliest.”

7. It may be relevant to record that the Directive was amended subsequently, vide directives dated 18.04.2011 and 23.04.2011, no arguments were advanced assailing the vires of the Directive, and the instruments amending the same. It is also not the case of petitioner that it falls under any of the categories prescribed in the Directive.

8. A perusal of the relevant portion of the Directive reveals that the renewal or extension of provisional licenses was banned, save for the instances wherein the concerned facility was 100% complete in terms of installation of equipment and civil works and OGRA had already carried out inspection before the date of approval of the summary, being 30.09.2011. In the present scenario it is apparent that the work on the CNG Station was not complete prior to 30.09.2011 and that it was a matter of record that no OGRA inspection, in respect of completion, was carried out prior to the designated date or at any time thereafter.

9. The petitioner has itself filed documentation, along with the memorandum of petition, demonstrating that even its initial request for inspection of the CNG Station is dated May 2012, which is admittedly beyond 30.09.2011. There is yet another denouncing

document, filed along with OGRA's statement dated 12-12-2015, being the inspection report dated 04.11.2015 issued by the Hydrocarbon Development Institute of Pakistan in respect of the CNG Station. The aforesaid report documents that even the letter of credit for the importation of the machinery to be installed at the CNG Station was opened on 25.11.2011, beyond the 30.09.2011 deadline.

10. The report records that the date of actual import of the machinery, based on the bill of entry / customs clearance date) to be installed at the CNG Station was 31.01.2012, again beyond the 30.09.2011 deadline. The report also contains a notation to the effect that the date of completion of the CNG Station, according to the statement of the petitioner is 18.03.2012, once again beyond the 30.09.2011 deadline. This document shows that the post completion inspection certification with respect to the CNG Station was issued on 04.11.2015, well beyond 30.09.2011

11. The record also reflects that instead of preferring an application for renewal of the provisional license three months prior to its date of expiration, being 07.06.2012, the petitioner presented the present appeal on 05.06.2012. A reasonable inference could be drawn that since the petitioner failed to make the application required by law to renew its provisional license within the timeframe provided by the law, the present petition was instituted instead thereof.

12. In the event that the petitioner had filed an application for the renewal of the provisional license within time and OGRA had denied the grant thereof, the provision for appeal would have been available to the petitioner under Rule 7(v) of the Rules. It is the considered

view of this Court that petitioner's failure to prefer the requisite application for renewal of its provisional license cannot be condoned even in view of perception that such an application was unlikely to have been granted.

13. Furthermore, it would appear that notwithstanding the fact that an application was required to have been preferred by the petitioner three months prior to the expiration of its provisional license, such an application was in fact considered belatedly by OGRA, pursuant to interim orders passed herein, and the same stands dismissed. The Rules provide for a remedy against such a dismissal order, being an appeal under Rule 7(v) thereof, and we see no reason why the exercise of such statutorily prescribed appellate jurisdiction may be assumed by this Court.

14. The OGRA Decision has referred to orders passed by the honorable Supreme Court in SMC 01 of 2013, dated 19.03.2014, 15.05.2014, 09.07.2014 and 18.09.2014, and declared that OGRA was directed to conduct inspections and grant marketing licenses to the extent of CNG stations whose CMA numbers / names were mentioned in the said orders. It was thus stipulated that since the name of the petitioner was not contained in the aforesaid orders therefore the grant of a license thereto was not merited.

15. OGRA did not file copies of any of the aforesaid orders and instead filed a statement dated 16.01.2017 and therewith filed copies of orders dated 15.04.2013, 20.08.2015 and 27.10.2015 rendered by the honorable Supreme Court in SMC 01 of 2013 and order dated 21.12.2015 passed by the learned Lahore High Court in a similar matter.

16. The order of the honorable Supreme Court dated 15.04.2013, although not a constituent of the 4 orders referred to in the OGRA Decision, reads as follows:

“The Learned counsel for the OGRA has stated that in pursuance of the direction of this Court vide order dated 10.04.2013, files of 1451 CNG Stations were handed over to FIA. The Additional Director General (Law) and Director FIA appeared and stated that except 33 files, which were made available to the FIA, today they have already completed the exercise as per the directions of this Court in respect of 1508 files. The original files have been retained whereas three sets of each file have been prepared for perusal of the Court. The learned counsel for the OGRA has categorically stated, under instructions, that on 12th March, 2013, after relaxing the ban, directions were issued to the OGRA for issuing licenses to the applicants, which were about 200 in number but OGRA has not complied with the order and so far no license has been issued to anyone. In view of the fact that there is an allegation of lack of transparency for granting the CNG licenses as well as non-availability of the gas, we direct the OGRA not to grant any CNG license to any of the said 200 applicant, till final disposal of this case.

2. Admittedly, after 13th February, 2008, when there was a ban and at different times, the ban was relaxed and according to the OGRA instead of issuing fresh CNG License, Marketing Licenses were given to the applicants who had applied for the Licenses before the imposition of the ban.

3. Without prejudice to the result of the instant case, it is to be that there are cases wherein the Marketing licenses were also issued contrary to the Rule 10 of the Compressed Natural Gas (CNG) (Production and Marketing) Rule, 1992 as amended upto date. Some of the license holders either appeared in person or through their counsel stated that on account of unavoidable circumstances, the application/formality for obtaining marketing licenses could not be completed, therefore, as the delay was beyond their control, therefore, no sooner the formalities were completed, the Marketing licenses were given to them. It may be noted that OGRA has used two expressions namely, “Provisional licenses” and “Marketing licenses” whether we accept the same or not but we may observe that there is no such concept quo both the expressions under the Rules, as the Rule speaks about issuance of a license and extensions of the same on the successful completion of the initial period for which the license was given. It is to be noted at this state, that not only the Marketing licenses have been issued but reportedly in some of the cases the sites of the CNG Stations have also been exchanged contrary to law and rules and this aspect of the case shall also be dealt with later on.

4. On our query the learned counsel for the OGRA has stated that the licenses are issued by the Authority or the Member, Gas to whom the Authority has delegated powers under Section 10(2) of the Oil & Gas Regulatory Authority Ordinance, 2002. He is directed to place on record the authority Letters conferring any power upon the Member (Gas) to act on behalf of the OGRA/the Authority commencing from 13th February 2008 to onward. Similarly, he is required to place authentic copies of the original policy and amendments brought into the same from time to time for examining each case. Some format of criteria has to be laid down, enabling the Court or any other functionary to whom the task would be assigned to test each case to ascertain as to whether the allegations, as they had appeared in the newspaper are correct or otherwise.

5. The next important question is with regard to competency to entertain application for establishing CNG Stations, as such station can only be run if the gas is available and if the gas not sufficient for requirement of CNG Stations then how the applications could be entertained and the licenses granted, therefore, we have formulated the following question to which the learned counsel may answer, on the next date of hearing.

“What is the formula/criteria for establishing CNG Stations all over the country (Province/ICT wise) respectively subject to availability of the Gas and requirement of the consumers?”

6. We appreciate the performance, which has been shown by the FIA by collecting and placing before us the relevant documents from all the files, mentioned hereinabove.

7. Mr. Abid Saeed, Secretary Petroleum, has placed on record the information about the opening of LCs which information has been obtained from the FBR and stated that no LC has been opened. He further stated that so far the cylinders are concerned they have also not been allowed to come into the market by the FBR and according to his information the same are lying at the Port. The Secretary Petroleum may put up a comprehensive note after conducting an enquiry in the Department under what circumstances the cylinders were being imported and whether and procedure which has been followed was transparent and legal.

8. Adjourned to 22.04.2013. The office is directed to keep these files in safe custody.”

17. The other orders of the honorable Supreme Court, filed along with statement dated 16.01.2017, bear little relevance to the controversy at hand but the order of the learned Lahore High Court is pertinent to consider. It was demonstrated to the Court that the

Lahore High Court was seized of a matter wherein the impact of the same orders of the honorable Supreme Court, with respect to CNG stations, was deliberated upon. The judgment dated 21.12.2015 in *WP No. 28949 of 2015 (Al-Karim CNG vs. Government of Pakistan etc)* read as follows:

“Grievance of the petitioner is that CNG marketing license is not being issued in its favour inspite of repeated requests made to the concerned respondent Authority.

2. Learned counsel for the respondents submits that respondents are bound by the order of the august Supreme Court of Pakistan passed in SMC NO.1/2013 whereby specific instructions have been issued not to issue CNG marketing license.

3. Learned counsel for the respondent further submits that the petitioner may approach the august Supreme Court of Pakistan and obtain approval in this regard in the aforementioned *Suo Moto Case*.

4. Learned counsel for the petitioner on the other hand submits that SMC No.1/2013 has since been disposed of. On the last date of hearing i.e. 10.12.2015 petitioner sought time to place a copy of the order on the record to show that the case been disposed of, however, the same has not been placed on the record.

5. In view of above, petitioner may approach the august Supreme Court of Pakistan for verification/permission in the light of earlier orders of the august Supreme Court of Pakistan passed in SMC No.1/2013, if so advised.

6. The matter regarding CNG license is pending and regulate by the orders/guidelines given by the august Supreme Court of Pakistan in SMC 1/2013 no interference is called for by this Court. This petition is disposed of in the above terms.”

18. The petitioner, on the other hand, filed a statement dated 28-10-2014 and along therewith filed a copy of the order of the honorable Supreme Court dated 15.05.2014. The ostensible purpose of the petitioner to file the aforesaid order was to demonstrate the findings of the honorable Supreme Court that the grant of a license by OGRA is independent of the availability of CNG

and that OGRA had been directed therein to issue licenses to CNG stations that had complied with the relevant laws, rules and regulations.

19. It may be pertinent to reproduce the relevant order herein below:

“Vide order dated 19.03.2014, we had held as under: -

“4. There is another aspect of the case which is specific to the individual CNG Stations. On 15.04.2013, we had passed an order stating that “in view of the fact that there is an allegation of lack of transparency for granting the CNG Licenses as well as non-availability of the gas, we direct the OGRA not to grant any CNG License to any of the said 200 applicants, till final disposal of this case”. We have been informed that OGRA, as a result of the aforesaid order is currently not granting any licenses to CNG Stations. A number of CNG Station are before us, who have sought modification of the aforesaid order. These CNG Stations are listed as under:-

- i. M/s Shahwani CNG;
- ii. M/s Renala Petroleum Service;
- iii. M/s Liaquat CNG;
- iv. M/s Chanar CNG;
- v. Midway-II CNG Station
- vi. Ali CNG Station;
- vii. M/s Raees CNG Filling Station;
- viii. M/s Energy Comforts Pvt Ltd CNG Station; and
- ix. M/s TMG CNG;

5. The order of 15.04.2013 to the extent reproduced above is modified and it is observed that OGRA may issues to the above listed CNG Stations provided that the said CNG Stations have complied with all the relevant laws, rules and regulations as per regulatory mechanism of OGRA.”

2. In compliance with the order dated 22.04.2014, learned counsel for the applicants have moved CMA No. 2486 of 2014 in which following categories have been mentioned:-

Category No.I:

There are seven (07) CNG Stations namely:-

Sr.No.	CMA No.	Name of CNG Stations
1.	CMA No. 8/2014	Shahzada Filling Station
2.	CMA No. 92/2014	Nasir Brothers Petroleum Service
3.	CMA No. 188/2014	Hamza CNG Filling Station
4.	CMA No. 214/2014	Al-Khair CNG and Petroleum Services.
5.	CMA No.299/2014	M/s Kangore CNG Station
6.	CMA No. 2191/2013	M/s Bukhari CNG
7.	CMA No. 2339/2013	M/s Bugti CNG

These CNG Stations are 100% completed and inspection by the regulator has also been carried out. In this respect a report has also been submitted in the Court by OGRA. In respect of those in category No.1, the same order as in paras-4 & 5 reproduced above of order dated 19.03.2014 is applicable and OGRA may issue licenses to them. We may add that the grant of a license by OGRA is a matter distinct from availability of CNG and the same is to be based on consideration which are not relatable to OGRA.

These CMAs stand disposed of

Category No.II

There are twenty (20) CNG Stations that have been covered in this category namely:-

Sr.No.	CMA No.	Name of CNG Stations
1.	CMA No. 605/2014	Gas Drive CNG
2.	CMA No. 606/2014	Shafqat CNG Station
3.	CMA No. 631/2014	M/s Raja Filling Station
4.	CMA No. 632/2014	Sabir CNG Station
5.	CMA No.749/2014	M/s Madina CNG Filling Station
6.	CMA No. 750/2014	M/s Aziz CNG-II Filling Station
7.	CMA No. 751/2014	M/s Engineer Enterprises
8.	CMA No. 760/2014	M/s Decent CNG
9.	CMA No. 1026/2014	M/s Abid CNG
10.	CMA No. 1027/2014	M/s Sahil Energy Pvt. Ltd.
11.	CMA No. 1361/2014	M/s Rajpoot CNG Station
12.	CMA No.1563/2014	M/s Al-Hamd CNG Station
13.	CMA No. 1565/2014	M/s Saleh CNG Filling Station
14.	CMA No. 1566/2014	M/s Bismillah Enterprises
15.	CMA No. 1567/2014	M/s Sahiwal CNG
16.	CMA No. 1568/2014	M/s Allah Wala CNG
17.	CMA No. 1569/2014	M/s Banaras CNG
18.	CMA No. 1954/2014	M/s Sivia CNG
19.	CMA No.1977/2014	Al-Barka CNG
20.	CMA No. 2435/2014	Akbar CNG Station

In respect of these CNG Stations the applicants have asserted that these stations are also 100% complete. However, inspection by the OGRA has not yet been carried out. In these circumstances OGRA may carry out the inspection and thereafter proceed to perform its regulatory functions in accordance with the OGRA Ordinance, 2002. WE may again add that the grant of a license by OGRA is a matter distinct from availability of CNG and the same is to be based on consideration which are not relatable to OGRA.

These CMAs stand disposed of with the above observations.

Category No. III:

There is presently no CNG Station mentioned in this category. It may be the case that there are certain applications pending in Court which fall in this category and have not yet been listed for hearing and categorized. This category is in respect of those CNG Stations which have orders/judgments of the High Courts in their favor directing issuance of marketing licenses; or those CNG Stations cases whereof are pending in the writ jurisdiction of the High Courts. If there are any such cases, the learned counsel for the respective CNG Stations are directed to list their applications in this category. Zulfiqar Khalid Maluka and Shahid Kamal, ASCs shall finalize this exercise within seven (7) days. The office shall provide them the list of CMAs for impleadment pending in this case and fix the same on the net date of hearing separately.

Category No. IV & V:

These are two categories where marketing licenses have been granted by the Court but have been withdrawn/cancelled by OGRA where CNG Stations are only partially completed. In all there are four (4) such CNG Stations. Let these applications be listed for hearing alongwith those categorized in category No. III.

The main legal issue relating to the power of regulatory authorities which has been noted in our previous order dated 19.03.2014, for which questions have also been formulated as reproduced in our order dated 09.04.2014, shall be listed for hearing after 10 days.

CMA No. 2483 of 2014 has been filed by Mr. Zulfiqar Khalid Maluka, ASC which shall be considered on the next date of hearing.”

20. It is apparent from a review of the aforesaid orders of the honorable Supreme Court that certain exceptions were made and CNG connections / supply was permitted to entities that were otherwise in conformity with the prescriptions of the laws, rules and regulations. However, the order does no merit to the petitioner as it is apparent that the petitioner was not in the list of entities that were granted relief by the honorable Supreme Court after having been determined that they had complied with all the relevant laws, rules and regulations as per regulatory mechanism of OGRA.

21. Even otherwise there is now a decision of OGRA in the field that clearly states that the petitioner had not complied with all the

relevant laws, rules and regulations as per regulatory mechanism of OGRA.

22. Learned counsel for the petitioner chose not to cite any case law before us during the course of the hearing but a perusal of the case file revealed that a judgment of a Division Bench of this Court, dated 21.04.2015 in *CP No. D 4829 of 2014*, was laid before this Court at some juncture in the past to corroborate the contentions of the petitioner.

23. The aforesaid judgment pertains to a similar claim for supply of natural gas to a CNG station, which claim was denied by the respondents. It was however an admitted position reflected in the said judgment that the petitioner's claim fell squarely within the second category of the Directive, i.e. CNG stations that have paid the connection charges/security deposit but meters have not been installed. The judgment available on file does no merit to the case of the petitioner as the petitioner's claim does not fall under any category delineated vide the Directive and the petitioner itself has never claimed the benefit of any of the categories of the Directive. Hence in the facts and circumstances hereof the referenced judgment is duly distinguishable.

24. Another uncited Division Bench judgment of this Court, copy whereof was available on file, is that dated 13.01.2015 in *CP No. D 395 of 2015 (Maqbool Ahmed vs. Oil & Gas Regulatory Authority & Others)*. This referenced order disposed of the petition with the direction that the referenced official respondents may conduct an inspection of the subject CNG station within a specified time and in case it is found that the said station meets all the requirements for permission to operate the same then such permission may be

granted to the petitioner in accordance with the law. This judgment also does not assist the petitioner as in the present circumstances OGRA has already adjudicated the matter and denied the requisite permission vide the OGRA Decision.

25. This Court is cognizant of the well settled principle of law that policies of the Government may not be interfered with by the Court unless it is manifest that a policy is violative of the fundamental rights enshrined in the Constitution. Reliance is placed in such regard on the judgment of the honorable Supreme Court in the case of *Punjab Public Service Commission and Another vs. Mst. Aisha Nawaz and Others* reported as 2011 SCMR 1602.

26. The Directive is a policy of the Government and nothing has been placed before us to suggest that it infringes upon any fundamental right.

27. It has to be borne in mind that while adjudicating the merits of this petition we are not sitting in appeal over the OGRA Decision, as that is the purview and function of the authority prescribed vide the Rules. It is the considered view of this Court that the facts and circumstances of this case do not merit any further indulgence of the Constitutional jurisdiction of this Court. In view of the reasoning provided herein this petition is hereby dismissed with no order as to costs. The petitioner shall however remain at liberty to avail any appellate remedy against the OGRA Decision in accordance with the law.

28. It is pertinent to record that the observations made hereinabove shall cause no prejudice to the adjudication of any

proceedings wherein the OGRA Decision may be assailed, before the forum of competent jurisdiction.

JUDGE

JUDGE