

**IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD**

APPEAL NO. 949-03-2021

Naeem Sadiq

Vs

Pakistan State Oil

Date: 16.6.2021

Fawad Malik: Information Commissioner

**A. APPEAL.**

1. Mr. Naeem Sadiq, a citizen of Pakistan preferred an application dated 10.2.2021 to the Managing Director, Pakistan State Oil at its head office, Clifton, Karachi invoking his right under the Right of Access to Information Act, 2017 read with Article 19A of the Constitution of Pakistan 1973. He requested the following information/record:

1. *What is the total number of company operated petrol stations (operated by PSO itself) in Karachi (Category A), and total number of petrol pumps operated under contract between PSO and contractors in Karachi. (Category B)*
2. *What is Monthly wage given to staff deployed on 24 hours duty at Category A petrol pumps in Karachi and Monthly wage given to staff deployed on 24 hours duty at Category B petrol pumps in Karachi.*
3. *Are employees performing 24 hours duty at Category A petrol pumps in Karachi registered with EOBI. If so please give a list that shows names of total number of employees and EOBI registration number of those registered with EOBI.*
4. *Kindly provide same information as asked at para 3 for Category B petrol pumps in Karachi as well.*
5. *Are employees performing 24 hours duty at Category A petrol pumps in Karachi registered with Social Security SESSI. If so please give a list that shows names of total number of employees and SESSI registration number of those registered with SESSI registration number of those registered with SESSI.*

6. *Kindly provide the same information as asked at para 5 for Category B petrol pumps in Karachi as well.*
2. The respondent organization failed to respond within the limitation provided in the Act, hence the appeal before the Pakistan Information Commission, Islamabad.

**B. PROCEEDINGS.**

3. The Commission after taking the cognizance issued notice to the Managing Director of the organization on 17.3.2021 which was replied by the Senior Manager Legal Affairs through letter dated 25.3.2021. The relevant part is reproduced as under:

1. *PSO has 07 company operated sites in Karachi, whereas, the other retail outlets are being operated by the respective dealers.*
  2. *It is imperative that company operated sites are being operated by the contractors and not directly by PSO. Those contractors arrange themselves their staff to be deputed on those company operated retail outlets and their hiring /firing/wages/gratuity/EOBI/PESSI/SESSI and all other term & conditions of their employment is the sole and absolute obligation of the said contractors and PSO has nothing to do with the same. These services are obtained through by way of competitive bidding strictly in accordance with PPRA Rules, 2004.*
  3. *The contractors provide services at the company operated retail outlets through their own staff and their wages along with all kinds of statutory requirements including payment of EOBI, PESSI, SESSI & gratuity etc is the sole responsibility of contractors and PSO does not maintain any kind of contractor's staff.*
  4. *As regards point No. 4, the staff at dealer operated sites across the country is appointed by the respective dealers, who themselves operate their owned sites and as such PSO does not have record of staff working at dealer operated sites.*
  5. *As submitted above, staff at company operated retail outlets is directly appointed by the outsourced contractors without any intervention of PSO and they are solely responsible for their wages/gratuity/SESSI/PESSI/EOBI etc.*
  6. *As submitted above, staff at dealer operated retail outlets is directly appointed by the representative dealers and they are solely responsible for the payment of wages/gratuity/SESSI/PESSI/EOBI etc of their staff, so appointed.*
4. The appellant is not satisfied with the reply and has reiterated for the provision of the complete information made in his application.

**C. ISSUES.**

- i) Whether the staffs employed by the contractors/dealers/franchise of PSO at their respective retail outlets are the employees of PSO?

- ii) Whether the appellant has the preferential right for seeking the requested information?

D. COMMISSION'S VIEW.

5. The appellant has asked information pertaining to the total number of company operated petrol filling stations, and total number of petrol pumps operated under contract between PSO and contractors in Karachi. He further has desired the monthly wages being paid to the employed staff at the PSO petrol pumps, their registration numbers with Social Security, SESSI and the registration numbers with EOBI.
6. PSO has admitted in the reply that 07 company operated sites in Karachi are being operated through contractors whereas the other retail outlets are being operated by the dealers. The respondent has failed to answer the queries of the appellant pertaining to the monthly wages paid to the employed staff, their registration numbers with Social Security SESSI and the registration numbers with EOBI. It is claimed that since the contractors and the dealers arrange the staff therefore all terms and conditions of their employment is the sole and absolute obligation of the contractors and the dealers and that the PSO has nothing to do in the matter however these services are obtained through competitive bidding in accordance with the PPRA Rules, 2004. Be that as it may, the PSO is the employer of all the staff serving at the filling outlets though engaged by the third party i.e. contractor, dealer or franchise. The section 2(4) of the minimum wages ordinance, 1961 has defined the employer as:

*“employer” means any person who employs either directly or through another person, whether on behalf of himself or any other person, any person for whom a minimum rate of wages may be declared under this Ordinance, and includes: --*

*(a) in relation to a factory, a managing agent or other person who has ultimate control over the affairs of the factory; and*

*(b) in other cases, any person responsible to the owner for supervision and control of such worker or for payment of his wages;”*

7. The Honourable Supreme Court of Pakistan in the case titled “*Fauji Fertilizer Company Ltd. vs National Industrial Relations Commission*” reported as 2013 SCMR 1253, has observed as:

*“The relationship of employer and employee does not exist between a company and the workers employed by the contractor, however, in the case where an employer retains or assumes control over the means and method by which the work of a contractor is to be done, it may be said that the relationship of employer and employee exists between him and the employees of the contractor. Further, an employee who is involved in running the affairs of the company,*

*under the direct supervision and control of the company, working within the premises of the company, involved directly or indirectly in the manufacturing process, shall be deemed to be employees of the company.”*

8. The Sindh High Court while referring the above cited views of the Honourable Supreme Court of Pakistan has observed in the Constitutional Petition No. D-852 vide order dated 10.3.2021 as under:

*“suffice it to say that it is a normal practise won behalf of such employer to create a pretence and on that pretence to outsource the employment against permanent posts. This all seems to be a sham pretence and therefore it is not a case of disputed fact and evidence is required to record”*

9. PSO is providing oil country wide through the third party contractors and dealers. The organization is under obligation to make sure that its contractors, dealers or franchise are maintaining the standard fixed by the company at the filling stations and following the laws of the Government of Pakistan, while awarding the dealership. Thus the employer PSO is responsible to ensure compliance of all laws of workers when they are employed by their contractors. The Commission in the light of the verdicts of the Honourable Supreme Court of Pakistan and the relevant law on the subject is of the considered view that the staffs employed by the contractors/dealers/franchise of PSO at their respective retail outlets are the employees of PSO.
10. The appellant, a resident of Karachi has asked the requested information to the extent of Karachi city, in the public interest. The appellant has the fundamental and Constitutional right under article 19A of the Constitution of Pakistan fortified by statutory right under the Right of Access to Information Act, 2017 to seek information in the matters of public importance from any public body.
11. It is noticed by the Commission that the respondent organization has not complied the mandatory provisions of section 5 & 9 of the Act, so far.

E. ORDER.

12. The appeal is allowed. The Managing Director, Pakistan State Oil is directed to furnish Mr. Naeem Sadiq, all the requested information / record sought through his application dated 10.2.2021, forthwith, but in any case not later than seven days of the receipt of this order.
- He is further directed to implement the section 5 and 9 of the Act, in letter and spirit with out any further delay, under intimation to this Commission within one month of the receiving the order.

Mohammad Azam  
Chief Information Commissioner

Fawad Malik  
Information Commissioner

Zahid Abdullah  
Information Commissioner  
Announced on 5.7.2021

Certified that this order consists of three (3) pages, each page has been read and signed.