

15

S.C.P.-11

Cons- P
and date
paper

No.

of

2005.

It is respectfully submitted that this Constitution Petition has been filed under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 by Mr. Mehmood A. Qureshi, AOR for and on behalf of the petitioners namely Pakistan Environmental Law Association (PELA) through its Vice President (Punjab) Syed Mansoor Ali Shah and 31 residents of Chakwal.

2. It has been stated in this Constitution Petition that petitioner No. 1 is a society registered under the Societies Registration Act, 1860 with the objects to promote the development and effectiveness of Environmental Law. Petitioner Nos. 2 to 39 are residents of the area and have strong ancestral attachment to the land and earn their livelihood through agriculture land in the said area. Life and livelihood of the resident petitioners is seriously threatened due to the setting up of cement factories inside confines of Kahoon Vallley, District Chakwal. Further, the two basic raw materials for the manufacture of cement by the Government of Punjab i.e. limestone & clay have been allowed to be excavated without any due process of law and without any hearing granted to the residents of the area. The said concessions by the Provincial Government fail to count for the environment of the area or the health and life of the residents. The land cultivated for generations by the resident petitioners has been unlawfully allotted to the said factory for the purposes of excavation of the clay for the said factories. The titled petition invokes the constitution jurisdiction of the Court and is in the nature of environmental public interest litigations against the environmental catastrophe to be caused by the setting up six cement plant in the lap of beautiful and pristine Kahoon Valley situated in Tehsil Shoa Saidan Shah, District Chakwal. The petition raises serious questions of public importance not only for the thousands of residents of the area but for the citizens of Pakistan and the concerned environmentalists, whose fundamental right to a clean and safe environment is seriously threatened and is likely to be irreversibly impaired. In essence the following main environmental issues arise from the setting up of the cement plants:-

- i. Air pollution/suspended particulate matter (dust).
- ii. Water scarcity.
- iii. Water pollution.
- iv. Noise pollution.
- v. Damage to heritage sites.
- vi. Negative social and cultural impacts.
- vii. Degradation of land.
- viii. Extinction of a magical valley boasting a civilization that is two thousand years old.

3. The AOR has further stated that currently D.G. Khan, Cement, Company Limited and Best Way Cement Company Limited have started setting up their cement plants in the valley without a proper Environmental Impact Assessment (EIA). A number of legal and factual objections have been raised by the residents and environmental NGOs about setting up of these cement plants.

210.210

[From Over-Leaf]

of 2005.

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of paper

The AOR has further stated that on 21.10.2004 and 01.11.2004 respondent Nos. 1 & 2 allegedly reviewed the two EIA's submitted and issued NOCs allowing the respondent companies to proceed with the construction of cement factories in the Kahoon Valley. A paper sack plant is also being installed by D.G. Cement Company. This is an independent plant having a severe effect on the environment but no EIA of the said project has been approved. Furthermore, a similar petition was filed before the Lahore High Court under Article 199 of the Constitution on 24.12.2004. For ten months the stay application was argued but Lahore High Court did not take any decision or granted any relief, therefore, the same has been withdrawn to file the Constitution Petition. The petitioner are aggrieved of the setting up of cluster of cement plant and a paper mill inside the Kahoon Valley, the unlawful allotment of clay as a raw material for the said plants from the cultivated agriculture land of the residents of the area without due process of law and the mining concession of the limestone reserves in the area without considering the devastating impact on human life from quarrying and then manufacturing cement in the area and lastly WAPDA and SNGPL has conducted no EIA before starting installation of electric and gas connections to the said mills. The AOR has, therefore, made the following prayers:-

- i. That setting up of Cement Factories and Paper mills in Kahoon Valley may graciously be declared to be in violation of fundamental rights of the petitioners and against sustainable development in the country.
- ii. That the allocation of clay and limestone by the Mineral Department to the respondent companies may graciously be declared to be unconstitutional and in clear violation of PEPA, 1997 and the Mining law.
- iii. That the incomplete and inadequate EIA's submitted by the cement factories may be declared to be absolutely void and offensive to the fundamental rights of the petitioners.
- iv. That the impugned Approvals/NOCs dated 21.10.2004 and 01.11.2004 granted by respondent No. 1 may graciously be declared to be illegal without lawful authority and issued under dictation.
- v. That the laying down of electric transmission lines for over 132 KV by WAPDA and the Sui Gas transmission by SNGPL without an EIA or IEE may graciously be declared to be absolutely illegal.
- vi. That till such time that EIA under the ACT and Regulations is prepared and duly approved by the Federal Agency in accordance with law, further construction of the cement plants be stopped.
- vii. That a Commission (comprising responsible members of the civil society & experts) may graciously be directed to be constituted in order to monitor and oversee the entire area of Kahoon Valley and submit recommendations to this august Court regarding questions raised in this petition. Any construction and laying down of transmission systems by WAPDA and SNGPL till such time may graciously be stopped in the area.

Auth. P. 3/2

*Const. P
P 34-62/2*

Const-1st

No.

of

2005

No. and date of paper

[From Pre-Page]

PP 959-962
= para

4. It is pointed out that the AOR has also filed an application for interim relief which is placed at PP. 959-962/r.

5. It is further submitted that the AOR has filed an application for fixation of the title petition **on 28.11.2005** on the ground that the matter is of public importance and if not fixed the petitioners would suffer an irreparable loss.

6. It is pointed out that the matter does not relate to the whole of Pakistan but only to a particular area, therefore, the original jurisdiction of the Court cannot be invoked by filing a Constitution Petition under Article 184(3) of the Constitution as held by this Court in the judgment reported as 1998 SCMR 793 titled as "Zulfiqar Mehdi. Vs. PIA, etc."

7. In view of the above, orders are respectfully solicited as to whether:-

a) On the basis of para 6 above, the said Constitution Petition may be returned to the AOR being not entertainable.

OR

b) The same may be registered and fixed before the Court for orders regarding its maintainability or otherwise.

A/

8. Submitted for orders please.

3/11/05

23/11/05

23-11-05

23.11.05

23/11

DR. [Signature]

Registered

23/11

HCS

9

As at A

A

Resit on

12

8/2005

at

(Attorney)

29/4/05

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

**MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, C.J.
MR. JUSTICE CH. IJAZ AHMED
MR. JUSTICE GHULAM RABBANI**

Const. Petitions No. 29/2005 & 10/2006.

Pakistan Environmental Law Association
(PELA) etc. Petitioners (in Const.P.29/05)
Supreme Court Bar Association.... .. Petitioner (in Const.P.10/06)

VERSUS

The Provincial Environmental
Protection Agency etc. Respondents both)

For the petitioner (s) Mr. Sajjad Mehmood Sh. ASC (in Const.P.29/05)

For the petitioner (s) Qazi M. Anwar, Sr. ASC (in Const.P.10/06)

For the respondent (s) Mr. Saluman Akram Raja, ASC
Mr. Saeed Akhtar Sh. ASC
Mr. M.S. Khattak, AOR
Mr. Arif Shuja, D.G. Pak, EPA
Mr. Nawaz Manik, Dy. Dir.
Kh. Nadeem, L.O. M/o Industries.

Date of hearing 16.02.2010

ORDER

Const. P.29/2005: Learned counsel for the respondents stated that some time be allowed to file reply. Learned counsel appearing for the petitioner, however, insisted that a restraining order be issued against the respondent-Industry for not extracting national water from the spring flowing in the area where the industry is located. This request can be considered after taking into consideration the reply submitted by the respondents. Adjourned to 11.3.2010. In the meanwhile, notice be also issued to remaining respondents with direction to appear and file their parawise comments.

Const. P.10/2006: Qazi Muhammad Anwar, Sr. ASC/President of the Supreme Court Bar Association is present who states that he also needs some time to go through the contents of the petition, therefore, this matter may also be adjourned alongwith the connected petition. Order accordingly.

Islamabad

16-02-2010

A. Rehman



(1)

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Rana Bhagwandas
Mr. Justice Mian Shakirullah Jan

Constitution Petition No.29 of 2005 and
Constitution Petition No.10 of 2006

Pakistan Environmental Law Association(PELA) etc.
Supreme Court Bar Association of Pakistan

...Petitioners

Versus

The Provincial Environmental Protection Agency etc.

...Respondent

For the petitioners:

Syed Mansoor Ali Shah, ASC
Mr. Tariq Bilal, ASC

For the respondents:

Raja Muhammad Bashir, Sr. ASC
Raja Muhammad Akram, Sr. ASC
Raja Saeed Akram, AAG, Pb.
Ms. Afshan Ghazanfar, AAG
Mr. M.S. Khattak, AOR
Ch. Akhtar Ali, AOR
Mr. Ijaz Muhammad Khan, AOR
Mr. Faheem Riaz, Direction FEPA
Mr. Dilawar Khan, Dy Director FEPA

Date of hearing:

23.10.2007

ORDER

Learned counsel for respondents No.1-3 requests for time to file concise statement. It is stated on behalf of M/s Bestways Cement Co. Ltd. that Raja Bashir, learned ASC has filed reply, copy of the same has been handed over to the learned counsel for the petitioner. Learned counsel however, undertakes to do the needful during course of the day. Learned counsel for respondent No.4 has stated that he is also appearing on behalf of respondent No. 8 and the issue involved is the same, therefore, he is not interested to file separate concise statement on its behalf.

2. No one has entered appearance on behalf of M/s Pakistan Chakwal Cement, respondent No.5, therefore, it is ordered to be proceeded ex-parte.
3. On behalf of respondent No.7, E.Tech, concise statement has been submitted, copy of which has been handed over to the Syed Mansoor Ali Shah, ASC.
4. Respondents No.9 & 10 request for time to file concise statement.
5. Mr. Saeed Akhtar, learned ASC also requests for adjournment on behalf of respondent No.12 to file concise statement. He is directed to supply copy of the same well in time to learned counsel for the petitioner.
6. No one has appeared on behalf of WAPDA (Res.11).
Adjourned to **27th November, 2007.**
7. Learned counsel appearing for the respondents who shall have to submit concise statement, are directed to do the needful before the next date of hearing and handover copies of the same to learned counsel for the petitioner.

Islamabad, the
23rd October, 2007
Nisar/*

R
29/10
MS
29/10

In the Supreme Court of Pakistan.

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ

Mr. Justice Saiyed Saeed Ashhad

CONST. PETITIONS NO. 29 OF 2005 & 10 OF 2006

Pakistan Environmental Law Association (PELA) etc.

Supreme Court Bar Association

Petitioners

Vs.

The Provincial Environmental Protection Agency, etc.

Respondents

For the Petitioners:

Mr. Shaukat Ali Mehr, ASC
Ch. Muhammad Akram, AOR

Respondents:

Not represented

Date of hearing:

21.9.2006

ORDER

There is a request for adjournment. Adjourned to a date in office. To be fixed alongwith connected petitions.

Islamabad
21st September, 2006
Saleem*

NS
22/9

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT

Mr. Justice Mian Shakirullah Jan

Mr. Justice Saiyed Saeed Ashhad

CONSTITUTIONAL PETITION NOS.29/2005 AND 10/2006

Pakistan Environmental Law Association & Others
(Const. P. No.29/2005)

Supreme Court Bar Association of Pakistan through its Secretary
(Const. P. No.10/2006) Petitioners

Versus

Provincial Environmental Protection Agency
and others
(In both petitions)

Respondents

Petitioner-4: In person

Respondents: Not represented

Date of hearing: 8.1.2007

ORDER

Mr. Abdul Majid, Petitioner No.4 appeared in person and stated that his counsel has not arrived from Lahore. Adjourned to a date in office.

Islamabad

8th January 2007

Atif*



IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ
Mr. Justice Rana Bhagwandas
Mr. Justice Faqir Muhammad Khokhar

CONSTITUTION PETITION NOs.29 OF 2005
AND CONST. PETITION NO.10 OF 2006

Pakistan Environmental Law Association etc *Petitioners*
(in Const.P.29/05)

Supreme Court Bar Association of Pakistan *Petitioner*
(in Const.P.10/06)

Versus

The Provincial Environmental Protection Agency etc *Respondents*
(in both cases)

For the petitioners : *Syed Mansoor Ali Shah, ASC*
(in Const.P.29/05)

For the petitioners : *Mr. Tariq Bilal, ASC*
(in Const.P.10/05)

For respondent (4&5) : *Raja Muhammad Akram, Sr. ASC*
(in both cases)

Date of hearing : *01-08-2007*

ORDER

Issue notices to respondents except respondent No.4 & 5 in both petitions.

All the respondents are required to submit reply of the concise statement.

Adjourned to a date in office in the month of October 2007.

Islamabad
01-08-2007
*MS/**

*MS/**
6/8