

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-5561 of 2014

Ghulam Hussain & others *Versus* Federation of Pakistan & 04 others

Date of Hearing: 16.09.2019

Date of Order : 24 .09.2019

Petitioner is present in person.

Syed Aminuddin, Advocate for Respondent No.3.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

At the very outset, we asked the petitioners to satisfy this court with regard to maintainability of the captioned Petition, because entire claim of the petitioners is with regard to their appointments in a private limited Company.

2. Petitioner No.1, present in person, submitted that, basically, through the instant Petition, they have sought enforcement of the judgment passed by the Honorable Supreme Court of Pakistan on **APPLICATION BY ABDUL HAKEEM KHOSO, ADVOCATE (PLD 2014 Supreme Court 350)** with further **direction** to the Respondent-ENI Company to provide employment and other allied benefits to the petitioners and other deserving inhabitants of “Bhitt Gas Field Area” situated at Jhangara, Taluka Sehwan Sharif, District Jamshoro, as per terms and conditions set forth in the Petroleum Concession Agreement (PCA), duly executed between the Government of Pakistan and Respondent-company. The petitioners have further asserted that employment is basic necessity of life in the society, particularly for educated youth and the State is responsible to provide transparent working environment and employers are required to provide opportunity for grooming and exploitation

of abilities and talent of the employees; that they approached the Respondents from time to time for the aforesaid purpose, but they turned deaf ear in order to accommodate their blue eyed ones in the company in disregard of stipulations in their PCA with the Government. Petitioner No.1, referred to the report submitted by the Director General Petroleum Concessions (C.M.A. 6508/2013) before the Honorable Supreme Court in the aforesaid matter and stated that the Respondent-company has accumulated millions of US Dollars and nothing has been spent on the welfare being of the local society, rather degraded the local environment by constant heavy drilling for exploring the oil and Gas, caused panic in the surrounding area; that these are substantial amounts and the respondent company can meet basic needs of the people of the area living within the radius of 5km of Gas field, such as, clean drinking water and quality education, however the official respondents are in league with the Respondent-company and are basically beneficiaries of the royalty funds; that the enforcement of the contractual commitment of Respondent-company in relation to social welfare obligations etc. have to be properly monitored and enforced. Those responsible for ensuring fulfillment of these payment obligations including the Director General, PC, the Provincial and Local Governments are fiduciaries of the people in this respect and it is their duty to recover funds for the agreed social welfare obligations and to ensure their spending in the most efficient and optimal manner for benefit of the people; that some of these obligations are expressed in monetary terms, while others, such as, employment and training opportunities are specified differently. The Petitioner has pointed out that the Honorable Supreme Court has dealt with the issue in very elaborate manner and touched the overall overview of the contractual commitment of Exploring & Production Companies, like ENI. The petitioner

being aggrieved by and dissatisfied with the conduct and inaction on part of the Respondent-company has filed the instant petition in year 2014.

3. Upon notice, the Respondents No.1, 2 and 3 filed their para-wise comments and controverted the allegations.

4. Syed Aminuddin, learned Counsel for the Respondent-company argued that the instant Petition is not maintainable in law; that the issues raised by the Petitioners involve factual controversy, which requires evidence; therefore, Constitutional Jurisdiction of this Court under Article 199 cannot be invoked; that the Petitioners have raised multiple frivolous grounds to harass the Respondents No.3; that the Petitioners have not come with clean hands and not disclosed the true facts before this Court; that the allegations of the Petitioners regarding violation of PAC Agreement and infringement of their rights and other ancillary matters are baseless, therefore the factual controversy cannot be resolved in the Writ Petition; that the instant petition is also not maintainable against a Private-Company as the same is neither controlled nor owned by the Government of Pakistan; that petitioners have failed to demonstrate any violation of any law and/or breach of any fundamental right nor is there any question of law of public importance involved; that without prejudice to the Respondent-company's rights, which operates in compliance with his obligations under the said Petroleum Concession Agreement (PCA). Further, no rights of the Petitioners have been affected nor they are aggrieved parties; that they have no vested right of employment in the private company as has been sought by them, especially when the Respondent No.3 works in compliance with the obligations under the PCA; that with reference to the order passed by the Hon'ble Supreme Court of Pakistan in C.P. No. 46 of 2013, reported in PLD 2014 SC 350, operative part of the said judgment starts from paragraph 22 wherein, thrust of the decision is on use of "social welfare funds" and guidelines relating

thereto and not regarding employment issues as per prayer clauses (a) and (b) of the instant petition; that the official respondents No.1& 2 have also confirmed the assertions of Respondent No.3. However, position confirmed by the officials respondents, further establishes that the Respondent No.3 is in full compliance with the terms & conditions of the PCA; that even otherwise, the Respondent No.3 has filed a list of over 500 unskilled local employees working at the relevant time in the Respondent-company; that the Respondent No.3 has complied with its environmental obligations also as is evident from various reports submitted by them to the Sindh Environmental Protection Agency with further confirmation by the respondents No.1&2 that the Respondent No.3 has complied with its obligations also regarding social welfare in the area as is evident from its various activities, which include school buildings, water tanks, health center, etc. and that Petitioner No.1 has primarily filed this Petition for seeking personal benefit of employment through the Court direction to the respondents in the instant writ jurisdiction. In support of his contention, he relied upon the cases of Abdul Wahab and others Versus HBL and others (2013 S C M R 1383), Fida Hussain and another Versus Mst. Saiqa and others (2011 S C M R 1990), Pakistan Red Crescent Society and another Versus Syed NAZIR GILLANI (PLD 2005 Supreme Court 806), Salahuddin and 2 others versus Frontier Sugar Mills & Distillery Ltd., Tokht Bhai and 10 others (PLD 1975 Supreme Court 244), Hafiz Hamdullah Versus Saifullah Khan and others (PLD 2007 Supreme Court 52), Dr. Sher Afgan Khan Niazi Versus Ali S. Habib and others (2011 SCMR 1813) and Niaz Ali and 9 others Versus Province of Sindh through Secretary and 3 others (2018 YLR 1038). He lastly prayed for dismissal of the instant Petition.

5. Mr. Muhammad Nishat Warsi, learned Deputy Attorney General representing the Respondents No.1&2, argued that in the present petition, the Petitioners have raised grievances of their unemployment and that the

Respondent No.3 is not fulfilling its contractual obligations regarding social welfare, which contentions have been examined and the Respondent No.3 has already submitted detailed comments in this Court, wherein all the allegations have been replied to in adequate detail; that the Respondent-ENI is not in violation of the terms and conditions of the PCA with respect to employment of Pakistani nationals or locals of the area; that the contentions of the petitioners regarding non-fulfillment of social welfare obligations by Respondent-ENI are also baseless. He lastly prayed for dismissal of the instant Petition.

6. We have heard learned counsel for the parties on the issue of maintainability of the instant Petition and perused the material available on record and case law cited at the bar.

7. Firstly, the question of maintainability of the instant petition needs to be resolved. In cases where question of public importance with reference to the enforcement of fundamental rights is involved, appropriate order with direction of the nature as mentioned in Article 199 can be passed by this Court. The present case deals with the issue of the welfare of the people residing in area where the Respondent-ENI-company carries oil exploration operations. The Petitioners are claiming to be the residents of the Gas field area in district Jamshoro. Per petitioners, Respondent-ENI is acting in violation of law and the terms and conditions of the petroleum concession agreement, which they executed with the Government of Pakistan, whereby they are bound to control environmental pollution, provide jobs and gas facility to the local people of the area as well as develop infrastructure facilities, such as roads, schools, hospitals and the betterment of local people. In view of the sanctity and importance of the aforesaid rights and for safeguard thereof, the Constitution provides a specific and a special mechanism, in terms of Article 199(1)(c) by virtue whereof notwithstanding

the powers of the High Courts under Article 199(1)(a) and (b) an extraordinary power has been conferred on it "to make an order giving directions to any person, etc., as may be appropriate for enforcement of the fundamental rights enshrined in Chapter I of Part-II" and as per Article 199(2) of the Constitution, the right to move a High Court for enforcement of any of the Fundamental Rights conferred by Chapter I & II shall not be abridged. In the light of aforesaid discussed proposition of law, the instant petition is maintainable and can be heard and decided on merit.

8. Prima-facie, the present matter is of public importance and directly relates to the Fundamental Rights of the people of the Gas field Area, especially those guaranteed in Articles 9 and 14 of the Constitution. The binding social welfare obligations under the heads of social welfare, employment, training, production bonuses, and royalty arose under successive petroleum policies, with the Petroleum Policy 2012 currently in the field.

9. We have noticed that the concerned federal Ministry/the respondent No. 01 has issued separate guidelines for use of social welfare funds and the Government of Sindh has adopted these guidelines. The Honorable Supreme Court has addressed the aforesaid issues of the concerned District and Tehsil/Tulka in paragraph 19,20 and 21 of the judgment dated 28.10.2013 (supra) and the directives of Honorable Supreme Court are still in operation and cannot be ignored by the Respondents. In view of the foregoing, we have to see as to whether the directions of the Hon'ble Supreme Court in the aforesaid matter has been complied with in its letter and spirit or otherwise.

10. On the aforesaid issues the Honorable Supreme Court has concluded its findings and directed as under:-

"22. The rights of the people in the funds generated on account of social welfare obligations have a direct nexus with the fundamental rights mentioned above. These funds have either remained unutilized or have been under-utilized or the use of these funds has not been adequately monitored to ensure evaluation of spending. As an initial measure, therefore, we direct as under:--

(a) The DG PC and the relevant Provincial Government shall ensure diligent collection and monitoring of social welfare obligations of E&P Companies.

(b) The DG PC, the relevant Provincial Government and the Local Government within the area of activities of an E&P Company shall ensure optimum utilization of social welfare funds, production bonuses and other sums such as marine research fee, as are generated on account of the contractual obligations of E&P Companies. This shall be done in an open and transparent manner by ensuring that consistent with Article 19A of the Constitution [Right to Information], the local population has available to it, all relevant information relating to such funds.

(c) The Provincial and Local Governments shall review the existing policy guidelines and, where necessary, make suitable amendments to ensure that as far as may be, one Committee be constituted for each district or tehsil/taluka to ensure coordinated and effective use of the aforesaid funds. Keeping in view the provisions of Article 140A, the Local Governments established in each tehsil/taluka be given due representation or a voice on such Committee in line with the said constitutional provision which requires "each Province ... [to] devolve political, administrative and financial responsibility and authority to the elected representatives of the Local Government".

(d) Guidelines may be framed by the Federal and Provincial Governments in reasonable detail so that social welfare obligations can be monitored and the expenditure of funds can be examined in an open and transparent manner. The Committee for utilization of funds should;

- (i) ensure that the social welfare obligations of E&P Companies are fulfilled;
- (ii) proposed schemes receive due publicity and inputs from the final recipients and beneficiaries or their representatives;
- (iii) evaluate progress and completion of welfare schemes;
- (iv) have public hearings for receiving local level inputs in respect of selection, completion etc. of welfare schemes.

(e) Once every sixth months, the DCO shall effect the publication of a notice online and in the most widely-read newspaper in the district, announcing a public hearing to solicit any comments or reservations that the inhabitants of the district in general, and the purported direct beneficiaries of the scheme in particular, may have with regard to the schemes completed, initiated, or ongoing during the preceding six months. A list of all such schemes shall be included in the public notice along with their location, budget and current status.

(f) Such notices for public hearings shall be sent to all district level trade organizations, chambers of commerce, Bar Associations and other prominent organizations and social welfare organizations. Notices shall also be sent to the provincial ombudsmen. Such public notices of the public hearings shall also be promptly placed on the website of the district government, if it has one.

(g) A report in respect of completed schemes shall be sent to the Federal and Provincial Ombudsmen and to the Human Rights Cell of this Court.

(h) The DG PC shall prepare a comprehensive account of the amounts due to each district from the various E&P Companies operating therein under the heads of social welfare obligations, production bonuses, and, if applicable, marine research fee. The estimated figures for royalties due to each district may also be included in this account. A statement of this account shall be made within 45 days and shall be submitted in Court. The account shall be displayed in Urdu, English and regional languages on the website of the MPNR.

(i) The DG PC shall solicit half-yearly reports from all licence/lease holders in respect of their social welfare obligations towards the local community, including among other things, the locations, budgets and status of schemes completed, ongoing, or initiated during those six months.

(j) The DG PC shall use his enforcement powers under PCAs. actively and diligently to seek compliance with the terms of the PCAs.

(k) The Ministry of Petroleum and Natural Resources shall, ensure implementation of the Prime Minister's directive of 15-9-2003 and provide gas to "all the surrounding localities/villages falling within the radius of 5km of all Gas Fields, on priority basis" as directed, in accordance with law.

23. The DG PC shall coordinate with the Provincial Chief Secretaries and/or concerned Secretaries with the object of preparing a report in line with the aforesaid directives. The report preferably should contain suggestions/recommendations which are practical and workable keeping in view the objective that the social welfare funds are duly collected and properly spent for the benefit of beneficiaries i.e. the local people in concerned districts. For the purpose of collating information/ data in a readily usable form and for analysis of the same, the help of Professor Anjum Nasim, Senior Research Fellow, Institute of Development and Economic Alternatives, an experienced academic, may be sought by the DG PC." [Emphasis Added]

11. In view of the forgoing, the issue is not confined to the employment of the petitioners only, there are various factors involved in the matter, thus this court is empowered to enforce the judgment of the Honorable Supreme Court as provided under Article 187(2) of the Constitution.

12. The respondents are directed to take steps pursuant to the aforesaid directions issued by the Honorable Supreme Court of Pakistan in the aforesaid matter and submit compliance report through MIT-II of this Court.

13. The Chief Secretary, Sindh is also directed to appraise this court regarding compliance of the aforesaid directives of the Honorable Supreme Court accordingly. The said exercise shall be undertaken within a period of two months. The hearing of this matter is adjourned to be taken up after submission of compliance reports.

JUDGE

JUDGE

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