

ORDER SHEET**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

Const. Petitions No. D - 1064, 1068, 1069, 1072, 1075, 1077, 1080, 1081, 1083, 1084, 1087, 1088, 1089, 1091, 1096, 1097, 1098, 1099, 1103, 1104, 1105, 1106, 1108, 1112, 1114, 1125, 1126, 1127, 1132, 1135, 1141, 1146, 1147, 1148, 1151, 1152, 1153, 1154, 1155, 1160, 1162, 1169, 1174, 1180, 1191, 1193, 1213, 1217, 1235, 1259, 1277, 1287, 1300, 1468, 1549, 1599 of 2022& 02/2023

Date of hearing	Order with signature of Judge
-----------------	-------------------------------

**Mr. Justice Salahuddin Panhwar
Mr. Justice Abdul Mobeen Lakho**

For hearing of main cases:

25.01.2023

M/s Ghulam Shabbir Shar, Fidaullah Qureshi, Muhammad Raza Soomro, Sohail Ahmed Khoso, Abdul Qadeer Khoso, Waqar Ali Phulpoto, Muhammad Qasim Kandhro, Ubedullah Malano, Riaz Ali Shaikh, Athar Hussain Abro, Niazuddin N. Memon, Nusrat Hussain Memon, Shabbir Ali Bozdar, Badaruddin Memon, Muhammad Qayyum Arain, Deedar Ali M. Chohan, Abdul Mujeeb Shaikh and Achar Khan Gabol, Humail Rafi, Abdul Ghani, Sadaqat Ali Rid & Samiullah Rind, Advocates for the petitioners in C. Ps. No. D-1064, 1072, 1080, 1081, 1083, 1098, 1104, 1125, 1126, 1132, 1148, 1151, 1169, 1174, 1180, 1191, 1193, 1217, 1235, 1287 and 1549 of 2022.

M/s Jhando Khan Jarwar, Waqar Ali Phulpoto, Gul Feroze Kalwar, Asif Ali Bozdar, Muhammad Balam Sangi, Riaz Ali Maitlo, Aijaz Ali Shar, Samiullah Rind and Shabbir Hussain Talpur, petitioners in person in C. Ps. No. D-1084, 1088, 1091, 1096, 1099, 1135, 1147, 1152 and 1153 of 2022.

Mr. Sanwan Khan Jagirani, Legal Advisor of SIDA along with Faisal Ahmed (Executive Engineer, Nara Canal Division, Khairpur @ Sukkur).

Mr. Nisar Ahmed G. Abro, Deputy Attorney General and Mr. Muhammad Aslam Jatoi, Assistant Attorney General along with Abdul Karim Memon (Chief Operating Officer, SEPCO, Sukkur) and Altaf Hussain Kaheri (Executive Engineer/Operations Division, SEPCO, Ranipur).

Mr. Shafi Muhammad Chandio, Additional Advocate General Sindh and M/s Mehboob Ali Wassan and Asfandyar Kharal, Assistant Advocate Generals Sindh along with, Sharjeel Noor Channa (Deputy Commissioner, Khairpur), Muhammad Usman Abdullah Deputy Commissioner, Ghotki, Maqsood Hussain Soomro, Deputy Director, PDMA Sindh, Liaquat Ali

Kalhor ADC-I, Sukkur Waseem Ahmed, AC-Rohri, Muhammad Adeel, Assistant Commissioner, Salehpat, Asadullah Khokhar, Assistant Commissioner, Mehrabpur Sajjad Ali Khaskheli, Mukhtiarkar Taluka Hussain Bux Mari, District Mirpurkhas, Dr. Jameel Ahmed, DHO Sukkur, Dr. Abdul Sattar, Director Health Services, Sukkur, Dr. Rehmatullah Solangi, DHO Khairpur, Rasool Bux Junejo, Abdul Majeed Panhyar, Executive Engineer, Provincial Highway Division Shaheed Benazirabad, Khursheed Ahmed, XEN Mirpur Mathelo, Irrigation Ghotki, Darya Khan Chandio, AC Kotdiji, Dr. Nadeem Memon, Focal Person, DHO Office Naushahro Feroze, Jawed Memon, Project Director, Sindh Flood Emergency Rehabilitation Project, Muhammad Hayat Shaikh (Project Director SCARP, Khairpur), Amjad Ahmed Memon (Project Director SCARP, North Rohri/Shahed Benazirabad), Zain-ul-Abidin Morio (Executive Engineer, Provincial Highways, Khairpur), Qaisar Ali Hashmi, District Accounts Officer, Sukkur.

Salahuddin Panhwar, J.- Pursuant to order dated **12.01.2023**, Project Director, Sindh Flood Emergency Rehabilitation Project (SFERP), Irrigation Component, Karachi appeared and submitted the report. According to Project Director, (PD) as per commitment with **World Bank**, Sindh Government will *repair* and recoup *Dohras* for *rehabilitation* of **flood** affected areas including *construction* of *houses*, *compensation* and re-modeling of NALAs and rehabilitation of all ways of water including lacks as well as natural drainage sources by two different projects. At present, they have received **200 Million Dollars** only. Project Director and one Deputy Director, who is executive engineer, are *co-signatory* to **utilize** the amount received under this head to recoup and *remodeling* the capacity of Manchur Lake and other water sources. At this juncture, **PD** contends that they have utilized **3.8 million rupees** on different schemes. Details of schemes are attached, accordingly PD shall submit progress report along with photographs.

2. Besides, in view of the Flood Commission Report (*as discussed and referred to in earlier order*), **SCARP** has submitted *feasibility* report in view of the flood commission in **2013** for *activation* and construction of *Dhoras* and other natural water ways. Such summary was approved. Nevertheless, according to PD this task is

assigned to same project, hence in view of the Flood Commission Report 2013, paragraph No.15 of order dated 12.01.2023, being relevant, is reproduced herewith:-

“15. Project Director, **SCARP** contends that they are *unable* to drain out the water due to *blockage* of natural way(s), through illegal allotments of the land and *encroachment* by *influential* persons. He also contends that there is no proper **drainage** Nalla (s) in Khairpur District and *adjoining* Districts as well, and there is no chance to remove the flood water in near future. **This contention of PD depicts his inefficiency and ineffectiveness of the Commission and Authorities.** However, he contended that **summary** submitted by the SCARP with the Worthy Chief Minister has been **approved** due to objection by **P&D**, they have submitted concept paper for updating of the *feasibility* report 2013, *resultantly* hurdles are removed and now funds are to be released. Being relevant, component of project as approved are that:-

The Project comprises of following 08 Components.

- i. **Activation** of **Dhoro** Puran from **Mirpur** Khas up to Shakoor Dhand.
- ii. **Activation** of **Sohni** Dhoro from **Shahdadpur** to Mirwah Gorhani. Activation of Bhai Khan Dhoro from Tando Allahyar to Pangrio.
- iii. **Construction** of **Dhoro** bye-passes for Digri, Jhuddo, Tando Ghulam Ali and Naukot Towns.
- iv. **Activation** **Hiral** escape/Pithoro Dhoro, **Hakro** Dhoro & Naro (Nabisar) Dhoro.
- v. **Activation** of Sarfaraz (Digri) Dhoro, Pangrio, Khairpur. Khairpur Ghumbo & Roshan abad Dhoro.
- vi. **Activation** of **Khairpur** South dhoras.

vii. **Activation** of Ghotki Dhoras. Activation of Miranpur-Bachal Rahu Dhoro, Kandiaro-Moro Dhoros.”

3. Accordingly Flood Commission Report and PC-1 as referred above shall be initiated and implemented without any further delay. Compliance report shall be submitted.

4. At this juncture, Mr. Jawed Memon, Project Director, Sindh Flood Emergency Rehabilitation Project present *contends* that authorities have *decided* to deal all the issues relating to flood through this emergency project. In these circumstances, when *admittedly* whole irrigation system is *compromised* owing to present flood. It is therefore, pertinent to mention that project cannot be left without having no *roadmap* and *planning* in sight. Hence master plan of drainage schemes and process of eight components as referred in para 15 of order dated 12.01.2023 shall be prepared and completed under rehabilitation damages funds. All encroachments on natural ways shall be removed **immediately**. Flood Commission Reports 2012/2013 shall be implemented in letter and spirit. However ongoing schemes under Sindh Flood Emergency Rehabilitation (FERP), Irrigation component shall be continued by all means of transparency under the guidelines and MoU with donor agencies/**World Bank**.

5. Besides, it has come on record that Sindh Flood Emergency Rehabilitation Program (SFERP) infrastructures, livelihoods and Rescue 1122 components **have** been established on 5th December 2022 in the Executive Committee of National Council of Common (ECNEC), hence Project Director (SFERP) shall be in attendance along with complete record of funds **and their utilization on** ongoing schemes.

6. Accordingly, Chief Secretary Sindh with consultation of Finance Department, Secretary Irrigation and others shall workout and submit feasible plan (master plan) to ensure that in upcoming years masses must be saved from this climate change flood(s). This

exercise shall be completed within **fifteen (15) days** with compliance report.

7. Director, PDMA present submits report showing therein that **DG (PDMA)** along with Secretaries of the relevant Departments conducted open *Katcheries*, during that *directives* have been issued to the Deputy Commissioners (**DCs**) as well that they shall conduct survey and submit their demand with regard to relief **items**. Accordingly, Deputy Commissioners of all four districts i.e. Ghotki, Khairpur, Sukkur and Naushahro Feroze shall ensure that they have submitted demand after **re-survey** of the flood effected areas of their respective districts within **three (03) days**; besides, **DG PDMA** shall ensure that all demands submitted are fulfilled and flood relief items shall be provided to the **DCs** within **one week** without fail. They shall also ensure that quality and standard of the flood relief items including **blanket** and **warm** clothes i.e. **sweaters**, **jerseys** and **pullovers** proposed to be provided to the flood effectees should be appropriate and reasonable for utilization and in this regard, **PQ&SA** shall *monitor/observe* the same diligently **and carefully**. **DCs** shall ensure **distribution** of the flood relief **items** in **transparent** manner, among the flood *effectees* with full respect and reverence, without any discrimination including Political affiliation and no one shall remain unattended; Whereas, homeless persons, who are known as High Risk Families having no permanent abode shall be provided all basic facilities.

8. Director PDMA contends that Provincial Disaster Management Authority provided **9068, 86200, 61000** and **34000** tents to the Districts, Ghotki, Khairpur, Naushahro Feroze and Sukkur, respectively. Controversially, Deputy Commissioners Khairpur and Sukkur, present in Court, categorically disputes the figures provided by Director, PDMA. According to Deputy Commissioner, Khairpur, he has received only **65000** tents, whereas Deputy Commissioner, Sukkur has received **18000** tents and similar position **is** reported in district Naushahro Feroze. Accordingly, **DG (PDMA)** shall be in attendance and explains his position with regard to tents as claimed

by Deputy Commissioners. In case of failure, **contempt proceedings** shall be initiated against him.

9. At this juncture, **Director** (PDMA) contends that in their survey conducted under the supervision of the Military Personnel, there is claim of **4000** casualties due to electric shocks, roof damages, drowning and snake bites and according to them, they have paid **one million** to the legal heirs of each deceased person up-today and they have settled the claim of **232** persons died in the present flood. Whereas, rest of the claims will be settled after seeking verification reports from Deputy Commissioners. Hence, the Deputy Commissioners shall **conduct** complete survey, with the help of **NADRA & BISP** and submit complete details along-with relevant documents like death certificate to PDMA within **fifteen (15)** days. PDMA authorities are hereby directed to pay the compensation to the legal heirs of the victims within **one month** after **proper verification from concern quarters and all the payment shall be made through Banking Channels in the account of the legal heirs;** Moreover, appropriate compensation to those flood effectees be paid, who have lost their whole earnings in shape of dwellings owing to such flood in all districts of the Province of Sindh. As reported, some of flood affected areas have been *surveyed*; however, some are remained to be surveyed, thus prompt steps in this regard be taken to complete the entire survey immediately in order to compensate them accordingly from the funds reserved for flood effectees with availability of their data with **NADRA & BISP**.

10. It has come on record that *Vehri* Lake is occupied by private Respondents at the side of **RD-40** Lath Waro Minor, which is a natural way of drainage and due **such illegal** occupation, the stagnant water could not be drained out. Accordingly, Deputy Commissioners shall form a committee comprising of concerned officers of SCARP, Director Agriculture, Representative of Abadgar Association, Representative of PW&D, Director, SIDA, who shall be competent to take action in accordance with law and ensure removal of encroachment(s), if any, over there. Moreover, with regard to

stagnant water in **Mirwah**, Project Director, Khairpur shall provide *Jhatta* and ensure that stagnant water is drained from Mirwah. The Deputy Commissioners in all respective districts shall also ensure by directing the concerned officials to drain out the stagnant water at earliest under monitoring of Assistant Commissioners and **shall** submit their names in court, to held responsible in case any slackness **is found** on their part; Besides that, Executive Engineer, Highway, present contends that department has submitted **PC** for new road towards Mirwah. Accordingly, Works and Services Department shall look into the issue and ensure that such **PC-(I or II)** is approved and funds are provided.

11. At this juncture, it would be conducive to refer the judgment of Hon'ble Apex Court, wherein order of this Court has been *modified* to the extent of role of District Judiciary including Civil and District Judges, therefore, **paragraph-24** of **order** dated **16.01.2023**, passed by this Court, stands modified to that extent accordingly; Besides, Apex Court judgment contends that there must be role of **women** to look after committees, *therefore*, Deputy Commissioners shall ensure appropriate representation of women Officials, activists, non-government organizations and look after committees with regard to issues related to female genders. Needless to add, the **UN Women** also plans to work in flood affected areas throughout Pakistan and **has** made appeal in this respect as well¹ to provide life-saving relief including in Sindh & Balochistan provinces. It also includes provisional women's centres and services for the prevention of and response to gender-based violence (**GBV**), with a focus on psychosocial support to **GBV** survivors². Thusly, propriety demands that such kind of organization be taken on board to achieve desired relief results. Therefore, the Chief Secretary Sindh and Registrar of this Court shall take on board the **UN Women Pakistan**³ and submit response in this regard before the court.

¹<https://asiapacific.unwomen.org/en/countries/pakistan/flood-appeal>

²<https://pakistan.un.org/en/198187-un-women-puts-women-and-girls-heart-flood-response-pakistan>

³<https://asiapacific.unwomen.org/en/about-us/contact-us-4#pakistan>

12. Beside that, Hon'ble Apex Court in the case of **Marvi Memon Vs. Federation of Pakistan** and others (PLD 2011 Supreme Court 854) constituted a flood commission and such petition was disposed of with the following orders:-

18. Thus, accordingly following **directions** are issued;

(i). *The Federal and Provincial Governments through Secretary Cabinet and Secretary Interior Division as well as Chief Secretaries of all the Provinces are hereby **directed to implement the findings and recommendations of the report in letter and spirit.***

(ii). *The report so prepared by the Commission shall be **supplied, both soft and hard copies, to all concerned immediately.***

(iii). *The Secretary Information of Federal and Provincial Governments are hereby **directed to ensure publication of the findings and recommendations of the Commission and the instant order widely in print media as well as in electronic media in all the provinces and Islamabad Capital Territory in national and local languages.***

(iv). *The **compliance report for our perusal in Chambers shall be sent fortnightly by the Chief Secretaries.***

[Emphasis added]

13. Nonetheless, despite repeated directions in last 05 months, PDMA has **failed** to provide **complete** relief to the flood affectees as well as they have **failed** to **drain** the flood water from respective areas. P.D SCARP Sukkur, Deputy Commissioner, Khairpur and *representative* of the Deputy Commissioners Ghotki, Sukkur and Naushahro Feroze have *admitted* that the thousands acres of the land is still submerged and IDPs are *facing* miseries of the flood water by taking shelter in different places. **The reason assigned behind their contentions is non-availability of water ways to drain the flood water, but there is no explanation advanced regarding lack of steps being**

taken since promulgation of the Act, *especially* in respect of *current disaster*. Further they have contended that in initial period they received funds *accordingly* and the relief provided to the IDPs as well, but from one-month *despite* of making their requisition the concerned authorities have failed to provide them funds, therefore, they are unable to drain the water and provide relief to the IDPs. The above contentions of P.D **SCARP** Sukkur, Deputy Commissioner, Khairpur and representative of the Deputy Commissioners Ghotki, Sukkur and Naushahro Feroze depicts they have no co-ordination with the commissions and authorities and even they have not prepared the long term or short-term plans for extending relief(s) and shelter to the flood affectees as provided under the Act. It is an *undeniable* fact that the Government has allocated and released billions of rupees for providing relief and shelter to the flood affectees, nevertheless it is also an *irrefutable* and painful fact that these funds have not been incurred upon the *affectees*, in its letter and spirit and the *elements* of misappropriation, corruption and favouritism in disbursement of funds heard from every corner and cannot be ruled out.

14. It has also come on record that the IDPs are facing different *miseries* including various diseases Malaria, skin and bacterial infection; though there are serious allegations of misappropriation and discrimination with regard to the funds received by Disaster Management Committee, headed by the Deputy Commissioner(s). Be that as it may, **Secretary Health and District Health Officers** of District Khairpur Ghotki, Sukkur and Naushahro Feroze are directed to provide health facilities on emergent basis by establishing temporary dispensaries and providing mobile medical units (*fully equipped with the necessary medicines, life savings drug, ASV and ARV vaccines coupled with medical and para-medical staff*) in the relief camps till the IDPs

go back to their homes. In case of any unpleasant incident with regard to the issues of health of the affectees, the Secretary Health and the District Health Officer of the concerned district will be held responsible for any unpleasant incident.

15. In view of above facts and circumstances so emerged; besides gross negligence and slackness on the part of different departments of Government of Sindh, which resulted in thousand casualties, damages to dwellings, crops and livestock, therefore, let **show cause notices** be issued to **Secretary (Irrigation)**, Secretary (**Revenue**), Secretary (**Works & Service Department**) and **DG PDMA**, who shall be in attendance before this Court without fail and submit their explanations as to why “**contempt proceedings**” **should** not be initiated against them.

Adjourned; to come up on **08.02.2023**; to be taken up at **11:00 a.m.**, whereas, all officials present today shall remain in attendance along-with Deputy Commissioners, Naushahro Feroze and Sukkur without fail. Office to **facsimile** copy of this order to all concerned for strict compliance; besides copy be also provided to Additional Advocate General Office and Additional Attorney General, Registrar for information and compliance. Office is also directed to categorize all the captioned petitions district wise and listed them with separate headings in the cause list.

JUDGE

JUDGE

Faisal Mumtaz/PS