

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Constitutional Petition No. D – 988 of 2021

Date	ORDER WITH SIGNATURE OF JUDGE(S)
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18.01.2023 :

Mr. Gulzar Ali Almani, Advocate for the petitioners.

Mr. Ayaz Ali Rajpar, Assistant Advocate General, Sindh.

NADEEM AKHTAR, J. – Through the present petition, the petitioners have prayed, *inter alia*, that respondents 1 to 5 be directed to provide water supply and R.O. plants along with solar system to ensure supply of clean drinking water for the residents of Taluka Johi, Taluka Khairpur Nathan Shah and Taluka Mehar in District Dadu, Sindh. They have stated that due to exploration of oil and gas in the subject area and drilling of ground for this purpose, the water under the ground used by the residents has become contaminated and unfit for human consumption and or agricultural purposes. They have alleged that despite repeated requests and protests by the people of the area in question, the Government of Sindh and the official respondents have not made any serious effort to arrange clean water for human consumption and irrigation purposes, and the funds allocated for this purpose have been misappropriated by the local administration. They have pleaded that the relief sought by them in this petition is in the interest of public / people of all the villages falling in the subject Talukas who have been / are being deprived of their fundamental right.

2. On behalf of the respondents, comments have been filed by respondent No.5 / Executive Engineer Public Health Department Dadu wherein he has stated that he only looks after the schemes for supply of water that are prepared and sanctioned by "higher authorities" ; the schemes so provided are made functional in order to provide relief to the people of the relevant area ; and, as soon as new schemes are sanctioned, the same will be implemented. It is significant to note that the allegations made by the petitioners regarding contamination of water and non-supply of clean water in the subject areas have not been denied by respondent No.5. The tenor of his comments reflects that he is referring to the schemes to be announced and sanctioned in the future, and no comment or suggestion whatsoever has been made therein for improving the schemes in the subject areas, supply of clean water in lieu of contaminated water and or treatment / cleaning of contaminated water. Such an irresponsible, dismissive and apathetic attitude on the part of the respondents is

a matter of grave concern and indeed alarming, especially when the matter pertains to one of the most basic and vital fundamental rights of people viz. right to life guaranteed by Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973. Needless to say the life and wellbeing of a person without clean and adequate water is unimaginable. Indeed every fundamental right guaranteed by the Constitution is significant and important, but the right to life has to be kept on a higher pedestal and dealt with accordingly as all other fundamental rights flow from this right which guarantees the very existence and survival of every citizen.

3. In Ms. Shehla Zia V/S WAPDA (PLD 1994 S.C. 693), the Hon'ble Supreme Court was pleased to hold as under :

" Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word 'life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in the neighbour-hood or at a far-off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law. Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be residing near, under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the possibility of danger come forward and this has happened so in the present case."

(Emphasis added)

4. The aforementioned case before the Hon'ble Supreme Court was in respect of construction and installation of a grid station in a residential area due

to which local residents of that area were being affected. In the present case, all the residents living in the villages of the subject areas, who must be thousands in number, are being affected because of contamination in water and are being deprived of clean water because of the negligence and inaction on the part of the respondents. Therefore, in our humble opinion, the above authority of the Hon'ble Supreme Court is fully applicable to the present case and this Court is bound to follow the same in view of the important principles laid down therein with regards to safeguarding the life, liberty, and dignity of every citizen in accordance with law and the Constitution ; entitlement and enjoyment of basic amenities, facilities, healthy environment, etc. by every citizen ; and, sufferings of people due to inaction and failure on the part of civic, municipal and other relevant agencies. Needless to say similar to Article 184, Article 199 of the Constitution can also be invoked in such cases.

5. By merely preparing, sanctioning and announcing the schemes for water supply, the respondents cannot be absolved from their legal and constitutional duty and functions for providing necessities of "life" to the residents of the subject villages as held in Ms. Shehla Zia (supra). All such schemes are meaningless unless they are actually executed such that they safeguard life, liberty, and dignity of citizens in accordance with law and the Constitution. The public functionaries and all such departments and organizations who are legally bound to perform their functions and duties for the survival, safety, wellbeing and betterment of general public, must perform their functions and discharge their duties with sincerity, honesty, prudence, vigilance and full responsibility. It is well-settled that justice should not only be done, but it should be seen to have been done. On the same analogy duties should not only be discharged, but they should be seen to have been discharged. The question involved in the present case relates directly to fundamental rights relating to "life," health and human existence and enjoyment of amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. We are, therefore, constrained to treat this matter as public interest litigation.

6. This petition is pending since the past eighteen (18) months, but except for the vague and stereotypical comments mentioned above no step has been taken by the respondents to redress the grievance brought before this Court through the present petition. The respondents have not surveyed the subject villages and have not conducted any test to determine the extent of the contamination in water and or the cause of such contamination, nor have they submitted any report in this behalf. They have not even bothered to volunteer to conduct such a survey or test to ensure provision of the right to life to people by providing clean water to them, which is indicative of their lack of interest in the

matter and wellbeing of thousands of lives. It appears that the Government and the respondents have not only failed in performing their duty and functions of making proper and timely corrective measures for eradicating the contamination in water and arrangements for providing clean water, but have also failed in giving due importance and priority to this basic and fundamental right of the people. This is unjustifiable on several accounts, including that the respondents are public servants / functionaries and by definition their job comprises serving the public and looking out for the best interests of the public ; also, surely the respondents would not accept contaminated water for their own consumption, and it is rather callous that only because they are not personally affected by a problem, they remained indifferent to it and failed to take corrective measures.

7. In the above circumstances, the respondents are jointly and severally directed to conduct a detailed survey of the villages / areas in question and proper specialized laboratory / chemical tests of the underground water in the said areas within sixty (60) days ; ensure immediate eradication of contamination in water by proper and specialized water treatment ; and, ensure provision of clean, safe and adequate water for the said areas forthwith with R.O. plants along with solar system. The Secretary Health, Government of Sindh, is directed to submit a compliance report in the above terms within fifteen (15) days of the period stipulated above. Issue notice to him as well as to the Chief Secretary Sindh for compliance. The petition stands allowed in these terms with no order as to costs.