

## **Pakistan**

### **Ashgar Leghari v. Federation of Pakistan**

Lahore High Court, Pakistan, 4 September 2015

Case No: W.P. No. 25501/2015<sup>1</sup>

#### CLIMATE CHANGE ORDER.

1. The petitioner, who is an agriculturist and a citizen of Pakistan, has approached this court through this public interest litigation (PIL) to challenge the inaction, delay and lack of seriousness on the part of the Federal Government and the Government of the Punjab to address the challenges and to meet the vulnerabilities associated with Climate Change. It is submitted that in spite of the National Climate Change Policy, 2012 and the Framework for Implementation of Climate Change Policy (2014-2030) [“Framework”], there is no progress on the ground. It is submitted that climate change is a serious threat to water, food and energy security of Pakistan which offends the fundamental right to life under article 9 of the Constitution. On the last date of hearing, notices were issued to the concerned Ministries and Departments for today.

2. The following departments and their representatives are present before the Court today:

#### Federal Government.

- i. Cabinet Division, Government of Pakistan.
- ii. Ministry of Finance, Revenue and Planning and Development.
- iii. Ministry of Foreign Affairs
- iv. Ministry of Inter-Provincial Coordination.
- v. Ministry of Law and Justice
- vi. Ministry of Climate Change.
- vii. Ministry of National Food Security and Research.
- viii. Ministry of Water and Power
- ix. Irrigation Department.
- x. National Disaster Management Authority (NDMA).

#### Provincial Government.

- i. Agricultural Department.
- ii. Environment Protection Department/EPA.
- iii. Food Department.
- iv. Forestry, Wildlife and Fisheries Department.
- v. Health Department.
- vi. Housing, Urban Development and Public Health Engineering Department.
- vii. Planning and Development Department.

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<sup>1</sup> Available at <http://edigest.elaw.org/sites/default/files/pk.leghari.090415.pdf>.

- viii. Irrigation Department.
- ix. Law and Parliamentary Affairs Department.
- x. Disaster Management Department (DMD).
- xi. PDMA.

Joint Secretary, Ministry of Climate Change made his submissions regarding the implementation of the Climate Change Framework. He submitted that under the Framework there are 734 action points to be addressed by various stakeholders and out of these 232 action points, are priority items which must be completed in two years i.e., latest by 2016. In response to a question by the Court, the Joint Secretary submitted that the principal concern for Pakistan is to develop climate change resilience through adaptation in Water, Agriculture & Livestock and Forestry sectors besides Disaster Preparedness. He referred to Paras 4, 5, 7 and 9 of the Framework in this regard.

3. He submitted that Federal Ministry for Climate Change was established in the year 2015 and its first meeting took place in April, 2015 and since then various reminders have been issued to various departments and authorities in May and June, 2015 to report the progress regarding the priority items mentioned in the Framework. On Court query, he very frankly submitted that by and large the response of the various departments has not been very positive and feels that more awareness and sensitization is required. He submits that the effects of climate change can be addressed through mitigation or adaptation. As Pakistan is not a major contributor to global warming it is actually a victim of climate change and requires immediate remedial adaptation measures to cope with the disruptive climatic patterns.

4. It is submitted that most relevant stakeholders at the Federal level are the Ministry of Water and Power, the Federal Flood Commission, Meteorological Department, WAPDA and NDMA [National Disaster Management Authority], Economic Affairs Division, Planning Commission of Pakistan and at the provincial level it is the Planning and Development (P&D) Department, Irrigation (including Small Dams Organization), Agriculture and Forestry Departments besides PDMA. He also submits that MET Department be directed to be present before this Court with a summary of the climatic history of Pakistan for the benefit of the Court and for the other stake holders.

5. The representatives of the Irrigation Department, Agriculture Department, Forestry Department, Ministry of Water and Power, Federal Flood Commission, NDMA, PDMA and Ministry of Foreign Affairs made brief submissions but could not satisfactorily show that adaptation measures as listed in the Framework were seriously afoot. They sought time to file a detailed reply clearly showing the progress made regarding the PRIORITY actions under the Framework relating to Water, Agriculture, Forestry and Disaster Management.

6. Climate Change is a defining challenge of our time and has led to dramatic alterations in our planet's climate system. For Pakistan, these climatic variations have primarily resulted in heavy floods and droughts, raising serious concerns regarding water and food security. On a legal and constitutional plane this is clarion call for the protection of

fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society who are unable to approach this Court.

7. Fundamental rights, like the right to life (article 9) which includes the right to a healthy and clean environment and right to human dignity (article 14) read with constitutional principles of democracy, equality, social, economic and political justice include within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intra-generational equity and public trust doctrine. Environment and its protection has taken a center stage in the scheme of our constitutional rights. It appears that we have to move on. The existing environmental jurisprudence has to be fashioned to meet the needs of something more urgent and overpowering i.e., Climate Change. From Environmental Justice, which was largely localized and limited to our own ecosystems and biodiversity, we need to move to Climate Change Justice. Fundamental rights lay at the foundation of these two overlapping justice systems. Right to life, right to human dignity, right to property and right to information under articles 9, 14, 23 and 19A of the Constitution read with the constitutional values of political, economic and social justice provide the necessary judicial toolkit to address and monitor the Government's response to climate change.

8. In the present case, the delay and lethargy of the State in implementing the Framework offends the fundamental rights of the citizens which need to be safeguarded. Therefore, it is directed as follows:

- i. That above Ministries, Departments and Authorities shall nominate a CLIMATE CHANGE FOCAL PERSON within their institution to closely work with the Ministry of Climate Change to ensure the implementation of the Framework and also assist the Court in the instant petition. The official notification for the said nomination shall be placed on record on the next date of hearing when the FOCAL PERSON shall also appear before the Court.
- ii. The above Ministries, Departments and Authorities shall present a list of adaptation action points (out of the priority items of the Framework) that can be achieved by 31st December, 2015.
- iii. In order to assist this Court to monitor the progress of the Framework according to the deadline directed by the Court (i.e., 31<sup>st</sup> December, 2105) it is imperative to constitute a CLIMATE CHANGE COMMISSION (CCC). CCC shall comprise (a) representatives of the key ministries/departments (b) NGOs (c) Technical Experts etc. Let the proposed names and terms of reference be placed on the record on the next date of hearing.

8. The Joint Secretary Climate Change when asked to appear in person on the next date of hearing, submitted that he has been transferred to Baluchistan and he might not be able to assist the Court on the next date of hearing. On further probe, the said officer replied that he has been working in the areas of Environment/ Forestry and Climate Change for

the last four years. On a policy level, if a civil servant has acquired such special expertise and experience over a period of four years especially in an area where the country lacks expertise and where water and food security stand seriously threatened, any such transfer can weaken the momentum gained by the Ministry which in turn will have a serious bearing on the fundamental rights of the people. Learned DAG will seek instructions from the Establishment Division in this regard and apprise the Court on the next date of hearing. The said officer shall appear in person on the next date of hearing.

9. Office shall issue notices to:

- i. Mr. Ali Tauqir Sheikh, CEO, LEAD Pakistan, LEAD HOSUE, f-7, Markaz Islamabad (051-111 511 111).
- ii. Mr. Hamad Naqi, Director General, WWF, Lahore (0300-8466690)
- iii. Mr. Irfan Tariq, D.G. (Environment), Ministry of Climate Change, Islamabad.
- iv. The Project Director, Small Dams Organization, Irrigation Department, Government of the Punjab.

10. Office is directed to additionally fax copy of this order to all the concerned departments and persons mentioned in this Order. Additional Secretaries of the Ministries and Departments mentioned in this order shall appear in person along with the FOCAL PERSONS on the next date of hearing.

11. To come up on 14.09.2015 at 11.00 a.m.

(Syed Mansoor Ali Shah)  
Judge

M. Tahir\*