

Form No:HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No. W.P. No.30823/2024

Ch. Rizwan Ali Raa **Versus** Government of Punjab & others

S.No.of order/ Proceeding	Date of order/ Proceeding	Order with signature of judge, and that of parties or counsel, where necessary.
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17.05.2024 M/s. Mian Ejaz Latif, M. Azhar Siddique and Ch. Arshad Gulzar, Advocates for the petitioner.
Mrs. Hina Hafeez Ullah Ishaq and Syed Kamal Ali Haider, Advocates/Members of the Judicial Water and Environmental Commission.
Mr. Asad Ali Bajwa, Deputy Attorney General.
Mr. Hassan Ejaz Cheema, Assistant Advocate General with Dr. Ahmad Javed Qazi, Secretary Transport and M. Nawaz Manik, Legal Advisor for EPA.

This order will also decide connected W.P.No. 30822/2024 as similar questions of law have been raised in these petitions.

2. Notices were issued and report has been filed by the learned Members of the Judicial Water and Environmental Commission regarding a scheme sought to be launched by the Government of Punjab to provide motorcycles to the students. Under the scheme the proposal is to provide 23000 bikes to the students of which 19000 would be petrol bikes (**The Scheme**). This raised concerns regarding environment pollution and adverse impact on the environment by induction of a large number of motorcycles in the traffic pattern of Punjab. It is made clear that this issue has engaged the attention of this Court purely because of environmental concerns which strictly affects the right to life enshrined in Article 9 of the Constitution of Islamic Republic of Pakistan, 1973. Two reports have been filed on behalf of Transport & Masstransit Department, Government of Punjab. To reiterate, this Court is

not concerned with the other aspects of the scheme which is within the domain of the Government but merely relates to the impact on environment by the launch of the scheme. Different applications were filed which have now been converted into instant constitutional petitions and which are being heard and disposed of together.

3. Learned Advocate General Punjab on the last date of hearing as well as learned Assistant Advocate General have been heard today as also the Secretary Transport and Masstransit Department, Government of Punjab have been heard in the matter. There are various reports placed on the record filed by the Urban Unit, Government of Punjab as well as World Bank and other Multilateral Agencies which establish in different studies that of the various factors vehicular emission constitutes the largest proportion of pollution being caused. Out of the entire bulk of vehicular emission, the major contributor to pollution is the emission by motorcycles. Therefore, it should be of deep concern for any reasonable Government to engage in a priorly conducted feasibility study regarding impact of induction of thousands of motorcycles into the mainstream traffic of Punjab.

4. The Punjab Environmental Protection Act, 1997 ("Act, 1997") assumes significance in this regard. Adverse environmental effect has been defined as:

"(i) "adverse environmental effect" means impairment of, or damage to, the environment and includes –
(a) impairment of, or damage to, human health and safety or to biodiversity or property;
(b) pollution; and
(c) any adverse environmental effect as may be specified in the regulations;"

5. Project in the Act, 1997 means:

"project" means any activity, plan, scheme, proposal or undertaking involving any change in the environment and includes—

(a) construction by use of buildings or other works;
(b) construction or use of roads or other transport

systems;

- (c) *construction or operation of factories or other installations;*
- (d) *mineral prospecting, mining, quarrying, stone-crushing, drilling and the like;*
- (e) *any change of land use or water use; and*
- (f) *alteration, expansion, repair, decommissioning or abandonment of existing buildings or other works, roads or other transport systems, factories or other installations;”*

6. Lastly, proponent has been defined as:

“proponent” means the person who proposes or intends to undertake a project;

7. A cumulative reading of these definitions would clearly show that a project would mean any activity, plan, scheme or undertaking involving any change in the environment. Doubtless, the scheme being proposed by the Government is such a scheme and would involve a change in the environment and there can be no two opinions about this aspect. The launch of the scheme would be caught by the definition of adverse environmental effect and would cause pollution and impairment of human health and safety. Since the scheme is definitely a project within the meaning of the Act, 1997, this would trigger Section 12 which provides that:

“12. Initial environmental examination and environmental impact assessment.—(1) No proponent of a project shall commence construction or operation unless he has filed with the Provincial Agency an initial environmental examination or where the project is likely to cause an adverse environmental effect, an environmental impact assessment, and has obtained from the Provincial Agency approval in respect thereof.

(2) The Provincial Agency shall—

- (a) review the initial environmental examination and accord its approval, or require submission of an environmental impact assessment by the proponent; or*
- (b) review the environmental impact assessment and accord its approval subject to such conditions as it may deem fit to impose, or require that the environmental impact assessment be re-submitted after such modifications as may be stipulated, or reject the project as being contrary to environmental objectives.*

(3) Every review of an environmental impact assessment shall be carried out with public participation and no information will be disclosed during the course of such public participation which relates to—

- (i) trade, manufacturing or business activities, processes or techniques of a proprietary nature, or financial, commercial,*

scientific or technical matters which the proponent has requested should remain confidential, unless for reasons to be recorded in writing, the Director - General of the Provincial Agency is of the opinion that the request for confidentiality is not well-founded or the public interest in the disclosure outweighs the possible prejudice to the competitive position of the project or its proponent; or

(ii) International relations, national security or maintenance of law and order, except with the consent of the Government; or

(iii) matters covered by legal professional privilege.

(4) The Provincial Agency shall communicate its approval or otherwise within a period of four months from the date the initial environmental examination or environmental impact assessment is filed complete in all respects in accordance with the prescribed procedure, failing which the initial environmental examination or, as the case may be, the environmental impact assessment shall be deemed to have been approved, to the extent to which it does not contravene the provisions of this Act and the rules and regulations made thereunder.

(5) Subject to sub-section (4) the Government may in a particular case extend the aforementioned period of four months if the nature of the project so warrants.

(6) The provisions of sub-sections (1), (2), (3), (4) and (5) shall apply to such categories of projects and in such manner as may be prescribed.

(7) The Provincial Agency shall maintain separate Registers for initial environmental examination and environmental impact assessment project, which shall contain brief particulars of each project and a summary of decisions taken thereon, and which shall be open to inspection by the public at all reasonable hours and the disclosure of information in such Registers shall be subject to the restrictions specified in sub-section (3)."

8. The provisions set out above is couched in mandatory terms and prohibits any project to commence unless an environmental impact assessment has been filed with the Provincial Agency whose approval has been obtained in this regard. This, *a fortiori*, applies to a scheme or undertaking by the Government and is of the essence of a responsible Government. This has admittedly not been done by the Transport Department while formulating the scheme and obtaining its approval from the Government. The Secretary present in the Court does not dispute the applicability of the Act, 1997 under these circumstances. Finally, section 19 makes it an offence for any Government Agency to proceed with the implementation of the scheme without the approval of the Provincial Agency and the head of that Government Agency

will be directly liable for being punished under the provisions of the Act, 1997. Therefore, it can be culled out from the above narration of the provisions of Act, 1997 that an Environmental Impact Assessment (**EIA**) as a *sine qua non* was to be submitted by the Transport Department with regard to the scheme to the Provincial Agency and an approval had to be obtained priorly before the scheme was formally launched. This can still be done by the Transport Department which is under obligation to do so.

9. In view of the above, these petitions are **disposed of** with a direction that before the scheme is formally put into effect and the distribution of petrol motorcycles takes place, an EIA shall be submitted to the Provincial Agency for its approval in accordance with law. Once that approval has been granted, this scheme may proceed ahead. It is further made clear that the Provincial Agency shall engage private and independent consultants to review the EIA so submitted and thereafter proceed to grant or refuse approval on the basis of the recommendations. The fee of the independent consultants shall be borne by the Transport Department. Until the approval is granted, the scheme shall be held in abeyance and no further steps shall be taken by the Transport and Masstransit Department with regard to the scheme.

(**SHAHID KARIM**)
JUDGE

Approved for reporting.

JUDGE

Abdul Waheed