

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No: W.P.No.69910/2024

Amal Sukhera

Versus

Govt. of Punjab etc.

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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07.11.2024 Senator Barrister Syed Ali Zafar, ASC for the Petitioner alongwith Mr. Jahanzeb Sukhera, Barrister Mehak Zafar, Kashish Haider and Batool Hussain, Advocates.
Mr. Osman Khan, Assistant Advocate General (on Court call).
Mr. Muhammad Abid, Civil Judge/Research Officer.

The Petitioner has filed this *Writ of Mandamus* under Article 199(1)(a)(i) of the Constitution of Islamic Republic of Pakistan, 1973 (the “Constitution”), to direct the Respondents to do, what they are required by law to do and in this case, to implement provisions of Section 15 of the Punjab Environmental Protection Act, 1997 (the “Act”) read with the Punjab Environmental Protection (Motor Vehicles) Rules, 2013 (the “2013 Rules”).

2. Senator Barrister Syed Ali Zafar, ASC submits that the Petitioner is a child of three years and she has filed this petition through her mother for the protection of intergenerational rights of the future generation to a clean and healthy environment as enshrined in (newly inserted) Article 9A to the Constitution under Section 16 of the Constitution (Twenty-sixth Amendment) Act,

2024 (the “Twenty-sixth Amendment”), which are being irreversibly affected through the adverse impacts of air pollution currently prevailing in Lahore city.

3. When confronted how writ is maintainable after insertion of new clause (1A) to Article 199 of the Constitution under Section 16 of the Twenty-sixth Amendment, because it confines the jurisdiction of this Court by mentioning that *for removal of doubt, the High Court shall not make an order or give direction or make a declaration on its own or in the nature of suo motu exercise of jurisdiction beyond the contents of any application filed under clause (1)*, Senator Barrister Syed Ali Zafar, ASC submits that Article 199(1)(a)(i) of the Constitution makes it clear that this Court can pass an order or direction to a person performing functions within its territorial jurisdiction in connection with the affairs of the Federation, a Province or a local authority **to do anything he is required by law to do, on an application of any aggrieved party**, therefore, this Court is fully empowered to pass a direction in the instant petition.

4. When further confronted how writ can be filed by a child under the age of three years, Senator Barrister Syed Ali Zafar, ASC submits that Article 199 of the Constitution mentions that any aggrieved party may approach this Court but it does not specify the nature of party, thus, the Petitioner, being an aggrieved party, can agitate the issue before this Court under the Child Justice System. In this regard, he has drawn attention

towards the judgment passed by this Court (at Rawalpindi Bench) in the case of Zafar Khizer versus Federation of Pakistan and others (PLD 2023 Lahore 164) in which the concept about protection of fundamental rights of child citizens of this country, as enshrined in Chapters 1 and 2 (under Part-II) of the Constitution, has been further elaborated. He has read from paragraph-2 of this judgment, relevant part of which is reproduced hereunder for ease of the matter:

“.....The Petitioner has sought directions to both the Federal as well as the Provincial Governments to declare the fundamental rights of child citizens, including right to nutritious food, right to proper development (to maximize benefit from education) and right to education, as an unqualified right and to further expand the said rights in light of provisions of Articles 4, 9, 14, 25A and 38 of the Constitution. The first issue to be resolved by this Court is whether the word child citizen can be referred in the Constitution in light of different words used in the Constitution i.e. (a) citizen; (b) party; (c) person; and (d) individual in order to invoke such provisions. In this regard, stance of the learned counsel for the Petitioner is that the Constitution itself elucidates the word children under the newly added Article 25A, which specifies that free and compulsory education is fundamental right of all the children of the age of five to sixteen years. They further asserted that the word “children” is mentioned in Article 11(3) and also used in Article 25(3) while Article 35 of the Constitution protects the marriage, the family, the mother and the child, hence, the word child used in the Constitution can be stretched with the words citizen and person.”

He maintains that in **Zafar Khizer Case** (*supra*), this Court followed Doctrine of Intergenerational Rights developed by Supreme Court of Philippine in **Oposa versus Factoran**, G.R.No.101083, 224 S.C.R.A. 792 (1993), recognizing the doctrine of intergenerational responsibility of the environment in the Philippine legal system. In the said case, the children became party to protect their future generation and despite the fact that the Respondents (of said case) did not take issue with the Petitioners' legal standing, the Court of Philippine nevertheless addressed the "special and novel element" of the Petitioners representing their generation and generations yet unborn by strengthening the Doctrine of Intergenerational Responsibility by holding that:

"We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the "rhythm and harmony of nature." Nature means the created world in its entirety. Such rhythm and harmony indispensably include, inter alia, the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment

of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come."

He maintains that the basic issue for which the intervention of this Court is being sought, is the lack of interest on part of the Government in fulfilling its obligation and duty to enforce the provisions contained in Section 15 of the Act since the time of its induction, i.e the year 1997. He has read the "Preamble" of the Act, which clearly states that it has been enacted for the protection, conservation, rehabilitation and improvement of the environment, **prevention and control of the pollution**, promotion of sustainable development, and for the matters connected therewith and incidental thereto. He strenuously states that after lapse of a long period of about **twenty seven years**, no substantial steps have been taken by the Respondents/authority concerned so far for control of the air pollution. He has pointed out that the Air Quality Life Index (the "AQLI") Report for Pakistan indicates that air pollution has led to a significant decrease in life expectancy, particularly in the Province of Punjab where it is estimated to be reduced by 5.5 years and presently, the average life expectancy in our country is around 67 years, which reflects severe impact of poor air quality on public health. He next argues that the Lahore city has been declared as one of the most polluted cities in the

world and core cause of this pollution is the vehicular emissions, which as per a report prepared by the Urban Unit of Punjab's Planning & Development Department, is now reached to 83-percent (originating from the transportation sector) but the concerned authority, forum as well as the department has failed to regulate the said vehicular emissions by applying relevant provisions of the 2013 Rules. He contends that though the Act was enacted in 1997 when it was the subject of Federal Government but after eighteenth amendment to the Constitution on 15.04.2010, it has become the Provincial subject through induction of the Punjab Environmental Protection (Amendment) Act, 2012, therefore, this Court can take cognizance of the matter.

5. In response to another query raised by this Court that under which law the Petitioner is seeking the aforesaid direction and what is the jurisprudence developed by superior Courts of the country on the issue in hand, Mr. Jahanzeb Sukhera, Advocate contends that the Respondent, Environmental Protection Agency, (the "EPA"), is established under Section 5 of the Act with the functions & powers as defined under Sections 6 and 7 of the Act and it can take necessary steps/action under Section 11 read with Section 16 of the Act to control the air pollution. He claims that the issue of air pollution has not been addressed by the EPA for revising the Punjab Environmental Quality Control Standards (the "PEQs") for ambient air and industrial gaseous emissions, as provided under Section 6(1)(e) of

the Act. He argues that it is necessary to maintain a healthy environment in the City of Lahore and throughout the Punjab to (i) revise the PEQs for ambient air and industrial gaseous emissions; and (ii) make regulations for installation of pollution control devices or other equipment and fuel, in order to control the air pollution. He states that air pollution is defined under Sub-Section (iii) of Section 2 of the Act and if the PEQs are not revised or regulations for checking maintenance of motors are not made under the 2013 Rules in a timely fashion then it will cause more adverse effect to the environment of Lahore as well as the entire Province. He submits that the non-action on part of the Government to control the air pollution is also against the principles settled by the superior Courts of the country from time to time on climate justice and in this connection, reference can be made to the judgments reported as *Ms. Shehla Zia and others versus WAPDA (PLD 1994 SC 693)* (right to clean environment), *Asghar Leghari versus Federation of Pakistan and others (PLD 2018 Lahore 364)* (right to environment/water justice); *General Secretary Salt Miners Labour Union (CBA) Khewra, Jhelum versus The Director, Industries & Mineral Development Punjab Lahore (1994 SCMR 2061)* (right to clean water), *Government of Balochistan through Additional Chief Secretary versus Azizullah Memon and 16 others (PLD 1993 SC 341)* (right to access to justice), *Al-Jehad Trust through Raees-ul-Mujahidin Habib Al-Wahabul Khairi, Advocate Supreme*

Court and another versus Federation of Pakistan and others (PLD 1997 SC 84), Khan Asfandyar Wali and others versus Federation of Pakistan through Cabinet Division, Islamabad and others (PLD 2001 SC 607), Arshad Mehmood and others versus Government of Punjab through Secretary, Transport Civil Secretariat, Lahore and others (PLD 2005 SC 193), (PLD 2011 SC 619) Suo Moto Case No.13 of 2009 (Nexus between Articles 9 and 38), Fiaqat Hussain and others versus Federation of Pakistan through Secretary, Planning and Development Division, Islamabad and others (PLD 2012 SC 224), 2013 SCMR 1752 (right to reputation), Lahore Development Authority through D.G. and others versus Ms. Imrana Tiwana and others (2015 SCMR 1739), Shahab Usto versus Government of Sindh through Chief Secretary and others (2017 SCMR 732) (right to clean water and sewerage disposal), Nadir Ali versus Medical Superintendent, Civil Hospital, Larkana and 9 others (PLD 2017 Sindh 448) and Messrs GETZ PHARMA (Pvt.) Ltd. through Authorised Person versus Federation of Pakistan, through Secretary, Ministry of National Regulation and Services and another (PLD 2017 Sindh 157) (right to health). He has particularly referred to another judgment passed by the Supreme Court of Pakistan in the case of Pollution of Environment Caused by Smoke, Emitting Vehicles, Traffic Muddle (1996 SCMR 543), in which directions were issued to the concerned authority to streamline the process of checking as a first step in eliminating the

pollution caused by the smoke emitting vehicles. He pleads that the basic source of pollution in the Lahore city as well as the Province of Punjab is the motor vehicles, as mentioned above, therefore, specific direction was issued by the Supreme Court of Pakistan to first take steps for implementing the check and balance policy on the motor vehicles in the aforesaid judgment which is binding on all the Governmental authorities under Article 189 read with Article 190 of the Constitution.

6. Mr. Jahanzeb Sukhera, Advocate next submits that under Section 15 of the Act no person shall operate a motor vehicle from which air pollutants or noise are being emitted in an amount, concentration or level which is in excess of the PEQs and the owner of such vehicle shall install a pollution control device/equipment, use fuel and undergo maintenance or testing of motor vehicle for control of air pollution and noise pollution, as may be prescribed under the regulations. In this regard, he has drawn attention of the Court towards the provisions of Section 33(2)(i) of the Act, which reads as under:-

“33. Power to make regulations. (1) For carrying out the purposes of this Act, the [Provincial Agency] may, by notification in the official Gazette and with the approval of the [Government], make regulations not inconsistent with the provisions of this Act or the rules made thereunder.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for—

(a) -----

- (b) -----
- (c) -----
- (d) -----
- (e) -----
- (f) -----
- (g) -----
- (h) -----
- (i) *installation of devices in, use of fuels by, and maintenance and testing of motor vehicles for control of air and noise pollution.”*

He contends that the regulations are to be made by the Respondents without any delay, which has not been done so far. This violates fundamental rights of the Petitioner and other citizens of the country as prescribed in the judgments passed by this Court on similar issue of controlling air pollution in the cases of Mrs. Anjum Irfan versus Lahore Development Authority through Director-General and others (PLD 2002 Lahore 555) and Syed Mansoor Ali Shah and 4 others versus Government of Punjab, through Housing, Physical and Environmental Planning Department, and 3 others (PLD 2007 Lahore 403) and subsequently, by a Division Bench of High Court of Sindh in the case of Islam Hussain versus City District Government and others (2007 CLC 530). He highlights the point that in Syed Mansoor Ali Shah’s Case (supra), the Court suggested various measures for combating pollution, which included, inter alia, efficient utilization of solar energy, more plantations of trees, measures to introduce electric rail cars, and increasing the role of the media in promoting public awareness. In the said case, this Court

directed the “Lahore Clean Air Commission” to recommend measures for the improvement of Lahore's air quality and the said commission not only set up sub-committees with respect to clean fuel, rickshaws, public transport and coordination with local councils but also attention of all the oil companies was invited by the Clean Fuel Sub-committee to support the work of the said commission, and some of their representatives attended a national workshop in Lahore convened by the commission to formulate a joint strategy for air quality. Ultimately, the said case was disposed of by the Court with directions to the Transport Department, City District Government Lahore and the EPA to introduce CNG Euro II buses for public transport, phase out existing buses within two years by December 2007, set up dedicated bus lanes, implement a cap age of ten years for buses, and ban four stroke rickshaws. Whereas in **Islam Hussain (2007 CLC 530)**, the Division Bench of High Court of Sindh directed the DIG Traffic Police to ensure that no smoke-emitting vehicle or one causing noise pollution should ply in the city of Karachi after three months from the day the judgment was passed in 2007, and further that strict action be taken against the offenders.

7. Suffice to mention here that this Court has to protect and promote child justice system as also envisaged by the Supreme Court of Pakistan on various occasions, while hearing a number of similar cases. Under Rule 3(3) of the Punjab Government Rules of Business, 2011 (the “2011

Rules”), business of the Government has been distributed amongst several Departments in the manner indicated in the Second Schedule and functions of the **Secretary** are described under Rule 10 of the 2011 Rules, which is reproduced hereunder for ease of the matter:-

“10. Functions of the Secretary.— (1) A Secretary shall:

- (a) *be the official head of the Department and be responsible for its efficient administration and discipline, for the conduct of business assigned to the Department and for the observance of laws and rules, including these rules, in the Department;*
- (b) *be responsible to the Minister for the business of the Department and keep him informed about the working of the Department, and of important cases disposed of without reference to the Minister;*
- (c) *assist the Minister in the formulation of policy and bring to the notice of the Minister cases required to be submitted to the Chief Minister under the rules;*
- (d) *execute the sanctioned policy;*
- (e) *submit, with the approval of the Minister, proposals for legislation to the Cabinet;*
- (f) *keep the Chief Secretary informed of important cases disposed of in the Department;*
- (g) *issue, subject to any general or special orders of the Government:*
 - i) standing orders specifying the cases or class of cases which*

may be disposed of by an officer subordinate to the Secretary; and ii) specific orders and instructions to its officers for the conduct of the business assigned to a local government.

(2) While submitting a case for the orders of the Minister, the Secretary shall suggest a definite line of action.

(3) Where the Minister's orders appear to contravene any law, rules, regulations or Government policy, the Secretary shall resubmit the case to the Minister inviting his attention to the relevant law, rules, regulations or Government policy, and if the Minister disagrees with the Secretary, the Minister may refer the case to the Chief Minister for orders."

This Court has already strengthened the scope of Rule 10 of the 2011 Rules in the case of PIA Officers Cooperative Housing Society Limited versus Province of Punjab etc. (2024 CLC 947 947) (**Rawalpindi Bench**) by holding that Secretary, being official head of the Department, can look into the administrative affairs of the Department. In the instant case, the Secretary, Environmental Protection Department, Lahore/ Respondent No.1 is the official head of the department and he is fully empowered to make (i) proper legislation; (ii) policy formulation; and (iii) planning in respect of various fields related to environment, as specified under the 2011 Rules. He may also take all the necessary measures for perfect administration of the relevant laws.

8. This is a first impression case and further interpretation of the (newly inserted) Article 9A of the Constitution with regard to protection of intergenerational rights of future generation read with the provisions of Articles 9, 14 and 3 of the Constitution is required. Moreover, “Preamble” of the Act deals with the protection, conservation, rehabilitation and improvement of environment as well as **prevention and control of the pollution** couple with the fact that Section 2(xlii) of the Act defines the “sustainable development” as the development which meets the needs of the present generation without compromising the ability of future generations to meet their needs.

Admit. Notice be issued to the Respondents for 12.11.2024. Secretary, Environmental Protection Department, Lahore (Respondent No.1) and the Director General, EPA (Respondent No.2) will appear in person on the next date to explain what steps have been taken by them to control air pollution in the City of Lahore under Section 15 read with the provisions of Section 33(2) of the Act. As the big cause of pollution in the city is the vehicular emissions, a senior and responsible officer from the office of Respondent No.3 shall also appear on the next date to inform the Court what steps have been taken by them for maintaining a clean and healthy environment in the City of Lahore.

9. A separate notice under Order XXVII-A of C.P.C shall also be issued to learned Advocate General Punjab to respond to the legal questions raised in this petition.

C.M.No.01/2024

10. Notice for the aforesaid date.

C.M.No.02/2024

11. Dispensation sought for is allowed subject to all just and legal exceptions. C.M. stands **disposed of**.

(JAWAD HASSAN)
JUDGE

*Mājid