

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P.NO.2123-2021

Bilal Haque etc.

Vs.

Federation of Pakistan through Secretary Interior, Islamabad etc.

**Petitioners by : M/s Natalya Kamal and Hassan Adnan Ahmed,
Advocates**

**Respondents by : Ms. Misbah Gulnar Sharif, Advocate for CDA with
Rana Tariq Mahmood, Director (Roads), CDA
Aamir Abbas Khan, Deputy Director (Legal), Pak.
EPA/respondent No.4.**

Mr. Danyal Hassan, Advocate for respondent No.5.

M/s Qasim Wadood, Additional Attorney General
and Attique-ur-Rehman Siddiqui, Assistant Attorney
General.

Date of decision : 28.02.2022

AAMER FAROOQ.I. The instant writ petition is in the nature of ‘public interest litigation’ seeking appropriate declaration and directions with respect to unlawful acts and omissions by respondent No.3 primarily. In this behalf, the petitioners are citizens of Islamic Republic of Pakistan and are concerned and aggrieved of commencement of the Project by the respondents in the name and style ‘Margalla Avenue’. It is the stance of petitioners that respondent No.3 is acting in violation of mandatory provisions of Pakistan Environmental Protection Act, 1997 (PEPA, 1997), Capital Development Authority Ordinance, 1960 (CDA Ordinance, 1960) and Islamabad Wild Life (Protection, Preservation, Conservation and Management) Ordinance, 1979 (Wild Life Ordinance, 1979).

2. Learned counsel for the petitioners *inter alia* contended that on 19.04.2021, the Prime Minister of Pakistan inaugurated 'Margalla Avenue Project' as an initiative of CDA and the Project was to be executed by Frontier Works Organization. It was contended that as per the advertisement and information, the Project purportedly was to divide the land under Margalla Hills National Park and CDA and the former was to be protected by building a wall. It was contended that petitioners approached respondent No.4 ensuring compliance of PEPA, 1997 but no response was made. In this behalf, learned counsel took the Court through various provisions of PEPA, 1997 to highlight

her argument that it is mandatory for any organization to comply with provisions of Act of 1997 before commencement of any project and its violation thereof attract penalties and fines and even upon conviction punishment by way of imprisonment. It was contended that in light of celebrated judgment reported as ‘Shehla Zia Vs. WAPDA’ (PLD 1994 SC 693), environmental justice was recognized as part of right to life guaranteed under Article 9 of the Constitution of Islamic Republic of Pakistan, 1973. It was further argued that sections 12, 17 & 19 of PEPA, 1997 also lay down procedures and requirements. Learned counsel further argued that proposed Project perhaps will cause irreversible damage to Margalla Hills National Park (MHNP), which is in violation of provisions of Wild Life Ordinance, 1979, in particular, section 21(4)(iii). It was contended that CDA is a regulator hence needs to adhere to the relevant laws.

3. Learned counsel for respondent No.3 *inter alia* contended that ‘Margalla Avenue Project’ is divided into two Phases i.e. Phase-I and Phase-II and Phase-I is further divided into two Packages i.e. Package-I and Package-II; Package-I from G.T. Road to Sector D-12 Islamabad and Package-II from Constitution Avenue to Muree Road, whereas Phase-II is from D-12 to Constitution Avenue. It was contended that Package-I of Phase-I has already commenced and the environmental impact study was submitted to Pakistan Environmental Protection Agency in 2013, however, as the Project was shelved, the matter fizzled out. It was argued that Package-II of Phase-I is still under study and nothing has been done as such and Phase-II is also in study stage. Learned counsel pointed out that Margallah Highway Islamabad is part of master plan of Islamabad hence cannot be shelved.

4. Learned Additional Attorney General, arguing for respondents No.1 & 2, *inter alia* contended that Federation of Pakistan is cognizant of its responsibilities and environmental impact of the Project shall be duly assessed. It was reiterated that since the Projects are part of master plan of Islamabad, hence are to be executed.

5. The representative of respondent No.4 *inter alia* argued that No Objection Certificate has not been obtained from PEPA and as a result thereof, show-cause notice was issued on 27.10.2021 for violation of law.

6. Learned counsel for respondent No.5 *inter alia* contended that Project, in its present form, threatens Margalla Hills National Park, which is a protected

area under SRO No.443(I)/80 dated 28.04.1980. It was contended that respondent No.5, under the Ordinance of 1979, has the power and obligation to protect wildlife as well as plantation in the area falling within the territory provided under the law.

7. Arguments advanced by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

8. The controversy raised, in the instant petition, has been spelt out in the preceding paragraphs therefore, need not be reproduced, however, for the sake of brevity, the prayer made, in the writ petition, is reproduced below:-

“1. Declare the proposed Margalla Avenue (Northern Bypass, Phase II) Project, as illegal, malafide, without jurisdiction and without lawful authority, being in violation of Pakistan Environmental Protection Act, 1997 and Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979, Islamabad Local Government Act 2015, Article 140-A and fundamental right to life guaranteed by the Constitution of Islamic Republic of Pakistan;

II. Direct Respondent No.3 (CDA) to immediately stop any kind of work on the proposed Margalla Avenue (Northern Bypass, Phase II) Project till an impartial Environmental Impact Assessment, as contemplated and directed by law, in a meaningful, purposive and transparent manner has been conducted under the aegis of respondent No.4 (Pak EPA);

III. Direct respondent No.4 (Pak-EPA) to impose appropriate penalties on respondent No.3 (CDA) as contemplated by sections 17 & 19 of the Pakistan Environmental Protection Act, 1997;

IV. Direct respondent No.3 (CDA) to publicly disclose the relevant record concerning the proposed Margalla Avenue (Northern Bypass, Phase II) Project; and

V. Declare that Respondent No.3 and No.4, are under a statutory duty to implement and enforce the provisions of the PEPA 1997, and that in the future, no project will be conceptualized, planned or initiated without compliance of the said Act”.

9. The thrust of the contentions by learned counsel for the petitioners is that respondent No.3, in proceeding with Margalla Avenue Project, is acting in violation of PEPA, 1997; in this regard, it is appropriate that relevant provisions of the referred law, be reproduced and examined; section 2(i)(xi) of the Act defines environmental impact assessment as an environmental study comprising collection of data, prediction of qualitative and quantitative impacts, comparison of alternatives, evaluation of preventive, mitigatory and compensatory measures, formulation of environmental management and training plans and monitoring arrangements, and framing of recommendations and such other components as may be prescribed. Section 12 provides for

initial environmental examination and environmental impact assessment; which reads as follows:-

“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 Government Agency designated by Federal Government Protection Agency or Provincial Environmental Protection Agencies, as the case may be, or, where the project is likely to cause an adverse environmental effect, an environmental impact assessment, and has obtained from the Federal Agency approval in respect thereof.

(2) The Government Agency shall subject to standards fixed by the Federal Environmental Protection Agency-

(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, 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 Federal 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 Federal Government; or

(iii) matters covered by legal professional privilege.

(4) The Government 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.

(5) Subject to sub-section (4) the appropriate 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-section (1), (2), (3), (4) and (5) shall apply to such categories of projects and in such manner as may be prescribed.

(7) The Government Agency shall maintain separate registers for initial environmental examination and environmental impact assessment projects, 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).”

Section 16 provides for environmental protection order and section 17 for penalties. The referred provisions read as follows:-

“16) Environmental Protection Order (1) Where the Federal Agency or a Provincial Agency is satisfied that the discharge or emission of any effluent, waste, air pollutant or noise, or the disposal of waste, or the handling of hazardous substances, or any other act or omission is likely to occur, or is occurring or has occurred, in violation of the provisions of this Act, rules or regulations or of the conditions of a licence, and is likely to cause, or is causing or has

caused an adverse environmental effect, the Federal Agency or, as the case may be, the Provincial Agency may, after giving the person responsible for such discharge, emission, disposal, handling, act or omission an opportunity of being heard, by order direct such person to take such measures that the Federal Agency or Provincial Agency may consider necessary within such period as may be specified in the order.

(2) In particular and without prejudice to the generality of the foregoing power, such measures may include:

(a) immediate stoppage, preventing, lessening or controlling the discharge, emission, disposal, handling, act or omission, or to minimize or remedy the adverse environmental effect;

(b) installation, replacement or alteration of any equipment or thing to eliminate, control or abate on a permanent or temporary basis, such discharge, emission, disposal, handling, act or omission;

(c) action to remove or otherwise dispose of the effluent, waste, air pollutant, noise, or hazardous substances; and

(d) action to restore the environment to the condition existing prior to such discharge, disposal, handling, act or omission, or as close to such condition as may be reasonable in the circumstances, to the satisfaction of the Federal Agency or, Provincial Agency.

(3) Where the person, to whom directions under sub-section (1) are given, does not comply therewith, the Federal Agency or Provincial Agency may, in addition to the proceeding initiated against him under this Act, the rules and regulations, itself take or cause to be taken such measures specified in the order as it may deem necessary, and may recover the reasonable costs of taking such measures from such person as arrears of land revenue”.

“17) Penalties *(1) Whoever contravenes or fails to comply with the provisions of section 11, 12, 13, or section 16 or any order issued there-under shall be punishable with fine which may extend to one million rupees, and in the case of a continuing contravention or failure, with an additional fine which may extend to one hundred thousand rupees for every day during which such contravention or failure continues:*

Provided that if contravention of the provisions of section 11 also constitutes contravention of the provisions of section 15, such contravention shall be punishable under sub-section (2) only.

(2) Whoever contravenes or fails to comply with the provisions of section 14 or 15 or any rule or regulation or conditions of any licence, any order or direction issued by the Council or the Federal Agency or Provincial Agency, shall be punishable with fine which may extend to one hundred thousand rupees, and in case of continuing contravention, or failure with an additional fine which extend to one thousand rupees for every day during which such contravention continues.

(3) Where an accused has been convicted of an offence under sub-section (1) and (2), the Environmental Court and Environmental Magistrate, as the case may be, shall, in passing sentence, take into account the extent and duration of the contravention or failure constituting the offence, and the attendant circumstances.

(4) Where an accused has been convicted of an offence under sub-section (1) and the Environmental Court is satisfied that as a result of the commission of the offence monetary benefits have accrued to the offender, the Environmental Court may order the offender to pay, in addition to the fines under sub-section (1), further additional fine commensurate with the amount of the monetary benefits.

(5) Where a person convicted under sub-section (1) or sub-section (2), and had been previously convicted for any contravention under this Act, the Environmental Court or, as the case may be, Environmental Magistrate may, in addition to the punishment awarded there-under:

(a) endorse a copy of the order of conviction to the concerned trade or industrial association, if any, or the concerned Provincial Chamber of Commerce and Industry or the Federation of Pakistan Chambers of Commerce and Industry;

(b) sentence him to imprisonment for a term which may extend upto two years;

(c) order the closure of the factory;

(d) order confiscation of the factory, machinery, and equipment, vehicle, material or substance, record or document or other object used or involved in contravention of the provisions of the Act;

Provided that for a period of three years from the date of commencement of this Act the sentence of imprisonment shall be passed only in respect of persons who have been previously convicted for more than once for any contravention of sections 11, 13, 14 or 16 involving hazardous waste.

(e) order such person to restore the environment at his own cost, to the conditions existing prior to such contravention or as close to such conditions as may be reasonable in the circumstances to the satisfaction of the Federal Agency or, as the case may be, Provincial Agency; and

(f) order that such sum be paid to any person as compensation for any loss, bodily injury, damage to his health or property suffered by such contravention.

(6) The Director-General of the Federal Agency or of a Provincial Agency or an officer generally or specially authorized by him in this behalf may, on the application of the accused compound an offence under this Act with the permission of the Environmental Tribunals or Environmental Magistrate in accordance with such procedure as may be prescribed.

(7) Where the Director-General of the Federal Agency or of a Provincial Agency is of the opinion that a person has contravened any provision of Act, he may, subject to the rules, by notice in writing to that person require him to pay to the Federal Agency or, as the case may be, Provincial Agency an administrative penalty in the amount set out in the notice for each day the contravention continues; and a person who pays an administrative penalty for a contravention shall not be charged under this Act with an offence in respect of such contravention.

(8) The provisions of sub-sections (6) and (7) shall not apply to a person who has been previously convicted of offence or who has compounded an offence under this Act who has paid an administrative penalty for a contravention of any provision of this Act”.

10. The above examination of law shows that before commencement of any operation, environmental impact assessment is to be filed with the Government Agency after the same has been issued by Federal Government Protection Agency and the procedure for making the assessment is through public participation as hearing the petitions and passing appropriate orders only thereafter. Under section 17, in case of any threat to environment, environmental protection order can be passed after issuance show cause notice and penalties envisaged in section 19 can be imposed accordingly.

11. Respondent No.3, in response to the instant petition, has come up with a break down and division of Margalla Avenue Project by specifying that it is divided into two phases and Phase-I into two Packages. As per contentions of

the referred respondent, the working on Package-I only has commenced, whereas second Package and Phase-II are in the planning phase.

12. In so far as Package-I is concerned, it is an admitted position that there is no environmental impact assessment, as the same was duly admitted during course of arguments and is also borne out from the replies filed by CDA. Moreover, show-cause notice dated 27.10.2021 issued by respondent No.4, also evidences the fact. In this view of the matter, assertions made by learned counsel for the petitioners that Project is violation of provisions of PEPA, 1997, holds true. The remedy, with respect to referred provision, is also provided in section 17 and 19 ibid and since respondent No.4 has already taken cognizance in the matter, it would be only appropriate for the referred Agency to follow the mandate of law and take appropriate actions against the persons responsible for such violation. Though no specific prayer was made with respect to violation of the provisions of 1979 Ordinance yet it is needless to observe that in case, any violation is made by any Government Agency of the provisions of 1979 Ordinance, Wildlife Board can take appropriate measures as enshrined in the said Ordinance and do the needful for stopping the violations.

13. In view of foregoing, instant petition is disposed of with direction to respondent No.4 to ensure compliance of provisions of PEPA, 1997 as regards Margalla Avenue Project and take action against anyone responsible for violation thereof.

(AAMER FAROOQ)
JUDGE