

FORM NO:HCJD/C

ORDER SHEET**IN THE ISLAMABAD HIGH COURT,
ISLAMABAD
JUDICIAL DEPARTMENT****W.P. NO. 216 OF 2011****SYED SAIF-UR-REHMAN VERSUS THE FEDERATION OF PAKISTAN ETC.**

S.NO. OF ORDER/ PROCEEDINGS	DATE OF ORDER/ PROCEEDINGS	Order with signature of judge and that of parties or counsel where necessary.
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13-03-2011

Mr. Rafiq R. Sanjrani Advocate, for the
petitioner.Mr. Tariq Mahmood Jahangiri, Deputy Attorney-
General.

IQBAL HAMEED-UR-RAHMAN, C.J.: Through
the instant constitutional petition under Article-
199 read with Article 203 of the Constitution of
the Islamic Republic of Pakistan, 1973, the
petitioner has made the following prayer:-

"It is therefore, respectfully prayed that:

*(I) The writ of Mandamus, or any other
appropriate writ, order or direction be issued to the
respondents to release and to make payment of
compensation to deprived and affected 187
persons/families of Earthquake disaster-2008,
inhabitants of village Road Mulazai and Dilsora,
District Pishin, Tehsil Karezat U/C (Balochistan)
without discrimination out of the relevant fund
reserved, as per announced by the Government
outstanding against claim worth Rupees 93.50
Million.*

(II) To pass appropriate directions to Auditor General of Pakistan to carry out necessary audit of the account under the title of P.M. & C.M. RELIEF AND REHABILITATION FUNDS' maintained by the commercial Bank of the countries, in particular Bank A/C No. Fund-G12160 and Fund G 121, maintained by NBP, Civil Secretariat Branch Quetta and other treasury offices in Balochistan.

(III) Any other relief to which this Honorable Court deems fit and proper may also be awarded in favour of the petitioner .

2. Precisely, the petitioner has alleged that petitioner and other 187 families are resident of P.O. Khanozai village Road Mullazi, District Pishin (Balochistan) and are affectees of 28th October, 2008 earthquake. The Prime Minister of Pakistan announced financial aid to the tune of Rs. 350,000/- for each affected family as compensation. Respondent No.4 i.e. Provincial Disaster Management Authority (PDMA) undertook a short survey of the area on urgent basis, however, nothing was paid to the petitioner and other 187 families who had lost their every thing during the earthquake. Resultantly the petitioner and other affected families protested against the injustice and discriminatory treatment of the authorities concerned, whereupon, the Chief Minister of Balochistan reiterated through media to undertake fresh survey, however, with the

passage of time nothing was paid to the petitioner and similarly affected other 187 families. The petitioner has alleged that Government of Pakistan had received approximate donations of Rs. 2,620.64 Million while PDMA declared that around 2000.40 Millions have been distributed in the affected persons/families, as such, a huge amount of donations is still lying with the Government for its distribution among the earthquake affectees but despite that nothing is paid to the petitioner and other 187 earthquake affected families, hence, the instant writ petition.

3. Para-wise comments have been filed by the respondents.

4. Learned counsel for the Petitioner argued that a huge amount was donated by the individuals/institutions /organizations and by the donor agencies/countries for the rehabilitation of earthquake affectees of 2008 earthquake but despite that the petitioner alongwith other 187 families who had lost their everything in the earthquake had not been paid even a single penny by the respondents although they had staged demonstration in this regard; that the Provincial Disaster Management Authority

(PDMA) had undertaken a very short survey of the area and even a fake survey report was prepared by the survey team; that even after the statement of Chief Minister of Balochistan that a fresh survey will be conducted in the area of the petitioner and others in order to find out the real affectees, but no such survey has yet been conducted, as such, the petitioner and others have been subjected to a discriminatory treatment by the respondents. Learned counsel for the petitioner has relied upon PLD 1961 Lahore 664 and PLD 1961 S.C. 192.

5. Conversely, learned Deputy Attorney-General argued that the instant writ petition is not maintainable; the petitioner in the writ petition has mentioned himself to be resident of Khanozai, District Pishin (Balochistan) as well as Chairman Action Committee for Earthquake affectees of the region but no document in this regard is available on the file; that the claims of petitioner and other 187 families are fake; that the whole relief is sought against Government of Balochistan and all the transactions were carried out in the province of Balochistan, as such, the writ petition is not maintainable before this Court; that no relief is sought against the Federal Government and it is a matter of factual inquiry

that whether the petitioner and other alleged affectees are genuine affectees or not? ;that the earthquake had taken place in the year 2008 whereas, the compensation was delivered in the year-2009, as such, the writ petition suffers from laches. Learned Deputy Attorney-General has relied upon 2007 SCMR 1209 and 2009 SCMR 644.

6. I have heard the learned counsel for the petitioner as well as learned Deputy Attorney-General and perused the documents appended with the writ petition.

7. Petitioner has alleged that he and other 187 families are affectees of 2008 earthquake but despite the announcement of the Prime Minister of Pakistan regarding payment of compensation to the affectees of earthquake-2008 nothing has been paid to them, whereas, the respondents have taken the stance that the petitioner and other affectees have not submitted any documentary evidence that they were owners and bonafide residents of the earthquake affected area.

8. No doubt the petitioner and other 187 affectees of earthquake-2008 are the citizens of this country and under Article-25 of the

Constitution of the Islamic Republic of Pakistan they are entitled for equal protection of law. No body can be penalized by the inaction of the public functionaries. It is the duty of the State functionaries to act in quasi judicial manner and it is also the primary obligation of the State functionaries to protect the rights of the citizens but unfortunately, the petitioner who alleges himself to be an affectee of earthquake-2008 is knocking the doors of the Government functionaries for a compensation which was announced by the Prime authority of the country but no serious effort was made by the authorities concerned to determine the genuine-ness of his claim. For the sake of arguments, if it is presumed that the petitioner has a fake claim and is asking for something for which he is not entitled, then too, it was the primary duty of the concerned authorities to come forward with a clear reply that they have already reached to a conclusion, after thorough inquiry and probe, that the petitioner is not an earthquake affectee but in the instant case the respondents have failed to bring on record even a single document to show that the petitioner who alleges himself to be resident of village Mullazi, District Pishin is neither resident of the said village nor is an affectee of earthquake-2008. The petitioner

cannot be knocked out on the basis of technicalities because the Court has to do substantial justice and to meet the ends of justice, I direct the respondent No.1 to get conducted a fresh survey with the help of residents of the locality as well as with the assistance of the concerned revenue authorities and thereafter, reach to a just conclusion that whether the petitioner and other 187 families are genuine affectees of earthquake-2008 or not? Furthermore, if the petitioner and other 187 affectees are found to be genuine affectees of earthquake-2008, the respondents shall proceed in the matter as per the policy of the Government. The needful shall be done by the respondents within a period of six months positively from the date of announcement of this Order.

9. With the above direction, the instant writ petition stands disposed of.

CHIEF JUSTICE

M. ABID KHAN