

**SUPREME APPELLATE COURT GILGIT-BALTISTAN
(Original Jurisdiction)**

S.M.C. NO. 12/2009
CLEAN DRINKING WATER, GILGIT

Present: **Mr. Justice Muhammad Nawaz Abbasi, C.J.**
Mr. Justice Muhammad Yaqoob, J

Advocate General Gilgit-Baltistan,
SDO, WASA, Gilgit-Baltistan.

Date of Hearing: 08-11-2010

JUDGMENT

Muhammad Nawaz Abbasi, CJ: In pursuance of the complaint of the public in general published in the newspapers that because of non availability of clean drinking water in Gilgit City, majority of the population is victim of various serious diseases, this Court in exercise of power under Article 61 of Gilgit-Baltistan (Empowerment and Self Governance) Order, 2009 having taken cognizance of the matter issued notice to the concerned authorities vide order dated 27.08.2010 as under:-

"This is General complaint that drinking water in Gilgit is full of pollution. The water of Natural Nullas and River is stored in water tanks and supplied to the people in raw form without filtration, and consequently the people have the complaint of serious diseases like Hepatitis, Kidney failure, Gastroentitis and Cancer in Gilgit and other parts of Northern Areas. It is reported in Daily Sada-e-Gilgit dated 26th August 2009, that the residents of Sonikot are being directly supplied drinking water from the River without filtration and the people having no option are compelled to drink the polluted river water, which is not only injurious to General health but also is the cause of serious diseases. The news paper clipping is attached herewith.

The clean drinking water is the natural right of every person and being essential for life, is an integral part of fundamental rights of life, as envisaged under Article 9 of the Constitution read with the Governance Order 1994. Therefore, this is Constitutional duty of the Government to provide clean drinking water to the citizen to maintain the health standard.

The Superintendent Engineer (WASA) will submit report and will also appear in person on 1st September, 2009 before the Court to explain the standard of drinking water being supplied to the people.

The Secretary Health will submit report with detail of patients of Hapatitis, Kidney failure, Gastroentitis and Cancer in Gilgit and overall Northern Areas. The Director Health Gilgit

will appear for assistance of the Court on 1st September, 2009."

- In continuation of the proceedings, the court on various dates passed orders as under:-

01-09-2009

The report submitted by Director Health Northern Areas reveals that there are 13392 patients of Gastroenteritis and 971 of Hepatitis in Gilgit District, whereas 11 are cancer patients and 18945 are of renal diseases. The total patients of the above diseases in District Gilgit, Skardu, Ghizer, Chanche and Astore are about 50817. The Director Health has informed the Court that main cause of all these diseases is the non-availability of clean drinking water and with reference to the system of water supply in Gilgit City pointed out that water is supplied to the people from Kargah and Jutial Nallas without proper filtration which is much below to the normal health standard what to speak of health standard of WHO. He stated that due to the pollution the water of these Nallas is not safe for human consumption and that lifting of river water to the reservoir/tank for supply as drinking water without filtration is dangerous from health point of view and is injurious to life.

The Superintendent Engineer (WASA) Mr. Muhammad Ishaq has also submitted report which shows that main sources of drinking water in Kargah and Jutial Nallas. The natural water of these Nallas is stored in water tanks and after the primary treatment i.e. (sedimentation and chlorination) is supplied to the people in the Gilgit City. The Sonikot Area is supplied the river water by lifting through pumps from the depth of 40 to 60 feet and this water due to natural filtration is safe for drinking. Superintending Engineer present in Court states that on the basis of laboratory test reports the water of above referred source was found satisfactory and that 52 water purification plants are also installed in Gilgit District out of which 50 are functioning and only two are non-functional.

The learned Advocate General has supported the report submitted on behalf of WASA without contradicting the position explained by the Director Health regarding the large number of patients of diseases referred above being caused due to polluted drinking water.

The learned Advocate General becoming sentimental argued that his family uses same drinking water and by grace of God no member of the family is suffering from any disease. The complaint of the people published in the News paper is baseless and Department reserves right of legal action against the newspaper.

Mr. Muhammad Issa, Senior Advocate, President Supreme Appellate Court Bar Association and Mr. Ahsan Ali, Advocate have stated that the report of WASA is baseless

which is evident from the report of Director Health, wherein it has been shown that number of patients of different diseases in Gilgit and Northern Areas are suffering with these diseases due to the drinking of polluted water and that water purification plants installed at different places in Gilgit are not functional. They stated that even if these water plants are made functional can only feed 10% of population of Gilgit and major population of the City would still be deprived of filtered drinking water.

Mr. Muhammad Issa, Senior Advocate has also pointed out that the drainage water is mixed with natural water of Nallas and people use this water for no alternate arrangements. Mr. Amjad Hussain, Advocate at this stage pointed that the Chief Executive Inspection Team on asking of Chief Secretary N.A's prepared a report on the subject and according to this report most of filtration plants are not functional and water is being supplied to the people without filtration.

The Advocate General will collect the report in question from the concerned quarter and place the same on record before the next date.

In the light of factual position contained in the report submitted by the Health Secretary and the matter explained by Director Health in the Court, we are not satisfied with the report submitted by the Superintending Engineer WASA or with the explanation of learned Advocate General that supply of clean drinking water in Gilgit and whole of Northern Areas is being made as per normal health standard.

This is a matter of common sense that unless a proper treatment plant for filtration and purification of water at natural source is installed, the primary treatment of water with sedimentation and chlorination is not sufficient and is not at all safe for drinking. This water certainly causes serious diseases as mentioned in the report of health Secretary. The arrangement of sedimentation and chlorination for drinking water is second stage after supply of filtered water as a safety measure before use. The Superintending Engineer has not been able to justify non installation of water treatment plants at Kargah and Jutial Nalla, and also that raw water lifted from depth of 40 to 60 feet from the river can be treated clean drinking water and is not injurious to health.

In view of the position explained above we direct to the Director Health, for collecting samples of water being supplied from Kargah and Jutial Nallas and also the water being lifted through pumps from river Gilgit, for the laboratory tests from Health Services Laboratory Aga Kahn (WASIP). The test report shall be submitted to this Court with in a fortnight. The Inspection Team of Chief Executive will hold an inquiry into the water supply system and the standard of drinking water in the light of report of Superintending Engineer (WASA) and the report of Health Secretary, will submit its report to this court within two weeks.

The Superintending Engineer (WASA) in his report has pointed out that due to limited financial source the clean drinking water as per required standard is not being supplied and if sufficient funds are provided to WASA, the clean drinking water as per required health standard will definitely be supplied to the people of Northern Areas.

The clean drinking water is basic necessity of life and part of fundamental right of life in terms of Article 9 of Constitution of Pakistan read with Governance Order 1994 therefore this is constitutional duty of the Government to provide clean drinking water to the citizens to improve their standard of health and save them from serious diseases which are result of polluted drinking water.

The Chief Secretary will submit report regarding the scheme for the installation of water treatment plants at main source of water i.e. Kargah and Jutial Nalla and the budget allocation to WASA in this behalf. The report should reach to the Court before the next date. We appreciate the assistance of Mr. Muhammad Issa, Senior Advocate and President Supreme Appellate Court Bar Association, Mr. Amjad Hussain, Advocate and Ahsan Ali, Advocate in this matter of public interest. They will render assistance in the matter as amicus curie. Adjourned to 15-09-2009.

Order Dated 15-09-2009

The reports of PBSP of the samples of water taken from Kargah and Jutial Nala reveal that water being supplied to Soni Kot by lifting from underneath river falls in category A and is fit for human consumption whereas water of Jutial Nala and Kargah is of category B and C and containing bacteria is

not fit for human consumption. The Learned Advocate General has also submitted a report prepared by CMH Laboratory Gilgit in respect of water of Kargah Nala, Jutial Nala, Alsabah Zulfiqarabad ,Soni Kot and Musa Mohallah in which the opinion expressed is "satisfactory". This report on the face of it is not to the required standard as contents of the water in respect of bacteria and other elements have not been explained. It is also not known whether the water of these Nalas is fit for human consumption or not.

Learned Advocate General in view thereof has submitted that Environment department has its own testing laboratory and it would be more appropriate if the samples are sent to this laboratory for report.

Mr. Ahsan Ali Advocate at this stage pointed out that the samples were taken of the water which is being supplied to major portion of the population in Gilgit where as the report of CMH Laboratory is confined only to a limited area of population. Be that as it may Mr. Khadim Hussain Asst. Director Environment present in court is directed to get samples of the water from different natural sources being supplied in Gilgit city and surrounding areas for laboratory tests from the laboratory of Environment agency and submit report on the next date.

The Learned Advocate General states that the matter relating to the financial grant to the WASA for installment of Treatment Plant at natural sources of water i.e. Karga and Jutial Nala could not be taken up with Chief Secretary and further time may be granted for the needful to be done in view thereof the case is adjourned to a date in the second week of October.

Order dated 13-10-2009

The Advocate General states that the matter relating to the Financial grant to WASA for installment of treatment plant at natural source of water was to be taken up with Chief Secretary Gilgit-Baltistan but due to no availability of Chief Secretary the matter could not be taken up with him. Mr. Khadim Hussain Assistant Director Department of environment who was directed to get samples of water from different natural sources in Gilgit City for laboratory test, is absent without any intimate. The Advocate General is directed to submit the report regarding financial grant for installation of treatment plant on the next date and to ensure the attendance of Assistant Director environment Department as well. The Advocate General states that superintendent Engineer PHE (WASA) is not in a position to properly appraise the court about the matter. He suggested that XEN, PHE (WASA) may be directed to attend the Court for proper Assistance. The office is directed to notice Executive Engineer Public Health (WASA) for attendance on the next date. Mr. Wazir Muhammad District

Health Officer on behalf of Director Health Services Gilgit - Baltistan and Mr. Ismail Engineer, Assistant Director WASA along with Mr. Mir Baz A.E.E. on behalf of Superintendent Engineer present. Case adjourned to a date to be fixed by the office.

Order dated 18-11-2009

The XEN WASA (PHE) states that due to the shortage of funds the installment of the treatment plant is withheld and that the department has not prepared proposal for establishment of treatment plant for approval of the Chief Secretary. The report called from the Chief Secretary for allocation of funds and establishment of treatment plant at main source of water i.e. Karga and Jutial Nala has not been sent.

The matter relates to the basic necessity of life as there is no justification of supply of contaminated water to the citizens as a result of which as per report of Health Department, a large number of persons in Gilgit are patients of serious diseases. The Secretary Works will prepare the feasibility report and initiate the process for approval of the installment of treatment plant and the Chief Secretary may in the light of feasibility report with the proposal for establishment of treatment plant on the main source of drinking water i.e. Karga and Jutial Nala approve the scheme for inclusion in the Annual Development Program in the current financial year.

The Director Environment at this stage pointed out that in case of delay in establishment of treatment plant, the alternate arrangements for supply of clean drinking water can be made and in view thereof the Director Environment will assist the Secretary Works in preparation of feasibility report. The Director Environment with reference to the water quality survey report submitted that immediate steps are required to be taken for supply of clean drinking water in the light of recommendations made by the Inspection Team. The report at page 4 is reproduced as under:

"In this connection the team has conducted water quality survey of Gilgit City and Danyore from September 17 to October 12, 2009 and collected 69 samples, which were tested. Out of that only four samples collected from Danyor are bacteriologically contaminated and turbid, hence not fit for human consumption. Ten samples of Al-Saba lift water system were tested out of which two were turbid beyond the standard limit, the sample from Wahdat Colony Jutial Lift System was heavily turbid at sources and hose tape."

The Chairman of Inspection Team (CIT) Gilgit Baltistan has pointed out in report that water of water supply scheme of Jutial, Barmas and Alsaba has been found contaminated with

bacteria whereas the water of water supply Denyore is not fit for human consumption. The inspection team has recommended the solution of the problem as mentioned at page 6 of the report as under: -

"Short Term:

- Water & Sanitation Authority may ensure regular maintenance of purification plants as per WHO standards and guidelines so as to provide safe & clean drinking water to the user community.
- Water sources may be properly protected to avoid penetration of human, animal and agriculture residues in to water bodies so as to minimize bacteriological contamination.
- Work on the development project "improvement of water tank at Barmas and Jutial" may be resumed through the same contractors immediately to complete it without further loss of time. Necessary budget required would be arranged to liquidate the liabilities of the contractors.
- GB-EPA may periodically monitor water sources and purification plants to ensure quality of water fit for human consumption.
- In the short run PHE Department should fence the tanks, install mesh in the incoming section of water supply system of Jutial Upper Complex and ensure sedimentation and chlorination of water before supply."

The Director Environment submitted that in the light of these recommendations arrangement is made the problem in the supply of purified and clean drinking water will be solved. In view thereof we direct that the Secretary Works will immediately take necessary steps in the light of recommendations for supply of clean drinking water on the basis of short terms. The Secretary Works will also initiate process for long term arrangement as suggested in the recommendations of Inspection Team referred above for approval of the Chief Secretary and submit compliance report to the Registrar of this Court for our perusal in Chamber within a month.

Mr. Muhammad Issa, Sr. Advocate and President Supreme Appellate Court Bar Association has pointed out that pipe line in the water supply Danyore was required to be replaced for which budget was also allocated but it is stated that Contractor in connivance with field staff without replacing the pipe lines with new pipe lines exhausted the budget and although an inquiry was held in the matter and recovery was also made from contractor but the pipe lines has not so far

been replaced.

The SDO WASA (PHE) present in court states that the work of replacement of the pipe lines in Danyore water supply as per requirement is in progress and will be completed by the end of December 2009. The XEN WASA (PHE) will immediately make arrangement of Sodimentation and Chlorination of the water. SDO as well as XEN will submit compliance report to the Registrar of this Court within a week.

The XEN WASA (PHE) has stated that at the first instance the following actions are required to be taken on priority for supply of clean and purified drinking water.

- Construction of the number water filtration complex at Jutial, Konodas and Barmas through craft system including construction of storage tanks having capacity of 50 lac gallons each to meet the basic requirement of the everyday use.
- Allocation of proper funds for maintenance of 52 number purification plants and 26 number water pumps at various locations.
- Scheme for the replacement of G1 pipe with HDP pipe at Nagral, Dumyal and Kashrote areas.
- Ban to use water hand pumps in Nagaral and Kashrote areas.
- Laying of Sewerage Scheme for Nagral, Magni Mohalla, Damyal and Kashrote Area for the disposal of proper Sewerage including two number treatment plants before the disposal of waste of sewerage in Gilgit.
- Establishment of Test Laboratory with WASA (PHE) Division.

In the light of the Laboratory test, the recommendations of Chairman's Inspection Team CIT Gilgit Baltistan and the suggestions of the Director Environment and XEN WASA (PHE), we direct that the Secretary Works in consultation with the Director Environment, XEN WASA (PHE), Engineer Inspection Team and a representative of Planning Department will prepare the feasibility report within a fortnight and will submit it to the Chief Secretary for approval of the scheme for supply of purified water of the standard of human consumption.

The case shall be relisted after winter vacation and the officials present in Court will remain in attendance to apprise the Court on the progress.

Order Dated 15-03-2010

Vide Order dated 18-11-2009, it was directed for preparation and submission of feasibility report for approval of

the Chief Secretary in connection with the scheme for supply of clean drinking water of the standard of human consumption on the basis of the Laboratory tests and recommendations of Chairman Inspection Team (CIT), Gilgit Baltistan and also suggestions given by the Director Environment Department and XEN WASA.

The Learned Advocate General states that neither any officer from the department is in attendance nor he has been given instructions regarding the progress in the matter. The XEN WASA and an official of the Planning Department not below the rank of Deputy Secretary shall appear tomorrow and explain the position. The officials present today shall remain in attendance.

Order Dated 16-03-2010

XEN PHE Division Gilgit Baltistan having placed on record copy of proposal regarding water scheme in Gilgit Baltistan submitted to the concerned Division has stated that these schemes are essential to provide Clean Drinking Water to the area. The Secretary Planning has stated that PC1 for these schemes shall be prepared on priority basis to include the same in the next Annual Development Program for allocation of funds and start of work.

Secretary Health having submitted copy of the report of the Inspection Team prepared in pursuance of the direction of this court regarding water supply system and standard of drinking water in municipal area of district Gilgit has stated that scheme incorporated in the letter Mark 'A' produced by the XEN WASA (PHE) are included in the report and on the basis of this report the Works and Planning Department has already initiated the process for preparation of PC1 and allocation of funds.

Mr. Muhammad Issa, Sr. Advocate and President Supreme Appellate Court, Gilgit Baltistan at this stage pointed out that the implementation of the proposed schemes included in the inspection report being subject to the allocation of funds, may take some time, but the people in Gilgit Baltistan and particularly in the municipal area of Gilgit are deprived of Clean Drinking Water which is basic need of life therefore immediate action is required to be taken for supply of clean drinking water by replacing/repairing the damaged sanitation system, the Sodimentation and Chlorination of the water and proper functioning of filtration Plants already installed in the city at different places including the filtration Plant installed at the main water sources.

There is no need of preparation of PC1 and allocation of separate funds for repair of pipe line, Sodimentation and chlorination of water in the filtration plants already installed and department has to meet such expenses from running budget for the maintenance of such projects therefore the

excuse of shortage of funds or the technical advise or approval of any other administrative department is not involved for the maintenance work for supply of clean drinking water.

The Secretary Works states that the immediate steps for supply of purified drinking water by making the filtration plants operational and by repair of pipe lines and Sedimentation and Chlorination of water will be taken and the maintenance of water schemes already in operation shall also be done on priority from the current budget. The Director Environment present in Court shall inspect the sites of all the Filtration Plants including the main sources of water supply, sanitation and water pipe lines, the position of sedimentation and chlorination of the water and submit report to this court within fortnight.

Order Dated: 01-04-2010

Director EPA submitted that incompliance with the orders of this court dated 16-03- 2010, the technical team of Gilgit-Baltistan EPA carried out a detailed survey and testing of filtration plants installed in Gilgit City and three water supply complexes for sedimentation and chlorination. According to the statement and report submitted by EPA there are 18 filtration plants installed at various locations in Gilgit City, out of those 18 plants, 11 plants are in operation and 7 plants are either incomplete or non functional due to some reasons.

The Director EPA, submitted that the technical team of EPA, carried out survey and inspection of the following sites;

- CMH, Jutial Gilgit.
- Army Public School & College Jutial Gilgit.
- Public School & College (Boys Section).
- Khomar Chowk.
- Muhammadi Muhallah Kashrote Gilgit.
- Bargali Hat Khomar Damote.
- Airport.
- Airport Chowk.
- Fatah Bagh.
- Paltany Muhallah.
- DHQ, Gilgit.

According to the report some of the filtration plants require repair and maintenance, while complete report regarding some of plants have not been furnished due to non-availability of operational staff deputed at the filtration plants. The absence of operational staff at these important rather sensitive plants is highly deplorable. The department should take disciplinary

action against those officials. Who are irregular in performance of their duties. It is further recommended in the report that the inexperience and untrained operational staff should be trained so that the plants are properly and smoothly operated.

It is also pointed out in the report that proper chlorination and sedimentation is not carried out in Burmus and upper Jutial water supply complex are neither covered nor fences, resultantly animals can easily excess to these complexes and due to animals activities the water of these complexes is polluted which is dangerous for health. The report further reveals that inexperience and untrained chowkidars have been deputed for operation of these complexes.

It is also mentioned in the report that the water of these complexes is contaminated and hazardous for public health. The third complex i.e. lower Jutial water complex as per report and statement of Mr. Abdul Hadi, AEE, PHE present on behalf of XEN, PHE, is closed due to shortage of water. The XEN and AEE, PHE, are directed to make emergency basis arrangements to supply the drinking water to the consumers from the complex and submit compliance report on or before the next date of hearing as the drinking water is the basic need of human being and essential for human life.

So far as sedimentation and chlorination process of the filtration plants is concerned the AEE, PHE, requested one weeks time to carry out sedimentation and chlorination of these plants as well as water supply complex. He is directed to materialize his commitment before the next date and submit compliance report.

The Director Health Services Dr. Nazeem Khan, present in court states that the drinking water supplied by the PHE, in Gilgit City is contaminated and this contaminated water causes different type of water borne diseases in the Area.

The PHE Department is also directed to carry out necessary repair and maintenance of filtration plants strictly in accordance with the recommendation of EPA experts.

The case is adjourned to a date in 3rd week of April, 2010, for further proceedings.

Order Dated: 26-04-2010

Director Environment states that 18 Filtration Plants in Gilgit with chlorination are functional but the sedimentation of the water is not satisfactory. Mr. Wazir Muhammad Tajwar XEN PHE states that the clorination in all filtration plants at the rate of 0.2 ml per litter is being regularly carried out in the city and outside city by trained/untrained staff but the sedimentation of the water cannot be carried out for non completion of repair work of the water tanks in upper and lower Jutial and Barmas. He states that contracts for repair of

4 water tanks at the above said places were given to Mr. Ghulam Rabbani, Mr. Rehmat Ullah and Mr. Habib-ur-Rehman Contractors and despite expiry of contract period in December 2009 and payment of secured advance they instead of completing the work have abandoned their contracts. Similarly the contractor after partial construction of the filtration plant left the site and remaining work was completed by the department to make the plant functional which is not up to the required standard.

The position explained above reveals that contractors in connivance with the concerned officials of the department have misappropriated the government money by getting secured advance without completing the work of repair of the water tanks and construction of filtration plant as a result of which the residents of Gilgit have been deprived of the supply of clean drinking water.

This is sad that department without visualizing the government loss and consequence of supply of manipulated water to the public extend undue favour of giving secured advance to the contractors. It is evident from the above factual position that department without inspection and progress of the work at site has shown latitude in the payments of contract money and caused loss to the government for benefit of the contractors. This is general complaint in Gilgit Baltistan that projects of public utility are frustrated for non completion of the work within time as a result of which huge loss is caused to the exchequer at the cost of public inconvenience.

The Chief Secretary will personally look into the matter and hold a discreet inquiry into the irregularities and delay in the construction of filtration plant and repair of water tanks in question as a result of which the people have been deprived of the supply of clean drinking water. The Chief Secretary will make efforts to complete the inquiry into the matter and in the light thereof will fix the responsibility of the concerned official and the contractors for the loss caused to the government and will take appropriate action in accordance with law.

The XEN has pointed out that under the rules in such cases of naked breach of contract by the contractors, the department is empowered to forfeit the security of contractors or itself complete the project or the leftover work is completed on the cost and risk of the contractor. This being so the Chief Secretary taking into consideration this aspect of the matter will ascertain the reason for not invoking the penal clauses of the contract by the competent authority in the department in case of breach of contract by the contractor.

The Assistant Executive Engineer of the department has informed us that in Danyore the damaged pipelines have been repaired/replaced and work in this regard is still in progress and that the work of sedimentation and chlorination of the water is being conducted as per requirement.

Further proceedings will be taken up tomorrow after the appearance of the Chief Secretary in Chamber to explain the position of funds. This order will be conveyed to the Chief Secretary today.

Order Dated: 27-04-2010

Mr. Wazir Muhammad Tajwar XEN PHE states that he will attend the issue regarding supply and distribution of water in Danyore as well as the repair of pipe lines on priority basis. He however pointed out that due to shortage of funds department is facing acute difficulty in the repair work of the water tanks as well as filtration plant and the ancillary matters.

The Chief Secretary while appearing before us in Chamber in another case has given assurance for providing necessary funds therefore the department may ask for allocation of the required funds in accordance with the procedure prescribed under the rules.

The XEN states that subject to availability of funds the needful will be done on priority and compliance report will be submitted to the Registrar of this Court within a fortnight. Order accordingly.

Order Dated 16-06-2010

Mr. Tajwar XEN, PHE states that the proposal for construction of three projects of Water reservoir for supply of clean drinking water to Barmas, Daynore and Jutial has been made by the department and on approval for availability of funds the projects will be completed on priority.

The Assistant Chief, P&D Department states that PHE without completing the codal formalities in accordance with the required procedure has submitted the proposal which could not be approved in the current budget and will be considered for allocation of funds in the financial year commencing from 1st July 2010.

Learned Advocate General has stated that the project below the cost of Rs. 60 Million does not require approval of P&D Department rather the concerned department itself can approve the project for grant of funds, therefore the matter is unnecessarily being complicated at the cost of delay in the projects of public importance.

The XEN PHE and Assistant Chief P&D Department have conceded that projects up to the cost of Rs. 60 Million do not require formal approval of P&D Department or Chief Secretary. This is noticeable that the Chief Secretary while appearing in Chamber before us in another matter on 27/04/2010 has given assurance for providing necessary funds for the project but it appears that the concerned department has not taken any step for release of funds in the current

financial year. In view thereof we direct that the Secretary Works after completing the procedural requirements will approve the proposed project for construction and allocation of funds in the next financial year before 15th July 2010 positively.

In case the proposal is beyond the power of Secretary Works he will coordinate with Secretary Finance and Secretary P&D for approval of the scheme for the purpose of allocation of funds in the light of the assurance given by Chief Secretary before this court.

Mr. Tajwar XEN, PHE will pursue the matter for allocation of funds and Secretary P&D Department will submit the copy of Draft ADP before 30th June and final approval by 15th July 2010 to the Registrar of this Court. The case shall be relisted immediately on reopening of the Court after summer vacations.

Order Dated 05-08-2010.

The secretary P&D has stated that in the light of revised policy the water supply scheme of Burmus, Danyore and Jutial mentioned in the order dated 16-06- 2010 have not been included in the ADP for allocation of funds and that PC-1 of these schemes has also been not submitted for approval. The Secretary P&D however conceded that supply of clean drinking water to the citizen is obligation of the Government and being basic necessity of life is essential part of fundamental rights guaranteed in Gilgit-Baltistan (Empowerment and Self Governance) Order 2009 and the constitution of Pakistan. He also admitted that deviation from the order of this court in respect of providing clean drinking water to the citizens would amount to deny fundamental rights of the people and also defy the order of the court which is binding on all executive and judicial authorities in Gilgit-Baltistan as provided in Article 62 (2) of Gilgit-Baltistan (Empowerment Self Governance) Order 2009.

Notwithstanding the position taken in the letter sent by the Minister concerned to the Registrar of this court in respect

of funds the public in general cannot be deprived of the legal and fundamental rights for the administrative or other reasons, therefore on going water schemes or projects of public utility ancillary to public life cannot be suspended or postponed with diversion of funds to any other purpose.

The supply of clean drinking water to the people is an obligation of the Government therefore, no exception can be taken to the completion of such projects of public utility, which relate to the basic necessity of life of people.

The Secretary P&D in pursuance of the order of this court passed on 16-06-2010 will take necessary steps for

approval of the above water supply scheme in ADP for 2010-2011 and submit compliance report within a fortnight.

During the course of hearing of the case it has been brought to our notice that out of total cost of Rs. Nineteen crore for construction of phase-1 of judicial complex at Jutial the contract of which has been given with the completion date of 30th June 2011, only an amount of Rs. Eight Million has been allocated in the current financial year, which would amount not only to frustrate the contract and prolong the construction of judicial complex, but is also wastage of public money and time and to deny the fundamental rights of people of excess to justice.

The Secretary Planning, Secretary Finance, and Secretary Works, explaining the correct position will submit their reports to the Registrar of this Court within a week. The case in respect of judicial complex will be put up with the present case after two weeks.

ORDER DATED 21-09-2010

Mr. Nazir Ahmed Deputy Chief P & D stated at Bar that the department of P & D has send a summery to Chief Minister Gilgit-Baltistan for compliance of the orders of this court dated 16-06-2010 and no sooner the same is approved by the Chief Minister, necessary action for implementation of the scheme will be initiated. The Advocate General on behalf of Provincial Government informed the court that sufficient funds are being allocated to WASA/PHE from regular budget for maintenance of water supply system in and around the Gilgit city but due to improper utilization of funds, the residents of the areas are compelled to use contaminated water which is hazardous for the health of General public. The representatives of PHE contended that a major portion of regular budget is being spent on the salaries of staff etc and remaining on the minor repairs of water supply system. While a sufficient fund is required for repair work of Burmas, Banyor and Jutial water complex and installation of filtration plants, be that as it may we have already issued directions for provision of funds for these projects in the ADP.

The Secretary P & D, Works, and Finance were directed to submit their reports regarding compliance of orders of this court dated 16-06-2010 and 05-08-2010 but neither any report on behalf of the concerned Secretaries is submitted nor the Secretaries put their attendance before this court. The concerned Secretaries should attend the court on the next date alongwith their reports/comments as directed on previous date. The case is adjourned to a date to be fixed on next week for further proceedings. The Deputy Chief Planning Haji Nazir Ahmed is directed to pursue the matter personally and submit compliance report on or before the next date of hearing.

ORDER DATED 13-10-2010.

Despite specific directions to Muhammad Ismail Assistant Executive Engineer WASA vide order dated 29-9-2010 for necessary arrangement of inspection of pipe line by WASIP. Today no one appear on behalf of WASA whereas the public representative, the Deputy Secretary Finance and representative of P&D department are present in person. Muhammad Ismail Executive Engineer will appear before the court tomorrow to explain his position for non-compliance and show cause why he be not proceeded against for frustrating the order of court. The EXN WASA shall also appear in court tomorrow.

ORDER DATED 14-10-2010.

Mr. Tajwar XEN WASA states that due to some misunderstanding the Assistant Executive Engineer has not been able to contact WASIP in compliance of order of this court and needful will be done within a week.

In view thereof the inspection shall be carried out in terms of the order dated 29-9-2010 in present of representatives of local area and report will be submitted within 10 days.

- In consequence to the intervention of the court and different Orders passed on various dates the Water and Power Department Government of Gilgit-Baltistan approved the scheme for improvement of the supply of the clean drinking water and finally a special package was given by the Chief Minister for water scheme with direction to complete the scheme on priority and in the light of the statement made by the Deputy Chief Planning in respect of the supply of clean drinking water on 29.09.2010, the court proceeded to pass the order as under: -

“Order Dated: 29.09.2010

Mr. Muhammad Nazir Khan Deputy Chief Planning producing directives of the Chief Minister Gilgit -Baltistan issued on 28.09.2010 “Mark A” stated that a special package for the project of Water Treatment System in Barmas, Danyore, and Jutial has been approved in the current financial year 2010, and in pursuance thereof, the Department has been directed to submit PC- I for approval on priority, so that the work can be started at an early date.

Assistant Engineer WASA states that the repair and replacement of the pipe lines in 24/25 Muhallas of Danyore has already been completed, and compliance report submitted in this behalf, is available or record. He further stated that the work of Sedimentation, Chlorination, and purification of water is included in the special package of the Chief Minister and same will be carried out accordingly.

Mr. Muhammad Issa, Sr, Advocate has pointed out that the repair works and replacement of pipe line in Danyore as

stated by the Assistant Engineer WASA is only a paper work and the pipes on the spot have not been replaced.

Mr. Muhammad Rafique, Muhammad Karim, Lambardar and Muhammad Ibrahim EX-Chairman Union Council Danyore present in court state that old pipe line so far has not been replaced and report submitted by the Assistant Engineer WASA is against to the factual position.

Mr. Muhammad Issa, Sr. Advocate and Deputy Chief Planning suggested for appointment of a commission for physical verification of the work. The learned Advocate General has supported the proposal and submitted that General Manager WASEP may be asked to depute a team of Skilled person for physical verification to ascertain as to whether the old pipe line in Danyore area has been replaced or not. We order accordingly with direction that inspection will be made within a week and the report shall be submitted within two weeks. The expenditure incurred on the inspection including the fee etc. of specialist if any will be born by the Water and Power Department, Provincial Government Gilgit Baltistan./WASA.

In view of the directives issued by the Chief Minister, the requirement of scheme of treatment of clean drinking water is fulfilled. The matter in respect of replacement of old pipe lines in Danyore will be re-listed within two week.”

- The issue regarding the defect in the pipelines of the water supply in Daynore and its replacement was also considered and direction was given to WASEP for technical inspection of the cite. The team deputed by the WASEP for physical inspection, submitted the report as under:-

“Technical inspection team’s report on”clean Drinking Water” Danyore Area

The Honorable Supreme Appellate Court directed WASEP (AKPBSP) Gilgit- Baltistan through order S.M.C. No. 12/2009 dated 06 October 2010 to depute a technical team to carry out the physical verification to ascertain whether the old pipe line in Daynore Area (Gilgit) has been replaced or not. In this connection, WASEP requested the Registrar Supreme Appellate Court through a letter dated 13 October 2010 for providing the necessary documents with regards to the project in question. The Registrar directed WASEP to collect the required documents from the concerned department (WASA). With regards to this, WASEP contacted WASA department through letter dated October 17, 2010 and WASA provided the contract agreements for 13 schemes (List is annexed with the report). These schemes were included in maintenance head for the period “July 2009 to May 2010”

In compliance with the court order, WASEP (AKPBSP) deputed a technical team comprising of 01 senior engineer and 02 engineers to carry out the physical verification of schemes on site against the documents provided by WASA. As per

Court Directions (court order dated 14th October, 2010), the Inspection was to be carried out in the presence of representatives of local area. Technical team contacted the local representatives and WASA concern engineer. With the mutual consent, the visit to the site was scheduled on 21 October, 2010 at 10:00 am. A meeting was arranged with local representatives and the concern engineer WASA before starting the physical verification. WASEP team explained the purpose/objective of physical verification of schemes and shared the detail of schemes to be inspected with the participants.

The local representatives stated that the community of Daynore doesn't have any objection on these 13 schemes and they are satisfied with work done by the contractors. As per their statement, there is no need of physical verification of the 13 schemes indicated by WASA. They representatives mentioned that the request was for a different scheme worth 16.5 million started in 2004 and completed in 2007. People of Daynore had submitted an application with the honorable court for an impartial inspection of the above-mentioned scheme to find out whether the pipes used are as per specs and standards stated in the contract agreement or not.

At the end of the meeting, a resolution was passed by the representatives of local area by incorporating the decisions taken in the meeting and all the representatives signed the resolution (Resolution is annexed with the report).

Conclusion/Out Come

- Upon the order of the Supreme Appellate Court WAESP constituted a technical team for the physical verification of the subject project. The team visited the site and had a meeting with local representatives as per the order of the honorable.
- WASA provided the documents related to 13 schemes included in maintenance head for the period "July 2009 to May 2010" for the inspection whereas representatives of local area (Daynore) showed their satisfaction with the work done by WASA on these 13 schemes and resisted to conduct verification of the said schemes.
- As per statement of the representatives, they have submitted an application with the honorable court for the inspection of a different scheme worth 16.5 million started in 2004 and completed in 2007.
- The Technical team could not carry out the physical verification of the scheme mentioned by the community as this scheme was not in the list schemes provided by WASA for verification."

In the light of the report, no further proceedings being required in the

matter, the case was closed vide Order dated 08.11.2010 as under: -

“Order Dated: 08.11.2010

The technical inspection team of WASEP has submitted report on the matter relating to the supply of Clean Drinking Water to Daynore with the following conclusion/outcome:-

Conclusion/Outcome:-

- Upon the order of the Supreme Appellate Court WASEP constituted a technical team for the physical verification of the subject project. The team visited the site and had a meeting with local representatives as per the order of the honorable.
- WASA provided the documents related to 13 schemes included in maintenance head for the period “July 2009 to May 2010” for the inspection whereas representatives of local area (Daynore) showed their satisfaction with the work done by WASA on these 13 schemes and resisted to conduct verification of the said schemes.
- As per statement of the representatives, they have submitted an application with the Honorable Court for the inspection of a different scheme worth 16.5 Million started in 2004 and completed in 2007.
- The Technical team could not carry out the physical verification of the scheme mentioned by the community as this scheme was not in the list schemes provided by WASA for verification.

The learned Advocate General in the light of report of WASEP has submitted that the representatives of the area have confused the matter before the court with some other scheme which is not subject matter of the present case and further proceeding may be closed.

In view of the report of WASEP and the statement made by XEN WASA before this Court on 29.09.2010, no further proceedings are required and case is accordingly disposed of.”

Clean Drinking Water is a basic necessity of life which is a fundamental right of the people and government is obliged to provide clean drinking water to the citizens as a legal duty. This is appreciable that despite limited sources and financial constraint, Government of Gilgit-Baltistan has approved the scheme for supply of clean drinking water in the welfare of the people in pursuance of their fundamental rights guaranteed under Gilgit- Baltistan (Empowerment and Self Governance) Order, 2009 read with Universal Declaration of Human Rights of United Nations.

- This Suo Moto Case having born fruit stands disposed of.

Chief Judge

Judge