

SUPREME APPELLATE COURT GILGIT BALISTAN

S.M.C. No. 4 of 2009,

SADPARA DAM SKARDU

Present:	Mr. Justice Muhammad Nawaz Abbasi,	C.J
	Mr. Justice Syed Jaffar Shah,	J
	Mr. Justice Muhammad Yaqoob,	J

Advocate General Gilgit-Baltistan.

Muhammad Shafi, Sr. Advocate for WAPDA.

Syed Raghbir, Member Water and Power, WAPDA.

Date of hearing: 6th October, 2010.

JUDGMENT

Muhammad Nawaz Abbasi, C.J.--This Suo Motu Case arised out of an application moved by one Haji Fida Muhammad Nashad the then member Northern Areas Legislative Assembly from Skardu. The applicant has urged in the application that the project of Sadpara Dam was approved with the diversion of Shatong Nullah in the Dam but subsequently, WAPDA authorities for reason best known to them, excluded the diversion of Nullah to the Dam, therefore, direction may be given for completion of Sadpara Dam with diversion of Shatong Nullah as per original plan of the project. The application is read as under:--

"Subject: DELAY IN COMPLETION OF SADPARA DAM PROJECT and SHATONG INTAKE

Respected Sir,

The subject project is the only source of drinking water for the civil population, irrigation water to the agricultural lands and fruit orchards and main source for generation of hydro electricity. The major components of this project are construction of Dam, Power Houses to generate 13 MW electricity, Diversion of Shatong Nullah to ensure 105 Cusees regular flow of water to the Dam and construction of left bank and of right bank canals. The project was approved during 2002-2003 at a cost of Rs. 2090.431 million and as per plan; it should have been completed by 2007. A copy of implementation schedule is attached for your kind perusal.

Despite repeated requests by the elected representatives WAPDA authorities failed to complete the project as per working plan. The most important component of the project i.e. construction of Shatong intake has been totally neglected by the executing agency, which will cause the objective of this mega project meaningless rather wastage of Government money. It is well known to all that Indian govt. is constructing

52 Dams on our different water sources. The repeated objection raised by the Pakistan Government on this issue at several occasions proved fruitless. A copy of editorial note of daily Jang, Rawalpindi dated 13-4- 2008 is attached for perusal. Diversion of Shatong Nullah is the only project by which we can stop the flow of water towards India, as such immediate completion of this component of project has a great value and in the national interest. Due to non completion of the project timely, government had to spend millions of rupees on transportation of wheat from down country as well as alternate fuel like Kerosene Oil and LPG with heavy loss to state exchequer. The construction quality of left bank and right bank

canals are technically very poor besides for the last two years progress of work is no visible on this component. The project, on its completion, will improve the environment in term of agricultural growth, industrial development, job opportunities, tourist development, improved standard of living and improvement of economy by reducing cutting of fruit trees. This Extra Ordinary delay in execution of the project has multiplied grievances of general public in terms of shortage of irrigation water, drinking water and electricity load shedding etc.

I, therefore, on behalf of the beneficiaries of this important project request you to kindly take notice of this important issue of public at large and ask the WAPDA to ensure quality construction of all the above components of this project within a targeted period seems reasonable by the honourable court in the larger interest and oblige."

2. This is a matter of national importance which relates to the enforcement of fundamental rights of the people of Gilgit-Baltistan and this court while taking cognizance in it in exercise of its original jurisdiction issued notice to the concerned authorities vide order dated 1-7-2009 as under :-

"Haji Fida Muhammad Nashad, Member Legislative Assembly Northern Areas Gilgit-Baltistan from Skardu has filed this application under Article 45(2) read with Article 19 of the Gilgit-Baltistan Governance Order, 1994 and Chapter-II Part, 1 of the Constitution of Pakistan. The applicant has sought direction for early completion of Satpara Dam with diversion of Shatong Nullah as its major component in the light of original plan of the project.

The applicant in the capacity of public representative of the area has stated that the completion of Dam has been unnecessarily delayed which has directly affected the supply of irrigation and drinking water to the people of Skardu and generation of power to provide Electricity to the Gilgit-Baltistan basic facility of life. According to the applicant the project due to its location and sources of power generation and irrigation as well as drinking water has national importance, which was

required to be completed by 2007, but instead of progress in the work, for unknown reasons the irrigation system of the project has been suspended, whereas, the diversion of Shatong Nullah as major component of the Dam has been dropped, as a result of which the whole project would practically become useless and the expenditure incurred thereon would go waste. It is urged in the application that without the diversion of Shatong Nullah and completion of irrigation system of the Dam, the object of improvement of environment, the agriculture growth, industrial development, job opportunities, development of tourism, improvement of standard of living and economy would not be achieved and the people of the area would remain deprived of their basic and fundamental rights guaranteed under the law and Constitution.

The delay in execution of the project would certainly result in National loss and deprived the people from supply of drinking and irrigation water and also electricity to reduce the problem of load shedding etc. the most important question raised therein relates to the flow of water of Shutang Nulla towards the territory of India and without diversion of Shutang Nulla as important component of the project, the water of this Nulla would be of no use to Pakistan, rather India would be the sole beneficiary of the water of this Nulla. The target date for completion of project was by end of 2007 and it appears that project has been delayed for no technical or other justifiable reasons.

From the contents of application, it reveals that the purposes of construction of Dam and diversion of Shutang Nulla towards Dam was to generate power for supply of drinking and irrigation water to the area. The clean drinking water and electricity as well as irrigation water for agriculture purpose are considered as basic needs of life which are essential part of right of life, in terms of Article 9 of the Constitution read with Article 19 of the Gilgit-Baltistan Governance Order, 1994, therefore, this court in exercise of power under Article 45(2) of Gilgit-Baltistan Governance Order, 1994, may take notice of the matters relating to the enforcement of fundamental rights of the people, guaranteed under the Constitution of Pakistan, read with Gilgit-Baltistan Governance Order, 1994.

Consequently, it is directed that Chairman Wapda with the assistance of Project Director Satpara Dam Skardu, Gilgit-Baltistan, will submit report to this Court, containing the reasons of delay in the Construction of Dam, the suspension of irrigation system and non- diversion of Shutung Nulla which was essential component of Dam as per original scheme of the project. The report should reach to the Court within three weeks and case shall be re-listed on the receipt of report immediately after summer vacations. The copy of this order shall also be sent to Secretary Water and Power Government of Pakistan for his consideration and appropriate action. The Chairman will depute a senior officer well conversant with the

matter to attend the Court for assistance and Project Director of the Dam shall also appear with instructions.

The matter is of national and public importance and also of extreme value for Gilgit-Baltistan therefore, we would require assistance of Attorney General for Pakistan and additionally would request to Muhammad Akram Sheikh and Choudary Mushtaq Ahmed Senior Advocates Supreme Court of Pakistan to assist the Court as Amicus Curia. The expenditure on boarding, lodging and travelling first class by Air of Amicus will be borne by Wapda. The Advocate General Gilgit-Baltistan and the President of Supreme Appellate Court, Bar Association as well as President and Secretary General of Skardu Bar Association will also assist the Court."

3. In the light of the position explained by the departmental representatives, the Court passed the order in the subsequent proceedings as under:--

"Order Dated 17-8-2009

Mr. Mohsin Ali Project Director has submitted report on behalf of the Chairman WAPDA which reveals that due to technical reasons irrigation system was temporarily suspended and about 50% physical progress in completion of project has been achieved, but due to increase in rates the Contractor demanded payment on revise rates, therefore, a meeting was held by the concerned authorities in which approval for payment on revise rate was given and consequently, the Contractor has restarted the work at the site from 16th July, 2009, with assurance that the remaining project will be completed by September, 2010, subject to the release of funds?

The applicant present in person as well as Ghulam Nabi President Baltistan Bar Association stated that no actual work has been "carried out at the project as stated and prayed that the inspection team of Chairman NA,s may be asked to inspect the site and submit report. The applicant as well as the learned counsel Messrs Ghulam Nabi and Mr. Muhammad Issa Advocates President Supreme Appellate Court Bar Association have brought to the notice of court that the quality of work is much below to the specification and WAPDA authorities are least bothered to check the quality, therefore, the inspection team may also be asked to monitor the quality of work.

We have been told that mud of irrigation canal has been put on private agriculture land, which has been converted into waste land, without payment of compensation. The land owners have been illegally deprived of their valuable property without acquisition and payment of compensation. The Project Director states that the claim of land owners is genuine and WAPDA authorities would not resist to the payment of compensation to be determined by the concerned authority, to the effectees.

In view thereof, we direct Deputy Commissioner/Collector Skardu to complete survey of the land in question, within one month and assess the compensation for payment to the effectees. The D.C will also ascertain the future use of land and if the land cannot be used for agriculture or %ny other purpose, may by negotiation proceed for acquisition of land for WAPDA in accordance with law.

The report submitted on behalf of Chairman WAPDA reveals that due to environmental impact and technical consideration, it was decided in the meeting held on 4th May, 2005, to defer the diversion of Shutang Nulla. In addition the Project Director submitted that the diversion of Shutang Nulla was deferred, firstly for the reason that there was no shortage of water for irrigation or domestic use, and secondly, due to environmental hazard.

The petitioner as well as the Deputy Speaker of the Gilgit-Baltistan Assembly and the learned counsel have stated that actually the diversion of Shutang Nulla was deferred at the instance of contractor, who wanted to exclude this diversion from the contract for his personal interest and benefit and taking a strong exception to the diversion of Shutang Nulla they asserted that if the diversion of Nulla is dropped, the Dam would be of no use rather the land of Skardu would change its character as barren land, and consequently, the public money on the construction of Dam would go waste. The Project Director has conceded that instead of deferring diversion of

Shutang Nulla, the water of Nulla can be diverted in a manner in which, the excess water to the need of Dam may flow in natural way.

The application as well as Deputy Speaker and learned counsel stated that Shutang Nulla is major source of water for Dam, i.e. 60% of water and remaining 40% water Dam is not enough for power generation or for irrigation purpose and by dropping or deferring the diversion of Nulla the utility of Dam would be confined to the extent of domestic use. They informed the Court that there is acute shortage of water from October to May, and without diversion of Shutang Nulla the Dam would be only seasonal.

We having perused the report and considering the explanation given by the Project Director have not been able to understand the logic in deferring the diversion of Shutang Nulla. However in view of the nature of controversy regarding the diversion of Shutang Nulla, we deems it proper to ask the inspection team of Chairman NA,s to inspect the site for our assistance and supervise the quality of work in the matter. The inspection team may prepare a comprehensive report after providing proper opportunity of hearing to all concerned and furnish it to this Court by 30th September, 2009.

Order Dated 17-3-2010

The report submitted by the inspection team contains the proposal that the exclusion of diversion of Shutang Nulla, from the original plan may be justified if the flow of Sadpara Dam for the purpose of irrigation and requirement of the power generation and drinking water for Skardu is fulfilled otherwise the work on the diversion of Shutang Nullah should immediately be revived as the project of Dam without the diversion of Shutang Nullah would be of no use.

The Project Director Mr. Muhammad Usman present in Court states that under original plan about 20,000 acre lands was to be irrigated which has been reduced to 15000 acre by exclusion of diversion of Shutang Nulla.

Learned Advocate General and Mr. Muhammad Issa, President Supreme Appellate Court Bar Association Gilgit-Baltistan have supported the report of the Inspection Team in respect of the proposal regarding diversion of Shutang Nulla towards Dam. Mr. Muhammad Shafi Sr. Advocate counsel for the WAPDA on instruction of Project Director has submitted that in the original design of the Dam the diversion of Shutang Nulla has been excluded by Member Water and he is in better position to explain the benefit of exclusion or inclusion or inclusion of Shutang Nulla in Dam. The member Water is directed to appear with original as well as revised plan of Dam and also submit his comments for exclusion of diversion of Shutang Nulla on a date to be fixed by the office.

Order Dated: 15-4-2010

The learned counsel for WAPDA, submits that the member water WAPDA, as directed by this court could not appear due to an emergent meeting with the US-AID mission regarding important issues relating to Sadpara Dam. He requests for an adjournment. Request allowed. The case is adjourned to a date in office.

Order Dated: 29-4-2010

Learned Counsel for the WAPDA submitted that due to non-availability of the flight the Member Water and Power, WAPDA has not been able to reach from Islamabad and has requested for a date after 15th May, 2010 as he would not be available in the intervening period. The petitioner present in person has no objection to the grant of adjournment.

The case is accordingly adjourned to a date in the week commencing after 15th May, 2010.

Order Dated 18-5-2010

Mr. Muhammad Shafi learned counsel for WAPDA has filed an application for adjournment on the ground that the member of water, Board of Directors of WAPDA, could not appear before this court due to an emergent meeting with the President of

Pakistan scheduled to be held on 19-5-2010, besides his other engagements on 17/18-5-2010.

The Advocate General and Haji Fida Muhammad Nashad, have no objection for adjournment. The case adjourned to a date in office for further proceedings.

Order Dated: 30-6-2010.

Haji Fida Muhammad Nashad the than Member Northern Areas Legislative Council and former Deputy Chief Executive, on whose petition this Suo Motu Case has been taken up by the court, present in person contended that in-spite of lapse of considerable time the WAPDA authorities have failed to complete the construction work of Sad Para Dam. He further added that diversion of water of Shutang Nulla into under construction Sad Para Dam was a major component in the original PC-1 of the project approved in the year 2001, but the WAPDA authorities inclusion with the contractors have deleted this important component form the project and without diversion of water of Shutang Nulla the Dam would be of no use.

On 17-8-2009 this court had directed the Chairman Inspection Team to submit a comprehensive report after visit and detailed inspection of the site, whether deferment of conversion of water of Shutang Nulla was justified or not the said Inspection Team after detailed inspection submitted its report on 29- 9-2009 which is now part of record of the present case which is self-explanatory. On 17-3-2010 the Law Officer and representatives of WAPDA when asked, submitted that in original PC-I diversion of Shutang Nullah was a component of the project, the same having been deleted by Senior Authorities of WAPDA at a later stage is no more a part of project. They however could not be able to convince the court about the logic behind deferment of this portion of project. The MEMBER WATER WAPDA being the concerned authority and aware of the whole affairs was directed to attend the court on next date falling on 15-4-2009 to apprise the court about the real situation, but the learned member instead of appearing in person sent an application for adjournment, on his request the matter was adjourned to 29-4- 2010 and on the said date he again applied for adjournment and the matter was put off till 18-5- 2010 on 18-5-2010 the member again remained absent. Even today when the case is fixed for hearing the Member Water is not in attendance and has again sent an application for adjournment through his Law officer Mr. Muhammad Shafi, Senior Advocate, who contended that due to his pre-engagement in presidency in connection with an emergent meeting; the learned Member Water could not be able to

attend this court. We observe that due to non-cooperation of MEMBER WATER the matter is being prolonged and important issue relating to diversion of Shutang Nulla water is not being settled down. Such Senior Officers are expected to prefer the directives of the court but sadly routine official work is being preferred to the judicial directives. This behavior of senior officers more or less amounts to frustrates the judicial work of court. The law officer of the WAPDA is directed to make ensure the attendance of MEMBER WAPDA on next date of hearing to avoid application of coercive measures for his attendance.

Haji Fida Muhammad Nashad, Mr. Muhammad fssa Senior Advocate, president Supreme Appellate Court Bar Association Gilgit-Baltistan and Mr. Shoukat AH, Senior Advocate jointly expressed their concern over the delay in completion of the work of the Dam and deferment of conversion of Shutang Nulla, the Deputy Commissioner Skardu informed the court that the WAPDA authorities have paid a sum of Rs. 3 Crore and 17 Lacs on account of land compensation which has been distributed among the effectees as per award. He submitted that an amount of more than one Oroe is still outstanding against WAPDA on account of land compensation as per award. He also submitted that some awards are still under process. He is directed to expedite the compensation cases on priority basis.

The case is adjourned to a date in office on re-opening of the courts after summer vacation.

Order dated 9-8-2010.

This case is ripe for argument as the entire material and relevant documents are available on record. In view of the statement made before the court by Project Director Muhammad Usman that according to original plan about 20,000 acres of land was to be irrigated but subsequently Member WAPDA reduced it to 15000 acres and also excluded the diversion of Shutang Nullah in the revised plan. Member WAPDA was directed to appear and explain the position.

Mr. Muhammad Shafi, Sr. Advocate, counsel for the petitioner also states that in the original design of Dam, the diversion of Shutang Nulla was part of scheme but in the revised plan Member WAPDA excluded it, therefore he is the proper person to explain the benefit of exclusion of diversion of Shutang Nulla from Dam.

The Member WAPDA was directed to produce original and revised plan of Dam with his comments for exclusion of diversion of Shutang Nulla but despite number of

adjournments, he has not appeared. The learned counsel for WAPDA stated that today Member WAPDA could not reach for non-availability of flight from Islamabad and has requested for a date as last chance for appearance of Member WAPDA and in case he fails to appear, the court may decide the case on the present record. The learned Advocate General has also supported the request.

In absence of any valid reason, the exclusion of diversion of Shutang Nulla from Dam would be considered for a consideration other than the public interest. The case is ripe for argument which is adjourned to enable Member WAPDA to explain the matter on the next date and learned counsel for the WAPDA will also argue the case on the said date. Learned Advocate General will assist the Court on behalf of Government of Gilgit-Baltistan and President Supreme Appellate Court Bar Association and Chief Court Bar Association as well as Mr. Shoukat Ali Senior Advocate, President Skardu Bar Association will appear in the matter as Amicus. No further adjournment will be granted to either of the party."

4. Syed Raghbir Member Water and Power, WAPDA appeared before the Court, on 6-10-2010 and explained the matter in detail and in the light thereof the case was disposed of as under:--

"Syed Raghbir Member WAPDA having explained the position of Sadpara Dam in detail stated that as per Original Scheme Diversion of Shutang Nulla, by all means was part of Sadpara Dam but subsequently, for technical reason for the time being the deferment of Diversion of Shutang Nulla was proposed, and consequently, revised PC-I was got approved from the Competent Authority i.e. Prime Minister of Pakistan. The Member WAPDA stated that the deferment of Diversion of Shutang Nulla to Sadpara was only for a period of two years from the date of completion of project of Dam in September, 2012 which is temporary suspension of Diversion for a specified period and since diversion of Shutang Nulla is permanent part of Original Scheme, therefore, subject to any unforeseen reason, this Nulla will certainly be diverted to Dam. The Member has further explained that the cost of the Original project was Rs.2.69 Billion, whereas the revised cost is Rs. 4.8 Billion and suspension of diversion of Shutang Nulla, has neither reduced the cost nor caused any damage to the project. The Member WAPDA placing on record, a copy of revised PC-I submitted that he will also place on record the detail working paper of project for the convenience of the Court, within a week, through learned Counsel for WAPDA. The Member WAPDA has given unconditional undertaking on behalf of WAPDA that Shutang Nulla shall be diverted to

Sadpara Dam as per Original Scheme within the prescribed period.

The arguments have been concluded and for the detail reasons to be recorded later, this matter subject to all just exceptions, stands disposed of in the light of statement made by the Member WAPDA that as per Original Scheme and plan of Sadpara Dam, Shutang Nulla shall remain permanent part of Dam and its temporary suspension shall not be converted into permanent exclusion of diversion of Nulla with following directions:-

Notwithstanding the approval of revised PC-I no change will be made in Original Plan of Sadpara Dam duly approved.

Without the approval of Legislative Assembly and the Council of Gilgit-Baltistan and subject to the national and public interest diversion of Shutang Nulla will be completed within the specified period.

Syed Raghib Member WAPDA has regretted for inconvenience caused to the Court for his non-appearance on more than one date with the explanation that he was heavily engaged in other important matters. We realizing the difficulty of Member, appreciate the efforts made by him for assistance of the Court in this important matter, involving enforcement of Fundamental Rights of the people of Gilgit-Baltistan."

5. Notwithstanding the deferment of diversion of Shutang Nulla *vide* Revised PC-I and the direction contained in the order dated 6-10-2010 of this Court, subject to the national and public interest, the diversion of Shutang Nulla in the Dam as per original plan of Sad Para Dam shall not be deferred for indefinite period or changed permanently without the approval of the Legislative Assembly and the Counsel of Gilgit-Baltistan.

6. The Sadpara Dam is a project of national interest and permanent exclusion of diversion of Shutang Nulla from Dam may on one hand result in wastage of water of Nullah and on the other hand due to shortage of water the Dam ultimately may have no useful purpose. Consequently, to avoid national loss, we direct that WAPDA must ensure diversion of Shutang Nulla as per original scheme on the expiry of the period for which it has been suspended.

7. With the above observation and the direction in the order dated 6-10-2010 this case stands disposed of.

Chief Judge

Judge

Judge