

ORDER SHEET
**HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD**

Before:-

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

CP No. D- 1536 of 2014

[Shafi Muhammad and others v. Province of Sindh and others]

CP No. D- 1164 of 2016

[Abdul Qadir and others v. Province of Sindh and others]

CP No. D- 1232 of 2016

[Abdul Jaleel and others v. Province of Sindh and others]

CP No. D- 1400 of 2016

[Abdul Sattar v. Secretary Irrigation and others]

CP No. D- 3035 of 2017

[Ghulam Rasool v. Province of Sindh and others]

CP No. D- 3769 of 2017

[Muneer and others v. Province of Sindh and others]

CP No. D- 3264 of 2018

[Mirza Moazam Zahoor v. Province of Sindh and others]

CP No. D- 2651 of 2019

[Ghulam Nabi Khan Sanjrani v. Province of Sindh and others]

CP No. D- 429 of 2020

[Mushtaque Ali Shah v. Civil Judge and others]

CP No. D- 671 of 2020

[Zakir Hussain v. Province of Sindh and others]

CP No. D- 795 of 2020

[Abdul Majeed v. Province of Sindh and others]

CP No. D- 804 of 2020

[Muhammad Ramzan Pathan and others v. Province of Sindh and others]

CP No. D- 917 of 2020

[Abdul Hameed and others v. Province of Sindh and others]

CP No. D- 922 of 2020

[Khushal Das v. Province of Sindh and others]

CP No. D- 936 of 2020
[Murad Ali Abro and others v. Province of Sindh and others]

CP No. D- 982 of 2020
[Aijaz Ali Memon v. government of Sindh and others]

CP No. D- 1021 of 2020
[Mushtaque Ahmed v. Province of Sindh and others]

CP No. D- 1057 of 2020
[Hamzo Khan Zardari and others v. Province of Sindh and others]

CP No. D- 1232 of 2020
[Ikhtiar Ali v. Province of Sindh and others]

CP No. D- 556 of 2021
[Shahnawaz Nizamani and others v. Province of Sindh and others]

CP No. D- 764 of 2021
[Muhammad Bux v. Province of Sindh and others]

CP No. D- 814 of 2021
[Abid Farooq v. Province of Sindh and others]

CP No. D- 896 of 2021
[Imtiaz Ali v. Province of Sindh and others]

CP No. D- 898 of 2021
[Nawab Hussain Ali Leghari v. Province of Sindh and others]

CP No. D- 948 of 2021
[Mir Fateh Ali Khan Talpur v. Province of Sindh and others]

CP No. D- 980 of 2021
[Muhammad Urs and others v. Province of Sindh and others]

CP No. D- 1028 of 2021
[Abdul Jabbar and another v. Province of Sindh and others]

CP No. D- 1168 of 2021
[Pir Shahabuddin and another v. Province of Sindh and others]

CP No. D- 1330 of 2021
[Asad Ali and others v. Province of Sindh and others]

CP No. D- 1335 of 2021
[Ghulam Mustafa v. Province of Sindh and others]

CP No. D- 1408 of 2021
[Syed Madad Ali Shah v. Province of Sindh and others]

CP No. D- 1413 of 2021
[Hussain Bux and another v. Province of Sindh and others]

CP No. D- 1482 of 2021
[Muhammad Ishaque and another v. Province of Sindh and others]

CP No. D- 1487 of 2021
[Ghulam Hussain Shahani and others v. Province of Sindh and others]

CP No. D- 1567 of 2021
[Abdul Razaque Dharejo and another v. Province of Sindh and others]

CP No. D- 1581 of 2021
[Arbab Ali Samejo v. Province of Sindh and others]

CP No. D- 1629 of 2021
[Channesar v. Province of Sindh and others]

None present for petitioners in CP Nos. D- 1536 of 2014, CP Nos. 1164, 1400 of 2016, CP No. D- 3769 of 2017, CP Nos. D- 429, 671, 795, 804, 982, 1021, 1057, 922, 936 & 1232 of 2020, CP No. D- 814, 898, 1028, 1168, 1330, 1482, 1581, 1629 of 2021

M/s. Shakir Nawaz Shar, Razaq Raheem, Muhammad Arshad S. Pathan, Hameedullah Dahri, Qambar Ali Jamali & Balmiyo, Muhammad Sachal R. Awan, Muneer Ahmed Turk, Shahnawaz Nizamani, Abdul Majeed Shaikh, Muhammad Ibrahim, Amjad Hussain Rajpar, Advocate(s) for petitioners in rest of the petitions

Mr. Nihal Khan Lashari, Advocate for respondents 6 to 15 in CP No. D- 764 of 2021

Mr. Touseef Ahmed Chandio, Advocate for respondent No.5 in CP No. D- 1408 of 2021

Mr. Muhammad Sachal R. Awan, Advocate holds brief for petitioners' counsel in CP No. D- 948, 980 of 2021

Mr. Rafique Ahmed Dahri, Assistant A.G Sindh

Date of hearing & Order:
18.11.2021

ORDER

ADNAN-UL-KARIM MEMON, J. – The above-referred Constitutional Petitions are being disposed of by this common order as the issue raised therein is similar.

2. Through these constitutional petitions, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”),

the petitioners have prayed for providing irrigation water to their respective lands as per their share list, change of module / sub-module, dismantling of modules / sub-modules, closure / change of watercourse, illegal outlets, and sanctioning of new water course from the main canals / wahs and other ancillary relief(s) relating to the Irrigation Department under the irrigation laws.

3. Petitioners and their counsels were already put on notice to satisfy the Court regarding the maintainability of these petitions, as prima facie, it appears that the same have been filed in violation of orders passed by this Court in C.P No.D-721 of 2010. Today again we put the same question to them, to that query they submitted in unequivocal terms that their respective agricultural lands rest on different watercourses for last many years. They have further contended that the respondents are persistently attempting to obstruct water supply to their lands from the said watercourse and / or are avoiding to redress their other ancillary issues rather than threatening them to accommodate their feudal lords, against which the petitioners raised hue and cry but all went in vain, which has compelled them to approach this Court. They have also submitted that the petitioners are entitled to have irrigation water to irrigate their lands and the official respondents are bound to supply water under the irrigation laws and also to resolve their other issues relating to irrigation water, but they are reluctant to exercise their legal authority. They further submitted that interference of respondents in a flat supply of water to the petitioners' land through their respective watercourses and canceling their sanctioned watercourses / modules / sub-modules and / or allowing illegal outlets / watercourses amounts to an offense under the irrigation laws, but the competent authorities have failed to take any action against them. They prayed for a direction to the official respondents to redress their grievances under the law within a reasonable dispatch.

4. Before going ahead it is observed that though this Court has already decided the petitions of similar nature vide common order dated 10.12.2019 passed in C.P. No.D-721 of 2010 (Umer Din Mehar v. Province of Sindh and others). We are surprised rather shocked that yet again the petitions of similar nature are being poured before this Court, although this Court gave strict directions in afore-referred order to the competent authority of the Irrigation Department to redress the grievances of the petitioners, if any, at the first instance, however, they have completely failed and neglected the directives of

this Court, leaving the petitioners / khatedars to approach this Court time and again. Primarily this is not the function of this Court to look into the matters of providing irrigation water to petitioners' / khatedars' respective lands as per their share list, change of module / sub-module, dismantling of modules / sub-modules, closure / change of watercourse, illegal outlets, and sanctioning of new waters course from the main canals / wah and other ancillary relief(s) relating to Irrigation Department under the irrigation laws.

5. Article 9 of the Constitution provides the right to life, if a person is deprived of the fundamental right; he can always approach this Court by invoking Constitutional jurisdiction of this Court with a rider that such right is not hampered with by any law. A right to irrigate agricultural and / or other ancillary issues is also governed and protected under the Irrigation Laws and the Rules made thereunder and in case of infringement thereof, the same could be examined by this Court. In this regard, we deem it advantageous to refer to the case law reported in 2014 SCMR 353, wherein the Hon'ble Supreme Court has observed that the provisions of the Sindh Irrigation Act, 1897, are required to be strictly observed so that nobody can encroach upon the rights of others, as the farmers are earning their livelihood for their own lives and their families, which is a fundamental right guaranteed under Article 9 of the Constitution. So far as the contention of involving disputed questions of facts as argued by the learned counsel for the private respondents are concerned, we are of the view that the claim and counterclaim of the respective parties cannot be looked into under Article 199 of the Constitution.

6. The Honorable Supreme Court in similar nature of case took Suo-Moto notice and passed the order therein. An excerpt whereof is reproduced below:

"In such view of the matter, we direct the Secretary, Irrigation that immediately he should take action to protect their interest. Here we deem it appropriate to reproduce operative part of the report of the learned District and Sessions Judge Badin dated 27-11-2013:- "It is further submitted that frames of the outlets were tampered and some were having repaired freshly. The type of the frames as sanctioned was 2" x 2" inches but after tampering; the same were found up to 1 to 2 feet width. It is further submitted that on 25- 11-2013 the most of the outlets were closed and the Irrigation Officers informed that the same have been closed due to rotation; hence, the flow of water was found up to the sanctioned level and reached at the tail of Sangi Pharho / Regulator. It is further submitted that the outlet of Kamal Khan Chang crossed Pir Sakhi Minor. It is further submitted that again on 26-11-

2013 the undersigned conducted the surprise visit of the site without accompanying the Irrigation Officers and found that most of the outlets were opened, hence, there was no pressure of flow of the water at the tail and it was not flowing at sanctioned level at the tail of Sangi Phraho. It is further submitted that if all the outlets remain opened, then the flow of the water will not reach at the tail of Naseer Branch. In this situation, the Zamindars of tail of Naseer Canal Branch cannot get the Irrigation water for cultivating their lands."

7. As regards the main issue involved in the present proceedings, this Court vide judgment dated 18.4.2019 passed in C.P. No. 1375-D of 2017 directed the competent authority of the Irrigation Department to ensure supply of water to the khatedars under share list. The aforesaid judgment was assailed before Honorable Supreme Court in Civil Petition No. 410-K of 2019 which was disposed of in the following terms:

"Learned counsel for the petitioners has impugned the judgment dated 18.4.2019, whereby the issue as to the supply of water to the petitioners' land, which, according to the learned counsel, is being curtailed. Learned Additional Advocate General along-with Secretary Irrigation Department, Government of Sindh have filed their comments, duly signed by Secretary Irrigation and Managing Director, SIDA, Hyderabad, which read as under:- "As permanent relief relocation of head regular of Bilori Minor has been provided in ADP 2019-20, at Sr.No.1113 which is in process and will facilitate restoration of original source of irrigation water supply to the petitioner and others in due course of time". Learned Bench of the High Court, already seized of the matter, in terms of para No.23 of the impugned judgment has directed for compliance report before the Assistant Registrar of High Court. Since High Court itself is regulating and supervising the issue as urged in the petition, we are not inclined to interfere in the matter which is purely between the two departments and as stated by the learned Additional Advocate General same will be resolved on permanent basis no sooner the scheme allocated to ADB is executed for which funds are allocated it is expected that such scheme is materialized. The High Court will ensure that its orders are complied with in letter and spirit. The authority shall ensure to supply water from either of the available source of supply in accordance with share list. In this view of matter, we are not inclined to interfere in the impugned judgment. Petition disposed of."

8. The above orders passed by the Honorable Supreme Court resolve the issue, which is also one of the main issues of these petitions. During the course of arguments learned counsel for the petitioners demonstrated that the Irrigation Department is turning deaf ear to comply with the directives of the Hon'ble Supreme Court as well as of this Court issued from time to time and even till today they are reluctant to submit a compliance report in the aforesaid

proceedings which show their malafide conduct just to please their feudal lords and to provide them adequate water supply and reluctant to provide due share as per their share list to the petitioners, which is discriminatory under the Constitution as well as under the Sindh Irrigation Act. We are cognizant of the fact that no authority has been conferred upon khatedars to utilize water more than their sanctioned share as per the prescribed share list, and the Irrigation Department is bound to ensure providing a due share of water to each khatedar as per law. In such circumstances, this Court took cognizance of the matter and vide common order dated 10.12.2019 passed in C.P. No.D-721 of 2010 (Umer Din Mehar v. Province of Sindh and others) resolved the controversy, which is also the main issue of these petitions. Unfortunately, the respondents / Irrigation Department prima facie seems to be reluctant to redress the grievances of the khatedars as discussed supra, compelling this Court to again take cognizance of the matter and pass strict directions against the delinquent officers / officials of the Irrigation Department to do the needful before it is too late on their part, which may result into disciplinary action against the delinquent officials.

9. Prima facie, the basic issue involved in the present proceedings is the distribution of water to the lands of lawful khatedars of the concerned under the Sindh Irrigation Act. The official respondents along with others have allegedly attempted to obstruct the water supply to the petitioners' land and in some of the cases have allegedly closed or blocked the source of water supply to them and / or threatened to close the water source through force to accommodate khatedars of their choice irrespective of their entitlement and created bottlenecks for their water-related issues involved in these proceedings.

10. A perusal of record and consideration of contention of petitioners raised before us has persuaded us to believe that the issue involved in the present proceedings is the distribution of water to the lands of genuine khatedars of the area concerned. Distribution of water according to sanctioned channels under the Sindh Irrigation Act is the sole responsibility of the Sindh Irrigation Department, Government of Sindh.

11. The Irrigation Act provides a complete mechanism for equitable distribution of water among khatedars and remedies for redressal of their

water-related grievances which exercise cannot be undertaken by this Court under Article 199 of the Constitution. It is for the official respondents to take prompt action to redress the genuine grievances of the khatedars strictly under law.

12. In view of the above discussion, the competent authority of the respondent department is directed to ensure regular supply of water to the lands of genuine khatedars / landowners as per share list ; and to take action forthwith against such khatedars / official of the Irrigation Department who have violated or violate the law by tampering with the sanctioned modules and / or by changing the watercourse and / or by obstructing the water supply of other khatedars and grievance / complaints, if any, placed before them by the aggrieved khatedar shall be addressed / decided promptly within a period not exceeding 30 days from the date of complaint / application strictly under law after providing opportunity of hearing to all concerned.

13. Issue notice to the Secretary Irrigation Department, Government of Sindh to ensure compliance of the above direction in letter and spirit and submit monthly report to this Court through Additional Registrar of this Court with regard to regular supply of water to the lands of genuine khatedars / land owners as per share list, action against the khatedars / officials who take the law in their hands, decision on complaints and other ancillary issues cropped up and brought before him and result of redressal of grievances for our perusal in chamber. However, it is made clear that in case of default contempt proceedings shall be initiated against Secretary Irrigation and the delinquent official / beneficiaries who failed and neglected to comply the orders passed by Honourable Supreme Court as well as by this Court from time to time on the subject matters.

14. All these petitions and applications, pending therein, stand disposed of in the terms with no order as to cost.

JUDGE

JUDGE

Sajjad Ali Jessar