

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D - 1043 of 2018

Date of hearing	Order with signature of Judge
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1. For orders on office objections at Flag-A
2. For hearing of main case
(Notice sent to AAG, DJs Sukkur, Khairpur, Sanghar etc.)
(Report received)

13.06.2018

Mr. Irfan Ahmed Baloch, Advocate for the petitioners.
Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh along
with Aftab Ali Talpur, Executive Engineer and Imdad Hussain,
Assistant Engineer, Nara Canal Khairpur.

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Salahuddin Panhwar, J. - Through instant petition, the petitioner has challenged the legality and competence of *water-rotation* Programme at different government channels thereby resulting in denial to rights, guaranteed by Constitution. There was also complaint of use of *lift-machines*. None could deny the importance of *water* into our lives because Holy *Quran* says:

*“By means of water, we give **life to everything**”*

2. The *agriculture* is considered as *back-bone* of economy of Sindh, as well as country, therefore, the right of every *farmer / zamindars* to have due share of water is not less than a *guarantee*, provided by Article 9 of Constitution as same is for livelihood of such a person. Reference may well be made to case of *Pir Imran Sajid & Ors* 2015 SCMR 1257 wherein it is categorically observed as:-

“9. It is now well established that right to life as envisaged by Article 9 of the Constitution, includes the right to livelihood and as laid down in the case of *Abdul Wahab* (supra), the “right to livelihood, therefore, cannot hang on the fancies of individuals in authority. ...”.

There could be no *green* in absence of *blue* therefore, every holder of *agricultural land* must be provided *equitable* right to have *green* by providing *due share* as per available discharge. Since, the complaint of non-receipt of water, *undeniably*, falls squarely within meaning of Article 9 of

the Constitution and *prima facie* was of involving public at large, therefore, vide order dated 07.6.2018 the reports were called from official respondents (*irrigation authorities*) couple with report from learned District & Sessions Judge, Khairpur, Sukkur and Sanghar.

2. Accordingly, Executive Engineer is present and submits comments along with written statement appended with plethora of documents relating to private pumping machines, government lift channels and **illegal lift machines** over *Nara Canal*. Executive Engineer Nara Canal Division Khairpur contends that his jurisdiction is from RD-02 to RD-550 (*Mundh Jamrao*); that there are 47 approved government channels which suck water through lift machines as well 188 private lift / pump machines approved by Chief Minister Sindh as well Secretary Irrigation Sindh. Whereas, **256 unauthorized lift machines** are on *Nara Canal*. Albeit they have tried to remove illegal lift machines, but due to law and order situation, unable to do so; that there are other lift machines which are movable, installed on tractors, usually booked by land lords for getting water through theft in the night time. He contends that total discharge of *Nara Canal* is **13650 cusecs**, whereas, for approved / sanctioned channels the limit is **600 cusecs**. Hence, irrigation authorities are bound to provide **13000 cusecs** at *Mundh Jamrao*; that there are three other divisions; *Thar*, *Jamrao* and *Mithrao*, which are responsible to provide / regulate share of water to irrigate the lands on their command areas up to ***tail-end***. Whereas, he is bound to provide such sanctioned water up to *Mundh Jamrao*. In comments, it is also pleaded that due to short-fall of water in *River Indus* the irrigation authorities are unable to provide *due* share of water hence rotation Programme is being introduced within meaning of Section 28 of Act.

3. Learned AAG Sindh contends that Chief Minister Sindh is not competent to sanction the lift machines; that in order to regulate distribution of water as per entitlement, it would be in the interest of justice to direct law enforcement agencies to supervise / monitor *Nara Canal* particularly from RD-02 to RD-550. It is also contended that there is no concept of minor or water course upto *Mundh Jamrao*, hence Head, installed by irrigation authorities are apparently illegal; that huge increase in command area upto *Mundh Jamrao*, shall be re-examined, as allotment

of dunes and approval of lift machines, appears to be favour to a selected political class in various regimes.

4. At this juncture, Executive Engineer contends that except *Rangers*, police officials would not be in a position to rescue the irrigation authorities in order to regulate the irrigation system. Learned Assistant Attorney General, present, contends that federal law enforcement agencies would provide every assistance to the Province of Sindh.

5. The shortfall in main-source (*Indus River*) is no more a *secret* however, this sole *plea / ground* was / is never sufficient for an *authority* to act arbitrarily / in a *discriminate* manner or guilty of *negligence* thereby denying rather depriving the *tail-end* to receive water. On the other hand, this *short-fall* requires much more vigilance and indulgence on part of *Irrigation Authorities* from top to *bottom* to ensure that *equity* prevails. We would come to this *aspect* later.

The use of *lift-machines* though is permissible at places where the water-level is so low that practically *due share* cannot be obtained except by use of *lift-machines*. This *however* requires a proper sanction by competent authority (*Irrigation Department*) but what we have seen in reports of *Judicial Officers* speaks otherwise.

6. Learned District & Sessions Judge Sukkur deputed a Magistrate, who has submitted report which contains **120 illegal lift machines**, which are functional, same shows unauthorized lift pumps from RD-02 to RD-220 which are 183 and names of owners are also mentioned. As well, we have received report of learned Magistrate Nara, District Khairpur, which contains that he observed that:

*“most of the source of energy supplied to lift machines were due to supply of transformers which were almost **illegal and without any NOC from Irrigation Department**. Even and otherwise it was also brought to my notice by public that most of the **transformers were either illegal or were** issued in the names of persons in respect of **their homes, Atta Chakki and Ara Machine**. I had also pointed out such complaint to Line Superintendent of SEPCO and directed to produce such approval or record of transformers issued for lift machines who failed to produce such record, hence such non production of record from SEPCO Authorities the transformers attached with lift machines seem to be illegal.”*

Further, he has submitted details of private lift machines including unauthorised and functional with names of beneficiaries. As well, we have received report of Civil Judge & Judicial Magistrate-II Sanghar, which is that:

"In compliance of the orders passed by Honourable High Court of Sindh, Sukkur Bench @ Sukkur in above mentioned Constitutional petition, your kind honour was then pleased to depute the undersigned as visiting judge for checking the lift machines approved or unapproved (functional or dis functional), for which the undersigned duly complied with the said orders and now submits herewith the following report.

It is submitted that undersigned visited first the Lower Nara Canal, which starts from Head Jamrao point, R-D No.01, Bakhoro Sub-division, District Sanghar to R-D 530 Farash division, District Umerkot and found as follows;

During visit of Bakhoro Sub Division, it was observed that two lift machines were installed at RD-16 and RD-18, out of which one was disfunctional at RD-16. The Assistant Executive Engineer Bakhoro Sub-division Mr. Arif Memon submitted his report about the said machines that both the machines are approved by the department and he further submitted that the land of lower Nara Canal is cultivated through modules, because command area of lower Nara Canal is being cultivated through gravity flow and the land is below from the full supply level of lower Nara Canal. It is gravity flow and the land is below from the full supply level of lower Nara Canal. It is relevant to mention here that on the day of visit, the water supply in Re-aligned Nara Canal at RD 72 D/S was at about "Zero level".

*During visit of Nara Canal Farash Sub-Division, the undersigned found that two lift machines were installed at RD 369 R/S for water supply to Khipro town, one machine was lying installed at RD-470 right side by one Mir Sohrab Khan Mari, (as informed by officials). The Assistant Executive Engineer Irrigation Farash Sub-division Nara Canal, Mr. Mola Bux Laghari submitted that **no any approved lift machines along lower Nara Canal form RD-280 to RD-530 was mentioned in their office record.** He further submitted that about **116 pipes outlets are approved from RD-280 to RD-530.**"*

(Emphasis is supplied)

7. Perusal of above shows that such report is appended with photographs showing therein that no water is available at RD-550, meaning thereby after this site all citizen including *khatedars* are facing great hardship since many months as well as since years. Since water falls within the term of life and every citizen has fundamental right as enshrined in the Constitution of the Islamic Republic of Pakistan, 1973,

which is guaranteed and state is responsible to ensure such guarantee. We would also add that it is the *prime* source for **drinking water** *too* therefore, responsibility becomes rather serious to ensure proper supply of water *least* when it comes to matter of *drinking water*. Though, *pure drinking water* is right of every single citizen but *regretful* to admit that in *tail-end* areas and *remote* areas their priority is to have water regardless of its *suitability* for drinking standard or *otherwise*.

8. We would not hesitate in acknowledging that by introduction of *Act*, the intention and the purpose was / is never meant to *please* big-zamindars or those, having their lands at the '*mundh*' (upstream) but *undeniably* was / is to ensure equitable distribution of water among all khatedars (*farmers*) regardless of their *holdings* and their position on *source* of water (water-course/minor etc). The *preamble* of the *Act* shall make this *fact* clear which reads as:-

*"Whereas it is necessary to make provision for the **construction, maintenance and regulation of canals**, for the **supply of water** therefrom and for the **levy of rates** for water so supplied, in the (Province of Sindh); It is acted as follows:-*

The purpose and concept of heads, gates and *modules* are nothing but to *first* receipt of proper discharge and *then* supply thereof to whole command areas of *Canal*. Any breach or tampering with *design* discharge always results in effecting the rights of those to follow, therefore, supply of water by way of **construction, maintenance and regulations of canals**, has been made *prime rather* sole obligation / duty of Irrigation Authorities.

9. Thus, *legally*, the *fixed* cultivation figure is meant from *top* to *end* and since it is based on **equity** therefore, shall *normally* never open a room of complaint to any of the *farmer / zamindar* even in cases of *short-fall* in *Indus River*. None would complain even on *rotation Programme* if object and intention thereof is to ensure **equity**. If so then the answer to *general* cries all at the *tail-end* areas in all over *Sindh* could be nothing but result of *negligence* or *excess* on part of quarter concerned i.e *Irrigation Authorities* (Government of Sindh). Needless to say that *legislatures* have not vested uncontrolled authority / jurisdiction in concerned rather by insertion of Part-V in the *Act* with title '*of the Award of Compensation*' made it quite

clear that a deliberate omission in discharge of official obligation, if resulting in causing damage to *farmer / zamindars*, would give a right to such *aggrieved* to claim '**compensation**'. Here relevant sections of part-V are reproduced for ease and understanding that an attempt has been made to keep balance between *rights* and *obligations*.

"31. Compensation may be awarded in respect of any substantial damage caused by the exercise of any of the powers, conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation:

Provided that no compensation shall be so awarded in respect of any damage, arising from---

- (a) deterioration of climate, or
- (b) stoppage of navigation, or the means of rafting timber or of watering cattle, or
- (c) stoppage or diminution of any supply of water in consequence of the exercise of the power conferred by section 5, if no use have been made of such supply within the five years next before the date of the issue of the notification under section 37, or
- (d) failure or stoppage of the water in a canal, when such failure or stoppage is due to—

- (1) cause beyond the control of (the Provincial government);
- (2) the execution of any repairs, alterations or additions to the canal, or
- (3) any measures considered necessary by any Canal officer duly empowered in this behalf for regulating the proper flow of water in the canal, or for maintaining the established course of irrigation;

but any person who suffers loss from any stoppage or diminution of his water-supply due to any of the causes named in clause (d) of this section shall be entitled to such remission of the water-rate payable by him as may be authorized by the (Provincial Government)

"35. If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in clause (d) of section 31, the holder of such land may present a petition for compensation to the Collector for any loss arising from such interruption, and the Collector, after consulting the Canal-Officer, shall award to the petitioner reasonable compensation for such loss".

10. Such insertion, being deliberate, is meant to ensure a protection to rights of a *farmer / zamindars* in receiving his due share of water and any negligence or *failure* on part of quarter concerned may expose him (department) to pay compensation. Every official has to ensure discharge

of his obligations and cannot escape consequences of his *failure / negligence* which is a fundamental rule and principle of equity in matters of *damages / compensations*. Reference may be made to the case of Province of Sindh v. Kabir Bokhari 2016 SCMR 101 wherein it is observed as:-

“10. ... The Government and its department are bound to act justly and fairly with the citizens of the country and in case of illegal and unlawful conduct of the government and its officials of department any loss is caused to the citizen of this country, same is appropriately be compensated. This is a fundamental rule and also principle of equity.”

11. Thus, we would conclude that *legally* the irrigation officials cannot come forward with plea of being *helpless* rather would be required to justify any such *failure* or *negligence* else to face the consequences i.e payment of compensation. At one hand, the irrigation authorities admit the position so *critical* that they seem to have become *incapable* to provide water but at same time their conduct is quite negligent as admittedly *illegal lift machines* and *illegal electric connections* are being used/continued. Here a referral to letter of Director, NCAWB, Mirpurkhas bearing NO.RC/D-55(a)/NCAWB/803 OF 2018 MPK Dated 21.3.2018, addressed to Chief Executive Officer (Operation), SEPCO, Sukkur (attached with comments), being relevant, is made hereunder:-

“In view of massive shortfall in River Indus, a meeting of Nara Canal Area Water Board has been convened by the undersigned on 21/03/2018, to tackle the situation in hand and to manage proper supply of water not only for irrigational purpose but also for drinking purpose. The Nara Canal Area Water Board has unanimously arrived at the conclusion that some stringent measures need to be taken on emergent basis, in fact, there are a lot of private and government lift machines are functioning through electric power, alongside some unauthorized lift machines are also functioning. In this regard, this Directorate had already issued letter to you vide this office NO.RC/D-55(a)/NCAWB/108 dated 09.5.2017 requesting to remove power supply of unauthorized lift machines in compliance with the court order passed by the Honourable High court of Sindh, Circuit Bench at Hyderabad in Const. Petition No.D-239/2009, but unfortunately no composite / practical action has so fare been taken from your side.

The water crises throughout Sindh province has depend to the limit and there are eminent signs of sparking worst situation for water management in the days to come which will definitely become out of control, even when the water for drinking will completely be dropped out in the off taking canals of Indus River System. At present it has

become far more essential to swallow the bitter pill to avert the untoward situation of water crises.

*You are requested to kindly arrange to disconnect all the electric power connection to the government and private lift pumps for **one week closing and one week opening basis** in order to meet the demand of water. On the other hand you are once again requested to kindly close down the electric supply to all unauthorized lift machines still functioning along Upper Nara at one.*

12. In above, the seriousness of water short-fall is admitted yet no follow-up was made in one year for disconnection of *illegal* electric connection or *use* thereof from **09.5.2017 to 21.3.2018**. Such attitude is not worth appreciating when admittedly the *cries* in respect of water are, now, touching to *sky*.

13. The *bona fide* would not find satisfaction by beautifying a *correspondence* but would require an *action* and since the Act does contain Part-III, titled as '*of penalties*' therefore, before pleading *bona fide* the concerned official shall be required to establish taking of all *positive* and *legally* permissible steps against the one, whose actions or omissions appear to have resulted in interference in supply of water. The part-III of the *Act* includes Section 64. The same reads as:-

'64. *Any person in charge, of, or employed upon, any canal may remove from the lands or building belonging thereto, or may take into custody without a warrant, and take forthwith before a Magistrate or to the nearest Police-station, to be dealt with according to law, any person who within his view –*

- (1) willfully damages, obstructs or fouls any canal,
or
- (2) without proper authority interferes with the supply or flow of water, in or from any canal, or in any river or stream so as to endanger, damage, make dangerous or render less useful any canal".

14. From above, it is *prima facie* no more ambiguous that the *Irrigation authorities* would never be justified in claiming themselves *helpless* towards performing their obligations which shall always include a *legal action* against any person if his acts or omissions appear to be resulting in hampering / interference in supply / flow of water from *top* to *end/tail*. The *picture*, so appeared from the reports *prima facie* shows negligence *rather* failure on part of the Irrigation Authorities in discharge of their

obligations *rather* mandatory duties. The *department* always represents the *Government* hence representative of a *department* would not be justified while complaining about non-co-operation by law enforcing agencies or status / high position of *guilty/violator* of law and obligations. Letting one to suck the water share of other by means of *breach* of outlet or use of *illegal* lift machines is nothing short of an attempt to *put* guaranteed fundamental rights of *others* in *serious* jeopardy, which authority, we would emphasis, lies with *none*.

15. The *negligence* and *exercise* of jurisdiction in *issuing* direct outlets was even earlier taken notice of by Honourable Apex Court in a case, reported as **2014 SCMR 353**. The same, being very relevant, is reproduced hereunder:-

... On the last date of hearing, after receipt of the report, following order was passed:-

..
...
...

(3) It appears that the **outlets have been sanctioned in violation of law and in relaxation of the ban** which has been imposed as per letter No.2/687-S.O(OP)/70-Vol-III, dated 2-1-1999 but in the relaxation of this ban from time to time, outlets are sanctioned in favour of influential and interested persons without acknowledging that due to such acts, the lands of farmers / zamindars situated at tail shall not get water equal to their share because, before reaching the tail mostly the whole water is taken by upper riparian. These farmers / zamindars at the tail have every right to protect their property under Article 24 of the Constitution as they are also earning livelihood for their families. In such view of the matter, we direct the Secretary, Irrigation that immediately he should take action to protect their interest.

(4).....

(5) The above report is sufficient to conclude that **Irrigation department is not discharging its functions** because even if it is presumed that the outlets have been sanctioned legally but **no authority has been conferred upon these persons to utilize water more than the sanctioned size by tampering with the outlets.**

(6) Under the circumstances, we direct the Secretary Irrigation to visit all the outlets personally, a list of which has been provided by the Chief Engineer along with the DIG and other force, if necessary and ensure that all these persons to whom outlets have been sanctioned, strictly comply with the sanction. He should also examine all the cases separately and, if found against the law, issue the notices to the owners. He shall take action as per law and shall submit comprehensive

report on 3-12-2013 at Islamabad. He would also intimate all the persons whose names have been mentioned in the list and those whose cases shall be examined by him to appear, if they so desire before the Court at Islamabad on 3-12-2013.

4. We feel that the provisions of the Sindh Irrigation Act, 1879 are required to be strictly observed so that nobody can encroach upon the rights of others, as the farmers are earning their livelihood to protect and their own life and their families, which is a fundamental right guaranteed under article 9 of the Constitution.

5. The Chief Engineer Irrigation, present in Court, states that **in future there shall be no violation of the Act by any of the farmer / zamindars, and if any one violates the same, he will be dealt with in accordance with law.** However, he seeks an observation from the Court that local police shall co-operate with them. Though it has already been observed, yet we direct DIG Hyderabad and D.P.Os of the Districts under his control to take action against the persons involved in water theft etc. It may not be out of context to mention that before approaching the police authorities, the irrigation authorities shall satisfy that there is violation of law. **Moreover, the provisions of section 28 of the Sindh Irrigation Act shall be strictly observed, so that nobody could take the law in his hands.**

16. From above, it is quite obvious that the Honourable Apex Court *categorically* observed the following while acknowledging the same to be *guaranteed* rights and *obligations* and in line with Act i.e:-

- i) *outlets are being sanctioned in violation of law and rules in consequences whereof tail does not get water equal to their share because, before reaching the tail mostly the whole water is taken by upper riparian;*
- ii) *Irrigation department is not discharging its functions properly;*
- iii) *without prejudice to legality or otherwise of such outlets no authority has been conferred upon these persons to utilize water **more than the sanctioned size by tampering with the outlets;***
- iv) *the provisions of section 28 of the Sindh Irrigation Act shall be strictly observed, so that nobody could take the law in his hands.*
- v) *The D.P.Os (Sr. Superintendent of police) were directed to take action against the persons involved in water theft etc*
- vi) *there has been categorical undertaking by Chief Engineer Irrigation that in future there shall be no violation of the Act by any of the farmer / zamindars, and if any one violates the same, he will be dealt with in accordance with law. (emphasis supplied)*

17. The *crux* of above *judgment* of honourable Apex Court was nothing but an assurance of the *guaranteed* fundamental rights of every *farmer / zamindars* (regardless of his holding and position/turn of water) that he shall receive his due share of water on principle of *equity* even when the situation demands exercise of *jurisdiction* under section 28 of the *Act*. This shall not find satisfaction if negligence or *failure* on part of the *Irrigation Authorities* is allowed to continue only in name of *short-fall* of water or *names* of big-guns, involved in violating the *Act*. In short, a proper compliance of above directions/observation shall not be satisfied if, every *illegal lift machine, illegal out-lets, damage/breach to source of water*, as well use of sanctioned *lift machine/out-let* in excess of its purpose i.e to take its share *only* are not *immediately* brought to an *end* so that water-flows from *top* to *end/tail* as per received discharge.

18. Needless, to say that such observations were / are of *binding* effect and leave no body with any escape to avoid the same, however, regretful to say that position is not different *rather* appears to be worst as admittedly *hundreds* of illegal and unauthorized *lift machines* are functioning which is nothing less than an *admission* of violation of *Act* at the cost of those, whose water share is sucked before reaching to them. This *otherwise* is a *prima facie* violation of the *directives*, made by Honourable Apex Court as well obligations, arising from the *Act* itself?

19. Since, the Article 190 of the Constitution is quite clear that:-

“Article 190. Action in aid of Supreme Court—All Executive and Judicial Authorities, throughout Pakistan, shall act in aid of the Supreme Court”.

Hence, not only this Court but even District Judiciary is expected to act in aid so as to ensure complete satisfaction of directions of honourable Apex Court. Since, it *prima facie* stood proved that despite a *categorical* undertaking by Chief Engineer Irrigation that no violation of *Act* shall go un-noticed but the things remained *otherwise* therefore, same opens a room of involvement of *all judicial authorities* to play their roles not only to get compliance of *observation* of honourable Apex Court but also to protect *fundamental* rights, as was insisted in referred *case*. Thus, under these circumstances, judicial propriety demands that Chief Secretary, with consultation of Secretary Irrigation, shall constitute five members

committee comprising on three *Irrigation Officers (retire/serving)*, not below the rank of superintendent engineer and two irrigation experts working in private sector who shall visit Nara Canal, examine the sanctioned private lift machines approved by Chief Minister and Secretary Irrigation as well use thereof as per *specification* or otherwise, and submit report whether such approval is against the interest of *tail-end khatedars* and whether same is justified or otherwise?. The committee shall also point out any violation / breach of the Act as well negligence of irrigation officials of concerned point. The committee would also ensure getting such violation / tampering with module etc repaired (restored at its sanctioned design) by seeking assistance of local police and irrigation officials. Committee shall examine the period of huge increase in command area; approval of lift machines up-to *Mundh Jamrao* and legality thereof. Chief Secretary shall issue such notification in above terms within seven days with compliance report through A.R of this Court and Committee shall complete this assignment within two months such report shall be submitted for action with the secretary irrigation chief secretary within two months, as well as shall be filed before this Court.

- i) On such proposal, Chief Secretary and Secretary Irrigation shall take action within one month. Needless to mention that due notice shall be provided to all the concerned parties. Every officer/ authority would be bound to co-operate with committee.
- ii) Secretary Irrigation and Managing Director Sindh Irrigation and Drainage Authority (SIDA) shall ensure *immediate* removal of 256 unauthorized lift machines on Nara Canal as well as lift machines on government Channels up-to *Mundh Jamrao* and lodgment of criminal cases against all beneficiaries. Removal of all illegal and unauthorized *machines* be ensured regardless of their placement / use at *private* area or government channel even on wheels; IGP Sindh shall direct all SSPs to provide complete force to finalize this task. This exercise shall be completed within ten days.
- iii) Secretary Irrigation and Managing Director Sindh Irrigation and Drainage Authority (SIDA) shall conduct open *kachehris* at the *tail-end* area of *Mithrao, Jamrao* and *Thar Canal* on every six weeks in the months of March to October. Needless to mention that they shall ensure presence of the Judicial Magistrates / Civil Judges, of the respective areas in their open *kachehris*. Judicial Magistrates / Civil Judges would be competent to supervise and ensure that every common citizen has access in that open *kachehris*.

- iv) Learned District & Sessions Judges, Sukkur, Khairpur, Sanghar, Umerkot and Mirpurkhas shall depute Magistrates who shall make surprise visits *as per their convenience* without disturbing their *judicial works* and ensure that no one is getting water illegally in their respective areas and all illegal lift machines, modules, pipes, are removed within their respective areas as well shall point out any violation of the *Act* couple with negligence of concerned official / officials. The learned District & Sessions Judges would refer the matter to quarter concerned for appropriate actions. The quarter concerned *however* shall deal with such reference as per law and rules but would report disposal of such *reference* to concerned District & Sessions Judge, within reasonable time, else District judges would be competent to call respective authority for compliance.
- v) SSPs, Sukkur, Khairpur, Sanghar, Umerkot and Mirpurkhas shall ensure that at least DSP and other police escort shall be available with the Magistrates and with the Engineers in respect of removal of illegal lift machines, pipes, modules, etc from the Nara Canal and its all branches, including minors. Any negligence or failure in attending the complaint of *irrigation official* in this regard shall expose the concerned police official to legal action which is not limited but includes *contempt* proceedings.
- vi) Secretary Irrigation shall ensure *website* of Irrigation Department on same pattern as Punjab Province is working and survey of underground and surface water and its environmental and other effects for the lands as well for human beings. Such survey and reports shall be published every year and shall be flashed on *website*. As well as *toll free number* shall be provided in similar fashion as Province of Punjab is doing with regard to complaints, and rescue centers shall be established.
- vii) Chief Secretary Sindh and IGP Sindh shall ensure that Police Department along with Irrigation and agriculture Department shall establish rescue centers who shall hear the complaints. In every *District Headquarter* and in *Taluka Headquarter* of *tail-end* areas, there must be a *rescue center*; concerned Magistrates of respective area, would be competent to make surprise visit and ensure that *tail-end khatedars* are receiving their share of water as well citizens are getting drinking water per sanctioned.
- viii) CEO of SEPCO shall ensure that no one is allowed to use electricity for private unauthorized lift machines over Nara Canal and its channels. All the illegal electric connections, being used for purpose other than its sanction, shall immediately be disconnected, for which request is already made. In case of failure, they will be booked in criminal cases. Executive Engineers of respective areas are hereby directed to point out those places. This exercise shall be completed within one month, with compliance report.

- ix) Even in case of shortage of water, if sanctioned ratio as per available discharge from *main source* (Indus River) is not received at *Mundh Jamrao*, Superintending Engineer and Executive Engineer Nara *canal* would be responsible for that shortage and Secretary Irrigation shall take action against them because it is their obligation to ensure reach of due discharge to *next canal*.
- x) Besides Chief Secretary Sindh, to curb this menace, shall seek assistance of *Rangers* with the help of *Federation* and ensure complete monitoring over water distribution system on all canals including *Nara Canal* and *Rohri Canal* particularly from the period of March to August, every year.

Since a *challenge* in petition was made with reference to *water rotation programme* for which it would suffice to say that since the application of Section 28 of the *Act* is available with the Irrigation authority hence petition seems to have found its answer. Further, it is added that such exercise (*water-rotation Programme*) may be continued, if circumstances, so demands. However, this shall not be exercised at the cost of rights of other *khatedars*. A *proper* publication of *water rotation programme* shall *however* be made in advance.

While parting, we feel it proper that the *farmers / zamindars* also be made aware of Part-V in the *Act* with title '*of the Award of Compensation*' which cannot be expected from *lay-men* therefore, while holding *first open kachehri* the holder thereof shall ensure a *briefing* thereof and a *good* publication of complete mechanism.

Office shall communicate this order to all concerned for compliance. The petition is disposed of.

JUDGE

JUDGE

Abdul Basit