ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

M.A No. 67 of 2021

Order with signature of Judge(s)

1. For orders on office objection a/w reply of the counsel
2. For hearing of CMA No.4794/2021
3. For hearing of main case

02.02.2023

Appellant Mr. Zubair Ahmed is present in person
Mr. Pervez Ahmed Mastoi, AAG

This Miscellaneous Appeal is filed against the judgment dated 23.08.2021 rendered by the Sindh Environmental Protection Tribunal, Karachi in Appeal No. 08 of 2021 that was agitated on the application moved under Section 27 of the Sindh Environmental Protection Act, 2014, of which the cause of action arose from the Press Release of Advisor to Chief Minister (available at page 37) with the headline *"No new industrial units without effluent treatment plant"* at which juncture, Sindh Environmental Protection Agency ("SEPA") was in the process of drafting new SEPA Rules, therefore, the appeal also craves that such Rules be disseminated amongst the public in local languages as well as the said Rules also be placed on the website of SEPA with such translations.

The key contention of the appellant, and as pressed in the said appeal was that under Section 18 of the Sindh Environmental Protection Act, 2014 it was incumbent upon all the Provincial Government agencies, departments, authorities, local councils and local authorities responsible for formulating policies, legislation, plans and programms, which may cause any environment impact within the Province, before being submitted to the competent authority, to must furnish those to SEPA for a strategic environmental assessment. Appellant's contentions is that the word 'legislation' therein also includes SEPA Rules, which point has been discussed in the judgment impugned and where such a contention of the appellant was not found impressive enough. Appellant has drawn Court's attention to paragraph-8 of the impugned judgment, which is reproduced hereunder:-

> "8. The appellant No.2 has very much emphasized on Rule 7 of SEA Rules, 2015 but in view of sub-section (3) of Section 18 of SEP Act, 2014 the said Rules are not applicable to any type of legislation or sub-legislation and such rules are applicable to the

> extent of policies, plans and programms only. Moreover, the appellants in the memo of appeal have repeatedly mentioned for the requirement or public consultations on the proposed Regulations and for the comments or recommendations of the Council and also for initiating SEA by the Minister of concerned department. But all these requirements are alien to S.18 of the said Act."

The appellant is also aggrieved that learned Tribunal has chosen to hold that Section 18(3) is not applicable to any type of legislation or sub-legislation.

As far as the contention of the appellant that all draft regulations plans and programms whatsoever, particularly those effecting lives of general public in the Province of Sindh like environment, health, education and safety etc. have to be translated into local languages and disseminated as such, so that the people at large in general and stakeholders in particular could understand the implications thereof and offer any comments or suggestions, the Hon'ble Supreme Court in a number of judgments has also held such a view, therefore, I have no cavil to this proposition and direct the Respondent Nos.1 and 2 that whenever any policy, plan, program or legislation is proposed, it must be translated into the national as well as provincial language and reproduced side by side in the draft and also published on the respective website in all three languages [English-Sindhi-Urdu], so that the essence of having public consensus thereto could be achieved. Understanding law or policy is the first step towards adhering to the principles of fair trial as enshrined in the Constitution of Islamic Republic of Pakistan, 1973 and to foster the rule of law.

With regards to the appellant's contention that Section 18 includes SEPA itself, is not impressive, if the said section is read in its entirety and if the contentions of the appellant are accepted, it would make the statute futile, because it would mean SEPA to submit its own policy etc. to itself. The appellant's contention that such mechanism enables stakeholders to raise objections and file comments for such policy is noble one, for which the Constitution envisages and the General Clauses Act, 1897 through Section 23 provides that all Rules, Regulations and Bye-laws can only be made after previous publication, which exercise must be carried out by the Respondent Nos.1 and 2 in respect of all such policies and regulations without fail. Full text of the said Section 23 is reproduced hereunder:-

> **"23. Provisions applicable to making of rules or bye-laws after previous publication -** Where, by any (Central Act) or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:- The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of person likely to be affected thereby. The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the (Government concerned) prescribed. There shall be published with the draft a notice specifying a date on after which the draft will be taken into consideration. The authority having power to make the rules or bye-laws, and where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified. The publication in the (Official Gazette) of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made."

Court has also been informed that *vires* of the latest SEPA Rules have already been challenged by the appellant [and other petitioner(s)] in C.P No.D-607 of 2022, which I am of the view is more appropriate forum, where the petitioners can air their grievance and if there are any objections, could seek appropriate orders.

With these directions, the instant Misc. Appeal is disposed of.

JUDGE

B-K Soomro