

**IN THE HIGH COURT OF SINDH BENCH AT  
SUKKUR**

**Present:** Mr. Justice Salahuddin Panhwar  
Mr. Justice Abdul Mobeen Lakho

**C.P.No.D- 699 of 2019**

Petitioners : 1) Abdul Jabbar s/o Muhammad Hashim  
2) Khair Muhammad s/o Sher Muhammad  
3) Hashim s/o Khair Muhammad  
4) Ali Nawaz s/o Khair Muhammad

Respondents. Federation of Pakistan & others

**CP.No.D-907 of 2019**

Petitioners : 1) Aijaz Ali Shar s/o Qutubuddin Shar  
2) Muhammad Suleman s/o Muhammad  
Tagial

Respondent No.1. Federation of Pakistan & others

Date of hearing: 9<sup>th</sup> March 2023

Date of judgment: \_\_\_\_\_ 2023

**APPEARANCE**

Mr. Achar Khan Gabol, advocate for petitioners in CP.No.D-699/2019

Mr. Abdul Naeem Pirzada, advocate for petitioners in CP.No.D-907/2019

Mr. Mehmood Alam Abbasi, advocate for Respondent No.2 in CP.No.D-907/2019

Mr. Nisar Ahmed Abro, Deputy Attorney General, for the Federation of Pakistan.

Mr. Ali Raza Baloch, Asst Advocate General, for the Province of Sindh.

**J U D G M E N T**

**Salahuddin Panhwar, J.-** Through this single judgment, we intend to dispose of captioned petitions as similar question of law and fact arise in both the petitions.

2. Ephemeral facts of **C.P.No.D-699** of 2019 are that the *petitioners* are farmers and use to cultivate their lands in U.C Beruta, Taluka Daharki, District Ghotki, where number of petroleum and gas companies are working; their head offices are also located there. One Marri Petroleum Company Limited Daharki (**MPCL**) District Ghotki is also working there and *Oil & Gas exploration* plants, wells and pipelines are available *especially* at Taluka Daharki District Ghotki. However, in the month of **February**, 2019 a **Public Notice** was published in different newspapers, from the office of **Deputy Commissioner Ghotki** wherein it has been *informed* to the general public of the District that petroleum and gas companies as well as other energy companies, which are working in the District Ghotki, they through the **Social Welfare Department** intends to utilize their funds (*Royalty amount*) for the welfare of general public, specially where the plants of that companies are located. Further it was informed through that Public Notice that the Deputy Commissioner Ghotki will hold the open *Katchehries* in his office with general public of the District Ghotki and will invite suggestions from the local persons where the **sites/plants** of the private companies are located, so that the development works will be started there. The petitioners appeared in the *open Kechehri* in the office of Deputy Commissioner Ghotki, (**The D.C**) where they filed number of applications and particularly they informed to the **D.C** that they belong to **UC Beruta Taluka Daharki District Ghotki**, where number of *wells/plants* of the **MPCL** are located and the people of that locality are suffering allot, particularly there is no development work from the funds of **The MPCL** has been started. Further they have requested to **the D.C** that some funds of above company may be utilized for the general public of U.C Beruta, Taluka Daharki. On **06.04.2019** in "**Daily Sobh Newspaper**" one notice was *published* by the office of Deputy Commissioner Ghotki, for general public hearing, whereby some schemes of the companies have been approved, specially **MPCL** have approved more than **08** schemes, while these schemes were approved for the areas, where the plant/well of the **MPCL** are not located, on the contrary in the locality of the petitioners plants/wells of **MPCL** are located, but no scheme for that area has been approved. It is further stated in the petition that thereafter the petitioners approached to The

D.C and filed their applications and shown their reservations that the schemes are approved by the **MPCL** for the areas beyond the places of their plant, whereas number of plants/wells are available in UC Beruta, but not a single scheme has been approved for the same UC. However, the DC Ghotki did not pay heed to it and kept them on false hopes. Thereafter, through the office of respondent No.5 they have called the **tenders** of the **schemes**/works which were *approved* earlier through the **Newspaper**, in this regard, the MPCL have funded for the development works from **Nos.10 to 15**, through NIT dated 16.04.2019 published in Daily Kawish dated 21.04.2019. The schemes which were called through tender notice which was approved by the **MPCL**, and the Company wanted to utilize its funds at the places where the plant of the company is not available. It has been done merely on the pressure of political persons. It is further submitted that the petitioners once again approached to the respondent **No.4** and filed their application that some schemes may be approved for the U.C Beruta, where number of wells of company are located i.e **Well-4**, 2, 33, 63, 64, 68, 67, 33, 26, 27, 28, 101 and others. It is further stated, that the above-mentioned wells are located just near the village of the petitioners but no scheme has been proved for the **welfare** of general public of UC Beruta Taluka Daharki, District Ghotki, hence there is great *discrimination* with the petitioners and general public of the U.C Beruta, Taluka Daharki, District Ghotki. However, instead of number of approaches by the petitioners to the respondent No.4 (**D.C Ghotki**) no scheme for development has been approved for local persons where the plants/wells of the company are *located*. Hence, the petitioners filed instant petition with following prayers:

- (a) To declare the act of the respondents who have approved the development Schemes subsequent issued **NITs**, (the funds which were given by the **Mari Petroleum company Limited, district Ghotki as royalty**) in the areas where no plant/well of the company is located, that funds are utilized just on the influence of the political persons of locality who belongs to ruling party, that act of respondents is illegal, unlawful against the rules and policies of the company.
- (b) To direct the respondents No.2 to 4 to approve the development schemes for the welfare of general public of U.C Beruta specially village Khair Muhammad Mahar,

where number of plants/wells of Mari petroleum company Limited, District Ghotki are located and not a single development scheme has been approved for the welfare of persons of that locality i.e village Khair Muhammad Mahar U.C Beruta, Taluka Daharki, district Ghotki.

- (c) To restrain the respondent No.5 for further process of tender works which were approved by Mari Petroleum Company Limited viz work No.10 to 14 of NIT dated 16.04.2019 published in Daily Kawish dated 21.04.2019, till the final decision of this petition.
- (d) To grant any other relief, which deems fit and proper under the circumstances of the case.
- (e) To award the cost of petition.

3. The relevant facts as narrated in **C.P.No.D-907 of 2019** are that petitioners are **members** of social welfare organization namely "**Community Rural Development Program (CRDP)**". It is pleaded that there is a petroleum and gas company titled as "**UNITED ENERGY PAKISTAN**, at Sawan Gas Field Nara, District Khairpur" working in Taluka Nara and its plants, wells and pipelines are available specifically in Taluka **Nara** District Khairpur. In the month of February, 2019, a Public Notice was published in different newspapers, from the office of **Deputy Commissioner (D.C)** Khairpur, whereby it has been informed to general public of the District Khairpur that the petroleum and gas company, which is working in the District Khairpur, through Social Welfare Department wants to utilize their funds (Royalty amount) for the welfare of the general public, specially where the plants of that company are located. Further, it was informed that the Deputy Commissioner Khairpur would hold open *Katchehries* in his office with general public of the District and would call the suggestions from local persons where the sites/plants of the private companies are located, so that the development works be carried out there. The petitioners appeared in open *Katchehri* in the office of D. C Khairpur and filed an applications, whereof informed him that they belong to the Taluka Nara, where number of **wells/plants** of the above company are located and the persons of the locality are suffering allot, particularly there is no development work from the funds of

UEP has been started. Further they have requested to the DC that some funds of the above company may be utilized for the general public of Taluka Nara, but no head was paid to it. One **notice** was published on 27.04.2019 in "Daily Kawish Newspaper" for general public hearing issued by the office of Deputy Commissioner Khairpur, where some schemes of the companies have been approved, specially **UEP** company Taluka Nara have approved more than **08** schemes, while these schemes were approved for the areas, where the said schemes are already available, for example the buildings of a Primary and High Schools are already available, but they are not properly functioning, therefore it requires facilities like computer lab, teaching and non-teaching staff, but only schemes for repairing and construction of more class rooms are unnecessary. Nonetheless, subject schemes are for facilitating to local influential persons/politicians who would use the same as their personal property in purpose of their *Otaqs* etc. It is further submitted, that Nara Taluka is backward/remote area of District Khairpur, where there is highly need of **12** KM remaining road of Kot bungle to choondiko, 35 KM Nara Thari Road, Choondiko to Sikandarabad Road, Choondiko to head Jamrahoo Road, and need of two colleges and 04 High schools and up-gradation of hospitals, which are situated in different areas of the Nara, where no any facilities for treatment of hepatitis **B/C** and maternity home are available. Further, the royalty/community funds of **UEP** is being utilized in unnecessary schemes which are already available, which are not functioning, and just to usurp the same, which is general practice for corruption and emblazonment, therefore the general public of Taluka Nara has been affected directly and indirectly. It is further averred that the petitioners approached to Deputy Commissioner Khairpur and filed their applications whereby shown their reservations that the schemes which have been approved/published in Daily Kawish dated 27.04.2019, are not valid and the petitioners strictly condemned those schemes, so also suggested for fresh schemes i.e. I.T Lab, Trauma Center, Up-gradation of Hospitals, construction of roads, teaching and non-teaching staff in schools and establishment of the College and more High Schools, but the D.C Khairpur did not pay heed to the request of the petitioners and kept them under false hopes. The schemes

which were called through public notice which has approved by the UEP, the respondents want to utilize its funds at the places where no plant of the company is available, this has been done only on the pressure of the political persons. It is further stated that instead of number of approaches by the petitioners to the respondents nothing fruitful could be achieved. Hence, the petitioners have filed the instant petition for the following reliefs:

- a) To declare the act of the respondents who have approved the development schemes vide public notice dated 27.04.2019 for utilizing the funds which were given by the **United Energy Pakistan, at Sawand Gas field and Qadanwari, Taluka Nara as royal/community), which are not needful schemes as the same are already available**, that funds are utilized just on the influence of the political persons of locality who belongs to ruling party, that act of respondents is illegal, unlawful against the rules.
- b) To direct the respondents No.2 to 4 to cancel the schemes which were published vide public notice dated 27.04.2019 in Kawish Newspaper and also to approve the fresh schemes i.e. I.T Lab, Trauma Centre, Up-gradation of Hospitals, construction of roads, teaching and non-teaching staff in schools and establishment of College and more high schools in Taluka Nara, district Khairpur.
- c) To restrain the respondents No. 4 to 6 for further process of tender works which were approved by UEP, published in Daily Kawish dated 27.04.2019 till the final decision of this petition.
- d) To grant any other relief which deems fit and proper under the circumstances of the case.
- e) To award cost of the petition.

4. The respondents were served with notices, including the Deputy Commissioners of the respective Districts, who filed their comments, which are made part of the record.

5. At the very outset question regarding maintainability of these petitions has been raised from the respondent's side. In the present petitions, it has been vigorously argued that these petitions have been filed to enforce fundamental rights of the residents of the area from where oil and gas Exploration and Production (E&P) companies are operating. To resolve this controversy, it would be expedient to consider **Article**

**199(1)(c)** of the Constitution, 1973 which provides a mechanism for enforcement of the fundamental right enshrined in the constitution from Article 09 to 28, which reads as under:

“**Article-199.** Jurisdiction of High Court.---(1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-

(a).....

(b).....

(c) on the application of any aggrieved person, make an order giving such directions to **any person** or **authority**, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.

6. From plain reading of the above, it appears that (*subject to the Constitution*) High Court is authorized to issue any directions, as may be appropriate for the enforcement of any of the Fundamental Rights conferred by the Constitution to any person or authority exercising any power or performing any function in (*or in relation to*) any territory within its jurisdiction (*which includes but is not limited to any Government*), provided two **conditions** are met i.e (i) such direction is made pursuant to an **application** of any **aggrieved person**, in other words, High Court cannot issue any direction *suo motu*; and (b) no other **adequate remedy** is provided by law. The apex Court in the case reported as **Human Rights Commission of Pakistan**<sup>1</sup> has observed, that the amplitude of Article 199 (1)(c) of the Constitution is *wider* than the other parts of **Article 199** of the Constitution and is not restricted to public functionaries only, but even it could extend to private parties, as long as there is a question of enforcement of fundamental rights under the Constitution. In the present petitions it is inter-alia prayed that respondents may be directed to approve the schemes relating to basic necessities like **education, healthcare**, construction of **roads** etc. for the local residents of the area from where gas and oil are being explored, *therefore*, in our opinion, the instant petitions are maintainable on following fundamental rights protected under the constitution of Pakistan 1973.

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<sup>1</sup> Human Rights Commission of Pakistan and 2 others v. Government of Pakistan and others [PLD 2009 SC 507]

**Education:**

**6-A.** Moreover, the present petitions are also held to be maintainable, as this Court being the ultimate custodian, of the enforcement of guaranteed rights, as stated in the above paragraph, with regard to Education, Healthcare, Construction of Roads and public health infrastructure, which are otherwise essential for the very existence of human life. The Constitutional command for such basic necessities have been propounded in various important and specific provisions of the Constitution, all along within Constitutional arrangement for the enforcement of fundamental rights, such as Article **25-A**, which speaks about the right of **Education**, for easy understanding, the same is reproduced herewith; 'Article 25-A. Right to Education: The State shall provide free and compulsory education, to all children of the age of five to sixteen years in such manner as may be determined by law'. From the plain reading of Article **25-A** of the Constitution, it can safely be concluded that, the *State* is under a mandatory *constitutional obligation to provide free education* to all, irrespective of **color, caste and creed**, admittedly, by far, there is no cavil to the proposition, that the state has miserably failed to provide such guaranteed right of education to all, and departure from such mandate, has far reaching consequences, most of them we are already witnessing in the present times, such as poverty, gender inequality, social and cultural barriers, discrimination based on ethnicity, language or religion etc, therefore the Constitutional duty, enshrined under Article 199 empowers this court to pass such orders, when guaranteed constitutional rights are infringed, High Court is obligated to intervene and issue order/writ to the delinquents functionaries for such enforcement, hence the present petitions are also maintainable on this score alone too.

**6B-** However, on the other hand, the world over, *the right to education is a fundamental human right recognized internationally*. It emphasizes, that every individual, regardless of their background, should have access to quality education. The *right to education*, encompasses both i.e right to receive education and the right to pursue education. This right ensures that the education is accessible, available, acceptable, and adaptable to the needs of individuals. Many countries



have enshrined the right to education in their national laws or constitutions, and *international human rights treaties* also emphasize its importance. Governments, are generally responsible for ensuring that this right is upheld and that educational opportunities are provided to all individuals without discrimination. This includes making education accessible, promoting equal opportunities, and eliminating barriers that might prevent individuals from enjoying their right to education.

**Healthcare:**

**6-C.** With regard to basic facilities and amenities, such as providing quality **health care** at the door steps and incorporation of the basic public health infrastructure/facilities, are also considered to be amongst the guaranteed fundamental constitutional rights, as enunciated under Article 9 of the Constitution, which states that, No person shall be deprived of life and liberty, however, the right to basic health facilities is also protected under the Constitution. Article 38 of the Constitution of Pakistan, which addresses the promotion of *social and economic well-being* of the people, including access to *healthcare*. According to Article 38 (a), the state is responsible for securing the provision of basic necessities of life to all citizens, including food, clothing, housing, education, and medical relief. This implies that the government has an obligation to ensure the availability and accessibility of quality basic health facilities to its people, at their doorsteps.

**6-D.** Furthermore, Article 25(1) of the Constitution guarantees equality before the law and prohibits discrimination on various grounds, including health. This provision ensures, that access to **healthcare** services should be provided *without discrimination*, ensuring equal treatment and opportunities for all across the board. It is important to note that while the Constitution establishes the right to basic health facilities, the actual implementation and provision of healthcare services are the responsibility of the government. Admittedly, the government has taken steps to enhance healthcare infrastructure, and for the improvement in access to providing quality health care services, and to address the

healthcare challenges, but at the same time there is no denial to the fact, that in the true sense of the word, a lot still needs to be done.

**Authority of the Court:**

6-E. Under these prevailing and compelling circumstances, this Court will not hesitate to exercise its extra ordinary and vast Constitutional Jurisdiction, conferred upon it under article 199 of the Constitution of Islamic Republic of Pakistan 1973, for the enforcement of fundamental rights, guaranteed to the common people of the country, thus we hold that these present Constitution Petitions relating and touching the very roots of the basic rights, guaranteed by the Constitution, are very much entertainable and maintainable under the writ jurisdiction of this court.

**Controversy:**

7. Now, reverting back to the present proceedings, record reflects that the respondents denied the allegations leveled against them and submitted that the funds received from the companies are being utilized in accordance with **Guidelines** for *Utilization* of Social Funds.

8. It would be conducive to reproduce here, the Guidelines submitted along with their comments, which read as under:

**“Guidelines for utilization of Social Welfare Funds 2017”**

The Ministry of Petroleum & Natural Resources, Government of Pakistan has been pleased to issue the following **Revised Guidelines for utilization of Social Welfare funds** in and around the license/lease areas in a **fair** and **transparent** manner:-

The Social Welfare schemes shall be based on the requirement of Area, as mentioned in para-2, against the specified minimum financial obligations which will be identified and implemented by the following Social Welfare Committee:

MNA(S) of the Concerned Constituency	Chairman
MPA(S) of the concerned Constituency	Member
E&P Companies	Member
District Nazim / Chairman of the District Council	Member
Tehsil Nazim / Chairman of the	Member(s)

Tehsil Council	
Nazim/Chairman of concerned Union Councils	Member(s)

In case, Area of a Block falls in more than one constituency, the MNA of the Constituency having larger part of area will be the Chairman.

2. The area of interaction of such schemes shall be in the sectors of **health, education, water** supply, and **drainage**, and will only be confined to the areas under active exploration work at the exploration stage. The additional social welfare amount to be generated due to incremental production shall be calculated on the basis of production share of each D &P Lease. This amount shall be further distributed among the Tehsil/District concerned on the basis of the lease area, falling therein.

3. Cash donations will be strictly prohibited whereas supplies of material/medicines etc. will be through local dispensaries.

4. E&P companies will open a joint bank account with DCOs/DCs concerned and will deposit the Social Welfare Contribution fund within one month of signing of PCA and subsequently by 31<sup>st</sup> of January each year. The interest accrued on the deposits will also be considered as part of the social welfare fund.

5. The social welfare schemes would be executed and monitored by the DCO/DC through relevant agency under intimation to the MNA and relevant Union Council.

6. The Chairman will take the following steps while considering, evaluating and implementing the schemes to ensure transparency:-

- (i) The social welfare obligations of E&P Companies are timely fulfilled;
- (ii) Proposed schemes receive due publicity and inputs from the final recipients and beneficiaries or their representatives;
- (iii) Evaluate progress and completion of welfare schemes;
- (iv) Have public hearings for receiving local level inputs in respect of selection, completion etc. of welfare schemes.

7. Once every sixth months, the DCO/DC shall effect the publication of a notice online and in the most widely-read newspaper in the district, announcing a public hearing to solicit any comments or reservations that the inhabitants of the district in general, and the purported direct beneficiaries of the scheme in particular, may have with regard to the schemes completed, initiated, or ongoing during the Preceding six months. A list of all such schemes shall be included in the public notice along with

their location, budget and current status. This shall be strictly monitored by the provincial governments.

8. Such notices for public hearings shall be sent to all district level trade organizations, chambers of commerce, Bar Associations and other prominent organizations and social welfare organizations. Notices shall also be sent to the provincial ombudsmen. Such public notices of the public hearings shall also be promptly placed on the website of the district and provincial governments.

9. A report in respect of completed schemes shall be sent by the provincial governments to the Federal and Provincial Ombudsmen and to the Human Rights Cell of the Supreme Court of Pakistan on six monthly basis by end July and end January of each year.

10. In case due to topographical/habitat limitations the work cannot be carried out in a specific D&PL lease area, the company will obtain in the approval of the regulatory authority (DGPC), after consulting the concerned Committees, to undertake the social welfare schemes in a locality which is adjacent/nearest to the area of activities of E &P Companies.

11. The plan covering the social welfare schemes, duly approved by the Committee for each calendar year will be submitted by the concerned DCO/DC as per prescribed format to DGPC by March 31 of that year for information only.

12. The DCO/DC shall submit bi-annual reports to the Provincial Governments and DGPC in respect of all licenses/leases on their social welfare obligations towards the local community.

13. The DCO/DC shall submit including among other things, the locations, budgets and status of schemes completed, ongoing, or initiated during those six months, by end January and July each year. The district and provincial governments shall exhibit the reports on their websites for information of general public.

14. On completion of the work, a prescribed 'Completion Certificate' will be issued by the DCO/DC concerned within 30 days. Annual progress report of the previous calendar year will also be forwarded by the DCO/DC to DGPC by March 31 of the following year along with a copy of completion certificate for information.

15. In case, a scheme has to be funded by more than one Operator, then DGPC will be consulted for final decision by the MNA.

16. Social Welfare funds earmarked for a specific license /lease will neither be linked to the schemes of other license (s)/lease (s) nor used for schemes outside a specific license/lease without prior approval of the DGPC and concerned MNAs.

17. The DCO/DC will ensure transparency in award of social welfare contracts/works.

18. The E&P Companies will provide audit certificate annually from their statutory auditors that the due amount of social welfare obligation has been discharged by transferring to the joint account as per PCA and Social Welfare Guidelines.

19. The Auditor General of Pakistan will conduct annual audit of the accounts maintained by the concerned DCO/DC to ensure utilization of funds in a transparent and competitive manner.

20. Ministry of Petroleum & N.R./Federal Government can modify these guidelines as deemed appropriate from time to time.

Sd/-  
Saeedullah Shah  
Director General  
(Petroleum  
Concessions)

**“Revised Guidelines 2019”**

No.ED/F-23/O&G/48/2019.  
**GOVERNMENT OF SINDH**  
**ENERGY DEPARTMENT**  
Karachi, dated: February 04,2019

Subject: **REVISED GUIDELINES FOR UTILIZATION OF FUNDS DEPOSITED BY WAY OF PRODUCTION BONUS BY EXPLORATION & PRODUCTION (E&P) COMPANIES**

In exercise of powers conferred under sub clause 3 of 4.1.2 of the Petroleum Exploration and Production Policy 2012 issued by the Ministry of Petroleum and Natural Resources vide S.R.O 1078(1)/2012 dated 30.08.2012. Government of Sindh has been pleased to issue the following revised guidelines for the use and utilization of the amounts to be paid by the E&P Companies on the social welfare projects in and around the respective concession area in the following manner:

1. Minimum size of the scheme financed out of Production Bonus will be Rs. 1,000,000/- (Rs One Million only)

2. The funds will be spent in a transparent manner in and around the areas of producing fields through Committees called Petroleum Social Development Committee (PSDC) consisting of following:

**Petroleum Social Development Committee (PSDC)**

Senator(s)	Member(s) (nominated by Government)
Concerned MNA(s) of the District (including MNAs on reserved seat(s))	Members(s)
Concerned MPA(s) of the District (including MPAs on reserved	Members(s)

seat(s)	
Chairman/Administrator District Council	Member
Representative of E&P Company	Member
Deputy Commissioner of the District with maximum acreage of the contract area to be determined by DGPC or his nominee.	Member/Secretary

3. The Chairman of the PSDC shall be nominated in consultation with the **Senator(s), MNAs and MPAs** of the district by the Chief Minister.

4. The amounts received from E&P Companies by way of Production Bonus shall be utilized for the welfare and benefit of people residing in the district where the contract Area i.e D &P Lease area is located.

5. 60 % share of the Production Bonus will be utilized in the oil and gas producing Taluka whereas balance 40 % will be utilized in the remaining Taluka(s) of the district in the concession area.

6. The utilization of the Production Bonus will be based on the annual figures transferred by the E&P Companies i-e Operators as it becomes due as per relevant PCAs and amounts so transferred by Finance Department from time to time.

7. A quorum shall include Chairman, Secretary and minimum 51% members. In case there is more than one producing field of different operators in a District then each Company shall nominate one member each.

8. The Secretary i-e DC will arrange regular meetings of the PSDCs and will remain proactive and take a lead role in the implementation of the schemes. Moreover, the DCs with the cooperation of E&P companies arrange Seminars at district level for the increased awareness of and input from the stakeholders.

9. Terms of Reference (TORs) of PSDC are as follows:

- i) ensure that the social welfare obligations of E&P Companies are fulfilled;
- ii) proposed schemes receive due publicity and inputs from the final recipients and beneficiaries or their representatives;
- ii) evaluate progress and completion of welfare schemes;
- iv) have public hearings for receiving local level inputs in respect of selection, completion etc. of welfare schemes.

v) The PSDC will hold at least one quarterly meeting to discuss and agree on community project for local area and other relevant matters.

10. PSDC after consultation with the community shall identify, prepare and approve visible and verifiable sustainable social sector improvement schemes for the district ensuring maximum service delivery for the citizens. The schemes shall be handed over to the concerned local government provincial government department after completion, which will be responsible for its recurring cost. The PSDC will ensure that there shall be no duplicity in the schemes and make all necessary coordination with the provincial/local government departments in this regard. For any scheme for construction of a new school in the Taluka from PSDC Funds prior concurrence of the Education Department shall be solicited.

11) The PSDC shall oversee that the funds are spent on Social Development Programs in and around the Area of operation of the E&P companies according to priority fixed by the PSDC.

12. The committee will ensure that all relevant line departments of Provincial/Local Government are mobilized to support the projects for timely completion and ownership. All schemes which have been identified and approved by the PSDC will be implemented by the Deputy Commissioner (DC) as an executing agency. The funds to be expended in execution of such schemes shall be utilized strictly in accordance with the rules, procedures and instructions notified by the Government from time to time applicable to the schemes implemented from the public funds. Once the scheme(s) is/are approved by the PSDC, the PSDC will only have a role of periodic review of the scheme(s) which is/are under implementation and it will have no role whatsoever in the utilization of funds expended for the purposes of implementation of the scheme(s).

13. The Secretary of the PSDC shall submit the annual Petroleum Social Development Program (PSDP) and the previous year's progress to Energy Department and Planning and Development Department, by 31st March of each calendar year.

14. Once every sixth months, the DC shall effect the publication of a notice online and in the most widely-read newspaper in the district, announcing a public hearing to solicit any comments or reservations that the inhabitants of the district in general and the purported direct beneficiaries of the scheme in particular, may have with regard to the schemes completed, initiated or ongoing during the preceding six months. A list of all such schemes shall be included in the public notice along with their location, budget and current status. *The Secretaries PSDCs / Deputy Commissioners shall submit a quarterly progress report of the schemes to the Commissioners of the respective Divisions. The Commissioners shall monitor and carry out detailed supervision to these schemes and ensure that schemes are being implemented as per approved revised guidelines for utilization of production bonus.*

15. Such notices for public hearings shall be sent to all district level trade organizations, chambers of commerce, Bar Associations and other prominent Organizations and social welfare organizations. Notices shall also be sent to the provincial ombudsmen. Such public notices of the public hearings shall also be promptly placed on the website of the Deputy Commissioner office, if it has one.

16. A report in respect of completed schemes shall be sent to the Federal and Provincial! Ombudsmen and to the Human Rights Cell of Supreme Court of Pakistan.

17. Secretary of the PSDC will open and administer a joint bank account (the Account) with the title "Petroleum Social Development Fund (PSDF)." to be operated by Deputy Commissioner and representative of E&P Company or Additional Deputy Commissioner-1 for the purpose of funding projects identified by the PSDC through any Production Bonus payable by the E&P Company. The E&P Companies which are obligated to pay Production Bonus to the government will deposit the funds in the said account soon after companies' liabilities become due in consultation with the Energy Department. The unspent amount of the previous years, if any, shall also be deposited in the said account.

18. In the absence of DC, the official designee will be the alternate signatory. Secretary of the PSDC will be responsible for the maintenance of books of accounts, verification of invoices and other relevant records, including the minutes of the meetings. Secretary of the Committee will also forward copy of the minutes of the meeting, details of the schemes to Finance, P&D. Local Government and Energy Department.

19. In case Production Bonus payment relates to a lease, the boundaries of which lies in more than one province, the Production Bonus amount will be paid to the Provinces in the ratio of their respective share in the production of oil and gas from that province.

20. In case of receipt of money by way of Production Bonus by the Finance Department from Federal Government or E&P companies. it shall promptly transfer the same amount to the PSDF bank account of the district. The Finance Department will also transfer all the outstanding proceeds lying with it, if any, in the joint bank account of the Committee in the respective district.

21. In case Production Bonus payment relates to a lease, the boundaries of which lies in more than one District, the Production Bonus amount will be paid to those Districts in ratio of the lease area located in each District.

22. The information referred in 19 & 21 above relating to lease area shall be provided by the Director General of Petroleum Concessions to the Energy Department and respective Deputy Commissioner for the old and new deposits of production bonus respectively.



23. The bank account shall be properly maintained and may be subject to statutory external audit.
24. An annual progress report regarding Petroleum Social Development undertaken during financial year shall be prepared by the respective DC in coordination with PSDC. This report shall be provided to the Energy Department and DGPC, MoPNR.
25. The Secretary PSDC shall ensure that statutory audit of the funds are conducted annually by the Auditor General of Pakistan and audit report shall be submitted to MoPNR and Energy Department Government of Sindh.
26. The E & P Company will provide an annual audit certificate from its statutory external auditor confirming the amount deposited with the Provincial Government with respect to its production bonus obligation.
27. Energy Department, GoS may revise the modalities/guidelines as deemed appropriate from time to time.
28. In case of a Provincial Government dispute in the PSDC on spending of Production Bonus, the decision of the Chief Secretary Sindh shall prevail.
29. This supersedes all previous guidelines on the Production Bonus proceeds.

Sd/-  
SYED MIR MUJTABA  
Section Officer (Oil &  
Gas)  
Energy Department  
Government of Sindh  
Karachi

**“Guidelines for utilization of Social Welfare Funds 2021”**

The Ministry of Energy (Petroleum & Natural Resources, Government of Pakistan has been pleased to issue the following Revised Guidelines for utilization of Social Welfare funds in and around the license/lease areas in a fair and transparent manner:-

1. The Social Welfare schemes shall be based on the requirement of Area, as mentioned in para-2, against the specified minimum financial obligations which will be identified and implemented by “Social Welfare Committee”  
The members of the Committee shall be as under:

Any elected member of the Constituency, Federal or Provincial, in which the relevant PCA falls, or any notable member of the Constituency.	Chairperson.
DCO/DC of the district	Member/Secretary

E&P Companies	Member
District Nazim / Chairman of the District Council	Member
Tehsil Nazim / Chairman of the Tehsil Council	Member(s)
Nazim/Chairman of concerned Union Councils	Member(s)
Heads of relevant area functionaries (Health, Education, Water Supply and drainage etc)	Co-opted Member

Note:

- The Chairperson of the Committee shall be nominated by the Federal Minister.
  - The meeting of the Committee shall be convened by the Chairperson.
  - In case of non-functioning of the Local Bodies, the relevant administrative officials shall be members of the Committee.
  - Chairperson of the Committee shall have the veto power for identification schemes.
2. The area of interaction of such schemes shall be in the sectors of drug awareness, promotion of sports, rehabilitation of the special needs and differently abled children, improvement of educational facilities, drinking water, health, roads and grant of scholarships for local students. The additional social welfare amount to be generated due to incremental production shall be calculated on the basis of production share of each D& P Lease and shall be in and around the lease area.
  3. Cash donations will be strictly prohibited whereas supplies of material/medicines etc. will be through local dispensaries.
  4. E&P companies will open a joint bank account with DCOs/DCs concerned and will deposit the Social Welfare Contribution fund within one month of signing of PCA and subsequently by 31<sup>st</sup> of January each year. The interest accrued on the deposits will also be considered as part of the social welfare fund. If a PCA/Block falls in the more than one Constituency, then separate bank account per Constituency shall be opened and funds apportioned appropriately.
  5. The social welfare schemes would be executed and monitored by the DCO/DC through relevant agency under intimation to the Chairman and relevant Union Council.
  6. The Chairman will take the following steps while considering, evaluating and implementing the schemes to ensure transparency:-

- (i) The social welfare obligations of E&P Companies are timely fulfilled;
- (ii) Proposed schemes receive due publicity and inputs from the final recipients and beneficiaries or their representatives;
- (iii) Evaluate progress and completion of welfare schemes;
- (iv) Have public hearings for receiving local level inputs in respect of selection, completion etc. of welfare schemes.

7. Once every sixth months, the DCO/DC shall effect the publication of a notice online and in the most widely-read newspaper in the district, announcing a public hearing to solicit any comments or reservations that the inhabitants of the district in general, and the purported direct beneficiaries of the scheme in particular, may have with regard to the schemes completed, initiated, or ongoing during the Preceding six months. A list of all such schemes shall be included in the public notice along with their location, budget and current status. This shall be strictly monitored by the provincial governments.

8. Such notices for public hearings shall be sent to all district level trade organizations, chambers of commerce, Bar Associations and other prominent organizations and social welfare organizations. Notices shall also be sent to the provincial ombudsmen. Such public notices of the public hearings shall also be promptly placed on the website of the district and provincial governments.

9. A report in respect of completed schemes shall be sent by the provincial governments to the Federal and Provincial Ombudsmen and to the Human Rights Cell of the Supreme Court of Pakistan on six monthly basis by end July and end January of each year.

10. In case due to topographical/habitat limitations the work cannot be carried out in a specific D&PL lease area, the company will obtain in the approval of the regulatory authority (DGPC), after consulting the concerned Committees, to undertake the social welfare schemes in a locality which is adjacent/nearest to the area of activities of E &P Companies.

11. The plan covering the social welfare schemes, duly approved by the Committee for each calendar year will be submitted by the concerned DCO/DC as per prescribed format to DGPC by Márch 31 of that year for information only.

12. The DCO/DC shall submit bi-annual reports to the Provincial Governments and DGPC in respect of all licences/leases on their social welfare obligations towards the local community.

13. The DCO/DC shall submit including among other things, the locations, budgets and status of schemes completed, ongoing, or initiated during those six months, by end January and July each year. The district and provincial governments shall exhibit the reports on their websites for information of general public.

14. On completion of the work, a prescribed 'Completion Certificate' will be issued by the DCO/DC concerned within 30 days. Annual progress report of the previous calendar year will also be forwarded by the DCO/DC to DGPC by March 31 of the following year alongwith a copy of completion certificate for information.

15. In case, a scheme has to be funded by more than one Operator, then DGPC will be consulted for final decision by the MNA.

16. Social Welfare funds earmarked for a specific license /lease will neither be linked to the schemes of other license (s)/lease (s) nor used for schemes outside a specific license/lease without prior approval of the DGPC and concerned Chairperson.

17. The DCO/DC will ensure transparency in award of social welfare contracts/works.

18. The E&P Companies will provide audit certificate annually from their statutory auditors that the due amount of social welfare obligation has been discharged by transferring to the joint account as per PCA and Social Welfare Guidelines.

19. The Auditor General of Pakistan will conduct annual audit of the accounts maintained by the concerned DCO/DC to ensure utilization of funds in a transparent and competitive manner.

20. Ministry of Energy (Petroleum Division)/Federal Government can modify these guidelines as deemed appropriate from time to time.

Sd/-  
(Abdul Jabbar Memon  
Director General (Petroleum  
Concessions)  
31<sup>st</sup> March 2021

9. It is pertinent to mention here, that captioned petitions seeking compliance of guidelines provided by Federal Government with regard to welfare of local area(s) pursuant to the judgment of the apex Court in case of **Abdul Hakeem Khoso, Advocate**<sup>2</sup> where petroleum and gas fields are working. At this juncture, it would be significant to refer the directions of apex

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<sup>2</sup> Abdul Hakeem Khoso, Advocate [PLD 2014 Supreme Court 350]

Court in the said case. Being relevant paragraphs No. 8, 13, 16, 18 and 22 are reproduced herewith:-

*“8. Before delving into the submissions made before us during these proceedings, it is necessary to lay out the legal regime of the social welfare obligations of E&P Companies. There is a simple calculus underpinning this case which has been the reason why the Court has taken proceedings under Article 184(3) of the Constitution. Simply put, the E&P Companies operating in Pakistan are contractually obliged to make specified payments in lieu of exploration rights and privileges, as will be discussed shortly. According to a report submitted by the DG PC (C.M.A. 6508/2013), over the years these contractual commitments of E&P Companies have amounted to many millions of US Dollars. Furthermore, as per presentation on Welfare Obligations of E&P Companies submitted by the MPNR, the total sum of royalty payable by these Companies in rupees was more than Rs.160 billion in respect of crude oil and more than Rs.293 billion in respect of gas extracted from the various districts in Pakistan in which the E&P Companies are active. These are very substantial amounts considering particularly the inadequacy of funds available to ensure even the very basic needs of the people of Pakistan such as clean drinking water and quality education. These sums, it may be reiterated, are vested beneficially in the People. It is all the more important in this context that enforcement of the contractual commitments of E&P Companies in relation to social welfare obligations etc. are properly monitored and rigorously enforced. Those responsible for ensuring fulfillment of these payment obligations including the DG PC, the Provincial and Local Governments are fiduciaries of the people in this respect and it is their duty to recover the agreed social welfare obligations and to ensure spending of the same in the most efficient and optimal manner for the benefit of the people.”*

*“13. The Petroleum Policy, 2012 prescribes different percentages for each use. Ten percent of onshore royalty is to be used "in the district where oil and gas is produced for infrastructure development". Onshore production bonuses are to be used for "social welfare projects in and around the respective contract areas". Social welfare funds are to be used "to give lasting benefit to the [local] communities". Seventy five percent of the marine research and coastal area development fee is to be utilised for "coastal area development". Employment is for Pakistani nationals and training includes "internships/scholarships and training of local inhabitants". It may be mentioned that unlike onshore production bonuses, production bonuses from offshore areas are not specifically required to be spent on the social welfare of local inhabitants. In any event, most of the social welfare obligations contained in successive Petroleum Policies have been reflected in the PCAs.”*

*“16. The guidelines for utilization of production bonuses dated 29-10-2009 are similar to the marine research fee guidelines. These guidelines create a Petroleum Social Development*

Committee (PSDC) consisting of MNAs and MPAs having their constituencies in the District, District and Tehsil/Taluka Nazims, DCO and an E&P Company representative. **The PSDC is mandated to "identify, prepare and approve sustainable schemes for the benefit of the Community" and periodically review the implementation of such schemes. The DCO is exclusively responsible for collecting and managing production bonuses directly from E&P companies and for execution of the schemes approved by the PSDC. Furthermore, completed schemes are supposed to be handed over, funded, and managed by the local government.** However, there is no obligation under these Guidelines on anyone to evaluate a scheme or to produce any completion certificates as to the implementation (successful or otherwise) of a welfare scheme."

"18. It is also worth mentioning that Mr. Hakeem Khoso brought to light a directive issued by the Prime Minister dated 15-9-2003 which stipulated that "[t]he Prime Minister has been pleased to direct that gas be provided to villages falling in the radius of 5-KM from the gas source (Zamzama Gas Field, Tehsil Johi, District Dadu, Sindh). Prime Minister was further pleased to announce that this principle would apply to all gas fields and that gas may be provided to all the surrounding localities/villages falling in the radius of 5 km of all Gas Field, on priority basis." (emphasis added). The reply filed by the MPNR on 29-6-2013 stated that the "Prime Minister's directives [were] pertaining to the villages in the gas producing field Zamzama District Dadu and not for those Blocks which are situated in District Sanghar". The Ministry's stance is a clear deviation from the express words of the Prime Minister's directive as highlighted above."

"22. Although the **preparation of appropriate guidelines is a policy matter falling within the executive domain, our examination of the present status of collection, expenditure, administration etc. of social welfare funds and the preparation of guidelines shows that this aspect of the matter has not received the requisite attention. The rights of the people in the funds generated on account of social welfare obligations have a direct nexus with the fundamental rights mentioned above. These funds have either remained unutilized or have been under-utilized or the use of these funds has not been adequately monitored to ensure evaluation of spending.** As an initial measure, therefore, we direct as under:--

(a) The DG PC and the relevant Provincial Government shall ensure diligent collection and monitoring of social welfare obligations of E&P Companies.

(b) The DG PC, the relevant Provincial Government and the Local Government within the area of activities of an E&P Company shall ensure optimum utilization of social welfare funds, production bonuses and other sums such as marine research fee, as are generated on account of the contractual obligations of E&P Companies. This shall be

*done in an open and transparent manner by ensuring that consistent with Article 19A of the Constitution [Right to Information], the local population has available to it, all relevant information relating to such funds.*

*(c) The Provincial and Local Governments shall review the existing policy guidelines and, where necessary, make suitable amendments to ensure that as far as may be, one Committee be constituted for each district or tehsil/taluka to ensure coordinated and effective use of the aforesaid funds. Keeping in view the provisions of Article 140A, the Local Governments established in each tehsil/taluka be given due representation or a voice on such Committee in line with the said constitutional provision which requires "each Province ... [to] devolve political, administrative and financial responsibility and authority to the elected representatives of the Local Government".*

*(d) Guidelines may be framed by the Federal and Provincial Governments in reasonable detail so that **social welfare obligations** can be **monitored** and the **expenditure** of funds can be **examined** in an **open and transparent** manner. The Committee for utilization of funds should;*

*(i) ensure that the **social welfare obligations** of E&P Companies are **fulfilled**;*

*(ii) proposed **schemes** receive **due publicity** and **inputs** from the **final recipients** and **beneficiaries** or their representatives;*

*(iii) **evaluate progress** and completion of **welfare schemes**;*

*(iv) have **public hearings** for **receiving local level inputs** in respect of **selection**, completion etc. of **welfare schemes**.*

*(e) Once every **sixth months**, the **DCO** shall effect the **publication** of a **notice online** and in the most **widely-read newspaper** in the district, **announcing** a **public hearing** to solicit any **comments** or **reservations** that the **inhabitants** of the district in general, and the **purported direct beneficiaries** of the **scheme** in **particular**, may have with regard to the **schemes completed**, initiated, or ongoing during the preceding six months. **A list of all such schemes shall be included in the public notice along with their location, budget and current status.***

*(f) **Such notices** for public hearings shall **be sent to all district level trade organizations, chambers of***

*commerce, Bar Associations and other prominent organizations and social welfare organizations. Notices shall also be sent to the provincial ombudsmen. Such public notices of the public hearings shall also be promptly placed on the website of the district government, if it has one.*

*(g) A report in respect of completed schemes shall be sent to the Federal and Provincial Ombudsmen and to the Human Rights Cell of this Court.*

*(h) The DG PC shall prepare a comprehensive account of the amounts due to each district from the various E&P Companies operating therein under the heads of social welfare obligations, production bonuses, and, if applicable, marine research fee. The estimated figures for royalties due to each district may also be included in this account. A statement of this account shall be made within 45 days and shall be submitted in Court. The account shall be displayed in Urdu, English and regional languages on the website of the MPNR.*

*(i) The DG PC shall solicit half-yearly reports from all licence/lease holders in respect of their social welfare obligations towards the local community, including among other things, the locations, budgets and status of schemes completed, ongoing, or initiated during those six months.*

*(j) The DG PC shall use his enforcement powers under PCAs actively and diligently to seek compliance with the terms of the PCAs.*

*(k) The Ministry of Petroleum and Natural Resources shall, ensure implementation of the Prime Minister's directive of 15-9-2003 and provide gas to "all the surrounding localities/villages falling within the radius of 5km of all Gas Fields, on priority basis" as directed, in accordance with law."*

[Emphasis Supplied]

10. In a similar way, this Court in the case of **Muhammad Ibrahim Thahim**<sup>3</sup> with regard to royalty of coal mining observed that the principles laid down by the apex Court are also applicable and on the same criterion, the Sindh Government shall **frame a policy** and ensure

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<sup>3</sup> Muhammad Ibrahim Thahim vs. Province of Sindh through Secretary Mines and Minerals Development and others. [2016 YLR 2393]



that the **inhabitants**, where coal mines are *permitted* or getting basic facilities. Being relevant paragraph No.23 are reproduced herewith:-

“23. Before lifting my pen, I cannot lose sight of one of the most important factor that Sindh Mining Concession Rules, 2002 do speak about the competence of the licensing authority to lease/license any area for purpose, defined therein, including extracting of minerals from such area against 'royalty' but it no where speaks about use of any portion thereof for benefit of inhabitants of such area, although rights of the inhabitants were even acknowledged by the Secretary, Mines and Minerals in the suit No.45/2011, which is evident from order passed on C.M.A. No.313/2011, attached by plaintiff as P/25. The Sindh Mining Concession Rules, 2002 is creation of the power, exercised under section 2 of the Regulation of Mines and Oil-Fields and Mineral Development (Federal Control) Act, 1948. The Government no doubt is the controlling authority and may exercise power to use and spend the benefits (revenue) etc. collecting from and within its territory but this should be based on principle of equity and fair-play which always demands a preferential consideration for welfare of the inhabitants from where such revenue is generated. All masses are equal but inhabitants of the area from where revenue is generated has an advantage as all operations, taken for creating such revenue, leaves consequences thereof which are born by the inhabitants. This question came under discussion before honourable Supreme Court in the case of 'Application by Abdul Hakeem Khoso Adv. (PLD 2014 SC 350)' wherein similar issue was involved. In such case honourable Supreme Court held that:

“2. The world of today is no longer one of unbridled capitalism and *laissez-faire*. Corporate enterprises doing business the world over are being forced to consider the impact of their activities on the immediate social and environmental surroundings, habitat and infrastructure and on the people of the areas where such enterprises operate. While Corporate Social Responsibility (CSR) may be voluntary, the Government, recognizing the importance of activities of companies in the oil and gas sector, has incorporated provisions in contracts and official policies, setting out obligations of oil Exploration and Production (E&P) Companies operating in Pakistan. The present case deals with these contractual and legally mandated obligations of E & P Companies towards the environment and the societies living in the areas where these Companies are **engaged in the exploration and extraction of mineral oil and gas.**

4. While it is necessary for the economic well being of the country that the natural resources and mineral wealth of the country be exploited for the public weal, it is, at the same time, necessary that the welfare of the people residing in areas where E&P Companies operate, is not adversely impacted and also that the inhabitants benefit from the economic activity resulting from such operations and from the natural/mineral resources extracted from their local areas. This Court has had an expansive approach when setting the boundaries of the right to life in the celebrated judgment of *Shehla Zia v. Federation of Pakistan* (PLD 1994 SC 693), with later precedents highlighting the continuing expansion of this approach for which reference can be made to the cases titled *General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra Jhelum v. Director, Industries and Mineral Development, Punjab, Lahore* (1994 SCMR 2061) and *Abdul Wahab v. HBL* (2013 SCMR 1383)."

(Underlining has been supplied for emphasis)

In said judgment, the honourable Supreme Court of Pakistan, did sketch out a policy for benefit of the inhabitants of the Petroleum Concession Area. **I have no hesitation to say that since the principle, so established in the above judgment, is with reference to rights and liabilities of the inhabitants therefore, such principle shall also apply to the area, given by the authority under Sindh Mining Concession Rules, 2002, which prima facie on quarry was/is under process therefore, it would be appropriate to direct the defendants No.1 and 2 to frame a policy, taking guidance from said judgment of Honourable Supreme Court of Pakistan and to process the same for its legal enforcement even on matters, dealt and controlled by Sindh Mining Concession Rules, 2002. The report on progress of the matter be made to this Court within two months from the date of receipt of the order."**

11. While taking benefit of **guidelines** provided by the Federal Government and the apex Court, we have examined *reply* and *record produced* by the respondents with regard to *utilization of funds* in different districts, this is matter of fact that in every district **MNAs, MPAs, Chairman** District Council, including *representative* of Energy and Patrol & Gas Companies are members and Deputy Commissioner is Secretary of such committee. According to *respondents* they are **utilizing funds** within the mandate of *welfare committees* in each district with wide publication. However, according to **clause 2** of the **Guidelines** for utilization of **Social Welfare Funds of 2021** provide that:

2. The **area of interaction** of such **schemes** shall be in the **sectors** of **drug awareness, promotion of sports, rehabilitation** of the special needs and *differently abled* children, **improvement of educational** facilities, drinking water, health, roads and grant of *scholarships* for local students. The additional social welfare amount to be **generated due to incremental production shall be calculated on the basis of production share** of each D & P Lease and shall be in and around the lease area.

12. Whereas, the record available is *reflecting* that most of the funds were utilized in the **drainage** schemes, in town of different talukas and to some extent **new dispensaries** for certain villages. However, no amount was specified/allocated either for the sectors of **drug awareness, promotion of sports, rehabilitation** of the special needs and differently abled children and/or **grant of scholarships** for local students.

(Underlining has been supplied for emphasis)

12-A. It was also informed to this court, during the course of hearing, with regard to the above mentioned *guidelines* issued from time to time and upon a query posed by this Court, from the representatives of the concerned *Bar Associations*, whether they were ever informed through any notices from the *Secretary of the Committee/Deputy Commissioner* concerned, about the announcement of public hearings to **solicit** any comments or **reservations**, that the **inhabitants** of the district in general, and the **purported** direct beneficiaries of the scheme in particular, may have with regard to the schemes **completed**, initiated, or ongoing, as mandated by above *guidelines* for such purpose, to our *dismay and disbelief*, the Learned Bar Representatives of District **Ghotki** and District **Khairpur** have informed us, that they have **never received** any such **intimation** notice for all those years, such conduct is contradictory and opposed to the **mandate** given through the guidelines, such blatant violation of mandatory guidelines, speaks volumes about the very **working of these committees** and the inaction and omissions on part of delinquent officials, which is otherwise gross misconduct on their part, in this matter of great national cause and concern, and in addition to this, it also amounts to willful *disobedience* and disregard to the **Apex Court's directions** coupled with this Court's direction in the case of

**Muhammad Ibrahim Thahim** (*ibid*) as well **Muhammad Asim Panhwar**<sup>4</sup> wherein observed and directed as follows:-

10. It would not be out of place to mention here that vide order dated 27.12.2013 passed in Suo-Motu Case No.36052/2013 reported as Application by Abdul Hakim Khoso Advocate (PLD 2014 SC 350), the Hon'ble Supreme Court was pleased to issue certain directions regarding distribution and utilization of Social Welfare Funds received from companies engaged in oil exploration and production (E&P) in Pakistan, towards the development, welfare and uplift of areas of their operation. Therefore, the respondents / District Managements of all the Districts in the Province of Sindh, including Districts Badin and Matiari, are duty-bound to utilize the said funds for the welfare and uplift of the people residing in their respective Districts, including the repairs, maintenance and uplift of the Government school buildings.

11. Learned counsel for the petitioners, learned AAG and the Secretary School Education and Literacy Department, Government of Sindh, agree that the proposal submitted before the Court by the said Secretary, reproduced in paragraph 5 above, will facilitate the Government of Sindh in improving and maintaining the existing and future infrastructure of the Government school buildings. They have also agreed that an order in terms of the said proposal, and any other or further order as this Court may deem fit and proper, be passed. Accordingly, with their consent the following order is passed :

- A. 25% from each of the (i) District Development Fund / Budget, (ii) Bonus Production Fund and (iii) Social Welfare Fund, in respect of every District in the Province of Sindh, shall be allocated and utilized by the Government of Sindh only for the repairs and maintenance of the Government school buildings of the respective District ;**
- B. The Government of Sindh and District Oversight Committee shall ensure that 25% of the above Funds, the yearly budget allocated by the Government of Sindh as well as all other aid(s), grant(s), fund(s) or assistance of any nature received for this purpose by the Government of Sindh / District Oversight Committee, are utilized only for the repairs and maintenance of the Government school buildings ;**
- C. The Government of Sindh and District Oversight Committee shall ensure that only honest, reliable and competent officers having such reputation and unblemished record are assigned the task to manage the funds and to oversee and monitor the works so that the funds are not misused, misappropriated or lapsed ;
- D. The Government of Sindh and District Oversight Committee shall maintain proper accounts of the above funds at all times. The Government of Sindh shall ensure that the funds / accounts are audited on quarterly basis i.e. in March, June, September and December every year under the joint supervision of the Chief Secretary Sindh, the Secretary Education Sindh and the Accountant General Sindh ;

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<sup>4</sup> Muhammad Asim Panhwar Vs Province of Sindh through Secretary Education Government of Sindh Karachi 2020 CLC 1465 [Hyderabad Bench]

- E. The Government of Sindh and District Oversight Committee shall ensure that the utilization and disbursement of funds must be absolutely free from arbitrary or whimsical exercise of discretion, political influence and or personal projection, interest or gain of any nature ; and,
- F. The Chief Secretary Sindh and the Secretary Education Sindh are jointly and severally directed to submit compliance report in the above terms to this Court on quarterly basis within fifteen (15) days of the audit of every quarter i.e. latest by 15th day of April, July, October and January every year, along with audit report for the relevant quarter. The compliance report shall be submitted by them simultaneously at the Principal Seat of this Court at Karachi through MIT-II and also at the Circuit Court Hyderabad through Additional Registrar.

12. Office is directed to issue notice along with a copy of this order to the Chief Secretary Sindh, the Secretary Education Sindh and the Accountant General Sindh for compliance. 13. Foregoing are the reasons of the short order announced by us on 10.12.2019, whereby both these petitions were allowed with the consent of the parties.

Similarly, this court in the case of **Ghulam Hussain**<sup>5</sup>, wherein controversy regarding employment of the people of locality address with direction to implement PCA agreements, vide order dated 24.09.2019 and observed as follows:-

*7. Firstly, the question of maintainability of the instant petition needs to be resolved. In cases where question of public importance with reference to the enforcement of fundamental rights is involved, appropriate order with direction of the nature as mentioned in Article 199 can be passed by this Court. The present case deals with the issue of the welfare of the people residing in area where the Respondent-ENI-company carries oil exploration operations. The Petitioners are claiming to be the residents of the Gas field area in district Jamshoro. Per petitioners, Respondent-ENI is acting in violation of law and the terms and conditions of the petroleum concession agreement, which they executed with the Government of Pakistan, whereby they are bound to control environmental pollution, provide jobs and gas facility to the local people of the area as well as develop infrastructure facilities, such as roads, schools, hospitals and the betterment of local people. **In view of the sanctity and importance of the aforesaid rights and for safeguard thereof, the Constitution provides a specific and a special mechanism, in terms of Article 199(1)(c) by virtue whereof notwithstanding the powers of the High Courts under Article 199(1)(a) and (b) an extraordinary power has been conferred on it "to make an order giving directions to any person, etc., as may be appropriate for enforcement of the fundamental rights enshrined in Chapter I of Part-II" and as per Article 199(2) of the Constitution, the right to move a High Court for enforcement of any of the Fundamental Rights conferred by Chapter I & II shall not be abridged. In the light of aforesaid discussed proposition of law, the instant petition is maintainable and can be heard and decided on merit.***

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<sup>5</sup> Ghulam Hussain Vs Federation of Pakistan; CP No.D-5561 of 2014 *unreported*, (<http://43.245.130.98:8056/caselaw/view-file/MTQwMzIxY2Ztcy1kYzgz>)

8. *Prima-facie, the present matter is of public importance and directly relates to the Fundamental Rights of the people of the Gas field Area, especially those guaranteed in Articles 9 and 14 of the Constitution. The binding social welfare obligations under the heads of social welfare, employment, training, production bonuses, and royalty arose under successive petroleum policies, with the Petroleum Policy 2012 currently in the field.*

9. *We have noticed that the concerned federal Ministry/the respondent No. 01 has issued separate guidelines for use of social welfare funds and the Government of Sindh has adopted these guidelines. The Honorable Supreme Court has addressed the aforesaid issues of the concerned District and Tehsil/Tulka in paragraph 19,20 and 21 of the judgment dated 28.10.2013 (supra) and the directives of Honorable Supreme Court are still in operation and cannot be ignored by the Respondents. In view of the foregoing, we have to see as to whether the directions of the Hon'ble Supreme Court in the aforesaid matter has been complied with in its letter and spirit or otherwise.*

12-B. That, there is one other, yet important aspect arising out of the present proceedings is of **Climate Change** and the impacts of industrial undertakings and restrictions on such establishments. The outcome of exploration activities by **oil** and **gas** exploration companies can have significant **environmental impacts**, such as, **habitat destruction**. The exploration activities often involve *clearing land*, building access roads, and drilling wells, leading to habitat destruction for various species. This can disrupt **ecosystems** and threaten the survival of vulnerable plants and animals.

12-C. **Exploration activities**, may involve the use of chemicals and the discharge of wastewater, which can contaminate nearby water sources and as per the **reports** received by this Court, during the hearing of some other case, relating to the *Indus River* and the *hazardous effluent industrial water waste*, being directly **poured** into River Indus without any sort of treatment. Moreover, spills or leaks during drilling or transportation can also release oil or hazardous substances into water bodies, *causing harm to aquatic life and affecting water quality*, these explorations activities release pollutants such as methane, a potent greenhouse gas, and volatile organic compounds (VOCs) into the atmosphere. These emissions contribute to air pollution, which can have adverse effects on human health and contribute to climate change. Extracting and burning fossil fuels from the exploration activities contribute to greenhouse gas emissions, primarily

*carbon dioxide. These industrial emissions are significant drivers of climate change and contribute to global warming, leading to various environmental impacts such as rising sea levels, altered weather patterns, and ecosystem disruptions. Exploration activities involving transportation of oil and gas present the risk of spills and accidents. Oil spills can have catastrophic effects on marine life, coastal ecosystems, and the livelihoods of communities dependent on affected areas. Therefore, it is important for oil and gas exploration companies to prioritize environmentally responsible practices, adopt sustainable technologies, and mitigate the potential impacts through careful planning, monitoring, and adherence to regulatory standards. Additionally, transitioning to cleaner and renewable energy sources can help reduce the overall environmental impact of energy production.*

12-D. That, the importance of the environmental impact of the present industrial *undertakings*, cannot be **overruled** and such important aspect has very *meticulously* and *authoritatively* been dealt with, by the Apex Court, in a recent reported judgement, in '**D.G. Khan Cement Company Ltd's**<sup>6</sup> case and paragraphs 15, 16, 17, 18 and 19 are important in this context, the same are reproduced for seeking guidance and expected to be strictly **adhered** to, by the relevant concerned government departments and Oil & Gas exploration companies, in letter and spirit, which provides as follows;

*"15. It was vehemently argued by the learned counsel for the petitioner, that the petitioner **company** proposes to expand the existing cement plant by installing a new "zero water" technology cement plant. However, there is no evidence brought on the record to establish the claim that the new cement plant technology is 'zero-water' or even the fact that the petitioner is currently manufacturing cement **without** any use of **water**. Even the consultants engaged by the petitioner did not say that cement plants could be run without using water. On the contrary, according to the position taken by the petitioner and confirmed by the DG, EPA, Punjab, the petitioner is currently **using six rainwater harvesting ponds and two water tanks to save water for use in the cement plant. This act of building storage tanks and ponds shows that water is essential for the running of the cement plant, not to mention that development of the ponds and storage tanks further restricts the recharge and replenishment rate of the aquifer which is to sustain the local habitat including nature, population, subsistence agriculture and help in regaining water supply levels for Katas Raj***

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<sup>6</sup> D.G. Khan Cement Company Ltd. v. Government of Punjab 2021 SCMR 834

**Temple Pond.** We also notice that building such ponds and storage tanks (a water management project) required an Initial Environmental Examination (IEE)/Environment Impact Assessment (EIA), which does not appear to have been done, casting doubts on legal sustainability of these ponds and storage tanks in the Negative Area. Recourse to alternative source of water by the petitioner company clearly establishes that use of water is an indispensable requirement for running a cement plant. Additionally, the petitioner claimed that it was not given the opportunity of hearing before the issuance of the Notification. We, however, see that the Consultants had arranged a Stakeholders Consultation Meeting with cement companies. Three officials of the petitioner participated in the said meeting and their names and signatures are visible in the report. Besides, we need to look beyond limestone, clay and other minerals to appreciate the value of the stretch of land, called the Salt Range, whose charm has captivated pilgrims, travelers and emperors since olden days. The picturesque region rich in biodiversity, and historical and sociocultural heritage is a national asset of timeless magnificence.

**Precautionary Principle, In Dubio Pro Natura & Environmental Legal Personhood**

16. The facts of the case brought before us through various technical reports of the Government and its consultants (referred to above) show that there are serious threats to environment in the Negative Area, especially to the underground water aquifer that needs to be first recharged before any sustainable development in the area can take place. Negative area in other words means an environmentally fragile area, which is a vulnerable natural habitat and needs care and protection, till it recovers, if at all. Enlargement of an existing cement plant in a negative area attracts the well-established principle of international environmental law called the Precautionary Principle, reflected in Principle 10 of the Rio Declaration, 1992. The principle provides; **“where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”** Another emerging environmental principle declared as Principle 5 of the IUCN World Declaration on the Environmental Rule of Law (2016) is in dubio pro natura i.e. **“in cases of doubt, all matters before courts, administrative agencies, and other decision-makers shall be resolved in a way most likely to favour the protection and conservation of the environment, with preference to be given to alternatives that are least harmful to the environment.** Actions shall not be undertaken when their potential adverse impacts on the environment are disproportionate or excessive in relation to the benefits derived therefrom.” In the facts of the case, the Provincial Government was obliged to take a precautionary approach and act in-line with the principle of in dubio pro natura, till, inter alia, a detailed hydrogeological study assessing the potential of groundwater resources for



*industrial purposes of the project area is carried out. This approach is also **constitutionally compliant as the courts are to protect the fundamental rights of the public and in this case right to life, sustainability and dignity of the community surrounding the project remains paramount till such time that the Government is of the view that the project has no adverse environmental effects. Also, the environment needs to be protected in its own right.** There is more to protecting nature than a human centered rights regime. We see elements of personhood have now been ascribed to nature by legislatures and courts around the world. The approach of personifying the environment in order to protect and preserve nature and its objects is one of the latest evolutions in environmental law. Man and his environment each need to compromise for the better of both and this peaceful co-existence requires that the law treats environmental objects as holders of legal rights.*

17. According to our National Climate Change Policy, 2012 water resources are inextricably linked with climate; this is why the projected climate change has such serious implications for Pakistan's water resources. Freshwater resources in Pakistan are based on snow and glacier-melt and monsoon rains, both highly sensitive to climate change. This will further exacerbate the already difficult situation of a water-stressed country facing demand increases due to population growth and increasing economic activity. To address the impact of climate change on water resources and to enhance water security, the Government of Pakistan has proposed Integrated Water Resource Management to provide regulatory frameworks, water licensing, slow action dams, artificial recharge especially for threatened aquifers, adoption of integrated water resource management concepts, and ensuring rational ground water exploitation by avoiding excessive pumping. Agriculture is central to human survival and is probably the human enterprise most vulnerable to climate change. The hydrological cycle is similarly likely to be influenced by global warming, necessitating the agriculture and livestock sectors, particularly in rain-fed areas, to adapt to climate change. The World Water Forum, laying down the concept of water justice, declared<sup>30</sup> that the State should exercise stewardship over all water resources, and protect them, in conjunction with their associated ecological functions, for the benefit of current and future generations, and the Earth community of life.<sup>31</sup> Because of the close interlinkages between land and water and the ecological functions of water resources, any person with a right or interest to use water resources or land has a duty to maintain the ecological functions and integrity of water resources and related ecosystems. **The precautionary principle should be applied in the resolution of water-related disputes. Notwithstanding scientific uncertainty or complexity regarding the existence or extent of risks of serious or irreversible harm to water, human health or the**

**environment, judges should uphold or order the taking of the necessary protective measures having regard to the best available scientific evidence.** Consistent with the principle in *dubio pro natura*, in case of uncertainty, water and environmental controversies before the courts should be resolved, and the applicable laws interpreted, in a way most likely to protect and conserve water resources and related ecosystems. In adjudicating water and water-related cases, judges should be mindful of the essential and inseparable connection that water has with the environment and land uses, and should avoid adjudicating those cases in isolation or as merely a sectoral matter concerning only water. **Water justice requires appreciation that there are no easy, simple or singular solutions to the water crisis, and that water problems cannot be resolved through technical solutions alone but require broader recognition that they are inherently ecological, political and social issues simultaneously.**

18. The fragility of the Negative Area also needs to be examined in the larger context of climate change. The environmental issues initially brought to our courts were local geographical issues, be it air pollution, urban planning, water scarcity, deforestation or noise pollution. But now climate change has a bearing on these issues. **One of the serious climate change threats to Pakistan is the rising temperatures resulting in enhanced heat and water-stressed conditions, particularly in arid and semi-arid regions, leading to reduced agricultural productivity.** Notably, the Salt Range has an arid climate characterized by lack of water. **According to our National Climate Change Policy, 2012 for Pakistan to continue on a development path, the more immediate and pressing task is to prepare itself for adaptation to climate change. The country is bearing huge socioeconomic costs of environmental degradation, it is globally ranked in the top ten countries most affected by climate change in the past 20 years and has lost 0.53 percent per unit GDP, suffered economic losses worth US\$ 3792.52 million and witnessed 152 extreme weather events from 1999 to 2018. Only by devising and implementing appropriate adaptation measures will it be possible to ensure water, food and energy security for the country. The goal of the Policy is to ensure that climate change is mainstreamed in the economically and socially vulnerable sectors of the economy and to steer Pakistan towards climate resilient development. The Notification, in the current facts of the case, is a climate resilient measure and in step with the National Climate Change Policy and the Constitution.**

19. Another important **dimension** of climate change is **intergenerational justice and the need for climate democracy.** The tragedy is that tomorrow's generations aren't here to challenge this pillaging of their inheritance. **The great silent majority of future generations is rendered**

*powerless and needs a voice. This Court should be mindful that its decisions also adjudicate upon the rights of the future generations of this country. It is important to question ourselves; how will the future generations look back on us and what legacy we leave for them? This Court and the Courts around the globe have a role to play in reducing the effects of climate change for our generation and for the generations to come. Through our pen and jurisprudential fiat, we need to decolonize our future generations from the wrath of climate change, by upholding climate justice at all times. Democracy, anywhere in the world is pillared on the rule of law, which substantially means rights based rule of law rather than rule based; which guarantees fundamental values of morality, justice, and human rights, with a proper balance between these and other needs of the society. Post climate change, democracies have to be redesigned and restructured to become more climate resilient and the fundamental principle of rule of law has to recognize the urgent need to combat climate change. Robust democracies need to be climate democracies in order to save the world and our further generations from being colonized at the hands of climate change. The preambular constitutional value of democracy under our Constitution is in effect climate democracy, if we wish to actualize our Constitution and the fundamental rights guaranteed under the Constitution for ourselves and our future generations. Janine Benyus suggests we learn from nature's 3.8 billion years of evolution. How is it that other species have learned to survive and thrive for 10,000 generations or more? Well, it's by taking care of the place that would take care of their offspring, by living within the ecosystem in which they are embedded, by knowing not to foul the nest. We must restore and repair and care for the planetary home that will take care of our offspring. For our children, and our children's children, and all those yet to come, we must love our rivers and mountains and reconnect with the long and life-giving cycles of nature. **To us there is no conflict between environmental protection and development because our answer would be sustainable development. Sustainable development means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs and it is in step with our constitutional values of social and economic justice.**"*

**12-E.** That the same *understanding* about the **climate** change and its **effects** on the fundamental rights of people, has again been reiterated and propounded in a more recent judgement of the Supreme Court, in '**Raja Zahoor Ahmed's**<sup>7</sup> case, in paragraphs No. 8 to 12 are also reproduced;

*8. Pakistan falls amongst the most vulnerable countries and is seriously hit by climate change, even though it has negligible contribution towards greenhouse gases (GHGs). The National*

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<sup>7</sup> Raja Zahoor Ahmed Vs Capital Development Authority 2022 SCMR 1411

*Climate Change Policy 2012 underlined the seriousness of this existential threat. Climate resilient development and adaptation<sup>9</sup> was the focus of this policy document though as a responsible member of the global community due importance was also accorded to mitigation<sup>10</sup>efforts. However, after Paris Climate Accord 2015, Pakistan has updated its climate policy and the focus of the National Climate Change Policy 2021 is equally placed on adaptation and mitigation with the major emphasis on nature-based solutions. Such solutions include vegetal cover expansion, coastal resource management, and mangrove and natural reef ecosystem protection. Infrastructure-based solutions comprise climate-proofing infrastructure, including storm drainage systems, water supply and treatment plants, as well as the protection or relocation of energy or solid waste management facilities. Some coastal cities may also need to plan for infrastructure development, protection and/or relocation related to a rise in sea level.*

*9. Our national response to climate change, inter alia, is to continuously evolve innovative and smart “adaptation” strategies. Our adaptation climate change strategy requires that Pakistan and its public institutions make climate resilient policies and rest its decisions on sustainability. Our infrastructures must be strong enough to withstand climate change e.g., heavy rains, floods, earthquakes and other extreme weather. Shutting eyes to the ominous signs of climate change will plunge us into a world that may not be able to sustain fundamental human values. It could affect our basic physical and larger social needs including harnessing and consuming energy, water and food as well as habitation, travelling and communication potentialities. It is doubtful that our early town planners were driven by climate considerations. However, climate must, in the wake of climate change, form a basic determinant of urban planning and design. Climate-resilient development in cities of all sizes is crucial for improving the well-being of people and increasing the life opportunities of future generations. Any change in the Master Plan to an urban scheme without taking account of the climate factor would be detrimental.*

***10. The concept of “the Right to the City” has become a common framework for articulating alternative visions of the city and making a host of demands on issues related to urban equity and social justice. It has also been used for making urban governance, planning, and budgeting more participative and inclusive. The Right to the City is interdependent to all recognized international human rights; and its conception is based on an integral view, which includes civil, political, economic, social, cultural and environmental rights enshrined in the International Human Rights Treaties.***

***11. Effect of climate change on cities, affects its residents and their core fundamental rights to life, dignity and property guaranteed under Articles 9, 14, 18 and 23 of the Constitution of the Islamic Republic of Pakistan, 1973. In an urban living, climate change can impair the quality of life of a person, offend his dignity and deprive him of his property or the right***

***to fully enjoy his property. Incorporating adaptation, climate resilience<sup>15</sup> and sustainability, in the policy decisions by the urban development authorities, are essential to actualize the fundamental rights of the people and therefore form an integral part of the fundamental human rights of the people of Pakistan. In the face of the grave existential threat of climate change, adaptation, climate resilience and sustainability assume the role of a constitutional necessity and of an overarching constitutional obligation.***

*12. Our urban development authorities need to ensure that their urban development plans consider and support adaptation, climate resiliency and sustainability. Before putting up a proposal for amendment or modification in the Master Plan or a scheme or before proposing a new development plan or scheme, the urban development authorities need to seriously consider the climate change angle. Any conversion of residential neighbourhoods to commercial zones is likely to lead to adverse environmental consequences on account of increased human and vehicular traffic and activity, and should not be permitted without proper investigation, forethought and remedial measures to control the soaring thermal environment. It is high time that our urban planners prioritize the climate factor in their development approaches to address the triple planetary crises of Climate Change, Air Pollution and Loss of Biodiversity. The CDA shall ensure to factor in adaptation, climate resiliency and sustainability into their plans, policies and decisions in order to protect the constitutional rights to life, dignity and property of the residents of Islamabad, in particular, and people of Pakistan, in general."*

**12-F. Similarly,** the issues arising out of the present petitions, which is addressed in view of *guidelines* provided by the **Apex Court**, in **Abdul Hakeem Khoso, *ibid***, in furtherance and in aid of achieving the basic objectives as provided in the Constitution of Islamic Republic of Pakistan, 1973, which is a complete code in itself. As emphasized in **Article 158** for providing the necessary Constitutional requirement to *supply* the local inhabitants of the area from where the oil and gas exploration companies are extracting natural gas, or oil and we deem it appropriate first to *reproduce* the same for easy understanding, as contemplated therein, as follows:-

**Article 158:- Priority of Requirements of Natural Gas; The Province in which a well-head of Natural Gas is situated shall have precedence over other parts of Pakistan, in meeting the requirements from that well-head, subject to the commitments and obligations, as on the commencing day".**

12-G From the plain reading of above, it transpires that it need not in depth interpretation or *deliberation*, as it is an **unambiguous** constitutional provision, which clearly *obligates* that in case of *exploration* of natural gas, as against the *mineral* and *oil*, the Province in which a well head is situated shall have *preference* over other parts of the Pakistan in meeting the requirement from the well head situated in that particular Province". Nevertheless, very regretful to note here, that the state has also miserably failed to comply with the above obligatory constitutional provision in fair distribution of the natural resources among the inhabitants area. Though this article does not give the absolute right, as it is subject to certain conditions, but at the same time, there is no denial to the fact that, the provinces, including Sindh, who contributes the majority of the gas production share, have been deprived from providing such basic necessity (Natural Gas) of life. Whereas, during the course of proceedings, we have been informed and confirmed by the learned counsels for the petitioners, that the villages of the petitioners and hundreds of like nature villages, though situated within less than half a kilometer from where such pipelines of Natural Gas are passing through and contributing Natural Gas for rest of the Country, have been deprived from such right, which otherwise is guaranteed through Article-158 of the Constitution of 1973. Such blatant and flagrant violation and abuse of statutory Constitutional rights and obligations, so guaranteed, speaks volumes about the State of affairs and needs no further clarifications, therefore, we deem it appropriate and direct that the dicta laid down in the case of Abdul Hakeem Khoso, Supra, must strictly be complied with and implemented in its letter and spirit.

12-H. Moreover, in addition to this, with regard to Article 25-A, which mandates that the state should provide free education to all, in that context it is important to note here, that ensuring free education for all in Pakistan, is a significant goal, that requires *overwhelming* and ongoing efforts. While some progress has been made by the State, yet there are still challenges to overcome some key areas. Whereas, *transparency* in the *division* and spending of funds allocated by the Government for education coupled with generated through oil and gas exploration companies in its local areas of exploration is essential for ensuring

accountability and equitable distribution and utilization. It is therefore, a mechanism ought to be devised which can help to achieve transparency in spending of funds, that need pivotal attention, and can be achieved in the manner stated hereinbelow:

- (i) **Legal Framework**: Establish clear legal guidelines and regulations that mandate transparency in the division and spending of funds. This can include provisions for disclosure of financial information, reporting requirements, and penalties for non-compliance.
- (ii) **Revenue Sharing Agreements**: Implement revenue-sharing agreements between the oil and gas exploration companies and the local communities or Governments. These agreements should clearly define how the funds will be distributed and spent, ensuring a fair share for the local areas as mandated by the Apex Court in the case of **Abdul Hakeem Khoso**, *id.*
- (iii) **Independent Oversight**: Create an independent oversight body or committee comprised of representatives from the local communities, government authorities, and industry stakeholders. This body can monitor the funds' division and spending, ensuring adherence to transparency standards.
- (iv) **Public Reporting**: Require regular and comprehensive public reporting of financial information related to oil and gas revenues. This can include audited financial statements, disclosure of payments made to governments or local communities, and details on how the funds were allocated and utilized.
- (v) **Community Engagement**: Promote active community participation and engagement in decision-making processes regarding the division and spending of funds. This can involve public consultations, Town hall meetings, or other platforms that allow local residents to express their needs and priorities.
- (vi) **Capacity Building**: Invest in capacity building initiatives for local communities and government officials to enhance their understanding of financial management and oversight. This can include training programs, workshops, or partnerships with organizations experienced in managing natural resource revenues.

By implementing these **mechanisms**, the *transparency* of funds generated through **oil** and **gas** exploration companies can be *improved*, leading to more **accountable** and **equitable** distribution of resources within the local areas of such *oil* and *gas* exploration.

12-I. Moreover, to effectively implement the Apex Court's directions contained in the judgement reported as **Abdul Hakeem Khoso** *ibid*, subsequently by this court in the case of **Muhammad Asim Panhwar**, *ibid*, and **Ghulam Hussain's** case<sup>8</sup> for long lasting implementation of PCA's, following process must be *adhered* to in education sector;

- (a) **Access and Enrollment:** Ensuring access to *education* for all *children*, especially those in *remote* or *disadvantaged* areas, is *crucial*. Efforts should be made to *increase enrollment rates* and reduce barriers such as *poverty*, *gender discrimination*, and *disabilities* that prevent children from attending school.
- (b) **Quality of Education:** Improving the *quality* of *education* is *essential* to provide meaningful learning experiences. This includes enhancing *teacher training* and qualifications, updating *curriculum*, *improving* school infrastructure, and incorporating *modern teaching methods* and *technologies*.
- (c) **Inclusive Education:** Ensuring education for marginalized groups, including girls, children with disabilities, and those from low-income backgrounds, is *vital*. Special measures, should be taken to eliminate gender disparities, provide inclusive classrooms, and accommodate the needs of children with disabilities.
- (d) **Financial Accessibility:** Financial barriers, such as the cost of uniforms, textbooks, and transportation, can prevent children from attending school. Measures should be taken to address these barriers and provide financial support, scholarships, and free educational resources to students in need.
- (e) **Awareness and Parental Engagement:** Promoting awareness of the importance of education and actively engaging parents and communities in the education process can contribute to increased enrollment and improved educational outcomes.
- (f) **Technical Education:** There is eminent need of imparting technical education in the areas of oil & Gas exploration to the students who unable to avail Higher Education of Engineering, at the same time it will provide opportunity the people of effected areas to get job in the fields, therefore E&P companies shall establish technical colleges within district or facilitate to the existing Technical colleges to establish relevant departments e.g Petroleum, Gas and mining etc.

12-J. Besides, in the case of MUHAMMAD IBRAHIM THAHIM<sup>9</sup>, this Court while dealing with the coal issue directed Sindh Government that:-

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<sup>8</sup> Ghulam Hussain Vs Federation of Pakistan; CP No.D-5561 of 2014 *unreported*, (<http://43.245.130.98:8056/caselaw/view-file/MTQwMzkxY2Ztcy1kYzgz>)

<sup>9</sup> MUHAMMAD IBRAHIM THAHIM Versus PROVINCE OF SINDH through Secretary Mines and Minerals reported as 2016 YLR 2393



"23. Before lifting my pen, I cannot lose sight of one of the most important factor that Sindh Mining Concession Rules, 2002 do speak about the competence of the licensing authority to lease/license any area for purpose, defined therein, including extracting of minerals from such area against 'royalty' but it no where speaks about use of any portion thereof for benefit of inhabitants of such area, although rights of the inhabitants were even acknowledged by the Secretary, Mines and Minerals in the suit No.45/2011, which is evident from order passed on C.M.A. No.313/2011, attached by plaintiff as P/25. The Sindh Mining Concession Rules, 2002 is creation of the power, exercised under section 2 of the Regulation of Mines and Oil-Fields and Mineral Development (Federal Control) Act, 1948. The Government no doubt is the controlling authority and may exercise power to use and spend the benefits (revenue) etc. collecting from and within its territory but this should be based on principle of equity and fair-play which always demands a preferential consideration for welfare of the inhabitants from where such revenue is generated. All masses are equal but inhabitants of the area from where revenue is generated has an advantage as all operations, taken for creating such revenue, leaves consequences thereof which are born by the inhabitants. This question came under discussion before honourable Supreme Court in the case of 'Application by Abdul Hakeem Khoso Adv. (PLD 2014 SC 350)' wherein similar issue was involved. In such case honourable Supreme Court held that:

"2. The world of today is no longer one of unbridled capitalism and laissez-faire. Corporate enterprises doing business the world over are being forced to consider the impact of their activities on the immediate social and environ-mental surroundings, habitat and infrastructure and on the people of the areas where such enterprises operate. While Corporate Social Responsibility (CSR) may be voluntary, the Government, recognizing the importance of activities of companies in the oil and gas sector, has incorporated provisions in contracts and official policies, setting out obligations of oil Exploration and Production (E&P) Companies operating in Pakistan. The present case deals with these contractual and legally mandated obligations of E&P Companies towards the environment and the societies living in the areas where these Companies are engaged in the exploration and extraction of mineral oil and gas.

4. While it is necessary for the economic well being of the country that the natural resources and mineral wealth of the country be exploited for the public weal, it is, at the same time, necessary that the welfare of the people residing in areas where E&P Companies operate, is not adversely impacted and also that the inhabitants benefit from the economic activity resulting from such operations and from the natural/mineral resources extracted from their local areas. This Court has had an expansive approach when setting the boundaries of the right to life in the celebrated judgment of Shehla Zia v. Federation of

Pakistan (PLD 1994 SC 693), with later precedents highlighting the continuing expansion of this approach for which reference can be made to the cases titled General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra Jhelum v. Director, Industries and Mineral Development, Punjab, Lahore (1994 SCMR 2061) and Abdul Wahab v. HBL (2013 SCMR 1383)."

(Underlining has been supplied for emphasis)

In said judgment, the honourable Supreme Court of Pakistan, did sketch out a policy for benefit of the inhabitants of the Petroleum Concession Area. I have no hesitation to say that since the principle, so established in the above judgment, is with reference to rights and liabilities of the inhabitants therefore, such principle shall also apply to the area, given by the authority under Sindh Mining Concession Rules, 2002, which prima facie on quarry was/is under process therefore, it would be appropriate to direct the defendants No.1 and 2 to frame a policy, taking guidance from said judgment of Honourable Supreme Court of Pakistan and to process the same for its legal enforcement even on matters, dealt and controlled by Sindh Mining Concession Rules, 2002. The report on progress of the matter be made to this Court within two months from the date of receipt of the order."

Accordingly, Deputy Commissioners Tharparker, Jamshoro and other districts where coal extraction plants/ thermal powers are currently operating shall ensure implementation of the directions contained in the judgment of **Abdul Hakeem Khoso** (supra) as well as of the judgment passed by this Court. Needless to mention that resources are need of time, therefore, all companies have been allowed to extract minerals. However, it must be emphasized that the environment, including the climate, cannot be compromised for the sake of resource's extraction. Similarly, historical and cultural sites, ancient monuments, and declared/undeclared wildlife sanctuaries cannot be jeopardized on the ground of extraction of resources and their safety must be observed while working on the sites. Hence, Deputy Commissioners are bound to apply the judgment of this Court passed in CP. No. D-1105 of 2018 [Re-Nadir Ali S/o Khan Muhammad Bugti vs. The Province of Sindh & others] in the High Court of Sindh Bench at Sukkur, in its letter and spirit, at this juncture, before dilating further, upon the impact caused to the ecosystem, from these sort of industrial undertakings, it is essential to reproduce the noteworthy crux, which lead to passing of such judgement, dated 18-05-2023, at Sukkur Bench of Sindh

High Court, as during the course of proceedings, some glaring and significant discoveries surfaced before the Court, which cannot even otherwise be left unattended, as such, the discoveries incorporated therein the judgment, particularly in paragraphs no.6, 7, 8 and 17, are also reproduced herewith for the purpose of understanding:-

6. Before proceeding with the earlier orders, it needs to reiterate here, that the crushers may be used to **reduce the size, or change the form, of waste materials, so they can be more easily disposed of or recycled**, or to reduce the size of a **solid mix** of raw materials (*as in rock ore*), so that the pieces of different composition can be *differentiated*; however, **crushing plants** installed are failed to act with the conditions laid down in the mining permit as lease holders have to prevent hazards to human or animal or life or the property of others and the environment as well. Besides, at the site there are activities of **dynamite blasting** and crushing the rocks, which causes respiratory disorders not only to human but animals as well, due to *inhalation* of fine dust particles, so also causing damages to the **historical sites declared as heritage sites**, which are *protected* under relevant laws, lowers agricultural yield as the dust covers the leaf surface of the plants and poor visibility near the crushers. Nevertheless, stone crushing was known to affect both surface and ground water regime.

7. Pursuance to order dated **16.02.2023**, the Director General, Mines & Minerals Development Department, Sindh Karachi, files statement, wherein it has been mentioned that in compliance with the directions contained in **para-12** of aforesaid order, the draft **Rules “The Sindh Mines and Minerals Governance Rules 2023”** has been forwarded for vetting to the Law Department. In this regard a letter dated 27<sup>th</sup> February, 2023 has been addressed to the **Secretary** to Government of Sindh, Law and Parliamentary Affairs and Criminal Prosecution Department Sindh Karachi, and annexed. Thus, the Secretary law department shall ensure vetting of the draft rules submitted by the Mines and Minerals department in line of relevant laws including, **The Environmental Protection Agency Act, 1997, The Pakistan Environmental Protection Act 1997**, i.e **National Environmental Quality Standards (NEQS)** and international protocols settled by the international organizations i.e United Nations, UNESCO. Needless to say that the Pakistan being signatory of various UN Conventions including “Convention concerning the protection of the World Cultural and Natural Heritage 1976, and certain rules are framed to rules and principals to governing the protected areas, resources and heritage i.e Rule 136 to 141 which says that the area, land, and its resources are the common heritage of mankind and the same are bestowed in humans as a whole, on whose behalf the Authority shall act, even the State should not alienate, or lease particularly the raw materials, extracted, mined therefrom, except in accordance the law and rules, regulations and procedures of the Authority. The State is responsible to protect, preserve and save these areas from damage and all the activities ought to be for the benefit of the human beings without discrimination as the right to life is not restrained to

biological physical life but more than and as enlightened the scope of Article 09 of the Constitution of Pakistan by the Supreme Court of Pakistan in the case of **Shehla Zia Vs WAPDA** PLD 1994 SC 693.

*Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. **The word life is very significant as it covers all facts of human existence. The word life has not been defined in the Constitution but it does not mean nor can be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally.** A person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. **Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in the neighbourhood or at a far-off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law.** Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be residing near, under or at a dangers distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the possibility of danger come forward.*

Therefore, Director General, Mines and Minerals shall ensure that **no permit/license** for crushing plants is issued *except* fulfilment of the criterion contained under draft rules as mentioned above and the **committees** comprised in view of the **amended rules**, who shall examine all licenses /permits issued to different crushing plants for mining purposes and if any licenses is not fulfilled the criterion of present rules; that shall be considered as cancelled. Suffice it to say, that the **Rule 133** of the amended rules, with regard to contribute in corporate Social responsibility shall be complied with in its letter and spirit. Being relevant, **Rule 133** is reproduced as under:-

133. Corporate Social Responsibilities (CSR): (1) All the large and small scale mineral title or permit holders shall be responsible to pay prescribed amount of CSR fund in the mining area for the

welfare of local inhabitants, which include infrastructure development, education, health, social services, environmental up-gradation, beautification, uplifting socio-economic conditions in order to improve quality life and make the mineral title holders responsible to the rights of local inhabitants in the prescribed manner the Government of Sindh may determine from time to time by crafting a CSR policy accordingly.

2) The Mining companies and mineral title/permit holders would contribute an amount as determined by the Government of Sindh, annually, towards the social uplift of the local population through establishment and self-sustained maintenance of community improvement projects and would participate in Government efforts to sustain the development level of mineral bearing areas on depletion of the mineral resource. The Government of Sindh will collect this contribution and spend on the welfare projects prepared in consultation with local representatives of the area/region. Out of such contributions, training and employment opportunities shall be provided to the local employees by foreign and national, mineral exploration and production companies in Sindh.

3). There shall be some arrangements (production bonus) out of the production slab of minerals to be determined through the policy mechanism for the welfare of inhabitants of the mining areas or the proximity areas of the district concerned to be levied by the Government of Sindh through mines and mineral development department.

Besides, Director General shall ensure compliance of paragraph No.3 of order dated 16.2.2023 which reads as under:-

**3. It is pertinent to mention that merely providing such class will not serve the purpose, unless those licenses are examined and if same are not falling within criterion at the sites, those mines shall be stopped. DG Mines and Minerals Department also refers Rule 134, which speaks as under:-**

**“134. Restriction on grant of area for Mining purpose and Stone Crushing activity: (1) There shall be a complete ban on the mining and stone crushing activity in any historical / religious / heritage / Culture /public places including old archeological/historical hills/mountains having historical identity etc. or any vital installation, irrespective of sites of mentioned areas / locations.**

**2. Subject to sub rule (1) the already granted mineral title and mineral permits shall stand cancelled.**

**Any person who shall carry out illegal mining directly or indirectly which is detrimental to any historical /religious /heritage /cultural /public place or any vital installation shall be punished with an imprisonment which may extend to six month or a fine of rupees up to five hundred thousand or with both”.**

8. However, the **modification** as mentioned in paragraph No.8 to the extent that all crushing plants in view of new prescribed rules shall deemed to be sealed until demarcation. **It is made clear that in case of operation of the crushing plant in future, the licenses of the plants will be issued after observing all the legal formalities and the crushing site would be at the**

**distance of at least one-kilometer radius from the historical site subject to NOC from the Environmental Protection Agency (SEPA). Besides the crushing plants shall adopt wet crushing technology and dust collectors. The Deputy Commissioners, Sukkur, Khairpur and Ghotki shall ensure strict compliance without fail and if any owner or companies found involved in any illegality or issued license without observing the legal formalities, delinquent officer(s) shall expose themselves for contempt of court proceedings. Besides, safety measures shall be adopted by the owners of crushing plants through crushing technology and dust collectors.**

17. That procedure regarding installation of a crushing units/plants nearly at all the stone quarries in Sindh is given by this Court vide order dated 20<sup>th</sup> April, 2021 in the case of Rindz Mari Vs. Province of Sindh through Secretary Mines and Mineral Development Department, Karachi and 08 others (2021 CLD 1195). Being relevant, paragraph-10 of the same is reproduced as under:-

*“10. Now we would like to address the installation of crushing units nearly at all the stone quarries in Sindh. These mechanized crushers crushed the huge rocks into the aggregate of small fragments locally known as crush and used as an important building material. These fragments of rocks are made with mechanized crushers, which produce a lot of air and noise pollution while working. It is unfortunate indeed that these crushers are usually installed within or nearby the stone quarries and on some within the vicinity of a highway or human settlements. Through wet-crushing, the dust produced could be minimized while the manufacturers of these crushers have also introduced different types of Dust Collectors to be attached with the crushing machines so that pollutants may not spread in the atmosphere but in the country, all these crushing machines are being used without Dust Collector installed or attached with them. Besides, it is necessary that before allocating a site for stone quarry, and initial Environment Examination (IEE) and subsequently an Environment Impact Assessment (EIA) should be done by SEPA after the public hearing but the said procedure has never been followed. It is also necessary that the area allocated to the operators of quarries should be properly demarcated for which the revenue authorities should also be involved and without NOC from the Board of Revenue, no new quarry for surface mineral should be given to prospective operators. Consequently, we crystalized the entire matter in the following terms.*

- i. The permit/license issued in favour of respondent No.9 by the Mines Department regarding the limestone quarry adjacent to the village of the petitioners is set aside by declaring that the same was established without fulfilling the necessary codal formalities.*
- ii. The crushing machine/plant functioning at or nearby the said quarry is also declared as illegal, as the same falls under the definition of a factory and it was also working without proper permission obtained according to sections 5 and 5-A of the Factories Act, 1984, as such the respondent No.9 is directed to remove the same within 15 days and in case of failure the Deputy Commissioners concerned is directed to remove the same on the expenses of respondent No.9.*
- iii. The Deputy Commissioners of all the districts in Sindh are directed to issue notices to all the crushing plants and machines installed and operating in their jurisdiction within or nearby a some quarry**

and with directions to get relevant permits/licenses issued by the relevant department of the ministry of industries within three months thereafter no crushing plant/machine should be allowed to function without permit and license and all such plants and machines should be removed by district administration.

- iv. Nevertheless, installation of such crushers or crushing plants may only be done keeping in view of the requirements of sustainable development as envisaged under the Sindh Environmental Protection Act, 2014 and rules made thereunder but under the permits/licenses issued as provided under sections 5 and 5-A of the Factories Act, 1934 after fulfilling all the codal formalities, rules and regulations.
- v. The Government of Sindh is directed to issue directions/notification under section 5 read with Section 16 of the Factories Act, 1934 for making it mandatory that all the Crusher, Crushing Machines, Crushing Plants operating/Operating within the province of Sindh should make proper arrangements for removing or minimizing dust by using wet-crushing technology or installing proper Dust Catcher within a period of six months. ]
- vi. The Deputy Commissioners of all the Districts in Sindh are directed to submit a list of all the surface minerals mines and quarries in their districts to the Director-General, Sindh Environment Protection Agency (SEPA), who shall conduct Environment Impact Assessment and furnish a report to Deputy Commissioner and Mines Department with suggestion regarding the operation of such mines and quarries. In case of a negative EIA, the Deputy Commissioners are directed to close such activities immediately. The Mines Department is directed to cooperate with the Deputy Commissioner and SEPA.
- vii. The Mines department is directed to allocate the surface minerals mining permits to prospective mine and quarry operators for surface minerals by auction while all those mining permits for stone quarries and mines pertaining to any sorts of surface minerals should be canceled, if not allocated to mines and quarry operations without any open auction or bit.
- viii. The Mines department is directed to get the area of Mines and Quarries of surface mining demarcated with the help and assistance of Revenue department while Deputy Commissioners are directed to make sure that no mine or quarry operator is allowed to operate beyond allocated areas."

[Emphasis added]

12-J-i The "Sindh Environmental Protection Act, 2014", was promulgated to address various environment related issues, but in the context of present controversy, and the ongoing climate change crisis, its significance and importance cannot be over looked. As the legislature aimed at preserving and conserving natural resources, by providing the necessary

safeguard to the state's natural resources; like air, water, and land from *pollution, deforestation and degradation*. The 2014 Act, also provides for the promotion of *sustainable development* by encouraging, responsible and *eco-friendly practices* in *industrial* as well as other *developmental* activities, in order to shield the biodiversity of the province in particular, and the whole of region in general. *SEPA 2014, Act*, was the need of the hour, as it was high time not only for Pakistan, considering the recent last year down pours, resulting in the post rains flooding calamities, but also the world over, the *climate change* is the hottest burning issue, and without any second thought, this 2014 Act, is part of the *international and bilateral mutual agreements* arrived at collectively, under the auspices of the *United Nations Environmental Program*, aimed at securing the Earth, from the horrors of the climate change, which are unprecedented rainfalls and tropical cyclones, while in some other regions, in shape of longer period of *droughts* and *frequent wildfires*.

12-J-ii. However, the '*Environmental Impact Assessment*' (EIA), as per the 2014 Act, is a prerequisite and makes it mandatory for conducting (EIAs) prior to certain commercial and industrial undertakings or projects, to evaluate their potential environmental impacts, before approval, which might eventually address issues related to climate change and promote strategies, such as '*Sustainable Development*' to *adapt* and to *mitigate* its impacts, the provisions of 2014 Act, makes it rather mandatory for any project to qualify the test of the '*Sustainable Development*' and the '*Strategic Environmental Development*', only then can they get a nod to go ahead, however, if the same is not undertaken, it carries far reaching *consequences*, as projects such as *mining excavations*, adversely effects the *ecosystem, biodiversity etc*. The relevant provisions with respect to such environmental examinations/assessments, are *Sections 17 and 18*, whereas, *Section-31*, of *SEPA 2014*, encourages public participation in such projects, where *Environment Impact Assessment* has been conducted, inviting public objections through advertisements.

12-J-iii. That, the similar view, as that in 2021 CLD 1195, and as correctly followed, in the case of [Re-Nadir Ali S/o Khan Muhammad Bugti vs. The Province of Sindh & others] in the High Court of Sindh Bench at Sukkur, discussed *ibid*, has again in fact taken note and caution of, in a case,



somehow, very similar to the facts of this very important aspect, in a most recent pronouncement from the Honourable Apex Court, while emphasizing the importance of the subject issue, in the case of *Public Interest Law Association of Pakistan versus Province of Punjab*, reported as 2023 CLD 618, while dilating upon the provisions of *Punjab Mining Concession Rules, 2002* and *Punjab Environmental Protection Act 1997*, which are '*analogous*' to the Sindh Province's almost identical scheme of law, i.e. *Sindh Mining Concession Rules, 2002* and *Sindh Environmental Protection Act, 2014*, excerpt from the Honourable Apex Court's recent ruling is reproduced hereinbelow;

*“-This Petition impugns order dated 18.11.2019, passed by the Lahore High Court, Lahore (High Court) wherein the Petitioner, in public interest, challenged the lack of environmental approvals for grant of small-scale mining licenses or leases. The issue raised is the grant of small-scale license or lease for mining minor minerals like sand, gravel and sandstone which are issued without considering the impact on the environment. The Petitioner's argument is that the Punjab Mining Concession Rules, 2002 (the Rules) sets out the process, for award of small-scale mining licenses without requiring any approval by the environmental authority, even though section 12 of the Environmental Protection Act, 1997 (the Act), requires that all projects need environmental approval from the Environmental Protection Agency (EPA). The counsel explained that as per the definitions and the provisions of the Rules, both large scale and small-scale mining operations are projects for the purposes of section 12 of the Act. Consequently, as per section 12 of the Act proponents of projects must obtain environmental approvals from the EPA*

4. *Pakistan has the world's second largest salt mines and coal reserves, fifth largest copper and gold reserves and second largest coal deposit' with gravel, sand and limestone deposits widely distributed in all four provinces. The country's GDP owing to mining, alone has increased from Rs.309,823/- million in 2020 to Rs.663,084/- million in 2021. There is huge potential in the mining sector for the country's economy; however, it cannot be achieved at the expense of the environment. We have examined the Regulations promulgated vide Notification dated 16.12.2022. As per these Regulations, projects listed in Schedule-I(D) require an IEE which include commercial extraction of sand, gravel, limestone, clay, sulphur and other minerals not included in Schedule-III and with a total cost of less than 500 million. It also includes exploration of coal, gold, copper, sulphur and precious stones similarly, projects listed in Schedule-II(C) require an EIA which includes mining and processing of coal, gold, copper, sulphur and precious stones. Hence, the Regulations clearly specify the requirement of an IEE or EIA, which is a fundamental and basic step before a project starts, so as to ensure that an adverse effect on the environment has been considered and addressed. This is because even the exploration and mining of minor minerals has an adverse impact on the environment, which includes deforestation, pollution, production of toxic waste water, loss of habitats and disruption of the ecosystem. In particular, with reference to sand mining; deforestation, loss of biodiversity, soil erosion and acid drainage are some of the serious environmental impacts, which have to be given due consideration. Surface mining creates health hazards for miners and local communities as well as gives rise to air pollution and produces toxic waste water, and causes droughts all of which must be*

catered for. In this context, climate change is one of the biggest global threats and the combination of surface mining and climate change becomes a serious threat for the ecological system. Hence, the mining sector must adopt climate proof mining policy which must consider how climate change will impact mining areas so that the climate change risks are integrated into the environment assessment. Therefore, without an IEE or EIA, these matters are totally neglected. Hence, special attention must be given to all environmental aspects even with reference to the mining of minor minerals.

5. The relevance of the IEE and EIA cannot be ignored. Not only do the IEE and EIA consider the environmental impact of the project but can also include standards and initiatives to improve sustainability of the sector. This can be vital in projects of mining under the MMD. They also prescribe mitigation measures and put in place a monitoring method through an Environment Management Plan (EMP). The EMP provides the basic framework for implementing and B managing mitigation and monitoring measures. It identifies the environment issues, the risks and recommends the required action to manage the impact. This is vital because not only does the miner know what its obligations are, it also gives the MMD and the EPA a framework to follow and to ensure its compliance. Hence, all factors considered the IEE and EIA ensure that the project is sustainable and all possible environmental consequences have been identified and addressed adequately.

6. In this context, we have examined the Regulations and agree with the contention of the learned counsel for the Petitioner that there is no timeline provided within which these approvals are to be obtained nor does it specify any process to bind the successful bidder of the project to the terms of any EMP or other measures provided for in the IEE or EIA. However, the Regulations do clarify that the proponent of the project has to obtain the IBE or the EIA and, in this case, the proponent of the project will always be the MMD, hence the practice of requiring a successful bidder to obtain an IEE or EIA after bidding of the project C totally negates the purpose and impact of these reports. The impact on the environment must be looked into before bidding commences by the MMD and at the time of bidding a bidder must know the terms set out in the IEE or EIA that they are bound by and are required to comply with especially the mitigation measures and the EMP. Hence, it is the MMD that is responsible for obtaining these reports before initiating the process for bidding of the said projects. In this regard, it would be useful for the MMD to provide guidelines and SOPs to facilitate this process and also provide penalizing provisions within the license or lease for any violation of the EMP so as to ensure compliance. While mining is an essential part of the economy, it must be conducted in a responsible and sustainable manner to minimize its impact on the environment. By implementing best practices and adhering to strict guidelines and developing a climate proof mining policy, it can be ensured that mining continues to provide for the economy while also protecting the health of our planet and its inhabitants. Economic growth is important but it must be achieved in a way that is sustainable and respectful of the natural systems that support it.

12-J-iv Indubitably, in view of above respective judgements, Fossil fuels – coal, oil and gas – are by far, the largest contributor to global climate change, accounting for over 75 per cent of global greenhouse gas emissions and nearly 90 per cent of all carbon dioxide emissions. As greenhouse gas emissions blanket the Earth, they trap the sun’s heat. This leads to global

warming and climate change. The world is now warming faster than at any point in recorded history. Warmer temperatures over time are changing weather patterns and disrupting the usual balance of nature. This poses many risks to human beings and all other forms of life on Earth. The right to a clean, healthy and sustainable environment is generally understood to include, the right to clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments to live, work, study and play; and healthy biodiversity and ecosystems. It also includes access to information; the right to participate in decision-making; and access to justice and effective remedies including the secure exercise of these rights free from reprisals and retaliation. Realizing, the right to a healthy environment also requires international cooperation, solidarity and equity in environmental action, including resource mobilization. Like any other responsible State, we as a nation, also have the legal obligation to prevent actions/omissions from causing environmental harms around the world. Climate Change is more than statistics, it's more than data points. It's more than net-zero targets. It's about the people, it's about the people who are being dangerously exposed and impacted right now. The right to a healthy environment can be a unifying force across all the international environment and human rights laws.

12-K In order to address these challenges requires a **multi-faceted** approach involving **government initiatives**, policy **reforms**, **adequate budget allocation**, community engagement, and collaboration with international partners and civil society organizations. Continued commitment to fulfilling the constitutional mandate i.e **free education for all in Pakistan** is essential for the development and empowerment of individuals and society as a whole.

13. Needless to mention here, that the local government is complete *hierarchy* and **funds** are being provided by the Province of Sindh for the development of the towns and local councils/town committees are bound to maintain running schemes as well as renovate and upgrade schemes already available. As per policy rider, which is fixed that a *certain amount* scheme can be permitted only is apparently *unjustified* and committees shall reserve at **least 50 % funds** in every district for **Higher Education Scholarships** for the deserving locals, where Gas,

Energy & Petroleum Companies, as well as Coal Mines Companies are working and that **scholarship** shall be on the basis of **merit**, selection process shall be in the same pattern as School Education **Endowment Funds** of Province of Sindh by **third party Testing Agency**. Accordingly, Endowment Fund shall be established with Trust deed within three months in districts where oil, gas, energy and coal companies are working. Deputy Commissioners shall ensure compliance. In case of failure, delinquent can be exposed to contempt proceedings.

13-A. This Court is also sanguine of significant *challenges* in providing free **healthcare** for all across the board without any *discrimination*, while the government has made *efforts* to **improve healthcare** services, *still* there is need for further progress. Some of the key areas, that require attention concerning *healthcare*, includes the following:

- (A) **Access to healthcare**: *Ensuring equitable access to healthcare services, especially in rural and underserved areas, remains a challenge. Adequate healthcare infrastructure, availability of medical personnel, and transportation (Ambulances) facilities are crucial in addressing this issue.*
- (B) **Quality of healthcare**: *Enhancing the quality of healthcare services is essential. This involves improving medical facilities, ensuring the availability of necessary medical equipment and medications, and enhancing the skills and training of healthcare professionals.*
- (C) **Financial barriers**: *Financial constraints prevent many individuals from accessing healthcare. Expanding the coverage of free or subsidized healthcare services, particularly for vulnerable populations, can help alleviate this issue.*
- (D) **Health awareness and preventive care**: *Emphasizing health education, awareness campaigns, and preventive care initiatives can play a significant role in reducing the burden of diseases and promoting overall well-being.*

13-B. Addressing, these challenges requires a **comprehensive** approach involving **collaboration** between the government, healthcare institutions, civil society organizations, and international partners. It involves **increased investment** in healthcare infrastructure, **adequate allocation** of resources, policy reforms, and effective **implementation** of healthcare programs. Efforts towards achieving universal **healthcare** coverage and free healthcare for all across the board are seemingly ongoing, and

continued attention and support are necessary to make further progress in this important area.

14. So far as other schemes i.e. sectors of **drug awareness**, promotion of **sports**, rehabilitation of the special needs **differently abled and children** having **autism** are concerned, nothing has been brought on record to show that any step towards initiation of such scheme has been undertaken by the respondents; such schemes are also seeking attention of the Respondents. In the present case the petitioners have raised pleas that their **objections** were not acceded to and instead unnecessary schemes were approved that too in the areas, where no exploring work is being done. At this occasion, it is pertinent to mention here, that a constitutional court can examine not merely the decision, but also the **decision** making process as well, in order to **determine**, *whether the same was appropriate* ? In any event, objective to provide basic needs such as **clean drinking water** and **quality education** etc. to the inhabitants of the areas where E&P Companies are operating cannot be **achieved** unless the rules of *justness, fairness*, and **openness** in consonance with the command of the Constitution enshrined in various Articles including Articles 4 and 25 are strictly followed.

### **Conclusion**

15. For the above stated reasons, the captioned **petitions** are **disposed of**. We, however, for easy compliance of all directives, reiterate the same in brief, as under:-

- (i) **Respondents** shall ensure that the **objections** of the petitioners shall be **attended** to and **detailed** reasons in writing for their **approval** and/or **refusal** shall be passed strictly in accordance of law;
- (ii) Respondents shall ensure strict compliance of directions and guidelines contained in **Abdul Hakeem Khoso** Case *ibid* in its true letter and spirit;
- (iii) Allocating 50% of total yearly royalty funds to educational institutions, scholarships, research grants, and technological advancements, which can foster innovation, skill development, and intellectual growth; Accordingly, Endowment Fund through trust likewise College Education Department of Sindh shall be established within three months; scholarship shall be awarded in same manner as by the

College Education Department for Higher Education. Deputy Commissioners being Secretaries of the committees shall ensure compliance and submit report through MIT-II of this Court on administrative side.

- (iv) To establish technical training in colleges/universities in coordination of STEVTA.
- (v) To ensure initiation of social schemes i.e. **drug awareness**, promotion of **sports**, rehabilitation of the special needs and **differently abled children**; besides shall ensure strict compliance of directions contained in paragraphs No.6, 12, 13 **(alongwith its' sub-paras) and 14** as well in its true letter and spirit without fail;
- (vi) To ensure allocation of a portion of the funds to **environmental conservation** and **sustainability initiatives**; besides investing in renewable **energy projects, reforestation efforts, water conservation programs**, and other environmentally friendly initiatives to mitigate the impact of resource extraction and promote **long-term sustainability**;
- (vii) To ensure that in future if the **Committee** approves any scheme in the area where the **E&P** companies are working or in an adjacent *area*, amongst the schemes as mentioned in **clause-2** of the Guidelines of **2021** mentioned *hereinabove*, the reasons for approval of such scheme shall be given in writing and if any objection is raised to such approval, the same shall be allowed and/or rejected by detailed reasons in writing;
- (viii) To ensure that the funds generated through **oil, gas**, energy and coal exploration companies shall be utilized in transparent and translucent manner in guideline (supra) without any discrimination; besides shall ensure provision of basic needs such as **clean water and quality education etc.** to the inhabitants of the area where **E&P** are operating;
- (ix) Allocating a portion of royalty funds to improve healthcare infrastructure, access to medical services, and public health initiatives for the well-being of the population. This can involve upgrading hospitals and clinics, supporting healthcare professionals, and implementing disease prevention and health promotion programs;
- (x) Conducting community consultations and engaging stakeholders can ensure that the funds are used in a manner that aligns with their needs, priorities, and cultural values.
- (xi) Allocation funds for social programs aimed to support vulnerable populations, such as the elderly, disabled individuals, Autism Centers, low-income families, or those facing economic hardships;

- (xii) To ensure that if the royalties are linked to cultural resources or indigenous territories, it is crucial to allocate funds for the preservation and promotion of cultural heritage; besides initiatives with regard to protection of sacred sites, support for cultural events and festivals, language revitalization efforts, and the preservation of traditional knowledge.
- (xiii) Compliance report to this effect be submitted through M.I.T-II of this Court without fail.

16. While parting it would be conducive to refer clause (g) and (i) of Hakeem Khoso case (supra):-

- (a) A report in respect of completed schemes shall be sent to the Federal and Provincial Ombudsmen and to the Human Rights Cell of this Court (**Supreme Court**).
- (b) The DG PC shall solicit half-yearly reports from all licence/lease holders in respect of their social welfare obligations towards the local community, including among other things, the locations, budgets and status of schemes completed, ongoing, or initiated during those six months.

Therefore, Deputy Commissioners, where oil, gas, energy and coal companies are working, shall submit a report to the concerned quarters and copies shall also be sent to this Court (**High Court of Sindh**).

17. Let copy of this order be **communicated** to all concerned, including **Worthy Chief Minister, Sindh, Federal Secretary, Ministry of Energy (Petroleum Division), Government of Pakistan, Islamabad, Director General, Coal Mines Development, Government of Sindh, Federal and Provincial Ombudsmen, Deputy Commissioner(s)** all over Sindh directly as well as through Chief Secretary Sindh, **Member Inspection Team, & Additional Registrar** of this Court, through emails, whatsapp and other modes for strict compliance.

Learned Registrar shall ensure translation of this judgment into Urdu & Sindhi and shall flash it on the High Court website

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