

ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P.No.2573/2023
Public Interest Law Association of Pakistan
Vs.
Federation of Pakistan and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
03	07.09.2023	Ms. Natalya Kamal, Advocate for the petitioner. Mr. Tariq Zaman Ch., Advocate / proxy counsel for the CDA / respondent No.2. Malik Shaukat Nawaz Awan, learned AAG. M/s. Khalid Mehmood Chadhar, Dy. Dir (EIA) and Muhammad Ramzan, A.D. (Legal / Enforcement), Pak. EPA. Ms. Rina Saeed, Chairperson and Mr. Vaqar Zakaria, Board Member, I.W.M.B. / respondent No.4.

After the orders dated 25.08.2023 and 31.08.2023 were passed by this Court, the officials of the Pakistan Environmental Protection Agency (“Pak. E.P.A.”) inspected the site where the construction activity on the “Alexander Road Project” is ongoing and have submitted a report, which confirms that presently the construction activity is ongoing. One of the observations in the said report is as follows:-

“the project proponent (i.e. CDA) need to submit Environmental Management & Monitoring Plan (EMMP)/ Environmental Report in accordance with Pakistan Environmental Assessment Procedures for the construction and operational phase of the instant project in compliance with Pak-EPA Review of IEE / EIA Regulations, 2000 for consideration of grant of acceptance by Pak-EPA. The project proponent also needs to submit the environmental compliance report in accordance with the said EMMP.”

2. Mr. Khalid Mehmood Chadhar, Deputy Director (E.I.A.) is in attendance along with Mr. Muhammad Ramzan, Assistant Director (Legal / Enforcement) on behalf of

the Pak. E.P.A. (respondent No.3) and has clarified that it was obligatory on the Capital Development Authority (“C.D.A.”) to have obtained an approval of the Environmental Impact Assessment (“E.I.A.”) in terms of Section 12 of the Pakistan Environmental Protection Act, 1997 (“the 1997 Act”) before the commencement of the construction work. The omission on the part of the C.D.A. to obtain such an approval, according to them, is in violation of Section 12 as well as Section 16 of the said Act and such a violation empowers the Pak. E.P.A. to initiate proceedings which includes the exercise of the powers to immediately stop the construction work. They further submitted that presently no action has been taken by the Pak. E.P.A. on account of the pendency of the instant case before this Court. It is clarified that this Court has not issued an injunctive order restraining the Pak. E.P.A. from performing its statutory obligations. Pak. E.P.A. may proceed in the matter strictly in accordance with the law.

Learned counsel for the petitioner submitted that in terms of Section 21 of the Islamabad Wildlife (Protection, Preservation, Conservation & Management) Ordinance, 1979 (“1979 Ordinance”), the construction activity of the nature being presently carried out by the C.D.A. on the “*Alexander Road Project*” is not permissible. She also submitted that the *proviso* to Section 21(4) of the 1979 Ordinance requires prior authorization under the said Ordinance before clearing or breaking up of any land

for cultivation, mining or for any other purposes. This authorization, she submits, was also not obtained before the commencement of the construction work. She has placed reliance on the notification dated 21.04.1980 issued by the Ministry of Housing and Works, which contains the declaration of the Federal Government as to the areas which form part of the National Park in the Islamabad Capital Territory ("I.C.T."). This area has been listed as follows:-

- (1) *Margallah Reserve Forest comprising compartments No.2 to 5, 7 to 23, 28, 30 to 38(i) and 41 (ii).*
- (2) *Military Grass Farm comprising compartments No.1 to 25*
- (3) *Lands falling in villages Mangial, Malach, Dakhli, Phulgran, Subhan, Mandla, Jhang Bagial, Malpur (Bijran), Rumli, Narias, Padoh Dakhli, Noorpur Shahan, Ratta Hottar, Saidpur, Dhok Jiwan, Gandiar, Kalinjar and Sanjari.*
- (4) *Area bounded by Sherah-i-Kashmir in the north, Shahrah-i-Islamabad in the west and Murree Road in the south and east upto its junction with Sharah-i-Kashmir; and*
- (5) *Rawal Lake and area within a distance of 2 kilometres from the highest water mark of Rawal Lake"*

The report submitted by the Pak. E.P.A. has clarified that the area where the construction activity is presently ongoing, falls within the limits of the notified National Park. I deem it appropriate, to leave the officials of the Pak. E.P.A. to carry out their statutory obligations and not to interfere with the Pak. E.P.A.'s proceedings at this stage. Let progress in the matter be intimated to this Court on the next date of hearing. The C.D.A. is directed to submit a report prior to the next date of hearing. The C.D.A. (respondent No.2) as well as Islamabad

Wildlife Management Board (respondent No.4) shall submit para-wise comments prior to the next date of hearing.

This Court was apprised that the Pak. E.P.A. comprises of the following three Directorates:-

- (1) *E.I.A / Monitoring Directorate, which is headed by a Director (EIA / Monitoring) and includes two Deputy Directors;*
- (2) *Lab / National Environmental Quality Standards ("N.E.Q.S.") Directorate, which is headed by a Director and includes two Deputy Directors, one Assistant Inspector, one Field Assistant, one Senior Laboratory Assistant and one Lab Assistant.*
- (3). *Admin / Legal / Enforcement Directorate, which is headed by a Director (A / L / E) and includes two Deputy Directors and two Assistant Directors.*

Presently, the post of one Deputy Director in the E.I.A. / Monitoring Directorate and one post of Assistant Director (Bio safety), three posts of Chemists and one post of Assistant Inspector in the Lab / N.E.Q.S Directorate are lying vacant whereas one post of Director (Admin / Legal / Enforcement), Pak. E.P.A. and one post of Sub-Engineer are also vacant. These posts have been vacant since a long time.

It is my view that these vacancies have impeded the smooth functioning of the Pak. E.P.A., hence, I deem it appropriate, to direct the Director General, Pak. E.P.A. to take the measures to fill these vacant posts through

promotion and/or direct recruitment as the case may be in accordance with the relevant Recruitment Rules / Regulations at the earliest. On the next date of hearing, a report shall be submitted as to the steps being taken to fill these vacant posts. Given the deterioration of the environment in the I.C.T, I am of the *prima facie* view that the present strength of Inspectors in the Pak. E.P.A. is deficient to address or deal with the challenges of the environmental degradation. It is my view that measures be taken to enhance the strength of the Inspectors in Pak. E.P.A. For this purpose, it would be appropriate, for an officer not below the rank of an Additional Secretary, Ministry of Climate Change and Environmental Coordination to attend the Court on the next date of hearing. The learned Assistant Attorney General submits that he shall ensure that the official from the said Ministry is briefed about the instant litigation and for his attendance in the Court.

Now to come up for further proceedings on 18.09.2023.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

Sanaullah