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26/4/13

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI
(CONSTITUTIONAL JURISDICTION)

Constitution Petition No. D-295 of 2013

1. Pakistan Institute of Labour
Education & Research,
Registered under the Voluntary Social
Welfare Agencies, Ordinance, 1961,
registered office at PILER Centre,
ST-001, Sector X, Sub-Sector V,
Gulshan-e-Maymar,
Karachi-75340
2. Pakistan Fisher Folk Forum,
a Society registered under the
Societies Registration Act XXI of 1860,
having its Head Office at Sachal Hall,
Ibrahim Hyderi, Bin Qasim Town,
Karachi
3. National Trade Union Federation (REGD),
a Federation registered under the
Laws of Pakistan,
having its office at 628 Mashriq Centre,
Gulshan-e-Iqbal, Block No. 14,
National Stadium Road,
Karachi
4. Hozzry Garments Textile
& General Workers Union,
a Trade Union registered under the
Laws of Pakistan,
having its office at D-695,
Orangi Town,
Karachi
5. Javed Iqbal Burki
Son of (late) Muhammad Deen,
Muslim, Adult,
Resident of 14/10-4A,
Nazimabad,
Karachi
6. Syed Ammad Bin Tahir
Son of Syed Tahir Mahmood,
Resident of S-19,
First Floor, Mehmoodabad Street,
Phase-I, D.H.A.,
Karachi.....Petitioners

Versus

1. Sindh Building Control Authority
Through the Director General,
Annexe to the Civic Centre Building,

Hassan Square, Gulshan-e-Iqbal,
Karachi

2. Federation of Pakistan
Through the Principal Secretary,
Prime Minister of Pakistan,
Prime Minister's Secretariat,
Constitution Avenue,
Islamabad
3. Province of Sindh
Through the Chief Secretary,
Government of Sindh,
Sindh Secretariat,
Karachi
4. Province of Sindh
Through the Secretary,
Ministry of Labour,
Government of Sindh,
Sindh Secretariat,
Karachi
5. Province of Sindh
Through the Home Secretary,
Government of Sindh,
Sindh Secretariat,
Karachi
6. Sindh Industrial Trading Estate
Through the Secretary,
Manghopir Road,
S.I.T.E.,
Karachi
7. I.G. Sindh
Sindh Police
Police Head Office,
I.I. Chundrigar Road,
Karachi
8. Karachi Metropolitan Corporation
Through the Chief Officer,
Civic Centre Building, Hasan Square,
Gulshan-e-Iqbal, Karachi
9. Abdul Aziz
Son of Ali Muhammad,
Muslim, Adult,
Resident of House No. 31/11, Street No.30,
Off Khayaban-e-Shamsheer,
Phase-V Extension, D.H.A.,
Karachi
10. Arshad Abdul Aziz
Son of Abdul Aziz Bhaila,
Muslim, Adult,
Resident of House No. 31/11, Street No.30,
Off Khayaban-e-Shamsheer,
Phase-V Extension, D.H.A.,
Karachi

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11. Shahid Abdul Aziz
Son of Abdul Aziz Bhaila,
Muslim, Adult,
Resident of House No. 29/111, Sabah Avenue,
Phase-V Extension, D.H.A.,
Karachi
 12. Regional Inspection & Certification
Agency (Pvt.) Limited (RI&CA)
Through its Managing Director,
D-13, Al-Hilal Society,
Opp. Askari Park,
Main University Road,
Karachi
 13. RINA Services S.p.A.,
Through its Managing Director,
Via Corsica 12
16128, Genova,
Italy
 14. Sindh Environmental Protection Agency
Through its Director General,
EPA-Complex, Plot 2/1,
Sector No. 23,
Korangi Industrial Area,
Karachi.....Respondents

**CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

It is most respectfully and most humbly submitted on behalf of the abovenamed
Petitioners as under:

1. That the subject-matter of this present Petition is the biggest industrial tragedies in Pakistan's history, in which a fire destroyed a garment factory operated by Messrs Ali Enterprises at F-67, S.I.T.E., Baldia Town, Karachi [hereinafter referred to as the "Baldia Fire Tragedy"], due to which around two hundred and fifty nine people, including young men, women, pregnant women and children were burnt alive and numerous people were injured. It is submitted that the Petitioners, through this Petition, seek justice and enforcement of fundamental rights and the law, for the victims, the survivors and their families, and also seeks further directions from this Honourable Court in order to avoid such industrial tragedies in the future.

2. That the Petitioners No. 1 to No.4 are all known organisations, which have undertaken dedicated efforts towards the betterment of the people of Pakistan through various measures on a voluntary basis. It is submitted that the Petitioners No. 1 to 4 also desire, and are working for, the enforcement of the rights of the workers and the people of Pakistan in the various industrial and labour work places in Pakistan. It is further submitted that the Petitioner No. 5 is a known legal activist, who has been involved in various struggles for the enforcement of the legal rights of the people of Pakistan and also desires, and is working for, the enforcement of the rights of the workers and the people of Pakistan in the various industrial and labour work places in Pakistan. The Petitioner No.6 is an artist, who has been involved in raising awareness of the various labour related issues through his artwork.

A copy of the Resolutions passed by the Petitioners No.1 to 4 authorising the institution of this Petition, are annexed and marked as Annex 'A' to 'A-3' respectively.

3. That it has come to the knowledge of the Petitioners that the garment factory operated by Messrs Ali Enterprises, in which the Baldia Fire Tragedy took place, is a three storey building with around five hundred workers on each floor, with an estimated number of over one thousand five hundred workers in total working in the factory. It is submitted that there are three exits in the said factory and a main exit. It was an illegal common practice of the Respondents No.9 to No.11 and the management of Messrs Ali Enterprises that during the factory shifts, the exits were locked from the outside and the workers were locked inside the factory.
4. That to the shock and horror of the people of Pakistan, especially the people of Karachi, on September 11th, 2012, one of the biggest industrial fire tragedies took place at the garment factory [hereinafter referred to as the "Baldia Factory"] of Messrs Ali Enterprises at F-67, S.I.T.E., Baldia Town, Karachi. It is submitted that 259 people died and numerous people were injured in the said Baldia Fire

Tragedy. It is submitted that it has been reported, and prima facie proven, that one of the reasons as to why such a large number of people were unable to escape the fire in the factory is because the management of Messrs Ali Enterprises, namely Respondents No. 9 to 11 and others, had locked the exits of the factory premises from the outside and the windows of the factory premises had grills because of which, young men, women, pregnant women and children, were burnt alive in the Industrial Fire Tragedy. In short, the Baldia Factory did not have required fire and safe provisions. It is important to note here that it has been reported that not only did the Respondents No.9 to 11 do absolutely nothing substantial to save the lives of hundreds of workers but the Respondents No.9 to 11 were shockingly only interested, and involved, in trying to save their industrial goods from the fire and most importantly, the Respondents No.9 to 11 fled from the factory, at the time of the Baldia Fire Tragedy, to the detriment of the workers of their factory.

5. That, inter-alia, the Petitioners No. 1 to 5 have filed a Constitution Petition No.3318 of 2012, in relation to the Baldia Fire Tragedy, in which various Orders have been passed by the Honourable Sindh High Court on the various issues stemming from the Baldia Fire Tragedy and in relation to the criminal trial of the Respondents No.9 to 11.

A copy of the Memo of C.P. No.3318 of 2012, and its Order Sheet, are marked and annexed as Annex 'B' & 'B-1' respectively.

6. That in relation to the Baldia Fire Tragedy, an F.I.R. No. 343 of 2012 [hereinafter referred to as the "FIR No.343"], under Sections 435/436/337/322/302/34, P.P.C., 1860, has been initiated by P.S. S.I.T.E. B, Karachi, against, inter alia, the Respondents No.9 to 11. It is submitted that through Order dated: 06-10-2012, the Bail Application of the Respondent No. 10 and 11 was denied by the Learned Vth Additional Sessions Judge (West) At Karachi [hereinafter referred to as the "Learned Sessions Judge"], in Criminal Bail Applications No. 1214 and 1215 of 2012. It is further submitted that, inter-alia, the Accused Persons in the

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abovementioned Criminal Bail Applications No. 1214 and 1215 of 2012 have impugned the Order dated: 06-10-2012 of the Learned Sessions Judge through Criminal Bail Application Nos. 1153 of 2012, 1266 of 2012 and 1208 of 2012.

A copy of the FIR, along with the translation, Order dated: 06-10-2012, and Charge Sheet in FIR No.343/12, are annexed and marked as Annex 'C' to 'C-2' respectively.

7. That in a speech to the Karachi Chamber of Commerce and Industry (KCCI) on December 29th, 2012, the Prime Minister is reported to have said that "Authorities should reinvestigate the case and provide justice to the employers of Ali Enterprises if a wrong case has been registered against the factory owners under Section 302 [murder]" and according to him "no case of Section 302, P.P.C., 1860, was made against the Respondents No.9 to No.11". It is pertinent to note here that Mr. Jehanzaib Khan [hereinafter referred to as the "IO"], Investigation Officer in FIR No.343, has subsequent to the Prime Minister's abovementioned speech to the KCCI, submitted a Supplementary Charge Sheet in FIR No.343 in which he has omitted, for no stated reason, the Murder Charge i.e. he has removed from the Supplementary Charge Sheet the offence under Section 302, P.P.C., 1860.

A copy of The Express Tribune news clipping dated: 30-12-2012 and the Supplementary Charge Sheet are annexed and marked as Annex 'D' to 'D-1' respectively.

8. That the Respondent No.13 ['RINA'], purportedly surveyed the factory of Messrs Ali Enterprises through their local partner, i.e. the Respondent No.12 ['RI &CA'] and issued Certificate No.SA-944 dated: 21-08-2012, i.e. less than three weeks before the Baldia Town Tragedy.

A copy of the Certificate No. SA-944 dated: 21-08-2012, letter dated: 06-06-2012, and Statement dated: 21-09-2012, are annexed and marked as Annex 'E' to 'E-2' respectively.

9. That the Respondent No.1 ['SBCA'] has, through Statement dated: 26-11-2012 filed in CP No.3188 of 2012, declared that the Respondent No.1 ['SBCA'] has no jurisdiction in the S.I.T.E. Area, i.e. in which the Baldia Factory is situated, which is purportedly why the Respondent No.1 ['SBCA'] has not taken any action against the owners of the Baldia Factory for building violations.

A copy of the Statement dated: 26-11-2012 is annexed and marked as Annex 'F'.

10. That the Respondent No.6 ('SITE') has issued various notices dated: 9-3-2004, 24-8-2005, 12-9-2005 & 3-10-2005, to the Respondents No.9 to No.11 for violations of building violations in relation to the building violations.

A copy of the abovementioned Notices dated: 9-3-2004, 24-8-2005, 12-9-2005 & 3-10-2005, are annexed and marked as Annex 'G' to 'G-3' respectively.

11. That the Respondent No.8 ['KMC'] has also, through their Statement dated: 13-11-2012, filed in C.P.No.3318 of 2012, pointed some of the fire and safety violations in the Baldia Factory.

A copy of the Statement dated: 13-11-2012 is annexed and marked as Annex 'H'.

12. That the Respondent No.4 ['Labour Ministry'], through their Statement dated: 20-10-2012 filed in C.P. No.3318 of 2012, confirmed the existence of violations of various labour laws in the Baldia Factory. It is also pertinent to note here that the Respondent No.4 ['Labour Ministry'] has in their Reply Statement in C.P. No. 3318 of 2012, pointed out the alarming fact that the Baldia Factory was not even registered with the Directorate of Labour.

A copy of the Statement dated: 20-10-2012 and Reply Statement, are annexed and marked as Annex 'I' & 'I-1' respectively.

13. That the Respondent No.6 ['Home Secretary'], through Notification dated: 12-09-2012, constituted a Tribunal of inquiry headed by Mr. Justice (Retired) Zahid Kurban Alavi. It is submitted that the Report of the abovementioned Tribunal has also earmarked the various labour and other legal violations at the Baldia Factory as the primary cause of the high death toll of the Baldia Fire Tragedy and has recommended that immediate action be taken for the enforcement of Labour and Building Laws.

*A copy of the Tribunal's Report is annexed and marked as **Annex 'J'**.*

14. That it is important to note that even the European Union Parliament has passed a strongly worded resolution in regard to the Baldia Fire Tragedy and there is imminent danger that Pakistani exporters may be subjected to anti-labour sanctions from the international community if no action is taken on this issue.

*A copy of the abovementioned European Union Parliament resolution, is annexed and marked as **Annex 'K'**.*

15. That the above facts clearly show that the Baldia Fire Tragedy is one of the greatest tragedies in the history of Pakistan. It is submitted that it is not only a tragedy because of the huge loss of life and the huge number of injured persons, but because it shows that there is a complete breakdown of the State to enforce the law as well as to respond to an industrial disaster. It is further submitted that it is also a tragedy because of the shocking behaviour and reaction of the Respondents No.9 to 11 before, during, and after, the Baldia Fire Tragedy, which clearly shows that there is a deterioration of civilised values in society indicating a breakdown of the society.

16. That it is most respectfully and most humbly submitted that being aggrieved by the abovementioned actions and inactions of the Respondents as being

unconstitutional, without jurisdiction and illegal, the Petitioners have no alternative or efficacious remedy except to invoke the Constitutional jurisdiction of this Court on the, inter alia, facts and grounds stated herein.

GROUND

- A. That the Prime Minister of Pakistan has no legal authority to interfere in a criminal investigation, especially one which is already pending adjudication before the Courts of Pakistan and in which a Charge Sheet has already been submitted and accepted by the Trial Court. It is submitted that such an intervention by the Prime Minister of Pakistan is not only illegal and unconstitutional but is also a violation of the Provincial Autonomy under the Constitution, 1973. It is further submitted that the submission of any charge sheet by the Investigation Officer in FIR No.343 of 2012, in pursuant to such directions is also completely illegal. Therefore, the actions and directions of the Prime Minister of Pakistan are unconstitutional, without jurisdiction and of no legal effect and are a violation of the Petitioners fundamental rights under the Constitution.
- B. That the Respondent No. 12 ['RI&CA'] and the Respondent No.13 ['RINA'] have committed blatant fraud because no inspection of the Baldia Factory has taken place and fabricated documents were issued. It is also pertinent to note here that there are allegations against the Respondent No.13 ['RINA'] for being responsible for other tragedies in other countries. Furthermore, the Managing Director of the Respondent No.13 ['RI&CA'] i.e. Mr. Adnan Ul Hassan has stated, in relation to the survey of the Baldia Factory, that "We didn't do Ali Enterprises" and "I've never even seen the factory" whereas, in his letter dated: 06-06-2012, addressed to the Respondent No.10 ['Arshad Abdul Aziz'], Mr. Hassan has clearly alluded to the fact that Respondent No.12 ['RI&CA'] was

directly involved in the certification of the Baldia Factory. Therefore, the conduct of the Respondent No. 12 ['RI&CA'] and the Respondent No.13 ['RINA'] suggests that their actions are malafide and that an investigation into the affairs of the Respondent No.12 ['RI&CA'] and the Respondent No.13 ['RINA'] is essential in order to determine whether the factories they have purportedly certified, which the Petitioners believe to be in excess of one hundred since the year, 2007, are worthy of any certification. Therefore, the aforementioned actions of Respondent No.12 & No.13 are unconstitutional, without jurisdiction and of no legal effect and are a violation of the Petitioners fundamental rights under the Constitution.

A copy of the News clipping dated: 7-12-2012, published in the News York Time, and Lloyd's List dated: 5-6-2007, is annexed and marked as Annex 'L' & 'L-1' respectively.

- C. That although the Respondent No.1 ['SBCA'] has jurisdiction in the S.I.T.E. area, the Respondent No.1 ['SBCA'] has malafidely absolved itself from all responsibility by claiming that the S.I.T.E. area does not fall within the ambit of its jurisdiction and therefore, the Respondent No.1 ['SBCA'] claims that it is not responsible for the building violations which have been occurring in the Baldia Factory for the last many years and for which violations, neither any inspection has taken place in order to identify the building law violations nor has any action been taken against the owners of the Baldia Factory for such violations. It is submitted that, notwithstanding the abovementioned, if the Respondent No.1 ['SBCA'] does not have any jurisdiction in the S.I.T.E. area, resultantly the Respondent No.6 ['S.I.T.E.'] is directly responsible for deliberately not taking any action against the owners of the Baldia Factory for the numerous building law violations. Therefore, the aforementioned actions of the Respondents are unconstitutional, without jurisdiction and of no legal effect and are a violation of the Petitioners fundamental rights under the Constitution.

- D. That the Respondents No. 4 ['Labour Ministry'] has alleged various labour law violations in the Baldia Factory including, but not limited to, the alarming fact that the Baldia Factory was not even registered with the Labour Directorate however, to date, no action has been taken by the aforementioned Respondent for such violations. Therefore, the aforementioned inaction of the Respondent No.4 are unconstitutional, without jurisdiction and of no legal effect and are a violation of the Petitioners fundamental rights under the Constitution.
- E. That in view of the above, it is obvious and apparent that no compliance of the Pakistan Environmental Protection Act, 1997, in the construction and operation of the Baldia Factory has taken place, and neither has the Respondent No. 15 ['SEPA'] taken any action in relation to the Baldia Factory for enforcement and compliance of the Environmental Protection laws of Pakistan. Therefore, the aforementioned inaction of the Respondent No.15 is unconstitutional, without jurisdiction and of no legal effect and are a violation of the Petitioners fundamental rights under the Constitution.
- F. That the Baldia Fire Tragedy has been one of the major catastrophes in the history of Pakistan and has led to the death of 259 people and destruction of the lives of an equal number of families. It is the biggest factory fire tragedy in recorded history. It is submitted that in view of the magnitude of the tragedy and suffering of the families, it is in the public interest that the Respondent No.3 should acquire the land on which the Baldia Factory is built under the Land Acquisition Act, 1894, as well as other relevant laws, for the purpose of creating a public monument in commemoration of the victims of the Baldia Fire Tragedy and for creating a rehabilitation and community centre for the families of the victims. The compensation for the acquisition of such land should be used to build the aforementioned public projects. Failure to do so, would be a violation of the Respondent No.3's constitutional duty towards the people of Sindh, in particular, and Pakistan, in general.

- G. That it is most respectfully and most humbly submitted that the Petitioner seeks the indulgence of this Honourable Court to raise further grounds at the time of the hearing of this Petition and its accompanying application.

PRAYER

It is, therefore, most respectfully and most humbly prayed that this Honourable Court may graciously pass judgment and orders, against the Respondents, in the following terms:

- (a) Declaration that Statement and Directions of the Prime Minister of Pakistan, in favour of the Respondents No. 9 to 11, amounts to an interference in the criminal prosecution and trial in relation to F.I.R. No. 343/12 dated: 11-09-2012 (PS S.I.T.E. B), and is unconstitutional, without jurisdiction and of no legal effect;
- (b) Declaration that Statement and Directions of the Prime Minister of Pakistan, in favour of the Respondents No. 9 to 11, in relation to F.I.R. No. 343/12 dated: 11-09-2012 (PS S.I.T.E. B), is a violation of Provincial Autonomy under the Constitution, 1973, and is unconstitutional, without jurisdiction and of no legal effect;
- (c) Permanently restrain the Respondents No.3, No.5 and No.7, from taking any actions on the basis of statements and directions of the Prime Minister of Pakistan, in relation to F.I.R. No. 343/12 dated: 11-09-2012 (PS S.I.T.E. B);
- (d) Declare that the Respondent No.1 ('S.B.C.A.') has jurisdiction in relation to the building violations in the Baldia Garment Factory, run by Messrs Ali Enterprises at F-67, S.I.T.E., Baldia Town, Karachi, and further direct the Respondent No.1

(‘S.B.C.A.’) to take action, and initiate legal proceedings, against the Respondents No. 9 to 11 for such violations;

- (e) In the alternative to the above prayer (d), Direct the Respondent No. 6 (‘S.I.T.E.’) to take action, and initiate legal proceedings, against the Respondents No. 9 to 11 for building violations in the Baldia Garment Factory, run by Messrs Ali Enterprises at F-67, S.I.T.E., Baldia Town, Karachi;
- (f) Direct the Respondent No. 4 (‘Labour Ministry’) to take action, and initiate legal proceedings, against the Respondents No. 9 to 11 for violation of labour laws in relation to the Baldia Garment Factory, run by Messrs Ali Enterprises at F-67, S.I.T.E., Baldia Town, Karachi;
- (g) Direct the Respondent No. 14 (‘S.E.P.A.’) to take action, and initiate legal proceedings, against the Respondents No. 9 to 11 for violation of the Pakistan Environmental Protection Act, 1997, and the laws under it, in relation to the Baldia Garment Factory, run by Messrs Ali Enterprises at F-67, S.I.T.E., Baldia Town, Karachi;
- (h) Direct the Respondents No.3 (‘Govt. of Sindh’) & No.4 (‘Labour Ministry’) to take action, and initiate legal proceedings, against the Respondents No.12 & No.13, for issuing false certifications as Per SA 8000:2008, in relation to the Baldia Garment Factory and other factories in Karachi;
- (i) Direct the Respondent No.3 to acquire the land, on which Baldia Garment Factory at F-67, S.I.T.E., Baldia Town, Karachi, is built, for the public purpose of the construction and running of a rehabilitation and community centre for the families of the victims, injured and displaced workers of the Baldia Garment Factory, and to use the compensation money to be paid for such acquisition for the construction and running of such rehabilitation and community centre;

- (j) Grant such further, additional or alternative relief, as this Honourable Court may deem fit and proper.

PETITIONER NO.1

PETITIONER NO.2

PETITIONER NO.3

PETITIONER NO.4

PETITIONER NO.5

PETITIONER NO.6

ADVOCATE FOR THE PETITIONERS

Karachi;

Dated: 26th January, 2013

DOCUMENTS FILED: As shown in the Petition

DOCUMENTS RELIED UPON: The abovementioned documents e.t.c.

ADDRESS OF PETITIONERS: As per in title of the petition

ADDRESS OF PETITIONERS COUNSEL: Faisal Siddiqi
Advocate
HC-8504/HC/KHI
F-66/3, Park Lane,
Block-5, Clifton,
Karachi.

DRAWN BY ME

ADVOCATE