

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

Constitution Petition No. 3318 of 2012

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
Industrial Relations Ordinance, 2007,
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
Industrial Relation (Revival and
Amendment) Act, 2010,
having its office at D-695,
Orangi Town,
Karachi
5. Human Rights Commission of Pakistan
A Society, registered under the
Societies Registration Act XXI of 1860,
having its Head Office at Unit No. 8,
First Floor, Ilaco House, Abdullah Haroon Road,
Saddar, Karachi
6. Javed Iqbal Burki
Son of (late) Muhammad Deen,
Muslim, Adult,
Resident of 14/10-4A,
Nazimabad,
Karachi.....Petitioners

Versus

1. Federation of Pakistan
Through the Secretary,

Ministry of National Regulations & Services,
Constitution Avenue,
Islamabad

2. Province of Sindh
Through the Chief Secretary,
Government of Sindh,
Sindh Secretariat,
Karachi
3. Province of Sindh
Through the Secretary,
Ministry of Labour,
Government of Sindh,
Sindh Secretariat,
Karachi
4. Province of Sindh
Through the Secretary,
Ministry of Health,
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. Qaim Ali Shah
Son of unknown,
Muslim, Adult,
Chief Minister of Sindh,
Resident at Chief Minister House,
Near Sheraton Hotel,
Karachi
8. I.G. Sindh
Sindh Police
Police Head Office,
I.I. Chundrigar Road,
Karachi
9. National Disaster Management Authority
Through the Chairperson,
Prime Minister's Secretariat,
Constitution Avenue,
Islamabad
10. Provincial Disaster Management Authority
Through the Chairperson,
C-52, Block 2, K.D.A. Scheme No.5,
Karachi

- 5
11. Karachi Metropolitan Corporation
Through the Commissioner Karachi,
Civic Centre Building, Hasan Square,
Gulshan-e-Iqbal, Karachi
 12. Sindh Building Control Authority
Through the Director General,
Annexe to the Civic Centre Building,
Hassan Square, Gulshan-e-Iqbal,
Karachi
 13. 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
 14. 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
 15. 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
 16. State Bank of Pakistan
Through the Governor,
State Bank Building,
I.I. Chundrigar Road,
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 one of the biggest industrial
tragedies in Pakistan's history, in which a fire destroyed a garment factory owned
by Messrs Ali Enterprises at F-67, S.I.T.E., Baldia Town, Karachi [hereinafter
referred to as the "Industrial Fire Tragedy"], due to which over two hundred and
fifty people, including young men, women, pregnant women and children were

burnt alive and around a hundred 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 5 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 5 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. 6 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

A copy of the Resolutions passed by the Petitioners No.1 to 5 authorising the institution of this Petition are annexed and marked as Annex 'A' to 'A-4' respectively.

3. That it has come to the knowledge of the Petitioners that the garment factory of Messrs Ali Enterprises, in which the Industrial Fire Tragedy took place, is a three storey building with around five hundred workers on each floor, with an estimated number of 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 a illegal common practice of the Respondents No.13 to No.15 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 and the exits were unlocked only during lunchtime and after the working day of the factory ended at 7:00 P.M..

- 9
4. That to the shock and surprise of the Petitioners, it has been disclosed by Mr. Ameer Nawab, former Sindh Labour Minister, that the Respondent No.7 ['Qaim Ali Shah'] "had stopped him taking action against factories violating labour rules". It is submitted that it has also been reported in the press that the Respondent No.7 ['Qaim Ali Shah'] "had verbally issued directives to government officials to stop the inspection of factories in Sindh". It is important to note here that the aforementioned allegations against the Respondent No.7 ['Qaim Ali Shah'], which have been reported in the press, have not been denied by the said Respondent.

A copy of the news item dated: 13-09-2012 of the Express Tribune is annexed and marked as Annex 'B'.

5. That in view of the facts stated in Para 4 above, it has also come within the knowledge of the Petitioners that the garment factory of Messrs Ali Enterprises was not inspected by the Respondent No.3 ['Labour Ministry'] and even if any inspection did take place [of which the Petitioner is unaware of], it prima facie appears that the inspection was merely on paper and not a substantial compliance of the labour laws of Pakistan. It is submitted that the Industrial Fire Tragedy has also raised questions regarding the Respondent No.12 ['S.B.C.A.'] and whether the garment factory of Messrs Ali Enterprises was in compliance of the building laws of Sindh. It is further submitted that it is unreasonable to believe that the premier authority in the S.I.T.E. area, the Respondent No.6 ('S.I.T.E.'), and its management, were unaware of the aforementioned violations of laws and it can reasonably be presumed that they either consciously encouraged, or deliberately overlooked, the aforementioned violations of the laws.
6. That to the shock and horror of the people of Pakistan, especially the people of Karachi, on September 11th, 2011, one of the biggest industrial fire tragedies took place at the garment factory of Messrs Ali Enterprises at F-67, S.I.T.E., Baldia Town, Karachi. It is submitted that over 250 people died and around 100 people

11

were injured in the said Industrial 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. 13 to 15 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. It is important to note here that it has been reported that not only did the Respondents No. 13 to 15 do absolutely nothing substantial to save the lives of hundreds of workers but the Respondents No.13 to 15 were shockingly only interested, and involved, in trying to save their industrial goods from the fire and most importantly, the Respondents No. 13 to 15 fled from the factory, at the time of the Industrial Fire Tragedy, to the detriment of the workers of their factory.

7. That the Respondent No.1 ['Ministry of National Regulation'], Respondent No.2 ['Sindh Government'] and No. 4 ['Health Ministry'], Respondent No.9 ['N.D.M.A.'], Respondent No.10 ['P.D.M.A.'], and Respondent No.11 ['K.M.C.'], are the organisations responsible for rescue services in any industrial incident. It is submitted that such a large number of deaths and injured persons have proven beyond a shadow of doubt that the aforementioned Respondents as well as the entire machinery of the State failed to effectively respond to the Industrial Fire Tragedy and this criminal negligence on their part led to the death toll, as well as the injured persons, being substantially greater in number than it should reasonably have been if there was an effective rescue response on the part of the state machinery.
8. That despite the enormity of the Industrial Fire Tragedy, it is tragic and shocking to note that the Government of Sindh has announced a mere three lakh Rupees for each victim and Rupees fifty thousand for each injured. It is submitted that it is equally shocking and surprising that on the appeal of politicians, Malik Riaz, who has admittedly been trying to bribe the Supreme Court in order to get favourable

results (in which he has completely failed), has also announced compensation for the victims. It is further submitted that in order to divert attention as well as to cover-up the criminal negligence of the Government of Sindh and of the Respondent No.7 ('Qaim Ali Shah'), it has appointed a so-called commission to investigate the Industrial Fire Tragedy.

9. That in relation to the Industrial Fire Tragedy, an F.I.R. No. 343 of 2012, 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.13 to 15 as well as various departments of the Government of Sindh. It is submitted that the Respondents No. 13 to 15 not only fled the scene of the Industrial Fire Tragedy but were absconding from the Police and finally applied for Protective Bail before the Honourable Sindh High Court, Larkana Bench. It is further submitted that the Honourable High Court, through Order dated: 14-09-2012, was pleased to grant protective bail to the Respondent No.13 to 15 for seven days on the conditions that (A) the Respondents No.13 to 15 will join the investigation on 15-09-2012 at 9:00 A.M. (B) the Respondents No.13 to 15 will surrender their passports and other passport related documents to the Nazir of this Honourable Court at Karachi and (C) the F.I.A. was directed not to allow the Respondents No. 13 to 15 to leave the country.

*A copy of the FIR, along with the translation, as well as the Order dated: 14-09-2012, in CrI.B.A No. S-422 of 2012, are annexed and marked as **Annex 'C' to 'C-2'** respectively.*

10. That the above facts clearly show that the Industrial Fire Tragedy is one of the great 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. 13 to 15 before, during, and after, the Industrial Fire Tragedy,

which clearly shows that there is a deterioration of civilised values in society indicating a breakdown of the society.

11. 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.

GROUNDS

- A. That the above facts clearly prove that the Respondents No. 13 to 15 and other members of the management of Messrs Ali Enterprises have failed to comply with the provisions of the Factories Act, 1934, as well as the provisions of the Sindh Factories Rules, 1975. Therefore, it is obvious and apparent that the Industrial Fire Tragedy, leading to the violation of the fundamental rights under, inter alia, Articles 9 of the Constitution, of the victims, the injured and their families, was a result of the actions of the Respondent No. 13 to 15 and other members of the management of Messrs Ali Enterprises, to fulfil their statutory obligations under the labour and other laws currently in force in Pakistan.
- B. That the above facts clearly prove that the Respondents No. 13 to 15 and other members of the management of Messrs Ali Enterprises have failed to comply with the provisions of the Factories Act, 1934, as well as the provisions of the Sindh Factories Rules, 1975, building laws, etc. Therefore, it is obvious and apparent that the Industrial Fire Tragedy, leading to the violation of the fundamental rights under, inter alia, Articles 9 of the Constitution, of the victims, the injured and their families, was also the result of the criminal negligent failure of the

Respondents No. 2, No.3, No.6 and No. 12, to fulfil their statutory obligations under the labour and other laws currently in force in Pakistan.

- C. That as the above facts clearly prove, that the huge loss of life and injury to the workers and other persons as a result of the Industrial Fire Tragedy was also caused by the fact that the Respondents No.1, No.2, No.4, No.9, No.10 and No. 11 have shown criminal negligence and a complete failure to effectively respond to the Industrial Fire Tragedy and have completely failed to fulfil their statutory responsibilities in relation to rescue efforts in an industrial fire tragedy. Therefore, the aforementioned criminal negligence of the said Respondents and other elements of the State machinery, has led to the violation of the fundamental rights under, inter alia, Articles 9 of the Constitution, of the victims, the injured and their families.
- D. That the abovementioned facts clearly show that the petitioners and the people of Karachi and Sindh are in a clear and present danger that such industrial fire tragedies will also be caused in the future and no effective and substantial rescue measures will be taken in the future due to the criminally negligent actions, inactions and behaviour of the Respondents and other elements of the State machinery. Even otherwise, the Petitioners, the victims, the injured and their families have a fundamental right under Article 19-A of the Constitution to seek truth about the Industrial Fire Tragedy through a judicial commission constituted by this Honourable Court. Therefore, unless the judicial commission is formed, the fundamental rights under, inter-alia, Articles 9 and 19-A of the Constitution, of the Petitioners, the victims, the injured and their families, as well as the people of Karachi and Sindh, will be violated.
- E. That in view of the Ground D above, it is most respectfully and most humbly submitted that the Petitioners have no confidence in the commission constituted by the Respondent No.2 and the Respondent No. 7, which is merely an attempt to cover-up the criminal negligence of the Government of Sindh and of the

Respondent No.7, which directly contributed towards the Industrial Fire Tragedy and also contributed to the loss of life, and the great number of injured persons, due to the complete failure of the rescue services.

- F. That in view of the fact that if it is proven that not only are the Respondents No. 13 to 15 responsible but also the Government of Pakistan and the Government of Sindh is equally responsible for the loss of life and injury then the victims, the injured and their families, have a fundamental right under, inter alia, Articles 9 of the Constitution, to demand reasonable and appropriate financial contribution not only from the Respondents No.13 to 15 but also from the Government of Pakistan and the Government of Sindh.
- G. That the past experience of criminal trials in high profile cases have led to the acquittal of the accused persons despite overwhelming evidence against them. It is most respectfully and most humbly submitted that there is a clear and present danger that the accused persons will not be effectively dealt with under the law unless the criminal trial in F.I.R. No. 343 of 2012 [P.S. S.I.T.E. B, Karachi] is transferred and conducted by the Honourable Sindh High Court at Karachi itself or the Honourable Sindh High Court should kindly pass appropriate orders and directions as suggested in the prayer clause in this regard. Therefore, in order to ensure the enforcement of fundamental rights under, inter alia, Articles 4, 9 and 10-A, of the Constitution, the trial of the aforementioned F.I.R. No. 343 of 2012 [P.S. S.I.T.E. B, Karachi] should be conducted by the Honourable Sindh High Court at Karachi itself or the Honourable Sindh High Court should pass appropriate orders and directions as suggested in the prayer clause in this regard.
- H. That there is a clear and present danger that the Respondents No. 13 to 15 and other accused persons will abscond and not face trial in F.I.R. No. 343 of 2012 [P.S. S.I.T.E. B, Karachi], or in any other related proceedings. Therefore, in order to enforce fundamental rights under, inter-alia, Articles 4, 9 & 10-A, of the Constitution, the Respondent No. 5 and the Respondent No.8 should ensure that

the Respondent No. 13 to 15 and other accused persons are arrested unless granted bail by a competent Court and further to ensure that the Respondents No. 13 to 15 and other accused persons, do not abscond and face trial in F.I.R. No. 343 of 2012 [P.S. S.I.T.E. B, Karachi], or in any other related case.

- I. That in view of the above facts and grounds, there is a clear and present danger that there are other labour establishments, factories and other industrial units in Sindh, in which a similar industrial tragedy may occur due to the non-compliance of the fire and safety provisions under the labour laws of Pakistan. Therefore, in order to ensure the enforcement of fundamental rights, this Honourable Court may direct the Respondents No. 2 ['Government of Sindh'], as well as the Respondents No. 3 ['Labour Ministry'] to immediately conduct survey and inspection of all labour establishments, factories and industrial units in Sindh, in order to ensure the implementation of fire and safety provisions under the labour laws of Sindh and Pakistan.
- J. That in view of the abovementioned facts and grounds, it would be illegal for the Respondents No. 13 to 15 or any other person from the management of Messrs Ali Enterprises to make any money or make any financial gain as a result of the Industrial Fire Tragedy. Therefore, in order for the enforcement of fundamental rights, this Honourable Courts may restrain the Respondents No. 13 to 15, or any other person in the management of Messrs Ali Enterprises, from collecting any money, or making any financial gain [including but not limited to insurance claims] as a result of the Industrial Fire Tragedy at the garment factory of Messrs Ali Enterprises and to further restrain the Respondents No. 13 to 15, or their family members, or any other person in the management of Messrs Ali Enterprises, from (a) disposing off or creating any third party interest in the assets, and interests, of Messrs Ali Enterprises and assets and interests in their name and assets and interest in their other companies or businesses and (b) using the bank accounts and lockers, without the permission of this Honourable Court.

This is essential because such money will be utilised for the payment of compensation to the victims, the injured and their families.

- K. 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 in the following terms:

- (a) Direct the constitution of a judicial commission, headed by a retired High Court or Supreme Court Judge and comprising of other relevant experts and persons, as nominated by this Honourable Court, and direct this judicial commission to give its findings on the, inter-alia, following terms of reference:
- (i) Inquire into the causes of the Industrial Fire Tragedy at the garment factory of Messrs Ali Enterprises, S.I.T.E. area, Baldia Town, Karachi.
 - (ii) Assign responsibility and liability of persons, including Government officials, as well as Government departments, responsible for causing, either deliberately or through criminal negligence or through non-performance of their statutory duties, the Industrial Fire Tragedy at the garment factory of Messrs Ali Enterprises, S.I.T.E. area, Baldia Town, Karachi, as well as the huge loss of lives and injured persons.
 - (iii) Assign responsibility and liability of persons, including Government officials, as well as Government departments, responsible for the

failure to effectively respond to the Industrial Fire Tragedy at the garment factory of Messrs Ali Enterprises, S.I.T.E. area, Baldia Town, Karachi, and to prevent the huge loss of lives and injured persons.

- (iv) After assigning responsibility and liability on various persons and entities, to recommend civil, criminal and administrative actions, to be taken against the responsible and liable persons and entities.
 - (v) Determine the quantum of compensation for the victims, their families and the injured persons, for the loss of life, emotional distress, social and economic destabilisation and future loss of income, as a result of the Industrial Fire Tragedy at the garment factory of Messrs Ali Enterprises, S.I.T.E. area, Baldia Town, Karachi.
 - (vi) Make recommendations for the avoidance of such industrial tragedies, including but not limited to, enacting new fire and safety labour laws, as well as suggestions for the effective enforcement of the relevant laws.
 - (vii) Make recommendations in relation to an effective response from the state and society to such industrial tragedies in order to avoid substantial loss of life and prevent substantial injuries to the people in the future.
- (b) Declare that the victims, the injured and their families, of the Industrial Fire Tragedy, of the garment factory of Messrs Ali Enterprises, are entitled, as a fundamental right under the Constitution, to demand reasonable and appropriate financial contribution not only from the Respondents No.13 to 15 but also from the Government of Pakistan and the Government of Sindh;

- (c) Direct the transfer of the criminal trial in F.I.R. No. 343 of 2012 [P.S. S.I.T.E. B, Karachi] against, inter-alia, the Respondents No. 13 to 15 to the Honourable Sindh High Court at Karachi and to conduct the said criminal trial by itself [i.e. Honourable Sindh High Court] or to assign this criminal trial to a specific Session Judge, as nominated by the Honourable Sindh High Court, with directions to expeditiously conclude the criminal trial and to submit monthly reports to the Honourable Sindh High Court about the progress of the criminal trial;
- (d) Direct the Respondent No. 5 ['Home Ministry'] and the Respondent No.8 ['I.G. Sindh'] to insure that the Respondents No. 13 to 15 and other accused persons are arrested unless granted bail by a competent Court and further to ensure that the Respondents No. 13 to 15 and other accused persons do not abscond and face trial in F.I.R. No. 343 of 2012 [P.S. S.I.T.E. B, Karachi], or in any other related case;
- (e) Permanently restrain the Respondents No. 13 to 15, or their family members, or any other person in the management of Messrs Ali Enterprises, from (a) disposing off or creating any third party interest in the assets, and interests, of Messrs Ali Enterprises and assets and interests in their name and assets and interest in their other companies or businesses and from (b) using the bank accounts and lockers, without the permission of this Honourable Court;
- (f) Permanently restrain the Respondents No. 13 to 15, or any other person in the management of Messrs Ali Enterprises, from collecting any money, or making any financial gain [including but not limited to insurance claims], in relation to the Industrial Fire Tragedy at the garment factory of Messrs Ali Enterprises;
- (g) Direct the Respondents No. 2 ['Government of Sindh'], as well as the Respondents No. 3 ['Labour Ministry'], to immediately conduct survey and inspection of all labour establishments, factories and industrial units in Sindh, in order to ensure the implementation of fire and safety provisions under the labour

laws of Sindh and Pakistan and to submit a comprehensive report in this regard to this Honourable Court;

- (h) Permanently restrain the commission formed by the Respondent No.2 ['Government of Sindh'] and Respondent No.7 ['Qaim Ali Shah'] from proceeding to conduct any enquiry into the Industrial Fire Tragedy at the garment factory of Messrs Ali Enterprises;
- (i) 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: 18th September, 2012

DOCUMENTS FILED:	As shown in the Petition
DOCUMENTS RELIED UPON:	The abovementioned documents e.t.c.
ADDRESS OF PETITIONER:	As per in title of the petition
ADDRESS OF PETITIONER COUNSEL:	Faisal Siddiqi Advocate HC-8504/HC/KHI F-66/3, Park Lane, Block-5, Clifton, Karachi.

DRAWN BY ME

ADVOCATE