

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

Constitution Petition No. 1181 of 2014

1. Pakistan Institute of Labour
Education & Research,
Registered as an Association under Section 42,
Companies Ordinance, 1984,
Having its 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. 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,
Establishment Division,
Cabinet Secretariat,
Government of Pakistan,
Islamabad
2. Federation of Pakistan,
Through Ministry of National Food Security & Research,
3rd Floor, B-Block, Pak Secretariat,
Islamabad
3. Federation of Pakistan,
Through Ministry of Interior,
Pak. Secretariat, R Block,
Islamabad
4. Federal Investigating Agency (FIA)
Through its Director General,
Head Office,
Islamabad
5. Province of Sindh
Through the Chief Secretary,
Government of Sindh,
Sindh Secretariat,
Karachi

- 6. Province of Sindh
Through the Secretary,
Ministry of Food,
Government of Sindh,
Sindh Secretariat,
Karachi
- 7. Province of Sindh
Through the Secretary,
Ministry of Local Government,
Government of Sindh,
Sindh Secretariat,
Karachi
- 8. Province of Sindh
Through the Secretary,
Ministry of Revenue & Relief,
Government of Sindh,
Sindh Secretariat,
Karachi
- 9. Province of Sindh
Through the Secretary,
Ministry of Health,
Government of Sindh,
Sindh Secretariat,
Karachi
- 10. Federation of Pakistan
Through the Secretary,
Ministry of National Regulations & Services,
Constitution Avenue,
Islamabad
- 11. National Disaster Management Authority
Through the Chairperson,
Prime Minister's Secretariat,
Constitution Avenue,
Islamabad
- 12. Provincial Disaster Management Authority
Through the Chairman / Relief Commissioner,
C-52, Block 2, K.D.A. Scheme No.5,
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 in relation to the deaths of over two hundred (200) people, including women and children, as a direct result of,

inter-alia, famine, malnutrition, disease and the criminal negligence of the Respondents [hereinafter referred to as the 'Tharparkar Tragedy'] 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 seek further directions from this Honourable Court in order to deal with the ongoing Tharparkar Tragedy and to avoid such tragedies in the future.

2. That the Petitioners No. 1 & 2 are 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 and 2 also desire, and are working for, the enforcement of the rights of the workers and the people of Pakistan. It is further submitted that the Petitioner No. 3 is a known legal activist, who has been involved in various struggles for the enforcement of the legal rights of the people of Pakistan.

A copy of the Resolutions passed by the Petitioners No.1 and 2 authorising the institution of this Petition are annexed and marked as Annex 'A' & 'A-1' respectively.

3. That most areas of Sindh's Tharparkar district, including Tehsil/Taluka Mithi, Chachro, Diplo, Islamkot, Nagarparkar and Khinsar, are facing a famine-like situation and over two hundred people, a majority of whom are reported to be malnourished children, are reported to have died. It is submitted that over 175,000 families are reported to have been affected and some of them have been forced to leave their homes and move to barrage areas.
4. That the deaths of over 200 people, including women and children, have been slow and painful because the symptomatic effects of three years of drought in a parched arid area like Tharparkar have reached a stage that it has become a full-blown famine. It is pertinent to note here that the ongoing Tharparkar Tragedy has not occurred overnight has been happening over a period of time, increasing

slowly and gradually however, the Respondents have failed to take any steps to mitigate its effects.

5. That the Tharparkar district, with an estimated population of 1.5 million, is ranked by the World Food Programme as the most food insecure of Pakistan's 120 districts. It is pertinent to note here that there is a general consensus amongst all the news reports that the cause of the famine in Tharparkar is both a decline in the availability of food as well as a reduction in people's access to, or their inability to acquire, food.
6. That the Sindh Chief Minister Qaim Ali Shah has reportedly acknowledged the negligence and failure of the local administration in the Tharparkar Tragedy and named "pneumonia" and "malnutrition" as the main causes of the deaths and held the local administration, officials of health and livestock departments and the police responsible for the incident. It is pertinent to note here that the Chief Minister of Sindh is also reported to have stated that "The lives of these children could have been saved if the doctors and officials of the health department had taken this matter seriously and shifted these children to Hyderabad for timely treatment," and that "The government had provided 60,000 gunny bags of wheat for the district, but it was not properly distributed which led to hunger and malnutrition among the children."

A copy of the Express Tribune Article dated: 10-03-2014 is annexed and marked as Annex 'B'.

7. That the Honourable Supreme Court of Pakistan, through Order dated: 10-03-2014, has reportedly noted that the ongoing Tharparkar Tragedy is a direct result of the negligence of Sindh Government and even the Advocate General Sindh has reportedly admitted before the Honourable Supreme Court of Pakistan that there was negligence on the part of the Government of Sindh. To the further shock and surprise of the Petitioners, it has been widely reported that the

Government of Sindh has refused to accept aid provided by the Government of Punjab.

A copy of the news item dated: 08-03-2014 of Samaa TV and news item dated: 10-03-2014 of GeoTV are annexed and marked as Annex 'C' & 'C-1' respectively.

8. That the Respondent No.10 ['Ministry of National Regulation'], Respondent No.5 ['Sindh Government'] and No. 9 ['Health Ministry'], Respondent No.11 ['N.D.M.A.'] and the Respondent No.12 ['P.D.M.A.'], are responsible for rescue services in any tragic incident involving the loss of life. It is submitted that such a large number of deaths and sick/malnourished 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 ongoing Tharparkar Tragedy and this criminal negligence on their part led to the death toll being substantially greater in number than it should reasonably have been if there was an effective response on the part of the state machinery.
9. 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 it is most respectfully and most humbly submitted that the right to life under Article 9, Constitution, 1973, includes a right to food and a right to be free from starvation and severe malnutrition. It is further respectfully submitted that Article 38(d), Constitution, 1973, also recognizes such a right to food. Therefore, the

failure of provide such a right to food and to be free from starvation and severe malnutrition has been violated in the ongoing Tharparkar tragedy.

- B. That it is most respectfully and most humbly submitted that the right to life under Article 9, Constitution, 1973, includes a right to food and a right to be free from starvation and severe malnutrition. Also, under Article 38(d), Constitution, 1973, the Constitution recognizes such a right to food as a principle of State Policy. It is further most respectfully submitted that by not being able to prevent large scale deaths during the ongoing Tharparkar tragedy, the Sindh Government as well as Federal Government have failed in their constitution duty under Article 9, Read with, Article 38(d), Constitution, 1973. Therefore, the failure by the Sindh Government as well as Federal Government is a violation of the Constitution.
- C. That it is most respectfully and most humbly submitted that in view of the grounds taken above in Para-A and Para-B, every person affected by deaths and severe health problems caused by starvation and severe malnutrition is entitled to reasonable and appropriate compensation as a constitutional right. Therefore, it is obligatory on the provincial as well as the federal government to pay such compensation to every person affected by death and severe health problem caused by starvation and severe malnutrition.
- D. That it is most respectfully and most humbly submitted that in view of the grounds taken in Para's A to C, it is the constitutional right of every person affected due to death and severe health problems caused by starvation and severe malnutrition during the ongoing Tharparkar tragedy to be given reasonable and appropriate compensation by the Sindh Government as well as the Federal Government. Therefore, the failure of the Sindh Government as well as the Federal Government to give reasonable and appropriate compensation to the affected persons is a violation of the Constitution.

E. That it is most respectfully and most humbly submitted that criminal negligence is also an offence under Section 302, P.P.C., 1860. The ongoing Tharparkar tragedy is a direct result of the criminal negligence of the actions and inactions of government officials, government departments, and private individuals, responsible for preventing deaths caused by starvation and severe malnutrition. Since the officials of the Sindh Government are directly criminally liable, it is appropriate that the Respondents Nos.3 & 4 should conduct an investigation and assign the responsibility for the ongoing Tharparkar tragedy and further, initiate criminal proceedings against such persons. Therefore, by not holding accountable persons responsible for causing deaths due to starvation and severe malnutrition, the provincial as well as federal government have failed in their constitutional duty under Articles 4 & 9, Constitution, 1973.

F. That it is most respectfully and most humbly submitted that in view of the contents of Para-E above, it is the constitutional duty of the Sindh as well as the federal government to initiate administrative as well as the departmental proceedings against government officials, government departments and private individuals, whose criminal negligence has caused the ongoing Tharparkar tragedy. Therefore, by not holding accountable persons responsible for causing deaths due to starvation and severe malnutrition, the Sindh as well as federal government have failed in their constitutional duty under Articles 4 & 9, Constitution, 1973.

G. That it is most respectfully and most humbly submitted that the persons affected by the ongoing Tharparkar tragedy are entitled to all kind of relief including but not limited to food and health services free of cost for a time framed to be determined by this Honourable Court. Therefore, the failure of the Sindh and Federal governments to provide such kind of aforementioned relief is a violation of the Constitution.

- H. That it is most respectfully and most humbly submitted that in order to prevent such like tragedy as the ongoing Tharparkar tragedy, it is imperative that the Sindh Government as well as the Federal Government should take the following measures, namely, create a permanent monitoring setup/unit in District Tharparkar in order to prevent future deaths due to starvation and severe malnutrition, to publish a detailed program of measures to be taken by them to prevent such future deaths and to establish a commission of well reputed members of civil society to periodically monitor the governments constitutional obligations to implement the right to food of the citizens and persons living in Sindh.
- I. That it is most respectfully and humbly submitted that the Petitioners seek the indulgence of this Honourable Court to raise further grounds at the time of the hearing of this Petition.

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) Declare that every citizen, including every person living in Pakistan, has a right to life under Article 9, Constitution, 1973, and such a right to life includes a constitutional right to food and the right to be free from deaths due to starvations and severe nutrition;

(b) Declare that the Provincial as well as the Federal Governments fail to perform their constitutional duty under Article 9, Read with, Article 38(d), Constitution, 1973, by failing to prevent deaths caused due to starvations and severe malnutrition;

(c) Declare that every family affected by deaths and severe health problems caused by starvation and severe malnutrition has a fundamental right to demand reasonable and appropriate financial compensation from the Provincial as well as the Federal Governments;

(d) Direct the Federal Government of Pakistan as well as the Provincial Government to pay reasonable and appropriate compensation for every death caused by starvation and severe malnutrition during the ongoing Tharparkar tragedy, as well as to all persons who have suffered severe health problems caused by starvation and severe malnutrition during the ongoing Tharparkar tragedy;

(e) Declare that deaths and severe health problems caused by starvation and severe malnutrition, which starvation and severe malnutrition is the result of the criminal negligence of government officials, as well as government departments, and private individuals, is a criminal offence under Section 300, P.P.C., 1860, and other provisions of the laws of Pakistan;

(f) Declare that the failure of the Provincial as well as the Federal Governments to take legal action [including criminal, departmental and administrative proceedings] against government officials, government departments and private persons, is a violation of their constitutional obligations under Articles 4 & 9 of the Constitution, 1973;

(g) Direct the Respondent No.3 and 4 to conduct an investigation into the ongoing Tharparkar tragedy and to assign the responsibility and criminal

deaths due to starvation and severe malnutrition in the province of Sindh;

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(m) Direct the...

periodically monitor the Sindh Government's constitutional obligation to implement the right to food of the citizens and persons living in Sindh;

(n) 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

ADVOCATE FOR THE PETITIONERS

Karachi;

Dated: 11th March, 2014

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