

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

Constitution Petition No. 3818 of 2012

Presented on 17-9-12

*[Signature]*  
Deputy Registrar (17/9/12)

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

Javed Iqbal Burki  
Son of (late) Muhammad Deen,  
Muslim, Adult,  
Resident of 14/10-4A,  
Nazimabad,  
Karachi.....

Petitioners

Versus

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. D.C. 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,  
M. Chundrigar Road,  
Karachi.....

Respondents

The seal of the High Court of Sindh is circular, featuring a crescent moon and a star in the center. The words "HIGH COURT OF SINDH" are inscribed around the perimeter of the seal.

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



ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-3318/2012

- 1.For order on Misc. No.272/2013
- 2.For hearing of Misc. No.628/2013

29.1.2013

Mr. Faisal Siddiqui for the petitioner in CP No.D-3318/2012  
 Mr. Farmanullah Khan for petitioner in CP No.D-3256/2012 alongwith petitioner Nadeem Shaikh  
 Mr. Khalid Mehmood Siddqui, for respondent No.13  
 Mr. Amer Raza Naqvi, for respondents No.14 & 15  
 Mr. Khursheed Jawed for KMC  
 Mr. Qadir Hussain Khan, Advocate  
 Mr. Shafi Mohammad Memon, Additional Advocate General, Sindh alongwith Saqib Sultan, SSP, Saddar, SI/IO, Jehanzeb, SITE-B Police Station, Karachi, Abdul Moid, SHO, SITE-B Police Station, Karachi, PI Mussadiq Amjad and Abdul Aziz Memon, Assistant Director, Labour  
 Mr. Mohammad Yaseen, Legal Assistant, Pakistan Rangers, Sindh  
 Mr. Arshad Abdul Aziz, respondent No.14, present in person  
 Mr. Shahid Abdul Aziz, respondent No.15, present in person

It is unfortunate that despite the Court's efforts and the orders passed from time to time and despite passage of considerable time, still a good numbers of bodies have not been identified and there is gross confusion in the narration as contained in the documents submitted before us. The letter dated 11.1.2013 addressed by Dr. Amar Ali Hussain Khan, Project Director, NFSA, is also confusing. However, what we are able to understand from the said letter perhaps is that out of 24 dead bodies that were still to be identified, 16 bodies, as mentioned in the letter with their identification numbers, have not been identified. In addition to the above 16, in respect of sample bearing No.PSK 23/12, it is stated that no DNA profile could be identified therein despite repeated analysis.

The next Para in the letter being Para No.4 then says that sample No.PSK 118, which was said to be given by the brother of the deceased was not suitable for identification and therefore, personal belongings of the deceased like tooth brush, eraser, unwashed undergarments, cloths, specially night dress or any other related material which is not used by any other person may be provided to the DNA Laboratory for analysis. It is also not explained as to why the sample was not suitable and why a fresh sample cannot be drawn.

As regards PSK 32, it is stated that it was described by Police Surgeon Karachi as multiple fragments of more than one person and it is stated that samples of other corresponding fragments may also be provided for DNA Analysis. It is

further stated that three samples of unidentified dead bodies, bearing No.PSK 12, PSK 19 and PSK 30, are being reanalyzed and if any match with reference to the said samples is found, will be communicated accordingly. It is further opined that the possible reason for non-identification of the bodies mentioned in Para No.2 might be the non-availability of the biological reference samples of the claimant families as few dead bodies were handed over without any proper identification procedure and that ground checks/investigation could help in resolving the issue. The delay in identifying the bodies and the present report clearly show that the matter is not being dealt with properly, may be for lack of sense of responsibility and/or various essential facilities.

We would, in the circumstances, direct the ADIG, Karachi to intervene in the matter so that the identification process may be expedited and conducted with a sense of responsibility and at the same time would direct the Project Director, NFSA to depute some competent officer/Doctor alongwith adequate number of technicians and equipments to come to Karachi within four days from the receipt of copy of the letter of communication of this order, which shall be done by Mr. Shafi Mohammad Memon, learned Additional Advocate General instantly so that the officer who may be deputed by the ADIG, Karachi and the officers/Doctors and functionaries deputed by the Project Director may coordinate with each other and do whatever is necessary for quick and proper identification of the bodies as miseries and agony of the relatives of the victims are beyond imagination and we certainly need to take effective steps to at least mitigate the same. We would further direct the ADIG, Karachi and Project Director, NFSA to conclude the identification exercise latest by 15.2.2013 as the situation is now become unbearable.

Mr. Amer Raza Naqvi, at this stage, points out that through order dated 12.12.2012, at his request the Investigating Officer was directed to contact members of such families of the victims for whom samples have not been obtained/drawn and it was noted that he shall provide the list of such family members to the Investigating Officer or they may themselves approach the Investigating Officer. The learned counsel further submits that in pursuance of the aforesaid order, though a list was provided to the I.O., however, no progress has been made in this regard. The I.O., on the other hand, denies having received any such list. Even if no such list was provided it was the duty of the I.O. and more so, for the reason that identification has been delayed inordinately, his not doing so badly reflects on his conduct. We, however, taking a lenient view, give a chance to the I.O. to arrange samples from the members of such families, a list whereof shall again be provided by Mr. Amer Raza Naqvi to the I.O. by tomorrow without fail. The I.O. shall, by the next date, submit complete list of claimants and all the bodies retrieved or identified so far with the possible explanations for such discrepancy, if any.



CMA No.628/2013

Through this application the petitioner seeks direction to respondents No.13 to 15 to deposit an amount of Rs.5,18,00,000/- (Rupees Five crores and eighteen lacs only). Mr. Faisal Siddiqui submits that the Commissioner, Workmen Compensation and Authority under Payment of Wages Act (West Division) at Karachi has in case No.90/2012, vide order dated 26.12.2012 allowed the compensation in favour of all 259 deceased victims of the subject fire incident at the rate of Rs.200,000/- per victim. Such payment in terms of the order has to be made within the stipulated time for onward disbursement to the legal heirs of the deceased victims. Mr. Amer Raza Naqvi denies any allegation against respondents No.13 to 15 as may have been leveled through the instant application, and though the above order for compensation is under challenge before this Court by the said respondents through CP No.S-19/2013, which is still pending, the respondents No.13 to 15 consent to the grant of the application and submit that the said respondents may be allowed to draw a cheque on their Bankers from their account(s) in favour of the Nazir of this Court so that the amount may be deposited with him and ultimately disbursed amongst the victims by the Commission as proposed by the petitioners and referred to in order dated 10.1.2013.

We would, therefore, grant this application. The respondents No.13 to 15 or any of them may draw and deliver a cheque to and in favour of the Nazir of this Court to be deposited with him for disbursement to the victims, by the proposed Commission. The bankers of the respondents No.13 to 15 are directed to honour such cheque so that the amount may be transferred/paid into the account of the Nazir of this Court for the aforesaid purpose. It is, at the request of Mr. Amer Raza Naqvi, clarified that the above amount shall be withdrawn out of 80% amount lying with the said respondents' bankers, which have been frozen under the orders of a Magistrate in the criminal proceedings pertaining to the subject incident. The State Bank of Pakistan, if need be, shall instantly allow such withdrawal/transfer. It is by way of abandoned caution clarified that the amount as hereby ordered to be withdrawn/transferred is for a specific purpose of disbursement to the families/legal heirs of the deceased, to be distributed through the proposed Commission and shall only be transferred/deposited with the Nazir of this Court for the above purpose. It may further be observed that the above deposit/payment/transfer shall be in compliance of the order dated 26.12.2012 passed by the Commissioner for Workmen Compensation, as noted above.

At this point respondents No.13 to 15 herein submit that looking at the plight of the families of the victims whose bodies have not yet been identified and no compensation has been made to them so far, they are too eager and keen to pay certain amounts to such families. However, they would like to disburse such amount





through this Court and for the purpose are ready and willing to initially deposit an additional amount of Rs.10 million with the Nazir of this Court so that such victims may have some interim relief as early as possible. We would therefore, allow respondents No.13 to 15 to deposit the aforesaid amount with the Nazir of this Court who shall deposit such amount in a separate account. Such amount shall also be deposited/transferred in the Nazir's aforesaid account through the same mechanism as prescribed above. This additional amount shall also be disbursed by the proposed Commission. However, payment out of this additional amount shall be made to the families of the deceased victims, who have not received any compensation so far, mainly for the reason that the bodies of the deceased from their families have not been identified so far. The amount shall be deposited in the Nazir's account only and shall be disbursed by the Commission on priority basis. The rate of compensation to each victim's family and the criteria of identification of such family and victims, shall be made as prescribed by the commission. The above two amounts be deposited/withdrawn/transferred within a week from today.

Mr. Faisal Siddiqui submits that in order dated 10.1.2013, this Court has observed that it would be proper to draw certain parameters for the disbursement of the amount of US\$ 1 million to be received by the petitioner from KiK Textilien for immediate relief to the victims of the Baldia fire incident and submit before us the proposed terms of reference in pursuance of the said order. We have perused the proposed terms and after hearing all the learned counsel present laydown the following terms for the proposed Commission: -

- i. That the commission shall be established for the sole purpose of disbursement of the above immediate relief amounting to US\$ 1 million, a portion whereof has already been received by the petitioner No.1 from KiK Textilien, a German concern, in terms of an agreement between the said concern and the petitioner No.1 and also the amount to be paid by respondents No.13 to 15 as noted in the earlier part of the present order, and all other amounts that may be received by the Commission directly or the petitioner from any source whatsoever including the amount already received by the Nazir of this Court from one philanthropist, Shehzad Riaz.
- ii. The amount received under the aforementioned agreement shall be disbursed by the commission in terms of the aforementioned agreement and keeping in view the spirit of the agreement.
- iii. The disbursement shall be made after verifying the family members of the deceased and also after verifying as to who are the legal heirs of each such deceased.
- iv. The question as to how much amount shall be paid to each legal heir of a victim shall be decided by the Commission in accordance with the relevant law(s).



- v. The rate of compensation to the various legal heirs of each victim shall also be decided by the Commission keeping in view the relevant law(s) and other relevant factors.
- vi. The rate of compensation to the injured person shall also be determined by the Commission and in doing so it shall keep in view the relevant law and the relevant factors.
- vii. In making the above payment the Commission shall also keep in view the amount already received by the injured victims or family members of the deceased after verifying such payments.
- viii. Priority in payment of compensation shall be given to those injured victims or the families of deceased victims who have not received any compensation as yet.
- ix. In case of any objection to any claim for compensation or competing claim the Commission shall decide the question of payment after taking into consideration all the relevant material and certainly after hearing the concerned parties.
- x. Verification of each claim shall be made after thorough scrutiny and with the assistance of all the parties concerned including the petitioners, respondents No.13 to 15 and all the relevant official functionaries.
- xi. Before commencing the above exercise the commission shall publish a notice inviting claims in various categories from the victims of the incident through print as well as electronic media. In this regard the print and electronic media shall widely publish the formation of the Commission as well as the invitation of the claims by the Commission.
- xii. All the relevant functionaries including the labour department and Commissioner for Workmen Compensation shall come forward to provide full and complete assistance to the Commission in their carrying out the above mandate effectively and swiftly.

The Commission shall exercise the following powers: -

- i. It shall exercise all the powers provided for conducting proceedings under the Civil Procedure Code, 1908, including the powers to summon anyone for seeking production of documents/relevant record or recording evidence.
- ii. The Commission shall conclude the above mandate as early as possible preferably within a period of two months from the date of commencement of hearing and shall submit the compliance report before this Court accordingly.
- iii. The Honourable Chief Justice of this Court may consider to provide adequate space to the Commission for its functioning and if possible to provide to the Commission necessary infrastructure and staff for discharging its obligation. In addition to the staff by this Court, the



M



Commissioner, Workmen Compensation shall also provide additional staff as may be required by the Commission.

- iv. The petitioner shall make its fullest endeavor to have the entire amount of US\$ 1 million repatriated to Pakistan for disbursement as noted above and whatever other amount as may be committed from the above donor or other sources from abroad as a relief to the victims and their families.
- v. As suggested by all present, Mr. Justice ® Rehmat Hussain Jafri is appointed Commissioner, who shall constitute the Commission. A request may be sent to the Honourable Mr. Justice ® Rehmat Hussain Jafri instantly alongwith the copies of various orders passed in the present proceedings from time to time and also the agreement executed between the petitioner No.1 and KiK Textelien.
- vi. The fee of the learned Commissioner as may be determined by him shall be paid out of the funds received by the petitioner as noted above. However, the amount shall be reimbursed by Government of Sindh as early as possible to be deposited in the aforementioned Nazir's account for disbursement to the victims.
- vii. Other than the fee, all expenses incurred in the above exercise by the Commission shall also be borne by the Government of Sindh and shall be paid without any delay. For this purpose, Government of Sindh shall make a reasonable amount available to the Commission so that they may not have any difficulty in the smooth functioning of the Commission. However, in case of any delay in payment towards the expenses such expenditure may be made out of the funds, which may be deposited with the Nazir of this Court as noted above.
- viii. Non-cooperation by any relevant government functionary with the Commission in carrying out its above mandate or causing any hindrance or obstruction in its smooth functioning by anyone shall amount to contempt of Court and anybody, who may be found responsible for the above, shall expose himself to the contempt of Court proceedings.



*Sh. Muzafar Beyer*

JUDGE

*Sh. Niazat Ali Sabir*

JUDGE