


IN THE HONOURABLE SUPREME COURT OF PAKISTAN

C.M.A. No. 676-Ref 2018

In

Human Rights Case No. 20883 of 2018
(In the matter regarding excessive and unannounced load shedding in Sindh)

1. Human Rights Commission of Pakistan (HRCP),
A Non-Governmental Organization,
Through its authorized Person,
Having its registered office at
Aiwan-i-Jamhoor, 107- Tipu Block,
New Garden Town,
Lahore - 54600

2. Karamat Ali,
Son of (Late) Amanat Ali,
Muslim, Adult,
Resident/office at 143-A, Sector X-5.
Gulshan-e-Maymar,
Karachi-75340

3. Nazim Fida Hussain Haji.
Son of Fida Hussain Haji.
Muslim, Adult,
Resident of House No. A-21/2-A,
KDA Scheme 1A Extension, Stadium Road,
Karachi

4. Pakistan Institute of Labour
Education & Research,
Registered as an Association under Section 42.
Companies Ordinance, 1984,
Through its authorized person,
Having its registered office at PILER Centre.
ST-001, Sector X, Sub-Sector V,
Gulshan-e-Maymar,
Karachi-75340

5. Shehri – Citizens for a Better
Environment (CBE),
A Non-Governmental Organization,
registered as a Society under the
Societies Registration Act, 1860,
Through its authorized person,
Having its registered Office at
88-R, Block -2, P.E.C.H.S.,
Karachi - 75400.....Applicant Interveners

APPLICATION UNDER ORDER 33, RULE 6, READ WITH, ORDER 5,
RULE 2, SUPREME COURT RULES, 1980

On behalf of the Applicant Interveners, it is most respectfully prayed that this Honourable Court may be pleased to implead the Applicant Interveners as Respondents in the above titled case for the reasons as disclosed hereunder:

1. That the Applicant Interveners No.1, 4 and 5 are known Non-Governmental Organizations and the Applicant Interveners No.2 and No.3 are known activists, who are involved in various struggles for the enforcement of the fundamental rights of the people of Pakistan. The contribution and activism of Applicant Intervener No.1 in the field of human rights, prominently for the rights of the underprivileged, women, children, victims of violence and abuse and for citizens of the country at all levels is well known. The contribution and activism of Applicant Intervener No.5 for the protection and preservation of environment is also well known. The Applicant Interveners No.2 to No.4 have also fought for many causes, and the most significant includes, fighting against the Federal Government, NEPRA and K-Electric for the victims of the heat wave tragedy in the year 2015, through Constitution Petition No. 3885 of 2015 [‘Karamat Ali and Others Versus Federation of Pakistan and Others’] before the Honourable High Court of Sindh, at Karachi, that resulted in NEPRA initiating proceedings against K-Electric and adjudicating upon the same resulting in the Decision dated: 25th March, 2016, through which a fine and various directions against K-Electric were imposed. For implementation of the said Decision, the Applicant Interveners No.2 to No.4, firstly, filed Intervener Application in Suit No. 1453 of 2015 [‘K-Electric Versus Federation of Pakistan and Others’] but upon withdrawal of the said Suit by K-Electric, the Applicant Interveners No.2 to No.4 filed Constitution Petition No. 3891 of 2016 [‘Karamat Ali and Others Versus Federation of Pakistan and Others’] which was disposed of by the Honourable High Court

of Sindh, at Karachi, through Order dated: 29.05.2017, The Applicant Interveners No.2 to No.4 have also filed Constitution Petition No.D-1754 of 2017 ['Karamat Ali and Others Versus Federation of Pakistan and Others'] before the Honourable High Court of Sindh, at Karachi, regarding issue of overbilling to its customers by K-Electric upto Rs.62 Billion, unpaid dues and payables of K-Electric with regard to various federal government and entities, non-implementation of 'Time of Use-TOU' metering/billing facility and transfer of indirect shareholding and control in K-Electric to Shanghai Electric Power Co. The aforementioned Petition is pending adjudication.

2. That the Applicant Interveners are customers of K-Electric who are individuals/organizations all based in Karachi. Whilst being directly affected by the performance of K-Electric, the Applicant Interveners would also like to assist this Honourable Court in public interest on behalf of all those whose welfare and economic efficiency is dependent upon the performance of K-Electric i.e. a major public utility provider, generator, transmitter and distributor of electricity.
3. That the purpose behind filing the present Application is to bring on record that fact that in the present Human Rights Case regarding the excessive and unannounced load shedding in Sindh, NEPRA and K-Electric have deliberately concealed from this Honourable Court the NEPRA's Press Release dated: 17th April, 2018, through which NEPRA has revealed the major reasons behind the excessive and unannounced load shedding in Karachi, Sindh. In the said Press Release, NEPRA has stated that firstly, K-Electric had been underutilizing Bin Qasim Power Station (BQPS I), whereas it could have been operated at full capacity to minimize load shedding. Furthermore, due to poor maintenance plan and unplanned outage, generation capacity is also reduced, resulting in low generation of electricity. Secondly, NEPRA has provided evidence of K-Electric's poor maintenance plan, poor load management, fragile distribution system and faults which have added to

the unplanned and excessive load shedding. The aforementioned facts which have been stated in the Press Release are clearly reflective of the fact that the electricity crisis in Karachi is not due to unforeseeable circumstances or force majeure, but such electricity crisis has been deliberately created by K-Electric due to its own negligence and failures as a generator and supplier of electric power.

4. That it is important to submit that this negligent behaviour of K-Electric is not new and in fact, K-Electric has been involved in such deliberate and wilful behaviour of negligently performing as a generator and supplier of electricity. This is evident from the fact that due to illegal, arbitrary and discriminatory acts of K-Electric during the onslaught of heat wave in Karachi in June 2015, which led to a large number of deaths and injuries, Show Cause Notice, dated: 24th July, 2015, was issued by NEPRA against K-Electric, resulting in NEPRA's Decision dated: 25th March, 2016. Through Para 37(ii) of the aforementioned NEPRA'S Decision, it has been categorically and unequivocally directed that if K-Electric (KE) continues with the practice of reducing or underutilizing its generation capacity, strict punitive action will be taken against it in future. Furthermore, through Para 37(v) of the NEPRA'S Decision, K-Electric has been categorically and unequivocally directed to increase its generation capacity and improve its transmission and distribution system strictly in accordance with the investment plans submitted by and attached as Annexure-A to the decision (Page 103 to 105). However, it is obvious from the aforementioned observations of NEPRA in its Press Release that firstly, K-Electric has completely violated the directions given in Para 37(ii) of NEPRA's Decision by reducing and underutilizing its generation capacity and secondly, K-Electric has completely violated the directions given in Para 37(v) of NEPRA's Decision because of its poor maintenance plan which is clearly violative of the aforementioned investment plan submitted by K-Electric, that

specifies that investment had to be made by K-Electric for the purposes of rehabilitation and enhancement of distribution and transmission network.

5. That it is respectfully submitted that the statement made by NEPRA in its Press Release dated: 17th April, 2018, to the effect that legal action will be taken by it against K-Electric is only a pretence and farce when in fact both K-Electric and NEPRA are acting in collusion with each other, which is obvious from the fact that in the span of over one year and in the present electricity crisis, NEPRA has not taken any action against K-Electric. It is evident that NEPRA's so-called actions are only taken on paper, but no effective or substantive decision is ever taken or enforced against K-Electric.

6. That as stated above, as an organization that generates and supplies electricity, K-Electric is completely non-serious, criminally negligent and corrupt in its actions and performance, primarily because of, inter alia, the lack of interest of the major investors in K-Electric. This is evident from the fact that ABRAAJ i.e. owner or the largest shareholder in K-Electric has been accused of usurping funds given by Bill and Melinda Gates Foundation i.e. the fundraising organization for the benefit of their personal businesses. Furthermore, the proof of K-Electric's complete neglect and complete failure as an organization is the Letter dated: 26.01.2017 of Ministry of Water and Power addressed to NEPRA, which provides that it had been noted by it that K-Electric consumers have been made to pay at least Rs. 62 Billion in the past few years which violates the general policy and guidelines relating to tariff determination and has resulted in "windfall profits" for K-Electric. As a result, NEPRA has been reprimanded by Ministry of Water and Power because as alleged by the said Ministry, unfair and excessive tariff settings by NEPRA had resulted in K-Electric being allowed to recover a very high price from consumers whereas the actual generation costs are much lower. Therefore, it is necessary that the Applicant Interveners are permitted to intervene and assist this Honourable Court in order to enable this Honourable

Court to pass just and equitable Orders which have a direct and indirect impact upon the interests of the Applicant Interveners.

7. That in view of the above, it is obvious and apparent that the Applicant Interveners are necessary and proper parties to this present case because, firstly, any Order passed in this present Petition regarding the issue of electricity supply will directly affect the vested interest of the Applicant Interveners as citizens of Karachi. Secondly, the presence of the Applicant Interveners is necessary in order to bring the aforementioned facts on record to enable this Honourable Court to pass just and equitable Orders which have direct and indirect affect on the vested interests of the Applicant Interveners.

PRAYER

In view of the above, it is most respectfully prayed that this Honourable Court may be pleased to implead the Applicant Interveners, as Respondents, in the present Petition in order to enable this Honourable Court to effectually and completely adjudicate upon and adjudicate all the questions involved in the present Petition.

Karachi

Dated: 28.05.2018

Advocate on Record
For the Applicant Intervener