

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.8960 of 2019

Maria Khan etc.

V/S

Federation of Pakistan etc.

<i>S.No.of order / Proceedings</i>	<i>Date of order /Proceedings</i>	<i>Order with signatures of Judge, and that of parties or counsel, where necessary.</i>
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15.02.2019

M/s Aneesa Agha, Fatima Abbas and Abuzar Salman Khan Niazi, Advocates.
Ms. Sadia Malik, Assistant Attorney General on Court's Call.

The Petitioners have filed this constitutional petition on their behalf as well as on behalf of future generation and youth of Pakistan being aggrieved by the inactions of the Respondents Energy (Power Division), Alternate Energy Development Board, Central Power Purchasing Agency (Guarantee) and Ministry of Climate Change for not fulfilling their obligation to reduce and mitigate the adverse impacts of climate change. Miss Aneesa Agha, Advocate states that Government of Pakistan had ratified Paris Agreement on Climate Change, 2015 (the "Paris Agreement") and had submitted its statement on Intended National Determined Contributions (INDCs) to United Nations Framework Convention on Climate Change (UNFCCC) for reduction of 20% of its 2030 projected GHG emissions. She contends that Government of Pakistan, after ratifying the Paris Agreement, had to implement its mandatory Articles in order to show that Pakistan is giving high priority mitigation measures of developing renewable energy resources and transitioning to a cleaner and low-carbon economy in Pakistan. She states that there are two major

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mitigation measures for slowing down climate change i.e. cutting down on combustion of fossil fuels and switching to alternate and greener sources of energy and second is development of carbon sinks and carbon sequestration. She further states that inactions of the Respondents regarding development and support of renewable energy projects have abnegated their responsibility as trustees of natural resources of country under the Public Trust Doctrine on climate change. She next states that this doctrine was firstly established by the Supreme Court of America in case titled "Illinois Central Railroad v. Illinois" (146 U.S. 387 (1892) and recently in a judgment given by U.K. Supreme Court in case titled "Newhaven Port and Properties Limited Versus East Sussex County Council and another" (2015 UK SC 7) and judgment of Indian Supreme Court "Swaraj Abhiyan Versus Union of India and others" (2016) 7 Supreme Court Cases 498. She argued that in "SINDH INSTITUTE OF UROLOGY AND TRANSPLANTATION and others Versus NESTLE MILKPAK LIMITED and others" (2005 C L C 424) doctrine of public trust was discussed by holding that *natural resources are like Public Trust, such resources being a gift of nature, should be made freely available to everyone irrespective of the status.* The aforesaid judgment was appealed and dismissed by learned Division Bench in case "NESTLE MILKPAK LTD Versus SINDH INSTITUTE OF UROLOGY and others" (P L D 2007 Karachi 11).

2. When confronted on the same issue, this Court has already passed detailed judgment reported as "ASGHAR LEGHARI versus FEDERATION OF PAKISTAN and others" (PLD 2018 Lahore 364), the counsel for the Petitioners states that this judgment relates to adaptation measures of UNFCC and not mitigation measures as laid down in Paris Agreement. She states that this Court has

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already passed judgment on the issue on protection of omission in "Mrs. ANJUM IRFAN Versus LAHORE DEVELOPMENT AUTHORITY through Director-General and others"(P L D 2002 Lahore 555) and "Syed Mansoor Ali Shah Versus Government of Punjab etc" (2007 PLD Lahore 411) wherein "the Court disposed of the petition by giving directions to the Transport Department, City District Government Lahore and the EPA to introduce CNG Euro II buses for public transport, phase out existing buses, set up dedicated bus lanes, implement a cap age of ten years for buses, and ban four stroke rickshaws" but the Respondents have not taken any concrete steps in order to implement the Paris Agreement hence violation of Article 4.4 of the Agreement which states that "developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances". She also relied on "Ms. IMRANA TIWANA and others Versus PROVINCE OF PUNJAB and others" (P L D 2015 Lahore 522) and "LAHORE DEVELOPMENT AUTHORITY through D.-G. and others versus Ms. IMRANA TIWANA and others" (2015 S C M R 1739) and states that international agreements have binding effects on Pakistan as per Item Nos.3 and 32 of Federal List, Part-I, Fourth Schedule of the Constitution.

3. Notices be issued to the Respondents for 26.02.2019 to file report and parawise comments. Learned Assistant Attorney General shall seek instructions from the Respondents.

(JAWAD HASSAN)
JUDGE

Examiner Copy Supply Section
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of the Constitution of Pakistan
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In Case No.....
Examiner: JIS (Writ Branch)
Lahore High Court, Lahore