

GENERAL SECRETARY, WEST PAKISTAN SALT MINERS LABOUR

UNION (CBA) KHEWRA, JHELUM ---Petitioner

versus

THE DIRECTOR, INDUSTRIES AND MINERAL DEVELOPMENT,

PUNJAB, LAHORE---Respondent

1994 SCMR 2061

[Supreme Court of Pakistan]

Present: Muhammad Rafiq Tarar and Saleem Akhtar, JJ

Human Right Case No. 120 of 1993, decided on 12th July, 1994.

#### JUDGMENT

SALEEM AKHTAR, J.---This petition under Article 184(3) of the Constitution was filed complaining against the pollution of water supply source to the residents and mine workers of Khewra. They claim to be settled there for generations and the water supply was arranged by Pakistan Mineral Development Corporation (PMDC) through a pipeline connecting the spring and taking water to the reservoir. It has been alleged that although water catchment area was reserved and no lease for coal mines was to be granted, the authorities concerned particularly the Director, Industries and Mineral Development, Government of the Punjab, granted lease and reduced the water catchment area.

The result was that the poisonous water coming out of the mines pollutes the water reservoir and is a health hazard. It was further alleged that the allotment and grant of lease to the miners in the water catchment area is illegal and mala fide. It has been prayed that such leases may be cancelled and the residents may be saved from the health hazard created by the miners and the authorities concerned. The case was processed in the office and prima facie it was established that if the operation of coal mines is granted in the water catchment area, it is likely to pollute the water resources, which may be contaminated with the water flowing out of the mine holes during operation.

Consequently, cognizance was taken under Article 184(3) of the Constitution and notice was issued to PMDC, Director, Industries and Mineral Development, Government of the Punjab through Advocate-General and M/s. Punjab Coal Company (PCC). In pursuance of the notice the petitioner submitted its detailed note supported by documents. Similarly PMDC and respondent No. 1 submitted their replies. PCC and M/s. A. Majeed & Co., to

whom leases were granted, also filed their replies. In the present case the main contestant seems to be PCC.

2. The history of these coal mines particularly in the water catchment area goes back to the early part of the century .when during British days the water catchment area was reserved and grant of mining lease was prohibited. PMDC has filed a copy of the letter No. 78 C & I dated 31-1-1911 from Mr. R.A. Munt, ICS, Financial Secretary to the Government of the Punjab addressed to the Commissioner, N.I. Salt Revenue, which reads as follows:--

"In reply to your Letter No. 2576 dated the 22nd October, regarding the coal mining operations in the Salt Range in the Jhelum District, I am directed to. say that the Lieutenant Governor agrees to the proposals contained in paragraph 4 of your letter under reply. I am to add, however, that His Honour understands that the preservation of the Khewra Water Supply is real ground for the reservation of this area which lies to the north of the Mayo Salt Mine. "

Other related letters referred and subsequent correspondence in this regard have not been filed, but none of the official respondents appearing have disputed this letter. From this letter it seems that even at that time for the preservation of the Khewra water supply an area was separately reserved while granting lease for mining purposes. Initially the area of the water catchment was alleged to be 4161 acres which was declared as restricted area. PMDC has filed a plan in which the original water catchment area has been shown.

It also mentions the present water catchment area, which has been reduced to 545.09 acres. A visual inspection of this document clearly gives an idea that the original water catchment area was much larger than it exists now. It would have been at least six to seven times more than the present area. The location of PCC (No. 27A) is also shown whereas the area of M/s. A. Majeed & Co has also been mentioned. It seems that after the year 1950 the mining leases were granted in the original catchment area, which has been reduced to about 1/8th of its original measurement as claimed by the petitioner and PMDC. It was in the year 1981 that a small area now measuring 545.09 acres was absolutely forbidden for allotment for mining purposes. In this regard reference has been made to the report of a high-powered committee constituted in the year 1981 to dispose of the application of M/s. Rasco & Co. for grant of prospecting licence for coal near ' Nali' , District Jhelum. This committee was constituted by the Secretary, Industries and Mineral Development and consisted of:--

(1) Director of Industries Mineral Development, Punjab, Lahore.

(2) Deputy Commissioner, Jhelum.

(3) Chief Inspector of Mines, Punjab, Lahore.

(4) Superintending Engineer, Public Health Engineering, Circle 11, Rawalpindi.

(5) Representative of Pakistan Mineral Development Corporation.

(6) Assistant Commissioner, Pind Dadan Khan. .

The committee was authorised to co-opt any other member. The terms of reference were:

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(i) Whether or not this is a catchment area for water supply of Khewra Town and Dandot?

(ii) Whether there is a natural spring in the area for supply of water to these Towns?

(iii) Whether mining would in any way affect or contaminate the water?

(iv) Whether alternate water supply schemes for Khewra etc. have been implemented and are on ground?

(v) Also the reaction of the local population regarding mining in this area? The committee after visiting the site observed that the area fell within the reserved water catchment zone and referred to the decision of the Mines Committee of 22-2-1981 that no further mining concession should be granted within this particular area forming the water catchment zone for the water supply scheme PMDC a scheme mainly serving the population of Khewra Town.

It further reported as follows:--

"The major spring located in this area is called ' Mitha Pattan'. It is a collection of many smaller springs originating from within this area. The 'Mitha Pattan' spring has an outlet of about 2 lac gallons per day. According to the assessment of Superintending Engineer, Public Health Engineering Circle No. 11, Rawalpindi this source of water caters to at least 60 % to 70 % of the needs of Khewra Town. The other two sources of water are the water supply scheme of Municipal Committee, Khewra and one outlet from the Imperial Chemical Industries' waterworks. The municipal water supply scheme is catering only up to 15 % of the needs of the local population while the outlet from the waterworks of Imperial Chemical Industries contributes only to the extent of 5 % in this regard. It was also brought out by the Superintending Engineer, Public Health Engineering Department and conceded by the Chairman, Town Committee, Khewra that the water available from the municipality's water supply scheme is not of good quality. As such, the only major source of drinking water for Khewra Town is the Mitha Pattan spring located in the area in question."

As regards water contamination and pollution the Committee after referring to the structural behaviour of the area as explained by the geological map, observed:-

"This map clearly indicates that contours in the area form a cup-shaped valley, in which the water from smaller springs is joined into a main spring i.e. 'Mitha Pattan'. A number of lithological units are exposed at different spots. Hillocks of Sakesar Limestone which are regarded as cap-rock for coal deposits are also visible in this area for which M/s. Rasco & Company has applied. However, these hillocks are irregular and highly disturbed. There are a number of visible faults, fractures and joints in the area. The relevant geological data indicate that the 'Patala Shales', which is the coal bearing formation in the salt range, is very close to the springs. Any sub surface and underground mining activity in this area will pose the following two threats, to the water reservoir:

(1) Water may leak through the mines which, in turn, can dry the springs.

(2) Pollute the water in the catchment area.

During the proceedings of the meeting of the Committee, a specific reference was made to a past incident involving the installation of a mining tunnel by the Pakistan Mineral Development Corporation near Pir Jehnia, District Chakwal. The terrain was similar to the area under discussion. While driving the tunnels, the underground water zone of the locality was punctured. This adversely affected the water source in the area."

The Committee also seriously took note of the fact that the water rights of the miners which stand established since 1911, should always be taken into consideration. The Committee recommended that:

"The area, declared restricted by the Mines Committee in 1981, should continue to enjoy this status. The Committee also recommends that demarcation of past leases granted in the adjoining areas be re-checked so as to ensure that no one violates the boundaries of this restricted area."

This report gives a clear picture of geological, geographical and historical background of the present controversy. The claim of the petitioners though formed in general terms basically seeks enforcement of the right of the residents to have clean and unpolluted water. Their apprehension is that in case the miners are allowed to continue their activities, which are extended in the water catchment area, the water source, reservoir and the pipelines will get contaminated.

3. In its reply, PCC besides taking preliminary legal objection regarding maintainability, has pleaded that the lease was granted to it in the year 1950 for 30 years and it has been renewed on 1-11-1980 for another 20 years. It has also been stated that the leased area stretches to the north separated by a deep and considerably wide ravine from other mining area allotted to as many as 18 different companies carrying out the same business in similar circumstances and conditions. This area is outside the alleged catchment area declared by the Ministry of Industries. The water reservoir collects water solely from natural spring. The natural spring and the water reservoir both are situated at a higher point from the mining area of PCC and are separated by a huge and deep ravine. The mining activities cannot affect the natural spring or reservoir. The water collected in

reservoir is supplied to the workers colony through two pipes, one of which stands disconnected by PMDC. Sometimes water downstream overflows which is not used by any body. On a similar complaint that due to the mining activity of PCC, water reservoir is contaminated and that mining activity might disturb natural springs, the matter was considered by respondent No. 1 on an appeal from the order of the Leasing Authority where it was held that according to the demarcation by the Committee comprising representatives of PCC, PMDC and the Directorate, mine 27-A falls outside the restricted area, but within 50 metres from the boundary within the leased area of PCC.

The Leasing Authority had granted land for working of this mine subject to three conditions which included installation of second pipeline by PMDC, cost of which would be borne equally by PMDC and PCC, the water reservoir was to be enlarged and that a retaining wall would be constructed by PCC near the mouth of mine 27-A. The PCC has entirely relied upon this order and claims that retaining wall has been constructed, but the petitioners allege that the water overflowing from the mines which is admittedly a poisonous water and a health hazard, is contaminating the water reservoir. M/s. A. Majeed & Co. has also submitted reply denying the claim made by the petitioners. Apart from stating that Mitha Pattan is the water source and the reservoir is situated at such a place that question of contamination does not arise, it further stresses that huge investments have been made on the working of the mines, due to operation of mines many workers and their families are settled and are earning their livelihood. Furthermore there are various Government authorities authorised to see that the miners work in a proper and legal manner and further that water source is not contaminated.

4. We have heard all the parties present. Mr. Munir Piracha, learned ASC for PCC contended that the facts of the case do not warrant any action under Article 184(3) as the petitioners have not shown that any fundamental right has been violated and that a question of public importance is involved with reference to the enforcement of the fundamental rights. The petitioners' complaint is about the contamination of the water reservoir. During arguments it was also contended that if the mining operation is continued, the water resources of Mitha Pattan will be polluted, destroyed or dried up.

From the statements, background and the records which have been produced and have not been disputed or rebutted, the picture clearly emerges that the petitioner and the other workers numbering 35000 reside in an area in Khewra who are mostly engaged in the mining work. Almost from about a century the residents of the area were provided water through Mitha Pattan, which receives water from several small springs in the area and it serves as a reservoir for supply of water to the residents of that area. The location and geographical position of these springs and Mitha Pattan seems to have been taken into consideration as far back as in the year 1911 when it was felt necessary that the water catchment area which is the source to supply water to the residents should not be touched, endangered, injured or impaired by mining activities. Mining activities were, therefore, prohibited in that area and this state continued up to the present time with the difference that the total area was reduced and mining leases were frequently granted in the water catchment area. The area which at one time is claimed to be more than 4000 acres, has been reduced to 545.09 acres which the Mining Committee by its decision dated 22-2-

1981 declared restricted water area and all types of mining activities were completely prohibited. Letters and instances have been referred to show that this policy was enforced with vigour and strictness and applications for mining lease and licences in the water catchment area were not granted. However, the irony of situation is that with the passage of time, population has grown and number of mining leases in the catchment areas has increased, but the water source remains the same and water catchment area has been reduced. The mining operations in this area pose serious danger of cracks, punctures and leakage in the rocks and ravines which may lead to contamination or drying up of the springs. These are well-known and acknowledged dangers to the water source and have been mentioned in the report submitted by the Committee. In such a situation when the water catchment area seems to have been reduced to its minimum, the mining activities have completely surrounded the water catchment area and are extending nearer to the source spring, it seems necessary to immediately take measures to protect the water sources and springs. It is fortunate that so far no major mishap has occurred, but the more mining activities increase and the catchment area is reduced, the danger of bursting, leaking and contamination also increases. In this situation, if the petitioners complain, are they not justified to seek protection of their right to have clean water free from contamination and pollution. Article 9 of the Constitution provides that "no person shall be deprived of life or liberty save in accordance with law". The word 'life' has to be given an extended meaning and cannot be restricted to vegetative life or mere animal existence.

In hilly areas where access to water is scarce, difficult or limited, the right to have water free from pollution and contamination is x right to life itself. This does not mean that persons residing in other parts of the country where water is available in abundance do not have such right. The right to have unpolluted water is the right of every person wherever he lives. Recently in *Shehla Zia v. WAPDA* (H.R. Case No. 15-K/1992-PLD 1994 SC 693) while dealing with Article 9, one of us (Saleem Akhtar, J.) observed as follows:--

"The word 'life' in the Constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but to enjoy it. Under our Constitution, Article 14 provides that the dignity of man and subject to law the privacy of home shall be inviolable. The fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled and could be found only in few Constitutions of the world. The Constitution guarantees dignity of man and also right to 'life' under Article 9 and if both are read together, question will arise whether a person can be said to have dignity of man if his right to life is below bare necessity line without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment. "

"In *M.C. Mehta v. Union of India* (AIR 1988 SC 1115) and *M.C. Mehta v. Union of India* (AIR 1988 SC 1037) the Court on petition filed by a citizen taking note of the fact that the municipal sewage and industrial effluents from tanneries were being thrown in River Ganges whereby it was completely polluted, the tanneries were closed down. These judgments go a long way to show that in cases where life of citizens is degraded, the

quality of life is adversely affected and health hazards are created affected a large number of people, the Court in exercise of its jurisdiction under Article 184(3) of the Constitution may grant relief to the extent of stopping the functioning of factories which create pollution and environmental degradation. "

The petitioners' demand here is the barest minimum. Water has been considered source of life in this world. Without water there can be no life. History bears testimony that due to famine and scarcity of water, civilizations have vanished, 10 green lands have turned into deserts and arid zones completely destroying the life not only of human being, but animal life as well. Therefore, water, which is necessary for existence of life, if polluted, or contaminated, will cause serious threat to human existence. In such a situation, persons exposed to such danger are entitled to claim that their fundamental right of life guaranteed to them by the Constitution has been violated and there is a case for enforcement of fundamental rights by giving directions 'or passing any orders to restrain the parties and authorities from committing such violation or to perform their statutory duties. In our view the petition is maintainable.<sup>5</sup> The next contention of the learned counsel is that the question whether mining activity could possibly pollute or diminish the water supply, is a question of fact and two authorities have recorded finding on it, therefore, such question cannot be raised before and determined by this Court. In dealing with this contention, one has to keep in mind the scope and extent of the jurisdiction exercised by this Court under Article 184(3) under which, in cases where question of public importance with reference, to the enforcement of fundamental rights is involved, direction or order of the nature as mentioned in Article 199 can be given or passed. Article 184(3) reads as follows:-

"184. (1) & (2) . . . . ."

(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of the nature mentioned in the said Article."

It is well-settled that in human rights cases/public interest litigation under Article 184(3), the procedural trappings and restrictions, precondition of being an aggrieved person and other similar technical objections cannot bar the jurisdiction of the Court. This Court has vast power under Article 184(3) to investigate into questions of fact as well independently by recording evidence, appointing commission or any other reasonable and legal manner to ascertain the correct position. Article 184(3) provides that this Court has the power to make order of the nature mentioned in Article 199. This is a guideline for exercise of jurisdiction under this provision without restrictions and restraints imposed on the High Court. The fact that the order or direction should be in the nature mentioned in Article 199, enlarges the scope of granting relief which may not be exactly as provided under Article 199, but may be similar to it or in the same nature and the relief so granted by this Court can be moulded according to the facts and circumstances of each case.

While raising this contention the learned counsel has referred to the order passed by the Secretary, Government of the Punjab, referred to above in appeal from the order of the Licensing Authority. The appellate authority has confirmed the order of the Licensing Authority with certain restrictions and safeguards provided in it. The location of mine 27A is not disputed being completely adjacent to the present water catchment area. Another salient point which emerges is that it is within 50 metres from the boundary within the lease area of P.C.C. From the plans produced, it is clear that the mouth of the mine is right on the boundary line of the catchment area which is a reduced area to the barest minimum. If it could not have posed any danger to the water source, why it was found necessary by both the authorities to impose a condition that a retaining wall be constructed by P.C.C. This by itself admits that the very existence of mine 27A and its mouth in the prohibited area does pose a serious danger and threat to the water catchment area and reservoir. P.C.C. has not filed its lease deed. However, M/s. A. Majeed & Co. have filed a lease deed and the standard form of lease is the same in almost every case. Clause (12) of the lease deed prohibits mining operation or workings to be carried on in or under the said land at any point within a distance of 50 yards from the boundaries of the said land except with the consent in writing of the Licensing Authority. Thus, without the consent in writing of the Licensing Authority P.C. C. could not have carried out mining work within 50 metres from the boundary.

It is an admitted position as is obvious from the order of the Secretary, Government of the Punjab, Industries and Mineral Development that P.C.C. is operating and working within 50 metres from the boundary. It is very close to the boundary of the catchment area. The object of keeping distance of 50 metres from the boundary wall is to provide safeguard to the adjoining land. There is nothing on record to show that the authorities concerned have at any time applied their mind or passed any specific order in writing permitting P.C.C. to carry out operation or mining work within 50 metres from the boundary. The general permission granted and the order of the Leasing Authority do not refer to such special permission as required by the lease deed nor can the permission to carry out mining operation amount to such a permission. Such a permission should be specific in nature with reference to the distance of 50 metres from the boundary. General permission granted and relied upon can be of no avail to P.C.C. It is therefore clearly established that P.C.C. is carrying on mining work adjacent to the catchment area and within the radius of 50 metres from the boundary. It is strange that the respondent did not object to P.C.C. to open the mine mouth adjacent to the water catchment area. As the lease in this prohibited area had been granted, it was the duty of the respondent to ensure that the lessee does not open the mine mouth so near the boundary. Conscious of the fact that P.C.C.'s mining operation would cause pollution, the Leasing Authority ordered for joint inspection by PMDC and P.C.C. to ensure that no further pollution is caused. But this arrangement did not work. It has been contended that as P.C.C.'s mine is located about one thousand yards downstream from the water tank/reservoir, which is approximately at a height of ` 200 ft. from the bed of the stream, there can be no possibility of causing pollution.

This contention completely overlooks the fact that about 300/400 yards from the mine mouth of P.C.C. there exists an open reservoir built by PMDC in which over flown water



from the big water reservoir is collected and distributed to the residents through a pipeline. This small reservoir is polluted by the mine debris and poisonous water as stated in the inspection report of the Mineral Development Officer prepared in January 1992. It concludes as follows:--

"It is in the fitness of things and also in the interest of public that the lease firm (appellant) may be advised to set up a device which should protect the falling debris into the stream and they may also be allowed to work in the said mine by giving such assurance. Whereas M/s. Pakistan Mineral Development Corporation may also be advised to take further steps for protection of water pipe line from main water tank and abandon the small water reservoir as it has a little area to settle down the heavier material which is mixed in the stream channel."

This report has been relied upon by the concerned authorities, but they do not seem to have taken any effective steps to stop pollution of stream and small reservoir except that three conditions were imposed which have remained ineffective.

6. In view of the above discussion:--

(i) P.C.C. is directed to shift within four months, the location of the mouth of mine No. 27A at a safe distance from the stream and small reservoir in such a manner that they are not polluted by mine debris, carbonised material and water spilled out from the mines to the satisfaction of the Commission consisting of the following members:--

(a) Dr. Parvez Hasan, Advocate, Lahore (Chairman).

(b) Dr. Tariq Banuri.

(c) Director, Industries and Mineral Development, Lahore.

(d) A member nominated by PMDC.

(e) A member co-opted by the afore-stated members of the Commission.

The Commission shall have power of inspection, recording evidence, examining witnesses including the powers as provided by Order XXVI of the Civil Procedure Code. If, on the report of the Commission, it transpires that shifting of the mine mouth is not possible, then the case shall be placed before the Court for further consideration including the question whether the operation of mine No. 27A should be completely stopped;

(ii) PMDC is directed to instal a second pipeline connecting the top level reservoir; '

(iii) PMDC will enlarge the top level water reservoir and construct wall of reservoir cost of which will be shared equally by PMDC and P.C.C.;

(iv) P.C.C. and all the miners operating adjacent to the water catchment area shall take such measures to the satisfaction of the Commission, which may prevent pollution of the water source reservoir, stream beds and water catchment area;

(v) respondent No. 1 and all authorities empowered and authorised to grant, renew or extend the mining lease or licence, are ordered:--

(a) not to grant any fresh lease/licence/permission to carry out mining work in the area which prior to 1981 was water catchment area; (b) not to renew or extend the existing lease/licence of the miners mentioned in the Schedule to the judgment without prior permission of this Court;

(vi) PMDC and P.C.C. shall bear the cost of the Commission expenses and initially

Rs.10,000 shall be deposited .by each of them with this Court within two weeks.

All the parties concerned including the persons mentioned in the Schedule and members of the Commission be informed of this judgment. The Commission shall submit its report within six weeks.

SCHEDULES. No.	NAME OF PARTY	DATE OF GRANT	
VALID UP TO			
1.	M/s. Punjab Coal Co.	1-11-1950	1-11-2000
2.	M/s. Fazal Din & Co.	1-11-1950 ,	31-10-2005
3.	M/s. A. Majid & Co.	11-11-1950	31-10-2000
4.	Mr. Saleem Jamal -	15-1-1953	9-11-2013
5.	M/s. Rehman Aslam	13-10-1960	12-2-2008

#### Colleges

6.	P.M.D.C.	1-7-1962	30-6-1992
7.	Punjab Min. Dev: Corp.	28-8-1962	23-9-2000 ,
8.	Ch. Noor Alam	1964	8-5-2005
9.	Malik Ali Shah	31-5-1968	1-12-1997
10.	Al-Madad Coal Co.	31-5-1968	22-6-2008
11.	M/s. Bilal Mineral	27-3-1975	6-3-2002

#### Associates

12.	Malik Abdur Rashid	9-5-1978	7-1999
13.	Col. Anayyat Hussain	16-12-1981	1-2000

M.B.A./G-479/S

Order accordingly.