Mehar Badshah v. Government of Khyber Pakhtunkhwa

PLD 2025 Supreme Court 36

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Mehar BADSHAH vs GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary, Peshawar and others
Present: Qazi Faez Isa, CJ, Naeem Akhtar Afghan and Shahid Bilal Hassan, JJ
Civil Petition No. 524-P of 2015, decided on 24th October, 2024.

*** KEY SIGNIFICANCE: This is the Supreme Court's first application of the NEW Article 9A (inserted via the Constitution 26th Amendment Act, 2024, on 21 October 2024 — three days before this order) — "Every person shall be entitled to clean and healthy sustainable environment." Confirms Pakistan is "one of very few countries which mention the environment specifically in their Constitution." Notes that even before Art. 9A, courts had read Art. 9 (right to life) expansively to include environmental protection. ***

(a) Constitution of Pakistan---
----Art. 9A---Right to a clean, healthy, and sustainable environment - Deforestation---Adverse effects---Forests, importance of---Forest cover in Pakistan has been rapidly decreasing, suggesting complicity and/or negligence of the Forest Department, which is supposed to protect forests---Deforestation results in unprecedented land-slides and flooding, and the diminishing forest cover is not sufficient to enable the sequestering of the green house gas emissions caused by burning fossils fuels, which exacerbates the effect of climate change, the consequences of which are suffered by the people---Pakistan is amongst the countries most vulnerable to the effects of climate change.

(b) Practice and procedure---
----Every document filed in Court must have name of the person who submits/files it.

(c) Constitution of Pakistan---
----Arts. 9 & 9A---Right to life---Scope---Clean, healthy, and sustainable environment---Life worth living is one having a sustainable environment.

Shah Faisal Ilyas, Additional Advocate-General, Khyber Pakhtunkhwa along with Sajid, Aman, SDFO, Forest Department on Court's Notice for Government of Khyber Pakhtunkhwa.
Date of hearing: 24th October, 2024.

ORDER

Qazi Faez Isa, CJ. Civil Petition No. 524-P of 2015, which pertained to the illegal cutting of 218 Shisham trees, was decided vide order dated 4 September 2024. However, during its hearing a larger question of deforestation came up, which is a serious issue, because the forest cover in Pakistan has been rapidly decreasing, suggesting complicity and/or negligence of the Forest Department, which is supposed to protect forests. Deforestation results in unprecedented land-slides and flooding, and the diminishing forest cover is not sufficient to enable the sequestering of the green house gas emissions caused by burning fossils fuels, which exacerbates the effect of climate change, the consequences of which are suffered by the people. Pakistan is amongst the countries most vulnerable to the effects of climate change. However, the Forest Department appears to view forests as a resource to be exploited which was a policy of the former colonizers.

2. The government of Khyber Pakhtunkhwa was, therefore, issued notice and directed to submit a report providing the following information: (a) the annual budget of the Forest Department, (b) the total number of employees of the Forest Department, (c) the quantity of timber that has been allowed to be cut, (d) the quantity of timber illegally cut, (e) reforestation measures undertaken and the amount spent on it and (f) the forest cover of the Province and how is it measured/determined. The information in respect of the present and previous five years was sought.

3. The learned Additional Advocate-General, Khyber Pakhtunkhwa ('AAG') submitted a report (C.M.A. No. 10451/2024) in Court, which is signed by the 'Division Forest Officer, Mardan Forest Division, Mardan' ('DFO'). It is not understandable why a DFO of a District has submitted the report when the information that had been sought was in respect of the Province of Khyber Pakhtunkhwa. The report which is submitted is undated and does not disclose the name of the DFO, despite that every document filed in Court must have name of the person who submits/files it. It was categorically stated in the case of Province of Sindh v. Shahzad Hussain Talpur (2022 SCMR 439) that the designation and name of the person must always be disclosed as it also affixes responsibility. The report disclosed that the Forest Department employees are 7,422 personnel and in the last five years a total 6,066,185 cubic feet of timber was allowed to be cut and that 130,255 cubic feet of timber was cut illegally, which was confiscated by the Forest Department.

4. The issue which was taken up by this Court is of critical importance for the Province, and also for the entire country. The future of the people of Pakistan depends in having adequate forest cover. The existing dwindling forests must be preserved and efforts should be made to stop deforestation.

5. Through the Constitution (Twenty-sixth Amendment) Act, 2024 the Constitution of the Islamic Republic of Pakistan was amended on 21 October 2024 and a new Article 9A has been inserted therein, as under:
'Every person shall be entitled to clean and healthy sustainable environment.'

Raising the status of the environment to that of a Fundamental Right in the Constitution shows the importance that the environment and Pakistan is now one of very few countries which mention the environment specifically

in their Constitution. It may, however, be stated that even before the insertion of the Article 9A into the Constitution the superior courts of Pakistan had been interpreting Article 9 (right to life) expansively and that life worth living is one having a sustainable environment. It is, however, commendable that the right to a clean, healthy and sustainable environment has now been specifically incorporated into the Constitution which undoubtedly will help to preserve flora and fauna and the natural environment. It has by now been established that a viable future is dependent on preserving and conserving the environment and adopting sustainable environmental practices.

6. Forests are natural rainfall catchment areas, and they also ensure against flooding and avalanches. The rain water flowing in to the streams and rivers must not be polluted. Unfortunately and regrettably sewage and industrial waste are released into water bodies killing the life bearing quality of water. The effects of deforestation and pollution long outlast lives. Trees are equally important in sequestering green house gases released by burning fossils fuels. Environment has an importance place in Islam and there are innumerable verses of the Holy Qur'an which mention the natural environment and the rights of all living things. There are also many saying of Prophet Muhammad (peace and blessings be upon him) stressing the necessity to preserve the natural environment, including protecting tress and animals and birds.

7. The environment has been placed as a Fundamental Right in the Constitution and its significance and importance must be brought to bear on everyone and effective preservation measures be taken. The learned AAG states that the Government of Khyber Pakhtunkhwa will be doing so and encourage and implement best sustainable environmental practices. This matter is disposed of in the above terms.

MWA/B-6/SC Order accordingly.

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