

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Naeem Akhtar Afghan
Justice Shahid Bilal Hassan

1. **Civil Misc. Application No. 6155/18 in CP. No.57/2016**
[Advertisement by UBL and HBL regarding raising of Funds for Diامر Bhasha and Mohmand Dam by the Government of Pakistan]

AND

2. **Civil Misc. Application No. 1031/20 in CMA. 1610/019**
[Comprehensive Report on behalf of WAPDA]

AND

3. **Civil Misc. Application No. 783/21 in CMA. No.6155/18**
[Advertisement by UBL and HBL regarding raising of Funds for Diامر Bhasha and Mohmand Dam by the Government of Pakistan]

AND

4. **Civil Misc. Application No. 697/2022 in CMA. 6155/18**

Sh. Bashir Ahmad ... *Petitioner*

Versus

Muhammad Asadullah (deceased)
through his L.Rs and others ... *Respondents*

AND

5. **Civil Petitions No. 350-P to 354-P of 2022**

*(On appeal against the order dated 21.03.2022
passed by the Peshawar High Court, Peshawar in
CRs No. 1092-P to 1095-P/2021 and 2-P/2022)*

Zahid Khan and others
(in CP.350-P/22)

Taj Muhammad and others
(in CP.351-P/22)

Haji Aslam Khan
(in CP.352-P/22)

Haji Ahmad Said and others
(in CP.353-P/22)

Sarwar Khan and others
(in CP.354-P/22)

... *Petitioners*

Versus

Haji Malik Said Mehmood Jan and others
(in CPs.350-P & 353-P/22)

Malik Manan and others
(in CP. 351-P/22)

Waris Khan and others.
(in CPs.352-P & 354-P/22)

... *Respondents*

For the Federation:

Ch. Aamir Rehman,
Additional Attorney-General for Pakistan
Mr. Ghufran Memon,
Additional Auditor-General for Pakistan
Mr. Tajdar Zaidi, Director (Legal)
Mr. Muhammad Azhar,
Deputy Auditor-General for Pakistan

For Government of Punjab:

Mr. Wasim Mumtaz,
Additional Advocate-General

On Court's Notice:

Mr. Khalid Jawed Khan, ASC
(through video-link from Karachi)

For State Bank of Pakistan:

Mr. Mehmood Nazir Rana, Legal Advisor

For NBP:

Mr. Taha Sajjad,
Head Fixed Income Sales, NBP, Karachi
Mr. Zia Iftikhar,
Head Corporate Sales North, NBP, Karachi

For WAPDA:

Mr. Saad Rasool, ASC
Mr. Javaid Latif, Member Power, WAPDA
Mr. Asim Rauf, GM, Mohmand Dam
Mr. Nazakat Hussain, GM, Diامر Bhasha Dam
Mr. M. Babar Khattak, Dy. Director (Legal)

For the Applicant:
(In CMA. 697/22)

Mian Abdul Rauf, ASC

For the Petitioners:
(In CPs. 350-P to 354-P/22)

Mr. M. Munir Paracha, ASC
Haji M. Zahir Shah, AOR

For the Applicant:
(In CMA. 9843/24)

Mr. Hassan Rashid Qamar, ASC

For M/o Information: Mr. Sikandar Mehmood, Assistant Director

Date of Hearing: 09.10.2024

ORDER

Qazi Faez Isa, CJ.

C.M.A. No. 7360 of 2024:

1. The Government of Pakistan and the Water and Power Development Authority ('**WAPDA**') have jointly moved this application praying that the fund/amount deposited in account No. 03-593-299999-001-4 in the name of '*The Supreme Court of Pakistan and the Prime Minister of Pakistan Diامر-Bhasha and Mohmand Dams Fund*' be transferred to the official WAPDA account with the National Bank of Pakistan ('**NBP**'). The application further states that the Government of Pakistan and the executing agency, that is, WAPDA, shall utilize the amount so transferred exclusively for the construction of the Diامر-Bhasha Dam and Mohmand Dam projects ('**the said dams**').

2. CMA No. 9812 of 2024: Learned Mr. Saad Rasool who represents WAPDA stated that as directed by this Court WAPDA periodically submits progress reports, and this CMA is the progress report for the period January 2023 to August 2024.

3. We had inquired about this Court's remaining role in this matter and about the continuance of the *Implementation Bench*. Some of the learned counsel submitted that in view of the pendency of this matter before this Court other courts and authorities are not attending to the issues and disputes that have arisen. Others questioned whether the Supreme Court should have taken up the matter of whether the said dams should be constructed, and whether this Court could constitutionally do so, and to have passed the orders that it did. However, we made it clear that this Bench was not hearing a review petition, therefore, these questions/objections cannot be agitated before it.

4. To attend to and better understand the matter, as this Bench had not heard it before, we had issued notices to the Attorney-Generals for Pakistan

in whose tenure the said dams matter was initiated and continued, namely, to learned Messrs Khalid Javed Khan and Anwar Mansoor Khan. Former Attorney-General, Mr. Anwar Mansoor Khan, submitted an application stating that his attendance may be dispensed with as no substantial hearing took place when he was the Attorney-General and that he had only attended to inconsequential hearings. He also regretted traveling to Islamabad (even though he was not directed to do so, and could have addressed us via the available video link facility from this Court's Branch Registry at Karachi). Former Attorney-General, the learned Mr. Khalid Javed Khan, was kind enough to attend (via video link facility from Karachi) and was asked about the noted matters, however, we did not get any meaningful response from him. He stated that this Court invokes Article 184(3) of the Constitution as the different Chief Justices deemed appropriate, but he did not state when or how the jurisdiction under Article 184(3) should be invoked.

5. Learned Ch. Aamir Rehman, Additional Attorney-General ('**AAG**'), stated that Article 78(2)(b) of the Constitution of the Islamic Republic of Pakistan ('**the Constitution**') stipulates that the money '*received by or deposited with the Supreme Court... shall be credited to the Public Account of the Federation.*' He submitted that the said account and the retention of the money by the Supreme Court was inappropriate. Since this was a fiscal matter notice was also issued to the Auditor-General for Pakistan, whose representative supported the contention of the learned AAG.

6. We had also asked the purpose of the filing of technical periodical progress reports by WAPDA, and were told that the same were submitted as was directed. Learned Mr. Khalid Javed Khan was asked whether this Court possessed requisite ability to fully comprehend the mostly technical information contained in such reports, and he responded by stating that such progress reports were probably called for to monitor the progress which had been made with regard to the construction of the said dams.

7. As regards the *Implementation Bench* we were informed that *vide* order dated 9 January 2019 five Judges of the Supreme Court were designated as the *Implementation Bench*, namely, Justice Sh. Azmat Saeed,

Justice Umar Ata Bandial, Justice Faisal Arab, Justice Ijaz ul Ahsan and Justice Munib Akhtar. The *Implementation Bench* was constituted by a Bench of this Court comprising of the then Chief Justice Mian Saqib Nisar, Justice Umar Ata Bandial, Justice Faisal Arab, Justice Ijaz ul Ahsan and Justice Munib Akhtar. However, the record does not show that the *Implementation Bench* (constituted on 9 January 2019) undertook any work or that the progress reports submitted by WAPDA were ever examined by it.

8. If the *Implementation Bench* did not examine the progress reports then their submission is pointless. Moreover, except for one, all the Hon'ble Judges of the *Implementation Bench* have since retired and were not replaced by this Court. WAPDA's counsel also stated that preparation of progress reports consumes time, money and effort. The filing of the progress reports without the same being examined by the *Implementation Bench* served no purpose. And, now there is also no *Implementation Bench* as four of its members have retired/resigned. Therefore, unless specifically directed, WAPDA need not submit further progress reports in this Court.

9. To ascertain the amount in the abovementioned account the State Bank of Pakistan ('**SBP**') was directed to submit its report, and SBP states that, as on 4 October 2024 the total collected amount was Rupees 11,475,776,584 and the mark-up earned thereon was Rupees 12,194,306,459. The accrued mark-up has exceeded the amount collected, therefore, we inquired who had paid the mark-up and were informed that it was the Federal Government. The total amount (principal and mark-up) is Rupees 23,670,083,043. WAPDA's counsel stated that the present projected cost of the said dams is seven hundred and forty billion rupees (Diamer-Bhasha Dam to cost four hundred and eighty billion rupees, and Mohmand Dam to cost two hundred and sixty billion rupees). The amount in the said account, therefore, constitutes only 3.2 per cent of the money required to build the said dams, and of such amount the larger portion the Government itself has paid in the form of mark-up.

10. Considering the aforesaid facts and after hearing the learned counsel it is ordered as under:

- (i) The amount in account No. 03-593-299999-001-4 maintained in the name of '*The Supreme Court of Pakistan and the Prime Minister of Pakistan Diامر-Bhasha and Mohmand Dams Fund*' by the State Bank of Pakistan is directed to be transferred to the Public Account of the Federation (in terms of Article 78(2)(b) of the Constitution);
- (ii) Upon transfer of the total amount from the abovementioned account No. 03-593-299999-001-4 maintained in the name of '*The Supreme Court of Pakistan and the Prime Minister of Pakistan Diامر-Bhasha and Mohmand Dams Fund*' the account should be closed;
- (iii) A sub-account in the Public Account of the Federation be created or other appropriate measure be taken to enable the said amount to be lent to the best rated private scheduled bank(s) so that mark-up can be earned thereon; and
- (iv) When any amount is required for the construction of the said dams the amount collected and mark-up accrued thereon should be so utilized.

11. The listed applications and all other connected applications and petitions are disposed of.

Chief Justice

Judge

Judge

Islamabad
17.10.2024
(Farrukh)

Approved for Reporting