

**P L D 2018 Lahore 1**

**Before Syed Mansoor Ali Shah, C J**

**WALID IQBAL---Petitioner**

**Versus**

**FEDERATION OF PAKISTAN and others---Respondents**

Writ Petition No.34789 of 2016, decided on 14th November, 2017.

**Constitution of Pakistan---**

---Arts.9 & 199 ---Constitutional petition---Public Interest Litigation---Environment---  
Fundamental Right to Life---Hazardous smog---Precautionary principle---Scope---  
Petitioners filed public interest petition impugning inaction of Provincial Government in  
addressing the issue of pollution and hazardous smog in the city---Validity---Dense  
smog was physically visible in the city and air monitoring showed that same had gone  
above the highest level and Doctors had confirmed that such levels of smog were  
hazardous to health of residents---High Court observed that in spite of such conditions,  
no preventive measures had been taken to protect life and health of people and that High  
Court was bound to protect fundamental rights of people and could enforce Art.9 of the  
Constitution read with internationally recognized "precautionary principle" and  
accordingly till such time Government proposed a detailed action plan and keeping in  
view emergent nature of current crises---High Court directed that its laid-out plan be put  
in place and a revised smog policy and declaration of public health emergency be  
submitted before High Court within 3 months---Constitutional petition was disposed of,  
accordingly.

Sheraz Zaka for Petitioner.

Liaqat Ali Qureshi and Barrister Hamza Randhawa for Petitioners in connected  
petitions.

Nasar Ahmad, Deputy Attorney General for Pakistan.

Ms. Hina Hafeezullah Ishaq, Assistant Attorney General for Pakistan.

Anwaar Hussain and Ahmad Hassan Khan, Additional Advocates General,  
Punjab.

Ms.Sarah Belal and Fahad Malik, Advocate/amici curiae.

Ahmad Rafay Alam, Advocate.

Muhammad Azhar Siddique, S. Parveen Mughal, Abdul Malik and Muhammad  
Razwan Gujjar, Advocates.

Saif Anjum, Secretary Environment, Government of the Punjab.

Muhammad Nawaz Manik, Director (Law), Environment Protection Department, Punjab.

Mian Ejaz Majeed, Deputy Director (Legal) EPA, Punjab, Lahore.

Najam Ahmed Shah, Secretary Specialized Healthcare and Medical Education Department.

Dr. Salman Shahid, Addl. Secretary, SHC and ME Department.

Aslam Javaid, Senior Law Officer, SHC and ME Department.

Dr. Sadain Khalid, Addl. Secretary (vertical program) Primary and Secondary Healthcare Department.

Dr. Aqil M. Khalil, Dy. Secretary (Technical) P&SHC Department.

Dr. Saeed Akhtar, Director (CDC), DGHS, Punjab.

Dr. Maudood Khan, Consultant, EPD.

Dr. Asim Altaf, Addl. Sec. Primary and Secondary Health.

Khurram Chughtai for (LWMC).

Muhammad Riaz, Chief Metrologist.

M. Aleem Akhtar Cheema, Senior Law Officer, Primary and Secondary Health Department.

Toquir Ahmad, Director (ML&T), EPA.

Muhammad Zaman Watto, Addl. Secretary, EPA.

Tariq Mahmood, Addl. Secretary, School Education Department.

Zubair Khan, Deputy Secretary (Legal), School Education Department.

## **ORDER**

**SYED MANSOOR ALI SHAH, C.J.**---This is a petition in the nature of public interest pointing out the inaction of the respondent-government departments to address the issue of pollution and smog in the city. It is prayed that the respondent-departments must show what steps they have taken to combat smog in the city, which is a serious health hazardous and inaction on the part of Government is violative of Article 9 of the Constitution of Islamic Republic of Pakistan, 1973.

2. The Secretary, as well as, departmental representatives of Environment Protection Department have tendered appearance and submit that they have formulated "Policy and Action Plan for Control, Mitigation, Advisory and Protective Measures in Extreme Weather Conditions of Dense Smog in the Punjab" ("Policy"), the same has been placed on the record as Mark-A. They add that since last year Environment Protection Department has also procured six air monitoring stations which have been installed at different locations in the city of Lahore and they are tabulating the data in order to formulate future line of action.

3. When asked that in spite of the aforesaid Policy, formulated in the light of direction given by this Court last year, why there is still smog in the city of Lahore causing serious health hazard to the life of the people? They replied that the Environment Protection Department is still busy in analyzing the data in order to formulate strategic interventions. The air quality monitoring data placed before the Court by the respondent-department shows daily averages of PM10, PM2.5, CO, NO, NO2, O3, SO2 at all five air monitoring stations in Lahore. Examining the daily averages collected by the air monitoring machine installed at the MET office Shadman, Lahore, it is noticed that daily average of PM2.5 recorded at 11:55:00 PM on 06.11.2017 is 358.7 [ g/m<sup>3</sup>], while the air monitoring data received from Thokar, University of Engineering and Technology ("UET") and Lakhodahar Stations does not have any data regarding PM2.5. The data is placed on the record as "Mark-B".

4. As per the Smog Policy, when PM2.5 concentration rises above 300+ it is considered to be a severe health situation which may cause respiratory impact even on healthy people and serious health impact on people with lung/heart disease and the health impact can be experienced during light physical activity. When asked what actions were taken when the said readings were recorded by the air monitoring machine installed at the MET office, they submitted that they are still analyzing and tabulating the data in order to formulate an action plan. They were asked whether the Environment Protection Department informed the Health Department and School Education Department regarding the PM2.5 concentration touching the highest level, they replied that there was no written correspondence between the Departments.

5. Secretary, Health Department, submitted that they have been holding meetings on daily basis for two weeks, however, the readings of the air monitoring machines were not discussed with the Health Department.

6. The representative of the Health Department also submitted that they never sought such information or received any information from the Environment Protection Department. They submitted that the Health Department has issued health advisory warnings, which were published in the National Dailies to the following effect:-

## احتیاطی تدابیر دوران سموگ

- روزانہ زیادہ سے زیادہ پانی پیئیں
- زیادہ سے زیادہ وقت گھروں میں گزاریں۔ بازاروں، گلیوں یا سڑکوں پر زیادہ چلنے پھرنے سے پرہیز کریں
- گھروں کی کھڑکیاں اور دروازے بند رکھیں
- گھروں کی صفائی کے دوران جھاڑو کی بجائے گھاس یا کپڑا استعمال کریں
- گھر سے باہر نکلنے وقت چشمے کا استعمال کریں اور سفر کے دوران یا بعد میں آنکھوں کو پانی سے اچھی طرح دھوئیں
- باہر اور ڈھانچا لباس پہنیں ہمارے ٹوپی یا رومال رکھیں اور ٹاک و مٹک کو ماسک یا رومال سے ڈھانپ کر رکھیں
- بہت زیادہ ٹھنڈے مشروبات پینے سے اجتناب کریں
- گھروں کے باہر مٹی والی جگہ پر پانی کا چھڑکاؤ کریں
- تعمیراتی جگہوں اور کوڑا کرکٹ والی متعفن جگہوں پر بھی توجہ دیں تاکہ دھول یا مٹی وغیرہ نہ اڑے
- اپنی گاڑیوں کا معائنہ کروائیں تاکہ دھوئیں کی وجہ سے ماحول میں آلودگی کم سے کم ہو اور زیادہ سفر کرنے سے پرہیز کریں
- بچوں اور بزرگوں پر خصوصی توجہ دیں اور ان کی صحت کا خاص خیال رکھیں۔
- آنکھوں اور سانس کی بیماری کی صورت میں فوری طور پر اپنے قریبی ڈاکٹر یا سرکاری ہسپتال سے رجوع کریں

7. The representative was asked whether these warnings were based on research regarding effects of smog on health. The answer was that no such research was carried on and these instructions were issued on the basis of their own general understanding.

8. From the above, it appears that Government Departments have no desire, capacity or mutual coordination to deal with the Smog Emergency in the city. The Smog levels having touched the highest levels according to their own Smog Policy, but no tangible steps were taken by the Environment Protection Department, Health Department or the School Education Department for the protection of the health or safety of the residents of Lahore including children, pregnant women and persons of old age. This is most disconcerting and disappointing.

9. Ms. Sarah Belal and Fahad Malik, learned amici curiae submitted that if the level of PM2.5 cross 300+ (ug/m<sup>3</sup>) it calls for declaring of health emergency and in support of this contention referred to the Public Health (Emergency Provisions) Ordinance, 1944. Mr. Ahmad Rafey Alam, learned amicus curiae, had brought portable air monitoring indicator in the Court and submitted that the level of PM2.5 in the Court is 494 (ug/m<sup>3</sup>) and outside the Court it is slightly over 500(ug/m<sup>3</sup>).

10. Dr. Maudood Khan, Consultant, Environment Protection Department, Dr. Kamran Cheema, who had come along with Secretary Health Department frankly submitted that when concentration of PM2.5 crosses 300+, it causes serious health issues for pregnant women and people suffering from lungs and heart diseases and result in long term effects on healthy people. They candidly submitted that the situation warranted the raising of red flag.

11. Considering the above situation, Secretaries of the respective Departments along with law officers were directed to hold an emergent meeting under the chairmanship of Chief Secretary, Punjab in order to formulate an Emergency Action Plan today, and the hearing was postponed till 06:00 p.m.

12. The case was taken up at 06:00 p.m. when the Secretary Environment Protection Department presented the following action plan:--

<b>PM<sub>2.5</sub><sup>2</sup></b>	<b>Indicator color</b>	<b>Overall Description</b>	<b>Actions-General Advisory</b>
0.35	Green	Good-Minimal Impact	--
36-70	Light Green	<b>Satisfactory</b> -May cause minor breathing discomfort to sensitive people	* Consider restriction on air pollution generating industrial unit and construction activities in the affected area. * No new air pollution generating units allowed.
71-105	Yellow	<b>Moderately polluted</b> -May cause breathing discomfort to people with lung disease such as asthma, and discomfort to people with heart disease, children and older adults.	* Consider shutting down of high air pollution generating industrial units. * Consider restriction on the use of motor vehicles.
106-140	Orange	<b>Poor</b> -May cause breathing discomfort to people on prolonged exposure, and discomfort to people with heart disease.	* Consider shutting down of construction activities. * Advise for children and elderly to remain indoors in clean air especially during peak times. * Consider shutting down of primary schools.
141-300	Maroon	<b>Very Poor</b> -May cause respiratory illness to the people on prolonged exposure. Effect may be more pronounced in people with lung and heart diseases.	* Shutting down of all educational institution. * Advice for all to remain indoor in clean air. * Everyone to wear mask when outdoor. * Distribution of the masks. * Closing down of parks.

300+		<b>Severe-</b> May cause respiratory impact even on healthy people, and serious health impacts on people with lung/heart disease. The health impacts may be experienced even during light physical activity.	* Imposition of medical emergency with the suspension of all other outdoor activities. * Evacuation to the safe places as far as practicable.
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They submitted that these actions were proposed by the Department but were not included in the Smog Policy because they wanted to wait and further analyze all the data collected.

13. In the present case, dense smog is physically visible in the city and the air monitoring record shows that it has gone above 300+ i.e., the highest level. Doctors have confirmed that the smog levels are seriously hazardous to health of the residents. In spite of the same no preventive measures to protect the life and health of the people have been put in place. This Court is bound to protect the fundamental rights of the people, therefore, relying on Article 9 of the Constitution, i.e., right to life, read with the internationally recognized precautionary principle, till such time that the Government proposes a detailed action plan, keeping in view the emergent nature of the current crises, the following plan shall be put in place:-

**SMOG HEALTH EMERGENCY ACTION PLAN**

Government and its respective departments shall immediately act according to the directions given in column 4 if PM2.5 concentration is as shown in column 1, below. The action of the Government shall be monitored by the Chief Secretary.

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
PM <sub>2.5</sub> <sup>2</sup>	Indicator Color	Overall Description	-
0.35	Green	Good-Minimal Impact	--
36-70	Light Green	<b>Satisfactory</b> -May cause minor breathing discomfort to sensitive people.	<b>* IMMEDIATELY REST-RICT AIR POLLUTION GENERATING INDUSTRIAL UNITS AND CONSTRUCTION ACTIVITIES IN THE AFFECTED AREA</b>
71-105	Yellow	<b>Moderately polluted</b> -May cause breathing discomfort to people with lung	<b>* SHUT DOWN HIGH AIR POLLUTIOON GENERATING INDUSTRIAL UNITS. * IMPOSE RESTRICTIONS ON THE USE OF MOTOR VEHICLES.</b>

		disease such as asthma, and discomfort to people with heart disease, children and older adults.	
106-140	Orange	<b>Poor</b> -May cause breathing discomfort to people on prolonged exposure, and discomfort to people with heart disease.	<b>* ISSUE PUBLIC WARNINGS FOR CHILDREN AND ELDERLY TO REMAIN INDOORS IN CLEAN AIR ESPECIALLY DURING PEAK TIMES. * SHUT DOWN PRIMARY SCHOOLS.</b>
141-300	Maroon	<b>Very Poor</b> -May causes respiratory illness to the people on prolonged exposure. Effect may be more pronounced in people with lung and heart diseases.	<b>* SHUT DOWN ALL EDUCATIONAL INSTITUTIONS. * DIRECT EVERYONE TO WEAR MASK WHEN OUTDOOR. * DISTRIBUTION OF FACE MASKS. * CLOSING DOWN OF PARKS.</b>
300+		<b>Severe</b> - May cause respiratory impact even on healthy people, and serious health impacts on people with lung/heart disease. The health impacts may be experienced even during light physical activity.	<b>* IMPOSITON OF MEDCIAL EMERGENCY WITH THE SUSPENSION OF ALL OTHER OUTDOOR ACTIVITIES. * EVACUATION TO THE SAFE PLACES AS FAR AS PRACTICABLE.</b>

In addition to the above, daily readings of the air quality monitoring will be uploaded on the website of the Environment Protection Department and efforts shall be made to put real time data on the website at the earliest. This data should be station wise.

14. The Smog Emergency Health Action Plan will come into motion on the basis of highest reading of any one of the air monitoring stations out of the five stations mentioned above. The petitioner or the amici curiae are free to approach this Court in

case there is any lapse on the part of the Government to put the above Emergency Health Action Plan into action.

15. This Emergency Health Action Plan will be widely disseminated by the respective departments in the print and electronic media till such time that the issue of smog comes to a complete end.

16. A revised smog policy clearly spelling out actions, items and the declaration of the public health emergency be submitted before this Court within three months. The new revised policy will assign a role to the Health Department, as well as, School Education Department.

17. To come up for progress report of the concerned departments on 18.12.2017.

KMZ/W-9/L Order accordingl