

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No. 1675/2018

Date of institution.22.09.2018

Date of decision. 15.11.2019

1. Justice (R) Syed Manzoor Hussain Gillani, Chairman (Human Rights Association AJ&K),1-Shoukat Lines Muzaffarabad.
2. Sheikh Hafeez-ur-Rehman (R) Senior Member Board of Revenue Azad Jammu and Kashmir, Muzaffarabad.
3. Dr. Ejaz Ahmed, R/o Khamdrang Shoukat Lines Muzaffarabad.
4. Raja Amjad Ali Khan, Advocate Supreme Court, Member AJ&K Bar Council, Muzaffarabad.
5. Syed Waqar Hussain Kazmi, Advocate Supreme Court, Member AJ&K Bar Council, Muzaffarabad.
6. Haroon Riaz Mughal, Advocate Supreme Court, Member AJ&K Bar Council, Muzaffarabad.
7. Majid Khan, Advocate President AJ&K High Court Bar Association, Muzaffarabad.
8. Fazal Mehmood Baig, Advocate Supreme Court, Azad Jammu and Kashmir Muzaffarabad.
9. Mehr Ali Shah Bukhari, Advocate Supreme Court, Azad Jammu and Kashmir Muzaffarabad.
10. Ahmed Nawaz Tanooli, Advocate Supreme Court, Azad Jammu and Kashmir Muzaffarabad.
11. S.M. Ibrar, Advocate High Court, Azad Jammu and Kashmir Muzaffarabad.
12. Nasir Majeed Chishti, Advocate High Court, Azad Jammu and Kashmir Muzaffarabad.
13. Syed Waqar Hussain Kazmi, Advocate High Court, Azad Jammu and Kashmir Muzaffarabad.
14. Syed Zulqarnain Raza Naqvi, Advocate High Court, Azad Jammu and Kashmir Muzaffarabad.
15. Khalid Bashir Mughal, Advocate High Court, Azad Jammu and Kashmir Muzaffarabad.
16. Abdul Malik Siddiqui, Advocate, General Secretary all Jammu and Kashmir Jamat Ulma-e-Islam Azad Kashmir.
17. Asad Qureshi, Advocate High Court, Azad Jammu and Kashmir Muzaffarabad.

18. Asif Raza Mir, Central Secretary General T.V Journalists Association AJ&K Central Press Club Muzaffarabad.
19. Abdul Hakeem Kashmiri, Central Secretary General Central Union of Journalists AJ&K Central Press Club Muzaffarabad.
20. Zulfiqar Butt Ex-Secretary General Central Press Club Muzaffarabad.
21. Afzal Ahmed Sulehria, Journalists Central Press Club Muzaffarabad.
22. Faisal Jameel Kashmiri Arzi Manzil No.14, Near City Police Station Muzaffarabad.
23. Shoukat Nawaz Mir President Markzi Anjuman Tajran Muzaffarabad Habib News Agency Muzaffarabad.
24. Abdul Razaq Khan, Chairman Tajaran Joint Action Committee Muzaffarabad.
25. Shehzad Aslam Khan R/o Ambore Ward No.1, Muzaffarabad.
26. Raja Omar Ahsan R/o Domail Opposite Sangum Hotel Muzaffarabad.
27. Shahid Ali Awan, R/o Lower Chatter Muzaffarabad, District Muzaffarabad.
28. Zahid Mughal R/o Lower Plate Muzaffarabad.
29. Central Bar Association Azad Jammu & Kashmir Muzaffarabad through its President Maqbool-ur-Rehman Abbasi, Advocate.
30. High Court Bar Association through its President Raja Majid Ali Khan, Advocate.

Petitioners

VERSUS

1. Govt. of Islamic Republic of Pakistan through Establishment Secretary to Govt. of Pakistan Islamabad.
2. WAPDA through its Chairman WAPDA House Mall Road Lahore.
3. Azad Govt. of the State of Jammu and Kashmir through its Chief Secretary New Secretariat Muzaffarabad.

4. Azad Jammu and Kashmir Environmental Protection Council through its Chairman /Prime Minister of Azad Jammu and Kashmir Muzaffarabad.
5. Azad Jammu and Kashmir Environmental Protection Agency through its Director General at Muzaffarabad.

Respondents

2. Writ Petition No. 1744/2018.
Date of institution.09.10.2018.

1. Saqib Ahmed Abbasi, Advocate High Court, Central Bar Association Muzaffarabad.
2. Shaheen Kousar Dar, Ex-Deputy Speaker of Azad Jammu and Kashmir Legislative Assembly Muzaffarabad.
3. Azhar Hussain Gillani Ex-Minister Law Azad Govt. of the State of Jammu and Kashmir Muzaffarabad.
4. Zafar Ali Awan Ex-DSP, R/o Sund Gali Muzaffarabad.
5. Sheikh Attique-ur-Rehman, Advocate High Court, Central Bar Association Muzaffarabad.
6. Bilal Ahmed Magree, Advocate High Court, Central Bar Association Muzaffarabad.
7. Yasir Safeer Mughal, Advocate High Court, Central Bar Association Muzaffarabad.
8. Waheed Bashir Awan, Advocate High Court, Central Bar Association Muzaffarabad.
9. Riaz Qureshi, Principal Asian Star School System Bala Peer, Muzaffarabad.

Petitioners

VERSUS

1. Govt. of Islamic Republic of Pakistan through Establishment Secretary to Govt. of Pakistan Islamabad.
2. WAPDA through its Chairman WAPDA House Mall Road Lahore.

3. Azad Govt. of the State of Jammu and Kashmir through its Chief Secretary having his office at New Secretariat Muzaffarabad.
4. Azad Jammu and Kashmir Environmental Protection Council through its Chairman /Prime Minister of Azad Jammu and Kashmir, Muzaffarabad.
5. Azad Jammu and Kashmir Environmental Protection Agency through its Director General at Muzaffarabad.
6. Three Gorges Corporation through its Managing Director.
7. Environmental Department of Govt. of the State of Azad Jammu and Kashmir through Secretary Environment.

Respondents

**Before:- Justice Muhammad Sheraz Kiani, J.
Justice Sadaqat Hussain Raja, J.
Justice Ch. Muhammad Muneer, J.**

LARGER BENCH

PRESENT:

Raja Amjad Ali Khan, Haroon Riaz Mughal, Syed Zulqarnain Raza Naqvi and Saqib Ahmed Abbasi, Advocates for Petitioners.

Nemo for Respondent No.1 in both Writ Petitions.

Ch. Shabbir Ahmed, Advocate for Respondent No.2-WAPDA in both Writ Petitions.

Sardar Karam Dad Khan, Advocate General, Akhlaq Hussain Kiani, Additional Advocate General, Raja Ayaz Ahmed, AAG for official Respondents in both Writ Petitions.

JUDGMENT:

(Justice Muhammad Sheraz Kinai.J.) The captioned writ petitions have been addressed under

Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974.

2. As common questions of facts and law are involved in both the writ petitions, therefore, the same were clubbed for onward proceedings and are decided through the instant single judgment.

3. Precise facts culminating into filing of writ petition No.1675/2018, are that petitioners are bona-fide hereditary State Subjects of the State of Azad Jammu & Kashmir, having domicile of District Muzaffarabad. It is stated that Govt. of Pakistan through its outlet, Water and Power Development Authority (WAPDA) has undertaken the construction of different Dams throughout Pakistan, including Azad Jammu & Kashmir and Galgit Baltistan for generating Hydroelectricity. The WAPDA has already constructed a Dam in Mirpur District i.e. Mangle Dam, which has a capacity of generating 1200 MW electricity, which was transferred to national grid in 1966-67 without paying the share of Azad Jammu & Kashmir in the net profit of hydro generation. It is stated that besides many other small dams, the WAPDA has undertaken the construction of two new hydro electric power generating

project on Neelum and Jhelum rivers, in Muzaffarabad District i.e. Neelum Jhelum Hydro Project (to be referred as 'NJHP') with capacity of generating 969 MW and Kohala Project with the capacity of generating 1224 MW electricity. The construction of NJHP was completed and is generating power, while process for acquisition of land for Kohala Project is in process. It is averred that several studies were made before initiating work on NJHP. The first study was made in 1996-97 by NORPALAN (a global consulting company based in Norway), hired by WAPDA. The said company reported that 20 cumics water would be required for Noseri to Domail for drinking and ecological system and to minimize the environmental impact on the community living in the area. The study was based on calculation of projected population from 2000 to 2050, which was the life of project. According to the said study report by 2050, the population of Muzaffarabad city would be around 5,92,092. It is stated that due to devastated earthquake of 2005, the demography of the area was totally changed as the population of Muzaffarabad has now increased to the level of more than 03 lacs by 2018, due to influx of people of surrounding

areas, affected by earthquake and expending economic activities. The WAPDA authorities rejected the aforesaid report on the ground that it will cause an economy loss of 65 million dollars to the State as in case of release of 20 cumecs water WAPDA would not be able to generate the electricity compatible with the expenses incurred thereon. The WAPDA instead proposed to release 3 cumecs water for drinking purpose had struck to its position of the designee prepared for reservoir. It is maintained that report suggested 03 cumecs for drinking and 17 cumecs for sewage dilution, while flow of water was also required to maintain ecological system, as well as, to minimize the environmental impact. However, later on second study for the purpose was conducted by WAPDA from the same agency in year 2010. According to this report, the estimated population of Muzaffarabad city would be 3,37,796 in 2050. It is claimed that the same group consisting of experts, taking millions of rupees for study, reported contradictory to what they had earlier reported, which implies that they had been influenced by some authority and most probably by WAPDA, to save the money, which, would be otherwise required for uplifting

the affected area. It is further stated that in view of resistance & protest of civil society, backed by the Govt. of Azad Jammu & Kashmir through its environmental agency, WAPDA approached the Azad Jammu & Kashmir Council and with its connivance got maneuvered second report through the same agency in year 2009-10, which recommended the release of 09 cumecs water from Noseri to downstream, on the basis of new projected population. As against above, another study was submitted by Japan International Corporation Agency (JICA), in year 2007, stating therein that population position of Muzaffarabad in year 2009 as 1,38,000, the projected population in 2030 as 2.57,000 and in year 2050 as 5,92,000. Both the study reports could not cater the use of water by non-residents and those not counted during the census, such as hospitalized patients, visitors, the college and universities' students, their guardians and visitors, casual visitors in the markets, offices, mosques, and spiritual places from around the State, refugees, camps, which would be more than triple of the number of the projected population given under the first report. Besides that, decreasing water level all around the world

due to depletion of glaciers and climate change is not taken into consideration as the source of river Neelum is no exception to the general climate change. It is averred that Govt. of Azad Jammu & Kashmir was directed to initiate proceedings for acquisition of land for the purpose, while all other directions were issued by the Azad Jammu & Kashmir Council and Ministry of Kashmir Affairs in favour of WAPDA, bypassing the Govt. of Azad Jammu & Kashmir. The Govt. of Azad Jammu & Kashmir was, however, requested for No Objection Certificate from Azad Jammu & Kashmir Environmental Authority, which was conditionally issued on 22.01.2010, which was later on renewed and supplemented through subsequent No Objection Certificate, which had to be fulfilled by WAPDA, before, during and after completion of the project, but disgustingly, despite completion of the whole project and diversion of the water course of river Neelum, WAPDA has not complied with the conditionalities, imposed by the Azad Jammu & Kashmir Environmental Protection Agency given in the NOC's. Besides above, the Development Authority, Muzaffarabad had also written a letter to Secretary Works & Communication Department

on 02.09.2010, listing the hazards which the Muzaffarabad city would face in case of diversion of river Neelum and also suggested measures of combating adverse effects of diversion of the river, the climate and eco system, including the compensation to be assessed. It is stated that if theoretical position is accepted, Neelum Jhelum Hydro Project or any other project launched by WAPDA in Azad Jammu & Kashmir shall be subject to the protocol and laws as enforced by the International Environmental Protection Agency with the consent of local authority i.e. Azad Jammu & Kashmir Govt. The WAPDA in absence of accepting the Azad Jammu & Kashmir as the territory or province of Pakistan has to follow international laws and subject to its jurisdiction if civil society of Azad Jammu & Kashmir complains to UN Program on environment but it may embarrass geo political diplomatic position of Pakistan at International level. It is further maintained that as Azad Jammu & Kashmir is entrusted as a Local authority, under the interim control of Government of Pakistan, hence, it shall be treated as a territory otherwise included in Pakistan under Article 1(3) of the Constitution of Islamic Republic of Pakistan, 1973. It is maintained that

the Constitution of Pakistan shall apply in that case if the international laws/protocol, as envisaged by the United Nations and International Environmental Program. It is further claimed that although Azad Kashmir is technically not a part and province of Pakistan as visualized by Article 1 of the Constitution of Islamic Republic of Pakistan, however, practically it is dealt as territory and province of Pakistan, subject to final resolution of Kashmir dispute in accordance with UNCIP resolutions and is administered like that by the Govt. of Pakistan, which has the authority to make laws for Azad Jammu & Kashmir under Article 31(3) and (4) of the Azad Jammu & Kashmir Interim Constitution, 1974. It is stated that the Government of Pakistan, through its Notification dated 11.05.1971, followed by another Notification dated 06.06.1988, declared that although Azad Kashmir is not part of Pakistan within the meaning of Article 1(2) of the Constitution, it should, for all practical purposes, be treated like any other province. It is further claimed that WAPDA has almost completed Neelum Jhelum Hydro Project generating 969 MW electricity without any agreement with the Government of Azad Jammu &

Kashmir, although all natural resources including water reservoir and profit earned therefrom, fall within the domain of the Govt. of Azad Jammu & Kashmir under Article 52-C of the Interim Constitution, 1974 and that too, without taking care of the adverse effects of the diversion of Neelum river from Noseri to Kohala on the eco-system and environment of Azad Jammu & Kashmir, particularly, the area through which the river is flowing, spread over 41 kilometers from Noseri to Domail and 25 kilometers from Domail to Kohala. Similarly, WAPDA has undertaken diversion of river Jhelum from Sarran to Kohala, which will deprive the entire area and inhabitants, living around the river up to a length of 40 KM of its natural benefits, essential for biodiversity besides affecting the entire eco-system of environment of the area, adversely affecting the lives of the people, animals and other bio-diversities, when two rivers, in between which, the district Muzaffarabad is located are diverted, entire district alongwith its inhabitants and habitat will be subjected to forced migration or succumb to environmental catastrophe. It is alleged that no agreement till date was concluded by the Govt. of Azad Kashmir with respect to

any of the two projects, through which the courses of Neelum and Jhelum rivers are being diverted. It is claimed that river Neelum carries entire sewage down below Noseri, as no sewage treatment plant is installed by the Government or the relevant agencies, for Muzaffarabad City, right from Noseri, wherefrom, the course of Neelum river was diverted, hence, all sewerage outlets are dumped around the river Neelum, and close to living vicinities from having no other outlet rendering the entire area unhygienic and polluted, susceptible to all the diseases. It is maintained that WAPDA had constructed and completed Mangla Dam, at Mirpur, in the decade of sixties due to which, a bulk of population of Mirpur had to migrate to different countries, however, despite that WAPDA has not paid till date any share from net profit earned by it, from the hydroelectricity generated at Mangla, which is violation of Article 161 of the Constitution of Islamic Republic of Pakistan, whereas, the royalty as well as net hydro profit is paid to the Government in respect of like projects functioning there in KPK, hence, the instant constitution petition.

4. The respondent No.1, despite service failed to file written statement, hence, was proceeded ex-parte vide order dated 22.02.2019. However, writ petition has been resisted by respondents Nos.2 to 5, through separate written statements. In the written statement filed on behalf of respondent No.2, it is stated that petitioners through WAPDA sought remedy against three Mega Hydro Electric Projects within Azad Jammu and Kashmir territory known as (i) Neelum Jhelum Hydro Electric Project (NJHPC), (ii) Kohala Hydro Electric Project at Muzaffarabad and (iii) Mangla Dam Project at Mirpur, whereas all the afore-stated projects have their separate supervisory bodies but the others were not impleaded as party in line of respondents, therefore, the instant writ petition is not maintainable due to non-joinder of necessary parties. It is pleaded that as per Environmental Impact Assessment (EIA) studies, the Environmental Protection Agencies (EPA) Govt. of Azad Jammu and Kashmir issued NOC on 12.01.2011 and all these obligations were also made part of draft tri-parties agreement, however, the aforesaid agreement was not formally signed. It is further pleaded that at the time of

framing tri-partite agreement draft all different covenant of NOC of EPA-AJ&K Govt. were made part of agreement with further addition that WAPDA would construct 22 different projects keeping in view the environmental measures and for social uplift of the local community. It is maintained that on demand of Azad Jammu and Kashmir Govt. WAPDA/NJHPC provided 2.984 Billion Rupees fund to the Azad Jammu and Kashmir Govt. for construction of projects, however, petitioners without probing real position filed the instant writ petition, which is not maintainable. It is submitted that WAPDA/NJHPC continuously releasing 20 cumecs water since September 2018, which is sufficient for maintaining the aquatic system. It is stated that as per Article 161(2) of the Constitution of Islamic Republic of Pakistan, 1973, on Hydro Power Project two types of profits are given, one is net hydel profit and second is water usage charges, however, as per law net hydel profit could be given to Provinces only, while Govt. of Azad Jammu and Kashmir is entitled for getting water usage charges, and the same payment will be made after signing agreement which is pending in the Ministry of Water Resources Govt. of

Pakistan. The other contents of writ petition have also been refuted.

5. In written statement filed on behalf of respondents Nos.3 to 5, it is stated that present project was launched by Govt. of Pakistan for betterment and welfare of public at large and as per Article 31(3) Schedule 3, item No.4 of the Azad Jammu and Kashmir Interim Constitution, 1974, all acts done and proceedings taken by the Govt. of Pakistan are not challengeable before this Court, hence, the instant writ petition is not maintainable. It is pleaded that petitioners have neither challenged exclusive jurisdiction of Govt. of Pakistan with regard to construction of Hydro Power Project nor pointed out any violation of law, hence, the instant writ petition is liable to be dismissed. It is submitted that decisive steps were taken and Neelum Project was completed, while steps with regard to Jhelum surcharge (fee) was imposed since 2009, money collected, land was acquired and payment of compensation to the tune of more than 50 Crore was paid, heavy machinery was installed on three sites, if matter is being delayed or prolonged in litigations, the Govt. of Pakistan has to be sued before the International

forum and penalty like Recodic case is likely to be imposed on Govt. of Pakistan. The other contents of writ petition have also been refuted.

6. Precise facts culminating into filing of writ petition No.1744/2018, are that Government of Pakistan through its outlet, Water and Power Development Authority (WAPDA) is undertaking the construction of Dams throughout Pakistan including AJK & Galgit-Baltistan for construction of Hydroelectricity. It is stated that Govt. of Pakistan through Govt. of AJK awarded land for Neelum Jhelum Project in year 2008-09, from Jagran, Thotha, Majhoi and Kohala for that purpose. It is maintained that WAPDA has already constructed the dam in Mirpur District called as 'Mangla Dam' which has a capacity of generating 1200 MW electricity, which is transferred to the national grid in 1966-67, without paying the share of AJ&K in the net profit of Hydro generation. It is added that WAPDA after more than 10 years construction/works upon the projects namely "Neelum Jhelum Hydro Project" and generating the electricity with the capacity of generating 969 MW and Kohala Project with capacity of generated 1224 MW electricity. The construction of

Neelum Jhelum project has been completed and the official respondents are going to start the work on Kohala Project. It is submitted that a study was made in 1996-97 by NORPALAN (a global consulting company based in Norway) which was hired by WAPDA. The said company reported that 20 cumecs water will be required for Noseri to Domail for drinking and ecological system and to minimize the environmental impact on the community living in the area. It is also suggested by the said company that 3 cumecs for drinking and 17 cumecs for sewerage dilution while flow of water was also required to maintain ecological system, whereas, the said report was rejected by WAPDA authorities due to loss of 65 million dollars to the State, as in case of release of 20 cumecs water WAPDA would not be able to generate the electricity compatible with the expenses incurred thereupon. It is stated that second study was also made by WAPDA from the same agency during year 2010, however, the said agency came under influence by WAPDA authorities. It is again stated that another study was submitted by Japan International Corporation Agency (JICA), in year 2007, stating therein that both agencies could not cater the use of water by

non-residents and those not counted during the census, such as hospitalized patients, visitors, the college and Universities students, their guardians and visitors, casual visitors, in the market, offices, mosques, and spiritual places from around the State, refugees, camps etc. Even though authorities have not bothered to preserve as to what would happen after the project period and as to whether there will be any change in population and its requirements of water usage and the safe environmental conditions for future generations etc. Despite that Govt. of AJ&K was directed to initiate the proceedings for acquisition of land for the purpose, while all other directions were issued by the Azad Jammu and Kashmir Council and Ministry of Kashmir Affairs in favour of WAPDA, however, the WAPDA did not bother to comply with the conditionalities imposed by the Azad Jammu and Kashmir Environmental Protection Agency given in the NOC's. It is further maintained that as the Azad Jammu and Kashmir is not part, territory and province of Pakistan under the Constitution of Islamic Republic of Pakistan, 1973, therefore, before starting construction work on Kohala Project to determine the liabilities of the AJ&K

Govt. as law in four provinces of Pakistan in compliance of Articles 19, 52-A and 52-C, of the Azad Jammu and Kashmir Interim Constitution, 1974, including environmental laws, however, the same was not done, which is ultimately violative of fundamental rights of property, life of person of State subjects, hence, the instant constitution petition.

7. The respondent No.1, failed to file written statement, hence, was proceeded ex-parte vide order dated 22.02.2019. However, writ petition has been resisted by respondents Nos.2 and 3 to 5 & 7, through separate written statements, which are similar to writ petition No.1675/2018, hence, need not to be repeated for the sake of brevity and convenience.

8. The learned counsel for the petitioners while reiterating the contents of the writ petitions submitted that respondent WAPDA completed the NJHEP generating 969 MW electricity without any agreement with the government of Azad Jammu & Kashmir although all natural resources including water reservoir and profit thereupon falling within the domain of Azad Jammu & Kashmir under Article 52 (C) of Azad Jammu & Kashmir

Interim Constitution. It is contended that while diverting Neelum river from Noseri to Kohala adverse effects of this project on the ecosystem and environment of Azad Jammu & Kashmir particularly the area connected with the river (41 KM from Noseri to Domail) have not been considered and similarly when the respondents have undertaken the diversion of the river Jhelum from Sarran to Kohala, the adverse impacts likely to affect the biodiversity and the environment of the area ultimately which will affect the life of the people has not been taken into consideration, neither the proper remedial and mitigating measures have been adopted to offset the disastrous effects caused and likely to be caused due to decrease of water flow in the relevant area. It is argued that no agreement till date has been made with the Government of Azad Jammu & Kashmir regarding any of the two projects, neither the matter was referred to the council of common interest. It is also submitted that both the rivers Neelum and Jhelum carried away entire sewage in their full flow time but by reducing water from rivers no Sewage Treatment Plants have been installed by the Government or constructing companies for the city

Muzaffarabad and its adjoining areas, thus the sewerage outlets are dumped around the Neelum river and close to living vicinities causing many diseases and pollution of environment. It is further argued that Mangla Dam was completed by WAPDA almost five decades ago and electricity worth of billions rupees has been generated by virtue of said Dam (Power House) and share of the net profit/royalty has not been paid so far to the Government of Azad Jammu & Kashmir for the welfare of its people and their due rights have been denied although the royalty as well as the net hydel profit on similar projects is paid by WAPDA to the provinces of Pakistan particularly Khyber Pakhtun Khwa (KPK) and it has also been apprehended by the learned counsel that there is no likelihood in near future that the profit share or royalty of these projects shall be given to the Government of Azad Jammu & Kashmir and its people. In respect of these two projects, it is vehemently contended that without consent and any agreement, the natural resources vested to the people and its representative government under constitution of Azad Jammu & Kashmir, diversion of river is share violation of constitution and also in violation of

relevant constitutional provision of Islamic Republic of Pakistan. The learned counsel also contended that the mitigating measures as postulated in conditional environmental approval issued by the Environment Protection Agency of Azad Jammu & Kashmir has not been taken/implemented. Proponent (constructing agency) has installed no Sewage Treatment Plants and water monitoring system has not been constructed/installed. Makri Water Treatment and other facilities stipulated in EPA document have also not been completed. Water Supply Scheme and other commitments for arrangement of Environmental Management Plant has not been so far acted upon in respect of NJHEP. It is further contended that minimum level of release of water (e-flows) as suggested and agreed by the respondents is not sufficient to meet the requirements of the concerned local inhabitants and for other environmental and ecological purposes.

9. On the other hand, Ch. Shabir Ahmed, the learned counsel for WAPDA, while controverting the arguments submitted that as per Environmental Impact Assessment, EPA Government of Azad Jammu & Kashmir

issued NOC for construction of NJHEP on 12.01.2011 and all the major features of NOC inspite of the fact that Tripartite agreement has been not formally signed. WAPDA has fulfilled almost all the obligations either relating to environmental issues and those conditions have also been made part of the draft Tripartite agreement with further condition that WAPDA had to construct 22 projects keeping in view the environmental measures and for social uplift of the local community but on the demand of Azad Jammu & Kashmir Government WAPDA instead provided 2.984 Billion Rupees to the Azad Jammu & Kashmir Government for construction of those projects which can be checked from the record. He further contended that the report of NORPLAN mentioned in the petitions does not suggest for release of 22 cumecs water in Neelum river from Noseri, it only mentions 13 cumecs water for maintaining the aquatic system and never recommended for release of 20 cumecs water, however, the learned counsel stated before the Court that 20 cumecs water since September, 2018 has continuously been released by the WAPDA although it caused a loss of billions of rupees to the Company. He further submitted

that gauging facilities are existing at different places. Regarding the claim of profit to Government of Azad Jammu & Kashmir, he argued that according to constitution of Islamic Republic of Pakistan and prevailing laws, net hydel profit can be given only to the provinces of Pakistan, however, Government of Azad Jammu & Kashmir is entitled for water usage charges and WAPDA is ready for payment on the prescribed and agreed rate after execution of the agreement, as the draft is pending in the Ministry of Water Resources Government of Pakistan. The learned counsel also on the direction of the Court placed a certificate regarding released amount of the water on daily basis into Neelum river at Noseri showing the measurement. Regarding KHPP, he submitted that WAPDA has nothing to do with the said project.

10. In writ petition No.1744/2018, Three Gorges company has been impleaded as respondent No.6. Nobody appeared on behalf of said respondents inspite of notice through proclamation in daily Ausaf, issued on 26.09.2019, ex-parte proceedings were ordered against the said respondents. Record of the said project has also been summoned which reflects that the Ministry of Water

and Power Government of Pakistan and Chinese Three Gorges Corporation signed an MOU for development of KHPP by CTGC on BOOT (Build, Own, Operate & Transfers) basis, and the project is duly approved by the Government of Azad Jammu & Kashmir vide notification dated 31.08.2016 and Azad Jammu & Kashmir EPA issued conditional NOC in favour of projects companies. The said project is being undertaken by its special company namely Kohala Hydro Construction Limited (KHCL), the project developer has not been impleaded in the line of respondents.

11. We have heard the arguments and gone through the record of the case with utmost care.

12. These writ petitions have been filed by the notable residents of Muzaffarabad and adjoining areas likely to be affected by the construction of the two projects namely NJHEP and KHPP. The NJHEP with the electricity generating capacity of 969 MW is already constructed and functional at river Neelum and the proposed 1124 MW Kohala HPP is planned to be constructed at Jhelum river, being the state subjects of Azad Jammu & Kashmir, the petitioners also raised issue

of Mangla Dam royalty/profit share. In writ petition No.1675/2018, petitioner No.1 is a retired Judge of Supreme Court of Azad Jammu & Kashmir and amongst others, there are retired senior Bureaucrats, advocates of Supreme Court and High Court of Azad Jammu & Kashmir, Doctors, Journalists and members of trade Associations of Azad Jammu & Kashmir. In writ petition No.1744/2018, amongst others, the petitioner No.2 is a former Deputy Speaker of Azad Jammu & Kashmir Legislative Assembly and petitioner No.3 is a former Minister of law.

13. A perusal of record shows that NJHEP has been completed which is operational and its electricity generating capacity is 969 MW. It is a diversion project involving the diversion of river through 28.5 Kilometer long tunnel and its diversion weir is constructed at Noseri 40 Kilometer upstream from Muzaffarabad and the power house is located at Chatter Kalas 22 Kilometer downstream from Muzaffarabad. Minimum environmental flow of water (e-flows) imposed by EPA of Azad Jammu & Kashmir is 15 cumecs at Muzaffarabad, however, through mutual understanding and arrangement it is stated to be 20 cumecs from weir at Noseri. The

proposed KHPP will have installed capacity of 1124 MW and it is also the diversion project involving diversion of river through long tunnel. Its diversion weir will be constructed at Village Siran 26 Kilometer upstream from Muzaffarabad, at river Jhelum and the power house shall be installed at Village Barsala 32 Kilometer downstream from Muzaffarabad and the tunnel will be 34.8 K.M. Its E-flow initially was suggested as 22.5 cumecs, however, while issuing the conditional approval, the EPA has imposed the condition of releasing minimum 30 cumecs. It would be useful to reproduce the Conditional Environmental Approval given by EPA of Azad Jammu & Kashmir Government on 22.01.2011 in respect of NJHEP which reads as under:-

“CONDITIONAL ENVIRONMENTAL APPROVAL

(Under Section 11 of AJK Environmental Protection Act, 2000 read with IEE/EIA Regulations, 2000 PEPA)

In exercise of powers conferred under section 11 of Azad Jammu & Kashmir Environmental Protection Act, 2000, the Director General AJK Environmental Protection Agency (AJK-EPA), after the review of Environmental Impact Assessment Report (EIA) accords Environmental Approval for the implementation of 969 MW Neelum-Jhelum Hydroelectric Project (NJHEP) subject to the fulfillment of following conditions by the proponent;

- (i) Proponent shall ensure compliance to National Environmental Quality Standards (NEQs);
- (ii) The WAPDA shall ensure a minimum ecological flow in Neelum River of 15 m³/s at Muzaffarabad during lean period irrespective of additional inflow downstream from Nauseri;
- (iii) The WAPDA shall construct state of the art gauging facility at Muzaffarabad to measure the flow, to be jointly monitored/operated by WAPDA and Government of Azad Jammu & Kashmir;
- (iv) To maintain the Biological Oxygen Demand (BOD) within permissible limits in the remaining flow, the WAPDA shall construct the Sewage Water Treatment Plants for 16 active sewage outlets, laid along the Neelum River in the Municipality of Muzaffarabad, besides installing water quality monitoring system all along the length of river starting from diversion weir to fall of the diverted flow back into the river on permanent basis;
- (v) The WAPDA shall ensure the uninterrupted functioning of Makri Water Treatment & Supply Facility. In case the reduced flow during the operational phase of the Project renders its water off-take component dysfunction, the WAPDA shall bear the technical and financial responsibility for its relocation or readjustment as prompt remedial measure;
- (vi) The WAPDA shall install an alternate Water Supply Scheme as a sustainable arrangement to cater the demand of growing population

- & size of Municipality of Muzaffarabad besides making the similar arrangements for the settlements of Nauseri Nausada and Majhoi to offset the impacts of vanishing perennial water resources due to under laying Tunnel;
- (vii) To mitigate the loss of aesthetic look of river in Muzaffarabad, WAPDA shall cascade remaining flow, streamline the river banks and level its bed by removing boulders etc. to give it a more pleasant look and to restore its beauty;
 - (viii) Mitigation measures suggested in the EIA report & Environmental Management Plan (EMP) shall be strictly adhered to ensure not to cast any negative impact on soil ground water, ambient air quality, noise level, natural drainage, flooding, hill torrents and biological resources of the Project area. This should be indicated in the report as "Commitment". Institutional arrangements for implementation of Environmental Management Plan may be finalized well before the commissioning of project, so that proposed mechanism of environmental protection should be operative well in time;
 - (ix) WAPDA will constitute Environmental Monitoring Committee having the representatives of all concerned stakeholders as mentioned in EIA. The reporting mechanism and TORs of the committee shall be finalized in consultation with AJK-EPA;
 - (x) Monitoring shall cover the entire period of the Project construction and operation Monitoring reports

- shall be submitted to AJK-EPA on quarterly basis;
- (xi) The Proponent shall provide the copy of this approval and EIA report to the contractor for compliance;
 - (xii) Compensation shall be provided to inhabitants in case of loss of agricultural land, crops, property, usage right etc. in accordance with the rates that were agreed upon. All conflicting issues regarding compensation should be settled amicably sooner than later;
 - (xiii) Proponent shall ensure the adequate arrangements for addressing public grievances and implementation of Resettlement Action Plan (RAP) through public Grievances Redress and Settlement Committee (PGRSC) without any delay;
 - (xiv) Blasting shall be avoided preferably; if it is inevitable, the controlled techniques in accordance with Pakistan Explosive Act, should be adopted in siding and perspective siding prone areas;
 - (xv) In case independent Environmental Specialist Companies are to be hired, as a compulsory arrangement, to undertake measurements of different parameters critically important in determining water & air quality and assessing noise emission level either during construction phase or in both construction and operation phases of the proposed project, the findings of quality analysis on regular basis should positively be shared with AJK –EPA;
 - (xvi) The Proponent shall ensure that strict and efficient health

and safety measures are in place for the protection of workers and passers-by backed by a comprehensive emergency response mechanism plan;

(xvii) As far as possible, employment should be provided to local people for all unskilled jobs. Preference may also be given to local people for all semi-skilled and skilled jobs. Employment record for all positions shall be provided to AJK-EPA positively;

(xviii) In case the articles of Archeological importance like artifacts, coins rock-arts and other archeological relics are discovered, the work at the site should immediately be stopped and the concerned department or agency should be consulted for the appropriate action;

(xix) Proponent shall ensure all public utilities, such as water supply pipes, power/phone lines be not disturbed by the execution of the project. if it is inevitable then alternative may be provided to the people of the area before hand in consultation with respective agencies under intimation to AJK-EPA;

(xx) Proponent shall take special safety measures while working close to settlements, towns schools and hospitals etc for safety of the general public and livestock;

- (xxi) Proponent/contractor shall make sure the safety & security of wild animals and their habitats at the project site and in its environs with the prior consultation and adhering to the guidelines of Forestry and Wildlife Departments strictly;
- (xxii) During the excavation of tunnel; the spoil should be dumped at pre-identified location. Free roll down of excavated land shall be prohibited to avert damage to vegetation cover, water bodies, perennial & non-perennial drains, irrigation channels, communication routes and productive lands. Littering would be avoided strictly during transportation of materials;
- (xxiii) The mechanized plants, machinery and other equipment must be fitted with noise abatement devices and should have the conformity to NEQS standards. The sites to install the asphalt plant and other machinery would be selected in consultation with the Agency (AJK-EPA). Special consideration must be given to critical installations like school, hospitals, mosques, community hall, etc while selecting temporary utility sites;
- (xxiv) The proponent shall not setup labor camps near to habitations and develop independent services utilities

- to avoid intruding into local population privacy;
- (xxv) The proponent shall manage scientifically all waste generated by construction activities and machinery, chemicals' spill, damage done to flora fauna and overall ecology etc;
- (xxvi) The proponent shall rehabilitate all sites to their natural conditions affected by temporary use during the construction phase;
- (xxvii) The proponent shall be liable for the correctness and validity of the information furnished by the environmental consultant;
- (xxviii) Proponent shall be liable for compliance of regulations 13, 14, 17 & 18 of IEE/EIA Regulations 2000, which enunciate the conditions for approval, confirmation of compliance, entry, inspection and monitoring of the proposed project;
- (xxix) Proponent would be responsible to facilitate EPA team for any visit for inspection/monitoring etc;
- (xxx) Any change in the approved project shall be communicated to AJK-EPA and shall be commenced after obtaining the approval;
- (xxxi) This approval shall stand null and void if any of the conditions, mentioned herein before, are not fully complied with;

- (xxxii) This approval does not absolve the proponent of the duty to obtain any other approval or clearance that may be required under any law in force or by any competent forum/court of law;
- (xxxiii) This Approval shall be valid for a period of three years from the date of its issue under Section 16 of IEE/EIA Regulation, 2009;
- (xxxiv) This Approval can be withdrawn at any time without any prior notice if deemed necessary in the public interest.”

14. Later on renewal of Conditional Environmental Approval was issued on 23.10.2014 which would also be usefully reproduced herein below:-

“RENEWAL OF CONDITIONAL ENVIRONMENTAL APPROVAL

(Under Section 11 of AJK Environmental Protection Act, 2000 read with IEE/EIA Regulations, 2000 PEPA)

Reference letter No.GM&PD/NJHPC/2014/W-35/91, dated July 23, 2014, please.

In continuation of Environmental Approval granted by the Agency, under section 11 of the Azad Jammu & Kashmir Environmental Protection Act, on January 22, 2011, No.P&DD/EPA/209-13/2011, 2000, (hereby mentioned as previous Approval) for the implementation of Neelum-Jhelum Hydroelectric Project; this is to accord ‘Renewed Environmental Approval’ in favor of WAPDA for the remaining construction phase of NJHEP subject to the fulfillment of the conditions/clauses given below;

1. All the conditions imposed under previous Environmental Approval shall stand enforced during the remaining construct phase of the project and the proponent, WAPDA, shall be liable to comply these in true letter and spirit.
2. In continuation or additional to already imposed, the WAPDA shall undertake following measures on priority basis;
 - i. Dumping of spoil at pre-identified and approved places, and in this respect, dumping of spoil/excavated material at sites other than approved and in flood line of rivers shall be strictly prohibited. Additional sites, as the prevailing situation demands, may be explored if possible to dump the spoil and get approval;
 - ii. A comprehensive plan to construct protection/retaining walls for all spoil banks, an earnestly required measures, to safeguard and enhance the life of Mangla Reservoir, must be submitted to the Agency within one month time from the issuance of this Approval;
 - iii. Installment of water Gauging facility without any further delay and, in respect thereof, implementation/execution plan may be shared with the Agency within 03 months' time positively;
 - iv. For the environment improvement & rehabilitation measures, like soiled/hospital water management support, may be considered for Municipal Corporation Muzaffarabad (Municipal Corporation Mirpur) under NJHEP as confidence building measure;

- v. The remodeling and readjustment of off-take of Makri Water Treatment & Supply Facility must be started on prompt basis and, in respect thereof, execution plan may be submitted to the Agency within one month time;
- vi. Owing to such situation wherein water supply arrangement for urban areas of Capital city has already been covered under MCDP, the WAPDA shall install a Gravity Water Supply Scheme from Saheli Nullah for the suburbs of Muzaffarabad city;
- vii. The statement of expenditures incurred against implementation of Environmental Management Plan (EMP), must be made as an integral part of future Quarterly Reports;
- viii. As an integral part of environmental management and rehabilitation under NJHEP, the WAPDA shall workout and execute a Watershed Management Program in consultation with the concerned Government Departments/agencies like Forest, Agriculture, and Wildlife & Fisheries Departments Govt. of AJ&K;
- ix. The plantation activity, which is a part of approved EMP of NJHEP, it is required that this activity shall be implemented without any further delay and, in respect thereof, the WAPDA shall submit a plan within one month of this issuance;
- x. In compliance to Clause (a) of Sub section (2) of section 13, the proponent (WAPDA) shall acknowledge the acceptance of the conditions stipulated here under this Approval by executing an

‘Undertaking’ in the form set out in Schedule vii of ‘Azad Jammu & Kashmir Environment Protection Agency Review of IEE/EIA Regulations, 2009;

- xi. These approvals (previous and renewed) shall stand null & void if any of the conditions mentioned herein or before are not fully complied with.”

Compliance of above mitigation measures as well other contents laid down in the above approval of statutory body, the respondent WAPDA is under legal obligation to comply and implement those conditions.

15. As in Azad Jammu & Kashmir, the Environment Protection Agency (EPA) is mandated to ensure sustainable development in terms of Environmental Protection Act, 2000. The preamble of the said Act being relevant is reproduced as under:-

“AN ACT

to provide for the protection, conservation, rehabilitation and improvement of the environment for the prevention and control of pollution and promotion of sustainable development:
WHEREAS, It is expedient to provide for the protection, conservation, rehabilitation and improvement of the environment, prevention and control of pollution, promotion of sustainable development, and for matters connected herewith and incidental there to;”

EPA established under the said Act has to perform its functions as laid down in the Act and Rules made there under. Section 11 *ibid* explicitly provides that no proponent of a project shall commence any construction or operation unless such proponent has filed with EPA and Initial Environmental Examination (IEE) or where the project is likely to cause an adverse environmental effect, an Environmental Impact Assessment (EIA), and has obtained from the EPA approval in respect thereof. For ready reference the Section 11 *ibid* is produced as under:-

“11. Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA):

- 1) No proponent of a project shall commence construction or operation unless he has filed with the Agency, an Initial Environmental Examination (IEE) or where the project is likely to cause an adverse environmental effect, an Environmental Impact Assessment (EIA), and has obtained from the Agency approval in respect thereof.
- 2) The Agency Shall;
 - a) Review the Initial Environmental Examination (IEE) and accord its approval, or require submission of an Environmental Impact Assessment (EIA) by the proponent; or
 - b) Review the Environmental Impact Assessment and accord its approval subject to such conditions as it may deem fit to impose, or require that the Environmental Impact Assessment be resubmitted after such modifications as may be stipulated, or reject the project as being contrary to environmental objectives.

- 3) Every review of an Environmental Impact Assessment shall be carried out with public participation and no information will be disclosed during the course of such public participation which relates to; Trade, manufacturing or business activities, process or techniques of a proprietary nature, or financial, commercial, scientific or technical matters which the proponent has requested should remain confidential, unless for reason to be recorded in writing, the Director General of the Agency is of the opinion that the request for confidentiality is not well founded or the public interest in the disclosure outweighs the possible prejudice to the competitive position of the project or its proponent; or international delegations, national security or maintenance of law and order, except with the consent of the Government; or Matters covered by legal professional privilege.
- 4) The Agency shall communicate its approval or otherwise within a period of four months from the date the Initial Environmental Examination or Environmental Impact Assessment is filed complete in all respect in accordance with the prescribed procedure, failing which the Initial Environmental Examination or, as the case may be, the Environmental Impact Assessment shall be deemed to have been approved, to the extent to which it does not contravene the provision of this Act and the rules and regulations made there under.
- 5) Subject to sub section (4) the government may in a particular case extend the aforementioned period of four months if the nature of the project so warrants.
- 6) The provisions of sub section (1), (2), (3), (4) and (5) shall apply to such categories

of projects and in such manner as may be prescribed.

- 7) The Agency shall maintain separate Registers for Initial Environmental Examination and Environmental Impact Assessment projects, which shall contain brief particulars of each project and a summary of decisions taken thereon, and which shall be open to inspection by the public at all reasonable hours and the disclosure of information in such Registers shall be subject to the restrictions specified in sub-section (3).”

16. It has also been brought on record that EPA vide letter No. EPA/2698-2700/2017 has asked NJHC to file case for confirmation of compliance as required by law. But till to date the confirmation of compliance which is a mandatory requirement of law yet not has been solicited. The contents of letter of EPA read as under:-

“ Ref #: EPA/2698-2700/2017
Date: 20.10.2017

Chief Executive Officer,
Neelum-Jhelum Hydropower Company (Pvt.)
Ltd,
House# B-04, Upper Chatter,
Muzaffarabad.

SUBJECT: WRITTEN CONFIRMATION OF COMPLAINT FROM EPA BEFORE COMMENCEMENT OF OPERATION OF 969 MW NEELUM-JHELUM HYDROPOWER PROJECT.

I have been directed to refer to the above subject and to state that the construction of 969 MW Neelum-Jhelum Hydroelectric Project has

been completed and, reportedly, the operation of the project is about to commence very soon. In this regard, as per law before commencing the operation of the project, it is mandatory for Neelum-Jhelum Hydro Company (the proponent of the project) to secure/obtain **“Written Confirmation of Compliance”** from EPA for construction phase, as provided under **Regulation 13(2)(b)** of “AJ&K Review of Environmental Impact Assessment/IEE Regulations 2009”, which provides as under:-

“13(2)(b) Where Agency accords its approval subject to certain conditions, the proponent shall;

(a)-----

*(b) Before commencing operation of the project, obtain from Agency a written confirmation of compliance that the conditions of the approval, and the requirements given in the IEE or Environmental Impact Assessment related to **design and construction, adoption of mitigatory** and other measures and other relevant matters have been duly complied with”*

2. The Regulation 14 (Confirmation of Compliance) of said Regulations further enunciates that the request for Written Confirmation of Compliance shall be accompanied by Environmental Management Plan (EMF) for the “Life of the Project” including provisions for monitoring, reporting and auditing.
3. Forgoing in view, this is to intimate that a case for obtaining Written Confirmation of compliance for EPA, that you have implemented all the mitigation measures in true spirit of Environmental Approvals, granted by EPA for the Construction of 969 MW Neelum-Jhelum Hydroelectric Project (NJHEP without securing Confirmation of Compliance would be deemed as a serious breach of Law

that is cognizable under Section 16 of AJ&K Environmental Protection Act, 2000.

4. *This issue with the approval of Competent Authority.*

(M. Ali Saleem)

Assistant Director.

CC.

1. *PS to the ASC (Dev)/Secretary Environment, Govt. of AJ&K.*
2. *Master File."*

Despite issuance of above notice by AJK EPA, NJHC did not file the mandatory confirmation of compliance, hence, going into operation phase without meeting prerequisite mandatory conditions amounts to continuous violation of law which is cognizable by the concerned authority.

17. We are cognizant of the significance of legal measures that are required for effective implementation of sustainable development to enforce environmental quality to be maintained for the wellbeing of the people. Effective legal measures support the regulators to enforce environmental equality standards to safeguard the nature and nature based resources. Notwithstanding, this needs to be equally realized that only Nature-based solutions harness the power and sophistication of nature to turn environmental, social and economic challenges into innovation opportunities. Only Nature-based solutions can address a verity of societal challenges in sustainable ways with the potential to contribute to green growth, fostering

people's well-being, providing business opportunities and positioning a State as a leader in world markets. Nature-based solutions are actions which are inspired by, supported by or copied from nature and resilient to change, but to be successful, must be adapted to local conditions. Only Courts judgment may not prove result oriented unless supported by a through nature-based solution, which can only be achieved after conducting a thorough environmental studies/surveys.

18. In view of technical sensitively involved in the nature of case, we have also summoned Raja Mohammad Razzaque, Secretary Population Welfare Department (Member, World Commission on Environmental Law), who had also served as Director General, Environmental Protection Agency for three years, to assist the court in setting Environmental flows (e-flows) for Neelum-Jhelum and Kohala Hydropower Projects and other appropriate mitigation measures which are essential to safeguard our pristine environment. He concisely sensitized the court on different scenarios with modus operandi as under:-

A. Setting Environmental Flows (e-flows) for Neelum-Jhelum and Kohala Hydropower Projects.

The Brisbane Declaration, 2007'----to which Pakistan is a party ---recognized that:

Freshwater ecosystems are the foundation of our social, cultural, and economic well-being.

Freshwater ecosystems are seriously impaired and continue to degrade at alarming rates.

In cognizance of the above, the declaration defines environmental flow as: 'Environmental flows describe the quantity, timing, and quality of water flows required to sustain freshwater and estuarine ecosystems and the human livelihoods and wellbeing that depend on these ecosystems.'

Hydropower projects invariably result in altering the natural flow regime of rivers by constructing dams, and diverting and regulating the flow to optimize power generation. Where diversion tunnels are involved, low flow reaches downstream of the dams are created. Significant hourly and daily variations in flow also occur when the power plants are operated in a peaking mode in low flow winter season, to match the production of electricity with its demand. Environmental flow assessments of hydropower projects are required to inform the decision makers on the tradeoffs between economic gain from power generation and loss to the society, ecosystem, and local economy and people on account of loss of services provided by the rivers. These can include drinking water supply, irrigation, fisheries, and dilution of effluents generated by cities. In the context of hydropower, the common practice based on misconception is a minimum release from the dam which is considered to achieve the balance between economic gain and environment. Environmental flows worldwide in the

past have typically been set by engineers as a part of the project design, and have relied on simplistic and outdated approaches such as setting a minimum flow corresponding to 10% of average low flow season or monthly average flow. This approach disregards the local conditions and environment, such as community uses of water, sensitive ecosystems, and transboundary impacts. Guidelines for assessment of environmental flows to address these concerns and shortcomings are available in literature.

19. As far as the proposed Kohala Project is concerned, according to record summoned from the Azad Jammu & Kashmir Private Power Cell, history of the project is as under:-

- (a) Ministry of Water & Power, GoP and China Three Gorges Corporation (CTGC), signed MOU for development of Kohala HPP by CTGC on BOOT (Build, Own, Operate & Transfers) basis, during the visit of Honorable President of Pakistan to China in October 2008;
- (b) Private Power & Infrastructure Board (PIIB) issued letter of Intent (LOI) under the provision of Power Policy 2002 to CTGC on 15 January 2009 to review, update the feasibility study earlier carried out by WAPDA at no risk and cost to the Government of Pakistan (GOP);
- (c) Power Policy for Power Generation Projects Year 2002 promulgated by COP is adopted by Government of AJK vide notification # 2472-84/2006 dated 14.03.2006. As per para 28 of the Power Policy, the Provinces/AJK can manage investment for projects up to 50 MW and for projects above 50 MW, PIIB (Print Power investment Board) is the main driver and catalyst for managing investment;
- (d) Subsequently, letter of Support (LOS) was issued on 31st December 2015 to Kohala Hydro

- Company Limited subsidiary of China Three Gorges Corporation (CTGC) by PPIB, GOP;
- (e) The project is duly approved by GoAJK vide notification #SE/PDO/11628-39/2016 dated 31.08.2016 and AJK EPA issued conditional NOC in favour of Project Company;
 - (f) The project Company has signed MOU with Board of Revenue GoAJK for land acquisition and resettlement. The award for most of the land has been issued. The project Company shall sign a 'Land Lease Agreement' with GoAJK and GoAJK shall be the owner of the land and the Project Company shall be lessee. The process of land acquisition is routed through AJK Private Power Cell;
 - (g) The Project Company has deposited about Rs.1.5 billion into Govt. treasury and disbursement to Project affectees have been started by Revenue Department.

NATIONAL BENEFITS OF PROJECT:

1. Generation of 1124 MW electricity.
2. Investment of US\$ 2.4 billion.

PROJECT BENEFITS TO AJK:

- a. After completion of 30 years term of the project, the project costing US\$ 2.4 Billion, would, be transferred to GoAJK free of costs;
 - b. The Company shall pay approximately Rs.65.65 Billion to GoAJK during 30 years on account of Water use Charges (WUC);
 - c. The company shall pay roughly Rs.10 billion to GoAJK during 6.5 years of construction of the project on account of taxes;
 - d. Project would produce employment opportunities and allied business for locals and near areas.
20. As a result of a letter of the Prime Minister of Azad Jammu & Kashmir dated 07.09.2018, the Prime

Minister of Pakistan vide letter dated 09.10.2018 directed the Secretary Water Resources Development to submit a report after consultation with the Chairman WAPDA and Azad Jammu & Kashmir Government relating to issues pertaining to reduction in natural river flow passing through Muzaffarabad city due to diversion of water at the existing NJHP and the proposed KHP. After jointly visiting the NJHP alongwith relevant technical officials and verifying the actual discharge for the recommendation of technical solution to the issues, the report was prepared by the concerned Secretary which narrates the respective versions of the concerned stakeholders and the recommendations, the same is also usefully reproduced as under:-

“REPORT ON SOCIAL, ENVIRONMENTAL AND STRATEGIC ISSUES LIKELY TO EMERGE DUE TO CONSTRUCTION OF KOHALA HYDROPOWER PROJECT.

1. Background.

1.01 On 07.09.2018, the Prime Minister of Azad Jammu & Kashmir (AJK) made a correspondence with the Prime Minister of Pakistan followed by a meeting on 09.10.2018. In the said correspondence and the meeting, the PM AJK highlighted that pursuance to diversion of water of Neelum River through Neelum-Jhelum Hydropower Project (NJHP) the Neelum River flows have been drastically reduced

below the Neelum Jhelum dam up to Muzaffarabad city. This situation is creating adverse effects on the environment in terms of inter alia, deterioration of the river water quality because of less flows and reduction in water supply for Muzaffarabad city from Makri water supply scheme. The said situation will be further exacerbated after construction of Kohala Hydropower Project (KHP) on Jhelum River because KHP will also divert the water of Jhelum River which presently flows in its natural course to Muzaffarabad, leaving thereby the capital city of AJK devoid of its natural river flows resulting into serious environmental and social issues.

- 1.02 The Prime Minister's Office (PMO) accordingly conveyed the orders of the Prime Minister vide UO letter dated 09.10.2018 that the Secretary Water Resources in consultation with Chairman WAPDA and Azad Jammu & Kashmir Government shall furnish a report on the issue pertaining to reduction in natural river flow passing through Muzaffarabad city due to diversion of water at the existing NJHP and the proposed KHP after jointly visiting the NJHP alongwith relevant technical officials and verifying the actual discharge downstream. A technical solution to the issue shall be suggested without involvement of huge funds.

2. Consultation.

- 2.01 Pursuant to submission of this Ministry's report on "Water Issues of Muzaffarabad City Vs. NJHPP" submitted to the Prime Minister's office vide this Ministry's U.O. No.2(26)/1989-AC, dated January 02, 2019, the joint Secretary (Water),

Ministry of Water Resources visited Muzaffarabad city and the dam site of the proposed Kohala HPP on 19.01.2019. The visit was aimed to make consultation with the concerned officials of the Govt. of AJK and see the proposed dam site of Kohala Hydropower Project to review the concerns highlighted by the Govt. of AJK that with the construction of Kohala HPP, the social, environmental and strategic issues are likely to emerge. During the visit, a meeting was held with the official of Govt. of AJ&K, representing EPA, Energy and P&D Departments as well as the DC Muzaffarabad. A representative of the PPIB also participated in the said meeting. The above said team, after the meeting proceeded for the site visit.

2.02 It is also to mention that before proceeding for Muzaffarabad, the JS (W) also held a meeting on 18.01.2019 in the Ministry of Water Resources, Islamabad, with the representatives of China three Gorges Company the developer of Kohala HPP on their request made to the Ministry of Water Resources vide their letter No. Nil, dated 26.12.2018.

2.03 Besides a meeting was also convened in the MoWR under the chairmanship of the Secretary MoWR on 21.02.2019 wherein the ACS Development, MD PPIB and the CEO of Kohala Hydropower Company also participated. The participants shared their respective view point. After deliberations, it was decided that the Kohala Hydropower Company will respond to the concerns of the Govt. of AJK in a meeting which will be convened after a week.

2.04 The next meeting which scheduled to be held within a week of previous meeting of 21.02.2019, was convened on 08.03.2019 upon request of Govt. of AJK with a

stated reason of obtaining clear mandate from their Prime Minister.

- 2.05 In the said meeting the parties reiterated their original stance. Besides, the ACS Development, being the representative of the Govt. of AJK, conveyed that the Prime Minister of AJK has desired that the Govt. of Pakistan should take cognizance of all other outstanding issues which need resolution since long. The particular points which the ACS Development intimated have been provided under section 3, below.

3. Viewpoint of Stakeholders.

3.01 Concerns and Viewpoint of Govt. of Azad Jammu & Kashmir.

- a. During the meeting held in Muzaffarabad on 19.01.2019, as referred at para 2.01 above, the Director General EPA-AJK briefed that the natural river flow passing through Muzaffarabad city is presently contributed by the Neelum and the Jhelum rivers as the city of Muzaffarabad is located at the confluence of these two rivers.
- b. With the construction of Neelum-Jhelum Hydropower Project (NJHP), the actual flows of Neelum River dwindled drastically when the Neelum Jhelum Company (NJC) restricted the outflows from NJ Dam to 9 cumec being the designed minimum environmental flow of NJHP. The situation was immediately felt adversely by the local city. The flow reduction in Neelum River also adversely affected the water drawing capacity of Makri water supply scheme as reported by the Public Health Engineering Department of AJK. The matter was taken up by the District Administration of Muzaffarabad city with the NJC to resolve the concerns of locals which were expanding

into agitation. Pursuant to the intervention of the District Administration, the NJC maintained minimum flow equivalent to 20 cumec through release from NJ Dam.

- c. He added that, based on lessons learnt from NJHP, both the people of Muzaffarabad and the Govt. of AJK, are highly cautious and concerned about the construction of Kohala Hydropower Project (KHP) which incorporates a scheme of diversion of water from the upper limb of Jhelum River at Siran to Kohala on the lower limb of Jhelum by passing Muzaffarabad city, thus depriving the natural water, once again, to the city of Muzaffarabad, except for a stated provision made in KHP to release 30 cumec as minimum environmental flow below the KHP Dam. Given already reduced flow from Neelum after operation of NJHP, the diversion of water after construction of KHP is intolerable for the Govt. of AJK, socially, environmentally as well as politically both at domestic and international level. Considering the gravity of the situation associated with the construction of KHP which bears high impacts beyond mitigation as well as the adverse public sentiments against the diversion, the people and Govt. of AJK are of the opinion that instead of a diversion project, KHP should be redesigned as pure Run-of-the River Project without diversion component. Notwithstanding, if the project is to be developed as a diversion scheme, following major mitigation measures are essential which must be taken and a firm commitment be made by the project developer through a tripartite agreement among the Govt. of AJK , the Project Developer and the Govt. of Pakistan through the Ministry of Energy (Power Division).
 - (i) E-flow downstream Saran site should be 80 cumecs (additional 50 cumecs

- water being added into Jhelum River due to diversion of Neelum River at Kishenganga Hydropower Project in Indian occupied Kashmir be considered as minimum flow below KHP and be maintained during lean period E-flow).
- (ii) Provision of Sewage Treatment Plants with 100% water treatment capacity, for settlements in downstream Saran including Muzaffarabad city areas (which is also a part of Addendum No.1 as additional condition in pursuance to condition 10 of Conditional Environmental Approval issued by EPA), vide EPA No.1759-69/2016 dated 05.09.2016.
 - (iii) Construction of minimum 5 (five) water bodies downstream of the dam at Saran as reflected in Conditional Environmental Approvals of AJK-EPA of dated 05.09.2016.
 - (iv) Provide drinking water facilities in the affected project corridor areas including urban sports.
 - (v) All other mitigation measures, as pointed out in the Conditional Environmental NOC for the KHPP, must be executed in letter and spirit.
- d. While explaining the existing flow conditions, he shared monthly average flows of Jhelum River at KHP Dam site as observed by Surface Water Hydrology Directorate of WAPDA and reported by Kohala Hydropower Company (Private) Limited (KHCL) in 2016. Based on the two sets of monthly average flow values, he presented a comparison of both the data and also presented a comparison of water envisaged for diversion through KHP as reportedly estimated by WAPDA and the KHCL. The said comparison of natural and diverted flows at KHP Dam site as presented by the DG EPA are given below in Table 1:-

Table 1: Natural Flow of Jhelum River and Diverted Flow from KHP reported by WAPDA and KHC as presented by DG EPA, AJK.

Month	WAPDA (Cumec)	KHCL (Cumec)	WAPDA (Cumec)	KHCL (Cumec)
Jan	97.05	94.30	97.05	75.10
Feb	160.20	160.00	160.20	144.70
Mar	374.07	365.00	374.07	368.60
Apr	574.23	555.00	425.00	425.00
May	648.66	628.00	425.00	425.00
Jun	514.22	491.00	425.00	425.00
Jul	431.17	413.00	425.00	425.00
Aug	365.02	349.00	365.02	361.90
Sep	248.51	243.00	248.51	252.10
Oct	133.58	129.00	133.58	122.30
Nov	97.44	95.30	97.44	82.00
Dec	89.88	90.70	89.88	74.70

- e. On a query by the joint Secretary M.WR, the DG EPA responded that initially in 2014, E-flow was calculated through Montana method by the consortium of SMEC that excluded environmental based flow study i.e. DRIFT¹ study and has least scope to take care of E-flow holistically. The Montana method was applied and E-flow was determined as 18 cumecs, which after refinements in the light of other associated factors, was raised to 22.05 cumecs and submitted to EPA for approval in 2015. The EPA, did not agree with the method applied and formula used for determining E-flow and this was communicated to CTG that 39.05 cumecs will required as E-flow, however as minimum it should not be less than 30 cumecs, Similarly, the CTG during determining E-flow, did not take into account the additional inflow available after operation of Kishenganga HEP, which was highlighted by EPA under its response

furnished in 2015. The CTG (KHC) subsequently carried out E-flow Assessment through DRIFT Model, in 2016, which is an ex-post factor in nature. The DRIFT method usually generates and accordingly study different flow scenarios and finally recommends one with least adverse impacts on biophysical and social environment. Whereas, in this case, the DRIFT has been run to corroborate already determined Flow Scenarios, i.e. 22.05 cumecs proposed by the project developer (KHC) and 30 cumecs determined by EPA, as minimum. The applied DRIFT methodology has also not taken into account of hydrology of river. In order to for examine the facts, the Joint Secretary MoWR GoP desired to review the original hydrological study, including but not limited to, the hydrological analyses, primary data and documents and the derived outcome, conducted by China Three gorges Corporation (CTG) and submitted to EPA AJK. He also advised EPA to seek comments proposals from other stakeholders of AJ&K i.e. Fisheries, Irrigation, Agriculture, Forestry, Municipal Authorities and PP&H Department regarding mitigation measures to be incorporated by the project developer, in order to avoid any gap while examining the basis of the latest E-flow study conducted for KHP.

- f. The DG EPA further elaborated the strategic issues and explained that River Jhelum is already regulated in IOK due to three large scale Hydro Power Projects, which include 480 MW Uri-2 HPP, 240 MW Uri-1 and 150 MW Lower Jhelum HPP, and in case, India holds the flow downstream for enhanced generation, the situation downstream from Saran will become further exacerbated. Furthermore, if E-flows at Kohala are determined to fully address the environmental and social concerns of

downstream reaches, it will strengthen Pakistan's arguments in case it contests for getting more environmental flow from India at any third forum. Besides, as per final award by CoA on Feb 18, 2013, the Parties to the Indus Waters Treaty have been afforded the right to make a recourse to the court for having reconsideration of the E-flows given in Kishenganga 2013 award after a period of 7 years of operation of Kishenganga.

- g. In view of above, the DG EPA, on behalf of the Govt. of AJK recommended that a comprehensive environmental study should be conducted to determine the actual E-flow on the earliest basis on the similar lines as recommended in case of NJHPP vide the report of the Ministry of Water Resources submitted to the Prime Minister of trade-off options regarding the re-designing of the project as run of river instead of tunneling project.
- h. The additional items raised by the ACS Development in the meeting held on 08.03.2019 were:
 - (i) provision of 614 cusecs water from Mangla Dam to AJK for irrigation and drinking purposes;
 - (ii) Complete and full implementation of the recommendations of the report prepared by the MoWR on the environmental concerns associated with the Neelum-Jhelum Hydropower Project;
 - (iii) Payment of Water Use Charge/Net Hydrel Profit at par with the provinces in accordance with recommendations of the committee constituted by the Prime Minister under the convenorship of Secretary Finance Division and comprising the Secretary MoWR and the CS AJK;
 - (iv) Implementation of Mansehra-Muzaffarabad-Mirpur-Mangla road under

the CPEC as agreed during the 7th JCC of CPEC.

3.02 **Viewpoint of Private Power Infrastructure Board (PPIB)**

- a. The PPIB vide its letter dated 19.02.2019 conveyed to this Ministry its viewpoint as given in the ensuing paragraphs.
- b. 1124 MW Kohala Hydropower Project (the Project) is a Run of River scheme planned to be located on Jhelum River with Dam/Weir near Siran in District Jhelum Valley & Power House near Barsala/Kohala Bridge district Muzaffarabad.
- c. The project is being developed by Kohala Hydropower Company Private Limited (KHCL) under Power Policy 2002 of Government of Pakistan as adopted in AJ&K. The project is being sponsored by China Three Gorges Corporation through its subsidiary M/s CSAIL with 70% share in equity, Silk Road Fund with 15% share in equity and IFC with 15% share in equity.
- d. The Project is included in CPEC to which Letter of Support (LOS) was issued by PPIB on 31st December 2015. Currently it is at Financial closing (FC) Stage for which KHCL has completed a number of milestones for achievement of FC and FC achievement dated was 31st December 2018 yet some crucial pre-requisites particularly the land acquisition process has not yet been completed by the Go AJ&K.
- e. It is import to mention here that after operation of recently completed Neelum-Jhelum Hydropower Project (N-J HPP) by WAPDA, major portion of the flow from Neelum River has been diverted through tunnel bypassing Muzaffarabad city and only

environmental (e-flow) is being released by WAPDA in the Neelum River. The local community of Muzaffarabad started showing its concern over reduced flow in Neelum River considering it insufficient to cater for the needs of the city. Consequently, GoAJ&K raised its apprehension about e-flow of Kohala Hydropower Project and is linking it with the N-J HPP e-flow issued; due to which activities on land acquisition have been stopped. The GoAJ&K is demanding a higher e-flow from Kohala Hydropower Project and at the same time wants to put the burden to KHCL for construction of municipal sewage treatment plants in Muzaffarabad city.

- f. It is important to mention here that prior to inclusion of Kohala HPP in CPEC program, the E-flow was fixed @ 5 cumecs in the Feasibility Study conducted by WAPDA. Then the Chinese Investors reviewed the E-flow and concluded @ 15 cumecs. After inclusion of the project in CPEC, the E-Flow was worked out based on scientific method & international/World Bank standards (much more stringent than that of government of AJ&K) which confirmed sufficiency of 22.05 cumecs to cater for maintenance of aquatic life, needs of community downstream of the dam sit, dilution waster water from the city of Muzaffarabad and water supply requirements of the city & adjoining population considering their projected growth for next 50 years.
- g. However, the Government of AJ&K requested E-Flow @ 30 cumecs which was accepted by the investors in

courtesy of Kohala HPP being a China Pakistan Economic Corridor Project. The Environment Protection Agency of AJ&K government as per its rules & regulations went through long rigorous process including extensive consultations with relevant departments as well as local communities and decided E-Flow @ 30 cumecs and issued NOC on 22nd December.

- h. Accordingly, the design of the project got changed and bids were obtained through ICB and NEPRA approved project cost & tariff on 2nd April 2018. Payment on account of land lease for about 53% public & private land has been made by the Company to AJ&K Government. All kinds of Agreements have been initialed between Company and the Government of AJ&K & Pakistan including Power Purchase Agreement (PPA). The contractor was also mobilized to perform preliminary construction works.
- i. Moreover, besides generous compensations i.e. more than government & market rates to the affected people, activities under corporate social responsibility (CSR) have also been initiated which also include fully funded higher education support to project affected youth in the field of engineering from Chinese universities with the assurance of employment and so far twenty eight students are benefitting and this figure will cross hundred in next couple of years.
- j. It is noteworthy that Kohala HPP is the largest power project under CPEC regime in terms of investment to the tune of US\$ 2.5 Billion which is likely to

open extensive employment & business opportunities for locals to improve their quality of life on sustainable basis. Moreover, the government of AJ&K will receive billions of rupees on account of land lease, taxes, water use charged etc. for performing its functions during construction & operation of the plant.

- k. it is worth mentioning here that after completion of the term period of 30 years, project will be transferred to AJ&K government free of cost and AJ&K government will be selling electricity to the national grid at a feasible unit rate which would be adding significantly income sources of AJ&K government for its self-sufficiency spending towards socio-economic uplift of the people of AJ&K.
- l. Approximately 80% population of Muzaffarabad is associated with Neelum River and about 20% with Jhelum River. WAPDA in order to address the concern of AJ&K government & people have already increased minim flow from 9 cumecs to 20 cumecs, whereas minimum 30 cumecs E-Flow release from Kohala project is already much higher than the future 50 years requirements at downstream. This minimum E-Flow will occur only for about two-three months during winter season and will gradually increase up to annual average of 68 cumecs with the increase in natural flow upstream.
- m. In view of the above, it is stated that Kohala Hydropower Project is at advance stage of development for which all major project's agreements have been finalized and all necessary approvals of the investors,

governments, lenders and Sinosure are in place. It is single largest investment so far in any IPP in Pakistan/AJ&K which is being developed in the private sector under a well defined policy framework. Further, the scientifically determined e-flow of 30 cumecs which is duly approved by AJ&K EPA, is much higher than the future downstream requirements in the river i.e. maintenance of aquatic life, needs of community downstream of the dam sit, dilution of waste water from the city Muzaffarabad and water supply requirement of the city & adjoining population considering their projected growth for next 50 years, therefore, any enhancement of e-flow from existing approval e-flow of 30 cumecs will require a design change which will have serious adverse impacts on the project tariff already approved by NEPRA, the project cost as well as substantial delay in its commissioning. this may also require approvals of the Chinese investor, Chinese government, lenders and Sinosure as well as NEPRA, and will require considerable time. Therefore, at this point in time minimum e-flow should be kept @ 30 cumecs which is more than the e-flow requirement and approved by the EPA, government of AJ&K, with the condition that necessity of any enhancement of e-flow may be fixed through adaptive method vis-à-vis quantity and period of e-flow releases, after commercial operation of the Project, and provision of water bodies may be decided as per Condition at Sr. K (xxiii) (Creation of Water Bodies) of AJ&K EPA approval dated 22nd December 2016 and “EPA Stance” at

Sr.No. K (xxiii) of the Undertaking given by the Company to the EPA in relation with said approval of AJ&K –EPA.

3.03 Viewpoint of Kohala Hydro Company (Private) Limited (KHCL)—The Project Developer.

- a. The KHCL during the meetings held in the MoWR apprised that the project developer comprises a consortium of China three gorges Corporation (70% shareholding), International Finance Corporation (IFC) of World Bank Group (15% shareholding) and Silk road Fund (15% shareholding). This consortium forms China three gorges South Asia Investment Limited (CSAIL) which is undertaking Kohala Hydropower project through its company known as Kohala Hydro Company (Private) Limited (KHCL). The CTG enjoys a good international repute in terms of investment in hydropower and wind power plants where with an investment portfolio of 63.10 billion in Europe, USD 5 billion in Brazil and USD 20 billion as an expected investment in Asia including USD 6 billion under the CPEC.
- b. The CSAIL's Kohala venture is a biggest Foreign Direct Investment in the hydropower sector under the ongoing CPEC being implemented under the BOOT model. The total investment amount is USD 2.7 billion. The company will transfer the project complete project to the Govt. of AJ&K after 30 years operation which will provide USD 400 million to the Govt. of AJ&K , annually. Therefore, the Govt. of AJK should cooperate with the KHCL to solve all kind of issues related to the project. If the matter gets settled and

resolved, the construction work has to be started in the first half of year 2019 according to the project implementation plan.

- c. The CTG has made huge struggle of eight years to bring the project under the CPEC, as generally no investors were inclined for investment in AJK due to its disputed status. Due to the Environmental-flow (E-flow) issue, the project has been stalled for almost eight months due to which the Company had to transfer 90% of its EPC staff to other overseas projects. Presently 80 Chinese engineers alongwith 150 number of various kind of machinery and 200 local people are mobilized on site. It is apprehended that in case the matter is not resolved the funds allocated for Kohala HPP may be diverted to other investment ventures of the CTG Company. With this state of affairs, the KHCL team is losing its confidence in its head office with every day passed.
- d. As a matter of fact, the design of Kohala Hydropower Project (KHPP) has been based on 30 cumec Environmental flow (E-flow) pursuant to the official demand of the AJK as against the E-flow calculated by the KHCL of 22.05 cumec. The AJK EPA, while giving comments on Technical Report of KHPP, conveyed to PPIB, vide letter dated 09.07.2015, that the E-flow of 30 cumec must be ensured. During 10th POE meeting held on 24.03.2016, POE decided the E-flows as 30 cumec in Jhelum River. Accordingly, the AJK EPA issued conditional No Objection Certificate (NOC) to KHCL on 22.12.2016 stating, inter alia that "...Environmental Flow

downstream not less than 30 m³/sec, during lean period” This was finally approved by the IFC on 09.07.2017. Based on approval by the AJK EPA and subsequently by the POE of PPIB, the EPC contract was awarded on 21.01.2017 and the financing structure was finalized with lenders. In addition, based on the technical, commercial and the economic indicators of the Project, tariff has also been determined by NEPRA on 11.10.2018 i.e. two years after the approval of design by the POE.

- e. On the conditional NOC issued by the AJK EPA on 22.12.2016, the CEO KHCL gave undertaking to the AJK EPA on 18.07.2017 that the CEO KHCL fully understood and accepted the conditions mentioned in the Conditional Environmental Approval (the NOC) of 1124 MW Kohala HPP accorded by the AJK EPA on 22.12.2016 subject to mutual understating/interpretations on the eight conditions on which KHCL provided its rationale and agreed during the meeting held in EPA office Muzaffarabad on 04.05.2017.
- f. The KHCL stated in its rationale that the construction of water bodies being one of the major conditions imposed by the AJK EPA in its conditional EPA was discussed. It was stated that in case of NJHP the consultants of NJHP furnished their apparent opinion that construction of water bodies is not technically feasible due to following reasons;
 - (i) High sediment load in Jhelum River, any water body created in the river bed will be filled up with

sediment deposited in flood period;

- (ii) Given the flow of Himalayan River, any structure constructed will be washed during floods.
- g. The DG EPA-AJK on the above rationale of KHCL recorded his observation on 04.05.2017 by pointing out that in this case NJHP have already allocated funds for feasibility study of construction of water bodies to determine the status of being technically viable. The Chief Engineer CDO (WAPDA) also pointed out that the slope of Neelum River is much steep than Jhelum River. Considering water bodies as conductive to environment, the construction has been proposed for Neelum River provided with the gates to flush sediments during low flood level.
- h. The Agreed position of AJK EPA and KHCL on the above condition and the rationale as presented by the KCHL to the MoWR is as follows:-
 - “The condition will be reviewed in line with outcome of the feasibility study for construction of water bodies in Neelum River by NJHP followed by independent third party feasibility study by KHCL to be engaged, if necessary, in consultation with EPA-AJK”
- i. With regard to consideration of water bodies, the KHCL also apprised that NEPRA during the hearing on 19.07.2018, did not allow the construction of water bodies at a cost of USD 100 million as part of tariff of KHPP and conveyed that the aforementioned decision of NEPRA Authority is based on the available information provided by the Sponsor

Company/project Company. However, if there are any studies conducted by the AJK-EPA regarding the proposed water bodies those may be shared with NEPRA for further necessary action.

- j. The KHCL in view of above process, has apprised to the MoWR to proceed further in the following manner:-
 - (i) Based on NJ project feasibility study, Company will hire independent third party consultant to make feasibility study on water bodies at company's cost.
 - (ii) The report will be submitted to all stakeholders including GoAJK, NEPRA, IFC and third party Consultant for review and finalization.
 - (iii) The final report with estimates cost, design and construction schedule will be submitted to NEPRA for final approval.
- k. Besides water bodies, the other major condition imposed in the Conditional NOC issued by AJK-EPA was concerning the Sewage Treatment Plants (STPs). The KHCL in this regard submitted its position as follows:-
 - (i) AJK EPA through addendum dated 28.11.2018 communicated that the installation of Sewage Treatment be an integral part of Environmental Management Plan (EMP) of the Kohala Hydro Power Project.
 - (ii) The National Electric Power Regulatory Authority (NEPRA) based on feasibility study, detailed engineering design, environmental approvals and EPC contract has determined tariff on

cost plus basis. The cost does not include cost of any sewage treatment plant.

- (iii) The justification for the installation of Sewage Treatment Plant provided by EPA is to offset the potential impacts of the increase in biological Oxygen Demand (BOD) of the remaining flow of River Jhelum downstream, during the operation phases, due to serious threat of exponential increase in remaining reduced flow in river downstream. This ground is not supported with any scientific evidence or model study and is purely an observation of AJK EPA.
- (iv) AJK EPA, through addendum dated 28.11.2018 communicated that the installation of Sewage Treatment be an integral part of Environmental Management Plan (EMP) of the Kohala Hydro Power Project.
- (v) The National Electric Power Regulatory Authority (NEPRA) based on feasibility study, detailed engineering design, environmental approvals and EPC contract has determined tariff on cost plus basis. The cost does not include cost of any sewage treatment plant.
- (vi) The justification for the installation of Sewage Treatment Plant provided by EPA is to offset the potential impacts of the increase in biological Oxygen Demand (BOD) of the remaining flow of River Jhelum downstream, during the operation phases, due to serious

threat of exponential increase in remaining reduced flow in river downstream. This ground is not supported with any scientific evidence or model study and is purely an observation of AJK EPA.

- (vii) The KHCL ESIA Report (approved from IFC, POE, EP AJK, Chinese Government clearly states that environmental factors like Dissolved Oxygen, turbidity, total dissolved solids, water pollution, BOD, and Chemical Oxygen Demand (COD) etc, are not limiting factors in Jhelum River in terms of impacts on migration and distribution of fish or even otherwise.
- (viii) Drift Model study for E-flow of Kohala Project considers the water quality including the concentration of untreated sewage discharge into Jhelum River, it also considers the predicted impacts of other hydropower project namely KHEP, NJHPP, PHPP, KAHPP and KHPP.
- (ix) The municipal sewage of Muzaffarabad is predicted to be 1.7 cumec in 2050. As there are no any wastewater treatment facilities in Muzaffarabad, all the municipal sewage from city is being directly discharged into the Jhelum river. Therefore, the dilution water demanding is 17 cumec to EPA Pak's dilution rate should be no less than 10.1.
- (x) Based on aforementioned, the average monthly ecological flow (68 cumec) minimum ecological flow (30 cumec), and 2 days

flushing discharge more than 1000 cumec are enough for sewage dilution.

- (xi) Considering the big revenues of water using charge and different taxes collected by GoAJK after the operation of project, GoAJK may carryout investment on infrastructure projects such as sewage treatment plants in the future.

1. With the above background and the circumstances, the KHCL conveyed its considered view as follows:

- (i) Increase in E-flow is technically, commercially and legally not justifiable by GoAJ&K department, it also be not supported with any scientific evidence or model study by GoAJ&K departments. PPIB and GoAJK should give final decision as soon as possible. In case the E-flow is changed it will result into the following:
 - a. Delay of the investment of at least 3 years;
 - b. Additional cost more than USD 30 million for redesign of the project;
 - c. Reduction of Capacity;
 - d. 5%-10% increase in tariff;
 - e. Cancellation of the Project by CTG due to change in strategy and policy after three years.
- (ii) Company will hire independent third party consultant to make feasibility study on water bodies at company's cost based on NJ Feasibility Study. The report will be submitted to all stakeholders including GoAJK and NEPRA, IFC and third party Consultant for review and finalization. The final report with estimated cost, design and construction schedule will be submitted to NEPRA for final approval.
- (iii) Sewage Treatment Plants are not relevant to the project.

m.....Beside above, the KHCL alongwith the PPIB during the last meeting held in the MoWR on 08.03.2019,

conveyed that in case the downstream release from the KHPP is increased from 30 cumec to 60 cumec, the KHCL will remain entitled to get its revenue according to the terms and conditions approved in the tariff petition of Kohala HPP. Any financial implication whatsoever will have to be borne by the Power Purchaser and not by the KHCL. The CEO of the Company also apprised that sufficient arrangements are available in the existing design of the project to ensure 60 cumec release downstream of the dam KHPP in the Jhelum River.

4. Examination by the MoWR of the E-flow Assessment Technical Report Published on 15.08.2016 as Provided by KHCL.

- 4.01 The E-flow assessment report studies various reaches of Jhelum and Neelum Rivers in which the critical reach, with regard to the environmental concern for the Muzaffarabad city, is the Reach 4a as denominated in the E-flow assessment report of KHCL. In this reach, like all other reaches, the impact of diversion has been studied on various disciplines including geomorphology, water quality, algae, vegetation, macro invertebrates and fish.
- 4.02 Furthermore, the impacts on the said disciplines have been studied for thirteen various scenarios which broadly cover the 'no-diversion' scenarios vis. (i) the baseline conditions as prevailed in year 2012 and (ii) the present day conditions as observed in 2016, and the 'diversion' scenarios based on simulation results of the DRIFT model. Further diversification induced in these scenarios pertain to taking impact of other hydropower projects in the Jhelum basin particularly on Neelum, Kunhar and Jhelum.
- 4.03 These scenarios have further been broadened by adding various levels of management to protect biodiversity. These scenarios range from 'Business as Usual' to 1st, 2nd and 3rd degree of

protection denominated as 'Pro 1', 'pro-2' and 'pro-3, respectively.

4.04 In order to ascertain the impact assessed in the E-flow report, the most relevant scenarios are as follows:-

- (i) Base-BAU;
- (ii) KoP30-BAU;
- (iii) KoP30-pro 1/2/3.

4.05 **Base-BAU** is 2012 baseline, which represent the river conditions before completion of Kishenganga Hydroelectric plant (KHEP) Neelum Jhelum Hydropower Project (NJHPP) and Patrind Hydropower project (PHPP), with Business as Usual (BAU) in the reaches represented by various sites on Jhelum Neelum and in the Mahl and Kahuta nullahs.

4.06 **KoP30-BAU** is KHEP, NJHPP, PHPP and Karot HPP, plus baseload generation at Kohala HPP with a minimum release of 30 cumec; BAU alongwith the protection against environmental degradation for al sites in the basin.

4.07 **KOP30-Pro 1/2/3** is KHEP, NJHPP, PHPP and Karot HPP, plus baseload generation at Kohala HPP with a minimum release of 30 cumec. Protection level 3 in place in the reaches represented by Sites 4a and 4 (just upstream and downstream of Kohala HPP dam, respectively). Protection level 2 in place in the reaches represented by Sites 7 and Kahuta nullah; and Protection level 1 in place in the reaches represented by Sites 5 and 6, and in the Mahl nullah.

4.08 Before proceeding to the impacts on various disciplines defined above, it is imperative to present the change in natural flow pattern in Jhelum River below the Kohala HPP dam as assessed and reported in the E-flow assessment

report. The E-flow report under section 5.2.1 stated that once Kohala HPP is constructed and with a minimum release of either 30 or 22.05 cumec, the duration of the wet season will be reduced by about 100 days and that of the dry seasons will be extended by approximately the same amount. Linked with this the onset of the wet seasons will be delayed and that of the dry season will be earlier than in the baseline. In simple terms, the dry season without Kohala HPP starts from 2nd week of September which will start from 4th week of June every year with Kohala HPP even after introducing the Protection scenarios. Similarly, the wet season which starts without Kohala HPP in 1st week of March will start in 1st week of April when Kohala HPP will be constructed and operationalized. The reduction in flow as determined in the E-flow assessment report Table 5.4 on the basis of 5 day average minimum dry season flow will be from 67 cumec to 31 cumec in 'without' and 'with' Kohala HPP. This reduction in flow and prolonged dry season as well as reduced wet season are the major consequences of the Kohala HPP.

4.09 In order to understand the impact of the flow reduction as assessed in the E-flow report and summarized above, the most adversely hit disciplines worked out by the E-flow assessment report are Geomorphology, Water Quality, the Algae, the Macro invertebrates and fish particularly the Kashmir Catfish.

4.10 In the said disciplines, with regard to geomorphology most adversely affected indicator is the 'area of secondary channels, backwater' where the decline in condition is up to 70% in BAU scenario and has been presented

with marginal to no improvement even with the highest degree of protection. This is an alarming situation which is diagnosed in the E-flow assessment report under section 5.2.3.1 as a result of trapping of suspended and bedload sediments in the Kohala reservoir, combined with much lower flows. It is important to clarify that even if the diversion component of Kohala HPP is excluded, the situation would not improve as unless the Kohala reservoir is filled up with the sediments, almost all the inflowing sediments will be trapped in the reservoir leading to reduction of area of secondary channels.

4.11

Under the discipline of Water Quality, the indicator of 'Nutrient Concentration' in dry season represent the decline the quality from 64% in the Vaseline to 150% with Kohala condition; the situation has however been stimulated as improved from 150% to 79% after introducing the highest degree of protection which stil remains 15% less than the baseline condition. The E-flow assessment report under section 5,2,3,2 also describes the situation by stating that the nutrients are predicted to increase under the Kohala HPP scenarios. This is mainly related to loss of dilution capacity for nutrients and other pollutants entering the river from the surrounding landscape. It further describes that the predicted temperature under the Kohala HPP scenarios are erratic, because, at the decreased flow volumes expected, the buffering capacity of the river is much reduced, and water temperature are expected to track to ambient temperature more closely than under baseline conditions. Importantly, with regard to introducing protection as

part of biodiversity Management Plan, the E-flow assessment report under section 4, 2, 1 titled as 'Measures for achieving protection levels' provides that "For nutrients, these levels of protection could be achieved through the construction and operation of sewage effluent treatment plants, and other means of reducing the inflow of raw sewage into the rivers. Such a process is reportedly under discussion for NJHEP.

4.12 Similar level of degradation on algae, macro invertebrates and Kashmir Catfish can be seen in Table 5.5 under the above mentioned three particular scenarios which are only because of reduced flow volume in the river reach downstream of Kohala HPP dam up to Muzaffarabad.

4.13 The overall scores of the ecosystem integrity as exhibited in Figure 5.5 under Section 5. 2. 4 for the reach under reference in the E-flow assessment report, indicate that the ecosystem in the said reach will move from moderately modified (baseline condition) to largely modified (with Kohala Project). It is also depicts that by introducing the highest protection level in the reach below Kohala HPP dam, the ecosystem can be maintained as it prevails in the present day condition. This is a qualitative scale of integrity which has been developed on the assumption that sewage treatment plants will be installed and operated under the Neelum Jhelum Hydropower Project financing as stated in section 4.2.1 of E-flow assessment report.

5. Findings.

5.01 The E-flow assessment report presents a rigorous work in terms of assessment of

impact on the environment due to diversion of Jhelum river flow by developing and studying various scenarios. these scenarios primarily pertain to 'without' and 'with' Kohala diversion and have been further broadened by taking into consideration the impacts of other hydropower projects in the basin like Neelum-Jhelum, Patrind, Karot and Kishenganga as well as introducing the biodiversity management options in terms of human induced measures through which the environmental degradation can be mitigated like reducing fish catch through policing, sewage water treatment by assuming that water treatment plants will be installed etc. It has, however, been observed that the E-flow assessment report analyzed on one value of 22.5 cumec followed by another single value of 30 cumec and instead of analyzing the impact of a range of E-flows i.e. higher than 30 cumec as the same environmental team did in Kishenganga Dam case arbitration on various disciplines of ecosystem like fish, water quality, and their key indicators rather it restricted the analysis to only two values of E-flows vis. 22.5 cumec and 30 cumec. Had it been done in the said environmental study report of Kohala HPP, it would have provided a flexible matrix of impacts on the environment for making the decision by the stakeholders while arriving at a trade-off between the benefits of the projects and the likely cost of environmental degradation to be borne by the people of AJK.

5.02

With regard to the assessment made in the study, the Environmental Consultants of Kohala HPP have determined that Water Quality

deteriorates significantly due to prolonged dry season associated with significantly reduced flow when Kohala HPP will be operationalised. The degradation in water quality has been assumed in the F-flow assessment report as controllable by installing and operating the sewage treatment plants to be financed from the Neelum-Jhelum Hydropower Project's financing. Hence, in first place, the environmental study considers the provision of sewage Treatment Plant is an essential component to provide comprehensive treatment of all kind of effluent draining into Jhelum River. Besides, while reviewing the environmental study report, it cannot be comprehended that how the sewage which is presently drained into Jhelum River, in the Siran to Muzaffarabad reach, has been referred to be installed from NJHP financing as the dilution water being denied in the Jhelum River is due to proposed diversion of water at Kohala HPP and not by the NJHP.

5.03

The environmental report also determined significant reduction in flow are of secondary channels and has mentioned that this adverse condition cannot be improved even under the stringent protection levels of biodiversity proposed to be introduced by the project developer as the reduction in flow area of secondary channels can only be mitigated by providing the requisite water in the main stem of Jhelum River. Since, with the diversion of water through Kohala HPP, the requisite water cannot be made available, therefore, in order to restore the backwater areas in the secondary channels, the provision of water bodies duly maintained by periodic flushing of sediments through adequate ancillaries

remain the only option which is to be provided to mitigate the adverse impact associated with shrinking of the secondary channels.

5.04 Through, the E-flow report demonstrates the environmental conditions as they exist presently can be maintained i.e. the baseline integrity of the ecosystem, by introducing various levels of biodiversity and environmental management options when Kohala HPP will be in operation phase, however, with the above noted shortcoming of not analyzing E-flows higher than 30 cumec, there is no other option available except to adopt the recommended E-flow of 30 cumec with a compulsory implementation of biodiversity and environmental management plan. Prima facie there is no harm in following the course as suggested in the E-flow assessment report vis 30 cumec environmental flow with a compulsory implementation of biodiversity and environmental management plan, however, careful review of the situation reveals that should the report presented impact of E-flow value higher than 30 cumec, the owner and the affectees would have been in a comfortable position to find a trade-off by deciding as whether or not to choose the costlier option of implementation of biodiversity management plan for protection/maintaining the environment/ecosystem in its present form as well as making the investment financially viable, simultaneously.

6. Recommendations.

6.01 The above concerns as ascertained by the MoWR from the examination of the environmental study report of Kohala

Hydropower Project were shared with the representatives of AJK, PPIB and the project Developer (KHCL) whereupon the stakeholders reiterated their stated position as briefly mentioned at paras 3, 4 and 5 above, respectively.

6.02 In the above situated, and particularly taking cognizance of the adverse impacts of Kohala HPP as determined in the environmental study report on the water quality in the Jhelum River reach from Siran to Muzaffarabad as well as reduction in area of secondary channels, the project developer must have to undertake all the protection measures including those considered by the environmental consultants as essential like sewage treatment plants to control the environmental degradation associated with diversion of flow at Kohala HPP. The specific measures required to be taken in addition to all those being provided by the project developer includes providing a comprehensive sewage water treatment for Muzaffarabad city and the water bodies duly maintained by periodic flushing of sediments through adequate ancillaries provided as permanent designed feature.

6.03 The E-flow of 30 cumec be increased by the same magnitude as it has become available in Jhelum River due to the diversion of Neelum River at Kishenganga Hydroelectric Plant at least during the winter months i.e. November to February. The average monthly diversion of flows by Kishenganga HEP during the winter months are 16, 11, 11, and 15 cumec for the months of November, December, January and February, respectively.

6.04 In case the project developer does not agree to undertake the mitigation measures including, but not limited to comprehensive sewage treatment plant and water bodies, it should sign an MOU with the Govt. of AJK to release 60 cumec minimum flow during the months of November to February for which necessary revision may be solicited in the tariff from NEPRA at the CoD stage.

6.05 The other issues raised by the ACS Development AJK vis supply of 614 cusec water for AJK from Mangla Dam, payment of Water Use Charge/NHP on the analogy of other provinces from the public sector hydropower projects, expeditious implementation of recommendations made in the MoWR's report on the environmental issue of Muzaffarabad associated with the diversion of water at NJHPP and implementation of 4M Road as agreed project under the CPEC, have been found as not related to the environmental concerns of Muzaffarabad associated with Kohala HPP. It is, therefore, proposed that these issues may be dealt with separately for which the GoP may consider constituting a high powered committee.

6.06 The above recommendations are essential to be considered for implementation to avoid social, environmental and strategic issues likely to emerge due to construction of Kohala Hydropower Project.

21. The Secretary Local Government Rural Development Department and D.G Health submitted their reports regarding completion/execution of projects

funded by WAPDA, wherein, it has been submitted that in order to offset the adverse environmental and social impact of Neelum Jhelum Hydroelectric Power Project (NJHEP), WAPDA has provided Rs.546.399 million to LG&RDD. It has further been stated that for rehabilitation and augmentation of water supply schemes affected by NJHP, tunnel Rs.282.602 million were provided. The learned counsel for WAPDA was also directed to produce the detail of the measurements of the water discharge (e-flows), and he furnished a report alongwith the summary of environmental mitigation projects up to 10.02.2019, a portion of which reads as under:-

“As per Tripartite Agreement among govt. of Pakistan, WAPDA/NJHPC and Govt. of AJ&K, WAPDA/NJHPC shall ensure 15 cumecs of water in Neelum River at Muzaffarabad as environmental flow. As per decision of the Cabinet Committee on Energy conveyed by Ministry of Water Resources, GoP vide letter No.2(26)/89-AC dated 19.09.2019. Accordingly, WAPDA/NJHPC is maintaining and shall maintain minimum release of 20 cumecs. For measuring the environmental flow, Gauging Stations have been installed by Surface Water Hydrology (SWH) Department of WAPDA at Neelum River to record the discharge on hourly and daily basis regularly.”

22. An application has been filed on behalf of residents of constituency No.4, Khawara, wherein, it has been stated that due to construction of NJHEP the natural resources of water in the said constituency have totally been dried and due to this act of the constructing company, the people of constituency No.4, Muzaffarabad, are feeling inconvenient and they fetch water from city Muzaffarabad, therefore, while protecting the rights of the inhabitants, they may be supplied water in sufficient quantity.

23. The above reproduced relevant documents and pleadings of the parties sufficiently shed light upon the background and different versions of the stakeholders (i.e. Govt. of Azad Kashmir, Govt. of Pakistan, Project developers and affected people of Azad Jammu & Kashmir) and advantages and disadvantages attached with the projects under discussion. The case can be summarized in questions as under:-

- (i) Whether the minimum Ecological Flow (E-Flow) determined and imposed by EPA, AJK in its respective Conditional Environmental Approvals is sufficient for maintaining the

aquatic and ecological system and to minimize the adverse environmental impacts?

- (ii) Whether the WAPDA, despite the completion of NJHEP has not complied with the conditionalities imposed by the EPA, AJK?
- (iii) Whether the WAPDA and Kohala Hydro Company Limited (KHCL) (The Proponents) can undertake and operate the respective projects, without payment of net hydro profit or water usages charges to the Govt. of AJK, and without finalizing the tripartite agreements?
- (iv) Whether this Court has jurisdiction in matters raised before us?
- (v) Whether the Projects have been undertaken in violation of Articles, 19, 52-A, 52-C, of Azad Jammu & Kashmir Interim Constitution 1974 and Environmental Laws and whether the rights of the people to life, property have been infringed?
- (vi) Whether the remedial and mitigating measures have been adopted by the proponents of the projects to offset the adverse affects caused or

likely to be caused due to the decrease of the water in the relevant areas?

- (vii) Whether the net hydel profit of Mangla Dam is not being paid to the Govt. of Azad Jammu & Kashmir?

First of all we would like to take up the question of jurisdiction of this Court in the matter. These writ petitions have been filed under Article 44 of Azad Jammu & Kashmir Interim Constitution 1974, which provides that when no other adequate remedy is provided on the application of any aggrieved party, this Court may make an order directing the person performing functions in connection with the affairs of Azad Jammu & Kashmir or local authority to refrain from doing that which is not permitted by law to do or to do that which is required by law to do. The Court can also make declaration regarding any act if the same is found or proceedings taken by the persons performing functions in connection with the affairs of state or local authority if the same have been done without any lawful authority. If the question of enforcement of any of fundamental rights conferred by the constitution arises then the Court can make an

appropriate order giving direction to the person or authority including council and the Government for the implementation and enforcement of such right. In simple words, one can say that if the authority performing any act in connection with the affairs of the state of Azad Jammu & Kashmir, in violation of any law or performs any act by departure from law or any right guaranteed by the constitution is infringed by that authority or person, the Court has jurisdiction to make its enforcement through its order, direction etc. In these writ petitions, it is alleged that both the projects, NJHEP and KHPP have been undertaken in violation of constitutional provision Nos. 19, 52-A and 52-C of Azad Jammu & Kashmir Interim Constitution, 1974. Article 52-C of the constitution is usefully reproduced herein below:-

“52-C. Natural Resource Endowment. (1) The natural resource of Azad Jammu & Kashmir which having a potential of economic value and providing for the sustenance of life for future generations shall be preserved and regulated by an Act of the assembly.

(2) Without prejudice to sub-Article (1), the natural resource of Azad Jammu & Kashmir may be utilized under the law, in the economic and efficient manner, by the Government and also may be authorized under an Act of Assembly to

utilize any resource of the State by any person, entity or authority of Pakistan in consideration of valuable economic benefits for the public interest such as net-hydel profit or royalty or any other acceptable form or benefit but without affecting the pristine environmental value of the inherent endowment of the State.”

24. The abovementioned Article clearly postulates that natural resources of Azad Jammu & Kashmir shall be preserved and regulated by the act of Assembly of Azad Jammu & Kashmir and those resources can also be utilized under law when those are authorized through act of the Assembly, to any person entity or authority of Pakistan the key words are “in consideration of valuable economic benefits for public interest”, such as net hydel profit or other benefits. Second condition laid down in the above provision of the constitution is that any proposed activity project ought not to affect the environmental value of the inherent endowment of the State. Under Article 24-A, the executive authority of the Govt. also includes to make contract regarding any State property as well, but both the projects under discussion are being carried out without finalizing any contract with the Government of Azad Jammu & Kashmir. Furthermore, it is also averred

that the fundamental rights of the people to life and clean water are also being affected without adopting mitigating measures.

25. When WAPDA was going to construct a grid station in F-6/1, Islamabad, some residents of Sector F-6/1 in a letter complained and pointed out that the electromagnetic field by the presence of high voltage transmission lines on the grid station would pose a serious health hazard to the area. The Hon'ble Supreme Court of Pakistan took cognizance of the matter in the famous case of 'Shehla Zia & others Vs. WAPDA & others' (PLD 1994 SC 693) and on the objections of jurisdiction of the Court held that where life of citizens is degraded, quality of life is adversely affected and health hazards are created affecting the large numbers of people, the Court in exercise of its jurisdiction under Article 184(3) of the constitution of Pakistan may grant relief to the extent of even stopping the functions of the units which create pollution and environmental degradation as the dignity of man, life and privacy are inviolable fundamental rights to be preserved and protected. The apex Court further

defined the extended scope of life or right to life in the following manners:-

“Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word ‘life’ is very significant as it covers all facts of human existence. The word ‘life’ has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. For the purposes of present controversy suffice to say that a person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in the neighborhood or at a far off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law. Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be rebidding near, under or at a dangerous distance of the

grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the possibility of danger come forward and this has happened so in the present case.”

26. With regard to the right of water, general comments were adopted in the 29th Session of the Committee on Economic Social and Cultural Rights (CESCR) United Nations on 20th of January 2003 and it has been affirmed that human right to water entitle everyone to sufficient, safe, acceptable physically accessible and affordable water for personal and domestic uses. The right to water is essential for securing adequate standard of living, particularly since it is one of the most fundamental condition for survival and this right has been recognized in wide range of international documents, for instance; Article 4, paragraph 2, of the convention on the elimination of all forms of Discrimination against Women stipulates that ‘State parties shall ensure to women the right to enjoy adequate living conditions, particularly in

relation to water supply'. Article 24 paragraph 2, of the Convention on the rights of the child requires State parties to combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water. Water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihood, however, it has been prescribed in the documents that priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights. So, importance of sustainable access to water resources for agriculture to realize the right to adequate food and it is the obligation of the State and Society as well to ensure that the people may not be deprived of its means of subsistence and there is adequate access to water or subsistence farming and for securing the livelihood of indigenous people. Environmental hygiene, as an aspect of the right to health under Article 12, paragraph 2 (b) of the Covenant encompasses taking steps on a non-discriminatory basis to

prevent threats to health from unsafe and toxic water conditions, for example, State parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes. Likewise, State parties should monitor and combat situations where aquatic ecosystems serve as a habitat for vectors of diseases, wherever they pose a risk to human living environments and water supplied necessary for the right to water and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water. The water supply for each person must be sufficient and continuous for personal and domestic uses and its quality must be of a high degree, free from microorganisms, chemical substances and radiological hazards that constitute a threat to a person's health.

Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use. The rural areas should be protected from unlawful

encroachment and pollution. Right to water, like any other human right, imposes three types of obligations on the State parties: i.e. obligation to respect, obligation to protect and obligation to fulfill. So any denial by the respondents to the people or limits equal access to adequate water or unlawfully diminishing or polluting water i.e. through waste from State owned facilities or through use and testing of weapons would be considered as infringement of this basic right of the people and for the enforcement of such right, a writ can be issued validly, especially, when the constitutional provisions are alleged to have been violated, so in such backdrop of the facts this Court has the jurisdiction in the matter as the projects under discussion are situated in the territory of Azad Jammu & Kashmir and the control on the natural resources of Azad Jammu & Kashmir Government has been recognized in the above referred constitutional provisions, so, any deviation from the legal requirements and infringement of fundamental rights, would be sufficient to seek the redressal by invoking the extraordinary jurisdiction conferred upon this Court, under Article 44 of the Constitution.

27. Regarding the other hereinabove formulated points, it is admitted position that the tripartite agreements in relation to Mangla Dam Raising Project was concluded between the Government of Islamic Republic of Pakistan, Azad Government of the State of Jammu & Kashmir and Water and Power Development Authority on 27th of June, 2003 but with regard to the other projects NJHEP and KHPP although the draft agreements have been brought on record but these agreements have not been executed, finalized and signed by the concerned parties and execution of the agreements between the concerned parties (Govt. of Pakistan, Govt. of the State of Jammu & Kashmir and project developer is necessary and mandatory, so, without signing and finalizing the agreements, operation of the projects under construction cannot be considered as legal and justified. However, record reveals that before construction of NJHEP, the Conditional Environmental Approval was given by the EPA of Azad Jammu & Kashmir on 22.01.2011 and as mitigation and remedial measures, some conditions were imposed by EPA. We have summoned the report in this regard by the concerned Agencies, which shows that

although many of the conditions have been fulfilled but some major conditions have not been complied with, so far. It was clarified by the EPA that mitigation measures suggested in the EIA report and Environmental Management Plan shall be strictly adhered to ensure not to cause any negative impact on soil ground water, ambient air quality, noise level, natural drainage, flooding, hill torrents and biological resources of the project area and this should be indicated in the report as commitment. Institutional arrangements for implementation of EMP may be finalized well before the commencing of project, so that the proposed mechanism of environmental protection should be operative well in time and the proponents shall ensure the adequate arrangements for addressing public grievances and implementation of resettlement action plan without any delay and the proponents shall rehabilitate all sites to their natural conditions affected by temporary use during construction phase. This condition was very much clear that EMP will be finalized well before the commencing of projects but the record shows that this condition was not strictly adhered and the proponent of the project NJHEP was also

obliged under approval that they shall rehabilitate all sites to their natural conditions used during construction. It was further expressed in clear terms that approval shall stand null and void if any of the condition mentioned therein is not fully complied with.

28. Later on, when the renewal approval was issued by EPA on 23.10.2014, it was made clear that all the conditions imposed under previous environmental approval shall stand enforced during the remaining construction phase of the project and the proponent, WAPDA shall be liable to comply these in letter and spirit and the renewal approval was given in continuation as addition to already imposed conditions. It was also stipulated therein that comprehensive plan to construct protection/retaining walls for all spoil banks, an earnestly required measure, to safeguard and enhance the life of Mangla Reservoir, must be submitted to the Agency within one month time from the issuance of this Approval, but this condition has also not been fulfilled. Once again in this approval it was also mentioned in unambiguous words that these approvals shall stand null and void if any of the conditions are not fully complied with. Section 11 of

the Environmental Protection Act, 2000, provides that no proponent of projects shall commence any construction or operation unless such proponent has filed with EPA and Initial Environmental Examination (IEE) or where the project is likely to cause adverse environmental effects. According to section 2 (b) of the aforesaid section, review of the Environmental Impact Assessment and accord its approval subject to such conditions as it may deem fit to impose, or EIA be resubmitted after such modification as may be stipulated. The conditions have not been fulfilled which are mandatory before commencing the operation of the projects. The letter of EPA dated 20.10.2017, shows that such compliance report/confirmation has not been submitted to the EPA before commencing of the project, NJHEP and this is also another violation of law.

29. We have summoned the report from EPA regarding the compliance/implementation of the conditions of the approval by WAPDA under NJHEP, which has been submitted before the Court, the current status of the conditions has been given in the report. The report is usefully reproduced below:-

CONDITIONS OF ENVIRONMENTAL APPROVAL	COMPLIANCE STATUS	ADDITIONAL NOTES
(I).The WAPDA shall ensure a minimum Ecological Flow (F-flow) in Neelum River of 15 M3/s (cumecs) at Muzaffarabad during lean period irrespective of additional inflow downstream from Nauseri	At the time of commissioning of operation of NJHEP, the WAPDA released 09 cumecs from Dam site as E-flow. However, in the light of recommendation by the Commission of Ministry of Water Resources (MoWR), it has been decided by the Cabinet Committee Energy (CCOE) GoP, on August, 28. 2019 , that till the fresh Environmental Study is done to determine the E-flow under NJHEP, the compensation release or water from Dam Site Nauseri shall be 20 cumecs. AS agreed upon, the Govt. of AJ&K has prepared the ToRs of said Environmental study, which will be funded by GoP.	Commission formulated by the PM of Pakistan comprises of Secretary & Joint Secretary Ministry of Water Resources (MoWR) to examine the issues emerged in the wake of NJHEP and submit Report with Recommendations (Section-D" of the Report). The Report of the Commission is annexed as "A". The Minutes of CCOE meeting are annexed as "B".
(iii). The WAPDA shall construct state of the art Gauging Facility at Muzaffarabad to measure the flow, to be jointly monitored/operated by WAPDA and Go AJK.	The WAPDA has released funds, on September 18, 2018, amounting Rs.04.00 million to Department of Physical Planning & Housing (PP&H) Govt. of AJ&K for construction.	The latest implementation status of the activity/project is with PP&H Department, being implementing Agency.
(iv). To maintain the Biological Oxygen Demand (BOD) within permissible limits in the remaining flow, the WAPDA shall construct the Sewage Water Treatment Plants for 16 active sewage outlets, laid along the Neelum River in the Municipality of Muzaffarabad, besides installing water quality monitoring system all along the length of river starting the diverted flow back into the river on permanent basis.	The WAPDA didn't include the budget in the approved PC-1 of NJHEP for the construction of Sewage Treatment Plants (STPs). However, in the light of recommendations of the Commission, Cabinet Committee on Energy (CCOE) has decided that GoP/WAPDA will provide funds for construction of STPs along River Neelum.	
(V).The WAPDA shall ensure the uninterrupted functioning of Makri Water Treatment & Supply Facility. In case the reduced flow during the operational phase of the Project renders its water off-take component dysfunctional, the WAPDA shall bear the technical and financial responsibility for its relocation or readjustment as a prompt remedial measure.	The WAPDA has released Rs.942.95 million to PP&H Govt. of AJ&K for the purpose on September 18, 2018.	The latest implementation status of the activity/project is with PP&H Department, being Implementing Agency.
(vi).The WAPDA shall install an alternate Water Supply Scheme as a sustainable arrangement to cater the demand of growing population & size of Municipality of Muzaffarabad besides making the similar arrangement for the settlements of Nauseri Nausada and Majhoi to offset the impacts of vanishing perennial water resources due to under laying Tunnel.	In the light of Environmental Approval, the WAPDA was liable to implement 05- Water Supply Schemes for Muzaffarabad , Nauseri, Nausada, and Majhoi. However, the WAPDA implemented 64 Water Schemes, through LG&RDD , Govt. of AJ&K in areas adjoining to NJHEP with total cost of Rs.263.800 million.	
(vii).To mitigate the loss of aesthetic look of river in Muzaffarabad, WAPDA shall cascade remaining flow, streamline the river banks and level its bed by removing boulders etc. to give it a more pleasant look and to restore its beauty. (Construction of Water bodies.	For carrying out a feasibility Study of Water bodies in Neelum River, the WAPDA provided Rs.103.333 million, on 10.10.2017 to Central Design Office (CDO), PP&H, Govt. of AJ&K . The feasibility has already been completed by CDO. The approved budget provision in PC-1 of NJHEP for the construction of Water bodies is Rs.2079.273 million. However, in the light of feasibility, more than Rs.8000.0 million would be required.	

	The Commission has also strongly recommended the construction of Water bodies, which has been endorsed by the Cabinet Committee on Energy (CCOE), accordingly.	
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Renewed (2nd) Environmental Approval by AJK-EPA, dated October 10.2014.

(ii).A comprehensive plan to construct protection/retaining walls for all spoil banks, an earnestly required measure, to safeguard and enhance the life of Mangla reservoir, must submitted to the Agency within one –month time form the issuance of this Approval.	Construction of protection/retaining walls at spoil banks is yet to be done by WAPDA oat most of the places.	
(iv).For the environment improvement & rehabilitation measures, like solid/hospital waster management support, may be considered for Municipal Corporation Muzaffarabad (Municipal Corporation Mirpur) under NJHEP as confidence building measure.	For the construction of a solid Waster Recycling Plant in Muzaffarabad Municipality, the WAPDA has already released funds amounting Rs.263.8 million to Local government & Rural Development Department (LG&RDD) of AJ&K in 2016. The feasibility of said activity is under progress.	The latest implementation status of the activity/project is with Local Government & Rural Development Department, being implementing Agency.
(vi).Owing to such situation wherein water supply arrangement for urban areas of Capital city has already been covered under MCDP, the WAPDA shall install a Gravity Water Supply Scheme form Saheli Nullah for the suburbs of Muzaffarabad city.	In the light of recommendation by the Commission, a Greater Water Supply is proposed to be constructed from Dam Site to Muzaffarabad.	
(viii).As an integral part of the environment management and rehabilitation under NJHEP, the WAPDA shall workout and execute a Watershed Management Program in consultation with the concerned Government Departments/agencies like Forest, Agriculture and Wildlife & Fisheries Departments Govt. of AJ&K.	The Forest Department, Govt. of AJ&K has already implemented a Watershed Management Project with the financial assistance of WAPDA of Rs.150.00 million.	The latest implementation status of the activity/project is with Forest Department, being implementing Agency.

30. The report of Secretary Water Resources Govt. of Pakistan has been reproduced in para 20 of this judgment wherein, the respective versions of the

stakeholders have been brought on record and it has been mentioned therein that the Government of Azad Jammu & Kashmir proposed the run of river for the project KHPP instead of water diversion through tunneling and it has also been apprised that major mitigation measures are essential, which must be taken as a firm commitment, be made through a tripartite agreement among the Govt. of AJK , the project Developer and the Govt. of Pakistan through Ministry of Energy (Power Division). E-flow downstream Saran site should be 80 cumecs and construction of Sewage Treatment Plants with 100% water treatment capacity, construction of minimum 5 water bodies downstream of the dam at Saran, Drinking water facilities in the affected project and overall mitigation measures have been pointed out in the conditional Environmental NOC for KHPP and demanded the execution of agreements in letter and spirit. The D.G, EPA, stated before the inquiry officer that 39.05 cumecs water will be required for e-flow, however, at minimum it should not be less than 30 cumecs on the weir of KHPP. The comprehensive environmental study regarding the actual flow has also been demanded and the other demands

which were reiterated therein that the payment of water usages charges and net hydel profit at par with the provinces of Pakistan in accordance with recommendation of the committee constituted by the Prime Minister under the convenership of the Secretary Finance Division and comprising the Secretary MoWR and the CS, AJK. The implementation of the other projects, i.e. Mansehra, Muzaffarabad, Mirpur Mangla road under the CPEC has also been stressed upon.

31. Now, on one side both the projects have some adverse impacts on the environment and can affect the biodiversity of the area to some extent. On the other hand although the projects have also benefits and can enhance the economy of the State for a sustainable developments, for example; the consortium; China three gorges South Asia Investment Limited which is undertaking Kohala Hydro Project through Kohala Private Limited (KHCL) which is committed to make it a firm investment of US\$ 2.7 billion in KHPP under BOOT model and the company will transfer the complete projects to the Govt. of AJ&K after 30 years of its operation which will provide USD 400 million to the Govt. of Azad Jammu & Kashmir annually

and the project developer has made huge struggle and due to this, it will generate 1124 MW electricity, so, the project will definitely become beneficial in terms of revenue and its generating capacity will ultimately cause a benefit to the people of Azad Jammu & Kashmir as well. In such situation, balance should be maintained between the benefit and loss to the people and the Government.

In such state of affairs in a case when issue of cutting the trees for Canal Widening Project Lahore, came before the Supreme Court of Pakistan in a case reported as 2011 SCMR 1743, some important principles have been laid down therein. The petitioners, "Lahore Bachao Tehreek", had challenged the project of 'Govt. of Punjab for widening of 14 kilometer long Canal Bank road' on the ground that the project would not only destroy the green belt/park and biodiversity of the area but also fail to solve the problem of traffic congestion at Canal Road for which the project has purportedly been designed. By resolving the matter the concept of public trust has been elaborated therein. It was further held by the Hon'ble Court that although the adjoining area of the road was an environmental asset and the greenery around it added the

beauty and romance to the city but If human had shunned reasons and the civilizational impact or had taken their love of nature too far, they would still have been living in caves, eating insects and raw meat and mating like animals, so, finally it is the human needs which are to be preferred. The relevant portion of the judgment is reproduced herein below:-

“In Passing the court may add that it is conscious of the historic and emotional appeal of the Canal which was built initially by the last Muslim Ruling Dynasty, the Mughals and extended in 1861 by the British. It is indeed an environmental asset. The greenery around it adds beauty and romance to the city. In times gone by there must have been flourishing fields, meadows and green valleys. Much later when the road on both sides of the Canal was metalled, there would hardly have been a few residential colonies. But slowly and gradually, as the population increased, residential colonies were built to cater to the needs of the populace. The mushroom growth of residential colonies is a post independence phenomenon. It assumed a greater momentum in the last $\frac{3}{4}$ decades. This caused massive damage to the flourishing fields, the orchards and to the habitats. The ill-conceived commercialization of residential areas had its toll as well. Industrialization on the outskirts of the city further confounded the situation and this resulted in traffic flow to multiply manifolds. The loss of those green valleys

evokes a natural lament and nostalgia. but his is what happens to environment and ecology when human needs increase and the cities expand bringing in their wake paints, issues, and Thomas hardy's "Madding Crowd". The famous German Philosopher Frederick Engels (1820-1895) who belonged to the same period when the canal was built, was alluding to this paradox when he said.

This however, is the flip side of human saga. It has a positive dimension too. If humans had shunned reason and the civilizational impact or had taken their love of nature too far, they would still have been living in caves, eating insects and raw meat and mating like animals. The discovery and development of the bounties and beauties of nature are partly attributable to human perception, ingenuity, struggle and its harnessing. John Keats, the poet of nature and beauty was referring to these human virtues when he said:-

Who, of men, can tell

That flowers would bloom, or that green fruit would swell To meeting pulp, that fish would have bright mail. The earth its dower of river, wood, and vale, the meadows runnels, runnels pebble-stones, The seed its harvest, or the lute its tones, tones ravishment, or ravishment its sweet. If human souls did never kiss and greet?

The beauty of the canal and of the greenbelt on both sides of Canal Road lie partly in beholder's eye i.e. human aesthetics, imagination, design and engineering. It is the human needs which require widening of the road."

32. So, in the light of above observation of the apex Court of Pakistan, we have come to the pragmatic beneficial and balanced approach with regard to these projects. The report of schemes executed under NJHEP has also been produced which shows that in order to offset the adverse environmental and social impact of NJHEP, WAPDA has provided Rs.546.3999 million to LG&RDD. For the rehabilitation and augmentation of water supply schemes affected by NJHEP tunnel, Rs.282.600 millions was provided. Under this component total 64 water supply schemes were identified with the consultation of affected communities which benefited almost 30,000 population among affected areas. To cater the solid waste management requirement of Muzaffarabad city Rs.263.800 were allocated for Integrated Solid Waste Management project. List of executed and completed projects has also been furnished and work on some of schemes could not be started due to litigation i.e. Water Supply Scheme Chanal Bang, Water Supply Scheme Achral etc. and 43 projects have been completed, however, four schemes are under progress. The report submitted by EPA reveals that so far, WAPDA

did not include the budget in the approved PC-1, NJHEP for Sewage Treatment Plant, however, in the light of recommendations of the commission cabinet meeting on Energy (CCOE) decided that WAPDA, Government of Pakistan will provide funds for construction of Sewage Treatment Plants alongwith river Neelum, and this was a big and one of the main condition of approval which has not been implemented by the WAPDA. The other big one was construction of Water Bodies and although according to the report of WAPDA funds of Rs. 103.333 have been transferred to AJ&K Govt. for construction of water bodies on Neelum river but in the light of report its projected costs would be eight thousands millions (Rs.8000 millions) and the commission of inquiry discussed hereinabove has also strongly recommended the construction of water bodies which has been endorsed by cabinet meeting on Energy for construction of water bodies. The WAPDA has not released the amount so far which they are legally bound to provide. The Cabinet meeting on Energy of Government of Pakistan (CCOE) has approved recommendations of Ministry of Water Resources regarding the water issues of Muzaffarabad city due to

NJHEP, vide its approval dated 19.09.2019 and it was directed as under:-

“vi. All the confidence building measures being part of the 4th Revised PC-1 shall continue and WAPDA will expeditiously release the funds after duly fulfilling codal formalities;

vii. In addition, to resolve this issue in true spirit and to effectively mitigate environmental and social issues, required funds be allocated by WAPDA/GoP for additional mitigation measures as mentioned in EPA NOC and in draft tripartite agreement for which required funds are not allocated in 4th revised PC-1. These measures include construction of comprehensive sewerage treatment and disposal system, supply of water from Dam site for Muzaffarabad city and construction of water bodies/cascades on river Neelum downstream the Neelum Jhelum Dam.”

(underlining is for emphasis)

33. Regarding the E-flow on NJHEP, a certificate has been issued by WAPDA and it has been confirmed that as per decision of the cabinet meeting on energy vide letter dated 19.09.2019, the NJHEP shall maintain minimum release of 20 cumecs and it has been stated that approximately 30 cumecs water released has been maintained by WAPDA throughout the month of September 2019. Although in the EPA approval, the limit

of 20 cumecs is not mentioned but when the WAPDA can maintain this minimum flow of water at the relevant places though provisionally then in our view, this e-flow level should not be reduced in future and minimum level of 20 cumecs must be maintained all the years to come. Another certificate issued by WAPDA shows that WAPDA has transferred Rs.3,041.96/- Millions to the different departments of Government of Azad Jammu & Kashmir for construction of different schemes under environmental mitigation measures, so the Govt. of AJ&K is also responsible to complete those schemes for which they requested and received the funds. As it has been observed earlier that the agreements in this regard have not been executed, (some main schemes have not so far been completed) like water bodies, Sewage Treatment Plants and Greater Water Supply Schemes, so, WAPDA and NJHPC is under legal obligation to complete the remaining projects as stipulated by EPA, in the conditional approvals as well as in draft tripartite agreements to minimize the adverse environmental impacts on the social, biological and economic life of the people to maintain the ecological system of the area.

34. With regard to the e-flow, at KOHPP, the EPA, AJ&K issued conditional NOC and it had determined the e-flow of 30 cumecs during the lean period vide its NOC dated 22.12.2016 and thereafter a contract was awarded on 21.02.2017 to the concerned project developer. Although it has been mentioned in the report of commission that the water bodies at river Jhelum are not technically feasible due to reason that high sediment load in Jhelum river, water body created in the river bed will be filled up with the sediment deposited in flood period and with the higher flow of Himalayan river, any structure constructed thereupon, will be washed away during floods but this view is not supported by other circumstances of the case. If the feasibility report on NJHEP regarding the construction of water bodies is approved then there is no reason that why these water bodies cannot be constructed on Jhelum river in relation to the KHPP particularly when it is on record that Chief Engineer CPO (WAPDA) also pointed out that slope of Neelum river is much steep than the Jhelum river. It has also been suggested by the commission that construction of water bodies shall be reviewed in line with outcome of the

feasibility study. Regarding the other major conditions, construction of Sewage Treatment Plants, KHCL has only the reservation that any financial implication should be borne by the power purchaser and not by the KHCL is not justified. The construction of Water Sewage Treatment Plants is necessary as it has been mentioned in the technical report that the dry season in Kohala HPP starts from 2nd week of September which will start from 4th week of June every year with Kohala HPP even after introducing the protection scenarios. According to Biodiversity Management Plan, the e-flow assessment report provides that for nutrients, these levels of protection could be achieved through the construction and operation of sewage effluent treatment plants. The report of commission further clarifies about water bodies that in order to restore the backwater areas in the secondary channels, the provision of water bodies duly maintained by periodic flushing of sediments through adequate ancillaries. The financial expenses cannot be preferred on lives of the people. Tariff issue can easily be settled between KHPC and NEPRA.

35. Some issues connected with the Mangla Dam and its raising project have also been highlighted by the petitioners that provisions contained in Clause 6.2 of the agreement are clear for the purpose of approved allocation of 126 cusecs water as envisaged in the agreement. The affected land owners are not being paid enhanced compensation of the lands. It is also contended that 'Haryam Bridge' is under construction since long and yet has not been completed although the recent project has already been completed almost more than 13 year ago and construction of bridge has been stipulated in clause 6.1 of the agreement, which is reproduced herein below:-

6.1. The WAPDA shall construct bridge at Dhangali. The construction of another bridge (Mirpur to Islam Garrh) shall be taken up by the Ministry of KANA&SAFRON, Government of Pakistan and the ministry of Finance and Revenue, Government of Pakistan shall provide funds under PSDP."

(Underlingings are ours)

Different resolutions against non-implementation of the agreements have been expressed by the different Organizations like 'Kashmir Press Club, Mirpur Chamber of

Commerce & Industry, and District Bar Association Mirpur. Rathoa Haryam Bridge has not been completed after the period of even 15 years. The compensation for the landlords of Mangla Dam affectees, according to the judgments of the Courts have not been given to them so far and the greater water supply scheme has not been completed for Mirpur city. The public buildings of different institutions made in new city and in Model Small Towns, Chaksawari, Islam Garh and Dadyal like Schools, Colleges and Hospitals and other offices are not 100% functional and completed. This fact is admitted by WAPDA as it prepared and submitted a 2nd revised PC-1 by including the demand of Rs. 2 billions for remaining work and Rs.10 billions to be paid as compensation to the land owners for approval before Govt. of Pakistan (Ministry of PDR) in the meeting dated 27th March, 2019 and the both matters are still awaiting approval by the government.

36. Under the agreement, it was incumbent upon the WAPDA to complete the projects promised through agreements well within time. Needs of water on construction of greater water supply scheme by providing 126 cusec water has not been catered so far, so, WAPDA

must own its commitments that the people of the areas who have been affected not once but twice, first in the decade of sixty and second at the time of upraising of Mangla Dam Project. When the EPA issued the renewal conditional environmental approval on 23.10.2014, it also imposed urge upon WAPDA with comprehensive plan to construct the protection retaining walls to safeguard the life of Mangla Reservoir within one month time but the same has not been done and due to construction of Dam, some areas on the banks of reservoir have badly damaged, which require urgent attention of the project developer, WAPDA. To get the compensation amount of the acquired lands according to the market value as determined finally by the Courts of law is a statutory and constitutional right of the people which is being denied by WAPDA.

37. It is to be observed here that as the conditional approval has been given by the EPA AJK for construction of both the projects and land required for the construction of the projects was also acquired by the Government of Azad Jammu & Kashmir, so, it cannot be said that the projects have been executed or implemented

without the consent of the Government of Azad Jammu & Kashmir, which is the representative Government of the people of Azad Jammu & Kashmir and it has also got funds from the WAPDA for different schemes relating to the projects and some of them have not been completed, so far, by the concerned departments of Government of Azad Jammu & Kashmir; like Health, Rural Development Local bodies and PP&H. So, the relevant departments are also under legal obligation to complete those projects without any further delay.

38. The crux of above detailed discussion is that unless mitigation measures and conditions stipulated in the conditional environmental approvals of EPA AJ&K for both the projects (NJHEP and KHPP) are complied with the operation of the projects constructed or under construction, whatever the case may be, would not be considered as legal and such violation can entail the legal consequences as enshrined in the Environmental Protection Act and other laws. As all the three projects (NJHEP, KHPP and Mangla Dam Raising Project) are located in the

territory of Azad Jammu & Kashmir and under the constitutional provisions and according to the understanding of the parties, the water usage charges and share from the net hydel profit of the projects, as given to the other concerned regional Govt. of Pakistan, the Government of Azad Jammu & Kashmir is also entitled for such financial benefits on the same rates no matter with whatever name. The Government of Pakistan, Govt. of AJ&K as well as project developers (WAPDA and KHCL), are under legal obligation to finalize and sign the draft tripartite agreements in relation to both the projects (NJHEP and KHPP) within reasonable period, so that no room may be left for complaints.

Therefore, in the light of what has been stated above, the project developers, WAPDA and KHPC are hereby directed to implement all the conditions of EPA AJK approvals in letter and spirit. The construction of water bodies, Sewage Treatment Plants connecting with both the projects as mentioned in the EPA approvals shall be completed within one year regarding NJHP and before the operation of KHPP. The respondents are also directed to complete and execute the draft tripartite agreements in relation to both the projects

within reasonable period not later than four months. In case of violation of the terms and conditions of EPA approvals, D.G EPA is directed to initiate the legal proceedings against the concerned persons/authority under law. The minimum E-flow level of the water at NJHP shall not be reduced from 20 cumecs during the lean periods of the year and that of KHPP Weir preferably not less than 39.5 cumecs. However, the condition of EPA of minimum 30 cumecs E-flow shall not be violated by any means at the latter project. The responsible respondents under agreement dated 27.06.2003, regarding Mangla Raising Project are also directed to complete the remaining portion of Haryam Bridge within a period of six months and pay the compensation amount to the affectees, land owners according to the final judgments of the Courts within four months, they shall complete, maintain and make the facilities, public buildings and institutions (Schools, Dispensaries, hospital and other offices of services built at various hamlets for Mangla affectees) functional by providing resources and staff. The respondent, Govt. of AJ&K shall also complete the all schemes, projects for which it received funds from

WAPDA within six months. It shall also constitute a Committee consisting of persons of known integrity and uprightness to probe into the causes of the delay of the schemes and if the committee finds any financial irregularities in execution of the schemes, it will nominate the responsible and propose the legal actions against them.

The Government of Azad Jammu & Kashmir shall be entitled to receive the water usage charges and share of net hydel profit, equal to that given to the other concerned regional governments, to be paid by the power producers/purchasers according to final agreement reached between the parties.

The petitions are disposed of in the manner as indicated above. The compliance report of all the directions, terms and conditions as well as the other measures mentioned hereinabove shall be submitted to the Registrar of this Court for perusal of the Court as well.

Muzaffarabad.

15.11.2019 (Saleem)

JUDGE
(S.K)

JUDGE
(S.H)

JUDGE
(Ch.M)

(APPROVED FOR REPORTING)

JUDGE
(S.K)

JUDGE
(S.H)

JUDGE
(Ch.M)