

IN THE SUPREME COURT OF PAKISTAN  
(Original Jurisdiction)

Present:

Mr. Justice Umar Ata Bandial, CJ  
Mr. Justice Ijaz ul Ahsan  
Mr. Justice Syed Mansoor Ali Shah

Constitution Petitions No.4 & 14 of 2021 and  
Crl.M.Appeal No.8/2021 & CMA No.4707/2020.

Amer Ishaq & others (in Const.P-4/2021)  
Muhammad Nawaz & others (in Const.P-14/2021)  
Chief Abdul Rehman (in Crl.M.Appeal-8/2021)  
..... Petitioner(s)

Versus

Province of KPK, etc (in Const.Ps-4&14/2021)  
Muhammad Javed Marwat, etc (in Crl.M.Appeal-8/2021)  
.....Respondent(s)

In attendance: Ch. Imran Hassan Ali, ASC.  
Mian Shafqat Jan, Addl.A.G. KPK.  
Mr. Zakriya (For Hagler Bailly)  
Mr. Aitzaz Ahsan, Sr.ASC.  
Mr. Cohar Ali Khan, ASC.  
Chief Abdul Rehman, in person.  
Kh. Haris Ahmed, Sr.ASC.

Date of hearing: 25.04.2022

ORDER

The petitioners are residents of villages Suraj Gali and Khoi Mera located in Tehsil Khanpur, District Haripur. They are aggrieved of the installation and operation of power crushing plants situated in their neighbourhoods. They have challenged the vires of Rule 2(c) and Schedule IV of the Khyber Pakhtunkhwa Power Crushers (Installation, Operation and Regulation) Rules, 2020 (the "Rules") on the ground that the Rules do not provide for any protection of minimum safe distance between the installation site of the power crushers and the nearby human population. It is contended that the power crushing units have been permitted to install plants at a distance of 300 meters from the population in rural areas instead of 1,000 meters as provided in the erstwhile Khyber Pakhtunkhwa Power Crushers (Installation, Operation and Regulation) Rules, 1998. The impugned provisions of the Rules, according to them, are not only *ultra vires* Sections 7 and 19 of the

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Khyber Pakhtunkhwa Power Crushers (Installation, Operation and Regulation) Act, 2020 but also of Articles 9, 23, 24 and 25 of the Constitution. This grievance is being aired through constitutional petitions filed under Article 184(3) of the Constitution and in the appeals/petitions arising from the writ petitions filed by the petitioners before the Peshawar High Court against the installation and operation of power crushers in their villages.

2. The underlying issue mainly relates to the emission of dust particles (i.e., particulate matter or PM) from stone crushers and its effect on the health, safety, agriculture and livelihood of nearby population. The Court vide order dated 08.01.2020 appointed Hagler Bailly, Pakistan as local commission to submit a report on environmental and social assessment of mining and crushing activities in village Suraj Gali, District Haripur. The Report dated 10.08.2020 recorded, as noted in order dated 15.12.2021, that the distance of the crushing plants from the settlements was less than the minimum safe distance of 300 meters while the air monitoring analysis revealed that the particulate matter (PM<sub>10</sub>)<sup>1</sup> stood at 2286 and 1588 at two places in proximate settlements instead of the prescribed standard of 150 under the National Environmental Quality Standards ("NEQS"). The counsel representing the respondent crushing plants stated before the Court on 15.12.2021 that modifications had been made in the plants in view of the Report dated 10.08.2020 to bring the same in compliance with the Rules. The Court then again appointed Hagler Bailly Pakistan as Technical Counsel to carry out site inspection of the stone crushing plants set up in village Suraj Gali and prepare a fresh report specifically on PM<sub>10</sub>.

3. A study to measure the PM<sub>10</sub> pollution at the stone crushing plants and receptors in the vicinity and to assess the effectiveness of the onsite implemented dust control measures was undertaken. The Report, dated 04.04.2022, submitted by the Technical Counsel is indeed telling: PM<sub>10</sub> concentrations at all sampling locations substantially exceeded the limits prescribed in the NEQS; extensive deposition of dust was observed on trees and crops indicating that the mitigation measures adopted by plant

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<sup>1</sup>with an aerodynamic diameter <10 micrometers

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owners were insufficient to control the dust emissions in the area; the measured PM<sub>10</sub> concentrations were above the 24-hours limit prescribed in the NEQS at all six monitoring locations and long term exposure to such high concentrations could cause several health effects among the residents and the workers of the stone crushing plants; and PM<sub>10</sub> is known to affect animals by causing various respiratory problems and creating additional stress. It was suggested that the implementation of appropriate dust control measures is essential to keep the emissions of particulate matter within the limit. The findings recorded in the fresh report belie the claim made on behalf of the respondent crushing plants on 15.12.2021. Record also reflects that Government Departments such as Forestry, Environment and Wildlife, and Archaeology and Museums initiated proceedings against said power crushers for alleged violations and encroachments.

4. Even though steps taken by the power crushers during the pendency of these petitions has, according to HB, reduced the emissions but there has to be a more sustainable mechanism put in place to address the problem. It is not practicable for EPA to monitor and police the power crushers to constantly use the protective equipment and control the emissions. Besides the issue of the growing human settlement in the area will always encroach upon the safe distance under the Rules.

5. The issues raised in these petitions apparently poses a threat to the life, health and livelihood of the inhabitants of village Suraj Gali, District Haripur. Commercial operations of power crushers though necessary to meet the developmental needs of the country could not, however, be allowed to encroach upon the fundamental rights of the local human settlement. Rather, a balancing act is required to achieve sustainable development. The Court exercising its inquisitorial jurisdiction and before expressing any opinion on the vires of impugned provisions of the Rules, that a Commission be constituted that surveys the area and deliberates with the concerned stakeholders to suggest proposals with a view to finding a sustainable solution of the problem of ambient air quality in the surroundings of power crushers in order that not only the interests of the current population of the vicinity be preserved but the issues likely to arise as a result of any possible

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expansion in human habitation in the future be addressed as well. It is also underlined that only three power crushers are before us and we have been informed that there are 950 power crushers operating in KPK. Any sustainable solution proposed by the Commission and eventually approved by this Court can go a long way in resolving this issue for the entire Province.

6. We, therefore, constitute "Power Crushers Commission" in the following terms.

I) CONSTITUTION OF POWER CRUSHERS COMMISSION

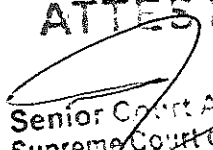
"Power Crushers Commission" is hereby constituted under Order 26 CPC, comprising the following members:-

1.	Dr. Pervez Hassan	Chairman
2.	Representative of Hagier Bailly Pakistan	Member
3.	Representative of WWF	Member
4.	Director, Mineral and Mines, Government of KP	Member
5.	Director, EPA, Government of KPK	Member
6.	Representatives of Stone Crushers	Member
7.	Ahmad Rafay Alam, Environmental Lawyer, Lahore	Member
8.	Zofeen T Ibrahim, Freelance Journalist.	Member

II) TERMS OF REFERENCE OF POWER CRUSHERS COMMISSION:-

Terms of Reference:

- a) What is the safe distance for installation and operation of power crushers from human dwellings?
- b) What safety measures must be taken/installed by power crushers for blasting and stone crushing at site at all times?
- c) What National Environmental Quality Standards (NEQS) must be maintained by stone crushers to safeguard public health?

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- d) What short term and long-term measures to be adopted by crushers in order to be EPA compliant?
- e) What measures or steps ought to be taken to continuously or regularly monitor the crushing and mining activities of power crushers to be EPA compliant?
- f) What measures to be taken by power crushers so as to convert from conventional quarrying to safe and smart quarrying which avoids flying rock and dust?
- g) What time frame to be fixed for to make their units EPA complaint?
- h) Recommend specification for cost-effective monitoring equipment with real-time monitoring of wind speed, wind direction, and dust emissions (specifically PM10) generated from operations of stone crushers and blasting activities.
- i) Draft guidelines to assist the power crushers to achieve effective management and operation of monitoring equipment with due consideration to existing technical capacity and costs.
- j) Develop a framework that can be used by the regulators to assess the environmental and social performance of stone crushers throughout the province and to share the information with the communities that may be at risk.
- k) Assess performance of stone crushing plants that have installed and operated equipment to control dust emissions and where applicable provide recommendations that the owners of crush plants may consider to further improve their environmental performance.
- l) Develop an action plan that considers a phased approach including appropriate safe distance (buffer zone) that will allow stone crushers to transition towards compliance with applicable

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legal laws in an appropriate time frame and eventually achieve internationally established benchmarks through continual improvement.

- m) Has the Government of KPK recently established a dedicated crushing zone in Khanpur, a few kilometers away from Suraj Gali; whether it is viable solution to shift/transfer the stone crushers to that zone.
- n) Any other issue as may be deemed appropriate or relevant to the above TORs or subject matter of crushing & environment.

#### III. POWER OF THE COMMISSION

- a) The Commission shall enjoy the powers under Order 26 of the CPC in order to achieve the objective of the Commission.
- b) The Chairman shall have the power to co-opt any person/expert, at any stage.
- c) The Chairman can seek assistance of any Federal or Provincial Government Ministries/ Department by approaching the concerned Ministries/ Departments in writing and the concerned Ministries/Departments are hereby directed to render full assistance to the Commission in respect of the above Terms of Reference.

#### IV. QUORUM OF THE COMMISSION

The quorum of the Commission shall be five which shall include the Chairman.

#### V. SECRETARIAT OF THE COMMISSION

The Secretariat of the Commission shall be housed at the Department of Industries, Commerce and Technical Education, Civil Secretariat, Peshawar or at any other venue decided by the Commission.

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VI. EXPENSES OF THE COMMISSION:

- (a) Secretarial expenses of the Commission shall be borne by the Department of Industries, Commerce and Technical Education, Government of KPK, Peshawar.
- (b) The Commission may approach this Court at any stage to seek *appropriate* orders for facilitation of their work.

VII. INTERIM REPORT

The Commission shall file interim reports as and when directed by this Court.

Sd/- HCJ

Sd/- J

Sd/- J

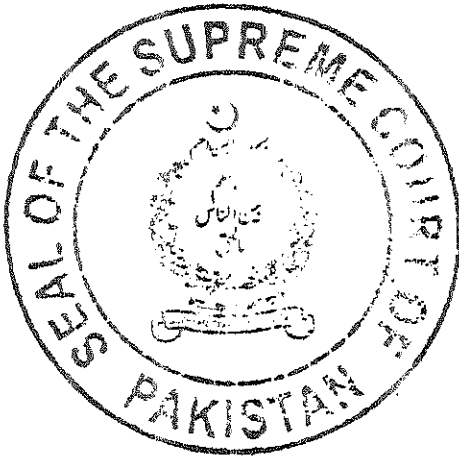
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Islamabad,  
25<sup>th</sup> April, 2022.  
Not Approved for reporting.

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