

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik

CIVIL PETITION NO.55 OF 2020

[Against order dated 18.11.2019, passed by the Lahore High Court, Lahore, in W.P. No.56780 of 2019]

Public Interest Law Association of Pakistan
registered under the Societies Act, 1860 through
authorized person Chaudhry Awais Ahmed ...Petitioner(s)

Versus

Province of Punjab through Chief Secretary, Civil
Secretariat, Lower Mall, Lahore and others ...Respondent(s)

For the Petitioner(s) : Mr. Rafey Alam, ASC
Ch. Akhtar Ali, AOR

For the Respondent(s) : Mr. Qasim Ali Chohan,
Addl. A.G.
Mr. Ashfaq Ahmed Kharal,
Addl. A.G.
Noman Sarfraz,
Deputy Director (Mines and Minerals)
Nawaz Majid,
Deputy Director (L) Environment

Date of Hearing : 02.02.2023

JUDGMENT

AYESHA A. MALIK, J.- This Petition impugns order dated 18.11.2019, passed by the Lahore High Court, Lahore (**High Court**) wherein the Petitioner, in public interest, challenged the lack of environmental approvals for grant of small-scale mining licences or leases. The issue raised is the grant of small-scale license or lease for mining minor minerals like sand, gravel and sandstone which are issued without considering the impact on the environment. The Petitioner's argument is that the Punjab Mining Concession Rules, 2002 (**the Rules**) sets out the process for award of small-scale mining licences without requiring any approval by the environmental authority, even though Section 12 of the Environmental Protection Act, 1997 (**the Act**), requires that all projects need environmental approval from the Environmental Protection Agency (**EPA**). The counsel explained that as

per the definitions and the provisions of the Rules, both large scale and small-scale mining operations are *projects* for the purposes of Section 12 of the Act. Consequently, as per Section 12 of the Act proponents of projects must obtain environmental approvals from the EPA.

2. The Respondents explained that during the pendency of this dispute, meetings were held to resolve the issue and finally on 27.12.2019, it was agreed that the Mines and Minerals Department (**MMD**) shall submit Initial Environmental Examination (**IEE**) and Environmental Impact Assessment (**EIA**) reports before each project and shall obtain environmental approval for the project as per Section 12 of the Act, prior to the commencement of the bidding process and issuance of the offer letter to a successful bidder. This includes small-scale mining license or lease. It was also agreed that this process will be used by the MMD to monitor the terms and conditions of the environmental approvals. Further that the EPA will provide its expertise in monitoring the terms and conditions of the environmental approvals and in the event of any violation they will take action against those who violate the terms and conditions. Thereafter, pursuant to Section 33 of the Act, the Punjab Environmental Protection (Review of Initial Environmental Examination and Environmental Impact Assessment) Regulations, 2022 (**Regulations**), was promulgated and notified on 16.12.2022. As per Regulations No.3, 4 and 5, it is clearly stipulated as to which projects require an IEE and which require an EIA. Therefore, they state that the matter in issue has been resolved.

3. Counsel for the Petitioner does not dispute the meeting and or the issuance of the Regulations. However, he argues that no steps have been taken to ensure the enforcement of these Regulations as there is no procedure set out to clarify who has to obtain the IEE or EIA for the projects. He explained that as per practice, once the bidding takes place, the MMD requires the successful bidder to obtain the necessary environmental approval. He states that this negates the purpose of obtaining the IEE or EIA and is also against the spirit of what was decided on 27.12.2019. As per his contention, there should be guidelines and Standard Operating Procedure (**SOP**) set out to give clarity and timelines within which the approval should be obtained and the terms of the environmental approval should bind the successful bidders of the projects so that they abide by it.

4. Pakistan has the world's second largest salt mines and coal reserves, fifth largest copper and gold reserves and second largest coal deposits¹ with gravel, sand and limestone deposits widely distributed in all four provinces. The country's GDP owing to mining alone has increased from Rs.309,823/- million in 2020 to Rs.663,084/- million in 2021.² There is huge potential in the mining sector for the country's economy; however, it cannot be achieved at the expense of the environment. We have examined the Regulations promulgated vide Notification dated 16.12.2022. As per these Regulations, projects listed in Schedule-I(D) require an IEE which include commercial extraction of sand, gravel, limestone, clay, sulphur and other minerals not included in Schedule-III and with a total cost of less than 500 million. It also includes exploration of coal, gold, copper, sulphur and precious stones. Similarly, projects listed in Schedule-II(C) require an EIA which includes mining and processing of coal, gold, copper, sulphur and precious stones. Hence, the Regulations clearly specify the requirement of an IEE or EIA, which is a fundamental and basic step before a project starts, so as to ensure that an adverse effect on the environment has been considered and addressed. This is because even the exploration and mining of minor minerals has an adverse impact on the environment, which includes deforestation, pollution, production of toxic waste water, loss of habitats and disruption of the ecosystem. In particular, with reference to sand mining; deforestation, loss of biodiversity, soil erosion and acid drainage are some of the serious environmental impacts, which have to be given due consideration. Surface mining creates health hazards for miners and local communities as well as gives rise to air pollution and produces toxic waste water, and causes droughts all of which must be catered for. In this context, climate change is one of the biggest global threats and the combination of surface mining and climate change becomes a serious threat for the ecological system. Hence, the mining sector must adopt climate proof mining policy³ which must consider how climate change will impact mining areas so that the climate change risks are integrated into the environment assessment.⁴ Therefore, without an IEE or EIA, these matters are totally neglected. Hence, special attention must be

¹Sector Brief Mineral, SMEDA

²Trading Economics: Pakistan GDP from Mining

³Jason Phillips, *Climate change and surface mining: A review of environment-human interactions & their spatial dynamics*, 74, *Applied Geography*, 95-108 (2016)

⁴Lukas Ruttiger & Vigya Sharma (2016) *Climate Change and Mining: A Foreign Policy Perspective*, Germany, adelphi

given to all environmental aspects even with reference to the mining of minor minerals.⁵

5. The relevance of the IEE and EIA cannot be ignored. Not only do the IEE and EIA consider the environmental impact of the project but can also include standards and initiatives to improve sustainability of the sector. This can be vital in projects of mining under the MMD. They also prescribe mitigation measures and put in place a monitoring method through an Environment Management Plan (**EMP**). The EMP provides the basic framework for implementing and managing mitigation and monitoring measures. It identifies the environment issues, the risks and recommends the required action to manage the impact. This is vital because not only does the miner know what its obligations are, it also gives the MMD and the EPA a framework to follow and to ensure its compliance. Hence, all factors considered the IEE and EIA ensure that the project is sustainable and all possible environmental consequences have been identified and addressed adequately.

6. In this context, we have examined the Regulations and agree with the contention of the learned counsel for the Petitioner that there is no timeline provided within which these approvals are to be obtained nor does it specify any process to bind the successful bidder of the project to the terms of any EMP or other measures provided for in the IEE or EIA. However, the Regulations do clarify that the *proponent of the project* has to obtain the IEE or the EIA and in this case, the *proponent of the project* will always be the MMD, hence the practice of requiring a successful bidder to obtain an IEE or EIA after bidding of the project totally negates the purpose and impact of these reports. The impact on the environment must be looked into *before* bidding commences by the MMD and at the time of bidding a bidder must know the terms set out in the IEE or EIA that they are bound by and are required to comply with especially the mitigation measures and the EMP. Hence, it is the MMD that is responsible for obtaining these reports before initiating the process for bidding of the said projects. In this regard, it would be useful for the MMD to provide guidelines and SOPs to facilitate this process and also provide penalizing provisions within the license or lease for any violation of the EMP so as to ensure compliance. While mining is an essential part of the economy, it must

⁵Sustainability 2017 – Review on Environmental Impacts of Sand Exploitation.

be conducted in a responsible and sustainable manner to minimize its impact on the environment. By implementing best practices and adhering to strict guidelines and developing a climate proof mining policy, it can be ensured that mining continues to provide for the economy while also protecting the health of our planet and its inhabitants. Economic growth is important but it must be achieved in a way that is sustainable and respectful of the natural systems that support it.

7. In view of the above, this petition is disposed of.

JUDGE

Islamabad
02.02.2023
'APPROVED FOR REPORTING'
*Mahtab H. Sheikh/Alizeh Akbar**

JUDGE