

[Supreme Court of Pakistan]

Present: Umar Ata Bandial, C.J., Syed Mansoor Ali Shah and Ayesha A. Malik, JJ**PROVINCE OF SINDH through Chief Minister and others---Petitioners****Versus****SARTAJ HYDER and others---Respondents**

Civil Petitions Nos. 943 to 954-K of 2022, decided on 21st October, 2022.

(Against orders dated 01.09.2022 and 06.09.2022 passed by the High Court of Sindh, Bench at Sukkur and Circuit Court Larkana in C.Ps. Nos.D-1064, D-1068, D-1072, D-1075, D-1077, D-1080, D-1081, D-1083, D-1084, S-790, S-797 and S-792 of 2022)

Per Ayesha A. Malik, J; Umar Ata Bandial, CJ and Syed Mansoor Ali Shah, J. agreeing (Majority view)

(a) Constitution of Pakistan---

---Art. 185(3)---Interim orders passed by High Court impugned before the Supreme Court---Supreme Court normally does not interfere with the interim orders of the High Court except in exceptional circumstances.

Federation of Pakistan through Secretary, Ministry of Energy (Power Division), Islamabad and others v. Shafiq ul Hassan and others 2021 PLC (C.S.) 292 and Dossani Travels Pvt. Ltd and others v. Messrs Travels Shop (Pvt.) Ltd. and others PLD 2014 SC 1 ref.

(b) National Disaster Management Act (XXIV of 2010)---

---Ss. 3(2)(p), 6, 8, 13 & 18---Flood management in Province of Sindh---Citizens Committee in every Taluka of flood affected Division---Said Committees were constituted on orders of the High Court with the direction that such Committees be headed by a Civil Judge and that the said committees work under the supervision of the concerned District and Sessions Judge---Constitutionality---Role assigned to the judicial officers of overseeing the work of the executive by heading the Citizens Committees essentially meant that the judicial officers were performing executive functions which was against the principle of separation of powers---Inclusion of the members of the District Judiciary in the said Committees was not required given that there was an entire legal framework under the National Disaster Management Act, 2010.

The issue before the Court essentially is the exercise of jurisdiction by the High Court while creating the citizens committees and placing judges from the District Judiciary on these committees to oversee the work, being done by the committees. The role assigned to the judicial officers of overseeing the work of the executive by heading the citizens committees essentially means that the judicial officers are performing executive functions which is against the principle of separation of powers. The Constitution does not contemplate assumption of functions by one organ that essentially belongs to another. Moreover planning and strategy, coordination, monitoring and implementation are the functions of the executive and is best left for them to fulfil their duty and obligations in this regard. Furthermore, the work of these committees is a fulltime job which will require the judicial officers to spend time on these committees which in turn take them away from their judicial work that is also not practical nor expedient.

The relevant law on the subject is the National Disaster Management Act, 2010 ('the Act'), which establishes a National Disaster Management Commission (Commission) for the purposes of policy making. This Commission not only lays down the policy on disaster management but also approves a National Plan and Guidelines to be followed by the Federal and Provincial authorities in the event of a natural disaster.

Formation of the citizens committees by the High Court, in principle, was to facilitate relief efforts in different areas within the Province, however, the inclusion of the members of the District Judiciary was not required given that there is an entire legal framework under the Act to ensure relief work right down to the district level. Supreme Court modified the impugned orders of the High Court to the extent that the Citizens Committee shall no more be headed by a Civil Judge notified by the District Judge concerned and the citizens committee shall no more work under the supervision of the concerned District and Sessions Judge.

(c) National Disaster Management Act (XXIV of 2010)---

---Ss. 3(2)(p), 6, 8, 13 & 18---Flood management in Province of Sindh---Citizens Committee in every Taluka of flood affected Division constituted on orders of the High Court---Participation of public and civil society in the National Disaster Management Authority (Authority), the Provincial Disaster Management Authority (PDMA), the District Disaster Management Authority (DDMA), and the National Disaster Management Commission (Commission)---Significance and benefits---Community participation is not only necessary for planning disaster management but also for implementing and monitoring purposes as it gives people the right to participate in the decisions that affect their lives; this creates more awareness and a sense of ownership and responsibility which is required, particularly in disaster management so to enhance effectiveness and engage the people with their communities to provide rescue, relief and rehabilitation efforts---Importance of inclusion of civil society in disaster management stated.

As per the scheme of the National Disaster Management Act, 2010, members of the civil community which include volunteers, NGOs, doctors and others can be made part of the Provincial and District Management Authorities to help relief efforts.

Participation by the public in the Provincial Disaster Management Authority (PDMA) and District Disaster Management Authority (DDMA) and even at the National Disaster Management Commission (Commission) level ensures that the flood affectees are able to bring first hand their vulnerabilities and priorities, which results in a more measured response and proper allocation of resources where required. It also gives the National Disaster Management Authority (Authority) greater insight into the affected communities enabling them to work more effectively and produce better result. Community participation is not only necessary for planning disaster management but also for implementing and monitoring purposes as it gives people the right to participate in the decisions that affect their lives. This creates more awareness and a sense of ownership and responsibility which is required, particularly in disaster management so to enhance effectiveness and engage the people with their communities to provide rescue, relief and rehabilitation efforts. Hence, citizens' participation in the PDMA and DDMA can improve coordination and response which will enable the government authorities to provide relief work in a more effective and efficient manner. It is fundamental to the composition of the Commission, the Authority, the PDMA and the DDMA that members of civil society are included in it.

To deal with the issue in hand, the Citizens Committees can work with DDMA to the extent of monitoring, coordination efforts and ensure that relief work reaches the affectees, who do not have sufficient assistance at the moment. The committees can also facilitate the PDMA and the DDMA of the Province in providing necessary information and data with reference to relief work and what is required which will improve the Authority's coordination with affected areas and communication with affected areas especially due to the challenges of accessibility and communication failure. The Citizens Committee can, therefore, monitor the efforts of the PDMA and the DDMA which will not only lead to better results in the relief work but will also create awareness within the affectees as to the manner in which the relief effort is being carried out and will encourage them to participate. This participatory approach to a natural disaster humanizes the work of the authorities so that affectees are provided with real time relief that they need and not what the paperwork suggests.

Supreme Court directed that the Citizens Committees shall oversee the work of the government authorities and provide necessary information and data to facilitate the work of the authorities; that the Citizens Committee itself shall not engage in directing or controlling the relief work being undertaken but shall participate in the process put in place by the DDMA to make it more effective and inclusive.

(d) National Disaster Management Act (XXIV of 2010)---

---Ss. 6, 8 & Chpts. III, IV---National Policy Guideline on Vulnerable Groups in Disasters 2014 (Policy Guidelines)---Flood management in Province of Sindh---Inclusion of women in disaster management, importance of---Citizens Committee in every Taluka of flood affected Division constituted on orders of the High Court---National Policy Guideline on Vulnerable Groups in Disasters 2014 (Policy Guidelines) requires the participation of women in disaster management plan at all levels to ensure integration of the gender perspective---Importance of inclusion of women in disaster management stated.

National Policy Guideline on Vulnerable Groups in Disasters 2014 (Policy Guidelines) requires the participation of women in disaster management plan at all levels to ensure integration of the gender perspective. As per the Policy Guidelines, women are at a greater risk from natural disasters than men. They are vulnerable and victims in natural disasters but also play a significant role throughout the disaster management cycle, without being adequately recognized and included in the decision making. Therefore, in line with the policies formulated, it is imperative that the citizens committees include women, older persons and persons with disabilities so that the required response is ensured and provided and that the Policy Guidelines formulated be implemented real time. In this context, the affected areas require maternity and healthcare for women so there is an increased need for female doctors, trainers and caretakers to attend to the health concerns. Women are often subjected to gender-based violence and harassment in times of such calamities, therefore safety and security concerns are also of significance for which appropriate response is also required. In this context, although the framework exists, an effort must go into ensuring that it actually functions and fulfils its mandate. Accordingly, the Citizens Committee should ensure the representation of the vulnerable groups, particularly of women, in order to strengthen its perspective.

Supreme Court directed that the Citizens Committees shall continue to operate with the given composition including that of vulnerable groups, particularly women for monitoring the relief work and provide necessary information to the District Disaster Management Authority (DDMA) to improve their efforts.

Per Syed Mansoor Ali Shah, J; Umar Ata Bandial, CJ and Ayesha A. Malik, J; agreeing (Majority view)

(e) National Disaster Management Act (XXIV of 2010)---

---Ss. 6(2)(g), 10(3)(a) & 17(3)(b)---Constitution of Pakistan, Arts. 9 & 14---Climate change adaptation plan -
-- Observations and directions recorded by the Supreme Court regarding importance of a climate change adaptation plan stated.

In view of the unprecedented damage (due to floods) and the likelihood of its recurrence, it is imperative that serious and practical efforts are undertaken for prevention and adaptation against such disasters induced by climate change. It is expected that existing policies or mechanisms catering to food insecurity etc. are mobilized as soon as possible and if no such policies or mechanisms exist, then the respective State functionaries should take urgent action to formulate such policies and create such mechanisms to prevent further exacerbation of the losses and damage already suffered due to the floods and for sustainable rehabilitation.

Climate justice was an important consideration at the 27th Conference of the Parties to the United Nations Framework Convention on Climate Change ("COP27") which concluded with a significant and positive development through the formation of a loss and damage fund for climate-vulnerable developing countries. Soon funds will be allocated to countries that have suffered loss and damage due to climate change. It is high time to develop a mechanism for the allocation of these funds and the identification of key adaptation infrastructural projects that will help build national climate resilience, especially against floods in the years to come. It is expected that the Ministry of Climate Change, Government of Pakistan shall drive this initiative and frame a policy and set up a mechanism to effectively and efficiently utilize such funds. It is therefore essential that these global funds are invested in building national climate resilience so that climate induced disasters can be minimized.

Climate Change is perhaps the most serious threat to the fundamental rights of the people in Pakistan. In order to protect their right to life and above all their right to dignity under Articles 9 and 14 of the Constitution, a climate resilient adaptation plan including a detailed mechanism for utilization of financial support coming to Pakistan from the loss and damage fund, is the need of the hour. Having failed to learn from the past floods, as has become apparent from the magnitude of the destruction caused by the recent floods, it is pivotal that effective steps are taken to prevent such catastrophes in the future.

Hassan Akbar, A.G., Sindh (via video link from Karachi), Iqbal Memon, Commissioner Karachi and Maqsood Soomro (PDMA Sindh) (via video link from Karachi) for Petitioners.

Ghulam Shabbir Sher, Advocate Supreme Court for Respondents (in C.P. No. 943-K of 2022).

Nemo for Respondents (in remaining cases).

Faisal Siddique, Advocate Supreme Court Amicus Curiae.

Date of hearing: 21st October, 2022.

JUDGMENT

AYESHA A. MALIK, J.---The instant Civil Petition (C.P. No.943-K of 2022) along with connected Petitions impugns interim orders dated 01.09.2022 and 06.09.2022, passed by the High Court of Sindh, Bench at Sukkur and Circuit Court Larkana (High Court). The orders have been passed in petitions filed by the Respondents in relation to the relief work carried out by the Petitioners in the flood affected areas of Sindh, mainly Khairpur, Ghotki and Naushahro Feroze.

2. The Petitioners before the Court are the Province of Sindh and Director General, Provincial Disaster Management Authority (PDMA), amongst others, whose grievance against the impugned orders is that the Court has directed the relevant Commissioners to constitute a citizens committee in every Taluka of Sukkur Division, Larkana Division, Shaheed Benazirabad Division and Naushahro Feroze District and directed that such citizens committee be headed by a Civil Judge and that the said committees work under the supervision of the concerned District and Sessions Judge. The Petitioners are also aggrieved with the directions given that the citizens committees are to look after the affairs of the tent city. Mr. Hassan Akhtar, Advocate General Sindh, argued that the impugned orders have placed the Provincial and District administration, responsible for disaster management including the provision of relief work under the control of the citizens committees which are headed by Civil Judges. Consequently, the Court has exceeded its jurisdiction as it has directed judges to enter the domain of the executive by requiring them to oversee relief work. He adds that the orders were beyond the court's jurisdiction and have placed relief efforts in the hands of the citizens committee. He explained that the Petitioners are striving hard to ensure that adequate relief is provided to the affected areas and that any lapse or deficiencies in the same are not on account of negligence or ineffective management by the Petitioners but are due to vastness of the area which is affected by the flooding coupled with the lack of resources. He elaborates that access to these areas is also an issue as roads, railway lines, bridges have been damaged or destroyed and large parts of these areas are under water. Despite these challenges, he states, that best efforts are being made and that these committees will hamper progress. He explained that distribution of relief items to the calamity affected areas is the responsibility of the District Disaster Management Authority (DDMA) and the PDMA coordinates all relevant departments for actions required in response to the floods. As per the record of the Government of Sindh, there has been an unprecedented amount of rainfall in the month of July and August 2022 with 307% and 561% over and above the annual average, respectively. He stated that the recent spell of rain has impacted the entire Province of Sindh such that 30 districts are under water which has led to loss of infrastructure and resources and has brought about a humanitarian crisis. He further submits that there is a legal framework in place under the National Disaster Management Authority Act, 2010 (Act) whereby the PDMA and the DDMA are functional and are carrying out relief work. He added that as per notification dated 24.06.2014 issued by the Government of Sindh, Services, General Administration and Coordination Department, two representatives from the business community, three representatives from the civil society organisations and two representatives from the agriculture sector are nominated as members of the DDMA. Hence, he states, that civil society is already a part of the existing framework and so there was no reason to make a citizens committee.

3. On behalf of the Respondents, who are affectees of the calamity affected areas of districts of the Province of Sindh, it is stated that no relief work is being provided in their area, hence, petitions were filed seeking directions that the Petitioners take immediate action to provide food and shelter to the residents of the area and also to drain out the water from the lands of the Respondents so that they are able to inhabit and cultivate their lands once again. Discriminatory acts of the PDMA Sukkur have been highlighted by the Respondents; one of them, has also stated that the government hierarchy is only saving the lands of the political elite by diverting water towards the villagers' land; that half of the draining disposal machines are out of order; that proper evaluation of loss of the affected areas is also required for rehabilitation purposes. Ghulam Shabbir, Advocate High Court, one of the residents of Dadu District, has filed C.M.A. No.7960 of 2022 for impleading him as party to bring on record the destruction of his district and failure of the government in its rehabilitation. He adds that there is

no presence of the PDMA or the DDMA in his district despite the fact they have prepared documents relating to contingency plan and disaster management plan yet nothing has been implemented in this area.

4. Mr. Faisal Siddiqui, ASC was appointed as amicus curiae by the Court vide order dated 05.10.2022 to assist on the issue of the courts' jurisdiction to establish citizens committee. He has submitted his report and argued that the issue raised by the Petitioners is the role assigned to judicial officers in the impugned orders and the controlling powers given to the District and Sessions Judge to supervise the citizens committees as well as the work of the tent city/relief camp. He states that the courts are always reluctant to interfere in ad interim orders except in exceptional circumstances. As per his opinion, the citizens committees are in the nature of commissions which this Court has established as was seen in cases reported as *Marvi Memon v. Federation of Pakistan* (PLD 2011 SC 854) where a commission was established, following the floods of 2010, for fact finding and submitting recommendations for relief efforts; *Petition regarding miserable condition of the schools: in re C.P. No.37 of 2012* (2013 SCMR 764) where multiple commissions were established to carry out surveys of school functioning for fact finding purposes in order to assess the conditions and workings of the said schools; *Dr. Akmal Saleemi and others v. Federal Government and others* (2013 SCMR 103) where a commission was established for fact finding in a matter concerning extra judicial killings in the premises of Lal Masjid and Jamia Hafsa; and *Suo Motu Case No.16 of 2011* along with C.M.As. (PLD 2013 SC 443) where a commission was constituted for fact finding purposes in order to assess if the lease agreements were legally sound. He stated that commissions are used for fact finding purposes, for putting together technical experts and also to propose sustainable solutions in environmental issues. He stated that commissions help build capacity to deal with extraordinary circumstances, as in the present case, and it will only facilitate relief work and not hamper it. He further stated that the directions of this Court vide its order dated 05.10.2022 requiring the citizens committee to continue their oversight of relief work should continue both with reference to relief efforts and the management of the tent cities as doing so will not only improve coordination efforts in this time of crisis but will also ensure that the ground-level issues are raised before the relevant authorities.

5. We have heard all parties at length. The orders impugned are interim orders and this Court normally does not interfere with the interim orders of the High Court except in exceptional circumstances, as held in the cases reported as *Federation of Pakistan through Secretary, Ministry of Energy (Power Division), Islamabad and others v. Shafiq ul Hassan and others* [2021 PLC (C.S.) 292] and *Dossani Travels Pvt. Ltd and others v. Messrs Travels Shop (Pvt.) Ltd. and others* (PLD 2014 SC 1). Without a doubt, it is noted that, these are exceptional circumstances. While the interim orders exceed the jurisdiction of the Court to the extent of the role assigned to the judicial officers, the plight of the affectees of the 2022 floods needs attention in order to meet the needs of the flood affected population in Sindh. The biggest hindrance appears to be coordination and time frames for relief work as notwithstanding efforts made, it is neither sufficient nor is it effectively managed. The issue before the Court essentially is the exercise of jurisdiction by the High Court while creating the citizens committees and placing judges from the District Judiciary on these committees to oversee the work, being done by the committees. The role assigned to the judicial officers of overseeing the work of the executive by heading the citizens committees essentially means that the judicial officers are performing executive functions which is against the principle of separation of powers. The Constitution of the Islamic Republic of Pakistan, 1973 does not contemplate assumption of functions by one organ that essentially belongs to another. Moreover planning and strategy, coordination, monitoring and implementation are the functions of the executive and is best left for them to fulfil their duty and obligations in this regard. Furthermore, the work of these committees is a fulltime job which will require the judicial officers to spend time on these committees which in turn take them away from their judicial work that is also not practical nor expedient.

6. We are informed that the relevant law on the subject is the Act, which establishes a National Disaster Management Commission (Commission) for the purposes of policy making. This Commission not only lays down the policy on disaster management but also approves a National Plan and Guidelines to be followed by the Federal and Provincial authorities in the event of a natural disaster. The Act also establishes a National Disaster Management Authority (NDMA) which is responsible for implementing, co-ordinating and monitoring the National Plan and Policy. As per section 13 of the Act, a Provincial Disaster Management Commission

(PDMC) is established in each of the provinces, which lays down the Provincial Disaster Management Policy and also establishes the PDMA for the implementation, co-ordination and monitoring of the national as well as provincial plan in the event of a natural disaster. Section 18 of the Act constitutes the DDMA which works at the district level and is responsible for the preparation of Disaster Management Plan for the district, as well as implementing, coordinating and monitoring the National, Provincial and District plans at the district level. As per the powers and functions of the DDMA, they are required to provide relief to the community in response to any disaster, which includes shelter, food, drinking water and essential provisions, healthcare and services. They are also required to establish emergency communication systems and carry out relief efforts along with rescue operations in the area. Subsequent to the creation of the NDMA, a National Disaster Risk Reduction Policy was passed in 2013, which seeks to reduce vulnerabilities and increase resilience in the event of a natural disaster. It also provides guidelines for timely intervention and for reducing disaster risk. Additionally, a Disaster Management Strategy (2015 to 2022) was framed and a National Policy Guideline on Vulnerable Groups in Disasters 2014 (Policy Guidelines) was framed which stresses on the importance of dealing with vulnerable members of the community in the face of a natural disaster.

7. Despite the legal framework formed under the Act, the real issue is the lack of coordination and information with respect to the relief efforts being made by the Petitioners. It was argued before us that there are many parts of the Province of Sindh where relief efforts have not reached and where there is no food or drinkable water, nor any health care. Some of the causes of concern voiced by the Respondents was that roads, drainage, irrigation systems and sanitation systems are damaged or destroyed by the heavy rains and flooding. The supply of provisions and drinkable water is not enough; families have been evacuated but face diseases in the tent cities such as dengue, malaria and gastroenteritis. The Petitioners have admitted that there is difficulty not only on account of accessibility but also on account of resources including human resources to deal with the unprecedented floods. In this background, we find that the formation of the citizens committees by the High Court, in principle, was to facilitate relief efforts in different areas within the Province of Sindh, however, the inclusion of the members of the District Judiciary was not required given that there is an entire legal framework under the Act to ensure relief work right down to the district level. As per the scheme of the Act, members of the civil community which include volunteers, NGOs, doctors and others can be made part of the Provincial and District Management Authorities to help relief efforts. The record shows that they have been included in the DDMA vide notification dated 24.06.2014, however, there is no information on whether they actually participated. Section 3(2)(p) of the Act provides that National Commission shall also consist of representatives of civil society or any person appointed by the Prime Minister. As this is the policy making body, the inclusion of members of civil society on this Commission is imperative because for effective and efficient disaster management the inclusion of people likely to be affected is necessary not only for coordination, data collection and creating awareness but also to combine the efforts of the community and the authority in the event of a natural disaster. This gives civil society an opportunity to become part of the implementation, co-ordination and monitoring plan which only makes the work of the authority more effective. The Act also provides under Section 8 that the NDMA shall consist of members as may be prescribed by its chairperson. This Authority is headed by the Prime Minister, who can include any member as he deems appropriate. Similarly, at the provincial as well as the district level, the Act provides in its sections 13 and 15 that members to the PDMA and DDMA may be nominated by the Chief Minister and by the District Authority to include any member as they deem appropriate. Under these provisions, members of civil society can be included not only on the Commission but also in the Authorities to ensure that relief work is carried out where required and to help in mitigating the effects of the natural disaster as well as work on rehabilitation of the affectees. Hence, inclusion of civil society is necessary.

8. These are unprecedented times, as per the United Nations Office for the Coordination of Humanitarian Affairs, more than 33 million people have been affected by the floods of which 14.5 million are in Sindh alone (ECHO Daily Flash of 25 October 2022 - Pakistan). Furthermore, despite the fact that the Act has provided its framework since 2010, the efficiency and effectiveness of the PDMA and DDMA is questioned by affectees. There is merit in this argument as there appears to be no monitoring system in place. In this context, participation

by the public in the PDMA and DDMA and even at the Commission level ensures that the affectees are able to bring first hand their vulnerabilities and priorities, which results in a more measured response and proper allocation of resources where required. It also gives the Authority greater insight into the affected communities enabling them to work more effectively and produce better result. Community participation is not only necessary for planning disaster management but also for implementing and monitoring purposes as it gives people the right to participate in the decisions that affect their lives. This creates more awareness and a sense of ownership and responsibility which is required, particularly in disaster management so to enhance effectiveness and engage the people with their communities to provide rescue, relief and rehabilitation efforts. Hence, citizens' participation in the PDMA and DDMA can improve coordination and response which will enable the government authorities to provide relief work in a more effective and efficient manner. Moving forward, it is fundamental to the composition of the Commission, the NDMA, the PDMA and the DDMA that members of civil society are included in it.

9. At present to deal with the issue in hand, the citizens committees can work with DDMA to the extent of monitoring, coordination efforts and ensure that relief work reaches the affectees, who do not have sufficient assistance at the moment. The committees can also facilitate the PDMA and the DDMA of Sindh in providing necessary information and data with reference to relief work and what is required which will improve the Authorities' coordination with affected areas and communication with affected areas especially due to the challenges of accessibility and communication failure. The citizens committee can, therefore, monitor the efforts of the PDMA and the DDMA which will not only lead to better results in the relief work but will also create awareness within the affectees as to the manner in which the relief effort is being carried out will encourage them to participate. This participatory approach to a natural disaster humanizes the work of the authorities so that affectees are provided with real time relief that they need and not what the paperwork suggests.

10. In this regard, we also note that the impugned orders have directed that the citizens committees should comprise of medical superintendents of the Taluka Hospital, Mukhtiarkar, focal person of PDMA and the President of the Taluka Bar Association. In this context, we find that the Policy Guidelines requires the participation of women in disaster management plan at all levels to ensure integration of the gender perspective. As per the Policy Guidelines, women are at a greater risk from natural disasters than men. They are vulnerable and victims in natural disasters but also play a significant role throughout the disaster management cycle, without being adequately recognized and included in the decision making. The Policy Guidelines also emphasizes on ensuring equal access to relief opportunities for victims without any discrimination which requires the needs of vulnerable groups to be targeted to ensure that their needs are attended, safeguarded and protected. As per the Policy Guidelines, women, children, older persons, persons with disabilities are all defined as vulnerable groups in disaster. The NDMA and National Disaster Risk Reduction Policy all emphasize on reducing risks and vulnerabilities of those who are marginalized which include women, children, older person, persons with disabilities and minorities, however, there is no report available on the actual efforts made during the last six months. A National Gender and Child cell framework was also formulated in 2013 to work towards the disaster preparedness and disaster risk reduction for which again there is no information on its working in the 2022 floods. Therefore, in line with the policies formulated, it is imperative that the citizens committees include women, older persons and persons with disabilities so that the required response is ensured and provided and that the Policy Guidelines formulated be implemented real time. In this context, we note that the affected areas require maternity and healthcare for women so there is an increased need for female doctors, trainers and caretakers to attend to the health concerns. Women are often subjected to gender-based violence and harassment in times of such calamities, therefore safety and security concerns are also of significance for which appropriate response is also required. In this context, although the framework exists, an effort must go into ensuring that it actually functions and fulfils its mandate. Accordingly, we find that the citizens committee should ensure the representation of the vulnerable groups, particularly of women, in order to strengthen its perspective.

11. In view of the aforesaid, the impugned orders are modified to the extent that the citizens committee shall no more be headed by a Civil Judge notified by the District Judge concerned and the citizens committee shall

no more work under the supervision of the concerned District and Sessions Judge. However, the citizens committees shall continue to operate with the given composition including that of vulnerable groups, particularly women for monitoring the relief work and provide necessary information to the DDMA to improve their efforts. Furthermore, the direction given in the impugned orders that the citizens committee shall look after the affairs of tent cities is modified in the manner that the citizens committees shall oversee the work of the government authorities and provide necessary information and data to facilitate the work of the authorities. In this regard, we clarify that the citizens committee itself shall not engage in directing or controlling the relief work being undertaken but shall participate in the process put in place by DDMA to make it more effective and inclusive. The requirement of filing reports before the High Court by the PDMA and DDMA with respect to the work and progress of the relief work shall be filed bi-weekly to ensure efficiency. Further, the requirement of filing reports before this Court with respect to the composition of the citizens committee shall be filed within three weeks to ensure necessary compliance.

12. The petitions are disposed of in the above terms.

I have read the additional note by my brother Justice Syed Mansoor Ali Shah and agree also with the environmental aspects of the case dealt with therein.

Sd/-

Umar Ata Bandial, C.J.,

Sd/-

Syed Mansoor Ali Shah, J

I agree with the additional note as well.

Sd/-

Ayesha A. Malik, J

SYED MANSOOR ALI SHAH, J.---I have read the judgment authored by my learned colleague, Mrs. Justice Ayesha A. Malik and I am in complete agreement with the same. However, I would be remiss if the dimension of climate change is not highlighted in the backdrop of the recent floods. Climate change is undoubtedly the most serious existential threat faced by Pakistan and the major cause of the recent floods. Therefore, any post-floods strategy must first and foremost propose a national strategy to deal with climate change today and tomorrow. The primary responsibility falls on the shoulders of the Ministry of Climate Change, Government of Pakistan, as well as, the National Disaster Management Authority (NDMA) to propose a national adaptation plan to avert the horrific devastation caused by floods this year and also to safeguard and protect the fundamental rights of the people from the wrath of climate change. I, therefore, feel compelled to append this additional note in public and national interest.

2. Pakistan was ranked in the top 10 most vulnerable countries on the "Global Climate Risk Index 2021"¹ and the devastation caused by the recent floods in 2022 is distressing proof of the same. Research has found that the 5-day maximum rainfall over Sindh and Balochistan (Provinces of Pakistan) had become 75% more intense than it would have been had the climate not warmed by 1.2 C, thereby directly connecting global warming to be a major cause of the recent floods of 2022 and the likelihood of its recurrence in the years to come². The probability of such heatwaves has now substantially increased due to climate change, with future heatwaves being even more hotter compared to 2022³, therefore, chances of similar extreme rainfall have also become more likely. According to the "Pakistan Floods 2022 Post-Disaster Needs Assessment" prepared by the Ministry of Planning Development and Special Initiatives, Government of Pakistan with the assistance of other international bodies such as the World Bank etc., the total damage from the floods is evaluated to be at PKR 3.2 trillion (US\$14.9 billion), total loss at PKR 3.3 trillion (US\$15.2 billion), and total needs for recovery and reconstruction at PKR 3.5 trillion (US\$16.3 billion)⁴. The resulting food and health insecurity, the risk of food shortage and diseases pose challenges that need serious and urgent attention⁵. In view of this unprecedented damage and the likelihood of its recurrence, it is imperative that serious and practical efforts are undertaken for prevention and adaptation against such disasters induced by climate change. It is also expected that existing policies or mechanisms catering to food insecurity etc. are mobilized as soon as possible and if no such policies or mechanisms exist, then the respective State functionaries should take urgent action to formulate such policies

and create such mechanisms to prevent further exacerbation of the losses and damage already suffered due to the floods and for sustainable rehabilitation.

3. The existing climate change framework of Pakistan indicates that the Ministry of Climate Change, Government of Pakistan has formulated a National Climate Change Policy, updated in 2021, devising policy measures for climate change adaptation and mitigation. Furthermore, the Climate Change Act of 2017 ("Climate Change Act") has established the Pakistan Climate Change Council and the Pakistan Climate Change Authority. The latter has been empowered to formulate adaptation and mitigation policies, plans etc., including the National Adaptation Plan, which the former shall approve and monitor. However, it seems that no substantial policies or plans have been formulated or implemented under the Climate Change Act. It is apparent that the measures in place are insufficient to cater to rapidly changing climate and its dire effects, therefore, there is a need for a coordinated joint effort in this regard. The National Disaster Management Act, 2010 ("Act") itself does not expressly cater to climate change, nonetheless, the Act does provide for taking measures for prevention of disasters and mitigation. Section 6(2)(g) of the Act provides that the National Disaster Management Commission ("Commission") may 'take such other measures for the prevention of disaster or the mitigation or for preparedness as it may consider necessary'. Prevention and mitigation have also been provided under provisions stipulating powers and functions of the Provincial Disaster Management Commission, the Provincial Disaster Management Authority and the District Disaster Management Authority established under the Act. Similarly, section 10(3)(a) stipulates that the National Plan shall include 'measures to be taken for the prevention of disasters or the mitigation of their effects' and section 17(3)(b) of the Act stipulates that the Provincial Plan shall include "the measures to be adopted for prevention and mitigation of disasters". Although the National Disaster Management Plan, 2012 does refer to the increase in climate-related natural disasters, however, it falls short of devising any meaningful steps/directions to suggest adaptation measures to address and guard against the changing climate. Similarly, one of the policy objectives of the National Disaster Risk Reduction Policy, 2013 includes promoting development planning that considers and addresses risks alongside environmental and climate change concerns but there appears to be no plan or strategy on the ground that has been formulated and put out in the public domain that deals with adaptation measures to be taken by the Government or the respective authorities in order to ensure that the floods of 2022 are not repeated next year. The rehabilitation work has to be climate resilient and it must be a part of a master adaptation plan. The Pakistan Climate Crises Charter 2022 ("Charter") published by the WWF provides a roadmap with the following actions:

- i. Advocate for loss and damage financing internationally
- ii. Address institutional governance issues
- iii. Develop an effective local government system
- iv. Map climate risks and vulnerabilities
- v. Prioritize and mainstream local level adaptation
- vi. Incorporate nature-based solutions in the development paradigm
- vii. Address vulnerabilities in disadvantaged communities
- viii. Mainstream crisis response across local communities
- ix. Address population management concerns

The said Charter has been prepared in consultation with some of the following:-

- a) National Disaster Risk Management Fund
- b) Ministry of Planning, Development and Special Initiatives
- c) Ministry of Climate Change
- d) Pakistan Council for Research in Water Resources
- e) Centre for Disaster Management, University of Management and Technology, Lahore
- f) Population Council
- g) International Union for Conservation of Nature (Pakistan)
- h) World Wide Fund for Nature Pakistan
- i) Sustainable Development Policy Institute
- j) International Water Management Institute

- k) Global Water Partnership
- l) Pakistan Academy of Sciences
- m) Sustainable Development Policy Institute
- n) Global Change Impact Studies Centre

Yet there is no policy or directive from the concerned Ministry supporting the said Charter or moving in this direction.

4. Climate justice was an important consideration at the recent 27th Conference of the Parties to the United Nations Framework Convention on Climate Change ("COP27") which concluded with a significant and positive development through the formation of a loss and damage fund for climate-vulnerable developing countries⁶. Soon funds will be allocated to countries that have suffered loss and damage due to climate change. It is high time to develop a mechanism for the allocation of these funds and the identification of key adaptation infrastructural projects that will help build national climate resilience, especially against floods in the years to come. It is expected that the Ministry of Climate Change, Government of Pakistan shall drive this initiative and frame a policy and set up a mechanism to effectively and efficiently utilize such funds. Additionally, under section 11 of the Act, subject to the directions of the Commission, the National Disaster Management Authority ("NDMA") is to lay down guidelines for minimum standards of relief to be provided to persons affected by disaster. The NDMA has formulated guidelines under this provision, such as the NDMA Guidelines for Minimum Ex-Gratia Assistance to the Persons Affected by Natural and Man-Made Disasters, 2016, and State functionaries, while operating under the said guidelines, are expected to promptly formulate a mechanism for provisioning of immediate relief to persons affected by climate-related disasters. It is therefore essential that these global funds are invested in building national climate resilience so that climate induced disasters can be minimized. Climate Change is a perhaps the most serious threat to the fundamental rights of the people in Pakistan. In order to protect their right to life and above all their right to dignity under Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973, a climate resilient adaptation plan including a detailed mechanism for utilization of financial support coming to Pakistan from the loss and damage fund, is the need of the hour. Having failed to learn from the floods in 2010, as has become apparent from the magnitude of the destruction caused by the recent floods, it is pivotal that effective steps are taken to prevent such catastrophes in the future. I hope the Federal Government will act with speed in this regard because in the words of Greta Thunberg,⁷ "our house is on fire."

5. This additional note be placed before the other members of the bench for their perusal.

Sd/-

Syed Mansoor Ali Shah, J

MWA/P-1/SC Order accordingly.