

PLJ 2025 Lahore 874
[Bahawalpur Bench, Bahawalpur]

Present: MALIK MUHAMMAD AWAIS KHALID, J.

ADVOCATE MUHAMMAD WASEEM MUKHTAR KHAN--Petitioner

versus

GOVERNMENT OF THE PUNJAB etc.--Respondents

W.P. No. 1612 of 2025, heard on 3.7.2025.

Constitution of Pakistan, 1973--

----Arts. 9-A & 199--Punjab Environmental Protection Act, 1997 (XXXIV of 1997), S. 5--Constitutional petition--Sewerage effluent into Khanpur Canal--Non-obtaining of NOC--Legal requirement--Unauthorized disposal of was occurs--Delegation of powers--Environmental assessment--Direction to--The natural water system is being polluted by addition of industrial wastes, urban wastes, pesticides and related pollutants--Resultantly whole environment has been severely effected--Khanpur minor Canal was a vital water source used for both irrigation and drinking purposes by humans and animals, and also for agriculture--The ground water of locality was highly brine and unfit for consumption, leaving canal as primary source of potable water and discharging untreated sewerage waste into canal, leading to contamination of water and posing severe health risks to residents of area--Petition allowed.

[Pp. 878 & 880] A & B

(1886) LR I Ch. App. 349; (1921) 3 KB 427 & 2022 SCMR 1411 *ref.*

M/s. Muhammad Farooq Warind and Muhammad Asif, Advocates for Petitioner.

Sardar Muhammad Shahzad Khan Dhukkur, Advocate for Assistant Attorney General.

M/s. Muhammad Afzal Ch., Sardar Abdul Basit Balouch and Rai Shujaat Hussain, Advocates for Respondents No. 8, 10 & 11.

Mr. Anwaar Hussain and Rai Mazhar Hussain Kharal, Assistant Advocates General along with *Sajid Riaz* Chief Officer, Municipal Committee Khanpur in person for Government of the Punjab.

Date of hearing: 3.7.2025.

JUDGMENT

The petitioner has filed instant Constitutional petition with the following prayer:

“1. *Direct the Respondents, particularly the Municipal Committee, Tehsil Khanpur, to immediately cease the disposal of untreated sewerage effluent into the Khanpur Minor Canal.*

2. *Direct the Punjab Environmental Protection Agency to conduct an urgent environmental assessment of the water contamination and take appropriate action against the responsible authorities.*

3. *Direct the Punjab Irrigation Department to ensure that no unauthorized disposal of waste occurs in any running canal without prior approval and proper treatment.*

4. *Direct the Government of Punjab to formulate and implement a sustainable waste management plan for Tehsil Khanpur to prevent further environmental degradation.*

5. *Grant any other relief, which this Hon’ble Court deems just and proper in the circumstances of the case.”*

2. Brief facts leading to file this Constitution petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “**Constitution**”) are that the petitioner is a practicing lawyer, member of Khanpur Bar Association, Khanpur and resident of Basti Sardar Abdul Raheem, Mauza Kotla Mai, Tehsil Khanpur, District Rahim Yar Khan; that the ground water of “Mauza Kotla Mai” and many other adjacent villages is saline and not fit for drinking and irrigation, therefore, the population and livestock of the villages used the irrigation water supplied through Khanpur minor. Further that the crops, fruit trees and vegetables are also being irrigated through the said canal water and there is no alternate source for drinking water for living beings but surprisingly local authorities are illegally, unlawfully and negligently disposing of the sewerage effluent into the Khanpur Minor Canal between RD 9-10/L at Chak No. 57/P, which is violation of the fundamental rights of the citizens of the area, especially under Article 9A of the Constitution. The Municipal Committee Tehsil Khanpur, in complete disregard of environmental laws, health hazards, and legal obligations, is acting indiscriminately. This act not only endangers the well-being of the people but also threatens the agricultural sustainability of the region; that the Municipal Committee has also failed to obtain the requisite No Objection Certificate (NOC) from the Punjab Irrigation and Environmental Departments Government of Punjab before discharging sewerage waste into the canal, which is a mandatory legal requirement. This further substantiates the illegality of their actions. Though the matter was reported to the high ups of irrigation department yet no action was taken against violation of fundamental rights of the petitioner as well as populace of the area. That the continued disposal of sewerage into the canal is likely to cause the spread of severe waterborne diseases such as cholera, hepatitis, typhoid, and gastroenteritis. Cause of action arisen when the Municipal Committee commenced disposing of sewerage into the canal, continuously contaminating the water, and endangering the lives of residents.

The contamination is still continuing. Further submits that despite hectic efforts of the petitioner through certain applications for redressal of his grievance, the respondents are not paying any heed and lives of the inhabitants of the area are in danger due to polluted drinking water. Learned counsel for the petitioner, while relying upon *D.G. Khan Cement Company Ltd. v. Government of Punjab through Chief Secretary, Lahore and others* (2021 SCMR 834) and *Shahab Usto v. Government of Sindh through Chief Secretary and others* (2017 SCMR 732). Hence, this Constitutional Writ Petition.

3. In response, Chief Officer, Municipal Committee, Khanpur (Respondent No. 11) appear before the Court and submitted report which is reproduced as under:

"1. Khanpur is a major city of district Rahim Yar Khan with an estimated population of 2.5 lac inhabitants. To cater the water disposal needs of waste and storm water of the southern part of the city, Government of the Punjab constructed a mega sewerage scheme with its disposal station at Ghareeb Abad through Public Health Engineering Department in 2012. Afterwards, the scheme was handed over to Municipal Committee Khanpur for operation. In the said scheme, two outlets for final disposal of waste water were constructed. The first one opens in private fields and the water of that outlet is used by the farmers of that area for irrigation of crops. The second outlet opens near Khanpur minor. The second outlet is only used for emergency purposes like rain, storm water etc. In the normal conditions, the water is discharged into agricultural lands only through first outlet. It is pertinent to mention here that the arrangement has been working without any hazard to the local population and without any complaint from the inhabitants of the area for last 13 years except the present one.

2. The LG&CD Department in collaboration with the Punjab Municipal Development Fund Company (PMDFC) is going to implement the World Bank funded Punjab Inclusive Cities Programme (PICP). MC Khanpur has been included in this initiative which aims to enhance urban infrastructure by improving drainage and sewerage systems through the development of disposal stations and waste water treatment plants. MC Khanpur has already requested for construction of water treatment plant in its plan submitted to PMDFC (Annex A). PMDFC has prepared draft cost estimates for the same and water treatment plant with an estimated cost of 1886.18 Million Rupees have been included in the draft estimates (Annex B). The design for the treatment plant has also been prepared (Annex C). Furthermore, PMDFC has also informed that funds will be transferred to Municipal Committee Khanpur shortly and undersigned has been asked to ensure that budget amount is reflected in the current budget estimates for FY 2025-26 for the said project (Annex D)."

Chief Officer, Municipal Committee, Khanpur (Respondent No. 11) further submitted that second outlet of waste water near Khanpur minor has been only opened for discharge of additional water during emergencies and in usual days, waste water is being used for irrigation purposes by the local farmers through first outlet. Respondent No. 11 further submits that Government of the Punjab through PMDFC has already started working on water treatment plant for the said disposal station.

4. Sub Divisional Officer, Khanpur Canal Sub Division-I, Khanpur wrote a letter to Chief Officer, MC Khanpur (Respondent No. 11) on 28.01.2025 while sensitizing the situation, which is reproduced as under:

"Sub-Engineer, Khanpur section reported vide C.W No. 2500 dated 25.01.2025, that your department is laying sewerage pipe line for disposal off sewerage effluent in to Khanpur Minor between RD 9-10/L.

Khanpur Canal water is using for irrigation to crops and for drinking to Humans & Animals. The ground water of the area is saline and not fit for drinking etc. The sewerage effluent will affect the health of peoples & may cause the epidemic situation, in locality.

Furthermore your department did not get NOC for disposal of sewerage in to running canal form irrigation department. It is requested to kindly adopt alternate measures for sewerage disposal."

5. Arguments heard. Record perused.

6. Water is sustenance of the life cycle. It must be protected from all types of pollutants. Water, the elixir of life, is essential for all living beings and ecosystems. Water sustains life, enabling bodily functions, supporting agriculture, and facilitating industrial processes. However, increasing water scarcity, pollution, and mismanagement threaten this vital resource. It should be our collective responsibility to preserve the water through responsible usage and waste reduction in our daily lives.

The human body and other living organisms require it, but in its pure form, free from any type of contamination. But man is disturbing water bodies, viz. rivers, wells, streams, seas. On land, the natural water system is being polluted by the addition of industrial wastes, urban wastes, pesticides and related pollutants. Resultantly the whole environment has been severely effected.

7. In fifth Edition of **Halsbury's Laws of England** (Environmental Quality and Public Health) Pollution at common law defined the pollution as under:

"The common law meaning of 'pollution' is the doing of something which changes the natural qualities or properties of water, whether chemically or in its temperature or otherwise. Any interference with the natural quantity or quality of the water may be actionable at common law as an infringement of proprietary rights, such as riparian rights, or a right to take underground water, or an easement to a flow of water, or a

*profit à prendre, or a right of fishery, or may be actionable under the common law relating to nuisance or under the rule in **Rylands v Fletcher***”.

In famous common law case on this issue *Goldsmith v. Tunbridge Wells Improvement Commissioners*, held that the plaintiff was awarded an injunction to restrain the defendants from depositing sewage from their own town into a stream which passed through his land. Sir G.J. Turner observed:

“It is not every case of nuisance that this Court should interfere. I think that it ought not to do so in cases in which the injury is merely temporary and trifling; but I think it ought to do so in cases in which the injury is permanent and serious.”

In *Pride of Derby and Derbyshire Angling Assn. Ltd. v. British Cleanese Ltd.*, it was held to be no excuse that the stream was already polluted by others, and the local authority acted not for profit but for the benefit of a large population, or that it had a statutory authority to drain a city. Similarly, in *Overseas Tankship U.K. Ltd. v. Morts Dock & Engg. Co. Ltd. (Wagon Mound No. 1 case)* (1886) LR I Ch App 349. In *Dell v. Chesham Urban District Council*, (1921) 3 KB 427), it was observed by the Privy Council that the spillage of oil on seawater due to negligence of the servants of the defendants amounted to nuisance. Thus, discharge of effluents, oil, waste, etc., in water is actionable under the law.

8. Through the Constitutional amendment, vide 21st October 2024 and a new Article 9A has been inserted therein, which is reproduced as under:

“Every person shall be entitled to clean and healthy sustainable environment.”

Raising the status of the environment to that of a Fundamental Right in the Constitution, manifest its significance. Pakistan is now one of very few countries which bring up the environment specifically in their Constitution. Now it is the responsibility of everyone here to ensure that this country must be free from pollution with clean healthy environment.

The Hon’ble Supreme Court of Pakistan while prioritizing the environment and in its reported judgment titled as “*Raja Zahoor Ahmed and others vs. Capital Development Authority through Chairman and others*” (2022 SCMR 1411) held as under:

Public welfare today would naturally encompass the pressing issues of the time i.e., climate change; environmental degradation; food and health safety; air pollution; water pollution; noise pollution; soil erosion; natural disasters; and desertification and flooding having an appreciable impact on public health, food safety, natural resource conservation, environmental protection, social equity, social choice, etc. Any initiative to revise land use regulations must be based on the aforesaid considerations in order to ensure that urban development standards stay relevant to current issues of the community.

In adjudicating water and water-related cases, judges should be mindful of the essential and inseparable connection that water has with the environment and land uses, and should avoid adjudicating those cases in isolation or as merely a sectoral matter concerning only water. Water justice requires appreciation that there are no easy, simple or singular solutions to the water crisis, and that water problems cannot be resolved through technical solutions alone but require broader recognition that they are inherently ecological, political and social issues simultaneously.

The Section 5 of the **Punjab Environmental Protection Act, 1997** (the “**PEPA, 1997**”) delegate powers and function of the (Environmental Protection agency) to Director-General, which is reproduced as under:

5. Establishment of the [Provincial] Environmental Protection Agency.—[(1) The Government shall, by notification in the official Gazette, establish the Provincial Environmental Protection Agency to exercise the powers and perform the functions assigned to it under this Act, the rules and the regulations.]

(2) The [Provincial Agency] shall be headed by a Director General, who shall be appointed by the [Government] on such terms and conditions as it may determine.

(3) The [Provincial Agency] shall have such administrative, technical and legal staff as the [Government] may specify, to be appointed in accordance with such procedure as may be prescribed.

(4) **The powers and functions of the [Provincial Agency] shall be exercised and performed by the Director-General.**

[(5) **The Director General may, by general or special order, delegate any of the functions of the Provincial Agency exercised by him under sub-section (4) to any other officer appointed under sub-section (3).**]

9. Biodiversity is collapsing at an unprecedented rate; thousands of animal and plant species face complete destruction within a decade, because of human activities. Notwithstanding extensive domestic regulation, global standards of air, land and water pollution remain stubbornly high. Khanpur minor Canal is a vital water source used for both irrigation and drinking purposes by humans and animals, and also for agriculture. The ground water of the locality is highly brine and unfit for consumption, leaving the canal as the primary source of potable water and

discharging untreated sewerage waste into the canal, leading to the contamination of water and posing severe health risks to the residents of the area.

10. In consequence thereof, Director-General, the Punjab Environmental Protection Agency (Respondent No. 6) is directed to visit the above said spot forthwith and conduct the environmental assessment of the water contamination on urgent basis and take prompt actions to save the human life of Khanpur and its vicinity villages, posing an imminent public health crisis, exacerbating the deplorable condition of the already vulnerable population in the region. Compliance report be submitted within 30 days under intimation to this Court through Deputy Registrar (Judicial) of this Bench, from the date of receipt of certified copy of this order.

Instant petition is allowed in above terms.

(Y.A.) Petition allowed