

JUDGMENT SHEET

PESHAWAR HIGH COURT.
PESHAWAR.

JUDICIAL DEPARTMENT

**Writ Petition No.703-B of 2016 with Interim Relief with
C.Ms.No.16-B/2017 and 94-B/2017,
with C.O.C.No.558-B/2016.**

JUDGMENT

Date of hearing 31-05-2017 (Announced on 15.06.2017)

Petitioners: (Abdul Wahab Khattak and others) By
Mr.Muhammad Ishaq Khan Khattak, Advocate.
(newly impleaded petitioners) by M/s Bughdad
Khan Khattak, Akhtar Nawaz Khattak and
Ghulam Farid Chaudhry, Advocates.

Respondents: (Government of Khyber Pakhtunkhwa and others)
By Mr.Manzoor Khan Khilil, DAG, Waqar Ahmad
Khan, AAG, Shumail Ahmad Butt, Muhammad Isa
Khan, Barrister Masroor Shah, Hameed Ullah
Khattak, Mr.Anwarul Haq, Amanullah Khan
Khattak, Malik Samiullah Khan, Shakeel Asif,
Hidayatullah Khattak, Advocates.

YAHYA AFRIDI, C.J:- Abdul Wahab Khattak and

eleven others, the petitioners, seek the Constitutional
jurisdiction of this Court praying that;

*“So it is, therefore, most humbly and
respectfully prayed that on acceptance of the
instant writ petition, this Hon’ble Court may
very graciously be pleased to hold and declare
the impugned guidelines of Government of
Khyber Pakhtunkhwa Energy & Power
Department and Working paper vide which
different developmental schemes have been
allocated to public elected representative are as
illegal, against law and facts, nullity in the eye
of law, has got no legal effect and be cancelled
at the large interest of general public.*

*Further prayed that this Hon’ble Court may
very kindly be pleased to restore the structure*

and operational guidelines for Petroleum Social Development Committee titled "Utilization of Production Bonus Obligations of the Exploration & Production Companies" formulated by the Government of Pakistan Ministry of Petroleum and Natural Resources Directorate General of Petroleum Concession dated Islamabad 20.04.2009 wherein membership have been given to Tehsil Nazim & District Nazim.

Any other relief if not specifically prayed by the petitioners may also be granted if this Hon'ble Court deems fits and proper in circumstances of the case."

2. In essence, the grievance of the petitioners relates to mode and manner in which different developmental schemes are carried out in District Karak, and in particular seeks the restoration of the committee for the allocation and utilization of *Production Bonus* payable by the Exploration and Production Companies ("**E&P Companies**"), as was stipulated in the Petroleum Policy of 2009, wherein Tehsil and District Nazims were integral part thereof.

3. In order to clearly understand and appreciate the grievance of the petitioners, it would be important to trace the contractual and legal obligations of E&P Companies operating in Pakistan towards the environmental, welfare and general uplift of areas of their operations and the authority administering its utilization,

as envisaged in the successive Petroleum Policies of Government of Pakistan.

4. Government of Pakistan introduced the first Petroleum Policy in 1991, which was followed by successive policies in 1993, 1994, 1997, 2001, 2007, 2009, which finally culminated in the **Petroleum Exploration and Production Policy of 2012** (“**Petroleum Policy of 2012**”).

5. The Petroleum Policy of 2009 provided for a committee to supervise the utilization of the funds received from E&P Companies in a transparent manner *in and around* the areas of producing fields, called **Petroleum Social Development Committee** (“**PSDC**”). This committee comprised of worthy members including Tehsil and District Nazims. The same provided that;

MNA (s) (of the District)	Chairman
MPA(s) (of the District)	Member
District Nazim	Member
District Coordination Officer (DCO)	Secretary
E & P company (two representatives)	Vice Chairman and Member
Tehsil/Taluka Nazim(s) of the District	Member.

6. The Policy of 2009 was superseded by the **Petroleum Policy of 2012**, wherein there was no express provision for constituting the PSDC. However, there

were provisions in the new policy stipulating for the respective Provincial Governments to evolve their procedures for utilization of funds receivable from the E&P Companies.

7. *Royalty and Production Bonuses* receivable from the E&P Companies are the two core issues in the Petroleum Policy of 2012, which are relevant to the just resolution of the present petition. The essential extracts thereof reads, *inter alia*, that;

“4.1 Royalty, Income Tax and Windfall Levy

1. *Royalty will be payable at the rate of 12.5% of the value of petroleum at the field gate.*
2. *The royalty will be paid in cash or kind by the Federal Government to Provinces to the extent of their share of liquid and gaseous hydrocarbons (such as LPG, NGL, Solvent oil, gasoline and others) as well as all substances including sulphur, produced in association with such hydrocarbon. The option to choose between ‘cash’ or ‘kind’ will rest with the Province however when the option of “kind” is to be exercised, the respective Province will consult with the Federal Government. The lease rent paid during the year shall not be deductible from the royalty payment.*
3. *Tax on income will be payable at the rate of 40% of profit or gains in accordance with the Fifth Schedule of the Income Tax Ordinance, 2001. Royalties will be treated as an expense for the purpose of determination of income tax liability.*
4.
5. *10% of the royalty will be utilized in the district where oil and gas is produced for infrastructure development.*
.....
.....

4.1.2 Production Bonuses

1. *Local Operator companies will pay their share of production bonuses in the Pakistan Rupees equivalent of United States Dollar converted at the prevailing exchange rate on the day of transaction.*

3. *It is intended that production bonuses will be expended on social welfare projects in and around the respective contract areas according to guidelines to be issued by the Provincial Government from time to time.*

(emphasis provided)

8. The Provincial Government in pursuance of the Petroleum Policy of 2012 framed its guidelines for utilization of *production bonuses* in terms that;

“Subject: GUIDELINES FOR UTILIZATION OF PRODUCTION BONUS OBLIGATIONS OF THE EXPLORATION & PRODUCTION COMPANIES.

In exercise of powers conferred under sub clause-3 of 4.1.2 “Production Bonuses” of the Petroleum Exploration and Production Policy 2012, which is reproduced below;

“It is intended that production bonuses will be expended on social welfare projects in and around the respective contract areas according to guidelines to be issued by the Provincial Government from time to time”.

2. **Salient features of the Guidelines are;**

- a. *Minimum size of a scheme financed out of Production Bonus would be Rs.1,000,000/- (Rupees One Million).*
- b. *Production Bonus amount will be utilized on Electricity Supply of Gas, Education, Technical Education, Water Supply Schemes, Roads, Health Facilities and Construction of Small Dams etc.*
- c. **50% share of Production Bonus will be utilized in oil and gas producing Tehsils, whereas balance 50% will be utilized in the remaining**

Tehsils of a District where well heads are located.

- d. *The utilization of Production Bonus will be based on annual figures transferred by production companies.*
- e. *The composition of the Committee to utilize Production Bonus would be;*

<i>MNA (s) (of the District) (In case more than one MNA is available in the respective District's, the MNA of the constituency area from where maximum petroleum is produced)</i>	<i>Chairman</i>
<i>MPA(s) of District</i>	<i>Member</i>
<i>Deputy Commissioner of the District</i>	<i>Secretary</i>
<i>E&P Company (two representatives)</i>	<i>Vice Chairman and Member</i>
<i>Representative of concerned Department at the District</i>	<i>Member</i>
<i>Assistant Commissioner of concerned Tehsil</i>	<i>Member</i>
<i>Divisional Monitoring Officer (DMO) of Monitoring and Evaluation Directorate, P&D Department.</i>	<i>Member</i>

- f. *A quorum shall include Secretary, Vice Chairman (representative of E&P Company) and minimum 51% members. In case there is more than one producing field in a District, then each Company shall nominate 2 members and the position of Vice-Chairman shall be rotated amongst the companies on quarterly basis.*

-
- s. *In case of a Provincial/District Government dispute in the PSDC on spending of Production Bonus, the decision of the Chief Secretary, Provincial Government shall prevail.”*

(emphasis provided)

9. During the pendency of the present petition, the Government of Khyber Pakhtunkhwa issued orders to add the *District* and *Tehsil Nazims* of the respective

Districts and Tehsils, as members of PSDC regarding the utilization of *production Bonuses*. The said order provided that;

**“Government of Khyber Pakhtunkhwa
Energy and Power Department,
Civil Secretariat, Peshawar.**

Dated Peshawar, the 26/05/2017

Notification.

NO.SOP/E&P/1-59/2016:- Competent Authority has been pleased to add the District Nazim/ Tehsil Nazim of the respective Districts/Tehsils and Deputy Secretary of Energy and Power Department as members of Petroleum Social Development Committee (PSDC) at the end of Table in Section 2(e) of the “Guidelines for Utilization of Production Bonus Obligations of the Exploration and Production Companies”. This notification will stand extended to all other Districts on production of Oil and Gas.

Sd/-xxxxxxx

Secretary

***Government of Khyber Pakhtunkhwa
Energy and Power Department”.***

10. Similarly, guidelines were also framed by the Provincial Government in regard to utilization of *royalty* on oil and gas receivable from the Federal Government vide Notification dated 24.03.2012, which reads;-

***“Government of Khyber Pakhtunkhwa
Finance Department***

Dated Peshawar the 24th March, 2012

Notification.

No.BO(NFC-II)FD/2-2/2009/Vol-II. In pursuance of the Provincial Cabinet decision in its meeting held on 07th March, 2012, the Provincial Government has been pleased to notify the amended policy regarding 5% share of royalty on oil & gas receivable from the Federal Government in the Districts (for developmental activities) where well

heads are located, already approved by the Provincial Cabinet in its earlier meeting held on 07/04/2009. Salient features of the policy are;-

- a. Minimum size of a scheme financed out of 5% share of Royalty on Oil & Gas will be Rs.10,00,000/- (one million).
- b. 5% share of royalty on oil & gas will be utilized on Electricity, supply of Gas, Education, Technical Education, Water Supply Schemes, Roads, Health facilities, construction of small Dams, and Purchase of land for higher educational Institutions.
- c. 50% share of 5% Royalty on oil/gas will be utilized in oil and gas producing Tehsils, whereas balance 50% will be utilized in the remaining Tehsils of a District where well heads are located.
- d. Release/utilization of 5% share of royalty of oil and gas will be based on annual figures of commercial production viz-a-viz actual revenue received by the Provincial Government during the last financial year.
- e. To monitor & supervise the execution of schemes, a District level committee headed by the D.C.O will be constituted. Respective MPAs will also be represented in the Committee.
- f. All schemes to be executed out of 5% share will require clearance of all competent forums on the same pattern as that of ADP schemes.
- g. Funds to the tune of 5% of royalty on oil and gas to be utilized in the respective districts (where well heads are located) shall be relected in the Provincial ADP over and above their respective Provincial ADP as well as District Development Funds.
- h. Controlling Department for utilization of 5% share of Royalty on Oil and Gas in the respective Districts will be Local Government & Rural Development Department with P&D Department exercising its role of monitoring, review and approval.
- i. The amended policy approved by the Provincial Cabinet will be applicable from 2009-10 and onward.

Sd/ xxxxxx
Secretary Finance”

(emphasis provided)

11. Before this Court proceeds to consider the claim of the petitioners, which is essentially based upon the terms of the Petroleum Policy of 2012, it would be important to first *test* the constitutionality thereof. In this regard, it is noted that *Mineral Oil* and *Natural Gas* falls within the legislative domain of the Parliament, as it forms part of Para-2, Part-II of the *Federal Legislative List*, entailed in the *Fourth Schedule* to the Constitution, which reads;

“2.Mineral Oil and Natural Gase; liquors and substances declared by Federal Law to be dangerously inflammable.”

While, Item 18 of Part-II *ibid* further expands the scope of the legislative power of the Parliament by including;

“18.Matters incidental or ancillary to any matters enumerated in this Part.”

12. As Oil and gas falls within the legislative competence of the Parliament, the *Executive Authority* of the Federation under Article 97 of the Constitution would be extended to introduce the successive petroleum policies. Importantly, the Petroleum Policy of 2012 has been approved by the ***Council of Common Interest***, comprising of worthy members, including the Chief

Minister of Khyber Pakhtunkhwa, as mandated by Article 154 of the Constitution, which reads;

“The council shall formulate and regulate policy in relation to matters in Part-II of the Federal Legislative List and shall exercise supervision and control over related institution.”

13. Accordingly, it would be safe to state that the Petroleum Policy of 2012 framed by the Federal Government is Constitutionally *intra vires*.

14. Now, canvassing through the Petroleum Policy of 2012 and the Guidelines framed by the Provincial Government of Khyber Pakhtunkhwa in pursuance thereof, it is noted that there are essentially three contractual obligations of E&P Companies towards the environmental welfare and general uplift of areas of their operations;

- i. **Direct Social welfare activities** carried out by E&P Companies in the area of their operations. These obligations include providing scholarship, apprenticeship and employment to persons hailing from the areas of its operation.
- ii. **Production Bonuses** payable by E&P Companies in accord with the stipulated amount, which is maintained in the account of the Deputy Commissioner of

the District where E&P Companies are operating.

- iii. **Royalty** payable by E&P Companies to the Federal Government in accord with the rate/ amount expressly stipulated in the Petroleum Policy of 2012. The *Royalty* so received by the Federal Government is, thereafter, transferred to the Provincial Government. The *Royalty* payable by the Federal Government to the Provincial Government is to be accounted for in the Provincial Consolidated Fund, being revenue received by the Provincial Government, as provided under Sub-Article (1) of Article 118 of the Constitution. However, there is express stipulation in the Petroleum Policy of 2012, which mandates that 10% of the *Royalty* so received shall be utilized in the District where the Oil or Gas is produced. While, the guidelines framed by the Provincial Government has further set 50% of the said 10% to be utilized in the Tehsils, where the Oil or Gas is being produced.

15. The recent move of the Provincial Government notifying the District and Tehsil Nazims to be included as members of PSDC vide Notification

dated 26.05.2017 has in effect redressed part of the grievance of the petitioners. This leaves this Court to consider the next contention of the worthy counsel for the petitioners regarding role of the *Tehsil Nazims* of District Karak in the utilization of the *Royalty* received from the E&P Companies. In this regard, it is noted that apart from the PSDC constituted by the Provincial Government to manage the utilization of *Production Bonuses*, there is no specific committee prescribed for such supervisory role regarding the utilization of *Royalty* received from E&P Companies.

16. It is this stark omission in the Petroleum Policy of 2012 and the Guidelines issued by the Government of Khyber Pakhtunkhwa, which was most keenly contested by the parties and warrants a definite finding on the following issue;

“Whether the Tehsil and District Nazims should have an effective role in the utilization of the 10% royalty prescribed under the Petroleum Policy of 2012 for the utilization of infrastructure schemes in the District where Oil and Gas is being produced or otherwise.”

17. The worthy Additional Advocate-General duly supported by the worthy counsel for the District Nazim and Members of the Provincial Assembly from

Karak, vehemently opposed such a move. Their contention was that *Royalty* be allowed to be utilized by District Development Advisory Committee (“DDAC”) constituted under District Development Advisory Committee Act, 1989. It was further contended that the *Royalty* received by the Provincial Government formed part of its Annual Consolidated Fund and thus should be allowed to be utilized as deemed appropriate by the Planning and Development Department of the Provincial Government.

18. The Petroleum Policy of 2012 clearly stipulates and binds the Provincial Government to utilize 10% of the *Royalty* for infrastructure development schemes in the District where Oil or Gas is produced. In turn, the Provincial Government in its Guidelines of 24.03.2012 further binds 50% of the said allocation of total 10% of the *Royalty* to be utilized in the *Tehsil* where the well heads of the Oil or Gas are situated. Thus, the Petroleum Policy of 2012 and the Guidelines issued in pursuance thereof by the Provincial Government have clearly put a bench mark for specific amount of the *Royalty* received to be utilized not only in the District but in the *Tehsil* where the well heads of the

Oil or Gas are situated. These specific stipulations *qua* the amount of *Royalty* and the location of its utilization negates the stance taken by the Provincial Government, the District Nazim and the worthy Members of the Provincial Assembly to deprive the representative of the *Tehsil* Local Government to be part of the decision making of its utilization.

19. This Constitutional Court is *alive* to the jurisdictional contours of this Court under Article 199 of the Constitution. Admittedly, it ought not to interfere in pure administrative and Policy decision of the executive organ of the State, so as to maintain the balance the *Tricotomy of Power* engrained in the Constitution. However, this Court cannot lose sight of the express directions rendered by the Apex Court in **Abdul Hakeem Khosa's Suo Moto Case (PLD 2014 SC 350)**. In the said case, the August Court, while considering the terms of the successive petroleum policies of the Federal Government, including the Policy of 2012, and the Guidelines issued in pursuance thereof by the Provincial Government of Khyber Pakhtunkhwa rendered its clear directions regarding the mode and manner of the utilization of the funds and social welfare activities to be

carried out by the E&P Companies in the respective areas of their operations. The matter was elegantly articulated by Justice Jawwad S.Khawaja, as he then was, in *para.19*, in terms that;

“The geographical source and intended use of these various funds require that the same should be administered by the same body, even if these are under separate guidelines issued by separate authorities and through separate bank accounts as per the policy and contractual obligations of the Federal and Provincial Governments.”
(emphasis provided)

And also in sub-para-c of para-22, wherein it was further emphasized that there should be **one committee** for coordinated and affected use of the funds payable by the E&P Companies, in terms that;

“The Provincial and Local Governments shall review the existing policy guidelines and, where necessary, make suitable amendments to ensure that as far as may be, one Committee be constituted for each district or Tehsil/taluka to ensure coordinated and effective use of the aforesaid funds”
(emphasis provided)

20. The apex Court, while deliberating upon the issue in hand clearly made very express declarations regarding the *fundamental rights* of the inhabitants of the area where the oil or gas is being produced and the *fiduciary duty* of those who are to administer the funds

being received from the E&P Companies, it was observed that;

“2. While Corporate Social Responsibility (CSR) may be voluntary, the Government, recognizing the importance of activities of companies in the oil and gas sector, has incorporated provisions in contracts and official policies, setting out obligations of oil Exploration and Production (E&P) Companies operating in Pakistan. The present case deals with these contractual and legally mandated obligations of E&P Companies towards the environment and the societies living in areas where these Companies are engaged in the exploration and extraction of mineral oil and gas.....

4. This Court has had an expansive approach when setting the boundaries of the right to life in the celebrated judgment of Shehla Zia v. Federation of Pakistan (PLD 1994 SC 693), with later precedents highlighting the continuing expansion of this approach for which reference can be made to the cases titled General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Jhelum v. Director, Industries and Mineral Development, Punjab Lahore (1994 SCMR 2061) and Abdul Wahab v. HBL (2013 SCMR 1383).....

21. Therefore, the Court has considered aspects of the utilization of these available funds, where such utilization can be streamlined and optimized, thereby ensuring that transparency and public access to these funds is duly translated into enforcement of the fundamental rights of the People, guaranteed to them, inter alia, by Articles 9 and 14 of the Constitution and the Principles of Policy enunciated in Chapter 2 of Part II of the Constitution.”

21. The apex Court, in the said land mark decision went on to explain the reason for its interference in policy decision of the provincial government and rendered directions as to the steps to be taken in selection, execution and supervision of the schemes

financed by the funds received from the E&P Companies,
the same reads;

“22. Although the preparation of appropriate guidelines is a policy matter falling within the executive domain, our examination of the present status of collection, expenditure, administration etc of social welfare funds and the preparation of guidelines shows that this aspect of the matter has not received the requisite attention. The rights of the people in the funds generated on account of social welfare obligations have a direct nexus with the fundamental rights mentioned above. These funds have either remained unutilized or have been under-utilized or the use of these funds has not been adequately monitored to ensure evaluation of spending. As an initial measure, therefore, we direct as under;

- (a) The DG PC and the relevant Provincial Government shall ensure diligent collection and monitoring of social welfare obligations of E&P Companies.***
- (b) The DG PC, the relevant Provincial Government and the Local Government within the area of activities of an E&P Company shall ensure optimum utilization of social welfare funds, production bonuses and other sums such as marine research fee, as are generated on account of the contractual obligations of E&P Companies. This shall be done in an open and transparent manner by ensuring that consistent with Article 19A of the Constitution (Right to Information), the local population has available to it, all relevant information relating to such funds.***
- (c) The Provincial and Local Governments shall review the existing policy guidelines and, where necessary, make suitable amendments to ensure that as far as may be, one Committee be constituted for each district or Tehsil/taluka to ensure coordinated and effective use of the aforesaid funds. Keeping in view the provisions of Article 140A, the Local Governments established in each Tehsil/taluka be given due representation or a voice on such Committee in line with the said constitutional provision which requires “each Province...to devolve political, administrative and financial responsibility and authority to***

the elected representatives of the Local Government”.

- (d) *Guidelines may be framed by the Federal and Provincial Governments in reasonable detail so that social welfare obligations can be monitored and the expenditure of funds can be examined in an open and transparent manner. The Committee for utilization of funds should;*
- (i) *Ensure that the social welfare obligations of E&P companies are fulfilled;*
 - (ii) *Proposed schemes receive due publicity and inputs from the final recipients and beneficiaries or their representatives;*
 - (iii) *Evaluate progress and completion of welfare schemes;*
 - (iv) *Have public hearings for receiving local level inputs in respect of selection, completion etc of welfare schemes.*
- e. *Once every sixth months, the DCO shall effect the publication of a notice online and in the most widely-read newspaper in the district, announcing a public hearing to solicit any comments or reservations that the inhabitants of the district in general, and the purported direct beneficiaries of the scheme in particular, may have with regard to the schemes completed, initiated, or ongoing during the preceding six months. A list of all such schemes shall be included in the public notice along with their location, budget and current status.*
- (f) *Such notices for public hearings shall be sent to all district level trade organizations, chambers of commerce, Bar Associations and other prominent organizations and social welfare organizations. Notices shall also be sent to the provincial ombudsmen. Such public notices of the public hearings shall also be promptly placed on the website of the district government, if it has one.*
- (g) *A report in respect of completed schemes shall be sent to the Federal and Provincial Ombudsmen and to the Human Rights Cell of this Court.*

- (h) *The DG PC shall prepare a comprehensive account of the amounts due to each district from the various E&P Companies operating therein under the heads of social welfare obligations, production bonuses, and, if applicable, marine research fee. The estimated figures for royalties due to each district may also be included in this account. A statement of this account shall be made within 45 days and shall be submitted in Court. The account shall be displayed in Urdu, English and regional languages on the website of the MPNR.*
- (i) *The DG PC shall solicit half-yearly reports from all licence/lease holders in respect of their social welfare obligations towards the local community, including among other things, the locations, budgets and status of schemes completed, ongoing, or initiated during those six months.*
- (j) *The DG PC shall use his enforcement powers under PCAs actively and diligently to seek compliance with the terms of the PCAs.*
- (k) *The Ministry of Petroleum and Natural Resources shall, ensure implementation of the Prime Minister's directive of 15-9-2003 and provide gas to "all the surrounding localities/villages falling within the radius of 5km of all Gas Fields, on priority basis" as directed, in accordance with law".*

22. What *irks* this Court is that above clear directions of the apex Court have not been executed; this *inaction* warrants urgent and positive attention of this Court being under the constitutional command to ensure the same under the dictates of Articles 187(2), 189 and 190 of the Constitution.

23. When confronted with the above legal position, the worthy counsel for the District Nazim and

the members of the Provincial Assembly from Karak objected to the move of this Court stating that the petitioners had not specifically prayed for including the *Tehsil Nazim* to be a part of a committee for the utilization of the *Royalty* payable by the E&P Companies. Here again, this Court would not agree with this response of the worthy Counsel for the private respondents, simply for the reason that this Constitutional Court has the jurisdictional mandate to mould the *relief* sought by the petitioners, in case, the circumstance of the case, so warrants. In the instant case, the *inaction* of the Provincial Government in the face of the clear directions rendered by the apex Court in *Abdul Hakeem Khosa's case supra*, as discussed hereinabove, would legally suffice for this constitutional Court to ensure the implementation and enforcement of the clear directions rendered by the apex Court in the said decision. Accordingly, in the circumstance of the present case, the response of the respondents is not legally maintainable.

24. Before parting with this judgment, it would be important to note that during the proceedings of the instant petition, numerous applications for impleadment as necessary party to the instant petition were filed. In

this regard, C.M.No.44-B/2017 filed by Taj-ur-Rehman and others, C.M.No.112-B/2017 filed by Moulana Mir Zaqem and others, C.M.No.123-B/2017 filed by Shah Zaman and C.M.No.182-B/2017 filed by Ali Mar Jan, were allowed. They were all provided an opportunity of hearing to assert their respective stance on the issue in hand.

25. In addition to the above, an application C.M.No.141-B/2017 filed by Ihsan-ul-Haq and others seeking in essence for *Neighborhood Council* and *Village Councils* in District Karak as party to the petition and for including the *Nazims* of the *Village Council* and *Neighbourhood Council*, as member of the PSDC. No doubt, the case made out by the applicants is very attractive to give the elected Nazim of the most immediate local body representation in the committee to decide the fate of developmental scheme for the said area, essentially for the reason that the inhabitants of the said area have to bear the most immediate thrust of the adverse impact caused due to the exploration and production carried out by E&P Companies. What is also to be reconsidered by the Provincial Government is the limit of one million fixed for developmental schemes

to be financed by *Production Bonuses* and the clog of one million fixed for such schemes. Surely, removing the limit of the amount to be utilized from such funds would bring in more transparency and also cater for better supervision and monitoring of the schemes so financed from the said funds.

26. What restrains this Court to positively consider the stance of the applicants is that when the August Supreme Court of Pakistan was deciding *Abdul Hakeem Khosa's case* *supra*, wherein the Khyber Pakhtunkhwa Local Government Act, 2013 expressly specifying the *Village Council* and *Neighborhood Council*, as a Local Government, was in the field and yet no directions were rendered for its inclusion in the PSDC/Committee, administering the utilization of the funds receivable from E&P Companies. In the circumstance, it would not be legally appropriate for this constitutional Court to directly interfere in the matter, which is surely a policy matter, and best be left for just decision of the *Executive Authority* of the Provincial Government.

27. In conclusion, this Constitutional Court, for the reasons stated herein above, declares and directs that;

- I. There should be one Petroleum Social Development Committee (“PSDC”) for each District, where Oil or Gas is produced to administer the utilization of the *Production Bonuses* and 10% *Royalty* payable by the E&P Companies, finally received by the Provincial Government.
- II. The District *Nazims* of the Districts where oil or gas are produced are to be members of the PSDC, administering the utilization of the *Production Bonuses* payable by the E&P Companies, and 10% *Royalty* payable by the E&P Companies, finally received by the Provincial Government.
- III. The *Tehsil Nazim* of the *Tehsils* where oil or gas are produced are to be a members of the Petroleum Social Development Committee administering the utilization of *Production Bonuses* and the 50% of the 10% *Royalty* payable by the E&P Companies, and finally received by the Provincial Government.
- IV. The Petroleum Social Welfare Committee constituted to administer the utilization of

the *Production Bonuses* and *Royalty* paid by the E&P Companies are to adopt the procedure stipulated by the August Supreme Court in para-22 of its decision in *Abdul Hakeem Khosa's case* *supra*.

V. This decision shall in no way affect the mandate of the Planning and Development Department of the Government of Khyber Pakhtunkhwa in its implementing and executing developmental schemes financed by the *Royalty* paid by the E&P Companies.

VI. The Provincial Government shall re-visit its Guidelines for utilization of *Production Bonuses* and *Royalties* receivable from E&P Companies to reconsider;

- i. Including the Nazims of *Village Council* and *Neighbourhood Council*, as member of PSDC.
- ii. Enhancing the limit of Rs.1 million set for schemes to be utilized from *Production Bonuses*.
- iii. Reserving a percentage of the *Production Bonuses* and *Royalty* to be invested in the developmental schemes in the *Village Council* and

Neighbourhood Council where oil or gas is produced.

Accordingly, the writ petition alongwith all the miscellaneous applications are disposed of, in the above terms.

Announced.
Dated.15/06/2017.

CHIEF JUSTICE

J U D G E

*F.Jan/**