

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[APPELLATE JURISDICTION]

PRESENT:

**Raja Saeed Akram Khan, C.J.**  
**Ghulam Mustafa Mughal, J.**

*Civil Appeal No. 89 of 2020*  
(PLA filed on 31.10.2019)

1. Azad Government of the State of Jammu & Kashmir through Secretary Forests, having his office at New Secretariat, Chatter Muzaffarabad.
2. Secretary Wildlife & Fisheries, Azad Government of the State of Jammu & Kashmir having his office at New Secretariat, Chatter Muzaffarabad.
3. Chief Conservator Forests Azad Government of the State of Jammu & Kashmir having his office at Bank Road Muzaffarabad.
4. Conservator Forests (Neelum Circle) Authmuqam having his office at District Headquarter Authmuqam District Neelum.
5. Conservator Forests Muzaffarabad Circle having his office at Bank Road Muzaffarabad.
6. Minster Forests Azad Government of the State of Jammu & Kashmir having his office at New Secretariat, Chatter Muzaffarabad.
7. Director Wildlife & Fisheries, Azad Government of the State of Jammu & Kashmir having his office at New District Complex Muzaffarabad.

.....APPELLANTS

VERSUS

1. Khawaja Ahmed Akbar Advocate, Member District Bar Association Neelum, Azad Kashmir.
2. Waqar Farooq Abbasi, Advocate High Court, Central Bar Association Muzaffarabad, Azad Kashmir.
3. Amjid Hussain Lone, General Secretary District Bar association Neelum, Azad Kashmir.
4. Hayyat Awan, Journalist, Member Governing Body Press Foundation, Azad Kashmir.
5. Inayat Khan s/o Shair Ahmed Khan r/o Authmuqam District Neelum, Azad Kashmir.
6. Mirza Akhtar Iqbal s/o Mirza Nawab Baig r/o Qasba Hattian Dopata Tehsil & District Muzaffarabad.
7. Gulzar Ahmed Usmani s/o Muhammad Yaqoob Khan r/o Ghari Dopatta Tehsil & District Muzaffarabad.

.....RESPONDENTS

8. Secretary Power Development Organization (PDO), Muzaffarabad.
9. Managing Director Power Development Organization (PDO), Muzaffarabad.
10. Director General Environmental Protection Agency (EPA), Muzaffarabad.
11. Shah Ghulam Qadir, Member Legislative Assembly Constituency No. 1, District Neelum, Azad Kashmir.

PROFORMA-RESPONDENTS

[On appeal from the judgment of the High Court dated 02.09.2019 in writ petition 1011 & 1140 of 2019]

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FOR THE APPELLANTS:

Mr. M. Hanif Khan Minhas,  
Advocate.

FOR THE RESPONDENTS: Mr. M Khalid Naqashbandi  
& Mr. Haroon Riaz Mughal,  
Advocates.

Date of hearing: 03.06.2020.

**JUDGMENT:**

*Ghulam Mustafa Mughal, J.*– The captioned appeal by leave of the Court has been directed against the consolidated judgment of the Azad Jammu & Kashmir High Court dated 02.09.2019, passed in writ petition Nos. 1011 & 1140 of 2019.

2. The precise facts forming the background of the captioned appeal are that the respondents, herein, filed separate writ petitions before the Azad Jammu & Kashmir High Court, stating therein that the tender notice dated 12.06.2019, which has been republished on 29.06.2019, have been issued in violation of Azad Jammu & Kashmir Forest Regulation Act, 1930, as amended in 2017, “The Azad Jammu &

Kashmir Wildlife Act, 2014, because before issuing the same no technical assessment like environmental impact, conservation status of the important plants of the area has been conducted and for the reason that green trees have been marked by the officials of Forest Department. It is further stated that the impugned advertisement/ tender notice has been issued without obtaining NOC from Environmental Protection Agency, which was mandatory requirement of section 11 of Azad Jammu & Kashmir Environmental Protection Act, 2000. It is further stated that in the garb of extraction of fallen, converted and dry standing trees, the respondents have marked green standing trees in order to give undue favour to the contractor without any mechanism of check and balance. It is further stated that this action of the appellants, herein, tantamounts to deprive of the people of *Neelum Valley* and *Jehlum Valley* from their

rights i.e. grazing animals and using damaged wood for heating purpose. It is further stated that cutting of the green standing trees will damage the friendly environmental atmosphere which affects the attraction of tourists in the area which now a days is sole source of income of the people of area as well as the state. It is prayed that the appellants, herein, may be restrained from cutting green trees in the garb of fallen and extraction of damaged trees. They prayed for declaration and prohibition against the respondents in the above indicated terms. The appellants, herein, contested both the petitions by filing separate written statement, wherein, it is stated that the impugned advertisement/tender notice have been issued in accordance with law and in the light of ban imposed by the Government of Azad Jammu & Kashmir on cutting of green trees. In the separate written statement filed by Director Wildlife and

Fisheries, the allegation levelled by the appellants were not denied and the power of Forest Department for extraction of the fallen trees were admitted. The learned High Court after necessary proceedings accepted both the writ petitions through the impugned judgment dated 02.09.2019.

3. Mr. Muhammad Hanif Khan Minhas, the learned Advocate for the appellants argued with vehemence that respondents No. 1 to 3 are members of legal fraternity, whereas, the respondent No. 4 is a journalist and respondents No. 5 to 6 are nothing to do with the preservation of forest, hence, all the petitioners are aggrieved and cannot seek a writ of mandamus from the High Court, hence, the learned High Court has travelled beyond its jurisdiction while giving the impugned direction. The learned Advocate further argued that it is within the competency of the forest department and is also necessary for the

preservation and reforestation of the forest within the parameters of the approved working plan to extract the fallen and uprooted and cutting trees, hence, no any violation of law infact was pointed out and the writ cannot be issued mere on the hypothetical grounds until the specific violation of law or non-performance of duty is pointed out. The learned Advocate further argued that the direction given by the learned High Court was neither part of the pleadings nor was specifically requested by the respondents, hence the same was beyond the pleadings and it is well settled law that the relief which is not claimed cannot be granted in the writ jurisdiction.

4. Written arguments on behalf of the respondents have been filed, wherein, it is submitted that under section 5 of the Azad Jammu & Kashmir Environmental Protection Agency Act 2000,

protection, conservation, rehabilitation, improvement of environment, preservation, control of pollution and promotion of sustainable development of the society, is clearly provide. It is further submitted that the respondents by issuing the tender notice without obtaining the NOC from the Director General EPA, has violated the mandatory provisions and procedure by the said law, hence, the respondents have rightly challenged the action of the appellants being members of the legal fraternity and they are aggrieved for the purpose as they want to enforce the performance of the legal duty enshrined upon the them under the statutory law. The learned Advocates further submitted that right to life is a fundamental right guaranteed by the constitution which includes the friendly atmosphere for peaceful enjoyment of life as has been held in the cases reported as *Imrana Tanvana vs. Province of Punjab and other* [PLD 2015



*Lahore 522*], *Lahore Development Authority vs. Imrana Tiwana & others* [2015 SCMR 1739]. The learned Advocate further placed reliance on the case reported as 2010 SCMR 361, PLD 2015 Islamabad High Court 2304, 2011 SCMR 1743 and an unreported judgment titled *Amjad Hussain vs. Sadia Malik* dated 30.08.2019. The learned Advocate further submitted that under the Forest regulation Act, 1993, the appellants are duty bound to protect every sort of forest and its produce from being damaged and provide facilities to the locals and expand the tourist/ economic activities in Azad Jammu & Kashmir. The learned Advocate further placed reliance on the cases titled PLD 2019 Lahore 664, PLD 2015 Lahore 522, 2015 SCMR 1739, 2010 SCMR 361, PLD 1994 SC 693.

5. We have heard the learned Advocates for the parties and gone through the record of the case. It may be stated that the respondents, herein, are

members of legal fraternity and one of them is journalist while others are the members of civil society. They are definitely interested in the economic and tourist activities in their area but law is well settled and the writ of mandamus can only be issued if there is a legal right which vests in the aggrieved person and the respondents against whom direction or prohibition is sought is under legal obligation to perform or refrain from performing an act. It has also been observed by this Court that a Court of law has to act within four corners of law and not on the basis of moral or humanitarian consideration howsoever compelling the same may be. In the present case the relief is sought against the Government functionary to perform their responsibility enjoined upon it under different statutes with regard to the protection of the environment and forest produced but infact, the tender notice dated 29.06.2019, issued by the forest

department for extraction of the fallen and dry stand trees have been challenged. In our opinion, it is within the domain of forest department to extract the fallen wood and even dry stand trees for preservation of the existing forest and reforestation. The respondents have not proved in any manner that how through extraction of the fallen wood or cutting of the dry trees, they or community of the area will suffer any loss. The learned High Court has given direction in vacuum without looking into the legality and propriety of the matter involved, without hearing the learned Advocate-General and obtaining the view point of the Government in this regard or other concerned agencies which was essential. Such type of the direction cannot be given in vacuum. We have also noticed that the learned High Court has not considered the written statement filed on behalf of the Director General Environment as well as the

Government and forest department, otherwise, the conclusion might have been different. The appellants, herein, have no locus-standi to challenge the tender notice issued by the respondents at all, therefore, their writ petition were liable to be dismissed on the ground that they have no locus-standi. The question of locus-standi has liberally been construed by the Courts when public interest is concerned or when the writs are filed by the members of the legal fraternity or members of the civil society in the public interest but everybody cannot be given license to file the writs *probono publico* until and unless the action under challenged is of such a nature which affects the public at large or personal interest of anybody. In the present case as stated in the earlier part of the judgment only tender notice with regard of the extraction of the fallen and dry trees have been challenged and the respondents-petitioners before the High Court have

not satisfied that under what circumstances, they are affected or interest of public at large is affected in any manner, therefore, they cannot be termed as aggrieved. The matter has been considered in the case titled Raja Iqbal Rasheed Minhas vs. AJ&K Council & others [2001 SCR 530] by this Court after considering the earlier case laws on the subject at page 540. In para No. 14 it was observed as under:-

*14. It may also be pointed out that there is a wide difference between a writ of certiorari and a writ of habeas corpus or a writ of quo warranto. Except the writ of habeas corpus and the writ of quo warranto which can be invoked by any person, the other writs can be prayed for only by an aggrieved person. It may be stated generally that an aggrieved party is one in a writ of prohibition whose rights are threatened, in writ of mandamus whose rights are being denied and in writ of certiorari whose rights have been affected by a decision. The word "right" is not used here in strict juristic sense. It is sufficient if the person alleging to be an aggrieved has a personal interest in the performance of a legal duty which if not performed would result in the loss of some personal advantage. A party who stands to lose or gain an advantage by observance or non-observance of law is an aggrieved party. A person aggrieved must be a person who has suffered a legal grievance,*

*a person against whom a decision has been pronounced which has wrongly deprived him of something, or wrongfully refused him something or wrongfully affected his title to something. The petitioner being not falling in any of the categories, mentioned above, had no competence to lodge either the writ petition or an appeal in this Court against the impugned judgment of the High Court.*

Upshot of the above discussion is that finding no force, this appeal is accepted.

**JUDGE**

**ACTING CHIEF JUSTICE**

Muzaffarabad,

