

PCA Case No. 2023-01

IN THE MATTER OF AN ARBITRATION

-before-

**THE COURT OF ARBITRATION CONSTITUTED
IN ACCORDANCE WITH THE INDUS WATERS TREATY 1960**

-between-

THE ISLAMIC REPUBLIC OF PAKISTAN

-and-

THE REPUBLIC OF INDIA

**FURTHER QUESTIONS TO BE ADDRESSED AT
THE HEARING ON COMPETENCE**

COURT OF ARBITRATION:

**Professor Sean D. Murphy (Chairman)
Professor Wouter Buytaert
Mr. Jeffrey P. Minear
Judge Awn Shawkat Al-Khasawneh
Dr. Donald Blackmore**

SECRETARIAT:

The Permanent Court of Arbitration

12 May 2023

Further to paragraph 1.2 of Procedural Order No. 5, the Court of Arbitration invites Pakistan to address the following further questions in its oral submissions scheduled for 13 May 2023:

G. Questions concerning the legal effect of decisions in *Kishenganga* and *Baglihar*

37. What is the legal effect of the decisions reached by the *Kishenganga* Court of Arbitration and the *Baglihar* Neutral Expert for a decision by this Court of Arbitration on its competence?

H. Questions concerning the *Baglihar* Neutral Expert proceeding

38. Can you provide the Court with a copy of available documentation leading to the appointment of the Neutral Expert in the *Baglihar* proceeding (including, but not limited to, the notification of the intention to ask for the appointment of a Neutral Expert,¹ and the request for the appointment of the Neutral Expert and its accompanying documents²)?

I. Questions concerning the procedure and status of the current Neutral Expert proceeding

39. Is there a confidentiality regime with respect to the current Neutral Expert that affects sharing with the Court information regarding that process? In that regard, can you share with the Court the retainer agreement concluded with respect to the current Neutral Expert?
40. When confidential Court documents are shared with the Neutral Expert, is this done on a confidential basis (per Article 14(5) of the Supplemental Rules of Procedure) and, if so, how is that effectuated?
41. Can you provide the Court with any information on the likely timetable for the work of the Neutral Expert, including for the selection of a secretariat, the adoption of rules of procedure, site visits, submission of pleadings, and a final determination?

J. Questions concerning the current Neutral Expert and the Court of Arbitration

42. Please confirm whether the following statement captures Pakistan's position with respect to the current Neutral Expert:

The Neutral Expert proceeding is now lawful, as matter of *forum prorogatum*, based on Pakistan's decision to participate in that proceeding. However, under the Treaty, a Court of Arbitration has the authority to decide whether a Neutral Expert has issued a decision, in whole or in part, that is outside the scope of his competence, pursuant to paragraph 13 of Annexure F.

43. Assuming both Parties agree to the competence of the Neutral Expert, is the Court of Arbitration bound by that agreement or can it pass upon the legality of the appointment of the Neutral Expert?

¹ Per paragraph 5(a) of Annexure F to the Treaty.

² Per paragraphs 5(c) and 5(d) of Annexure F to the Treaty.

44. Assuming that this Court of Arbitration is competent, Pakistan maintains that the current Neutral Expert can be seen as having competence linked to and ancillary to the Court of Arbitration. Please provide jurisprudence in support of this concept of ancillary competence.³

³ See, Tr. D2, 25:11–26:8.