

**IN THE HIGH COURT OF SINDH**  
**CIRCUIT COURT, HYDERABAD**

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Date	Order with signature of judge(s)
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**C.P. No.D-1557 of 2015**

For katcha peshi.  
For hearing of MA-7812/15.  
For hearing of MA-13601/15.

Date of hearing: 10.11.2016.

Petitioner is present in person.

Mr. Allah Bachayo Soomro, Addl. A.G along with Dr. Usman Chachar, Secretary Health, Dr. Wajid Ali Memon, M.S. LUMS, Hyderabad, Dr. Abdul Wahab Khanzada, AMS, Dr. Hassan Masood, D.G.Health, Dr. Abdul Rehman Mallano, AMS, LUH,Hyd and Akhtar Hussain Dawach, S.E. Building Hyderabad and Dr. Naeem Zia Memon, AMS.

Mr. Roshan Azeem Mallah, Advocate for respondent No.3.

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**SALAHUDDIN PANHWAR, J:** Through instant petition, the petitioner Aamir Lutuf Ali Zardari, while claiming to be working as a “social worker” in the name and style of Shaheed Benazir Bhutto Welfare Society Pakistan, at Hyderabad in the field of Blood Banking since 08 years; submitted an application to respondent No.3 for permission to open *blood bank* at Civil Hospital Hyderabad or in the premises for which the said respondent No.3 has issued N.O.C; had made an application for registration of *blood bank* to the Director Sindh Safe Blood Transaction Authority Disarmament of Health, Provisional Secretariat Shah Latif Hostel Sindh Medical College Campus NICVD Karachi which despite having been sent through TCS but could not reach for *unavoidable* reasons therefore petitioner personally appeared before the

Director and got received such application; that due to good reputation and services provided by the blood bank of the petitioner he has been issued various performance certificates by the respondent No.3; that petitioner since 2008 is striving for the welfare of public in the field of health sciences and providing facilities to patients at the time of urgent need in order to save precious lives of the patients in serious conditions; that the petitioner has also approached respondents No.1 and 2 for redressal of his grievance but all the complaints of the petitioner were unheard; petitioner also alleged misuse of powers and designation by respondent No.5 who is running blood bank at Civil Hospital Hyderabad and that he (*respondent no.5*) intends not to allow the petitioner to open blood bank at Civil Hospital Hyderabad as he blackmails the poor persons for blood bags and for the medical tests of hepatitis B & C and that due to intentional negligence and corruption of the respondent No.5 so many people lost their lives at the hand of respondent No.5; the administration of Civil Hospital Hyderabad also proved to be negligent in securing the needs of poor ill people; that the petitioner is serving to the nation in the field of Health Sciences besides *Edhi* and *Saylani Welfare* but only the society of the petitioner has got 3 best performance certificates and remaining two social welfare organizations have not got any such certificate for rendering services to the public; that due to undue harassment and mental torture created by the respondents, the petitioner society is facing hardship and troubles; that respondent No.4 has been graced with million of rupees to construct his new office in Civil Hospital Hyderabad and public money has been misused in foolish like activities and the budgets have been

shown insufficient to meet the public needs and to purchase lifesaving medicines. Hence the petitioner has approached this Court with the following prayers:-

- “(A) That this Honourable Court may kindly be pleased to issue writ declaring that act of respondents No.3, 4 and 5 is illegal, unlawful, ab-initio void and contrary to law.*
- (B) That this Honourable Court may be pleased to direct the respondents No.3, 4 and 5 not to create hurdles in the way of petitioner so also restrain from misusing their powers and designations.*
- (C) That this Honourable Court may be pleased to direct the respondents No.1 and 2 to take legal and lawful action against the respondents No.3, 4 and 5 while restraining them not to take law in their hands so also step issuing threats to the petitioner and his well wishers, workers and those persons who have joined the hands of petitioner voluntarily for the welfare of public.*
- (D) That the respondents No.3, 4 and 5 are playing tricks and using force against petitioner and other volunteer persons, if any unavoidable incident would happen then the respondents No.3, 4 and 5 will be held sole responsible for the same and such statement may be kept on the record so that it could be used at the time of need.”*

2. The respondents, on service, filed their respective comments. In the comments filed by respondents No.3 to 5, it is stated that petitioner is not social worker, he has illegally occupied the blood bank of the Liaquat University; petitioner has no any *locu-standi* under Article 199 of the Constitution; on the complaint of Dr. Abdul Wahab, Incharge Blood Bank Liaquat Medical Hospital, Hyderabad against the petitioner and others that they are involved in illegal and unlawful activity in blood bank Liaquat Medical Hospital Hyderabad are misusing official blood bank facility and storage capacity upon that the respondent No.3

restrained the petitioner from interfering in the Blood Bank of the hospital. Thereafter, petitioner forwarded application dated 07.10.2015 to the respondent No.3 in respect of issuance of NOC to open blood bank in the hospital and the respondent No.3 directed the petitioner to get registration from Sindh Safe Blood Transaction Authority, besides the respondent No.3 issued letter dated 11.07.2015 to the petitioner to get registration of blood bank from the authority but no NOC was issued to the petitioner by the respondent No.3 as stated in the petition; that the petitioner filed application dated 13.07.2015 to the Director Sindh Safe Blood Transaction Authority requesting for registration of blood bank which is still pending and the petitioner is not entitled to open blood bank before the registration; that neither the petitioner possesses the qualification nor having any experience or affiliation for service of the blood bank; that no best performance certificate was ever issued to the petitioner; petitioner has managed all the bogus certificates; that the petitioner has been earning money from the poor persons through blood bank; that the petitioner is involved in criminal activities and has no role for welfare; that the petitioner's blood bank is not registered to the authority but he has moved an application with regard to registration which is still pending; that the respondents No.4 and 5 are working under the administration of respondent No.3 hence they are responsible to inform all the illegal and unlawful activities carried out by the petitioner in the blood bank; that the respondent No.5 who is Assistant Medical Superintendent is running the blood bank and not misusing the powers and designation as alleged by the petitioner; that the Civil Hospital maintained the blood bank in its premises for the

poor patients under the administration of respondents No.3, 4 and 5 to available healthy blood at the time of emergency; that respondents No.3, 4 and 5 are performing their duties according to law and providing all the medical facilities including blood to the poor patients in the Civil Hospital, Hyderabad; that the petitioner is a notorious criminal and involved in many including FIRs No.318/2009, 319/2009 and 91/2011 registered with P.S. Tando Jam and SITE Hyderabad; that the petitioner is also an absconder in some cases and he forcibly carried out the so-called civil work of the hospital; that the petitioner is creating hurdles in the administration of the hospital and does not want to leave the illegal occupation of the blood bank in Liaquat Medical Hospital, Hyderabad by harassing and blackmailing the administration of the blood bank; that the petitioner has made fake performance certificates by showing the signatures of Medical Superintendent Liaquat University Hospital, Hyderabad in the name of Chairman, Shaheed Benazir Bhutto Welfare Society regarding continuation of blood bank in old burnt ward, Civil Hospital, Hyderabad; that the respondents No.3 to 5 have neither issued any sort of harassment nor created any hurdle to the petitioner but attempting to save the poor patients from illegal activity of the petitioner supplying poor quality of blood and owing to which many patients have died due to reaction of the blood supplied; that as the petitioner is a criminal person and required in many cases and he has approached this Court with unclean hands and has concealed real facts from this Honourable Court; that the petition is liable to be dismissed with cost.

3. At this juncture, it would be relevant to say that there can be no denial to the well established principle for *exercising Constitutional Jurisdiction* that **‘in serving the interests of the community or public at large, the inconvenience and loss to an *individual* or *some* shall not come in the way, particularly when it involves fundamental rights of community or public at large’**. Reference, if any, can well be made to the case of *Pakistan Muslim League (N)* (PLD 2007 SC 642). Since, the issue involved in the instant petition, being directly and *prima facie* relating to the ‘*healthcare*’ in a government hospital which *otherwise* is ensured / guaranteed by the Article 9 of the Constitution itself and was/is meant for *public at large* therefore, status of ‘*Custodian*’ of fundamental rights of public at large, compelled to take a pause on *individual* grievance of petitioner, and to direct Mr. Asif Hyder Shah, Commissioner, Hyderabad Division to visit the *hospital* and to report so as to know whether matter, *in fact*, involves infringement of guaranteed fundamental rights or otherwise?. The *report* had *prima facie* indicated *poor* rather miserable condition of hospital thereby denying such guarantee, with certain suggestions/recommendations with reference to admitted/acknowledged facts and positions i.e:

- i) *the poor rather miserable condition of hospital thereby infringing guarantee, provided by Article 9 and 14 of Constitution;*
- ii) *recommendations / suggestions from skilled persons for uplifting the health care within four corners of admitted / acknowledged facts and law;*
- iii) *pendency of financial schemes / projects, already recommended, before quarter concern;*

but was not being dressed up thereby resulting in denial to guarantee provided by Chapter-I of Part-II of Constitution. There can be no denial to the well established fact that 'health-care' does include the meaning of term 'life' because the term 'life' is not restricted to mere the vegetative or animal life or mere existence from conception to death but it (*life*) includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally, therefore, order dated 22.09.2015 was passed by this Court, which *in fact* was a *hammer* only to what was acknowledged and recommended by concerned and related persons i.e Officials who *otherwise* are always under legal obligations and duty not only to perform their duties fairly but to accelerate that process which *directly* involves 'guaranteed fundamental rights'. The picture shall become *brighter* and *clearer* from reproduction of the order dated 22.9.2015 which is:

"In compliance of the orders passed on 29-07-2015 by this Court, Mr. Asif Hyder Shah, Commissioner, Hyderabad Division submitted an interim report dated 12.08.2015, in which it is stated as under: -

- "4. During a preliminary visit of the hospital by the undersigned it was also observed that the building needs major uplift and extension. The wards, especially Emergency Units, Gynae Ward and OPDs are overcrowded due to shortage of space. At the same time the approaches to Civil Hospital inside and outside the Hospital are too congested to cater for any emergency. Needless to submit that effective Operation Management is required to determine the bottle-necks in the entire process.
5. It is pertinent to submit that LUMHS is a tertiary care facility and such hospital is generally meant for handling patients requiring additional medical attention.

However, due to poor condition of secondary care medical facilities within and outside district Hyderabad most of the burden is being shared by this hospital.

6. Regarding infrastructure it can very safely be maintained that the hospital requires major infrastructural uplift including repair of existing wards, water supply and drainage system and additional units specially the emergency ward and operation theaters.
7. It is brought to the notice of this Court that Secretary Health has prepared a development scheme regarding rehabilitation of the LUMHS which is under consideration in Planning and Development Department. It would be appropriate, if Secretary Health is directed to pursue the said scheme and get it approved in the larger interest of the hospital and patients. The report/progress of work carried out during past year in civil side is enclosed (Annexure-D for perusal).
8. A team of four senior doctors headed by Professor Dr. Salma Shaikh, Dean, Medicines, LUMHS, Jamshoro was constituted to carry out a detailed inspection of Liaquat Medical Hospital Hyderabad and work out a proposal for technical shortcomings and lacuna in the hospital related to service delivery.
9. The above committee has pointed out a large number of short comings in terms of **staff, equipments, training & capacity building.** A detailed report of the committee along with requirements and recommendations for each unit is enclosed as (Annexure-E) for perusal. The committee in its conclusion has also suggested that the Medical Superintendents should be from amongst the senior professors rather than the executives of the health department.
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14. The undersigned has paid many overt and covert visits to the hospital, sometimes under disguise

*as a patient, to collect first hand information and to gauge the extent of pain and suffering of patients and their families. Being a responsible government officer I will be candid enough to admit that civil hospital Hyderabad is suffering from acute management issues apart from severe deficiency in terms of infrastructure, equipments, human recourse and hygiene. The Medical Superintendent and the health department have been informed at many occasions about irregularities in the hospital.*

15. Accordingly, following recommendations are submitted for perusal of the Court: -

- i. *The Secretary Health Department may be directed to pursue and get the schemes approved in order to bridge infrastructural gaps especially water supply and sanitation.*
- ii. *The Secretary Health Department may also be directed to ensure provision of human resource as per sanctioned strength of hospital and according the patient load.*
- iii. *The report submitted by the Doctor's Committee regarding equipment and allied facilities should be shared with Secretary Health for consideration and phase wise implementation as recommended by the Committee.*
- iv. *The draft audit report may be forwarded to Secretary Health Department for further necessary action after seeking explanation from responsible officers as per their tenure as Medical Superintendent.*
- v. *The Government of Sindh should also consider constituting a high powered Executive Board comprising senior doctors and reputable dignitaries from Hyderabad and oversee the management and affairs of the hospital.*
- vi. *The medical stores may be decentralized to the ward level, Professor Incharge of the Ward*

*should be in full authority to grant and maintain storage and supply of medicine to indoor patients in his Ward.*

*vii. The Medical Superintendent may ensure that **no private medical store, blood bank and laboratory runs within premises of hospital.***

2. We appreciate the manner in which the Commissioner not only probed into the matter but also came up with recommendations / suggestions based his personal visits, observations and facts couple with report of the Committee of Senior Medical Officers. The report prima facie speaks volume that there is:-

- i) need of major uplift and extension including repair of existing words, water supply and drainage system and additional units specially the emergency ward and operational theaters;
- ii) pending consideration of development scheme regarding rehabilitation of LUMHS;
- iii) short-comings in terms of staff, equipments, training & capacity building;
- iv) corruption of huge amount;

3. Since the report is undeniably an outcome of the order of this Court which even resulted into pin-pointing a massive corruption of Rs.71.031 Millions in result of irregularities by officials concerned for which an FIR has been lodged. There can be no denial to the fact that:-

- i) The Secretary Health was there;
- ii) The hospital has its management and controlling authority;
- iii) The Anti-Corruption Establishment was also functioning;

- iv) The Commissioner office and other administrative official(s) were functioning;

but the report in hand has made us to say that the existence of office(s) and putting some one there alone shall not serve the purposes thereof unless the superiors ensure a watch over working of subordinates and necessary action as and when required without any hesitation of a single moment. Proper functioning of each department shall not only uplift its own functioning but shall bring material changes in all whether related directly or indirectly. Such, gross illegalities and irregularities in a single government hospital, which too for a specific period, is an alarming situation. Thus, brings a serious question mark not only over the function of said offices but also about objects of their existence even. The work of an official does not come to an end only be assuring his presence in the office but when situation demands he should mark his presence in the field too. *The sense of existence is not depended to existence of a building but signs thereof which the people must feel.* The negligence of an official to let an illegality or irregularity to continue is not worth ignoring but must be checked at corrected at its inception because ignoring a minor illegality or irregularity always opens room for a serious of illegalities / irregularities which some time can cost irreparable losses as might happen in such like institutions.

4. Since a scheme for rehabilitation of the hospital in question is already pending consideration, therefore, Government of Sindh is directed to expedite the matter and ensure immediate action, preferably within six months, in that respect. The progress report is that regard shall be communicated to this court on monthly basis.

5. Besides, the decentralization of the medical store at departmental level is also a good suggestion/recommendation because it shall make the incharge of such department accountable as and when any malpractice is pointed out or complained by people. The Government of Sindh (Health Department) is required to frame a policy whereby decentralization the medical stores at department level under direct supervision of the incharge of department and should also ensure mechanism to encourage people to come forward to complain about any illegality, irregularity or even behavior and conduct of the staff towards the patients etc.

6. Further, this is also not a disputed position that hospital in question is **over-burdened** because of improper **secondary medical** facility in **nearby districts**, therefore, till such time level of secondary medical facilities in such districts is uplifted the Government of Sindh (Health Department) shall with consolation of senior professors of the hospital ensure provision of required **equipment, medicines, staff e.t.c.** This exercise shall be completed within a period of 30 days.

7. Since, **these are in result of above report** therefore, compliance of the above directives shall not lessen the burden of the Government of Sindh, Health Department to frame a policy whereby calking out measures and actions so as to eliminate the grievance of the people or least restoring a sense of trust and faith in people that **they shall have proper medication, treatment, medicine e.t.c.** which otherwise is the ultimate guarantee, so provided by Constitution under Article 4 of the Constitution. It is not practicable for Health Secretary to make constant visits at each hospital though it is his duty, therefore, the Secretary Health should least ensure that **Administrative functionaries like Commissioner and Deputy Commissioner are encouraged** to become helping hand in pin pointing any illegality / irregularity in such institution as they remain available at such level. Thus, this aspect also shall be considered while framing policy.

8. At this juncture, the conclusion of Finance Audit of Liaquat University Medical Hospital, Hyderabad also needs to be referred which reads as:-

Conclusion:-

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‘In the office of Medical Superintendent Liaquat University Medical Hospital Hyderabad for the year 2014-15, it was noticed that huge liability of Rs.31.214 million on account of electricity charges was paid the local office for the electric meters un-authorizedly being used for the officers / officials living in residential colony, without installing meters and justifying deduction charges from the salaries of officials. Further huge liability of Rs.12.121 million was cleared without having details, justification and reconciliation.’

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‘In the office of Medical Superintendent Liaquat University Hospital Hyderabad for the year 2104-15, it was observed

that an amount of Rs.3.996 million was incurred on account of consumables, but the bidding documents, dealership to supplier for particular product and accountal along with consumption needs to be provided. Further the consumables from M/s M.A. Traders and M/s. My Enterprises were purchased without quoting rates of items in comparative statement. Hence purchase was made irregular and un-authorized.'

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'In the office of Medical Superintendent Liaquat University Hospital Hyderabad for the year 2014-15, it was noticed that income tax of Rs.686.338 as per rule was neither deducted nor deposited into government account. Hence government sustained the loss due to non-deduction of income tax.'

9. The operative part above indicate gross illegalities, committed by the officials of the Hospitals in using the electric meters e.t.c. allowed for premises within the hospital, at other places whereby they indirectly misappropriated the official amount / fund of the hospital, meant for such purpose. Needless to say that all, attached with noble and respectable profession of medicine, regardless of their status should not make themselves as a symbol of illness of society by indulging in evil practices. Anti-corruption department shall also probe this aspect of the matter too.

10. While parting, it is made clear here that lodgment of FIR shall not exempt the guilty from departmental action in respect of illegalities or irregularities, if committed, therefore, the Secretary Health shall ensure proper action at departmental level whereby ensuring that not a single guilty escapes the punishment which the law demands. This exercise shall be completed within two months with compliance report."

4. Needless to add here that the *Secretary* of Health department was *otherwise* legally obliged and required to remain coming forward with better rather best *mechanism* so as to improve the "healthcare services" not only for '*present*' but keeping in view the massive increase in the population and future increase *too*. There is no *denial* that a considerable

budget (67 BILLION) is kept / allocated for 'healthcare facilities' every year but mere allocation of amount cannot achieve the intended object and purpose of such *allocation* unless and until custodian thereof comes with a proper mechanism to use such amount so as to get *maximum* benefits without complaining over *allocation* but smart utilization thereof. A *head of department* alone cannot get maximum benefits unless he knows the ways of using all organs i.e subordinates and ensures a good *control* and *command* over administration of its '*department*'. The help of skilled and experts should always be appreciated and one should not be reluctant to involve experienced, skilled and experts while forming some policy or mechanism which *prima facie* appeared to be lacking in such an important department i.e '**health department**' which surfaced with a *little* tapping of this court to *perhaps* slept one by involving skilled officials from same stock already available for help to the Secretary, Health Department.

5. This was so, that Secretary, Health department responded to interim order while coming forward with *open* statement thereby acknowledging deficiencies; delay in release of *funds* of approved schemes even. Further, recommendations/suggestions, so made *base* of interim order of this Court, were not claimed to be *unjustified* even rather seemed to have been found *purposeful*. This shall stand evident and clear from reproduction of the response of the Secretary, Health Department which reads as:

“It is submitted that in compliance of the Honourable High Court order dated 22.09.2015, the interim/preliminary progress report is submitted as under:-

A. **Plan for rehabilitation of Liaquat University Hospital, Hyderabad.**

The Health Department Government of Sindh is well aware of the importance of Liaquat University Hospital, Hyderabad because it is a teaching Hospital which cater for all complicated referred cases from districts, taluka hospitals. The department not only prepared rehabilitation scheme of LUMH but have also **planned 05 other schemes out of which 03 are approved and 02 are in process of approval**. The details are given below:-

(i) Strengthening of Liaquat University Hospital Hyderabad / Jamshoro including Administration Block, Kitchen Block, Bio-Medical Lab Renovation & Rehabilitation of Old Building & replacement of Internal Road and drainage lines, Expansion of Casualty Block, Operation Theatres, Radiology etc (scheme planned under Courts direction).

**Work progress.**

Scheme approved by PDWP on 11.03.2016. Administrative Approval issued by Finance & Health Department on 19.07.2016 & 20.07.2016. In capital component 50% funds released by Finance Department on **26.07.2016** & Health Department issued on **08.08.2016** and the work is under process.

(ii) Establishment of 50 bedded Medical & Surgical ICU and expansion of Casualty & OPD Department at Liaquat University Hospital, Hyderabad.

**Work progress**

The cost of scheme is **Rs.299.999 million**. It was approved by PDWP on **20.02.2012**. However, Finance Department made **delay in release of fund** which were released on **05.09.2016**. The work is under process.

(iii) Up gradation of Neonatal & Pediatric Services at Liaquat University Hospital, Hyderabad.

**Work progress.**

The cost of scheme is **Rs.121.818** it was approved on **08.04.2014** and Administration Approval issued by Finance Department on 05.11.2014. Finance Department **delayed the release of funds** which were issued on **01.07.2016**. Work is under progress.

(iv) Establishment of Cardio thoracic Surgery Department at Liaquat University Hospital, Hyderabad.

**Work progress.**

The Scheme was approved in **2013** at the cost of **366 million**. Work is under progress.

**B. Decentralization of Medical Stores at Departmental level.**

This is a Technical operational issue and the Health Department has constituted a Committee for **decentralization of Medical Stores at departmental level** under the chairman ship of Director General Health which will submit its feasibility report on 25.11.2016. (Annexure-I). The committee is consists of:-

- i. Medical Superintendent, Civil Hospital, Karachi.
- ii. Medical Superintendent, Chandka Medical University Hospital, Larkana.
- iii. Medical Superintendent, Sindh Medical University Hospital, Nawabshah (Shaheed Benazirabad).
- iv. Medical Superintendent Liaquat Medical University Hospital, Hyderabad.

**C. District Wise Monitoring of Health Facilities.**

The Chief Secretary Sindh has been requested to direct all Commissioners and Deputy Commissioners to become helping hand to Secretary Health and carry out spot inspections of all Health facilities within their jurisdiction and send monthly situational report to the Chief Secretary and Secretary Health which could considerably improve public service delivery. (Annexure-II).

#### D. Improvement of Secondary facilities at

##### District Level.

The efficient health services delivery heavily depend upon referral connection amongst all three services provides i.e. primary-secondary-tertiary. In this regard the health department have been executing the plan given under:-

**Improvement of Secondary care Health facilities in Sindh/Hyderabad.** Up-gradation and strengthening of Existing 17 Secondary / district headquarter hospital is under progress with a total cost of Rs.334.161 million. In this regard over 70% work has been completed with total expenditure of 2008.116 million (Annexure-III). In the Scheme the up-gradation of Taluka hospitals to district hospitals at Tando Muhammad Khan, Tando Allahyar, Kotri, Badin, Mithi, Mirpurkhas, Thatta, Sanghar and Matiari, is being made which would support Liaquat University Hospital Hyderabad in provision of efficient health services delivery in the area and also improve the chain of the referral system.

#### E. Establishment of database system for monitoring, objective decision making and to redress Public Grievance for improving health system.

Regarding Honourable Courts direction to frame a policy whereby chalking out measures and actions so as to eliminate the grievance of the people the health department is working to develop a database system in collaboration with JSI (John Snow Inc.), an implementation partner of USAID, where comprehensive data of all Sindh Health Services facilities including human resource is to be maintained which would provide monitoring

mechanism at Secretariat level and ensure efficient health services delivery to the general public. Also, through this database public complaint would be received by the Health department secretariat as well as DG Health office for redressal.

**F. Progress of Disciplinary proceedings against the officers / officials involved in corruption of Rs.71.031 million.**

In addition to Anticorruption cases, the departmental disciplinary proceedings after an enquiry, are already initiated against the delinquent Medical Superintendents and other administrative as well as accounting staff through a summary to C.M. Sindh. (Annexure-IV). The department is pursuing the progress and details would be submitted within one month.

**G. Payment of huge liability of Rs.31.212 & 12.121 million in respect of electricity bills.**

The liability of Rs.31.212 million was paid on account of use of unauthorized electricity by the officers / officials living in residential colony without installation of meters. In this regard as provided in Courts direction the issue is being investigated by the Medical Superintendent LUMH, for fixing responsibility on the alleged users and later a recovery plan for deduction from their salaries would be finalized. Regarding payment of Rs. 12.121 million liability pointed out by audit, M.S. LUMH has clarified that it was pending electricity bills liability which was paid in next financial year and clarification to this effect was provided to audit authorities.

**H. Overall regulation of Hospitals and Health Care facilities.**

In respect of Regulation of Hospitals and Health care facilities, Government of Sindh has established Health Care Commission. The members of the commission visited Punjab Health Care Commission for its working on 28.10.2016 to start its own working on sound footings.

8. It is respectfully prayed that considering the above facts and the position and status of answering respondent assuming the charge recently, one month time may kindly be granted to submit the detailed report.

Sd/-

(DR. MUHAMMAD USMAN CHACHAR)  
SECRETARY TO GOVERNMENT OF SINDH  
HEALTH DEPARTMENT"

6. Here, referral to material points from the report of Medical Superintendent, Liaquat University Hospital Hyderabad / Jamshoro, submitted to the Secretary, Government of Sindh Health Department needs to be referred that how a 'tapping by this Court' worked to step forward towards those works which were always the obligation / duty of quarter concern. The same are as under:

"That during the visit of Commissioner Hyderabad on the instructions of the Hon" High Court, a **Committee of Senior Professor** of the hospital was constituted which upraised the pit falls, lacunas and prepared detailed report:

It was observed that, hospital needs major uplifts and extension of wards especially Burn Ward, Emergency Unit / Casualty out patient department, Gynecological Wards, OPDs, Ortho, and Neurosurgery Ward.

In this regard following steps have been taken.

For major uplift and extension of the ward specially emergency of the units (OD) Operations Theaters 04 Gynae and 04 Surgery completed regarding the clearance of the approach to the hospital and removing of the encroachment District & Session Judge are requested in the monthly meetings and also traffic police authorities were addressed letter for deputing traffic police sergeants.

**BURN WARD.**

The Executive Engineer Provincial Building Hyderabad was requested to do following work on urgent basis.

- a) Renovation of Burn Ward + construction of Burn Ward through P.C-12016-2017
- b) Replacement of Drainage lines.
- c) Roof Topping
- d) Electricity Fittings.
- e) Sanitary Work.
- f) Repair of Operation Theaters.

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#### **EXPANSION OF CASUALTY DEPARTMENT.**

The Casualty Department LUH, Hyderabad is not spacious needs to be extended hence the Police Surgeon Office in the Casualty Department, Building has been shifted to **make the Casualty Department specious..... Separate Section for female emergency cases has been established.** Number of Medics and Para medics staff have been increased at Casualty Department **for the better service to the patients** and all the necessary facilities / Medicines for the patients at Casualty Department are being provided.

#### **Ultrasound facility at COD is provided.**

Casualty Department LUH, Hyderabad is fully renovated in all respects e.g.

Separate Cubes for consultants, ECG Room, Ultrasound Room, Minor O.T separate room for Male & Female Doctors 04 Washrooms / Bathrooms renovated **for patients.**

#### **STREET LIGHTS AND FOOTPATHS.**

The Street light have been **installed** and the footpaths have been **constructed** and also **Patients waiting Benches have been installed.**

#### **THE ILLEGAL ELECTRICITY CONNECTIONS.**

All the illegal connections have been removed from the residential colony of the hospital as well as outsiders using the electricity around the hospital. A letter has been issued to the HESCO authority for installation of meters.

#### GYNECOLOGICAL OPERATION THEATERS.

Renovation of the 04 Gynecology Operation Theaters and 04 Surgical Operation Theater **is completed** the renovation of the Additional Gynecology Operation theater is in progress and in equipped.

Extension of labour Ward /Room from 08 to 30 beds is near completion.

#### MACHINERY EQUIPMENTS.

The Schemes of machinery equipments repair and new have been approved.

#### SHORTAGE OF STAFF.

There is **acute shortage of Staff, Medics and Para medics** due to **non approval of SNE** of some new wards / units and on other hand many sanctioned Gazetted and Non Gazetted posts are lying vacant. Non Gazetted staff would be recruited after lifting of the ban. Newly promoted Doctors B-18 & 19 have been posted at this hospital.

It was also decided in high level meeting the SNE for creation of posts of Medical Officer (B-17) will be got approved and recruited through Sindh public Service Commission as per rules. Such detailed report is submitted to the Government for further orders.

#### REGULARITY AND PUNCTUALITY.

In order to monitor regularity and punctuality of Doctors and Para Medical Staff **10 Biometric machines have been installed.** The Bio Matric System has been started.....

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Irregularity is mention in order report regarding on account of the detailed report is attached. **Further more on financial irregularities FIR has been lodged against Ex-Medical Superintendent Dr. Rafique ul Hassan Khokhar the proceedings are in progress (Copy enclosed)**

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### **GHOST EMPLOYEES.**

By adopting the attendance on Bio Metric machines ghost and irregular employees are identified and have been terminated and reported to the Government.

### **REPAIR WORK**

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- 2...
- 3.
- 4...
- 5..
- 6..
- 7..
- 8..

### **SUPPLY OF MEDICINES TO END USERS (PATIENTS)**

The medicines are kept in Bulk Store at Jamshoro then on demand to Sub stores at Hyderabad / Jamshoro from their on demand are supplied to the Wards. As their (there) shortage of main (men) power and space therefore after the recruitment of the staff and extension of the wards the store will be decentralized at ward level. **All essential Medicines and allied items are available and required Drugs / Medicines are being provided to the patients,** the medical stores will be decentralized at ward level as soon SNE is sanctioned and staff is recruited. Twenty eight Pharmacists are posted at Liaquat Univerisy Hospital Hyderabad / Jamshoro the strict checked and balance of medicines.

The private medical store running in the premises of the hospital were given notice for evacuation they went in Honourable High Court as rejoinder / intervener in the above said petition the notice was withdrawn and petition disposed off (copy enclosed)

## **REGULARITY & PUNCTUALITY OF THE CONSULTANTS.**

It is submitted that Professor / Consultants are under administrative control of the Vice Chancellor LUMHS Jamshoro Hence it is requested that , for their attendance / presence, in OPD Ward record / duty roster muster rolls. The Vice Chancellor / Registrar LUMHS Jamshoro is requested for the purpose.

However consultants have been observed for their visits at OPD & Wards.

## **AMBULANCES.**

The ambulances which were out of orders have been repaired and total **17 Ambulances** at present are in working / running condition and all patients are shifted from City to Jamshoro free of Cost.

Moreover the Dead Bodies from this hospital are also disposed at their native place free of cost for deserving peoples.

Cleanliness of the hospital has been improved and monitored by Vigilance committee.

## **NEW ANGIOGRAPHY MACHINE.**

Scheme of New Angiography Machine has been approved and The shipment arrived from Japan at Karachi and is in process of Custom clearance and will be installed at Cardiac Surgery Department after completing custom clearance.

## **NEW SCHEMES.**

In order to fulfill the needs / requirements of the hospitals in terms of construction works, approval of SNE of required staff for newly established Wards a comprehensive report has been prepared in response to orders of the Honourable High Court of Sindh Circuit Court Hyderabad has been submitted to the Government for approval . (copy enclosed)

Standing program schemes are sanctioned SNE scheme for approval is being submitted to the Secretary Health.

The report regarding the M & R and on going / New Schemes is attached.”

7. Though, all the quarters concerned were always under legal obligations and duties to have done the said *actions* but from referral of report of the Medical Superintendent and Secretary, Health Department *even* shall make it clear that these actions were made subject to a **‘tapping by the Court’** which, we are sorry to say, is not worth appreciating because concept of *‘good governance’* cannot be achieved except by following the rules of justness, fairness, and openness in consonance with the command of the Constitution enshrined in different Articles including Articles 4 and 25. The *‘good governance’* is not limited to *Government* alone but shall bring every head of department or those entrusted with *public* money to use the same for benefit of *public at large*. The obligation to act *fairly* on part of the administrative authority has been evolved to ensure the *‘rule of law’* and to prevent failure of justice. If authorities start waiting one to awake them to perform their obligation it shall result nothing but collapsing the *system* as a whole. Reference can well be made to the case of *Pir Imran Sajid & Ors* (2015 SCMR 1257) wherein it is held that:

“12. It is now well laid down that the object of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but objective can be achieved by following the rules of justness, fairness, and openness in consonance with the command of the Constitution enshrined in different Articles including Articles 4 and 25. The obligation to act fairly on the part of the administrative authority has been evolved to ensure the rule of law and to prevent failure of the justice.”

8. We find no legal justification that how and why the repair of lifesaving machines/ equipments; availability of lifesaving drugs; assurance of hygienic condition in hospitals; non-release or delay of funds for seriously required schemes of *healthcare*; renovation and extension; repair of ambulance service; convenience of patients; ambulance service e.t.c. can be ignored or delayed despite allocation of considerable funds under claim of the Government to provide *healthcare* facility to every poor. Needless to add that majority of our total population lives below the poverty line hence they are left with no option but to rush to government hospitals and even can't complain when three patients are to adjust on a *single* bed or even in *Verandah(s)* of such hospitals. This *otherwise* is a pure negation to the guarantee, provided by Article 14 of the Constitution that:

**“Article 14. Inviolability of dignity of man, etc---(1) The dignity of man and, subject to law, the privacy of home, shall be inviolable.”**

We are conscious that *normally* the Courts should avoid interference in *independent* affairs of other ‘**Organs**’ but whenever a question of ‘**fundamental rights of community or general public**’ is involved, this Court would be legally justified in departing from *normal* procedure. Needless to add that *normal* procedure is meant for *normal* situations but in *abnormal* situation a departure is always permissible and justified.

A reference can be made to the case of Watan Party vs. Federation of Pakistan (PLD 2013 SC 167) it is held that:

“8. From the bare reading of the Constitution, particularly, Articles 29 and 38 of Chapter 2, Part-II, relating to principles of policy, it is evident that policies are to be made by the respective Federal and Provincial Governments and all decisions regarding their implementation are also to be

taken by them on the basis of determined priorities of different projects and availability of financial resources at their disposal. Obviously, this exercise cannot be ordinarily interfered with by this Court by invoking its jurisdiction under Article 184(3) of the Constitution, *unless shown to be malafide or in violation of the fundamental rights guaranteed under the Constitution to every citizen of this Country*, thereby affecting the interest of public at large.  
(emphasis supplied)

Therefore, a '**tapping to slept organs**' to do *only* what was always their obligations and duties cannot be avoided in name of procedural technicalities, if any, because procedural technicalities are always subordinate to substantial justice/fundamental rights of public at large hence cannot prevail over such rights. This Court, being custodian of '**fundamental rights**' is always competent to come forward for enforcement of such rights.

9. Now, reverting to short order through which petition was disposed of, we would respond in above back-ground as:

The instruction-1 is enforcement of interim order 22.9.2015 which, as detailed above, was never disputed rather was acknowledged, hence compliance thereof asked within a period of six months;

10. As regard the instruction-2, we would say that since it *categorically* came on record that patients come to these hospitals from all over the nearby Districts (13 districts) therefore, 17 ambulance (which too got repaired recently) are not sufficient to:

- i) *to shift patients;*
- ii) *to take dead bodies;*
- iii) *to stand well with emergency calls in such big city;*

Further, mere availability of 17 ambulances shall not serve purpose thereof unless the same is properly equipped with skilled staff so as to ensure shifting of 'patient' from called place to hospital because an ambulance is normally asked for in *emergency* situations i.e serious condition of patients. It should not be wishes or whims of the driver or *administrative* even to control the ambulances but same should be under direct reach/access of needy people. This object cannot never be achieved unless and until independent 'rescue centers' are established as is done in all over the world as well in province of Punjab as disclosed by Secretary health. If an *equipped ambulance* does not reach on a single call it shall not serve the purpose of its establishment hence it should be a toll-free number particularly when this service is aimed to facilitate poor *only*. The *rescue* centre is requirement for a particular hospital but *indeed* for all Headquarters or Taluka Hospitals *even* improvement whereof is under process, as was acknowledged by the Secretary, Health Department in his report, hence rescue centers have been ordered to be established in phases.

11. Regarding instruction-3, it is material to mention that all reports and responses from quarters concerned did *acknowledge* over-crowding and needs of extension, creation of new wards/units hence need of more beds was always a *common* cry. Besides, the Medical Superintendent LUMHS, was *fair* enough to say that two such *vital teaching* hospitals of Hyderabad Division have only 1400 beds which was/is not enough for such *city* alone but since these patients from all over nearby thirteen (13) Districts are referred here thereby compelling

adjustment of three patients onto a *single bed* therefore, *per M.S*, there is need of 3000 beds more in these *two* hospitals. Since, it was always the obligation of the government to ensure proper health care facility without hurting/harming the *dignity* of the man (patient) therefore at *least* such guarantee was/is required to be kept at *top* while numbering the preferential works in *health care* because the health department and administration of these hospitals never take a plea that any patient is not treated only because of over-crowding. This means that hospitals do provide treatment but at cost of *dignity* of the man which cannot be allowed to continue. Therefore, while keeping in mind the whole scenario couple with need of 3000 beds more in these two hospitals, it was instructed to government to *least* bring each hospital up-to 2000 beds capacity by utilizing abandoned area of hostel, old and dilapidated quarters or part of hospital area. Since, the Secretary Health Department already had involved the Commissioner and Deputy Commissioners to work as *helping hand* hence for better mechanism it was added in instruction-3 that Committee with co-ordination of hospital administration, including civil society, be framed so as to achieve maximum fruit.

12. Since, the Secretary Health had undertaken that there are schemes with regard to blood regional center hence considering population and over-crowding it was instructed to establish *four* regional blood centers so as to ease the grievance of people thereby eliminating or least lessening black-mailing from private blood banks.

13. As regard instruction Nos.5 and 6, it would be appropriate to first refer the definitions of '*healthcare establishment*' and '*healthcare services*' with reference to Sindh Healthcare Commission Act which are:

**“Section 2(xv) – “healthcare establishment”** means a hospital, diagnostic centre, medical clinics, nursing home, maternity home, dental clinic, homeopathic clinic, Tibb clinic, acupuncture, physiotherapy clinic, Pharmacy or any system of treatment’.

**“Section 2(xvi) – “healthcare services”** means services provided for diagnosis, treatment or care of person suffering from any physical or mental disease, injury or disability including procedures that are similar to forms of medical, dental or surgical care but are not provided in connection with a medical condition and includes any other service notified by Government”

The deliberate use of term '**diagnostic centre**' in definition of '*healthcare establishment*' and that of '*services provider for diagnosis*' in term of '**healthcare services**' should leave nothing ambiguous that '**blood-laboratories**' would include in such '*terms*' as the same do help in diagnosis process, therefore, the same are required to be registered within meaning of **Chapter-III** of the Act. The registration and issuance of license under this *Act* seems to be with no other object and purpose but to bring all under control of such Commission. Since, as per Secretary, Health Department the Commission has been established therefore, the registration of '**blood-laboratories**' were ordered to be registered and function *properly* under competent person which is duty of Commission as is insisted in Chapter-X of the Act by giving a complete *mechanism*. Besides such direction was given by this Court to Federal Government in criminal miscellaneous application No. 23 of 2009 vide order dated 26.08.2009.

14. Further, per Medical Superintendent only pathologist and Hematologist can *competently* run the affairs of the **'blood laboratories'** which do *fall* within meaning of *'healthcare establishment & healthcare services'* but a **'collection-point'** would not include in said definitions because at such place only 'collection of samples' is to be done while examination and testing is believed to be done at proper **'registered laboratory'**. Since, there can be no denial to the fact that any negligence in such *examination* and *testing* may cost serious prejudice to diagnosis process and *even* can off-track the 'Doctors' from proper treatment, therefore, registration thereof and function thereof under proper watch of the *competent* person was /is constant obligation and duty of the Commissioner. The Section 22 of the Act does permit the *inspection team* (competent person) to:

22(3). The inspection team may inspect any **apparatus, appliance, equipment, instrument, product, goods or item used or found** in, or any **practice or procedure** being carried out at the healthcare establishment.'

22(4). The inspection team may enquire if there has been any instance of **maladministration, malpractice or failure** in the provision of **healthcare services**

The improper running or functioning of the **'blood-laboratories'** shall include in **'maladministration'** and **'failure in provision of healthcare services'**. Since, the Act stood enforced and **'Commission'** has been established therefore, the instruction nos.5 and 6 were issued which *otherwise* is the obligation of the quarter concerned.

15. The instruction no.7 is *in fact* not an instruction or direction but refers to commitment/undertaking of the official concerned regarding assuring availability of medicines. The commitment being *directly* related to basic need of the healthcare hence was included and *specifically* referred.

16. As regard the instruction No.8, it would be *conducive* to first refer again the operative part of Progress Report, submitted by Medical Superintendent to Secretary, Health Department which reads as:

**SHORTAGE OF STAFF.**

There is **acute shortage of Staff, Medics and Para medics** due to **non approval of SNE of some new wards / units and on other hand many sanctioned Gazetted and Non Gazetted posts are lying vacant.** Non Gazetted staff would be recruited after lifting of the ban. Newly promoted Doctors B-18 & 19 have been posted at this hospital.

**It was also decided in high level meeting the SNE for creation of posts of Medical Officer (B-17) will be got approved** and recruited through Sindh public Service Commission as per rules. Such detailed report is submitted to the Government for further orders.

The facts of over-crowding and shortage of staff are not disputed rather acknowledged by quarter concerned. The recruitment process in such a *department* should not be delayed or avoided in names of *formalities* or *ban* even because if a single life is lost due to deficiency of staff it shall be a failure of the *department* as a whole which *otherwise* is aimed to save lives. A medicine or treatment cannot be possible in absence of proper *advice / treatment* which is to be done by qualified persons. Any negligence of healthcare staff may result in serious

consequences which shall occur if one is forced to do the works of *two* or *three* hence the department was always believed to expedite the matter of recruitment but facts were *otherwise*. Since, the summary of SNE was claimed to have been processed and pending with Government hence the Chief Secretary was asked to ensure approval thereof so as to ease the healthcare staff and patients. This needs not be added that instruction *however* was not be exploited to deviate from requirements of recruitment process.

17. As regard the instruction no.9, it is material to mention here that such proposal had come from the committee, constituted by the Commissioner, Hyderabad Division, which was consisting on Senior and skilled professors. Since the decentralization of the medical stores at department level can help the patients to have medicine much faster than it is *normally* obtained by running down to a single medical store of hospital. Since, the time also plays a vital and effective role in treatment process. This appears to be reason that such recommendation was not only considered by Secretary, Health Department but was also processed, as shall stand evident from re-referral of operative part of response of the Secretary, Health Department which reads as:

**B. Decentralization of Medical Stores at Departmental level.**

This is a Technical operational issue and the Health Department has constituted a Committee for **decentralization of Medical Stores at departmental level** under the chairman ship of Director General Health which will submit its feasibility report on 25.11.2016. (Annexure-I). The committee is consists of:-

- i. Medical Superintendent, Civil Hospital, Karachi.
- ii. Medical Superintendent, Chandka Medical University Hospital, Larkana.
- iii. Medical Superintendent, Sindh Medical University Hospital, Nawabshah (Shaheed Benazirabad).
- iv. Medical Superintendent Liaquat Medical University Hospital, Hyderabad.

Since a good cause and work should always be done within *least* practicable period therefore, processed initiatives were hammered in instruction No.9 of short order.

18. The instruction No.10 was *in fact* a hammer for filling up the vacant posts of Additional Secretary / Special Secretaries within shortest possible period. Since, importance of *Vertical Program* cannot be denied which since cannot function *properly* without Secretary thereof hence the department has been directed to create posts accordingly. It is *however*, needless to add that such instructions or hammering shall not be taken or interpreted to escape recruitment process, as per law, procedure and policy.

19. It would suffice for the instruction No.11, that it was in line of the requirement of the Act which *otherwise* has to be enforced and Commission has to work as per Act which do include registration of laboratories, as was discussed while responding to instruction Nos.5 and 6.

20. Regarding instruction No.12 and 13, it is material to mention that to provide the medicines is absolute responsibility of the government;

there is admission of considerable allocation for "*funds for purchase of medicines*" which *per* Health Department is provided to patients free of costs. If the medicines are to be provided *free* of costs by the *department* itself then how and why the '**private medical stores**' have been allowed and functioning inside the public sector hospitals ? Particularly when:

i) there is an admission of requirement of *space* for seriously required *extension* yet the premises of hospitals are being let out to private persons for running their own *private* businesses and allowing for raising structure;

ii) the hospital premises is *not* the property of Medical Superintendent or Civil Surgeon hence the Medical Superintendent or Civil Surgeon legally cannot let out such premises of hospital for running medical store even;

These seem to be reasons because of which the recommendations, submitted by Commissioner, Hyderabad with reference to Committee included as:

*"The Medical Superintendent may ensure that **no private medical store, blood bank and laboratory** runs within premises of hospital"*

Allowing a private medical store shall bring a serious question over the claim of free medicine to patients and *even* allocation of such funds. The deficiency of funds or medicines might be made a ground for *private medical* store owners but swallowing such reason shall expose the department and concerned to render explanation for not asking '*additional fund*' because it is not the owner of private medical store who is responsible to provide free medicines but the Government and Government *alone*. The Secretary has to ensure a proper mechanism to stand well with requirements of medicines while the Medical

Superintendent or Civil Surgeon(s) are to render proper account of medicines thereby explaining details of every single provided or purchased *tablet*.

The owners of the private medical store may also come with plea of running medical stores within premises with good intention of serving *patients*. This plea *alone* cannot be made an excuse to let an illegality continue or to fasten its roots.

Further, we are conscious that Secretary, Health Department may depart from procedure but in *abnormal* situation only and may permit one to use the space of the hospitals for *healthcare* services but such deviation should only be *interim* in nature because this shall not absolve the Secretary *even* from enforcement of his obligations and duties i.e to provide medicines and other healthcare services *free*. Needless to add that an *abnormality* must always be over-come as it always the responsibility and duty of *Authority* hence plea of *abnormality* shall not be an excuse to continue an *illegal* or *deviation* from procedure else this will prejudice the settled principle of law that **'things can only be done in the prescribed manner and not otherwise'**. Since, the Medical Superintendent was never competent to let the premises or part of premises of hospitals hence the agreement of lease/license, if any, were are illegal hence were declared so. These are the reasons for instructions nos.12 and 13.

21. As regard the instruction nos.15 and 16, it would suffice to say that premises of the hospital(s) since considerable encroachment possession over the property of the hospital came to surface. An

encroacher always continues with status of '**encroacher**' and mere plea of long possession is of no help to retain or continue such unauthorized possession. An encroachment possession over *public property* is always to be removed without much delay as was the reason for enactment of '**Sindh Public Property (Removal of Encroachment) Act**' thereby a speedy mechanism has been provided so as to removal encroachment from public property by Musafir khana or private persons. Further, NADRA or any other department cannot occupy / use the property of hospitals particularly when the hospital management crying for shortage of space and is processing for extension of Wards / Units and other healthcare services. The quarter concerned (hospital management) and even Local Administration are always under obligation to ensure *immediate* action against an encroachment or attempt in this regard. Since, those *prima facie* failed hence instruction nos.15 and 16 were issued thereby reminding the concerned of their obligations. The inclusion of *space* for attendants in future schemes was to facilitate those bringing their *patients* admittedly from far areas even from District Tharparkar.

22. Now, we would also examine the grievance of the present petitioner, for which it would suffice to refer that since the '**Commission**' has been established and is being made functional hence the petitioner can *competently* place his grievance, if any, before the Commission which is competent to entertain *complaints*) regarding any maladministration, malpractice or harassment.

23. These are the reasons for short order dated 22.9.2015.

While parting, we would highly appreciate the efforts and pain, taken by the officials, in pin-pointing the lacunas and irregularities, so also open statements offered by medical Superintendent and Secretary, Health Department towards their obligations and duties though after a *tap* by this Court.

**J U D G E**

**J U D G E**

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