

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD

CP No. D- 2940 of 2015

CP No. D- 1137 of 2015

DATED **ORDER WITH SIGNATURE OF JUDGE**

06.09.2017

Petitioner Nadir Ali in CP No. 1137 of 2015 is present along with his counsel Mr.Sarfraz Abbasi, Advocate,

Mr. Asif Hussain Chandio, Advocate for respondent No.2 and 3 in CP No. 1137 of 2015 is present.

Petitioner present in person in CP. no.D.1137/2015

Mr. Allah Bachayo Soomro, Addl.A.G.

Mr. Kamaluddin, Advocate for PMCH & L.U.M.H.S along with Prof. Dr. Azam Hussain Yousfani, V.C. PUMHS Nawab shah, Prof. Dr. Munir Ahmed Junejo, Pro-V.C. L.U.M.H.S, Jamshoro, Dr.Tufail Ahmed M.S. PMCH District Shaheed Benazirabad, Muhammad Saleem Soomro, Focal Person, Law Department, Dr. Abdul Waha, Medical Superintendent LUMH Hyderabad / Jamshoro, Dr. Fazlullah Pechuho, Secretary Health, Muhammad Ibrahim Memon, Deputy Secretary (Admn) Health Department, Government of Sindh and Dr. Akhlaque Khan D.G. Health Section Sindh,

In compliance of order, Secretary Health is present and submits his comments along with bundle of documents as well learned A.A.G. submits comments while Mr. Kamaluddin counsel for PMUH and LUMHS submits compliance report which all are taken on record. Further District & Sessions Judge, Mirpurkhas has submitted compliance report which is taken on record *too*.

2. On query about *earlier* instructions, the Secretary Health, at the outset contends that though Sindh Health Commission has been notified yet no rules have been framed; budget is allocated and they are searching for accommodation of office; Commissioner's offices are yet to be established in each division. Notifying Sindh Health Commission and allocation of *budget*

are *positive* steps not only achieving the object of such enactment but compliance of judgment of Nadir Ali case however, pleas of non-framing of rules and search for *Office(s)* do not seem *justified*. The Health Commission is *itself* a complete *enactment* hence non-framing of *rules* should not result in delaying *good cause* and *object* for which such enactment was made particularly when the *rules* always are subordinate to main *enactment*. To serve one does not require a *particular* office rather a *good soul* which we, *always* believe, exist in abundance. Therefore, it is hoped that *next* time the Authority shall come forward with a better statement rather a *satisfied* compliance of directives, issued in this regard including those mentioned in Nadir Ali case. He further contends that he will convey to the Chairman with regard to order of this Court and ensure that Health Care Commission would be functional in all senses within the spirit of Health Care Commission Act, 2013 preferable within three months.

3. With regard to medicine budget allocation to the hospitals, Secretary Health contends that 15% of the total budget is directly sent to the concerned hospitals with DDO powers to the concerned officer which (*allocation*) is on yearly basis, however, for additional allocation, the concerned officer can submit requisition. Since, such amount (15% allocation) is already allocated, therefore, same should reach *directly* in the account of the concerned hospital up-to ^{5th} of every quarter so as to avoid any *inconvenience* to health-care affairs which the *hospital* has to deal within such *allocated* /fixed amount. Accordingly, it is hereby directed that such amount shall be ensured to the institutions directly in their accounts without any formal requisition, however, as regard the additional amount, the formalities of *requisition*; consideration thereof; approval shall be followed. Needless to insist that a direct control or DDO powers shall never absolve the concerned from an *audit* rather it

should be mechanised in a manner that even every citizen can feel satisfied that every single penny served its purpose.

4. With regard to Central Latent Contract of Medicine, Secretary Health contends that they will form a new policy having option of revolving LC and suggested that competition would be divided on division level in whole Sindh and that cold storage would be erected in every division. We would not hesitate that the *higher-posts* are not meant to put *signatures* only rather are meant to mechanise things by forming policies. The suggestion of the Secretary to create an *atmosphere* of competition is worth appreciating and it is hoped that work shall be done in this regard which *hopefully* shall result in making a better policy which shall not only encourage well reputed companies to participate but shall also have medicines of well reputed companies at *reasonable* price. The companies are also expected to keep the concept of serving humanity at its place while competing. This policy shall be applied strictly from the budget 2017-2018. Authority shall ensure erection of cold storage buildings and its working, preferably within six months.

5. Secretary Health contends that since powers of disciplinary actions are not with Secretary thus due to political influence, hence he has no control over the Grade 1 to 15, employees, thus it needs modification in APT Rules like as in Education Department. For collecting *better* things it should never be seen as to from whom or where same is coming because it is not the man but the words (*actions*) which matter. Since, the modification in Rules for Education Department is acknowledged by Secretary as *good* hence, Chief Secretary Sindh shall ensure that such mechanism is provided within three months.

6. With regard to recruitment of sweepers it is already observed by this Court that the persons from minority, who are already professional in this field, shall be appointed.

7. Since, recruitment process is never meant to *merely* appoint persons but to select *the best* for which involvement of third party is being appreciated all over. While acknowledging this, the Secretary contended regarding appointment from Grade 6 to 15 that these appointments would be made through third party as such practice is carried out in Education Department through NTS / IBA Sukkur and no recruitment shall be made in deviation thereto. He added that even if there has been advertisement for fresh appointment same shall not be allowed to *prejudice* said process as fresh advertisement shall be made. The acknowledgment and stand is worth appreciating and it is hoped that there shall be no deviation thereto. Secretary Health shall ensure that appointments are made through NTS/IBA Sukkur/IBA Karachi.

8. As regard the *issue* of incapacity of hospitals to stand well with numbers of patients, it is contended by Secretary Health that the present hospitals were erected year back and in view of present census it needs up-gradation therefore they will form committees to examine the population as well OPDs' of Taluka Hospitals, District Hospitals, Rural Health Centres and Basis Health Centres and will increase the number of hospitals. The purpose of establishing *hospitals* was never meant to show *structure* but is to provide health-facility to people of such area therefore, there must always be a balance matching with increase of *masses* which cannot be achieved if the up-gradation is not made keeping in view *existing* population. Thus, this exercise same shall be materialized within three months, on emergency basis so as to process required up-gradation for approval.

9. With regard to public private partnership Act, it is contended that there is a concept of hospitals handing over to the Health Management Organizations (HMOS) registered with health department under public

private partnership Act 2010. The concept of involving HMOs is not *new* but object whereof is to ease the general public in availing *better* healthcare facility. It is *however* again insisted that whenever one has an option of selection then it should always choose the *best* among the *better* therefore, there must be a *criterion* which should not be limited to registration with health department *only*. Therefore, before handing over or selecting those HMOS besides considering required criterion it be also ensured that it (HMO) with *good* reputation of five years shall prevail and that their credentials would also be taken.

10. Secretary Health present contends that after taking over charge as Secretary health he has introduced Biometric system which, he acknowledged to be one of *directives* in case of Nadir Ali, and stated that this *process* resulted in finding out 1600 ghost/absentee employees who *either* are running their business outside the country or have joined other profession yet drawing salaries hence were burdening health-department causeless. Accordingly A.G. Sindh shall examine the list provided by Health Department that whether they are drawing salaries from the date of absence as marked by department or before it. If so, it be ensured that such amount is recovered from them and necessary action as per *service laws* be initiated against them. However it is contended that salaries of about 1400 employees have been stopped.

11. With regard to issue of handing over teaching hospitals, Secretary Health contends that the issue is between two departments; one relates to the Secretary Boards and Universities and other is Secretary Health. He *however* contended that there are difficulties with regard to functions of teaching hospitals therefore, it would be appropriate to constitute a committee for implementation of judgment of this Court as well

to examine the new proposed bill i.e. Teaching Health Management Board which (committee) may also examine the present situation of teaching hospitals and difficulties, faced by the patients and medical students, particularly because of management issue.

12. Accordingly Chief Secretary Sindh shall issue notification regarding committee, which would be comprised of Health Secretary, Secretary Boards and Universities, Secretary Law, Vice Chancellors of all Medical Universities, Mr. Asif Hyder Shah Secretary Forest, Chairman Health Care Commission, Dr Akhlaq Ahmed D.G. Health Sindh and Prof. Nadeem Qamar, Executive Director NICVD, which shall work-out *any* mechanism best suited to satisfy the direction-vi recorded in the case of Nadir Ali. The *first* object whereof is to make the *principal* (University) accountable for proper management of both principal (University) and its affiliated one (teaching hospital) without disturbing the service structure as well those *independent* affairs which *prima facie* does not prejudice meaning of management and control. The *other* object is to produce the best in this field by bringing the students with *direct* touch with highly trained and skilled professors of the Universities. The Committee *however* shall complete exercise within a period of two months as forming of committee is not meant to delay / frustrate the *judgment* of Nadir Ali case but a *better* and *complete* mechanism.

13. With regard to set a blaze of medicines, to the worth of 23 crores, available in the warehouse, situated within the compound of Jamshoro Hospital an inquiry was ordered by Secretary Health and as per inquiry this was not accidental. They also found expired medicines of about one *crore* in the adjoining rooms. The people *normally* are found standing in queue for hours together for a *single* medicine here medicines of *millions* of rupees *expired*. Such negligence is not *simple* because such *medicines* may have been used to cure / treat *poor*. When confronted, the

Secretary Health present contends that he will write to SSP Jamshoro for lodgement of case against the delinquent officers and after lodgement of FIR such investigation shall be handed over to Mr. Tanveer Ahmed Tunio, SSP who shall investigate the matter; as well he shall examine the inquiry report and he would be competent to seek assistance from D.G. Health as well Electrical Inspector General and other concerned quarters of the respective offices and they shall cooperate with him. Health secretary shall direct any responsible officer for FIR within seven days; IGP Sindh shall ensure that investigation is transferred to Mr. Tanveer Ahmed Tunio, SSP, without any delay. Needless that *investigation* should serve its purpose and every single *delinquent* regardless of his status should receive his due. This exercise shall be completed within three weeks, including investigation.

14. At this juncture, Secretary Health contends that they will start Maternity and Child Health Care Hospital Emergency Centres and ensure that in first phase such emergency centres would be started in 500 bedded hospitals of all over Sindh, with separate allocation of beds and required area. It is added that they will submit a proposal with regard to such facility at least in 300 bedded hospitals in future.

15. It is contended that Regional blood centres which are four in number would be handed over to private sectors as those centres are funded by German government by way of MOU. There is second phase of PC-1 in continuity of same MOU with German government whereby other centres as specified would also be erected. They shall also increase the human resources. It is further contended by Secretary Health that command and control would be handed over to HMD(s) having good reputation.

16. Further it is pointed out that hospitals are charging parking fee. Secretary Health contends that he has stopped such practice and certain directions have been issued. With regard to restaurants and medical stores established within the boundary of public sector hospitals, Secretary Health admits that this practice is illegal as the MS is not competent to enter into an agreement or to allow any private person to erect any building for private business. However, it contended that since issue of Medical stores pending before Apex Court in case of Amir Lutuf Ali Zardari where Sindh Government will pursue this aspect before the Honourable Apex Court by categorically mentioning that MS has / had no authority in this regard. At this juncture, it is pointed out that in Civil Hospital Hyderabad, illegal medical stores buildings were demolished but on account of pendency of case and stay order, at the direction of Advocate General Sindh they have raised new construction and they are running their private business.

17. Secretary Health contends that there is need of good condition of causalities like as in JPMC hence he will would pursue the issue and at initial stage such causality centres fully equipped with modern facilities would be established in tertiary hospitals. It is contended that there is issue of space and though quarters of employees are available and such space can be acquired by demolishing all those quarters but the inhabitants are not permitting to the Medical Superintendent concerned for dismantling the quarters. The employees can well be accommodated either by providing accommodation at *other* place but also by compensating in shape of increase of money towards *house-rent* etc but expansion of a *hospital* at other place is not advisable because *normally* all health-care facility should be under one *roof* or one compound. In short, convenience of a *group* even shall not prevail

over a general cause. Reference may be made to the case of Mst. Rukhsana Mehdi v. Waryam&Ors PLD 2006 SC 189 wherein it is held as:

“ ...The individual interests being subservient to the collective rights of the society are required to be adjusted accordingly. As set out in Chapter 2 (principles of Policy) of the Constitution, the State must strive to achieve the greatest happiness of the greatest number.”

Accordingly, Secretary Health would be competent to direct Medical Superintendents for cancellation of their allotment with specific date for eviction, which *however* should be reasonable so as to allow them to arrange accommodation, and thereafter that area shall be utilized by upgrading or establishing new emergency centres.

18. Secretary Health, contends that Department will launch service in phase at Tando Muhammad Khan, Badin and Thatta with the partnership of Aman Foundation and would be launched gradually in whole Sindh, however, he contends that there is issue of PEPRAs Rules, however, they will sort out this issue and will observe all legal formalities: will run the Ambulance Service within three months in these three districts. Needless to mention that the Rules are made to provide facilities to the public and those Rules would not come in the way while acting in good faith and awarding any contract to any reputable foundation to serve the common citizens.

19. With regard to insurance service as introduced by Federal Government directions were issued in Nadir Ali Case that “*Secretary Health Department shall also submit detailed report as to the clarity that they have taken ensure of poor citizens as provided by National Health Policy*

launched by the Federal Government and the funds are available in that pool”.

20. At this juncture D.G. Health submits that Federal Government has launched a policy of insurance in Tando Muhammad Khan. Accordingly Secretary Health shall pursue that policy and to provide mechanism in whole parts of Sindh. As well issue notice to D.A.G. and Secretary Health Federal at Islamabad for submission of policy and their criterion, along-with correspondence with Sindh Province. The order with regard to issuance of show-cause notice is hereby recalled.

20. Secretary Health contends that under Hospital Waste Management Rules, 2014 they will take action against laboratories and medical centres, which are in private sector as well public sector and will ensure that those Rules are complied with in its letter and spirit.

21. The attendance of officials is dispensed with as well notice to Secretary Law.

22. While adjourning, the acknowledgments, made by the Secretary Health, and details shown in complying with directives of this Court as well law, is appreciated again.

To come up on 11.10.2017 at 11:00 a.m.

Office shall repeat directions of para number 7 and 8 in order dated 24.08.2017 to all concerned as well Copy of this order be sent to all concerned for information and compliance through all modes.

JUDGE

JUDGE

