

**ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
AT KARACHI**

C. P. No. D-7368 of 2022

| Date | Order with signature of Judge |
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FRESH CASE.

1. For orders on Office Objection.
2. For orders on Misc. No.31198/2022.
3. For hearing of main case.

20.03.2023.

Mr. Kashif Hussain Shah, Advocate for the  
Petitioner.

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**YOUSUF ALI SAYEED, J.** - This Petition under Article 199 of the Constitution is directed primarily against the Secretary Health, Government of Sindh, arrayed as the Respondent No.3, with it being prayed by the Petitioner, namely Deepak Raj, with reference to the earlier proceedings in C. P. No. D-3044 of 2016 that this Court may be pleased *inter alia*:

- a) To direct the Respondent No.03 to comply the order dated 23.09.2021 passed by this esteemed court in letter and spirit along with order dated 10.10.2019 of this honorable court.
- b) To declare that the action of the respondents is illegal and unlawful regarding the non-compliance of order dated 23.09.2021 and order dated 10.10.2019.
- c) To direct the respondents to provide full medical treatment to the petitioner on government expenses and issue =50000/= per month compensation in shape of house expenses and educational expenses of minor till the complete recovery of petitioner.
- d) ...”

2. As it stands, the Order made on 10.10.2019 in that earlier Petition was of an interlocutory nature and merged into the final Order 23.09.2021 whereby the matter was disposed of in the following terms:

“The issue in this case is that Deepak received serious injuries at the hands of police, as such he required medical attention, which Government of Sindh undertook to provide him at their own expenses. However, Deepak was insisting that his medical treatment should be carried out abroad because according to him such treatment was not available in Pakistan, as such Special Medical Boards were setup two times in order to ascertain whether the applicant’s treatment could be carried out in Pakistan or not. The Special Medical Board headed by Professor Amjad Siraj Memon had opined that such treatment was available in Pakistan free of costs and could be carried out at Civil Hospital Karachi. In order to confirm the correct position, today we have called Professor Amjad Siraj Memon, Principal, Dow Medical College, Karachi and Dr. Masood Umer, Associate Professor Orthopedic & Head section of Orthopedic Department of Surgery, AKU Hospital, Karachi, who appeared in person before this Court. We categorically asked both Professor Amjad Siraj Memon and Dr. Masood Umer whether such treatment could be carried out in Pakistan to which they both replied that it could be carried out in Pakistan.

Under these circumstances, we are of the considered view that it is not necessary for Deepak to proceed abroad for treatment and as such he shall be treated whenever he so chooses by Experts in the relevant field either at Civil Hospital Karachi free of costs or at Agha Khan University Hospital Karachi at the cost of the Government of Sindh at his own choice, where the best medical team comprising of expert doctors in the relevant field shall be provided to him.

The Petition stands disposed of in the above terms along with pending applications.”

3. At the very outset, we had posed a query as to maintainability and called upon learned counsel to satisfy us as to how a separate Petition would lie for securing implementation of an Order made in an earlier proceeding. In response, reliance was placed on a judgment of the erstwhile High Court of West Pakistan in the case reported as Mehdi Hassan, Additional Secretary, Food and Forests Department, Government of West Pakistan and another versus Zulfiqar Ali, Conservator of Forests, Development Circle, Lahore PLD 1960 (W.P) Lahore 751, the operative part of which reads as under:

“We have already stated that the Court which issues a writ can be moved for its implementation, but such further proceedings would be proceedings in the very same petition for writ. If a Court has already issued a writ the Court can be approached for an interpretation of its order and for its enforcement, but these proceedings which may be called proceedings in execution or proceedings in implementation, are a continuation of the previous proceedings and if the application for a writ can be heard only by a Division Bench the application which is in continuation of these proceedings can also be heard only by a Division Bench. The orders passed in such proceedings are also orders passed in the exercise of writ jurisdiction. In fact while hearing application for implementation sometimes further or amended writs may, in view of the circumstances which arise afterwards or circumstances which may not have been brought to the notice of the Court when the writ was originally granted, have to be granted, and such writs could obviously be granted only by a Division Bench.”

4. Having considered the cited judgment, we are of the view that the same does not serve to advance the cause of the Petitioner. In fact, it reinforces the point that if there has been a violation or non-compliance of an order in a decided case, the appropriate course of action is for an application for Contempt to be filed in that very proceeding rather than implementation being sought through a fresh petition.

5. Indeed, the record reflects that such an Application under Article 204 read with the provisions of the Contempt of Court Ordinance, 2003 was in fact moved, but was found to be misconceived as it was preferred in relation to certain interlocutory Order dated 10.10.2019 and 11.10.2019, with the application thus being dismissed with the observation that there was no contempt in the matter as those Orders had merged in to the Order 23.09.2021.
  
6. Under the circumstances, the Petition is found to be misconceived and stands dismissed *in limine* along with the pending miscellaneous application.

JUDGE

CHIEF JUSTICE

MUBASHIR