

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before:

Justice Mrs. Kausar Sultana Hussain
Mr. Justice Khadim Hussain Soomro

C.P. No. D- 101 of 2024

[Mohsin Iqbal Memon & Ors. versus Province of Sindh & Ors.]

Petitioners : **Through M/s Riazat Ali Sahar and Asif Ali Talpur Advocates**

Respondents 1&2 : **Through Allah Bachayo Soomro Additional A.G**

Respondents 3to5 : **Through Mr. Mansoor A. Jamali advocate**

Dates of hearing : **14.03.2024**

Date of decision : **21.03.2024.**

J U D G M E N T

KAUSAR SULTANA HUSSAIN J. Through captioned petition petitioners, who are serving on various posts at Sindh Institute of Ophthalmology and Visual Sciences Hyderabad (**SIOVS**), have challenged the amendments in Rule 4(7) of the Sindh Institute of Ophthalmology and Visual Sciences Administrative Structure, Powers and Duties of Institute Officers Rules, 2021 [**Rules 2021**].

2. Learned counsel for the petitioners argued that SIOVS is a 50-bed eye hospital established in the year 1963 initially with the name of ‘Eye Hospital’, however later on it was renamed as SIOVS by the Act of parliament i.e Sindh Institute of Ophthalmology and Visual Sciences Act 2013 (**Act 2013**) and accordingly Rules 2021 were framed thereunder; that since the SIOVS is the only free of cost Institute for eye diseases in entire province of Sindh, as such the petitioners intend to continue with such trend forever in the public interest; that SIOVs is functioning under the control of Board, however for past two years a dispute arose concerning appointment of Executive Director of SIOVS which resulted in various litigation and in consequence whereof currently the SIOVS is being run under the supervision of acting Executive Director, however the respondent No.2 with malafide intention and ulterior motives just, without adhering the proper mandatory procedure as provided by the Act 2013 and Rules 2021 issued impugned Notification dated 07.12.2023 whereby certain amendments have been made in Rule 4(7) of Rules 2021 in order to appoint their blue eyed Executive Director. Learned counsel submits that since the said amendments have been made without following mandatory procedure, as the same are not sustainable under the law and liable to be set aside. He prayed for allowing this petition.

3. Learned counsel for respondents No.3 to 5 has filed comments whereby he also supported the stance of petitioners by stating in para-16 of the comments that the Notification dated 07.12.2023 issued by the Government of Sindh Health Department did not abide by the Rules and Act of SIOVS, as the members of Board of Directors were only informed that certain amendments will be carried out but no such Agenda was placed in 13th meeting of the Board of Directors.

4. Whereas learned Additional A.G Sindh argued that in the year 2019, certain amendments were made in the Act 2013 whereby the composition of Board of Directors was slightly changed; that according to Section 24 of the Act 2013 (amended), subject to the approval of the Government the Board may by Notification in official gazette make rules and regulations not inconsistent with the provision of the Act; that after due approval of the Government in its Cabinet meeting held on 02.08.2023 and with the consent of Board of Directors in its 13th meeting certain amendments have been made in Rule 4(7) of Rules, 2021 through Notification dated 07.12.2023 as such there is no illegality in the impugned Notification; therefore, instant petition having no merit is liable to be dismissed.

5. We have heard the learned counsel for the petitioner as well as learned Additional A.G Sindh and have also perused the material available on record.

6. Perusal of the record shows that SIOVS has been established under the Act 2013 passed by the Provincial Assembly on 13th March 2013. Sections 8 whereof relates to the composition of Board of Directors of SIOVS, whereas Section 9 of the said Act confers the powers and functions on the Board of Directors constituted under Section 8 *ibid*; such powers include framing of Rules and Regulations for the proper and efficient functioning of SIOVS. By Section 7 of the Act 2013, the Governor of Sindh was made Patron of the SIOVS, while by means of Section 11, the Director was made head of the SIOVS with certain administrative and academic powers.

7. In the year 2019, various amendments were made in the Act 2013, whereby along with other amendments, the word Governor was substituted with the word '*Chief Minister*', the word Director was substituted with the word '*Executive Director*' and the composition of Board of Director was also amended. Section 24 of the Act 2013 (amended) empowers the Board of Directors to make rules and regulations that are not inconsistent with the provisions of the Act *ibid* for carrying out the purpose of said Act but are subject to the approval of the Government. Accordingly, in the exercise of the powers and with the approval of Government Rules 2021 were framed. Per Rule 4 of the Rules 2021, the Executive Director has been made head of SIOVS with certain powers, including administrative and academic powers. Rule 7 of the Rules confers powers on the Board of Directors to appoint an Executive Director of SIOVS from amongst Senior Professors of SIOVS having at least 10 years' experience in the field of

Ophthalmology with sufficient administrative experience. For the sake of better understanding, Rule 7 of the Rules *ibid* is reproduced below:

(7) *The Executive Director shall be appointed by the Board under section 11 of the Act, on following terms and conditions:-*

- (i) *He shall be appointed by the Board from amongst the Senior Professors of Institute having at least 10 years' experience in the field of Ophthalmology with sufficient administrative experience;*
- (ii) *His appointment shall be approved as recommended by the Board and notified by the Health Department, Government of Sindh;*
- (iii) *He shall enjoy the perks and privileges of BPS-22 and shall draw salary of MP-1 on his extraordinary achievements in the field of Ophthalmology;*
- (iv) *That the Board shall recommend the re-appointment of eminently qualified person having experience in field of ophthalmology and has contributed to the Institute to the greater extent during the period, he has remained the Executive Director, for a term of four (4) years with the perks and privileges as may be determined by the Board.*

8. However, vide impugned Notification dated 07.12.2023 certain amendments have been made in the Rule 4(7) of the Rules *ibid*. For the sake of clarity, the said amendments are reproduced herein below;-

(7) *The Executive Director shall be appointed by the Board under section 11 of the Act, on following terms and conditions:-*

- (i) *He/She shall be appointed by the Government on the recommendations of Board who shall be a Professor of Ophthalmology, on open merit basis, for a period of four years, who possess domicile of Sindh Province, having an experience of minimum seven years in the management and/or administrative side in any public or private Medical institute.*
- (ii) *he shall hold the qualification of FCPS, FRCS, MS or equivalent from a University/Institute recognized by HEC or College of Physicians and Surgeons of Pakistan.*
- (iii) *His/Her pay scale shall be equivalent to BPS-21 and all applicable perks and privileges shall be admissible to the post as recommended by the Board.*
- (iv) *The Board may recommend for re-appointment of the Executive Director for maximum period of further tenure of four years subject to condition that his age shall not exceed sixty one (61) of his years at the time of re-appointment.*

9. The anxiety of the petitioners is that the authority vests upon the Board of Directors SIOVS to make any amendment in the Rules and Regulations, and the Sindh Government lacks such authority. To appreciate the contention, we have reviewed the provisions of the Act 2013 (amended) and Rules framed thereunder. Section 9(2) of the Act *ibid* confers the authority on the Board of Directors,

constituted under Section 8 of the said Act, to frame/make Rules and Regulations for proper and efficient functioning of the SIOVS and publish the same in the official gazette, however, subject to the approval of the Government of Sindh as provided under Section 24 of the Act *ibid*.

10. Perusal of impugned Notification reflects that though it has been mentioned therein that same is being issued by the Board of Directors after approval of the Government, however, same has been signed by the Secretary Health Department, though as per requirement of the Act *ibid* same was to be signed and issued by the Executive Director SIOVS in the capacity of Secretary of Board of Directors of SIOVS. Irrespectively, respondent No. 2/Secretary Health Department Government of Sindh stated in his comments dated 20.02.2024 that impugned Notification has been issued by him in his capacity as Chairperson of the Board of Directors with the consent of members of the Board of Directors in 13th meeting and after getting approval from the Government/Sindh Cabinet; however, the respondents No.3 to 5, who have been arrayed in their capacity as members of the Board of Directors, through their comments have specifically denied having approved any such Agenda.

11. We have also gone through the minutes of 11th, 12th and 13th meeting of the Board of Directors SIOVS (*available at page-31 to 65 of the Court file*) and found that there is no Agenda Item as to the amendment in Rules nor there is any discussion in this regard. Further, the copy of the Summary for the Chief Minister (*available on page 129 of the Court file*) for impugned amendments was also moved by the Secretary of Health Department on his own, as there is no mention in said Summary that whether the impugned amendments are being placed before the Cabinet/Government after approval by the members of Board of Directors SIOVS or otherwise. In our view, amendment, if any, in Rules and Regulations is the prerogative of the Board of Directors SIOVS, and after the decision of the Board of Directors, the same is to be placed before the Cabinet for final approval and subsequently publication in the official gazette.

12. In view of the above, the impugned Notification dated 07.12.2023, having been issued without the consent of the Board of Directors, as required under the law, is set aside. However, it may be clarified that observations made hereinabove place no restriction on the Board of Directors SIOVS and Government of Sindh from making amendments to the Rules as required by the law.

13. Instant petition stands disposed of in the above terms along with listed applications.

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