

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

1. C.P. No.D-2259 of 2017.

2. C.P. No.D-2509 of 2017.

DATE

ORDER WITH SIGNATURE OF JUDGE

16.08.2017.

Mr. Hameedullah Dahri, Advocate for petitioner in C.P. No.D-2509 of 2017.

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh alongwith Jamaluddin Jalalani Additional Secretary Health, Dr. Muhammad Akhlaq Khan D.G. Health Sindh and Dr. Anwar Ali Palari, DHO Mirpurkhas.

=

Learned AAG files report in shape of book on behalf of Secretary Health Department, taken on record.

2. Counsel for petitioner has referred paragraph-9 of the petition, which is that;

“That, the respondent No.2 is the incharge and direct custodian of all the affairs of Civil Hospital, Mirpurkhas but the below detailed facts and figures shall speak for itself that how the respondent No.1 and 2 have been managing and maintaining the affair(s) of the Civil Hospital, Mirpurkhas i.e:

Causality department	Is housed in a portion constructed in year 1938 which has never been improved / extended despite abnormal increase in population in the surrounding area.
Radiologist.	Post is vacant since last 12 years
Dental Department	Not functioning properly
Pediatric Department	Functioning in an old building, constructed in 1962 though new building with three floor constructed for such purpose in year 2015.
Surgical Department	No surgeon
Medical Department	No physician and no ventilator
Orthopedic Department	Not available
Urologist Department	Not available
Cardiac Ward	Not working properly even Echo Cardiography & EET machines are

	not working since considerable period which otherwise are essential for immediate examination and treatment of heart patient(s).
Skin specialist	Vacant
Chest Specialist	Vacant
Gynaecologist department	Specialist not available / vacant
Pathological laboratory	Blood bank equipment donated by District Government 2013 as well Germany Govt.—Not workable; Thalassaemia Centre—All equipments available but not functioning.
ENT Ward	Not available
Eye Ward	Not available
OPD	Not available
Physiotherapist	Not available / existing
Radiologist	Digital X-ray—Not available CT Scan—Not available MIR—Not available.

3. When confronted, the D.G. Health as well Additional Secretary Health and In-charge Civil Surgeon, present in Court, are not in a position to dispute majority of the facts as referred to above. The picture, so appearing from above facts, is not only alarming but *prima facie* a denial to the guarantee, provided by the Article 9 of the Constitution. “**Life**” shall never complete nor satisfy its meaning if one is deprived of *health* or is compelled to live an *ill-life*. The present Officials, while not disputing the above picture, assure that non-functional or improperly functional departments, machines etc shall be made functional without any delay till opening of **new building** and all possible efforts shall be taken in this regard.

4. With regard to separate department of Orthopedics, Urology and functions of departments in newly constructed building as well Anesthesia, Psychology and Thalassaemia as well non-availability of Specialists, Additional Secretary Health referred page-3 of the report / book and contends that Peeds Ward having separate building is complete and minor work is remaining and that possession of the same would be handed over to Health Department within 15 days. It is, *however*, admitted that surgical and other

equipment's are already lying in the in the new building for peeds ward. None can deny that purpose of purchase of every single surgical or other medical equipment is meant to be kept / handled *properly* hence it is *quite* strange that under whose control the said surgical and other equipments are lying and who would be responsible if those equipments / machines, purchased some year back, get destroyed / damaged or expired. The present *officials* have also failed to justify such dumping of valuable articles in an *under-construction* building. Accordingly, the present officials shall ensure proper management of *these* articles till proper handing over of the *building* and available equipment's to proper authority.

5. With regard to handing over of newly constructed building, we would add that earlier there was an *undertaking* by Project Director that possession of the said building would be handed over in March, 2017, but the same has not been handed over and matter was referred to Anti-Corruption Establishment. The delay in completion of a *project* always causes affects upon *cost* thereof which *directly* or *indirectly* is shouldered by public-money therefore, such delay should always be avoided. If a *project* is meant to ease '**life**' of an ordinary citizen the officials should always be on their *toes* to complete the same however present *facts* are otherwise as no one has taken any heed to such hospital which has huge catchment area particularly when the D.G. Health confirms that apart from territorial jurisdiction of Mirpurkhas people of lower parts of Sanghar, Badin and Tando Allahyar also come for treatment in Civil Hospital Mirpurkhas. Worth to refer here that Incharge Civil Surgeon present contends that in routine about 3500 are OPD patients on daily basis. Hence in continuity of our earlier order, wherby chairman Anti corruption was directed to probe in the matter, such report is not filed, accordingly issue show cause notice to chairman anticorruption further we, we appoint Mr. Faisal Bashir Memon, Director Enquiries, Anti-Corruption Establishment, Karachi to probe into the affairs of the Civil Hospital, Mirpurkhas as well newly constructed buildings / departments; irregularities with regard to affairs of Civil Hospital as well construction of new building

during last three years and in case of any malfeasance / illegality he shall proceed against the delinquent persons in accordance with law. Mr. Faisal Bashir Memon shall complete this exercise within four weeks and shall submit report to the concerned Court / Authority for further proceeding as well intimation to this Court through Additional Registrar of this Court. All concerned authorities shall cooperate said officer in case of failure contempt proceedings can be initiated against them.

6. The learned counsel for petitioner has also referred order placed in C.P. No.D-2259 of 2017, passed in C.P. No.D-1808 of 2016, wherein Secretary Health was directed that no person shall be appointed on OPS basis. On query, Dr. Jamaluddin Jalalani, Additional Secretary Health referred page-39 of the said book while stating that post of Civil Surgeon, Civil Hospital Mirpurkhas should be of Grade-20 and has referred paragraph-4 of page-39, which is that;

*“4. Considering the above position the Services General Administration & Coordination Department is requested that the additional charge of the post of Civil Surgeon (BS-20) Civil Hospital Mirpurkhas may be assigned to Dr. Hemraj Rathi, Director (BS-20) Health Services Mirpurkhas Division Mirpurkhas in addition to his own assignments till the time regular doctors be available after promotion.”*

7. It is further contended that Dr. Hemraj Rathi can be assigned the responsibilities of Incharge / Principal of Parameter Medical and Health Technician School and Public Health School, which are of BS-20 posts and at present one Dr. Aftab of BS-18 is working as Incharge of the said schools on OPS basis. He has Additional charge of Grade-20 of Public Health School, whereas in Parameter Medical and Health Technician School none is appointed; only DDO powers are vested with Dr. Muhammad Anwar Palari, who is DHO Health. The admission of *Additional Secretary*, Health regarding requirement of one to possess BS-20 for holding such posts and initiation to stand well with such requirement is worth appreciating but again we would insist that it shall never be the “**words**” alone which shall serve the purpose but the ‘**actions**’. Since, the scope of OPS by now stood defined hence needs

not be detailed again. The '**competent authority**' can always exercise *discretion* in appointing one against a post but such *decision* should always stand well with object of term *discretion* which is to **choose the best out of available lawful choices**'. Accordingly, the Chief Secretary, Sindh shall ensure that posts of Civil Surgeon as well Principal of aforementioned Schools / institution are filled within ten (10) days keeping in view above *principles* with compliance report.

8. With regard to appointment of DHO Health, the Additional Secretary Health has referred page-6 of the book, which shows that competent authority has approved the posts of District Health Officers, Directors at regional level and Medical Superintendents of major hospitals floating in BS-19/20. As per approval only top 200 doctors in seniority list of BS-19 would be considered against such floating posts. However, cognizance would be taken to appoint such doctors preferably having management experience and relevant degrees in health administration and management from recognized and reputed universities / institutes. He further contends that they are considering to create cadre posts for Management separately having required skill of management in view of PMDC guideline likewise in other Provinces the persons who are having degrees of administration are given preference to give responsibilities on administration side. The *proposal* is worth appreciating and it is expected that same shall not remain the **words** alone but shall be shown to have been enforced because no *institution* could run unless the same is 'managed / controlled' by skilled person properly. We *however* reserve our findings on legal authenticity of the said Notification for the time being since earlier order is in field, therefore, DHO Health shall be appointed having Grade-20 within ten days and report compliance.

9. With regard to shortage of Specialist, Chief Secretary and secretary health shall ensure to fill all the vacancies within fifteen days whereas Medical officers and Women medical officer shall be posted within one month.

10. With regard to budget D.G. Health present contends that budget depends upon the allocation and since the budget of Civil Hospital Mirpurkhas is Rs.4,14,00000/- per annum. Such *allocation* is apparently not sufficient to cope-up the *health* issues of Mirpurkhas Divisional hospital nor can be said to provide complete health facilities to the common man which *otherwise* should be an *object* while allocating an amount. Accordingly, Secretary Health Sindh shall constitute a Committee to visit the Civil Hospital Mirpurkhas which shall consider the population of the entire area; importance of the hospital situated in a divisional headquarter, catchment area and then shall recommend the *proper* budget as well float the summary to Finance Department, as per procedure, as well up gradation of the Hospital having all facilities for treatment of general diseases including Neuro, Heart and other major diseases and they also shall submit summary. It is expected that keeping in view the complete and full meaning of *life* all these facilities will be provided within a specific period and all necessary steps will be taken by the Secretary, Health Department Sindh. This exercise shall be completed within two months.

11. With regard to waste of Civil Hospital Mirpurkhas Additional Secretary Health contends that in pursuance of directions of Apex Court Health Department is working under the direction of Water Commission and they will complete all requisite formalities within a shortest possible time. He also contends that no Auto Claves and Incinerator Machines are available in any district hospital including Civil Hospital Mirpurkhas. The Officials should develop a courage to make proper requirement / request to quarter concerned which *too* in time and *writing* because such *statements* on query in Court may be worth appreciating but cannot be equated to the courage, made in time by proper person to proper authority for a *genuine* grievance. However, since importance of proper disposal of *waste* of Hospital cannot be denied as *improper* disposal may cause serious prejudice rather *harm* to life, therefore, we direct Health Department to make all arrangements with regard to drainage

as well waste disposal of old Civil Hospital building as well newly constructed building on priority basis preferably within a period of 06 months.

To come up on 28.08.2017 for appearance of Project Director Noor Muhammad Sammo with regard to handing over of possession of the newly constructed building of Civil Hospital Mirpurkhas as well he shall ensure that possession of the same is handed over to the Health Department within one month and same must be functional within three months. Attendance of Additional Secretary Health, D.G. Health is dispensed with, however, Civil Surgeon and DHO shall be in attendance.

Office shall communicate this order to Chief Secretary Sindh, Secretary Health, Project Director and D.G. Health, Chairman Anti-corruption, as well Mr. Faisal Bashir Memon, Director Enquiries, Anti-Corruption Establishment, Karachi for compliance.

JUDGE

JUDGE

S