

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**C.P No. D-4498 of 2019**

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DATE: ORDER WITH SIGNATURE(S) OF JUDGE(S).

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**For Direction.**

1. For hearing of CMA No. 29915/2019
2. For hearing of CMA No. 29916/2019

**22.01.2020**

M/s. Khalid Javed Khan, Umaimah Anwar Khan and Maaz Saqib, Advocates for the Petitioner.

Mr. Kafeel Ahmed Abbasi, D.A.G

Mr. Asif Sohail, Director (Litigation), Ministry of National Health Services, Regulations & Coordination, Govt. of Pakistan.

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This petition was disposed of vide order dated 18.09.2019. The relevant Para-4 of the order is reproduced as under:-

“4. As a result of above discussion, the Secretary, Ministry of National Health Services, Regulations and Coordination as well as Secretary, Federal Cabinet both are directed to expedite the process and submit the minutes of the DPC before the Federal Cabinet for their consideration and approval in the next Cabinet meeting. The petition is disposed of accordingly alongwith pending application.”

Learned counsel for the Petitioner points out that specific directions were given for placing the minutes of the Drug Price Committee (“DPC”) before the Federal Cabinet for its consideration and approval, and due to non-compliance the petitioner has filed a contempt application (CMA No. 29916 of 2019) under Article 204 of Constitution of Pakistan, 1973 read with the enabling provisions of the contempt of court for trying the alleged contemnor for non-implementing the order alongwith stay application (CMA No. 29915 of 2019) to restrain the respondents from taking any adverse action against the petitioner, which, as explained, essentially seeks that the petitioner may be allowed to sell its drugs in accordance with the price fixation of the DPC. Mr. Asif Sohail Director (Litigation), Ministry of Health has submitted a copy of a unsigned summary which was

apparently placed before the Cabinet for approval, Para-6 of which reflects that a proposal was placed before the Federal Cabinet for approval of reduction in MRP of 89 drugs on generic basis and further recommendation was made for constituting a sub-committee under the chair of Federal Minister for Commerce to examine the fixation of MRP of 37 new drugs and increase in MRPs of 85 drugs. Mr. Asif Sohail, Director (Litigation) has pointed out that upon considering the summary, the Cabinet directed that the subject of the fixation of MRPs of 37 new drugs and increase in MRPs of 85 drugs be placed before the Task Force on Health Sector and thereafter, the recommendation of the Task Force be brought to the Cabinet for approval.

Learned counsel for the petitioner has argued that there is no role of the Task Force indeed the sub-committee, but it is the responsibility of the Federal Cabinet to consider the prices fixed by the DPC, however in this case, in order to unwarrantedly prolong the process of approval without any reason, the matter has been sent to the Task Force.

Mr. Asif Director has also placed the Notification dated 19.09.2018 before us whereby the Task Force was constituted in pursuance of the decision of the Federal Cabinet. Para-A of Notification pertains to the health component and Para-B is germane to a Nursing. Thereafter, the Terms of Reference of the Task Force are mentioned. Though there is no specific task mentioned in the Notification which has been assigned to the Task Force with regard to the fixation of MRPs of drugs or the reduction thereof, Mr. Asif Director (Litigation) has submitted that the fixation or reduction of prices may nonetheless be considered by the Task Force under the Terms of Reference. Conversely, learned counsel for the petitioner also referred to Drugs Policy 2018 notified on 12.06.2018, Clause 9 of the policy pertinent to hardship cases whereas sub-clause (5) is reproduced as under:-

“(5) All new hardship applications filed after issuance of this Policy shall be decided within 180 days of submission of the hardship case on the specified form and complete in all respect with the DRAP (Division of Costing and Pricing) in manner as specified in this Policy. In case, no response is sent to the applicant of hardship case under provisions of this para within 180 days, the applicant may increase its MRP upto maximum of 10% on the existing approved MRP and inform the DRAP (Division of Costing and Pricing) with evidence that a complete case was submitted with the DRAP (Division of Costing and Pricing) provided that the applicant must have sent a reminder to DRAP 30 days before the expiry of the 180 days period. Further provided that if the matter has been referred by DRAP to the Federal Government within the aforesaid 180 days and the notification is not issued within a further period of 90 days (i.e within a period of 270 days from the date of the submission of the hardship application) then the applicant may increase its MRP upto the level recommended by the DPC of DRAP to the Federal Government. For this purpose, DRAP will share the minutes of the relevant meeting with the applicant upon the expiry of 180 days after the submission of the hardship application. No applicant shall exercise this option more than once in 3 years”

Learned counsel further argued that the time line mentioned in sub-clause (5) with regard to hardship cases has already lapsed, despite which no approval has been accorded by the Federal Cabinet on the prices fixed by the DPC and in order to linger on the matter, the issue has been referred to the Task Force, which is in violation of the Drug Policy, 2018 and the Act, as the Task Force has no role to play with regard to the approval of prices.

When confronted with sub-clause (5) to the Drug Policy, 2018, the learned D.A.G and Mr. Sohail Asif, Director (Litigation) admitted that the time mentioned in the sub-clause (5) for consideration of the subject of price fixation in the matter at hand has already lapsed and the important feature of sub-clause (5) is that if the matter has been referred by DRAP to the Federal Government within the aforesaid 180 days and the notification is not issued within a further period of 90 days (i.e within a period of 270 days from the date of the submission of the hardship application) then the applicant may increase its MRP upto the level recommended by the DPC of DRAP to the Federal Government, provided that no applicant shall exercise this option more

than once in 3 years. Under the circumstances, it is clear that the directions of this court has not been complied with, therefore the alleged contemnors are directed to file their comments and the notices shall be sent to them by the office. Since learned counsel has also filed CMA No. 29915 of 2019, till the next date no coercive action shall be taken against the petitioner if they sell their drugs according to the prices recommended by the DPC. By consent adjourned to 19.02.2020.

**JUDGE**

**JUDGE**

*TariqAli/PA*