

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-3463 of 2019
& C.P No.D-5143 of 2020

Date Order with signature of Judge

**PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR &
MR. JUSTICE ADNAN-UL-KARIM MEMON**

1. For order as to non-prosecution of CMA No.35419/2019.
2. For hearing of CMA No.20434/2021.
3. For hearing of CMA No.27756/2019.
4. For hearing of main case.

20.09.2021

Malik NaeemIqbal and Mr. Faizan Hussain Memon, advocates for petitioners.

Mian Raza Rabbani, advocate for respondents 4 & 8.

Mr. Zeeshan Abdullah, advocate for respondent No.4.

Mr. Mehmood-ul-Hassan, advocate for respondent No.10.

Mr. Muhammad Nishat Warsi, DAG.

Mr. Ali Asadullah Bullo, advocate for respondent No.4 in C.P No.D-5143 of 2020.

Mr. Ali Safdar Dejar, Assistant Advocate General alongwith Mr. Mengraj Mal, R.L (Legal-1), Government of Sindh.

Dr. Nadeem Qamar, Executive Director NICVD.

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SALAHUDDIN PANHWAR, J. Mr. Ayan Mustafa Memon, advocate files Vakalatnama on behalf of respondent No.4 in CP No.D-3463 of 2019, which is taken on record.

2. At the bar, learned counsel for NICVD in CP No.D-3463 of 2019 contends that respondent No.6 is not affiliated with NICVD as his contract expired on 8th May, 2021.

3. To give a back ground of today's proceedings, it is conducive to refer the order, passed on 06.09.2021 which speaks that:-

“Instant matter pertains to National Institute of Cardio Vascular Diseases Hospital (NICVD); case of the petitioners is that respondents No.10 is holding seat of Management Consultant of NICVD hospital, having no qualification. Though petitioners were employed in NICVD but after filing of this petition, petitioner No.1 has been fired. It has been further argued that NICVD is

being funded by Government of Sindh; whereas claim of the NICVD is that this is autonomous body; having its own resources and is regulated through the independent Board. At this juncture, picture is not clear with regard to status of NICVD as to whether that is hospital of public sector or private sector; whether that hospital is running their affairs on their own sources or is completely funded by the Province of Sindh?. It has also been surfaced that doctors, appointed on different posts, are receiving huge salaries, they have been allowed to practice in the NICVD privately and yet it is to be examined whether they are also allowed to practice out of the NICVD or otherwise?. These questions require an answers, particularly when the claim of NICVD is that of providing service free of costs.

2. Accordingly, Executive Director NICVD (respondent No.4) shall also appear in person and shall submit report whether all the doctors including him are receiving non-practicing allowance or not? This report shall be submitted with all documentary proof showing therein the salaries of all the doctors and managerial officers working in NICVD in all over Sindh.

3. At this juncture, respondent No.4 contends that petition has become infructuous as respondent No.10 is no more in service. Counsel for the respondent No.4 is at liberty to file such statement. Finance Secretary shall also file complete breakup of five years with regard to funds received by the NICVD.”

Pursuance to that compliance report is submitted, being conducive, same is reproduced herewith:-

“STATEMENT IN COMPLAINE OF THIS HONORABLE
COURTS ORDER DATED 6.9.2021 BY THE
RESPONDENT NO.4”

1. This Statement is being submitted in compliance of this Honorable Courts order dated 6.9.2021 without prejudice to the contention that the instant Petition impugns the appointment of Respondent No.10 who is an ex-employee of NICVD. It is submitted that the Respondent No.10's contract expired on May 9th 2021 as such the instant Petition has become infructuous. It is moreover most respectfully and humbly submitted that the information sought may not be germane to the controversy at hand therefore may be beyond the scope of the instant Petition. The undersigned respectfully submits the required information for this Honorable Court's perusal.

2. It is submitted that NICVD was initially created and governed by the National Institute of Cardiovascular Diseases (Administration) Ordinance 1979. After the

passing of the 18th Amendment, healthcare came under the realm of a provincial subject. Thus, the National Institute of Cardiovascular Diseases (Sindh Administration) Act 2015 was enacted.

3. Under both Acts, NICVD is and has always been an autonomous body which is governed by its own Act, Rules and Regulations and the competent authority is the Governing Body. As per Section 7 of the National Institute of Cardiovascular Diseases (Sindh Administration) Act 2015, The general direction and administration of the affairs of the Institute shall vest in the Governing Body which shall consist of -

- (i) Chief Minister, Sindh, Chairman
- (ii) Minister Health, Sindh, Vice Chairman,
- (iii) Secretary, Health Department, Member
- (iv) Secretary, Finance Department, Member
- (v) Executive Director to be appointed by Government, Member
- (vi) A nominee of Sindh Chamber of Commerce and Industry, Member.
- (vii) Two persons to be nominated by Government of whom one shall be a person possessing medical qualifications, Member
- (viii) A nominee of the Accountant General, Sindh Member
- (ix) An elected Mayor of the Karachi Metropolitan Corporation, Member.
- (x) Two members of the Provincial Assembly of Sindh, Members.

Member nominated by the Speaker.Members.

The Executive Director shall also act as Secretary of the Governing Body.

4. The powers of the Governing Body are listed out under Section 8 of the National Institute of Cardiovascular Diseases (Sindh Administration) Act 2015. Section 7 is described as follows:-

8. (1) The Governing Body may -

(a) frame bye-laws to govern the working of the Institute and issue instructions to any committee or sub-committee of the Institute; and

(b)generally supervise the administration and management of the affairs of the Institute and do all such acts and take all such steps as are necessary **for the promotion and fulfillment of the objects and purposes of the Institute.**

(2) In discharging of its functions, the Governing Body shall be guided on questions of policy by the instructions, if any, given to it from time to time by Government **which shall be the sole judge as to whether a question is a question of policy, and the Governing Body shall be bound to carry out such directions.**

5. It is thus clear from the above paragraphs that NICVD is an autonomous institute which is governed by the Governing Body headed by the Chief Minister of Sindh.

6. NICVD is for all relevant purposes a "Public Sector" hospital and not a "Private Sector" hospital. NICVD receives its funding from the Government of Sindh. However, NICVD does generate its own funds through a Private Ward, which treats around 5% or less patients. This is done through the mechanism of private practice.

7. The provision of private practice at NICVD is regulated under section 23 of the National Institute of Cardiovascular Diseases (Sindh Administration) Act 2015. Section 23 expressly provides that;

23. Private practice by officer of the institute who are qualified to practice medicine or surgery shall be governed by regulations made under this Act.

8. As per the revised NICVD Employee Service Regulations, which was subsequently approved in the 78th Governing Body Meeting, the provision of private practice falls under regulation 28. The relevant part is as follows;

"The Doctors of the institute, who are qualified to practice medicine or surgery, may carry out private practice in National Institute of Cardiovascular Diseases after their normal duty hours. Provided further that such officers shall not work in private clinics/ nursing homes, hospitals or medical centers etc.

As full time employees, doctors are not allowed to practice in any other hospital or clinic etc. The Doctors can charge their fees in private/executive clinic (after working hours) as per the market rates. The hospital will take its share of 30-40% from the fee per patient and for other procedures the hospital share/charges will be the same as per hospital policy."

9. Further under Regulation 30 which governs the realm of professional fees, the relevant part pertaining to private practice is as follows;

"The professional fee from private practice will be disbursed to the consultants/doctors against procedures, surgeries etc ., as per the hospital policy, for others as per their contractual letters or agreements or engagements and fees(in case of legal matters). Payments such as Legal/ Consultants/ Experts/ Specialists (Hospital Management Experienced) remuneration/ Consultancy/stipend/locum etc. will be paid accordingly. The self-generated fund shall be used for disbursement of above mentioned such payments/fees.

10. Private practice has been conducted at NICVD since before my induction as the Executive Director, which was in 2015. Private practice was first approved under the 72nd Meeting of the Governing Body meeting which was held on 17.1.2009. The relevant extract can be seen from agenda number 11 of the minutes of the meeting which expressly say;

"11. Evening Shift for Private Patients OPD/Private Coronary Angiographies/Angioplasties and Non-Invasive Services.

In order to encourage private patients and self reliance of NICVD, especially in the presence of state of the art facilities and expertise, Governing Body agreed with the suggestions of Executive Director to start a Private OPD and all other noninvasive and invasive procedures for private patients. Members agreed that this will help to improve overall services of the hospital and the availability of senior doctors till late in the evening will be beneficial for all admitted patients. Executive Director explained in details about the primary coronary angioplasties which are performed at nominal charges as compared to private sector, it was agreed by the Governing Body that as the consultants perform the emergency live saving procures after their duty hours and are exposed to stress and radiation, hence as a token of good will hospital will pay them for their services."

(Copy of Minutes of the 72"d Governing Body Meeting held on 17.1.2009 is attached and hereby marked as Annexure S/1)

11. The approval for the Evening OPDfor private patients was further approved within the 73rd Governing Body

Meeting held on 13.7.2010. The relevant extract pertains to agenda number 14 of the minutes of 14 meeting, which are reflected as;

14. Evening OPD for Private Patients.

Governing Body approved the evening private patients OPD for which approval was also given in principal in 72nd Governing body meeting. It was decided that consultant will be paid 70% of the fee charged from the private patients. Remaining 30% of the charges shall be utilize by the NICVD as its administrative cost.

Executive Director explained that the private clinic has been planned to extend services to the common man at nominal charges, as most of them are unable to afford the fee of these consultants in Private Hospitals. Thus, this will provide opportunity to common white collar patient to visit the Institute in the evening hours.

More over other Invasive / Non Invasive services shall also be made available to these patients. This will further improve the efficiency of the hospital staff. This shall include round the clock facility for Primary PCI,s and Emergency Cardiac Surgery. And as these patients are directly transferred from ER to Cath lab / Surgical theatre, thus the nominal fee of 15% of the total cost of procedure shall be paid to the treating consultants when the patients are admitted for these procedures after official working hours.

Executive Director further pointed out that commitment from the faculty has already been taken to sacrifice one day of Private Practice and this will be the first experience of Public Sector Institution in the country to extend its facilities out of routine working hours.

(Copy of Minutes of the 73"d Governing Body Meeting held on 13.7.2010 is attached and hereby marked as Annexure S/2)

12. Hence, private practice has been ongoing since 2009 at NICVD and is by no means a new phenomena. As described above, **doctors are not allowed to conduct private practice outside the hospital**. However, to retain the best possible talent at NICVD, doctors are allowed private practice during the evening hours. The most recent structure regarding full time employment at NICVD was further developed within the 78th Governing Body Meeting which was held on 27.9.2019. As per Agenda No.11 which expressly states;

11.Full Time Practice/Employmentwith NICVD

As per the previous approvals in the 75th and 76th Governing Body, all consultants/faculty are bound to service NICVD full time which explicitly means that they are not allowed to work outside NICVD. Any consultant/faculty still engaged with any other hospital except for NICVD will go back to the status of 2014, will not be entitled to Executive Clinic, will not get any Primary PCI on-call, will not receive any sharing from poor or hospital revenue, will not be entitled for any administrative portfolio/position and benefits, perks and privileges.

The Governing Body unanimously approved the criteria and engagement (Terms of reference- ToRs) for Full Time Employment/ Practice at NICVD, with the following preamble; faculty will not be allowed to work outside NICVD in any other hospital (conflict of interest); any consultant/faculty still engaged with any other hospital except for NICVD will go back to the status of 2014; will not be entitled to Executive Clinic will not get any Primary PCI on-call, will not receive any sharing from pool or hospital revenue, will not be entitled for any administrative portfolio, positions, benefits, perks , privileges, allowances etc.

(Copy of the 78th Governing Body Meeting Minutes of NICVD held on 27.9.2019 is attached and marked hereto as Annexure S/3)

13. No doctors are receiving non practicing allowances at NICVD. Allowances were previously given to those employees who were given additional duties owing to the various satellite centers that were being set-up through out the province of Sindh. Instead of hiring new people to help set up the satellite centers, and to save the Government of Sindh cost, those employees of NICVD who were already hired were given additional allowances for undergoing additional tasks. Since 2019 however, these salaries have stopped. The allowances were stopped under Agenda No.10 of the 78th Governing Body Meeting.

14. Please find attached the salaries of doctors and administrative workers at NICVD.

(Copy of list of salaries at NICVD both Clinical and Non-Clinical is attached and marked hereto as Annexure S/4).”

From above report, *even*, it became quite obvious that “NICVD is for all relevant purposes a "Public Sector" hospital and not a "Private

Sector" hospital. **NICVD receives its funding from the Government of Sindh**". Thus, the status of the NICVD to be a **public sector hospital** is no more disputed, particularly when admittedly it (NICVD) receives its funding from the **Government of Sindh**. Affirmative answers to above both question (s) leave a very little room for claim of the NICVD that it (NICVD) is an **autonomous body** even if the relevant law describes its status so. The **Government of Sindh** was / is always under legal obligation to ensure availability of every possible **health facilities** at door step (s) which (*health facilities*) shall always include Cardio Vascular disease (CVD). Thus, it would have always been in the interest of public at large if such facilities were / are assured at **government hospital (s)** operating / functioning as Taluka Hospital (s); District Health Hospital (s) and Civil Hospital (s) where the ordinary people rush in case of any emergency. We would not take an exception to the fact that such like facilities should also be worked but only if the Government has *first* assured **basic health facilities** at all government hospital (s) regardless of its status as that of Taluka Hospital or Civil Hospital. The miserable condition of such government hospital (s) is, by now, an open secret where the patients neither receive stretcher for *dying* nor ambulance to carry dead. A good atmosphere with all quality equipments in all government hospital (s) was / is the right of every single individual, therefore, the government of Sindh can't take an exception to its such bounden obligation even by establishing such like institutions at paces of their choices while ignoring availability of such facilities at local government hospitals. The question of allowing private practice to **'full-time engaged/hired doctors'** has been answered as that same is allowed only within NICVD which, *too*, is

purposeful i.e to keep senior doctors available as well help in generating income out of such allowed private practice. No one can deny that the **'knowledge and skills always increase by sharing thereof'** therefore, question was posed about allowing students / doctors of **'public sector hospitals'** to learn the skills and expertise in developing disease of Cardio Vascular in shape of house-job etc?. In consequence to such query, the respondent No.4 filed separate statement which reads as:-

“STATEMENT ON BEHALF OF RESPONDENT
NO.4/EXECUTIVE DIRECTOR (NICVD)

In light of the observations of this Honorable Court during hearing on 20.9.2021 it is most respectfully submitted on behalf of the Respondent No.4 that during the year 2020, NICVD received 20 students from Jinnah Post graduate Medical Center (JPMC) who undertook house jobs at NICVD Karachi. During the year 2021, NICVD has received 17 such students from JPMC, who undertook house job at NICVD Karachi. It is submitted that **NICVD will provide house jobs to medical students in every satellite center.** In this context **NICVD will write to all the medical colleges, within the vicinity of each center, inviting them to send their medical students for house jobs at NICVD.**”

Such statement/undertaking, being worth appreciating, is taken on record *happily*. It may be added that learning of the expertise under **'the experts'** of CVD was / is the need of the time because such **disease** is not limited to specific areas or big cities alone. A timely diagnosis of *problem*, we shall emphatically add, always helps in over-powering the same without letting much complications to worsen the problem. The students of different Medical Universities, if are trained under a good standard centre couple with sharing of experience of **the experts** shall surely help the medical students to practice at any area where they shall be helpful for patients of CVD.

4. Accordingly, undertaking / statement of the Executive Director NICVD to the effect that they will offer house job officers in all NICVD units by writing to the concerned medical universities. Accordingly, undertaking / statement of the Executive Director NICVD to effect that they will offer house job officers in all NICVD units by writing to the concerned medical universities. The Secretary, Health Department, shall ensure that house job officers shall be allowed and complete their assignments in cardiology faculty by the NICVD preferably, as undertaken by the NICVD. The secretary, Health shall also work out mechanism of short as well long training of medical officers of local government hospital in NICVD who, *normally*, are assigned duties in Cardic wards / units of local government hospitals so that such Wards/ Units could do a *little* more than mere referring to patients to big cities / hospitals. The NICVD, being a public sector hospital, hopefully shall open possibilities for same. Secretary, Universities and Boards Department and Secretary, Health Department, shall pursue the same for implementation.

5. Secretary, Finance Department has submitted break up of funds received by the NICVD within five years, which is that:-

“Compliance Report (On behalf of Finance Department)”

In compliance with Court order dated 06.09.2021 passed by the Honourable High Court of Sindh at Karachi, it is respectfully submitted that Finance Department provided funds to tune of **Rs.38,625,993,626/- million** to National Institution of Cardiovascular Diseases (NICVD) Karachi during last five years 2016-17 to 2020-21. The details of last five years-wise are as under:

S#	FINANCIAL YEARS	RELEASES
1	2016-19	Rs.1,895,000,000/-
2	2017-18	Rs.8,,094,436,626/

3	2018-19	Rs.8,267,223,626/
4	2019=20	9,931,647,000/
5	2020-21	10.437,687,000/
TOTAL GRANT		Rs.38,625,993,626/

In this regard, it is submitted that Finance Department, Government of Sindh has also allocated funds amounting to **Rs.12,539,243,000** and released amounting to Rs.**3,134,810,750/-** being 1st quarter for various Institutions of NICVD Karachi & Ten (10) others Satellite Centers of Sindh, during current financial year 2021-22.”

The statement again affirms that status of NICVD is public and it is funded by billions of rupees by the Sindh Government *itself*. Such *huge* funding by Sindh Government *alone* to NICVD could *normally*, be nothing but from budget of health. The Government of Sindh had/has never denied its obligations in providing / assuring the *health facilities* in local government hospital (s) which are **hundreds** in numbers. A comparative analysis of budget allocation (s) to such hospital (s) with that of NICVD has become necessary, therefore, Secretary Finance shall also submit budget allocation and release in favour of Teaching and District Headquarter Hospitals of last five years before next date of hearing. The medical superintendent(s) of Teaching Hospitals shall also be called to assist this court as to what facilities they are providing and what much amount they would need in ensuring free medicine(s) and other basic facilities. Secretary, Health Department, shall be in attendance.

6. Executive Director, NICVD, shall submit complete break up of last five years in NICVD in all over Sindh regarding procedures,

including pybass surgeries conducted by doctors. Such list shall include procedures conducted private and public sides. To come up on 14th October, 2021.

C.P. No.D-5143 of 2020 is de-tagged with the consent of learned counsel.

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