

**Order Sheet**

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

**C. P. No. D-2957 of 2022**

For hearing of main case

02.5.2023

Mr. Qadir Hussain Khan, Advocate for the Petitioner.

Mr. Jawad Dero, Additional AG

Mr. Muhammad Arif, Advocate for Sindh Health Care Commission.

Mr. S. Israr Hussain alongwith Mr. Hasan, Advocates for Respondent No.2

Mr. Imdad Ali Saheto, Advocate for Respondent No.5

Mr. Khaleeq Ahmed, DAG

Through these proceedings, Petitioner seeks following prayers:-

“I. Set-aside the Impugned order daed 16.4.2022 (Annexure A) passed by the learned XIIth Additional District and Sessions Judge, Karachi East in Appeal/Mental Health Petition No.02/2022.

II. Set-aside the Inquiry Report of SHCC (Annexurre A/I), as the Inquiry Report is illegal and unlawful. The inquiry Report was made on the basis of documents/Hospital Files and in the inquiry clearly showed that in Para-2 of the recommendation that the Duty doctors are not maintaining/keeping the record properly.

III. Direct the Respondents No.01 and 02 to conduct inquiry against the Respondent No.03 to 05 and constitute commission into the matter for better treatment of peoples.

IV. Any other relief(s), which this Hon’ble Court may deem fit and proper.”

2. Briefly facts of the case, as pleaded in the memo of Petition, are that Petitioner’s daughter Aqleema Sultana admitted in Fatimiyah Hospital on 16.11.2018 firstly for emergency treatment and later shifted to ICU. On 18.11.2018 the patient remained on fasting and after performing Endoscopy, Dr. Hussain Azhar, Respondent No.5, on 19.11.2018 suggested to shift the patient to Civil Hospital and admit her in Medicine Ward I. On seeing the poor condition of the Ward the patient refused to stay there but the Respondent No.5 allegedly stated that better facilities are available in HDU. Per pleadings the Doctors on duty started intravenous infusion while Petitioner was sent to bring injection and make registration/admission of the

patient. As the patient's condition started deteriorating, the Petitioner was asked to arrange for blood for transfusion but by the time he returned the patient had breathed her last and expired.

3. Thereafter, the Petitioner made complaints alleging negligence, etc on the part of the Doctors, including the Respondent No.5 and that no treatment was provided to her in the Civil Hospital. The Sindh Health Care Commission (the "SHCC") constituted an inquiry committee, which on 06.01.2020 submitted its report, inter alia, recommending the Medical Superintendent, Civil Hospital, Karachi to issue warning letter to the concerned attending duty doctors for improper record-keeping and documentation. The Petitioner received copy of the report on 09.01.2020 but preferred an Appeal in December, 2021, which was heard and dismissed by the learned XII Additional District Judge, Karachi East, vide impugned order dated 16.4.2022, inter-alia, on the ground that Petitioner's case does not fall in any of the category of clauses (a) to (e) to Section 31 of the Sindh Health Care Commission Act, 2013 (the "Act") and no case for condoning the delay in filing the Appeal was made out.

4. During course of arguments, to a query posed whether case of the Petitioner falls within the purview of Section 31(1) of the Act, the learned counsel preferred to remain mum. He nevertheless submitted that the Inquiry Committee constituted by the SHCC failed to notice the un-professional and untrained approach of the doctors and staff at the Civil Hospital and Fatimiyah Hospital, Karachi, who are playing with the lives of the innocent citizens.

5. Conversely, the learned counsel appearing for Respondents No.2 to 5, the leaned Additional AG and DAG while supporting the impugned Order dated 16.4.2022, prayed for dismissal of the Petition.

6. We have heard the learned counsel for the Parties and with their able assistance perused the material available on record. The case of the Petitioner hinges on the provisions of Section 31(1) of the Act and for brevity sake the same is reproduced hereunder:-

“31. (1) A person who is aggrieved by the—

- (a) Refusal of the Commission to issue or renew a license;
- (b) Decision of the Commission to suspend or revoke a license;
- (c) Order of closing down of a healthcare establishment or making improvements in the health care establishment;
- (d) Order relating to equipment, apparatus, appliances, or other things at a healthcare establishment; or
- (e) Imposition of fine by the Commission,

may, within thirty days from the date of communication of the order of the Commission, prefer an appeal in writing to the District and Sessions Judge.”

7. Perusal of the aforesaid provisions of the Act shows that the Appeal preferred by the Petitioner does not fall within ambit of provisions of Section 31(1). Even otherwise, it appears that the Petitioner received copy of the Inquiry Report on 09.01.2020 and in law was required to file the Appeal within thirty days. However, he belatedly filed the Appeal in December, 2021. He also failed to pinpoint how the findings of the Inquiry Committee are perverse or required interference.

8. In view of the above, we do not find any merit in the Petition in hand which stands dismissed leaving the Petitioner at liberty to avail remedy provided under the law, if so advised.

Chief Justice

Judge