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JUDGMENT SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Writ Petition No. 71548/2022

Fareeha Kanwal

Vs.

Punjab Healthcare Commission and others

JUDGMENT

Dates of hearing:	**21.2.2023, 1.3.2023, 8.3.2023, 6.3.2023**
For the Petitioner:	Mr Ghulam Mustafa Sabir, Advocate.
For Respondents No.1 to 3:	Mr Sittar Sahil, Assistant Advocate General, with Dr Majid Latif, Additional Director, and Saqib Naveed Bhatti, Assistant Director (Legal), Punjab Healthcare Commission.
For Respondents No.4 to 8:	Ch. Zulfiqar Ali Kamboh and Mr Salah-ud-Din Siddiqui, Advocates.

Tariq Saleem Sheikh, J. – This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, is directed against Punjab Healthcare Commission's decision dated 01.11.2021 and the judgment dated 12.10.2022 delivered by the District Judge, Faisalabad.

Facts of the case

2. On 19.10.2019 at 08:00 a.m., the Petitioner, who was 23 years old at that time, was admitted to Prime Care Hospital, Faisalabad (PCH), for delivery of her baby under the care of Respondent No.5, Consultant Gynecologist. On the first day, Respondent No.5 told the Petitioner's attendants that the birth would be regular, so they purchased medicines from the hospital's pharmacy for the normal procedure. On 20.10.2019, she informed them that a Caesarean section (C-section) was urgently required and operated on the Petitioner under epidural anaesthesia administered by Respondents No.6 and 7. A baby girl was born. After some time, the hospital staff handed over the newborn to the Petitioner's family members but shifted

her to the room after an hour. The Petitioner regained consciousness the following morning, but the doctors discovered that the lower part of her body was paralyzed. Respondent No.5 recommended conducting MRI, CT Scan, and NCS-EMG. These tests revealed that she had developed paraplegia/ plexopathy. She lost control of her urine and stool and could not pass them without a catheter bag and enema. On 09.11.2019, PCH discharged her, even though there was no improvement in her condition.

3. On 18.11.2019, the Petitioner filed a complaint with the Punjab Healthcare Commission (the "Commission") through her Special Attorney, Muhammad Nazim, against PCH (Respondent No.4), its doctors (Respondents No.5 to 7), and PCH's administrator (Respondent No.8), alleging medical negligence, maladministration, and malpractice. The Commission took cognizance and issued notice to Respondents No.4 to 8.

4. Respondent No.8, administrator of PCH, submitted his reply stating that Respondent No.5 admitted the Petitioner to the hospital for delivery on 19.10.2019. Respondent No.7, an anaesthetist, administered her epidural, which was partially ineffective. Therefore, Respondent No.6, another anaesthetist, gave the second epidural. Meanwhile, Respondent No.1 decided to perform a C-section with the help of Respondent No.7. After the surgery, the Petitioner complained that she couldn't move her legs. The duty doctor immediately informed Respondents No.5 to 7 who examined the patient. Respondent No.8 further submitted that a neurologist, Dr Javaid Iqbal, was also engaged who visited the Petitioner daily. He advised her to stay at the hospital for proper neuro care, but her family refused and sought her discharge which was done on 09.11.2019. Respondent No.8 denied the allegations of maladministration, malpractice and medical negligence levelled by Muhammad Nazim. He added that doctors monitored her around the clock when the Petitioner was in the hospital. Besides, Respondents No.5 to 7 paid her daily visits.

5. Respondents No.5 to 7 also submitted their replies on the above lines.

6. After preliminary proceedings, the Commission recorded the parties' evidence and sought opinions from one neurologist and two anaesthesia experts. Importantly, original operation notes were not available

in the patient file. Subsequently, Dr Atiqa Irshad made duplicate notes on the advice of the PCH's Administrator (Respondent No.8) and the Consultant Gynecologist (Respondent No.5).

Healthcare Commission's order dated 01.11.2021

7. The Commission decided the Petitioner's complaint by order dated 01.11.2021 in the following terms:

(i) The decision of the Consultant Gynecologist (Respondent No.5) was justified in performing C-section on the Petitioner.

(ii) The exact cause of severe Radicylopathy-plexopathy of the lumber area developed by the Petitioner could not be established according to the duplicate clinical notes.

(iii) The question as to whether Respondents No.6 & 7 had committed medical negligence, and if so, to what extent in administering epidural anaesthesia to the Petitioner requires further probe. Therefore, their cases be sent to the Pakistan Medical Commission for proceeding in accordance with the law.

(iv) On 08.06.2021, the Commission inspected PCH and found that its score on the Minimum Service Delivery Standards Table (MSDS Table) was only 37% which is unacceptable. Therefore, the Commission imposed a fine of Rs.300,000/- on it. Twenty per cent of that amount, when recovered, shall be paid to the Petitioner.

(v) PCH is directed to improve its score on the MSDS Table up to 70% within three weeks, failing which necessary action shall be taken in accordance with the law.

8. Respondent No.8 filed an appeal on behalf of PCH against the Commission's order in the Court of the District Judge, Faisalabad, which was dismissed on the ground of limitation vide judgment dated 12.10.2022. Reportedly, the PCH has deposited the penalty of Rs.300,000/- imposed on it.

9. The Petitioner also partially challenged the Commission's order but the District Judge, Faisalabad, dismissed it by judgment dated 12.10.2022 for lack of jurisdiction.

10. Respondents No.6 and 7 did not assail the Commission's order dated 01.11.2021. They are facing proceedings before the Pakistan Medical Commission (PMC).

The District Judge's judgment dated 12.10.2022 on the Petitioner's appeal

11. In her appeal before the District Judge, the Petitioner contended that Respondents No.5 to 8 removed, or caused to be removed, the original operation notes from her file to screen themselves of civil and criminal liability. They had thus committed an offence under section 201 PPC. The

Commission was, therefore, required under section 26(2) of the PHC Act to direct registration of FIR against them. Secondly, the Commission had erred in exonerating Respondent No.5. Thirdly, the Commission was obliged to declare the doctors (Respondents No.5 to 7) guilty of medical negligence before referring their case to the PMC. Fourthly, the fine imposed on PCH was disproportionate to the offence which it had committed. It should, therefore, be enhanced from Rs.300,000/- to Rs.500,000/-. Lastly, PCH should be sealed and banned from providing any healthcare facilities.

12. The District Judge held that section 31 of the Punjab Healthcare Commission Act 2010 (the "PHC Act") provides appeals against five kinds of orders only. The Petitioner's appeal is beyond the purview of that section. In particular, no appeal lies against the Commission's order fixing responsibility upon any delinquent and for enhancement of fine. Accordingly, the Judge dismissed the Petitioner's appeal as being not maintainable. He relied upon the following two unreported judgments of this Court for his holding: (i) ***Haseeb Ullah and another v. District & Sessions Judge and others*** (Writ Petition No.227659/2018); (ii) ***Dr. Muhammad Dilawaiz Mujahid v. Punjab Healthcare Commission etc.*** (Writ Petition No.48460/2019).

The submissions

13. The Petitioner's counsel, Mr Ghulam Mustafa Sabir, Advocate, contends that the District Judge has misconstrued the law while dismissing the Petitioner's appeal by judgment dated 12.10.2022. Section 31 of the PHC Act is not a standalone provision. It has to be read in conjunction with section 30 which makes all the orders issued by the Commission amenable to the appellate jurisdiction of the District Judge. He prays that the matter be remanded to him for a decision on merits.

14. Mr Sabir submits that the Petitioner is partially aggrieved by the Commission's order of 1st November. Even if it is assumed that her appeal before the District Judge was not competent, this Court has ample jurisdiction under Article 199 of the Constitution to issue a writ of *certiorari* to correct the errors in the said order. The Petitioner cannot be left without a remedy. She has urged all those grounds in this petition for the modification

of the Commission's order which she raised in her memorandum of appeal before the District Judge (see paragraph 11 of this judgment).

15. The Commission has submitted a para-wise reply to this petition. It has defended its order dated 01.11.2021 with full force and contends that it fully meets the ends of justice. It states that it provided the parties a fair opportunity to prove their respective claims and also sought expert opinions from the people of the relevant fields for a just and correct decision. It did not find Respondent No.5 had committed any medical negligence, so it exonerated her but deemed it proper to send the cases of Respondents No.6 & 7 to the PMC for further proceedings. The Commission has taken action against Respondents No.6 & 7 under section 26(2) of the PHC Act.

16. According to the Commission, it thoroughly probed the issue of the loss of the Petitioner's original operation notes. It found that they were misplaced and not destroyed by PCH, as the Petitioner claimed. Subsequently, duplicate notes were prepared by Dr Atiqa Arshad. In these circumstances, it did not have to invoke section 26(2) of the PHC Act to direct registration of FIR under section 201 PPC.

17. Mr Sittar Sahil, Assistant Advocate General, contends that the Commission's order dated 01.11.2021 and the District Judge's judgment dated 12.10.2022 on the Petitioner's appeal are well reasoned and do not call for interference by this Court in its constitutional jurisdiction.

18. Mr Salah-ud-Din Siddiqui, Advocate, submits that Respondents No.5 to 7 are distinguished doctors and experts in their respective disciplines. They have not committed any medical negligence for which they may held accountable. He has produced copies from various medical reference books to support his claim. Nevertheless, the Commission had exonerated Respondent No.5 only and referred the cases of Respondents No.6 & 7 to the PMC. Following the enactment of the Pakistan Medical and Dental Council Act 2022 ("PMDC Act of 2022"), these cases are now pending with the Council's disciplinary committee.[1] Mr Siddiqui contends that the Act of 2022 provides a comprehensive procedure for dealing with

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[1] Pakistan Medical and Dental Council Act 2022 has dissolved the Pakistan Medical Commission, subject to section 6 of the General Clauses Act, 1897.

complaints of professional negligence against medics. This Court has no jurisdiction to interfere in the matter under its constitutional mandate. It cannot declare Respondents No.5 to 7 guilty of medical negligence as the Petitioner wishes.

19. Mr Zulfiqar Ali Kamboh, Advocate, submits that PCH has deposited the penalty imposed on it by the Commission and improved its MSDS score as required. He contends that the Commission exercised its jurisdiction legally and reasonably while imposing the aforesaid penalty. This Court cannot enhance it while exercising constitutional powers under Article 199.

Opinion

20. In 2008, the Government of the Punjab initiated efforts to regulate the healthcare delivery system in the province. For this purpose, it got in touch with the stakeholders and also hired consultants. In the meantime, an incident occurred in Lahore in which a baby girl named Imanae Malik allegedly died because of medical negligence. There was a huge public outcry upon which the then Chief Justice of the Lahore High Court took *suo motu* notice. Subsequently, Writ Petition No.23796/2009 was also filed. One of His Lordship's orders passed in those proceedings was challenged before the Supreme Court of Pakistan in CPLA No.2510/L/2009 (titled: *"Doctors Hospital (Private) Ltd. etc. v. Government of the Punjab etc."*) which was heard on 30.12.2009. The learned Bench voiced serious concerns about the lack of a regulatory mechanism to monitor the licensing and accreditation of the privately-run hospitals and to ensure a minimum standard of quality of services, which it also recorded in its order of that date. Against this backdrop, the Punjab Assembly enacted the PHC Act. The Commission has been established under section 3 thereof.

21. Section 4(1) of the PHC Act empowers the Commission to perform such functions and exercise such powers as may be required to improve the quality of healthcare services and clinical governance and ban quackery. Section 4(2) outlines some of those functions, which *inter alia* include:

(a) maintain a register of all healthcare service providers;

(b) grant, revoke and renew licenses to persons involved in the provision of healthcare services and to vary terms and conditions and purposes of the licences;

(c) monitor and regulate the quality and standards;

(e) enquire and investigate maladministration, malpractice and failures in the provision of healthcare services and issue consequential advice and orders;

(g) impose and collect penalties on violation, breach or non-compliance of the provisions of the rules, regulations, standing orders and instructions issued under this Act;

(o) issue regulations, guidelines, instructions and directives to persons involved in the provision of healthcare services;

(p) grading of the healthcare establishments;

22. Section 4(7) of the PHC Act stipulates that, notwithstanding the provisions of any other legislation, the Commission may conduct an investigation on the complaint of an aggrieved person or a healthcare service provider.[2] However, it must do so if the Government or the Punjab Assembly makes a reference, or the Supreme Court of Pakistan or the Lahore High Court directs it during any proceedings. Section 4(8) empowers the Commission to take cognizance of any incident involving the harassment of a healthcare service provider or damage to a healthcare establishment[3] and then refer the matter to the appropriate legal authority for further action.

23. As per Regulation 6 of the Punjab Healthcare Commission Complaint Management Regulations, 2014 (the "2014 Regulations"), the Commission has jurisdiction over all complaints regarding medical negligence, maladministration, malpractice or failure to provide healthcare services. Section 2(xxii) of the PHC Act, read with section 19, defines "medical negligence," while Regulation 2 describes "maladministration," "malpractice," and "neglect." Section 28 of the PHC Act empowers the Commission to impose fines up to Rs.500,000/- for violations of the Act and

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[2] Section 2(xvii) of the PHC Act states:

> "healthcare service provider" means an owner, manager or incharge of a healthcare establishment and includes a person registered by the Medical and Dental Council, Council for Tibb, Council for Homeopathy or Nursing Council.

[3] Section 2(xv) of the PHC Act states:

> "healthcare establishment" means a hospital, diagnostic centre, medical clinics, nursing home, maternity home, dental clinic, homeopathy clinic, Tibb clinic, acupuncture, physiotherapy clinic or any other premises or conveyance-
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> (a) wholly or partly used for providing healthcare services; and
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> (b) declared by the Government, by order published in the official Gazette, as a healthcare establishment;

the rules and regulations made thereunder, keeping in view the gravity of the infraction. Thus, the Commission performs a dual function: on the one hand, it acts as a regulator, and on the other, it decides on issues involving patients' rights and obligations, as well as those of healthcare service providers and healthcare establishments.

24. On 18.11.2022, the Petitioner filed a complaint with the Commission through her Special Attorney, Muhammad Nazim, against PCH (Respondent No.4) and its doctors (Respondents No.5 to 7) and the administrator (Respondent No.8). The Commission decided it by order dated 01.11.2021 in the terms mentioned in paragraph 7 of this judgment. The Petitioner was partly dissatisfied with that order, so she preferred an appeal before the District Judge. The first question that arises for consideration is whether it was maintainable. Sections 30 and 31 of the PHC Act are relevant for the discussion which I reproduce below for ready reference:

> **30. Bar of jurisdiction**.– Save as provided in this Act, no court other than the Court of the District and Sessions Judge shall have jurisdiction-
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> (a) to question the validity of any action taken, or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under this Act; or
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> (b) to grant an injunction or stay or to make any interim order in relation to any proceeding before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the Commission.
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> **31. Appeal.**– (1) A person who is aggrieved by the –
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> (a) refusal of the Commission to issue or renew a license;
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> (b) decision of the Commission to suspend or revoke a license;
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> (c) order of closing down of a healthcare establishment or making improvements in the healthcare establishment;
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> (d) order relating to equipment, apparatus, appliances, or other things at a healthcare establishment; or
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> (e) imposition of a 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.
>
> (2) The healthcare service provider shall provide legal aid to a person, working in the healthcare establishment, pertaining to the matters related to this Act.

25. It is well-settled that the right to appeal is a substantive privilege established by law[4] and must be expressly provided by the

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[4] *Rahim Shah v. The Chief Election Commissioner of Pakistan and another* (PLD1973 SC 24); *Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed* (2013 SCMR 1707); *Malik Umar Aslam v. Mrs. Sumaira Malik and others* (2014 SCMR 45); *Mian Khalid Rauf v. Chaudhry Muhammad Saleem and another* (PLD 2015 SC 348).

statute.[5] It cannot be implied.[6] A bare perusal of section 31 of the PHC Act reflects that the right of appeal under the enactment is limited to five types of orders passed by the Commission. Section 30 merely mentions the bar of jurisdiction. It states that no court other than the Court of the District and Sessions Judge has the authority to question the legality of any action taken, order made or thing done under the PHC Act, or to grant an injunction, or stay or to issue an interim order in relation to any proceedings initiated by the Commission. Section 30 does not confer any new appellate powers on the District and Sessions Judge or otherwise broaden the scope of section 31. The judgments passed by this Court in the unreported cases of *Haseeb Ullah* and *Dr. Muhammad Dilawaiz Mujahid*[7] fully support this view.

26. Clause (e) of section 31(1) of the PHC Act grants the right of appeal to a person aggrieved by the order of the Commission imposing a fine. This provision cannot be stretched to provide for an appeal in cases where a fine is denied or to enable an appeal for increasing the amount of a fine. The rule stated by Tindal C.J. in ***Sussex Peerage Case*** [1844] 11 Clark and Finnelly 85, 8 ER 1034, still holds the field and is followed by the courts in all countries. He said:

> "The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case, best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute and to have recourse to the preamble, which, according to Chief Justice Dyer (*Stowel v Lord Zouch, Plowden, 369*), is 'a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress'."

27. Flex Frank writes:[8]

> "Whatever temptations the statesmanship of policymaking might wisely suggest, construction must eschew interpolation and evisceration. [The judge] must not read in by way of creation."

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[5] *Habib Bank Ltd. v. The State and others* (1993 SCMR 1853).

[6] *Raja Khurram Ali Khan and others v. Tayyaba Bibi and another* (PLD 2020 SC 146).

[7] See paragraph 12 of this judgment.

[8] *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 533 (1947).

28. Mr Sabir could not persuade me that the District Judge's judgment dated 12.10.2022 dismissing the Petitioner's appeal is erroneous. Hence, I uphold it.

29. The Commission's order dated 01.11.2021 is *quasi-judicial* and is, therefore, susceptible to judicial review. However, before attending to the case at hand, let's look at the breadth of that power.

30. The ancient supervisory jurisdiction of judicial review, which *Blackstone's Commentaries* refer to as a "very high and transcendent" jurisdiction, was an inherent jurisdiction exercised by the superior courts through the common law prerogative writs of *habeas corpus*, *mandamus*, prohibition, *certiorari* and *quo warranto*. These ancient prerogative writs derive their name from their historical association with the King's prerogative, which empowered the monarch as the fountain of justice to oversee the due enforcement of the law by government officials and tribunals.[9]

31. The King's Bench Division in England exercises supervisory jurisdiction when issuing the writ of *certiorari* (which literally means "to be certified" or "to be more fully informed"), and by means thereof, it calls for the records and proceedings to examine their legality. The following are the grounds on which it would interfere: (i) absence or excess of jurisdiction, (ii) breach of rules of natural justice committed by the tribunal during the proceedings, and (iii) an error of law apparent on the face of the record.[10] According to Brohi, if a tribunal assumes jurisdiction following the determination of a question of fact (known as jurisdictional fact in America) the existence of which has been made a condition precedent for the exercise of the tribunal's jurisdiction by the statute, the superior court will review the finding of the fact to ascertain whether the tribunal has properly acquired jurisdiction.[11]

32. Basu states that there has been a significant transformation in the judicial perspective regarding the writ of *certiorari* since the pivotal House of Lords decision in ***Ridge v. Baldwin***, (1964) AC 40. Before that

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[9] Fazal Karim, *Judicial Review of Public Actions*, Second Edn., Vol.3, p.1396.

[10] A.K. Brohi, *Fundamental Law of Pakistan (1958)*, p. 491.

[11] *ibid*, p. 493.

case, there was a widespread consensus that *certiorari* did not lie against purely administrative functions when the relevant statute imposed no duty to proceed judicially.[12] However, in *Ridge's* case, the House of Lords, by a majority, held that even when the enactment did not specify any judicial procedure for the performance of an administrative function, the law implied an obligation to act in accordance with the principles of natural justice if the exercise of the statutory power affected an individual's rights or determined "what the rights of an individual should be."[13]

33. In ***Council of Civil Service Union v. Minister*** (1984) 3 All ER 935, Lord Diplock observed that the law has developed to the point where one can easily categorize the grounds for judicial review of administrative action under three headings. He called the first ground "illegality," the second "irrationality," and the third "procedural impropriety." However, he emphasized that the ongoing development, which is on a case-by-case basis, may add further grounds in the future. "I have in mind particularly the possible adoption in the future of the principle of 'proportionality', which is recognized in the administrative law of several of our fellow members of the European Economic Community." Lord Diplock explained:

> " 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.
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> "By 'irrationality' I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it ...
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> "I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

34. The High Courts in Pakistan were granted the power to issue writs for the first time in 1954 when the Government of India Act, 1935,

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[12] *R.v. Electricity Commr.*, (1924) 1 KB 215; *Frome United Breweries v. Bath JJ*., (1926) AC 586.

[13] Durga Das Basu, *Commentary on the Constitution of India*, 9th Edn., Vol.11(1), p. 11838.

which served as the country's Constitution at that time, was amended and section 223-A was inserted. Since then, the High Courts have exercised that authority under succeeding constitutional dispensations. The Constitution of 1956 replaced the 1935 Act. Article 22 of that Constitution, on the one hand, granted citizens the right to petition the Supreme Court for the enforcement of fundamental rights through appropriate proceedings. On the other, it empowered the Supreme Court to issue directions, orders, and writs like *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, as deemed appropriate, to any person or authority, including when necessary, any Government, for the enforcement of any of the fundamental rights. Article 170 of the 1956 Constitution conferred similar powers upon each High Court for the enforcement of fundamental rights and any other purpose. The Constitution of 1962 brought significant changes to the law of judicial review in Pakistan, both in terms of procedure and substance. It also did away with the Latin names of the prerogative writs. In ***Mehboob Ali Malik v. The Province of West Pakistan and another*** [PLD 1963 (W.P.) Lahore 575], Manzoor Qadir CJ. eloquently explained this legal development and remarked that the rules governing the use of various writs have become more consistent. As a result, the scope of the earlier writ has been broadened in certain cases and narrowed in others. For instance, *certiorari,* which was initially limited to judicial or *quasi-judicial* decisions, can now be used in any case where orders exceed jurisdiction, regardless of whether they are issued by judicial, *quasi*-judicial, or non-judicial authorities. Furthermore, under Article 98 of the 1962 Constitution, every case is now subject to the condition that this jurisdiction may only be used when no other adequate remedy is available. In English Law, this requirement was rigorously applied mainly to mandamus and was less stringent for *certiorari*.

35. The concept adopted in the 1962 Constitution has been followed in the successor Constitutions, namely the Interim Constitution of 1972 and the Constitution of 1973, without any material change in language.

36. Clause (a)(ii) of Article 199(1) of the Constitution of 1973 provides that, subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law, on the application of any person, make an order declaring that any act done or proceeding taken

within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or local authority has been done or taken without lawful authority and is of no legal effect. Since this provision is analogous to clause (2)(b)(i) of Article 98 of the 1962 Constitution, I begin by reviewing some of the cases decided under that clause to understand its meaning. In ***Badrul Haque Khan v. The Election Tribunal, Dacca, and others*** (PLD 1963 SC 704), the Dacca High Court quashed the Election Tribunal's order. The argument before the Supreme Court was that a mere misconception by the inferior tribunal on the point of law was not sufficient ground for the High Court to intervene. Furthermore, a tribunal cannot be deemed to have exceeded its jurisdiction just because it admits illegal evidence, rejects legal evidence, misjudges the weight of the evidence, or convicts without evidence. Kaikaus J. stated he was "prepared to concede" that admitting inadmissible evidence would be an act without lawful authority. He went on to say:

> "The proposition is indisputable that when there is jurisdiction to decide a particular matter, then there is jurisdiction to decide it rightly or wrongly, and the fact that the decision is incorrect does not render the decision without jurisdiction. I do not see any difference in a case where the question of law decided is a matter on which two opinions can easily be held and a case where the decision on a question of law appears to be clearly erroneous. It would not make a difference that, on logical reasoning, the interpretation of law by the tribunal could not be supported. Unless a case of *mala fides* or a mere colourable exercise of jurisdiction could be made out, the decision would not be without lawful authority. If an order can be without legal authority because of a clearly wrong determination of a question of law, it should be without legal authority even in case of a clearly wrong determination of a question of fact. There is no reason for any distinction in this connection between a decision on a question of law and a decision on a question of fact. So if we were to accept the proposition that clearly erroneous decisions are without lawful authority, the Court acting under Article 98 would constitute itself a Court of appeal for matters of fact as well as matters of law."

37. In ***Mian Jamal Shah v. The Member Election Commission, Government of Pakistan, and others*** (PLD 1966 SC 1), the Supreme Court of Pakistan clarified that proceedings under Article 98 of the 1962 Constitution are not a continuation of the same processes as in an appeal where a cause is re-heard. Instead, the High Court's role is to examine the legality of actions taken by those granted certain powers by the law. If the High Court finds these actions illegal, it declares them as such. Essentially, proceedings under Article 98 are similar to a suit in which an order issued by an officer or authority is challenged. There is little distinction between the

High Court's jurisdiction under clause (a) of Article 98(2) and the power exercised by an ordinary civil court.

38. The Supreme Court also dilated on the phrase "without lawful authority" in *Jamal Shah*. It observed that it was no longer *res integra* that if a court has jurisdiction to decide a matter, it has jurisdiction to decide it rightly or wrongly. The word "decide" inherently contains the power and possibility of reaching more than one conclusion. If it is accepted that a wrong decision on a question of law renders an act "without lawful authority", the High Court would become a court of appeal for all orders passed by any judicial or *quasi-judicial* tribunal, making redundant section 100 of the Code of Civil Procedure and some other provisions, which grant the High Court limited power to interfere with judgments of some courts. Section 115 CPC would become useless because the High Court's jurisdiction under Article 98 would be greater than that exercised under that provision. The Supreme Court further stated that if a wrong conclusion on a question of law is considered as one reached without lawful authority, there is no reason why an erroneous decision on a question of fact should also be reckoned as without lawful authority because the defect in both cases consists in the mistake in the conclusion reached. The use of the authority to make the decision was perfectly legal in each instance.

39. In ***Government of West Pakistan and another v. Begum Agha Abdulkarim Shorish Kashmiri*** (PLD 1969 SC 14), the Supreme Court considered the phrases "without lawful authority" and "in an unlawful manner" as they occurred in clause (2)(b)(i) of Article 98 of the 1962 Constitution, *ibid*. Hamoodur Rahman J. stated:

> "… the expressions 'without lawful authority' and 'in an unlawful manner' occurring in sub-clause (b) were not merely tautologous. A definite meaning had, therefore, to be given to each of them ... It is agreed that without lawful authority, will be comprised all questions of vires of the statute itself as also of the person or persons acting under the statute, i.e., there must be a competent law authorizing the detention and the officer issuing such an order must have been lawfully vested with the power. But what is it that falls within the expression unlawful manner? … In my view, the words 'in an unlawful manner' in sub-clause (b) of Article 98(1) have been used deliberately to give meaning and content to the solemn declaration under Article 1 of the Constitution itself that it is the inalienable right of every citizen to be treated in accordance with law and only in accordance with law of my mind, therefore in determining as to how and in what circumstances a detention would be detention in an unlawful manner one would inevitably have first to see whether the action is in accordance with law, if not, then it is action in an unlawful manner.

> Law is here not confined to statute law alone but is used in its generic sense as connoting all that is treated as law in this country, including even the judicial principles laid down from time to time by the superior courts. It means according to the accepted forms of legal process and postulates a strict performance of all the functions and duties laid down by law."

The Hon'ble Judge further noted that the expression "in an unlawful manner" is as comprehensive as the American "due process" clause in a new garb. In this sense, a *mala fide* or colourable action is not regarded as an action under the law. Similarly, an action based on extraneous or irrelevant considerations or taken on no grounds at all or without sufficient application of mind would not qualify as an action in accordance with the law. It would, therefore, be struck down as an action taken in an unlawful manner.

40. In ***Rahim Shah v. The Chief Election Commissioner of Pakistan and another*** (PLD 1973 SC 24), the Supreme Court held that *certiorari* provides a supervisory control that extends not only to ensure that the inferior tribunals stay within their jurisdiction but also to see that they follow the law. *Certiorari* will be issued to any person performing functions in connection with the affairs of the Centre, Province or local authority. It is not necessary that the "person" acts in a judicial or *quasi*-judicial capacity. The High Court will intervene if the act or proceeding violates the law or any established legal norm. The term "law" is not confined to "statute", and the superior courts are not restricted to examining the record of the case when conducting the inquiry. They even record evidence to determine the legality of the act done or the proceedings undertaken. The Supreme Court emphasized that although the criteria for granting *certiorari* followed by English Courts do not apply to High Courts in Pakistan, the scope of this constitutional jurisdiction cannot be stretched to convert it into an appeal on facts or questions of law. Appeals are creatures of statutes, and if the Legislature does not permit them, the decisions made by a tribunal with exclusive jurisdiction are considered final.

41. In ***Muhammad Husain Munir and others v. Sikandar and others*** (PLD 1974 SC 139), the Supreme Court of Pakistan ruled that the phrases "without lawful authority and "of no legal effect" are expressions of art that allude to jurisdictional defects as distinguished from a mere erroneous decision on a question of fact or even of law. Where a court or a

tribunal has jurisdiction and decides a matter, it cannot be said that it acted illegally or with material irregularity merely because it reached an incorrect result on a question of fact or even of law. The High Court's supervisory jurisdiction under Article 98(2)(a)(ii) of the 1962 Constitution (or under Article 199(1)(a)(ii) of the Constitution of 1973) is assimilable to its jurisdiction under section 115 of the Civil Procedure Code (CPC) except in two important ways: first, the former jurisdiction is a creation of the Constitution and thus stands on a higher pedestal than that under section 115 CPC; second, the former jurisdiction has a wider reach than the jurisdiction under section 115 CPC, which is confined to subordinate courts. However, it is incorrect to assert that the above Constitutional provision was meant to empower the High Court to interfere with the decision of a court or tribunal of inferior jurisdiction merely because, in its opinion, the decision is wrong. In that case, it would make the High Court's jurisdiction indistinguishable from that exercisable in a full-fledged appeal, which is not the intention of the Constitution-makers.

42. In ***Munir Hussain Bhatti, Advocate, and others v. Federation of Pakistan and another*** (PLD 2011 SC 407), the Supreme Court approvingly cited the case of the *Council of Civil Service Union*[14] . It held that in the judicial review of administrative decisions, the word "lawful" in the phrase "without lawful authority" should be interpreted to mean illegality, irrationality and procedural impropriety.

43. It is worth noting that in the case of ***Utility Stores Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal*** (PLD 1987 SC 447), the Supreme Court somewhat deviated from the above-mentioned view. It stated that it is incorrect to suggest that when a tribunal is invested with jurisdiction over a certain matter, it possesses the power to adjudicate on it "rightly or wrongly" because the grant of jurisdiction requires that the matter be decided according to the law. Therefore, when the tribunal makes an error of law in deciding a case, it goes outside its jurisdiction, and its decision can be quashed in writ jurisdiction. Then, in the case of ***Muhammad Lehrasab Khan v. Mst. Aqeel-un-Nisa*** (2001 SCMR 338), the Supreme Court stated that while exercising constitutional jurisdiction, the

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[14] [1984] 3 All ER 935, 950-952

High Court would not ordinarily reappraise the evidence and disturb the findings of facts, but it would intervene if such findings were found to be based on non-reading or misreading of evidence, erroneous assumptions of facts, misapplication of law, excess or abuse of jurisdiction, and arbitrary exercise of power. In appropriate cases of special jurisdiction, where the District Court is the final appellate court, the High Court can issue a writ of *certiorari* to correct its error if it reverses the trial court's finding on grounds not supported by evidence on record.

44. Subsequently, in ***Shajar Islam v. Muhammad Siddique*** (PLD 2007 SC 45), the Supreme Court revisited this issue and clarified that the High Court should not interfere in the findings on controversial questions of facts based on evidence, even if such a finding is erroneous. It emphasized that the scope of the High Court's judicial review under Article 199 of the Constitution is limited to determining whether there is a misreading or non-reading of evidence or whether the finding is based on no evidence, especially if such errors could result in a miscarriage of justice. It is improper for the High Court to overturn factual determinations by reappraising evidence in writ jurisdiction or use this jurisdiction as a substitute for revision or appeal. In ***Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another*** (2023 SCMR 246), the Supreme Court held that the object of Article 199 of the Constitution is to foster justice, protect rights and correct the wrongs. The responsibility for assessing evidence falls squarely on the trial court, which holds exclusive jurisdiction in this regard. When the lower court's findings are based on a misreading or non-reading of facts, and the order is determined to be arbitrary, perverse, or in violation of law or evidence, the High Court might exercise its constitutional jurisdiction as a corrective measure. In ***M. Hamad Hassan v. Mst. Isma Bukhari and others*** (2023 SCMR 1434), the Supreme Court reiterated that constitutional jurisdiction cannot be used in place of a revision or an appeal. The High Court cannot reappraise the evidence and rule on the facts of the case while exercising that power. Its constitutional jurisdiction can only be invoked in exceptional circumstances and on limited grounds.

45. To sum up, the High Court's jurisdiction under Article 199(1)(a)(ii) of the Constitution of 1973 provides supervisory control over persons exercising functions related to the business of the Federation, a

Province or a local authority. Nonetheless, this jurisdiction is limited to determining whether they acted in conformity with the law in performing the act or conducting the proceedings. If yes, the High Court will stay its hands and not substitute its findings for those of the tribunal. Decisions involving bad faith, excess and abuse of jurisdiction, misdirection, failure to follow the rules of natural justice and conclusions based on no evidence are treated as acts without lawful authority that vitiate the proceedings.

46. Having discussed the scope of Article 199(1)(a)(ii) of the Constitution, let's turn to the case at hand. The Petitioner claims that Respondents No.5 to 8 removed, or caused to be removed, her original operation notes from the patient file to shield themselves from civil and criminal liability. As such, the Commission should have exercised its authority under section 26(2) of the PHC Act and ordered the registration of FIR against them. However, in its reply submitted to this Court, the Commission stated that during its inquiry, it found that the notes were "misplaced and not destroyed by PCH". *Prima facie*, no *mens rea* on the part of Respondents No.5 to 8 (or any of them) has been established. This is a factual determination by the Commission. The Petitioner has not alleged that there is no evidence to support it. Even otherwise, Dr Atiqa Arshad has prepared a duplicate file which the Commission used in its proceedings. The Petitioner never questioned their veracity.

47. As adumbrated, section 28 of the PHC Act empowers the Commission to levy a fine up to Rs.500,000/- for contravention of any provision of the Act, and the rules and regulations framed thereunder, considering the gravity of the offence. Therefore, section 28 requires two assessments: first, ascertaining whether a violation occurred, and second, determining the magnitude of the breach and the appropriate monetary penalty. Reasons must support both determinations. The Commission found that PCH had a poor score (37%) on the MSDS Table and fined it Rs. 300,000/-. The impugned order dated 01.11.2021 is silent on how the Commission decided on the quantum of the fine. It has an air of arbitrariness about it. This imposition is liable to be set aside.

48. The Commission has ordered that 20% of the fine imposed be given to the Petitioner when recovered. It has exceeded its jurisdiction by

issuing such a directive because it lacks a legal foundation. Section 32(1) of the PHC Act provides that a Fund shall be established for the purposes of the Act, which will be administered and controlled by the Commission. Section 32(2) delineates the sources for this Fund, which *inter alia* include any fees, penalties and other charges levied under the Act. This means that all fees and penalties must be deposited into this Fund. Section 32(3) specifies the permissible uses of the Fund, which primarily include expenses related to the Commission's functioning and operations of the Commission, such as paying employees, hiring contractors and consultants, purchasing equipment, repaying loans, and covering other legitimate expenses. Importantly, Section 32 does not grant the Commission the authority to utilize the Fund for compensating complainants.

49. The Petitioner is also dissatisfied with the Commission's decision to exonerate Respondent No.5 and refer the cases of Respondents No.6 and 7 to the Pakistan Medical Commission – which is now pending with the relevant committee of Pakistan Medical and Dental Council (PMDC) following the enactment of the Act of 2022. However, before judging whether the Commission has done so rightly, it is necessary to determine the precise scope of the PHC Act and the PMDC Act of 2022 because both contain clauses relating to medical negligence.

50. The PHC Act is a provincial statute. Its objective is to improve the quality of healthcare services and to eradicate quackery in the Punjab in all its forms and manifestations. On the other hand, the PMDC Act of 2022 is a federal law that consolidates the law governing the registration of medical practitioners and dentists and reconstitutes the Medical and Dental Council in Pakistan to establish a uniform minimum standard of basic and higher qualifications in medicine and dentistry. In ***Dr. Riaz Qadeer Khan v. Presiding Officer, District Consumer Court, Sargodha, and others*** (PLD 2019 Lahore 429), a Division Bench of this Court observed:

> "No doubt the medical profession is a Federal subject but it is only to the extent of regulating and educational qualifications and uniformity of standards in training and qualification for the purposes of education and entry into the profession. In this regard, the Pakistan Medical and Dental Council Ordinance, 1962, [15] regulates the minimum standards of higher educational qualification in medicine and dentistry. It recognizes all medical and dental qualifications whether obtained in Pakistan or

[15] Now, it is Pakistan Medical and Dental Council Act 2022.

> outside the country. It calls for the registration and licensing of medical and dental practitioners and all matters related to the establishment and functions of medical and dental institutions, including their recognition, are regulated by the PMDC. Hence, any person professing to be a medical or dental practitioner must be recognized, registered and licensed with the PMDC. It also regulates the institution from which the professional degree for qualifying as a doctor or dentist is obtained. However, this Ordinance does not regulate any of the healthcare services or establishments which will be used by the medical or dental practitioners during the process of providing medical or dental services. Therefore, it can safely be concluded that healthcare services, establishment and service providers do not fall under the subject of the medical profession, as such being a provincial subject, are liable to be tried and adjudicated upon by the provincial law."

51. Similarly, in ***Punjab Healthcare Commission v. Mushtaq Ahmad Chaudhary and others*** (PLD 2018 Lahore 762), a Single Judge of this Court held that the PHC Act does not regulate the medical profession. Instead, it focuses on regulating the provision of healthcare services, establishment and service providers. These subjects fall within the ambit of public health or healthcare rather than the specific realm of the medical profession.

52. Section 19 of the PHC Act addresses the issue of medical negligence. It reads as follows:

> **19. Medical negligence.—** (1) Subject to sub-section (2), a healthcare service provider may be held guilty of medical negligent on one of the following two findings:--
>
> (a) the healthcare establishment does not have the requisite human resources and equipments which it professes to have possessed; or
>
> (b) he or any of his employees did not, in the given case, exercise with reasonable competence the skill which he or his employee did possess.
>
> (2) The recognized and known complications of a medical or surgical treatment are not considered as medical negligence.

53. The term "healthcare service provider" is defined in section 2(xvii) of the PHC Act, which I have reproduced in footnote 2, supra. According to that definition, it encompasses medical practitioners. "The general scheme of healthcare law and clinical governance requires efficiency, responsibility and accountability at every level where healthcare is provided. Hence, the practitioner, the services, the establishment and the service provider are all regulated to ensure that the healthcare works at its optimum for the benefit of the people."[16]

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[16] *Punjab Healthcare Commission v. Mushtaq Ahmad Chaudhary and others* (PLD 2018 Lahore 762).

54. The PMDC Act of 2022 deals with medical negligence in section 44, which is reproduced below:

> **44. Removal of names from the register.**—(1) The Council, in its discretion, may direct the registrar to remove altogether or for a specified period from the register the name of any registered medical practitioner or registered dentist who has been convicted by the disciplinary committee or by any other court of law of any such offence as implies in the opinion of the Council a defect of character defined in the code of ethics of practice or who, after an inquiry at which opportunity has been given to such person to be heard in person or through a pleader, has been convicted by the disciplinary committee of the Council as guilty of professional negligence or incompetence in a patient-doctor scenario in clinical setting or who has shown himself to be unfit to continue in practice or on account of mental ill health or other grounds as prescribed in the code of ethics of practice regulations and the complaint and matter shall finish if the complainant withdraws his complaint.
>
> (2) The Council may also direct that any name removed from the register under sub-section (1) shall be restored.
>
> (3) …
>
> (4) The claim of professional negligence shall initially be established before the disciplinary committee of the Council before any other proceedings.

55. Section 44 of the Act of 2022 allows PMDC to remove a medical practitioner's name from the register entirely or for a specified period in the following circumstances: (i) if he is convicted by its disciplinary committee of professional negligence or incompetence in a patient-doctor scenario in clinical setting; (ii) if he is unfit to continue in practice because of mental ill health; (iii) if he is unfit to continue in practice on other grounds mentioned in the code of ethics. Section 44 provides a mechanism for good "housekeeping" and maintaining the minimum standard of practice which the Act aims to promote and preserve.

56. Section 19 of the PHC Act and section 44 of the PMDC Act of 2022 seem to overlap on the issue of medical negligence, but they do not. Section 44 can be invoked only when the alleged medical negligence is so grave that it raises the question of whether the medical practitioner concerned should be allowed to continue his practice.

57. The Commission has a legal obligation to decide all complaints of medical negligence filed against healthcare service providers. Section 28 empowers it to levy a fine up to Rs. 500,000/-, depending upon the gravity of negligence, if the accusation is proven. Section 26(2) of the PHC Act stipulates that if the Commission deems that the facts of a case require action under another law, it may refer the matter to the competent governmental

authorities or law enforcement agencies for appropriate action under the relevant laws. It could entail a referral to the PMDC and registration of a criminal case. In this regard, the Commission must *inter alia* follow the principles elucidated by this Court in ***Dr. Nafeesa Saleem and another v. Justice of Peace and others*** (PLD 2022 Lahore 18).

58. In the present case, the Commission found no lapse on the part of Respondent No.5, so it decided not to proceed against her. It has given extensive reasoning for this decision in the impugned order dated 01.11.2021. The Petitioner's counsel has failed to persuade this Court that it is flawed. However, the action against Respondents No. 6 and 7 is open to objection. Regulation 6 of the Complaint Management Regulations 2014 mandates the Commission to rule on all complaints, *inter alia* those involving medical negligence, malpractice or failure to provide adequate healthcare services. Section 28 of the PHC Act, in conjunction with Regulation 23, empowers the Commission to impose a fine if a complaint is successful. In this matter, the Commission has referred the cases of Respondents No.6 and 7 to PMDC without recording any findings. It has thus abdicated its jurisdiction. The Assistant Advocate General attempted to justify this course by arguing that the Commission required further inquiry to determine their culpability. This argument is not tenable. Regulations 15 and 16 of the 2014 Regulations provide for consultation with experts. In the present case, the Commission sought opinions from one neurologist and two anaesthesiologists. If it needed more assistance to decide on the guilt of Respondents No. 6 and 7, it could have consulted additional experts. The matter must, therefore, be remanded to it.

59. While hearing this case, this Court has observed some very serious issues in the healthcare delivery system in the province. The Healthcare Commission's regulatory purview ranges from public and private sector establishments to trust hospitals and autonomous healthcare organizations, including multi-disciplinary and single-speciality hospitals, clinical laboratories and diagnostic centres, clinics of general and family practitioners, Rural Health Centres, Basic Health Units, homoeopathic clinics, dental clinics, *matabs*, nursing homes, maternity centres, physiotherapy clinics, acupuncture clinics, etc. In addition, all other premises being wholly or partially used for providing healthcare services

and declared by the Government as "healthcare establishments" also fall within the Commission's jurisdiction. It has developed a comprehensive registration and licensing system to regulate all healthcare establishments and service providers. It has set minimum service delivery standards (MSDS) for all categories and all levels of health services. Each MSDS has a number of indicators. The Punjab Government approved these MSDS in October 2017. Setting service delivery standards and indicators is an established practice in various countries for continually improving the quality of service delivery in the health sector. The Commission has classified the healthcare establishments into the following three categories:

1. **Category I HCEs**

   Hospitals with a bed strength of 50 and above.

2. **Category II HCEs**

   I. Category II A HCEs (hospitals with 31-49 beds).

   II. Category II B HCEs (hospitals with 16-30 beds).

   III. Category II C HCEs (hospitals upto 15 beds).

   IV. Rural Health Centers (RHCs) (public sector HCEs with 10-20 beds).

3. **Category III HCEs**

   I. Basic Health Units (BHUs).

   II. Clinics of General Practitioners (GPs)/Family Physicians and Poly Clinics.

   III. Dental Clinic.

   IV. Clinical/Pathological Laboratories.

   V. Radiological and Imaging Diagnostic Centers.

   VI. Homeopathic Clinics.

   VII. Matabs of Hakeems.

   VIII. Midwifery Services.

   IX. Dialysis Centers.

   X. Intensive Care Unit (ICUs).

   XI. Coronary Care Units (CCUs).

   XII. Addiction/Psychiatric treatment facilities etc.

60. Since MSDS was a new regime, the Commission decided to facilitate the healthcare establishments and service providers by giving them reasonable time to comply. It issues provisional licences under section 16(1) of the PHC Act to those healthcare establishments that meet the Critical Patient Safety Areas (CPSA) requirements. The following is the detail of the said CPSA areas:

CPSA Areas

Main Areas	Sub Areas
1. Qualified Human Resource as per Declared Scope of Services	1. Scope of Services
2. Emergency Services	2. HR Status as per Scope of Services
3. Safe Blood Transfusion Services	3. Video clip of concerned HCE
4. Hospital Infection Control	4. Location of HCE
5. Operation Theatre Surveillance	5. Submission of declaration.
6. Fire & Non Fire Emergencies	
7. Hospital Waste Management	
8. Surgical Services	
9. Anesthesia Services	
10. Management of Medication	
11. Continuous Quality Improvement	
12. Medical Records	
13. Complaint Management System	
14. Diagnostic Services	

61. Granting a provisional licence to any healthcare establishment does not imply that it has complied with the relevant standards.[17] Before issuing a regular licence, the Commission must ensure that it has complied with the PHC Act, Regulations and Standards and any instructions and/or corrective orders issued by it following the survey and/or the inspection report. In other words, cent per cent implementation of MSDS by healthcare establishments is mandatory.

62. It is pertinent that the PHC Act does not stipulate any time limit within which the healthcare establishment must apply for a regular licence. As a result, these establishments continue to operate indefinitely under a provisional licence. PCH is a classic example. On 20.09.2017, Respondent No.8, its owner/administrator, applied to the Commission for registration under section 13 of the PHC Act. The Commission issued Registration Certificate No.R-41548 to PCH on 08.02.2018 and a provisional licence on 13.02.2018 under Category II-B (26-bed hospitals). The Commission inspected PCH to determine its eligibility for the grant of a regular licence on 13.12.2019. It scored 52% on the MSDS table and thus could not qualify. It conducted the second inspection on 21.10.2020, in which PCH failed again, although it showed 81% compliance. In the third inspection conducted on 11.06.2021, its score dipped to 38%, and in the fourth

[17] Regulation 11(4) of the Punjab Healthcare Commission Licensing Regulations 2020.

inspection held on 26.11.2021, it surged to 70%. PCH did not qualify for a regular licence because a perfect 100% score is required. Astonishingly, even after about 5½ years of registration, the Commission has no objection to its functioning on a provisional licence if it improves its score to 70%. The penultimate paragraph of the impugned order dated 01.11.2021 reads as follows:

> "The respondent [PCH] is further directed to improve its score up to 70% within three weeks, failing which necessary action shall be taken in accordance with law."

63. It is trite that where the law does not prescribe a time limit for performing a duty, it must be completed within a reasonable time. Reliance is placed on ***Chairman, Regional Transport Authority, Rawalpindi v. Pakistan Mutual Insurance Company Limited*** (PLD 1991 SC 14), ***Mushtaq Ahmed Sabto and others v. Federation of Pakistan and others*** [2001 PLC (C.S.) 623]. Allowing a healthcare establishment to operate on the basis of a provisional licence for an indefinite period is against the object and spirit of the PHC Act. The Provincial Government/ Commission must address this issue on priority.

64. Although vaginal delivery is a safe and low-cost method of delivery, a C-section may become necessary for medical reasons. Nonetheless, it is costly and sometimes creates health challenges for women and their newborns. The World Health Organization recommends that C-section rates should not exceed 10% or fall below 5%. The Commission has apprised this Court that the rate of C-sections in our country has risen alarmingly over the last decade, becoming a major public health issue. There are complaints that it is done even when not required. According to the survey conducted by the Pakistan Bureau of Statistics, the C-section delivery rate is 22%. It has rapidly increased from 14% in 2012-13 to 22% in 2017-18.

Region	**% of deliveries through C-section**		
	Overall	**Urban**	**Rural**
Pakistan	22.3%	-	-
Punjab	29.1%	37.2%	25.3%

Source: Pakistan Demographic and Health Survey (PDHS) 2017-18

Region	**% of deliveries through C-section**		
	Overall	**Urban**	**Rural**
Punjab	28.9%	35.1%	25.8%

Source: Multiple Indicator Cluster Survey 2018

65. The following statistics are also relevant:

S. No.	Description	% of Deliveries through C-section
1	C-section delivery rate in private facilities	38%
2	C-section delivery rate in public facilities	25%
3	Rate of C-Section in urban areas	32%
4	Rate of C-sections in rural areas	18%
5	Rate of C-sections in women with higher education	49%
6	Rate of C-sections in women with no education	11%
7	Rate of C-sections in rural areas in women of highest wealth quintile	46%
8	Rate of C-sections in rural areas in women of lowest wealth quintile	8%
9	Average rate of C-sections in Islamabad & Punjab	29%

Source: Pakistan Demographic and Health Survey (PDHS) 2017-18

S. No.	Region	% of Deliveries through C-section
1	Organization for Economic Co-operation and Development (OCED) Countries (https://stats.oecd.org/)	29.02%
2	India (National Family Health Survey reports 2021-22)	23.29%

Status of Sehat Sahulat Programme regarding C-sections

Around 800 hospitals are accredited under the Punjab Sehat Sahulat Programme. According to the Punjab Health Initiative Management Company statistics, 585,795 females insured with PHIMC gave birth in 2022-2023. Among these, 22% were normal deliveries, and 78% were C-sections. The percentage of regular deliveries is slightly better in public sector hospitals than in private hospitals.

Normal vaginal deliveries and C-sections (FY 2022-23)

Sector	NVDs	C-sections	Total	% NVD	% C-sections
Private	99,991	406,708	506,699	20	80
Public	28,219	50,877	79,096	36	64
Total	**128,210**	**457,585**	**585,795**	**22**	**78**

66. There are three major reasons for the dismal state of affairs depicted by the above-mentioned statistics. These are the financial gains, consultant's convenience, and client/patient preference. The C-sections that are not medically necessary and are performed for the first two considerations are unethical and constitute professional misconduct and malpractice. As regards the patient’s preference, it must be established that she gave informed consent. The Commission was required to set appropriate

standards to regulate this area of healthcare services but has not done it so far. The Technical Advisory Committee formed under section 10 of the PHC Act has also failed to make any recommendations.

67. International law recognizes the right to health as a human right and basic to the happiness, harmonious relations and security of all peoples.[18] It is also important because human rights are interdependent, indivisible and interrelated. Violation of the right to health may impair the enjoyment of other human rights, e.g. the rights to education, work and family life.[19] Article 9 of the Constitution of Pakistan (1973) protects the right to life as a fundamental right which has been interpreted to include all facets of human existence.[20] The right to health and, by extension, the right to healthcare is concomitant to the right to life.[21] It can also be read into the right to dignity of man guaranteed by Article 14 of the Constitution.

68. This Court is the guardian of the people's fundamental rights. Therefore, the following directives are issued:

(i) The Provincial Government and the Commission shall take appropriate steps to ensure that the healthcare establishments do not operate on provisional licences for an indefinite period and specify a time frame within which they must get a regular licence.

(ii) The Commission must enhance its capacity to discharge its duties under the PHC Act. The Government is directed to allocate funds necessary for that purpose.

(iii) The Commission shall forthwith develop standards to regulate healthcare services relating to C-section procedures in consultation with a technical advisory committee, the Society of Obstetricians and Gynecologists Pakistan (SOPGP), the Pakistan Society of Anesthesiologists (PSA), and other stakeholders. It shall ensure that the entire process is completed within 90 days from the announcement of this judgment.

(iv) The aforementioned standards shall, in particular, develop a mechanism for clinical audit of all C-sections done in the province.

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[18] Constitution of the World Health Organization. Available at: https://www.who.int/governance/eb/who_constitution_en.pdf

[19] The Right to Health, Fact Sheet No. 31. Available at: ohchr.org/documents/publications/factsheet 31.pdf

[20] *Ms. Shehla Zia and others v. WAPDA* (PLD 1994 SC 693)

[21] *Government of Sindh through Secretary Health Department and others v. Dr. Nadeem Rizvi and others* (2020 SCMR 1); *Naimatullah Khan Advocate and others v. Federation of Pakistan and others* (2020 SCMR 622) and *Sadaf Aziz and others v. Federation of Pakistan and others* (2021 PCr.LJ 205).

(v) All consultants and healthcare establishments shall submit separate statements/reports every six months giving details of the C-sections they performed during that period. The Commission shall conduct a compulsory clinical audit of all healthcare establishments and consultants whose figures exceed the WHO rate.

Disposition of the main case

69. The District Judge's judgment dated 12.10.2022 on the Petitioner's appeal is upheld.

70. The Commission's decision to exonerate Respondent No.5 is maintained. However, the matter is remanded to it (i) to judiciously re-determine the fine for PCH (Prime Care Hospital), giving reasons to justify it, and (ii) to determine whether Respondents No.6 and 7 committed any medical negligence and whether it was serious enough to warrant referral to the PMDC for action under the PMDC Act of 2022.

71. The Petitioner cannot be paid any compensation out of the fine imposed on PCH. The entire sum, when recovered, must be deposited in the Fund established under section 32(1) of the PHC Act. Nonetheless, she would be free to pursue any legal remedies against PCH.

72. PCH is directed to complete all the prescribed requirements within two months and obtain regular licence. If it fails, the Commission shall take action against it according to the law.

(Tariq Saleem Sheikh)
Judge

Announced in open Court on _____

Judge

Naeem

Approved for reporting

Judge