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JUDGMENT SHEET
LAHORE HIGH COURT
BAHAWALPUR BENCH, BAHAWALPUR
JUDICIAL DEPARTMENT

Writ Petition No. 7031/2023

Muhammad Tariq Javed
Vs.
Punjab Healthcare Commission and others

JUDGMENT

Date of hearing:	31.1.2024
For the Petitioner:	Ch. Shafi Muhammad Tariq, Advocate.
For Respondent No.1:	Mr. Gulzar Ahmad Khan Durrani, Advocate.
For the Province of Punjab:	Mr. Sajjad Iqbal, Assistant Advocate General.
Research assistance:	Mr. Sher Hassan Pervez, Research Officer, LHCRC.

Tariq Saleem Sheikh, J. – This petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”), is directed against the judgment dated 26.8.2023 delivered by the District and Sessions Judge, Lodhran.

Background

2. The Petitioner owns Tariq Medical Store in Basti Mianpur, Tehsil and District Lodhran, and has a valid drug sales licence to run it. The Punjab Healthcare Commission (the “Commission”), mandated to eradicate quackery¹ in the province, launched a series of surveys beginning in 2015, including one in District Lodhran, where the Petitioner

¹ Clause (f) of Regulation 2(1) of the 2016 Regulations defines “quack” as:

(f) “Quack” means a pretender providing health services without having registration of the Pakistan Medical & Dental Council, Council for Tibb, Council for Homeopathy or the Pakistan Nursing Council.

Clause (g) of Regulation 2(1) of the 2016 Regulations defines “quackery” as follows:

(g) “Quackery” includes such forms and methods of practices, including but not limited to different forms of treatments which are unsubstantiated and lack scientific plausible rationale; or are rendered, performed or undertaken, by persons who are not authorized to render, perform or undertake the same as per the governing laws, as well as standards of ethics etc., as the case may be, whether or not being so rendered, performed or undertaken by a quack as defined under the Act or herein.

was identified as engaging in quackery. Subsequently, Dr. Mahmood Khan also filed a complaint against the Petitioner. On 25.11.2022, acting on Census Data and in response to Dr. Mahmood's complaint, two officials of the Commission, Muhammad Jawad Khalid and Suleman Ahmad (the "PHC Officials"), visited the Petitioner's premises but found it closed. They marked the location for surveillance and revisited it on 7.12.2022 and 9.12.2022, but it was closed on both occasions. Upon inquiry, the local community informed the PHC Officials that the Petitioner was engaged in allopathic practice and had prior notice of their visits through WhatsApp groups, which enabled him to evade inspection. Consequently, Suleman Ahmad sealed the medical store and reported the matter to the Commission on 10.12.2022.

3. On 15.2.2023, the PHC Officials visited Tariq Medical Store for the fourth time. They found the Commission's seals on the premises intact, but local residents informed them that the Petitioner had established a new clinic, named Tariq Clinic, a few yards behind the medical store, where he was allegedly practising allopathic medicine. Upon visiting the clinic, the PHC Officials found it operational, but the Petitioner fled. They collected used syringes, medical waste (including injection vials), and loose medicines from the site, recorded video footage, and then sealed the premises. The PHC Officials reported the matter to the Commission, giving details of the collected materials and attaching the footage as evidence.

4. On 7.10.2022, the PHC Officials visited the location once again. They found the Commission's seal on Tariq Medical Store broken, though it was closed. Local residents informed them that the Petitioner had broken the seal and practised allopathic medicine twice or thrice a week. The PHC Officials re-sealed the medical store and submitted a report to the Commission.

5. Considering the above-mentioned reports, the Commission issued a notice dated 16.1.2023 to the Petitioner, directing him to appear before its designated committee (the "Hearing Committee") with all relevant documents, qualified staff, and an affidavit explaining his position. The Petitioner did not respond, so the Commission again issued him a summons on 20.2.2023 and 2.5.2023. He failed to respond to any of

them. Eventually, the Commission sought assistance from the District Police Officer, who ensured his appearance before the Hearing Committee on 8.5.2023.

6. The Petitioner's plea before the Hearing Committee was that he owned Tariq Medical Store, which he operated under a valid drug sales licence, and the store premises were his personal property. He explained that when his medical store was sealed, he was busy with his cousin, who had cancer and later passed away. He denied engaging in quackery at the store and claimed he had no connection with Tariq Clinic, which the PHC Officials sealed on 15.2.2023. He said a different person had been practising at that clinic but left after two months. The Petitioner also submitted an affidavit regarding his defence.

7. The Hearing Committee confronted the Petitioner with the PHC Officials' visit reports and the supporting evidence. He refuted them and reiterated his aforementioned version.

8. Upon conclusion of the proceedings, the Hearing Committee, by order dated 8.5.2023, imposed a fine of Rs. 300,000/- on the Petitioner and directed that Tariq Medical Store and Tariq Clinic be kept under surveillance to ensure that no healthcare services are provided in violation of the Punjab Healthcare Commission Act, 2010 (the "PHC Act")² and the Anti-Quackery Regulations³ (the "2016 Regulations"). The Petitioner filed an appeal under section 31 of the PHC Act against the said order. The District and Sessions Judge, Lodhran, partially accepted it vide judgment dated 26.8.2023 and reduced the amount of the fine from Rs.300,000/- to Rs.150,000/-

9. It is pertinent to mention that nobody has come forward to challenge the sealing of Tariq Clinic, which remains sealed. The Petitioner has disclaimed the ownership of Tariq Clinic throughout the proceedings and has asserted that he has no connection with it.

² Clause (xvi) of the PHC Act defines "healthcare services" as follows:

"Healthcare services" means services provided for diagnosis, treatment or care of persons suffering from any physical or mental disease, injury or disability including procedures that are similar to forms of medical, dental or surgical care but are not provided in connection with a medical condition and includes any other service notified by the Government.

³ I have used the term "Anti-Quackery Regulations" for brevity. The full title is: "The Punjab Healthcare Commission Regulations for banning quackery in all its forms and manifestations and for dealing with quacks, 2016."

The submissions of the parties

10. Ch. Shafi Muhammad Tariq, Advocate, contends that the proceedings against the Petitioner are illegal and should be quashed. He argues that, under section 22(2) of the PHC Act, an inspection team is authorized to inspect a healthcare establishment⁴ only (a) at the time of issuance or renewal of a licence or (b) upon receiving a formal complaint. Therefore, the PHC Officials had no lawful authority to visit the Petitioner's medical store. Their reports have no legal value, and no action could be taken against him on their basis. Mr. Shafi next contends that section 2(xviii) of the PHC Act outlines the qualifications and composition of an "inspection team." The officials who conducted the proceedings in this case did not meet these statutory requirements. Resultantly, the said proceedings were without jurisdiction and *coram non judice*. The counsel further contends that the PHC Act does not empower the Commission to seal or close healthcare establishments. Hence, Regulations 5 and 5A of the 2016 Regulations are *ultra vires* of the Act. Lastly, he asserts that under section 28, read with section 4(2)(g) of the PHC Act, only the Commission is competent to impose a fine on individuals found to be practising quackery. It cannot delegate this power to a committee. Therefore, the order dated 8.5.2023 is void, and because the District and Sessions Judge has failed to appreciate this point, his judgment dated 26.8.2023 is also unsustainable. Mr. Shafi relies on ***Punjab Healthcare Commission v. Mushtaq Ahmad Ch. and others*** (PLD 2016 Lahore 237)⁵ and ***Manzoor Elahi v. District & Sessions Judge, Sargodha, and others*** (PLD 2021 Lahore 843) in support of his contentions.

11. On the factual aspect, Mr. Shafi argues that there is no evidence to suggest that the Petitioner was involved in quackery at his medical store. As regards the second premises, Tariq Clinic, the Petitioner

⁴ Section 2(xv) of the PHC Act defines "healthcare establishment" as under:

- (xv) "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:
 - (a) wholly or partly used for providing healthcare services; and
 - (b) declared by the Government, by order published in the official Gazette, as a healthcare establishment.

⁵ Writ Petition No. 32150/2015 decided on 3.2.2016.

neither owns nor has any connection with it. Therefore, the Hearing Committee's order dated 8.5.2023 lacks a legal foundation and is liable to be set aside.

12. The Commission's Legal Advisor, Mr. Gulzar Ahmad Khan Durrani, has controverted the above contentions. He maintains that the PHC Officials and the Hearing Committee conducted the proceedings in accordance with the law. He emphasizes that, under section 4(g) of the PHC Act, the Commission is competent to delegate its powers to committees, including the authority to impose fines. Therefore, the Presiding Officer's appointment was valid, and her order dated 8.5.2023 is to be reckoned as the Commission's order and enforced accordingly. Regarding the *Manzoor Elahi*'s case, Mr. Durrani argues that Mr. Shafi's reliance on it is misplaced because the Supreme Court of Pakistan set aside that judgment through its order dated 18.11.2021 in Civil Petition No. 5444 of 2022 (titled: "*Chairperson Punjab Healthcare Commission v. District & Sessions Judge, Sargodha, and another*"). He has also submitted a copy of that order, which has been placed on record.

13. Mr. Durrani refutes the Petitioner's contention that there is no incriminating material against him. He contends that the PHC Officials' reports, recovery of used syringes and vials, and video footage established that he was engaged in quackery prohibited by law.

Questions of law

14. This petition raises the following questions of law:

- i) Does Regulation 3(2) of the 2016 Regulations conflict with section 22 of the PHC Act?
- ii) Are the powers of seizure and sealing conferred by Regulations 5 and 5A of the 2016 Regulations *ultra vires* of the PHC Act?
- iii) Can the Punjab Healthcare Commission delegate its adjudicative powers to a committee in cases involving violations of the PHC Act, rules, or the 2016 Regulations? If so, is that committee competent to impose fines on the offender?

15. Since the above questions are of public importance and involve interpretation of the Constitution and statutory law, this Court issued a notice to the Advocate General Punjab under Order XXVII-A of the Code of Civil Procedure 1908.

The Advocate General's submissions

16. The Advocate General has filed written submissions in response to the notice under Order XXVII-A CPC. He argues that section 4 of the PHC Act grants the Commission broad authority, including the power to delegate its functions. He submits that section 22 pertains to the inspection process, while Regulation 3(2) provides a mechanism to combat quackery. There is no conflict between these provisions as they govern different aspects of the Commission's regulatory functions. The Advocate General contends that the Petitioner's challenge to the Commission's authority to seal healthcare establishments is unfounded because it is based on the Lahore High Court's judgment reported in PLD 2016 Lahore 237, which the Supreme Court has overturned. In a subsequent ruling (PLD 2018 Lahore 762), the High Court upheld the Commission's power to seal premises under the precautionary principle, affirming that section 4 of the PHC Act includes the authority to take preventive measures, such as sealing healthcare establishments, to protect public health.

17. The Advocate General maintains that the Commission can lawfully delegate its *quasi-judicial* functions, including imposing fines, under sections 4(2)(m) and 4(3) of the PHC Act. The PHC Act does not differentiate between powers that can be delegated and those that cannot, allowing for the delegation of all powers and functions, including the imposition of penalties. The Advocate General asserts that the Petitioner's reliance on *Manzoor Elahi v. District & Sessions Judge, Sargodha, and others* (PLD 2021 Lahore 843) is misplaced because the Supreme Court has set it aside and it is no longer a good law. Even otherwise, that judgment failed to address the PHC Act's explicit provisions that permit delegation.

Opinion

18. The PHC Act of 2010 aims to improve the quality of healthcare services and ban quackery in the Punjab in all its forms and manifestations.⁶ It applies to all healthcare establishments, public and private hospitals, non-profit organizations, charitable hospitals, trust

⁶ The preamble of the Punjab Healthcare Commission Act, 2010.

hospitals, semi-government and autonomous healthcare organizations.⁷ The PHC Act establishes the Punjab Healthcare Commission to achieve the said purpose, and section 4 outlines its functions and powers. Section 4(3) of the PHC Act allows the Commission to delegate any of its functions to another person, subject to terms and conditions mutually agreed upon between the Commission and that person.

19. Under section 5(1) of the PHC Act, the Board is entrusted with the overall supervision, direction, and management of the Commission's affairs, including its policy-making responsibilities. It is empowered to exercise all the powers and perform any acts, deeds, or functions that the Commission is authorized to undertake under the Act. Section 9(3) authorizes the Board to establish committees to assist it in performing its functions.

20. Chapter V (sections 22 to 31) of the PHC Act deals with inspection and enforcement. Section 40 empowers the Commission to make regulations for carrying out the purposes of the Act by issuing a notification in the official Gazette. Under section 41, the Government may also frame rules to give effect to the provisions of the Act.

21. The Commission initially issued Standing Orders,⁸ (the "Standing Orders") purportedly under sections 4(2)(q) and 9(1)(i) of the PHC Act, to address quackery. These *inter alia* provided for setting up an Anti-Quackery Cell and authorized the Commission to seal or close down healthcare establishments. However, in ***Punjab Healthcare Commission v. Mushtaq Ahmad Ch. and others*** (PLD 2016 Lahore 237),⁹ the Court held that while section 4(2)(q) of the PHC Act mandates the Commission to take necessary steps to ban quackery, it does not authorize the creation of a new regime, such as setting up an Anti-Quackery Cell through a Standing Order. The "necessary steps" must be taken through subordinate or delegated legislation. The Court stated that section 13, read with section 31(1)(c) of the Act, does not empower the Commission to seal or close healthcare establishments. A passing reference in section 31 to an order closing a healthcare establishment is of

⁷ Section 1(4) of the PHC Act.

⁸ Standing Orders of the Punjab Healthcare Commission for banning quackery in all its forms and manifestations and for dealing with quacks.

⁹ Writ Petition No.32150/2015 decided on 3.2.2016.

no consequence, as the Act does not confer substantive power to issue such an order. Administrative Standing Orders cannot substitute proper statutory provisions or rules. Consequently, the sealing of the healthcare establishment was deemed unlawful, and the decision of the District and Sessions Judge, Toba Tek Singh, which set aside the sealing, was upheld. The Court recommended that the Commission propose amendments to the PHC Act or develop the necessary rules and regulations to achieve what was intended in the Standing Orders. Until such steps are taken, neither the Commission nor the Board can seal healthcare establishments or establish an Anti-Quackery Cell to handle third-party complaints.

22. In response to the Court's observations in the aforementioned case, the Commission, exercising its powers under section 40(1), read in conjunction with section 4(1) and clauses (j) and (k) of section 40(2) of the PHC Act, framed the Anti-Quackery Regulations 2016¹⁰ vide Notification No.REG.AQ-1/2016 dated 10.9.2016 (published in the Punjab Gazette on 27.10.2016). These Regulations were subsequently amended in 2017.¹¹

23. Additionally, the Commission appealed the aforementioned judgment in the Supreme Court. On 14.2.2017, through a consent order, the Supreme Court accepted that appeal (along with other connected appeals)¹² and remanded the cases to this Court to be consolidated and heard alongside Writ Petition No. 2427/2017. In that petition, the constitutionality of the PHC Act was challenged on the grounds that the Provincial Government lacks the authority to legislate on matters related to the medical profession, as Entry 11, Part II of the Federal Legislative List reserves the regulation of legal, medical, and other professions for the Federal Government. The argument was that the PHC Act attempts to regulate the medical profession by requiring all medical practitioners to register with the Commission, which conflicts with federal law since such practitioners are already registered under federal law.

¹⁰ The Punjab Healthcare Commission Regulations for banning quackery in all its forms and manifestations and for dealing with quacks, 2016.

¹¹ The Punjab Healthcare Commission (Amendment) Regulations for banning quackery in all its forms and manifestations and for dealing with quacks, 2017.

¹² Re: C.A. Nos. 213 and 214 of 2016, C.P. Nos. 768, 997, and 998 of 2016.

24. In the post-remand judgment dated 6.7.2018, which is reported as **Punjab Healthcare Commission v. Mushtaq Ahmed Chaudhary and others** (PLD 2018 Lahore 762), the Court ruled that the PHC Act does not regulate the medical profession but instead regulates healthcare services, establishments, and service providers. These areas do not fall under the subject of the medical profession but rather within the realm of public health or healthcare, which requires regulation, standardization, and accountability. In any regulatory framework, registration and licensing are essential for the authority to achieve its objectives and mandate. Accordingly, the Commission is responsible for establishing a clinical governance and healthcare system to effectively monitor all services, providers, and establishments within the healthcare sector. This is distinctly different from the registration of medical practitioners. The Court concluded that the PHC Act is not *ultra vires* the Constitution, and its mandate falls squarely under provincial jurisdiction.

25. The Court further held that the power to seize and seal is a necessary preventive measure to protect public health and safety. Based on the precautionary principle, this power shifts the focus from reaction to prevention. Under section 4 of the PHC Act, the Commission possesses inherent powers to seal healthcare establishments as a precautionary step, a power that existed even before the framing of the 2016 Regulations. The relevant excerpt is reproduced below:

“The Regulations issued under Section 40(1) of the [PHC] Act in 2016 prescribe the procedure to be adopted when the Commission is to seal a healthcare establishment. Hence, the power of sealing exercised by the Commission is in furtherance of the mandate of the [PHC] Act and the powers given to it under the law. In this regard, the power exercised prior to the framing of the Regulations falls within the inherent power to seal healthcare establishments to prevent any further risk or harm to persons under treatment or care by a healthcare establishment or healthcare service provider. Hence, no illegality is made out against the act of sealing.”

26. Leave to appeal was preferred against the above judgment dated 6.7.2018, but the Supreme Court refused the same vide order dated 26.12.2018.

27. It is pertinent to note that earlier, while adjudicating upon SMC No.1 of 2010 and HRC No.27813-P of 2017, the Supreme Court issued the following order on 14.4.2018:

“We accordingly direct the C.E.O. of the Punjab Healthcare Commission to take immediate steps to ban such business including sealing of premises where quackery is being practiced throughout the Province of Punjab. In case in pursuance of this order, the premises where quackery is being practiced are sealed by the Commission, no other Court in Pakistan shall interfere in the order passed by the Commission. The aggrieved person may approach this Court for redressal of his grievance as the order for banning and sealing of premises has been passed by this Court ...”

28. Having outlined the legislative framework, let's delve into the moot points.

Vires of Regulation 3(2)

29. Chapter V of the PHC Act deals with inspection and enforcement. Section 22, in relevant part, provides:

22. Inspection.— (1) The Commission may, by order in writing, appoint an inspection team to perform the functions and exercise the powers of the Commission in relation to inspections under this Act, rules, or regulations subject to such conditions and limitations as the Commission may specify in this behalf.

(2) The inspection team may inspect a healthcare establishment:

- (a) at the time of issuance and renewal of licence; or
- (b) on receipt of a complaint.

(3) The inspection team may inspect any apparatus, appliance, equipment, instrument, product, goods, or item used or found in, or any practice or procedure being carried out at the healthcare establishment.

(4) The inspection team may enquire any case if there has been any instance or allegation of maladministration, malpractice, or failure in the provision of healthcare services against a healthcare establishment.

(5) The Commission may impose a fine which may extend to fifty thousand rupees upon a healthcare service provider who –

- (a) refuses or fails, without reasonable cause, to furnish any information to the inspection team; or
- (b) gives any false or misleading information to the inspection team.

(6) ...

(7) ...

30. Section 22(1) of the PHC Act grants the Commission the general power to appoint an inspection team¹³ to carry out its functions and exercise its powers regarding inspections under the Act, rules, or regulations to ensure compliance with the law. In contrast, section 22(2) applies specifically to two scenarios: when a healthcare establishment

¹³ Section 2(xviii) of the PHC Act defines “inspection team”, and specifies its composition and qualification of those who can be appointed to it. Section 2(xviii) states:

(xviii) “Inspection team” means a team comprising more than two medical experts having postgraduate qualification and not less than fifteen years’ experience in the concerned field, and consisting of one employee of the Commission and others from public or private sector, to inspect any healthcare establishment under the Act.

applies for a new licence or renewal and when there is a complaint against a healthcare establishment. The overall focus of section 22, particularly through section 22(2), seems to be ensuring that licensed establishments meet the required standards. However, the broader authority granted by section 22(1) can extend to other areas like quackery if needed.

31. While section 22 of the PHC Act lays down the inspection procedure, section 4(1) generally 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 to ban quackery.” Section 4(2) lists the specific powers without prejudice to the generality of section 4(1). Section 4(2)(m) empowers the Commission to appoint, engage, authorize, and terminate employees, consultants, advisors, attorneys, inspection teams, contractors, agents, and experts on such terms and conditions as deemed fit and assign, delegate, or entrust them with such functions and powers as are expedient for the performance of functions of the Commission. Section 4(2)(q) allows the Commission to take necessary steps to ban quackery. Furthermore, section 4(3) authorizes the Commission to assign any of its functions to an individual. Section 4(4)(b) empowers it to coordinate with the Government.

32. Section 22 of the PHC Act cannot be construed in a manner that undermines or nullifies section 4. To reconcile the two sections, the court may invoke the rule of purposive interpretation, which focuses on the law’s underlying purpose to ensure it achieves the intended objective when the literal meaning leads to an ambiguous, absurd, or unjust outcome. In *Mangin v. Inland Revenue Commission*, [1971] 1 All ER 179 at 182, [1971] AC 739 at 746, the Privy Council stated: “the object of the construction of a statute being to ascertain the will of the legislature it may be presumed that neither injustice nor absurdity was intended. If, therefore, a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.” In *Molar Mal (Dead) through L.Rs v. M/s Kay Iron Works (P) Ltd.* (AIR 2000 SC 1261), the Supreme Court of India held:

“... normally the courts will have to follow the rule of literal construction which rule enjoins the court to take the words as used by the Legislature and to give it the meaning which naturally implies. But,

there is an exception to this rule. That exception comes into play when application of literal construction of the words in the Statute leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the Statute as a whole, it requires a different meaning.”

33. The purpose of section 22 of the PHC Act is that a healthcare establishment should be inspected by qualified persons so that they may ensure regulatory compliance. These inspections naturally require technical expertise, as inspectors must evaluate complex medical practices and equipment, ensuring that the healthcare establishment is providing safe and effective services. In contrast, identifying quackery primarily involves verifying the credentials of the individual concerned, which does not demand the same level of technical expertise. Therefore, a technical expert is not essential for inspecting premises suspected of quackery.

34. Regulation 3(2) of the 2016 Regulations empowers the Commission to authorize executive authorities or law enforcement agencies, through written instructions or directions, to exercise the necessary powers to visit premises suspected of quackery. These agencies are required to report quacks and quackery-related activities to the Commission, either directly or through designated officers. Regulation 3(2) is fundamentally based on the wide powers granted to the Commission under section 4 of the PHC Act. While the Commission can appoint inspection teams under section 22 for various purposes, including investigating quackery, Regulation 3(2) derives its legitimacy from the Commission’s broader regulatory authority under section 4. Therefore, it is lawful and not *ultra vires*. Question-I is answered in the negative.

Vires of Regulations 5 & 5A

35. As discussed, the Commission initially issued Standing Orders, purportedly under sections 4(2)(q) and 9(1)(i) of the PHC Act, to combat quackery and, to this end, *inter alia*, provided for the establishment of an Anti-Quackery Cell and sealing/closing the premises where quacks operated. However, in **Punjab Healthcare Commission v. Mushtaq Ahmed Ch. and others** (PLD 2016 Lahore 237), when the Court declared these Standing Orders to be without lawful authority, the Commission framed the 2016 Regulations under section 40 of the PHC Act. These Regulations were subsequently amended in 2017.

36. Regulation 2(1) of the 2016 Regulations mandates the Commission to establish an Anti-Quackery Cell to receive and manage reports and complaints regarding quackery and ensure that healthcare services are rendered in accordance with the provisions of the PHC Act, regulations, Minimum Service Delivery Standards, Reference Manuals, and the Commission's orders issued from time to time. Regulation 5 empowers authorized officers, including those from executive authorities, law enforcement, or any other person designated by the Commission, to inspect the relevant premises to verify whether healthcare service providers have valid registrations from recognized councils¹⁴ and fulfill licensing requirements. If the officers find any violations, they should seize relevant evidence, such as prescription slips or medicines, and collect statements from patients or attendants willing to testify. They should also prepare an on-site recovery memorandum with signatures and thumb impressions from those present, documenting the findings. Regulation 5A authorizes the said officers to seal premises if unregistered individuals are found providing healthcare services or if quackery is being practised. Before sealing, officers must confirm that no patients requiring urgent care are on the premises and, if needed, arrange for their safe transfer. Officers are also responsible for safeguarding medicines or perishable items to prevent spoilage. Once the premises are sealed, the keys are handed to the healthcare establishment's owner or manager, or if they are unavailable, submitted to the Commission along with a report.

37. The legislative intent of the PHC Act is to empower the Commission to safeguard public health by regulating healthcare standards and eliminating quackery. The powers of seizure and sealing are robust enforcement mechanisms that align with this intent and enable the Commission to act swiftly and effectively against quackery. They are consistent with the broad mandate given to the Commission under section 4 of the PHC Act, which allows the Commission to take all necessary steps to ban quackery and protect public health. Consequently, Regulations 5 and 5A of the 2016 Regulations are *intra vires* the PHC Act. Question-II is also answered in the negative.

¹⁴ These include the Pakistan Medical and Dental Council, the Pakistan Nursing Council, the National Council for Tibb, or the National Council for Homeopathy.

Jurisdiction of the Hearing Committees

38. Originally, any authority other than the courts was described as “administrative.” In early cases, when such authorities were required to make determinations affecting the rights of parties, they were expected to “act judicially.” However, it was soon realized that even when administrative authorities made decisions based on judicial principles, their role could not be classified as “judicial”, as this function was reserved exclusively for courts of law. The term “*quasi-judicial*”, meaning “not exactly”, was coined to address this distinction. Today, it is common to describe an authority as *quasi-judicial* when it possesses some attributes or trappings of a “court”, but not all.¹⁵

39. According to Wade & Forsyth,¹⁶ “administrative law needs consistent working definitions of the three primary constitutional functions, legislative, administrative and judicial; and also of the hybrid ‘*quasi-judicial*’ function which has a part of its own to play.” Judicial decisions are based on legal rules and principles, with a judge seeking the correct solution through objective analysis. In contrast, an administrative decision is guided by policy, focusing on what is suitable and desirable in the public interest. Despite some overlap, the roles of judges and administrators differ fundamentally, with judges being objective and administrators focusing on practical, policy-driven solutions. The concept of *quasi-judicial* functions refers to administrative tasks that must follow certain judicial procedures, such as adhering to natural justice principles. For example, when a minister decides on a planning appeal, the decision is based on policy, but the process requires fairness and transparency, similar to judicial procedures.

40. *De Smith’s Judicial Review* explains that the term *quasi-judicial* function may have any one of the following three meanings: First, it may describe a function that is partly judicial and partly administrative, such as the process of issuing a compulsory purchase order, where an administrative decision is made after a judicial-like inquiry and consideration of objections. Second, it may refer to the judicial aspect within a broader administrative process, such as the inquiry and objection

¹⁵ *G.J. Kanga and another v. S.S. Basha*, 1993 (95) Bom LR 632.

¹⁶ H.W.R. Wade & C.F. Forsyth, *Administrative Law*, Eleventh Edn., p. 31.

handling, which are considered *quasi-judicial* acts. Finally, the term may apply to discretionary acts where the decision-maker's discretion is not entirely free but is bound by certain legal standards or principles of fairness.

41. It is a well-known principle of law that when a person is granted authority, particularly where their individual judgment and discretion are trusted, they must personally exercise that power unless explicitly allowed to delegate it.¹⁷ This tenet is sometimes expressed in the form of the maxim *delegatus non potest delegare* (or *delegate potestas non potest delgari*). It has been applied most rigorously to proceedings of courts, requiring the judge to act personally throughout a case except insofar as he is expressly absolved from this duty by statute. Special tribunals and public bodies exercising functions broadly analogous to the judicial are also barred from delegating their decision-making authority unless the law allows it.¹⁸ Nevertheless, courts may recognize an implied authority for public bodies to delegate certain tasks, such as investigating, gathering evidence, and making recommendations, if two conditions are satisfied: (a) the original body retains the power of decision in its own hands and receives a report full enough to enable it to comply with its duty to "hear" before deciding, and (b) the context does not indicate that it must perform the entire "adjudicatory" process itself.¹⁹

42. According to *De Smith's Judicial Review*, the following are some of the general principles of delegation of discretion:²⁰

- (i) The delegation may be deemed invalid if an authority grants discretionary powers to committees, sub-committees, or individuals without retaining supervisory control.
- (ii) The extent of control the delegating authority maintains over the actions of the delegate, such as the power to reject a decision or recommendation, is crucial for ensuring the delegation is valid.
- (iii) The ability to delegate discretionary powers depends on the scope of the authority, its impact on individual interests, and the need for efficient public administration. The choice of delegate should be based on practicality, not rank, and should consider factors like resources, skills, and experience.

¹⁷ De Smith's *Judicial Review* (Sweet & Maxwell, Eighth Edn. 2018), p. 321

¹⁸ *ibid*, p. 322

¹⁹ *Ibid.*

²⁰ *ibid*, p. 327-331

- (iv) It is improper to delegate broad discretionary powers to another authority unless expressly authorized, especially if the delegating body cannot control the other authority.
- (v) Discretionary powers assigned to a specific officer (e.g., a chief of police) cannot be exercised by someone else unless there is a statutory provision for a deputy or if administrative necessity outweighs personal responsibility.
- (vi) Sub-delegation of powers that have already been delegated is more strictly controlled than the initial delegation, as Parliament is presumed to allow no further delegation unless explicitly stated.
- (vii) Powers to sub-delegate do not usually include the authority to delegate tasks requiring judgment unless such delegation is necessary for performing the duty.
- (viii) Statutes that allow sub-delegation must be followed strictly, ensuring that delegation is conveyed properly and the scope of delegated functions is clearly defined.

43. It may be advantageous to refer to some cases decided by our courts that elaborate the principles of delegation. In ***Pakistan Electronic Media Regulatory Authority (PEMRA) v. Pakistan Broadcasters Association and another*** (2023 SCMR 1043), the Supreme Court held that when considering delegation, the authority must begin by identifying the individual to whom the delegation is made and the specific power, responsibility, or function to be delegated. It should take into account factors such as the significance of the task, the nature of the responsibility or function, the context in which it is exercised, and its impact on those affected. While these factors are not exhaustive, they are essential for making a lawful delegation. The authority must act as a sieve and “scale” its powers, responsibilities, and functions in order of importance. Delegation cannot be appropriately made without this assessment, or at the very least, an awareness of these considerations when deciding whether to delegate. This principle is fundamental, and any delegation made without such consideration would be unlawful. Consequently, the more significant the power, responsibility, or function, the higher in the hierarchy the delegate must be, and the delegation process – whether by general or special order – must reflect this. Although the statutory language may sometimes suggest broad discretion in imposing conditions on delegation, the Supreme Court clarified that this discretion is not unfettered. It must be exercised in a structured, contextual, and coherent manner rather than being applied arbitrarily.

44. In *Fun Infotainment (Pvt) Ltd. v. Pakistan Electronic Media Regulatory Authority and others* (PLD 2024 SC 230), the Supreme Court held that when a statutory authority, such as PEMRA, is empowered to delegate its powers, responsibilities, or functions, that discretion must be exercised reasonably and non-arbitrarily, and should align with the statutory purpose. Delegation is an executive function, and its validity is judged by the same standards as any other administrative discretion. When delegating a power, responsibility, or function, the authority must not distort the statutory scheme, and any conditions imposed should be rational and appropriate. As emphasized by *Pakistan Broadcasters Association*,²¹ the more important the power, responsibility, or function being considered for delegation, the higher the “threshold” must be for the authority in deciding not to impose any conditions. This threshold should be gauged according to the importance of the power, responsibility, or function being delegated, and as the authority delegates more significant powers, responsibilities, or functions, the threshold – and the discretion not to impose conditions – diminishes. The selection of the delegate must be reasonable, and any improper delegation is subject to judicial review.

45. The concept of delegation must be clearly distinguished from agency. There are three main characteristics of agency. First, an agent acts on behalf of the principal, in the principal’s name, and any actions taken by the agent within their authority are attributable to the principal. These principles also apply to delegation in administrative law, where it is generally unlawful for a delegate to exercise powers in their own name. However, when Parliament delegates legislative powers or is validly sub-delegated by its delegate, the delegate or sub-delegate exercises the powers in their own name. In local government, administrative delegation schemes often operate in ways that diverge from the traditional principal-agent relationship. Secondly, an agent typically receives detailed instructions from the principal and operates with limited discretion. In contrast, those entrusted with statutory discretionary powers often exercise sufficient autonomy. The level of control retained by the delegating authority is usually a critical factor in determining the validity

²¹ *Pakistan Electronic Media Regulatory Authority (PEMRA) v. Pakistan Broadcasters Association and another* (2023 SCMR 1043).

of the delegation. Courts are more likely to uphold delegation when the authority retains significant control and may even conclude that no delegation has occurred if the original authority continues to exercise substantial oversight over the powers. Thirdly, in agency, the principal retains concurrent powers with the agent, meaning the principal can act alongside or instead of the agent, even when the agent is authorized to act. The agent operates on behalf of the principal, but the principal does not relinquish their authority. On the other hand, delegation involves the transfer of specific powers or functions to a delegate. Once delegated, the delegate exercises those powers independently within the scope of the delegation, and the authority cannot directly exercise the delegated powers unless the terms of the delegation explicitly provide for such a right. However, it retains oversight and may revoke or amend the delegation. The delegator is bound by decisions made by the delegate within the scope of the delegated authority.²²

46. In view of the above distinction between delegation and agency, in *Abdul Haseeb Khan v. Ravi Urban Development Authority and others* [2023 PLC (C.S.) 804], this Court explained that in cases of statutory delegation, the delegate exercises the assigned powers and performs the delegated functions in their own name. This is because statutory delegation grants authorization to act personally rather than as an agent. The relevant excerpt is reproduced below:

“In the case of statutory delegation, the delegate exercises the powers and performs the functions delegated to him by acting in his own name as the delegation involves an authorization to act personally rather than as an agent. The nature of such a delegation was described in *B (A Solicitor) v. Victorian Lawyers RPA Ltd.* (2002) 6 VR 642 as under:

‘A delegate acting is not an agent who exercises the [delegator’s] powers but rather, as the new repository of the powers, exercises his own powers as a delegate.’

“In case where the Authority has not delegated its power but has only authorized a person or an employee to act in exercise of its power, the act is to be done in the name of the Authority (see *London County Council v. Agricultural Food Products Ltd.* [1955] 2 Q.B. 218 per Romer L.J. at p.224.). On the other hand, where a delegate is exercising the power delegated to him under a statute, he may validly exercise that power in his own name (see *Owendale (Pvt.) Ltd. v. Anthony* (1967) 117 CLR 539). Similarly, it is well established that when a power is so delegated, the delegate must exercise his own independent discretion in

²² De Smith’s *Judicial Review* (Sweet & Maxwell, Eighth Edn. 2018), pp. 325-6.

the exercise of the delegated power (see *Northern Land Council v. Quall* [2020] HCA 33). However, this principle is not absolute as it yields to any contrary indicator found in the language, scope or object of the statute.”

47. Having reviewed the law, I now turn to the question whether the Commission can delegate its adjudicative powers to a committee in cases involving violations of the PHC Act, rules, or regulations and whether that committee is competent to impose fines on offenders.²³

48. As noted above, section 4 of the PHC Act outlines the Commission’s functions and powers. Clause (g) of section 4(2) empowers the Commission to impose and collect penalties for violations of the rules, regulations, standing orders, and instructions issued under the Act. Clause (m) of section 4(2) empowers the Commission to appoint employees, consultants, advisors, attorneys, inspection teams, contractors, agents, and experts and assign, delegate, or entrust them with such functions and powers as are expedient for the performance of the Commission’s functions. Section 4(3) permits the Commission to assign its functions to others on agreed terms. Section 22(5) empowers the Commission to fine healthcare service providers up to fifty thousand rupees for failing to provide or give false information to the inspection team. Section 28(1) authorizes the Commission to impose fines up to five hundred thousand rupees for contraventions of the Act, depending on the severity of the offence. Finally, section 31(1)(e) provides the right to appeal before the District and Sessions Judge against the imposition of a fine by the Commission.

49. The 2016 Regulations provide for committee hearings in cases of violations of the PHC Act, rules, and regulations. Regulation 6 outlines the hearing procedure, while Regulations 7(3) and 7(4) empower

²³ It is significant that the PHC Act alternates between the terms “fine” and “penalty”. For the purposes of the present case, it is not necessary to determine whether this reflects a deliberate distinction or if the terms were used interchangeably by the draftsman. The Supreme Court of Pakistan considered these terms in *Pakistan Telecommunication Authority (PTA) v. Pakistan Telecommunication Company Limited* (2016 SCMR 69), and explained that a “penalty” refers to a loss, disadvantage, or punishment imposed on an individual or their property due to their actions or omissions, covering both criminal and civil contexts. In criminal law, it signifies punishment, such as imprisonment or a monetary payment, for violating the law. In civil law, it may result from a breach of statutory duty or contractual obligation, though its scope and remedies vary. However, a “fine” is a specific type of penalty that involves a monetary payment as punishment for breaking the law. While all fines are penalties, not all penalties are fines. The Supreme Court observed that “both the terms “penalty” and “fine” in a statutory construction may sometime be used loosely but a true import of the term would obviously depend upon the subject matter and the object of the statutory instrument wherein such term has been employed that too with reference to the context in which it is used.”

the committee to impose fines for specific violations. Regulations 7(3) and 7(4) are reproduced below for ready reference:

(3) In any case, if the Committee, after hearing the concerned persons, concludes that a person who is duly registered with either of the Councils, as mentioned in clause (xxix) of Section 2 of the Act, is rendering unsubstantiated and unjustified support to an unregistered person(s), in any manner whatsoever, then his such conduct shall be reported to the relevant Council, for necessary action.

In such a situation the Committee shall impose a fine, which may extend to five hundred thousand rupees, upon such a person who was found to be practicing quackery at the said premises and the healthcare service provider, individually or collectively, as the case may be.

(4) Any person who is proved to be responsible and/or involved in the act of quackery or who is proved to be practicing as quack(s) at any particular Healthcare Establishment, the Committee shall impose a fine upon such person, which may extend up to five hundred thousand rupees, depending upon the facts and circumstances of the case and keeping in view the gravity of the offence and in the case of continuing failure to comply with the orders and directions, as issued to such person, or repetition of such illegal practice, to a further fine, which shall not be less than fifty thousand rupees and shall in no case exceed five hundred thousand rupees.

50. The Commission has appointed Hearing Committees to proceed further on the reports submitted by authorized officers/teams against quacks/unauthorized practitioners vide notification dated 19.9.2022. While clause (m) of section 4(2), read in conjunction with section 4(3) of the PHC Act, authorizes the Commission to appoint such a committee, the critical issue lies in defining the scope and extent of its powers, because a Hearing Committee undoubtedly exercises *quasi-judicial* functions when conducting its proceedings.

51. “Processing the case” and “deciding the case” are two distinct actions. The case of ***Prof. Dr. Manzoor Hussain and others v. Zubaida Chaudhry and others*** (2023 SCMR 1311) is instructive. In that case, section 14(4) of the Federal Ombudsman Institutional Reforms Act 2013 stipulated that a representation made to the President of Pakistan must be “processed” in the President’s office by a person qualified to be a Supreme Court Judge or who has served as a Wafaqi Mohtasib or Federal Tax Ombudsman. The question arose as to whether, in the absence of explicit authority to delegate the President’s decision-making powers, the term “processed” implied that these powers were delegated to the officer, thereby divesting the President of his authority. The Supreme Court ruled that the officer’s role was limited to preparing the case and making

recommendations, while the President retained final authority to decide the matter. The Court emphasized the distinction between processing and deciding, noting that the officer's role was ancillary to the President's ultimate decision-making authority. The President retains complete control over the decision and may, if necessary, personally hear the parties before issuing a ruling. The relevant excerpt is as follows:

“It is important to note that the power to process a representation by preparing the case, and the power to decide that representation, after due application of mind, are inherently distinct functions and cannot be equated or conflated. The function of processing a representation by the nominated officer is only ancillary to the main objective of decision on the representation by the President. According to De Smith’s Judicial Review, Courts have even conceded that an authority has an implied power to entrust to a group of its own members with the authority to investigate, to hear evidence and make recommendations in a report, provided that (a) it retains the power to make decisions in its own hands and receives a report full enough to enable it to comply with its duty to ‘hear’ before deciding, and (b) the context does not indicate that it must perform the entire adjudicatory process itself. Where there are express statutory provisions to this effect, the Court has to consider whether the Minister or Governor or, as in this case, the President, had to act ‘judicially’ in some respect and has failed to do so. The respect in which he has to observe judicial procedure or act judicially will depend on the statutory or other provisions under which the matter arises. For the purposes of the question raised in the instant matter, it is apparent from the provisions noted above that the President is specifically authorized to nominate an officer to process a representation by preparing the case and giving his/her views on the said representation, which are likely to be only in the shape of recommendations/proposals, as in the instant case, and in no manner can it be stated that the nominated officer is deciding the representation. The case is then placed before the President for decision thereon and the power to decide the representation resides solely with and is exercised only by the President after due application of mind.”

52. Proceedings before a Hearing Committee are permissible if they are merely for “processing the case”, as they fall within the ambit of clause (m) of section 4(2) of the PHC Act. Section 28 of the PHC Act expressly confers the jurisdiction for adjudication of fines on the Commission, a power further reinforced by sections 4(2)(g), 22(5), and 31(1)(e). A collective reading of these provisions indicates that the Commission is responsible for delivering the final verdict in any given case. As the PHC Act currently stands, it does not permit delegating this adjudicative power to the Hearing Committees.

53. It is well established that the State enforces its legislative policy through both primary and subordinate legislation, but such

legislation must always remain within the bounds of the Constitution. Besides being constitutionally valid, subordinate legislation must align with the authority granted by the parent Act. Therefore, no rule that contradicts the parent statute can be enacted, and no regulation may conflict with either the parent statute or the rules made under it. Any provisions of the rules or regulations inconsistent with the parent statute or rules shall be deemed inoperative to the extent of such inconsistency.²⁴ A statutory rule cannot expand the scope of the section under which it is framed. If a rule goes beyond what the section contemplates, the rule must yield to the statute. The rule-making authority cannot assume powers not granted by the statute.²⁵ The general power of rules cannot be used to widen the purposes of the Act or to add new and different means for carrying out or to depart from and vary its terms.²⁶

54. The power to impose fines is a significant *quasi-judicial* function that cannot be delegated to subordinate bodies without explicit authorization from the parent statute. The second paragraph of Regulation 7(3) and Regulation 7(4) of the 2016 Regulations, which allow the Hearing Committees to impose fines, exceeds the scope of the PHC Act. They are also inconsistent with the principles of delegation outlined by De Smith (referred to in paragraph 42). De Smith's principles assert that the nature of the delegated power also affects the delegation's validity. *Quasi-judicial* functions like imposing fines, which directly impact individual rights and require deliberate judgment, should not be delegated informally. Since the PHC Act, as adumbrated, does not expressly authorize the delegation of such significant powers to the Hearing Committee, this delegation violates established principles. Furthermore, Smith's principles highlight that delegating discretionary powers to a subordinate body without proper supervisory control renders the delegation invalid. In the context of the PHC Act, the Commission has

²⁴ *Suo Motu Case No. 13 of 2009* (PLD 2011 SC 619). Also see: *Pakistan Electronic Media Regulatory Authority v. Pakistan Broadcasters Association and others* (PLD 2023 SC 378); and *Shaukat Mahmood v. Election Commission of Pakistan (ECP) and others* (PLD 2024 SC 653).

²⁵ *Khawaja Ahmad Hassan v. Government of Punjab and others* (2005 SCMR 186). Also see: *Hirjina Salt Chemicals (Pak) Ltd. v. Union Council Gharo* (1982 SCMR 522); *Mian Ziauddin v. Punjab Local Government, and others* (1985 SCMR 365); *Mehraj Flour Mills and others v. Provincial Government and others* (2001 SCMR 1806); *The Collector of Sales Tax and others v. Superior Textile Mills Ltd., and others* (PLD 2001 SC 600); *Pakistan v. Aryan Petro Chemical Industries (Pvt.) Ltd., and others* (2003 SCMR 370); and *In the matter of Action taken on the news clippings regarding scandal of billions of rupees of National Police Foundation land* (PLD 2014 SC 389).

²⁶ *Khawaja Ahmad Hassan v. Government of Punjab and others* (2005 SCMR 186).

improperly delegated its power to impose fines to the Hearing Committee without adequate oversight. The committee's decisions should be subject to review or ratification by the Commission to ensure that the ultimate responsibility for *quasi-judicial* decisions remains with it. Lastly, De Smith emphasizes that the degree of control maintained by the delegating authority is critical in determining the validity of the delegation. It must retain the power to review or reject the delegate's decisions. In the present case, the delegation is flawed because the Hearing Committee has the final say in imposing fines without the Commission's oversight. It leaves the Commission with no control over this *quasi-judicial* power.

55. Interestingly, the Commission has also framed the Punjab Healthcare Commission Complaint Management Regulations, 2014. Under Regulation 21 thereof, the Competent Authority is required to submit the case before the Commission during a Board meeting, based on the recommendations of the Complaint Management Sub-committee, for a decision regarding penalties and the suspension or revocation of a licence. The Commission's Legal Advisor, Mr. Durrani, has failed to explain why the 2016 Regulations prescribe a different procedure that deviates from the settled law.

56. The principle of reading down a statutory provision is a well-established rule of interpretation. It is grounded in the assumption that the legislature would not intend to enact an invalid law. This approach equally applies to subordinate legislation, as the subordinate legislating authority is not expected to frame rules/regulations in violation of the parent Act or any other statute. In *Province of Punjab v. Saleem Ijaz and others* (2023 SCMR 774), the Supreme Court of Pakistan observed:

“This rule [of reading down] avoids striking down of statute or rule which carries curable constitutional or legal vice and instead by reading them down achieves to harmonize the statute or the rule with the general scheme of the Act and the Rules.²⁷ It is a rule of harmonious construction under a different name. It is generally used to straighten the crudities or ironing out the creases to make a statute or a rule workable. The rule of reading down is used for a limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statutes.²⁸”

²⁷ *J. K. Udaipur Udyog Ltd. v. State of Gujarat* (Full Bench of High Court of Gujarat at Ahmedabad) – MANU/GJ/0499/2001

²⁸ *Union of India and others v. Ind-Swift Laboratories Ltd.* (2011) 4 SCC 635.

57. Applying the above principle, the second paragraph of Regulation 7(3) and Regulation 7(4) of the 2016 Regulations must be read down, and the phrase “Committee shall impose a fine” should mean that on the conclusion of the proceedings, the Hearing Committee shall place the case before the Commission for a final decision which may impose a fine.

58. As adumbrated, Regulation 7(4) also empowers the Hearing Committee to impose an additional fine in the event of continuing failure to comply with the orders and directions or repetition of the illegal practice of quackery. This portion of Regulation 7(4) cannot be saved by applying the principle of reading down. It is, therefore, declared *ultra vires* and struck down.

The case at hand

59. In the present case, proceedings against the Petitioner were initiated based on Census Data and a complaint by Dr. Mahmood Khan. The PHC Officials, consisting of two Programme Officers (Enforcement), Muhammad Jawad Khalil and Suleman Ahmad Khan, were duly authorized to check the Petitioner and determine whether he was engaged in quackery, which is prohibited by law. These officials conducted inspections on 25.11.2022, 7.12.2022, 9.12.2022, and 15.2.2023. In light of the above discussion regarding Questions I and II, the Petitioner’s objections to the legality of the inspection and sealing of the premises are overruled.

60. I have concluded that the Commission can delegate its power to hear a complaint/report submitted by the Visiting/Reporting Officer to a committee under Regulation 6, which may conduct the hearing and present its findings to the Commission for a final verdict. However, I have upheld the Petitioner’s contention that, under section 28, read with section 4(2)(g) of the PHC Act, only the Commission can impose a fine on individuals found guilty of practising quackery. The Hearing Committee is not authorized to do so. Therefore, its order dated 8.5.2023 is without jurisdiction in the present case. The District and Sessions Judge, Lodhran, failed to appreciate this aspect while delivering the judgment dated 26.8.2023.

61. In view of the above, the judgment dated 26.8.2023 and the order dated 8.5.2023 *supra* are hereby set aside. The case is remanded to the Commission, which is directed to reconsider the matter and render a fresh decision following the legal principles discussed.

(Tariq Saleem Sheikh)
Judge

Announced in open court on _____

Judge

Naeem

Approved for reporting

Judge