JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 2152 of 2011
Homeo Dr. Pervaiz Akhtar Qureshi
Versus
Government of Pakistan and others

Petitioner by:	Mr. Anis Yaqub Rathore, Advocate
Respondents by:	Ch. Imtiaz Ahmed, Advocate and Ch. Muhammad Tahir Mehmood, AAG
Date of Hearing:	**28.01.2022**

SARDAR EJAZ ISHAQ KHAN, J.:- The late Dr. Pervez Akhtar Qureshi, Doctor of Homeopathy, filed this petition in 2011 praying that the show cause notice dated 31.03.2011 and notification dated 30.06.2011 issued by the Ministry of Health disqualifying him on allegations of corruption and misuse of public funds and removing him from the presidentship of the National Council for Homeopathy (**Council**) be set aside to enable him to complete his remaining tenure of approximately 3 months of the 5 year term as the president of the Council. The petition therefore prays for the writs of certiorari and mandamus to be issued.

2 Per the memo of petition, Dr. Pervez had been a lifelong active member of the Council. The Council is constituted under the *Unani, Ayurvedic and Homeopathic Practitioners Act, 1965* (the **1965 Act**).[1] It has 21 members; 13 are elected, 8 are nominated. The Federal Government nominates the latter. Among the Federal Government's nominees, the Deputy Secretary (Budget), Ministry of Health, is an *ex officio* member with the statutory designation of "Chairman of the Finance Committee" making him the eyes and ears of the Federal Government for the financial affairs of the Council[2]. The point is made, the relevance of which will become evident later, that under the scheme of the Act and the Rules, the financial affairs of the Council were a matter of collegiate decision making

[1] The Preamble to the 1965 Act describes it as "*an Act to regulate the qualifications and to provide for the registration of practitioners of Unani, Ayorvedic and Homeopathic Systems of Medicine*." During arguments, counsels were asked and replied that the 1965 Act has not been amended in any way to touch upon the merits of this petition.

[2] Rule 14 (2) of the Unani, Ayurvedic and Homeopathic System of Medicine Rules, 1980, (the Rules) further provides that "in incurring expenditure, the Council shall abide by all financial rules and instructions of the federal government insofar as they are not inconsistent with the act or these rules."

by the majority with the Federal Government, acting through its nominee on the Council, required to be ever present and watchful.

3 The memo of petition extols the keen interest Dr. Pervez took in the governance and politics of the Council, having been elected president a few years earlier also, and the efforts he expended to the end that the Council acquire its own building instead of being dispersed in rented premises all over the place. The Council resolved to purchase and did purchase a building in Rawalpindi in September 2010[3]. The memo of petition pleads, with references to its annexes, independent third party price assessment and procurement in accordance with the PPRA framework with frequent referrals to the Government departments[4] identifying the said property preceding its purchase. For the purchase of the building, the price of a plot was adjusted and it appears this too was one of the factors that led to the impugned notification dethroning Dr. Pervez.

4 In October 2009, Dr. Pervez with the support of another 11 members led a coup at the Council deposing the then-incumbent president with a vote of no-confidence[5] and getting himself elected as the president. The deposed president didn't take kindly to his removal. A battle ensued between the rival groups. Allegations of corruption in the purchase of the Council building surfaced. With incendiary complaints as the ammunition in this battle, he fired away salvoes to all and sundry, including to NAB, FIA, PM Secretariat and the Human Rights Cell, Supreme Court of Pakistan. Reports were made and reports were called. Codal formalities were both a shield and a sword in this battle of reports and counter-reports. Corruption, collusion and concealment were bandied about. NAB and FIA were kept busy with the HR Cell keeping a watch. The Ministry of Health was in the spotlight. As Mr. Rathore, appearing for the petitioner would have us believe, the events leading to the instant writ petition occurred during the tumultuous days of the overrevved HR Cell and, he urged on, the Ministry of Health had to 'fix responsibility' before anyone else did in a way other than to its liking.

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[3] To the extent the Council owning its own building was a policy question, the Federal Government was to be the sole judge as to whether a question was a question of policy, and its instructions on questions of policy were binding on the Council - section 48 of the 1965 Act.

[4] Annexed are 8 letters for the period 20/07/2010 to 17/08/2010 on the subject "Procurement of Ready Property for Council" addressed to the Ministry of Health, PPRA, Ministry of Finance, Ministry of Housing and Works, etc.

[5] notification dated 05/11/2009 issued by the Ministry of Health. Copy on record.

5 With the FIA, NAB and the HR Cell active in parallel, the Ministry of Health issued a show cause notice dated 31.03.2011 (**SCN**) to Dr. Pervez, when the PM office too jumped in the foray of the tremendous saga of the colossal loss of some millions in the purchase of a building by the Council. The impugned notification dated 30.6.2011 followed, disqualifying Dr. Pervez from being a member under section 13(2) of the 1965 Act and thereby ceasing to remain the president too. The impugned notification runs into 4 pages. With references to innumerable events, persons, minutes of committees' meetings et cetera surrounding the purchase of the Council building, the impugned notification lay the entire responsibility for corruption and misuse of public funds on Dr. Pervez alone.

6 In parallel, however, the FIA exonerated Dr. Pervez and with its exoneration report the HR Cell of the Supreme Court also closed the case. It appears that NAB also lost interest to pursue the case further. The memo of petition alleges *mala fide* in that the impugned notification was issued on the last day – 30.06.2011- before the Ministry of Health's pre-18th Amendment identity was to change forever. Dr. Pervez was the only casualty in this battle. On 04.07.2011, the instant petition was filed with the prayers noted in the first paragraph.

7 On the demise of Dr. Pervez in 2019, his legal heirs were impleaded. The order sheet notes the submission of counsel for the Council qua respondent no. 7 that the petition had become infructuous, for the late Doctor could no longer be restored to his office as prayed for in the petition. Mr. Rathore, appearing for the petitioners, relies on *Regional Operation Chief, National Bank of Pakistan, Human Resource Department, Regional Office, Sargodha and others versus Mst. Nusrat Perveen and others, 2021 SCMR 702 (Nusrat Perveen case)* to assert that the right to reputation survives for the benefit of the heirs.

8 Having heard counsels' submissions, I am in agreement with Mr Rathore that the right to dignity and fair trial survives to the benefit of the heirs. In *Nusrat Perveen* (supra), the Hon'ble Supreme Court held that:

> It is reiterated that other than pecuniary and pensionary benefits that inure to the benefit of the legal heirs, the right to restore one's reputation is

> also a survivable right and flows down to the legal heirs to pursue and take to its logical conclusion.

I would however hasten to add that a right to dignity or reputation is not to be inferred as a matter of course in each case of dismissal from a post or service as an ancillary right. The Supreme Court in *Nusrat Perveen* case observed at paragraph 8 as follows:

> The question whether after the death of the plaintiff or the petitioner proceedings would abate would primarily depend on the nature of cause of action and the relief claimed in the peculiar facts of each case.

9 For reparation of an injury to reputation, the relief must be specifically pleaded. Mr. Rathore appearing for the petitioner was candid in accepting that the prayer in the writ petition was confined to the setting aside of the impugned notification and restoring the Doctor as the president. As the memo of the writ petition does not make any prayer for a declaration of the innocence of Dr. Pervez, nor do I think for the reasons stated later that such a prayer could have been made, Mr. Rathore sought to argue the 'moulding of relief' principle, but what he asks is for this Court to rewrite the prayer clause to read as if written therein was an additional prayer "…to grant a declaration that the impugned notification has wrongfully injured the reputation of the petitioner." To accede to his request would cause this Court to stray into the suo moto territory which it cannot do[6]. To accede to his request would also cause this Court to act as a court of appeal against the findings in the impugned notification, which a Court in its Constitutional jurisdiction does not do[7]. Injury to reputation being an actionable wrong, redress by way of a private law remedy lay under the Defamation Ordinance 2002. Perhaps a suit for declaration and damages could also have lain. Mr. Rathore urges this Constitutional court to assume the role a civil court would under the Defamation Ordinance or the Specific Relief Act as a tribunal for the facts surrounding the purchase of the Council building.

10 Mr Rathore urges finally that the grounds for a writ of certiorari remain in the field as the impugned notification was issued without an

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[6] 2001 SCMR 1822
[7] PLD 2018 Isl 258

inquiry. He submits that, if a declaration of innocence could not be made, a writ of certiorari setting aside the impugned notification would have the indirect result of obliterating the injury to the reputation of the late Dr. Pervez.

11 Both the Ministry of Health qua respondent no 6 and the Council qua respondent no.7 replied "correct" in response to the averment in paragraph 45 of the petition that the impugned notification was issued *(i) without holding any inquiry, and (ii) the competent authority having closed the file being satisfied with the transaction of the purchase of the building*. Mr Rathore lays great emphasis on this admission by the contesting respondents, stating that a finding of corruption and misuse of public funds without holding an inquiry is invalid per se. Ch. Imtiaz Ahmad Advocate and the learned AAG appearing for the Ministry of Health and the Council, respectively, did submit that a reply to the SCN was given by Dr. Pervez and opportunities of personal hearing were provided which he did not avail, but could not demonstrate that a proper inquiry worth its name was carried out with the record of evidence collected (including in relation to market prices), statements of other members of the Council (including the Federal Government's ex officio nominee) recorded, and the like, which would be expected in a proper inquiry. On the principle that the parties are bound by their pleadings and cannot urge to the contrary at the hearing[8], I can proceed on the basis that a proper inquiry was not carried out before issuing the show cause notice and the impugned notification.

12 The impugned notification is premised on conclusions of fact, including that the building was purchased at higher than its market price. In the absence of a proper inquiry, it cannot be said that the said finding was based on any objectively verifiable evidence. There is no answer to one of the key defences taken by Dr. Pervez in his various responses namely, that under the scheme of the Act and the Rules, the decision making by the Council was a collegiate exercise that could not be hijacked by Dr. Pervez alone. To accuse and then dismiss the holder of an office created by statute without a proper inquiry into disputed questions of fact is not sustainable in law[9]. Even if the late Dr. Pervez chose not to appear before the Ministry, it

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[8] 2019 SCMR 74

[9] 2010 SCMR 1546; 2010 PLC (C.S.) 306; 2009 SCMR 339

was incumbent on the Ministry to prepare a dossier of relevant evidence and to have rebutted the defences of Dr. Pervez with a speaking order.

13 It appears, on a preponderance of the record before me, that the words of the impugned notification referring to the charges of corruption as being established 'without any shadow of doubt' do not carry much weight in a scale the other pan of which is stacked with the following factors, namely (i) a proper inquiry was not held preceding the show cause notice and the impugned notification; (ii) Dr. Pervez's defence is not addressed in the impugned notification, namely, that the scheme of the Act and the Rules postulated collective decision making by the Council that could not be hijacked by the President alone; (iii) the purchase of the subject building was well publicized to various departments of the Federal Government; (iv) the Federal Government, through its ex-officio nominee Chairman Finance Committee of the Council, could not disclaim participation in the purchasing decisions taken by the Council, and (v) the HR Cell of the Supreme Court closed the case after the exoneration report from the FIA. With the scale tilted heavily the other way, I find that the impugned notification was not backed with due process violating the late Doctor's fundamental right to a fair trial and that the countervailing factors on a balance of probability establish that it was not issued bona fide.

14 Resultantly, this petition is allowed and the impugned notification is set aside.

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

Imran

Announced in open Court on _____

JUDGE

Approved for reporting.