

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Writ Petition No. 3540 of 2013

Mubashir Butta Human Rights Trust
Versus
Federation of Pakistan, etc.

Petitioner by: Raja Maqsit Nawaz Khan, Advocate.
Respondents by: Chaudhary Abdul Jabbar, Assistant
Attorney General.
Date of Hearing: 10.02.2020.

Ghulam Azam Qambrani, J.:-Through this writ petition, the
petitioner has made the following prayer:-

*“Under the circumstances, it is respectfully prayed
that this honorable Court may be kind enough to declare
that the order passed by respondent No.1 on 30 June 2011
to the extent of respondent No.5 was void, illegal, without
lawful authority and of no legal effect and therefore, to be
set aside.*

*That, till final disposal of this petition stay order
may be issued for staying the implementation of said order
and also all subsequent orders.”*

2. Briefly stated facts of the petition are that the petitioner is a registered “Trust” and respondent No. 5 i.e. National Institute of Cardio Vascular Diseases (hereinafter be called as N.I.C.V.D), is also a “Trust”, established in the year 1963, under the Societies Registration Act, 1860; the affairs of the said institute was being governed and administered by the governing body, under the Ordinance-I of 1979. It has never been an attached department of the Ministry of Health, Government of Pakistan but vide impugned Notification dated 30.06.2011, the Government of Pakistan, Ministry of Health, transferred the N.I.C.V.D, along with Jinnah Post Graduate Medical

Centre and National Institute of Child Health, to the Government of Sindh with effect from 01.07.2011.

3. Learned counsel for the petitioner contended that N.I.C.V.D was established in the year 1963, and in the year 1976, it was placed under a Trust and that through Ordinance No.1 of 1979, it has been incorporated and that the impugned Notification dated 30.06.2011, has been passed by respondent No. 1 without lawful authority and acted in excess of its jurisdiction in violation of the principle of natural justice, which has resulted in manifest injustice to the public at large; that N.I.C.V.D has never been an attached department of respondent No.1 and vide Section 4 of the Ordinance No.1 of 1979, all the powers and functions of the Board of Trustees were rested in a Governing Body who were made responsible for exercising and formulating the powers and functions as performed by the Board of Trustee and vide Section 5 of the Ordinance No.1 of 1979, respondent No.5 had been incorporated and named as N.I.C.V.D. Further submitted that N.I.C.V.D receives Grant-in-Aid from the Federal Government, therefore, the impugned notification is liable to be declared as null and void.

4. On the other hand, learned Assistant Attorney General submitted that the 18th amendment was approved by the Parliament with the full support of all Political forces in the Parliament; that as per Clause-8 of Article 270 (AA), the process of devolution of the matters mentioned in the concurrent legislative list to the Provinces shall be completed by 30th June, 2011, as such to ensure completion of the process of devolution within stipulated time, the Implementation Commission was constituted by the Prime Minister in terms of Clause 9 of the Article 270 (AA) of the Constitution of the Islamic Republic of

Pakistan vide Cabinet Division Notification dated 04.05.2010, and the Ministry of Inter Provincial Coordination was designated as Secretariat of the Implementation Commission to complete the process of devolution on omission of the current Legislative List. He further contended that the said Implementation Commission was empowered to make or pass such directions, orders to undertake proceedings or require the making of amendments to regulations, enactments, notifications, rules or orders as may be necessary to further the objectives of Clause 9 of Article 270 (AA) and in this regard required the attendance of any official of the Federal or Provincial Governments or the Divisions or the Attached Departments/Offices. Next argued that the Implementation Commission in its 65th meeting held on 14th June, 2011 recommended the devolution of National Institute of Cardiovascular Disease Karachi. Consequently, Cabinet Division after approval of Prime Minister issued Notification No.4-9/2011-Min-I, dated 29th June 2013, wherein National Institute of Cardiovascular Disease was devolved to Government of Sindh, as one of the organization of the erstwhile Ministry of Health. Further submits that the instant petition is not maintainable and is liable to be dismissed.

5. Arguments heard. Record perused.

6. The Hon'ble Supreme Court of Pakistan while deciding Civil Appeals Nos.125-K to 131-K, 2306 to 2309 of 2016, Civil Miscellaneous Applications No.1254-K, 8973 of 2018 and Civil Petition No.2312-L of 2018, passed the judgment reported as Government of Sindh through Secretary Health Department and others Versus Dr. Nadeem Rizvi and other (2019 S C M R 556) and held as under:-

- i. *Transfer/devolution of SZMC, JPMC, NICVD, NICH, and NMP is declared to be unconstitutional, without lawful authority and of no legal effect;*
- ii. *All acts done or orders, directions, notifications and directives issued or made pursuant to the purported transfer/devolution or to give effect to the same in any manner whatsoever, which are inconsistent with or in derogation of the tenor of this order to the extent of inconsistency are declared to be without lawful authority and of no legal effect;*
- iii. *Within 90 days of this judgment, the Federal and Provincial Governments and all related Departments shall take all necessary steps relating to return of the aforementioned Institutions from the Provinces to the Federation. The position of these Institutions shall as far as possible be restored to the position as on the date when they were transferred to the Provinces. It is, however, clarified that the restoration and return as aforesaid shall include resumption of the employees by the Federation in relation to the Institutions and all serving or retired officers, employees or servants thereof. In case, the aforesaid exercise cannot be completed within the aforementioned period of 90 days and an extension is required, any of the Governments can move appropriate application before this Court seeking extension for reasons spelt out in the application;*
- iv. *Till such time as the aforesaid exercise is completed, all matters relating to the Institutions shall continue on the same basis as on the date of this judgment including but not limited to financial and budgetary matters, disbursement, outlays and expenditures including disbursement relating to payment of salaries, pensions and related matters;*
- v. *All ongoing projects/contracts in which partial payments have been made shall be taken over by the Federation and balance payments shall be made by it. However, all contracts completed within the past one year and equipment supplied in the same period which had actually arrived at the Institutions or in the process of being supplied or has already been installed shall be paid for/reimbursed to the Provinces by the Federation;*
- vi. *In case, the Federation and any of the Provinces are unable to resolve any matter, with regard to compensation or payments to be made, the same shall be deemed to be a dispute between the Provinces and the Federation. In that case, the aggrieved party shall be entitled to seek its remedy in accordance with the Constitution and the law;*
- vii. *All statutory instruments including Acts and Ordinances passed or issued in relation to the aforementioned Institutions shall stand suspended. Nothing in the Provincial Laws shall in any manner hinder, restrict or impede or otherwise affect the return of any of the aforementioned Institutions to the Federation;*
- viii. *A committee shall immediately be constituted for working out the modalities for smooth, trouble free and seamless transition and transfer of the aforementioned Institutions from the Provinces to the Federation and to deal with and make recommendations regarding all aspects of such transfer including terms and conditions of employment, seniority, assimilation, etc. in the service of the Federation and all other matters directly, indirectly or incidentally relating to the same. In case, a need arises, the Federal Government shall initiate such legislation as may be necessary for the effective completion and operation of the aforementioned Institutions; and*
- ix. *The Federal Government shall also allocate and disburse such funds as may be necessary to maintain the level of services being provided in the aforementioned Institutions presently and to progressively*

improve the environment and running of all Institutions in a more efficient, effective and patient friendly manner.

7. In view of decision rendered by the Hon'ble Supreme Court of Pakistan in the above mentioned judgment, whereby the devolution of National Institute of Cardio Vascular Diseases along with Jinnah Postgraduate Medical Center, Karachi ("JPMC") and the National Institute of Child Health, Karachi ("NICH") has been declared unconstitutional, without lawful authority. In view of the above judgment, this petition has become infructuous; the same is **disposed of** as such.

(GHULAM AZAM QAMBRANI)
JUDGE

"Rana.M.Ift"