

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, HCJ
Mr. Justice Mushir Alam
Mr. Justice Mazhar Alam Khan Miankhel

SUO MOTO CASE NO.1 OF 2020

[SUO MOTO action regarding
combating the pandemic of Corona
Virus (COVID -19)]

AND

C.M.Appeal.167/2020 IN C.M.A.NILL/2020 IN S.M.C.1/2020

C.M.Appeal.6/2021 IN C.M.A.NILL/2021 IN S.M.C.1/2020

[Application for impleadment as party]

Samira Mahamadi **vs.** Federation of Pakistan & others.

IN ATTENDANCE

For the Federation:	Mr. Sohail Mehmood, Addl.AGP Mr. Abdul Samad, SO Food Security
For NDMA:	Lt. Gen. Akhtar Nawaz, Chairman NDMA Mr. Adrees Mehsood, Member, NDMA
For M/o NHSR&C	Mr. Aamir Ashraf Khawaja, Secretary Health Rana Safdar, DG Health Mr. Ghulam Mustafa Jakhrani, Dy. Dir. (Legal)
For ICT:	Mr. Niaz Ullah Khan Niazi, Advocate General, Islamabad Mr. Babar Sahib Din, Addl. DC Islamabad
For PIAC:	Air Marshal Arshad Malik, CEO Syed Rifaqat Hussain Shah, AOR
For DRAP:	Dr. Asim Rauf, CEO Dr. Fakhar Uddin Aamir, Director, MDMC Dr. Ghazenfar Ali, Addl. Dir. Mr. Shoaib Ali Khan, AD Legal Affairs
For Govt. of Punjab :	Mr. Ahmed Awais, Advocate General (<i>via video link</i>) Ch. Faisal Fareed, Addl. A.G. Punjab Ms. Imrana Baloch, AOR
For Govt. of Sindh :	Mr. Sibtain Mehmood, Addl. AG

	Mr. Tariq Ali Khan, Secretary Energy Mr. Kazim Hussain Jatoi, Secy. Health Dr. Saeed Ahmed Qureshi, Focal Person to Chief Secretary Sindh (all via video link from Karachi Branch)
For Govt. of KPK	Mr. Shumail Butt, AG KPK Mr. Atif Ali Khan, Addl. AG, Mr. Younis Rahim, Secretary Relief & Rehabilitation Mr. Ikramullah, Home Secretary Syed Imtiaz Hussain, Secretary Health
For Govt. of Balochistan	Mr. Arbab Muhammad Tahir, Advocate General (via video link from Quetta Branch) Mr. Ayaz Khan Swati, Addl. A.G. Mr. Noor ul Haq Baloch, Secretary Health
For Govt. of GB :	Nemo
For CAA:	Mr. Khaqan Murtaza, DG Mr. Nadir Shafi Dar, DDG Regulatory Malik Mazhar, DHR Ms. Nasira Jabeen, Senior Legal Officer Ms. Amna Warsi, Legal Consultant Rana M. Bilal Anwar, Law Officer Riffat Ullah, Director Flight Standards
For Air Blue	Mr. M. Ikhlaw Awan, ASC/LA
For Serene Air	Mr. Muhammad Safdar Khan, CEO
For the Appellant (s) (in C.M.Appeal No.167/2020)	In person.
For the Appellant (s) (in C.M.Appeal No.06/2021)	In person.
Date of Hearing:	05.05.2021

ORDER

GULZAR AHMED, CJ.—

C.M.A.6875/2020: The Drug Regulatory Authority of Pakistan (**DRAP**) has filed its report by way of this application. A Notification dated 30.04.2021 has also been filed in Court today, showing that some exemptions have been granted from operation of the Rules for

importing of medical devices as mentioned therein. The CEO, DRAP informs the Court that despite issuance of the said Notification, the importers will have to obtain license to import medical device mentioned in the said Notification.

2. As regard the availability of Oxygen, it is stated that Pakistan Steel Mills Karachi has sufficient capacity of producing Oxygen to be used for patients needing the same. The learned Additional Attorney General for Pakistan informs that the Government is working on such aspect of the matter and approximately, an amount of Rs.1 Billion is required to be expended to make operational the Oxygen Plant of the Pakistan Steel Mills. He further informs that the Government is examining the feasibility of the said Plant and will shortly take steps to make it operational in order to ensure smooth supply of the Oxygen to hospitals and there should be no shortage, obstruction or impediment in the supply of Oxygen. He also informs that the Government has already constituted a Committee of specialized people who are considering these aspects of the matter.

3. As there is spike of COVID-19 in the country, the CEO, DRAP states that there is no shortage of any medical device or medicine used for treatment of COVID-19 patients and sufficient stock of the necessary medicines is available to meet the present demand of the hospitals and other medical institutions where treatment of COVID-19 patients is being carried out. The CEO, DRAP further informs that Actemra injections are being imported from Japan and almost two weeks' stock of such injections is available and before exhausting this stock, new supply of Actemra will arrive in Pakistan, so there will be no shortage of this injection too in Pakistan. The CEO, DRAP is required to submit further report regarding development of COVID-19 activities in

the country and availability of all necessary medical devices, medicines, etc., necessary for the treatment of patients affected with COVID-19. Such report shall be made available before the next date of hearing.

4. Learned Advocate General Khyber Pakhtunkhwa informs that the price of Oxygen is not being regulated and particularly, in the Province of Khyber Pakhtunkhwa, exorbitant prices of Oxygen cylinders are being charged. The CEO, DRAP states that the very production of Oxygen and its supply is handled by the Ministry of Industries & Production and it is the Secretary of Ministry concerned who is required to regulate the prices of Oxygen. Accordingly, the Secretary of Ministry of Industries & Production shall ensure that proper price mechanism of Oxygen gas and Oxygen cylinder shall be announced and notified within a period of one week and concise statement in this regard be also filed within a period of two weeks.

CMA 5057/2020

5. This report has been filed by the National Disaster Management Authority (**NDMA**), which apparently is not satisfactory as the issue regarding Al-Hafeez Crystoplast (Pvt.) Ltd. is not clear and at the first place, from the papers filed with the report, it transpires that in purported importing of the equipment/machinery, the Embassy of Pakistan at Beijing has been involved and we do not see any reason as to how Embassy of Pakistan at Beijing can be a party in importing the equipment/machinery for a private company. The documents further show that even the Aeroplane was chartered and in this regard NDMA and Embassy of Pakistan at Beijing are also involved, in that, the Aeroplane owner has been paid the charges in cash to the tune of Rs.10,725,000/- (Ten Million Seven Hundred Twenty Five Thousand only), and it is not mentioned that in what currency the said amount has

been paid, the receipt is attached in the noted report as Annexure G/8. Further, we have noted that the payment of price of the equipment/machinery imported from China has also been paid in cash and the same has been acknowledged by some officials (*attached with the report as Annexure E-3 and E-4*). The terms of payment of purported Purchase Contract (*attached with the report as Annexure E/1 & E-2*) shows that 100% advance payment T/T or cash in Pakistan. It is not shown that who has paid and who has received the payment. Further we noted that custom duties and taxes etc. have also been paid in cash. It appears that such report of NDMA is vague, which needs to be further examined. The Chairman, NDMA appear personally on the next date of hearing and inform the Court about the status of the above transaction and a detailed report be filed in this regard before the next date of hearing.

6. The Chairman, NDMA, present in Court, states that he has recently been appointed as Chairman and he intends to visit the quarantine centers and hospitals, including the quarantine centre Haji Camp Islamabad, and submit a report about the latest position regarding the steps taken by the NDMA in dealing with pandemic of COVID-19. Such report be made available before the next date of hearing.

CMA 6713/2020

7. Pakistan International Airline Corporation (**PIAC**) has filed this report showing action taken against the delinquent officials of the PIAC, including the list of pilots, who have been dismissed on account of holding fake academic documents and list of cases pending in Courts, where stay orders have been obtained. The Chairman, PIAC is present in Court and states that to have these cases decided by the respective Courts, he has approached the office of the Attorney General for Pakistan

to assist PIAC in having all these cases, filed by the employees in different Courts, decided, particularly in which injunctive orders are operating and the same be vacated. The report filed is taken on record. Let the Chairman, PIAC take necessary steps for removing surplus and non-required staff to ensure that the airline is brought to a level to make it a viable commercial airline.

CMA 6729/2020

8. This report has been filed by the Director General, Civil Aviation Authority (**the Authority**) in which comprehensive details have been given regarding the employees' misconducts and crimes while performing their duties in the Authority. The prosecution against such employees have already commenced and it is stated by the learned counsel that *Challans* have been filed in their respective Trial Courts. It is also stated that witnesses named in the *Challans* shall be produced and the Authority shall ensure that all these cases are decided by the respective Courts expeditiously. We may note that normally the criminal cases are not seriously prosecuted by the Government departments; therefore, mostly the delinquent employees get acquitted for the reason that no effective evidence is brought on record by the department concerned. Learned counsel for the Authority contends that they shall vigorously pursue all these matters and shall ensure production of best possible and quality evidence before the concerned Courts. The learned counsel further gives details of the action taken by the Authority on departmental side against the officials, including the pilots, who have obtained fake licenses, and informed about the details of the cases in which injunctive orders have been passed. In this regard, the DG of the Authority may approach the office of the Attorney General for Pakistan to ensure that the cases before the Courts, particularly where injunctive

orders have been passed, shall be properly pursued and dealt with to bring them at a logical conclusion. Further report shall be submitted by the DG before the next date of hearing.

CMA 5648//2020

9. This report has been filed by the Secretary Ministry of Ministry of National Health Services, Regulations and Coordination. Learned Additional Attorney General requests for some time to file the latest report giving up to date information. Needful be done before the next date of hearing.

CMA 4789//2020

10. This report has been filed by the Deputy Military Estates Officers, Headquarter Military Lands and Cantonment, Ministry of Defence, in which it is stated that the disinfection in the Cantonment areas is being conducted on regular basis, fines are being imposed on violation of COVID-19 SOPs, i.e., masks, gloves, hand sanitizer and anti-bacterial soaps, and payment of salaries and other benefits to the sanitary staff, the medical and paramedical staff are being regularly made. As per the report, all essential PPEs have been provided to the doctors and paramedic staff of the hospitals and dispensaries under the ML & C Department. Such report is taken on record.

CMA on behalf of Government of Punjab.

11. Learned Additional Advocate General Punjab states that latest report has been prepared but could not be filed, therefore, requests for time to file the same. Let the same be filed in office.

CMA 4688/2020

12. This report has been filed on behalf of Government of Sindh, however, such report in no manner is found by us to be satisfactory. Huge amount has been shown to have been allocated for education,

health, water supply and sanitation, infrastructure development but we note that these funds apparently are not applied in these sectors. We also note that the Government of Sindh has spent an enormous and staggering amount of US \$2600 Million on Sindh Education Sector Reforms Project (SERP-II) Project during the period 2013-2017. Despite spending such huge amount in the education sector in the province of Sindh, apparently, nothing has changed in the standards of education in the Province, as the literacy rate in the Province continues to be at dismal state.

13. We also noted that the Advocate General Sindh has not appeared personally today in such an important case relating to the Government of Sindh. Learned Additional Advocate General is not aware of the reason for non-appearance of the Advocate General. Let a written reply be filed by the Advocate General for perusal of the Court. Such reply be submitted within a period of 15 days.

CMA 5114/2021

14. This report has been filed by the Secretary Health Department, Secretary Home Department & Secretary Relief and Rehabilitation Department, Peshawar, giving details regarding Pandemic of COVID-19 in the Province of Khyber Pakhtunkhwa and the measures they have adopted to address the same. It is stated by the learned Advocate General Khyber Pakhtunkhwa that all efforts are being made by the Government of Khyber Pakhtunkhwa for availability of beds, medical devices and medicines and as per his statement, there is no shortage of any of the medical equipment and medicines required for the treatment of COVID-19 patients. Learned Advocate General informs that COVID-19 Pandemic situation had risen up to 40% positive rate of total test conducted, but now the situation is under control as the COVID-19

positive rate have dropped considerably. Be that as it may, the Government of Khyber Pakhtunkhwa is required to remain attentive and vigilant to the issue. In this regard, further report be filed before the next date of hearing.

CMA on behalf of Government of Balochistan.

15. Learned Advocate General Balochistan states that report has been prepared but it is not in detail, therefore, sometime is requested to submit a detailed report. Let the same be filed before the next date of hearing.
16. The matter be listed for hearing after one month.

Chief Justice

Judge

Judge

ISLAMABAD
5th May, 2021
Not approved for reporting.
Mudassar[☆]