

To,

1. The Registrar, Supreme Court of Pakistan, Islamabad
2. The Director General, Human Rights, Supreme Court of Pakistan, Islamabad

SUBJECT: HUMAN RIGHTS CASE NO.17205 OF 2018.

Application by: Muhammad Habib Qureshi, Advocate
Member Executive Supreme Court Bar Association

Kindly refer to your letter dated 24-04-2018 in the matter regarding closure of Asamai/Main gate of Lady Reading Hospital Peshawar, communicating following orders of the Honourable Chief Justice of Pakistan (**Annex-I**):

"Application be forwarded to Secretary Health KPK for required immediate compliance and to submit report by 28.4.2018"

2. In this regard, in order to ensure urgent compliance, above orders of honourable Chief Justice of Pakistan were communicated twice verbally, personally by undersigned to the Hospital Director and also formally through letter of Health Department letter no. SOG/Health/1-1/2018, dated 26-04-2018 (**Annex-II**), as Lady Reading Hospital is an autonomous Medical Teaching Institute under the Khyber Pakhtunkhwa Medical Teaching Institutions Reforms Act, 2015.

3. The Hospital Director, MTI Lady Reading Hospital has responded vide letter dated 27-04-2018 added as **Annex-III**, the operative/last para of which is reproduced below:

"The gate in question is certainly a high security risk in present highly volatile law and order situation and the BoG LRH and Administration of LRH is duly empowered and made bound under the Khyber Pakhtunkhwa Sensitive and Vulnerable Establishment and Places (Security) Act, 2015 to provide security and tranquility in LRH and the closure of the gate in question of one of them, which in view of the administration of the LRH is indispensable and its opening shall inevitably be a high security risk and in no sense its closure either effects patients, people a accomnying patients, staff members of LRH or public at large, but rather is closed in larger interest of public at large."

4. In order to ensure compliance of orders of Honourable Chief Justice of Pakistan, the matter was placed before the Chief Secretary, Khyber Pakhtunkhwa. The Chief Secretary has directed the Deputy Commissioner Peshawar to immediately remove the wall and reinstate the previous gate. The Chief Secretary has further directed Chief Capital City Police Officer Peshawar to provide additional security at the gate till such time the hospital administration raises its own security to regulate the opened gate please.

5. Report is submitted please.

Yours Faithfully,


(Muhammad Abid Majeed)

Secretary Health, Khyber Pakhtunkhwa

Copy to:

1. PSO to Chief Secretary, Khyber Pakhtunkhwa
2. CCPO Peshawar.
3. Deputy Commissioner Peshawar.


Secretary Health, Khyber Pakhtunkhwa



Annex-ii

**GOVERNMENT OF
KHYBER PAKHTUNKHWA
HEALTH DEPARTMENT**

No: SOG/Health/1-1/2018

Dated: 26th April, 2018

To

The Hospital Director,
Lady Reading Hospital Peshawar

Subject: HUMAN RIGHTS CASE NO.17205 OF 2018.

Dear Sir,

I am directed to enclose a letter received from Supreme Court of Pakistan Islamabad on above cited subject with the request to take necessary action and sent report to this office for onward submission to Supreme Court of Pakistan, Islamabad please.

Yours faithfully,


(Arsalan Ahmed)
Section Officer (General)

Copy to:

1. Advocate General, Khyber Pakhtunkhwa.
2. PSO to Chief Secretary, Khyber Pakhtunkhwa
3. PS to Secretary Health, Khyber Pakhtunkhwa.


Section Officer (General)



Annex-u

OFFICE OF THE HOSPITAL DIRECTOR

Lady Reading Hospital, Medical Teaching Institution, Peshawar
Phone # 0092-919211402 Fax: 0092-919211401 www.lrh.gov.pk

No. 937

/HD/LRH

Date: 27/4/18

To

The Worthy Secretary Health
Khyber Pakhtunkhwa.

Subject REPORT ON CLOSURE OF EASTERN GATE / ASAMAI GATE LRH

Respected Sir,

A Brief report over closure of the eastern gate, commonly known as Asamai gate is given as under:

A. History of Lady Reading Hospital (a medical teaching institution)

A bless in disguise, we all know Lady Reading Hospital is the result of an incident happened with the lady of Lord Reading (the then viceroy of India) when she was hurt and there was no medical facility to treat her, even being wife of a viceroy. After the retirement of Lord Reading, she came to Peshawar from Delhi and campaigned to construct a standard hospital. She donated Rs.52000 (Fifty two thousand) for the construction. This new hospital was subsequently named Lady Reading Hospital. Later on, the hospital was given the status of District Headquarters hospital with 150 beds and in 1930 it was a 200-bed hospital. Doctor Khan Bahadur Abdul Samad Khan became the first Medical Superintendent of the hospital. Doctor Muhammad Ayaz Khan was appointed the first Administrator of the hospital in 1973.

B. Current Scenario (Full Details in a precise manner)

It is the biggest hospital of Khyber Pakhtunkhwa province, providing tertiary care facilities. About 1589 bedded hospital, every day an average 4000 to 5000 patients visit OPD and 2000 to 3000 patients visit Accident and Emergency (A&E) for health care facilities, there are 26 Specialized Departments, where 3382 Medical and Paramedical staff are engaged twenty four hours in providing medical and health facilities to Public...

C. Challenges

- i. Keeping Abreast with the Modern Medical Science
- ii. Traditional and Local Approach, an Impediment to Change
- iii. Non- Cooperative Attitude
- iv. Communication Gape
- v. Security

D. Security Aspect of Lady Reading Hospital

It is important to mention that Lady Reading Hospital has absorbed and relieved the casualties of more than 300 blasts where the day and night services of the employees of the Lady Reading Hospital are commendable and find no words for appreciation. In the current situation of law and order and terrorism all the employees of LRH including patients are the most vulnerable and a soft target. The Provincial Government in this regard promulgated "The Khyber Pakhtunkhwa Sensitive and Vulnerable Establishments and Places (Security) Act, 2015" where it has been considered the primary duty of administration to take security measures and provide protection to its employees and public inside the premises. Administration followed the instructions from the government from time to time. Regarding the Asami gate it has initially been closed by the orders of the provincial government and lastly by BOG the LRH, MTI in its second meeting at 12/06/2015.

E. Asamai Gate

In past there were 11 gates for entry and exit but due to security reason it was planned to minimize the number upto the requirement of the public for their patient to avail health facility as easy as possible. Now without Asami Gate there are eight gates used for entrance and exit both. Asami gate was the gate where old 200 stature Casualty was in proximity and it was the easier way to approach to the hospital and get health facility. But with the passage of time the growing population, the acts of terrorism and emergency situations the old Casualty was unable to handle the patients in bulk. It has now been shifted to its three times bigger facility building where one may find two OPDs and a bigger A & E under one roof. It has international standard of housekeeping and patient management system. In current situation there is no benefit of opening Asamai Gate because by passing through this way a patient would have to cover more distance to come and find the current/ new Casualty OPD/ A&E. It is pertinent to mention that every patient has to come to Casualty or A&E thereafter he may be referred to the other specialized department as his health condition requires. It means approach from Asami

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Gate to newly established Casualty is not convenient for a patient, map of the hospital may clarify the situation. Not only it would be non-beneficial but the administration would have to compromise the security of all the hospital.

In the present scenario hospital has 120 internal security personnel and 38 police men under the supervision of a DSP which is not enough to provide a full proof security, opening a new avenue to public entrance would be risking the whole security and safety of the hospital where thousands of Patients get treatment on daily basis.

It is important to bring the attention that hardened criminal and under trial terrorists are brought from different Central Jails of the Province for treatment and availing health facility who are kept aloof from common patients. Sometimes after a bloody clash parties of both sides are brought to be provided with medical facility and life security both and its pertinent to mention here that medico-legal ward used to abode here at this gate. Opening the Asami gate might provide more chances to terrorists to find a soft target and hardened criminals to run away. In year 2013 this gate has also been attacked by a suicide bomber, now it is the most vulnerable place for terrorist attack, once enter he may hit easily every department in the hospital. Recently a Daish terrorist has also been arrested by the secret security agency thereafter the hospital administration wants to take no chance.

Now this being the situation, the first step was initiated by Secretary Health KP at that time by directing the closures of the gate in question and its pertinent to mention here that at relevant time, the Secretary Health used to exercise the Powers of Board of Governors LRH-MTI. This was re-iterated and endorsed by Board of Governors LRH-MTI in its second meeting dated 12-06-2015 in its decision 14(b), which reads as “ The Hospital Director, Dr Adnan Taj, briefed the Board regarding closure of Asamai Gate for which he has received threats and pressures. The Board endorsed the decision and directed him that such Gates should remain closed in the best interests of patients and the hospital”.

As the relevant wards and units i.e. emergency & Accident units OPD and medico-legal of the hospital have been shifted from Asamai Gate, so non of the patient, staff member or public is effected either directly or indirectly, but only the security risks and threats are curbed upto a large extent. This was the background that Some of the druggist and shop keepers whose shops are situated at the Asamai Gate, by fearing the set back of their business and at the cost of security risks agitated their so-called grievances before the Honorable Peshawar High Court in two writ petitions, bearing Nos. 4498-p/2015 and

No.2502-P/2015. Now in order to dig-out the real scenario and to go into deepness in the hollow agitations of the shop keepers of Assamai Gate, the Honourable High Court directed the worthy Advocate General KP to have a personal visit and submit a comprehensive report. The worthy Advocate General KP visited the spot in presence of the petitioners, hospital staff and experts and submitted a thorough report, by affirming the stance of the Hospital administration and vulnerability of the gate in question, especially in the background of its uselessness at the moment, due to shifting of the relevant wards and units and sever security risks in present volatile law and order situation.

The Honourable Peshawar High Court Peshawar graciously dismissed both the writ petitions, by holding that "The report clearly indicates that measures have rightly been taken by the respondents to curb the terrorism which is the primary duty of the hospital management under the provisions of "Khyber Pakhtunkhwa Sensitive and Vulnerable Establishment & Places (Security) Act, 2015". Hence, this writ petition is dismissed along ;with C.M. No.2095-P/16, COC No.424-P/2016 and Review Petition No.40-P/16.

However, as recommended by the Worthy Advocate General Khyber Pakhtunkhwa, the management shall positively consider the rights of the patients when the law and order with respect to terrorism is improved".(Copies of visit of Secretary Health K.P, BOG LRH 2nd meeting minutes, order and judgment at 22/02/2018 in w.p# 5502-p/2015 & No.4498-p / 2015 are annexed herewith along with hospital map)

The gate in question is certainly a highly security risk in prevalent highly volatile law and order situation and the BOG LRH and administration of LRH is duly empowered and made bound under the Khyber Pakhtunkhwa Sensitive and Vulnerable Establishment and Places (Security) Act-2015 to provide security and tranquility in LRH and the closure of the gate in question is one of them, which in view of the administration of LRH is indispensable and its opening shall inevitably be a high security risk and in no sense its closure either effect patients, people accompanying patient, staff members of LRH or public at large, but rather is closed in larger interest of public at large.

Report is submitted please


HOSPITAL DIRECTOR,
Lady Reading Hospital, MTI Peshawar

Amir A
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Visit of the Secretary Health, Government of Khyber Pakhtunkhwa to the office of Board of Governors, MTI Lady Reading Hospital Peshawar on 11th August 2015

Following were present:

1. Dr Mian Tahir Shah, Member, Board of Governors, MTI LRH
2. Prof. Aamir Ghafoor Khan, Medical Director, MTI LRH
3. Dr Laiq Zada, Acting Hospital Director, MTI LRH
4. Syed Tariq Ali Shah, Director Finance, MTI LRH

The Secretary Health was briefed about the legal matters due to which some hurdles have been created. Regarding closure of gates, he informed that the Asamai side gate was closed as per his directives when he had the powers of BoG and the same was followed by the Board when it came into function. It was an administrative decision and do not affect any patient, attendant or healthcare providers. The patients who come to visit OPD or Emergency, they are using separate gates adjacent to Toroqul Bai Masjid which is feasible and easy to accessible for OPD and emergency care. Similarly, other two gates at opposite side of the hospital are also opened for patients facilitation so there is no complaint from the patients' or staff. Since the closed gate was used for the old A&E and is now useless after shifting of A&E to the new building however this gate is being misused as a thoroughfare between Asamai and Khyber Bazaar by the general public. He further added that none of the patient, attendant of patient, staff, or public has filed this petition and the petitioner has no Locus Standi except that there is misplaced notion of adverse affect on their businesses which LRH, being public healthcare facility, is not supposed to support.

The Secretary Health also directed the HD and MD that Molvi Ji hospital order has been issued by the Government through Health Secretariat which is now a part of MTI LRH, however, the court case will be dealt by the Secretariat which is nothing to do with the LRH. The management of LRH should look after the affairs of Molvi Ji and all the pending works should be completed. He further directed the HD and MD to put-up note regarding pending work by the PDA in reference to the minutes of the meeting held with DG PDA to expedite the matter through local government department.

The Secretary Health also informed that with previous Rs.30 million support, the Government has further allocated Rs.300 Million for renovation, repair, beautification, face uplifting etc. for MTI LRH. The PC-1 has been prepared by the Planning Cell of Health Department which may be obtained and things to be prioritize and rationalize as directed and set by the BoG.

Further to that, the Secretary Health, member BoG and Administrative staff visited different areas of the hospital. The Secretary and member BoG showed his concerned over poor hygienic and cleanliness condition in the hospital and specifically in the ward. The Member BoG and the Secretary Health also directed the hospital management to formulate visitors policy and that no one should allowed to sit in the ward with the patients.

Members present:

1. Prof. Dr Nausherwan K Burki (Chairman)
2. Mr. Saleem Khan Jhagra
3. Dr Abdul Bari Khan
4. Maj. Gen (Rtd) Amjad Fahim
5. Representative of Health Department, Govt of KPK
6. Representative of Finance Department, Govt of KPK
7. Representative of Establishment Department, Govt of KPK

Note: The govt representatives refused to provide their names or sign in.

Members Absent

Dr Mian Tahir Shah (excused)

Invited Guests:

Syed Tariq Ali Shah, Director Finance, MTI - Lady Reading Hospital Peshawar
Prof Aamer Ghafoor, Interim Medical Director
Dr Adnan Taj, Interim Hospital Director

Prof. Burki called the meeting to order at 11am.

The Board meeting was delayed awaiting legal advice regarding rumors of a stay order by the Court of Law. The Legal Advisor of MTI LRH confirmed that the stay order is not applicable to the Board and does not affect the proceedings of the Board. This was confirmed to the chairman by the Deputy Advocate General.

1. Confirmation of the Minutes of the Board Meeting May 13th, 2015

The representatives of the Health, Finance and Establishment Departments raised the point that they had not received the copies of the previous minutes and that the agenda, for example the Regulations, should be circulated well before time so as to be able to prepare for the meeting. The Chairman stated that the minutes and the draft regulations had indeed been sent to and were available with the Health Department and similarly, the agenda was also sent to their respective departments with the invitation letters. The minutes had been previously circulated and approved by the voting members of the Board.

The Board unanimously confirmed the approval of the Minutes of the Board Meeting of May 13th, 2015.

2. Matters arising from the Board meeting of May 13th, 2015

- a) Mr. Saleem Jhagra inquired about the status of the Rules and related matters. The chairman stated that 2 weeks previously the Secretary Health had informed him that the Rules and the Regulations had been approved by the Chief Minister. The Board asked the representative of Health

Department who stated that he was unaware of this; the Chair stated that he had email correspondence with the health secretary confirming the above.

- b) Mr. Jhagra expressed the view that Senior Registrar posts should be excluded from the Teaching cadre. The Chair agreed with him and informed him that hopefully it will be sorted out gradually with the creation of consultants for various specialties and subspecialties.
- c) Mr. Jhagra pointed out that according to the Act the Co-opted members would attend the Board meetings but not as invited guests. The Chair informed him that some anomalies in the Act are being removed through an Ordinance for enabling rules. Mr. Jhagra felt that representatives of the Health, Finance and Establishment are important members to be present in the Board meetings to solicit immediate opinions relevant to them. The representative of the Finance Department also endorsed this opinion. The Chair stated that it was the prerogative of the Board to solicit opinions as necessary, but no impingement on the authority and autonomy of the Board was acceptable.
- d) Mr. Jhagra, asked about development of regulations required to run the business of the hospital, financial, services, procurement matters, etc. He also added that as the budget belongs to the government and in the absence of Institutional rules, government rules and audit procedures must be followed. The Chair informed the participants that the approved Rules would be available very soon and all such queries would be addressed. Audit is permissible anytime by the Auditor General or a 3rd Party.
- e) On a query from Mr Jhagra regarding the creation of a post of Director Paramedics, the Chair expressed his reservations and informed the Board that he held a meeting with the paramedical staff and was able to address their concerns in an amicable and satisfactory manner. However a lot of work needs to be done including rationalization of their positions and attrition of surplus specialties.

3. Review of the MTI ACT, 2015 including the relevant petition filed against the MTI ACT and filling of vacant positions on the Board. The Board discussed this and felt that all such petitions should be handled by the Government and not by the Board or MTI.

4. Draft Regulations and ByLaws: The Chair presented some suggestions regarding proposed employee benefits, e.g Leave entitlement, sick leave etc. It was agreed that input would be obtained from legal experts to ensure that the proposed benefits meet all relevant laws and the proposed benefits would be circulated to the Board members for review and approval.

5. Composition of the Statutory Committees

These were discussed in detail. Mr Jhagra stated that there is no provision in the 'ACT' for an Institutional Management Committee or a Management Committee either in the Definitions or the Substantive Sections. To the contrary Section 7(k) mandates constitution of Executive, Finance and

(8)

Recruitment committees as mandatory committees of the Board. The Chairman pointed out that the Act empowers the Board to approve Regulations and Bylaws for the Medical Staff, wherein these committees are included. Mr Jhagra felt that this "conflict" needs to be resolved in consultation with the legal experts.

- a) It was agreed to form a Finance committee, with the hospital finance director as a member and the names of other prospective members to be circulated amongst the Board members for a final decision.
- b) The executive committee would be the same as the Institutional management committee and will include the Dean, the Hospital and Medical Directors, the Finance Director and the Nursing Director, with the Medical Director as Chairman
- c) Recruitment committees will be appointed as needed.

6. Selection committees for: Hospital, Medical, Nursing and Finance Directors and Permanent Secretary to the BOG.

The Chair informed the Board that the positions of Hospital and Medical Directors have been advertised, and the Board had agreed on separate selection committees for these positions.

Regarding the Nursing Director, he suggested that this wait till the new Hospital and Medical Directors are appointed and can provide their inputs in the said appointment. Regarding the appointment of a Dean, Mr. Jhagra suggested an interim Dean until induction of a permanent Dean. Maj. Gen (Rtd) Amjad Fahim suggested that the interim Dean be selected from amongst the top three existing faculty members. Prof. Abdul Bari endorsed the idea. It was agreed that the Chair would solicit and forward the names of senior faculty for the position of interim Dean to the Board members for review and approval and at the same time the permanent Dean position would be advertised; the Chair would solicit the names of the selection committee according to the Rules and Regulations and circulate to all Board members for their concurrence.

The Chair indicated that the existing PGMI has faculty positions in LRH and a few in HMC. The PGMI building is located at the Hayatabad Medical Complex. By transferring PGMI from HMC to LRH, the faculty will have the option either to work at HMC or in the LRH. The Dean of LRH will appoint an Associate Dean who will be in charge of PGMI and will sit in the PGMI building.

The permanent Secretary for the Board will also be appointed soon, following the procedure laid out in the Act and Rules.

7. Financial position of LRH – Mr. Syed Tariq Ali Shah, Director Finance, LRH

Director Finance, Syed Tariq Ali Shah presented the financial position of the Lady Reading Hospital in detail with a booklet outlining all the relevant aspects of the Hospital finances.

As approved Rules have not yet been received, he was asked about the Rules at present being used to run the financial business of the hospital. He stated that until the new Rules and Regulations are received, as far as possible, the old rules for Finances, Audit, Procurement, etc. are being followed.

The Budget for the Financial Year 2015-16 will be prepared and presented to the BoG after its allocation for the FY 2015-16 by the government during the current budget session.

The Chair put the matter of Contributory Provident (CP) Fund of the employees before the Board which needs investment to gain financial benefits for the employees. The Board endorsed the suggestion and advised that a committee should be constituted who will decide all the mechanism and criteria for investment and send to the Board for approval. However, the employees should be fully informed and represented regarding such investments.

It was agreed that

- a) The Proposed budget should be sent to the Board members before the next meeting.
- b) All the activities and budget should be published on the website for the public to make it more transparent.

8. Salaries & benefits for LRH employees

The Chairman informed the Board that the existing salary of the medical staff is very low as compared to market rates and needs to be enhanced. The Health Department representative felt that the matter should be dealt in accordance with the services rules and increase in any financial benefit should be sent to the Finance Department for allocation of such increased amount in the budget, and was supported in this view by Mr Saleem Jhagra.

The Chair completely disagreed with this, since the Board is autonomous and has every right to set its own salary structure for the Institution.

Prof. Abdul Bari highlighted the point that with the existing low salary and benefits it would not be possible to hire top class experts to work for the LRH. It is necessary to review this to compete in the market and provide quality services to the poor.

The Chairman further added that it is necessary to increase the salary of the non-medical employees and suggested the increase should be 15% with a 7.5% of salary contribution to the Provident fund of those employees who opt to participate in this fund. These increases would only be for the institutional employees and not for the civil servants.

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It was agreed that the Chairman will solicit opinion regarding the relevant Laws from the hospital legal advisor or from the Law Consultant regarding the provision of benefits and will further provide a financial analysis of the implications of the proposed increases.

- 9. Update on changes in Administrative functions at LRH – Acting Hospital Director Dr Adnan Taj**
- 10. Update on changes in Clinical functions at LRH – Acting Medical Director Prof. Aamir Ghafoor**

These updates were not discussed due to shortage of time and deferred to the next meeting.

11. Waste Disposal at LRH

The Board discussed the waste disposal system at LRH and expressed grave concern over the poor system of waste disposal and cleanliness in the hospital. Maj. Gen (Rtd) Amjad Fahim said that hospital waste is not similar to ordinary waste, but includes hazardous and infective waste. It was decided that a proper and standardized cleanliness and waste disposal system should be established adopting modern techniques. It was agreed that Maj. Gen (Rtd) Amjad Fahim would circulate information on waste disposal for discussion and implementation at the next Board meeting.

12. Approval of Emergently Required Capital Equipment and Personnel

Dr Burki stated that this is in process, with input from the end-users and evaluation of the financial and patient care implications.

13. Update on Development Plans – Dr N. Burki

The Chairman informed the participants regarding the tasks assigned by him and indicated his deep disappointment that after the span of two months, very little has been achieved. The interim Hospital director has been quite ineffective and needed to be changed and Dr Burki was in the process of doing that. He felt confident that within the next month major changes would be apparent.

The Chair also informed the Board that, although delayed, work has started in the outpatient department for shifting of OPD registration counters with increase in their numbers to 18 and establishment of filter clinics. He further explained that there are 120 rooms in OPD out of which 40 were underutilized or misused, and this is being corrected. Maj. Gen. (Rtd.) Amjad Fahim asked about the utilization of services of existing medical staff in the evening OPD timings. The Chair stated that this is being addressed the needs of evening OPD would be met within the next month.

14. Other matters

- a. Selection Committees for the positions of Hospital and Medical Directors were introduced to the Board members. The committee

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members were briefed on the very important responsibility and the Board assured its full support to select the best candidate on merit. The Board also appointed Prof Aamir Bilal as the Chairman for the Selection Committee for Medical Director and Prof. Intekhab Alam as the Chairman for the Selection Committee for Hospital Director.

- I* b. The Hospital Director, Dr Adnan Taj, briefed the Board regarding closure of Asamai Gate for which he has received threats and pressures. The Board endorsed the decision and directed him that such Gates should remain closed in the best interests of patients and the hospital. *N*

The Meeting was adjourned with a vote of thanks by the Chair.

Dr Nausherwan Burki, MD, Ph.D, FRCP, FCPS, FCCP
Chairman Board of Governors

Amir
2-12-15

BEFORE PESHAWAR HIGH COURT PESHAWAR

W.P No. 25027/2015



1. Fayaz Ullah s/o Mohib Ullah, Proprietor Zia Brothers Medicos
2. Hidayat Ullah s/o Gul Rehman, Proprietor Bilal Medicos,
3. Muhammad Faisal s/o Hazullah, Proprietor Peshawar Medicos
4. Mohsin Bilal s/o Hasan Bilal, Proprietor Mumtaz Medicos
5. Asad s/o Salih Muhammad, Proprietor Larosh Medicos
6. Hamayun Fazal s/o Fazal Rahim, Proprietor Medicine Corner,
7. Qaisar Sharif s/o Muhammad Sharif, Proprietor Qaisar Medicos
8. Muhammad Imran s/o Zar Gul, Proprietor Makka Medicos,
9. Jawad Ahmed s/o Shahbaz Khan, Proprietor Sarhad Medicos,
10. Fawad Ali s/o Sikandar Khan, Proprietor Amjid Brothers Medicos
11. Amjid Hussain s/o Dawar Khan, Proprietor Sanan Medicos,
12. Muhammad Tufail s/o Muhammad Abideen, Proprietor Abid Medicos
13. Attaullah s/o Ghayus-ud-Din, Proprietor Ahmed Jan Medicos,
14. Raza Muhammad s/o Faqir Muhammad, Proprietor Shabqadar Medicos

ATTESTED
EXAMINER
Peshawar High Court

19 MAR 2018

1475
FILED TODAY

FILED TODAY

Deputy Registrar

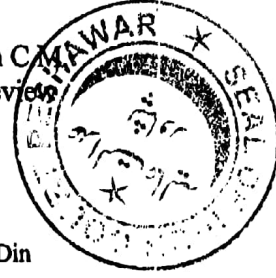
10/7 JUL 2015

15. Muhammad Faisal s/o Abdul Makeen, Proprietor Pakistan Medicos
16. Sikandar Zaman s/o Badri Zaman, Proprietor Nasir Medicos, situated at Asani Gate, near Lady Reading Hospital Peshawar.....Petitioner

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

JUDGMENT

W.P.NO. 2502-P/2015 with C.M. NO. 42-P/2016 with C.O. No. 2095-P/2016 with C.M. No. 1086-P/2017 with Review Petition No. 40-P/2016 with COC No. 424-P/2016



Date of hearing: 22.02.2018

Petitioner (Fayyazullah and others) By Mr. Ghulam Mohy-ud-Din Malik, Advocate.

Respondents (Government of KP and others) By M/S Rabnawaz Khan, A.A.G. and Javed Iqbal Gulbela, Advocate.

Mr. Intikhab Khan, Advocate, for the applicant in COC No.424-P/2016.

MUHAMMAD GHAZANFAR KHAN, J.- This single

judgment shall dispose of instant Writ Petition No. 2502-P of 2015 and connected Writ Petition No. 4498-P of 2015 as common questions of law and facts are involved therein.

2. Through instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Fayyaz Ullah etc., petitioners herein, have prayed for the following relief:-

“In view of the foregoing, this writ petition may be accepted with cost and respondents particularly Respondent No.3 may be directed to re-open the Eastern Side Old Emergency Gate of the hospital closed to Tora Qul Mosque and in front of petitioners' shops.

Secondly that to refrain from opening pharmacy shops adversely affecting the petitioners business.

Thirdly by way of Interim Relief, since the factors governing grant of relief prayed for in the writ petition do exist i.e. there is a prima facie existence of a right of gate of the hospital opening towards their shops and Peshawar City

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Peshawar High Court
19 MAR 2018

(14)

exists and its infringement by the respondents have been made causing irreparable damage/injury to the petitioners as well as inconvenience to the public at large and also the petitioners is comparatively greater than maintaining closure of the gate, therefore, by its nature an interim order pending declaration of writ petition may be issued directing respondents to restore status quo ante i.e. the situation that existed before closing the dispute gate may be restored.

Fourthly Respondents may graciously be directed under Article 19-A of the Constitution of Pakistan "Right to Information" to produce all the record/minutes of the meeting relating to decision about the closure of the old emergency gate along with old Master Plan of the hospital as was consented / approved by founder of the hospital and was maintained up till the impugned act and action of the respondents."

3. Brief facts of the case, as narrated in the petition, are that the petitioners are chemists and druggists, running their shops in front gate of Lady Reading Hospital, Peshawar towards East of the Hospital; that they are elected members of the Chemists and Druggists Union; that all members of the Union are registered license holders issued by Competent License Authority; that the respondents all of a sudden have closed down the gate opening towards the shops of the petitioners and residents of Peshawar City. Feeling themselves aggrieved from the closure of the said gate, the petitioners have approached this Court by filing the present petition.

4. C.Ms. NO. 1086-P/2017 and 42-P/2016 filed by the learned counsel for the petitioners for placing some additional documents on the file are allowed.

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Peshawar High Court
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5. To resolve the issue, this Court vide order dated 11.4.2017, directed the Worthy Advocate General Khyber Pakhtunkhwa to visit the place and give some viable solution of the problem.

6. The learned Advocate General visited the hospital on 29.4.2017 after informing all the concerned and arranged a meeting in the office of Hospital Director LRH, Peshawar wherein all the concerned were present. After thorough discussion and briefing by the Hospital Director with the help of maps etc., the learned Advocate General submitted his report on 4.5.2017 with the following conclusion:-

“After visiting the Lady Reading Hospital, Peshawar, hearing the Hospital Management, the aggrieved parties, public present outside the hospital and keeping in view the above facts, I am of the view as under:-

i. That the way from Aasamai Gate was for the original Accident & Emergency Department as it was very convenient to reach A&E, however, when a new A&E in the year 2014 was established being a building at a distance from the original one, a direct way was provided to that new building, keeping in view the emergency patients.

ii. Moreover, in the present situation it is not in the interest of security of the Hospital to have any more gates opened, specially from Aasamai Gate where Medico Legal Cases (MLC) Ward is situated. In MLC patients relating to terrorism are admitted, which is a very sensitive area required special security.

iii. The security is the subject of the Hospital Management. For the said purposes the Government of Khyber Pakhtunkhwa has promulgated “The Khyber Pakhtunkhwa Sensitive & Vulnerable Establishment and Places (Security) Act, 2015”, where it has been provided that it is the primary duty of administration to take security measures and provide protection to its employees and public inside its premises.

ATTESTED
EXAMINER
Peshawar High Court
19 MAR 2018

However, the request of the petitioners may be considered by the Management of the Hospital positively, when the law and order with respect to terrorism is improved."

7. The learned counsel for the petitioners argued that they are carrying on the business of medicine just in front of the impugned gate and its closure by the respondents have badly affected their business, which act of the respondents is in clear negation of the constitutionally guaranteed rights of the petitioners. He further argued that accessibility of the public to hospital has also been blocked which too is violative of Constitutional rights of the petitioners and general public.

The petitioners in other writ petition have the similar grievance. They are also praying for opening the eastern side old emergency gate of LRH.

8. On the contrary, the learned counsel for the respondents argued that the gate was closed due to security reasons. He further argued that saving of lives of patients in particular and the public in general is the foremost duty of every functionary of the State, especially the department dealing in public health and safety. He continued that the writ petition is frivolous as none of the public representatives has ever challenged the impugned action before any forum, so this writ petition be dismissed with costs throughout.

9. We have heard arguments of the learned counsels for the parties and have gone through the record with their valuable assistance.

ATTESTED
EXAMINER
19 MAR 2018

10. The report clearly indicates that measures have rightly been taken by the respondents to curb the terrorism which is the primary duty of the hospital management under the provisions of "Khyber Pakhtunkhwa Sensitive and Vulnerable Establishment & Places (Security) Act, 2015". Hence, this writ petition is dismissed along with C.M. No.2095-P/16, COC No. 424-P/2016 and Review Petition No. 40-P/16. However, as recommended by the Worthy Advocate General Khyber Pakhtunkhwa, the management shall positively consider the rights of the patients when the law and order with respect to terrorism is improved. ✓

Announced:
22.02.2018

JUDGE

JUDGE

(D.B.)
Hon'ble Mr. Justice Ikramullah Khan
Hon'ble Mr. Justice Muhammad Ghazanfer Khan

Muzaffargarh, 19

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1980
49 MAR 2018

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Annex I

L.No. 6383
Date 25.4.18
Secretary Health

IN THE SUPREME COURT OF PAKISTAN, ISLAMABAD

(Original Jurisdiction)

Regd. A.D.

HRC No. 17205-/2018

Application by: Muhammad Habib Qureshi Advocate Member
Executive Supreme Court Bar Association.

To

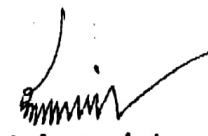
The Secretary,
Health Department KPK,
Peshawar C/o AR(P)

I am directed to inform you that the matter regarding closure of Asamai/Main Gate of Lady Reading Hospital, Peshawar was placed before the Hon'ble Chief Justice of Pakistan and his lordship has been pleased to pass the following orders:-

"Application be forwarded to Secretary Health KPK for required immediate compliance and to submit report by 28.04.2018."

2. You are therefore, required to do the needful and submit requisite **report by 28.04.2018**, positively.

Islamabad: April 24, 2018.


Court Associate
Human Rights Cell
Tel# 051-9220581/317
Fax # 051-9219516

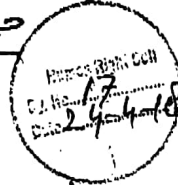
Encl. Copy of application

Indt/Important
Pl. receive from
HD and then
ind report. They
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Annex-I

شاہد نثار
چیف جسٹس ایسٹ
چیف جسٹس پشاور

HQS
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gate
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open



لیڈی ریڈنگ ہسپتال

گامین گیگی چور 1925

بہو اتھا کو بند کیا ہے جس سے

بیماروں کو سخت تکلیف ہے

اس کو ٹھونسے احکام کر لیا

نذر لعل کسب

محمد حبیب قریشی ایڈریس

03005900934

0336-5469950

در استر بخاری

محمد ایڈریس
محمد ایڈریس
محمد ایڈریس