

**IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI
(CONSTITUTIONAL JURISDICTION)**

Constitution Petition No. SS17 of 2014

Javed Iqbal, ~~Burhan~~
Son of (late) Muhammad Deen,
Muslim, Adult,
Resident/Office at Panorama
Centre No. 2, 3rd Floor, 316,
Raja Ghazanfur Ali Khan Road,
Saddar, Karachi.....Petitioner

Versus

1. Federation of Pakistan,
Through Secretary,
Ministry of Interior,
Pak. Secretariat, R Block,
Islamabad
2. Province of Sindh,
Through Chief Secretary,
Government of Sindh,
Sindh Secretariat,
Karachi
3. Province of Sindh
Through Secretary,
Home Department,
Government of Sindh,
Sindh Secretariat,
Karachi
4. Province of Sindh
Through Secretary,
Department of Health,
Government of Sindh,
Sindh Secretariat,
Karachi
5. The Inspector General
Sindh Police,
I.I.Chundrigar Road,
Karachi

6. National Institute of Child Health ['NICH'],
Through the Executive Director,
Rafiqui S.J. Shaheed Road,
Karachi - 75510.....

Respondents

**CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

It is most respectfully and most humbly submitted on behalf of the
abovenamed Petitioner as under:

1. That the subject-matter of this present Constitution Petition is, inter-alia, in relation to the ongoing illegal activities and offences committed by some of the staff in the National Institute of Child Health [NICH], at Karachi, and the failure of the Respondents to take action against the perpetrators of such offences.
2. That the Petitioner is a known legal activist, who is involved in various struggles for the enforcement of the legal rights of the people of Pakistan and is interested in safeguarding the interest of public at large and regarding the issues of public importance. This present Petition has been instituted by the Petitioner, inter-alia, because, as accentuated hereinbelow, the members of the administration of NICH are unwilling to come forward due to fear of repercussions from invoking the constitutional jurisdiction of this Honourable Court in relation to illegal activities and offences committed by some of the staff in NICH. The Petitioner has also instituted several public interest Constitution Petitions before this Honourable Court, including the following Petitions which are pending adjudication before this Honourable Court:

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- a. C.P. No. D-3318 of 2012 ['PILER and Others Vs. Federation of Pakistan and Others'] in relation to 2012 Baldia Factory Fire Incident.
 - b. C.P. No. D-295 of 2013 ['PILER and Others Vs. SBCA and Others'] in relation to 2012 Baldia Factory Fire Incident. - P 55
 - c. C.P. No. 1181 of 2014 ['PILER and Others Vs. Federation of Pakistan and Others'] in relation to the Tharparkar tragedy. - P 109.

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- d. C.P. No. 1171 of 2012 ['PILER and Others Vs. Province of Sindh and Others'] in relation to the criminal murder case of the acid attack victim Fakhra Younus. *p 137*

A copy of the Memo of C.P. No. D-3318 of 2012, C.P. No. D-295 of 2013, C.P. No. 1181 of 2014 and C.P. No. 1171 of 2012 filed by the Petitioner are attached and marked as Annexure 'A' to 'A-3'.

3. That NICH is a 500 bedded public hospital which was previously under the administrative control of Ministry of National Health Services, Regulations and Coordination but after the 18th Amendment the NICH came under the administrative control of the Respondent No. 4. It is the first children's hospital in the country and presently, one of the largest and the only children's hospital of the Province of Sindh. It provides tertiary care services for almost all types of paediatric diseases and is equipped with the latest diagnostic equipment. Reportedly, 700 to 800 patients visit different Outpatient Departments of NICH for treatment on a daily basis and 18,000 children get treatment every month in NICH. It is important to emphasise that NICH offers affordable medical facilities for children.

4. That some of the paramedic staff of NICH [hereinafter referred to as the 'perpetrators'], the majority of whom are members of medical wings of different political parties, have defaced the NICH building by installing huge banners, posters and party flags of political parties in different wards and entrances and exits of hospital in addition to, wall chalking which are also visible in wards, rooms and boundary walls of NICH. It is submitted that the abovementioned activities are being carried out by the perpetrators without the sanction or approval from the Management and Administration of the NICH.

A copy of the photographs displaying the abovementioned political activities and News clippings are attached and marked as Annexure 'B' & 'C'. *p 138*

5. That the perpetrators are also involved in direct interaction with the patients, most of whom are children, to promote their political mandate, which is deterring patients from availing medical facilities at NICH. The Perpetrators are also engaged in interfering with the administration of NICH, inter-alia, by meddling and interfering in procedures and functions of the blood bank, the procedure for conducting surgeries in Operation/Surgery Theatre/Rooms, and by interfering with emergency situations without any approval from the Management and Administration of NICH and/or doctors of NICH. It is also pertinent to note here that the perpetrators are also involved in extorting funds from patients, doctors and the administration of NICH.
6. That the Petitioner is informed that the Management and Administration of NICH have tried numerous times to take steps to remove the politically installed banners but the perpetrators form unlawful assemblies within the NICH premises and intimidate, insult, annoy and threaten violence against the management of the NICH in case any action is taken against them. It is further submitted that the Petitioner is further informed that numerous law enforcement agencies have also been contacted in this regard but none have taken any action. Moreover, the Petitioner is also informed that the Management and Administration of NICH apprehend serious danger at the hands of the perpetrators and fear that they would resort to illegal activities under the garb of their powerful political backing.
7. That it is most respectfully and most humbly submitted that being aggrieved by the abovementioned inactions of the Respondents as being unconstitutional, without jurisdiction and illegal, the Petitioner has no alternative or efficacious remedy except to invoke the Constitutional jurisdiction of this Court on the, inter alia, facts and grounds stated herein.

GROUND

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A. That the perpetrators, the majority of whom are members of medical wings of different political parties, have defaced the NICH building by installing huge banners, posters and party flags of political parties in different wards and entrances and exits of hospital in addition to, wall chalking which are also visible in wards, rooms and boundary walls of NICH. It is submitted that the abovementioned activities are being carried out by the perpetrators without the sanction or approval from the Management and Administration of the NICH. It is further submitted that the actions of the perpetrators fall within the meaning of, inter-alia, criminal trespass, offences against public tranquillity, including unlawful assembly, offences affecting the public health, safety, convenience, decency and morals, including public nuisance, as defined in the P.P.C., 1860, however, the Respondents have failed to take any action. Therefore, the acts of the perpetrators and the inaction of the Respondents in relation thereto violate the fundamental rights of the Petitioner and public at large as guaranteed under the Constitution, 1973.

B. That the perpetrators are also involved in direct interaction with the patients, most of whom are children, to promote their political mandate, which is deterring patients from availing medical facilities at NICH. The Perpetrators are also engaged in interfering with the administration of NICH, inter-alia, by meddling and interfering in procedures and functions of the blood bank, the procedure for conducting surgeries in Operation/Surgery Theatre/Rooms, and by interfering with emergency situations without any approval from the Management and Administration of NICH and/or doctors of NICH. It is also pertinent to note here that the perpetrators are also involved in extorting funds from patients, doctors and the administration of NICH. It is further submitted that the actions of the perpetrators fall within the meaning of, inter-alia, extortion, criminal trespass, offences against public tranquillity, including unlawful assembly, offences affecting the public health, safety, convenience, decency and morals, including public nuisance, as defined in

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the P.P.C., 1860, however, the Respondents have failed to take any action. Therefore, the acts of the perpetrators and the inaction of the Respondents in relation thereto violate the fundamental rights of the Petitioner and public at large as guaranteed under the Constitution, 1973.

C. That the Management and Administration of NICH have tried numerous times to take steps to remove the politically installed banners but the perpetrators form unlawful assemblies within the NICH premises and intimidate, insult, annoy and threaten violence against the management of the NICH in case any action is taken against them. It is further submitted that numerous law enforcement agencies have also been contacted in this regard but none have taken any action. The Management and Administration of NICH apprehend serious danger at the hands of the perpetrators and fear that they would resort to illegal activities under the garb of their powerful political backing. It is further submitted that the actions of the perpetrators fall within the meaning of, inter-alia, extortion, criminal trespass, offences against public tranquillity, including unlawful assembly, offences affecting the public health, safety, convenience, decency and morals, including public nuisance, as defined in the P.P.C., 1860, however, the Respondents have failed to take any action. Therefore, the acts of the perpetrators and the inaction of the Respondents in relation thereto violate the fundamental rights of the Petitioner and public at large as guaranteed under the Constitution, 1973.

D. That it is most respectfully and humbly submitted that the Petitioner seeks the indulgence of this Honourable Court to raise further grounds at the time of the hearing of this Petition.

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P R A Y E R

It is, therefore, most respectfully and most humbly prayed that this Honourable Court may graciously pass judgment, and orders, in the following terms:

- (a) Declare that every citizen, including every person living in Pakistan, has a right to life under Article 9, Constitution, 1973, and such a right to life includes a constitutional right to avail basic health facilities at Health Institution such as NICH without any hindrance or threat of security or political interference;
- (b) Permanently restrain the paramedic staff and political activists from interfering, harassing and hindering the administration and functioning of the NICH by engaging in political activities;
- (c) Direct the Respondents to take action against offences referred in Para C above committed by the perpetrators i.e. the paramedic staff of NICH, strictly in accordance with law;
- (d) Direct the Respondents to remove all the party flags, posters, banners and wall chalking from the building of the NICH;
- (e) Grant such further, additional or alternative relief, as this Honourable Court may deem fit and proper;

PETITIONER

ADVOCATE FOR THE PETITIONER

Karachi;

Dated: _____ 2014

DOCUMENTS FILED: As shown in the Petition

DOCUMENTS RELIED UPON: The abovementioned documents e.t.c.

ADDRESS OF PETITIONER: As per in title of the petition

ADDRESS OF PETITIONER COUNSEL: Faisal Siddiqi
Advocate
HC-8504/HC/KHI
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Block-5, Clifton,
Karachi.

DRAWN BY ME

ADVOCATE