

IN THE PESHAWAR HIGH COURT , BENCH MINGORA /
DAR-UL-QAZA, SWAT

WRIT PETITION NO. 1438 OF 2019

Uph. Health Care Commission of Amir Qadir Khan


This petition had been presented by M.r. Shakeel War Ahmedullah Advocate

On behalf of the petitioner /petitioners.

The petition is in proper form, copies of all the relevant documents have been attached.

Three (01) spare copies of writ petition have also been attached.


Petition be entered in the relevant register and placed before Hon'able court
(D.B) for further orders on 18-02-2020 the date fixed.



READER

Dated: 24-12-19

COUNTERSIGNED


Additional Registrar,
Peshawar High Court, Bench
Mingora/Dar-ul-Qaza, Swat.

Dated: 24-12-19

**IN THE PESHAWAR HIGH COURT, BENCH MINGORA/
DAR-UL-QAZA, SWAT
OBJECTION SLIP**

UPH Health Care Committee **VERSUS** Amir Qador et

Shabeel War Shereel selo

1. This petition has been presented by _____
2. Signature of council/petitioner requires on _____
3. Enactment under which the petition was file is not mentioned correct.
4. Approved file cover is not used.
5. Affidavit is not duly attested/appended.
6. Checklist has not been filed/duly filled in/signed
7. Petition/annexures are not properly paged according to index.
8. Certified copies of annexures/page # _____ have not been filed.
9. Copies of annexure/pages # 8 are not legible. *afw 2nd copy.*
10. Certificate be furnished that whether nay petition on the subject matter has earlier been filed in this court.
11. There should be separate application for each prayer/case.
12. Copy of application is not delivered to A.G.
13. The appeal, revision, application is time barred.
14. Value for the purpose of court fee and jurisdiction has not been mentioned in the relevant column of the opening sheet.
15. Opening sheet has not been filled in properly. *Filed*
16. The P/A of the council engaged is not attested/signed by all petitioners/appellants.
17. Chamber address and phone number of council has not been mentioned on index/wakalatnama.
18. Memo of parties name & address not filed.
19. Petitioner's/Attorney of Petitioners' CNIC #/present address/permanent address/phone #/Cell #/Fax #/E-mail address has not been mentioned in memo of addresses of the parties.
20. No. of referred cases is not given/correct.
21. Petition received by post is not entertain-able except through jail.
22. Petition containing overwriting is not entertain-able. Fair petition be filed. *39) legal notice to the opposite party afw receipt be attached.*
23. Appeal/Revision is not competent.
24. List of books have not been mentioned at the end of the petition.
25. Case does not relate to _____
26. Petition should be drafted by a person competent to do so.
27. _____ spare copies be filed. *40) Authority letter on behalf of petitioner no. 1 be attached.*
28. In what jail the petitioner is confined.
29. Revision/appeal may be filed on the prescribed form.
30. Copies of annexure _____ are not translated.
31. Court fee stamps are not been affixed.
32. Power of Attorney is not attested by the jail authority.
33. Certified copies of impugned orders/decree sheets/pleadings/evidence/ground of revision/appeal before District Judge have not been filed.
34. District Judge or any other Judicial Officer cannot be made as respondent on top of the petition.
35. Index has not been filed/signed/duly completed/or it carries overwriting.
36. The Petition has not been flagged/marked with annexures' marks.
37. Power of attorney for petitioner/petitioners has not been filed.
38. Every miscellaneous application should be followed by an affidavit.

READER

Returned with objections at Sr. Nos. 9, 15, 16, 19, 31, 39 for removal to be re-submitted on or before 28-12-14

*Objections removed
Re-submitted 7/2*

Amir Qador
**Additional Registrar
PHC, Bench Mingora/Dar-ul-Qaza, Swat**

Sira

objection

Removal

Synd

Raajjan

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

CHECK LIST

1.	Case Title	<i>K.P. Health Case Commission</i> VERSUS <i>Govt of KPK Instl Health Secretary.</i>	
2.	Case is duly signed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
3.	The law under which the case is preferred has been mentioned.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
4.	Approved file cover is used.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
5.	Affidavit is duly attested and appended.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
6.	Case and annexures are properly paged and numbered according to index.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
7.	Copies of annexures are legible and attested. If not, then better copies duly attested have annexed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
8.	Certified copies of all requisite documents have been filed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
9.	Certificate specifying that no case on similar grounds was earlier submitted in this court, filed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
10.	Case is within time.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
11.	The value for the purpose of court fee and jurisdiction has been mentioned in the relevant column.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
12.	Court fee in shape of stamp paper is affixed. [For writ Rs. 500, for other as required]	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
13.	Power of attorney is in proper form.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
14.	Memo of addressed filed.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
15.	List of books mentioned in the petition.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
16.	The requisite number of spare copies attached [Writ petition-3, civil appeal (SB-2) Civil Revision (SB-1, DB-2)]	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
17.	Case (Revision/ Appeal/petition etc) is filed on a prescribed form.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
18.	Power of attorney is attested by jail authority (for jail prisoner only)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

It is certified that formalities/documentations as required in column 2 to 18 above, have been fulfilled.

Name:- *Shahid U.*
 Signature:- *[Signature]*
 Dated:- _____

FOR OFFICE USE ONLY

Case:- _____
 Case received on _____
 Complete in all respect: Yes/ No, (If No, the grounds) _____
 Date in court:- _____

Signature _____
 Date:- *16-12-19*

Countersigned:- *[Signature]*
 (Deputy Registrar)

By Computer Under the Control of Peshawar High Court, Peshawar.

FILED TODAY

16 DEC 2019

Additional Registrar

**IN THE PESHAWAR HIGH COURT, PESHAWAR.
OPENING SHEET FOR WRIT BRANCH**

Date of Filing: 16/12/2019
District: Peshawar
Nature of Original Proceeding:

Case Type Writ Petition
Category Code: 50102

Review / Contempt of Court in respect of:

Writ of:

Heabus Corpus	Prohibition	Mandamus	√	Quo Warranto	Certiorari
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If Certiorari:

Forum	Date	(I)nterlocutory / (F)inal Order
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

Case Pertains to SB DB	√
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Petitioner Name	KP Health Care commission through CEO
Mobile No.	0301-8803895
Address	Office No. 01, Deans Trade Center, Peshawar Saddar
CNIC No.	17301-7438506-1
Email Address	N / A

Counsel for Petitioner (s)	Shakeel Khan Ahmadkhel Advocate High Court
Mobile No.	0301-8803895
Address	C-1, Rehman Plaza, Khyber Bazar, Peshawar.
CNIC No.	17301-7438506-1
Email Address	Shakilkhadv@gmail.com

Respondents	Amir Qadir and others
Address	Ghari Usamani Khel, Dargai District Malakand

Original Order / Action / Inaction Complained of:
Against the order dated: 04/11/2019

Prayer
On acceptance of this writ petition the impugned order dated: 04-11-219, may kindly be set aside and order dated: 19-06-219, may kindly be restored and Respondent No. 01 may kindly be directed to permanently closed down his premises.

Law / Rules / Governing the Original Proceedings / Action / inaction
Under Article 199 of the Constitution of Islamic Republic of Pakistan. 1973.

Re-Filed Today

24 DEC 2019

Additional Registrar



BEFORE THE HONOURABLE PESHAWAR HIGH COURT,
MANGORA BENCH.

Writ Petition No. 1438-M/2019

1. Khyber Pakhtunkhwa Health Care Commission.
2. Inspector Rais Jan Malakand Health Care Commission.

Petitioners

Versus

1. Amir Qadir S/o Fazal Qadir R/o Ghari Usamani Khel, Dargai District Malakand.
2. Mr. Aurangzeb District Judge /Zila Qazi /MLAC, Malakand at Batkhela.

Respondents

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S/No.	Description of Documents	Date	Annexure	Page No.
1	Writ Petition with affidavit			1-4
2	Memo of addresses of Parties			5
3	Copy of Authority Letter			5A ✓
4	Copy of Sealing Order	18-06-2019	A	6
5	Decision of De-sealing committee	19-06-2019	B	7
6	Copy of Appeal		C	8-9
7	Better Copy of Appeal			9A-9B ✓
8	Copy of Judgment of court	04-11-2019	D	10-12
9	Copy of Affidavit		E	13
10	Legal Notice			14
11	Court Fee			15
12	Wakaltnama			16

Re-Filed Today

24 DEC 2019


Additional Registrar

Petitioners

through



Shakeel Khan Ahmedkhel

Advocate Peshawar High Court

BEFORE THE HONOURABLE PESHAWAR HIGH COURT,
MANGORA BENCH.

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2. Mr. Aurangzeb District Judge /Zila Qazi /MLAC, Malakand at Batkhela.

Respondents

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

Respectfully Sheweth;

1. That on 18-06-2019 petitioners conducted inspection on Khattak Medical Store Ghari Usmani Khel Dargai and found appellant using medical kit and BP apparatus for which he was not entitled. therefore, his premises /medical store was sealed (copy of sealing order is annex as annexure A).
2. That as per sealing order/ charges against Respondent No. 01 is that he is unqualified person, being 'SDC' diploma holder found practicing allopathy hence, his clinic/medical store was rightly sealed.
3. That on 19-06-2019, the respondent No. 1 appeared before the de-sealing committee of KP-Health Care Commission but failed to wriggle out from the charges against him. Hence fine of Rs. 1 lac and 5 Thousand was imposed on him besides, he was directed to permanently closed down his premises (copy of order dated 19-06-2019 is annex as annexure B).
4. That Respondent No. 01 preferred an appeal under section 21 of KP-Health Care Commission Act 2015 Before the District and Session Judge Malakand at Batkhela (copy of appeal is annex as annexure C).
5. That after hearing both the parties the learned Court below accepted the appeal of Respondent No. 01 vide order Dated:04-11-2019, (Copy of order is annex as annexure D) and set aside both the orders of the authority in a hasty hand manner therefore, petitioner aggrieved of the same having no other adequate remedy approached this Hon'ble Court on the following grounds amongst others.

GROUND

- A. That order dated 14-11-2019 is illegal against the law and facts, hence, cannot be appreciated.

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16 DEC 2019

Additional Registrar

- B. That the learned lower Court wrongly interpreted the various section of KP-Health Care Commission Act 2015 and ignored the pure gesture, preamble of Act in hand while passing impugned order dated: 04-11-2019.
- C. That impugned order is not a speaking order and neither well-reasoned order. Hence having no legal effect.
- D. That as per section 18 of "Khyber Pakhtunkhwa Health Care Commission Act 2015" the commission is authorized to impose fine which may extend to one million rupees in accordance with the provisions for ready reference section 18 of the Act is reproduced as follows.
1. JURISDICTION OF COMMISSION FOR ADJUDICATION OF FINE.
"Notwithstanding anything contained in any other law, the commission may, for contravention of a provision of this Act, rules or regulation, impose fine which may extend to 1 million rupees in accordance with the provision of this Act."
 2. "The commission shall afford adequate opportunity of hearing and in certain circumstances give specified time for the improvement of the Health Care Establishment to a person before imposing fine of the person under this Act"
- E. That the learned Court below wrongly presumed that the petitioner issued sealing order followed by imposition of fine invoking section 28 of 'IBID' Act, and wrongly defines fines and offences. Thus, the learned Court below permitted the Respondent No. 01 to carry on his illegal and unauthorized practice which is against the norms of this Act. Hence, is liable to be set aside. Moreover, the petitioner can prosecute Respondent No. 01 under Section 18 & 28 at one time. In fact, Respondent No. 01 was not prosecuted under section 28 as no FIR was registered against him the learned appellate Court wrongly observed that how without framing of charge the Respondent No. 01 was punished in deed if anyone including Respondent No. 01 is prosecuted under Section 28 then FIR is registered under the said Section which is declared non bailable and cognizable and after registration of the case under this Section the local police would submit a challan under Criminal Procedure Code and then the trial Court will frame charge and after proving the case the offender can be punished with imprisonment which may extend to 06 months or with fine which may extend to 1 million rupees or with both but the Respondent No. 01 was only fined / prosecuted under Section 18 of KP-Health Care Commission Act, 2015 . As per sub-section 02 of the said Act the Respondent No. 01 was given an opportunity of hearing which he availed. Hence, Respondent No. 01 himself admitted that he was punish/fine under section 18 of the said Act for which an appeal under section 21 of KP-Health Care Commission Act 2015 lie is competent that to under the limitation of 30 days respondent no.01 again availed the said forum. Hence, again admitted that he was fined under section 18 of the said Act as no appeal under section 21 is competent against the offence under section 28 of the said Act.
- F. That impugned order has no legal footing. Hence, is liable to be set aside.
- G. That the learned court has ignored the material available evidence against the respondent No. 1 and passed this illegal order, Hence, is liable to be snubbed. Moreover, the Respondent/appellant while appeared before the de-sealing committee pleaded his guilt and besides deposited fine, 1 lack 5 thousand to the Authority he further submitted an affidavit for permanent closed down of his un-authorized clinic. Hence, the impugned order dated: 04-11-2019, is against the available facts and circumstances also amount to estoppel on part of the Respondent No. 01, as on one hand Respondent No. 01 pleaded his guilt before the de-sealing committee by depositing fine and affidavit and on another hand the validity of order of the de-sealing committee was challenged before Respondent No. 02 the said factum of these cases

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Additional Registrar

totally ignored by the learned Respondent No., 02 Hence, mere on this score alone the impugned order is liable to be buried. (copy of affidavit is annex as annexure E)

- H. That the learned lower Court wrongly interpreted Section 28 of this Act as Section 28 says who does not qualify the provision of this Act shall be punished with imprisonment which may extend to 06 months or with fine which may extend to one million rupees or with both. As in para 8 of the impugned order the learned Court respondent No. 02 made an observation that order dated: 19-06-2019, of the petitioner does not disclosed the provision of law, that under which law the Respondent No. 01 was convicted, in fact, Section 28 of KP-Health Care Commission Act provides two types of punishment i.e. imprisonment which may extend to 6 months or with fine which may extend to 1 million rupees but in the instant case the Respondent No. 01 was found violating provision of this Act, rules or regulations. Hence, Respondent No. 01 was punished under section 18 of this Act. In fact, the authority/ KP-Health Care Commission has all the rights to prosecute punish the Respondent No. 01 under section 18 as well as section 28 of this Act for contravention/Violation of this Act i.e. KP-Health Care Commission Act 2015 as preamble of this Act is to promote and improve patient safety and Health Care Service Quality in public and private sector and also to provide mechanism for banning quackeries.
- I. That other grounds will be agitated during the course of arguments with the permission of this Hon'ble Court.

It is therefore, humbly prayed that on acceptance of this writ petition the impugned order dated: 04-11-219, may kindly be set aside and order dated: 19-06-219, may kindly be restored and Respondent No. 01 may kindly be directed to permanently closed down his premises.

Dated: _____ through _____
 Petitioners
 Shakeel Khan Ahmedkhel
 Advocate Peshawar High Court

CERTIFICATE: -

It is certified that no such like writ petition has earlier been filed by the petitioner in this hon'ble Court.

 ADVOCATE

LIST OF BOOKS: -

1. Constitution of Islamic Republic of Pakistan ,1973.
2. Khyber Pakhtunkhwa Act, 2015.

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16 DEC 2019

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 ADVOCATE

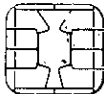


PAKISTAN National Identity Card

ISLAMIC REPUBLIC OF PAKISTAN



Name
Muhammad Rais Jan



Father's Name
Muhammad Idris Khan

Gender | Country of Stay
M | Pakistan

Identity Number | Date of Birth
172014813645-3 | 01.01.1985

Date of Issue | Date of Expiry
25.10.2016 | 25.10.2026



Holder's Signature

035



سجود پتہ: تیرہ آبادی، صدر بازار، مکان نمبر ۸-۲۵، رسالپور
پاکستان کے لیے تحصیل و ضلع نوشہرہ

17201-4813645-3



سنتھل پتہ: عبدالصمد خان ککے، ہری چند، تحصیل جنگلی، ضلع

چار سداہ

101071163740

Usman K. Malik
Registrar General of Pakistan

گمشدہ کارڈ ملنے پر قریبی لیڈ بکس میں ڈال دیں

BEFORE THE HONOURABLE PESHAWAR HIGH COURT,
MANGORA BENCH.

Writ Petition No. 1438 /2019

- 1. Khyber Pakhtunkhwa Health Care Commission.
- 2. Inspector Rais Jan Malakand Health Care Commission.

Petitioners

Versus

- 1. Amir Qadir S/o Fazal Qadir R/o Ghari Usamani Khel, Dargai District Malakand.
- 2. Mr. Aurangzeb District Judge /Zila Qazi /MLAC, Malakand at Batkhela.

Respondents

AFFIDAVIT

M.
I Rais Jan Inspector KP-Health Care Commission District Malakand, do hereby solemnly affirm and declare on oath that the content of accompanying reply is true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Rj Deponent

CNIC No 17201-4813645-3
Inspector KP-HCC District Malakand

Identified by:

Shakeel Khan

Shakeel Khan Ahmad Khel Advocate
Peshawar High Court Peshawar

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16 DEC 2019

Additional Registrar

S.No. 5321
Certified that the above was verified on Solemn affirmation before me on this 16 day of Dec 2019 by Muhammad Rais Jan S/o. M. Idrees Khattak who was identified by Shakeel Khan Ahmad Khel Adv. Who is personally known to me.

[Signature]
ADDL. REGISTRAR
Peshawar High Court
Mingora Bench/Dar-ul-Ulugh, Swat.

BEFORE THE HONOURABLE PESHAWAR HIGH COURT,
MANGORA BENCH.

Writ Petition No. 1438...../2019

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2. Mr. Aurangzeb District Judge /Zila Qazi /MLAC, Malakand at Batkhela.

Respondents

ADDRESSES OF PARTIES

1. KP-Health Care Commission. FF01 Deans Trade Center Peshawar.
2. Inspector Rais Jan. Behind District Court Gulkada Mingora District Swat.

Petitioners

Versus

1. Ameer Qadir R/o Ghari Usamani Khel, Dargai District Malakand.
2. Mr. Aurangzeb District Judge /Zila Qazi /MLAC, Malakand at Batkhela

Respondents

Dated:

through

Petitioners

Shakeel Khan
Shakeel Khan Ahmedkhel

Advocate Peshawar High Court

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16 DEC 2019

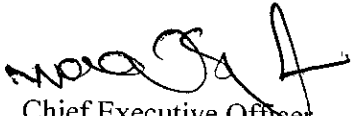
Additional Registrar



HCC/HO/A/09/10449
Date: 19-12-2019

AUTHORITY LETTER.

It is hereby decided to authorize Mr. Rais Jan Inspector KP-Health Care Commission District Office Malakand to attend the Peshawar High Court Mingora Bench Dar-ul-Qaza Swat. On behalf of Petitioner No. 01, KP-Health Care Commission in the Case title "KP-Health Care Commission Vs Mr. Amir Qadir".


Chief Executive Officer
KP-Health Care Commission

Endst: Even date & Number

Copy to:

1. Director Operation KP-Health Care Commission.
2. Director M&E / L&R KP-Health Care Commission.
3. Admin / Legal Officer KP-Health Care Commission.
4. PS to Chief Executive Officer KP-Health Care Commission.

Chief Executive Officer
KP-Health Care Commission



KHYBER PAKHTUNKHWA HEALTH CARE COMMISSION

Unit FF-01, Deans Trade Center, Islamia Road, Peshawar Cantt.

Phone: 091-9213245 Fax: 091-9213254

Email: info.hcc@hcc.gkp.pk



DISTRICT: Malakand

S.No. 3755

Seal # 000065

Date: 18/6/19

SEALING ORDER

To (Name of incharge and address of the Health Care Establishment)

Amir Qadir s/o Fazl Qadir. Khatlek Medical
Store & clinic Garijismani khel Dargai

In pursuance of Section 2 (j), Section 6 (2) (P) and Section 28 (1) of Khyber Pakhtunkhwa Health Care Commission Act 2015 and section 28 of the registration and licensing regulations 2016 made under the said Act and 28 B of the PM&DC Ordinance 1962 amended Act 2012 and will remain closed till further order. You are therefore directed to attend the KPHCC Head Office for your case within 15 days on the days specified below along with the relevant documents.

Received by: Waqas Ahmed

CNIC 15401-1222294-1

Contact No: 03359388478

Date: 18/6/19

Signature: [Signature]



Details of the items confiscated (If any)

Medical kit + BP apparatus & stethoscope

Inspector/ Senior Inspector/ Chief Inspector

[Signature]

All inspector to attach a copy of the documented evidence i.e. Prescription pads, Lab report etc. with office copy of this order.

Cause of action

① On general public complaint received through DC office Malakand. ② Unqualified person to Amir Qadir s/o Fazl Qadir having SDC diploma and practicing allopathy.

NOTE:

1. Safe custody of closed premises is the responsibility of the incharge / Owner of the premises mentioned above.
2. De-sealing cases will be heard once a week on the day specified by KPHCC Head Office.
3. Owner/ Incharge of the Health Care Establishment has to appear before the De-Sealing committee along with the relevant documents.

CFC. [Signature]

Amir Qadir s/o Fazl Qadir



S.No. 0487

Sealing Order No. _____

De-Sealing Committee Decision

Mr./Ms. Amir Qader presented his/her case to this office for de-sealing. Dated: 19/06/2019.

The name of the premises is Khattak Medical store & clinic
Situating at Malakand

CNIC:

1	5	4	0	2	-	1	4	2	5	0	8	5	-	5
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

Contact No. _____

Cause of Action:
SDC diploma holder was providing health services

The De-Sealing Committee decision is to: The applicant has appeared before the de-sealing committee and provided the documents of S.D.C diploma. So found guilty for providing health services. Further he will submit an affidavit that he will permanently close down his premises.
Fine Imposed: Rs. 105,000/-

Director Licensing & Registration Services

CTC.

BEFORE THE DISTRICT & SESSIONS JUDGE MALAKAND AT
BATKHELA

Amir Qadar S/O Fazli Qadar R/O Gari Usmani Khel Dargai, District
Malakand

.....Appellant

VS

1. Govt of KP through Secretary Health
2. Khyber Pakhtoon Khwa Health Care Commission Peshawar
3. Inspector Rais Jan, Malakand Health Care Commission

.....Respondents


**APPEAL U/S 21 OF KHYBER PAKHTOON KHWA HEALTH CARE
COMMISSION ACT 2015 AGAINST THE ORDER OF DIRECTOR
LICENSING & REGISTRATION /SERVICE WHEREBY THE
APPELLANT WAS PUNISHED OF RS.105000/- AS A PENALTY/FINE
AND WAS FURTHER ORDERED TO CLOSE DOWN KHATTAK
MEDICAL STORE MALAKAND**

PRAYER:

ON THE ACCEPTANCE OF THIS APPEAL THE ORDER OF THE
DIRECTOR LICENSING & REGISTRATION/ SERVICES DATED:
19/06/2019 MAY KINDLY BE SET ASIDE AND THE APPELLANT BE
ACQUITTED FROM THE CHARGES LEVELLED AGAINST HIM.

RESPECTFULLY SHEWETH:

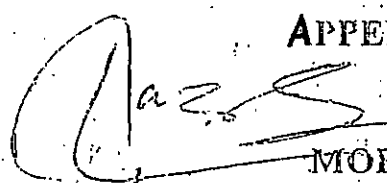
1. That on 18/06/2019 an inspection team of Health care commission conducted inspection on Khattak Medical Store Gari Usmani khel Dargai.
2. That according to the allegations of Inspector Health Care Commission Malakand the appellant was found in possession of Medical Kit and BP Apparatus from the Khattak Medical Store Gari Usmani khel Dargai and was alleged that SDC diploma holder was providing Health Services.
3. That on 19/06/2019 the Appellant Amir Qadar presented his case to the office of de-sealing Health Care Commission at Peshawar and provided the Documents of SDC Diploma, but the Health Care Commission convicted the Appellant and Sentenced to a fine of Rupees 105000/- with the further direction to close his Medical store in that premises vide the impugned order dated 19/06/2019. (Order is Annex "A")
4. That now feeling aggrieved from the said order present appeal on the following amongst other grounds.

etc 

GROUNDS:-

- a) That the impugned order of Health Care Commission is against the law and facts, hence untenable.
- b) That the impugned order is based on presumption, conjectures and surmises and the Health Care Commission has not proved their case through cogent and reliable evidence.
- c) That the Health Care Commission has awarded the punishment beyond his Jurisdiction. Q.11
- d) That the thread bare allegations of Rias Jan Inspector are not supported by any piece of evidence. Fict
- e) That the Health Care Commission while awarding punishment to the Appellant have recorded no evidence in support of the allegations, hence liable to be set aside.
- f) That possessing BP Apparatus is no Crime in the eyes of Law and similarly the Medical Kit was also not explained by the inspector so its possession also not constitutes an offence.
- g) That the prosecution evidence is suffering from inherent defects, pregnant with serious material contradictions.
- h) That further reasons will be advanced at the time of arguments.

IT IS THEREFORE, HUMBL Y PRAYED THAT ON THE ACCEPTANCE OF THIS APPEAL THE ORDER OF THE Health Care Commission DATED: 19/06/2019 MAY KINDLY BE SET ASIDE AND THE APPELLANT BE ACQUITTED FROM THE CHARGES LEVELLED AGAINST HIM.


 APPELLANT / ACCUSED
 THROUGH
 MOHAMMAD RAZIQ &
 UMAIR SHEHZAD
 27/6/19 ADVOCATES, HIGH COURT

CERTIFICATE:-

IT IS CERTIFIED THAT NO SUCH LIKE OTHER APPEAL HAS BEEN INSTITUTED BY THE APPELLANT, AS PER INFORMATION FURNISHED BY THE APPELLANT TO ME.

M. S.

CTC *[Signature]*

Better copy

**BEFORE THE DISTRICT & SESSION JUDGE MALAKAN AT
BATKHELA**

Amir Qadir S/o Fazli Qadir R/o Ghari usamani khel dargai, District Malakand

..... Appellant

Verses

1. GOVT of KP through Secretary Health.
2. KP-Health Care Commission Peshawar.
3. Inspector Rasi Jan, Malakand Health Care Commission.

..... Respondents

APPEAL U/S 21 OF KHYBER PAKHTUNKHWA HEALTH CARE COMMISSION ACT 2015, AGAINST THE ORDER OF DIRECTOR LICENSING & REGISTRATION/SERVICE, WHEREBY THE APPELLANT WAS PUNISHED OF RS. 105,000/- AS A PENALTY/FINE AND WAS FURTHER ORDERED TO CLOSE DOWN KHATTAK MEDICAL STORE MALAKAND.

PRAYER

ON THE ACCEPTANCE OF THIS APPEAL THE ORDER OF THE DIRECTOR LICENSING & REGISTRATION / SERVICES DATED:19-06-2019 MAY KINDLY BE SET ASIDE AND THE APPELLANT BE ACQUITTED FROM THE CHARGES LEVEL AGAINST HIM.

RESPECTFULLY SHEWETH;

1. That on 18-06-2019, an inspection team of Health Care Commission conducted inspection on khattak medical store ghari usmani khel Dargai.
2. That according to the allegations of inspector Health Care Commission Malakand the appellant was found in possession of medical kit and BP apparatus from the Khattak Medical store ghari usamin khel Dargai and was alleged that SDC diploma holder was providing Health Services.
3. That on 19-06-2019, the Appellant Amir Qadir presented his case to the office of De-sealing Health Care Commission at Peshawar and provided the documents of SDC diploma, but the Health Care Commission convicted the appellant and sentenced to a fine of Rs. 105,000/- with the further direction to close his medical store in that premises vide the impugned order dated: 19-06-2019.
4. That now feeling aggrieved from the said order present appeal on the following amongst other grounds.

Atc
Jan

GROUND:

- A. That the impugned order Health Care Commission is against the Law and Facts, his untenable.
- B. That the impugned order is based on presumption, conjectures and surmises and the Health Care Commission is not proved their case through cogent and reliable evidence.
- C. That the Health Care Commission has awarded the punishment beyond the jurisdiction.
- D. That the thread bare allegations of Rais Jan Inspector are not supported by any piece of evidence.
- E. That the Health Care Commission while awarding punishment to the appellant have recorded no evidence in support of the allegations, Hence, liable to be set aside.
- F. That possessing BP apparatus is no crime in the eyes of Law and similarly the medical kit was also not explained by the inspector, so its possession also not constitutes an offence.
- G. That the prosecution evidence is suffering from inherent defects, pregnant with serious material contradictions.
- H. That further reasons will be advanced at the time of arguments.

IT IS THEREFORE, HUMBL Y PRAYED THAT ON THE ACCEPTANCE OF THIS APPEAL THE ORDER OF THE HEALTH CARE COMMISSION DATED: 19-06-2019, MAY KINDLY BE SET ASIDE AND THE APPELLANT BE ACQUITTED FROM THE CHARGES LEVELLED AGAINST HIM.

APPELLANT / ACCUSED
THROUGH
MOHAMMAD RAZIQ &
UMARI SHEHZAD
ADVOCATES HIGH COURT

CERTIFICATE:

IT IS CERTIFIED THAT NO SUCH LIKE OTHER APPEAL HAS BEEN INSTITUTED BY THE APPELLANT, AS PER INFORMATION FURNISHED BY THE APPELLANT TO ME.

ADVOCATE

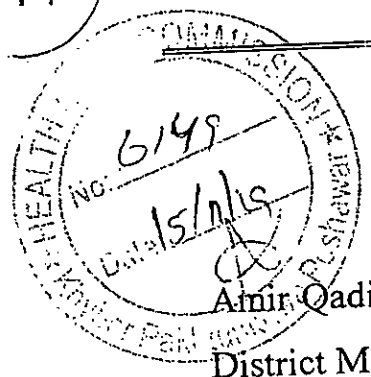
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IN THE COURT OF MR. AURANGZEB
DISTRICT JUDGE/ZILLA QAZI/MODEL CIVIL APPELLATE COURT,
MALAKAND AT BATKHELA

C.M.A No. 44/14 of 2019

Date of Institution: 29.06.2018

Date of Decision: 04.11.2019

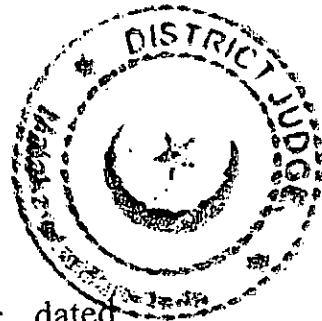


Amir Qadir son of Fazli Qadir resident of Garhi Usmani khel Dargai,
District Malakand(Appellant)

.....VERSUS.....

- (1)Govt of Khyber Pakhtunkhwa through Secretary Health
- (2)Khyber Pakhtunkhwa Health Care Commission, Peshawar
- (3)Inspector Rais Jan, Malakand Health Care..... (Respondents)

**CRIMINAL APPEAL AGAINST ORDER DATED 19.06.2019
PASSED BY LEARNED DIRECTOR, LICENSING AND
REGISTRATION WHEREBY THE APPEPLANT WAS
CONVICTED AND FINED RS.100,000/-.**



JUDGMENT

04.11.2019

The appellant named above impugned the Order dated 19.06.2019 passed by the learned Director, Licensing and Registration whereby he was convicted and fined Rs.100,000/-.

2. Brief facts are that under KP Health Care Commission Act, 2015 sealing Order dated 18.06.2019 passed by the KP Health Care Commission through Inspector Rais Jan the appellant convict was found medical practicing allopathy and he was directed to appeal before the Commission at HQ Peshawar within 15 days. On 19.06.2019 the appellant/convict was fined Rs.100,000/-. Hence the present appeal.

3. *Arguments heard and relevant record gone through.*

4. The sealing Order dated 18.06.2019 would show that it was passed in pursuance of Section-2 (j), Section-6 (2) (p) and Section-28

Admir

District & Sessions J
Zilla qazi Malakand at B

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Examiner
Sessions Division Malakand

CTC *[Signature]*

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(1) of KP Health Care Commission Act 2015 and Section-28 of the Registration and licensing regulation 2016 read with Section-28-B of the PM&DC Ordinance 1962. Section-2 (j) of KP Health Care Commission Act 2015 provides definition of "health care services" which mean services provided in public and private sectors for diagnosis, treatment or care of persons suffering from any physical or mental disease, injury or disability including procedures that are similar to forms of medical, dental or surgical care but are not provided in connection with a medical condition and includes any other service notified by Government.

5. Section-6 ibid provides Powers and functions of the Commission to ensure the safety of patient and health staff and to improve quality of public and private healthcare service and under sub-section (2) (p) ibid it shall monitor service performance against prescribed standards.

6. It is vehemently pleaded by the learned counsel for the appellant that no health service was either performed or required to be performed by the appellant. On contrary the learned legal counsel for the respondent/Commission argued that the appellant was found practicing allopathy without proper licensing from the PM&DC. In view of contentions of learned counsel for the parties, question of health services being not advocated by the appellant was irrelevant and its reference in the notice dated 18.06.2019 was misconceived.

7. The case of the appellant as spelt out from the sealing Order would fall under definition of quackery which is punishable under the Act 2015. Section-28 (1) says, who does not qualify the provisions of this Act shall be punished with imprisonment, which may extend to



Handwritten signature and text: District & Sessions Judge, District of Baitun.

Rectangular stamp: ENTITLED TO BE TRUE COPY. Registrar, Sessions District of Baitun.

etc [Handwritten signature]

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six months or with fine, which may extend to one million rupees, or with both. Sub-Section-2) ibid provides that offences under this Act shall be non-bailable and cognizable.

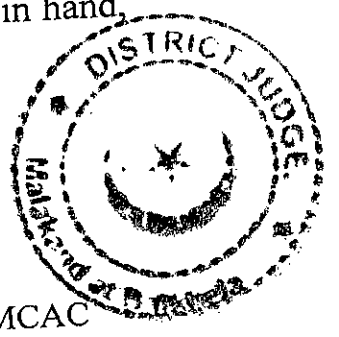
8. The impugned Order dated 19.06.2019 does not show or disclose under which provision of law, the appellant was convicted and fine of Rs.100,000/-. The said Order would show that it was a simple office letter addressed to the appellant. The record transpires that no charge was framed under relevant section of law and no adequate opportunity of hearing was given to the appellant. On 18.06.2019 the shop was closed and on next day, the appellant was fined which seems apparently violation of principles of natural justice and concept of fair trial. The record further reveals that no prescription chit or pad or lab report was taken into possession as evidence against the appellant for alleged practicing allopathy.

9. For reasons stated hereinabove it is, therefore, held that the learned Director, Licensing and Registration passed the impugned Order against express provisions of law and principles of natural justice, hence it stands set aside. By the accepting the appeal in hand, the appellant is hereby acquitted, in circumstances.

Announced
04.11.2019

Ann

(AURANGZEB)
District Judge/Zilla Qazi/MCAC
Malakand at Batkhela



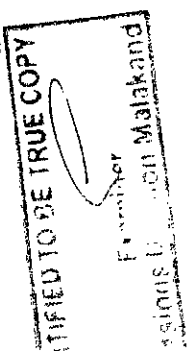
CERTIFICATE

Certified that this judgment consist of three (03) pages. Each page has been signed after reading and correction, if any.

NO. OF APPLICATION	6587
DATE OF APPLICATION	7/11/2019
ADVANCE FEE	
DATE OF COMPLETION	12/11/2019
NO. OF PAGES	03 pages

Ann

(AURANGZEB)
District Judge/Zilla Qazi/MCAC
Malakand at Batkhela



c/c *Ann*

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میمو شیٹ

بعدالت جناب ڈسٹرکٹ جج/ضلع قاضی ملاکنڈ بمقام ہٹ خیلہ

نمبر مقدمہ	تاریخ	نمبر
44/14 شدہ 19	29-6-19	4-11-2019

اہلیہ قادر ولد فضل قادر ساکن گڑھی عثمانی ہٹ خیلہ

(اپیل)

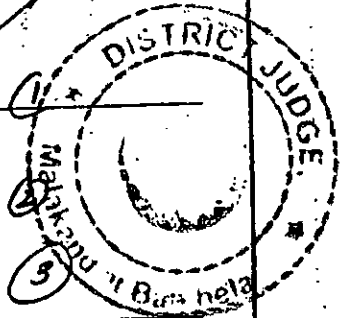
نہم

حکومت KPK ہزارہ سیکریٹری حکیم صہبت

ضلع پشاور خواہ سہیلہ کٹر طہنیں مقام پشاور

انسپیکٹر ریسس جان ملاکنڈ سہیلہ کٹر طہنیں

3
(رہنما لکھن)



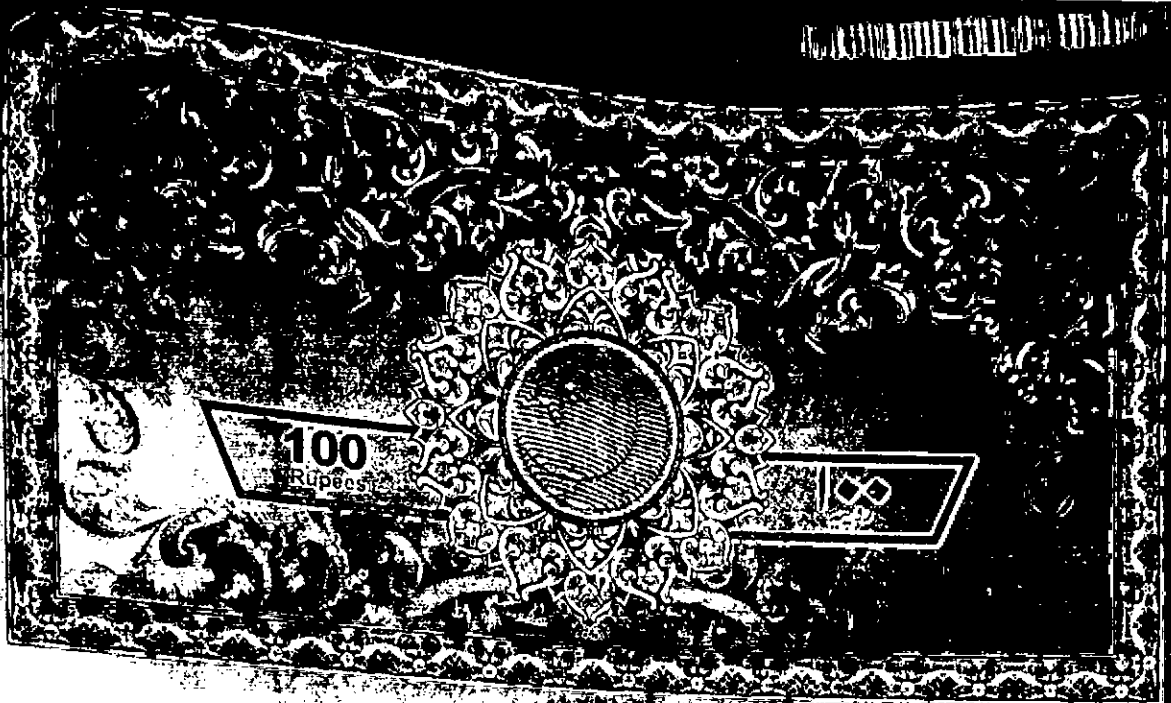
District & Sessions Judge/
Zilla qazi Malakand at Batkhela

Appeal u/s 21 of Khyber pakhtoon Khwa
health Care Commission act 2015 against
The order of Director licensing and regist-
ration/service. whereby the appellant was
punished of Rs 105000/= as a penalty/fine
and was further ordered to close down
Khatak Medical store Malakand.

اپیل ہوا جوڑ 11/19 کو ریسس ہو کر جس پر حکم ہوا کہ

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CTC



دینار حلقہ

مکتبہ اسلامیہ دارالعلوم دیوبند، دیوبند، پاکستان

کتاب: تفسیر القرآن مجید، جلد ۱، صفحہ ۱۰۰

50 Dinar, 50 Dinar, 50 Dinar

مکتبہ اسلامیہ دارالعلوم دیوبند، دیوبند، پاکستان

۱۹۰۶

SPedil Duma was providing neat sewing

15402-111285

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NOTICE UNDER REGISTERED A.D

To,

1. Amir Qadir S/o Fazal Qadir R/o Ghari Usamani Khel, Dargai District Malakand.

**SUBJECT: INTIMATION NOTICE REGARDING THE WRIT PETITION
TITLED "KP-HEALTH CARE COMMISSION VERSUS AMIR
QADIR ETC."**

Undersigned has filled a writ petition titled "KP-Health Care Commission Versus "before the Hon'ble Peshawar High Court, Mingora Bench Dar-ul-Qaza against the respondents order dated: 04/11/2019, you are herby served with a instance notice under the requirement of law for information please.

Copy of the writ petition is also annexed herewith for ready reference.

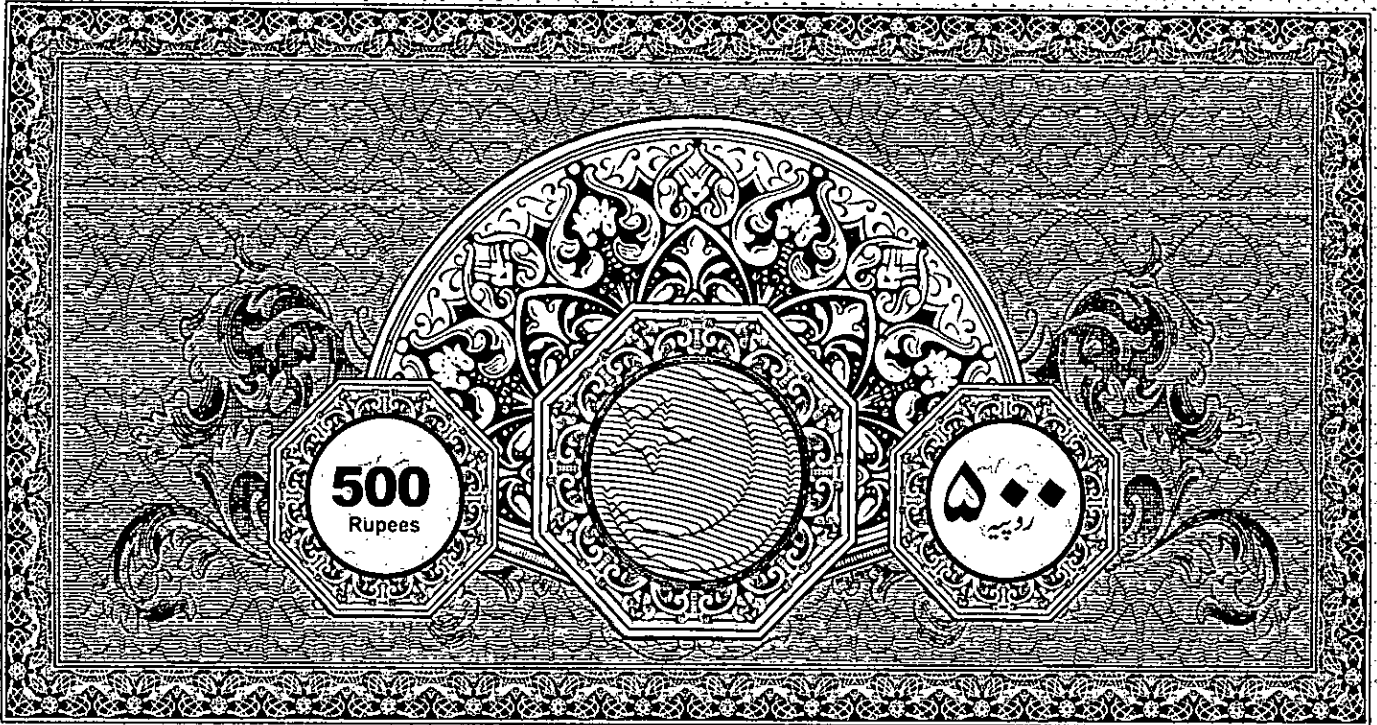
Dated: 18/11/2019


SHAKEEL KHAN AHMADKHEL

ADVOCATE

HIGH COURT

PESHAWAR



PAKISTAN COURT FEE

Kp. Health Case Commission

Ns
CANCELLED
Qadi's etc

CANCELLED

Re-Filed Today

24 DEC 2019

[Signature]
Additional Registrar

وکالت نامہ

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بعدالت پشاور ہائی کورٹ پشاور

PESHAWAR HIGH COURT BAR ASSOCIATION

S.No 18194

BC No BC 11-1869

Sign Qu W

THIRTY RUPEES

۳۰ روپیہ

مورخہ
مقدمہ
دعویٰ
جرم

W.P 1438-M

۲۰۱۹ء منجانب Petitioners
نام حکومت پاکستان، پشاور ہائی کورٹ
باعت خیرے آنکہ
صدر خیرین خواجہ ملک محمد کسٹمر وغیرہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطہ پیروی و جواب وہی وکل کاروائی، متعلقہ

آن مقام پشاور/سہولت کیلئے شکیل خان المذہب ایڈووکیٹ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ وکیل موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار حاصل ہوگا

نیز وکیل صاحب کو عرضی دعویٰ داخل کرنے، جواب دعویٰ، اپیل، نظر ثانی کا بھی اختیار حاصل ہو

گا نیز وکیل صاحب بصورت ڈگری برخلاف من اختیار دہندہ اپیل، نگرانی، نظر ثانی از عدالت ابتداء

تا عدالت انتہا یعنی سپریم کورٹ آف پاکستان دائر کر سکتا ہے وکیل موصوف بصورت عدم پیروی

کاروائی یکطرفہ یا ڈگری یکطرفہ کیخلاف درخواست دائر کر سکتا ہے اور وکیل موصوف میری جانب

سے مقدمہ میں بصورت ڈگری چیک یا نقد روپیہ کی شکل میں وصولی کر سکے گا اور مزید یہ کہ وکیل

موصوف مقدمہ متذکرہ کی کل یا جزوی کاروائی کیلئے اپنی بجائے دیگر وکیل بھی اپنے ساتھ مقرر کر سکتا

ہے جس کو بھی وہ جملہ اختیار حاصل ہونگے جو کہ وکیل موصوف کو حاصل ہیں مجھے اس صورت میں

تمام ساختہ پرداختہ منظور و قبول ہوگا لہذا میں نے وکالت نامہ ہذا تحریر کر کے اس پر دستخط/نشان

انگشت ثبت کر دیا ہے تاکہ سند رہے۔

FILED TODAY

16 DEC 2019

Additional Registrar

المرقوم 9 ماہ 7 ستمبر 2019



Accept کے لئے منظور ہے۔

Qu W

