

FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

(Original/Appellate/Advisory/Review Jurisdiction)

Present:

JUSTICE AMIN-UD-DIN KHAN, CHIEF JUSTICE
JUSTICE ALI BAQAR NAJAFI

C.P.L.A.538-P/2023

*[against the judgment dated 05.06.2023 passed by the
Peshawar High Court, D.I.Khan Bench in W.P. No.144D/2020
with C.M. No.120-D/2020 & Interim Relief]*

*Govt. of Khyber Pakhtunkhwa through
Secretary Health Department, Peshawar
and others*

...Petitioner(s)

Versus

*Dr. Muhammad Rizwan Rajpoot and
others*

...Respondent(s)

For the Petitioner(s) : Mr. Shah Faisal Ilyas, Addl. AG
Ms. Iqra Sharif, PDI, Health Deptt.

For the Respondent(s) : Mr. Saleem Ullah Ranazai, ASC
Mr. Abdul Qayyum Qureshi, ASC

Research Assistance by : Dr. Muhammad Mumtaz,
Research Officer

Date of Hearing : 23.09.2026

JUDGMENT

AMIN-UD-DIN KHAN, CJ.- The case in hand emanates from a petition originally instituted before the Supreme Court of Pakistan under Article 185 (3) of the Constitution of the Islamic Republic of Pakistan, 1973 (“the Constitution”), prior to the advent of the Constitution (Twenty-seventh Amendment) Act, 2025 (“the 27th Amendment”), seeking leave to appeal against the judgment dated 05.06.2023 rendered by learned Peshawar High Court in Writ Petition No.144-D/2020. Through the impugned judgment, the learned High Court, while exercising its constitutional jurisdiction, allowed the writ petition preferred by the respondents. Subsequent to the constitutional reconfiguration brought about through the promulgation of the 27th Amendment, and in view of the transitional framework envisaged therein, the instant matter, stood transmitted to this Court and now falls for consideration and adjudication in accordance with law.

2. Succinctly stated, the respondents, registered medical practitioners, were found maintaining dispensaries/medical stores within their respective clinical establishments and allegedly

stocking and vending pharmaceutical drugs without possessing the requisite drug sale licenses. This culminated in an inspection conducted on 21.01.2020, whereupon the drugs were taken into custody through Form-6 and consequential show-cause notices were issued. The respondents invoked the constitutional jurisdiction of the Peshawar High Court, D.I. Khan Bench, calling in question the legality of the aforesaid regulatory action. Their writ petition was allowed vide impugned judgment dated 05.06.2023, thereby occasioning the present petition for leave to appeal.

3. We have heard the learned counsel for the parties with due circumspection and have minutely examined the record, as well as the legal contours of the controversy arising therefrom.

4. We have considered the controversy in the light of the statutory scheme governing the subject. The multiplicity of questions formulated in the petition, when divested of prolixity, essentially converges upon three interrelated issues: first, whether the Drug Inspector was possessed of lawful authority to inspect the premises and take consequential action under the Drugs Act, 1976; secondly, whether registration of the respondents as medical practitioners, coupled with section 31(4)(a) of the Pharmacy Act, 1967, conferred upon them an unfettered entitlement to stock and sell drugs without obtaining the license contemplated by the Drugs Act, 1976 and the rules framed thereunder; and, thirdly, whether the High Court was justified in exercising its extraordinary constitutional jurisdiction at a stage when the statutory proceedings had not travelled beyond issuance of show-cause notices and the respondents had deliberately abstained from submitting their explanation before the competent authority.

5. We may first advert to the question concerning the competence of the Drug Inspector to undertake the impugned regulatory action. The answer necessarily lies within the statutory architecture of the Drugs Act, 1976, particularly sections 17 and 18 thereof, which respectively provide for the appointment of Inspectors and define the nature, extent and parameters of the authority exercisable by them. Section 18 expressly empowers an Inspector, within his assigned territorial jurisdiction, to inspect premises where drugs are sold, stocked, exhibited for sale or

distributed; to take samples; to enter and search premises where there is reason to believe that an offence under the Act or the rules is being committed; and, subject to the statutory requirements, to seize drugs and other material capable of furnishing evidence of such contravention. Section 19 thereafter prescribes the procedure attendant upon such exercise of power. The Rules complement this statutory mechanism: where stock is seized under section 18, the prescribed receipt is issued in Form-6. Thus, inspection and seizure are not extra-statutory acts but incidents of an enforcement mechanism expressly fashioned by the legislature. Sections 18(f) to (j), of course, remain subject to the requirement of specific authorization contemplated by the proviso to section 18(1), but no case appears to have been established before the High Court that the concerned Inspector lacked the requisite appointment, territorial competence or authorization.

6. The principal error, however, lies in the conflation of two conceptually distinct regulatory regimes. The Pharmacy Act, 1967 is primarily concerned with regulation of the profession and practice of pharmacy, constitution of Pharmacy Councils and registration of pharmacists. Section 31(1) prohibits practice as a pharmacist by an unregistered person. Subsection (4)(a), upon which the respondents rested their entire claim, merely carves out an exception from that prohibition in favour of a registered medical practitioner who dispenses medicine to his own patients or serves his own prescriptions. The legal effect of an exception cannot be enlarged beyond the prohibition from which it operates. *Exceptio est strictissimae interpretationis*—an exception to a statutory prohibition is to be confined to its legitimate field and cannot, through interpretative expansion, become the source of a substantive right which the enactment does not profess to confer.

7. The Drugs Act, 1976, on the other hand, occupies a distinct statutory field. Its very object is regulation of the import, export, manufacture, storage, distribution and sale of drugs. Section 23(1)(c) employs language of unmistakable amplitude by providing that no person shall sell any drug except under, and in accordance with, the conditions of a license issued under the Act. The expression “no person” admits of no occupational exception merely on account of the seller being a registered medical practitioner.

Equally significant is the fact that the legislature, wherever it intended to create an exception, did so expressly. An exemption from registration as a pharmacist cannot, therefore, be transmuted into an exemption from the statutory licensing regime governing sale of drugs.

8. The two enactments are consequently capable of operating harmoniously and there exists neither occasion nor justification for setting one against the other. The accepted canon *ut res magis valeat quam pereat* requires a construction which gives meaningful operation to both statutes rather than one which renders a substantial part of either otiose. Section 31(4)(a) of the Pharmacy Act 1967 protects a registered medical practitioner from being treated as unlawfully practicing pharmacy merely because he dispenses medicines to his own patients or serves his own prescriptions. It does not, however, authorize him to establish or maintain what, in substance and operation, constitutes a medical store or retail drug outlet dehors the licensing requirements of the Drugs Act and the Provincial Rules. The maxim *generalia specialibus non derogant* lends further support to this construction: where the activity complained of is stocking, exhibiting for sale, distributing or commercially selling drugs, it is the special regulatory regime governing sale of drugs which must receive effect.

9. This distinction is of cardinal importance. A physician may prescribe medicine and, within the contemplation of section 31(4)(a) of the Pharmacy Act, may dispense medicine to his own patient without thereby practicing unlawfully as a pharmacist. Whether, however, the particular premises are being utilized merely for such incidental dispensing or are in reality functioning as sales outlets from which drugs are stocked and sold is an altogether different inquiry. That question is predominantly factual, dependent upon the nature and quantity of stock, manner of procurement and supply, maintenance of sales record, identity of recipients, consideration received, invoices, prescriptions and other attendant circumstances. It could not appropriately have been conclusively determined in constitutional jurisdiction on competing assertions of the parties, particularly before the statutory authority had itself examined those matters.

10. The amended rule 18 of the Khyber Pakhtunkhwa Drugs Rules, 1982 further demonstrates the legislative insistence upon qualified supervision of sale premises. In the case of a pharmacy or distribution establishment, the amended provision requires appointment of a person registered under the prescribed category of section 24 of the Pharmacy Act 1967, while a medical store is likewise subjected to supervision by the category of qualified person specified therein. Registration with the medical regulatory body and registration under the Pharmacy Act thus perform different juridical functions; possession of the former does not, without more, satisfy a statutory condition expressly referable to the latter. To hold otherwise would amount to judicially engrafting upon the licensing regime an exemption which the rule-making authority itself has not enacted.

11. The respondents' reliance upon the expression contained in section 31(4)(a) of the Pharmacy Act 1967 was, therefore, misconceived. The words “dispenses medicine to his own patients or serves his own prescriptions” cannot reasonably be read as legislative authorization to conduct an independent trade in drugs. Dispensing as an incident of medical treatment and selling drugs as a commercial or retail activity are not juridically synonymous. The former may fall within the exception created by the Pharmacy Act 1967; the latter attracts the regulatory discipline of the Drugs Act 1976. Any contrary construction would permit the licensing mandate of section 23(1)(c) to be circumvented indirectly through professional registration—an interpretation repelled by the settled maxim quando aliquid prohibetur ex directo, prohibetur et per obliquum: what the law prohibits directly cannot ordinarily be accomplished indirectly.

12. There is yet another aspect of the matter which, in our estimation, goes to the root of the impugned judgment. The respondents were not visited with any final determination when they approached the High Court. They had merely been issued show-cause notices calling upon them to explain the alleged contravention. Instead of submitting their explanation and placing before the statutory authority the very defence subsequently urged before the High Court, they elected to short-circuit the proceedings by invoking Article 199 of the Constitution. The issuance of a

show-cause notice is ordinarily an embodiment, rather than a negation, of the rule *audi alteram partem*. It affords the noticee the opportunity to controvert the allegation before any adverse determination is made. A person who deliberately declines that opportunity cannot ordinarily invite the constitutional Court to pronounce upon matters which the statutory authority has not yet been permitted to determine.

13. Constitutional jurisdiction, though wide, is neither unstructured nor intended to supplant a complete statutory process whenever a party apprehends that an eventual determination may operate adversely against him. Where the competent statutory authority has merely initiated proceedings, no final right has ordinarily been extinguished or liability conclusively imposed. Intervention at such an embryonic stage is justified only upon demonstration of an exceptional jurisdictional defect—for instance, where the notice is demonstrably coram non iudice, issued by an authority wholly lacking jurisdiction, or where an admitted and incurable violation of law is apparent on the face of the record. No such exceptional circumstance was shown to exist here.

14. The principle has consistently informed constitutional adjudication. The extraordinary jurisdiction should not ordinarily be employed to intercept proceedings at the show-cause stage, since the authority may, upon consideration of the reply and material produced, itself drop the proceedings. The same rationale has been adopted in comparative constitutional jurisprudence. In *Special Director v. Mohd. Ghulam Ghouse*¹ and *Union of India v. Kunisetty Satyanarayana*², the Supreme Court of India, while construing the cognate writ jurisdiction under Article 226 of the Indian Constitution, reiterated that a show-cause notice ordinarily does not furnish an occasion for judicial interdiction unless it emanates from an authority demonstrably lacking jurisdiction. The principle is persuasive because it rests upon the institutional distinction between administrative determination at first instance and judicial review of a completed or jurisdictionally defective process.

¹ [(2004) 3 SCC 440]

² [(2006) 12 SCC 28]

15. The statutory architecture of the Drugs Act provides an additional reason for judicial restraint. Under section 19(6), a Provincial Inspector who finds a contravention is ordinarily required to refer the matter to the Provincial Quality Control Board and obtain its directions regarding further action. Section 11 confers upon that Board, *inter alia*, authority to scrutinize reports of Provincial Inspectors and issue directions as to the action to be taken. Where prosecution ensues, the Act provides for adjudication before the specially constituted Drug Court. The legislature has thus created a sequential and specialized mechanism in which technical and factual questions concerning drugs are initially examined by authorities possessing statutory expertise. The High Court ought not ordinarily to arrest that mechanism before it has run its lawful course, particularly where the *lis* involves disputed facts concerning the character of the respondents' activities.

16. We may clarify that section 11 of the Drugs Act 1976 is not, strictly speaking, an appellate remedy against a show-cause notice; rather, it forms part of the specialized statutory machinery through the Provincial Quality Control Board, read with sections 19, 30 and 31. The legal objection to the writ petition is, therefore, more accurately expressed in terms of prematurity, availability of an efficacious statutory process, and absence of a concluded adverse determination rather than by describing section 11 *simpliciter* as a conventional right of appeal. The distinction is material, for judicial reasoning must rest upon the true architecture of the statute and not merely upon the nomenclature employed by the parties.

17. The High Court also appears to have overlooked that Article 18 of the Constitution furnishes no immunity from the licensing requirements in question. The right to enter upon a profession or conduct a lawful trade is expressly made subject to qualifications prescribed by law, and clause (a) of the proviso specifically preserves regulation of a trade or profession by a licensing system. Regulation of the stocking and sale of pharmaceutical products—commodities intimately connected with public health—is paradigmatically within that constitutional permission. The Supreme Court has repeatedly recognized that the freedom guaranteed by Article 18 is not absolute and may legitimately be

regulated through licensing requirements rationally connected with public welfare.

18. Viewed thus, the premise upon which the respondents approached the High Court was fundamentally defective. Their registration as medical practitioners entitled them to practice medicine within the limits of the law governing that profession; it did not simultaneously clothe them with every statutory qualification required for a different regulated activity. *Qui sentit commodum, sentire debet et onus*—one who claims the benefit of engaging in an activity regulated by law must equally accept the legal burdens attached thereto. If the respondents wished to maintain establishments which, on evidence, answered the statutory description of drug-sale outlets, compliance with the licensing regime was not optional.

19. We are also unable to approve the High Court's resolution of disputed questions concerning whether the drugs recovered were merely being dispensed against the respondents' own prescriptions or were being commercially sold. These questions required scrutiny of evidence and ought first to have been placed before the authorities designated by the special enactment. Constitutional jurisdiction is essentially corrective and supervisory; it is not ordinarily a substitute for a fact-finding forum specially constituted under statute. The recent constitutional jurisprudence likewise recognizes that where disputed questions require examination of record and evidence by a statutory forum, Article 199 should not be employed to bypass that mechanism unless a patent jurisdictional or constitutional defect is demonstrated.

20. The impugned judgment, therefore, suffers from a twofold infirmity. First, it attributes to section 31(4)(a) of the Pharmacy Act an amplitude which its text cannot sustain, by treating an exemption from the prohibition against practicing pharmacy as though it were an affirmative exemption from the drug-sale licensing regime. Secondly, it prematurely foreclosed statutory proceedings at the show-cause stage without permitting the competent authorities to determine whether the respondents' conduct amounted to dispensing incidental to medical practice or

sale of drugs within the contemplation of the Drugs Act and the Rules.

21. It needs to be emphasized that, by restoring the statutory proceedings, this Court does not prejudge the factual guilt or otherwise of the respondents. They remain at liberty to submit replies to the show-cause notices and to establish before the competent authority, on the strength of prescriptions, invoices, stock registers and such other material as may be relevant, that their activities fell exclusively within the permissible scope of dispensing medicine to their own patients. Equally, the authorities shall determine the matter independently, strictly in accordance with the Drugs Act, 1976, the Pharmacy Act, 1967 and the Khyber Pakhtunkhwa Drugs Rules, 1982, without treating any observation herein concerning the disputed facts as a finding of culpability.

22. For the foregoing reasons, we are unable to sustain the impugned judgment. The learned High Court intervened at a stage when no final adverse order had been passed, proceeded to determine disputed questions which properly belonged to the statutory authorities, and accorded to the exception contained in section 31(4)(a) of the Pharmacy Act, 1967 a legal effect which extended beyond its statutory purpose.

23. The constitutional jurisdiction was, in the circumstances, exercised prematurely and upon an erroneous construction of the governing enactments. The petition, therefore, merits conversion into an appeal and acceptance, with the result that the impugned judgment is liable to be set aside and the parties relegated to the statutory process for determination of the show-cause proceedings in accordance with law.

CHIEF JUSTICE

JUDGE

Islamabad,
23.09.2026
APPROVED FOR REPORTING
RajaAhsan/-