

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 2000-P/2021

**Muhammad Yaseen and another vs. Pakistan Medical
Commission through its Secretary, Mauve Area, G-10/4,
Islamabad and others.**

J U D G M E N T.

Date of hearing: 02.07.2021

Petitioner (s) By Mr. Faheem Marwat, Advocate.

**Respondent (s) By M/s Muhammad Asghar Khan Kundi DAG,
Mansoor Tariq & Muhammad Sangeen
Khan Advocates.**

SYED ARSHAD ALI, J.:- This consolidated judgment shall dispose of instant petition as well as connected petitions wherein a common issue i.e. propriety and legality of the impugned letters dated 12.04.2021, 23.04.2021 & 22.02.2021 ("*impugned letters*") issued by respondent/Pakistan Medical Commission ("*PMC*") have been challenged. Particulars of the said petitions are as under:-

<i>S. No.</i>	<i>Case Title</i>
1.	<i>WP No. 2000-P/2021 "Muhammad Yaseen and another vs. Pakistan Medical Commission through its Secretary, Islamabad".</i>
2.	<i>WP No. 2206-P/2021 "Shaiq Rehman and others vs. Pakistan Medical Commission KP, Peshawar and others".</i>
3.	<i>WP No. 1921-P/2021 "Zia-ur-Rehman vs. The Government of Pakistan through its concerned Secretary Islamabad and others".</i>
4.	<i>WP No. 1922-P/2021 "Muhammad Haroon vs. The Government of Pakistan through its concerned Secretary Islamabad and others".</i>
5.	<i>WP No. 1923-P/2021 "Sajjid Ahmad vs. The Government of Pakistan through its concerned Secretary Islamabad and others".</i>
6.	<i>WP No. 1924-P/2021 "Kawish Bangash vs. The Government of Pakistan through its concerned Secretary Islamabad and others".</i>
7.	<i>WP No. 1925-P/2021 "Amin Ullah vs. The Government of Pakistan through its concerned Secretary Islamabad and others".</i>

8.	<i>WP No. 1926-P/2021 "Azam Khan vs. The Government of Pakistan through its concerned Secretary Islamabad and others".</i>
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2. It is the precise grievance of the petitioners in all the petitions except Writ Petition No. 2206-P/2021 that they appeared in a test for Undergraduate Scholarship Program conducted by the respondent No.2/Higher Education Commission ("*HEC*"), they qualified the written test as well as the criteria for the award of scholarship and accordingly their names were enlisted in the list of qualified and eligible candidates for the said scholarship i.e. pursuing studies in respective Medical Colleges against 265 seats meant for the students of erstwhile FATA and Balochistan under the Project known as "*Provision of Higher Education Opportunities for the students of Balochistan & FATA*" of the Federal Government but through the supervision of respondent-HEC. However, to the dismay of the petitioners, the PMC wrote the impugned letters to the HEC for the revision of merit list directing the respondent-HEC to give weightage of 50% marks of the student which they have obtained in the MDCAT test conducted by the respondent-PMC, for the purpose of admission against the said scholarship.

3. In response to the notice issued to the respondents/PMC/HEC, they have filed their separate comments contesting the claim of the present petitioners.

4. Arguments heard and record perused.

5. Higher Education Commission is a Federal body established through Ordinance No. LIII of 2002 for improvement and promotion of higher education and other connected matters at the federal level. The Federal Government in the year, 2015 had tasked the HEC to launch a scholarship program under the title "*Provision of Higher Education Opportunities for Students of Balochistan & FATA*" "**Project**" (with a capital cost of Rs. 2983.698 millions in the year, 2015). The essential feature of this scholarship is to provide opportunities to the various students of erstwhile FATA and the Province of Balochistan to pursue their Undergraduate Programs in various disciplines in education institution of the country. Accordingly, HEC announced its 5th batch of Undergraduate Scholarship Program through publication in the newspaper dated 13th September, 2020 with a cut-off-date i.e. 2nd October, 2020 soliciting applications from the eligible students from erstwhile FATA/Balochistan in various disciplines. Total number of 500 scholarships were available to the students of FATA and Balochistan at the ratio of 50:50. Since the seats were limited, therefore, the HEC had given to the students an aptitude test and thus, the merit criteria was fixed wherein 60% marks were assigned to the aptitude test whereas the remaining marks were assigned to the marks obtained by the students in their SSC examination and Intermediate Examination. The aggregate of the aforesaid marks was the benchmark for the preparation of the merit.

6. Relevant to the present controversy is the criteria and allocation of seats in various medical colleges. It is evident from record that initially, 29 seats were earmarked/reserved in various public sector medical and dental colleges all over Pakistan for the students of erstwhile FATA/Balochistan, who would be selected for scholarship under the Project. Later, on the interference of the elected members from both the areas, the said number of seats were enhanced from 29 to 229 equally distributable among the students from erstwhile FATA and Balochistan. One of the features of this scholarship is that indeed the HEC would supervise and provide admission to the said students on the basis of the aforesaid merit to various public sector medical colleges against 229 seats which is over and above the allocated seats of each and every public sector medical and dental colleges. Since these arrangements were made with the concurrence of PMC, therefore, the question whether the HEC has any mandate to allow such admission is not an issue before this Court.

7. Since 2015 the HEC were allocating seats to the eligible candidates stated above on the basis of merit list prepared by the HEC, however, the promulgation of Pakistan Medical Commission Act, 2020 ("*Act of 2020*") has changed the legal position.

8. It would be pertinent to note that legal, medical and other profession falls in fourth schedule of part II of the

Federal Legislative List and therefore under Article 70 of Constitution of Islamic Republic of Pakistan, 1973 ("**Constitution**") Parliament is competent to legislate *inter-alia* on matters relating to medical profession. Pakistan Medical and Dental Council Ordinance, 1962 ("**Ordinance of 1962**") was the Federal Law whereby Pakistan Medical and Dental Council, the apex regulatory body was established to *inter-alia* oversee and regulate medical profession in the country.

9. Through Medical and Dental Council (Amendment) Act, 2012, Section 36-B was inserted in the Ordinance of 1962, whereby, the then incumbent Council was dissolved, however, it was provided that the President, Vice President and the Executive Committee of the Council could stand till the appointment of the new President, Vice President and Executive Committee of the Council after the elections which were to be held within one year. Thereafter the Ordinance of 2013 substituted, Section 36-B which provided that the Council constituted under Section 3 of the Ordinance of 1962 would stand dissolved upon the commencement of the Act of 2012. Accordingly, elections were held and the result was published in the official gazette on 22.05.2013. The law was once again amended through the Ordinance of 2014 promulgated on 19.03.2014, whereby, Section 36-B was substituted with a new one by virtue whereof the members acting as the Council and Executive

Committee were de-notified and the Federal Government was authorized to constitute a Management Committee comprising of seven professionals to exercise the powers vested in the Council, with one of the professionals to be nominated as Chairperson. It was the Mandate of Management Committee to hold fresh elections within a period of 120 days. However, the Ordinance of 2014 was subsequently disapproved by the Senate through a Resolution dated 23.04.2014 as such, it lapsed/stood repealed. After that, the matter was regulated through various Ordinances, however, ultimately the Parliament was able to pass Pakistan Medical Commission Act, 2020 ("*Act of 2020*").

10. The Act of 2020 envisages for establishment of Commission under Section 3 of the Act consisting of three major components/bodies, (i) The Medical and Dental Council (established under Section 4 of the Act), (ii) the National Medical and Dental Academic Board (established under Section 10 of the Act), (iii) the National Medical Authority (established under Section 15 of the Act). Section 8 of the Act lays down the powers and functions of the Council and under Section 8-F the Council has the authority to frame Regulations for admission in medical and dental colleges and examinations to be conducted by the Commission.

11. Section 18 of the Act empowers the authority to conduct annually; on a date approved by the Council and as per standard approved by the Board; a single admission test

(“MDCAT”) which shall be mandatory requirement for all students seeking admission in medical or dental undergraduate program anywhere in Pakistan. According to Section 18 Sub-Section (2) no student is eligible to be awarded medical or dental degree in Pakistan who has not passed MDCAT prior to obtaining admission in a medical or dental college in Pakistan.

12. Proviso to Section 18 of the Act envisages that for the purpose of admission in the public sector medical and dental colleges, the marks obtained by the students in the merit, 50% weightage should be assigned to the marks obtained by the students in the MDCAT examination. For ease reference Section 18 of the Act reads as under:-

“18. Medical and dental colleges admissions tests (MDCAT).- (1) The Authority shall conduct annually on a date approved by the Council and as per standards approved by the Board a single admissions test which shall be a mandatory requirement for all students seeking admission to medical or dental under-graduate programs anywhere in Pakistan.

(2) No student shall be awarded a medical or dental degree in Pakistan who has not passed the MDCAT prior to obtaining admission in a medical or dental college in Pakistan:

Provided that such requirement shall be mandatory for all students who have been enrolled in medical or dental under-graduate programs in the year 2021 and thereafter.

(3) The admission to medical or dental programs conducted by public colleges shall be regulated as per the policy of the Provincial Governments strictly on merit and admission to a private college shall be in accordance with the criteria and requirements stipulated by the private college at least one year in advance of admissions including any additional entrance test as may be conducted by a private college subject to any conditions imposed by the relevant university to which such college is affiliated:

Provided that the marks obtained by a student in the MDCAT conducted by the Authority shall constitute a minimum of fifty percent of the

weightage for the purposes of admission in the public colleges”.

13. Since the aforesaid requirement has a statutory backing passed by a competent legislature and the HEC while preparing the merit has ignored the said criteria, therefore, PMC through the impugned letters directed the HEC that while preparing the merit list 50% weightage should be given to the marks obtained by the students in the MDCAT examination.

14. The petitioners are essentially aggrieved of the aforesaid directions and in this regard, the learned counsel for the petitioners has argued that since HEC is an independent authority of the Federal Government, the PMC has no mandate to issue such a direction to HEC. We do not tend to agree with the said submissions of the learned counsel for the petitioners for the obvious reason that the aforesaid requirements are in line with the mandate of Proviso to Section 18(3) of the Act 2020, therefore, the same is binding on HEC. Thus, the merit list prepared by the HEC without considering weightage of 50% marks obtained by a candidate in the MDCAT examination offends specific Proviso to Section 18 (3) of the Act, 2020 which cannot be approved.

15. It was brought to the notice of this Court that pursuant to the Act, 2020, the PMC has framed Admission Regulations (Amended) 2020-2021 and according to Regulation No.11, the said weightage can be overlooked by the public sector colleges when it grants admission against the

Provincial or Federal Government declared quota. For ease of reference the said Regulation reads as under:-

“11. A Provincial Government or the Federal Government may declare a quota for special seats in defined categories in public colleges administered by the Provincial or Federal Government subject to such quotas being publicly declared prior to opening of admissions.

Provided further, that students admitted against special quotas seats shall be required to mandatorily have passed the MDCAT and obtained a high school leaving certificate/degree”.

16. Not only the bare perusal of the aforesaid Regulation does not give any impression that the grant of said weightage can be dispensed with but also the PMC has no mandate to frame any Regulation contrary to the Act of 2020. We further clarify that any provision of the Regulation which is in conflict with the Act of 2020 has no legal foundation. It is only the requirement of Section 18 of Act of 2020 that the candidate for applying admission in any medical and dental college in Pakistan has to pass the MDCAT test and for admission in public sector medical and dental colleges in the merit 50% weightage has to be given to the marks obtained by the students in the MDCAT test. Therefore, the impugned letters have been competently issued by the PMC keeping in view the legal requirement as provided in Proviso to subsection (3) of Section 18 of the Act, 2020. Hence, the outcome of the aforesaid legal discourse is that the PMC can only direct the HEC in the present case to assign 50% weightage to the marks obtained by a student in MDCAT test, however, the PMC has no mandate to impose upon the HEC

any merit criteria over and above the aforesaid 50% weightage.

17. Moving to Writ Petition No. 2206-P/2021 wherein the petitioners have asked that the merit list be recalculated by assigning 265 seats to the erstwhile FATA and Balochistan instead of total 229 seats (179 MBBS and 50 BDS). The respondents-HEC in its comments has stated that since the PMC has allowed a quota of 229 seats, therefore, the HEC has no mandate to give admission to 265 students. It would be pertinent to note that allocation of seats in a public sector college is the exclusive domain of the respective Provincial Government. Neither the PMC nor the HEC has any mandate to issue direction in this regard. Since the allocation of 229 seats has been honoured by the respective Provinces in various respective public sector medical and dental colleges, therefore, the legality of this allocation is not before this Court. However, since the respective Provincial Governments have neither been approached in this regard nor is party before this Court, therefore, no writ can be issued in the matter.

18. In view of the above, we hold that:

- i. *HEC will grant admission against the aforesaid reserved seats only to those students, who have passed MDCAT test according to the criteria of PMC;*
- ii. *HEC shall revise its merit list wherein 50% weightage shall be given/assigned to the marks obtained by a student in MDCAT;*
- iii. *HEC would be at liberty to follow their policy for allocation of marks according to its criteria in the remaining 50% marks.*

19. Writ Petitions No. 2000-P, 1921-P, 1922-P, 1923-P, 1924-P, 1925-P & 1926-P/2021 are disposed of in the above terms while Writ Petition No. 2206-P/2021 is dismissed.

ANNOUNCED.
02.07.2021


JUDGE


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