

Form No: HCJD/C-121

ORDER SHEET.

**IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT**

**Intra-Court Appeal No.5251 of 2021
ABWA KNOWLEDGE VILLAGE (PVT.) LTD. , ETC.
Versus
FEDERATION OF PAKISTAN, ETC.**

S. No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge, and that of Parties of counsel, where necessary.
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26.01.2021 M/s Salman Aslam Butt, Furqan Naveed, Ghulam Mujtaba & Advocates for the appellant.
Mr. Zahid Sikandar, Assistant Attorney-General for Pakistan (on Court's call).
M/s Barrister Ch. Muhammad Umar and Rana Muhammad Ansar, Advocates for respondents.

This Intra Court appeal ('appeal') is directed against judgment dated 21.12.2020 of learned single judge in chambers, in terms whereof appellant's constitutional petition, bearing W.P. No.54112 of 2020, was dismissed.

2. Fundamentally the appellant entity, statedly operating a teaching hospital, invoked judicial review jurisdiction inter alia for seeking enforcement of various provisions of Pakistan Medical Commission Act, 2020, ("**Act of 2020**") and declaration of invalidity against certain regulations of the Admissions Regulations (Amended) 2020-2021 ("**Regulations 2021**"), labeling them, being ultra-vires the provisions of Act of 2020.

3. Facts of the case are narrated in the impugned judgment; reiteration whereof is unnecessary. Four

elementary issues are raised for determination, which are firstly, that proviso to sub-section (2) of section 18 of Act of 2020 creates an exception regarding condition of passing MDCAT examination for admissions relating to the year 2020, alleging that said condition was applicable for admissions for the year 2021 and thereafter; secondly, that in terms of sub-section (3) of section 18 of Act of 2020 private colleges are autonomous in regulating their admissions to medical and dental programs, which autonomy though was intended to be curbed through introducing regulations 13 and 14 of the Regulation 2021; thirdly, that independence of the private colleges to settle, claim and charge tuition fees, allowed and acknowledged through sub-section (7) of section 19 of Act of 2020 has been curtailed through Regulations 24 and 27 of Regulation 2021; and fourthly, that the terms of alleged settlement between Pakistan Association Medical Institution ('PAMI') and Pakistan Medical Commission ('PMC'), besides being lacking in authority, is unenforceable against appellant entity – to which purported settlement appellant was not a party.

While elaborating submissions, learned counsel explained that proviso to sub-section (2) of section 18 of Act of 2020 excludes applicability of the requirement of

MDCAT for admissions for the year 2020, which requirement is mandatory for admissions for preceding year 2021 and thereafter. Further submits in terms of sub-section (3) of section 18 of Act of 2020, private colleges are autonomous in the matters of admissions to medical and dental program(s), which autonomy cannot be circumscribed by importing restrictions through framing of Regulations 13 and 14 of Regulations 2021. Adds that declarations qua the entitlement of the commission to review and notify fees, in paragraphs 29 and 30 of the judgment, are contrary to the mandate of sub-section (7) of section 19 of Act of 2020. Last but not the least, the terms of settlement, reached between PMC and PAMI cannot be elevated to the status of a legislative instrument; and the terms of settlement, referred in paragraph 14 of the judgment, regarding centralized system of admissions are contrary to the spirit of sub-section (3) of section 18 of Act of 2020. Learned counsel reiterated reference to the judgments, relied upon before the learned single judge in chambers, besides referring the case of “Indian Sugar Mills Association through its President Shri Hari Raj Swarup v. Secy. To Government, Uttar Pradesh Labour Department and others” (AIR (38) 1951 Allahabad 1).

4. Learned counsel, for the respondent No.2, has entered appearance, with court's permission, and objected to the maintainability of instant appeal, on the premise that right of appeal is available in terms of section 37 of the Act of 2020. On Court's query, it is apprised that the agreement between the "PAMI" and "PMC" was reached between the parties thereto, which was submitted on record through a joint application and constitutional petition bearing W.P No.55761-2020 was disposed of accordingly. Contends that the order has not been assailed by any party, which attained finality and same is binding. In rebuttal, counsel for the appellant contends that appellant was not party to any such arrangement, terms whereof cannot be foisted on the appellant and instant appeal in fact and law questions the judgment and findings regarding the enforceability of terms of settlement, as observed by learned Single Judge-in-Chambers.

5. Arguments heard. Record perused.

6. The Act of 2020 was promulgated on 24th September 2020, upon being notified in the Gazette. In terms of section 50 of Act of 2020, *subject to section 6 of the General Clauses Act, 1897 (X of 1897), the Pakistan Medical and Dental Council Ordinance 1962 was repealed.* The historical trail of legislative interventions,

having the effect of eclipsing the operations of the Pakistan Medical and Dental Council Ordinance 1962, needs no reiteration. It is pertinent to mention that, before promulgation of the Act of 2020 and PMC Admissions Regulations 2020-2021 – approved and promulgated on 2nd October 2020; and later on, amended through the Admission Regulations 2020-2021, approved and promulgated on 17th November 2020 and amended on 23rd December 2021 – admissions into MBBS and BDS courses were regulated in terms of the *MBBS and BDS (Admissions, House job and Internship) Regulations 2018*. Appellant filed constitutional petition bearing W.P.No.54112-2020 on 24th October 2020, wherein legality of the Council's meeting and PMC Admissions Regulations, dated 2nd October 2020, were challenged. During the pendency of the petition appellant sought permission to continue with the admissions process, as contained in the Prospectus 2020-21 – wherein requirements of admission test in terms of *MBBS and BDS (Admissions, House job and Internship) Regulations 2018* or conditionality of MDCAT examination were conspicuous by their absence. Learned single judge in terms of order dated 27.10.2020 provisionally allowed appellant to continue with the admission process of students for the

Session 2020-2021, based on the Prospectus of the appellant college, at appellant's own risk and cost, and directed that admissions process should not be finalized till the outcome of the petition. The issues raised need to be contextualized in the context of aforesaid facts, which explains the spirit behind the objections raised.

7. There appears no dispute qua the contents of the Prospectus of the appellant, which invites applications for admissions for 2020-2021 session. Learned counsel argued that proviso to sub-section (2) of section 18 of Act of 2020 contained reference to the year 2021, hence, mandatory requirement of MDCAT, before obtaining admissions, is not essential for the students, who were provisionally admitted on the basis of eligibility / admission criterion in the Prospectus – which incumbent admissions were construed as admission for the year 2020. Submissions, notwithstanding being contrary to the statement in the Prospectus 2020-21, on their face are fallacious. It is expedient to reproduce section 18 of Act of 2020, for ease of reference and understanding its scope, which reads as;

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-graduation 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.

[Emphasis Supplied].

8. There is no controversy qua the fact that on-going process of admissions undertaken in Medical and Dental program(s) – till the hearing of instant appeal – started in the year 2020. Record manifests that annual admission process for Session 2020-2021 commenced in the last quarter of the year 2020; MDCAT examination were conducted in the month of November 2020 and admissions are scheduled to be completed by February 2021 – timelines in this behalf were varied often through amendments in the Regulations 2021. No exemption can be claimed from compliance of mandatory requirement of a single admission test for all the students seeking

admission to medical and dental under-graduate programs anywhere in Pakistan – condition spelled out under sub-section (1) of section 18 of Act of 2020 and there is no exception created by way of any proviso thereto. If the argument of appellant's counsel is appreciated, such a construction would render sub-section (1) of section 18, *ibid*, superfluous to the extent of redundancy. Sub-section (1) of section 18, *ibid*, makes no reference to MDCAT, but requirement of a single admission test – expression MDCAT is defined under clause (xii) of section 2 of Act of 2020. The expression MDCAT is used in sub-section (2), which places restriction upon award of medical or dental degree in Pakistan to a student, who has not passed the MDCAT prior to obtaining admission in the medical or dental college. Now the question arises that whether sub-section (2) of section 18 covers the students, allegedly admitted before the promulgation of Act of 2020. It appears from the record and reading of the Regulations 2021, that instances of admissions before September 2020 were available. It is pertinent to mention that Regulation 29 of the Regulations 2021 mentions factum of admissions prior to September 2020. Regulation 29, *ibid*, reads as;

'the tuition fee of students already admitted to the college prior to September 2020 shall

not be increased by more than 5% per annum'.

9. It is pointed out that Regulation 29 was incorporated in the Prospectus 2020-21 of the appellant, indicating factum of admissions prior to September 2020. A student, claimed to have admitted before September 2020, or before the promulgation of Act of 2020, may seek exemption from the requirement of MDCAT – while interpreting sub-section (2) of section 18 of Act of 2020. And proviso to sub-section (2) of section 18 of Act of 2020 re-affirms the requirement of MDCAT, for the students, who have been enrolled in the year 2021 and thereafter. An incisive perusal of the proviso clearly indicates manifestation of legislative intent, intending to cover all those students – who allegedly claimed to have admitted before promulgation of Act of 2020 admissions, without meeting the requirement of MDCAT. Proviso to sub-section (2) of section 18 of Act of 2020, in fact and law, potentially addressed the confusion qua classification of students, i.e., admitted either before or after September 2020. It is further evident from the perusal of sub-section (7) of section 19 of Act of 2020 that admission process concludes upon enrolment of a student - being enrolled upon fulfillment of conditions - for the entire period of enrolment at the college. It is expedient to refer and reproduce sub-

section (7) of Section 19 of Act, 2020, to understand stages of wholesome admission process, which reads

as:-

“All medical and dental colleges shall, at least three months prior to initiating the annual admissions process, publicly declare the fixed tuition and all ancillary fee structure on an annual basis for the entire program of study in which the students are seeking enrollment and which fee structure shall not be enhanced during the students period of enrollment at the college. No medical or dental college shall seek, demand or receive from a student or a student’s family, directly or indirectly, any donation or other payment prior to or at the time of admission or thereafter during the period of the students continuing enrollment at the college whether as consideration for grant of admission or otherwise”.

[Emphasis supplied]

10. The expression ‘enrolled’, besides being inclusive – covering admission process – and extensive in content, suggests culmination of the process of admission – when actually the student has been admitted, which has cleared all dues and forms part of the certified list of students, conveyed to the PMC in terms of Regulation 4 of the Regulations 2021. It is evident that Regulations 2021 are only applicable to the admissions being undertaken for the current session 2020-2021 and future admissions shall be governed under new regulations. Hence, the expression ‘*in the year 2021 and thereafter*’ is indicative of the fact that mandatory requirement of MDCAT examination is fully applicable to the process of admissions for the current session 2020-2021, though initiated in the year 2020, and the

requirement of MDACT continues even thereafter with respect to all enrolments, irrespective of one-time applicability of the Regulations 2021. In terms of Section 3(59) of the General Clauses Act, 1897, expression year is defined as, a year reckoned according to British Calendar, implying a period of 365 or 366 days, beginning from 1st January to 31st December. For all intent and purposes, admission though started in last quarter of 2020 would culminate upon enrolment in the year 2021. Hence, proviso to sub-section (2) of section 18 covers admissions by the appellant, even if carried before September, 2020. We are conscious that sub-section (2) of section 18 of Act of 2020, and proviso thereto are not appropriately worded, but nonetheless the construction suggested by the counsel for the appellant would leave the admissions for the current session 2020-2021 at the discretion of the private colleges – which happily desired self-framed admission criterion and self-regulated admission process, as evident from the Prospectus 2020-21 of the appellant – having the effect of undermining the purpose of Act of 2020. An isolated construction of proviso to sub-section (2) of section 18 of Act of 2020, would tantamount to crucify sub-section (1) of section 18 of Act of 2020 - wherein condition of single admission test is applicable

qua the admission to medical or dental under-graduate programs anywhere in Pakistan, without any time-constraint -, at the altar of the desires of private medical and dental colleges. Hence, the submissions are lacking in substance.

11. In view of the aforesaid, we hold that requirement of MDCAT forms condition precedent for enrolment for the year 2021 – notwithstanding initiation of process of admission in the last quarter of the year 2020. And the regulations framed, qua the requirement of MDCAT, as mandatory condition for admission, manifest no illegality or transgression. Learned single judge in chambers has rightly dismissed the objections qua the requirement of MDCAT, hence, no interference is warranted.

12. Now we take up objections regarding invalidity of Regulations 13 and 14 of Regulations 2021, on the premise of being contrary to the scope and mandate of Act of 2020 – precisely sub-section (3) of section 18 of Act of 2020. It is expedient to reproduce Regulations 13 and 14 of Regulations 2021, for ease of reference:

“13. Both Agha Khan University and NUMS in respect of its constituent, affiliated and administered colleges have a previously declared admission criteria for admissions which includes in addition to the MDCAT an entry test and other criteria specific to such colleges hence substantially fulfilling the requirement of prior disclosure of admission criteria pursuant to Section 18(3) of the PMC Act 2020. Therefore, admissions in the Army

Medical College and all constituent, affiliated and administered colleges of NUMS shall be undertaken by NUMS and admissions to Agha Khan Medical College shall be undertaken by Agha Khan University respectively, subject to the mandatory requirement of any student admitted having passed the MDCAT. Any student seeking to apply to said colleges shall be required to apply directly to the relevant university and fulfill the additional requirements for admission imposed and declared by such colleges.

Provided quota for special seats in colleges under the administrative control of NUMS shall be regulated by NUMS as may be notified by the relevant Directorate and approved by the Ministry of Defence subject to the maximum allocated seat limit of each college.

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

14. *Admissions to all private medical and dental shall be conducted only for the 2021 Session through a centralized automated admission system”.*

13. The authority of the Council qua framing of Regulations 2021, under section 8 of Act of 2020 in general and clause (f) of sub-section (2) of section 8, *ibid*, in particular, is neither disputed nor under challenge. It is expedient to reproduce clause (f) of sub-section (2) of Section 8 of Act, 2020, which reads as:-

“to frame regulations for conduct of admissions in medical and dental colleges and examinations to be conducted by the Commission and approve the examination structure and standards of the medical and dental colleges admissions test, national licensing examination and the national equivalence board examinations as proposed by the national medical and dental academic board including the standards of revalidation of licences to practice medicine or dentistry in Pakistan”.

[Emphasis supplied]

14. Regulations 13 and 14 of Regulations 2021 are in accordance with the powers extended in terms of

section 8 of Act of 2020. Learned counsel has misconstrued sub-section (3) of section 18 of Act of 2020, whereby significance of crucial condition remained unheeded. It is expedient to reproduce relevant part of sub-section (3) of section 18 of Act of 2020, for convenience,

.....'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.....'

15. The eligibility / criteria proposed for admissions for the session 2020-21, as contained in the Prospectus, neither qualified the test of time – at least one year in advance of admissions – nor such criterion was subjected to alleged scrutiny by the University to which appellant is affiliated. It is notable that even the requirement of admission test in terms of *MBBS and BDS (Admissions, House job and Internship) Regulations 2018* was missing in the prospectus available on record. In order to cover the void, Regulation 14 was promulgated. Regulation 14 – which manifest exercise of powers under section 8(2)(f) of Act of 2020 – envisages admissions to such class of private medical college(s), where existing declared admission criteria was not available. The objection of discriminatory treatment is

misconceived, when the factum of availability of admission criteria in the colleges specified in Regulation 13 of the Regulations 2021, is undisputedly available, to the exclusion of other private medical and dental colleges. The rationale of Regulation 14 of Regulations 2021 is to bring uniformity in the admission for session 2020-2021. Hence, objections against Regulations 13 and 14 of Regulations 2021 are without substance. We concur with the findings recorded in paragraphs 26 and 28 of the judgment, which are unexceptionable, and no illegality is found.

16. The objection against disproportionate exercise of authority to draft Regulations 24 and 27 is misconceived. The noted Regulations do not breach the scope and mandate of sub-section (7) of section 19 of Act of 2020, rather reinforces the direction, in terms of sub-sections (7) and (8) of section 19 of Act, 2020. The justification required to be offered to the Authority qua proposed fee structure, under sub-section (8) of section 19, *ibid*, extends the power to review the fee structure, if found unjustifiable. The purpose is to curb financial exploitation, rationalize disproportionate fee claimed in the context of available infrastructural facilities, to check and regiment, otherwise an unconscionable bargaining position and to ensure equal academic opportunities,

despite acute financial disparities in the society. We concur with the findings returned, on this issue, by learned single judge in chambers in paragraphs 29 and 30 of the judgment, which are maintained.

17. Now we take up much-emphasized objection regarding the scope, effect and consequence of alleged settlement between PMC and PAMI. The dispute qua the competency and authority of PAMI, to enter into settlement for and on behalf of its members, having binding status for the appellant, is not relevant for the determination of issues raised in appeal, predominately the challenge thrown qua the validity of the Regulations, 2021. The argument raised is impregnated with a moot question that *whether alleged settlement and terms thereof, as recorded in the settlement order of 17.11.2020 in W.P. No.55761/2020 - even if endorsed by this Court, would assume or acquire the status of a legislative instrument?*

18. There is no gainsaying that amendments affected in the Regulations 2021 are not the cause and effect of settlement order of 17.11.2020, rather amendments were made in exercise of powers extended in terms of clause (f) of sub-section (2) of section 8 of Act of 2020. The amendments affected are to give effect to and achieve the purpose of Act, 2020, we are not looking

into the intent and rational of the amendments. Equally, we are conscious of the fact that branding of amendments, as cause and effect of settlement order of 17.11.2020, is an instance of judicial overreach – whereby Courts, even as a consequence of settlement between the stakeholders, cannot legislate, indirectly upon passing orders to that effect, potentially discharging legislative functions. We repel the submissions that amendments in the Regulations 2021 was the consequence or outcome of alleged settlement order. We hold that amendments made, in the light of settlement order, would at best be construed as an input coming from PAMI, an association, claiming to be representatives of the members, or as an effect of meaningful consultation with one of the stakeholders. We concur with the learned counsel for the appellant to the extent that settlement agreement carries no legal value, when examined in the context of the amendments introduced in the Regulations, 2021, legality and enforceability thereof. The settlement order dated 17.11.2020 cannot be categorized as legislative fiat. The notion that settlement order is precursor to the amendments in the Regulations 2021 would set a dangerous precedent, suggesting conferment of legislative powers unto the Courts exercising

constitutional jurisdiction. The settlement reached between private parties is another matter but fundamentally construing such settlement or giving it a status of law – regarding amendment in the Regulations 2021 - is alike conferring rule making powers unto the Courts, which perhaps was neither desirable nor the intent of the judgment impugned. It is clarified that admissions shall be carried under the terms of Regulations 2021, without any reference to terms of settlement order. We are not reviewing the settlement order of 17.11.2020 but only construing its effect qua the legality and enforceability of Regulations 2021. As far as the objection of the learned counsel for PMC that terms of settlement, which were incorporated in the amendments affected in the Regulations 2021, cannot be questioned, is repelled in the wake of well-acclaimed principle that there is no estoppel against the law. We do not scribe to the observations that since settlement was reached therefore no challenge can be thrown to the vires of the Regulations 2021.

19. The judgments relied upon and referred by learned counsel for the appellant have already been referred by learned Single Judge-in-Chambers and discussed. No interference is warranted. No case for declaration of invalidity against the Regulations, under

challenge, is made out. The judgment in the case of “Indian Sugar Mills Association through its President Shri Hari Raj Swarup v. Secy. To Government, Uttar Pradesh Labour Department and others” (AIR (38) 1951 Allahabad 1) is of no significance in view of the findings returned hereinabove.

20. The findings recorded by learned single judge in chambers with reference to the scope of settlement and effect thereof are accordingly modified, in view of the reasons recorded by us. Notwithstanding, the modification of reasoning, the conclusion reached by learned single judge in chambers remains unchanged. This appeal is without merits and same is, therefore, dismissed. No order as to the costs.

(Shahid Jamil Khan)
Judge.

(Asim Hafeez)
Judge.

A.D. Mian*

APPROVED FOR REPORTING