

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

WP No.4635-P/2022.

Feroz Khan Shuja and others

Vs.

**Pakistan Medical Commission through President, Islamabad and
another.**

Date of hearing 13.12.2022
Petitioner(s) by: Ms. Humaira Gul, Advocate.
Respondent(s) by: Mr. Sardar Sad Ali, Advocate.

JUDGMENT

IJAZ ANWAR, J. Through this single judgment, we intend to decide the instant, as well as connected writ petition bearing titled and No. **“Arham Arshad and others Vs Pakistan Medical Commission through its registrar, Islamabad, Pakistan W.P No.4861-P/2022,** as in both these petitions, similar questions of law and facts are involved.

2. In the instant writ petition, petitioner has prayed for the following relief: -

“It is, therefore, most humbly prayed that on acceptance of this writ petition Hon’ble Court direct, hold & order that;

1. *Only elective/science subject marks may be considered by the respondents in calculating aggregated percentage for admission.*
2. *Cost throughout.*
3. *Any other relief not specifically prayed may also be granted if appears just, necessary and appropriate”.*

3. Comments were called from the respondents, who furnished the same wherein they opposed the issuance of the desired writ asked for by the petitioner.

4. Arguments heard and record perused.

5. It is the case of the petitioners in W.P No.4635-P/2022 that the respondents are required that for merit calculation, “the actual marks obtained in the elective subjects by the applicants in their F.sc or A-level or any equivalent to HSSC qualification results must be used”, therefore, institutions must not consider any grace marks added by any Provincial Authority to the overall marks obtained in F.sc by the students, while in the connected writ petition No.4861-P of 2022 it is the case of the petitioners that the public notice pertaining to direction that only the elective subjects marks and percentage will be considered for merit calculation for admission in Medical and Dental Colleges for the Session 2022-23 be set aside and that the decision on Admission Policy for 2022-23 circulated vide letter dated 12.10.2022 be implemented in true letter and spirit.

6. It appears that vide notification dated 12.10.2022 in terms of Section 40 and Sub-Section 2(f) read with Section 8 of the Pakistan Medical and Commission Act, 2020, the Medical and Dental Council notified “Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Policy and Regulations, 2022. These regulations were made applicable to all medical and dental undergraduate Programs recognized by the Pakistan Medical Commission in Pakistan, all registered medical and dental colleges and accredited teaching hospitals for imparting undergraduate education and house job. For the determination of merit and its calculation the following criteria is provided: -

<i>MDCAT</i>	<i>50% weightage</i>
<i>F.Sc (Pre-Medical)/HSSC/Equivalent</i>	<i>40% weightage</i>
<i>SSC/Matriculation/Equivalent</i>	<i>10% weightage</i>

7. This is in fact the policy formulated by the Pakistan Medical Commission being experts in academia and in the medical field. Thus, forming another opinion allegedly on the ground that it is a hardship case for the students or that the suggested criteria be implemented for such admission apparently seems beyond our domain. In the case of “Syed Azam Shah Vs Federation of Pakistan” (2022 SCMR 201) the Hon’ble Supreme Court, while commenting upon the jurisdiction of the Court in policy matters observed as follows: -

“The compass and magnitude of judicial review of governmental policy is now well settled and defined in which neither the court can act or represent as appellate authority with the aim of scrutinizing the rightness, fittingness and aptness of a policy nor may act as advisor to the executives on matters of policy which they are entitled to formulate. The extensiveness of judicial review of a policy is to test out whether it violates the fundamental rights of the citizens or is at variance to the provisions of the Constitution, or opposed to any statutory provision or demonstrably arbitrary or discriminately”.

8. Similarly, in the case of “Abdul Hameed and others Vs Water and Power Development Authority” (2021 SCMR 1230), it was held that it is not the role of the Courts to interfere in the policy decision and observed as under: -

“It is not the role of the Courts to interfere in policy decisions, unless it is manifest that, such a policy decision are the outcome of arbitrary exercise of power, mala fides, patently illegal or manifestly unreasonable. Reliance in this regard is placed on the case of Asaf Fasihuddin

Khan v. Government of Pakistan (2014 SCMR 676) of which, the relevant part is reproduced as: -

"It is to be noted that the duty of the Court is to confine itself to the question of legality. Its content should be whether a decision-making authority exceeded its powers; committed an error of law; committed a breach of the rules of natural justice; reached a decision which no reasonable tribunal would have reached; or abused its powers."

9. A larger bench of the Apex Court in the case of "Shahid Pervaiz Vs Ejaz Ahmad" (2017 SCMR 206) held that: -

"This Court in a series of judgments has held that policymaking is the domain of the executive and the Courts normally do not interfere in such matters, but when a policy is violative of the fundamental rights of individuals, the Courts are obliged to examine such policy in judicial review".

10. Similarly, the Apex Court in the case of "Watan Party and another Vs Federation of Pakistan and others" (PLD 2013 SC 167) held that: -

"we cannot assume the functions of policy-making or determining the priorities of various development projects in the country, which are the exclusive domain and functions of the Federal and Provincial Governments, as the case may be, who have their own ministries, departments, commissions and consultants, etc. for policy making, determining the priorities of various development projects and its implementation. It is pertinent to mention here that under the scheme of the Constitution having its structure based on trichotomy of power amongst its different organs i.e. legislature, executive and judiciary, each of its organ has to work and exercise its authority strictly within its mandate, without encroaching upon or usurping the jurisdiction/functions of any other organ of the State".

11. The same view was earlier given by the Apex Court in the case of "Asaf Fasihuddin Khan Vardag Vs Government of Pakistan and others" (2014 SCMR 646):-

“47. It is to be noted that the duty of the Court is to confine itself to the question of legality. Its concern should be whether a decision-making authority exceeded its powers; committed an error of law; committed a breach of the rules of natural justice; reached a decision which no reasonable tribunal would have reached; or abused its powers. Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair”.

12. In the case of “Dossani Travels PVT. LTD and others Vs Messrs Travels Shop (PVT) LTD and others” (PLD 2014 Supreme Court 1) the Apex Court held as under: -

“28. A comparative analysis of the constitutional law from various jurisdictions would indicate that the Courts have deferred to the decisions of the administrative bodies and those entrusted with the policy making functions of the Executive if there was no violation of law”.

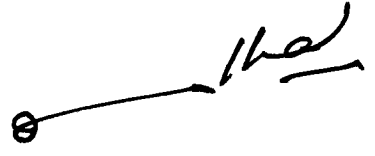
13. Similar view was given in the case of “Dr. Akhtar Hassan Khan Vs Federation of Pakistan (2012 SCMR 455), the relevant para is reproduced as under: -

“Though its policies sometimes may be open to criticism but that is for the concerned economists in the government or academics to examine and opine but once the Competent Authority in the government has taken a decision backed by law, it would not be in consonance with the well-established norms of judicial review to interfere in policy-making domain of the executive authority. ”

14. Thus, in view of the above judgments of the Apex Court it is not the function of the High Court to exercise jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan to interfere in the policy-making domain of the universities/institutions or even the executives unless it is demonstrated that there is any violation of law or violation of rules and regulations in the matter.

15. In view of the above, this and the connected writ petition No.4861-P of 2022 having no merit are accordingly dismissed.

Announced
Dt:13.12.2022



JUDGE



JUDGE

*(Amir Shehzad) **

(DB) Hon'ble Mr. Justice Mohammad Ibrahim Khan and Hon'ble Mr. Justice Ijaz Anwar.