

Form No.HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

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Examiner
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Lahore High Court, Lahore

W.P. No. 78297 of 2022.

Shareha etc. Vs Federation of Pakistan etc.

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13.12.2022. Mr. Naqeeb Ullah Khattak, Advocate for the petitioner.
Mr. Tahir Mehmood Ahmad Khokhar, DAG.
Mr. Imran Muhammad Sarwar, Advocate for UHC.
Mr. Waqar Mushtaq Toor, Advocate for PMC.

Through this petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have put a challenge to Pakistan Medical Commission (PMC) Policy Decision, dated 05.10.2022, announcement, dated 26.10.2022 and Medical and Dental Colleges Admissions Test (MDCAT) held on 13.11.2022.

2. Learned counsel for the petitioners submits that the Pakistan Medical Commission Act, 2020 (the Act, 2020) and Pakistan Medical Commission Conduct of Examinations Regulations, 2021 (the Regulations, 2021) empower PMC to determine the eligibility criteria including standard of paper but University of Health Sciences (UHS) does not figure anywhere in the scheme provided under the Act, 2020 as well as the Regulations, 2021; that setting up of different standards of paper/examination by the

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public sector universities is creating heart burning amongst the applicants as the paper set by UHS was too tough as compared to the paper prepared by rest of the public sector universities; that any examination conducted by UHS against the spirit of the Act, 2020 and the Regulations, 2021 does not carry any legal sanctity, thus, the impugned Policy Decision as well as MDCAT conducted by UHS is a nullity in the eye of law and that in the previous year MDCAT was got conducted by UHS through a Testing Agency via computer based examination but MDCAT for 2022 has been conducted by UHS on subjective pattern.

3. Learned counsel representing PMC, while opposing the submissions made by learned counsel for the petitioners, submits that Medical and Dental Council (the Council) in its second meeting, held on 27.09.2022, decided to conduct MDCAT, 2022 through public sector universities of all the federating units and Capital Territory, hence, claim of the petitioners that UHS of its own introduced holding of MDCAT through public sector universities runs contrary to the record; that Policy Decision for conduct of MDCAT was circulated through letter, dated 05.10.2022 and the petitioners having appeared

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in MDCAT under the said policy have no cheeks to challenge validity of MDCAT conducted by UHS; that decision of the Council regarding MDCAT Curriculum, 2022 *qua* weightage of questions for different subjects was also circulated through Policy decision, dated 27.06.2022, thus, the claim of the petitioners that they were kept in dark is also against the record; that the question agitated in this petition also came under discussion before the High Court of Sindh at Karachi in Constitutional Petition No.D-6021 of 2020 which was dismissed through order, dated 27.11.2020; that this Court, through judgment reported as Rida Fatima v. Pakistan Medical Commission etc. (PLD 2022 LHR 197), has also dismissed similar petitions, hence, no contrary view can be formed by this Court. Relies on ABWA Knowledge Pvt. Ltd. and another v. Federation of Pakistan and another (PLD 2021 LHR 436).

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4. Learned Deputy Attorney General, while supporting learned counsel representing PMC, states that when the petitioners opted to appear in MDCAT under the criteria determined by PMC they have no cheeks to pray for declaration of MDCAT as untenable; that since the petitioners were well aware

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about Policy Decision, dated 05.10.2022, they cannot claim that they were unaware about the eligibility criteria, hence, no interference is called for in these proceedings. Relies on Federation of Pakistan and others v. Haji Muhammad Saifullah Khan and others (1988 SCMR 1996), Aamir Ali v. Federal Public Service Commission (2000 YLR 573) and Muhammad Zubair and 5 others v. Government of Pakistan through Secretary Health, Islamabad and 22 others (2012 CLC 1071).

5. While exercising his right of rebuttal, learned counsel for the petitioners submits that since the eligibility criteria was not disclosed in Policy Decision, dated 05.10.2022, stance of the petitioners that the MDCAT was conducted by UHS in violation of the provisions of the Act, 2020 and the Regulations, 2021 has not been rebutted by learned counsel for the respondents.

6. I have heard learned counsel for the parties at considerable length and have also gone through the documents, annexed with this petition, as well as the case-law, cited at the bar.

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7. Admittedly, according to the Act, 2020 eligibility criteria and mode of paper for MDCAT is to be determined by the Council established under the Act, 2020. The Council, in its second meeting, held on 27.09.2022, against Agenda Item No.9 has taken the following decision:-

	<p>The Council unanimously approved conducting MDCAT exam 2022 through the following public universities of all provinces and Islamabad on a single day and time:</p> <ol style="list-style-type: none"> 1. Bolan University of Medical & Health Sciences (Baluchistan) 2. University of Health Services (Punjab) 3. Khyber Medical University (KPK) 4. DOW University of Health Sciences (Sindh) 5. Shaheed Zulfiqar Ali Bhutto Medical University (Islamabad, AJK, Gilgit Baltistan) <p>The Council approved the MDCAT pass percentage for admission to MBBS at 55% and BDS at 45%. Moreover, FSc (Pre-Medical) or Equivalent with 60% marks will be eligible to apply for admission to MBBS or BDS. The pass percentage will be applied prospectively.</p> <p>The Council approved that exam conducting universities will decide on the modalities of conducting exam i.e. either by themselves or through testing agency.</p> <p>Decision</p> <p>The Council further decided that MDCAT exam will be paper based manual exam and the answer keys of the papers will be uploaded by the concerned universities on the PMC website on the same day after the exam.</p> <p>The Council decided that exam centres be established in countries with more than 100 students registered for MDCAT. Accordingly, MDCAT will be conducted in two international centres i.e. UAE and Saudi Arabia. Aspirants in other countries may either change their centres to UAE and Saudi Arabia or come to Pakistan for the exam.</p> <p>The Council unanimously approved that the MDCAT exam shall be held on 13th of November 2022.</p> <p>It was decided that the online portal will remain open till 10th of October for registration and change of Centre for foreign students.</p> <p>The Council agreed that information about MDCAT being paper-based and single day be widely circulated through PMC website and media for information of the public.</p>
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From the above, it is crystal clear that the eligibility criteria was determined by the Council, hence, plea of learned counsel for the petitioners that the same was adopted by UHS of its own is not entertainable.

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8. The second point which was pressed into service by learned counsel for the petitioners was that in the previous year MDCAT was conducted by a Testing Agency but in the present year the said test was conducted subjective through public sector universities. To appreciate said contention I have gone through Policy Decision, dated 05.10.2022, which for facility of reference is imaged below: -



Tel: (92 51) 9106152-54
Fax: (92 51) 9106159

No. F-1/2-Sec.PMC-2022/PD-CD-MDCAT-E-2022/117
PAKISTAN MEDICAL COMMISSION
SUCCESSORS OF PAKISTAN MEDICAL & DENTAL COUNCIL
G-10 I, MAJLH AREA,
ISLAMABAD

Dated: 5th October, 2022

POLICY DECISION

COUNCIL DECISION ON CONDUCT OF MDCAT EXAM 2022 THROUGH PUBLIC SECTOR UNIVERSITIES OF ALL PROVINCES AND ISLAMABAD

The Medical and Dental Council in its meetings held on 7th and 27th September 2022 respectively, has approved the following:

- MDCAT exam will be held on 13th November 2022, through the following public universities of all provinces and Islamabad on a single day and time:
 - Dolan University of Medical & Health Sciences (Baluchistan).
 - University of Health Services (Punjab).
 - Khyber Medical University (KPK).
 - Dow University of Health Sciences (Sindh).
 - Shaheed Zulfikar Ali Bhutto Medical University (Islamabad, AJK, Gilgit Baltistan).
- MDCAT pass percentage for admission to MBBS at 55% and BDS at 45%. Moreover, FSc (Pre-Medical) or Equivalent with 60% marks will be eligible to apply for admission to MBBS or BDS. The pass percentage will be applied prospectively.
- Exam conducting universities will decide on the modalities of conducting exam i.e. either by themselves or through testing agency.
- MDCAT exam will be paper based manual exam and the answer keys of the papers will be uploaded by the concerned universities on the PMC website on the same day after the exam.
- Exam centres be established in countries with more than 100 students registered for MDCAT. Accordingly, MDCAT will be conducted in two international centres i.e. UAE and Saudi Arabia. Aspirants in other countries may either change their centres to UAE and Saudi Arabia or come to Pakistan for the exam.
- Online portal will remain open till 10th October 2022 for registration and change of Centre for foreign students.


Secretary

Pakistan Medical Commission

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The afore-impugned Policy Decision renders it crystal clear that on the recommendations of the Council in its meetings held on 07.09.2022 and 27.09.2022 public sector universities were involved by UHS to conduct MDCAT. In the given circumstances, plea of learned counsel for the petitioners that UHS of its own engaged public sector universities for holding of MDCAT is not tenable.

9. Now coming to plea of learned counsel for the petitioners that since different standards of papers have been set up by public sector universities as well as UHS it is case of clear discrimination, I am of the view that when eligibility criteria and the standards of paper have been determined by the Council, said plea cannot be given any weightage.

10. A similar question came under discussion before the High Court of Sindh at Karachi in Constitutional Petition No.D-6021 of 2020 which was responded in the following manner: -

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"7. We have heard learned counsel for the parties and have examined the material available on record with their able assistance, particularly the relevant provisions of the PMC Act. Before embarking upon the merits of the case, we deem it expedient to briefly discuss such powers and functions of the Council, the Board and the Authority constituted under the PMC Act, enumerated in Sections 8, 13 and 16, respectively, of the PMC Act, that are relevant for the purposes of the case at hand. Section 8(1) of the PMC Act, inter alia, provides that the Council shall have all powers, not expressly vested in any other authority or officer by any other law, where such powers not expressly mentioned in the PMC Act are necessary for the performance of its functions. Under Section 8(2)(f) of the PMC Act, the Council shall have the power, inter alia, to frame regulations for the "conduct" of admissions in medical and dental colleges "and the examinations to be conducted by PMC". By virtue of Section 8(2)(t) of the PMC Act, the Council shall have the power, inter alia, to do all such matters as are ancillary including issuance of policies or framing of regulations, convenient for or which foster or promote the advancement of these matters and the objectives of the PMC Act. Section 13(1)(c) of the PMC Act provides that the Board shall have the functions and power to formulate the examination structure and standards for the NMDCAT for approval of the Council. Under Section 16(1)(f) of the PMC Act, the Authority shall have the functions and power to conduct all examinations provided under the PMC Act, and under Section 16(1)(h) of the PMC Act, to implement all decisions of the Council and the Board. Section 16(2) of the PMC Act empowers the Authority to exercise all powers as shall enable it to effectively perform its functions.

8. Sub-Section (1) of Section 18 of the PMC Act empowers the Authority established under the PMC Act to conduct a single admissions test on annual basis on a date approved by the

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Council, constituted under the PMC Act and as per the standards approved by the Board constituted under the PMC Act. It is not the case of the petitioners that the subject tests have been announced by PMC on two different dates without the approval of the Council or the same are being held contrary to the standards approved by the Board. Perusal of the impugned announcement / decision shows that it was specifically mentioned therein that the same was made with the approval of the Council. Thus, the condition precedent for conducting the subject tests, as envisaged in Section 18(1) *ibid*, was admittedly fulfilled by PMC. It is also mentioned in the impugned announcement by PMC that the subject test on 13.12.2020 shall be conducted with the same structure and standard as the test being conducted on 29.11.2020. This statement clearly rules out the possibility of any discrimination, as averred by the petitioners.

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9. Regarding the argument advanced on behalf of the petitioners that Section 18 *ibid* allows only a single NMDCAT and as such the impugned announcement of conducting the subject tests on two different dates is ultra vires the PMC Act, we are of the view that a plain reading of Section 18(1) *ibid* would show that the words "on a date" and "a single admissions test" contained therein do not mean that the same must be read conjunctively. The words "a single admissions test" clearly denote a single attempt by every applicant; and, the words "on a date" undoubtedly mean the date approved by the Council. In this context, the submission made on behalf of PMC that a single admissions test means a centralized test across Pakistan also has force. It is not disputed that all the applicants appearing in the subject tests on both the given dates will be allowed only one / single attempt, and both the said dates have been duly approved by the Council. As noted above, the Council has the power under Section 8(2)(f) of the PMC Act to frame regulations for the "conduct" of

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admissions in medical and dental colleges "and the examinations to be conducted by PMC". Therefore, the approval accorded by the Council for conducting the subject tests on two dates cannot be deemed to be illegal or ultra vires the PMC Act, especially when every applicant will be allowed only a single attempt.

10. We must not lose sight of the extraordinary and dangerous situation prevailing due to the Covid-19 pandemic which, prima facie, compelled the Council and PMC to announce separate dates for conducting the subject tests in order to segregate the applicants into two groups viz. the ones who are not infected with the Covid-19 virus and the ones who have tested positive for this potentially lethal virus or will have tested positive up till 29.11.2020. This reason appears to be not only genuine, but also in the best interest of all concerned. Additionally, it also prevents applicants from missing the subject test, which is mandatory for seeking admission in medical or dental college / university, on account of being unwell, and gives them a chance to appear for the NMDCAT thereby ensuring they are not academically disadvantaged or their studies are not delayed by one whole academic year. Had there been any other reason or ground, conducting the subject tests on two different dates would have become questionable. Needless to say extraordinary measures are permissible in extraordinary circumstances, provided such extraordinary measures are not contrary to any law. Due to this reason, we are of the view that the impugned announcement / decision of PMC and our observations and findings in respect thereof should not be treated or cited as a precedent for NMDCAT to be held in future.

11. In view of the above discussion, we conclude that the impugned announcement / decision has not infringed any fundamental right of any of the applicants, including the present petitioners, and the same is not

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contrary to any of the provisions of the PMC Act and/or any other law.

12. Foregoing are the reasons of the short order announced by us on 27.11.2020 whereby this petition was dismissed in the following terms and with the following direction to PMC :

"Learned counsel for the petitioners and respondent No.3 as well as learned DAG have concluded their submissions. For the reasons to follow, the instant petition and listed application are dismissed, however, with the direction to respondent No.3 /PMC to ensure that all SOPs in relation to the Covid-19 pandemic prescribed by the National Disaster Management Authority (NDMA), Ministry of Health Government of Pakistan, and the Ministry of Health of the Province concerned, are strictly followed in letter and spirit by the students, invigilators and all persons / staff present at the examination centres during the subject MDCAT examination. There will be no order as to costs."

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PMC is further directed to ensure that results of the subject tests held on 29.11.2020 and 13.12.2020 must be announced together and a single merit list is issued in respect of the tests held on both the above dates."

11. Further, this Court in the case of Rida Fatima (Supra) resolved controversy relating to MDCAT in the following manner: -

"15. The MDCAT examination was held from 30.08.2021 to 30.09.2021 at various centers in all over the Pakistan. It is an admitted fact that all the Petitioners/Applicants applied for the

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MDCAT examination 2021 by following the aforesaid step by step Application criteria/process and appeared in the MDCAT by choosing their own computer based MDCAT time slot on the dates approved/given by the PMC. Now the Petitioners have challenged the whole procedure at this stage by stating that they did not practice the exams as per the Rules, Regulations and the Act. It is worth mentioning that the aforesaid Advertisement for Registration of the MDCAT examination was published on 13.06.2021 and the Petitioners could have approached the PMC regarding any inconvenience/hurdle but they opted to take part in the exam and now after their failure they filed these writ Petitions, which raised a serious question about the bona fide of the Petitioners."

12. If the fate of the present petition is adjudged on the touchstone of the afore-quoted decisions of Sindh High Court as well as this Court there leaves no ambiguity that the same has no force, therefore, the same is accordingly dismissed with no order as to costs.

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 (Shujaat Ali Khan)
 Judge

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