

Stereo. HCJDA 38.
Judgment Sheet
IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

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W.P. No. 73273/2023

Muhammad Abdullah Abrar Syed, etc.

Versus

Pakistan Medical and Dental Council, etc.

JUDGMENT

Date of hearing: **03.04.2024.**

Petitioner by: Barrister Syeda Maqsooma Zahra Bukhari, Iqra Liaqat and Anum Tariq, Advocates.

Respondents by: M/s Barrister Haris Azmat, Maryam Hayat and Hassnain, Advocates for PMDC.
Ch. Imtiaz Elahi, Deputy Attorney General for Pakistan.
Rana Muhammad Ansar, Advocate for UHS.
Mr. Tahir Yasin, Law Officer.
Mr. Imran Muhammad Sarwar, Advocate for UHS.

ASIM HAFEEZ, J. Petitioner seeks relief in following terms,

“It is prayed most humbly and respectfully that this Hon’ble Court may be pleased to strike down and declare that the impugned Regulation 4(7)(b) of the PMDC Regulation 2023 as illegal, unlawful, ultra vires, un constitutional and contradictory to Regulation No.2(f) as well as previous Regulations and legislations defining ‘Overseas Pakistanis’, in order to qualify for ‘overseas Pakistani quota’ in the MBBS admission which in fact violate their fundamental rights of the persons such as the petitioner enshrined under Article 4, 9, 25 and 25-A of the Constitution of the Islamic Republic of Pakistan, and it is further prayed that this honorable court may direct the Respondents to accept the petitioner and other students like him in their overseas quota for the admission in 2023”

2. Precise grievance against regulation 4(7)(b) of Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) policy and Regulations 2023, (**‘impugned regulation’**) is that the requirement of being, ‘....

a resident of foreign country at the time of applying for admission.....’ is specifically directed against Pakistani citizens, residing in Middle Eastern Countries and Kingdom of Saudi Arabia, which countries incidentally do not extend nationality or permanent residency to the residents therein. It is alleged that impugned regulation extends preference to the nationality holders of European and North American countries. Adds that definition of ‘overseas Pakistanis’ is subject to frequent changes, in quick succession, on annual basis, which expression and application thereof is otherwise contrary to the expression defined in other Statutes, dealing with citizenship and registration matters. Adds that impugned regulation contradicts regulation 2 (f) of Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Policy and Regulations 2023 (**‘Regulations 2023’**), wherein no requirement of being a resident of foreign country at the time of application for admission was indicated. Elaborates that petitioner stayed, studied and completed education till 12th Grade at Saudi Arabia and equivalence certificate affirmed petitioner’s residency at Saudi Arabia. Refers to report / para-wise comments submitted in proceedings, subject matter of W.P No.1682/2017 to emphasize that representation made is contrary to the mandate of impugned regulation. Lastly submits that requirement of being physically present in a foreign country at the time of submitting application is absurd and irrational condition, which was not endorsed otherwise by this Court while deciding Intra Court Appeal bearing ICA No.62074/2019.

3. Conversely, learned counsel appearing for PMDC submits that admissions are regulated by the Commission and changes are introduced where found necessary to check and control potential misuse of foreign student’s quota. Adds that no discrimination is intended towards Middle Eastern Countries. Explained that petitioner is not a foreign resident, who wants admission on foreign student quota, instead of contesting on open merit. Submits that judicial review jurisdiction is not available or exercisable to interfere in the policy domain or to assess rationality and plausibility of impugned regulation, drafted in exercise of powers conferred under parent enactment. Relies upon judgments reported as

“SUNDAS and others. Vs. KHYBER MEDICAL UNIVERSITY through V.C. Peshawar and

others.” (2024 SCMR 46), “*AINA HAYA. VS. PRINCIPAL PESHAWAR MODEL GIRLS HIGH SCHOOL-1, PESHAWAR and others*” (2023 SCMR 198) and “*YASIR NAWAZ and others. Vs. HIGHER EDUCATION COMMISSION AND OTHERS*” (PLD 2021 SC 745). Adds that comparison with definition of overseas Pakistanis under other laws is misdirected, and principle of *pari materia* legislation is not attracted. Further submits Constitutional petition bearing W.P. No. 5750/2020 was declared infructuous upon promulgation of new enactment and no affirmative declaration was made with reference to Regulation 8(2) of MBBS and BDS (Admissions, House Job and Internship) Regulations, 2018 (as amended on 30th May 2019) (**Regulations 2019**). Submits that facts of the case, subject matter of I.C.A No. 62074/2019, are distinguishable and otherwise having no precedential value in the context of present proceedings.

4. Heard. Record Perused.

Regulation 8(2) of Regulations 2019 bears semblance / proximity with the impugned regulation. No decision has been cited to show that regulation 8(2), *ibid*, was declared void and of no legal effect on the premise of being contrary to the parent statute or otherwise. Challenge to the constitutionality of impugned regulation is therefore adjudged hereunder.

5. It is essential to understand the position of the petitioner vis-à-vis the grievance agitated and discrimination pleaded. While examining correspondence addressed by the petitioner to the President of Pakistan Medical Commission, dated December 04, 2019 – *Subject: Complaint against Foreign Residency Requirements at the time of admission to MBBS* – petitioner admits being residing in Pakistan, who acknowledged that he was not a foreign resident at the time of applying for MBBS in Pakistan. This particular stand disentitle petitioner from claiming admission under foreign seats quota (‘designated reserved seats’).

Advertisement for admission for the session 2023-24 required submission of *Iqama or residence permits green card or foreign passport*, to substantiate candidate's foreign residency at the time of submission of application. Petitioner possessed none of the mentioned documents, hence, same is suffering from inherent deficiency for the purposes of seeking admission against reserved seats.

6. Now I turn to examine challenge to the vires of the impugned regulation, in the context of discriminatory treatment towards Pakistani citizens, being residents of Middle Eastern Countries and Saudi Arabia. To contextualize the context, it is appropriate to state impugned regulation, 4(7)(b) of Regulations 2023, which reads as;

(7) Self-finance and foreign quota seats. – (a) All medical and dental institutions may admit students on foreign seats quota upon fifteen percent of their total annual seats allocated by the Council purely on merit.

(b) No candidate shall be eligible for foreign quota seat in the public and private medical and dental institutions under sub regulations (a) unless, he holds a permanent foreign nationality or is an overseas (being a Pakistani citizen permanently resident in a foreign country) Pakistani, and who has studied and passed HSSC 12th grade examination or equivalent from outside Pakistan **and is a resident of a foreign country at the time of applying for admission** and possess a certificate from the institution last attended to this effect.

[Emphasis supplied]

7. I have examined the impugned regulation and do not find any particular disadvantage / exclusion directed towards Pakistani citizens, being resident(s) of Middle Eastern Countries or Saudi Arabia, for the purposes of present controversy. One of the conditions precedent for self-finance and foreign quota seats is that *candidate must be a resident of foreign country, at the time of applying for admission* - this key-phrase has to be read in the context of the documents ought to be provided by Pakistani students residing abroad and foreign candidates applying for the reserved seats – details of documents are mentioned in the advertisement which *inter alia* included *Iqama or Residence permit or*

green card of Foreign passport. It is evident that candidate(s) seeking admission against foreign seats quota must specify residency of a foreign country, at the time of making application. Physical presence of prospective candidate in Pakistan, at the time of making of application, is not a pre-requisite but what is required is that candidate should be the permanent resident of a foreign country, at the time of making application for admission. Notwithstanding, candidate's physical presence in Pakistan at the time of making application real test is whether same possess any of the documents, showing residency of a foreign country — class of documents required are mentioned in the advertisement. Hypothetically speaking, a candidate, physically present in Pakistan and holding Overseas Identity Card, for taking care of ailing parents, can still apply for admission against foreign seat quota, provided same had a valid residency of a foreign country, at the time of making application. There is another illustration. If prospective candidate, having Iqama – [residency of UAE] - is on vacation in United States, he can apply for admission against foreign seat quota provided he possessed and submitted copy of valid Iqama along the application. A prospective candidate may not be physically present in UAE - country of Iqama - but if he is a resident of a foreign country, at the time of applying for admission, he is eligible to apply. An invalid or ineffective Iqama does not entitle said candidate to seek a reserved seat. Petitioner misconstrued the scope of the impugned regulation, who may be physical present in Pakistan but failed to show that he was resident of a foreign country, at the time of making of the application. Conversely, petitioner admits its status as Pakistani citizen, and not being resident of foreign country. Some material facts / dates need particular mention. Petitioner filed instant this constitutional petition and provided CNIC, issued on 16.02.20214 with expiry of

16.02.2021 – showing stay of petitioner in Pakistan. Petitioner provided copy of NICOP, wherein country of stay was Saudi Arabia, which card was valid till 14.10.2020. Petitioner also provided copy of National Identity Card, issued on 16.01.2020 with expiry of 16.01.2030, wherein country of stay was Canada – mere stay in Canada, in absence of proof of foreign residency, in terms of the documents mentioned in advertisement, is not enough to meet the requirements. Petitioner had no claimed that his stay at Canada meets the requirement of a resident of a foreign country at the time of applying for admission. Petitioner fails, hence, not eligible to be considered for admission against reserved seats, who can otherwise compete with the class of Pakistani Student on merits.

8. Upon perusal of sections 10 and 12 of National DATABASE AND REGISTRATION AUTHORITY ORDINANCE, 2000 it is evident that National Identity Cards are issued to the citizens and Overseas identity cards are issued to a class of citizens resident abroad. Petitioner has not claimed foreign residency. No contradiction is otherwise pointed between impugned regulation and other relevant statutes.

9. No contradiction is found in regulation 2(f) and impugned regulation. One must not lose sight of regulation 2(g), which defines foreign student. In view of the aforesaid petitioner, for all intent and purposes, is a Pakistani student, eligible to compete on general seats on merits, but ineligible for admission on reserved seats. Petitioner seeks advantage of his stay in Saudi Arabia, and time spent there in acquiring HSSC (12th grade) without fulfilling the requirement of an “Overseas Pakistani” (being a Pakistani citizen permanently resident in foreign country). No case of any discrimination or exclusion of any particular foreign country is plausibly made out. In recent years a sinister practice has developed that a person,

who does not meet the requirements of any rule, throws challenge to the constitutionality of disadvantageous rule. This calls for disapproval. In absence of any defect in the constitutionality of impugned regulation, this Court finds no reason to judicially review the plausibility, rational and foundational basis for criterion for admission against foreign seat quota. No arbitrariness or perversity is found in exercise of discretion. The legality of regulations 8(2) of Regulations, 2019 was not adjudged by way of judicial scrutiny – W.P No.5750 of 2020 was disposed of being infructuous. Argument that some concession, apparently, is available in terms of para-wise comments submitted in W.P No.1682/2017, is misconceived. Effect has to be given to the statement contained in delegated legislative instrument, instead of construing any concession in para-wise comments. Decision in ICA No.62074/2019 is not attracted. No case of discrimination or discriminatory application of impugned regulation is made out.

10. Challenge to the legality / constitutionality of impugned regulation is rejected. This petition fails on merits. No order as to the costs.

(Asim Hafeez)
Judge

Approved for reporting.

Judge.

Imtiaz Nasir