

Form No:HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT

BAHAWALPUR BENCH, BAHAWALPUR

JUDICIAL DEPARTMENT

W.P No.4160/2024

Millat Law College and others. Versus The Islamia University of Bahawalpur, etc.

S.No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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15.07.2024	Mr. Bilal Ahmad Qazi, Advocate for petitioners. Dr. Malik Muhammad Hafeez, Advocate / Legal Advisor for the respondents – Islamia University of Bahawalpur with Murtaza Nawaz, Law Officer.
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This and connected constitutional petition bearing W.P. No.4161/2024 (‘companion case’) raise and seek determination of common question of law, hence, decided through instant order.

2. Pertinent chronological perspective is that Fact-Finding committee was constituted, by the Vice Chancellor, through Notification No.152/AF dated 13.09.2022 to probe into matter of discrepancies in the registration returns record of LLB 03-year program.

ISSUE-AT-HAND

Question, fundamentally, calling for determination is ‘Whether the Vice Chancellor of the Islamia University of Bahawalpur (‘the University’) possess the authority / power to constitute a Fact-Finding Committee, in the

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*context of circumstances of instant case, **or** Whether such authority / power exclusively vests with the Authority(ies) indicated in section 29 of the Islamia University of Bahawalpur Act, 1975 (Act, 1975).*

3. For the purposes of defining the scope of adjudication, it is pertinent to point out that these constitutional petitions traced their origin from the order dated 13.12.2023, whereby learned Division Bench of this Court, while allowing the appeal, bearing ICA No.137/2023, preferred against the decision of learned Single Judge of 05.06.2023, remitted for determination the question of jurisdiction of the Vice Chancellor, to the Syndicate of the University. Paragraph 9 of the order, containing relevant direction, is hereunder reproduced for adequate comprehension,

*“In view of the above, instant as well as connected appeal and writ petition are **allowed** in the manner that **we are inclined to transmit copies of writ petitions, along with annexures to respondent-Syndicate with direction to treat the same as objections on behalf of appellants / petitioners against constitution of the Fact Finding Committee and decide the same in accordance with law while keeping in view the relevant provisions of the Act of 1975, without being influenced by the impugned findings, after hearing the appellants / petitioners and all concerned, preferably within a period of thirty days from the date of receipt of certified copy of this order.** In order to facilitate the process, appellants / petitioners shall appear before respondent-Syndicate on 21.12.2023 at 10:30 a.m. Learned Law Officer shall ensure compliance of this order. Compliance report shall be furnished to this Court through Deputy Registrar (Judicial). The impugned judgment stands modified accordingly.”*

[Emphasis supplied]

4. Subsequent to passing of aforesaid order, matter was placed before the Syndicate of the University, in its 85th meeting, held on 27.02.2024, as Agenda Item No.12 and was decided accordingly - extract of the minutes of the meeting regarding Item No.12 was intimated through order dated 01.04.2024. Evidently, the Syndicate acknowledged, affirmed and validated the exercise of jurisdiction by the Vice Chancellor, that is an act of constituting Fact-Finding Committee – scope of recommendations by the Fact-finding committee are not subject matter of present challenge.

5. Determination of the question of jurisdiction of the Vice Chancellor, by the Syndicate in 85th meeting, is subject matter of present challenge.

6. Report and para-wise comments were solicited and submitted by the University.

7. Learned counsel for first and second petitioners contends that the Syndicate had failed to appreciate, construe and follow the mandate of the directions / observations recorded in paragraph 9 (supra). Submits that Syndicate, single mindedly, considered the scope, effect and applicability of section 15(1) of Act, 1975, while conspicuously ignoring the relevance, scope and effect of the powers otherwise extended unto various Authorities,

for purposes of composition of various committee(s), by virtue of section 29 of the Act 1975, which details of Authorities conspicuously exclude the Vice Chancellor – Vice Chancellor is not classified as Authority under section 21 of the Act, 1975. Learned counsel explains that section 15(1) of Act, 1975 has no application in the context of the controversy, which provision of law cannot be relied upon to confer or extend purported power to the Vice Chancellor to constitute the Fact-Finding committee, which is the domain of the Authorities identified in section 29, *ibid.*– [Syndicate for the purposes of present controversy].

8. Conversely, learned counsel for the University and others submits that exercise of power by the Vice Chancellor, to constitute the Fact-Finding committee, strictly comes within the scope of section 15(1) of the Act 1975, which empowers the Vice Chancellor, as principal executive officer of the University and responsible for administrative control over the affairs and officers of the University, to act accordingly. Adds that section 29 of the Act, 1975, for the purposes of present controversy, is not attracted. Further submits that powers extended to the Vice Chancellor cannot be undermined by superimposing the effect of section 29 of the Act, 1975, which provision has

its peculiar contextual relevance within the context of the powers and duties, statutorily assigned to each of the Authority defined therein. Learned counsel also objects to assumption of jurisdiction in the context of observations recorded in the case of Pakistan Bar Council through Chairman and others vs. Federal Government through Establishment Division and others (2019 SCMR 389).

9. Heard. Learned counsel concur that scope and jurisprudential potentiality of section 29 of the Act, 1975 is an unchartered territory and uncertainty encompassing it requires adjudication.

10. Despite plea of overshadowing uncertainty there appears a silver lining, which is an acknowledgment and recognition extended through order of 13.12.2023, whereby learned Division Bench affirmed the authority of the Syndicate to determine the scope and effect of jurisdiction exercised by the Vice Chancellor, while constituting the Fact-Finding committee. It is apparent from the reasoning of the order of 13.12.2023 that exercise of authority by the Vice Chancellor was analyzed and gauged in the context of power of delegation, extended to the Syndicate under section 25(cc) of Act, 1975. It is pertinent to mention that section 25(cc) of the Act, 1975 may not be relevant for the purposes of present

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controversy, since it never was the case of the University that power so exercised by the Vice Chancellor was a delegated authority of the Syndicate or borrowed one, but independently vesting in the Vice Chancellor under section 15 of the Act, 1975.

In these circumstances, relevance and exclusivity of section 15(1) of the Act, 1975 cannot be undermined, which in fact requires sharper focus while deciding the controversy. It is expedient to reproduce texts of sections 15 and 29 of the Act, 1975 for reference, which read as,

15. Powers and duties of the Vice-Chancellor.– (1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall ensure that the provisions of this Act, the Statutes, the Regulations and the Rules are faithfully observed in order to promote teaching, research, publication, administration and the general efficiency and good order of the University. He shall have all powers necessary for this purpose including administrative control over all officers, teachers and other employees of the University.

(2) The Vice-Chancellor shall preside at the meetings of the Authorities of which he is the Chairman and be entitled to attend and preside at any meeting of any other Authority or body of the University.

(3) Subject to such conditions as may be prescribed, the Vice Chancellor may, in an emergency, take an action which is not otherwise in the competence of the Vice Chancellor but is in the competence of any other Authority.

(3a) The Vice Chancellor shall, within seven days of taking an action under sub-section (3), submit a report of the action taken to the Pro-Chancellor and to the members of the Syndicate; and, the Syndicate shall, within forty five days of such an action of the Vice-Chancellor, pass such orders as the Syndicate deems appropriate.

(4) The Vice-Chancellor shall also have the powers–

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- (i) to sanction all expenditure provided for in the approved budget, and to re-appropriate funds within the same major head of expenditure;
- (ii) to sanction by re-appropriation an amount not exceeding Rs. 5,000 for an unforeseen item not provided for in the budget and report it to the Syndicate at the next meeting;
- (iii) to appoint paper setters and examiners for all examinations of the University after receiving panels of names from the relevant Authorities;
- (iv) to make such arrangements for the scrutiny of papers, marks and results as he may consider necessary;
- (v) to direct teachers, officers and other employees of the University to take up such assignments in connection with teaching, research, examinations, administration and such other activities in the University as he may consider necessary for the purpose of the University;
- (vi) to delegate, subject to such conditions, if any as may be prescribed, any of his powers under this Act to an officer or officers of the University;
- (vii) to appoint employees below the initial monthly pay of Rs.500; and
- (viii) to exercise and perform such other powers and functions as may be prescribed.

29. Appointment of committees by certain Authorities.— The Senate, the Syndicate, the Academic Council and other Authorities may, from time to time, appoint such standing, special or advisory committees **as they may deem fit** and may nominate such persons on these committees as are not members of the Authorities appointing the committees.

[Emphasis supplied]

11. No objection regarding co-existence of sections 15 and 29 of the Act, 1975 is raised, nor superiority of one provision over the other is pleaded. Conspicuously, powers and duties of the Vice Chancellor are defined under section 15 of the Act, 1975. Likewise, the composition, powers and duties of the Syndicate are specified in section 25 of

the Act, 1975. Pertinent to mention that powers and duties of each of the Authority, identified in section 29 of the Act, 1975, are otherwise separately listed in the Act, 1975. Syndicate is the executive body of the University, subjected to the provisions of the Act of 1975, which exercises general supervision over the affairs of the University. No power or corresponding duty is shown to vest in the Syndicate in the context of *raison d'être* of the Fact-Finding committee. Whether Syndicate, if it deems fit, could proceed to direct formation / appointment of any standing, special or advisory committee(s) with respect to any power or corresponding duty, statutorily assigned to any other Authority – for instance if any specific power or duty is assigned to the Academic Council; whether committee could be constituted by Syndicate in the context of the power of the Academic Council or for that matter the Senate. Likewise, powers and duties assigned to each Authority and the Officers of the University – [defined under section 10 of the Act, 1975] are Authority or officer specific, in the context of Act of 1975. Hence, intrusion by one Authority in the domain of powers conferred and duties assigned to other Authority or in the powers and duties prescribed for the Officers of the University, or by way of passing of any order by the Authority, in excess of

the powers and duties defined in the Act, 1975, is impermissible, unjustified, devoid of authority and in fact a non-starter. Therefore, the assignment / power extended upon each of the Authority, in terms of section 29 of the Act, 1975, to constitute committee(s) – [standing, special or advisory] – has to be read and construed in the company of the powers extended and duties assigned to each of the Authority and the Officers of the University. And building on this line of reasoning, there appears no cavil that exclusivity to constitute committees by each of the Authority is confined to the extent of the powers and duties prescribed. And any incidence of intrusion / encroachment, by constituting committee(s) with reference to any matter, otherwise falling outside the domain or authority of any particular Authority constitutes statutory wrong, having consequence of disturbing the structural balance and administrative framework knitted through the Act, 1975. By same analogy, the Syndicate lacks authority, in terms of section 29 of the Act, 1975, to constitute committee(s) with reference to the matter, otherwise coming within the jurisdictional domain of the Vice Chancellor – scenario would be different if the Syndicate, while hearing any objection or representation against some action or decision of the Vice Chancellor, provided such

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course is provided in law, considers appropriate to constitute any committee, be it under section 29 of the Act, 1975 or otherwise provided by virtue of Statutes, Regulations or Rules. In this case learned Division Bench remitted matter to the Syndicate for determining the question of jurisdiction of Vice Chancellor. Syndicate has neither claimed nor indicated any intent to exercise power under section 29 of the Act, 1975. Additionally, no exclusivity is otherwise claimable by any of the Authority under section 29 of the Act, 1975, but to the extent of the powers extended and duties assigned under the Act, 1975, Statutes, Regulations or Rules, as the case may be.

12. Argument by the counsel for the petitioner is otherwise flawed on its face. Textual reading of section 29 of the Act, 1975, at the first blush, extends an impression that powers extended thereunder, exercisable by each of the Authority(ies) are discretionary and exercisable 'as they may deem fit'. Now the context is that learned Division Bench of this Court, vide order of 13.12.2023, remitted matter to the Syndicate for determining validity of the decision of Vice Chancellor, and the Syndicate – decision-making authority - had acknowledged and recognized the authority / jurisdiction of the Vice Chancellor under section 15(1) of the Act, 1975 vis-à-vis

an act of constituting the Fact-Finding committee. It is absurd to attribute ignorance to the Syndicate qua its powers and duties, including the authority extended under section 29 of the Act, 1975. Acquiescence on the part of the Syndicate adequately answers and explains a lot. Whether such determination does not demand deference to the decision by the decision-making authority and showing restraint in exercise of judicial review jurisdiction. In fact, the jurisdiction of the Syndicate, to constitute a committee, is advocated tenaciously, however said Authority, when asked to adjudge the legality of act of the Vice Chancellor, had subscribed to it. This endorsement *per se* gravitates lawfulness qua the exercise of powers by Vice Chancellor by constituting the Fact-Finding committee, in the factual context of the case.

13. While exercising judicial review jurisdiction, substantially the elements of correctness and reasonableness need to be analyzed. Determination by the Syndicate meets the standard of correctness and standard of reasonableness, qua the order – absence of fairness or lack of provisioning of adequate opportunity are not pleaded as ground. And last but not the least, an act of formation of the Fact-Finding Committee, in wake of discrepancies in the registration returns record of LLB 03-

year program, is substantially a matter coming within the domain of administrative functions of the Vice Chancellor, who is assigned with the duty of ensuring compliance with laws / statutes / regulations. In wake of the affirmation by the Syndicate, that exercise of power / authority by Vice Chancellor is lawful and permissible, no case for assumption and exercise of jurisdiction is made out, which assumption, in view of the narrative, tantamount to interference in the internal affairs of the University and in fact constitute an act of usurpation of power of another decision-making authority, when no occasion arises for reviewing the decision of the decision-making authority. This kind of interference, in the circumstances of present case, in the guise of judicial review jurisdiction, is deprecated in terms of the ratio of decision in the case of Vice-Chancellor Agriculture University Peshawar and others V. Muhammad Shafiq (2024 SCMR 527). It is therefore, declared that section 29 of Act, 1975 has no application to this case. Decision of the Syndicate is upheld on merits.

Objection qua absence of jurisdiction to hear this petition on merits is misconceived, wherein, primarily, questions raised is whether direction(s) by learned Division Bench, while allowing ICA No.137/2023, were

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duly complied and whether any provision of Act, 1975 was misconstrued and misinterpreted to the prejudice of the petitioners. Scope of fact-finding committee and recommendations are not subject matter of adjudication, hence, observations recorded in the case of Pakistan Bar Council through Chairman and others V. Federal Government through Establishment Division and others (2019 SCMR 389) are not attracted. In view of above, order impugned manifests no illegality or any defect apparent thereupon requiring interference.

14. This and accompanied petitions are dismissed in wake of the narrative above.

(ASIM HAFEEZ)
Judge

M.S.Aleem

Approved for reporting.

Judge