IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE SAJJAD ALI SHAH

CIVIL APPEALS NO.3 AND 4 OF 2018 AND
(on appeal from the judgment/order dated 07.12.2017 passed by the Lahore High Court, Lahore in I.C.A. No.98703/2017)

CIVIL PETITION NO.3412 OF 2017 AND
(on appeal from the judgment/order dated 28.08.2017 passed by the Islamabad High Court, Islamabad in W.P.2975/2016)

CIVIL PETITIONS NO.45 AND 64 TO 70 OF 2018
(on appeal from the judgment/order dated 07.12.2017 passed by the Lahore High Court, Lahore in I.C.A.98703/2017)

1.	Pakistan Medical and Dental Council through its President	In C.As.3 & 4/2018
2.	Prof. Dr. Masood Hameed Khan	In C.P.3412/2017
3.	Pakistan Association of Private Medical and Dental Institution through its D.G.	In C.P.45/2018
4.	Pakistan Medical and Dental Council through its President	In C.Ps.64 to 70/18

...Appellant(s)/Petitioner(s)

VERSUS

1.	Muhammad Fahad Malik etc.	In C.A.3/2018
2.	Pakistan Association of Private Medical and Dental Institution etc.	In C.A.4/2018
3.	Federation of Pakistan through Secretary M/o National Health Services Regulation and Coordination and another	In C.P.3412/2017
4.	Federation of Pakistan etc.	In C.P.45/2018
5.	Muhammad Osama & others	In C.P.64/2018
6.	Taha Ahmed Train & others	In C.P.65/2018
7.	Hubaid Haider & others	In C.P.66/2018
8.	Shaniyaal Shahid & others	In C.P.67/2018
9	Mahnoor Ahsan Bhoon & others	In C.P.68/2018
10.	Ahmed Iqbal & others	In C.P.69/2018
11.	Azeem Izhar & others	In C.P.70/2018

... Respondent(s)

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(In C.As.3 & 4/2018 also in In CPs 64 to 70/18)

Sardar M. Latif Khan Khosa, Sr. ASC
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(In C.P.3412/2017)

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For the respondent(s): Respondent in person a/w father
(For respondent No.1 In C.A.3/2018)

Mr. Munawar-us-Salam, ASC
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(For respondent No.8 in C.A.3/2018)

Syed Ali Zafar, ASC
Mr. Munawar-us-Salam, ASC
Mr. Zahid Nawaz Cheema, ASC
(For respondent No.1 in C.A.4/2018)

Mr. Muhammad Akram Sheikh, Sr. ASC
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(For respondent No.2 in C.P.3412/2017)

Commander (R) Farasat Ali, Deputy Registrar, NUMS
(For respondent No.6 in C.A.3/2018)

Mr. Ahsan Masood, Legal Advisor, CMH Lahore Medical College
(For respondent No.7 in C.A.3/2018)

Dr. Arshad Ali Khan, AMS + Usman Rana, Litigation Officer
Ch. Muhammad Attique, Legal Advisor, UHS
(For respondents No.3 & 4 in C.A.3/2018)

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On Court's notice: Dr. Asim Hussain

Date of Hearing: 12.01.2018

JUDGMENT

MIAN SAQIB NISAR, CJ.– The facts of the instant matters are that as per the Admission in MBBS/BDS Courses and Conditions for House Job/Internship/Foundation Year Regulations, 2013 *(Regulations of 2013)* the students who did their F.Sc. were eligible for admission in medical and dental colleges on the basis of the marks they obtained in F.Sc. and the Medical & Dental College Admission Test *(MDCAT)*, whereas the students who completed their A-levels were eligible for admission in medical and

dental colleges on the basis of the marks obtained *vide* equivalence certificates issued by the Inter Board Committee of Chairmen, Government of Pakistan, Islamabad *(IBCC)* and their SAT-II scores in lieu of the MDCAT. On 27.10. 2016, the Regulations of 2013 were repealed by the MBBS and BDS (Admissions, House job and Internship) Regulations, 2016 *(Regulations of 2016)* in terms of which A-level students could no longer rely on their SAT-II results for the purposes of admission in medical and dental colleges and were required to take the MDCAT instead. The students who desired to seek admission in medical and dental colleges for the 2017-18 session had completed their A-levels in June, 2017 and obtained their equivalence certificates from IBCC. Thereafter, they appeared for the SAT-II held in June and October, 2017. Some of them, by way of abundant caution, also appeared in the MDCAT held in October, 2017. They challenged the Regulations of 2016 on the ground that when they commenced their A-levels in 2015 and took the necessary steps over the next two years in preparation for admission in medical and dental colleges for the 2017-18 session, the Regulations of 2013 were in the field, whereby they were entitled to have their SAT-II marks considered in lieu of that of the MDCAT, but at the eleventh hour, the Pakistan Medical and Dental Council *(interchangeably referred to as 'PMDC' or 'the Council' where appropriate)* brought about major changes in the admission criteria through the Regulations of 2016 without any notice, making the MDCAT mandatory and doing away with the SAT-II score, which violated their rights. In the previous year, the students had been given a concession that their admissions would be made under the Regulations of 2013 instead of the Regulations of 2016, thus, it was the case of these students that they too were entitled to the same treatment as they had already completed one year of their A-levels in October, 2016 and had planned the entire year on the understanding that they would be governed by the Regulations of 2013, therefore, they had a legitimate expectation to be admitted on the basis of the SAT-II score.

2. The Regulations of 2016 also introduced the Centralized Admission Program *(CAP)* at the Provincial level *(though not being practically implemented in all the Provinces)*, whereby all the private medical and dental colleges were required to submit a plan on the basis of which the University of Health Sciences *(UHS)* would receive all the applications for admission in private medical and dental colleges, process the same on the basis of preferences stated by the students and thereafter, finalize a merit list for all such private colleges which would then admit the students on the merit list prepared by UHS. Private medical and dental colleges evinced concerns regarding CAP, so negotiations took place between PMDC and the Pakistan Association of Private Medical and Dental Institutes *(PAMI)*; however, PMDC set out to enforce the mechanism prescribed under the Regulations of 2016. Despite that, the private medical and dental colleges commenced their admission process independently; whereas, UHS also issued advertisements calling for applications for admission in private and medical dental colleges, which created confusion among the students. In the circumstances, PAMI and some private medical colleges challenged the Regulations of 2016 and the actions of the authorities taken thereunder on the touchstone of Article 18 of the Constitution of the Islamic Republic of Pakistan, 1973 *(Constitution)* for violation of their fundamental right to do business under the Pakistan Medical and Dental Council Ordinance, 1962 *(Ordinance of 1962)*.

3. The learned High Court *vide* impugned judgment held and declared as under:-

> *(i) that the Council constituted under the Amendment Ordinance ceased to exist as of 25.4.2016 with the lapse of the Amendment Ordinance and the constitution and composition of the Council as under the 1962 Ordinance stood revived as on 25.4.2016. However the constitution of the Council and all acts, orders and decisions including the 2016 Regulations taken by the Council after*

25.4.2016 shall remain protected under the de facto doctrine until the legal Council is constituted as per law;

(ii) *that the Federal Government shall constitute the Council in terms of Section 3 of the 1962 Ordinance within three months' time;*

(iii) *that the existing Council shall carry out the day to day business of PMDC till the constitution of the new Council and shall not frame any new regulations or amend existing regulations under the 1962 Ordinance;*

(iv) *that Regulations 9(6)(7)(8) and (11) of the 2016 Regulations qua the centralized admission program is beyond the authorized mandate of PMDC under the 1962 Ordinance and inconsistent with the intent of the stated Ordinance, hence declared to be without lawful authority and of no legal effect, therefore struck down;*

(v) *that students who completed their A level in June 2017 are entitled to be admitted into medical and dental colleges on the basis of their SAT II score for the 2017-18 session;*

(vi) *that all decisions of the Council post 25.4.2016 including the 2016 Regulations along with the issues raised by private medical and dental colleges as well as students be placed before the CCI, to review the standards and criteria set under the 2016 Regulations to ensure compliance of the Constitution within the next six months;*

(vii) *as a future course of action PMDC will work under the supervision and control of the CCI and all policies and regulations prepared by them shall be approved by the CCI and will be binding if they are compliant with the constitutional mandate.*

4. The facts of Civil Petition No.3412/2017 are that the petitioner became a Member of PMDC for a period of four years on the basis of the elections held in 2013, and then was elected as its President. Through the Pakistan Medical & Dental Council (Amendment) Ordinance, 2014 *(Ordinance of 2014)*, Section 36B of the Ordinance of 1962 was substituted and by virtue of the new Section 36B, the Council functioning at that time was made dysfunctional and consequently, a new Managing Committee was constituted. The Ordinance of 2014 stood repealed in terms of Article 89(2)(a)(ii) of the Constitution as the same was disapproved by the Senate of

Pakistan through a Resolution dated 23.04.2014. On 28.08.2015, by virtue of the Pakistan Medical & Dental Council (Amendment) Ordinance, 2015 *(Ordinance of 2015)*, PMDC was again dissolved and structural changes in its constitution and composition were made. Pursuant to the Ordinance of 2015, a fresh Managing Committee was constituted, elections were held and a new Council was elected. The Ordinance of 2015 was not enacted as an Act of Parliament; however, after the expiry of 120 days, it was extended for a period of another 120 days by the National Assembly on 26.12.2015, whereafter the same lapsed on 24.04.2016. After the lapse/repeal thereof, the petitioner claimed to have been revived as the President of PMDC. He filed a writ petition before the learned Islamabad High Court which held, *inter alia*, as under:-

> *(a) though the Ordinances of 2014 and 2015 have lapsed/expired/repealed, however, by virtue of Section 6A of the General Clauses Act, the amendments/substitutions made in the Ordinance of 1962 have survived and are still alive and are part of the said Ordinance, as such, the petitioner is no longer the Member of the PMDC and/or its President;*
>
> *(b) the Ordinances of 2014 and 2015 cannot be held to be invalid on the ground that those were not laid before the Council of Common Interests before promulgation; and*
>
> *(c) it is trite law that the operation of the judgment is prospective and not retrospective, hence the Ordinances of 2014 and 2015 are not hit by the judgment of this Court in* ***M/s Mustafa Impex, Karachi & others Vs. Government of Pakistan through Secretary Finance, Islamabad and others*** *(PLD 2016 SC 808).*

5. Heard. For the sake of brevity, the arguments of the learned counsel are not noted separately and will reflect in the course of the opinion. The questions that emerge from the instant matters are:-

(a) Whether after the 18th constitutional amendment, whereby the medical profession was included in Part II of the Federal Legislative List, the laws, especially, the

Medical and Dental Council (Amendment) Ordinance, 2013 *(the Ordinance of 2013)* and the Ordinances of 2014 and 2015 *(collectively referred to as the 'Amendment Ordinances')*, amending the Ordinance of 1962, were validly enacted or the approval of the Council of Common Interests *(CCI)* was necessary before promulgating those laws;

(b) Whether the approval of CCI was necessary before making the Regulations of 2016;

(c) Whether after the lapse/repeal of the Amendment Ordinances, the amendments/substitution made thereby would survive or be gone with them;

(d) Whether the actions/activities undertaken by PMDC during the period when the Amendment Ordinances were in the field and those undertaken after the lapse/repeal thereof, were protected/saved, and if yes, to what extent; and

(e) If the amendments/substitutions made by the Amendment Ordinances have gone with their lapse/repeal, whether the members/President of the PMDC, existing prior to that, stood revived or not?

6. Before dilating upon the legal issues involved, it is appropriate to set out briefly the history of the laws pertaining to PMDC and the amendments made therein. Initially, a Medical Council was established under the Indian Medical Council Act, 1933 *(Act of 1933)*. After partition of the sub-continent, on the recommendation of the Health Conference in 1947, the Act of 1933 was adopted and a Medical Council constituted thereunder. The Medical Council was re-organized under the Pakistan Medical Council Act, 1951, which provided for a Medical Council for each Province. In 1957, the West Pakistan Medical Council was created by merging the Sindh and Punjab Medical Councils. Thereafter, the Ordinance of 1962 was promulgated and under Section 3(1) thereof, the Federal Government was to constitute a Council comprising of the members provided therein, which *(members)* were to elect its President *[Section 3(2)]*. As per Section 6 of the Ordinance, 1962, the Council was to be a body

corporate having perpetual succession and a common seal, with power to acquire and hold property both movable and immovable, and to contract, and to sue and be sued. Section 3 of the Ordinance of 1962, as originally enacted, was subsequently amended from time to time. Through the Medical and Dental Council (Amendment) Act, 2012 *(Act of 2012)*, Section 3 *ibid* was substituted with a new Section 3 which is reproduced as under:-

> *"3. Constitution and composition of the Council.— (1) The Federal Government shall, by notification in the official Gazette, cause to be constituted a Council consisting of the following members, namely:-*
>
> *(a) One member each from the senate and the National Assembly to be nominated by the Chairman or, as the case may be, the Speaker from amongst the members of the respective House;*
>
> *(b) Secretary, Health Department of each Province;*
>
> *(c) One member each to be elected by the member of the Syndicate of each public sector Pakistan university from amongst the members of its medical faculty and dental faculty of all its constituent as well as affiliated colleges from each Province, Gilgit Baltistan, Federally Administered Tribal Areas (FATA) and Islamabad Capital Territory;*
>
> *(d) One member each to be elected by the members of the Syndicate of each private sector Pakistan university from amongst the members of its medical faculty and the dental faculty of all its constituent as well as affiliated colleges from each Province, Gilgit-Baltistan, FATA and Islamabad Capital Territory;*
>
> *(e) One member from each Province, Gilgit-Baltistan, FATA and Islamabad Capital Territory to be elected amongst themselves by the registered medical practitioners;*
>
> *(f) Four members to be nominated by the Federal Government of whom one shall be Surgeon General of the Armed Forces Medical Services;*
>
> *(g) One member to be elected from amongst themselves by the registered dentists from amongst themselves by the registered dentists from each Province, Gilgit-Baltistan, FATA and Islamabad Capital Territory.*

(h) one member to be elected from amongst the Professors of the teaching staff of the public sector medical colleges from each Province, Gilgit-Baltistan, FATA and Islamabad Capital Territory;

(i) One member to be elected from amongst the Professors of the teaching staff of private sector medical colleges from each Province, Gilgit-Baltistan, FATA and Islamabad Capital Territory;

(j) One member to be elected from amongst the Professors of teaching staff of public sector dental colleges from each Province, Gilgit-Baltistan, FATA and Islamabad Capital Territory;

(k) One member to be elected from amongst the Professors of the teaching staff of private sector dental colleges from each Province, Gilgit-Baltistan, FATA and Islamabad Capital Territory;

(l) One member to be elected by the Council of the College of Physicians and Surgeons;

(m) One member, belonging to the legal profession, to be nominated by the Chief Justice of Pakistan;

(n) Senior most officer looking after health matters at the Federal level or an authority looking after the affairs of Council at Federal level designated or notified by the Federal Government, as the case may be; and

(o) Immediate ex-President of the Council who shall be a member of the Council for one non-renewable term of three years provided that he or she will not hold office.

(2) The President of the Council shall be elected by the members of the Council from amongst themselves.

(3) No act done by the Council shall be invalid on the ground merely of existence of any vacancy in or any defect in the constitution of the Council.

(4) The President shall be the head of the office of the Council and shall be the competent authority for all employees of the Council."

It is to be noted that through the Ordinance of 2015, Section 3 *ibid* was again substituted.

7. The Act of 2012 inserted Section 36B in the Ordinance of 1962, whereby the incumbent Council was dissolved, however, it was provided that the President, Vice-President and the Executive Committee of the Council would stay intact till the appointment of the President, Vice-President and the Executive Committee of the Council after the elections which were to be held within one year. Thereafter, the Ordinance of 2013 substituted Section 36B *ibid* with a new one which provided that the Council constituted under Section 3 of the Ordinance, 1962 would stand dissolved upon the commencement of the Act of 2012, however, the President, Vice-President and Executive Committee of the Council existing before the Act of 2012, would stay intact, and the President and Vice-President would act as members of the said Committee. Moreover, the Federal Government was authorized to appoint an officer, not below the rank of BPS-20, as an Administrator to head the Executive Committee. The Administrator and the Executive Committee were to exercise powers of the Council till constitution of a new Council and to conduct elections within a period of 90 days. Accordingly, elections were held and the result was published in the Official Gazette on 22.05.2013. The petitioner *(in CP No.3412/2017)* became a Member of the Council and was appointed as its President on 30.04.2013. The law was again amended through the Ordinance of 2014 promulgated on 19.03.2014, whereby Section 36B was substituted with a new one, by virtue whereof the Members acting as the Council and Executive Committee were de-notified. The Federal Government was authorized to constitute a Management Committee comprising of seven professionals to exercise the powers vested in the Council, with one of the professionals to be nominated as Chairperson. The Management Committee was mandated to hold fresh elections within a period of 120 days. It was also tasked to examine, investigate and fix responsibility for any mismanagement, maladministration and wrongdoing in the affairs of the Council in the last regime, and authorized to review any

decision already taken by the Council or the Executive Committee. However the Ordinance of 2014 was subsequently disapproved by the Senate through a Resolution dated 23.04.2014, as such, it lapsed/stood repealed. On 28.08.2015, through the Ordinance of 2015, beside amending other provisions, Section 36B *ibid* was again substituted, whereby the Federal Government was again authorized to notify a Management Committee for the interim period and also notify the nominee Members of the Council when the election results are ready to be announced. The elections were to be held by the Management Committee within a period of 120 days from the commencement of the Ordinance. However, the Ordinance of 2015 was not passed by Parliament within the prescribed time period and lapsed; however, after its lapse, on 26.12.2015 it was extended for another period of 120 days till 26.04.2016, thereafter the same lapsed/stood repealed. It is well established that no *mala fide* can be attributed to Parliament. However, we are constrained to examine whether the manner in which the amendments were made from time to time through the various Ordinances, especially when the earlier ones were either not approved or indeed were disapproved by Parliament, was appropriate and fulfilled the requirement of Article 89 of the Constitution.

8. Mr. Muhammad Akram Sheikh, learned Sr. ASC representing PMDC submitted that being the regulator of medical education, PMDC has been authorized to frame regulations and policies with regard to medical colleges and the medical profession, therefore, the inclusion of members from private medical colleges/universities in PMDC is not appropriate, and this aspect of the matter has to be considered by this Court. In this regard it is to be noted that as per the original Ordinance of 1962, there was representation of various segments, including the Central/Federal Government, Armed Forces medical profession, Provincial Governments, medical/dental universities/colleges, medical practitioners and dentists and members of the legal profession *(to be nominated by the Chief Justice of*

Pakistan). Initially, there were no private medical/dental institutions in the Country and medical education was imparted only through public sector universities/colleges; as such, there was no question of representation of private medical/dental institutions in PMDC. However, from time to time, a number of private medical/dental institutions were allowed to be established. Thereafter, in order to ensure representation of private medical/dental universities and colleges, certain amendments were made in the Ordinance of 1962; inasmuch as, through the Act of 2012, it was provided in Section 3 *infra* that the Council would include one member each to be elected by the members of the Syndicate of each private sector Pakistan university from amongst the members of its medical faculty and the dental faculty of all its constituent as well as affiliated colleges from each Province, Gilgit-Baltistan, FATA and Islamabad Capital Territory *[Section 3(1)(d) of the Ordinance of 1962]* and one member each to be elected from amongst the Professors of the teaching staff of private sector medical colleges *[Section 3(1)(i) of the Ordinance of 1962]* and private sector dental colleges *[Section 3(1)(k) of the Ordinance of 1962]* from each Province, Gilgit-Baltistan, FATA and Islamabad Capital Territory. However, we must not lose sight of the fact that PMDC is a regulatory body and its functions include inspection and examination of private medical universities and colleges for the purposes of registration and affiliation and to make rules and regulations in this regard. Therefore, owing to the risk of a conflict of interest, as such, the inclusion of members from each private medical university/college in the country is not appropriate as it would result in their predominant position in the Council.

We shall now discuss the answers to the questions mentioned above.

(a) ***Whether after the 18th constitutional amendment, whereby the medical profession was included in Part II of the Federal Legislative List, the laws, especially, the Amendment Ordinances, amending the Ordinance of 1962, were validly enacted or the approval of CCI was necessary before promulgating those laws?***

9. At this stage it would be apposite to consider the role of CCI in the legislative process with regard to the matters in the Federal Legislative List and the *vires* of legislation made without its approval. The respondents' case is that under Article 154 of the Constitution, CCI has the power to formulate and regulate policies in relation to matters in Part II of the Federal Legislative List, and since the 18th Amendment to the Constitution, the medical profession has been included in Entry 11 of Part II of the Federal Legislative List therefore no law/regulation can be made without prior approval of CCI. Conversely, it is the appellants' case that Entry 16 of Part I of the Federal Legislative List deals with professional or technical training, as such, medical education falls within the purview of this Entry and no prior approval of CCI is necessary. The relevant provisions of the Constitution are as under:-

> *"**70. Introduction and passing of Bills.** (1) A Bill with respect to any matter in the Federal Legislative List may originate in either House and shall, if it is passed by the House in which it originated, be transmitted to the other House; and, if the Bill is passed without amendment, by the other House also, it shall he presented to the President for assent.*
>
> *(2) If a Bill transmitted to a House under clause (1) is passed with amendments it shall be sent back to the House in which it originated and if that House passes the Bill with those amendments it shall be presented to the President for assent.*
>
> *(3) If a Bill transmitted to a House under clause (1) is rejected or is not passed within ninety days of its laying in the House or a Bill sent to a House under clause (2) with amendments is not passed by that House with such amendments, the Bill, at the request of the House in which it originated, shall be considered in a joint sitting and if passed by the votes of the majority of the members present and voting in the joint sitting it shall be presented to the President for assent.*

(4) In this Article and the succeeding provisions of the Constitution, "Federal Legislative List" means the Federal Legislative List in the Fourth Schedule.

153. Council of Common Interests. *(1) There shall be a Council of Common Interests, in this Chapter referred to as the Council, to be appointed by the President.*

(2) The Council shall consist of-

(a) the Prime Minister who shall be the Chairman of the Council;

(b) the Chief Ministers of the Provinces;

(c) three members from the Federal Government to be nominated by the Prime Minister from time to time.

(4) The Council shall be responsible to Majlis-e-Shoora (Parliament) and shall submit an Annual Report to both Houses of Majlis-e-Shoora (Parliament).

154. Functions and rules of procedure. *(1) The Council shall formulate and regulate policies in relation to matters in Part II of the Federal Legislative List and shall exercise supervision and control over related institutions.*

(6) Majlis-e-Shoora (Parliament) in joint sitting may from time to time by resolution issue directions through the Federal Government to the Council generally or in a particular matter to take action as Majlis-e-Shoora (Parliament) may deem just and proper and such directions shall be binding on the Council.

(7) If the Federal Government or a Provincial Government is dissatisfied with a decision of the council, it may refer the matter to Majlis-e-Shoora (Parliament) in a joint sitting whose decision in this behalf shall be final.

Fourth Schedule, Part I, Federal Legislative List.

16*. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.*

Fourth Schedule, Part II, Federal Legislative List.

11*. Legal, medical and other professions.*

Under Article 70 of the Constitution, Parliament has been mandated to make laws with respect to any matter in the Federal Legislative List which, as per Sub-article (4) means the Federal Legislative List in the Fourth Schedule. In order to create inter-provincial harmony, CCI has been created under Article 153 of the Constitution which is appointed by the President and includes, the Prime Minister who shall be the Chairman of the Council, the Chief Ministers of the Provinces and three members from the Federal Government to be nominated by the Prime Minister from time to time. According to Article 153(4) of the Constitution, CCI is responsible to Parliament and is required to submit an Annual Report to both Houses *(of Parliament)*. Article 154(6) of the Constitution provides that Parliament may, from time to time, by resolution, issue directions through the Federal Government to CCI generally or in a particular matter to take action as Parliament may deem just and proper and such directions shall be binding on CCI. Furthermore, as per Article 154(7) of the Constitution, if the Federal or a Provincial Government is dissatisfied with a decision of CCI, it may refer the matter to Parliament in a joint sitting whose decision in this regard shall be final. Thus, the foregoing provision of the Constitution clearly indicates that CCI is subservient, and not superior to Parliament.

10. Parliament on the other hand, under Article 70 of the Constitution, has been given absolute authority to make laws with respect to the matters enumerated in the Federal Legislative List. From a plain reading of the said Article, it is abundantly clear that no constitutional restriction or constraint has been imposed upon the power and authority of Parliament to legislate with respect to the matters enumerated in the Federal Legislative List. Article 70 *ibid* is an independent Article and neither subject to nor subservient to any other provision of the Constitution. However, CCI does not have unfettered power and is responsible to Parliament. As per Article 154(1) of the Constitution, CCI has been given power to formulate and regulate policies in relation to matters in Part II of

the Federal Legislative List and to exercise supervision and control over related institutions. Therefore, it is clear from this provision that CCI has no role in the legislative process with respect to the matters enumerated in the Federal Legislative List, rather it is restricted to formulation and regulation of policies in relation to the said matters, and that too contained only in Part II of such List. Once policies are finalized, CCI cannot interfere in the legislative process, nor can any legislation be struck down for the reason that CCI was not involved in the relevant legislative process. Additionally, CCI can exercise supervision and control over the related institutions but not over Parliament, which according to the scheme of the Constitution is supreme and all the other institutions have to function whilst remaining within their constitutional domain. Thus, it is held that Parliament, without any restriction or constraint, has absolute and unfettered authority to make laws with respect to the matters enumerated in the Federal Legislative List, without requiring any approval or assent from any forum or authority in the country, including CCI *(except Presidential assent in terms of Article 75 of the Constitution)*.

(b) Whether the approval of CCI was necessary before making the Regulations of 2016?

11. In this regard, Section 33 of the Ordinance of 1962 is important which reads as below:-

> ***33. Power to make Regulations.*** *– (1)The Council may, with the previous sanction of the Federal Government, make Regulation generally to carry out the purposes of this Ordinance, and, without prejudice to the generality of this power, such Regulations may provide for–*
>
> *(a) the management of the property of the Council and the maintenance and audit of its accounts;*
>
> *(b) the summoning and holding of meetings of the Council, the times and places where such meetings are to be held, the conduct of business thereat and the number of members necessary to constitute a quorum;*

(c) the powers and duties of the President and Vice President;

(d) the mode of appointment of the Executive Committee and other Committees, the summoning and holding of meetings, and the conduct of business of such Committees;

(e) code of practice and ethics for the medical and dental practitioners;

(f) the appointment, powers, duties and procedures of medical and dental inspectors;

(g) the conditions and procedure for maintenance, compilation and publication of the Register of medical and dental practitioners and of health care providing facilities and their minimum requirements and the fees to be charged for registration and, if necessary, for opening of sub-offices or branches for this purpose;

(h) the procedure for any inquiry under sub-section (1) of section 31; and

(i) any matter for which under this Ordinance provision may be made by regulations.

(2) Notwithstanding anything contained in sub-section (1) the Council shall make Regulations which may provide for–

(a) prescribing a uniform minimum standard of courses of training for obtaining graduate and post-graduate medical and dental qualifications to be included or included respectively in the First, Third and Fifth Schedules;

(b) prescribing minimum requirements for the content and duration of courses of study as aforesaid;

(c) prescribing the conditions for admission to courses of training as aforesaid;

(d) prescribing minimum qualifications and experience required of teachers for appointment in medical and dental institutions;

(e) prescribing the standards of examinations, methods of conducting the examinations and other requirements to be satisfied for securing recognition of medical and dental qualifications under this Ordinance;

(f) prescribing the qualifications, experience and other conditions required for examiners for professional examinations in medicine and dentistry antecedent to the granting of recognized medical and dental and additional medical and dental qualifications;

> *(g) registration of medical or dental students at any medical or dental college or school or any university and the fees payable in respect of such registration;*
>
> *(h) laying down criteria including university affiliation, conditions and requirements for recognition and continuation of recognition and for grant of status of a teaching institution of institutions and organizations under this Ordinance and on all connected matters of inspection of medical and dental institutions for recognition and continuation of recognition and inspection of examinations in these institutions and fee for such inspections;*
>
> *(i) terms and conditions of service for all employees appointed under section 9;*
>
> *(j) election of members of the Council; and*
>
> *(k) prescribing a uniform minimum standard for continuous professional development for registered graduate and post-graduate medical and dental practitioners.*

Parliament, by means of Section 33(1) of the Ordinance of 1962, has authorized PMDC to make regulations with the prior approval of the Federal Government on the matters enumerated therein. Through Section 33(2) of the Ordinance of 1962, Parliament has allowed PMDC to make regulations on its own accord without the prior approval of the Federal Government on the matters provided therein. These powers have been granted to PMDC by Parliament, the supreme law-making authority. Having held above that Parliament has the absolute authority to make laws and that the approval of CCI is not required in this regard, we find that regulations promulgated in exercise of delegated powers available under the parent statute also do not require the approval of CCI. Having so held, we are not required to consider whether the laws regulating medical institutions are covered by Entry 16 of Part I or Entry 11 of Part II or any other Entry of the Federal Legislative List.

12. A related aspect of the matter is whether PMDC is authorized to promulgate regulations pertaining to the centralized admission program. Notwithstanding our finding on the validity of the Regulations of 2016

hereinbelow, we find that the object of the centralized admission program is to monitor the system of admissions to ensure merit-based selection of students in institutions without any extraneous considerations. Therefore in light of be Section 6 of the Ordinance of 1962 *(as amended by the Act of 2012)* according to which PMDC is to act as a regulatory body for three things: (i) medical and dental profession; (ii) medical and dental education, and (iii) medical and dental institutions, and considering the scope of PMDC's power to make regulations *(Section 33 ibid)*, we find that it is authorized to monitor the whole process of admission which includes, particularly, the centralized admission program at the Provincial level and any regulations promulgated on this matter shall neither be beyond the authorized mandate of PMDC under the Ordinance of 1962, nor inconsistent with the intent thereof.

(c) Whether after the lapse/repeal of the Amendment Ordinances, the amendments/substitution made thereby would survive or be gone with them?

13. It is the case of the learned counsel for PMDC and the learned Attorney General for Pakistan that where a textual amendment, i.e. insertion, omission or substitution, is made in a statute, the same remains alive despite repeal of the amending law. Reliance in this regard was placed on a judgment from India reported as **Jethanand Betab Vs. The State Of Delhi (Now Delhi Administration) (AIR 1960 SC 89)**. On the other hand, learned counsel for the respondents argued that there is a distinction between a temporary legislation, which may exist for a limited period of time, and an Ordinance, which has a limited period of operation. Since the Ordinance of 2014 was disapproved and that of 2015 lapsed, the result is the revival of the position of law that prevailed prior to the amendments. In this regard, Article 264 of the Constitution was relied on to argue that when a law is repealed or is deemed to have been repealed, the repeal should not, except as otherwise provided in the Constitution, affect the previous

operation of law. Reference was made to the judgments reported as **Government of Punjab through Secretary, Home Department Vs. Ziaullah Khan & two others (1992 SCMR 602)**, **Muhammad Arif & another Vs. The State & another (1993 SCMR 1589)**, **Muhammad Naeem Vs. The State (1992 SCMR 1617)**, **Peer Sabir Shah Vs. Federation of Pakistan and others (PLD 1994 SC 738)** and **Syed Fayyaz Hussain Qadri Vs. The Administrator (PLD 1972 Lah. 316)**.

14. The facts in **Jethanand Betab**'s case *(supra)* are that the appellant therein was tried and convicted under Section 6(1-A) of the Indian Wireless Telegraphy Act, 1933, which was inserted therein by means of the Indian Wireless Telegraphy (Amendment) Act, 1949 *(Act of 1949)*, however, the said amending Act was repealed by the Repealing and Amending Act, 1952 *(Act of 1952)*. It was the case of the appellant therein that after the repeal of the amending Act, on the date of the alleged commission of the offence the said Section was not on the statute book, as such he *(the appellant therein)* could not be tried and convicted for that offence. The Supreme Court of India held that the said Section continued to be on the statute book even after the amending Act of 1949 was repealed by the Act of 1952, and that it was in force when the offence was committed by the appellant. It was further observed that "*[i]t is, therefore, clear that the main object of the 1952 Act was only to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of ever increasing spate of legislation and to remove confusion from the public mind. The object of the Repealing and Amending Act of 1952 was only to expurgate the amending Act of 1949, along with similar Acts, which had served its purpose*." Thus, the said case is distinguishable, as the effect of repeal of an amending Act through a later Act was considered, whereas, the effect of lapse/repeal of an Ordinance was neither in issue nor considered therein, which is the moot point in the instant case.

15. First, we shall consider whether there is any difference between temporary legislation made by Parliament and an Ordinance promulgated

by the President. The germane question is this: what is the spirit of the Constitution while authorizing the President to enact temporary legislation, i.e. an Ordinance? As mentioned above, under Article 70 of the Constitution, Parliament has the absolute authority to make laws with respect to any matter in the Federal Legislative List. Parliament can pass any Act which is time bound or applicable for a limited period of time. However, it is Article 89 of the Constitution which empowers the President to promulgate an Ordinance, which reads as under:-

> *"89.* ***Power of President to promulgate Ordinances. –*** *(1) The President may, except when the Senate or National Assembly is in session, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance, as the circumstances may require.*
>
> *(2) An Ordinance promulgated under this Article shall have the same force and effect as an Act of Majlis-e-Shoora (Parliament) and shall be subject to like restrictions as the power of Majlis-e-Shoora (Parliament) to make law, but every such Ordinance-*
>
> *(a) shall be laid-*
> *(i) before the National Assembly if it contains provisions dealing with all or any of the matters specified in clause (2) of Article 73, and shall stand repealed at the expiration of one hundred and twenty days from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution:*
>
> *Provided that the National Assembly may by a resolution extend the Ordinance for a further period of one hundred and twenty days and it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution:*
>
> *Provided further that extension for further period may be made only once.*

(ii) before both Houses if it does not contain provisions dealing with any of the matters referred to in sub-paragraph (i), and shall stand repealed at the expiration of one hundred and twenty days from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by either House, upon the passing of that resolution:

Provided that either House may by a resolution extend it for a further period of one hundred and twenty days and it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by a House, upon the passing of that resolution:

Provided further that extension for a further period may be made only once.

(b) may be withdrawn at any time by the President.

(3) Without prejudice to the provisions of clause (2) –
(a) an Ordinance laid before the National Assembly under sub-paragraph (i) of paragraph (a) of clause (2) shall be deemed to be a Bill introduced in the National Assembly; and

(b) an Ordinance laid before both Houses under sub-paragraph (ii) of paragraph (a) of clause (2) shall be deemed to be a Bill introduced in the House where it was first laid."

From the foregoing provision, it is clear that there are two riders to the power of the President to issue an Ordinance, namely, the Senate or National Assembly must not be in session, and the President must be satisfied that circumstances exist which render it necessary to take immediate action. Meaning thereby, the President's authority to promulgate an Ordinance is not absolute, rather it depends upon the necessity of immediate action and the non-availability of a session of the Senate or National Assembly. For that reason, as per Article 89(2) of the Constitution, an Ordinance so promulgated, though it has the force and effect of an Act of Parliament, has to be laid before either the National Assembly or both Houses *[depending on whether it falls within part (i) or (ii) of Article*

89(2)(a) of the Constitution], before the expiration of 120 days from its promulgation. However, an Ordinance can be extended for a further period of 120 days by the National Assembly or either of the Houses *(as the case may be)* by a resolution and shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by the National Assembly or either of the Houses *(as the case may be)*, upon the passing of that resolution.

16. The authority to promulgate Ordinances has been considered in many cases. In **R.K. Garg etc. etc. Vs. Union of India & Ors. etc. (AIR 1981 SC 2138)** while considering a similar power of the President to promulgate Ordinances under Article 123 of the Constitution of India, it was observed that:-

> "*At first blush it might appear rather unusual that the power to make laws should have been entrusted by founding fathers of the Constitution to the executive because according to the traditional outfit of a democratic political structure the legislative power must belong exclusively to the elected representatives of the people and vesting it in the executive though responsible to the Legislature would be undemocratic as it might enable the executive to abuse this power by securing the passage of an ordinary bill without risking a debate in the Legislature…It may be noted, and this was pointed out forcibly by Dr. Ambedkar while replying to the criticism against the introduction of Article 123 in the Constituent Assembly that the legislative power conferred on the President under this Article is not a parallel power of legislation. It is power exercisable only when both Houses of Parliament are not in session and it has been conferred ex-necessite in order to enable the executive to meet an emergent situation. Moreover, the law made by the President by issuing an Ordinance is of strictly limited duration.*"

In the case of **D. C. Wadhwa Vs. State of Bihar (AIR 1987 SC 579)**, the Supreme Court of India held that:-

> *"…every Ordinance promulgated by the Governor must be placed before the Legislature and it would cease to operate at the expiration of six weeks from the reassembly of the Legislature or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any. The object of this provision is that since the power conferred on the Governor to issue Ordinances is an emergent power exercisable when the Legislature is not in session, an Ordinance promulgated by the Governor to deal with a situation which requires immediate action and which cannot wait until the Legislature reassembles must necessarily have a limited life. Since Article 174 enjoins that the Legislature shall meet at least twice in a year but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session and an Ordinance made by the Governor must cease to operate at the expiration of six weeks from the reassembly of the Legislature, it is obvious that the maximum life of an Ordinance cannot exceed seven and a half months unless it is replaced by an Act of the Legislature or disapproved by the resolution of the Legislature before the expiry of that period…"*

In **Krishna Kumar Singh & Another Vs. State Of Bihar (AIR 1998 SC 2288)** it was held that:-

> "*Clearly, the power to promulgate an Ordinance is not a substitute for regular legislation passed by the Legislature of a State. It is a power conferred on the Executive in order to deal with any urgent situation while the Legislature is not in session. It is also of a limited duration. Article 213 does not contemplate that one Ordinance should be succeeded by several subsequent Ordinances without, at any stage, placing the Ordinances before the Legislature. It was this kind of practice which was condemned by the Constitution Bench of this Court in Dr. D.C. Wadhwa's case (supra). This Court observed in that case that the Government of Bihar made it a settled practice to deliberately go on re-promulgating the Ordinances from time to time on a massive scale in a routine manner*."

In **Krishna Kumar Singh & Another Vs. State Of Bihar & Others [(2017) 3 SCC 1]** the Supreme Court of India opined, *inter alia*, as follows:-

> *"…the Constituent Assembly did away with the extraordinary power of enacting an Act conferred on the Governor under Section 90 of the Government of India Act, 1935. However, it retained the impermanence of an Ordinance as is clear from a reading of Article 213 of the Constitution…in the absence of a savings clause Article 213 of the Constitution does not attach any degree of permanence to actions or transactions pending or concluded during the currency of an Ordinance…there is a recognizable distinction between a temporary Act which can provide for giving permanence to actions concluded under the temporary Act and an Ordinance which cannot constitutionally make such a provision. The reason for this obviously is that a temporary Act is enacted by a Legislature while an Ordinance is legislative action taken by the Executive. If this distinction is not appreciated, the difference between a temporary Act and an Ordinance will get blurred…it is clear from the Constitution that concluded actions and transactions under an Ordinance do not continue beyond the life of the Ordinance."*

In the case of **Zaibun Nisa Vs. Land Commissioner, Multan and others (PLD 1975 SC 397)** this Court held as under:-

> *"It will be seen that [Article 135 of the Constitution of Pakistan (1972)] is intended to make provision for emergency or temporary legislation at any time when the Provincial Assembly stands dissolved or is not in session, and it is for this reason that clause (2) of this Article, while conferring on an Ordinance promulgated by the Governor the same force and effect as an Act of the Provincial Legislature, contemplates that every such Ordinance shall be laid before the Provincial Assembly and shall cease to operate at the expiration of six weeks from re-assembly thereof, or if before the expiration of that period a resolution disapproving it is passed by the Provincial Assembly, upon the passing of that resolution. The same clause also provides that the Ordinance may be withdrawn at any time by the Governor. An Ordinance is, therefore, essentially in the nature of a temporary legislation,*

and its future operation is made conditional on the approval of the Provincial Assembly. The provisions contained in the proviso to clause (4) could not, therefore, be intended to confer permanency on an Ordinance, in violation of the clear stipulation in clause (2) of the Article."

In **Ziaullah Khan**'s case *(supra)* it was held as under:-

"12. It may be stated that an Ordinance is a temporary legislation. It cannot be given permanency in the absence of any sound legal principle or backing of law…

14. We may state that, if we were to accept Mr. Irfan Qadir's above contention, the same would be violative of Article 89 of the Constitution, which envisages that, if an Ordinance of the type in issue is not approved by both the Houses before the expiry of four months from its promulgation, the same shall stand repealed. The above clear Constitutional mandate cannot be defeated by pressing into service any rule of construction of statutes or a provision of a statute which cannot be pressed in aid while construing a Constitutional provision. We may further observe that our Constitution is a written Constitution based on Federal System. It envisages trichotomy of powers between the three limbs of the State i.e. the Legislature, the Executive and the Judiciary. In the above political set up the power to legislate is vested in the parliament. However, Article 89 of the Constitution empowers the President to promulgate an Ordinance when the National Assembly is not in Session or stands dissolved and he (the President) upon being satisfied that the circumstances exist which render it necessary to take immediate action. Such an Ordinance is to last, at the most, for four months, if not approved or if not rejected by the parliament earlier or withdrawn by the President in terms of sub-clause (a) of clause (2) of the above Article 89 of the Constitution.

The rationale behind providing an outer limit of four months for an Ordinance seems to be that even if the National Assembly or a Provincial Assembly stands dissolved at the time of promulgation of an Ordinance, the election of it is to take place within 90 days from the date of its dissolution in terms of clause 5 of Article 48 of the Constitution. Since Ordinance XIX of 1988 was not placed for approval before the

Parliament within the above time limit of four months in terms of sub-clause (a) of clause (2) of the Article 89, it stands repealed with the amendments contained therein upon the expiry of four months from the date of its promulgation."

Thus, there is a clear distinction between a temporary enactment made by Parliament and an Ordinance enacted by the President *(and Governor)*.

17. We shall now consider the effect of repeal of an Ordinance. In this regard, Article 264 of the Constitution is relevant:-

*"**264**. **Effect or repeal of laws.** Where a law is repealed or is deemed to have been repealed, by, under, or by virtue of the Constitution, the repeal shall not except as otherwise provided in the constitution,-*

(a) revive anything not in force or existing at the time at which the repeal takes effect;

(b) affect the previous operation of the law or anything duly done or suffered under the law;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law;

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law; or;

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed."

Sections 6 and 6A of the General Clauses Act, 1897 *(Act of 1897)* read as under:-

*"**6. Effect of repeal**.– Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not- Revive anything not in force or existing at the time at which the repeal takes effect, or Affect the previous operation of any enactment so repealed or anything duly done or suffered*

> *thereunder, or Affect any right, privilege, obligation or liability acquired, accrued or incurrent under any enactment so repealed, or Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or*
>
> *Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.*
>
> ***6A. Repeal of Act making textual amendment in Act or Regulation**.– Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."*

At this point, it is appropriate to consider some of the treatises and case-law that deal with the effect of repeal of temporary statutes/Ordinances. Craies on Statute Law (5th Ed.) states that:-

> *"The difference between the effect of the expiration of a temporary Act and the repeal of a perpetual Act, is pointed out by Parke, B., in Steavenson v. Oliver (1841) 8 M. & W. 234, 240, 241). There is a difference between temporary statutes and statutes which are repealed; the latter (except so far as they relate to transactions already completed under them) become as if they had never existed; but with respect to the former, the extent of the restrictions imposed, and the duration of the provisions are matters of construction."*

In the case of **Gooderham and Works Ltd. Vs. Canadian Broadcasting Corporation (AIR 1949 PC 90)** wherein, while dealing with the question of the survival of amendments affected by temporary legislations upon their expiry, the Privy Council held:-

> "*The repeal effected by the temporary legislation was only a temporary repeal. When by the fiat of Parliament the temporary repeal expired the original legislation automatically resumed its full force. No re-enactment of it was required*."

In **Mehreen Zaibun Nisa**'s case *(supra)* this Court, while considering the question as to whether Ordinance XV of 1972, being a temporary statute, could amend a permanent law such as Martial Law Regulation No. 115, held as under:-

> *"Apart from this basic objection, resting on the very nature of an Ordinance as a piece of temporary legislation, the proviso itself, as relied upon by the learned Attorney-General, makes it clear that it has a narrow and limited purpose, namely, of meeting the requirement specified in the proviso to clause (2) of Article 143 of the Interim Constitution in relation to the enactment of provincial laws on subjects included in the Concurrent Legislative List. As that proviso does not make a separate or special mention of the manner in which an Ordinance shall be promulgated in the Concurrent field, the proviso to clause (4) of Article 135 contains a special direction in this behalf, to the effect that an Ordinance containing provisions inconsistent with an Act of the Federal Legislature or an existing law with regard to a matter enumerated in the Concurrent Legislative List shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the President and assented to by him, provided the Ordinance is made by the Governor in pursuance of instructions from the President. Thus the proviso in question merely seeks to apply to an Ordinance the special stipulation contained in a subsequent Article on the subject of legislation in a Concurrent field, but does not have the effect of rendering the Ordinance promulgated by the Governor as a permanent Act of the Provincial Legislature for aid purposes…It, thus, becomes clear from the provision made in Act VI of 1973 that the Punjab Provincial Assembly did not regard Ordinance XV as being a piece of permanent legislation; on the contrary, it specifically laid down, in section 2 of this Act, that Ordinance XV shall continue in operation only for a period of six months with effect from the date on which it was to expire under clause 2 (a) of Article*

> *135 of the Interim Constitution. This direction of the Provincial Assembly would take effect under clause (2) of Article 135."*

In **Ziaullah Khan**'s case *(supra)* while considering the effect of the repeal of the Special Courts for Speedy Trials (Amendment) Ordinance, 1988, whereby a certain amendment was made in the Special Courts for Speedy Trials Act, 1987, on the expiration of four months from its legislation, it was held that provisions of the amending Ordinance, particularly the provision seeking to extend the life of the Act from one to two years did not survive the repeal:-

> *"9. A plain reading of the above section 6-A shows that when an amending Act, whereby the text of a Central Act or Regulation was amended, is repealed, then, unless a different intention appears, the repeal is not to affect the continuance of any such amendment made by the amending enactment so repealed. In other words, the effect of above section 6-A of the General Clauses Act is that, in spite of the repeal of an amending Act, the amendment, if it was in the text of any Act or Regulation, was to continue.*
>
> *10. Mr. Irfan Qadir has not been able to press into service the above section 6-A in the case in hand, as it is well-settled proposition of law that General Clauses Act cannot be used in aid while construing a Constitutional provision in the absence of making the same applicable through a Constitutional provision, as it was provided in Article 219 of the late Constitution of Islamic Republic of Pakistan, 1956…*
>
> *11. It may be mentioned that since there is no corresponding provision in the Constitution, the General Clauses Act cannot be pressed into service in the instant case, as has been rightly conceded by Mr. Irfan Qadir. However, his submission was that the above clause (b) of Article 264 of the Constitution can be equated with section 6-A of the General Clauses Act. In our view the above contention is not tenable as in fact, section 6 of the General Clauses Act, and not its section 6-A, is couched in terms of Article 264 of the*

Constitution, which is evident, if we were to place the above two provisions in juxtaposition…"

In the case of **Muhammad Arif and another Vs. the State and another (1993 SCMR 1589)** it was held as under:-

"12. At this stage it may be appropriate to point out that there is a marked distinction between a temporary enactment and a permanent enactment. In the case in hand, the Act was a statute of a temporary nature as subsection (2) of section 1 of it provided that it was to operate for a period of one year from the date on which it was assented to by the President. The rules of interpretation of such statutes are different from those which are permanent.

16. …It (the Act of 1987) was to operate only for one year from the date on which it was assented to by the President in terms of section 1 (2) thereof unless it was extended by the Parliament. The effect of promulgation of Ordinance XIX of 1988 was that the life of the Act was extended for a period of four months i.e. up to 12-2-1989. Since in the present case the Special Court recorded conviction on 11-4-1989 when the Act and Ordinance XIX of 1988 already stood lapsed, the judgment of the Special Court was coram non judice as has been held by the High Court…"

18. It is well-recognized that in case of any doubt or conflict between any two provisions of the Constitution, the Court has to construct the same harmoniously. First, it is to be determined whether or not there is any conflict between the provisions of Articles 89 and 264 of the Constitution. The clear mandate of Article 89 *ibid* is that while the President is authorized to make amendments in a permanent statute by promulgating an Ordinance, subject to the conditions mentioned therein, that Ordinance has been accorded only a limited period of effectiveness and operation, and cannot not operate beyond that period unless given permanency by Parliament by making it an Act of Parliament. On the other hand, Article 264 of the Constitution provides, *inter alia*, that where a law

is repealed, by, under, or by virtue of the Constitution, the repeal shall not, except as otherwise provided in the Constitution, revive anything not in force or existing at the time at which the repeal takes effect, or affect the previous operation of the law or anything duly done or suffered under the law. Does the Constitution provide for anything to the contrary or otherwise in this regard? The answer to this is yes – Article 89 of the Constitution, which clearly provides otherwise, i.e. every Ordinance shall stand repealed on the expiration of 120 days from its promulgation or upon the passing of a resolution disapproving it if passed by the National Assembly or either House *(as the case may be)* before the expiration of that period, however, the National Assembly or either House *(as the case may be)* may by a resolution extend, only once, the Ordinance for a further period of 120 days. What is the effect of an Ordinance on a permanent statute? To our mind, the effect is of a temporary nature, namely, any amendment/insertion/substitution made by it *(the Ordinance)* would only be for a limited period of 120 or at the most 240 days, unless provided permanency by Parliament by making it an Act of Parliament. Of course, in that eventuality, it would become a permanent statute. A combined reading of both the Articles makes it manifest that the intention of the legislature appears to be to limit the Ordinance making power of the President and not to give the President unlimited power to amend/alter/modify/change/rescind a permanent statute, which, of course, falls within the domain of Parliament.

19. If the argument of the learned counsel for PMDC and the learned Attorney General, that an amendment made by an Ordinance, despite its lapse/repeal becomes permanent, is accepted, it would enlarge the scope of Article 89 of the Constitution, inasmuch as, it would give the President unrestricted power to make permanent amendments in the existing law by promulgating an Ordinance, which is a temporary legislation and has only a limited lifespan. Meaning thereby, the President could amend a statute permanently through an Ordinance, without the

involvement/approval of Parliament, in cases where the Ordinance is not adopted by Parliament and expires/lapses or even where the it is disapproved by Parliament. As a consequence, though an Ordinance may lapse/be repealed, it would have a permanent bearing on an Act of Parliament amended through it *(Ordinance)* and this eventuality does not appeal to our mind. In this regard, the observation of this Court in paragraphs No.12 and 14 in **Ziaullah Khan**'s case *(supra)* reproduced above is iterated here. Furthermore, the response to the holding of the learned Islamabad High Court in the impugned judgment that though the Ordinances of 2014 and 2015 *(and to our mind the Ordinance of 2013)* had lapsed/expired/repealed, by virtue of Section 6A of the Act of 1897, the amendments/substitutions made in the Ordinance of 1962 survived and are still part of the said Ordinance, is the view of this Court provided in the view of this Court expressed in paragraphs No.9 to 11 in **Ziaullah Khan**'s case *(supra)* reproduced above, to which we fully subscribe. Thus, we are of the opinion that notwithstanding whether any amendment made by an Act of Parliament after the repeal of such amending Act would continue to operate or vanish, any amendment/insertion/introduction made by an Ordinance would not survive after its lapse/repeal. If, notwithstanding the fact that an Ordinance promulgated under Article 89 of the Constitution expires through efflux of time, the amendments made by it to a permanent statute, i.e. an Act of Parliament, are allowed to possess a permanent character, then this will virtually amount to giving plenary power of making permanent legislation to the Executive; it would be tantamount to providing the Executive a machinery to bypass the constitutional mandate of the Legislature and this we cannot permit, being absolutely against the spirit of the Constitution which embodies the important principles of democracy and trichotomy of powers.

20. With regard to the authority of the President to re-promulgate identical or somewhat identical Ordinances, it is pertinent to note that the

Ordinance making power under Article 89 *(or Article 128)* of the Constitution does not constitute the President *(or the Governor)* into a parallel source of law making or an independent legislative authority. The power to promulgate Ordinances is subject to legislative control. The failure to comply with the requirement of laying an Ordinance before the legislature is a serious constitutional infraction and abuse of the constitutional process. Re-promulgation of Ordinances, especially when the earlier ones were either not approved or disapproved by Parliament, is a fraud on the Constitution and a subversion of democratic legislative processes. In light of the above, any amendment/insertion/substitution made by the Amendment Ordinances in the Ordinance of 1962 did not survive after the former lapsed/were repealed, and the latter stood revived.

21. The validity of the Ordinances of 2014 and 2015 *(and to our mind the Ordinance of 2013)* was also challenged on the ground that they were hit by the ratio of the judgment of this Court reported as **M/s Mustafa Impex, Karachi & others Vs. Government of Pakistan through Secretary Finance, Islamabad and others (PLD 2016 SC 808)**. As per the scheme of the Constitution, the President has to act on the advice of the Prime Minister, which as per the law laid down by this Court in the aforementioned judgment, includes the members of the Cabinet. In this regard, **Krishna Kumar Singh**'s case *(2017)* is also relevant wherein it was held, with regard to the authority of the President to promulgate Ordinances, that consistent with the principle of legislative supremacy, the power to promulgate Ordinances is subject to legislative control; the President *(or the Governor)* acts on the aid and advice of the Council of Ministers, which owes collective responsibility to the legislature. However, we agree with the learned Division Bench of the High Court that in light of the judgment reported as **Peer Buksh represented by his legal heirs and others Vs. The Chairman Allotment Committee and others (PLD 1987 SC 145)**, the operation of judgment would be from the date it was

announced, hence, the Amendment Ordinances are not hit by **Mustafa Impex**'s case *(supra)*.

(d) ***Whether the actions/activities undertaken by PMDC during the period when the Amendment Ordinances were in the field and those undertaken after the lapse/repeal thereof, were protected/saved, and if yes, to what extent?***

22. We held above that the Amendment Ordinances had lapsed/been repealed therefore the Council constituted thereunder had ceased to exist with effect from 25.04.2016. As a necessary corollary, the Regulations of 2016 framed under Section 33 of the Ordinance of 1962 by the Council constituted under Section 3 thereof, both of which were substituted by the Ordinance of 2015, also ceased to exist having been illegally and invalidly framed. However, as regards the various actions/activities/orders/decisions taken in the ordinary day-to-day business of PMDC, we find that the in the instant circumstances, they are protected under the *de facto* doctrine, until reviewed, revised, amended or modified by the new Council to be constituted after fresh elections are conducted.

(e) ***If the amendments/substitutions made by the Amendment Ordinances have gone with their lapse/repeal, whether the members/President of the PMDC, existing prior to that, stood revived or not?***

23. In this regard, it is the petitioner's own case *(in C.P. No.3412/2017)* that he had participated in the elections held in 2013 after the Act of 2012 and the Ordinance of 2013 *(which subsequently lapsed/was repealed)*, and was elected as a Member and the President of the Council. We have held above that the Ordinance of 2013 had lapsed and the amendments/insertions/substitutions it brought with it also lapsed, therefore the petitioner's election held thereunder is rendered null and void. In light of the above, we find that fresh elections be held in accordance with the law.

24. For the foregoing reasons, it is held as under:-

(a) CCI does not have supervisory role over the functions of Parliament, since it is responsible to Parliament under the Constitution;

(b) Parliament, without any restriction or constraint, has absolute and unfettered authority to make laws with respect to the matters enumerated in the Federal Legislative List, without requiring any approval or assent from any forum or authority in the country, including CCI *(except Presidential assent in terms of Article 75 of the Constitution)*;

(c) Therefore, Ordinances, including the Amendment Ordinances, are not invalid on the ground that those were not laid before CCI before promulgation;

(d) Similarly, with the same strength and force, regulations, rules etc. promulgated by PMDC in exercise of delegated powers available under the parent statute, i.e. Ordinance of 1962, also do not require the approval of CCI;

(e) Therefore, the approval of CCI was not necessary for the promulgation of the Regulations of 2016;

(f) PMDC is authorized to monitor the whole process of admission through a centralized admission program which includes, but is not limited to, the central entry test in the public and private medical and dental institutions;

(g) There is a clear distinction between a temporary enactment made by Parliament and an Ordinance promulgated by the President *(or the Governor)*;

(h) Any amendment/insertion/introduction made by an Ordinance would not survive after its lapse/repeal. If, notwithstanding the fact that an Ordinance promulgated under Article 89 of the Constitution expires through efflux of time, the amendments made by it to a permanent statute, i.e. an Act of Parliament, are allowed to possess a permanent character, then this will virtually amount to giving plenary power of making permanent legislation to the Executive; it would be tantamount to providing the Executive a machinery to bypass the constitutional mandate of the Legislature and this we cannot permit, being absolutely against the spirit of the Constitution which embodies the important principles of democracy and trichotomy of powers;

(i) The Ordinance making power under Article 89 *(or Article 128)* of the Constitution does not constitute the President *(or the Governor)* into a parallel source of law making or an independent legislative authority. The power to promulgate Ordinances is subject to legislative control. The failure to comply with the requirement of laying an Ordinance before the legislature is a serious constitutional infraction and abuse of the constitutional process. Re-promulgation of Ordinances, especially when the earlier ones were either not approved or disapproved by Parliament, is a fraud on the Constitution and a subversion of democratic legislative processes;

(j) Therefore, any amendment/insertion/substitution made by the Amendment Ordinances in the Ordinance of 1962 did not survive after the former lapsed/were repealed, and the latter stood revived;

(k) The judgments of this Court, unless declared otherwise, operate prospectively, as such, the Amendment Ordinances are not hit by **Mustafa Impex**'s case *(supra)*;

(l) Since the Amendment Ordinances had lapsed/been repealed therefore the Council constituted thereunder had ceased to exist with effect from 25.04.2016;

(m) As a necessary corollary, the Regulations of 2016 framed under Section 33 of the Ordinance of 1962 by the Council constituted under Section 3 thereof, both of which were substituted by the Ordinance of 2015, also ceased to exist having been illegally and invalidly framed;

(n) However, in the facts and circumstances, the various actions/activities/orders/decisions etc. taken in the ordinary day-to-day business of the earlier Council, are protected under the *de facto* doctrine, until reviewed, revised, amended or modified by the new Council to be constituted after fresh elections are conducted;

(o) The Council created under the short order of even date *(ad hoc Council)* shall remain functional and intact from the date of such order, i.e. 12.01.2018, after which fresh elections shall be conducted in accordance with law, and in the meantime, the present Registrar of PMDC shall continue to work till an appropriate order is passed in this behalf by the President of PMDC;

(p) The *ad hoc* Council may re-visit the relevant law/policies/ rules/regulations etc., and any actions/activities/ orders/decisions etc. taken by such Council till its termination/dissolution shall be legal and valid for all intents and purposes; however, in case any issue arises in this regard, for resolution thereof, an appropriate application may be filed before this Court;

(q) directions may, from time to time, be given to the Council in the suo motu proceedings *(S.M.C. No.1/2010)* pending before this Court; and

(r) students who completed their A-level in June 2017 are entitled to be admitted into medical and dental colleges on the basis of their SAT-II score for the 2017-18 session.

In light of the above and considering this Court's power to do complete justice under Article 187 of the Constitution, Civil Appeals No.3 and 4 of 2018 and Civil Petitions No.45 and 64 to 70 of 2017 are dismissed subject to the reasons contained herein, whereas Civil Petition No.3412 of 2017 is converted in to an appeal and allowed to the extent mentioned above in this opinion.

25. For ease of reference, the relevant portion of our short order of even date reads as under:-

> *"C.M.A. Nos. 203 to 209/2018 are allowed office is directed to number the civil petitions.*
>
> *2. For the reasons to be recorded later, Civil Appeals No. 3 and 4 of 2018, Civil Petitions No. 45 and 64 to 70 of 2017 are dismissed; whereas Civil Petition No.3412/2017 is converted into an appeal and allowed. The Pakistan Medical and Dental Council (PMDC) constituted under the law and any Executive Committee constituted by or under the law and presently working are dissolved and till the appointment/election of the fresh Council and the Executive Committees in accordance with law, we are constituting an ad-hoc Council to perform the functions and run the affairs of PMDC in accordance with the relevant law. The Council shall comprise of the following:*

1. *Mr. Justice Mian Shakirullah Jan, former Judge of this Court (President);*
2. *The Attorney General for Pakistan (Member) or in case of his non-availability, his nominee/representative;*
3. *Federal Secretary Health, Islamabad (Member);*
4. *Surgeon General of Pakistan Armed Forces (Member);*
5. *Vice Chancellor, the National University of Medical Sciences (NUMS) (Member);*
6. *Vice Chancellor, University of Health Sciences, Lahore (Member);*
7. *Vice Chancellor, Jinnah Sindh Medical University, Karachi (Member);*
8. *Vice Chancellor, Khyber Medical University, Peshawar (Member); and*
9. *Principal, Bolan Medical College, Quetta (Member);*

The above Council will take over and run the affairs of the PMDC immediately and its first meeting shall be convened on 18.01.2018. The present registrar of PMDC shall continue to work."

[Note: Subsequently the Principal De'Montmorency College of Dentistry, Lahore, was added as the 10th Member of the ad hoc Council.]

CHIEF JUSTICE

JUDGE

JUDGE

ISLAMABAD.
12th January 2018.
Approved for Reporting
Waqas Naseer / *