

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Ijaz Ahmed Chaudhry
Mr. Justice Gulzar Ahmed

Civil Appeals No.2234, 2235 of 2005 & 61 of 2006

(On appeal from the judgment dated 30.06.2004 & 12.04.2005 passed by the Lahore High Court, Lahore in W.P. No.143/2003 & 19438/2004 respectively)

And Civil Petitions No.1587-L, 1588-L of 2010

(On appeal from the judgment dated 6.07.2010 passed by the Lahore High Court, Lahore in W.Ps No.5194/2006 & 11873/2010)

And Civil Petitions No.445-L & 454-L/2012

(On appeal from the judgments dated 12.10.2010 & 13.10.2011 passed by the Lahore High Court in W.Ps. No.23372/2009 and 19138 of 2011)

1. Secretary Economic Affairs Div, Islamabad etc. (in CA 2234/05)
 2. Anwarul Haq Ahmed (in CA 2235/05)
 3. Miss Zainab Iqbal Mian (in CA 61/2006)
 4. Secretary, Govt. of Pb. Health Deptt. (in CP 1587-L, 1588-L/10)
 5. Principal/EO, Fatima Jinnah Medical College
for women, Lahore (in CP 445-L, 454/12)
- ... Appellants/Petitioners

VERSUS

1. Anwarul Haq Ahmed (in CA 2234/05)
2. Secretary M/o Finance etc. (in CA 2235/05 & CA 61/06)
3. Noorien S. Bokharee & another (in CP 1587-L/2010)
4. Hassan Ashraf (in CP 1588-L/2010)
5. Miss Sara Bukhtiar & others (in CP 445-L/2012)
6. Khadija Akram Ch. & others (in CP 454-L/2012)

... Respondents

For the appellants
In CA 2234/05 & CP 1587-L,
1588-L/2010

Mr. Jawwad Hassan, Addl. A.G. Pb.
Mr. Ijaz Farrukh, Sr. Law Officer,
Health Department
(also for respondent in CAs 2235 & 61/2006)

For the appellants
In CA 2235/05 & CA 61/06

Mr. A.K. Dogar, Sr. ASC
(also for respondent in CA 2234/05)

For the petitioners:
in CP 445-L & 454-L/12

Mr. Anwar Kamal, Sr. ASC

For the respondents:

Mr. Abdul Sadiq Ch. ASC
(in CP 1587-88-L/10 & 454-L/10)

Malik Allah Yar Khan, ASC
(in CP 445-L/12)

For HEC:

Mian Muhammad Hanif, ASC
Raja Abdul Ghafoor, AOR

Date of hearing:

05.06.2013

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JUDGMENT

Iftikhar Muhammad Chaudhry, CJ. The listed appeals with the leave of the Court as well as the petitions have been filed against the judgments of the Lahore High Court, mentioned in the title.

2. Brief facts of the case are that as per prospectus for the sessions 2002-2003 issued by Government of Punjab, Health Department for admission in Medical Colleges of the Province, seats were allocated under various categories on merits and to accommodate students of some of the countries allocations of seats were made under "Pakistan Technical Assistance Programme" (PTAP) and under the "Self Finance Scheme" (SFS) for foreign students of

Pakistan origin. For convenience relevant paras from the prospectus containing policy read thus: -

(iv) **FOREIGN STUDENTS SEATS:**

- (a) **Under Technical Assistance Programme:**
The applicants seeking admission to a medical college should submit their applications through their own government/embassies to the Government of Pakistan (Economic Affairs Division, Islamabad). The nominations against these seats, shall be communicated to the Health Department, Government of Punjab, by Economic Affairs Division, Islamabad for onwards transmission to the colleges concerned. Applications submitted directly to the Principal or to the Government of Punjab, shall not be entertained.
- (b)

(v) **FOREIGN STUDENTS SEATS ON SELF-FINANCE**

BASIS: - The applicants seeking admission on self-finance basis will be required to contribute to the college endowment fund. This contribution would be US\$10,000 per annum in addition to the normal fee till graduation. However, such students will apply to the Economic Affairs Division, Government of Pakistan Ministry of Finance, Islamabad. The nominations against these seats, shall be communicated to the Health Department, Government of the Punjab, by Economic Affairs Division, Islamabad, for onward transmission to the colleges concerned. The students will have to pay for the first year through pay order worth US \$ 10,000 in the name of the Principal of the college for which he/she has been nominated and for the remaining four years a bank guarantee worth US \$ 40,000 in the name of the same Principal. In case a student repeats any class at his /her own accord or fails in the class/university examination, he/she will have to pay US \$ 10,000 for each extra year. Students discontinuing their studies at their own or expelled from the college will not be refunded the remaining amount which would be credited to the college according to the bank guarantee.

(vi)

(vii) **SELF-FINANCE SEATS:**

- (a) Admissions would be open to local and expatriate Pakistanis.
- (b) Admissions would be on merit.
- (c) Fee for local students shall be Rs.2,50,000/- per annum.
- (d) Fee for expatriate students shall be US\$ 10,000 per annum for colleges in Lahore, US \$ 7,000 per annum for colleges located in Multan and Rawalpindi and US \$ 5,000 per

annum for colleges located in Bahawalpur and Faisalabad.

- (e) In case a student repeats any class at his/her own accord or fails in the class/ University Examination, he/she will have to pay the same amount as mentioned above for each extra year.
- (f) For the first year the student will pay in cash/pay order and he/she will have to submit a bank guarantee for the remaining four years equivalent to the amount applicable in his/her case.

3. As per the prospectus for the year 2002-2003, 28 seats were earmarked on SFS basis for foreign students, out of which 4 (2+2) seats were allocated to King Edward Medical College.

4. Anwarul Haq Ahmed (respondent in CA No.2234/05 and appellant in CA No.2235/05) having passed A-Level, from the University of Cambridge, England, securing 935 marks out of 1100 as per equivalence certificate issued by the Inter Board Committee of Chairman. He applied for admission in the first year of MBBS for the session 2002-03 for Medical Colleges in Punjab as well as for Self Finance Scheme (SFS) and PTAP. He could not get admission on merit against the general seats. As he did not fulfil the basic pre-conditions of having studied abroad physically, his application was not considered under the PTAP, however, he was offered admission under Self Finance Scheme (SFS) against the seats reserved for foreign students of Pakistan origin in the King Edward Medical College. It is to be noted that according to the policy the student admitted under said scheme, will have to contribute to the college endowment fund an amount of US\$10,000/- per annum, which will be paid in advance; that for ensuring payment of fee for the remaining four year student will also have to furnish a bank guarantee for an amount of US\$40,000/-, in addition to the fees payable by a regular student.

5. It is to be noted that Anwar-ul-Haq, respondent being Pakistan origin holding foreign nationality succeeded in getting admission on SFS basis and deposited his contribution of US \$10000 towards college endowment fund as prescribed in the policy noted hereinabove, besides fulfilling his obligations towards payment of normal fee thus he was admitted in 1st year of MBBS, Sessions 2002-2003 in King Edward Medical College.

6. It is pertinent to note that the Government of the Punjab, Health Department *vide* letter No.SO(ME)8-91/2003 dated 03.02.2003 revised the policy for SFS, which is reproduced hereinbelow: -

"No.SO(ME)8-91/2003
GOVERNMENT OF THE PUNJAB
HEALTH DEPARTMENT
Dated Lahore, the 3rd February, 2003

To

The Principal/Chairman,
Admission Board,
King Edward medical College,
Lahore

SUBJECT: REDUCTION OF SELF-FINANCE RATES FOR
FOREIGN STUDENTS IN MEDICAL COLLEGES OF
PUNJAB

Reference your letter No.191/KEMC/2002, dated 8. .2002 on the subject noted above.

2. The Competent Authority in the Government of the Punjab on reconsideration of the issue decided as under: -

- (i) 50% seats of MBBS (self-finance) for expatriate Pakistans may be kept floating and the preferred choice of candidates be respected
- (ii) The fee structure for the peripheral colleges like, Multan, Rawalpindi be reduced from US\$10,000/- to US\$7,000/- per annum and for Faisalabad and Bahawalpur to US\$5,000/- per annum.

3.

4.

ADDITIONAL SECRETARY (TACH)
HEALTH DEPARTMENT"

7. The respondent Anwar-ul-Haq filed a Writ Petition No.143/2003 before the Lahore High Court, wherein following prayer was made: -

"In the light of Paras 31, 32, 33 and 34 it is respectfully prayed that this learned court be pleased to declare the Revised Fee Structure under Self Financing Scheme (SFS) for foreign students of Pakistan origin *ultra vires* of the provisions of Articles 2-A, 3, 4 and 25 read with 37(c) of the Constitution of the Islamic Republic of Pakistan, 1973.

It is further prayed that this learned court be pleased to direct the respondents to charge the petitioner a fee commensurate with the actual expenditure of Rs.100,000 per annum incurred on his education, which may be receivable in US dollars without any additional fee, and to accordingly adjust the already paid US\$10000 by the petitioner refunding him extra amount after deducting the aforesaid actual expenditure.

Also, it is prayed to direct the Respondents to abolish the bank guarantee as security for payment of future fee for 4 years since it is not required in any other province of the country and, being too harsh, it has already been withdrawn by Punjab government for local students admitted under SFS."

8. In the meanwhile, Government of Pakistan, Ministry of Economic Affairs and Statistics *vide* letter dated 06.06.2003 communicated following decision to the Secretary Health, Government of Pakistan: -

"No.1(1)FS/03
GOVERNMENT OF Pakistan
MINISTRY OF ECONOMIC AFFAIRS & STATISTICS
(ECONOMIC AFFAIRS DIVISION)
Islamabad, the 6th June, 2003

Fax: 92-51-9205971 & 9210734
From: Joint Secretary,
Tele: 9205327

SUBJECT: ADMISSION OF FOREIGN UNDER PAKISTAN
TECHNICAL ASSISTANCE PROGRAMME (PTAP/SELF
FINANCING SCHEME (SFS)).

1. ...

2. ...

3. ...

4. You would kindly appreciate that the high fee rates for Self-Financing Scheme and condition of submitting bank guarantee for remaining four years studies has resulted into low utilization of these seats for the last many years. No doubt the revision of fee rates made by the Health department during last year has improved the utilization of seats under SFS in Punjab. However, it can be improved further by reducing the fee rates to US\$7,000 per annum for Medical colleges in Lahore and US\$5,000 for Colleges of rest of cities of Punjab and by waving off the condition of bank guarantee as no such condition exists in other Province."

The above decision has been taken in continuation of letter dated 03.02.2003 issued by Government of the Punjab, Health Department, which has been reproduced hereinabove.

9. It may not be out of context to note that pending decision of petition filed by the respondent before the High Court, Government of Punjab enhanced status of King Edward Medical College to University *vide* the King Edward Medical University, Lahore Act, 2005.

10. A learned Division Bench of the Lahore High Court, *vide* judgment dated 02.08.2004, allowed the said writ petition to the extent that the letter dated 03.02.2003 in so far it prescribed a different fee structure for the Foreign students admitted under the Self Finance Scheme in different colleges of the Punjab and the condition of furnishing Bank guarantee were set-aside. It was further directed that the respondent authorities may, however, charge those students a

uniform rate of US \$5000 per annum irrespective of the College in which they were admitted. Relevant para therefrom is reproduced hereinbelow: -

"10. For what has been discussed above, this petition is allowed. The letter dated 3.2.2003 in for as it prescribes a different fee structure for foreign students admitted under the self-finance scheme in different Colleges of the Punjab and the condition of furnishing Bank guarantee are set aside. The respondent authorities may, however, charge those students a uniform rate of US\$5,000/- per annum for irrespective of the Colleges in which they are admitted. The petition stands disposed of in terms noted above."

11. The Secretary, Economics Affairs Division, Government of the Pakistan, Islamabad; Secretary Health Government of the Punjab; Principal Executive Officer/Dean; and Deputy Dean, King Edward medical College, Lahore, assailed the above decision in Civil Petition No. 2932-L/2004, whereas respondent Anwar-ul-Haq also challenged the same in Civil Petition No.2763-L/2004, wherein the reduced amount of endowment US\$5000 was also questioned being highly excessive as compared to the actual expenditures by the government on education and training of medical students. Leave to appeal was granted *vide* order dated 23.11.2005, *inter alia*, to examine the questions highlighted by the parties through their counsel while arguing their respective petitions.

12. It is important to note that following the judgment passed by the Lahore High Court in the case of Anwar-ul-Haq, Writ Petitions No.19438/04 (Ms. Zainab Iqbal Mian), 5198/2006 (Noorien S. Bokharee), 23372/09 (Ms. Sara Bakhtiar), 11873/2010 (Hassan

Ashraf) and 19138/11 (Ms. Khadija Akram Ch.) were filed before the High Court. In these petitions *inter alia* following prayers were made: -

“In view of the above circumstances and submissions it is respectfully prayed that this honourable court be pleased to declare that the General Conditions/Guide Lines for admission of foreign students of Pakistan Origin under Pakistan Technical Assistance Programme (PTAP) and Self Financing Scheme (SFS) are without lawful authority and of no legal effect and the petitioner is entitled to the same benefit as already directed by this Honourable Court in W.P.No.1162/2006 as well as in the light of reported judgment in PLD 2004 Lahore 771 which was decided prior to the admission of the petitioner.

It is further prayed that pending disposal of the main petition this honourable court be pleased to direct the respondents that the sum of US\$5000 P.A. only be charged from the petitioner in future years as directed in Anwar-ul-Haq case (PLD 2004 Lahore 771).

It is further prayed that the excess payment of US\$10000 already received by the respondent No.3 from the petitioner directed to be adjusted against future demands for the ends of justice, equity and fair play.”

13. Learned High Court following the dictum laid down in the judgment arising out of Anwar-ul-Haq's case, allowed writ petitions No. 5198/06, 23372/09, 11873/2010 and 19138/11 whereas writ petition No. 19438/04 filed by Miss Zainab Iqbal Mian was partly allowed, wherein the learned Division Bench of the High Court, after relying upon the said case, did not strike down the SFS. However, it was held that foreign students admitted under SFS should also be treated equally with in their class and they should not be subjected to a varying fee structure on the basis of different colleges in the province of Punjab; all students under the above scheme should be charged with same fee irrespective of their College or cities within the

Province, in view of the provisions of Article 25 of the Constitution. The details of the proceedings of the High Court are as under: -

Writ Petition No.	Title of the Petition	Date of Judgment	Decision
WP 19438/04	Miss Zainab Iqbal Mian v. Secretary Ministry of Finance	12.04.2005	Partly allowed in the light of the judgment in Anwar-ul-Haq's case
WP 5198/06	Norien S. Koharee v. Secretary Economic Affairs	06.07.2010	Allowed and Disposed of in terms of judgment in Anwar-ul-Haq's case
WP 11873/10	Hassan Ashraf v. Secretary Health, Govt. of Punjab	06.07.2010	Allowed and Disposed of in terms of judgment in Anwar-ul-Haq's case
WP 23372/09	Miss Sara Bukhtiar v. Secretary to Government of Pakistan	12.10.2010	Allowed in terms of judgment in Anwar-ul-Haq's case
WP 19138/11	Khadija Akram Chaudhry v. Government of the Punjab	13.10.2011	Disposed of in terms of judgment in Anwar-ul-Haq's case

14. It is to be noted that pending decision of Civil Petitions No.2763-L/2004 and 2932-L/2004, impugned judgments passed in Writ Petitions No.5198/2006, 23372/09, 11873/2010 and 19138/11 were challenged by the departments whereas, Miss Zainab Iqbal Mian also assailed Writ Petition No.19438/04 in this Court.

15. It is necessary to note that initially under the policy guidelines with regard to admission in the Medical Colleges in different cities of Punjab, e.g., Lahore, Rawalpindi, Multan and Faislabad, a uniform prospectus used to be issued allowing mostly the admission in Medical Colleges on merit basis. The candidates, who were found

eligible on merit, were accommodated as per the policy. However, there were certain other applicants/candidates like Anwar-ul-Haq, who were of Pakistan origin holding foreign nationality, when could not compete on merit, were left only with one option to apply on SFS basis. Because they had accepted the term & conditions laid down in the policy noted above, therefore, they were given admission. Subsequent thereto, the condition to the extent of deposit of endowment fund was changed and ultimately *vide* letter dated 03.02.2003, it was reduced as mentioned above but to the extent of candidates/students who would seek admission in future and not for the students who had already got admission.

16. Learned counsel for the appellants-departments stated that respondents-students are estopped to challenge the policy of admission on self finance basis, as they themselves had accepted the terms & conditions for the admission in 1st Year MBBS in Medical College after failing to get admission on merits, as he/they were not found eligible for not securing required marks.

17. Learned Additional Advocate General was not in attendance when case was heard; however, he has filed written arguments, *inter alia*, relying upon the arguments, which have been noted above.

18. On the other hand learned counsel for the respondents-students that both schemes noted hereinabove are confiscatory in nature and discriminatory as well as in violation of their fundamental rights enshrined in Article 9 read with Article 25 of the Constitution.

19. We have heard the parties' counsel, gone through the material so made available on record and perused the leave granting order dated 23.11.2005.

20. Before dilating upon the arguments of the parties, it is considered appropriate to note that educational institutions are independent to follow policy for admission including affairs relating to changing conditions for endowment funds or fee, either under the policy given by the government or adopted by the college; and interference in the policy by the Court is possible only in exceptional circumstances. Reference may be made to the case of Chairman Joint Admission Commission v. Raza Hassan (1999 SCMR 965) wherein it was held that the universities in Pakistan enjoy complete freedom to take decision in their own matters and interference by the Courts in such matters would be the least desirable, except for exceptional circumstances. In another case namely Mian Muhammad Afzal v. Province of Punjab (2004 SCMR 1570) this Court declined to interfere in the matter relating to the admission in the medical college, on the ground that it was of administrative nature relating to policy. In the case of Shazia Irshad Bokhari v. Government of Punjab (PLD 2005 Lahore 428), the learned Lahore High Court held that the Court, under its Constitutional jurisdiction would not enter into policy making domain of the State or question the wisdom of the legislature; it would not normally interfere or strike down a policy made by the Government unless the same was proved *mala fide* or made in a colourable exercise of authority, etc. It was further held that the classification in terms of equal treatment was legally permissible.

Reference may also be made the case of Waqas Zafar v. Baha-ud-Din Zakriya University (2010 CLC 999).

21. At this juncture it is to be observed that in respect of foreign students and students of Pakistan origin two independent policies have been followed by the Medical Colleges since the time when respondents-students themselves applied for admission on Self Finance Basis. Details of the seats reserved in different colleges for the year 2002-2003 are as follows: -

Sr. No.	Category	KEMC	NMC	QMC	PMC	RMC	AIMC	FJMC	Total
1.	Open Merit Seats	171	159	159	159	159	169	135	1111
2.	Reserved Seat								
i).	Disabled students seats	1	2	2	2	2	2	1	12
ii).	Federally Administered Tribal Areas (FATA) seats	1	1	1	1	1	1	1	7
iii).	Azad Jammu & Kashmir and Northern Areas seats	-	4	4	4	4	-	12	28
iv).	Foreign Students Seats under Technical Assistance Program	5	10	11	10	10	5	21	72
v).	Foreign Students Seats on Self Finance basis	4	4	4	4	4	4	4	28
vi).	Reciprocal Seats	2	3	2	2	2	2	2	15
vii)	Total seats of categories (i to vi)	13	24	24	23	23	14	41	162
	Total	184	183	183	182	182	183	176	1273

22. With regard to the arguments of the learned counsel for the respondents-students that the charging of fee/endowment funds at higher rates from the students of SFS as compared to other students is discriminatory as well as violative of Article 9 read with Article 25 of the Constitution, it is to be noted that Article 25 provides that all citizens are equal before law and are entitled to equal protection of law, and that there shall be no discrimination on the basis of sex. However, by now it is well settled that equality clause does not prohibit classification for those differently circumstanced provided a rational standard is laid down. The doctrine of reasonable classification is founded on the assumption that the State has to perform multifarious activities and deal with a vast number of problems. The protection of Article 25 of the Constitution can be denied in peculiar circumstances of the case on basis of reasonable classification founded on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out. The differentia, however, must have rational nexus to the object sought to be achieved by such classification. Reference in this behalf may be made to the case of I.A. Sharwani v. Government of Pakistan (1991 SCMR 1041) wherein the issue has been dealt with in detail. In the case of Tariq Aziz-ud-Din and others (Human Rights cases Nos.8340 of 2009, etc.) (2010 SCMR 130) it was held as under: -

22. ... We are also conscious of the provision of Article 25 of the Constitution, which guarantees equality of citizens. However, denying such protection in peculiar circumstances of the case on basis of reasonable classification founded on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out.

The differentia, however, must have rational nexus to the object sought to be achieved by such classification [Dr. Mobashir Hassan v. Federation of Pakistan and others PLD 2010 SC 265].”

In the case of National Bank of Pakistan v. Nasim Arif Abbasi (2011 SCMR 446) this Court after relying upon I.A. Sharwani's case (supra) declined to grant relief on the ground that no discrimination prohibited under Article 25 of the Constitution and a reasonable classification did exist between the two categories of employees, i.e., those who had exercised the option and those who had not exercised the option. In the case of Dr. Shahnaz Wajid v. Federation of Pakistan (2011 SCMR 1737) same principle was reiterated in the following words: -

“5. It is well settled by now that “equality clause does not prohibit different laws for those differently circumstanced provided a rational standard is laid down to guide the discretion of the relevant Authority to choose the appropriate law. A State may classify persons and objects for the purpose of legislation and make laws applicable only to persons or objects within a class. In fact almost all legislation involves some kind of classification whereby some people acquire rights or suffer disabilities which others do not. Expression “equal protection of laws” does not place embargo on power of State” to classify either in adoption of police laws, or tax laws, or eminent domain laws” rather gives to state exercise of wide scope of discretion, of course, nullifying “what is without any reasonable basis”. The State has the power of what is known as “classification” on the basis of rational distinctions relevant to the particular subject dealt with. Classification may be due to geographical situation or it may be based on territorial, economic, communal and other similar considerations. The Constitution itself contemplates passing of different laws for different provinces by their respective legislatures. The doctrine of reasonable classification is founded on the assumption that the State has to perform

multifarious activities and deal with a vast number of problems. It, therefore, should have the power to make a reasonable classification of persons and things, to whom different treatment may be accorded, provided there is legitimate basis for such difference the State can make laws to attain special objects, and the administrative authorities may make classification, in pursuance of such laws. But the classification should not be arbitrary and capricious and must rest on reasonableness and have a fair nexus and a just relation with the need for which classification is made". Ziaullah Khan v. Government of Punjab (PLD 1989 Lah. 554), Akram Khan v. State (PLD 1976 Lah. 1224), Fauji Foundation v. Shamimur Rehman (PLD 1983 SC 457), I.A. Sharwani v. Government of Pakistan (1991 SCMR 1041), Aziz Begum v. Federation of Pakistan (PLD 1990 SC 899), Balochistan Bar Association v. Government of Balochistan (PLD 1991 Quetta 7), Kathi Raning v. State of Saurashtra (AIR 1952 SC 123), Dhirendra v. Supdt. and Remembr (AIR 1954 SC 424), Zain Noorani v. Secretary of National Assembly (PLD 1957 Kar. 1), Government of Punjab v. Naila Begum (PLD 1987 Lah. 336), Charanjit Lal v. Union of India (AIR 1951 SC 41), State of West Bengal v. Anwar Ali (AIR 1952 SC 75), Rehman Shagoo v. State of J&K (1958 Cri L Jour 885), TK Abraham v. State of Tra. Co. (AIR 1958 Ker. 129), PLR 1957 (1) 743).

In the case of N.W.F.P. Public Service Commission v. Muhammad Arif (2011 SCMR 848) the Court held as under: -

"8. In view of what has been discussed hereinabove it can be inferred safely that reasonable classification which is not arbitrary or violative of doctrine of equality cannot be questioned. We are not impressed by the contention made by the learned Advocate Supreme Court on behalf of respondents that it is a case of sheer discrimination because discrimination means "making a distinction or difference between things; a distinction; a difference; a distinguishing mark or characteristic; the power of observing differences accurately, or of making exact distinctions; discernment. But discrimination against a group or an individual implies making an adverse distinction

with regard to some benefit, advantage or facility. Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context [Shirin Munir v. Government of Punjab (PLD 1990 SC 295), Pakcom Limited v. Federation of Pakistan (PLD 2011 SC 44)]. The learned Advocate Supreme Court has failed to point out any unfavourable bias which is an essential ingredient of discrimination and it is not understandable that how it can be pressed in to service."

Reference in this behalf may also be made to the case of Safdar Jamil v. Vice-Chancellor (2011 CLC 116), wherein a division Bench of Lahore High Court held that equality of citizens, provided in Article 25 of the Constitution meant equal treatment amongst persons, who are equally placed and reasonable classification in terms of equal treatment is legally permissible. The students obtaining less marks as compared to the students who succeeded in getting admission on open merit, were not similarly situated or placed and differential treatment was justified. Relevant para therefrom reads as under: -

"9. We do not agree with the argument of the learned counsel for the petitioners that the Self-Finance Scheme was violative of the fundamental rights, enshrined in the Constitution of Islamic Republic of Pakistan, 1973, as equality of the citizens, provided in Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, means equal treatment amongst persons, who are equally placed and reasonable classification in terms of equal treatment is legally permissible. In this connection, a reference could be made to the case of I.A. Sharwani and others v. Government of Pakistan through Secretary Finance Division, Islamabad and others (1991 SCMR 1041), wherein, it has been held that Clause (1) of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 does not prohibit the State to treat citizens on the basis of reasonable classification. A classification would be considered reasonable, if it is based on an intelligible differentia, which distinguishes

persons or things that are grouped together from those, who have been left out. The conditions, prerequisites for seeking protection of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, have also been discussed in the judgments reported in the cases of Messrs Gadoon Textile Mills and 814 others v. WAPDA and others (1997 SCMR 641), Muhammad Ramzan and 3 others v. Government of Pakistan through Secretary Ministry of Law, justice and Parliamentary Affairs, Pakistan Secretarial, Islamabad and 3 others (2004 YLR 1856), Shehzad Riaz v. Federation of Pakistan through Secretary Cabinet Division and 3 others (2006 YLR 229), Government of the Punjab. through Chief Secretary, Punjab, Lahore v. Naseer Ahmad Khan through L.Rs. and others (2010 SCMR 431) Tariq Aziz-ud-Din and others in re Human Rights cases Nos.834O, 9504-G, 13936-G, 13635-P 14306-G to 143309-G 4.2009 (2010 SCMR 130) and Dr. Mobashir Hassan and others v. Federation of Pakistan and others (PLD 2010 SC 265)."

Thus, it is held that the classification between the students, who secured more marks and succeeded in getting admission on open merit and the students, who, after failing to get admission on open merit, opted to get the benefit of Self Finance Scheme, is based on an intelligible differentia as such reasonable. Therefore, students who opted to apply for admission on Self Finance basis, after being failed to get admission on open merit, can not claim the protection of Article 25 of the Constitution as they are neither similarly placed nor such classification is unreasonable.

23. It is to be noted that the doctrine of 'estoppel' means a disability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability. Even as a rule of evidence

or pleading a party should not be allowed to approbate and reprobate. Reference in this behalf may be made to the case of Haji Ghulam Rasool v. The Chief Administrator of Auqaf (PLD 1971 SC 376) wherein it was held as under; -

"The doctrine of estoppel is not confined to the matters dealt with under section 115 of the Evidence Act, for, as pointed out by Garth, C. J. in the case of *Ganges Manufacturing Co. v. Sourajmull* (I L R 5 Cal. 669) "estoppels in the sense in which the term is used in the English legal phraseology are matters of infinite variety and are by no means confined to the subjects dealt within Chapter VIII of the Evidence Act". It has been defined in Salsbury's Laws of England (2nd Edn.), Vol. 13, "as a disability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to that disability". It is in this sense that it has often been held that even as a rule of evidence or pleading a party should not be allowed to approbate and reprobate. This principle was acted upon by the Judicial Committee in the case of *Lakshmana Goundan v. Subramania Aiyar* (AIR 1924 PC 44) where it was held that if a person had "held out and represented to the Hindu public that the temple was a public temple" he cannot resile from that position. Similarly in the case of *Jai Dayal v. Dewan Ram Sarn Das* (A I R 1938 Lah.686) the Lahore High Court also held that "where a person with full knowledge of the facts in unmistakable terms admitted the *wakf* nature of a house, he cannot subsequently be allowed to resile from that position"."

In the case of M/s Gadoon Textile v. WAPDA (1997 S C M R 641) it was held that if on the basis of representation made one party, any other party, acting *bona fide*, legally enters into any transaction, contract or deal which gives rise to rights and liabilities enforceable at law, then a vested right is created and the benefits or concessions arising from the representation made cannot be withdrawn. In the case of Pakistan v. Fecto Belarus Tractors Ltd. (PLD 2002 SC 208) it

was held that true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon the same, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. In the case of Muhammad Zubair v. Government of Pakistan (2012 CLC 1071) a division Bench of learned Lahore High Court held that the students appeared in the Entry Test in terms of the merit/weightage criteria publicized by the competent authority without challenging it and when they could not perform well in the entry test, they filed the writ petitions apprehending that they would be ousted on the basis of the entry tests, therefore, they were estopped by their own conduct to challenge the vires of the weightage criteria or merit on the settled principle of estoppel and waiver. The equality is only possible amongst the persons who are placed in same set of circumstances. In Yahya Gulzar v. Province of Punjab (2001 CLC 9) it was held that candidate who had not challenged the vires of prospectus before appearing in the entry test for admission was estopped to file Constitutional petition against the entry test on the principle of estoppel and waiver as per principle laid down by the Honourable Supreme Court in Ghulam Rasool's case (PLD 1971 SC

376). In the case of Turner Morrison & Co. v. Hungerford Investment Trust Ltd. (AIR 1972 SC 1311) the Indian Supreme Court held that "estoppel is a rule of equity. That rule has gained new dimensions in recent years. A new class of estoppel i.e. promissory estoppel has come to be recognised by the courts in this country as well as in England."

24. Thus, we are in agreement with the learned Additional Advocate General that under the doctrine of 'promissory estoppel' the respondents-students are estopped to challenge their contribution of US\$ 10,000 in endowment fund, in terms of article 114 of the *Qanun-e-Shahadat* Order, 1984, as they themselves accepted the terms and conditions of admission policy while getting admission on SFS basis.

25. As far as the different fee structure for foreign students admitted under SFS in different colleges of Punjab is concerned, it is to be noted that every college has its own study atmosphere due to different facilities available therein, which also vary from city to city. Further, the expenditures and cost of education also change in various cities. Thus, a uniform policy to contribute towards endowment fund can not be prescribed by the government of Punjab or by College Administration situated in different cities. The finding of the learned High Court directing the authorities to charge from all students a uniform rate of US \$5000 per annum, irrespective of the colleges, being unwarranted in view of the above discussion is not sustainable in law and the Constitution.

26. For the foregoing reasons, the CA No.2234 of 2005, CP No.1587-L & 1588-L of 2010 filed by the department (Secretary

Economic Division; Secretary Government of Punjab Health Department etc.) are allowed. Whereas, CA No.2235 of 2005 and CA No.61 of 2006 filed by the students are dismissed.

27. As far as CP No.445-L & 454 of 2012 CP are concerned, these are barred by time and also have become infructuous in view of allowing relief to other appellants in appeals noted hereinabove.

No order as to cost.

Chief Justice

Judge

Judge

Announced in open Court on 31.07.2013
At Islamabad,

Chief Justice

*Nisar/**

Approved For Reporting