

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present :-

Mr. Justice Mian Shakirullah Jan

Mr. Justice Tassaduq Hussain Jillani

Mr. Justice Nasir-ul-Mulk

Mr. Justice Syed Jamshed Ali

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**Civil Appeal No.2206/2005, Civil Appeal No.721/2006, Criminal Appeal No.304/2003
Civil Petition No.459 of 2006 and Suo Moto Case No.8/2006,**

In Civil Appeal No.2206/2005 & 721 of 2006

*On appeal from the orders dated 07.09.2006 10.03.2006 of the High Court of Sindh, Karachi, passed in
CPD No.371 of 2005 & CP.D. No.1664 of 2005, respectively.*

Pakistan Medical & Dental Council ***Appellant***

Versus

Ziauddin Medical University & others ***Respondents***

For the Appellants : Mr. M. Akram Sheikh, Sr.ASC

Assisted by Barrister Rahil Kamran Sh.

Mr. M. A. Zaidi, AOR

For the Respondent No.1 : Mr. Anwar Mansoor Khan, ASC

For the Respondent No.2 : Mr. Tariq Mehmood, Sr.ASC

For the Respondent No.3: Ch. Aitzaz

Ahsan, Sr.ASC

Assisted by Barrister Gohar Ali Khan.

For the Respondent No.4: Ms Nahida Mehboob Elahi, DAG

Raja Abdul Ghafoor, AOR

For the Respondent Nos.1&2: Mr Anwar Mansoor Khan, ASC

(in C.A.No.721/2006) Mr. Tariq Mehmood, Sr.ASC

Raja Abdul Ghafoor, AOR

For the Respondent No.3: Ms Nahida Mehboob Elahi, DGA

(in C.A.No.721/2006) Ch. Akhtar Ali, AOR

For the Applicant : Mehr Khan Malik, AOR

(in C.A.No.721/2006)

In Crl Appeal No.304 of 2003

On appeal from the order dated 03.07.2003 of the Lahore High Court, Rawalpindi Bench, passed in Crl.Org. No.107-W/2003

Dr. Sohail Karim Hashmi, etc Appellants

Versus

Healers Education Society, etc Respondents

For the Appellant : Mr. M. Bilal, Sr.ASC

For the Respondent : Mr. M. Munir Peracha, ASC

Mehr Khan Malik. AOR

Ch. Akhtar Ali, AOR

In Civil Petition No.459 of 2006

On appeal from the order dated 25.05.2006 of the High Court of Sindh, Karachi, passed in C.P. No.D 619/2006

Pakistan Medical & Dental Council Appellant

Versus

Federation of Pakistan & others Respondents

For the Petitioners : Mr. M. Akram Sheikh, Sr.ASC

Assisted by Barrister Rahil Kamran Sh.

Mr. M. A. Zaidi, AOR

For the Respondents : Mr. Anwar Mansoor Khan, ASC

Raja Abdul Ghafoor, AOR

Ch. Akhtar Ali, AOR

In S.M.Case. No.8 of 2006

Fraud by a Fake Medical College i.e. Independent Medical & Dental College, Faisalabad

For the Applicant : Malik Qamar Afzal, ASC

Barrister Ch. M. Jameel, ASC

On Court's Call : Sohail Karim Hashmi (Secy. PMDC)

Fazal Ahmed, President PMDC

Ms. Nahida Mehboob Elahi, DAG

Raja Saeed Akram, Asst.AG, Pb.

Raja Abdul Ghafoor, AOR

Ch. Akhtar Ali, AOR

Mr. Ejaz Muhammad Khan, AOR

Date of hearing : 28.11.2006

JUDGMENT

Tassaduq Hussain Jillani, J.- Medicine has always been a noble, rewarding and cherished profession. No wonder, down the ages, some prompted by mundane considerations, some inspired by idealism and some by the belief that healing is a divine virtue, young men and women in great numbers have chosen it as a career. By the nature of their calling Doctors have been respected, adored and at times subjected to, not too flattering a comment. The poet John Owen was not very off the mark when he said: -

"God and the doctor we alike adore

But only when in danger, not before;

The danger o'er, both are alike requited,

God is forgotten, and the Doctor slighted".

Driven by lofty objectives, motivated to achieve higher standards of professional excellence in Medical & Dental research as also to provide quality services to the needy and to ward off the element of "slight", in public comment, efforts were made to establish regulatory bodies all over the world. In the Indian subcontinent was passed the Indian Medical Council Act 1934 which formed a body by the name of Indian Medical Council. The Pakistan Medical Council of 1951 replaced by Pakistan Medical & Dental Council established under the Pakistan Medical & Dental Council Ordinance, 1962 are successor bodies to the said Council.

2. Responding to the public demand many private institutions have been established to train and impart medical training and award degrees in a medical qualification. The attempt by the Medical & Dental Council to keep a balance between the mandate of law and the demand of institutions seeking recognition of their respective medical qualifications have led to conflict of interests and litigation. The cases in hand are reflective of this dilemma in which following issues have cropped up for consideration.

What is the nature and import of the concept of recognition of a medical qualification as contemplated in Section 11 of the Pakistan Medical & Dental Council Ordinance, 1962?

What is the nature of 'consultation' with the Council by the Federal Government, which the law requires the latter to have before passing an order under various provisions of the Ordinance?

Whether every chartered University having a medical faculty is

entitled to representation in the Pakistan Medical & Dental Council in terms of Section 3 of the Ordinance?

Whether the teaching staff of each Medical & Dental Institution in Pakistan is entitled to representation in accord with Section 3 (f) of the Ordinance?

Whether the Pakistan Medical & Dental Council is empowered to ask for information, make queries, issue directions and take other steps prescribed in law to carry out the purposes of the Ordinance?

3. The afore-mentioned issues have arisen out of following set of facts and circumstances.

4. In Civil Appeal No.2206 of 2005, Pakistan Medical & Dental Council has challenged the order dated 07.09.2005, passed by a learned Division Bench of the High Court of Sindh, Karachi, vide which the constitution petition (C.P.D. No.371 of 2005) was allowed & it was held and directed as under:-

"We are of the considered opinion that the Petitioner No.2 University as well as the Medical Institutions owned by the Trusts which Petitioners No.1 and 3 represent are entitled to be represented on the Council of the Respondent No.1. Indeed the Respondent No.1 is entitled to seek such information as may be necessary or cause inspection of medical or dental institution as is permissible by section 20 and 21 and seek compliance of Regulations framed under section 33(2), it cannot take away the petitioners' right to be represented on the Council till such time that their recognition are revoked. We therefore, direct the Respondent No.1 to hold elections within 02 months from the announcement of our short order dated 07.09.2005. Above are the reasons of the aforesaid order".

5. In Civil Appeal No. 721 of 2006, Pakistan Medical & Dental Council has challenged the judgment dated 10.03.2006 passed (in C.P. No.D-1664 of 2005) by a learned Division Bench of the same learned High Court, vide which the earlier judgment/direction referred to in the preceding paragraph was reiterated and the Pakistan Medical Council was directed to convene a meeting for organizing the election of members for representing the respondent/petitioner in the Council in terms of Section 3(1) (b) and 3(1) (f) of the Ordinance.

6. In Civil Petition No.459 of 2006, Pakistan Medical & Dental Council has challenged the order dated 25.05.2006 passed in C.P. No.D-619/2000, whereby the learned High Court of Sindh, Karachi held that since the Council did not hold elections in terms of the order passed in C.P.No.D-371 of 2005 (referred to in para 4 above), petitioner Nos.1 to 3 & 5 to 8 (Now

respondent Nos.2 to 8 before this Court) shall have a right to participate in the meetings of the Pakistan Medical & Dental Council unless the Notification dated 18.04.2006 of Ministry of Health declaring them elected as members of the Council under section 3(1)(b) and (f) is set aside.

7. In Criminal Appeal No.304 of 2003, filed by Dr. Sohail Karim Hashmi, Secretary, Pakistan Medical & Dental Council, the charge sheet dated 03.07.2003, framed by a learned Division Bench of the Lahore High Court, has been challenged, wherein the learned Division Bench held that prima-facie the appellant was guilty of violating the undertaking given before the High Court in Intra Court Appeal No.153 of 2003, with regard to carrying out inspection of a medical institution. It issued show cause notice to the appellant and Dr. Riffat Ansari, Assistant Secretary, Pakistan Medical & Dental Council, as to why they should not be punished for committing contempt of the Court and the reply was sought within four days.

8. In Suo Moto Case No.8, some students of the independent Medical & Dental College, Faisalabad, addressed a petition to the Hon'ble Chief Justice of Pakistan, levelling serious allegations against the College administration and submitted that on account of omissions and commissions of the College, the students pursuing their professional Degree/Courses are not certain about their future as the medical qualification being given by the respondent had not been accorded recognition by the Pakistan Medical & Dental Council. It has been prayed that the Pakistan Medical & Dental Council be directed to close down the College and accommodate the students in other recognized Medical Institutions of the country.

9. The Pakistan Medical & Dental Council is a statutory body and in terms of the Pakistan Medical & Dental Council Ordinance, 1962, it is a regulatory authority for the universities having Medical & Dental Faculties and Institutions in Pakistan. The Council has been of the view that only those institutions and the faculties of such medical universities are entitled to be represented in the Council which are imparting education and training for the grant of medical qualifications which have been accorded recognition by the Federal Government in consultation with the Pakistan Medical & Dental Council in terms of Section 11 of the Ordinance. It has maintained that the elections for the membership of the Council from amongst the Medical faculties of universities and Medical Institutions have to be conducted by the Council. Reference was made to Section 3(1)(b) & (f), Sections 4 and 11 of the Pakistan Medical & Dental Council Ordinance, 1962. The Council has been jealous of its mandate to carry out inspections of the Medical & Dental Institutions & their examination centers with a view to ensuring uniform quality and standard of the medical education in Pakistan. Respondent Nos. 1 to 3 (in C.A. No.2206 of 2005), were petitioners before the learned High Court of Sindh (in C.P. No.D-371 of 2005). Their precise case before the learned High Court was that all Medical and Dental Institutions recognized by the Federal Government have a right to be represented in the Council; that all the three respondent-institutions have been accorded recognition in terms of the Pakistan Medical & Dental Council Ordinance, 1962; that elections were carried out by the respective institutions, and therefore, having been elected by Medical faculties, they have a right to be represented in the Medical Council. Civil Appeal No.721 of 2006 is directed against the order of the

learned High Court of Sindh in which the same learned Bench reiterated its order passed in C.P. No.371 of 2005. The impugned order (in Civil Petition No.459 of 2006) dated 25.05.2006 was passed by a learned Division Bench of the High Court of Sindh in which constitution petition of Respondent Nos. 2 to 8 representing various medical institutions was allowed. In the said petition, filed by several representatives of medical institutions, it was alleged that notwithstanding the order passed in C.P. No.371 of 2005 by the Sindh High Court (which has been challenged in Civil Appeal No.2206 of 2006) the Medical & Dental Council had not complied with the order on the ground that recognition granted to the medical institutions was provisional, therefore, they were not entitled to be represented on the Council.

10. Learned counsel for the appellant representing the Pakistan Medical & Dental Council contended that the judgment of the learned High Court of Sindh holding that respondents are entitled to be represented in the Council is not tenable as it does not appreciate the mandate and import of Section 3(1) (b) & (f) of the Pakistan Medical & Dental Council Ordinance. Under these provisions, only those faculties of medical institutions have a right to be represented whose medical qualifications have been recognized by the Federal Government in consultation with the Pakistan Medical & Dental Council. Referring to various provisions of the Pakistan Medical & Dental Council Ordinance, 1962, learned counsel maintained that the lawmakers have prescribed an elaborate procedure of inspection/of inquiry and of inspection of examinations by the Council.

11. Mr. Anwar Mansoor Khan, learned counsel representing the private respondents, contended that under the Ordinance there is no requirement of recognition to a medical institution by the Federal Government which already stands affiliated with a Pakistan University established by law. He added that Ziauddin Medical University is a chartered University and under section 3 (1)(b) of the Ordinance it has right to be represented in the Council without prior recognition in terms of Section 11 of the Ordinance. He further added that the medical institutions are of two kinds i.e. firstly those which are merely imparting training and secondly those which are imparting training and granting medical degrees. So far as former institutions are concerned there is no concept of recognition by the Federal Government and the institutions which stand affiliated with the Ziauddin Medical University also do not require recognition by the Federal Government as they do not grant degrees and it is the University which grants degrees. He lastly submitted that since the faculties of medical institutions have held elections for members who are to represent them in the Pakistan Medical & Dental Council, they have a right to be represented and the judgment of the learned High Court of Sindh is unexceptionable. Learned counsel also brought to the notice of this Court that the medical qualifications being granted by respondents No.1 (Ziauddin Medical University) & No.2 (Fatima Jinnah Dental College and Hospital Trust) have now been accorded recognition by the Federal Government in terms of Section 11 of the Ordinance.

12. Mr. Tariq Mehmood, ASC, representing the Fatima Jinnah Dental College & Hospital Trust, submitted that the institution has been accorded recognition by the Federal Government and to its extent there is no live issue.

13. Mr. Aitzaz Ahsan, Sr.ASC, learned counsel representing Respondent No.3 (Sohai Medical Trust) submitted that the institutions granting medical qualifications affiliated with a Pakistan University established under the law need not be specifically mentioned in the First Schedule of the Ordinance; that the respondent-institution was granted provisional recognition by the Pakistan Medical & Dental Council; that the concept of provisional recognition is not alien to the Ordinance; that under Section 23 of the Ordinance there is a concept of provisional registration of a medical practitioner; that by extending provisional recognition the Council obliged the respondent to invest a huge sum of money in those medical institutions and it was only with concurrence of the Council that several students were granted admissions in those institutions. It would be rather harsh both to the management and to the students to withdraw such recognition at this stage. He added that the respondent-institution is training and imparting knowledge but the medical qualification is to be granted by the University with whom the respondent-institution is affiliated which is sufficient for the purposes of the Ordinance. He contended that there is no concept of granting recognition to a Medical or a Dental Institution, the same was inserted for the first time by Ordinance No.VII of 1999 which was promulgated on 25th May 1999. But it was never placed before the National Assembly / Parliament within the period stipulated under the Constitution and it lapsed. This according to him reflects the intention of the lawmaker i.e. to dispense with the requirement of prior approval and recognition by the Federal Government to establish a medical institution. Now the Ordinance contemplates recognition of medical qualification and not of a medical institution or a University.

14. Ms. Naheeda Mehboob Elahi, learned Deputy Attorney General, submitted that the right to confer degrees, diplomas, licenses or certificates or other documents to "practise scientific Medical and Dental System" is with the authorities referred to in Section 3 of the Medical & Dental Degrees Ordinance, 1982 and the Schedule thereunder. She added that unless the Medical or Dental qualification for which the respondents-institutions are imparting training is recognized by the Federal Government in consultation with the Pakistan Medical & Dental Council in terms of Section 11 of the Pakistan Medical & Dental Council Ordinance, 1962 these institutions can not seek representation in the Council.

15. To appreciate the issues raised it would be in order to refer to the relevant provisions of Pakistan Medical & Dental Council Ordinance, 1962. The main object of the Ordinance is reflected in its preamble and it was, "to consolidate the data relating to the registration of medical practitioners and dentists and re-constitute (Medical & Dental Council) in Pakistan in order to establish a uniform minimum standard of basic and higher qualification in medicine and dentistry". The recognized medical qualification has been defined in Section 2 Clause (1) to mean, "any of the medical qualifications included in the first and second schedule or recognized under Sections 14 & 15 of the Ordinance". The composition of the Medical & Dental Council is spelt out in Section 3 of the Ordinance, which reads as under:-

"3. Constitution and composition of the Council.- (1) The Federal Government shall cause to be constituted a Council consisting of the following members, namely:-

one member to be elected by the National Assembly from amongst its members;

one member from each Province, to be nominated by the Provincial Government;

one member each to be elected by the members of the Syndicate of each Pakistan University from amongst the members of the medical faculty or the dental faculty of the University or, if the University has both a medical faculty and a dental faculty, from amongst the members of the two faculties;

four members to be elected from amongst themselves by the registered medical practitioners;

four members to be nominated by the Federal Government of whom at least one shall be a member of the Armed Forces Medical Services;

two members to be elected amongst themselves by the registered dentists;

one member to be elected by the teaching staff of each medical institution and dental institution in Pakistan from amongst the Professors on its staff, if such institution trains for a medical or dental qualification which is for the time being recognized under this Ordinance;

one member, belonging to the legal profession, to be nominated by the Chief Justice of Pakistan;

the Director General of Health, Government of Pakistan.

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

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

16. The elections of members to which reference has been made in Section 3 (b) & (f) are to be conducted by the Council in such manner as it may think fit (Section 4). The function and power of the Council are provided in various sections of the Ordinance. One of the sections

is Section 11 which is as follows:-

"11. Recognition of medical qualifications granted by medical Institutions in Pakistan.-

The medical qualifications granted by medical institutions in Pakistan which are included in the First Schedule shall be recognised medical qualifications for the purpose of this Ordinance.

Any medical institution in Pakistan which grants a medical qualification not included in the First Schedule may apply to the Federal Government to have such qualification recognised, and the Federal Government after consulting the Council, may, by notification in the official Gazette, amend the First Schedule so as to include such qualification therein. (Emphasis is supplied).

Such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be recognised medical qualification only when granted after a specified date".

17. Section 13 relates to the power of the Council to enter into negotiations with appropriate authority within or outside Pakistan, for settling a scheme of reciprocity for the recognition of Medical qualification. Section 14 provides that the Federal Government after consulting the Council may accord recognition to a medical qualification granted by medical institution outside Pakistan. Section 15 empowers the Council to certify persons to be possessed of sufficient medical qualification of course with the approval of the Federal Government. Section 16 provides for recognition of additional medical qualification granted by foreign or domestic medical institutions. By virtue of Section 17 the medical licenses and diplomas granted by medical institutions in or outside Pakistan are registerable under the Ordinance. Sections 18 & 19 contemplate recognition of qualifications granted by Dental institutions in or outside Pakistan and their certification by the Council. Section 20 empowers the Council to require information from every Medical or Dental institution in Pakistan as to the courses of studies and examinations being carried out. Section 21 empowers them to carry out inspections. Section 22 authorizes the Council to recommend withdrawal of recognition of medical qualification to the Federal Government. Under Section 23, the Council maintains a Register for registration of medical practitioners possessing qualifications, which are recognized medical qualifications under the Ordinance. Section 28 prescribes a penalty for fraudulent representation or registration. Section 33 empowers the Council with previous sanction of the Federal Government to make regulations. Section 34 mandates the Council to furnish reports about its working to the Federal Government and Section 35 envisages commission of inquiry by the Federal Government if it is found that the Council is no

complying with any of the provisions of this Ordinance. A careful study of various provisions of the Ordinance referred to in the preceding paragraphs show that the objectives of the Ordinance are as follows:-

Maintenance of uniform standard of Medical & Dental education (at the graduate and postgraduate level).

Recommendations for recognition, de-recognition of medical qualifications registration of doctors with recognized medical qualifications within the country or outside the country.

Registration of doctors possessing recognized medical qualification from within country or from foreign countries.

Making arrangements with foreign countries for according reciprocal recognition to the medical qualifications.

18. Having had a glance at various provisions of the law under consideration and the objectives of the establishment of the Council, we take up the first two of the 5 issues framed as mentioned above i.e. " (i) What is the nature and import of the concept of recognition of medical qualification as contemplated in Section 11 of the Pakistan Medical & Dental Council Ordinance, 1962? (ii) What is the nature of 'consultation' with the Council by the Federal Government, which the law requires the latter to have before passing an order under various provisions of the Ordinance? Although the Ordinance does not expressly use the expression of 'recognition' of a training institution but a combined reading of the preamble Sections 11, 20, 21 & 22 would indicate that recognition accorded to a medical qualification in terms of Section 11 of necessity would entail the recognition of the institution which is imparting training and granting a medical qualification. This is so because to assess whether the medical qualification being granted by an institution is in accord with the standard set by the Council and to ensure "uniform standard of basic and higher qualification in medicine and dentistry", the Council has prescribed the courses of study, watches the teaching standards and has been empowered to inspect, issue directions, monitor the working of the medical & dental institution or university which trains for, "grants medical or both trains and grants a medical qualification, additional qualification registerable medical license or diploma or any degree, diploma and license in dentistry". In this regard, the law does not contemplate any distinction between a medical institution or a chartered university granting a medical degree. With regard to the power of the Council in the realm of recognition of a qualification and other related matters under the Ordinance this Court approved in "*Shafique Ahmed and others vs. Government of Punjab and others (PLD 2004 SC 168)*" the view taken by the Lahore High Court in "*Ahmad Abdullah & 62 others vs. Government of the Punjab and 3 others (PLD 2003 Lahore 752)*". In the latter judgment, at page 783, it was held as follows:-

"But, so far as the power to grant a Degree in some medical qualification is concerned, no University in Pakistan can issue a

Degree in a medical qualification mentioned in the First Schedule to Ordinance XXXII of 1962 unless the said qualification has been accorded prior recognition in terms of section 11(1)(2) of the said Ordinance which, inter alia, contemplates recognition through a notification to be issued by the Federal Government after prior consultation with Medical Council established under the said Ordinance. This is true of the University of Punjab, the other Universities similarly placed in Pakistan and University of Health Sciences is no exception"

19. This brings us to the second issue mooted i.e. what is the nature of 'consultation' with the Council by the Federal Government, which the law requires the latter to have before passing an order under various provisions of the Ordinance? Under Section 11 (2) of the Ordinance, it is stipulated that "any institution which grants a medical qualification which is not included in the First Schedule, may apply to the Federal Government to have such qualification recognized and the Federal Government after 'consulting' the Council may, by notification in the official gazette, amend the First Schedule so as to include such qualification therein". The rationale appears to be that the expert opinion of the apex body of the Medical & Dental professionals should be solicited before according recognition to a medical qualification. The 'consultation' envisaged is not the 'consultation' of a senior with the junior in administrative hierarchy nor it is a 'consultation' with a consultant of choice rather it is 'consultation' with a statutory body mandated under the law to carry out prescribed functions to achieve certain objectives. The statutory phraseology of consultation has to be understood and expounded in accord and consistent with the law and to promote the objectives given in the context. The Council being a body of medical and dental professionals, the 'consultation' has to be purposive and meaningful. The opinion or advice rendered by the Council during consultative process may not be binding but the Federal Government has to consider and give it a due weight. If it chooses to disagree or bypass the advice rendered it has to give reasons in writing. The reasons should reflect an objective understanding of the issue and should be germane to the objectives enshrined in law. Consultation with the Council by the Federal Government before an order under these provisions is passed is reflective of the legislative intent which is twofold i.e. firstly that it is the Federal Government which has to pass an order conferring certain legal status to a medical qualification granted by an institution within or outside Pakistan and secondly an order by the Federal Government should be preceded by consultation with the Council.

20. The third & fourth issues are interrelated and they are being dealt with together. The issues are as under:-

"iii. Whether every chartered University having a medical faculty is entitled to representation in the Pakistan Medical & Dental Council in terms of Section 3 of the Ordinance?"

Whether the teaching staff of each Medical & Dental Institution in Pakistan is entitled to representation in accord with Section 3 (f) of the Ordinance?

At a first look, a plain reading of Section 3(1)(b) gives the impression that every Pakistan University established by a law and having a medical or dental faculty or both has a right of representation. This Section does not require a university to have a prior recognition of its medical qualification (by the Council) to qualify for representation. However, this has to be read along with other provisions of the Ordinance. A university which has a medical or a dental faculty, would make arrangements to train, or to train and grant a degree in a medical qualification or to extend affiliation to an institution doing this unless such a qualification is accorded recognition in terms of Section 11 of the Ordinance, the university cannot issue a degree in the said qualification. Even otherwise the medical and dental faculty of a university by itself would be an institution. Therefore, only those universities would qualify for representation in the Council whose degrees fall within the ambit of Section 11. The argument that once, a university is established, the medical qualification it grants does not require recognition in terms of the Ordinance would defeat the very purpose of the Ordinance. Because education being a concurrent subject under the Constitution, a university can be established either under Federal or Provincial law. If such universities are established and they start imparting training or granting degrees of a medical qualification independently of the regulatory mechanism of Pakistan Medical & Dental Council, then each university would run its own courses, and there would be no institution of medical experts at national level to ensure uniform quality education.

21. In case of Medical Institutions under Section 3 (1)(f), "the teaching staff of each medical or dental institution in Pakistan from amongst the Professors on its staff can elect one member for representation in the Council, provided, "such institution trains for a medical or dental qualification which is for the time being recognized under the Ordinance". Thus both the universities established by law in Pakistan having medical faculties and medical institutions would require prior recognition of their respective medical qualifications for getting representation in the Council.

22. The last fifth issue pertains to the powers of Pakistan Medical & Dental Council and has been framed as follows:-

"v. Whether the Pakistan Medical & Dental Council is empowered to ask for information, make queries, carry out inspections, issue directions and take other steps prescribed in law to carry out the purposes of the Ordinance?"

The powers to require information with regard to courses of study & examination and to inspect examination have been conferred on the Council in terms of Sections 20 & 21. These two provisions stipulate that the Council may require the institutions in Pakistan which train or grant or both train and grant a medical qualification, additional medical qualification, a diploma or a license in dentistry:-

To furnish information regarding courses of study and examination to be undergone in order to obtain a medical qualification in question. The minimum age at which such undergraduate courses of study can be undertaken on admission. The examination required to be undergone prior to such qualifications being conferred, any general information having relevance for obtaining the afore-referred qualification, degree or diploma. The Council can appoint medical or dental Inspector to inspect the medical centers.

To appoint Inspectors who are mandated under the law not to interfere in the conduct of any examination but they are to report to the Executive Committee on the sufficiency of every examination which they attend and on the courses of study and facilities for teaching provided by the medical or dental institution in question at different stages in respect of such examination.

23. The powers envisaged under the provisions referred to in the preceding paragraphs are not exhaustive and they may include the ancillary powers which they may exercise to achieve the objective of the Ordinance and the regulations framed thereunder. If the Council is not satisfied on report submitted by its Executive Committee with regard to the courses of studies and examinations, the law mandates that the Council in such an event shall report the matter to the Federal Government which after considering the report transmit the same to the concerned medical or dental institution asking the latter to submit explanation and after receipt of the same and after making any further inquiry if it deems fit may withdraw the recognition.

24. We may observe that over the last few decades there has been a mushroom growth of Medical and Dental institutions in the private sector. The element of commercialization has been more pronounced than commitment to academic excellence. The travails of education in public sector are appalling and are partly attributable to the lopsided national priorities pursued by those at the helm of affairs. This tempted the private sector to fill the void. The rapid growth of educational institutions in the private sector on the one hand reflect the extent of public need/thirst for education and on the other a deterioration or dearth of State run educational institutions. The quality of education in the private sector leaves much to be desired. Barring a few exceptions it reflects a pathetic state of affairs. There has been a complete absence of any regulatory mechanism in the domain of general education and people have been allowed mostly to fleece the students and their parents. The private sector has entered the realm of medical and dental education as well. In this domain there are regulatory laws but their application needs further improvement. The Pakistan Medical & Dental Council Ordinance and the regulations framed thereunder lay down a comprehensive procedure to ensure uniform and quality medical and dental education. Similarly, the Medical & Dental Degrees Ordinance, 1982 has restricted and regulated the right to confer degrees, diplomas, licenses and certificates to practice in the medical and dental domain and any violation thereof has penal consequences. There is a dire need to enforce the provisions of these laws with a view to promoting not only quality medical and dental education but

also to provide better quality of professional services to the people. The need for regulatory mechanism in the realm of general education and in the domain of professional courses has never been greater. The Higher Education Commission has taken a number of regulatory steps to ensure qualitative improvement in the higher education. The Pakistan Medical & Dental Council through the Ordinance and the regulations framed thereunder is mandated to pursue the objective of a uniform standard of Medical and Dental education in the country. All the stakeholders should strengthen these and similar institutions in the country because it is only through these institutions that we can achieve the goals set out in their Charter.

25. A society in transition witnesses two parallel strains i.e. a process of institutional erosion and attempt by the reformers/idealists to build the institutions. Effort should be to strengthen the latter. Because institutions play a vital role in civilizing a people and in their onward march towards socio-economic and political progress. In the comity of nations the credibility and progress of a country is measured by the strength of its institutions. A nation which fails to respect the institutions falls in grace, decays, splits and is condemned in history. A society bereft of stable institutions would be at odds with itself. The role of institutions in society has been aptly commented upon by (Professor Dr. Douglass C. North in his seminal work "Institutional Change and Economic Performance"). According to him, *"Institutions reduce uncertainty by providing a structure to everyday life. They are a guide to human interactions, so that when we wish to greet friends on the street, drive an automobile, buy oranges, borrow money, form a business, bury our dead, or whatever, we know (or can learn easily) how to perform these tasks. We would readily observe that institutions differ if we were to try to make the same transactions in a different country, Bangladesh for example. In the jargon of the economist, institutions define and limit the set of choices of individuals. Institutions include any form of constraint that human beings devise to shape human interaction. Are institutions formal or informal? They can be either: informal constraints – such as rules that human beings devise and informal constraints – such as conventions and codes of behaviour. Institutions may be created, as was the United States Constitution; or they may simply evolve over time, as does the common law. (Emphasis is supplied)".*

26. In the cases in hand, we are seized of the affairs of a professional regulatory institution. Such institutions stand on a set of rules prescribing the objective to be pursued, courses to be followed and a code of ethics to be honoured. The medical graduates would deliver, would be worthy of their noble calling, and would be respected within and outside the country only if they pass through the rigorous courses of study, abide by the parameters of academic discipline and the code of professional ethics which the Council has laid down. But above all, the Council itself has an onerous duty to perform and a responsibility to shoulder. The institution would be made or marred partly by what it does to itself, to its mandate, to the oath of its calling and to the law of which it is a creature.

27. For what has been discussed above, Civil Appeal Nos.2206 of 2005, 721 of 2006 Criminal Appeal No.304 of 2003, Civil Petition No.459 of 2006 after conversion into appeal & Suo Moto Case No.8 of 2006, are allowed, the impugned judgments are set aside and we are inclined to hold, declare and direct as under:-

No medical institution or university can train or grant a medical or dental qualification or train and grant both unless the said qualification, degree or diploma has been accorded recognition in terms of Section 11 of the Pakistan Medical & Dental Council Ordinance, 1962.

The Federal Government before according recognition in terms of Section 11 has to have a meaningful and purposive 'consultation' with the Pakistan Medical & Dental Council and the order to be passed in this regard has to be germane to the purposes and objects of the law.

Every University established by law in Pakistan having a medical or dental faculty or both and every Medical & Dental Institution performing a similar function have a right of representation in terms of Section 3(1) (b) & (f) of the Ordinance, provided the medical qualification or diploma for which they are training the students in their university/institution have been accorded recognition as prescribed under Section 11 of the Ordinance.

There is no concept of provisional recognition of a medical qualification issued by a medical institution either under the Pakistan Medical & Dental Council Ordinance or the Regulations framed thereunder. Since on account of the act of Pakistan Medical & Dental Council and the Federal Government certain medical qualification / degree / diploma being issued by certain medical institutions have been granted provisional recognition and on account of this, several students admitted in those institutions and they may be at various stages of their professional courses, we are not inclined to direct immediate closure of these institutions.

The cases of these colleges / institutions having provisional recognition shall be taken up by the Council. The institutions are given six months time from the announcement of this judgment to make up the deficiencies and submit a detailed report to the Pakistan Medical & Dental Council and thereafter the Council having examined the reports and carrying out requisite inspections, if deemed necessary, shall submit its recommendations to the Federal Government which shall decide the matter by 14th August 2007.

The medical institutions whose cases do not qualify for recognition in terms of Section 11 of the Ordinance and no order qua recognition of their medical qualification is passed by the Federal Government, by the afore-referred date shall not be allowed to function thereafter.

The students studying in the institutions / colleges who were accorded

provisional recognition and whose cases are not approved in terms of Section 11 of the Ordinance, shall be accommodated by the Federal Government in various medical institutions of their respective provinces of residence. Necessary steps shall be taken by the Federal Government so that the students are not put under any mental pressure and their studies do not suffer on account of this exercise. This is being done firstly, because the Pakistan Medical & Dental Council & the Federal Government have been partly responsible for their admissions when it granted provisional recognition and secondly, on Court query the Secretary, Pakistan Medical & Dental Council undertakes that the Council with the assistance of the Federal Government shall ensure that these students are accommodated in Medical & Dental Institutions of their respective Provinces.

The Council shall ensure that all necessary steps are taken for the composition of the Council in accord with the afore-referred provisions under Section 4 of the Pakistan Medical & Dental Council Ordinance. It is the Council which has to conduct elections in terms of clauses (b) (c) (e) or (f) of Sub-section 1 of Section 3 and a meeting of the Council shall be held within six weeks of the pronouncement of the judgment.

The Federal Ministry of Health, Government of Pakistan is directed to ensure that the mandate of the Pakistan Medical & Dental Council Ordinance, 1962 & Medical & Dental Degrees Ordinance, 1982 is given effect to in letter and spirit and any violation of these laws are met with penal consequences as envisaged under the law.

In view of our findings in para 22 above with regard to powers of the Council qua inspection of a Medical Institution, the proceedings of contempt against the appellants are uncalled for. Therefore, Criminal Appeal No.304 of 2003 is allowed and the proceedings before the High Court, Rawalpindi Bench are set aside.

In view of terms noted above, all these appeals & petitions are disposed off.

JUDGE

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ANNOUNCED IN OPEN COURT ON 15.12.2006

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"APPROVED FOR REPORTING"

ISLAMABAD, THE

15.12.2006

M. Zubair/*