

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

CRIMINAL MISC. APPLICATION NO.459 OF 2020 IN CRIMINAL PETITION NO.350 OF 2020.

(Against the order dated 07.04.2020 passed by the Islamabad High Court, Islamabad in Criminal Original No.70-W/2020 in Writ Petition No.3800 of 2019).

Tanveer Ahmed Qureshi, Secretary Ministry of National Health Services, Regulations & Coordination, Government of Pakistan, Islamabad.

...Petitioner(s)

Versus

Brig. (R) Dr. Hafizuddin Ahmed Siddiqui, former registrar, Pakistan Medical & Dental Council, Islamabad, etc.

...Respondent(s)

In attendance:

Mr. Khalid Javed Khan, AGP.
Ch. Aamir Rehman, Addl. AGP.
Dr. Tanveer Ahmed Qureshi,
Secy. M/o NHR&C.
Mr. Asif Sohail, Director Legal.
Mr. G. M. Jhakrani, Dy. Dir. Legal.
Ch. Akhtar Ali, AOR.

For Respondent No.1: Hafiz Arfat Ahmed Ch., ASC.
Syed Razaqat H. Shah, AOR.
a/w Brig. (R) Dr. Hafizuddin Ahmed Siddiqui.

Date of Hearing: 15.04.2020.

ORDER

The petitioners have challenged an order of the Islamabad High Court directing the Federation to allow the Respondent Brig. (Retd) Dr. Hafizuddin Ahmed Siddiqui to assume control of PM&DC and taking immediate steps for compliance on a contempt petition filed by Respondent No.1. The matter has now been fixed for hearing on 16.04.2020. The learned Attorney General for Pakistan submits that the order has been passed despite the fact that an application moved by the Federation pointing out that the

Respondent cannot be treated as an incumbent in the Office of Registrar PM&DC owing to the fact that the very law under which the appointment has been made has already been repealed is pending before the Islamabad High Court. He further points out that in light of "Zahid Waheed Khan. v. Crystal Chemical Limited" (2006-YLR-2577), despite ex-facie illegality of the said order, the same cannot be challenged in an Intra Court Appeal, as the same is not a final order. He further submits that unless this Court interferes in the matter in the interest of justice and in exercise of its powers under Article 187 of the Constitution, multiplicity of litigation would ensue in addition to serious legal complications need to be addressed on urgent basis owing to the importance of PM&DC and its work as a regulator which has come to a stand still on account of recent rounds of litigation.

2. In view of the above and in order to examine the legal questions involved in the matter, the application is allowed, the office objection is overruled.

Crl. P. No.350 of 2020.

3. The learned Attorney General for Pakistan submits that while directing the Federal Government to allow the former Registrar of PM&DC appointed under the Repealed PM&DC Ordinance, 2019 to assume the control of office of Registrar the learned High Court acted illegally without jurisdiction and in contravention of an unambiguous and unequivocal judgment passed by this Court on this very subject reported as "Pakistan Medical & Dental Council through President & 3 others. v. Muhammad Fahad Malik & 10 others" (2018 SCMR 1956). He further submits that the appointments made under an Ordinance do not survive after repeal

of the Ordinance unless specifically saved by any provision of subsequent legislation. He therefore maintains that while restoring the Respondent No.1 in contempt proceedings the learned High Court not only exceeded its jurisdiction but omitted to follow the principle of law settled by this Court in "Province of the Punjab through Secretary, Health Department. v. Dr. S. Muhammad Zafar Bukhari" (PLD 1997 SC 351). He maintains that there is neither legal basis nor lawful justification.

4. We have confronted the learned ASC for Respondent No.1 with a question how the Respondent could claim to be the Registrar of PM&DC when the law under which he was appointed stands repealed. He frankly concedes that there is no legal basis for such claim. He however submits that in line with the earlier order of this Court, he would approach the Council for redressal of his grievance, if any and that he will not press his contempt petition presently pending before the Islamabad High Court. In view of such conceding statement of the learned counsel for the Respondent, who is also present in Court in person, we do not feel the necessity to proceed further in the matter.

5. This Criminal Petition is therefore converted into an appeal and allowed. The impugned order of the High Court dated 07.04.2020 is accordingly set aside. In view of the statement of learned ASC for Respondent No.1, the Contempt Petition pending before the Islamabad High Court shall also stand dismissed.

Crl. M. A. No.468 of 2020.

6. In view of the fact that the Criminal Petition has been converted into an appeal and allowed by us today, this application has become infructuous and is accordingly disposed of.

Crl. M. A. No.460 of 2020.

7. The learned Attorney General for Pakistan has brought to our notice a judgment of the Islamabad High Court dated 11.02.2020 passed in Writ Petition No.3800 of 2019 through which the learned High Court has set aside Pakistan Medical Commission Ordinance, 2019. Further, the learned High Court has directed that the ad-hoc Council constituted by this Court vide order dated 21.01.2018 passed in Civil Appeals No.3 and 4 of 2014 and other connected petitions to perform the functions and run the affairs of PM&DC in accordance with law.

8. We notice that as per orders passed by this Court the Council constituted by this Court comprised of following Members:

1. Mr. Justice (Retd) Mian Shakirullah Jan, former Judge of Supreme Court of Pakistan (President).
2. The Attorney General for Pakistan or his nominee (Member)
3. Federal Secretary Health, Islamabad. (Member)
4. Surgeon General of Pakistan Armed Forces (Member)
5. Vice Chancellor, The National University of Medical Sciences (Member)
6. Vice Chancellor, University of Health Sciences, Lahore (Member)
7. Vice Chancellor, Jinnah Medical University, Karachi (Member)
8. Vice Chancellor, Khyber Medical University, Peshawar (Member)
9. Principal, Bolan Medical College, Quetta (Member)
10. Principal, De'Montmorency College of Dentistry, Lahore (Member)
11. Professor Dr. Faisal Masood, Member (since deceased).

9. It appears that the ad-hoc Council constituted by this Court ceased to exist after promulgation of PM&DC Ordinance,

2019. The learned Attorney General for Pakistan submits that in view of the judgment of the Islamabad High Court, the same needs to be reconstituted for various reasons. This cannot be done by the High Court because the Council was constituted under specific orders of this Court. Therefore, this Court may, if it considers appropriate reconstitute the Commission. Further, on account of afflux of time various changes have occurred and subsequent events have overtaken the situation which need to be considered by this Court in the interest of better and effective working of the Commission. He submits that PM&DC is the main regulator of the medical profession and medical education. It is imperative that it should run effectively efficiently and smoothly. He adds that there was no Medical University in Balochistan and this Court may now consider inclusion of Vice Chancellor, Bolan University of Medical and Health Sciences as Member of the ad-hoc Committee instead of the Principal Bolan Medical College. Furthermore, in order to ensure representation to the Federal Capital Territory, the Court may also include Vice Chancellor, Shaheed Zulfiqar Ali Bhutto Medical University, Islamabad in the Commission.

10. He submits that a new President of the ad-hoc Council may be nominated by this Court. Federal Government considers it necessary, owing to the work and the importance of PM&DC in addressing various pressing issues faced by it including huge backlog of pending registration of large number of doctors, dealing with matters involving admissions, admission policies, registration, renewals of registration of Private Medical Colleges etc which have been pending since long that a whole time Chairman should be appointed who may be able to devote his full time and energy run

the Council effectively. The sheer quantum of work requires a whole time Chairman who may be able to deal with the overwhelming workload and backlog which needs to be cleared quickly. He further submits that the Hon'ble Chairman originally appointed by this Court has rendered outstanding and meritorious services which are greatly appreciated and acknowledged. However, owing to his other pressing engagements as Chairman, National Industrial Relations Commission as well as the Member, Law & Justice Commission of Pakistan which require his whole time attention, it would be unfair and unreasonable to burden him with further responsibilities of a pressing nature. On being contacted by the office, the Hon'ble President of the Council has also expressed his unwillingness to continue any further because of his other engagements mentioned above which take up most of his available time. We find that he has performed his duties diligently efficiently and with grace and dignity and implemented all orders passed by this Court in letter and spirit. In this view of the matter and respecting the wishes of the current Chairman and with deference to the reasons given by him as well as the learned Attorney General for Pakistan we allow the request.

11. Accordingly, the Council is reconstituted in the following manner:

1. Mr. Justice Ejaz Afzal Khan, (former Judge of the Supreme Court of Pakistan) President.
2. The Attorney General for Pakistan or his nominee (Member).
3. Federal Secretary Health, Islamabad. (Member)
4. Surgeon General of Pakistan Armed Forces (Member).
5. Vice Chancellor, The National University of Medical Sciences (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).
9. Vice Chancellor Bolan University of Medical and Health Sciences, Quetta (Member).
10. Vice Chancellor, Shaheed Zulfiqar Ali Bhutto Medical University, Islamabad (Member).
11. Principal De'Montmorency College of Dentistry, Lahore (Member).
12. The Council shall meet as soon as possible. The Attorney General Office shall with prior approval of President of the Council intimate the date of its first meeting to all concerned. The President shall in consultation with the Council appoint a Registrar of the Council. All existing record of PM&DC shall be handed over to the authorized representative of Secretary Health by Respondent No.1. The said Secretary shall provide full assistance in convening and holding of meetings of the Council. All functionaries of PM&DC who may be in possession/custody of any record of PM&DC shall also handover all relevant records to authorized representatives of the concerned Ministry or a person nominated by the Chairman of the Commission. The application is disposed of in the afore-noted terms.

Chief Justice

Judge

Judge

Announced in open Court at Islamabad on _____

Judge

'Not Approved For Reporting'
Zubair/*