

2024 M L D 623

[Balochistan]

Before Muhammad Kamran Khan Mulakhail and Shaukat Ali Rakhshani, JJ

PALWASHA SHERANI and

others----Petitioners

Versus

PAKISTAN MEDICAL AND DENTAL COUNCIL (PMDC) and others--Respondents

Constitution Petitions Nos. 1515, 1534, 1574, decided on 23rd November, 2023.

Pakistan Medical and Dental Council Act, 2022 (IV of 2023)---

---Ss. 17 & 49---Constitution of Pakistan, Art. 199---Constitutional petition---Medical College---Admission---Alternate and efficacious remedy---Vacant seats---Petitioners/candidates remained unsuccessful in Medical and Dental College Admission Test (MDCAT) who assailed the process of test and sought adjustment from vacant seats---Validity---Petitioners did not avail remedy against alleged act of the Council with regard to preparation of test but approached High Court that too without having any evidence to such effect---None of the petitioners prior to taking MDCAT objected to the exam as hard or out of syllabus or not in line with the policy framed by PMDC and/or in contravention of Pakistan Medical and Dental Council Act, 2022 and Regulations---Petitioners were estopped from throwing challenge to the process of test---All those seats which could not be filled up for any reason, stood carried forward to the subsequent year and were to be filled up on the basis of merit of the whole Province---High Court declined to interfere in admission process---Constitutional petition was dismissed, in circumstances.

Muhammad Ishaq Nasar for Petitioners (in C.P. No. 1515 2023).

Tahir Ali Baloch for Respondent. No. 1 (in C.P. No. 1515 of 2023).

Shai Haq Baloch, Additional Advocate General for Respondent No. 2 (in C.P. No. 1515 of 2023).

Sultan Khalid for Respondent No. 4 (in C.P. No. 1515 of 2023).

Azhar-ul-Haq Tareen for Petitioner in (C.P. No. 1534 of 2023).

Tahir Ali Baloch for Respondent No. 1 (in C.P. No. 1534 of 2023).

Sultan Khalid for for Respondent No. 2 (in C.P. No. 1534 of 2023).

Shai Haq Baloch, Additional Advocate General for Official Respondent (in C.P. No. 1534 of 2023).

Shams-ur-Rehman Kakar for Petitioners (in C.P. No. 1574 of 2023).

Shai Haq Baloch, Additional Advocate General for Respondents Nos. 1 and 2 (in C.P. No. 1574 of 2023).

Sultan Khalid for Respondent No. 3 (in C.P. No. 1574 of 2023).

Tahir Ali Baloch for Respondent No. 4 (in C.P. No. 1574 of 2023).

Date of hearing: 14th November, 2023.

JUDGMENT

MUHAMMAD KAMRAN KHAN MULAKHAIL, J.---By means of this common judgment, we are proposed to dispose of the Constitutional Petitions Nos. 1515, 1534 and 1574 of 2023, as identical questions of law and facts are involved in these petitions.

2. The Petitioners in all three petitions being aspiring candidates for admission to a medical university(ies)/college(s) for the MBBS and BDS courses for the session 2023, participated in the 'Medical and Dental College Admission Test' (MDCAT) conducted on 10th September 2023, however, as per their contention the test was not conducted as per guidelines prescribed by the PMDC, while the test was to be conducted through respective province, but in complete disregard to the PMDC Rules/Regulations and guideline framed thereunder, the test was conducted through an unauthorized body viz National University of Science and Technology (NUST); that mass cheating through modern electronic devices in the said test has also been unearthed, which has altogether placed a question mark upon the entire procedure; that due to the lapses on part of the respondents, deserving candidates have been deprived of their legal fundamental rights. Finally prayer was made to the effect that the test be declared as null and void, followed by direction to conduct a de novo MDCAT test.

3. Learned counsel for the petitioners submitted that gross illegalities and irregularities have been committed by the respondents while conducting the test, while no pre-cautionary measures were taken to avoid, cheating, leaking out the paper and usage of any modern device by any candidate; that the paper was leaked out through modern device within fifteen minutes after starting the test/exam, which has further suspected the process; that the papers either were not prepared by the PMDC or according to guideline stipulated in the policy framed by the PMDC, as the questions were hard in nature and were out of course, beyond the study-modules and acquired knowledge of the candidates and despite several complaints, the respondents are bent upon to proceed with the process and allocate the seats to the students; Learned counsel for the petitioners prayed that the petitions be allowed in terms of the relief sought therein.

Conversely, the learned counsel for the Balochistan University of Medical and Health Sciences, Quetta (BUMHS) submitted that the allegations made in the petition are not supported by any evidence; that on basis of the scam emerged in social media, a committee was constituted, wherein only nine (9) students appeared, but none has objected the criteria, the question papers and the manner of examination, however, during course it revealed that only three pages of green book containing 15 to 20 questions were allegedly leaked out, and the student allegedly involved was rusticated; that none of the objectors have approached this court and similarly, the petitioners have never appeared before the committee; that total 9,240 candidates appeared in the test out of which around about 1800 students have passed their test and on basis of unproved allegations the passed candidates cannot be deprived of their right; that due to frivolous litigations the admissions process is at stake and similarly the upcoming academic session will get delayed, causing irreparable loss both to the students and the BUMHS; that the petitioners just want another opportunity to take the exam so as to improve their results; that the grievance of the petitioners who have failed in the MDCAT exam is belied by fact because thousands of students have passed the MDCAT exam; that any student having a grievance regarding the questions in his/her exam could have filed an application/complaint before the PMDC, but none have availed the remedy. Learned counsel prayed for the petitions to be dismissed.

Learned counsel for the PMDC while adopting the arguments of the learned counsel for the BUMHS requested for dismissal of the petitions.

4. We have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. Section 17 of the Pakistan Medical and Dental Council, 2022 (The Act 2022) provides the procedure for conducting the test for admission in the Medical and Dental Colleges, which stipulates as under:

"17. Medical and Dental Colleges Admission Tests (MDCAT).-(1) Each province, Gilgit-Baltistan and Islamabad Capital Territory as per the policy and standards approved by the Provincial Governments and Federal Government respectively shall conduct on the dates approved by the Council, a single admission test based on the intermediate or equivalent syllabus for all students seeking admission in

undergraduate programs both in public and private medical and dental colleges and universities.

(2) No student shall be awarded a medical or dental degree in Pakistan who has not passed the MD CAT prior to obtaining admission in a medical or dental college in Pakistan:

Provided that the mandatory requirement of MD CAT shall not apply to students seeking admission on a special program seat predefined exclusively for foreign students and on the seats reserved for overseas Pakistanis.

(3) The admission to medical and dental programs conducted by public and private colleges and universities shall be regulated as per the policy and standards of the Federal Government through Minister-incharge, Provincial Government and Gilgit-Baltistan strictly on merit. However, private colleges may take any additional entrance test subject to any condition imposed by the relevant university to which such college is affiliated:

Provided that the marks obtained by a student in MDCAT conducted by the province shall constitute a minimum of fifty percent of the weightage for the purposes of admission in the public and private colleges.

(4) The MDCAT result of one province shall be valid for the entire country and shall be valid for a period of three years. Each province, GilgitBaltistan and Islamabad Capital Territory shall give preference to the students having domicile of their respective province or territory as the case may be.

(5) Admissions on vacant seats shall be decided by the respective provincial government and respective authority in case of Gilgit-Baltistan and Islamabad Capital Territory.

Likewise, Section 47(2) (f) of the Pakistan Medical and Dental Council Act, 2022 ("The Act 2022") empowers the Pakistan Medical and Dental Council ("Council") to frame regulations for conducting admissions in medical and dental colleges and examinations to be conducted by the respective province. In pursuance thereof the PM&DC vide Notification dated 13th July 2023 notified the "Medical and Dental Undergraduate Education (Admission, Curriculum and Conduct) Policy and Regulation 2023 (The Regulations 2023). The petitioners do not question the authority or capacity of the Council to make the Regulations 2023 nor do they assail the Regulations through these petitions. Clause-3 of the Regulations 2023 contains the eligibility criteria for the admission in the Medical College/university, which stipulates as under:

3. Eligibility for Admission -(1) Any person seeking admission in any undergraduate medical or dental college in Pakistan shall be eligible having fulfilled the following mandatory criteria;

- a) have passed the MDCAT examination;
- b) obtained a Higher Secondary School Certificate qualification ("HSSC") or an equivalent 12th grade qualification recognized in Pakistan and having obtained a minimum of sixty percent (60%) marks therein, or a higher percentage as may be notified by the Pakistan Medical and Dental Council; and
- c) passed the mandatory subjects of biology and chemistry. The student may opt to qualify either physics or mathematics in the examination of the Higher Secondary School Certificate or an equivalent 12th grade qualification recognized in Pakistan;

Provided that the mandatory requirement of MDCAT shall not apply to students seeking admission on a special program seat predefined exclusively for foreign students and on the seats reserved for overseas Pakistanis. Such students shall qualify SAT-II with minimum score of 550 in each subject or a foreign MCAT examination or UCAT examination with 50% marks in the subjects as prescribed in Regulation 3 (c).

Provided further that a student admitted on a foreign seat shall pay the fee as a foreign student regardless of any change in status of such student during the program of study.

(2) The general principle to be applied shall be that admissions to medical colleges

should be concluded prior to admissions of dental colleges, and admissions to the public sector colleges are concluded prior to admissions to private colleges.

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| Public Medical Colleges | 31st December each year |
| Private Medical Colleges | 31st January each year |
| Public Dental Colleges | 15th February each year |
| Private Medical Colleges | 28th February each year |

Clause 4 of the Regulations deals with the admission process, which stipulates as under:

"Admissions Process,-(1) Each province, Gilgit Baltistan and Islamabad Capital Territory as per the policy and standards approved by the Provincial Governments and Federal Government respectively shall conduct on the dates approved by the Council, a single admission test based on the intermediate or equivalent syllabus for all students seeking admission in undergraduate programs both in public and private medical and dental colleges and universities.

(2) National University of Medical Sciences (NUMS) shall be the Admitting University responsible for admission in its constituent/affiliated medical/dental colleges/institutes. NUMS admission test shall be considered only for admission in all Armed Forces Administered medical/dental colleges.

(3) The government/admitting university shall formulate the merit and admission criteria for the public colleges as under:

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| MDCAT | 50% weightage |
| F.Sc (Pre-Medical)/HSSC/Equivalent | 40% weightage |
| SSC/(Matriculation)HSSC/Equivalent | 40% weightage |

(4) The government may create category of seats in the public colleges for purposes of admission in accordance with applicable law. Subject to Regulation 3 (1) (c) no category shall be created which permits a student who has not qualified the MDCAT or be admitted in violation of the fundamental principle of merit as mandatorily applicable under Article 37(c) of the Constitution of the Islamic Republic of Pakistan, 1973.

(5) The final criteria for merit and admission including all category of seats shall be publicly announced by or before 1st September of each year. A copy of the criteria and categories shall be provided to the Council by 1st September of each year.

(6) If any public scholarship or funded program requires seats to be allocated for its program in public colleges, the public authority responsible for such program shall seek and obtain the allocation of the required seats from the respective government or authority in respect of public colleges administered by them by or before 1st August of each year. All quotas and special seats shall be adjusted within the approved seat allocation by the Council for the institution."

The afore-quoted clause of Regulations 2023 makes it mandatory for a student to pass a single admissions test, in order to be admitted in a medical or dental undergraduate programmes in the year 2023 and thereafter anywhere in Pakistan. The MDCAT is required to be conducted annually by the Province on a date approved by the Council. This year, the MDCAT exam was conducted on 10th September 2023, at Balochistan University of Information Technology, Engineering and Management Sciences (BUITEMS) Quetta. wherein around about 9000 students including the petitioners participated in the test/exam, while approximately 1800 students have passed the test, however, none of them have challenged the vires of Section 17 of the Act 2022 or Regulations 2023, however, they have come with the different stance simultaneously, viz paper being prepared in disregard to the policy of PMDC difficulty ratio, out of course questions, test prepared and conducted by the NUST and paper being leaked out within fifteen minutes from its start. In order to inquire and unearth the actual position with regard to the allegations, the BUMHS constituted a committee and also to scrutinize the objections raised by the students, and as per report submitted by the learned counsel for the BUMHS only nine (9) students appeared before the committee, where the objection of each student was attended and dealt with accordingly, however, all those objectors being satisfied have not approached this court, instead the petitioners despite being given opportunity chose not to appear before the committee and

approached this court.

6. Though, the main stance of the petitioners was with regard that the paper was leaked out during the test, however, the allegation was to the extent that only three pages of green book were allegedly leaked out through whatsapp, but as per contention of the learned counsel for the BUMHS the said allegation remained unproved before the Committee, as no evidence except some photographic evidence was produced by any student. Even otherwise, if the contention of the learned counsel is taken into consideration, the same does not have impact upon the entire test process, as the test is being conducted on five different colour question papers, and each question paper contains 32 pages total 200 questions and approximately about 20/21 questions are alleged to have been leaked out, that too of only green book, on which only the petitioners, few in number have expressed their displeasure.

7. With regard to the other stance taken by the petitioner that the test was not conducted in accordance with the guidelines provided by the MDCAT and the paper was prepared beyond the syllabus and was hard in nature. The Act 2022 and the Regulations 2023 provides that the MDCAT exam shall be an assessment exam to determine the competence and suitability of a person to be inducted in a medical or dental undergraduate programme in Pakistan, while the Act 2022 and the Regulations 2023 also provide that the said test is to be based on the intermediate or equivalent syllabus. The petitioners have failed to point out or to place any question/material allegedly beyond/out of the syllabus or hard in nature, but even then more than 1800 students have passed their exam/test while appearing in the same test, but only eleven petitioners and 28 interveners/applicants have raised the stance of questions being harder in nature. Moreover, the pleadings of the petitioners regarding the questions in the MDCAT exam being out of the syllabus, harder and irrational are vague and generalized. It has not been pleaded as to which specific question; the petitioners were unable to answer on account of being out of the syllabus. The question bank may well have been secured but no student pointed out any particular question which according to him / her was out of the syllabus. The learned counsel for the BUMHS also pointed out that the test was conducted as per the policy framed by the PMDC, in presence of the PMDC officials and PMDC authentic data-bank. Even otherwise, the petitioner could approach the Federal Government through Minister-in-charge with regard to non-compliance of any provision of the Act 2022 by the Council, whereby the matter would be referred for inquiry with regard to particular compliant. Section 49 of the Act 2022, deals with such situation, which stipulates as under:

"49. Commission of inquiry.—(1) Whenever it is made to appear to the Federal Government through Minister-in-charge that the Council is not complying with any provisions of this Act, the Federal Government through Minister-in-charge may refer for inquiry the particulars of the complaint to a commission of inquiry consisting of three persons two of whom shall be appointed by the Federal Government through Minister-in-charge, including the chairman being at least a judge of a High Court, and one member nominated by the Council after a resolution.

(2) Such commission shall proceed to inquire in a summary manner and to report to the Federal Government through Minister-in-charge as to the truth of the matter charged in the complaint and in case of any charge of default or of improper action being found by the commission to have been established, the commission shall recommend the remedies, if any, which are in its opinion necessary.

(3) The Federal Government through Minister-in-charge shall the report of the commission of inquiry to the Council for implementation and for remedial actions. The Council shall submit to the Federal Government through Minister-in-charge a detailed plan of remedial measures to be adopted by the Council which shall be considered as approved if no further orders are passed by the Federal Government through Minister-in-charge in this regard within three months. All remedial actions shall be taken by the Council within a stipulated period of six months and the Council shall submit to the Federal Government through Minister-in-charge a report of actions taken thereon. If the Council fails to comply with the remedial measures forwarded to it by the Federal Government through Minister-in-charge, the Federal Government through Minister-in-charge may by itself amend the regulations of the Council or make such provisions or issue orders or take such other steps as may seem necessary to give effect to the recommendations of the commission.

(4) The commission of inquiry shall have power to administer oaths, to enforce the attendance of witnesses and the productions of documents and shall have other necessary powers for the purpose of any inquiry conducted by it as are exercised by a civil court under the Code of Civil Procedure, 1908 (Act V of 1908)."

The petitioners have not availed the remedy against the alleged act of the Council with regard to preparation of test, but have approached this court, that too without having any evidence to the effect. It is also relevant to mention that none of the petitioners prior to taking the MDCAT exam objected to the same being either hard, out of course, out of syllabus, or not in line with the policy framed by the PMDC and/or in contravention of the Act and Regulations, therefore, they are estopped from throwing a challenge to the process of test. Even otherwise, there is nothing irrational or unreasonable in the said Regulations, the process of test or the conduct of the respondents and nor does it, in our view, offends any of the provisions of the Regulations 2023.

8. The petitioners being students and aspiring candidates for the seats of MBBS and BDS have appeared in the test, but unfortunately, they remained unsuccessful, whereas on the other hand more than 1800 students have passed the test, thus, at the behest, whims and wishes of some students, the other students, who have successfully passed the test and are to be shortlisted for the reserved seats in the Public and Private Colleges, interviewed and selected against the seats, cannot be penalized for the act not done on their part or for the allegation which remained unproved before the committee or not challenged before the proper and available forum. The matter is of utmost importance and fundamental rights of each successful candidate is involved, while on the other hand the academic year is going to be started, thus, the matter cannot be prolonged nor kept in abeyance for indefinite period on pretext of unproved allegations of cheating or violation of the policy framed by the PMDC. Strong vested rights have been created in favour of all the students who have passed the MDCAT exam and on the basis of their result they have successfully qualified for admissions in the medical and dental institutions in Pakistan or to be considered for the same. Such rights cannot be undone in absence of the students who have already passed the test or are going to be admitted in the medical or dental institutions. Even if it is assumed that the petitioners had made out a case for issuance of a writ, in the present circumstances it would be most inequitable to issue a writ.

During course of arguments we have been informed that the seats allocated for self-finance and foreign nationals, which could not be filled up due to non-availability of candidates or otherwise, are either left vacant or allocated to other districts, having least quota of allocated seats. The similar issue has earlier come up before this court in case of "Zia-ur-Rehman v. The Chief Secretary, Government of Balochistan" (C.P No. 1279 of 2025) (sic), wherein this Court had decided the issue in following manner:

"9. The question of moot importance emerged .for consideration is that if according to para-45, of the prospectus, it was the prerogative of the Government of Balochistan to make any addition, alteration or amendment in the admission policy/prospectus then the powers of the Government of Balochistan in this behalf will become unfettered and the concerned department of the Government of Balochistan i.e., Health Department will be enjoying the unfettered and unhindered prerogatives to amend the admission policy by addition or alteration therein. Be that as it may, but the perusal of impugned paragraph-18, shows that unclaimed/unfilled seats "shall be equally distributed amongst the seven zones of the province of Balochistan by selection committee according to the prescribed order of the zones". For instance, if only one unclaimed/unfilled seat becomes available and/or more than one but less than seven seats become available, then for allocation of unclaimed/unfilled seats which criteria shall be followed, whether these seats will be allotted to the zones in seriatim or any other criterion will be laid down for allocation of these seats. Similarly, if more than seven but less than 14 seats are become available, then what would be a particular criterion for allocation of these seats amongst the seven zones.

We are of the considered opinion that aforesaid situation will conceive another dilemma followed by another chaos, in that case the unfilled seat(s), if allocated to one zone will increase its allocated seats, which will amount to deprive the other zone(s). In view of guidelines laid down by this court in the judgment dated 2.2.2015 passed in CP No.401/2014 and the judgment dated 25.9.2015 passed by the Hon'ble

apex Court in Civil Appeal Nos.186 and 187 of 2015, the department was allowed with an expectation that while regulating its future policy of admission, the guide lines given by the High Court shall also be kept in mind. On the other hand, if unfilled/unclaimed seats are permitted to be filled on basis of provincial merit list, the candidate(s) at Serial No. 1, of the merits list(s) of respective Zone(s) will transmit to the provincial merit list, which course, will itself serve the purpose by increasing the number of eligible candidates from the very zone(s), and, therefore neither anyone will be deprived nor will injustice or discrimination be caused to any candidate, nor any objection would be raised with regard to increased allocation of seat(s) to any specific Zone.

10. Therefore, under such circumstances for the time being except by expressing our grave concerns with regard to unclaimed/unfilled seats on basis of prescribed order of zones/zonal allocation, which will amount to deprive the aspiring candidates of one or the other zone. Since, the zonal allocation of those seats will not serve the purpose, until and unless at least with availability of seven or fourteen seats, when, in case of seven available seats, each zone will get one seat, while in case of fourteen seats, each zone will get two seats, but in case of more than one, but less than seven seats, and/or, in case of more than seven, but less than 14 seats the aspiring candidates of respective zones will be deprived."

Learned counsel for the PMDC informed that the PMDC has also framed Regulations 2023, and Clause-7 of the Regulations deals with the issue, which stipulates that:

- "(7) Self-finance and foreign quota seats.- (a) All medical and dental institutions may admit students on foreign seats quota upto fifteen percent of their total annual seats allocated by the Council purely on merit.
- (b) No candidate shall be eligible for foreign quota seats in the public and private medical and dental institutions under sub-regulations (a) unless, he holds a permanent foreign nationality or on overseas (being a Pakistani citizen permanently resident in a foreign country) Pakistani, and who has studied and passed HSSC 12th grade examination or equivalent from outside Pakistan and is a resident of a foreign country at the time of applying for admission and possess a certificate from the institution last attended to this effect.
- (c) Where any seat of foreign or self-finance quota remains vacant due to unavailability of eligible candidates or otherwise, it shall stand transferred to open merit quota and the student shall be charged fee and charges prescribed for open merit seat. An ineligible candidate shall not be admitted against such seats.
- (d) The annual quota offoreign seats and self-finance shall not be carried forward to admissions of any subsequent year. Cumulative seats for foreign plus self finance seats admission in a Public medical and dental institution shall not exceed fifteen percent of total allocated seats.

Since, the issue has already been attended by this court in the afore-referred petition, wherein it has been clearly decided that the unfilled seats, if remain vacant for any reason thereon, the same shall be transferred to open merit quota, whereas, the Regulations 2023 framed by the PMDC also stipulates that the vacant seat reserved for foreign nationals, if not filled up, shall be transferred to open merit, thus, it is once again declared and directed that all those seats, which could not be filled up for any reason, shall stand transferred to open merit quota of the province, which in no case shall be carried forward to the subsequent year and are to be filled up on basis of merit of the whole province.

In view of the above, we do not find any merit in these petitions, which are accordingly dismissed, but with no order as to costs.