

1997 SCMR 1026 & 1043

**2001SCMR1161**

**[Supreme Court of Pakistan]**

**Present: Muhammad Bashir Jehangiri,**

**Nazim Hussian Siddiqui and Rana Bhagwan Das, JJ**

**Mst. ATTIYYA BIBI KHAN and others---Appellants**

**versus**

**FEDERATION OF PAKISTAN through**

**Secretary of Education (Ministry of Education),**

**Civil Secretariat, Islamabad and others --- Respondents**

Civil Appeals Nos. 758, 759, 760, 761, 765, 766, 768, 769, 772, 876, 887, 888, 889, 890, 891, 892, 901, 902, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 1302 of 1998, 348 of 1999, 48 of 2000 and Civil Petition No. 1905 of 2000, decided on 22<sup>nd</sup> March, 2001.

(On appeal from the judgment/order dated 25-3-1998 of the Lahore High Court, Lahore passed in Writ Petitions Nos-3772, 2384, 329, 2901, 2989, 3010, 3221, 3336, 3639, 1505, 2722, 2908, 3187, 4148, 4536, 387, 2843 and 4023 of 1998).

# Per Nazim Hussain Siddiqui, J.-----

## (a) Educational institution---

---- Admission to Medical College---Candidates for admission were the real contesting parties; and to safeguard their individual interest, they had also challenged the entitlement of the rival candidates---Fate of such rival candidates could not be decided without affording them an opportunity of being heard.

Islamic Republic of Pakistan v. Abdul Wali Khan PLD 1975 SC 463; Syed Ahmed Saeed Kirmani v. Punjab Province and others 1982 CLC 590 and Mussarat Uzma Usmani and another v. Government of Punjab through Secretary Health, Lahore and another PLD 1987 Lah. 178 distinguished.

## (b) Maxim----

----"Audi alteram partem"---Applicability---Admission to Medical College--Candidates for admission were the real contesting parties, and to safeguard their individual interest, they had also challenged the entitlement of the rival candidates---Fate of such rival candidates could not be decided without affording them an opportunity of being heard.

Mushtaq Ahmed Mohal v. The Lahore High Court and others 1997 SCMR 1041 ref.

## (c) Educational institution---

---- Admission to Medical Colleges---Locus poenitentiae, principle of—Application ---Phrase "till a decisive step is taken"---Significance---Relevant Authority though could recede before "decisive step" was taken, but when admissions in the college were granted to the candidates, in accordance with the prospectus, and the results were communicated to them before the

Constitutional petitions were filed, they had not committed any wrong--Decisive steps in the matters thus were already taken and thereafter steps contrary to their interest could not be taken and principle of locus poenitentiae was attracted in these cases.

Pakistan and another v. S. Hussain Ali Shah A. Fazalani PLD 1960 SC (Pak.) 310 and Pakistan through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi PLD 1969 SC 407-ref.

**Per Rana Bhagwan Das, J.-----.**

**(d) Educational institution---**

---- Admission to Medical College---Candidates whose process of selection and admission had been finalized before the verdict of High Court on the subject, would not be affected by the judgment of High Court especially when they were not party to the proceedings before the High Court as they had acquired a valuable right on the strength of the admission policy and the representation bona fide made by the relevant Authorities.

**(e) Judgment---**

---- Operation of---Judgment would be operative from the date of announcement and would have no retroactive legal implications.

**(f) Constitution of Pakistan (1973)--**

----Art. 25---Equal protection of law and equal treatment before law--Principles stated.

Following are the principles with regard to equality of citizens:

(i) That equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;

(ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;

(iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;

(iv) that no standard of universal application to test responsibilities of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;

(v) that a law applying to one person or one class of persons may be Constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;

(vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;

(vii) that in order to make a classification reasonable, it should be based--

(a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;

(b) that the differentia must have rational nexus to the object sought to be achieved by such classification.

Muhammad Shabbir Ahmed Nasir v. Secretary, Finance Division, Islamabad 1997 SCMR 1026 and Mushtaq Ahmad Mohal v. Hon'ble Lahore High Court 1997 SCMR 1043 ref.

I.A. Sherwani v. Government of Pakistan 1991 SCMR 1041 quoted.

**(g) Constitution of Pakistan (1973)---**

---Arts. 254, 22, 25, 29, 37(c), 18 & 2A---Educational institution--Admission in Medical Colleges---Equality of citizens---Reasonable classification ---Concept-- -Discrimination ---Effect ---Principles.

Article 25 of the Constitution unambiguously guarantees that all citizens are equal before law and are entitled to equal protection of law and that they shall not be discriminated on the basis of sex alone. Inter alia, Articles 2A, 18 and 25 of the Constitution are designed, intended and directed to bring about an egalitarian society based on Islamic concept of social justice. There is no difference between individuals of mankind on the basis of race, colour and territory and that all human beings are equal in the eyes of Allah as He created all from a quintessence of clay.

No doubt, concept of reasonable classification has been held to be implicit in Article 25 of the Constitution which guarantees equality of citizens and equal protection of law. Nevertheless, it is equally well-settled that the classification must be reasonable and must have nexus with the objects sought to be achieved by such classification.

Constitution must be read as an organic whole and all its provisions must be harmoniously reconciled instead of picking out inconsistencies between different provisions.

Article 25, apart from stipulating equality and equal protection of law to all citizens, expressly prohibits discrimination on the basis of sex and provides that the State may make special provisions for protection of women and children. Article 22 of the Constitution forbids discrimination on grounds of race, religion, caste or place of birth in educational institution, receiving aid from public revenue but enables a public authority to make provisions for the advancement of any socially or educationally backward class of citizens.

Article 37(c), inter alia, requires that the State shall make technical and professional education generally available and higher education equally accessible to all on the basis of merit.

Admission to Government aided institutions was not exclusively covered by Article 22 of the Constitution but Article 25 was equally applicable. On the same principle there is no reason for ignoring the requirements of Article 37(c) of the Constitution. No doubt, aforesaid Article occurs in the Principles of Policy and is not directly enforceable nevertheless Article 29 of the Constitution requires each organ or authority of State to act in accordance with those Principles. These Principles of Policy are "conscience of the Constitution and the basis of all executive and legislative action". The provisions relating to Fundamental Rights ought to be read together with the directive Principles of Policy.

Article 37(c) ought to be read with Article 25 in matters concerning admission to Professional Colleges. Thus, reading Article 25 alongwith Articles 2A, 22 and 37(c) of the Constitution would show that only such classification could be deemed reasonable which fosters the objects of the Constitution i.e. to make higher education available on merits and at the same time to accommodate the interests of the socially or economically disadvantaged sections of the people for the purpose of fostering genuine rather than nominal equality.

The concept of a reasonable classification is premised on the principle that the object is not to secure nominal or formal equality but genuine equality amongst different classes or groups of citizens.

Nusrat Baig Mirza v. Government of Pakistan PLD 1992 FSC 412; Muhammad Nawaz Sharif v. President of Pakistan PLD 1993 SC 473; Shrin Munir v. Government of Punjab PLD 1990 SC 95; Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 418; Employees of the Pakistan Law Commission v. Ministry of Works 1994 SCMR 1548; Abdul Qadir Shaikh v. Registrar, N.E.D: University of Engineering and Technology 1992 CLC 2222; Abdul Fareed v. N.E.D. University of Engineering and Technology 2001 CLC 347; C.P.L.As. Nos.474-P and 494-P of 2000; Abdul

Qadir Bhatti v. Government of Sindh PLD 1976 Kar. 1102 and Ejaz Aslam v. University of Peshawar PLD 1975 Pesh. 186 ref.

#### **(h) Interpretation of Constitution---**

---Constitution must be read as an organic whole and all its provisions must be harmoniously reconciled instead of picking out inconsistencies between different provisions.

Muhammad Nawaz Sharif v. President of Pakistan PLD 1993 SC 473 ref.

**Per Rana Bhagwan Das, J.; Muhammad Bashir Jehangiri and Nazim Hussain Siddiqui, JJ., agreeing--**

#### **(i) Educational institution---**

----Admission to Medical Colleges in the Province of Punjab---Reservation of seats for admission for the course of M.B.,B.S. for sons and daughters of medical practitioners, medical officers and professors serving in teaching institutions; sons and daughters of the employees of the medical colleges; candidates domiciled in under-developed area like Dera Ghazi Khan, Rajanpur, Khushab etc.; candidates belonging to Federally Administered Tribal Areas and the sons and daughters of Armed Forces Personnel-- Legality---Held, reservation of seats for all categories in Medical Colleges was illegal and without lawful authority, except for disabled persons within the meaning of Disabled Persons (Employment and Rehabilitation) Ordinance, 1981, students domiciled in Federally Administered Tribal Areas and under-developed districts as well as Azad Kashmir and Northern areas, Afghan Refugees who had taken school and intermediate education in the educational institutions situated within those areas, and students of foreign countries on reciprocal basis for a period of seven years for the time being.

Where 'actual inequality exists; the State must resort to compensatory State action and, therefore, scheme of admission in Medical Colleges who make a certain percentage of reservation for those having suffered some initial disadvantage owing to their social and economic conditions. In the same spirit Articles 22 and 25 of the Constitution permit special provision to be made for women

and children or socially or educationally backward and undeveloped classes. Therefore, reservation of seats for such category may be justified. The benefit of such reservation should only be confined to those who have acquired their school and intermediate education from such less developed areas and not to any one who manages to obtain a domicile certificate from that area.

Similarly, reservation of seats for disabled persons is eminently reasonable inasmuch as because of their disabilities these candidates could not compete with their more fortunate compatriots and, therefore, it is the obligation of the State to take some compensatory action for them to fulfil its obligation to create genuine equality amongst all classes of citizens. There is yet another class of students which deserves serious consideration i.e. reservation of seats for foreign students domiciled and studying in foreign countries on the basis of reciprocity. Likewise, a provision can be legitimately made for children of Afghan Refugees who otherwise might not be eligible for admission on open merit basis. Students belonging to Azad Kashmir and Northern areas also might fall within the purview of socially, economically and educationally less developed areas and they deserve some kind of indulgence till such time those territories come up to the level of developed areas.

For this purpose it would be in the fitness of things that respective Governments take appropriate steps to identify socially and educationally backward areas in order to enable the children receiving education in such areas to qualify for admission to Medical Colleges against reserved seats.

Supreme Court thus declared reservation of seats for all categories in Medical Colleges illegal and without lawful authority, except for disabled persons within the meaning of Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 (Ordinance XL of 1981), students domiciled in FATA and under-developed districts as well as Azad Kashmir and Northern Areas, Afghan Refugees who have taken school and intermediate education in educational institutions situated within those areas, and students of foreign countries on reciprocal basis for a period of seven-years for the time being.

Candidates who were admitted under interim orders of Supreme Court and had reached 3rd year or 4th year class M.B.B.S. shall continue to avail the benefit of earlier admission policy as depriving such persons of the benefit of their education was bound to adversely affect their educational career. Furthermore, by vacation of their seats no person would be benefited as they had already completed three years of education.



I.A. Sherwani v. Government of Pakistan 1991 SCMR 1041; Muhammad Shabbir Ahmed v. Secretary, Finance Division, Islamabad 1997 SCMR 1026; Mushtaq Ahmad Mohal v. Hon'ble Lahore High Court 1997 SCMR 1043; Nusrat Baig Mirza v. Government of Pakistan PLD 1992 FSC 412; Muhammad Nawaz Sharif v. President of Pakistan PLD 1993 SC 473; Shrin Munir v. Government of Punjab PLD 1990 SC 95; Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 418; Employees of the Pakistan Law Commission v. Ministry of Works 1994 SCMR 1548; Abdul Qadir Shaikh v. Registrar, N.E.D. University of Engineering and Technology 1992 CLC 2222; Abdul Fareed v. N:E.D. University of Engineering and Technology 2001 CLC 347; C.P.L.As. Nos.474-P and 494-P of 2000; Abdul Qadir Bhatti v. Government of Sindh PLD 1976 Kar. 1102 and Ejaz Aslam v. University of Peshawar PLD 1975 Pesh. 186; S. Shreenivasa v. Registrar, Andhra University AIR 1985 Andh. Pra. 81; Subbarao v. Andhra University AIR 1964 Ker. 316; Shrin Munir v. Government of Punjab PLD 1990 SC 295; Falsafa Jamal v. Government of Balochistan 1999 CLC 1547 and Nationalized Secondary School v. Government of Punjab 1999 MLD 809 ref.

**Per Nazim Hussain Siddiqui, J.**

M. Sardar Khan, Senior Advocate Supreme Court for Appellants (in C.As.Nos.758, 766, 887 and 888 of 1998).

Ch. Mushtaq Ahmed Khan, Senior Advocate Supreme Court for Appellants (in C. As. Nos. 876, 1302. of 1998 and C. P.No.1905 of 2000).

Mansoor Ahmad, Deputy Attorney-General for Appellants (in C.As. Nos. 759, 761, 891 and 930 to 947 of 1998).

Nemo for Appellants (i`n C.As.Nos.765, 766 and 889 of 1998).

Bashir Ahmed Ansari, Advocate Supreme Court for Appellants (in C.A. No.48 of 2000).

Ali Hasan Shah, Advocate Supreme Court (in C.A. No.772 of 1998).

Muhammad Munir Peracha, Advocate Supreme Court for Appellants (in C.As. Nos.890 of 1998 and 348 of 1999).

Kh. Haris Ahmad, Advocate Supreme Court for Appellants (in C.A.No.902 of 1998).

Ch. Muhammad Ikram, Advocate Supreme Court for Appellants (in C.A. No.892 of .1998).

Raja Abdul Ghafoor, Advocate Supreme Court for Appellants (in C.As. Nos.759 and 929 of 1998).

Mehr Khan Malik, Advocate-on-Record for Appellants (in C.As.Nos.768 and 769 of 1998).

Ch. Akhtar Ali for Appellants (in C.As. Nos.901 and 928 of 1998).

Mansoor Ahmad, Deputy Attorney-General for Respondents (in C.As. Nos.758, 759, 760, 766, 768, 765, 769, 772, 887, 888, 890, 901, 902, 929 and 1302 of 1998).

Tariq Khokhar, Additional Advocate-General, Punjab for Respondents (in C.As.Nos.761, 876, 892, 928 of 1998, 930 to 947, 348 of 1999 and 48 of 2000).

Rao Muhammad Yousaf Khan, Advocate Supreme Court for Respondent No.5 (in C.A. No.876 of 1998).

Dates of hearing: 15th, 16th and 17th January, 2001.

## JUDGMENT

**NAZIM HUSSAIN SIDDIQUI, J.**---This judgment will dispose of Civil Appeals Nos. 758, 759, 760, 761, 765, 766, 768, 769, 772, 876, 887, 888, 889, 890, 891, 892, 901, 902, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 1302 of 1998 and 348 of 1999 in which common questions of facts involved. The Civil Appeal No. 48 of 2000 and Civil Petition 2000 are also being disposed of by this judgment.

2. The Civil Appeals Nos. 758, 759, 760, 761, 768, 769, 772, 887, 888, 890, 929 of 1998, 348 of 1999 relate to reserved seats for under developed areas.

3. The Civil Appeals Nos. 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947 of 1998 fall under the category of reserved seats for Defence Forces Personnel's children.

4. The Civil Appeals Nos. 876, 889, 902, 928, 1302 of 1998 and 1902 of 2000 are about reserved seats for Doctors' children.

5. The Civil Appeal No. 48 of 2000 and Civil Petition No. 1905 of 2000 concerning reserved seats for Doctors' children have been dealt with separately in this judgment.

6. The Civil Appeals Nos. 765 and 766 of 1998 are with regard to equivalence Certificate (G.C.E. "A" Level/Higher Senior Cambridge).

7. In above matters, judgment dated 25-3-1998 passed in Writ Petition No.3772 of 1998 by a learned Division Bench, Lahore High Court, Rawalpindi Bench, disposing of Writ Petitions Nos. 387, 3221, 3336, 2901, 329, 2843, 2384, 3010, 3167, 3639, 4023, 4536, 4148, 2989, 2908, 2722, 1505 of 1998 has been impugned.

8. The facts necessary for disposal of these appeals/petitions are that the appellants/petitioners applied for admission to the Board of Admissions of Medical Colleges of Punjab through its Chairman/Principal King Edward Medical College, Lahore. Subject-matter of grievance was the Prospectus of the Government Medical Colleges in Punjab for the Session 1997-98 in General and Appendix-II of the Prospectus in particular, dealing with Formula of merit of the candidates holding qualification other than (Pre-Medical), which is as follows:-----

## **APPENDIX-II**

Formula for evaluation of merit of the candidates holding qualification other than F.Sc. (Pre-Medical).

### **1. QUALIFICATION**

(i) G.C.E. "A" Level/ Higher Senior Cambridge

GRADE <u>(SUBJECTWISE)</u>	MARKS EQUIVALENT <u>TO F.Sc. (PRE-MEDICAL)</u>
A	85%
B	75%
C	65%
D	55%

E

45%

If the quantum of marks of a candidate is given by the Examining Authority, the same will be taken into consideration for working out the merit

**(ii) AMERICAN AND OTHERS**

IF CERTIFICATE SHOWS GRADE (SUBJECT WISE)	OR	IF CERTIFICATE SHOWS MARKS (SUBJECTWISE)	MARKS EQUIVALENT TO F.Sc.
A+		90% and above	80 %
A		85 % to 89 %	75 %
A- or B +		80 % to 84 %	70 %
B		75 % to 79 %	65 %
B- or C+		70% to 74%	60 %
C		65 % to 69 %	55 %

C- or D +	60 % to 64 %	50 %
D	55 % to 59 %	45 %
D-	50 % to 54 %	40 %

2. For purpose of working out the merit the subjects of Physics, Chemistry, Biology; and two languages (English and one other) if studied, of Intermediate level will be taken into account.

9. It was alleged that, undue favour, was shown to the candidates, who had qualified under foreign system of education, as such, the appellants were discriminated. It appears that as compared to the last session the percentage of marks for evaluation of merit of the candidates holding qualification other than F. Sc. (Pre-Medical) was increased to the extent of 5 % , which was alleged as being against the interest of the appellants.

10. It is claimed that the Appendix-II above is unwarranted and illegal. Further, it is alleged that quota system provided in the Prospectus is un-Islamic, opposed to the merit policy and is also against the principle of fair Play, as such, it needs to be scrapped out and all seats be made available for open merit amongst the candidates. The allocation of seats for the year 1997-98 shown at page 9 of the Prospectus is as follows: --

## **ADMISSIONS**

The total seats available for admission in each medical college and their allocation against each category of seats is shown in the following table:----

ALLOCATION OF SEATS FOR THE YEAR 1997-98 SESSION IN M.B.B.S. COURSE

Sr.No	Category	KEMC	NMC	QMC	PMC	RMC	AIMC	FJMC	Total
1	Underdeveloped District Seats	-	20	18	18	22	-	-	78
2	Defence Forces	-	2	2	2	2	-	6	14
3	Doctors' Children Seats	3	3	3	3	3	3	3	21
4	FATA seats	1	1	1	1	1	1	1	7
5	Azad Kashmir, Northern Area Seats	-	4	4	4	4	1	12	28
6	Disabled Students Seats	1	2	2	2	2	2	1	12
7	Reciprocal Seats	2	3	2	2	2	2	2	15
8	*Foreign Students Seats	5	10	11	10	10	5	21	72
9	Overseas Pakistani Children Seats	1	-	-	-	-	1	2	4
	Total Reserved Seats	13	45	43	42	46	14	48	251
10	Open Merit Seats	167	136	138	138	134	166	133**	1012
	Grand Total	180	181	181	180	180	180	181	1263

\* Out of 72 seats, seven are reserved for Afghan Refugee Students,

one in each of the Medical Colleges, 2 seats for Palestinian students, one at Fatima Jinnah Medical College, Lahore and one at Quaid-e-Azam Medical College, Bahawalpur.

\*\* Federally Administered Tribal Area Seats.

\*\*\* Federal Government's share in F.J.M.C. on 50:50 basis will be 66 seats.

Note.--An additional 334 seats will also be filled on merit for the academic session 1997-1998 only.

11. It was argued before High Court that question of equivalence of qualification was to be considered by the University, whereas question of 'equivalence of merit was within the domain of the Board of Admission, under para. 23 of the Prospectus, which is as under:--

"23. **FOREIGN QUALIFIED CANDIDATES** --Candidates belonging' to Punjab Province and Federal Capital Area who possess qualifications equal to Intermediate (Pre-Medical) in the subject of Physics, Chemistry and Biology; and English and one other language, if studied can apply for admission. Only those qualifications which have been declared equivalent to F.Sc. (Pre-Medical) by the relevant University for admission to tire medical Colleges of Punjab will be considered. The equivalence of merit will be determined by the Admission Board.

The formula for determining merit of the candidates holding qualifications other than F.Sc. (Pre-Medical) is given in Appendix-II. "

12. Learned counsel who appeared on behalf of American Education System and Britain Education System supported the Appendix-II of the Prospectus for the Sessions 1997-1998 and argued that the students of Foreign Institutes are brilliant and they have rightly been granted 5% increase in the classified grades, while evaluating merit as against locally qualified students. They supported the equivalence formula introduced by IBCC.

13. Learned High Court having taken into consideration all the pleas raised on behalf of the parties reached the conclusion that conversion formula must have logical, rationale and reasonable basis for determining the merits and that no legitimate objection could be taken as far as G.C.R. "A" Level/Higher Senior Cambridge, qualification is concerned. It was held that their standard of education, method of marking and setting of papers, excluded all possibilities of favoritism. Finally, it was held that the formula adopted for conversion of A level to F.Sc. marks in the Prospectus (Appendix-II) was just and fair.



14. About American System of Education, learned High Court has taken a different view and held that the formula for American Education Institution, including L.A.S., was unjust and unfair, has no rationale and logical basis. It was not approved and was held as under:--

"... The disputed provisions of Appendix-II clause (ii) in the Prospectus are declared unfair, unjust and without justifiable sound foundations. Fresh equivalence formula for determination of merit shall be evolved by the Admission Board keeping in view the observations made in this judgment."

15. Dealing with quota system, learned High Court, observed that learned Advocate-General had not seriously opposed the objections regarding quota system. However, in relation to quota of three categories, namely disabled persons, FATA and children of doctors, learned A.-G. submitted that it should not be disturbed.

16. In para. 9 of the impugned judgment, learned High Court stated that Government intended to maintain merit policy in all educational institutions and that no candidate shall be admitted in violation of the merit policy and that sex, area, caste and creed shall in no way stand in the way to determine the merit for grant of admission to a candidate in medical colleges.

17. The findings of paras. 14 to 16 of the impugned judgment have been impugned in these matters. High Court upheld reservation of seats for disabled students. For FATA, it was held that the candidates, who get admission in advanced areas like Lahore, Islamabad etc. were not entitled to get admission on special quota, as all the facilities like others were available to them. However, if a student of such a backward area gets his F.Sc. Education from district of his domicile, he shall be entitled to admission on reserved seats for FATA.

18. Likewise, a line of distinction was drawn about reserved seats for Doctors' children, holding that such children were not entitled to reserved seats, but sons and daughters of teachers of the medical colleges could legitimately claim this concession, as incentive for the doctors to teach in the Medical Colleges. It was held that except for the aforesaid three categories, the remaining reserved seats viz. 251, are un-Islamic and in conflict with Articles 18, 27, 25 and 2A of the Constitution of Pakistan, 1973. For above conclusion, reliance was placed on the case reported as *Mushtaq Ahmed Mohal v. The Lahore High Court and others* 1997 SCMR 1041.

19. Although in the impugned judgment, nothing is said specifically about seats reserved for the children of Defence Forces Personnel, but due to the observations that except the three categories mentioned above the remaining reserved seats are un-Islamic and against the provisions of the Constitution, the Adjutant-General, Pakistan Army, General Headquarters has filed Civil Appeals Nos. 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946 and 947 of 1998, challenging the above finding of High Court and prayed for maintaining quota of reserved seats, as per ;able quoted earlier.

20. In Civil Appeal No. 760, the appellant is N.-W.F.P., while Civil Appeal No. 761 of 1998 has been filed by Federation of Pakistan through Secretary, Ministry of Health. In Civil Appeal No. 760 it is contended that the Federally Administered Tribal Areas and the Provincially Administered Tribal Areas are backward areas and it is the Constitutional duty of the State to promote, with special care, the education and academic interest of the backward classes or area. Further, is stated that the Federal Government has reserved, for students from FATA, 96 seats in the various medical and dental Colleges in Pakistan. It is also the grievance of the appellant that FATA candidates can apply only for their own allocated seats and are not eligible for open merit seats in King Edward Medical College, Lahore, Allama Iqbal Medical College, Lahore, Fatima Jinnah Medical College for Women, Lahore.

21. In Civil Appeal No. 761 of 1998 it is contended that the appellants and the nominated candidates were condemned unheard and the impugned judgment of the High Court is against the principle of "audi alterm partem". Further, it is contended that nominations were made in January, 1998, much earlier to the filing of the Writ Petitions, and the impugned judgment was rendered on 25-3-1998, and it could not nullify the nominations validly made in accordance with the provisions of the Prospectus. Further, it is contended that since the nominations were made much earlier of filing of the petitions, it had become a past and closed transaction" and impugned judgment could not affect those nominations. Like wise, in Civil Appeal No. 759 of 1998, it is alleged that appellants were selected towards September, 1997 and the session in Fatima Jinnah Medical College for Women, Lahore, commenced in the month of March/April, 1998, as such, the impugned judgment was not applicable to them.

22. Vide order dated 18-5-1998, 21-5-1998, 2-6-1998, 3-6-1998 and 3-5-1999 passed in Civil Petitions Nos. 446, 469, 470, 477, 491, 541, 542, 679-L, 659, 663, 698, 702 of 1998 (Civil Appeals Nos. 758, 759, 760, 761, 768, 769, 772, 887, 888, 890, 929 of 1998 and 348 of 1999) leave was granted to consider whether learned Division Bench, Lahore High Court could pass the impugned judgment without hearing respective Provincial Governments and the nominating authority (SAFRON) a appellants in above appeals, who were nominated by the respective Provincial Government/(SAFRON) against reserved seats of FATA/PATA and by the Province

of Balochistan, were allowed provisional admission in the colleges where they were nominated by the respective authorities.

23. Vide orders dated 29-4-1998, 19-5-1998, 3-6-1998, 8-6-1998, 17-6-1998 and 4-8-1998 passed in Civil Petitions Nos. 604, 542-L, 659-L, 662-L, 664, 693, 716, 759 and 742 of 1998 Civil Appeals Nos. 765, 766, 876, 889, 892, 901, 902, 928, 1302 of 1998) leave to appeal was granted to consider issue relating to equivalence/Doctors' children and provisional admission was allowed to the candidates.

24. Vide orders dated 2-6-1998 and 3-6-1998 passed in Civil Petitions Nos. 705, 692-L, 705-L, 709-L, 713-L, 714-L, 715-L, 716-L, 717-L, 718-L, 719-L, 720-L, 721-L, 722-L, 728-L, 729-L, 730-L, (Civil Appeals Nos. 891, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947 of 1998) leave to appeal was granted, the impugned judgment was suspended- to the extent of reserved seats for defence personnel recommended by the services and the candidates were allowed provisional admission.

25. It is contended by Mr. M. Sardar Khan, Senior Advocate Supreme Court that candidates from FATA are not eligible to apply for admission against open merit seats and if impugned judgment is allowed to prevail, it would be against the educational interest and the career of the candidates, hailing from FATA. Learned counsel also argued that impugned judgment is misconceived in law and on facts as well, besides being against the principle of audi alteram partem.

26. Ch. Mushtaq Ahmed Khan, Senior Advocate Supreme Court has argued that impugned judgment suffers from patent discrepancies and contradictions, inasmuch as on the one hand High Court held that quota for Doctors' children is unjustified and simultaneously approved it, so far it related to specified Doctors' children. He also contended that impugned judgment at the most could be made applicable to the parties in these matters but it could not apply to appellant (Civil Appeal No. 1302 of 1998), as he was not impleaded as a party nor an opportunity was afforded to him to present his point of view. He submitted that appellant has acquired a vested right to seek education in the Quaid-e-Azam Medical College, Bahawalpur, as he was selected on merits on Doctors' children quota seats. Learned counsel also submitted that principle of "locus poenitentiae" is applicable in this case, but erroneously was not applied by High Court.

27. Mr. Mansoor Ahmed Khan learned counsel for appellants (Defence Forces Personnel children) contended that the appellants were condemned unheard. He also argued that the nominations of the appellants were made in January, 1998 i.e. much earlier to the filing of the

writ petitions and it being so their case fell within the scope of "past and closed transactions" and by the impugned judgment their nominations could not be rendered ineffective. He challenged the validity, propriety and correctness of the impugned judgment on the ground that neither Ministry of Defence nor any of its 3 constituents, namely Army, Air Force and Navy were parties to the writ petitions nor any notice was issued to them for explaining their point of view.

28. Kh. Muhammad Haris learned counsel for appellants (Civil Appeal No. 92 of 1998) argued that impugned judgment was passed totally ignoring the facts that appellants' names had already been displayed in the list of students admitted in one or the other Medical Colleges of Punjab, yet, they were neither impleaded as parties nor heard before passing of the impugned judgment and this adversely affected them. He also challenged the rationale applied in the impugned judgment regarding, reserved seats for Doctors' children.

29. Syed Ali Hasan Shah, learned counsel, for appellants (Civil Appeal No. 772 of 1998) has contended that allocation of two seats each for Tribal Areas of D.G. Khan and Rajan Pur was just and there was no justification to disturb it, as in these areas modern facilities are not available. According to learned counsel, the impugned judgment would have the effect of depriving under developed areas with medical education. He also argued that retention of special categories for admission in medical colleges by itself does not amount to discrimination.

30. Muhammad Munir Paracha, Ch. Muhammad Akram, Advocate Supreme Court and Raja Abdul Ghafoor, Mehr.Khan Malik and Ch. Akhtar Ali, Advocate-on-Records, have almost repeated the aforesaid contentions on behalf of their respective clients.

31. It is a common ground that the appellants were not parties nor they were heard before the impugned judgment was passed. Even, Federation of Pakistan and N.-W.F.P. have taken this plea. Factually, it is correct and this aspect has not been controverted. However, Mr. Tariq Khokhar, Additional Advocate-General, Punjab tried to meet above contention by arguing that High Court dealt with legal proposition with reference to the prospectus and in such circumstances, it was not necessary to join all the candidates as parties. He also argued that if a law is struck down, all the affected persons, are not made parties, as it would not be possible to do so. Besides, a person who availed illegal gain on the strength of a law, which subsequently was struck down, could not claim any legal right in respect of said law, although earlier he availed. In support of above contentions, he cited:--

(1) Islamic Republic of Pakistan v. Abdul Wali Khan PLD 1975 SC

(2) Syed Ahmed Saeed Kirmani v. Punjab Province and others 1982 CLC 590 (Lahore);

(3) Mussarat Uzma Usmani and another v. Government of Punjab through Secretary Health, Lahore and another PLD 1987 Lahore 178;

32. In the first case, the point under consideration was impleading of proper parties. It was held that a person having no interest likely to be affected by proceedings and a person not generally interested in a cause of action, were not proper parties. Also, when no relief is sought against a person, he could not claim to be a proper party. It was also held that in the generic sense, every decision of this Court on a point of law is likely to affect every one in the country in whose case a similar point of law arises, but this does not give every person in the country a right to intervene in every proceedings before the Court.

33. In the second case, it was held that principle on which a person is considered to be an 'aggrieved party' to maintain writ petition, the same does not govern question of impleading as respondent in writ petition.

34. In the third case, it was held that if State functionaries contravened Constitutional provisions, the beneficiaries of its illegal act, who may be in large number or majority of citizenry, need not be made parties to the Constitutional petition or petitions.

35. Suffice it to say that above cited cases are distinguishable on facts. Ratio of above quoted third cases is against the main argument advanced by learned Additional Advocate-General, Punjab, wherein it was held "in a dispute based on private rights, these are parties inter se, who are involved and they are essential parties to the litigation". In fact, in the cases in hand the candidates were the real contesting parties and to safeguard their individual interest, they have also challenged the entitlement of the rival candidates. The fate of the appellants should not have been decided without affording them an opportunity of being heard.

36. Next point is whether the principle of "locus poenitentiae" is applicable to these matters. Ch. Mushtaq Ahmed Khan, learned Senior Advocate Supreme Court vehemently argued that it is applicable and cited:----

(1) (1) Pakistan (2) The Chief Controller of Imports & Exports v. S. Hussain Ali Shah A. Fazalani PLD 1960 Supreme Court (Pak.) 310;

(2) Pakistan through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi PLD 1969 Supreme Court 407.

37. In the first reported case, the point under consideration was the import licence of an Indian film. Licence was granted in accordance with the declared policy of the Government. Later on, it was cancelled. It was held that licence granted was not mere act of discretion or unilateral act on the part of the Government, but it was granted in fulfilment of an undertaking, which imposed certain prior conditions upon the applicant, which he had fulfilled. It was also held that, under the circumstances, legal right accruing to the applicant, could not be taken away on the pretext of non-compliance with the rule requiring submission of a bank certificate.

38. In the second case, it was held that an authority competent to pass an order has also power to undo it and that an order could not be withdrawn or rescinded once it has taken legal effect and certain rights are created in favour of an individual. It was also held that principle of locus poenitentiae i.e. power of receding till a decisive step is taken, is available to the authority to pass order to retrace the wrong step taken by it.

39. It is noted that, the phrase "till a decisive step is taken" is very important. There is no doubt that relevant authority can recede before "decisive step" is taken. In these cases, admissions were granted to the candidates, in accordance with the prospectus, and the results were communicated to them before the writs were filed. They had not committed any wrong. Thus, decisive steps in these matters were already taken and thereafter steps contrary to their interest could not be taken. The principle of "locus poenitentiae" is attracted in these matters.

40. Learned High Court approved the formula of conversion relating to G.C.E. "A" Level/High Senior Cambridge qualification on the ground that their standard of education method of marking and setting up of papers excluded all possibilities of favouritism, and turned down the

formula relating to American System of Education, for the detailed reasons given in the impugned judgment, we uphold the finding of High Court and direct the concerned authorities to determine fresh equivalence formula in the light of the observations of High Court.

41. Now coming to the merits of the case, there is no dispute of reserved seats for disabled students. It is the responsibility of the State and the society to look after them, as to, enable them to settle themselves, as a good citizen. In all civilised countries, such persons are looked after by the citizens and the State as well Therefore, the allocation of seats for them is justified.

42. Before High Court there was no serious objection for abolition of reserved seats in respect of under developed districts, Defence Forces Personnel's children, Azad Kashmir and Northern Areas, seats on reciprocal basis, foreign students and Overseas Pakistanis' children. Only the case of 3 categories viz. Disabled Students (Special Persons), FATA and Doctors children, was pleaded.

43. As regards FATA, it has been argued that it is the Constitutional duty of the State to promote with special care, the educational and academic interest of the backward classes or areas. Further, it is contended that Federally Administered Tribal Areas, being backward areas, need to be protected till they come at par with the developed areas. We are not convinced with the above arguments. Many other areas of the country are even more backward than FATA. No doubt, it is the duty of the State to pay special attention for the up-lift of FATA, but that should not be at the cost of merit in educational institutions. Interest of the country is supreme than regional and motivated privileges to a particular group of persons. Reservation of seats besides denying legitimate right to deserving candidates to get admission on merit, promotes inefficiency, nepotism and corruption. There should not be any compromise on the quality of education, which certainly is affected if admissions are given on other basis than merits. We are of the view that there is no justification for reservation of FATA seats. All these seats must go on merits. The concerned authority shall frame necessary rules in the light of above observations.

44. Next category is Doctors' children. High Court, although in general, denied the reserved seats for Doctors' children, yet, to a limited extent approved, such reservation for sons and daughters of teachers in the medical colleges. According to High Court, it would provide incentive to doctors to teach in the medical colleges. We are not satisfied with this reasoning also. It is discrimination in the sense that those doctors, who are not teaching in the medical colleges will not have the benefit of this concession, while those serving as teachers/professors in the medical colleges would be entitled to it. A question arises as to why this facility to professor doctors and other doctors and not to the persons of other professions. Every citizen of the country should be treated alike as far as possible. Classification on the basis of favouritism is not permissible.

Accordingly, we hold that Doctors' children of all the categories would not be entitled to admission on reserved seats and all these seats are to be filled on the basis of merit and merit alone.

45. Next to be considered is the claim of reserved seats for the children of Defence Forces Personnel. It has been vehemently argued that it would not be proper to abolish reserved seats for Defence Services, as many of the Defence Personnel, as valiant soldiers laid down their lives for country or became handicapped, many of them permanently. Learned counsel also argued that Government of the then West Pakistan by a communication addressed to the Ministry of Defence, dated 14/17th January, 1966 had agreed for reserved seats to be allocated on the basis of merits to:-----

(i) Children of Shaheeds.

(ii) Children of crippled personnel.

(iii) The Children of those Defence Personnel, who have been decorated for gallantry.

(iv) Children of those Defence Personnel, who have actually been involved in the conflict.

(v) Children of those Defence Personnel, who belong to Defence Forces.

46. The Defence Personnel, who laid down their lives for the country shall be extremely respected and their dependents be suitably compensated but reservation of seats on that score is not justified. Their sons and daughters, who are meritorious would automatically get admission on their own merit. It is in the interest of every body that merit should be appreciated and shall not be bartered on any extraneous consideration. Many other' persons like police officers, custom officers, rangers etc., while discharging their duties, sacrifice their lives for the interest of the nation. Would they too be accommodated? We accordingly, hold that there shall not be reserved seats for the children of Defence Personnel.



47. Next we take up the category of underdeveloped districts. Experience has shown that after completing education the students mostly do not return back to their areas and settle down in developed areas. There is also no legal justification for reserved seats for such area. Besides, under developed areas are not only those specified in the prospectus, but they are also in many other parts of the country. So, this classification also is against established norms of justice.

48. Also for above reasons, we feel that there shall not be any reservation of seats for Azad Kashmir, Northern Areas, on reciprocal basis/grounds, foreign students and Overseas Pakistanis' children. All admissions, except disabled students, shall be on merits.

49. As pointed out earlier, interim relief was granted to the appellants on 29-4-1998, 18-5-1998, 19-5-1998, 21-5-1998, 2-6-1998, 3-6-1998, 8-6-1998, 17-6-1998 and 4-8-1998, whereby provisional admissions were allowed to them. Learned counsel representing them have submitted that these appellants are now in 4th Year and after about a year or so they would complete their studies. Since above relief was granted to them for doing complete justice, it would be inappropriate now to withdraw it with retrospective effect. If so is done, it would do nothing, but to put them in extreme hardship. It would not be beneficial to anybody.

50. Since the appellants were not impleaded as parties, as such, they could not be condemned unheard. The principle of "Locus Poenitentiae" is applicable to these matters. Besides, they were allowed provisional admission by this Court, which cannot be withdrawn at this stage. As a special case, therefore, we allow them to complete their studies.

51. Concerned authorities shall frame fresh rules for admission in the medical colleges on basis of merits alone in the light of above discussion/findings.

## **CIVIL APPEAL NO. 48 OF 2000**

52. The case of appellant, Miss Faiza Aslam, is that she passed her F.Sc. (Pre-Medical) Examination on 13-7-1999 and she is a daughter of Lt.-Col. Muhammad Aslam, who at the relevant time, was posted in the Province of Sindh. Her father is Bachelor of Dental Surgery from University of Punjab. It is her case that in the Prospectus for Session 1999-2000 published in September/October, 1999, reservation of seats for children of doctors was omitted. She claimed that she was deprived of an opportunity to seek admission on the basis of being a

daughter of doctor. She assailed the Prospectus for Session 1999-2000 as being harsh, oppressive, discriminatory and without lawful authority.

53. On 2-2-2000 leave to appeal was granted to her and it was ordered that her appeal shall be heard along with aforesaid matters.

54. It is pertinent to note that her counsel, when leave was granted, stated before this Court that the points involved in this appeal were similar to above appeals. It was incorrect statement, the points in this appeal and aforesaid matters are quite different. In the aforesaid matters, the appellants were already nominated much earlier to the filing of writ petitions. In above matters the Prospectus under consideration was for the Session of 1997-98 and not of 1999-2000. They were condemned unheard and principle of "locus poenitentiae" was applicable to them. In the instant appeal the factual position is different. The appellants of aforesaid appeals are now in 4th Year and appellant of the instant case was allowed provisional admission only on 2-2-2000. There was no reservation of seats for children of doctors for the Session 1999-2000. As held above, there shall not be any reservation of seats for children of the doctors. Accordingly, this appeal is not maintainable and is dismissed. Interim order dated 2-2-2000 is withdrawn.

#### **CIVIL PETITION NO. 1905 of 2000**

55. Petitioner, Miss Maham Niazi, is a daughter of Medical Practitioner and her father is M.B.,B.S. She applied for admission under above category. Her case is that she is on higher footing than appellant Faiza Aslam, as she (Maham Niazi) had secured more marks than Faiza Aslam. She also challenged the Prospectus for the Sessions 1999-2000 and her Writ Petition No. 330 of 2000 was dismissed by the Lahore High Court vide order dated 14-11-2000.

56. Contention is that she had secured more marks than Miss Faiza Aslam. We have dismissed appeal of Miss Faiza Aslam. Consequently, this petition is also dismissed for above reasons.

57. In consequence, the appeals stand disposed of in terms of above observations.

(Sd.)

Nazim Hussain Siddiqui, J.

I have subscribed to paras. 11, 15 and 16 of the judgment recorded by Rana Bhagwan Das, HJ-10.

(Sd.)

Muhammad Bashir Jehangiri, J.

(Sd.)

Nazim Hussain Siddiqui, J.

(Sd.)

Rana Bhagwan Das, J.

CIVIL APPEAL NO. 758 of 1998 and others

**RANA BHAGWAN DAS, J.**---I have had the privilege of perusing the draft judgment authored by my learned colleague Nazim Hussain Siddiqui, J. While I partially agree with the conclusions drawn, I would like to add a few paragraphs of my own.

2. Controversy in the appeals and petitions under consideration revolve around the question of legality or otherwise of reservation of seats for candidates belonging to different categories for admission to medical colleges for the course of studies for M.B.,B.S. In the case in hand, we are concerned with the reservation of seats for sons and daughters of medical practitioners, medical officers and professors serving in teaching institutions, sons and daughters of the employees of the medical colleges, candidates domiciled in underdeveloped areas, for instance, Dera Ghazi Khan, Rajanpur, Khushab etc. candidates belonging to Federally Administered Tribal Areas and the sons and daughters of Armed Forces Personnel. Consequent upon the impugned judgment delivered by the Lahore High Court on 25-3-1998, necessary steps were taken by various

medical colleges in compliance with the verdict of the High Court. Although the question relating to admission of the sons and daughters of the Armed Forces personnel was not in issue before the High Court, learned High Court proceeded to declare all such quotas barring reservation for disabled persons, generally termed as 'special persons' and candidates domiciled in FATA who have received their secondary and higher secondary education in the institutions situated within the territories of Tribal Areas illegal and ultra vires the Constitution. In view of the fact that the Armed Forces have reservation of seats in almost all medical colleges and since they were not made party to the petitions before the High Court, Adjutant-General also filed a petition for leave to appeal from the judgment of Lahore High Court and while granting leave, operation of the impugned Judgment was suspended.

3. First question irritating my mind is whether the candidates whose process of selection and admission had been finalised before the verdict of the Lahore High Court should be affected by the judgment especially when they were not party to the petitions before the Court. Simple and logical answer to the question ought to be in the negative for the reason that they had acquired a valuable right on the strength of the admission policy and the representation bona fide made by the relevant authorities. It has come on record that as against reserved seats they were selected/nominated by their sponsors and accepted by the college authorities but their physical admission preceded by receipt of admission fees was withheld by the college authorities in the light of the impugned judgment. Strictly speaking, judgment would be operative from the date of announcement and would have no retroactive legal implications. They were not even party to the proceedings before the High Court. It was, therefore, erroneous assumption of law and misinterpretation of the judgment that the college authorities considered it just and proper to withhold their admissions believing that they were acting in line with the mandate of the Court. Therefore, the decision to deny admission to these candidates being itself premised on a misunderstanding of law it cannot be said that any attempt to retrace a wrong step was made. Therefore, it is not even necessary to resort to the doctrine of locus poenitentiae. The submission that the appellants were condemned unheard in utter disregard of the principle of natural justice i.e. "audi alteram partem", is completely misconceived.

4. it may be observed at this juncture that almost in all the appeals while granting leave to appeal operation of the judgment was suspended and provisional admission was allowed through interim orders passed by this Court having regard to the rights and interests of the appellants. Accordingly they were admitted to the Course of Studies and are receiving necessary education. In many cases the appellants are now studying in 4th Year professional M.B. B.S.

5. Adverting to the question of equal protection of law and equal treatment before law I am reminded of the following illustrious principles laid down by this Court in I.A. Sherwani v. Government of Pakistan 199 SCMR 1041:--

"(i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;

(ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;

(iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings and persons accused of heinous crimes;

(iv) that no standard of universal application to test responsibilities of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;

(v) that a law applying to one person or one class of persons may be Constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;

(vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;

(vii) that in order to make a classification reasonable, it should be based:--

(a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;

(b) that the differentia must have rational nexus to the object sought to be achieved by such classification."

6. This principle was followed in *Muhammad Shabbir Ahmed Nasir v. Secretary Finance Division*, Islamabad 1997 SCMR 1026 and reiterated in *Mushtaq Ahmad Mohal v. Hon'ble Lahore High Court* 1997 SCMR 1043 which was a case of zonal allocation or quota system in matter of services in the light of Articles 18, 27, 25 and 2A of the Constitution. It is true that Mushtaq Ahmad Mohal's case (supra) essentially pertains to zonal or regional quota for appointments to public service in terms of Article 27 of the Constitution, the principles laid down in the case would apply with greater force to the case of reservation of seats for particular categories for admission to professional colleges dispensing medical education. True that Constitutional provision prescribing the period for such classification has been amended by Majlis-e-Shoora, the proposition of law settled is binding in all matters governing the right to enter upon any lawful profession or occupation without any discrimination. Article 25 of the Constitution unambiguously guarantees that all citizens are equal before law and are entitled to equal protection and that they shall not be discriminated on the basis of sex alone. Inter alia, Articles 2A, 18 and 25 of the Constitution are designed, intended and directed to bring about an egalitarian society based on Islamic concept of social justice. Needless to reiterate, there is no difference between individuals of mankind on the basis of race, colour and territory and that all human beings are equal in the eyes of Allah as He created all from a quintessence of clay. It would be pertinent to quote paragraph 36 of the judgment rendered by Federal Shariat Court in *Nusrat Baig Mirza v. Government of Pakistan* PLD 1992 FSC 412 which was, inter alia, quoted with approval in paragraph 25 of the classic judgment rendered by a Full Bench of this Court and authored by Ajmal Mian, J. (as his lordship then was), in *Mushtaq Ahmad Mohal's case* (supra):-----

"The Holy Qur'an and Sunnah should form the basis of all our directions for all our spiritual as well as worldly endeavours as they provide us a guidance not only towards the good in the Hereafter but also to attain a good life in this world. Quota system in disregard of merit makes the place of domicile as the criteria and this has, unfortunately, been so woven and institutionalised in our socio-political fabric that unless we return to the original message of the Holy Qur'an we will be farther away from the righteous and straight path."

7. No doubt, concept of reasonable classification has been held to be implicit in Article 25 of the Constitution which guarantees equality of citizens and equal protection of law as has been clearly explained in *I.A. Sherwani's case* (supra) mentioned in paragraph 5 above. Nevertheless, it is equally well-settled that the classification must be reasonable and must have nexus with the objects sought to be achieved by such classification. What needs to be seen is whether the classification impugned before the High Court could be termed reasonable or not.

8. It is a well-settled principle of Constitutional interpretation that the Constitution must be read as an organic whole and all its provisions must be harmoniously reconciled instead of picking out inconsistencies between different provisions. If authority is needed, one may refer to Full Court decision in *Muhammad Nawaz Sharif v. President of Pakistan* PLD 1993 SC 473. Article 25 apart from stipulating equality and equal protection of law to all citizens expressly prohibits discrimination on the basis of sex and provides that the State may make special provision for protection of women and children. Article 22 of the Constitution forbids discrimination on grounds of race, religion, caste or place of birth in educational institutions, receiving aid from public revenue but enables a public authority to make provisions for the advancement of any socially or educationally backward class of citizens. Article 37(c) inter alia requires that the State shall make technical and professional education generally available and higher education equally accessible to all on the basis of merit.

9. It may be pertinent to recall that in *Shrin Munir v. Government of Punjab* PLD 1990 SC 95 this Court repelled the contention that admission to Government aided institutions was exclusively covered by Article 22 of the Constitution and held that Article 25 was equally applicable. On the same principle there is no reason for ignoring the requirements of Article 37(c) of the Constitution. No doubt, aforesaid Article occurs in the Principles of Policy and is not directly enforceable nevertheless Article 29 of the Constitution requires each organ or authority of State to act in accordance with those Principles. In *Benazir Bhutto v. Federation of Pakistan* PLD 1988 SC 418 this Court described these Principles of Policy as "conscience of the Constitution and the basis of all executive and legislative action". In *Employees of the Pakistan Law Commission v. Ministry of Works* 1994 SCMR 1548 it was held that the provisions relating to Fundamental Rights ought to be read together with the directive Principles of Policy. In *Abdul Qadir Shaikh v. Registrar, N.E.D. University of Engineering and Technology* 1992 CLC 2222 and *Abdul Fareed v. N.E.D. University of Engineering and Technology* 2001 CLC 347 a Division Bench of the Sindh High Court held that Article 37(c) ought to be read with Article 25 in matters concerning admission to Professional Colleges. Thus, reading Article- 25 alongwith Articles 2A, 22 and 37(c) of the Constitution would show that only such classification could be deemed reasonable which fosters the objects of the Constitution i.e. to make higher education available on merits and at the same time to accommodate the interests of the socially or economically disadvantaged sections of the people for the purpose of fostering genuine rather than nominal equality.

10. Applying the above test special reservation in favour of doctors sons and daughters cannot pass the test of reasonable classification. Such classification has nothing to do with the merit of a child and there is no justification to give preferential treatment to a student who happens to have been born in a doctor's family. Likewise, there is no justification for reserving seats for children of Armed Forces Personnel more particularly when Army Medical College Rawalpindi should suffice to cater their needs overwhelmingly. Furthermore, such students are eligible for

admission in all other Colleges on the basis of their permanent residence and on the criteria of merit. Learned counsel for Adjutant-General, Pakistan Army, General Headquarters, having been heard by this Court at sufficient length, the grievance that this appellant had no opportunity of hearing before the High Court should come to an end.

11. However, with respect to disabled persons and candidates from the backward and underdeveloped districts and FATA, position is altogether different. It must be remembered that the concept of a reasonable classification is premised on the principle that the object is not to secure nominal or formal equality but genuine equality amongst different classes or groups of citizens. As observed by the Supreme Court of India in *Dr. Pradeep Jain v. Union of India* AIR 1984 SC 1420, where actual inequality exists, the State must resort to compensatory State action and, therefore, scheme of admission in Medical Colleges who make a certain percentage of reservation for those having suffered some initial disadvantage owing to their social and economic conditions. In the same spirit Articles 22 and 25 of the Constitution permit special provision to be made for women and children or socially or educationally backward and undeveloped classes. Therefore, reservation of seats for such category may be justified. It must, however, be pointed out that the benefit of such reservation should only be confined to those who have acquired their school and intermediate education from such less developed areas and not to anyone who manages to obtain a domicile certificate from that area. I am fortified in my view by an order rendered by a Bench of this Court in C.P.L.As. Nos.474-P and 494-P of 2000, decided on 2nd January, 2001. Similarly, reservation of seats for disabled persons is eminently reasonable inasmuch as because of their disabilities these candidates could not compete with their more fortunate compatriots and, therefore, it is the obligation of the State to take some compensatory action for them to fulfil its obligation to create genuine equality amongst all classes of citizens. There is yet another class of students which deserves serious consideration i.e. reservation of seats for foreign students domiciled and 'studying in foreign countries on the basis of reciprocity. Likewise, a provision can be legitimately made for children of Afghan Refugees who otherwise might not be eligible for admission on open merit. Students belonging to Azad Kashmir and Northern Areas also might within the purview of socially, economically and educationally less developed areas and they deserve some kind of indulgence till such time come up to the level of developed areas.

12. For this purpose it would be in the fitness of things that respective Governments take appropriate steps to identify socially and educationally backward areas in order to enable the children receiving education in such areas to qualify for admission to Medical Colleges against reserved seats.

13. Now let me have a resume of some of the decided cases on the question involved in the aforesaid appeals. A Division Bench of the Sindh High Court as far back as 1976 in *Abdul Qadir Bhatti v. Government of Sindh* PLD 1976 Karachi 1102 being bound by earlier decision of a



Division Bench held that allocation of seats to various communities including Ahmadi minority community according to their ratio in population was valid method for regulating admission to Medical Colleges. Learned High Court was of the view that the rule providing that minority applicants should not compete with applicants falling in another category was neither denial of admission only on ground of religion or infringed Articles 22(3)(b) of the Constitution. This judgment was impugned in Civil Appeals Nos. 72 to 75 of 1976 which were disposed of by this Court as two of them had fructified while other two appeals were rendered infructuous. The view taken by the Sindh High Court apparently did not lay down a good law and appears to be violative of Constitutional guarantees. In fact leave to appeal against the judgment was granted by this Court but as the appeals had fructified and some of the petitions rendered infructuous, no adjudication on merits was made. Conversely, identical issues arose before a Division Bench of the Peshawar High Court in *Ejaz Aslam v. University of Peshawar* PLD 1975 Peshawar 186. In this case paragraph 2 of Prospectus of Khyber Medical College, Peshawar provided for admission of minority community against only minority seats and declared them ineligible for open merit seats. A Division Bench comprising Ghulam Safdar Shah, C.J. and Qaisar Khan, J. (as their lordships then were) held that the orders of College Principal refusing admission to minority community candidates on merit were entirely unconstitutional and of no legal effect whatsoever. Division Bench ruled that a look at Article 22(3)(b) of the Constitution would show that no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, Caste or place of birth. On behalf of University it was contended before the High Court that the reservation of seats by the University for minority seats had for them the Constitution backing contained in clause (4) of Article 22 of the Constitution but the argument was repelled for the reason that this would not mean that a candidate belonging to a minority seat would have no right to compete for a seat on the basis of this merit. As observed, reliance was placed on the Fundamental Right guaranteed in Article 22(3)(b) of the Constitution. A Petition for Leave to Appeal No.113-P of 1975 was filed in this Court and leave was granted on 17-10-1975 in the case as important question of law as to the interpretation of Fundamental Right No.22 of the Constitution was raised therein, but on 7th June, 1983 the appeal (C.A. No. 42-P of 1975) was dismissed as withdrawn on written instructions of the Registrar of the University made to his counsel in view of change in admission policy of the Khyber Medical College. In *S. Sreenivasa v. Registrar, Andhra University* AIR 1985 Andhra Pradesh 81 a Division Bench of Andhra Pradesh High Court authoritatively ruled that reservation of seats for children of University employees by providing extra seats over and above general seats was unconstitutional. In the said case earlier decision in Writ Petition No.7188 of 1979 of the same High Court and *Subbarao v. Andhra University* AIR 1964 Ker. 316 were not followed. In *Shrin Munir v. Government of Punjab* PLD 1990 SC 295 it was authoritatively held that while interpreting Constitution and also in giving effect to the various legislative measures, one distinction has to be consistently kept in view that classification based on reasonable considerations is permissible and not violative of the principle. It was observed that harmony and consistency between Articles 25 and 22 of the Constitution is obvious notwithstanding the generality of the one and the particularly of the other, only if one keeps this important fact in view that classification based on intelligible and reasonable standards is permissible within framework of Article 25 on the ground of sex and sex alone. A Division Bench of the Balochistan High Court in *Falsafa Jamal v. Government of Balochistan* 1999 CLC 1547 while upholding that the Government has an authority of making classification amongst the persons living in the same circumstances and conditions, but there must be some

reasonableness in doing such classification; otherwise the action on behalf of the Authority responsible to do so shall be deemed discriminatory.

14. There is yet another case from Lahore jurisdiction i.e. Nationalised Secondary School v. Government of Punjab 1999 MLD 809 wherein Sh. Amjad Ali, J. (as he then was) concluded that teachers' children could not be given any preferential right over those children who showed better performance in examinations and ranked higher in merit. Provincial Government was advised to consider doing away of all kinds of reserved seats in matter of admission in educational institutions at all levels. Learned Judge dismissed the plea for reservation of seats for teachers children and those on kinship basis as being not maintainable at law.

15. For the aforesaid facts, circumstances and reasons I am inclined to declare reservation of seats for all categories in Medical Colleges illegal and without lawful authority, except for disabled persons within the meaning of Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 (Ordinance XL of 1981), students domiciled in FATA and underdeveloped districts as well as Azad Kashmir and Northern Areas, Afghan Refugees who' have taken school and intermediate education in the educational institutions situated within those areas and students of foreign countries on reciprocal basis for a period of seven years for the time being. I agree that C.P.L.A. No. 1905 of 2000 is without any merit and must be dismissed. C.P.L.A. Nos. 1979 and 1980 of 2000 re: Miss Nida Zulfiqar v. Government of Punjab and others and Miss Sana Arshad v. Government of Punjab and others seeking admission against seats earlier reserved for doctors' sons and daughters even after abolition of such seats by the Medical Colleges are dismissed for the reasons stated hereinabove.

16. Before parting with the judgment it may be pertinent to mention that the appellants who were admitted under interim orders of this Court and have reached 3rd Year or 4th Year Class M.B.,B.S. shall continue to avail the benefit of earlier admission policy as depriving such persons of the benefit of their education is bound to adversely affect their educational career. Furthermore, by vacation of their seats no person would be benefited as they have already completed three years of education.

## **ORDER**

**MUHAMMAD BASHIR JEHANGIRI, J.**---I have had the privilege of going through the draft judgment authored by my learned brother Rana Bhagwan Das, J. I find myself in agreement with the findings recorded by his Lordship.

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# **Miss Nida Zulfiqar and another--Petitioners**

**versus**

**Government of Punjab, Health Division,  
Civil Secretariat, Lahore through Secretary---Respondents**

Civil Petitions Nos. 1979 and 1980 of 2000, decided on 22nd March, 2000.

(On appeal from the judgment/order dated 25-3-1998 of the Lahore High Court Lahore passed in Writ Petition Nos.3772, 2384, 329, 2901, 2989, 3010, 3221, 3336, 3639, 1505, 2722, 2908, 3187, 4148, 4536, 387, 2843 and 4023 of 1998).

Bashir Ahmed Ansari, Advocate Supreme Court (in both C.Ps.) for Petitioners.

Nemo for Respondents.

Date of hearing: 25th January, 2001.

## **JUDGMENT**

**NAZIM HUSSAIN SIDDIQUI, J.**---In view of common judgment dated 22-3-2001 delivered in Civil Appeals Nos.758, 759, 760, 761, 765, 766, 768, 769, 772, 876,887, 888, 889; 890, 891,

892, 901, 902, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 1302 of 1998, 348 of 1999, 48 of 2000 and Civ: Petition No. 1905 of 2000, these Petitions 1979 and 1980 of 2000 are dismissed, as identical points are involved in these petitions and the appeal referred to above.

(Sd.)

Nazim Hussain Siddiqui, J.

(Sd.)

Muhammad Bashir Jehangiri, J.

(Sd.)

Rana Bhagwan Das, J .

## **ORDER OF THE COURT**

By majority of two to one the aforesaid appeals are disposed of in terms of the observations made in paragraphs 11, 15 and 16 of the judgment of Rana Bhagwan Das, J.

We unanimously and for reasons recorded in the judgments of both Nazim Hussain Siddiqui and Rana Bhagwan Das, JJ., dismissed Civil Petitions Nos. 1979 and 1980 of 2000 as identical points are involved in these appeals and the two petitions referred to above.

M.B.A./A-139/S

Order accordingly.

