

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.1817/2016  
Rawal Institute of Health Sciences  
Versus.  
Ministry of National Health Services and others

<b>Date of Hearing:</b>	01.02.2019
<b>Petitioner by:</b>	Malik Qamar Afzal and Mr. Saad Khan Mayar, Advocates in writ petition No.1817/2016. Mr. Khalid Ishaq, Advocate in writ petition No.3953/2018.
<b>Respondents by:</b>	Mr. Nadeem Khan Khakwani, learned Deputy Attorney-General. Hafiz Arfat Ahmed Ch. and Ms. Kashifa Niaz Awan, Advocates for P.M.&D.C. M/s Nouman Munir Paracha and Saadia Noreen Malik, Advocates for Shaheed Zulfiqar Ali Bhutto Medical University, Islamabad. Mr. Shakeel Ahmed, Treasurer, P.M.&D.C. Dr. Syed Azhar Ali Shah, Assistant Registrar, P.M.&D.C.

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**MIANGUL HASSAN AURANGZEB, J:-** Through this judgment, I propose to decide writ petitions No.1817/2016 and No.3953/2018 since they entail similar questions of law and fact.

2. Through writ petition No.1817/2016, the petitioner, Rawal Institute of Health Sciences, has sought a declaration to the effect that the resolution passed by Pakistan Medical and Dental Council/respondent No.2 ("P.M.&D.C.") for closing admissions in the petitioner/Institute was arbitrary, ill motivated and an act without lawful authority. Furthermore, the petitioner prayed for a direction to the effect that neutral inspectors should conduct an inspection of the petitioner/Institute.

3. Through writ petition No.3953/2018, the petitioner assails P.M.&D.C.'s letter dated 21.06.2018, whereby the petitioner was *inter-alia* restrained from making admissions in its medical college. Furthermore, the petitioner has prayed for permission to make admissions for the academic session 2018-19.

4. The facts essential for the disposal of the instant petitions are that the petitioner/Institute has been operating as a medical and dental college since 2011. The first comprehensive inspection of the petitioner/Institute was conducted by P.M.&D.C. on 24.10.2011. The objective of the said inspection was to determine whether the petitioner/Institute had sufficient facilities as per P.M.&D.C.'s criteria to merit recognition under Section 11 of the Pakistan Medical and Dental Council Ordinance, 1962 ("P.M.&D.C. Ordinance"); and whether it could be permitted to admit and train students for the MBBS course. The Inspectors, in their inspection report dated 24.10.2011, recommended that the petitioner/Institute be recognized to train 100 students for the MBBS course. The Executive Committee of P.M.&D.C. had also recommended that the petitioner/Institute be approved for recognition.

5. P.M.&D.C., in its meeting held on 22.12.2011, considered the said inspection report dated 24.10.2011, and vide letter dated 27.12.2011, P.M.&D.C. informed the erstwhile Ministry of National Regulations and Services (now the Ministry of National Health Services, Regulation and Coordination/respondent No.1) about the said recommendation and requested for the entry of the petitioner/Institute in the First Schedule of P.M.&D.C. Ordinance.

6. Vide notification dated 30.12.2011, issued by respondent No.2 in exercise of the powers conferred by Section 11 of P.M.&D.C. Ordinance, the petitioner/Institute was approved for imparting training for the MBBS degree awarded by Bahria University, Islamabad. Furthermore, it was directed that the petitioner/Institute's name be entered in the last column of First Schedule of P.M.&D.C. Ordinance.

7. The petitioner/Institute's affiliation with Bahria University was provisionally approved by the latter for the five years MBBS programme only. Subsequently, the petitioner/Institute was affiliated with Shaheed Zulfiqar Ali Bhutto Medical University (respondent No.3).

8. It is an admitted position that the petitioner/Institute was inspected by Bahria University on 06.11.2014, and by P.M.&D.C.

along with N.A.B. on 18.03.2014. The petitioner/Institute was able to pass these inspections. On 09.03.2016, a surprise inspection of the petitioner/Institute was conducted by P.M.&D.C. As per the inspection report, the petitioner/Institute got just 501 out of 1000 marks. It is an admitted position that a medical college which does not get 750 or more marks is not recommended for recognition. The convener of the inspection team endorsed the following observations in the inspection report:-

- “1. No clear cut demarcation between medical college/ dental college/ hospital.*
  - 2. Infrastructure needs a lot of improvement.*
  - 3. Hospital needs better equipment and diagnostic facilities.*
- “Not recommended for 100 MBBS admissions”*

9. Vide letter dated 10.03.2016, P.M.&D.C. sent the inspection report to the petitioner/Institute and requested the latter to note the deficiencies/recommendations pointed out in the said report and furnish its observations within a period of two weeks for the consideration of the Executive Committee of P.M.&D.C. Vide letter dated 16.03.2016, the petitioner/Institute requested P.M.&D.C. to clarify whether the inspection carried out on 09.03.2016 was a surprise inspection or a comprehensive inspection. Vide letter dated 01.04.2016, P.M.&D.C. informed the petitioner/Institute that the inspection carried out on 09.03.2016 was a surprise inspection on the directions of the President P.M.&D.C.

10. Vide letter dated 25.03.2016, the petitioner/Institute gave its comments on the inspection report to P.M.&D.C. In the said letter, the petitioner/Institute took the position that the presentation made by the Principal had not been fully heard by the inspectors; and that some of the facilities had not been fully inspected. The petitioner/Institute also complained that the dealings of a few inspectors with the head of the concerned departments had not been in consonance with the professional excellence, courtesy and esteem is expected from the inspectors.

11. P.M.&D.C., in its extraordinary meeting held on 04.05.2016, approved the following decision dated 03.05.2016 taken by the Executive Committee of P.M.&D.C.:-

*“The Executive Committee considered the comments received from Principal Rawal Medical College and Rawal Dental College. The Executive Committee unanimously approved the recommendations made by honourable inspectors according to which the college does not fulfill the criteria of continuation of recognition however the Executive Committee decided only to stop fresh intake of students in MBBS and BDS until the deficiencies pointed out by inspectors are rectified.”*

12. A news item had appeared in the daily Dawn's issue of 05.05.2016 stating that P.M.&D.C. had decided to ban further admissions in the petitioner/Institute, because the college and its affiliated hospital were situated in the same building, while the regulations required them to be in separate buildings. Other newspapers had also carried similar news about the petitioner/Institute. This caused the petitioner/Institute to file writ petition No.1817/2016 before this Court. On 13.05.2016, this Court issued notices to the respondents. By this time, P.M.&D.C. had not conveyed its decision dated 04.05.2016 and the Executive Committee's decision dated 03.05.2016 to the petitioner/Institute. On 20.05.2016, learned counsel for the petitioner/Institute informed the Court that no order had been passed by P.M.&D.C. In the said order, it was observed by this Court that if any order is passed by P.M.&D.C., it shall be provided to the petitioner/Institute and its copy shall be placed on the record.

13. On 26.05.2016, P.M.&D.C. informed the petitioner/Institute as to its decision dated 04.05.2016. Furthermore, the petitioner/Institute was directed by P.M.&D.C. *“not to admit or advertise for admission of students”*. The petitioner/Institute was warned that if any students were admitted before the issuance of permission by P.M.&D.C., the responsibility of the adverse effect on the career of the students shall be entirely on the petitioner/Institute and will lead to penal action under the relevant law.

14. The said letter dated 26.05.2016 was brought on the record of writ petition No.1817/2016. Vide order dated 07.06.2016, this Court restrained P.M.&D.C. from publicizing its decision referred to in the said letter. Thereafter, the petitioner/Institute filed an application (C.M. No.3112/2016) praying that a special team of

inspectors be constituted with the mandate to conduct a comprehensive inspection of the petitioner/Institute in accordance with the law. On 04.10.2016, learned counsel for P.M.&D.C. sought some time from the Court so as to enable him to consult with his client. This Court, vide order dated 04.10.2016, also required P.M.&D.C. to submit a list of the notified inspectors. On 26.10.2016, learned counsel for P.M.&D.C. sought more time so that he could meet with the President of P.M.&D.C. Thereafter, the case was adjourned on several occasions.

15. Vide letter dated 05.03.2018, P.M.&D.C. informed the petitioner/Institute that a comprehensive inspection was scheduled to be carried out on 08.03.2018. On 07.03.2018, learned counsel for P.M.&D.C. submitted before this Court that the results of the students who were enrolled before 26.05.2016 had not been withheld by P.M.&D.C. He had further submitted that since P.M.&D.C. had restrained the petitioner/Institute from enrolling students after 26.05.2016, the fate of such students would be decided after the inspection which was scheduled to be carried out on 08.03.2018. This Court, vide order dated 07.03.2018, directed that *“[a]fter the proceedings pursuant to letter, dated 05.03.2018 have been completed the matter shall be placed before the Council for addressing the grievance of those students who were admitted after 26.05.2016”*.

16. On 08.03.2018, a comprehensive inspection of the petitioner/Institute was carried out by a team of inspectors. As per the inspection report, the petitioner/Institute was able to get 789 out of 1000. In the said inspection report, the inspectors' final recommendation was that the petitioner/Institute be recognized for 100 MBBS students. The convener's special comments (which were part of the said report) were as follows:-

*“Medical & Dental College and hospital are in contradiction to Section 13 i.e. separate college & hospital building. PMDC council may decide accordingly.*

*Bank guarantee not provided.*

*Waste disposal not appropriate, not in line with environmental protection guidelines.*

*Systematic implementation of curriculum needs to [be] in practice.*

*Principal role needs more emphasis.”*

17. Vide letter dated 13.03.2018, the said inspection report was sent to the petitioner/Institute for its comments/observations. On 22.03.2018, the petitioner/Institute provided its comments to P.M.&D.C.

18. The inspection report dated 08.03.2018 and the petitioner/Institute's comments were considered by the Executive Committee of P.M.&D.C. in its meeting held on 12.04.2018. In the said meeting, it was unanimously decided that the earlier order stopping the petitioner/Institute from taking admissions would continue and the tuition fees collected by the petitioner/Institute from the two batches of students admitted after 26.05.2016 were required to be paid to P.M.&D.C. as a penalty. Such admissions were stated to be *"in violation of P.M.&D.C. Rules"*. The petitioner/Institute was also required to show compliance with Regulation 13 of the Medical and Dental Institutions (recognition, eligibility criteria for enhancement in annual admissions and accreditation standards) Regulations, 2012 ("the 2012 Regulations") within a period of six months. The Executive Committee of P.M.&D.C. required the petitioner/Institute to comply with the said condition before a decision could be taken regarding the continuation of its recognition. Furthermore, it was decided that the next admissions in the college would depend on the outcome of an inspection which would be carried out after six months. For the purposes of clarity, the relevant portions of the minutes of the said meeting dated 12.04.2018 are reproduced herein below:-

*"The Executive Committee after perusing the inspection report, recommendations made by the Inspection team and having deliberate discussion unanimously decided that the order regarding stop admissions/intake of admissions will be continued. Regarding students admitted in violation of PM&DC rules, penalty as per decision of 142<sup>nd</sup> session of the Council (5 years tuition fee for each over admission i.e 5 x tuition fee x No. students) will be imposed on two batches admitted in violation of PM&DC rules. Further the college will have to comply with Section 13 of "Medical and Dental Institutions (recognition, eligibility criteria for enhancement in annual admissions and accreditation standards) Regulations, 2012" within six months time and submit a compliance report regarding establishment of separate hospital and college.*

*To proceed further with continuation of recognition, the above conditions will have to be complied by the College and next admission/ intake of the college will be dependent on outcome of the Inspection which will be done after six months to verify rectification of above deficiencies and the College will be informed that no new admissions will be allowed to the College, unless the above conditions are fulfilled.”*

**(Emphasis added)**

19. Vide letter dated 25.04.2018, P.M.&D.C. informed the petitioner/Institute that P.M.&D.C., in its 164<sup>th</sup> session held on 12.04.2018, had considered the minutes of the Executive Committee's meeting dated 12.04.2018 and had approved the same. Vide order dated 26.04.2018 passed in writ petition No.1817/2016, this Court suspended the penalty imposed on the petitioner/Institute.

20. The Executive Committee of P.M.&D.C., in its meeting held on 06.05.2018, again decided not to allow further admissions in the petitioner/Institute. This decision was conveyed by P.M.&D.C. to the petitioner/Institute vide letter dated 21.06.2018. The Executive Committee's decision dated 12.04.2018 and P.M.&D.C.'s letter dated 21.06.2018 have been challenged in writ petition No.3953/2018.

**CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONER/INSTITUTE:-**

21. Learned counsel for the petitioners, after narrating the facts leading to the filing of the petitions under disposal, submitted that the petitioner/Institute is imparting high quality medical education to MBBS and BDS students since 2011; that the inspectors who carried out the surprise inspection on 09.03.2016 were biased and pre-disposed against the petitioner/Institute; that neither does P.M.&D.C. Ordinance nor do the Regulations made thereunder empower P.M.&D.C. or its Executive Council to impose the penalty of paying the entire tuition fees collected from students on a medical college; that P.M.&D.C. had no power under P.M.&D.C. Ordinance to stop admissions in a medical college for an indefinite period; that P.M.&D.C. could impose only those penalties which are specifically mentioned in Section 22B of P.M.&D.C. Ordinance; that P.M.&D.C.'s requirement that the

teaching hospital should be in a separate building from the medical college shall be complied with by the petitioner/Institute within a reasonable period; that the teaching hospital and the medical college being in the same building but on different floors does not in any manner violate Regulation 13 of the 2012 Regulations; that the said Regulation is vague and does not clearly require the teaching hospital and the medical college to be in two separate buildings detached from each other; that Regulation No.9(4) of the Medical and Dental Institutions (recognition, eligibility criteria for enhancement in annual admissions and accreditation standards) Regulations, 2018, require the building of the medical college to be on a plot of land measuring not less than 3 acres; that there was no such requirement under the 2012 Regulations; that medical colleges have been given a period of three years to fully conform to the requirements of the 2018 Regulations; and that the petitioner/Institute undertakes to put the teaching hospital and the medical college in separate buildings at the earliest.

22. Furthermore, learned counsel for the petitioner submitted that as early as 12.05.2016 when writ petition No.1817/2016 was filed, the petitioner/Institute had prayed for its inspection to be conducted by neutral inspectors; that the mere fact that such a prayer was made shows the petitioner/Institute's *bonafides*; that had a timely inspection of the petitioner/Institute been carried out by P.M.&D.C., there would have been no occasion for stopping the admission of students; that P.M.&D.C. procrastinated and avoided the petitioner/Institute's inspection for no plausible reason; that after the petitioner/Institute was able to obtain more than the passing marks in the inspection conducted on 08.03.2018, there was no reason for the continuation of the restriction on the admission of students; that this Court, in its order dated 26.04.2018, passed in writ petition No.1817/2016, had *inter-alia* observed that "[t]he recent inspection appears to have confirmed the apprehensions of the petitioner Institution regarding the inspection which was carried out on 09.03.2016"; that the said observation was made after the Court was informed that the



inspectors appointed by P.M.&D.C. had given a favourable report to the petitioner/Institute after the inspection carried out on 08.03.2018; that the petitioner/Institute committed no illegality by admitting students in two batches after 26.05.2016; and that the future of such students would be irreparably harmed if the instant petitions are not allowed. Learned counsel for the petitioner/Institute prayed for the writ petitions to be allowed in terms of the relief sought therein.

**CONTENTIONS OF THE LEARNED COUNSEL FOR P.M.&D.C.:-**

23. On the other hand, learned counsel for P.M.&D.C. submitted that in the surprise inspection of the petitioner/Institute carried out on 09.03.2016, it had obtained just 501 out of 1000 marks (750 being the passing marks); that in the inspection report dated 09.03.2016, the convener had clearly observed that there was no clear cut demarcation between the petitioner/Institute's medical college and the hospital; that P.M.&D.C., in its 143<sup>rd</sup> session held on 04.05.2016, approved the executive committee's decision dated 03.05.2016; that on 03.05.2016, the executive committee had decided to stop the petitioner/Institute from making further admissions; that P.M.&D.C.'s decision dated 04.05.2016 was conveyed to the petitioner/Institute vide letter dated 26.05.2016; that since the petitioner/Institute, in violation of the said decision, admitted students for two batches, it has disentitled itself from any relief in the discretionary/equitable jurisdiction of this Court; that even though the said letter dated 26.05.2016 was sent by P.M.&D.C. after the institution of writ petition No.1817/2016, the petitioner/Institute chose not to amend the said writ petition so as to challenge the said letter and/or P.M.&D.C.'s decision dated 04.05.2016; that although this Court can take into consideration events subsequent to the institution of a writ petition but it cannot strike down a decision which has not been specifically challenged in a writ petition; that the petitioner/Institute did not even pay the inspection fee for the inspection carried out on 09.03.2016; that the petitioner/Institute had miserably failed the said inspection; that P.M.&D.C. was under no obligation to re-inspect the petitioner/Institute at the latter's convenience; that this Court had

not suspended P.M.&D.C.'s decision dated 04.05.2016 conveyed to the petitioner/Institute, vide letter dated 26.05.2016; that on 07.06.2016, all that this Court had ordered was that the said decision shall not be publicized in any manner; that on 30.06.2016, P.M.&D.C. took a categorical position before this Court that the said decision restraining the petitioner/Institute from admitting students still remains intact; and that this Court had not permitted the petitioner/Institute to admit students after P.M.&D.C.'s said decision dated 04.05.2016.

24. Learned counsel for P.M.&D.C. further submitted that although the petitioner/Institute in the inspection dated 08.03.2018 had obtained 789 out of 1000 marks (750 marks being the passing marks), this by itself was not sufficient to accord recognition to the petitioner/Institute; that the petitioner/Institute had not complied with its mandatory obligation of having its medical college in a building separate from the hospital as required by Regulation 13 of the 2012 Regulations; that the petitioner/Institute had admittedly not furnished a bank guarantee in favour of P.M.&D.C. as required by Regulation 15 of the 2012 Regulations; that until the petitioner/Institute's medical college and hospital are housed in two separate buildings, and until a bank guarantee is furnished by the petitioner/Institute, the restraint *qua* the admission of new students cannot be lifted; that P.M.&D.C., in its 142<sup>nd</sup> session held on 12.03.2016, decided that those institutes/medical colleges who admit more than the allotted annual admissions would have to pay to P.M.&D.C., as penalty, the entire tuition fees charged from the students admitted beyond the permissible/allotted admissions; that the penalty imposed on the petitioner/Institute by P.M.&D.C., in its decision taken in the 164<sup>th</sup> session dated 12.04.2018, and communicated to the petitioner/Institute, vide P.M.&D.C.'s letter dated 25.04.2018, is on the same analogy as P.M.&D.C.'s decision taken in the 142<sup>nd</sup> session dated 12.03.2016; that the said penalty imposed on the petitioner/Institute was suspended by this Court vide order dated 26.04.2018 passed in writ petition No.1817/2016; that once the said penalty had been suspended, the petitioner/Institute could

not have filed writ petition No.3953/2018 to challenge the very same penalty; that given the convener of the inspection team's observations regarding the inspection dated 08.03.2018, the petitioner/Institute could not be permitted to admit students until the deficiencies in the petitioner/Institute pointed out by the convener had been rectified; that P.M.&D.C. did not refer the matter to the Federal Government for the petitioner/Institute's de-recognition, because it had taken a lenient view in the matter; and that on every deficiency or irregularity in a medical college, P.M.&D.C. could not be expected to refer the matter to the Federal Government for the de-recognition of such medical college under Section 22 of P.M.&D.C. Ordinance. Learned counsel for P.M.&D.C. prayed for the writ petitions to be dismissed.

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

26. The facts leading to the filing of the instant petitions have been set out in sufficient details in paragraphs 4 to 20 above and need not be recapitulated.

27. The petitioner/Institute tried to impeach the inspection report dated 09.03.2016 on the ground that P.M.&D.C.'s new regime elected in 2016 had a *"biased approach against the medical colleges on personal likes and dislikes and extraneous considerations"*, etc. Furthermore, in writ petition No.1817/2016, it was pleaded that the petitioner/Institute had *"strong reservations"* against the inspectors who carried out the inspection on 09.03.2016. It was also alleged that the inspectors were least interested in inspecting the standard of the petitioner/Institute.

28. Now learned counsel for the petitioner/Institute, in his arguments, did not utter a single word as to how and the manner in which the inspection was conducted on 09.03.2016 violated any provision of P.M.&D.C. Ordinance or the Regulations made thereunder. There is no material, much less cogent material, on the record for me to come to the conclusion that the inspectors who conducted the inspection on the said date were biased or had

harboured an ill will against the petitioner/Institute. Fanciful apprehensions of bias are never considered enough to undo such inspections. There must be reasonable evidence to satisfy that there was real likelihood of bias in the conduct of the inspectors. Such evidence is lacking in the case at hand.

29. The first communication by the petitioner/Institute with P.M.&D.C. after the said inspection was the letter dated 16.03.2016, wherein the petitioner/Institute simply requested P.M.&D.C. to clarify whether the inspection carried out on 09.03.2016 was a surprise inspection or a comprehensive inspection. In the said letter, the petitioner/Institute did not take a position consistent with its subsequent pleadings in writ petition No.1817/2016 *qua* the manner in which the inspection was conducted by the inspectors in that no allegation of bias was made against the inspectors in the said letter. Furthermore, the petitioner/Institute, in its comments to the inspection report, took the position *inter-alia* that the dealings of a few inspectors with the head of concerned departments had not been in consonance with the professional excellence, courtesy and esteem that could be expected from the inspectors. It was also alleged that the Principal's presentation had not been fully heard, and that some of the facilities had not been fully inspected. These allegations were not just vague and general in nature but having been made two weeks after the inspection, can safely be termed as a belated afterthought. Had there been any truth to the allegations of irregularity in the inspection conducted on 09.03.2016, the petitioner/Institute would have lost no time in bringing them to the notice of P.M.&D.C. Therefore, the inspection report dated 09.03.2016 cannot be held to be unlawful or the outcome of any procedural irregularity.

30. Now in the inspection report, the convener of the inspection team had clearly pointed out that there had been no demarcation between the petitioner/Institute's medical college and the hospital. It is an admitted position that till date, the petitioner/Institute's medical college and hospital are housed in the very same building. It was also not disputed that the students

and the patients in the petitioner/Institute's building use the very same entrance. As mentioned above, the learned counsel for the petitioner/Institute has submitted that the petitioner/Institute undertakes to separate the medical college from the hospital so as to house them in separate buildings.

31. The 2012 Regulations were made by P.M.&D.C. in exercise of the powers conferred by Section 33(1) of P.M.&D.C. Ordinance. These Regulations were made with the previous sanction of the Federal Government and were notified in the Official Gazette, on 26.01.2012. Regulation 12 requires all the existing recognized institutions to fully conform to the said Regulations within a period of three years of commencement of 2012 Regulations. Regulation 13 is reproduced herein below:-

*“13. Separate college and hospital buildings.- The medical or dental college shall be a separate purpose built facility separate from the hospital.”*

32. Regulation 13 has been couched in no ambiguous terms. The petitioner/Institute being an *“existing recognized institution”* was under an obligation to show compliance with the 2012 Regulations within a period of three years of their commencement. The petitioner/Institute had until 2015 to separate its medical college from the hospital so as to put them in two separate buildings. The *vires* of Regulation 13 have not been challenged by the petitioner/Institute. The petitioner/Institute chose to maximize its profits by not separating its medical college from the hospital for three long years after the commencement of the 2012 Regulations. It was in these circumstances when the surprise inspection dated 09.03.2016 was conducted. As mentioned above, the petitioner/Institute's medical college was given just 501 out of 1000 marks in the inspection report dated 09.03.2016.

33. Having not found the petitioner/Institute's comments to the said inspection report to be satisfactory, P.M.&D.C., vide its decision dated 04.05.2016, approved the Executive Committee's decision dated 03.05.2016 to stop the petitioner/Institute from further intake of students in MBBS and BDS until the deficiencies pointed out by the inspectors were rectified. P.M.&D.C., in its

letter dated 26.05.2016, informed the petitioner/Institute as to the said decisions and warned the latter that any student admitted without the permission of P.M.&D.C. would lead to penal action under the relevant law. Vide letter dated 21.06.2018, P.M.&D.C. again called upon the petitioner/Institute not to admit students in its college unless allowed by the former. It is an admitted position that in blatant disregard of the warnings in the said letters dated 26.05.2016 and 21.06.2018, the petitioner/Institute admitted students for MBBS and BDS for the sessions 2016-17 and 2017-18. No permission had been obtained by the petitioner/Institute before making the admissions for the said batches. Perusal of the entire order sheet in writ petition No.1817/2016 shows that the restriction imposed by P.M.&D.C. on the petitioner/Institute from making further admissions had not been suspended at any material stage. Even though the said writ petition was filed prior to the issuance of P.M.&D.C.'s letter dated 26.05.2016, informing the petitioner/Institute as to the restriction on the further intake of students, this Court was fully cognizant as to the said restriction imposed on the petitioner/Institute. Along with writ petition No.1817/2016, the petitioner/Institute had filed an application for interim relief (C.M.No.01/2016) praying for P.M.&D.C.'s order regarding the stoppage of admissions to be suspended. No injunctive order was passed by this Court on the said application. Although the petitioner/Institute had, through application (C.M. No.2514/2016), had sought interim relief restraining P.M.&D.C. from acting further upon the letter dated 26.05.2016, this Court, vide order dated 07.06.2016, only restrained P.M.&D.C. from publicizing its decision referred to in its letter dated 26.05.2016. This order can certainly not be interpreted as a suspension of P.M.&D.C.'s decision to stop the petitioner/Institute from further intake of students. This leads me to form the view that it was obligatory on the petitioner/Institute to have explicitly brought P.M.&D.C.'s decision dated 04.05.2016 to the notice of any candidate/student seeking admission after 26.05.2016. This vital information was contumaciously withheld by the petitioner/Institute from the two batches of students admitted for

the sessions 2016-17 and 2017-18. The power of P.M.&D.C. to stop a medical or dental institution from further intake of students is contained in Section 22(1) of P.M.&D.C. Ordinance. For the purposes of clarity, Section 22 of the said Ordinance is reproduced herein below:-

*“22. Withdrawal of recognition.- (1) If a recognized institution is violating provisions of this Ordinance and regulations made thereunder or the facilities for training for the courses of study or standard of examination in the institution to obtain a recognized medical or dental qualification, additional medical or dental qualification, training for house job or internship or foundation year or in a continuous professional development opportunity providing organization has deteriorated to an extent that the standard of proficiency required from candidates at any examination held for the purpose of granting such qualification is not such as to secure to persons holding such qualification the knowledge and skill requisite for the efficient practice of medicine or dentistry, the Council may stop further intake of students in the institution and forward a summary of its findings and its intent to the medical or dental institution with an intimation of the period within which the medical or dental institution may submit its explanation to the Council and may request for a hearing before the Council if it so desires.”*

*(2) If the Council is not satisfied with the explanation then it shall make a recommendation to the Federal Government for closure of the institution to which shall include a scheme for adjustment of students in other recognized institutions of the corresponding public or private sector, as the case may be.*

*(3) On recommendations of the Council, the Federal Government may, by notification in the official Gazette, direct that an entry shall be made in the First, Third, Fifth, Sixth or Seventh Schedule, as the case may be, against the said medical or dental or a postgraduate institution and qualification granted by it, hospital or continuous professional development opportunity provider declaring that it shall be recognized medical, dental or additional medical or dental qualification, institution, hospital and continuous professional development opportunity provider only before the date of notification.”*

**(Emphases added)**

34. Because the petitioner/Institute was able to obtain only 501 out of 1000 marks in the inspection dated 09.03.2016, it could not be said that *“the facilities for training for the courses of study or standard of examination in the institution to obtain a recognized medical or dental qualification”* had not deteriorated *“to an extent that the standard of proficiency required from candidates at any examination held for the purpose of granting such qualification is not such as to secure to persons holding such qualification the knowledge and skill requisite for the efficient practice of medicine or dentistry”*. Furthermore, since the petitioner/Institute had not

separated its medical college from the hospital so as to house them in separate buildings within three years of the making of the 2012 Regulations, the petitioner/Institute has been clearly operating in violation of Regulation 13 of the said Regulations. Therefore, there was no legal infirmity in P.M.&D.C.'s decision to stop further intake of students in the petitioner/Institute – the said decision being in consonance with the mandate of Section 22(1) of the said Regulations.

35. As mentioned above, P.M.&D.C. had approved the Executive Committee's decision to stop the petitioner/institute from further intake of students in MBBS and BDS until the deficiencies pointed out by the inspectors were rectified. Vide letter dated 26.05.2016, P.M.&D.C. called upon the petitioner/Institute to show compliance with the said decision. Now neither did P.M.&D.C. require the petitioner/Institute to submit an explanation nor did the petitioner/Institute request P.M.&D.C. for a hearing. This is perhaps because the dispute between P.M.&D.C. and the petitioner/Institute had already become *sub-judice* before this Court. Be that as it may, the spirit of Section 22(1) of P.M.&D.C. Ordinance is that after stopping further intake of students, a medical or dental institution must be given an opportunity to submit an explanation to P.M.&D.C. Section 22(2) of P.M.&D.C. Ordinance, in effect, provides that if P.M.&D.C. is not satisfied with the explanation submitted by a medical or dental institution (which has been stopped from further intake of students on account of violation of P.M.&D.C. Ordinance and Regulations made thereunder, etc.) that P.M.&D.C. can make a recommendation to the Federal Government for the closure of such an institution. It is not disputed that till date, P.M.&D.C. has not made a recommendation to the Federal Government under Section 22(2) of P.M.&D.C. Ordinance for the closure of the petitioner/Institute.

36. When asked as to why P.M.&D.C. did not call upon the petitioner/Institute to submit an explanation (as required by Section 22(1) of P.M.&D.C. Ordinance), and why P.M.&D.C. did not recommend the petitioner/Institute's closure to the Federal



Government on account of its deficiencies pointed out in the inspection report dated 09.03.2016, and the violation of Regulation 13 of the 2012 Regulations (as required by Section 22(2) of P.M.&D.C. Ordinance), learned counsel for P.M.&D.C.'s response was that P.M.&D.C. had taken a "*lenient view*" in the matter.

37. It amounts to dereliction of a statutory duty on the part of P.M.&D.C. when it does not proceed strictly in accordance with the procedure provided in Section 22 of P.M.&D.C. Ordinance against a recognized institution which violates the provision of the said Ordinance or the Regulations made thereunder. Adopting a policy of pick and choose amongst recognized institutions and showing leniencies in requiring strict observance with the requirements of P.M.&D.C. Ordinance or the regulations made thereunder bespeaks of a sorry state of affairs on the part of a Regulator like P.M.&D.C.

38. One of the prayers in writ petition No.1817/2016 is for an inspection of the petitioner/Institute to be conducted by neutral inspectors. P.M.&D.C. is under no obligation to conduct an inspection of a recognized institution as and when it takes the fancy of such an institution. Since Section 22 of P.M.&D.C. Ordinance requires the medical or dental institution to submit its explanation within the period intimated by P.M.&D.C. after the latter decides to stop further intake of students in such an institution, it would be expedient if a re-inspection is conducted soon after an explanation is submitted by such an institution requesting for a re-inspection. This is moreso if students are already being imparted education in such an institution. However, where the deficiencies are such that the recognized institution is unwilling or unable to cure, a re-inspection would be an exercise in futility. I say this because simply being able to obtain more than 750 marks in an inspection does not *ipso facto* give a medical or dental institution a right to be accorded recognition where such an institution remains non-compliant with the mandatory requirements of P.M.&D.C. Ordinance or the Regulations made thereunder. For instance, in the case at hand, it is an admitted

position that the petitioner/Institute had not shown compliance with Regulation 13 of the 2012 Regulations by separating its medical college from the hospital in such a way as to house them in separate buildings. Furthermore, the petitioner/Institute also did not comply with Regulation 15 of the 2012 Regulations by providing two bank guarantees (one for the medical college for an amount of Rs.20 million, and the other for the hospital for an amount of Rs.30 million) in favour of P.M.&D.C. valid for a period of five years from a scheduled bank approved by the State Bank of Pakistan having AAA rating. This was a clear violation of the 2012 Regulations and such violation on the petitioner/Institute's part continued until the judgment in the captioned petitions was reserved by this Court. The petitioner/Institute cannot expect a Court of Constitutional causes to shut its eyes to such violations. If this Court was to direct P.M.&D.C. to lift the restriction regarding the further intake of students, it would be adding a premium to the petitioner/Institute's wrong. The spirit of Section 22 of P.M.&D.C. Ordinance is that the provisions of the said Ordinance and the Regulations made thereunder have to be complied with by recognized medical or dental institution. Violation of P.M.&D.C. Ordinance and the Regulations made thereunder by a recognized medical and dental institution is to be met with the penal measure of the de-recognition of such an institution after following the procedure prescribed in Section 22 of the said Ordinance.

39. The petitioner/Institute had a period of three years after the commencement of the 2012 Regulations to show compliance with Regulations 13 and 15 of the said Regulations. Furthermore, for a period of more than two years after the surprise inspection dated 09.03.2016, the petitioner/Institute did not bother to show compliance with the said Regulations. In the face of this clear violation of the 2012 Regulations on the part of the petitioner/Institute, I do not find any legal infirmity in P.M.&D.C.'s decision to continue the restriction regarding the further intake of students on the petitioner/Institute. I form this view being cognizant of the fact that in the inspection dated 08.03.2018, the petitioner/Institute's medical college had obtained 789 out of 1000

marks, and in the inspection dated 10.04.2018, its dental college had obtained 861 out of 1000 marks. In the case of Nadir Khan Vs. Principal, Khyber Medical College, Peshawar (1995 SCMR 421), it has been held *inter-alia* that the regulations framed by P.M.&D.C. under Section 33 of P.M.&D.C. Ordinance are binding on all the medical and dental colleges in Pakistan.

40. A Court of Constitutional causes must be cautious of the artful dodgers running educational institutions seeking exemption of the penal consequences for flouting the laws that regulate them on the ground that the future of the students at such institutions would be at stake. By doing so, they try and play on the emotions of Courts when in fact it is their pockets that they are protecting. Seldom do such institutions place the students seeking admission in their institutions on notice as to the disabilities placed on them by their Regulators. By concealing such material facts, they do not just deceive the students but unjustly enrich themselves by accepting tuition fees from them and thereafter, attempt to retain such ill-gotten wealth and avoid the wrath of the Regulators by resort to frivolous litigation. Never must a Court show any clemency to such an entrepreneur masquerading as an educationist unless the Regulator, in imposing a restriction or a penal measure on it, is acting in clear violation of the law.

41. Given the fact that the petitioner/Institute admitted students after 26.05.2016 in two batches for the academic sessions 2016-17 and 2017-18 despite a restriction *qua* the further intake of students imposed on it by P.M.&D.C., and given the fact that the petitioner/Institute has remained non-compliant with the requirements of Regulations No.13 and 15 of the 2012 Regulations, I am most tempted to uphold the penalty imposed on the petitioner/Institute by P.M.&D.C. in its 164<sup>th</sup> session held on 12.04.2018. However, it is this Court's duty to determine as to whether P.M.&D.C. had the requisite power to impose such a penalty.

42. As mentioned above, learned counsel for P.M.&D.C. had submitted that P.M.&D.C., in its 142<sup>nd</sup> session held on 12.03.2016, had decided that those institutes/medical colleges which admitted

more than the allotted annual admissions would have to pay to P.M.&D.C., as penalty, the entire tuition fee charged from the students admitted beyond the permissible/allotted admissions. He had further submitted that the penalty imposed on the petitioner/Institute by P.M.&D.C., in its 164<sup>th</sup> session dated 12.04.2018, was on the same analogy as P.M.&D.C.'s said decision taken in its 142<sup>nd</sup> session. I refrain from giving my comments on P.M.&D.C.'s decision taken in its 142<sup>nd</sup> session since the same has not been assailed by the petitioner/Institute. I confine myself to the question whether or not the penalty imposed by P.M.&D.C. on the petitioner/Institute in the 164<sup>th</sup> session was with lawful authority. The power to impose the penalty by P.M.&D.C. has been conferred by Section 22B of P.M.&D.C. Ordinance which is reproduced herein below:-

*“22B. Penalty.- (1) Whoever runs or establishes or endorses any institution or advertises admissions in an institution for imparting education in medicine or dentistry, which is not recognized under sections 11, 11A, 16, 16A or 18 or in respect of which recognition has been withdrawn under 22, shall be guilty of an offence punishable with rigorous imprisonment for a term which may extend to five years but shall not be less than a year or with fine which may extend to ten million rupees but shall not be less than five million rupees or with both and shall also be liable to closure of such institution.*

*(2) Where any contravention of this Ordinance has been committed by a body corporate or institution and it appears from the relevant documents that such offence has been committed with the consent or connivance of or is attributed to any negligence on the part of any director, partner, manager, secretary or other officer of the body corporate or institution such director, partner, manager, secretary or other officer of the body or institution, shall be deemed guilty of such contravention along with the body corporate or institution and shall be punished accordingly :*

*Provided that in the case of a company as defined under the Companies Ordinance, 1984 (XLVII of 1984), only its chief executive shall be liable under this section.”*

43. It is not disputed that other than Section 22B, there is no provision in P.M.&D.C. Ordinance under which a penalty could be imposed on a medical or dental institution. Section 22B also mandates the imposition of a penalty only on those who run or establish or endorse any institution or advertise admissions in an institution imparting education in medicine or dentistry which is not recognized under Sections 11, 11A, 16, 16A or 18 of

P.M.&D.C. Ordinance or in respect of which recognition has been withdrawn under Section 22 of the said Ordinance. Since till date, the recognition accorded by the Federal Government to the petitioner/Institute has not been withdrawn, the question of the imposition of a penalty under Section 22B of P.M.&D.C. Ordinance does not arise. Furthermore, no specific contravention of P.M.&D.C. Ordinance by the petitioner/Institute was pointed out by the learned counsel for P.M.&D.C so as to warrant the imposition of the above-mentioned penalty on the petitioner/Institute. In holding so, I derive guidance from the law laid down in the following cases:-

- (i) In the case of Faisal Asad Vs. Secretary, Health, Government of Sindh (1995 MLD 104), the Hon'ble Mr. Justice Wajihuddin Ahmed (as he then was) of the Hon'ble High Court of Sindh, had the occasion to hold that a penal provision in a statute is to be construed strictly and a penalty is to be visited only if the liability was clear and free from all doubt.
- (ii) In the case of G. N. Dalmia Vs. The State (PLD 1963 (W.P.) Lahore 474), it was held that an authority acting under a statute is not competent to provide a penalty overriding the one provided by the statute itself.
- (iii) In the case of Abdul Aziz Vs. The State (PLD 1965 Dacca 98), the Hon'ble Mr. Justice S. M. Murshed (as he then was), had the occasion to hold as follows:-

*“It is a well-settled principle of interpretation that in construing a penal measure it is insisted that words imposing a penalty must be clear and distinct. An intention to create an offence must plainly appear from the language used. In the application of a penal provision the Court has to make sure that the offence charged is within the letter of the law. Courts will not be astute to extend punishment, by forced construction, to cases which are not clearly embraced within the expressed provisions of an enactment.”*

44. No provision of P.M.&D.C. Ordinance or the Regulations made thereunder empower P.M.&D.C. to impose a penalty of the nature as imposed by P.M.&D.C. on the petitioner/Institute in its 164<sup>th</sup> session dated 12.04.2018. Section 33(1) of P.M.&D.C.

Ordinance empowers P.M.&D.C. to make regulations with the previous sanction of the Federal Government to carry out the purposes of P.M.&D.C. Ordinance. No sanction of the Federal Government is required for the Regulations made by P.M.&D.C. in exercise of the powers under Section 33(2) of P.M.&D.C. Ordinance. None of the subjects enumerated in Section 33(1)(a) to (i) or Section 33(2)(a) to (k) of P.M.&D.C. Ordinance empower P.M.&D.C. to impose a penalty, or make a Regulation conferring a power on P.M.&D.C. to impose a penalty.

45. The penalty of requiring the petitioner/Institute to deposit with P.M.&D.C. the entire tuition fees taken from the students admitted after a restriction on the intake of the students was imposed on the petitioner/Institute may have wisdom behind it but it does not have any sanction of law.

46. P.M.&D.C. derives the authority to levy a penalty from the statute i.e. P.M.&D.C. Ordinance. P.M.&D.C. cannot act in excess of the authority which the said Ordinance confers on it. In the case of Pakistan Telecommunication Company Ltd. Vs. Pakistan Telecommunication Authority (PLD 2015 Islamabad 184), this Court *inter-alia* held that a penalty is a punitive action in nature and therefore, its imposition would require an express authority under the statute. Additionally, in the case of Plaza Hotel and Bar Vs. Federation of Pakistan (1990 CLC 682), the Division Bench of the Hon'ble High Court of Sindh held *inter-alia* that where a person is to be penalized for a breach of any rule or law, the penalty should be known in clear terms. It is also pertinent to reproduce the following passage from the treatise "Understanding Statutes" by S.M. Zafar:-

*"Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment. Such a statute should not be interpreted to impose restrictions on conduct not specifically enumerated in the legislative Act, or to include cases omitted by the legislature, and which do not fall within the scope of the law. The fact that statute may be easily evaded furnishes no excuse for supply by judicial construction that, which is palpably omitted therefrom. These rules prevail even though the Court thinks that the legislature ought to have made that statute more comprehensive."* (Page- 221)

47. The power to levy a penalty is a legislative function and has to be specifically conferred by statute. Courts have no power to read into the enactment a sentence or words which it does not contain. Accordingly, the power to impose a penalty on an institution recognized by P.M.&D.C. cannot be inferred by implication or by reference to some general words contained in the regulations. Neither does P.M.&D.C. Ordinance nor the regulations made by P.M.&D.C. in exercise of the power conferred under Section 33 of the said Ordinance, empower P.M.&D.C. to impose on a recognized institution a penalty of the nature as the one imposed on the petitioner/Institute by P.M.&D.C. in its 164<sup>th</sup> session dated 12.04.2018. In the absence of a specific provision made in that respect, it is not possible to uphold the penalty imposed on the petitioner/Institute by P.M.&D.C. in its 164<sup>th</sup> session dated 12.04.2018.

48. For defying the restriction on the intake of students imposed on the petitioner/Institute by P.M.&D.C. in its decision dated 04.05.2016, and for violating Regulations 13 and 15 of the 2012 Regulations, P.M.&D.C. could have proceeded against the petitioner/Institute under Section 22 of P.M.&D.C. Ordinance but could not have imposed the aforementioned penalty on it. Therefore, the imposition of the penalty as to the deposit of the tuition fees (collected from the two batches of students for the sessions 2016-17 and 2017-18 admitted by the petitioner/Institute after 26.05.2016) with P.M.&D.C. is declared without lawful authority and of no legal effect. P.M.&D.C.'s decision regarding the continuation of the restriction on the further intake of students being, in consonance with the mandate of Section 22 of P.M.&D.C. Ordinance, does not suffer from any jurisdictional infirmity. As regards the registration of all the students admitted by the petitioner/Institute after 26.05.2016, P.M.&D.C. shall take a decision in its discretion after the petitioner/Institute shows and reports compliance with Regulations 13 and 15 of the 2012 Regulations. Since vide order dated 14.11.2018 passed in W.P.No.3953/2018, this Court had permitted the petitioner/Institute's students to sit in the MBBS examinations,

there is nothing preventing Shaheed Zulfiqar Ali Bhutto Medical University/respondent No.3 from announcing the results of the examinations. In the event the petitioner/Institute does not show and report compliance with the said Regulations, P.M.&D.C. may proceed against the petitioner/Institute under Section 22 of P.M.&D.C. Ordinance and make a scheme for the adjustment of such students in other recognized institutions.

49. In view of the above, writ petition No.1817/2016 is dismissed, whereas writ petition No.3953/2018 is partly allowed in the above terms.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_/2019.

(JUDGE)

*Qamar Khan\**

**APPROVED FOR REPORTING**

*Uploaded By: Engr. Umer Rasheed Dar*