

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3117 of 2016
Islamabad Law College
Versus

Higher Education Commission through its Chairman and others

Date of Hearing: 07.10.2016 & 01.12.2016

Petitioner by: M/s Tariq Bilal, Atiq-ur-Rehman, Shahzadi Samreen Tariq, Raja Aleem Khan Abbasi, Arif Chaudhry, and Raja Ansar Abbas, Advocates.

Respondents by: Mr. Qaiser Sarwar, Advocate and Mr. Shahid Khalid, Law Director HEC for respondent No.1,
Mr. Bilal Ahmad Qazi, Advocate and Mr. Khalid Mehmood Asst. Registrar (Legal) for respondent No.5.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Islamabad Law College, seeks a direction to respondent No.1 (the Higher Education Commission) and respondent No.2 (the Director General (Accreditation and Attestation), Higher Education Commission) to issue a No Objection Certificate ("NOC") in the petitioner's favour. The NOC was required for the petitioner's affiliation with the Islamia University, Bahawalpur ("IUB").

CONTENTIONS ON BEHALF OF THE PETITIONER:-

2. The learned counsel for the petitioner submitted that the petitioner is a society established under the provisions of the Societies Registration Act, 1860; that according to the provisions of the Islamia University of Bahawalpur Act, 1975, all law colleges in the Islamabad Capital Territory seeking affiliation with IUB, are required to obtain an NOC from respondent No.1; that after the petitioner applied to respondent No.1 for the issuance of an NOC, respondent No.1 inspected the petitioner/college; that vide letter dated 28.01.2013, respondent No.1 asked the petitioner to clear the deficiencies listed in the said letter; that vide letter dated 05.12.2014, respondent No.1 issued a provisional/conditional NOC for a period of six months;

that the said letter dated 05.12.2014 contained a list of deficiencies which the petitioner was required to clear within a period of two months; that having cleared the deficiencies pointed out by respondent No.1, the petitioner, vide letter dated 04.02.2015, applied to respondent No.2 for the issuance of an NOC; that on 29.09.2015, 01.03.2016 and 12.07.2016, the petitioner sent reminders to respondents No.1 and 2 for the issuance of an NOC, but to no avail; that vide e-mail dated 18.07.2016, respondent No.1 informed the petitioner that an Inspection Committee will be visiting the petitioner/college on 19.07.2016 at 10:00 a.m.; that since the petitioner had enrolled numerous students for the LL.B Program for the academic session 2015-16, vested rights had been created in the petitioner's favour for the grant of an NOC; that the future of such students was at stake due to the omission on the part of respondents No.1 and 2 to issue an NOC in the petitioner's favour; and that as the students' examinations at the petitioner/college were fast approaching and the report of the Inspection Committee of respondent No.1 was not in sight, the petitioner filed the instant writ petition.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE ISLAMIA UNIVERSITY OF BAHAWALPUR (I.U.B.):

3. Initially when the instant writ petition was filed, the petitioner chose not to implead IUB as a party/respondent. On 30.08.2016, the petitioner filed an application (C.M. No.3325/2016) for the impleadment of IUB, and the Controller of Examinations of IUB, as parties/respondents to the writ petition. Vide Order dated 31.08.2016, the said application was allowed. Subsequently, IUB filed its report and para-wise comments to the writ petition.

4. Learned counsel for IUB submitted that the petitioner lacked the legal capacity to institute legal proceedings; that IUB cannot grant affiliation to any educational institution operating in the Islamabad Capital Territory unless an NOC is obtained from respondent No.1; that since respondent No.1 had not issued an NOC in the petitioner's favour, the question of granting affiliation

to the petitioner did not arise; that IUB in its letter dated 17.02.2015 had cautioned the petitioner not to make any admissions for the academic session 2015-16 without obtaining fresh affiliation from IUB; that the petitioner, in utter disregard of the said caution, has admitted a large number of students for the academic session 2015-16 without obtaining fresh affiliation from IUB; that since the petitioner was not granted affiliation by IUB for the academic session 2015-16, its students were not registered with IUB, and therefore, they cannot take the examination for the said academic session; that the petitioner is pressurizing IUB for the issuance of roll number slips without depositing the required fee of Rs.1.8 Million; that the petitioner is carrying out commercial activity in disregard of the applicable law, rules and regulations; that a wrong precedent would be set if students from institutions which do not have affiliation with IUB are allowed to sit in examinations; and that the petitioner has cheated and played with the future of the students by enrolling them for the academic session 2015-16 without informing them about the non-issuance of an NOC by respondent No.1. Learned counsel for IUB prayed for the writ petition to be dismissed.

CONTENTIONS OF THE LEARNED COUNSEL FOR PAKISTAN BAR COUNCIL:-

5. On 26.09.2016, the petitioner filed an application (C.M. No.3583/2016) seeking the impleadment of (1) the Pakistan Bar Council, and (2) the Legal Education Committee of the Pakistan Bar Council, as a parties/respondents to the writ petition. This application was allowed, vide order dated 30.09.2016. On 07.10.2016, Mr. Shoaib Shaheen, Advocate Supreme Court, tendered appearance for the Pakistan Bar Council, and drew the attention of the Court to the Pakistan Bar Council Legal Education Rules, 2015, framed in exercise of the powers conferred under Sections 13(1)(j) and 55 of the Legal Practitioners and Bar Council Act, 1973. He further submitted that the petitioner/college fell short of the requirements under the said Rules. He further submitted that IUB was under an

obligation to ensure that the petitioner/college fulfills the requirements of the said Rules.

LEGAL STATUS OF THE PETITIONER:-

6. The learned counsel for the petitioner in his arguments had submitted that the petitioner was a society registered under the provisions of the Societies Registration Act, 1860. As the petitioner had not annexed any document showing the registration/ incorporation of the petitioner, this Court, vide order dated 17.10.2016, directed the petitioner to file documents showing the registration/incorporation of the petitioner. On 03.11.2016, the petitioner filed an application vide Diary No.8712/2016, wherein it has been pleaded as follows:-

"i. The Petitioner College had been established and run under the management of "NUMLIANS" which is registered under Societies Act XXI of 1960."

7. Along with the said application, the petitioner filed the certificate of registration of 'NUMLAINS' dated 01.04.2004. This document shows that 'NUMLIANS', having its office at 4-B Basement, Rawal Arcade, F-8 Markaz, Islamabad, was registered under the provisions of the Societies Registration Act, 1860, with the Registrar Joint Stock Companies, Islamabad Capital Territory, Islamabad. Annexed to the said application are also the petitioner's applications for affiliation with IUB, wherein it is stated that the petitioner *"has been established under the management of NUMLIANS w.e.f.01.03.2011"*. No document of registration/incorporation or establishment of the petitioner was brought on record to show that the petitioner had been infused with legal personality. 'NUMLIANS' is not the petitioner in this writ petition.

8. Only a natural or a juristic person can sue or be sued in its own name. It is an admitted position that the petitioner/Islamabad Law College has not been registered as a Society under the provisions of the Societies Registration Act, 1860, or under any other law which would invest it with legal personality, such as the Companies Ordinance, 1984, the Partnership Act, 1932, or the Trust Act, 1882. Learned counsel for the petitioner was not able to explain that if the

petitioner/college was an adjunct or part and parcel of 'NUMLIANS', why did 'NUMLIANS' not institute the writ petition. Furthermore, the petitioner did not even bring any document on record to show that the petitioner/college is owned and controlled by 'NUMLIANS'. The petitioner did not even file the constitution/memorandum of article of association of 'NUMLIANS' to show that its business included the running of the petitioner/college. The petitioner's applications for affiliation with IUB do not in any manner strengthen the petitioner's case.

9. Annexed to the writ petition are the Auditor's reports and the balance sheets of the petitioner/college for the years ending on 30.06.2014, 30.06.2015 and 30.06.2016, prepared by "Chartered Associates, Auditor & Accountants". These reports describe the petitioner as a "sole proprietorship". The name of the proprietor of the petitioner/college is not mentioned in any of these reports. Now, in the writ petition, the petitioner does not describe itself as a 'sole proprietorship'. The writ petition was instituted by the petitioner/Islamabad Law College, through its Principal, Muhammad Atiq-ur-Rehman. It is well settled that legal proceedings can be instituted by a sole proprietor, but not the sole proprietorship. Reference in this regard may be made to the following case law:-

- (i) In the case of M/s. Aran Saz Contractors Vs. Pak Chromical Limited (1999 MLD 1781), the Hon'ble High Court of Sindh held that the filing of a suit in the name of a proprietary concern/sole proprietorship was not merely a technical flaw but was a legal defect, and that for such a legal defect the suit was liable to be dismissed. Furthermore, it was held as follows:-

"Another most important aspect of the matter is that the instant suit has been filed by M/s. Ahan Saz Contractors which, admittedly, is a proprietary concern of one Muhammad Riaz Awan. Order 30, C.P.C. deals with the suit filed by or against the firms and persons carrying on business in the names other than their own. Rule 1 of Order 30, C.P.C. provides that any two or more persons claiming or being liable as partners and carrying on business in Pakistan may sue or be sued in the name of the firm, if any, of which such persons were partners at the time of the accruing of the cause of action. Order 30,

*Rule 10, C.P.C. provides that any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name. Comparative study of Order 30, Rule 1, C.P.C. and Order 30, Rule 10, C.P.C. reveals that Order 30, Rule 1, C.P.C. which deals with suits by a partnership firm permits filing of suits by or against a partnership firm whereas Order 30, Rule 10, C.P.C. which deals with suit in the name of the proprietary concern specifically provides only for filing of suits against a proprietary concern in its name but does not provide for filing of a suit by a proprietary concern as it does not have any legal status/character as distinct from its proprietary. Thus a proprietary concern can be sued in its name but it cannot sue in its own name. The question as to whether a proprietary firm can sue in its own name came under consideration in the case of *Ismail Haji Sulaiman v. Messrs Hansa Line and another* (PLD 1961 Dacca 693) and *Habib Bank Limited v Iqbal I. Chundrigar* (1983 CLC 1464)."*

(ii) In the case of Habib Bank Limited Vs. Iqbal I. Chundrigar (1983 CLC 1464), it has been held as follows:-

"As it has been established that Iqbal Chundrigar is the proprietor of Iqbal & Co. the question arises whether they are two different and distinct persons for the purposes of incurring liability. A proprietary firm cannot have any legal status as distinct from its proprietor. It is the proprietor who is the legal person entitled to all the benefits and liable for the liabilities that accrued in that account. In the eye of law the proprietor and proprietary firm are one and the same person. A reference can be made to AIR 1924 Bom. 109 and AIR 1930 Bom. 216. It is well-established that a proprietary firm cannot sue in its own name. It is the proprietor who can sue for claims that may arise in the name of proprietary firm. It is thus established that each and every liability which the proprietary firm incurs is the liability of the proprietor himself. In fact it is the proprietor who is carrying on the business in the name and style of a firm taking upon himself the burdens and benefits."

10. Since the Auditor's reports were filed along with the writ petition, the petitioner is deemed to be well aware of their contents. The position that emerges is that the petitioner to its Auditors represented that it was a sole proprietorship, whereas to IUB the petitioner represented that it was set up under the management of 'NUMLIANS'. Either way, it was bereft of legal personality to institute legal proceedings, as explained above. The defect in the institution of a suit or writ petition is fatal to its maintainability. Therefore, I am constrained to hold that since the petitioner/Islamabad Law College is not a juristic or juridical

person, and does not have legal personality of its own, this writ petition is not maintainable.

THE PETITIONER'S AFFILIATION WITH I.U.B FOR ACADEMIC SESSIONS 2011-12, 2012-13, 2013-14 and 2014-15:-

11. The IUB was established under the provisions of the Islamia University of Bahawalpur Act, 1975 ("IUB Act"). One of the powers of the said University is to affiliate and de-affiliate educational institutions under prescribed conditions. IUB is also empowered to inspect colleges and other educational institutions associated and seeking association with it. The procedure and the conditions for the affiliation of educational institutions with IUB are set out in Section 34 of the IUB 1975.

12. Furthermore, Section 5(3) of the IUB Act provides that IUB may admit to its privileges under prescribed conditions, an educational institution falling within the territorial limits of another University whether inside or outside Pakistan, provided that the consent of such other University and the sanction of Government is first obtained. Since the petitioner/college is said to be located in the Islamabad Capital Territory, which is admittedly beyond the jurisdiction of the IUB, that is why it was required to fulfill the criteria of affiliation given by respondent No.1. Therefore, the petitioner applied to respondent No.1 for the issuance of an NOC for affiliation with the IUB. The petitioner in paragraph No.6 of the writ petition has explicitly pleaded this. The matter pertaining to the petitioner's applications to respondent No.1 for the grant of NOC for its affiliation with IUB shall be dealt with later.

13. Perusal of the IUB Act in general, and Section 34 thereof in particular do not envisage the concept of 'provisional affiliation'. But IUB has been granting provisional affiliation to the petitioner for specific academic sessions. The record shows that vide letter dated 01.06.2012, IUB granted 'provisional affiliation' to the petitioner to teach LL.B for the academic session 2011-12, subject to the conditions set out in the said letter. One of conditions was that the petitioner could not admit more than sixty (60) students for LL.B Part-1. The petitioner was required to

take the necessary steps to fulfill the deficiencies pointed out by the Affiliation Committee of IUB. Furthermore, the petitioner was required to fulfill the criteria of affiliation given by respondent No.1 / Higher Education Commission, as well as rules, regulations and instructions of the Pakistan Bar Council. The said affiliation is said to have been granted on the 'directions', dated 15.05.2012, of the Hon'ble Lahore High Court, Bahawalpur Bench.

14. Thereafter, vide letters dated 12.12.2012 and 05.12.2014, IUB granted 'provisional affiliation' to the petitioner to teach LL.B for the academic sessions 2012-13 and 2013-14, respectively. The petitioner was cautioned not to admit more than 150 students in each academic session of LL.B Part-I Program. The requirement to fulfill the criteria of affiliation given by respondent No.1 in its above-mentioned letter dated 01.06.2012, was reiterated by the IUB in its letters dated 12.12.2012 and 05.12.2014. The IUB again asked the petitioner to clear the deficiencies in its college.

15. Vide letter dated 17.02.2015, the IUB granted 'provisional affiliation' to the petitioner for teaching LL.B Part-I and LL.M classes for the academic session 2014-15 on certain terms and conditions. One such condition was that the petitioner could not admit more than 150 students for LL.B Part-I, and 20 students for the LL.M Program. It was explicitly provided that the number of students could not be increased under any circumstances.

THE PETITIONER'S AFFILIATION WITH I.U.B FOR ACADEMIC SESSION 2015-16:-

16. IUB, in its letter dated 17.02.2015, had cautioned the petitioner not to make admissions for their academic session 2015-16 without obtaining a fresh affiliation from the IUB. The last date for the receipt of the fresh application in this regard was 15.05.2015. IUB, vide letter dated 18.03.2016 informed the petitioner that its request for the grant of affiliation with IUB for the academic session 2015-16 would not be considered without the required NOC from respondent No.1.

17. On 04.05.2016, the petitioner had applied to IUB for the issuance of an affiliation notification for the academic session 2015-16. Vide letter dated 06.06.2016, IUB gave the petitioner a period of seven days to provide the required NOC from respondent No.1, failing which the affiliation for the academic session 2015-16 would be treated as cancelled.

PETITIONER'S APPLICATIONS TO THE HIGHER EDUCATION COMMISSION/RESPONDENT NO.1 FOR THE GRANT OF N.O.C.:-

18. As mentioned above, the petitioner had applied to respondent No.1 for the grant of NOC for its affiliation with IUB. Vide letter dated 18.12.2012, respondent No.1 informed the petitioner that a three-member inspection committee had been constituted to visit the petitioner/college on 19.12.2012 in order to ascertain its financial, academic and infrastructural facilities for affiliation with IUB. After the visit of the inspection committee, respondent No.1, vide letter dated 28.01.2013, informed the petitioner that the college was operating according to the required criteria. However, respondent No.1 cautioned the petitioner not to advertise any admissions until the deficiencies in its college were cured. The deficiencies in the petitioner/college, listed in respondent No.1's said letter dated 28.01.2013 were as follows:-

- "a. *The college needs to acquire 04 Kanals of land.*
- b. *The financial documents (endowment detail and total assets worth) need to be provided.*
- c. *The faculty list along with CV, copies of the degrees and appointment letters need to be submitted.*
- d. *The infrastructure i.e. rooms, common room, sports ground and transport vehicle needs to be upgraded.*
- e. *The library books, subscription of magazine's and newspaper were not in accordance.*
- f. *Hostel facility for students and faculty needs to be hired."*

19. After a lapse of more than one and a half year, the petitioner, vide letter dated 02.06.2014, informed respondent No.1 that the deficiencies listed in respondent No.1's letter dated 28.01.2013 had been "fulfilled". Vide letter dated 18.06.2014, respondent No.1 informed the petitioner that its request for the grant of NOC could not be considered until the decision in Writ Petition No.584/2014 (which had been instituted by the petitioner against respondent No.1). Furthermore, the petitioner was

requested to fulfill the required standards of academic, physical and financial infrastructure of the college.

20. Vide letter dated 07.09.2014, respondent No.1 informed the petitioner that a three-member inspection committee had been constituted to visit the petitioner/college on 09.09.2014 in order to ascertain its financial, academic and infrastructural facilities for affiliation with IUB. The inspection committee visited the petitioner/college on 09.09.2014 and submitted a detailed report. The findings of the inspection committee were as follows:-

- *"The Committee is of the view that the Islamabad Law College does not fulfill the basic criteria for the establishment of a law college and cannot be recommended for a grant of HEC NOC as an affiliated Institution.*
- *The Committee also showed reservations regarding the approval of Islamabad Law College as an affiliated institution of Islamia University, Bahawalpur and suggests that the issue may be taken up with the Vice Chancellor of the University for such a Serious Contravention of the affiliation rules by the University."*

21. The reasons for giving the said findings are also detailed in the inspection report. These reasons are as follows:-

"1. Physical resources and support services

- *Existing building is extremely unsuitable and inappropriate even for an ordinary primary school, let alone a law college. The proposed premises is located on the main Kashmir Highway which is a disputed area of G-12 sector of CDA. The building comprises a few small rooms with temporary and fabricated ceiling. There is no proper access to the main 'building' and one has to go through a dyke. The lease agreement signed with the owner of the premises is dubious; it is undated and there is no exist clause dealing with the vacation of premises. It has not been registered with the rent controller or even attested by a notary public. It has been verified only by one witness and the slot for other witness is blank.*
- *The seating capacity of the proposed classrooms is extremely inadequate and not suitable as classroom. According to PBS's Rules it must have capacity of 150 students. There is no common room, ladies room etc.*
- *A small room of the premises is marked as Library. It has only few books and some low paid books of general description. By any standard it cannot be called a law library. There is not a single law report or law journal. It can at the most accommodate 3-4 students at a time. It does not qualify to be called a study, what to talk of a library. There is no internet connectivity in the building.*

2. Human Resources/Faculty

The status of the faculty is very poor. A few practicing lawyers who have graduated from law colleges of poor quality, affiliated with Gomal University etc are designated as whole-time teachers with little or no experience. The terms of a fulltime faculty member as per contract is Rs.10,000/- pm. The

qualifications of the principal of the proposed law college are not adequate; he has done LLB degree from a private affiliated law college having no Master's degree as per requirements of the Pakistan Bar Council Rules.

3. *Proposed Curriculum and Program of Studies*

The college is required to follow the LLB program of the Islamia University Bahawalpur. There are around 178 students admitted in the college; it is conducting morning and evening classes not permissible under the PBC Rules.

4. *General*

Physical facilities such as building(s), library, hostels, playgrounds, furniture and fixture, transport are nonexistent; there is need of other necessary facilities, which, it is regrettably submitted, are completely missing."

22. Vide letter dated 23.09.2014, respondent No.1 required the petitioner to cure the following deficiencies in its college:-

- a. *The college is extremely unsuitable and inappropriate in terms of its building and other allied facilities.*
- b. *The seating capacity of the proposed classrooms is inadequate with respect to affiliation criteria.*
- c. *The college is seriously deficient of faculty members. A few practicing lawyers are designated as whole-time teachers with less experience.*
- d. *Physical facilities such as building(s), library, hostels, playgrounds, furniture and fixture, transport and nonexistent and*
- e. *A small room is marked as Library and the library books, subscription of magazine's/Journals need to be upgraded."*

23. Respondent No.1 again cautioned the petitioner not to advertise admissions in the college until the permission is granted by respondent No.1 after re-evaluation of the said deficiencies.

24. Respondent No.1 sent yet another inspection team, comprising Dr. Muhammad Rafiq Baloch and Dr. Iftikhar Ahmad Khan, to the petitioner/college. The said inspection team in its report dated 02.12.2014 made the following recommendation:-

"The college administration has tried to provide the required facilities. The college may be given time to address the above-mentioned recommendations and inform HEC when it is ready for a visit for verification of implementation of recommendations before the grant of NOC by HEC. It is believed that addressing the recommendations given above will make the programs better and will enable the college to serve the country and profession in a better way."

25. The above-mentioned recommendation was based on the following observations of the inspection team:-

- *"The class rooms are small and can accommodate not more than 25 students. No time tables were provided to*

the members of the inspection team that indicate whether the class rooms are adequate for the present student population. The information shared with members was mostly verbal.

- *There are no examination halls for the students to take their examinations. The class rooms are too small to be suitable for this purpose.*
- *No documents were provided to the members of inspection team about the numbers of students and faculty members, facilities provided by the college and plan that indicates whether the facilities are adequate for the students. The college should provide its plan that shows how the student population will grow with time and how the college will ensure that the number of faculty members and facilities will be adequate. The college should also indicate whether it will induct students once or twice a year. (A proforma developed by the Attestation and Accreditation Division of the Higher Education Commission to address all of these items will be helpful for the institutions as well as inspection teams.)*
- *The library is very small and needs more space and additional books and journals in accordance with the student population. The entrance from the main road to the College needs to be made proper. At present, it is not safe and may lead to accidents and injuries to the students, faculty members and others who visit the College.*
- *A cafeteria is needed for the students.*
- *There is a need to provide benches or chairs in the lawn for the students.*
- *Offices are needed for the faculty members to prepare lectures, mark assignments and examination papers, and advise students."*

26. Regardless of the findings and recommendations of the inspection committees, respondent No.1, vide letter dated 05.12.2014, gave the petitioner conditional NOC for a period of six months. The conditions subject to which the NOC was granted were as follows:-

- "1. The college needs to develop its entrance, buildup of civil, sanitary and allied infrastructures for ease of students including playground, cafeteria and sitting arrangements etc;*
- 2. The college needs to develop its ICT infrastructure i.e. computer lab, AV aids, internet connectivity and submits its valid evidences;*
- 3. The college needs to submit an affidavit by its faculty members that they are full time regular faculty;*
- 4. The college has to upgrade its library by placing more subject related books with latest journals and submit the invoices of the five (5) impact factor journals to this office;*
- 5. The college needs to provide valid proof of its running expenditures in the form of 3rd party audited balance sheet by a certified chartered firm; and*
- 6. The college needs to submit an affidavit that no other activity will be conducted on its premises."*

27. The petitioner was given a period of two months to fulfill the above mentioned deficiencies and to submit its report to respondent No.1. The petitioner was again cautioned that if no tangible improvement was observed, the said provisional NOC would be withdrawn without prior notice. Furthermore, the petitioner was required to adhere to the affiliation criteria adopted by the IUB based on respondent No.1's criteria/bench marks.

28. Vide letters dated 04.02.2015, 29.09.2015 and 01.03.2016, the petitioner requested respondents No.1 and 2 to issue an NOC. Respondents No.1 and 2 did not respond to any of these letters.

29. As per notification dated 04.07.2016 issued by the IUB, the Annual Examinations-2016 for LL.B Parts I, II & III were to commence on 06.09.2016. It is pertinent to bear in mind that the IUB had not granted affiliation to the petitioner/college for the three-year LL.B program for the academic session 2015-16. As mentioned above, the IUB in its letter dated 17.02.2015, had cautioned the petitioner not to admit students for academic session 2015-16 without obtaining fresh affiliation from IUB. As IUB had not granted affiliation to the petitioner for the academic session 2015-16, on account of non-issuance of an NOC in the petitioner's favour by respondent No.1, the petitioner, vide letter dated 12.07.2016, requested respondent No.2 to direct the IUB to issue an affiliation letter and registration cards and exam forms for students.

INSPECTION OF THE PETITIONER/COLLEGE DURING THE PENDENCY OF WRIT PETITION: -

30. When the instant writ petition was first taken up for hearing on 19.08.2016, the learned counsel for the petitioner submitted that respondent No.1 had informed the petitioner that on 18.07.2016, an inspection team would visit the petitioner/college on 19.07.2016. Therefore, the case was adjourned to 22.08.2016, and respondent No.1 was required to inform the Court about the outcome of the inspection carried out on 19.07.2016. During the course of the hearing, the learned counsel for respondent No.1

brought on record Inspection Report dated 19.07.2016, according to which the finding of the accreditation/inspection committee was that the petitioner/college did not fulfill the minimum requirements for becoming an accredited and affiliated law college of any public sector university till such time that it meets the affiliation criteria devised by respondent No.1 as well as the Pakistan Bar Council's rules and regulations. The said Inspection Report is most hurtful to the petitioner. The deficiencies pointed out by the accreditation/inspection committee in the petitioner/college were as follows:-

- "i. No appropriate faculty having related professional experience was present in the college;*
- ii. Library was not upto the mark and contained less than 5000 law books. The seating capacity of the library was only 5.*
- iii. College is located in a shabby area. Moreover, the seating capacity of the classrooms was extremely inadequate. As per the PBC Rules, each classroom should have 150 seating capacity whereas in this case, it is limited to 15-20 only.*
- iv. There is no civil or general facility for students, no common room, cafeteria as well as generator combatting load shedding.*
- v. The lease agreement of this college is undated having no proper signatures of the lessor and witnesses which makes it quite dubious.*
- vi. The ceiling of each room is temporarily fabricated which is unable to bear heat pressures.*
- vii. No tangible improvements have been notices since 1st inspection. Also, the boundary walls have been broken and the previously identified deficiencies remained same."*

31. In addition to the above deficiencies in the petitioner/college, the accreditation/inspection committee of respondent No.1 reported that the college was located on disputed land in G-12/4, Islamabad; that there were no pathway directions so as to locate the college; that there were no published law digests or journals in the library; that the library seemed to have less than 1000 books, whereas under the new regulations of Pakistan Bar Council, each law college needs to have at least 5000 books; that on the day of the inspection, there were only two faculty members/lecturers present at the college; that these two faculty members did not have the required five years professional experience for teaching law; that faculty members had been teaching on a monthly salary of only Rs.10,000/- per month; that strength of the faculty could not be

ascertained during the inspection; that the Principal was not present on the day of the inspection; and the qualification of the current administrator was only LL.B.

32. The members of the accreditation/inspection committee also expressed their reservations about the petitioner/college admitting students for the academic session 2015-16, when IUB had not granted affiliation to the petitioner/college for the said session. The said committee was of the view that such admissions need to be cancelled by the petitioner/college and the admission fee be returned to the students.

33. As mentioned above, the representatives of respondent No.1 have inspected the petitioner/college on a number of occasions. Every time respondent No.1 came up with a spate of deficiencies which the petitioner/college was required to clear. Other than for the six-month period during 2014, the petitioner/college has not been issued an NOC by respondent No.1. Without being issued an NOC by respondent No.1, and without obtaining a fresh affiliation from IUB for the academic session 2015-16, the petitioner went ahead and enrolled students. This was highly improper on the part of the petitioner. The learned counsel for the petitioner, in his arguments submitted that the future of several students, who were enrolled for the academic session 2015-16, was at stake if respondent No.1 did not issue an NOC. That may be so, but it is the petitioner which has put the future of such students at stake and is, therefore, liable to compensate them. Before admitting the students for the academic session 2015-16, it was the petitioner's duty to have made a clear and adequate disclosure to the students that it had neither been issued an NOC by respondent No.1, nor granted affiliation by IUB. The mere fact that the petitioner/college had admitted students for the academic session 2015-16 would not in any way strengthen its case for the grant on an NOC, unless the deficiencies pointed out by respondent No.1 were cleared. Reference in this regard may be made to the following case law:-

- (i) In the case of Noor Muhammad Khan Marwat Vs. Vice-Chancellor, Gomal University (PLD 2001 SC 219), Gomal University, Dera Ismail Khan, had granted affiliation to a private educational institution/college for classes B.Ed. only. Subsequently, the petitioner applied for affiliation for Junior Diploma in Physical Education (JDPE) classes, which application was turned down by the University. Despite the fact that the petitioner's application for affiliation for the JDPE classes was turned down by the University, several students were admitted at the petitioner's college for the JDPE classes. As such students were not issued roll numbers for the second term JDPE examinations, the petitioner filed a writ petition before the Hon'ble Peshawar High Court challenging the University's decision not to issue roll numbers for the second term JDPE examinations. The said writ petition was dismissed. The Hon'ble Supreme Court dismissed the petitioner's appeal against the dismissal of the writ petition. Paragraph 6 of the said judgment is reproduced herein below:-

"6. There is another aspect of the case. Universities have always been considered to be centres of high excellence where higher education is imparted and research facilities are regulated through its own discipline. Prominent jurists, educationists and research scholars are assigned administrative as well as educational and research assignments for achieving the object of higher education. Such authorities, generally speaking, are competent to administer their own affairs without outside interference from executive or judicial organs. Unless University authorities transgress the scope of their authority or act in violation of the statute, Courts are always loath to interfere with the smooth administration of Universities. Petitioner in the case in hand has been unable to point out any act of discrimination or contravention of the statute. No ground for interference is thus made out. In our view learned High Court was perfectly right in declining to exercise its extraordinary jurisdiction in the matter."(Emphasis added)

- (ii) In the case of Seena International Medical College Vs. Government of N.W.F.P. (1999 SCMR 2110), the petitioner, a medical college in the private sector, was neither registered with the Pakistan Medical and Dental Council, nor the Higher Education Commission (formerly, the

University Grants Commission). The petitioner was also not affiliated with any university. The inspection team constituted by the Health Department for inspecting the petitioner/college reported that the college was substandard etc. The Hon'ble Peshawar High Court dismissed the writ petition against the closure of the medial college. The Hon'ble Supreme Court upheld the decision of the Hon'ble Peshawar High Court, and *inter alia* held that the college was liable to be closed as it was substandard, lacked the required facilities and was being run on commercial basis only with a view to earn money instead of imparting education in the real sense.

- (iii) In the case of Rahimyar Khan College of Education Vs. Islamia University of Bahawalpur (1996 SCMR 341), the University, which granted provisional affiliation to colleges, had asked them to fulfill certain deficiencies and requirements to earn affiliation of permanent nature. Since the colleges did not remove the deficiencies pointed out by the University, the Affiliation Committee of the University recommended that their affiliation should not be extended any further. The Syndicate of the University accepted the recommendations of the Affiliation Committee. The Hon'ble Lahore High Court dismissed the writ petitions filed by the colleges against the decision of the University not to grant/extend the affiliation. The Hon'ble Supreme Court refused to grant leave to appeal against the judgment of the Hon'ble Lahore High Court. The Hon'ble Supreme Court did not find any reason to fault the reports of the Affiliation Committee, which was manned by personages of high repute. In Paragraph 5-A of its judgment, the Hon'ble Supreme Court held as follows:-

“5-B. It was also submitted by learned counsel for the petitioners that in view of the poor literacy rate of our country, it was not just and proper to stop educational institutions from disseminating knowledge in different spheres. There can be no cavil with the proposition that the citizens of this country should be enabled not only to become literate but also to improve their educational proficiency. It is, however, equally imperative that the

institutions which come in this field, should play their role in a befitting manner. Mere fleecing of people desirous to achieve excellence or providing them short-cuts to obtain high degrees, without requisite knowledge, cannot be countenanced. Heavy responsibility, therefore, falls on the shoulders of the functionaries of the University to ensure that affiliation is granted to only such institutions as can deliver goods in a perfect and laudable manner. If any institution is found lacking in this behalf the University authorities will be justified in refusing affiliation thereto. It is discretionary with the University to grant or withhold affiliation and if discretion is exercised judiciously, it cannot be taken exception to by any one. A perusal of clause (n) of subsection (2) of section 25 read with section 34 of Islamia University Bahawalpur Act, 1975, would indicate that an institution has to satisfy several requirements to earn affiliation. It is the Syndicate of the University, which is competent to grant or refuse affiliation after obtaining report of the Affiliation Committee with regard to the fulfilment of the said requirements. Thus, if the Affiliation Committee had found that any of the requirements laid down in rule 34 of the said Act had not been fulfilled by the petitioners, and then on the basis of its report in this regard, the Syndicate had refused affiliation to the petitioners, the orders of the Syndicate in the matter did not suffer from any jurisdictional defect and would not warrant interference by the superior Courts in exercise of their constitutional jurisdiction.”

- (iv) In the case of Al-Farooq College of Education, Bahawalpur Vs. Islamia University, Bahawalpur (1997 MLD 2896), provisional affiliation was granted by the Islamia University, Bahawalpur was granted to a private institution on a year to year basis subject to certain conditions, which were required to be fulfilled by the institution. On the institution's application, the Affiliation Committee of the University inspected the institution and pointed out certain deficiencies due to which affiliation was not granted. It was held by the Hon'ble Lahore High Court that the University was within its lawful authority to ask the petitioner/institution to remove the deficiencies pointed out by the Affiliation Committee and the same having not been removed, the University had the lawful authority to refuse to affiliate the institution for a specific year.
- (v) In the case of International College of Commerce Vs. University of Punjab (PLD 2004 Lahore 335), the Affiliation Committee of the University of Punjab inspected the

petitioner/college and found several deficiencies in it. The petitioner was issued a notice to show cause as to why its affiliation should not be withdrawn. The petitioner's representation did not find favour with the University, which withdrew the petitioner's affiliation. The Hon'ble Lahore High Court dismissed the petitioner's writ petition by inter alia holding that no institution can claim affiliation until it conforms to a certain standard. Furthermore, it was held as follows:-

"10. ... Affiliation is a facility sought by an educational institution and granted by the University for the purpose of enabling the students of that particular educational institution to sit for an examination to be conducted by the University in the prescribed subjects and to obtain a degree conferred by the University. For that purpose, the students have to be coached in such a manner that they attain excellence in respect of the standards of education prescribed by the University. That is the price of affiliation. For this reason, it is permissible for the University to prescribe regulations which must be complied with before an institution can seek and retain affiliation. Therefore, I have no doubt in my mind that affiliation of an educational institution could be regulated, laying down permissible standards, observance of which could be made a condition precedent to the according of affiliation."

34. The conduct of IUB in granting 'provisional' affiliation to the petitioner for specific academic sessions midway, is also not proper. Ideally, the decision whether or not to grant affiliation to an educational institution should be taken by a University prior to the commencement of a particular academic session. In this case, the 'provisional' affiliation for teaching LLB (three year course) for the academic session 2012-13, was granted by IUB to the petitioner on 12.12.2012 i.e. after the commencement of the academic session. Astoundingly, the 'provisional' affiliation for the academic session 2013-14 was granted by IUB to the petitioner on 05.12.2014 i.e. after the completion of the academic session. The 'provisional' affiliation for the academic session 2014-15 was also granted on 17.02.2015, which is midway the academic session. Now, the question that emerges is whether, based on the belated issuance of affiliation for academic sessions by IUB, the petitioner could have developed a legitimate

expectation for the grant of affiliation for the academic session 2015-16 after the commencement or even the completion of the academic session; and therefore, admitted students for the academic session 2015-16? I would say no. This is because when IUB granted 'provisional' affiliation to the petitioner for the academic session 2014-15 on 17.02.2015, the petitioner was expressly cautioned not make admissions for the academic session 2015-16 without obtaining a fresh affiliation from IUB. Since the time-bound and conditional NOC granted by respondent No.1 to the petitioner had lapsed on 05.06.2015, IUB had, vide letters dated 18.03.2016 and 06.06.2016, required the petitioner to obtain an NOC from respondent No.1 failing which its application for affiliation would not be considered. Therefore, the petitioner should not have admitted students for the academic session 2015-16 without having obtained an NOC from respondent No.1 or an affiliation for the said academic session from IUB. It was obligatory on the petitioner to have intimated students applying for admission for the said academic session that it does not have the requisite affiliation with the IUB.

35. Under Section 5 (3) of the IUB Act, IUB could prescribe conditions for the grant of affiliation or the admission of an educational institution to its privileges. The requirement of obtaining an NOC from respondent No.1 was a condition set by IUB for granting affiliation to the petitioner/college. The petitioner does not dispute that IUB was well within its rights to require the petitioner to obtain an NOC from respondent No.1 for the petitioner's affiliation with IUB. The petitioner/college by making applications to respondent No.1 for the grant of an NOC acknowledged that such an NOC was an essential prerequisite for its affiliation with IUB.

36. Now, the 'provisional affiliation' letters issued by IUB to the petitioner for the academic sessions 2011-12 to 2014-15 contain a direction to the petitioner to fulfill the affiliation criteria in the rules and regulations of the Pakistan Bar Council. The Pakistan Bar Council while approving the recommendations of its Legal Education Committee in its 115th meeting held on 27.06.1998

proposed the “Affiliation of Law Colleges Rules” for adoption by Universities in Pakistan imparting legal education. These Rules provide for a host of requirements to be met by the Government and private law colleges. These Rules were repealed and replaced by the “Pakistan Bar Council Legal Education Rules, 2015”. Under Rule 14 of the said Rules, inspection teams constituted by the Legal Education Committee of the Pakistan Bar Council can inspect law colleges to ensure compliance with the said Rules. Chapter VI of the said Rules titled “Affiliation of Law Colleges” sets out the minimum requirements of building, allied facilities, number of lecturers, standard of legal education, etc., which have to be achieved by law colleges to gain affiliation with universities. Rule 31 provides that in addition to the inspection by inspection teams under Rule 14, there shall be one inspection of the law college every year by the inspection committee of the University. Such an inspection committee is to *inter alia* include a one nominee of the Pakistan Bar Council. The inspection committee constituted by respondent No.1 during the pendency of this writ petition, included a member of the Pakistan Bar Council, who did not accompany the inspection team for the inspection of the petitioner/college on 19.07.2016, because of his pre-occupation elsewhere. The Pakistan Bar Council ought to take its responsibilities a little more seriously if they want the Rules framed by them to be observed in letter and spirit by universities and law colleges.

37. As regards the standards of legal education and affiliation of law colleges with Universities, the Hon'ble Supreme Court in the case of Pakistan Bar Council Vs. Federal Government (PLD 2007 SC 394) gave *inter alia* the following directions:

“(1) The Pakistan Bar Council, is the apex professional elected body of lawyers established under the Legal Practitioner and Bar Councils Act, 1973. One of its primary functions under this Act is ‘to promote legal education and prescribed standards of such education in consultation with the universities in Pakistan and the Provincial Bar Councils’. (Section 13(j)). It has been empowered to make rules to carry out its functions which include rules to provide for, ‘the standards of legal education to be observed by the universities in Pakistan and the inspection of universities for that purpose’.”

(ii) The Affiliation of Law Colleges Rules framed by the Pakistan Bar Council and any rule added or amended from time to time by it are essential to ensure that the law schools/colleges impart uniform quality legal education.

(iii) The rules framed by the Pakistan Bar Council shall be read into the rules framed by any Pakistani university and in case of conflict former rules shall have primacy

(iv) The rules do not envisage any concept of provisional affiliation. However, if any enactment, rules or regulation made thereunder provide for provisional affiliation, the same shall not extend beyond the period of one year and thereafter the said college shall stop admitting students for a law degree.”

38. This judgment is a most illuminating discourse on the importance of legal education standards that need to be achieved. The views enunciated in the in the said judgment have been reiterated by the Hon'ble Supreme Court in the case of Pakistan Bar Council Vs. Federal Government (2013 SCMR 165). An expectation was voiced by the Hon'ble Supreme Court in the said judgment for the making of uniform rules for the effective supervision relating to the recognition of universities and law colleges and also for raising the standard of legal education. This judgment is said to be the precursor to the making of the Pakistan Bar Council Legal Education Rules, 2015. Law colleges, including the petitioner/college, have to meet the requirements in the Pakistan Bar Council Legal Education Rules, 2015, to the satisfaction of the Pakistan Bar Council in order to gain affiliation with a university.

39. After the judgment was reserved, the petitioner filed an application for bringing on record letter dated 04.01.2017 from IUB, wherein it is stated that unless an NOC is issued by respondent No.1 the petitioner could not be granted an affiliation. As similar letters had earlier been issued to the petitioner, the said letter dated 04.01.2017 does not, in any manner, strengthen the petitioner's case. The petitioner also applied for summoning the record of meetings of IUB. I am not inclined to allow this application at this stage.

40. In view of the several deficiencies in the petitioner/college pointed out by respondent No.1 in its inspection reports, I do not find any illegality, malafides, irrationality or procedural

impropriety in respondent No.1 refusing to grant an NOC to the petitioner/college. In view of the foregoing discussion, this writ petition is found to be devoid of merit and not maintainable and, therefore, is dismissed. All pending applications, seeking interim reliefs and the interim order, as granted, stand vacated. There shall be no order as to costs.

41. As the rules framed by the Pakistan Bar Council have to be read into the rules framed by IUB, the petitioner is at liberty to apply to IUB for the grant of affiliation, and to respondent No.1 for the issuance of an NOC. In the event, an NOC is granted by respondent No.1, the Legal Education Committee of the Pakistan Bar Council, may under Rule 14 of the Pakistan Bar Council Legal Education Rules, 2015, inspect the petitioner/college to ensure compliance with the said Rules.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan*

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