

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 18 of 2017

The Open International University for Complimentary Medicine,
Sari Lanka

Vs

Higher Education Commission, etc.

DATE OF HEARING: 31-01-2017.

PETITIONER BY: Mr Sher Afzal Advocate.

RESPONDENTS BY: Mr Qaisar Sarwar Advocate.

ATHAR MINALLAH, J.- Through this petition the Open International University for Complimentary Medicine, Sri Lanka (hereinafter referred to as the "petitioner University") has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "Constitution") challenging the inclusion of its name in the list issued by the Higher Education Commission of Pakistan (hereinafter referred to as the

"Commission") wherein the former has been declared as illegal. A further prayer has been sought to restrain the Commission from proceeding against the petitioner University.

2. The facts, in brief, are that the petition has been filed through Professor Dr Raja Khurram Shahzad Kayani who claims to be the Vice Chancellor of the petitioner University in Pakistan. The latter had earlier filed a constitutional petition i.e. W.P. No. 3186 of 2014 which was decided vide order dated 05-09-2016. Professor Dr Raja Khurram Shahzad Kayani had challenged an e-mail, dated 14-08-2016, whereby the Commission had informed a prospective student that the petitioner University had not been recognized by the former. The said Professor Dr Raja Khurram Shahzad Kayani had made representations in the printed brochures/prospectus that the petitioner University was recognized by the Commission. However, the latter had unequivocally taken the stance before this Court that the representations made were false and deceptive. The said order, dated 05-09-2016, passed in W.P. No. 3186/2014 was assailed by Professor Dr Raja Khurram Shahzad Kayani by filing an Intra Court Appeal and the same was entertained by a Division Bench of this Court and vide order, dated 19-09-2016, the Commission was restrained from initiating action against the appellant till the

next date of hearing. The Commission has issued a list of illegal/fake universities and campuses and a copy thereof is attached with the petition as Annexure-F, pages 75 to 87. The name of the petitioner University is included at serial No. 5 of the said list. Inclusion of the name in the list has been challenged through the instant petition.

3. The learned counsel for the petitioner has contended that; the inclusion of the name of the petitioner University in the list is without lawful authority and jurisdiction; the petitioner University has been recognized by the University Grants Commission of Sri Lanka and in this regard reference has been made to copy of letter, dated 09-06-1991, signed by the Chairman of the Commission; the recognition of foreign educational institutions is not within the ambit of the jurisdiction of the Commission in terms of section 10 (o) of the Higher Education Commission Ordinance, 2002 (hereinafter referred to as the "HEC Ordinance"); the Commission has a limited scope; recognition of foreign educational institutions is not envisaged under the HEC Ordinance; the petitioner University is not established within the jurisdiction of the Commission and, therefore, the latter has no power to give such a declaration; the liaison office established by the petitioner University does not fall within the ambit of the HEC Ordinance; the impugned inclusion is in

violation of the principles of natural justice; the inclusion of the name of the petitioner University in the list is on account of malafide since the officials of the Commission have been pressurizing its Vice Chancellor for ulterior motives.

4. The learned counsel appearing on behalf of the Commission has argued that; the latter is the regulatory authority for higher education within Pakistan; the instant petition is not maintainable since no document has been attached with the petition to show that either the petitioner University is in existence in Sri Lanka or that it is recognized by the Commission of that country; the copy of letter dated 09-06-1991, attached with the petition at page 9, is in respect of an institution named as the "Open International University", whereas, the instant petition has been filed in the name of the "Open International University for Complimentary Medicine"; the Commission after making inquiries was satisfied that the petitioner University either does not exist or is not recognized or accredited by a competent authority in Sri Lanka; the Commission is vested with powers to regulate the higher educational institutions within Pakistan; the Commission has approved and prescribed a policy in respect of opening of campuses of a foreign University; The petitioner University's office, claimed to be a

liaison office cannot be used for making false representations to the general public.

5. The learned counsels have been heard and the record perused with their able assistance.

6. The petition has been filed in the name of the petitioner University. It appears that the latter is a juridical person but no document has been placed on record to show its existence as a juridical person. The petition has been filed through a natural person namely, Professor Dr Raja Khurram Shahzad Kayani who claims to be the Vice Chancellor for the Pakistan Chapter of the petitioner University. There is force in the argument raised by the learned counsel for the respondents that the copy of letter dated 09-06-1991, attached with the petition at page 9, is in respect of some other university i.e. "Open International University" and not the petitioner University which claims to be named as the "Open International University for Complimentary Medicine". The Commission has placed on record documents to show that the petitioner University is not included as a chartered or accredited University or 'degree awarding institution' in Sri Lanka, in credible lists prepared by reputable institutions. The learned counsel for the petitioner has laid great stress regarding the powers and jurisdiction of the Commission in

declaring the petitioner University as illegal/fake. It would, therefore, be beneficial to peruse the provisions of the HEC Ordinance, so as to examine the scope of powers and jurisdiction of the Commission.

7. The HEC Ordinance was enacted and notified in the official gazette on 11-09-2002. The object and purposes described in the preamble is improvement and promotion of higher education, research and development and to provide for establishment of a Higher Education Commission and for matters connected therewith or incidental thereto. The powers and functions of the Commission are described in clauses (a) to (y) of sub section (1) of section 10 of the HEC Ordinance. The powers and functions, inter-alia, include formulating policies, guiding principles and priorities for higher education institutions; cause evaluation of the performance of institutions; determining the equivalence and recognition of degrees, diplomas and certificates awarded by the institutions within the country and abroad; collect information and statistics on higher education and institutions as it may deem fit and cause it to be published and to perform such other functions as are consistent with the provisions of the HEC Ordinance.

8. A plain reading of the provisions of section 10 as a whole clearly shows that the Commission has wide powers, which also extend to institutions established abroad. The expression 'Institution' is defined in clause 2(h) as any university or other degree awarding institution that offers higher education or is involved in the research and development activities. The definition is exclusive and is not restricted to an institution established within Pakistan. Clause (o) of sub section (1) of Section 10 expressly empowers the Commission to determine the equivalence and recognition of degrees, diplomas and certificates awarded by institutions within the country and abroad. Likewise, clause (x) ibid provides that the Commission is empowered to collect information and statistics on higher education and institutions as it may deem fit and then cause it to be published. It is, therefore, obvious that in case an educational institution established abroad solicits admissions or induces students who are citizens of Pakistan, then the Commission would be empowered and vested with jurisdiction to collect information regarding such an institution and cause it to be published for the information of the general public. The HEC Ordinance explicitly empowers the Commission to collect information and statistics on higher education and institutions as it may deem fit. The wording used by the Legislature in clause (x) of sub section (1) of section 10 are unambiguous and wide

enough to include information and statistics relating to institutions which have been established abroad.

9. In the instant case, a natural person namely, Professor Dr Raja Khurram Shahzad Kayani has been representing himself as the Vice Chancellor of the Pakistan Chapter of the petitioner University. The bank accounts operated by him are not in the name of the petitioner University. He had been mistakenly representing to the general public that the petitioner University was recognized by the Commission. No credible document has been placed on record to show that he has the authority to file the instant petition or that the petitioner University actually has an existence or is a degree awarding educational institution. The letter, dated 09-06-1991, a copy whereof is attached at page 9, is in respect of an institution named as the "Open International University" while the instant petition has been filed in a different name. Professor Dr Raja Khurram Shahzad Kayani has been filing petitions but surprisingly the petitioner University has never approached the Commission directly for the equivalence or recognition of its diploma or degree, which is an important function of the Commission under section 10(o) of the HEC Ordinance. Professor Dr Raja Khurram Shahzad Kayani has neither been able to establish his own bonafides nor that of the educational institution, which he

claims to represent. The proper course for any educational institution abroad is to directly approach the Commission for determining the equivalence and recognition of its degrees, diplomas and certificates. Moreover, admittedly the petitioner University has never approached the Commission through the Higher Education Commission of Sri Lanka. The petitioner University has kept itself elusive and its very existence is an enigma.

10. The list published by the Commission, wherein the name of the petitioner University has been included at serial No. 5, has obviously been issued pursuant to powers conferred under clause (x), sub section (1) of section 10 of the HEC Ordinance read with clause (o) *ibid*. The students are impressionable and, therefore, they need to be protected from being deceived. It is, therefore, a statutory obligation of the Commission to collect information and statistics relating to institutions within Pakistan and abroad in order to protect the students by keeping them informed. It may also be noted that a person who dishonestly induces members of the public at large to deliver, *inter alia*, money or valuable security exposes himself or herself to proceedings in relation to an offence defined under clause (ix) of section 9 of the National Accountability Ordinance, 1999. In the instant case the learned counsel appearing on behalf of the petitioner

University has not been able to show that the information published in the impugned list published by the Commission pursuant to its powers vested under section 10(1)(x) is perverse or fanciful. There is no force in the argument that the inclusion of the name at serial number 5 of the impugned list is in violation of the injunctive order, dated 19-09-2016. Firstly, the said order is in respect of a natural person, namely Dr Raja Khurram Shahzad Kayani and, secondly, the petitioner University was not a party in that case and, lastly, nothing has been placed on record to show that the petitioner University is a juridical person and that the petition has been filed in the prescribed manner. However, as already discussed above, the Commission is empowered to issue the impugned list and that the name of the petitioner University was included at serial no.5 after making necessary inquiries. Nevertheless, the petitioner University shall be at liberty to approach the Commission either directly or through the official regulatory authority in Sri Lanka. The petitioner University has to show to the satisfaction of the Commission that the information published pursuant to the powers conferred under section 10(1)(x) is not correct. In case such a representation is made to the Commission, the latter shall afford an opportunity of hearing to an authorized representative of the petitioner University and may also conduct such inquiry as it may deem appropriate. If the

petitioner University is able to satisfy the Commission that the information relating to it in the impugned list is incorrect, then the latter shall amend the list accordingly.

11. For what has been discussed above, the instant petition is without merit and is, therefore, accordingly dismissed.

(ATHAR MINALLAH)
JUDGE

Tanveer Ahmed.

Approved for reporting.