

Form No: HCJD/C.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Writ Petition No.2391 of 2021

Mamoon Wazir etc.
Vs.
Federation of Pakistan etc.

Petitioner by: M/s. Muhammad Tariq & Aman Ullah, Advocates.

Respondents by: Sardar Taimoor Aslam Khan, Advocate.
Mr. Attiq Ur Rehman Siddiqui, Assistant Attorney-General.

Date of Decision: 02.08.2021

AAMER FAROOQ, J.- The petitioners are first year M.B.B.S. students of ABWA Knowledge Village (Pvt.) Limited which concern is running a medical college. They are aggrieved of the requirements of Pakistan Medical Commission (PMC) to sit for and pass the Medical and Dental Colleges Admission Test (MDCAT) before admission in medical college. In this behalf the petitioners have challenged the Pakistan Medical Commission Admission Regulations, 2020-2021 (the Regulations) whereby requirement has been imposed for all the students to sit and pass MDCAT on the ground that the same is in violation of Section 18 (3) of the Pakistan Medical Commission Act, 2020 (the Act).

2. Learned counsel for the petitioner, *inter alia*, contended

that under Section 18(3) of the Act the private medical colleges are entitled to frame their own policy and criteria for admission in the M.B.B.S. course. It was submitted that by virtue of the Regulations the criteria has been imposed on passing MDCAT with 60% marks is in violation of Section 18(3) of the Act inasmuch as it violates the said provision. It was further contended that similar requirement has been made in Regulation No.16 of the Regulations which again is contrary to Section 18(3) of the Act.

3. At the very outset, learned counsel for respondents No.3 to 5, *inter alia*, contended that similar petition was filed by respondents No. 6 & 7 before the Hon'ble Lahore High Court which was dismissed vide judgment dated 21.12.2020 (W.P. No.54112/2020) and the intra Court appeal filed against the said judgment was also dismissed by the learned Division Bench of the Hon'ble Lahore High Court (I.C.A. No.5251/2021) vide order dated 26.01.2021. It was contended that Regulations No.13 & 14 of the Regulations are not in violation of Section 18(3) of the Act and the holistic reading of Section 18 of the Act shows that the requirement for passing MDCAT examination in order to obtain admission in a private or a public college is mandatory.

4. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. Since the controversy raised in the instant petition revolves around Section 18 of the Act and Regulations 13 & 14 of the Regulations, hence for the ease of convenience the relevant provisions are reproduced below:

“18. Medical and dental colleges admissions tests (MDCAT) --- (1) The Authority shall conduct annually on a date approved by the Council and as per standards approved by the Board as single admissions test which shall be mandatory requirement for all students seeking admission to medical or dental undergraduate programs anywhere in Pakistan.

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

Provided that such requirement shall be mandatory for all students who have been enrolled in medical or dental undergraduate programs in the year 2021 and thereafter.

(3) The admission to medical or dental programs conducted by public colleges shall be regulated as per the policy of the Provincial Government strictly on merit and admission to a private college shall be in accordance with the criteria and requirements stipulated by the private college at least one year in advance of admissions including any additional entrance test as may be conducted by a private college subject to any conditions imposed by the relevant university to which such college is affiliated.”

Regulations 13 & 14 of the Regulations.

“13. Both Agha Khan University and NUMS in respect of its constituent, affiliated and administered colleges have a previously declared admission criteria for admissions which includes in addition to the MDCAT an entry test and other criteria specific to such colleges hence substantially fulfilling the requirement of prior disclosure of admission criteria pursuant to Section 18(3) of the PMC Act 2020. Therefore, admissions in the Army Medical College and all constituent affiliated and administered colleges of NUMS I shall be undertaken by NUMS and admissions to Agha Khan Medical College shall be I undertaken by Agha Khan University respectively, subject to the mandatory requirement of any student admitted having passed the MDCAT. Any student seeking to apply to said colleges shall be required to apply directly to the relevant university and fulfill the additional requirements for admission imposed and declared by such colleges.

Provided quota for special seats in colleges under the administrative control of NUMS shall be regulated by NUMS as may be notified by the relevant Directorate and approved by the Ministry of Defence subject to the maximum allocated seat limit of each college.

Provided further, that students admitted against special quotas seats shall be required to have mandatorily passed the MDCAT and obtained a high school leaving certificate/ degree.

14. In view of none of the other private medical and dental colleges having any prior declared

criteria for admissions and consequently for the admissions in the current session unable to substantially fulfill the requirements of Section 18(3) of the PMC Act, 2020, admissions to all private medical and dental shall be conducted only for the 2021 Session through a centralized automated admission system.”

6. The bare reading of subsection 2 of Section 18 of the Act shows that no student is to be awarded a medical or dental degree in Pakistan who has not passed the MDCAT prior to obtaining admission in a medical or dental college in Pakistan; under the proviso it is mandatory for all the students who have been enrolled in medical or dental under-graduate programs in the year 2021 and thereafter. Likewise, subsection 3 provides that medical colleges are at liberty to frame their policies and criteria but that do not exclude MDCAT. Even otherwise, under subsection 3 it is provided that additional criteria can be laid down by private colleges which is over and above the requirements as prescribed for public colleges or under this Act. The vires of Regulations 13 & 14 of the Regulations were examined by the Hon'ble Lahore High Court and it was observed as follows:

“In view of the aforesaid, we hold that requirement of MDCAT forms condition precedent for enrolment for the year 2021- notwithstanding initiation of process of admission in the last quarter of the year 2020. And the regulations framed, qua the requirement of MDCAT, as

mandatory condition for admission, manifest no illegality or transgression. Learned single judgment in chambers has rightly dismissed the objections qua the requirement of MDCAT, hence, no interference is warranted.

12. Now we take up objections regarding invalidity of Regulations 13 and 14 of Regulations 2021, on the premise of being contrary to the scope and mandate of Act of 2020 – precisely subsection (3) of section 18 of Act of 2020. It is expedient to reproduce Regulations 13 and 14 of the Regulations 2021, for ease of reference:

“13. Both Agha Khan University and NUMS in respect of its constituent, affiliated and administered colleges have a previously declared admission criteria for admissions which includes in addition to the MDCAT an entry test and other criteria specific to such colleges hence substantially fulfilling the requirement of prior disclosure of admission criteria pursuant to Section 18(3) of the PMC Act 2020. Therefore, admissions in the Army Medical College and all constituent affiliated and administered colleges of NUMS I shall be undertaken by NUMS and admissions to Agha Khan Medical College shall be I undertaken by Agha Khan University respectively, subject to the mandatory requirement of any student admitted having passed the MDCAT. Any student seeking to apply to said colleges shall be required to apply directly to the relevant university and fulfill the additional requirements for admission imposed and declared by such colleges.

Provided quota for special seats in colleges under the administrative control of NUMS shall be regulated by NUMS as may be notified by the relevant Directorate

and approved by the Ministry of Defence subject to the maximum allocated seat limit of each college.

Provided further, that students admitted against special quotas seats shall be required to have mandatorily passed the MDCAT and obtained a high school leaving certificate/degree.

14. In view of none of the other private medical and dental colleges having any prior declared criteria for admissions and consequently for the admissions in the current session unable to substantially fulfill the requirements of Section 18(3) of the PMC Act, 2020, admissions to all private medical and dental shall be conducted only for the 2021 Session through a centralized automated admission system.

13. The authority of the Council qua framing of Regulations 2021, under section 8 of the Act in general and clause (f) of sub-section (2) of section 8, ibid, in particular, is neither disputed nor under challenge. It is expedient to reproduce clause (f) of sub-section (2) of Section 8 of Act, 2020, which reads as :-

“to frame regulations for conduct of admissions in medical and dental colleges and examinations to be conducted by the Commission and approve the examination structure and standards of the medical and dental colleges admissions test, national licensing examination and the national equivalence board examinations as proposed by the national medical and dental academic board including the standards of revalidation of licences to practice medicine or dentistry in Pakistan”
[emphasis supplied]

14. *Regulations 13 and 14 of Regulations 2021 are in accordance with the powers extended in terms of section 8 of Act of 2020. Learned counsel has misconstrued sub-section (3) of section 18 of the Act of 2020, whereby significance of crucial condition remained unheeded. It is expedient to reproduce relevant part of sub-section (3) of section 18 of the Act of 2020, for convenience,*

.....' private college shall be in accordance with the criteria and requirements stipulated by the private college at least one year in advance of admissions including any additional entrance test as may be conducted by a private college subject to any conditions imposed by the relevant university to which such college is affiliated."

15. *The eligibility/ criteria proposed for admissions for the session 2020-21, as contained in the Prospectus, neither qualified the test of time – at least one year in advance of admissions – or such criterion was subjected to alleged scrutiny by the University to which appellant is affiliated. It is notable that even the requirement of admission test in terms of MBBS and BDS (Admissions, House job and internship) Regulations 2018 was missing in the prospectus available on record. In order to cover the void, Regulation 14 – which manifest exercise of power under section 8 (2)(f) of Act of 2020 – envisages admissions to such class of private medical college(s), where existing declared admission criteria was not available. The*

objection of discriminatory treatment is misconceived, when the factum of availability of admission criteria in the colleges specified in Regulation 13 of the Regulations 2021, is undisputedly available, to the exclusion of other private medical and dental colleges. The rational of Regulation 14 of Regulations 2021 is to bring uniformity in the admission for session 2020-2021. Hence, objections against Regulations 13 and 14 of Regulations 2021 are without substance. We concur with the findings recorded in paragraphs 26 and 28 of the judgment, which are unexceptionable, and no illegality is found.”

7. The abovementioned judgment though is not binding on this Court but elaborately deals with the propositions raised in the instant petition and I find no reason to differ from the same.

8. For what has been stated above, the instant petition is without merit and is accordingly dismissed.

(AAMER FAROOQ)
JUDGE