

**JUDGEMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

***W.P. No.415 of 2011.***

*Muhammad Usman Syed,*

***Vs.***

*COMSATS Institute of Information Technology, etc.*

<i>DATE OF HEARING:</i>	<i>02-04-2012.</i>
<i>PETITIONER BY:</i>	<i>Barrister Omer Farooq, Advocate</i>
<i>RESPONDENTS BY:</i>	<i>Raja Abid Hussain, Advocate for respondent No.1.</i>

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**SHAUKAT AZIZ SIDDIQUI; J:** Brief facts gleaned out from the writ petition are that, petitioner applied to various universities and degree awarding institutes, including Respondent No.1, FAST University, Air University and Ghulam Ishaq Khan Institute for admission in BS programme with major in computer sciences. A provisional offer was made by Respondent No.1 vide provisional offer letter dated July, 07, 2010 which was accepted by way of deposit of fee, vide Pay Order No.3131299, RBS Bank, F-7 Branch, Islamabad.

2. Later on, petitioner received an offer from FAST University to join its BS Program on July, 19, 2010. Petitioner accepted the later offer and deposited the dues amounting to Rs.85,000/- on July 28, 2010 as FAST university was the preferred choice of the petitioner from the outset. The Father of petitioner, on July 29, 2010 through an email addressed to Mr. Nadeem-ud-din Qureshi, Additional Registrar of Respondent No.1 communicated the

petitioner's decision to withdraw his acceptance of a place at COMSATS and sought refund of the fee who responded to same on July 31, 2010 refusing refund of fee, on the ground that no such practice is prevalent at Institute, petitioner's father, on August 04, 2010 served a legal notice on Respondent No.1 demanding reimbursement of fee, but did not receive response in affirmative, hence instant petition.

3. The learned counsel for petitioner argued that petitioner is an "aggrieved party" within the meaning of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Moreover, petitioner brings the instant Petition before this court in the public interest, as promotion to the right of education and prohibition of any unreasonable restriction or restraint as policy and practice of Respondent No.1, is illegal, unreasonable and unfair which directly undermine the Fundamental Rights of petitioner and thousands of other students of the country.

4. The learned counsel added that when a petition under article 199 is instituted before the High Court in the public interest, petitioner need not prove that he/she is an aggrieved party within the meaning of Article 199. The real test in public interest litigation is the subject matter of the petition or the abuse of public trust complained of. Once the court assesses that breach of trust and violation of law by a

public institution has taken place, the court must immediately proceed further to rectify the breach, the identity of antecedents of petitioner pale into insignificance. Moreover, with the development of new concept of public interest litigation in the recent years, a person can now invoke the constitutional jurisdiction of the superior courts, even if he is not an aggrieved party as held by the superior courts of the country in number of judgments. In this regard learned counsel placed his reliance on 2010 PLD Lahore 605, PLD 2009 Lahore 22, 2007 MLD 989, PLD 2006 Supreme Court 394, 2000 CLC 471 (Lahore), 1997 CLC 1379 (Lahore) and 1992 CLC 2065 (Lahore).

5. While arguing on the point of acquiescence to the terms and conditions of the Provisional Offer Letter, issued by Respondent No.1 and principles of estoppel, learned counsel for petitioner contended that the principle of estoppel does not apply to the instant petition, since the Refund Policy infringes the Fundamental Rights of petitioner and it is settled law that there is no estoppel against law. Consequently, even if petitioner was aware of the Refund Policy or agreed to the terms and conditions thereof, such knowledge or acquiescence does not estopp petitioner from agitating the instant petition as he cannot contract out of his Fundamental Rights.

6. Learned counsel further argued that COMSATS is a body corporate, established pursuant to the COMSATS

Institute of Information Technology Ordinance, 2000 (COMSATS Ordinance). By virtue of Section 13 of the COMSATS Ordinance, the general supervision and control of administrative, academic and financial affairs of COMSATS and the power to lay down policies of COMSATS vest in the Board of Governor consisting of (a) the Executive Director, COMSATS, who is the Chairman of the Board (b) the Rector, (c) the Secretary, Ministry of Science and Technology, Government of Pakistan, (d) the Secretary, Ministry of Education, Government of Pakistan (e) the Chairman, University Grants Commission, (f) one person to be nominated by the Educational NGOs, (g) the Director of the campuses of the Institute (h) two Deans to be nominated by the Managing Committee of COMSATS and three person of outstanding merit to be nominated by the Managing Committee of COMSATS i.e Registrar of COMSATS, who is the Secretary. Therefore, as per established dicta, an entity is considered to be "a person performing functions in connection with the affairs of the Federation (i) where the functions entrusted to it are indeed functions of the state. COMSATS, therefore, is "a person performing functions in connection with the affairs of the Federation". On this point, learned counsel for petitioner placed his reliance on PLD 2010 SC 676, 2006 MLD 686, 2010 PLC (C.S) 184 and PLD 2000 (Lahore) 489.

7. On the point that, whether a policy decision of a public functionary can be challenged in the constitutional jurisdiction of the High Court, the learned counsel for petitioner argued that the Refund Policy is essentially a manifestation of an executive policy/act by a person performing functions in connection with the affairs of the Federation. In this regard, it is settled law that any unreasonable restraint, hindrance, or condition on the exercise of a Fundamental Rights is ultra vires to the Constitution, irrespective of whether, same was imposed by an administrative or executive act, by some statutory rule or even by the statute itself. It is also well settled that if a policy is in conflict with any provision of law or is violative of the Fundamental Rights of a citizen, the same can be called in question before High Court in its Constitutional Jurisdiction. In this regard, learned counsel for petitioner placed his reliance on 2011 SCMR 1621, PLD 2007 Karachi 116 and PLD 1979 SC 1.

8 On the other hand, respondent No.1 filed its reply and parawise comments and sought dismissal of the writ petition on the grounds that, petitioner has no cause of action to file the instant petition as he himself willingly preferred for admission in BS (Computer Science) Program of respondent Institute and thereafter accepted the admission offer and the terms and conditions thereof. That institute announces opening and closing dates of its

admissions through leading dailies and its Website as well. The admission criteria in detail is provided in CIIT's prospectus. Petitioner like all other candidates/applicants submitted his application form for his admission in BS (Computer Science) Program and after fulfilling all the requirements he was granted admission on provisional basis which he willingly accepted and reserved a seat in the relevant discipline of Respondent Institute. Therefore, by accepting this admission offer, petitioner restrained respondent Institute to allow admission to any other candidate, against his allocated/reserved seat. That e-mail response of Additional Registrar of the University/respondent Institute has been misconstrued, basically any of the candidates/applicants who intends to withdraw from his/her admission at CIIT is entitled only to the refund of "Caution Money". The policy for the result awaiting candidates as explained by the Additional Registrar in his e-mail response was revised by CIIT since it is empowered to amend its policies at any stage without any prior notice. That, the Institute's undergraduate prospectus 2010-2011 session contains therein a self explanatory "Disclaimer" that justifies all its actions and /or amendments in its policies from time to time. That every educational institution has its own governing body, empowered to formulate, approve and promulgate its policies, rules and regulations which it has to follow in letter

and spirit. On grounds, it is averred that, CIIT is governed under the provisions of "the COMSATS Institute of Information Technology Ordinance, 2000". The admission policies are always formulated within the framework of the statutes of the educational institutions established under any statute. The admission policy of the respondent institute was framed in accordance with the said Ordinance and Statutes framed there under and certain competent forums have been established who are empowered to regulate the policies regarding admissions in different degree program. The respondent institute has never deviated from its laid down rules/regulations and procedure for admission in any of its discipline. That respondent Institute has strictly complied with and followed the admission policy in letter and spirit and no question of violation of any provision of the Constitution of Pakistan and/or principle of natural justice arises.

I have heard the learned counsel, appreciated the respective pleadings and perused the documents annexed.

9. In order to narrow down the controversy, I find it appropriate to provide admitted facts, which are as under:-

- Admission granted to petitioner was provisional, as like many other students his result was awaited.
- Dues/fee received from petitioner was of regular student.
- Petitioner stay at Institute was for a short span of time.
- Petitioner took admission in FAST University and left respondent No.1.
- There is no statutory provision through which entire fee deposited by student can be forfeited.

10. In my humble estimation, non-refund of fee to any student who left the institution at very initial stage is harsh and against the principles of natural justice. One of the features of social contract i.e. Constitution of the Islamic Republic of Pakistan is to eliminate exploitation and non-refund of fee tantamounts to exploitation, thereby resulting into an infringement to constitutionally guaranteed rights to citizen of the Islamic Republic of Pakistan. It is also against the golden principles of Islamic law and moral values to make claim with regard to that amount against which no service, labour or product is provided. One of the reason of prohibiting Ribba (interest) in the Islamic State is that it leads to exploitation.

11. It is being observed with great concern that trend of Educational Institutions in the public and private sectors in parting the education appears to be with commercial approach and due to this very reason policies are introduced to squeeze money from the students, who in the compelling circumstances are forced to give an undertaking of acceptance of terms and conditions. Educational Institutions cannot be allowed to operate purely on commercial considerations rather main object of Educational Institutions should be to part the education with the purpose of building a nation with sense of civilization, rule of law and transparency in the affairs. This



type of policies, in-fact burden the entire family and there are instances where most brilliant students deprived of education as families were not financially strong to deposit fee of different Institutions. This illogical policy depriving students from lower middle class which is naked discrimination and offending to principles of equity, fair play, equality and transparency. In an Islamic and Welfare State right of good education can never be confined to rich, influential and mighty ones.

12. The management of the Educational Institutions is expected to demonstrate parental conduct and approach towards students instead of businessmen. Every student make his dream true by opting for Educational Institution in accordance with his priorities and means, it is the right of every student to ensure that his Educational career is guarded, therefore, to apply for getting admission in different institutions should not be treated as an offence bringing penal consequences of forfeiture of entire fee/dues received by the Institution.

In this view of the matter, instant petition is allowed by declaring that there is no rationale in the policy of non-refund of entire fee which is unjust, harsh, illegal, besides the mandate of the constitution, principles of natural justice, equity, social justice, dictums laid down by the superior courts of the country, therefore, same cannot be

allowed to be applied by the public/private sector institutions. Respondent Nos. 1 and 2 are directed to restructure the applicable policy and bring the same in conformity with the observations made herein above. However, Institutions may retain amount against expenses and services provided to any student, till his stay at the Institution.

**(SHAUKAT AZIZ SIDDIQUI)**  
**JUDGE**

Announced in open court on 30-04-2012.

**JUDGE**

**Approved for reporting.**

"Waqar Ahmed"

*Blue Slip added*

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