

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1380 of 2021
Syed Mohammad Hassan Raza Rizvi and others
Versus
Federation of Pakistan and others

Dates of Hearing: 01.07.2021, 14.07.2021, 15.07.2021,
12.08.2021, 17.08.2021 and 20.08.2021
Petitioners by: M/s Arif Chaudhary, Hameed Maqsood Abbasi
and Shafqat Ullah Waris, Advocates
Respondents by: M/s Taimoor Aslam Khan, Muhammad Ali Raza
and Muddassar Abbas, Advocates

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition as well as writ petitions No.1519 and 1520 of 2021, the petitioners, who have obtained undergraduate medical qualifications from colleges/institutions in the People's Republic of China (“China”), Republic of Kyrgyzstan, Afghanistan, and Ukraine, seek a declaration to the effect that the inaction on the part of the Pakistan Medical Commission (“PMC”) to recognize their foreign qualifications and grant them provisional licences to undertake their house job in Pakistan is without lawful authority and of no legal effect. In particular, the petitioners assail the decision taken by the Council, which is one of the components of PMC, in its 5th meeting held on 19.02.2021 on agenda item No.12 on the subject “*NLE permission for Foreign Medical Graduates graduated before January 2021.*” The said petitions are being disposed of through this common judgment.

2. In the said meeting, the Council had decided that students who had graduated prior to January 2021 from a foreign college contained in List-B of the colleges shall be processed for licensing on the following basis:-

- “a. *Shall be required to show License Eligibility in the country from where they graduated if they have not acquired a license from such country.*
- b. *Qualify the NLE.*
- c. *On qualification of NLE they shall be granted Provisional License.*
- d. *Shall be required to then complete a house job in Pakistan.*
- e. *On completion of house job, they shall be granted a full license.”*

3. Vide letters dated 19.04.2021, the PMC informed the petitioners about the said decision.

FACTUAL BACKGROUND:-

4. The Pakistan Medical and Dental Council Ordinance, 1962 (“**the PM&DC Ordinance**”) was promulgated on 05.06.1962 in order to consolidate the law relating to the registration of medical practitioners and dentists; to establish a uniform standard of basic and higher qualifications in medicine and dentistry; and to reconstitute the Medical and Dental Council in Pakistan (“**PM&DC**”). The PM&DC Ordinance was repealed by the Pakistan Medical and Dental Council Ordinance, 2019 which was promulgated on 08.01.2019 but lapsed by efflux of time. Thereafter, the Pakistan Medical Commission Ordinance, 2019 (“**the PMC Ordinance**”) was promulgated on 20.10.2019 but was declared *ultra vires* the Constitution by this Court vide judgment reported as Saira Rubab Nasir Vs. President of Pakistan through Secretary, Islamabad (PLD 2020 Islamabad 130). The Pakistan Medical Commission Act, 2020 (“**the PMC Act**”) was enacted on 22.09.2020, and Section 50(1) thereof repealed the PM&DC Ordinance whereas the proviso to Section 50(2) repealed and made unenforceable all Regulations made under the PM&DC Ordinance.

5. Section 3(4) of the PMC Act provides that the PMC shall consist of (a) the Pakistan Medical and Dental Council (“**the Council**”), (b) the National Medical and Dental Academic Board and (c) the National Medical Authority.

SCHEME FOR THE REGISTRATION OF GRADUATION OR POST-GRADUATION QUALIFICATION FROM A FOREIGN INSTITUTION UNDER THE PM&DC ORDINANCE AND REGULATIONS MADE THEREUNDER:-

6. Section 15 of the said Ordinance provided as follows:-

***“15. Power of the Council to certify certain persons to be possessed of sufficient medical qualifications. – (1) If, after an examination by a board constituted by the Council, the Council is satisfied that a person holding a qualification granted by a medical institution outside Pakistan, is possessed of sufficient knowledge and skill to be registered as a practitioner for the purpose of this Ordinance, it may recommend to the Federal Government to issue a notification in favour of such person to register him and his qualification. Upon such notification, the Council shall register the qualification possessed by the person without it being entered in any of the Schedules of this Ordinance.*”**

(2) The Council shall register the qualification granted by a medical institution outside Pakistan, possessed by the person by maintaining a separate list in the Register.”

7. In exercise of the powers conferred by Section 33 of the PM&DC Ordinance, the PM&DC, with the previous sanction of the Federal Government, made the Pakistan Registration of Medical and Dental Practitioners Regulations, 2008 (“the 2008 Regulations”). Under Part VII of the said Regulations, the National Examination Board (“NEB”) was constituted by the PM&DC to conduct examinations to determine the professional competence or otherwise of a candidate for registration or equivalence of his/her foreign basic or post-graduate medical qualification, to enable the PM&DC to make a decision about the equivalence of Pakistani basic or post-graduate medical qualification to the foreign qualification. The NEB was to conduct examinations for the registration and equivalence of basic qualifications and post-graduate qualifications.

8. Regulation 44 of the 2008 Regulations required a Pakistani citizen desirous of joining an undergraduate or a post-graduate medical course in any foreign medical institution to approach the NEB for the issuance of a No Objection Certificate (“NOC”) and to provide detailed documentary information regarding the qualification /course and the institution the student intends to join.

9. Regulation 45 of the said Regulations provided *inter alia* that an NOC certifying that the candidate is eligible to join a medical institution outside Pakistan to obtain the medical qualification would be issued if the candidate is found to fulfill the criteria for admission and the course and standard of the institution are acceptable to the PM&DC. The NOC was to indicate that on return, after obtaining the foreign medical qualification, the candidate shall obtain an eligibility certificate to appear in the registration and equivalence examination conducted by the NEB. The candidate’s application for the eligibility certificate was required to be accompanied by the NOC from the PM&DC to join the course.

10. Regulation 46 makes it clear that the issuance of an NOC to a candidate would not entitle him to any right whatsoever other than to take admission in an undergraduate or post-graduate medical course in

a foreign medical institute and after graduation to obtain the eligibility certificate from the Registrar of PM&DC to appear in the exam conducted by the NEB.

11. A Pakistani citizen desiring to seek registration or equivalence after achieving graduation or post-graduation from a foreign institution, and who met the requisite qualification for admission as specified by the PM&DC in its admission criteria and is issued an eligibility certificate to appear in the examination conducted by the NEB was required to pass such examination before the PM&DC granted registration or equivalence to the candidate.

12. The examinations conducted by the NEB consisted of three parts namely (i) Step-I (theory papers and basic subject), (ii) Step-II (theory papers of clinical), and (iii) Step-III (clinical / viva exam).

THE PETITIONERS' GRIEVANCE:-

13. It is an admitted position that all the petitioners went abroad for their undergraduate medical qualifications prior to the repeal of PM&DC Ordinance, and that they were all issued NOCs by PM&DC before they went abroad. It is also an admitted position that all the petitioners, after graduating and returning to Pakistan, cleared the first two steps of the NEB examination but prior to sitting in the third step, the PMC Act was enacted on 24.09.2020. Thereafter, the third part of the NEB examination was not conducted. Since the petitioners have not cleared all the three steps of the NEB examination, they have not been granted licences to do their house job in Pakistan.

14. As per the Press Release issued by the PMC on 04.02.2021, foreign graduates seeking licences to practice medicine and dentistry in Pakistan were required to follow the designated licencing pathways prescribed by the PMC and placed on its website. For the purposes of the pathways, the PMC had placed the assessed foreign undergraduate medical colleges in the following three categories:-

- (i) **Category-A** represents colleges and qualifications offered by these colleges that have been assessed and accredited at two levels i.e. pursuant to a physical inspection by an independent internationally recognized accreditation agency which is duly recognized by World Federation for Medical Education ("WFME") and is further recognized by a tier 1 international regulator (Educational Commission for Foreign Medical Graduates ("ECFMG"), General Medical Council ("GMC"), Australian Medical

Council ("AMC")) in addition to recognition by the national regulator enabling graduates to be licenced in the home country.

(ii) **Category-B** represents colleges and qualifications that are recognized by either by a tier 1 international regulator (ECFMG, GMC, AMC) or pursuant to a physical inspection by one of the independent internationally recognized accreditation agency which is duly recognized by WFME in addition to recognition by the national regulator enabling graduates to be licenced in the home country; hence, these colleges possess only a single tier verification.

(iii) **Category-C** represents colleges and qualifications that possess recognition by the national regulator enabling graduates to be licenced in the home country but do not possess either of the two tiered independent verification by a tier 1 international regulator (ECFMG, GMC, AMC) or pursuant to a physical inspection by one of the independent internationally recognized accreditation agency which is duly recognized by WFME.

15. Countries with stringent internationally recognized licencing regulatory framework had been placed by the PMC in List-A whereas all other countries had been placed in List-B. A foreign college could be shifted from one List to the other based on its accreditation status in its own country and international accreditation assessments.

16. The institutions from where all the petitioners have obtained their undergraduate medical qualifications have been placed in List-B. The petitioners assert that the decision taken by the Council in its 5th meeting held on 19.02.2021 is in stark contrast to Section 20(2) of the PMC Act which is reproduced herein below:-

“(2) A person, having obtained an under-graduate medical or dental qualification issued by a university in Pakistan or an under-graduate medical or dental qualification issued by a foreign institution duly recognized by the Commission, shall be granted a provisional license to undertake his house job within fourteen days of verification of their qualification by the granting institution:

Provided that the person to whom a provisional license is granted shall complete the mandatory requirement of passing the NLE at any time prior to issuance of full license.”

(Emphasis added)

17. The National Licencing Examination (“NLE”) is scheduled to be held on 27.08.2021. All the petitioners have registered to sit in the said examination. But they don’t want to take the exam so soon. They want provisional licences to be issued to them right away so that they can undertake their house job, and after they complete their house job they

say that they would take the NLE. It is for this reason that the petitioners have challenged the said decision taken by the Council which *inter alia* requires them to qualify in the NLE whereafter they would be issued provisional licences, provided they show licence eligibility in the country from where they graduated if they have not acquired a licence from such foreign country.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS:-

18. Learned counsel for the petitioners submitted that all the petitioners are citizens of Pakistan, and have obtained MBBS degrees from institutions in foreign countries after passing their Higher Secondary School/F.Sc./A Levels examinations; that the petitioners had obtained NOCs from the PM&DC under Part VII of the 2008 Regulations prior to starting their undergraduate courses in the foreign countries; that upon their return to Pakistan after obtaining MBBS degrees, the petitioners applied to the PM&DC for the issuance of eligibility certificates to enable them to sit in the NEB examination; that all the petitioners were issued eligibility certificates to sit in the NEB examination; that in 2019, the petitioners appeared in the first and the second step of the said examination but could not sit in the last step since it was suspended due to the enactment of the PMC Act; that Section 20(2) of the PMC Act provided *inter alia* that a person who had obtained an undergraduate medical qualification issued by a foreign institution duly recognized by the Commission shall be granted a provisional licence to undertake a house job within fourteen days of verification of their qualification by the granting institution; that the *proviso* to Section 20(2) provided that a person to whom a provisional licence is granted shall complete the mandatory requirement of passing the NLE at any time prior to the issuance of the full licence; that the institutions from where the petitioners have obtained their undergraduate degrees have been placed in List-B by the PMC; that all the petitioners approached the PMC for the issuance of provisional licences in accordance with Section 20(2) of the PMC Act so as to enable them to start their house job and become eligible to sit in the NLE; that the petitioners would be in a position to obtain a full licence on passing the NLE; that the PMC, in its 5th meeting held on 19.02.2021,

decided *inter alia* that the students who had graduated prior to January 2021 from a foreign institution placed in List-B shall be processed for licensing subject to the conditions listed in the said decision; that the petitioners have already deposited the fee and submitted the required documents for the grant of provisional licences; that the PMC has withheld the petitioners' provisional licences without any justification; that the petitioners have graduated more than two years ago but have, till date, not been issued provisional licences; and that the refusal by the PMC to grant provisional licences amounts to a transgression of the petitioners' fundamental rights enshrined in the Constitution.

19. Furthermore, it was submitted that the institutions from where the petitioners have obtained their MBBS degrees stood recognized by the PM&DC under the erstwhile PM&DC Ordinance since all the petitioners had been issued eligibility certificates to sit in the NEB examination; that under Section 50(6) of the PMC Act, all registrations and recognitions granted by the erstwhile P.M.&D.C. under the repealed PM&DC Ordinance are to be treated as registrations and recognitions granted by the PMC; that the placement of the institutions from where the petitioners have obtained their MBBS degrees in List-B is in conflict with the provisions of the PMC Act; that the decision taken by the PMC requiring students (who had obtained their undergraduate degrees from institutions placed in List-B) to sit in the NLE prior to the issuance of a provisional licence is in violation of Section 20(2) of the PMC Act; that the said provision clarifies that a candidate cannot sit in the NLE prior to the issuance of a provisional licence; that the PMC has meted out discriminatory treatment to the petitioners inasmuch as candidates similarly placed as the petitioners (i.e. who have graduated from institutions placed in List-B) have already been issued provisional licences and are presently doing their house job in hospitals in Pakistan; that several people who have obtained undergraduate degrees from the same institutions from where the petitioners graduated are registered medical practitioners in Pakistan; that the WCAME (the Medical Education Regulatory Body in China) has given time to medical institutions in its jurisdiction to get accredited and registered till 2024; that the inspection team of WCAME has not

inspected several institutions due to the COVID-19 pandemic; that the institutions from where the petitioners obtained their undergraduate degrees have been recognized by the Ministry of Higher Education in China, the World Health Organization, FAIMER, and ECFMG; that the petitioners are ready to take the NLE in accordance with the law; and that the decision taken by the Council in its 5th meeting held on 19.02.2021 is contrary to the object behind the enactment of the PMC Act, i.e. to set up uniform minimum standards of basic and higher medical education, training and recognition of qualifications in medicine and dentistry. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PMC:-

20. On the other hand, learned counsel for the PMC took an objection to the maintainability of the instant petition on the ground that the petitioners have an alternative remedy of filing an appeal against the impugned decision taken by the Council in its 5th meeting held on 19.02.2021 before the Medical Tribunal; and that the impugned decision dated 19.02.2021 taken by the Council in its 5th meeting is an “*order or direction*” against which the petitioners could have filed an appeal before the Medical Tribunal. Learned counsel for the PMC prayed for the writ petition to be dismissed as not maintainable.

21. Furthermore, it was submitted that under Section 20(2) of the PMC Act, a provisional licence to undertake a house job can be granted to a person who has obtained an undergraduate medical qualification issued from a foreign institution only if such institution is recognized by the Commission; that till date, none of the institutions from where the petitioners have graduated have been recognized by the Commission; that the Council showed grace to the petitioners by allowing them to sit in the NLE so that they could prove their ability; that the Council, in its 4th meeting held on 22.12.2020, decided *inter alia* that graduates from a foreign institution which is not recognized by the PMC and placed by the PMC in the blacklist cannot be entertained for the grant of licence in Pakistan, however, such graduates were permitted to seek recognition of their foreign qualifications from the Higher Education Commission as non-medical undergraduate qualifications provided it shall not make

them eligible for medical licensing by the PMC; that the petitioners do not fulfill the requirements of the issuance of provisional licences under any of the licensing pathways devised by the Council; that the institutions from where the petitioners have obtained their undergraduate degrees fall in Category-B; that the cases of the candidates who have obtained their undergraduate degrees from foreign institutions in Category-B have been facilitated by the Council by permitting them to qualify in the NLE whereafter provisional licences shall be granted to them provided they show licence eligibility in the country from where they graduated if they have not acquired licences from such foreign country; and that the NLE is scheduled to be held in the near future and the petitioners have already registered to sit in the said exam.

22. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petitions have been set out in sufficient detail in paragraphs 4 to 17 above and need not be recapitulated.

23. I propose in the first instance to deal with the objection taken by the learned counsel for the PMC to the maintainability of the instant petitions.

24. The Medical Tribunal was constituted pursuant to the provisions of the Medical Tribunal Act, 2020 (“MT Act”). Vide notification dated 31.12.2020, the Prime Minister has, in exercise of the powers conferred under Section 4(1) of the MT Act, established the Medical Tribunal at Islamabad to exercise jurisdiction under the said Act. Vide another notification dated 31.12.2020, the Prime Minister has, in exercise of the powers conferred under Section 4(2) of the said Act, appointed the Chairman of the Medical Tribunal for a period of three years. The Member of the Medical Tribunal has also been appointed vide notification dated 17.02.2021. The Medical Tribunal has been made functional in Islamabad, and can take cognizance in any matter over which its jurisdiction extends.

25. Section 8 of the MT Act provides *inter alia* that any person aggrieved by any order or direction of the authorities pursuant to (i) the

PM&DC Ordinance, (ii) the PMC Ordinance, (iii) the Pakistan Nursing Council Act, 1973, (iv) the Pakistan Health Research Council Act, 2016, (v) the Unani Ayurvedic and Homeopathic Practitioners Act, 1965, (vi) the Pharmacy Act, 1967 (vii) or any other law as may be notified by the Federal Government may prefer an appeal before the Medical Tribunal within thirty days of the date of communication of the impugned order or direction.

26. Section 3(1) of the MT Act provides that no court shall take cognizance in any matter to which jurisdiction of the Medical Tribunal extends. The MT Act is a special law, Section 6 whereof circumscribes the jurisdiction that can be exercised by the Medical Tribunal. Section 6 of the said Act titled *“jurisdiction and powers of Medical Tribunal”* explicitly provides for the matters over which the Medical Tribunal has jurisdiction. In particular, under Section 6(2) of the MT Act, the Medical Tribunal has been empowered to hear and decide appeals against decisions, orders and acts of the authorities formed pursuant to (i) the PM&DC Ordinance (ii) the PMC Ordinance (iii) the Pakistan Nursing Council Act, 1973, (iv) the Pakistan Health Research Council Act, 2016, (v) the Unani Ayurvedic and Homeopathic Practitioners Act, 1965, (vi) the Pharmacy Act, 1967 (vii) or any other law as may be notified by the Federal Government.

27. It is no longer *res integra* that unless a statute specifically ousts Courts’ jurisdiction, ouster of jurisdiction cannot be readily inferred. The jurisdiction of a special tribunal cannot be inferred by implication. Ouster of jurisdiction is to be found only if the Court finds that the provisions of a statute excluding the jurisdiction of the Court are unequivocal, explicitly expressed and definitive. To hold that the jurisdiction of the Courts has been ousted it must be found from the language of the statute that there is an express ouster of jurisdiction of the Courts as well as an express conferment of such jurisdiction upon a special tribunal set up under the Act. In the case of Additional Collector-II Sales Tax Vs. Messrs Abdullah Sugar Mills Ltd. (2003 SCMR 1026), it was held that *“ouster of jurisdiction is always through express words and can never be implied.”* In the case of Maula Dad Khan Vs. West Pakistan Bar Council (PLD 1975 SC 469), it was held that *“it was a well-*

settled principle of interpretation that there cannot be an implied ouster of the jurisdiction of the Superior Courts so as to be inferentially spelt out from vaguely worded and imprecise expressions on the basis of a priori reasoning.” In the case of Abbasia Cooperative Bank Vs. Muhammad Ghaus (PLD 1997 SC 3), it was held that *“the provision contained in a statute ousting the jurisdiction of Courts of general jurisdiction is to be construed very strictly and unless the case falls within the letter and spirit of the barring provision, it should not be given effect to.”*

28. Section 6(2) of the MT Act also provides that appeals against decisions, orders and acts of the authorities formed pursuant to any other law as may be notified by the Federal Government can be heard and decided by the Medical Tribunal. Till date the PMC Act has not been notified by the Federal Government so that appeals against the decisions, orders and acts of the authorities formed pursuant to the said Act could be filed before the Medical Tribunal. Since the PMC Act was not enacted prior to the MT Act but on the very same day (i.e. 22.09.2020), this is perhaps the reason why the PMC Act was not included in the list of statutes with respect to which the Medical Tribunal could exercise jurisdiction. Learned counsel for the PMC confirmed that a notification by the Federal Government providing for appeals, claims, complaints etc. against decisions, orders and acts of the authorities formed pursuant to the PMC Act to be filed before the Medical Tribunal is awaited. Section 3(1) of the MT Act does not oust the jurisdiction of a Court to take cognizance in a matter to which the jurisdiction of the MT does not extend. Therefore, unless and until the PMC Act is notified by the Federal Government pursuant to the provisions of Sections 6 and 8 of the MT Act, it cannot be held that the Medical Tribunal has the exclusive jurisdiction to decide appeals, claims, complaints etc. against decisions, orders and acts of the authorities formed pursuant to the PMC Act, or that the petitioners had the alternative remedy of filing an appeal against the impugned decision taken by the Council in its 5th meeting held on 19.02.2021.

29. Section 37(1) of the PMC Act provides that any person including an employee of the Commission aggrieved by any order or direction of

the Commission, including the Council, Authority or Disciplinary Committee, under any provision of the said Act, or rules or regulations may prefer an appeal only before the Medical Tribunal within thirty days of the date of communication of the impugned order or direction. Now, the Medical Tribunal has not been constituted pursuant to the provisions of the PMC Act but under the provisions of the MT Act, Section 37(1) of the PMC Act does not start with a non-obstante clause and therefore does not have an overriding effect over the provisions of the MT Act. Had it had an overriding effect, then it could have been held that the petitioners had the alternative remedy of filing an appeal against the impugned decision taken by the Council in its 5th meeting held on 19.02.2021. But Section 37(1) of the PMC Act cannot apply *proprio vigore* (by its own force) to enlarge the scope of Sections 6 and 8 of the MT Act by investing the Medical Tribunal with the jurisdiction to hear and decide appeals against decisions, orders and acts of the authorities formed pursuant to the provisions of the PMC Act.

30. Had Section 6 of the MT Act not restricted the jurisdiction and powers of the Medical Tribunal only to appeals against decisions, orders, and acts of the authorities formed pursuant to the provisions of the statutes mentioned in the said Section, it could have been argued that appeals against decision, orders and acts of the authorities formed pursuant to the provisions of the PMC Act could have been filed before the Medical Tribunal. But Section 6 of the MT Act does not include the PMC Act amongst the statutes listed in the said Section. The literal interpretation of Section 6 of the MT Act would lead this Court to hold that the jurisdiction and powers of the MT Act does not extend to hearing appeals against decisions, orders and acts of the authorities formed pursuant to the provisions of the PMC Act. Therefore, on the above grounds, the objection taken by the learned counsel for the PMC to the maintainability of the instant petitions is dismissed. I now proceed to decide these petitions on merits.

31. It is a well-known fact that a large number of private agencies sponsor Pakistani students for medical studies at institutions outside Pakistan for commercial considerations. Most of these students who fall prey to such agents do not fulfill the minimum eligibility requirement for

admission to undergraduate and postgraduate courses in Pakistan. On a complaint filed by the Ambassador of Pakistan to the Republic of Kyrgyzstan, serious aberrations were noticed by the PMC in the quality of medical institutions available in some of the foreign countries, which were sub-standard and not at par with the prescribed medium of medical education available in Pakistan. The PMC has to proceed with utmost caution when according recognition to foreign medical institutions. This Court, in exercise of its jurisdiction under Article 199 of the Constitution, cannot direct the regulator/PMC to accord recognition to foreign institutions which fall short of satisfying the criteria laid down for the recognition of such institutions. The question of recognizing a foreign institution which has not been recognized by the regulator or the government of the country where such institution is functioning does not arise. The medical profession is the noblest of professions and aberrations in the prescribed process for recognition of foreign medical institutions can have the potential consequence of putting the lives of human beings at stake. Therefore, the PMC cannot be restrained from assessing or re-assessing the facilities and standards at such institutions in the recognition process.

32. As mentioned above, the petitioners have returned to Pakistan after having obtained undergraduate medical qualifications from foreign institutions which have been placed in List-B by the PMC. They want this Court to issue a writ to the PMC directing it to grant provisional licences to the petitioners so that they could do their house job. Additionally, they seek a direction to the PMC to allow the petitioners to sit in the NLE after completing their house job. At this juncture, it would be apposite to take a glance at the relevant provisions of the PMC Act governing the NLE, grant of provisional licence for a house job, and the grant of a full licence to practice medicine in Pakistan.

33. Section 20(1) of the PMC Act provides that the National Medical Authority shall at least twice a year conduct the NLE, and that passing the NLE shall be mandatory for obtaining a full licence. The NLE is substantially based on objective computer-based multiple choice questions and a practical component if determined by the Council. The

Council has unanimously approved the structure and the service for the NLE as formulated and recommended by the Academic Board. The NLE, as per the Academic Board's recommendations approved by the Council consists of two exams – the first being a multiple-choice question (MCQ) based theory component and the second a clinical skill examination.

34. Section 20(2) has already been reproduced in paragraph 16 above.

35. Section 27(1) of the PMC Act provides that every person having obtained a provisional licence under section 20(2) shall be required to undergo and successfully complete a mandatory one year house job, internship or foundation year, by whatever name called at an institution recognized by the Commission or an equivalent of a house job outside Pakistan as may be recognized by the PMC.

36. Section 29(1) of the PMC Act provides that the National Medical Authority shall grant a full licence to practice basic medicine or dentistry as a general practitioner to a person who *“subsequent to qualifying the NLE has completed his mandatory one year house job”* or foundation year or internship satisfactorily or has successfully completed a house job, internship or foundation year equivalent to a house job at a foreign teaching hospital or institution recognized under Section 28(3).

37. Section 28(3) provides that the Council shall recognize any foreign teaching hospital or institution recognized by the regulatory authority of such country for the purposes of imparting a house job, internship, foundation year or clinical training by whatever name called.

38. A conjoint read of Sections 20(1) and (2), 27(1), and 28(3) of the PMC Act shows that a person having obtained an undergraduate medical qualification from a foreign institution, duly recognized by the PMC, shall be issued a provisional licence to undertake a house job for a period of one year and upon successful completion of the house job is to pass the NLE before being granted a full licence to practice basic medicine or dentistry as a general practitioner. Passing the NLE is an essential pre-requisite for obtaining a full licence.

39. The proviso to Section 20(2) requires a person to whom a provisional licence has been issued to pass the NLE prior to the issuance of the full licence whereas Section 29(1) empowers the National Medical Authority to grant a full licence to a person who *“subsequent to qualifying the NLE has completed his mandatory one-year house job.”* There appears to be a discord in the proviso to Section 20(2) (which contemplates the grant of provisional licence to undertake the house job to be prior to the NLE), and Section 29(1) (which envisions the one-year house job to be undertaken subsequent to the passing of the NLE).

40. Section 25(1) of the PMC Act provides that the Council may, subject to the assessment and recommendation of the National Medical Authority, recognize any foreign institution which grants an undergraduate medical qualification or a recognized post-graduate, additional or alternative qualification. Section 25(2) provides that the National Medical Authority shall assess for the purposes of recommendation any foreign institution either on the application of such foreign institution or upon an application of a person having acquired a recognized qualification from a previously un-recognized foreign institution.

41. It is an admitted position that till date none of the foreign institutions from where the petitioners have obtained their undergraduate medical qualifications have been recognized by the Council pursuant to Section 25 of the PMC Act. Section 50(6) of the PMC Act saves all registrations, recognitions, etc. granted by the dissolved PM&DC under the PM&DC Ordinance or by the PMC under the PMC Ordinance. There is, however, nothing on the record to show that the institutions from where the petitioners have obtained undergraduate medical qualifications had been recognized pursuant to the provisions of the PM&DC Ordinance or the PMC Ordinance. The mere fact that the petitioners were issued NOCs by the PM&DC specifically mentioning the institutions from where the petitioners were to obtain their undergraduate medical qualifications or the fact that after their return to Pakistan they were allowed to participate in the NEB would not, sans a formal recognition of the foreign institutions

under the provisions of the PM&DC Ordinance or the PMC Ordinance cause this Court to hold that such institutions had been duly recognized. Be that as it may, as per the report dated 17.08.2021 submitted by the PMC to this Court the PMC has presently placed the institutions from where the petitioners have obtained their undergraduate medical qualification in category-B which, as mentioned above, represents colleges and qualifications that are recognized either by a tier 1 international regulator (ECFMG, GMC, AMC) or pursuant to a physical inspection by one of the independent internationally recognized accreditation agencies which is duly recognized by WFME in addition to recognition by the national regulator enabling graduates to be licenced in the home country; hence, these colleges possess only a single tier verification.

42. It is an admitted position that none of the petitioners have done their house job, internship or foundation year, by whatever name called in the countries from where they have obtained their undergraduate medical qualifications. It is also an admitted position that none of the petitioners have been issued a licence to practice in the countries from where they have obtained their medical qualifications.

43. The documents brought on record by the PMC show that licencing pathways have been devised by the Council for the holders of qualifications from foreign institutions. I have gone through the said pathways, none of which provide a mechanism for a provisional licence to be granted to graduates from category-B foreign institutions not recognized by the PMC, and who have not been granted a licence by the authorities of the country where they graduated to practice in that country. All the petitioners fall in this category. However, bearing in mind that the petitioners were issued NOCs by the PM&DC and had also been permitted to sit in the first two steps of the NEB, the Council, in its 5th meeting, decided to accommodate such graduates by allowing them to qualify the NLE and thereafter do their house job. They have also been required to show licence eligibility in the country from where they graduated if they have not acquired a licence from such country. Learned counsel for the PMC submitted that in the next meeting of the Council it shall be considered whether or not to exempt such graduates

from the requirements of showing their licence eligibility in the country from where they graduated. For the present purposes, suffice it to say that none of the petitioners have been granted a licence to practice medicine in the country where they graduated.

44. The only grievance that the petitioners have against the impugned decision dated 19.02.2021 taken in the 5th meeting of the Council is that they have been required to sit in the NLE prior to being given a provisional licence to do their house job. They base their case on Section 20(2) of the PMC Act which *inter alia* contemplates the NLE for persons holding an undergraduate medical qualification issued by a foreign institution to be taken after the house job. Section 27(1) of the PMC Act provides that the period of the house job shall be one year. In other words, the petitioners want to take the NLE after one year during which period they want to complete their house job. The Council has already shown indulgence to the petitioners by permitting them to sit in the NLE despite the fact that the institutions from where the petitioners have obtained their undergraduate medical qualifications are in Category-B, and despite the fact that none of the petitioners have shown their licence eligibility in the countries where they got their degrees.

45. Section 20(2) of the PMC Act is not of any benefit to the petitioners inasmuch as it provides for a provisional licence to be issued to persons having undergraduate medical qualifications issued by a foreign institution *“duly recognized by the Commission.”* As mentioned above, due recognition has not been accorded to any of the foreign institutions from where the petitioners have obtained their undergraduate medical qualifications. The impugned decision requiring the petitioners to pass the NLE as a pre-condition for the grant of a provisional licence is in accord with Section 29(1) of the PMC Act which also provides for the house job to be *“subsequent to qualifying the NLE”*

46. The PMC’s concern is that the petitioners who have not even been issued a licence in the country where they graduated cannot be permitted to do their house job and deal with patients in Pakistan without having proven their abilities by passing the NLE. Therefore, the petitioners have been required to pass the NLE before being granted

provisional licences so that they can do their house job. I find this decision of the Council not to be either irrational, perverse, arbitrary, or discriminatory.

47. The petitioners have also filed an application (C.M. No.2422/2021) praying for the NLE scheduled to be held in August 2021 to be suspended. This Court did not grant any injunctive relief on the said application. The primary concern of the applicants was that the passing marks for the NLE were fixed to be 70%. The petitioners cannot avoid sitting in the NLE simply because it had been made tough by the regulator. Since all the petitioners have registered for the said examination they ought to take it and prove their ability and competence. Therefore, the said application is dismissed.

48. In view of the above, I do not find any merit in these petitions, which are accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 20/08/2021

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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