

HCJD/C-121  
**JUDGMENT SHEET**

**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**W.P. No. 2523 of 2016.**

**Al-Khair University through Muhammad Niaz, Additional Registrar  
Bhimber, AJK.**

***VERSUS***

**Higher Education Commission, etc.**

Petitioner by: Sh. Ahsan ud Din, Advocate.

Respondents by:- Mr Qaisar Sarwar, Advocate.

Dated of hearing: 13.06.2017.

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**Athar Minallah, J:**

The instant petition has been filed by Al-Khair University (hereinafter referred to as the "***Petitioner / University***") under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, assailing letter, dated 20.05.2016, issued by the Higher Education Commission of Pakistan (hereinafter referred to as the "***Commission***").

2. The facts, in brief, are that the Petitioner University was established under the Azad Jammu Kashmir Assembly Act 1994 (hereinafter referred to as the "***Act of 1994***"). Section 1(2) of the Act of 1994 explicitly restricts the academic jurisdiction of the Petitioner University to the

territorial limits of Azad Jammu and Kashmir, while it provides for the opening of campuses in Pakistan and abroad. The campus of the Petitioner University is situated at Bhimber, Azad Jammu and Kashmir. It was reported to the Commission that the Petitioner University had extended its operations within the territory of Pakistan and had granted affiliations to other educational institutions, besides opening franchised campuses. The opening of franchised campuses and granting affiliations to other educational institutions was without obtaining approval from the Commission. Moreover, in violation of the guidelines and requirements prescribed by the Commission, the Petitioner University had not constructed its own campus even within the territory of Azad Jammu and Kashmir. The Commission, vide letter dated 16.05.2009, advised the Government of Azad Jammu and Kashmir to implement the decisions taken in the 18<sup>th</sup> meeting of the Managing Board of the Commission held on 31.03.2009. It was decided that the degrees issued by the Petitioner University would not be recognized in the case of students admitted after 30.04.2009 in campuses or affiliated educational institutions within the territory of Pakistan. The Government of Azad Jammu and Kashmir was asked to advise the Petitioner University to fulfill the criteria and other prescribed requirements at its declared campus at Bhimber. The Commission, vide letter dated 17.10.2011, had granted restricted permission to the Petitioner University for launching degree programs.

However, the degree programs for which the permission was granted and the terms and conditions were unequivocally mentioned in the said letter. It was explicitly mentioned that no franchised campus or affiliation shall be allowed, either within the territory of Azad Jammu and Kashmir or Pakistan. The Registrar of the Petitioner University had also submitted an affidavit declaring that no student had been admitted from 30.04.2009 to 16.10.2011 in any discipline and that no academic activity was conducted at the camp office situated at I-8/4, Islamabad. Despite the clear orders and directions issued by the Commission, the Petitioner University published advertisements in various newspapers in respect of admissions in different disciplines. The Commission, therefore, vide letter dated 30.01.2012, directed the Petitioner University to publish a corrigendum in the newspapers, withdrawing the advertisements. The consequences for continuing the illegalities were also mentioned in the said letter. The Petitioner University invoked the jurisdiction of this Court under Article 199 of the Constitution by filing W.P. No. 1278 of 2012. The said petition was disposed of vide order dated 30.09.2015. The learned counsel who had appeared on behalf of the Petitioner University had unequivocally given an undertaking that no degree would be awarded till the deficiencies noted by the Commission during inspection had been remedied. A further undertaking was given that no fresh admission will be given to any student till a fresh inspection is carried out.

The learned counsel had also submitted a letter, dated 21.09.2015. The petition was, therefore, disposed of by directing the Commission to carry out a fresh inspection and that till the deficiencies and irregularities noted by the Commission had been removed, the undertakings recorded in the order, dated 30.09.2015, would continue to hold the field. The Commission, therefore, undertook the inspection of the Petitioner University and pursuant thereto communicated its observations and recommendations vide letter dated 20.05.2016. The said letter has been assailed through the instant petition.

3. The learned counsel appearing on behalf of the Petitioner University has contended that; the inspection was carried out by the Commission beyond the directions given by this Court vide order dated 30.09.2015; the malafide of the Commission is obvious from the fact that no notice was given to the Petitioner University before carrying out the inspection; other similarly placed educational institutions have been allowed to carry on their business while the Petitioner University is being treated differently; before passing the impugned order an opportunity of hearing to the Petitioner University was not afforded; the Petitioner University is providing quality education in various fields and a large number of members of the public are benefiting there from; the Commission has no jurisdiction to interfere in the affairs of the Petitioner University; the Petitioner

University has been chartered by an enactment promulgated by the Assembly of Azad Jammu and Kashmir; the jurisdiction of the Commission, therefore, does not extend to the Petitioner University; the Commission is acting in violation of fundamental rights guaranteed under Article 25 of the Constitution.

4. The learned counsel appearing on behalf of the Commission, on the other hand, has argued that; the Commission is vested with the exclusive authority to regulate all matters relating to educational institutions which offer higher education; the conduct of the Petitioner University has remained contumacious and defiant; the Petitioner University has played fraud on the general public; the educational institutions which offer programs in higher education are amenable to the exclusive jurisdiction of the Commission; the Petitioner University is neither authorized to open its campuses nor to grant affiliation within Pakistan.

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

6. The Petitioner University has been established under the Azad Jammu and Kashmir Act of 1994. It is an admitted position that the Commission has not granted approval to the Petitioner University to open its campuses or

to grant affiliation to other institutions within the territorial limits of the Islamic Republic of Pakistan or Azad Jammu and Kashmir. The Commission had initially inspected the facilities of the Petitioner University and had granted restricted permission i.e. only to operate its campus located in Bhimber. The Petitioner University had been explicitly informed vide letter dated 17.10.2011 that it could neither open campuses nor grant affiliations to other institutions either within the territory of Azad Jammu and Kashmir or the Islamic Republic of Pakistan. A written affidavit was also given by the Registrar of the Petitioner University. However, it appears from the record that the Petitioner University chose to defy the Commission's directions and perpetuate the illegalities. The Petitioner University had earlier approached this Court and the constitutional petition was disposed of vide order dated 30.09.2015. The undertakings given by the Petitioner University have been recorded in the said order. The Commission has informed that the Petitioner University has violated the undertakings which were given before this Court. The inspection carried out by the Commission was pursuant to the order dated 30.09.2015, passed in W.P. No. 1278 of 2012. The Commission, after conducting a thorough inspection, was not satisfied and has, therefore, communicated its recommendations vide letter dated 20.05.2016. The Commission, in the light of the evaluation and findings made pursuant to the inspection carried out, has restrained the Petitioner University from

admitting students w.e.f. the fall of 2016 for undergraduate programs and for all MS/M.Phil. & Ph.D. level programs w.e.f. the fall of 2014.

7. The Petitioner University has been established in the private sector and, therefore, falls within the category of a private educational institution. It is a commercial enterprise and is engaged in the business of operating and managing an educational institution offering higher education programs for profit. The Petitioner University has demonstrated a defiant conduct by not accepting the directions and jurisdiction of the Commission. Through the instant petition the powers and jurisdiction vested in the Commission have been questioned, besides challenging the recommendations and evaluation made as a result of carrying out the inspection in compliance with the order dated 30.09.2015, passed by this Court in W.P. No. 1278 of 2012. The question to be answered in the instant petition, therefore, is regarding the jurisdiction of the Commission and whether its evaluation and findings are justiciable while exercising powers under Article 199 of the Constitution. In order to answer the questions raised in the instant petition it would be beneficial to survey the provisions of the statute through which the Commission has been established.

8. The Commission has been established under the Higher Education Commission Ordinance, 2002

(hereinafter referred to as the "**Ordinance of 2002**"). The said legislative enactment was published in the official gazette on 11.09.2002. Section 2(h) defines "Institutions" as meaning any university or other degree awarding institution that offers higher education or is involved in research and development activities. "Degree Awarding Institutions" is defined in section 2(e) as meaning an institution imparting higher education and awarding a degree of its own. Likewise, "University" is defined in section 2(m) as meaning a university established or incorporated under any law for the time being in force. The Commission has been established under section 4 and its composition is provided under section 6. Section 10 describes the functions and powers of the Commission. The powers vested in the Commission are expansive and, inter alia, include the formulation of policies, guiding principles and priorities for higher education institutions for the promotion of the socio-economic development of the country. It also includes the evaluation of the performance of institutions and prescribing the conditions under which institutions, including those that are not part of the State educational system, may be opened and operated. Clause (d) of sub-section (1) of section 10 is relevant in the facts and circumstances of the instant case. Clause (o) of section 10(1) explicitly empowers the Commission to determine the equivalence and recognition of degrees, diplomas and certificates awarded by institutions within the country and abroad. Likewise, clause (p)



empowers the Commission, as a regulator, to develop guidelines and facilitate the implementation of a system of evaluation of the performance of faculty members and institutions. Clause (x) vests the jurisdiction in the Commission to collect information and statistics on higher education and institutions as it may deem fit and may cause it to be published. Lastly, clause (y) empowers the Commission to perform other such functions consistent with the provisions of this Ordinance as may be prescribed or as may be incidental or consequential to the discharging of the functions described in section 10. Accreditation of institutions offering higher education is also an important function entrusted to be performed by the Commission.

9. The Ordinance of 2002, when read as a whole, unambiguously shows that the legislature has intended to establish the Commission as the exclusive regulatory authority relating to higher education and the educational institutions which offer programs relating thereto. The powers vested in the Commission and its jurisdiction extends to the whole of Pakistan. It is important to note that the legislative enactments under which institutions are established are subject to the regulatory framework contemplated under the Ordinance of 2002. There is no force in the argument that since the statute or charter which has established an institution has explicitly empowered it to open campuses or grant affiliations, therefore, provisions of

the Ordinance of 2002 will not be attracted. The charter or statute which creates a juridical person does not render the latter immune or exempt it from the regulatory regime which is contemplated under the Ordinance of 2002. The latter enactment has established a regulatory authority and has equipped it with expansive powers and jurisdiction to achieve the objects and purposes for promulgation thereof. The Commission is the sole and exclusive regulatory authority of higher education, the institutions established under any law and all matters related therewith. No institution can claim to have unfettered power on the basis of the statute or law which has created it to open campuses or grant affiliations. The statutes which establish juridical or statutory persons are subservient to and are governed for the purposes of being regulated under the provisions of the Ordinance of 2002. Be as it may, no educational institution, whether established in Pakistan or abroad can lawfully open campuses or grant affiliations to other educational institutions without the express approval of the Commission. The latter is the sole regulatory body to evaluate the institutions and monitor their performance so as to ensure that quality education is offered to the public. The Commission, therefore, has been mandated to make certain that the educational institutions offering higher education meet the prescribed guidelines and criteria. The object and purpose is obviously to guarantee quality education.

10. There is no cavil to the proposition that the right to education is a fundamental right guaranteed under the Constitution and that it is an integral part of the right to life under Article 9 of the Constitution. However, offering programs by unapproved educational institutions enables the unscrupulous entrepreneurs to introduce and sell to the general public sub standard education for their pecuniary gains. Offering unregulated and sub standard educational programs for pecuniary gains or otherwise is an antithesis of safeguarding the fundamental rights guaranteed under Article 9 of the Constitution and thus inevitably leads to the violation thereof. An educational institution which does not meet the prescribed criteria laid down by the Commission and opts to continue with offering unapproved programs, or opens campuses and grants affiliations to other institutions on the one hand exposes itself to be tried for committing the offence of cheating the public at large as defined under section 9 (ix) of the National Accountability Ordinance, 1999, and on the other hand puts at risk the lives and future of the younger generation. The object of establishing the Commission as an exclusive regulatory authority is obviously to protect and safeguard the members of the general public, particularly the youth and their parents, from being cheated and defrauded. The provisions of the Ordinance of 2002, and the authority and jurisdiction of the Commission are definitely sacrosanct and ought to be jealously guarded. Universities, whether in the public or private sector, are

supposed to be seats of learning and centers of excellence. They cannot be allowed to exploit the youth of the nation. An educational institution which refuses to surrender to or demonstrates defiance and contumacious conduct towards the authority vested in the Commission by refusing to comply with its directions cannot expect equitable relief from a High Court under Article 199 of the Constitution.

11. The august Supreme Court in the case titled *"Haji Nasir Mehmood versus Mian Imran Masood and others"* [PLD 2010 S.C. 1089], in the context of the role of the Commission has held and observed as follows;-

*"It may not be out of place to mention here that the question of recognition of a degree is equally important because the degree which is not recognized by the Higher Education Commission would be worthless like a piece of paper, cannot be equated to that of a 'Degree' because every degree is subject to recognition which provides sanctity to a degree".*

12. In the case titled *"Government College University, Lahore through Vice-Chancellor and others versus Syeda Fiza Abbas and another"* [2015 SCMR 445], the august Supreme Court has held that the Courts must not

interfere with the policy matters of educational institutions. Likewise, in the case titled "*University of Health Science, Lahore through Vice-Chancellor and others versus Arslan Ali and another*" [2016 SCMR 134], the august Supreme Court has emphasized that in matters of admission and examination in educational institutions, the latter are the sole judges of the criteria laid down in the prospectus. It has further been held that in such matters the Courts ought to desist from interfering as it would create difficulties for the institutions to run their affairs in an appropriate manner according to their rules and regulations. It would also be apt to refer to the judgments rendered by the august Supreme Court in the cases titled "*The University of Dacca through Vice-Chancellor versus Zakir Ahmed*" [PLD 1965 S.C. 90] and "*Ahmed and 03 others versus Vice-Chancellor, University of Engineering and Technology and another*" [PLD 1981 S.C. 464].

13. It is obvious from the above mentioned enunciation of law by the august Supreme Court that in matters relating to educational policies and academic evaluations, extreme restraint is exercised by the courts. In such matters the relevant authorities have been declared to be the sole judges thereof. The sanctity of educational institutions and the doctrine of loco parentis has been consistently acknowledged as guiding principles for exercising restraint in educational and academic matters.

The seats of learning and education and their relationship with the young members of the society who enroll as students is treated at par with that of a parent and a child. On the same analogy the Commission also enjoys the same status as an exclusive regulator and, therefore, Courts ought to exercise restraint in relation to its decisions and evaluations, unless it can be demonstrably shown as being perverse or suffering from want of jurisdiction. The Commission is, therefore, the sole and exclusive regulatory authority in relation to educational institutions which offer higher education programs. The assessments, evaluations or findings of the Commission can neither be substituted nor are subject to judicial review.

14. In the facts and circumstances of the instant case, the conduct of the Petitioner University has indeed remained defiant and contumacious. There is no force in the argument raised by the learned counsel for the Petitioner University that the Commission is not vested with jurisdiction merely because the latter has been established through a legislative instrument outside the territorial jurisdiction of the Islamic Republic of Pakistan. The powers and functions of the Commission have been described above. They extend to institutions established within Pakistan and abroad. The Commission is the sole judge regarding the status of an educational institution i.e. whether or not it meets the minimum threshold prescribed for granting approvals. The

argument of the learned counsel for the Petitioner University that the impugned letter is illegal because it has gone beyond the directions given by this Court vide order, dated 30.09.2015, is misconceived. The students who have taken admission or have enrolled themselves in any of the programs offered by the University or its affiliated institutions cannot claim a right and any degree or certificate granted by such institutions would be subject to verification by the Commission. A degree issued by an unrecognized educational institution is a worthless piece of paper as has been held by the august Supreme Court in the case of Haji Nasir Mehmood (supra). Moreover, no institution which has been affiliated by the Petitioner University, can operate or offer programs without express written approval granted by the Commission. The students enrolled in such programs cannot claim a right that their degrees or certificates be recognized. It is mandatory for the Petitioner University to strictly comply with the directions given by the Commission. The letter, dated 20.05.2016 does not suffer from any legal infirmity or jurisdictional error. The Commission would be justified in informing the general public regarding the status of the Petitioner University so as to ensure that the youth does not suffer.

15. For what has been discussed above, the instant petition is without merit and is, therefore, ***dismissed.*** However, the Petitioner University shall be at

liberty to provide the complete record and information sought by the Commission. The Petitioner University would only be entitled to offer admissions after the Commission has given its approval, pursuant to being satisfied that the prescribed criteria and conditions have been met. Likewise, any affiliation granted by the Petitioner University to an educational institution or any opening of its campuses would remain illegal unless approved by the Commission. It is the duty of the Commission, as a regulator, to inform the general public through the publishing of public notices regarding the status of the Petitioner/University and the affiliations granted by it.

(Athar Minallah)  
Judge

Announced in the open Court on 22.06.2017.

Judge

Approved for reporting.

*Asad K/\**