

FORM NO.HCJD/C
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD
JUDICIAL DEPARTMENT
I.C.A. No. 571 of 2012.

The College of Physician and Surgeons of Pakistan (CPSP).

Versus

The FOP, etc.

Date of hearing: 09.11.2016.

Appellant by: *Dr. Khalid Ranjha, ASC.*

Respondents by:- *Mr Attaullah Hakim Kundi, advocate for the respondent no.3.*
Mr Tariq Saeed Rana, advocate for the respondent no.5.
Mr Anwar Kamal and Mr Muhammad Umar Vardag, senior ASCs for the respondents no. 6 to 14.
Mr Rehman Seerat, advocate for the respondent no. 15.
Mr Israr ul Haq, Standing Counsel.

Athar Minallah, J:- This Intra Court Appeal is directed against judgment, dated 12.09.2012, passed by the learned Single Judge in Chambers in the Constitutional Petition No. 701 of 2011.

2. The facts, in brief, are that the the appellant i.e. the College of Physicians and Surgeons of Pakistan (hereinafter

referred to as the "**College**") was established under section 3 of the Pakistan Physicians and Surgeons Ordinance, 1962 (hereinafter referred to as the "**CPSP Ordinance of 1962**"). The respondent no.3 i.e. the Pakistan Medical & Dental Council (hereinafter referred to as the "Council") is constituted under the Pakistan Medical & Dental Council Ordinance, 1962 (hereinafter referred to as the "**PMDC Ordinance of 1962**"). It is noted that the provisions of the PMDC Ordinance of 1962 were amended vide Pakistan Medical and Dental Council (Amendment) Act No. XIX of 2012 (hereinafter referred to as the "**Amendment Act of 2012**") and the said amendments came into force when the constitutional petition No. 701 of 2011 was pending adjudication before the learned Single Judge in Chambers. The medical qualifications granted by the College are included in the Third Schedule of the PMDC Ordinance of 1962 and are thus recognized as additional medical qualifications for the purposes of the said statute. The power of the College to confer degrees is also recognized under section 3, read with the schedule of the Medical and Dental Degrees Ordinance, 1982 (hereinafter referred to as the "**Ordinance of 1982**"). The respondent no.5 i.e. the Shalamar Hospital, Lahore (hereinafter referred to as the "**Hospital**") is a private medical facility, which was established in the year 1982. According to the assertions made in the constitutional petition No. 701 of 2011, it is one of the projects of the Business Hospital Trust. The Hospital was approved by the Council on 25.11.1984 for house job training in medicine, surgery, obstetrics and gynecology. The appellant claims that it had granted accreditation to the Hospital for FCPS-II training vide letter dated 16.03.1995, and later in respect of some other subjects vide

letter dated 01.12.1994. The Shalamar Medical and Dental College was established in 2009 (hereinafter referred to as the "**Shalamar College**"). The Shalamar College was granted recognition by the Council under the PMDC Ordinance of 1962, vide Notification dated 07.01.2010. The respondents no.6 to 14 were working at the relevant time in the Hospital i.e. prior to the establishment and recognition of the Shalamar College. The said respondents, for ease of reference, shall be referred to as 'Consultants'. The respondent no.12, vide letter dated 08.06.2010, requested the Council for recognition of 50% of the postgraduate teaching experience since 01.12.1994, in respect of the Consultants employed at the Hospital. This request was based on the analogy that in the case of other similarly placed persons, the Council had given similar recognition. The Council, vide letter dated 30.07.2010, informed the respondents that the Hospital was not recognized for the postgraduate training programme and that it was granted recognition only for the purposes of house job training in the specified subjects. The request regarding consideration of the teaching experience of the Consultants was regretted on the ground that they were not entitled in this regard for the period prior to 07.01.2010 i.e. when the Shalamar College was notified as a recognized medical institution. The Hospital and the respondents / Consultants challenged the letter, dated 30.07.2010, before this Court through the constitutional petition No. 701/2011. The learned Single Judge in Chambers disposed of the petition in the following terms;-

- a) The Hospital was directed to apply for recognition as a training site for postgraduate teaching hospital with effect from 01.12.1994.
- b) The College was directed to initiate the process by recommending and forwarding to the Council, after fulfilling the formalities, a request for recognition of the Hospital w.e.f. 01.12.1994.
- c) The Council was directed to process and decide the matter expeditiously within a period of one month from the date of receipt of a proposal sent by the College in this regard.
- d) The Council was further directed to decide the issue relating to recognition of the teaching experience of the Consultants w.e.f. 01.12.1994.

3. The learned Single Judge in Chambers has observed that since the College had granted accreditation to the Hospital w.e.f. 01.12.1994, therefore, it was negligence on part of the former not to have informed the Council in this regard. It is an admitted position that neither the Hospital nor the Consultants have challenged the judgment dated 12.09.2012. The instant appeal has been filed by the College alone, and in a nut shell, the case of the latter is that it has been established under a statute which empowers them to grant accreditation and, therefore, it is not under an obligation to inform the Council or to seek its approval.

4. Dr. Khalid Ranjha, senior ASC, has appeared on behalf of the appellant and has contended that; the impugned judgment, dated 12.09.2012, is ultra vires, discriminatory, misconceived and based on misinterpretation of the CPSP Ordinance, 1962, and the PMDC Ordinance, 1962; the College is under no obligation to write a letter to the Council each time a new institution for postgraduate training is accredited; the learned Single Judge in Chambers has erred in paragraph no. 13 of the impugned judgment by observing that it was necessary for the College and the Hospital to apply to the Council for recognition; the status of the Consultants as well as the Hospital stood recognized pursuant to the accreditation of the latter and, therefore, the Council could not have refused to acknowledge the accreditation and to refuse to consider the teaching experience of the Consultants; the Council and the College have been established under two distinct statutes and are, therefore, independent of each other; the College is neither subservient to nor under the control of the Council; the learned Single Judge in Chambers misinterpreted sections 11 and 16 of the PMDC Ordinance, 1962, and misconstrued the judgment of the august Supreme Court rendered in "*Pakistan Medical & Dental Council versus Ziauddin Medical University*" [PLD 2007 S.C. 323]; the degrees and qualifications awarded by the College are recognized and have been accordingly included in the Third Schedule of the PMDC Ordinance, 1962; the amendments made in the PMDC Ordinance of 1962, vide Amendment Act of 2012, are not attracted since the matter relates to the period prior thereto; the Council was under an obligation to grant recognition of teaching experience to the Consultants as

already granted in a ratio of 2:1 in the case of training / teaching experience of the faculties of some other hospitals under similar circumstances.

5. Mr Anwar Kamal, senior ASC, appeared on behalf of the Consultants and besides adopting the arguments advanced by the learned counsel for the College, has argued that; the College is recognized as a Degree awarding institution under the Degree Ordinance of 1982; the provisions of the relevant statutes have been misinterpreted and a vested right has accrued in favour of the Consultants for the purposes of recognition of their experience while working in the Hospital.

6. Mr Attaullah Hakim Kundi, Advocate, appeared on behalf of the Council and has argued that; the scope of the CPSP Ordinance of 1962 is unambiguous and does not confer the power of accreditation or recognition of hospitals or medical institutions: the College has been established under the CPSP Ordinance of 1962 and, therefore, is vested with only such power and jurisdiction as described *ibid*; the Council has been established under the PMDC Ordinance, 1962, and the functions assigned to it by the legislature are regulatory nature; there is a prescribed manner for granting recognition to a medical institution and the same does not envisage giving recognition on the basis of purported accreditation granted by the College; the learned Single Judge in Chambers has rightly directed the Council to consider the matter, if an application or proposal is received from either the Hospital or the College; it is the duty of the Council to consider any

proposal or request within the confines of the power vested under the Pakistan Medical & Dental Council Ordinance, 1962.

7. Mr Rehan Seerat and Mr Tariq Saeed Rana, advocates, have adopted the arguments advanced by the learned counsels who have appeared on behalf of the College and the Consultants.

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

9. Admittedly, the Consultants were employed and working in the Hospital. The controversy is in respect of the period prior to the establishment and recognition of the Shalamar College. It is not disputed that the Hospital was not granted recognition by the Council pursuant to the powers conferred under the PMDC Ordinance of 1962, except for the limited purpose of house job training. The case of the appellant College is to the effect that it has been conferred with the power to 'accredit' a hospital or medical facility and that for such accreditation there is no obligation either to seek approval from the Council or to inform the latter in this regard. The College interprets the CPSP Ordinance of 1962 as a self contained statute, inter alia, vesting powers in it of a regulatory nature. In essence the 'accreditation' granted by the College to the Hospital is being construed as giving a legal status to the latter and, thus, it is pleaded that on this basis it has to be treated as a recognized hospital by the Council for the purposes of the PMDC

Ordinance of 1962, particularly in the context of counting the experience of the Consultants. The grievance of the appellant College inevitably relates to paragraph number 13 of the impugned judgment. Moreover, since the qualifications/degrees awarded by the College are included in the Third Schedule of the PMDC Ordinance of 1962 and the Schedule of the Ordinance of 1982, therefore, on this ground it is asserted that it has the power and jurisdiction to accredit hospitals and that such accreditation ought to be accepted by the Council. The questions which emerge for our consideration are, firstly, the scope of the powers and functions of the College under the CPSP Ordinance of 1962; secondly, whether it is vested with the power and jurisdiction to grant 'accreditation' to a medical facility or a hospital, and if so, then the implications thereof viz-a-viz the PMDC Ordinance of 1962 and, if not, then the consequences flowing there from, and lastly, the effect of the inclusion of the qualifications granted by the College in the Third Schedule of the PMDC Ordinance of 1962, and the Schedule of the Ordinance of 1982.

10. In order to answer the above questions, it would be beneficial to examine the relevant provisions of the three distinct statutes i.e. the CPSP Ordinance, 1962, the PMDC Ordinance, 1962, and the Ordinance of 1982. They are, therefore, briefly discussed as follows;

CPSP ORDINANCE OF 1962:

11. The CPSP Ordinance of 1962 was notified in the official gazette on 19.05.1962. The objectives and purposes of enacting the said statute are mentioned in its preamble i.e. to

establish a College for maintaining high principles of medical provisions, promoting specialist medical practice, arranging postgraduate medical training and for matters ancillary thereto. The College is defined in clause (a) of section 2, as meaning the Pakistan College of Physicians and Surgeons established under section 3. A 'Fellow' has been defined under clause (c) as meaning a Fellow of the College. Section 3 provides that a college shall be established, called the Pakistan College of Physicians and Surgeons, which shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property. Moreover, it can be sued or may sue in its name. Section 4 describes the persons who may be called Fellows of the College. Section 4 provides that the College shall consist of such Fellows who meet the conditions stipulated *ibid*. Section 5 describes the functions of the College in sub-sections 1 to 6 thereto. A plain reading of section 5 clearly shows that the functions assigned by the Legislature to the College are in the nature of promoting specialist practice of medicine, surgery, gynecology and obstetrics and such other specialties by securing the improvement of teaching and training in hospitals and hospital methods, to hold and conduct examinations for the granting of diplomas and admission to the Fellowship of the College, to provide for research and to bring together the physicians, surgeons and other specialists of Pakistan periodically for scientific discussions and practical demonstrations of various subjects. Sub-section (6) of section 5 provides that the College is empowered to do all acts and things as it may consider necessary to carry out the purposes of the Ordinance. The generality of sub-section (6) of section 5 cannot be construed

beyond the objects of the CPSP Ordinance of 1962 nor in isolation, particularly by ignoring the legislative intent of enacting the PMDC Ordinance of 1962. Section 6 provides for the constitution of the Council of the College, while section 9 enumerates the powers of the latter.

12. When the provisions of the CPSP Ordinance of 1962 are read as a whole, it unambiguously shows that the legislative intent was to establish a College entrusted with the functions described in section 5 *ibid*. The said functions are definitely not regulatory in nature. The crucial question which needs to be considered is whether the College has been empowered to give 'accreditation' to a hospital or medical facility, and whether such accreditation would be treated as valid for the purposes of the PMDC Ordinance of 1962. The CPSP Ordinance of 1962 has not defined the expressions 'accredit' or 'accreditation' nor is it mentioned in the entire statute. Likewise, the expression has also not been defined in the PMDC Ordinance of 1962. In order to ascertain the ordinary meaning of the expression 'accredit' or 'accreditation', the relevant definitions from various dictionaries are reproduced as follows;-

Black's Law Dictionary, Ninth Edition.

"Accredit, vb. 1. To give official authorization or status to. 2. To recognize (a school) as having sufficient academic standards to qualify graduates for higher education or for professional practice. [Cases: Schools__4]. 3. Int'l law. To send (a person) with

credentials as an envoy.____accreditation, n.____accredited, adj.”

Oxford English Dictionary.

"accredit verb 1 he was accredited with being one of the world's fastest sprinters: recognize as, credit with; have something ascribed to one, have something attributed to one, receive the credit for, be given the credit for. 2. The discovery of distillations is usually accredited to the Arabs: ascribe, attribute, chalk up; lay at the door of. 3. Professional bodies accredit these research degrees, recognize, license, authorize, approve, certify, warrant, empower, depute, endorse, sanction, vouch for, put one's seal of approval on, appoint.”

The Chambers Dictionary, Tenth Edition.

"accredit, to bring into credit, show to be true or correct; to accept as true; to provide with or send with credentials, to certify as meeting official requirements; to attribute (to); to ascribe to (with the thing attributed); to accept (a student) for university entrance on the basis of work done in school as opposed to an examination (NZ).

Accreditation n. accredited adj. provided with credentials; certified officially; accepted as valid; (of

livestock) certified free from a particular disease, e.g. brucellosis."

13. Accreditation, essentially, has the meaning of recognizing someone or something as having a particular status. In the context of the controversy before us, it would have reference to granting approval or recognition to a hospital or a medical facility on the basis of meeting specific requirements. It refers to recognition or acknowledgment that a hospital or medical facility has sufficient academic standards to qualify graduates for higher education. If such a power is actually vested in the College and it is not in conflict with any other statute, particularly the PMDC Ordinance of 1962, then it shall have the effect of giving a legal cover to the medical practitioners, in this case, the Consultants, to be simultaneously recognized or registered under the PMDC Ordinance of 1962. In so far as the CPSP Ordinance of 1962 is concerned, no such power is vested in the College, nor will the selection of a hospital or medical facility by the latter have relevance in the context of the PMDC Ordinance of 1962. We are afraid that there is no force in the argument advanced by the learned counsel for the College that the latter is not required to either inform or seek concurrence of the Council when a medical facility or a hospital is selected or 'accredited' by it. The contention that the CPSP Ordinance of 1962 is a self contained statute and that the power to accredit ought to be implied, is misconceived. If this plea had been correct then the recognition of the qualifications awarded by the College would have been included in the CPSP Ordinance of 1962 rather than in the Third Schedule of the PMDC

Ordinance of 1962. This would become clearer after examining the provisions of the latter statute.

PMDC ORDINANCE of 1962.

14. The PMDC Ordinance of 1962 was notified in the official gazette on 05.06.1962 and was later amended through the Medical and Dental Council (Amendment) Act No.XIX of 2012 (hereinafter referred to as the "**Amendment Act of 2012**"). The purposes and object of enacting the PMDC Ordinance of 1962 are mentioned in its preamble as consolidation of the law relating to registration of medical practitioners and dentists and to reconstitute the Medical and Dental Council in Pakistan in order to establish a uniform minimum standard of basic and higher qualifications in medicine and dentistry. The Council has been established and reconstituted with the unambiguous intent that uniform minimum standards relating to medical qualifications, whether at graduate or post graduate level, could be achieved. Prior to the promulgation of the Amendment Act of 2012, clause (a) of section-2 defined 'approved hospital' or 'approved institution' as meaning a hospital or institution approved by the Council for the purposes of sub-section (1) of section 23. Section 23 mandated the Council to maintain a Register of medical practitioners possessing qualifications as recognized medical qualifications for the purposes of the PMDC Ordinance of 1962. The three provisos to section 23 stipulated the conditions for being entitled to be entered in the Register as a medical practitioner. It is noted that the registration was unambiguously in relation to an approved hospital or approved institution. Sub section 2 of section 23 provided for the powers of

the Council to remove the name of a medical practitioner, provisionally registered under the PMDC Ordinance of 1962, if the latter practiced somewhere other than in an approved institution or an approved hospital. Section 2(d) defines a 'medical institution' as meaning any institution, within or outside Pakistan, which trains for, or grants, or both trains for and grants degrees, diplomas or licenses in medicines. Likewise, 'medicine' is defined as meaning scientific medicine, including surgery and obstetrics, but excluding veterinary medicine and surgery. The qualifications in the realm of medicine have been divided into four categories i.e. 'recognized medical qualification', 'recognized dental qualification', 'recognized additional medical qualifications' and registrable medical license or diploma, defined in clauses (i), (h), (g) and (m) respectively, of section 2.

15. Recognized medical qualification was defined as meaning such qualifications which were either included in the First and Second Schedules, or recognized under sections 14 and 15. The First and Second Schedule were in relation to the recognized medical qualifications granted by medical institutions in Pakistan and outside Pakistan respectively. Section 14 empowered the Federal Government, after consulting the Council, to give recognition to a medical qualification granted by an institution outside Pakistan. Section 15 empowered the Council to certify the qualification granted by a medical institution outside Pakistan, on the basis of experience gained in Pakistan. Section 11 provided that the medical qualifications granted by a medical institution in Pakistan, and included in the First Schedule, shall be a recognized

medical qualification. Section 12 and 13 covered the medical qualifications granted by medical institutions outside Pakistan. It is noted that recognized medical qualification refers to graduate level qualification in the field of 'medicine', excluding veterinary medicine and surgery.

16. 'Recognized additional medical qualification' under section 2(g), before and after the Amendment Act of 2012, is defined as medical qualifications included in the Third Schedule. Part A includes qualifications granted by the medical institutions in Pakistan while Part B by institutions outside Pakistan. Part A, inter alia, includes two qualifications granted by the College i.e. Fellow of College of Physicians and Surgeons Pakistan (hereinafter referred to as 'FCPS') and Member of College of Physician and Surgeons Pakistan (hereinafter referred to as 'MCPS'). FCPS is a 4 to 5 years training program and it is a post graduate degree granted by the College. Likewise MCPS is a two years training program. The recognized additional medical qualification, therefore, refers to post graduate degrees. Section 16 provides that the post graduate medical qualifications, included in the Third Schedule, shall be the recognized additional medical qualifications. Sub section 2 of section 16 provides for the mechanism to amend the Third Schedule. Since recognized dental qualifications and registrable Licenses and Diplomas are not relevant for the purposes of the instant appeal, therefore, we need not advert thereto in detail. Needless to mention that the licenses and diplomas are also regulated exclusively under the PMDC Ordinance of 1962.

17. In a nut shell, all qualifications relating to medicine, whether at graduate or post graduate level, and whether in the nature of degrees, licenses or diplomas or in any other form, are regulated exclusively by and under the PMDC Ordinance of 1962. The Council has been established under section 3 *ibid* for this purpose in order to achieve a uniform minimum standard with regard thereto. Medical institutions or hospitals may be established by the legislature through legislative enactments and vested with the power to grant degrees, yet they would be subject to the regulatory framework mandated under the PMDC Ordinance of 1962, unless the legislature, through express and unambiguous language, has intended otherwise. It would also be relevant to refer to the powers of the Council in order to further discover the intention of the legislature.

18. Section 20 empowers the Council to require every medical or dental institution in Pakistan, which trains for, or grants, or both trains for and grants, either graduate or post graduate qualification or a registrable license or diploma, to furnish information in relation to the matters mentioned therein. The legislature, having used the expression 'shall', has made it mandatory for the medical institution from which information has been sought to provide the same. Section 21 provides that the Executive Committee shall appoint Inspectors to attend the examinations, *inter alia*, held by medical institutions established in Pakistan for the purpose of granting recognized additional medical qualifications. The Inspectors are under an obligation to submit a report to the Executive Committee. The latter has a statutory duty

to forward the report to the concerned medical institution as well as the Federal Government, along with the remarks received from the former. Section 22 contemplates the withdrawal of recognition, inter alia, of a recognized additional medical qualification included in the Third Schedule in the eventualities and the manner prescribed *ibid*. Section 33 vests the power in the Council to make Regulations with the previous sanction of the Federal Government for carrying out the purposes of the statute.

19. The Amendment Act of 2012 introduced amendments in various provisions of the PMDC Ordinance of 1962. Through the said amendments, the expressions 'Continuous professional development', 'continuous professional development opportunity provided' and 'house job or foundation year or internship' were inserted. Provisions were also inserted relating to the said expressions. However, besides these amendments, which were in the nature of enlarging the scope of the regulatory framework, the scheme of the PMDC Ordinance of 1962, particularly the role of the Council in the context of the medical institutions, the recognized medical qualifications or the recognized additional medical qualifications remained the same.

20. It would also be pertinent to refer to some of the relevant regulations made pursuant to the powers conferred under section 33 of the PMDC Ordinance of 1962 so as to further highlight the extent of the scope of the regulatory functions of the Council. The Pakistan Registration of Medical and Dental Practitioners Regulations (hereinafter referred to as the 'Registration

Regulations') were notified in the official gazette on 26-01-2009. The expressions 'Post graduate qualification', 'and 'Registrable qualifications' are defined in clauses (xxiii) and (xxix) respectively of Regulation 2. The latter definition includes the recognized qualifications of the College i.e. FCPS and MCPS. Part X of the Registration Regulations relates to 'Registration of Postgraduate Medical and Dental Students' and requires every postgraduate student enrolled in a program in Pakistan to get himself/herself registered with the Council. Part XII is in respect of 'Registration of Faculty'. Every member of the teaching faculty, inter alia, including that of a postgraduate medical institution in Pakistan, is under an obligation to apply for registration, and the Council may prescribe a criterion in this regard. The Medical and Dental Institutions (recognition, eligibility criterion for enhancement, in annual admissions and accreditation standards) Regulations of 2012 (hereinafter referred to as the Regulations of 2012) were notified on 05-01-2012. Likewise, regulations have been made for the appointment of faculty, professorial staff/Examiners/Principals/Deans/Administrative staff in both undergraduate and post graduate institutions of Pakistan. The Code of Ethics of Practice for Medical and Dental Practitioners Regulations, 2011 were notified on 16-07-2011. The purpose of referring to these regulations was to show that, read with the provisions of the PMDC Ordinance of 1962, the regulatory authority vested in the Council is expansive and exclusive.

21. A cumulative reading of the provisions of the PMDC Ordinance of 1962 unambiguously shows that the legislature, in its

wisdom, has provided for a comprehensive and self contained regulatory framework in respect of medical institutions, medical students, graduate as well as postgraduate studies, licenses, diplomas and other qualifications, examiners, examinations, supervisors, hospitals related to training or institutions granting degrees, the members of faculties of medical institutions etc. Almost all the facets of medical institutions, which trains for or grants or both trains for and grants degrees, diplomas or licenses in medicine, other than veterinary medicine, fall within the ambit and are regulated under the PMDC Ordinance of 1962. Moreover, the medical practitioners, their professional conduct and teaching experience are also regulated under the aforesaid statute. When the provisions of the CPSP Ordinance of 1962 and the PMDC Ordinance of 1962 are examined in juxtaposition, by no stretch of the imagination can the former be construed as being exempt or immune from the exclusive regulatory framework provided under the latter statute. In case the legislative intent was to establish the College as an independent entity outside the scope of the provisions of the PMDC Ordinance of 1962, then explicit language in this regard would have been used in the CPSP Ordinance of 1962, which is obviously not the case. This is affirmed from the inclusion of the two post graduate qualifications granted by the College in the Third Schedule of the PMDC Ordinance of 1962. The College grants two post graduate degrees i.e. FCPS and MCPS and both these degrees fall within the definition of 'recognized additional medical qualifications' defined under section 2(g) renumbered as 2(o) vide the Amendment Act of 2012. The College itself falls within the definition of a medical institution. As discussed

above, the College has no power or jurisdiction to grant 'accreditation' to a hospital or medical facility and it would definitely not clothe such an entity with a legal status for the purposes of the PMDC Ordinance of 1962. Approval or accreditation of a hospital in relation to a recognized additional medical qualification exclusively falls within the ambit of the PMDC Ordinance of 1962, so much so that the criterion and conditions in this regard may also be prescribed through regulations framed under section 33 of the PMDC Ordinance of 1962. The accreditation of a hospital by the College, therefore, has no relevance or validity for the purposes of the PMDC Ordinance of 1962, unless it has been approved there under. There is no force in the argument advanced by the learned counsel for the College that the latter is not under an obligation to inform the Council regarding selection of supervisors or accreditation of a hospital. The College, as a medical institution, which both trains and grants degrees recognized as additional medical qualifications, is exclusively within the domain of the regulatory framework provided under the PMDC Ordinance of 1962 and nothing to the contrary is explicitly mentioned in the CPSP Ordinance of 1962. Construing the provisions of both the statutes otherwise would tantamount to reading something not provided therein. We, therefore, declare that an accreditation of a hospital by the College for the purposes of a recognized additional medical qualification is without lawful authority and has no legal status, unless endorsed or approved under the PMDC Ordinance of 1962. Moreover, the College is subject to the regulatory framework provided *ibid*, including the powers relating to seeking information or inspection through Inspectors. We are fortified by the exposition

of law by the august Supreme Court and the observations made by the apex court in relation to the significance of the regulatory role of the Council in the case titled "*Pakistan Medical and Dental Council versus Ziauddin Medical University and others*" [PLD 2007 S.C. 323]. The relevant portions are reproduced as follows;

"A careful study of various provisions of the Ordinance referred to in the preceding paragraphs show that the objectives of the Ordinance are as follows:-

- (i) Maintenance of uniform standard of Medical & Dental education (at the graduate and postgraduate level).*
- (ii) Recommendations for recognition, de-recognition of medical qualifications registration of doctors with recognized medical qualifications within the country or outside the country.*
- (iii) Registration of doctors possessing recognized medical qualification from within country or from foreign countries.*
- (iv) Making arrangements with foreign countries for according reciprocal recognition to the medical qualifications."*

"The Pakistan Medical and Dental Council Ordinance and the regulations framed there under lay down a comprehensive procedure to ensure uniform and quality medical and dental education. Similarly the Medical and Dental Degrees Ordinance, 1982 has restricted and regulated the right to confer degrees, diplomas, licenses and certificates to practice in the medical and dental domain and any violation thereof has penal consequences.

There is a dire need to enforce the provisions of these laws with a view to promoting not only quality medical and dental education but also to provide better quality of professional services to the people. The need for regulatory mechanism in the realm of general education and in the domain of professional courses has never been greater."

"The Higher Education Commission has taken a number of regulatory steps to ensure qualitative improvement in the higher education."

"The Pakistan Medical and Dental Council through the Ordinance and the regulations framed there under is mandated to pursue the objective of a uniform standard of Medical and Dental education in the country. All the stakeholders should strengthen these and similar institutions in the country because it is only through these institutions that we can achieve the goals set out in their Charter."

"A society in transition witness two parallel strains i.e. a process of institutional erosion and attempt by the reformers/idealists to build the institutions. Efforts should be to strengthen the latter. Because institutions play a vital role in civilizing a people and in their

onward march towards socio-economic and political progress. In the comity of nations the credibility and progress of a country is measured by the strength of its institutions. A nation which fails to respect the institutions falls in grace, decays, splits and is condemned in history."

There is, therefore, no doubt whatsoever that the College is subject to the regulatory framework provided under the PMDC Ordinance of 1962.

22. We would now advert to the argument advanced by Mr. Anwar Kamal, Sr. ASC, that since the College is included as a degree awarding institution under the Ordinance of 1982, therefore it is to be treated as having the power to accredit a hospital. The Ordinance of 1982 was notified in the official gazette on 31.10.1982. Section 3 thereof provides that the right of conferring, inter alia, degrees stating therein that the recipient thereof is qualified to practice shall be exercisable by the authorities which are specified in the Schedule. Section 4 forbids any person who is not authorized under section 3 from conferring, granting or issuing a degree, and doing so would tantamount to committing an offence and shall be liable to be punished as provided under section 5. The Ordinance of 1982 specifies the authorities who may lawfully grant degrees and prescribes punishment for a person who is not so authorized and yet purportedly grants or issues a degree. The Ordinance of 1982 has no relevance for the purposes of the PMDC

Ordinance of 1962, except that the College is entitled to confer the two recognized additional medical degrees of FCPS and MCPS included in the Third Schedule thereof.

23. It is obvious from the above that the three statutes have distinct and separate objects and purposes and by no stretch of the imagination can the CPSP Ordinance of 1962 be construed as exempting the College from the provisions of the PMDC Ordinance of 1962, or that it is vested with the independent power to grant accreditation to a hospital without the sanction or approval of the Council *ibid*. The Consultants selected by the College as Supervisors and the mechanism or criterion for counting their experience is also exclusively governed and regulated under the PMDC Ordinance of 1962. The College placed on record a letter signed by its President, through CM No. 4498/2016, wherein it has been stated that the former has an elaborate, credible and transparent system of inspection for accreditation and that the interference by the Council under the PMDC Ordinance of 1962 would deprive it of its credibility. We have no reason to doubt the credibility or intentions of the College. Nevertheless, the College established under the CPSP Ordinance of 1962 or the Council constituted under the PMDC Ordinance of 1962 are creations of legislative enactments and inevitably have to function in accordance with the legislative intent, which has been discussed in detail above. It is not a question of supremacy of one over the other but a matter of enforcing the intent of the legislature in terms of the clear language of the respective legislative enactments. The College is the creation of a statute and, therefore, bound by the provisions thereof and other

laws made applicable and attracted thereto. It is settled law that it is the duty of a court to interpret statutory provisions so as to give effect to the legislative intent. The object and scheme of the two statutes, as discussed above, and the language used therein, renders the interpretation of the provisions thereof by the College as misconceived and contrary to the unambiguous intention of the legislature and its policy.

24. In the light of the above discussion, we find no merit in this appeal. However, we are of the opinion that the directions given by the learned Single Judge in Chambers, with great respect, are susceptible to interfere with the independent decision making process of a regulatory authority established and constituted under the PMDC Ordinance of 1962. The directions given or observations made in the impugned judgment shall not in any manner influence the decisions or the proceedings of the Council or any other forum established under the PMDC Ordinance of 1962. We are mindful that the College and the post graduate degrees of FCPS and MCPS awarded by it have an enviable reputation and standing within and outside Pakistan. We, therefore, expect that the Council established under the PMDC Ordinance of 1962 shall take appropriate and timely measures, in consultation with the College, to remedy the irregularities in respect of accreditation or approval of hospitals in connection with the training of students or other matters leading to the award of the recognized additional medical qualifications granted by the College and included in the Third Schedule. In proceeding with the matter the Council is expected to observe utmost caution, having regard to the reputation and credibility of the

College and the degrees awarded by it. This Court records its appreciation regarding the suggestion made by the learned counsel appearing on behalf the Council, that the latter shall endeavor to work out and facilitate the resolving of matters relating to the College and in this regard may, inter alia, in consultation with the College, consider the framing of regulations in respect of inspections and accreditation of hospitals and all other matters ancillary thereto. The Council in its regulatory capacity is also expected to attend to the grievance of the Consultants and resolve the same in accordance with law.

25. The appeal is accordingly ***disposed of*** in the above terms.

(Miangul Hassan Aurangzeb)
Judge

(Athar Minallah)
Judge

Announced in the open Court on 09th February, 2017.

Judge.

Judge.

Approved for reporting.

*Asad K/**

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