

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1437 of 2020
Rawal Institute of Health Sciences (Pvt.) Ltd.
Versus
Federation of Pakistan and others

Date of Hearing: 12.06.2020.
Petitioner by: Mr. Khalid Ishaq, Advocate,
Respondent by: Mr. Afnan Karim Kundi, Mr. Tanvir-ul-Islam and Barrister Adeel Aftab, Advocates for P.M.&D.C.,
Mr. Arshid Mehmood Kiani, learned Deputy Attorney-General,
Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General,
Mr. Soban Hayat, Law Officer, respondent No.3

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petition Nos.1292/2020, 1393/2020, 1437/2020 and 1449/2020 since they entail certain common features.

Writ Petition No.1393/2020 titled “Saepn (Private) Limited and another Vs. Federation of Pakistan and others”.

2. Through the said petition, the petitioner/college had sought a direction to the respondents in the said petition to include the name of the petitioner’s dental college in the provisional merit/selection list of colleges for BDS (Session 2019-20) and to permit the admissions of students against the prescribed quota of 50 seats. The said petition was filed on 21.05.2020.

3. Earlier Saepn (Private) Limited had filed writ petition No.3566/2019 before this Court seeking permission to provisionally admit students for the academic year 2019-20. The said petition was taken up for hearing on 17.10.2019 whereon directions were sought to the Regulator to inspect the petitioner’s medical college in accordance with the applicable regulations. On 18.12.2019, this Court was informed that the petitioner/college had been inspected by a team deputed by the

erstwhile Pakistan Medical Commission (“P.M.C.”) on 16.12.2019, and that the inspection report was awaited.

4. Vide letter dated 23.12.2019, the P.M.C. informed the petitioner/college that the latter’s score was 73.5% in the comprehensive inspection carried out on 16.12.2019 by the Higher Education Commission in collaboration with the P.M.C. Since the petitioner/college had scored less than 75% in the faculty section, it was informed by the P.M.C. that it had failed to meet the evaluation criteria. Furthermore, the petitioner/college was informed that if it had any grievance, it could appear before the National Inspection Committee for a personal hearing scheduled to be held on 26.12.2019.

5. Apparently, the representatives of the petitioner/college had appeared before the National Inspection Committee. Vide letter dated 14.01.2020, the petitioner/college was informed that on the recommendations of the National Inspection Committee, the P.M.C. had decided *“to provisionally approve”* the petitioner/college. Furthermore, the petitioner/college was directed to deposit the requisite registration fee in order to process its case for registration. Vide letter dated 06.01.2020, the P.M.C. granted provisional faculty registration to the members in the petitioner/college faculty. It is an admitted position that the petitioner/college had admitted students for the Session 2019-20.

6. Learned counsel for the petitioner submitted that the petitioner/college was permitted to admit students after it was inspected pursuant to the orders passed by this Court in writ petition No.3566/2019; that had the P.M.C. not granted provisional approval to the petitioner/college, it would not have admitted students; that if the students admitted by the petitioner/college are sent to another college and subsequently the petitioner/college is granted recognition by the P.M.&D.C., the students would suffer irreparably.

Writ Petition No.1437/2020 titled “Rawal Institute of Health Sciences (Pvt.) Ltd. Vs. Federation of Pakistan and others”.

7. Through the said petition, the petitioner/college challenged the public notice dated 20.05.2020 published by the Pakistan Medical and Dental Council (“P.M.&D.C.”) whereby the decision taken by the P.M.C. to permit the petitioner/college’s dental section to admit 50 students was revoked, and the students already admitted by the petitioner/college in its dental section for the Session 2019-20 were to be adjusted in other colleges.

8. The petitioner/college’s case was that initially, vide letter dated 09.03.2012, the P.M.&D.C. had accorded recognition to the petitioner’s dental college for admission of 50 students. Vide notification dated 12.03.2012 issued by the Ministry of National Health Regulations and Services, the Federal Government approved the petitioner/college to impart training to students for BDS degree. Subsequently, the P.M.&D.C. restrained the petitioner/college from the further intake of students in its medical as well as dental college. After an inspection of the petitioner/college was carried out pursuant to the orders passed by this Court in writ petition No.1308/2019 (which is still pending), the P.M.&D.C., vide letter dated 19.10.2019, permitted the petitioner/college to admit students for the MBBS session 2019-20.

9. Vide letter dated 13.11.2019, the P.M.C. informed the petitioner that the P.M.&D.C.’s letter dated 19.10.2019 was also applicable for the dental section of the petitioner/college, and that the admissions in the dental section are permitted and opened with immediate effect. After this 47 students had been admitted by the petitioner/college in its dental section against the sanctioned strength of 50 seats.

10. Learned counsel for the petitioner submitted that the petitioner is ready, willing and able to subject its dental section for inspection by the P.M.&D.C. in accordance with the applicable regulations; that the P.M.&D.C. instead of inspecting the dental section, has taken a decision which has the effect of disrupting the education being imparted to the students in the dental section; and that if in the future, the P.M.&D.C. grants

recognition to the dental section, its students adjusted in other dental colleges would suffer irreparably.

Writ Petition No.1292/2020 titled “Watim Medical College Vs. University of Health Sciences, Lahore and others”.

11. Through the said petition, the petitioner had sought a direction to the respondents to include the petitioner/college in the *“second provisional 8th selection list of colleges for MBBS (Session 2019-20)”*. Furthermore, the petitioner had sought a direction to the University of Health Sciences to recommend students for admission against vacant seats in the petitioner/college.

12. The petitioner’s case was that vide letter dated 14.01.2020 issued by the P.M.C., the petitioner/college was provisionally approved and permitted to admit students for the Session 2019-20. The petitioner/college was permitted to admit 100 students every year in MBBS. The petitioner/college was one of the constituent colleges of the University of Health Sciences, Lahore which had recommended admission of 79 students in the petitioner/college. When this writ petition was filed, 21 seats in the petitioner/college were vacant.

13. The petitioner/college was provisionally approved by P.M.C. after it had been inspected pursuant to the orders passed by this Court in writ petition No.1423/2019. The order sheet of the said case shows that on 20.12.2019, this Court had been informed that the petitioner/college had already been inspected and that the inspection report was to be placed before the P.M.C. in its next session. On 13.01.2020, this Court disposed of writ petition No.1423/2019 after the learned counsel for P.M.C. confirms that after the inspection of the petitioner/college, it had already been accorded recognition and permitted to admit students.

14. Learned counsel for the petitioner submitted that the petitioner/college had admitted students for the Session 2019-20 pursuant to the provisional approval granted to the petitioner/college by P.M.C.; that the petitioner had also been permitted to admit 100 students for the MBBS course for the

Session 2019-20; that vide merit list issued on 17.01.2020, 100 students to be admitted in the petitioner/college had been forwarded by the controlling university (i.e., University of Health Sciences, Lahore), and out of 100 students in the list, number of students opted not to take admission in the petitioner/college; that consequently, another list was issued on 29.01.2020 by the University of Health Sciences, Lahore intimating 39 students to be admitted in the petitioner/college; that presently, there are 79 students who are undergoing MBBS course in the petitioner/college since January, 2020; and that the students already admitted by the petitioner/college would suffer irreparably if they are sent to be adjusted in other medical colleges.

Writ Petition No.1449/2020 titled “Fazaia Ruth Pfau Medical College, Karachi Vs.The Federation of Pakistan and others”.

15. Through the said petition, the petitioner challenged the public notice dated 20.05.2020 published by the P.M.&D.C. whereby the decision taken by the P.M.C. to provisionally approve the petitioner/medical college for registration was revoked, and the students already admitted by the petitioner/college for the Session 2019-20 were to be adjusted in other medical colleges.

16. After the petitioner/college was inspected by the National Inspection Committee, the P.M.C. vide letter dated 02.01.2020 provisionally approved the petitioner/college for registration. The petitioner/college was also permitted to admit students for the MBBS session 2019-20. Consequently, 101 students were admitted in the petitioner/college and are presently undergoing the MBBS course. Learned counsel for the petitioner submitted that the petitioner is ready, willing and able to subject its medical college for inspection by the P.M.&D.C.; that the P.M.&D.C. instead of inspecting the petitioner/college, has taken a decision which has the effect of disrupting the education being imparted to the students in the petitioner/college; and that if in the future, the P.M.&D.C. grants

recognition to the petitioner/college, its students adjusted in other medical colleges would suffer irreparably.

17. The submissions made by the learned counsel for the petitioners have already been referred to hereinabove.

18. Learned counsel for the P.M.&D.C. was most vociferous in his arguments. He submitted that there was no provision in the P.M.C. Ordinance under which a provisional approval or a provisional recognition could have been granted to the petitioner/colleges; that this Court in its judgment dated 11.02.2020 passed in writ petition No.3800/2019 had unequivocally declared all the decisions taken by the P.M.C., including the decisions to grant provisional approval/recognition to the petitioner/colleges or to permit them to admit students, to be unlawful; that since the petitioner/colleges have lost their recognition by virtue of the said judgment, this Court cannot pass an order which will have the effect of such colleges continuing to function; that since the provisional approvals/recognitions granted to the petitioner/colleges have not been saved by this Court by applying the doctrine of *de facto*, such approvals/recognitions are rendered *non-est*; that the petitioner/colleges were not properly inspected and did not satisfy the Regulator's requirements and standards for recognition; that the petitioners in writ petitions No.1292/2020 and 1393/2020 have not even challenged the public notice dated 20.05.2020 issued by P.M.&D.C.; and that the petitioners had concealed the material facts from this Court especially the judgment passed by the Hon'ble Lahore High Court in writ petition No.13141/2020. Learned counsel for P.M.&D.C. prayed for the writ petitions to be dismissed.

19. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

20. This Court vide judgment dated 11.02.2020 passed in writ petition No.3800/2019 titled "*Saira Rubab Nasir and others Vs. President of Pakistan and others*" (hereinafter referred to as

“Saira Rubab’s case”) had *inter alia* declared the Pakistan Medical Commission Ordinance, 2019 (“P.M.C. Ordinance”) to be *ultra vires* to the Constitution. Furthermore, it was held that the affairs of the P.M.&D.C. have to be regulated under the Pakistan Medical & Dental Council Ordinance, 1962 (“the P.M.&D.C. Ordinance”), which stood revived upon the P.M.C. Ordinance being declared unconstitutional. The doctrine of *de facto* was not made applicable to the decisions taken by the P.M.C. during the currency of the P.M.C. Ordinance. In paragraph 52 of the said judgment, it was explicitly held that *“the actions, orders and decisions taken by the P.M.C. pursuant to promulgation of the P.M.C. Ordinance, 2019 are hereby declared unlawful...”*

21. By dint of the said declaration made in paragraph 52 of the judgment in Saira Rubab’s case, the provisional approvals/recognitions or the permission to admit students granted by the P.M.C. during the currency of the P.M.C. Ordinance are also unlawful. However, in paragraph 52 of the said judgment, it has also been observed that *“actions affecting the rights of any individual in this regard will have to be considered by the interim regime notified in the case of Fahad Malik ...”* Additionally, in paragraph 54 of the said judgment it was held as follows:-

“The Members of the Council appointed in terms of Section 4 of the PMC Ordinance, 2019 i.e. Respondents No.5 to 11 are neither allowed to represent PMC or erstwhile PMDC in any manner, nor suppose to join any meeting or pass any order dealing with the affairs of the Council in any manner as their appointment/nomination is illegal and void. Similarly, all of their actions, approvals and orders are also illegal and subject to rectification by the regular Council as and when appointed under the law.”

(Emphasis added)

22. Vide order dated 15.04.2020 passed by the Hon'ble Supreme Court in criminal miscellaneous application No.459/2020 in criminal petition No.350/2020, the Council was reconstituted and the Hon'ble Mr. Justice (Retired) Ejaz Afzal Khan (former Judge of the Supreme Court of Pakistan) was named as the President of the reconstituted Council.

23. The 3rd meeting of the *ad-hoc* Council was held on 14.05.2020. The minutes of the said meeting show that the President, P.M.&D.C. had clarified that the colleges whose provisional accreditation had been declared unlawful have to be inspected a fresh in the near future. Till date none of the petitioner/colleges, which had been granted provisional approvals or permission to admit students, have been re-inspected.

24. The petitioners' grievances primarily centered around the public notice dated 20.05.2020 published at the instance of the P.M.&D.C. In the said public notice, 10 medical colleges including all the petitioner/colleges were stopped from admitting fresh students, and the students who had already been admitted for the Session 2019-20 were to be rehabilitated/adjusted in the colleges already recognized by the P.M.&D.C. and notified by the Federal Government.

25. In the public notice, it is explicitly mentioned that *"the colleges whose provisional accreditation has been declared unlawful have to be inspected a fresh in near future."*

26. It is my view that it would be inequitable for students admitted in the petitioner/colleges to be adjusted by admitting them in other medical colleges recognized by the P.M.&D.C. only for them to be re-admitted in the petitioner/colleges if upon re-inspection such colleges satisfy P.M.&D.C.'s criteria for recognition. The very purpose of the re-inspection of such colleges by P.M.&D.C. is to decide whether or not to grant them recognition. It is of course within the realm of possibilities for the petitioner/colleges to satisfy the recognition criteria of P.M.&D.C. upon their inspection. Instead of causing the students already admitted in the petitioner/colleges pursuant to the provisional approvals or permission to admit students granted by P.M.C. to oscillate like a pendulum between the petitioner/colleges and the recognized medical institutions where they are proposed to be adjusted and then back to the petitioner/colleges, if recognized by P.M.&D.C. after their re-inspection, it would be proper to let such students continue with

their education until a decision is taken by the Council regarding the petitioner/colleges' recognition after their re-inspection in accordance with the applicable regulations. While deciding to carry out a re-inspection it is expected that the P.M.&D.C. would bear in mind the import of Regulation 12 of the Medical and Dental Institutions (Recognition, Eligibility Criteria for Enhancement in Annual Admissions and Accreditation Standards) Regulations, 2018 (**"the 2018 Regulations"**).

27. The adjustment of the students admitted in the petitioner/colleges in other recognized medical colleges would also not be appropriate where there are no vacant seats in such recognized medical colleges where the adjustment of students is proposed to be made by P.M.&D.C. This is because Regulation 7(2) of the 2018 Regulations, provides that a medical institution in the public sector shall not have more than three hundred and fifty students annually and a medical institution in private sector shall not have more than one hundred and fifty students annually irrespective of the facilities available. To admit students in the recognized medical institutions beyond their sanctioned strength of seats would be a clear violation of the said Regulations.

28. In the case of Pakistan Medical and Dental Council Vs. Ziauddin Medical University (PLD 2007 SC 323), even though the Hon'ble Supreme Court held that there was no concept of provisional recognition of a medical qualification issued by a medical institution either under the P.M.&D.C. Ordinance or the Regulations framed thereunder, since several students had been admitted in medical institutions on the basis of such provisional recognition, the Hon'ble Supreme Court did not direct the immediate closure of the institutions which had issued the provisional recognition. Furthermore, it was held that the cases of the medical institutions having provisional recognition shall be taken up by the Council, and the medical institutions were given a period of six months to cure their deficiencies. For the purposes of clarity, paragraph 27 (iv and v) of the judgment are reproduced herein below:-

“iv. There is no concept of provisional recognition of a medical qualification issued by a medical institution either under the Pakistan Medical and Dental Council Ordinance or the Regulations framed thereunder. Since on account of the act of Pakistan Medical and Dental Council and the Federal Government certain medical qualification/degree/diploma being issued by certain medical institutions have been granted provisional recognition and on account of this, several students admitted in those institutions and they may be at various stages of their professional courses, we are not inclined to directed immediate closure of these institutions.

v. The cases of these colleges/institutions having provisional recognition shall be taken up by the Council. The institutions are given six months time for the announcement of this judgment to make up the deficiencies and submit a detailed report to the Pakistan Medical and Dental Council and thereafter the Council having examined the reports and carrying out requisite recommendations to the Federal Government which shall decide the matter by 14th August, 2007.”

29. In view of the above, the writ petitions are disposed of in the following terms:-

- i. Pursuant to the decision taken by the *ad-hoc* Council in its 3rd meeting held on 14.05.2020, and the position taken by the P.M.&D.C. in the public notice dated 20.05.2020, the petitioner/colleges shall be inspected afresh in the near future in accordance with the applicable regulations;
- ii. Until a decision is taken by the Council *qua* the petitioner/colleges’ recognition after the re-inspection of the petitioner/colleges is carried out and the inspection reports are placed before the Council, the students already admitted in the petitioner/colleges would continue being imparted education and their courses would continue;
- iii. The petitioners are at liberty to take their grievances to the P.M.&D.C. in terms of the observations made by this Court in paragraphs 52 and 54 of the judgment in Saira Rubab’s case;
- iv. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE