

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE AMIN-UD-DIN KHAN

AFR
Civil Petitions Nos. 1925, 1975 and 1976 OF 2020.
(Against the consolidated judgment dated 30.4.2020
passed by the Islamabad High Court in ICA 265/2017,
2282/2019 & 3258/19)

Yasir Nawaz & others

Petitioner (In CP 1925/2020)

Al-Khair University thr. Registrar

Petitioner
(In CP 1975-76/2020)

Versus

Higher Education Commission & others. *Respondents (In all cases)*

For the Petitioner(s) : Mr. Munawar Iqbal Duggal, ASC
(In CP 1925/2020)

For the Petitioner(s) : Malik Noor Muhammad Awan, ASC
(In CP 1975-76 of 2020)

For the Respondent(s) : N.R.

Date of Hearing : 05.04.2021

ORDER

Sajjad Ali Shah, J.- The petitioners herein seek leave of this Court against a common judgment of the Islamabad High Court whereby their petitions/appeals seeking *inter alia*, an order directing the High Education Commission ('HEC') to attest the degrees of the students enrolled in Al-Khair University or its affiliated colleges, were dismissed.

2. Briefly, Al-Khair University (hereinafter referred as 'the University') which is a private educational institution created through the Al-Khair University, Azad Jammu and Kashmir Act, 1994 with its

principal campus in Bhimber, Azad Jammu & Kashmir, is imparting education in different disciplines with its mandate to affiliate itself or associate other institutions. In this pursuit, the University entered into correspondence with HEC to seek recognition. It appears that certain correspondence was also exchanged between the HEC and the University and ultimately the University was allowed to admit students at University's principal seat viz. Bhimber that too in respect of specific degree programs. However, in gross violation of the permission, the University extended its operation far and wide in Pakistan and Azad Jammu & Kashmir by opening un-authorized franchise campuses and unlawfully affiliated various institutions. It appears that HEC received various complaints regarding imparting of poor quality of teaching, weak assessment and evaluation system, non-declaration of results and award of low quality degrees by the University and its affiliated institutions. The concerns were duly communicated to the University but the complaints were never redressed. Consequently, the academic operation of the University was suspended by the HEC from 2009 to 2011. It appears that thereafter the University was inspected in September and October 2011 and consequently was allowed to admit students at University's principal seat viz. Bhimber only and that too for few degree programs viz. Management Sciences, Computer Sciences, Pakistan Studies, Islamic Studies, Education and Urdu. However, the imparting of studies in the allowed discipline was specifically prohibited through other campuses or affiliated institutions. It appears that the University, against the specific directions of the HEC, started operation through affiliated colleges and advertised admissions in MS/M. Phil & PhD programs compelling the HEC to advise the University to revoke the advertisement and refrain

from conducting MS/M. Phil & PhD distancing learning degree programs. At this juncture, the University and/or its affiliated institutions/effectuated students resorted to approach the Court and obtained interim orders notwithstanding the fact that HEC kept reminding the University that it was allowed imparting of education at its principal campus at Bhimber, that too for specified disciplines but the University and its so-called affiliated institutions, in clear breach of such directions, kept on admitting students in the disciplines which were never approved by the HEC. The record reflects that the petition filed by the University was disposed of with the directions to HEC to inspect the University. Consequently, in compliance of the orders, the inspection was carried out and deficiencies were pointed out in the operation of the University and due to grave discrepancies, irregularities and mismanagement found in the academic operations of the University, its further intake w.e.f. fall, 2016 was stopped at all levels. It appears that instead of taking corrective measures, the University again approached the Islamabad High Court by challenging the decision of HEC and the Islamabad High Court, after hearing the parties, dismissed the petition by declaring that *"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"*.

3. It appears that the HEC in order to resolve this outstanding issue and to protect the future of the students, devised a policy whereby it recognized the degrees of all students enrolled upto April 30, 2009 including the graduates studied at affiliated colleges/campuses and further directed that no degree of students enrolled during the ban period i.e. April 30, 2009 to October 17, 2011

shall be recognized. It was further decided that students enrolled and studied upto October 17, 2011 at affiliated colleges/campuses of the University other than the main campus at Bhimber in violation of the directions of the HEC would be required to appear in a comprehensive examination for recognition of their Award. This decision again was challenged before the Peshawar High Court without any success and the Court, while dismissing the petition, upheld the decision of the HEC.

4. It appears that this very decision taken by the HEC on 31.8.2018 settling a principle for recognition of the students who were enrolled and had studied after October 17, 2011 at affiliated colleges/campuses of the University, AJ&K in violation of the Commission's directions and were required to appear in a comprehensive exam for recognition of their Award, in consequence also directed the University to deposit certain amount as the estimated cost of the test (letter dated 18.4.2019 at page 57). This letter has been questioned by the University for want of jurisdiction. Based on this background, learned counsel for the petitioners-students has contended that the petitioners have completed their various degrees from the affiliated colleges/institutions and the HEC, all of a sudden, disaffiliated such colleges/institutions leaving petitioners-students without any remedy, resultantly it would be highly unfair to the students that their degrees are not recognized due to no fault of theirs. It was next contended that the petitioners have completed their degrees during the period when interim orders remained in effect and consequently the benefit of such injunctive order is to fall in favour of the petitioners. It was further contended that HEC was bound to issue the parents/students any alert in any newspaper regarding the status

of affiliated colleges of the University. It was lastly submitted that in all fairness, the decision of the HEC should be prospective and, therefore, necessary directions be imparted for recognition of the degrees of the petitioners who have already completed their degrees in different faculties.

5. Likewise, the learned counsel petitioner-University contends that HEC has no authority whatsoever over the petitioner-University inasmuch as the petitioner-University is a chartered University with its principal campus in Azad Jammu & Kashmir. Consequently HEC is to attest all foreign qualifications and the directions to deposit huge sum against the amount for recognition of the degrees/mark-sheet awards, is not only illegal but without jurisdiction.

6. We have heard the learned counsel for the respective parties and have perused the record. It appears that HEC never granted any permission to the University to affiliate colleges/institutions in Pakistan nor had it assured recognition of the degrees by the institutions/colleges affiliated by the University in AJ&K. The only letter issued by the HEC whereby the University was assured recognition of their degrees was vide letter dated October 17, 2011 which provided as follows:

"With reference to your letter No. AU-I(7)GA/2010 dated 19th September, 2011 and on the recommendation of the Inspection Committee the competent authority has been pleased to allow the Al-Khair University, Bhimber to launch degree programmes in the Departments of Management Sciences, Computer Sciences, Pakistan Studies, Islamic Studies, Education and Urdu subject to availability of required faculty with the following terms and conditions:

- *On campus operation at Bhimber is allowed.*
- *No campuses in AJ&K and Pakistan shall be allowed.*
- *No affiliation in AJ&K and Pakistan shall be permitted.*
- *The University will be required to submit on judicial paper duly notarized and registered in Court of Law they will operate only on campus at Bhimber.*
- *University will not initiate any legal proceedings against the HEC in AJ&K and Pakistan.*

7. The letter specifically prohibits any campus in AJ&K and Pakistan. It further prohibits affiliation of colleges/institutions of AJ&K and Pakistan. In the circumstances, as per such letter, HEC cannot be burdened to recognize the degrees/awards conferred by the colleges/campuses whose education imparting qualities/capacity was never examined by the HEC. If any one is to be blamed for playing havoc with the career of the students, it is either the University or its affiliated institutions. In our opinion, HEC has already taken a sympathetic approach and has shown grace by providing a mechanism to recognize the degrees/mark sheets/Awards granted by such institutions/colleges after testing the educational achievements of their students in the relevant disciplines and such decision, in our opinion, does not require any interference. The record further reflects that the HEC has issued sufficient alerts regarding the status of the institutions/colleges claiming affiliation with the University and, therefore, this plea has also not impressed us. As to the submission regarding interim orders, it is suffice to observe that the interim order is always of a limited duration which legally does not control the final adjudication and, therefore, would not create any right in cases where the main action and/or the relief is found frivolous or is turned down

unless for reasons specified, a protection is extended. In all other cases, the interim order is merged into the final order and loses its efficacy and operation instantly. Any other meaning would amount to reversing the verdict. Reference can be made to the case of Federation of Pakistan vs. Pervez Musharraf (PLD 2016 SC 570). Consequently, the submission is of no consequence.

8. As to the point raised on behalf of the University that HEC has no jurisdiction for directing the University to reimburse the expenses incurred and consequent demand estimating cost of testing in the sum of Rs.8060500/- @ Rs.700/- per student, suffice it to observe that by requesting the HEC to recognize the degrees/mark sheets/Awards granted by the University or its affiliated institutions to its students itself amount to submitting to the jurisdiction of HEC. The submission to the jurisdiction of HEC is not without any reason because the degree which is not recognized by the Higher Education Commission would be worthless like a piece of paper which could not be equated to that of a degree because every degree awarded by the Institution within the country or the Institution functioning abroad is subject to recognition which provides sanctity to a degree. Reference can be made to the judgment of this Court in the case of Nasir Mahmood vs. Imran Masood (PLD 2010 SC 1089). Consequently the University cannot be allowed to take two different stances at the same breath. The stance of the University in the circumstances, challenging the demand, appears to be totally frivolous.

9. Beside, the decision taken by the HEC is a policy one, and by now it is settled law in various jurisdictions that Courts should generally refrain from interfering in policy decisions taken by statutory bodies and authorities tasked with running the affairs of educational

institutions and students, like the HEC. The rationale for the same is that matters of an academic nature necessitate the need for technical and professional expertise which may only be attained as a result of specialization and the experience of working with and in educational institutions. Courts are neither equipped with such expertise, nor do they possess the relevant experience that would allow for interference in such matters. However, it does not mean that the Courts would not step in at the request of the parties to ensure and ascertain whether or not minimum requirements of natural justice and principles of law have been complied with and whether a case of grave injustice has been made out. Also in cases where a principle of law has to be interpreted, applied or enforced with reference to or connected with education, the Courts would not hesitate in stepping in. Reference can readily be made to the cases of Muhammad Ilyas vs. Bahauddin Zakariya University (2005 SCMR 961), Noor Muhammad Khan Marwat vs. Vice-Chancellor (PLD 2001 SC 219) and Maharashtra State Board vs. Paritosh Bhupeshkumar Sheth and others (AIR 1984 SC 1543).

10. For these reasons, we had, after conclusion of the hearing, announced dismissal of these petitions by declining the leave to appeal.

Sd/- J
Sd/- J
Sd/- J

Islamabad

05.04.2021

A. Rehman

Not Approved For Reporting