

# **IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE UMAR ATA BANDIAL.  
MR. JUSTICE IJAZ UL AHSAN.**

## **Civil Petitions No.2916, 3219, 2757-L & 3063-L of 2019**

AGAINST JUDGEMENTS DATED 24.06.2019 & 25.09.2019 OF THE LAHORE HIGH COURT, LAHORE PASSED IN ICA NOS.36401, 36402 & 39849 OF 2019.

Muhammad Zubair Choudhary & others	<b>Petitioner(s)</b> <i>(in CP No.2916/2019)</i>
Haroon Qadir & others	<b>Petitioner(s)</b> <i>(in CP No.3219/2019)</i>
Akhtar Saeed Medical & Dental College	<b>Petitioner(s)</b> <i>(in CP No.2757-L/2019)</i>
Rafay Tariq & others	<b>Petitioner(s)</b> <i>(in CP No.3063-L/2019)</i>

### **Versus**

Pakistan Medical & Dental Council & others      **Respondent(s)** *(in all cases)*

For the Petitioner(s):      Sardar Muhammad Aslam, Sr. ASC.  
*(in CP No.2916/2019)*

Ch. Mushtaq Ahmed Khan, ASC.  
*(in CP No.3219/2019)*

In Person  
*(in CP No.2757-L/2019)*

Mian M. Rauf, ASC  
*(in CP No.3063-L/2019)*

For the Respondent(s):      Ch. M. Umar, ASC.  
*(For Respondent # 1)*

Ch. M. Atiq, ASC.  
*(For Respondent # 2)*

Date of Hearing:      25.10.2019

### **JUDGMENT**

**IJAZ UL AHSAN, J-**. These Petitions have been filed against judgements of learned Division Benches of the Lahore High Court dated 24.06.2019 & 25.09.2019. The Petitioners include prospective medical and dentistry students (the "**Petitioner Students**") as well as a medical college (the "**Petitioner College**"). The Petitioners contend that they be allowed to fill up seats at private medical colleges

which have been left vacant after conclusion of the admissions process and lapse of the admissions deadline set by the Pakistan Medical and Dental Council (“**PM&DC**”) for the 2018-2019 academic year. These Civil Petition Nos.2916, 3219, 2757-L & 3063-L of 2019 were dismissed *vide* short order dated 25.10.2019. The detailed reasons and guidelines of this Court in light of our conclusions and findings are set out below.

2. Provision of quality medical and dental education forms the very basis of a country’s healthcare system. It stands to reason, therefore, that institutions imparting medical or dental education are not merely seen as service providers but also as custodians of the nation’s health and the primary training centres for its doctors and healthcare professionals. Indeed, medicine has always been amongst the most popular career choices for Pakistani students over the years and it is therefore no surprise that a large number of medical and dental colleges have sprung up to cater to the rising demand for medical and dental education. However, this rise in demand and the opening up of an ever-greater number of private medical colleges has also caused a number of regulatory challenges. The regulatory structure which is less than perfect for various reasons, which need not be mentioned here, has resulted in a fall in standards of medical education and training as well as several discrepancies, some intended and deliberate and others, not, in medical and dental admissions across the country.

3. For the past 57 years the medical profession has been regulated by the Pakistan Medical and Dental Council Ordinance, 1962 (the "**1962 Ordinance**"). Under the said Ordinance, PM&DC was created as a federal body for the regulation and control of the medical profession, it also formulates regulations regarding *inter alia* minimum standards of medical and dental education, conditions for admission into medical and dental degrees and the registration of medical and dental students. The 1962 Ordinance was subsequently amended through various Acts and Ordinances. Following promulgation of the 1962 Ordinance, various regulations were also framed and notified by the PM&DC from time to time in order to regulate admissions, training, education, house jobs, and internships of medical and dental students. Most recently the MBBS and BDS (Admissions, House Job and Internship) Regulations, 2018 (the "**2018 Regulations**") were notified by the PM&DC and were subsequently amended on 30.05.2019.

4. However, the 1962 Ordinance was repealed by the Pakistan Medical Commission Ordinance, 2019 (the "**2019 Ordinance**") which was promulgated by the President of Pakistan on 19.10.2019 and subsequently lapsed. The 2019 Act provides for the creation of a new body – the Pakistan Medical Commission ("**PMC**") – and the dissolution of the PM&DC. While no new regulations have been framed by the PMC under the 2019 Act as yet, some of the 2018 Regulations have apparently been adopted during the transitory period



while new rules and regulations are framed and notified by the PMC pursuant to the 2019 Ordinance.

5. During this time, students and private medical and dental colleges have been approaching this Court and the High Courts across the country for redressal of grievances arising out of issues relating to the admissions process of medical and dental students, publication of merit lists, grant of recognition and denotification of colleges, cut-off dates for the admissions process and most notably the issue of adjustments on vacant seats in medical and dental colleges which were unable to fill up the entire number of seats sanctioned to them by the PM&DC. These have been the underlying issues in various judgements of this Court as well, most recently in Hashmat Medical and Dental College v Pakistan Medical and Dental Council (2018 SCMR 1310) and Pakistan Medical and Dental Council v. Muhammad Fahad Malik (2018 SCMR 1956).

6. In fact, the spate of litigation resulting out of these issues and the onslaught of cases filed in the Courts before the start of every academic year led this Court to take notice of the matters directly in Suo Motu Case No.1 of 2010 which was disposed of *vide* order dated 17.09.2018 after the PM&DC furnished draft rules and regulations containing a Centralised Admissions Policy and mechanisms to address the various issues mentioned hereinabove. Subsequently, the PM&DC also introduced various new regulations through the 2018 Regulations on 30.05.2019. However, disputes

regarding the conduct of admissions, vacant seats, administration of the Medical and Dental College Admission Test ("**MDCAT**"), publication of merit lists, and discrepancies between the registration/enrolment of students at various medical and dental colleges still continue to arise.

7. As a consequence of these issues, over the past several years the country has seen a consistent decline in the quality of education, training and facilities afforded to its medical and dental education/training students. The rise in the number of private medical and dental colleges and the resultant rise in the number of seats available at medical and dental colleges has also been met with a continuous decline in the quality of entrants who are admitted into these degrees. In a country like Pakistan – whose healthcare system already suffers from a number of chronic issues – this decline in the quality of medical education imparted to future doctors is creating an alarming situation.

8. In the present cases, Learned Counsel for the Petitioner Students have argued that vacant seats at private medical colleges become available every year after the conclusion of the admissions process due to 'drop-out' students. Drop-out students are those students who have qualified for admission pursuant to the merit lists published by the PM&DC but have either chosen different medical colleges or have not taken up their offers of admission. They have prayed that the Court may allow them to be adjusted against these seats. Learned Counsel for Petitioner Students

has argued that the Centralized Admissions Policy under the 2018 Regulations provides for the creation of a merit list by the PM&DC on the basis of which medical and dental colleges are allocated students based on the preferences given by the students themselves. However, some students do not opt for the colleges which offer them admission as they get upgraded to colleges which were higher up on their preference. Further, some students are offered admission to public sector medical and dental colleges which are the preferred options for most students and their parents on account of better standards and lower costs. Consequently, the seats not taken up by them remain vacant. Learned counsel for the Petitioner Students has argued that Respondent No.1's decision to not allow further admissions after the cut-off date has resulted in a number of vacant seats at Sahara Medical College and other such private medical and dental colleges, where the Petitioner Students could be allowed admission if it were not for the cut-off date. Learned Counsel contends that the Petitioner Students were likely to qualify for admission in the next merit list, had the cut-off date not been imposed. Cut-off date is a date after which no further admissions can take place pursuant to the 2018 Regulations.

9. Learned Counsel for the Petitioner College has argued that under the Centralized Admissions Policy, medical and dental colleges are allocated a certain number of seats. In order to fill these seats, the colleges are provided with merit lists by Respondent No.1 (PM&DC) on the basis of which

these seats must be filled. Since not all of these seats are filled in the first round, Respondent No.1 also provides successive merit lists in order to fill up the remaining seats. In light of this scheme, learned Counsel for the Petitioner College has argued that by implementing a cut-off date after which seats have remained vacant, Respondent No.1 has not fulfilled its statutory obligation. It was also his contention that Respondents have acted in a discriminatory manner as similar adjustments were allowed to Hashmat Medical and Dental College as well as Bolan University. As a result of these seats remaining vacant, it is contended that they will incur a loss for the next 5 years over which these seats will remain empty. This will result in a huge loss of investment made by the Petitioner College to provide facilities for a certain number of students as per the allocation made for it by Respondent No.1.

10. Chaudhary Muhammad Umar, ASC, Learned Counsel for the Respondents has argued that no case of discrimination exists in the circumstances. He clarified that Hashmat Medical College has not been allowed any extensions and is not even allowed to admit any students as it was de-notified by the Federal Government *vide* notification dated 14.01.2019. Instead, he clarified that the issue was of adjustment and not extension, since students enrolled at the college had to be adjusted at other colleges as a result of Hashmat Medical College's de-notification. This had to be done in order to safeguard the academic year of the students



in question. In the case of Bolan University, Learned Counsel also clarified that no extensions had been provided by the PM&DC and any advertisements made by Bolan University after the cut-off date for further admissions had been published without sanction or approval of PM&DC, and are therefore totally unauthorized. Such admissions if made shall be dealt with in accordance with the law.

11. Learned Counsel for the Respondents also argued that another issue in these circumstances was the difference in the start of academic years in the Provinces of Punjab and Balochistan (where the academic year commenced later than Punjab). He argued that owing to this fact, there can be no case for discrimination between medical and dental colleges in Punjab and Balochistan because the same dates do not apply to them. Additionally, Learned Counsel also argued that the dissolution of PM&DC *vide* the promulgation of the 2019 Ordinance had resulted in extraordinary circumstances during the 2018-2019 academic year. As a result of these circumstances and the creation of a new council, the cut-off date was already extended from 31.12.2018 to 31.03.2019 and finally to 10.04.2019. During this time, 9 successive merit lists were provided to medical and dental colleges to provide a fair chance to fill up their seats. However, Learned Counsel argued that under the 2018 Regulations there is a strict requirement for a nine-month academic year for medical and dental students, which cannot be adhered to if



the admission deadline is continuously extended in order to accommodate the requests of the Petitioner College.

12. Having heard the arguments from both sides and perused the record, we are of the opinion that the Division Bench of the Lahore High Court has comprehensively addressed the issue of discrimination and has clarified that the facts in the case of Hashmat Medical and Dental College related to the de-notification of the college by PM&DC, as a result of which enrolled medical students had to be adjusted in various other medical colleges, and hence were distinguishable from the present case. Similarly, we find that the grievances of the Petitioner Students and the Petitioner College with respect to remaining vacant seats at medical and dental colleges have also been addressed by the Division Bench of the Lahore High Court, and we are inclined to agree with these findings.

13. However, we are also concerned with the continuous and long-standing issues with respect to admissions in medical and dental colleges, recognition and enforcement of the rules and regulations made by PM&DC/PMC, regulatory loopholes in the existing regulations and the enforcement of these rules. Therefore, in light of the issues raised by the Learned Counsel for the Petitioners and the Learned Counsel for PM&DC, as well as this Court's opinion on the challenges brought before it by the regulator, medical and dental students, and medical and dental

colleges, the following observations are made being fundamental to the issues raised before us:

**i) Adjustments on vacant seats:**

During the present case as well as in earlier matters regarding admissions in medical and dental colleges the issue of vacant seats has been a constant grievance. On the one hand, medical and dental colleges have time and again contended that they be allowed to fill their entire quota of seats allocated for that year by PM&DC. On the other hand, the record shows that these allowances also result in the admission of students who fall much lower on the merit lists but are offered admission into medical and dental institutions due to continuous extensions of the admission cut-off date as well as the issuance of successive merit lists.

In order to resolve this issue, we find that no admission against vacant seats left by “drop-out” students (defined under Regulation 2(d) of the 2018 Regulations) or against vacant seats left after passing of the admissions deadline set by the PM&DC/PMC should be allowed under any circumstances whatsoever. It must also be ensured that no student whose aggregate scores and MDCAT results fall below the cut-off threshold, assigned by the PM&DC/PMC for that academic year, is admitted into any medical or dental colleges. This should be done regardless of the number of vacant seats at medical or dental colleges or any other circumstances giving rise to surplus seats across the country.

Additionally, the practice of granting extensions to medical and dental colleges after the expiry of the admission deadline allowed by the PM&DC/PMC must be discontinued, forthwith. Imparting medical and dental education is not a business and must not be motivated by a desire for profit maximization. The statutory and regulatory framework must be vigorously and strictly implemented and enforced with the sole objective of imparting the best possible medical and dental education and training on students of the highest possible merit whose abilities must be thoroughly checked through high standard examination at every level on the theoretical as well as practical side. Merit, competence, and ability must be ensured when the students graduate because they would be dealing with human lives on a daily basis.

**ii) Different academic years across provinces:**

During the proceedings of the present case as well as in previous cases on the same subject before this Court, including Hashmat Medical and Dental College (Supra), both private medical colleges and students have time and again raised the contention that they be allowed adjustment after the lapse of admission deadlines set up by the PM&DC due to the differences in the start of academic years at medical colleges across the country. This discrepancy between the start of academic years in various provinces also results in confusion amongst applicants looking to pursue their medical or dental education outside of the province of their domicile. In order to resolve this issue a uniform academic year for medical students should be encouraged across all provinces in conjunction with the uniform medical admissions test – the MDCAT. PM&DC/PMC must

endeavour that a strict guideline is enforced to ensure both that academic years in various provinces start at the same time and that their length is also uniform.

**iii) Earlier enrolment and admissions deadline to be implemented:**

Regulation 9(23) of the 2018 Regulations mandates that all medical and dental colleges must submit a list of registered students to the PM&DC/PMC no later than 31<sup>st</sup> March of each year. Whereas, the admissions deadline set by the PM&DC/PMC is the 31<sup>st</sup> December of each year. This has created a loophole for many colleges who continue to admit students after the lapse of the admission deadlines set by the PM&DC/PMC (31<sup>st</sup> December) and subsequently add their names to the list by the 31<sup>st</sup> of March. For this reason, a separate admissions acceptance deadline (at least a month prior to the start of each academic year) and an enrolment deadline (during the first week of the academic year for medical and dental students to take up the places offered at their respective colleges) should be implemented in order to ensure the entire process is completed by the time the academic year starts. All medical and dental colleges must submit lists of all enrolled students to the PM&DC/PMC immediately after the lapse of the enrolment deadline. The PM&DC/PMC should not accept the names of any students enrolled on the register of any college after the academic year has already started. This should be done particularly to ensure that the entire admissions process has been completed before the start of each academic year, and that all concerns related to admissions are resolved in a timely



fashion without creating any delays in the beginning of the academic year.

**iv) Duration of the Academic Year:**

The examination guidelines under Regulation 22 of the 2018 Regulations require colleges to ensure that their academic year is at least nine months long. However, in the past several colleges have either violated this provision altogether or have approached the PM&DC/PMC, the Honourable High Courts, and this Court at various times to allow them to condense the academic year down by initiating additional studies and courses during the winter and summer holidays as well as other public holidays. This has also been used as a means for newly formed/registered colleges to start their classes immediately, even if they were recognized by the PM&DC/PMC or registered during the middle of an ongoing academic year.

We are of the opinion that this practice is both detrimental and counterproductive to the cause of medical and dental students as well as colleges providing medical and dental education. The responsibility of determining the length of the academic year is within the purview of the regulator –PM&DC/PMC – and as such no medical and dental colleges should be allowed to bypass this requirement by holding classes during holidays, weekends and vacations and newly formed/registered colleges should not be allowed to admit any students before the start of the next academic year. It should be ensured by the PM&DC/PMC that the academic year for all students across the country is of uniform length and that any new colleges adhere to the same process as existing colleges. In case new medical or dental

colleges are granted recognition or registered during a particular academic year, they should not be allowed to enrol any students before the next academic year.

**v) MDCAT and the admissions process:**

Entry 11, Part II of the Federal Legislative List, Fourth Schedule to the Constitution of the Islamic Republic of Pakistan, 1973 empowers the Federation to deal with all matters related to the medical profession. PM&DC/PMC should, therefore, ensure a uniform weightage for the MDCAT across all provinces in order to deal with discrimination and the issues of medical students seeking admission in colleges outside of the province of their domicile. It was also brought to our attention during the proceedings of the present case that the individual percentages assigned to all components of the aggregate formula used in the formulation of merit lists (e.g. HSSC/F.Sc./O-Level/A-Level/IB scores) is not uniform across all provinces and medical and dental colleges. This has also led to grievances by many prospective students who believe that their admissions were prejudiced by virtue of the weightage given to particular components in the determination of their merit. In order to resolve this, the weightage given to the various components used in the calculation of students' ranks on the merit list must be uniform across all provinces and for all medical and dental colleges. Additionally, PM&DC/PMC must ensure that the MDCAT is applicable to all students seeking admission in medical or dental colleges across Pakistan.

**vi) Enhancement of admission capacity and ceilings for permissible seats :**

A key issue throughout the present proceedings and in earlier matters has been the allocation of seats to medical and dental colleges by the PM&DC/PMC. The issue of vacant seats and the falling standards of education as the number of seats at medical and dental colleges must be resolved in a fair and transparent manner. To this end, the admission capacity granted to public or private medical and dental colleges should be linked with minimum standards of *inter alia* facilities, infrastructure, teaching faculty, courses offered, number of departments, staff, accommodation capacity and reports of inspections from previous years. In order to ensure compliance with such standards, the colleges that admit students beyond admission capacity should be dealt with in accordance with law.

These minimum standards must clearly set out the basic requirements to be fulfilled before a certain number of students are allowed to be admitted to a medical or dental college. This should be done by creating different tiers of admission capacity e.g. up to 50 students, up to 100 students, up to 150 students etc. With each tier of admission capacity, therefore, a greater number of requirements and higher minimum standards must be fulfilled. In case colleges wish to increase their admission capacities, they must ensure compliance with the complete satisfaction of PM&DC/PMC, with the minimum standards set for higher numbers of admission capacity before making applications for this purpose. PM&DC/PMC must put in place robust and effective mechanisms and procedures for site visits and regulator inspections (at least once a year) of each and every medical and dental institution to ensure that

the requisite standards are being maintained in terms of staff, faculty, laboratories, theatres, class rooms, lecture halls, facilities, equipment, etc.

**vii) Fulfilment of Minimum Standards by all medical and dental colleges:**

This Court in previous cases such as Hashmat Medical and Dental College (Supra) as well as this present case has observed the shocking lack of compliance by medical and dental colleges with minimum standards set up by PM&DC/PMC and their habitual avoidance of inspections. In order to resolve this, and to ensure compliance with the standards set up by PM&DC/PMC, broader powers to inspect must be given to officers of PM&DC/PMC, including the powers to call for records of medical and dental colleges as well as provisions allowing the inspection of financial and student records. PM&DC/PMC must also make such inspections throughout the year in order to ensure complete compliance with the standards and rules set out by it. Inspections should not be limited to the grant of recognition or renewal of such recognition afforded to any medical or dental college. A standard form based on a points system must be developed, covering every material aspect of medical and dental education. Institutions failing to meet requisite standards must be dealt with in accordance with law.

**viii) Publication of statistics and rankings:**

The data collected through the aforementioned inspections as well as PM&DC/PMC's own records with respect to the passing rates of students from individual institutions in central examinations, National Licensing Examinations and other professional examinations



conducted by PM&DC/PMC should be made publicly available in order to better inform prospective students, parents and other concerned parties. This will also help empower students to make more informed choices when choosing priority colleges and decrease the number of “drop-out” students.

A ranking system must also be devised, taking into account the factors including those mentioned above as well as other factors such as student satisfaction, provision of facilities, compliance with minimum standards, etc. This comprehensive ranking system should be made publicly available for the benefit of all those interested in the medical profession, prospective students, employers and the public at large.

**ix) Removal of conflicts of interest and “regulatory capture”**

In the past, many actions were taken by PM&DC/PMC for the benefit of medical and dental colleges that were not in the larger public interest. These include recognition, subsequent renewal of recognition and registration of sub-standard colleges, continuous extensions for medical and dental colleges to fill up the entirety of their admissions capacities at the cost of students’ education and the length of their academic years, etc. For any regulatory body, such as PM&DC/PMC, set up by the government, it is pertinent that the regulation of the entity under its purview is done in a fair, transparent and impartial manner. However, when the membership of such a regulatory body, tasked with protecting the public interest, becomes populated with – or starts advancing the interests of – a particular interest group

or lobby within the entity it is regulating, the entire purpose of its existence is defeated. This phenomenon is often referred to as the doctrine of "regulatory capture."

Reliance in this respect is placed on Muhammad Yasin v. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others (PLD 2012 SC 132), where Jawwad S. Khawaja, J, speaking for the Supreme Court, stated that:

"23. The provisions that the Legislature has made for ensuring regulatory autonomy are a reflection of accumulated economic wisdom based on empirical study. Here we can cite just one pertinent example from contemporary literature on regulatory economics pointing to the rationale and text of the Ordinance. In her article "Effectiveness of Regulatory Structure in the Power Sector of Pakistan", Afia Malik, a research economist at the Pakistan Institute of Development Economics, Islamabad, identifies "regulatory autonomy" as the foremost indicator of good regulatory governance. "Regulatory autonomy" refers to the regulator's ability to resist the pressure of 'regulatory capture' and pressures from economic and political interest groups. Amongst the key dangers to watch out for, according to the author, are "[u]ndue interference and influence of the government" which the author says hamper "independent functioning, which in turn affects the consumers as well as producers." Also, A.R. Kamal, one of Pakistan's renowned development economists has similarly highlighted the importance of effective checks, cautioning against the danger of compromising the autonomy of regulatory institutions. He warns: "[s]ince there is a cycle where the regulatory agencies over time degenerate into protecting the organizations which they are supposed to regulate, checks and balances must be put in place so that persons in responsible positions in these bodies are not corrupted." He further emphasises that "regulatory authorities . . . . . must be given autonomy so that their decisions gain credibility; and checks and balances should be so formulated that they cannot indulge in corrupt practices." The legislature has taken stock of these concerns and made a number of provisions noted above for such "checks and balances".

14. In light of these issues, we are of the view that a transparent and fair process for the nomination/selection of the membership of PM&DC/PMC and its constituent bodies and boards should be adopted. This process should be clearly laid out and must be designed to ensure that no 'conflicts of interest' are present within the membership. In fact, the best way to safeguard against potential 'regulatory capture' and to ensure the integrity and credibility of any regulatory agency is through a 'no conflict of interest' provision. Such a provision must be designed to ensure that no individual with any pecuniary, material or other direct or indirect interest in a medical or dental college can become a member of PM&DC/PMC or any of its constituent bodies. This conflict of interest provision must also stretch to the immediate family of the members.

15. In addition to the nomination/selection of the membership, it must be ensured that no conflicts of interest arise after a member has been appointed to PM&DC/PMC or any of its constituent bodies. This must be done through the introduction of a positive obligation upon all members of PM&DC/PMC and any of its constituent bodies regarding the disclosure of any interests in any matter put up before the body of which the member is a part. The members must be bound to declare any such conflict that they are aware of or should be aware of in advance and must recuse themselves from voting or taking any decisions with regard to such matters. In case such a conflict of interest is not disclosed by

the member in question, a comprehensive provision for the immediate removal of such a member must be introduced.

16. Although the petitions have not been pressed, we have considered it appropriate to record reasons and guidelines based upon elaborate and detailed submissions addressed by both sides for guidance of PM&DC/PMC to streamline their working to reduce unnecessary litigation for bringing improvements in implementation of the laws on the subject. This, in our view, is of paramount importance considering the alarming state of affairs in the dental and healthcare educational set up existing in our country. For ease of reference, our short order dated 25.10.2019 is reproduced below:

*"For detailed reasons to be recorded later, it is noted that the learned counsel for the petitioners do not press their petitions in order to avail their remedy strictly in accordance with law before the Pakistan Medical Commission which is now duly constituted."*

ISLAMABAD, THE  
25<sup>th</sup> of October 2019.  
MAU/\*  
APPROVED FOR REPORTING