

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P No.2610-P/2022

**Dr. Faiz Ullah & others Vs. Pakistan Medical
Commission, Islamabad through its President & Vice
President & others.**



Date of hearing **31.10.2022.**

Mr. Shah Faisal Ilyas, Advocate, for the petitioners.

Me. Daulat Khan, AAG, and Sardar Saad Ali, Advocate, for the respondents.

JUDGMENT

SYED ARSHAD ALI, J:- The Pakistan Medical and Dental Council Ordinance, 1962 ("*PMDC Ordinance*") was promulgated on 05.06.1962 in order to streamline and consolidate laws relating to registration of medical practitioners and dentists; to establish a uniform standard of basic and higher qualification in medicine and dentistry; and to reconstitute the Medical and Dental Council in Pakistan ("*PMDC*").

2. The PMDC Ordinance was repealed by Pakistan Medical and Dental Council Ordinance, 2019, however, by afflux of time the said Ordinance could not be translated into an Act of Parliament in terms of Article 89 of the Constitution of Islamic Republic of Pakistan.

3. The Pakistan Medical Commission Ordinance, 2019 ("*PMC Ordinance*") was promulgated on 20.10.2019, however, the same was declared ultra-vires by the Islamabad High Court through its decision,

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"Saira Rubab Nasir Vs. President of Pakistan through Secretary, Islamabad (PLD 2020 Islamabad 130)."

4. The Pakistan Medical Commission Act, 2020 ("**PMC Act**") was enacted on 22.09.2020. Section 50(1) of the PMC Act has repealed PMDC Ordinance whereas proviso to Section 50(2) repealed and made unenforceable all regulations made under the PMDC Ordinance.

5. Pakistan Medical Commission had conducted its first meeting on 02.10.2020 whereby various agendas were discussed, however, relevant to the controversy is agenda item No.32 and the decision made on it. The said decision reads as under: -

"Decision.

Students who had already graduated prior to September 2020 and were hence already doing their house jobs shall not be required to take the NLE for grant of Full Licenses. However, all students who graduate from medical or dental colleges after September, 2020 shall be required to take the NLE as per law anytime during or after completing of their house jobs in 2021 or thereafter.

First NLE exam to be held in 2021 subsequent to its standard structure being determined by the Academic Board."

6. All the petitioners have graduated from foreign universities situated in different countries and are citizens of Pakistan. It is the claim of the petitioners that Higher Education Commission of Pakistan had granted them equivalency certificate to the degree obtained by the petitioners from foreign universities and therefore, when the PMC through the aforesaid decision had exempted the Pakistani students from taking the examination of National Licensing Examination ("**NLE**") for grant of full license, the said exemption should be also allowed to the petitioners as admittedly the PMC Act, 2020 has no retrospective application.

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7. On the other hand, it is the case of PMC that since the petitioners have obtained their degree from foreign universities, therefore, they are bound to take the NLE examination as prior to the promulgation of PMC Act, the PMDC Ordinance had required all the foreign graduates to qualify National Examination Board (“NEB”) which was pre-requisite for a full license in Pakistan. Since, after the commencement of PMC Act, no authority is giving NEB exam, therefore, the petitioners are thus bound to take the examination (NLE).

8. In order to effectively understand the issue we deem it appropriate to refer to the relevant provisions of the PMDC Ordinance and the PMC Act relating to NEB as well as NLE examination. Through an amendment Act of 2012 in PMDC Ordinance, 1962 Section 15 was inserted which relates to the registration and recognitions of qualifications granted by medical institutions outside Pakistan. Section 15 as inserted through the said amendment reads as under: -

“15. Power of the Council to certify certain persons to be possessed of sufficient medical qualifications.—(1) If, after examination by a board constituted by the Council, the Council is satisfied that a person holding a qualification granted by a medical institution outside Pakistan, is possessed of sufficient knowledge and skill to be registered as a practitioner for the purpose of this Ordinance, it may recommend to the Federal Government to issue an notification in favour of such person to register him and his qualification. Upon such notification, the Council shall register the qualification possessed by the person without it being entered in any of the Schedules of this Ordinance.

(2) The Council shall register the qualification granted by a medical institution outside Pakistan, Possessed by the person by maintaining a separate list in the Register.”

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9. The PMDC in exercise of the powers conferred by Section 33 of the PMDC Ordinance and with the previous sanction of the Federal Government made a regulation known as Pakistan Registration of Medical and Dental Practitioner Regulations, 2008 (*"The Regulations"*). Under the Regulations (part VII), the National Examination Board (NEB) was constituted and accordingly the foreign graduates were required to pass the NEB examination in order to become eligible for full license. The NEB examination consisted of three following parts: -

- i. Theory papers and basic subjects.
- ii. Theory papers of clinical.
- iii. Clinical/viva examination.

10. On promulgation of PMC Act, 2020 Section 20 of the Act made it mandatory for the authority established under the PMC Act to give a uniformed exam to all persons having obtained an under graduate medical or dental qualification before entering into their house jobs and grant of full license. Section 20 of the Act reads as under: -

"National licensing examination (NLE).—(1)
The Authority shall at least twice a year as per schedule approved by the Council conduct the NLE. Passing the NLE shall be mandatory for obtaining a full license. The NLE shall be subsequently based on objective computer based multiple choice questions and a practical component if determined by the Council:

Provided that there shall be no limit on the number of times a person may attempt the NLE:

Provided further that Pakistan armed forces cadets who upon successful completion of their under-graduate degree program and pre-requisite military training are commissioned in the Pakistan armed forces shall be granted an armed forces provisional license and shall qualify their NLE during service as regulated by the service headquarters prior to grant of full license.

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(2) *A person, having obtained an undergraduate medical or dental qualification issued by a university in Pakistan or an undergraduate medical or dental qualification issued by a foreign institution duly recognized by the Commission, shall be granted a provisional license to undertake his house job within fourteen days of verification of their qualification by the granting institution:*

Provided that the person to whom a provisional license is granted shall complete the mandatory requirement of passing the NLE at any time prior to issuance of full license.

(3) *Any medical or dental practitioner who has obtained a license to practice in any foreign country after having qualified from Pakistan or from a foreign institution recognized by the Commission and does not hold a postgraduate qualification recognized by the Council, shall be required to qualify the NLE for grant of a full license to practice in Pakistan:*

Provided that a medical or dental practitioner who has obtained a license to practice in a foreign country or qualified from a foreign institution, not recognized by the Commission, but has acquired a postgraduate qualification in Pakistan or from a foreign institution recognized by the Council shall not be required to qualify the NLE and shall be granted a full license to practice on the basis of the recognized postgraduate qualification."

11. The perusal of Section 15 of the PMDC Ordinance, 1962 and Section 20 of the PMC Act, 2020 would clearly show that the law maker had drawn a distinction between graduates who have obtained their undergraduate degree from abroad and the graduates who have obtained an undergraduate medical degree from university in Pakistan. Prior to promulgation of Act of 2020, there was no requirement for students who have obtained their undergraduate degree in medicine from Pakistan to pass any test/examination like NEB whereas; till the promulgation of Act of 2020, the foreign graduates were required to have passed NEB exam for obtaining a full license. Section 50 of the PMC Act, 2020 deals with the repealing and

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saving of the law/regulation made pursuant to the enabling provision of PMDC Ordinance, 1962 which reads as under: -

"50. Repeal and savings.—(1) Subject to section 6 of the General Clauses Act, 1897 (X of 1897) the Pakistan Medical and Dental Council Ordinance, 1962 (XXXII of 1962) hereinafter referred to as the repealed Ordinance, shall stand repealed.

(2) Notwithstanding the repeal of the repealed Ordinance or anything contrary contained herein, all decisions taken, regulations made or amended and disciplinary actions taken by the Council of the dissolved Pakistan Medical and Dental Council pursuant to the repealed Ordinance and the Pakistan Medical and Dental Council Ordinance, 2019 (II of 2019) and by the Pakistan Medical Commission pursuant the Pakistan Medical Commission Ordinance 2019 (XV of 2019) shall be deemed to have been validly made:

Provided that all regulations made and promulgated pursuant to the repealed Ordinance, or the Pakistan Medical and Dental Council Ordinance, 2019 (II of 2019) stand repealed and shall not be enforceable subject to sub-section (6):

Provided further that the Council shall have the exclusive power to review and modify any saved decision taken, regulation made or amended and disciplinary action taken.

(3) The dissolved Pakistan Medical and Dental Council as formed pursuant to the repealed Ordinance stands dissolved upon the commencement of this Act.

(4) all assets, rights moveable and immoveable properties, records, cash, bank accounts, deposits etc, of the dissolved Pakistan Medical and Dental Council under the repealed Ordinance shall stand transferred to the Commission and shall be deemed to be the assets, rights, properties, records, cash bank accounts, deposits etc, of the Commission.

(5) All assets, liabilities, payables and receivables of the dissolved Pakistan Medical and Dental Council under the repealed Ordinance shall be deemed to be the assets, liabilities, payables and receivables of the Commission.

(6) all registrations, recognitions etc, granted by the dissolved Pakistan Medical and Dental Council under the repealed Ordinance or the Pakistan Medical Commission under the Pakistan Medical Commission Ordinance, 2019 (XV of 2019) shall be deemed to be the registrations, recognitions granted by the Commission subject to not being in conflict with this Act and the provisions of this Act or the same being within the

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power of the Commission to recognize and register pursuant to this Act."

12. In view of the clear mandate of Section 50 Sub Section 2 of the PMC Act, 2020; we are clear in our mind that the Regulations of 2008 which were framed under the PMDC Ordinance, 1962 requiring the foreign graduates to take the NEB examination would still be in field, however, since, the conducting of said examination has been abandoned and instead NLE examination have been introduced, therefore, the case of the petitioners is distinguishable from the students who have obtained their undergraduate degree in medicine from Pakistan universities. For a graduate in medicine from Pakistani university prior to the promulgation of PMC Act, 2020 there was no requirement to take any examination for full license whereas; for the foreign graduate in medicine, there was a requirement that before obtaining a full license to practice, he was required to undergo the process of examination of NEB. The impugned Board Resolution which exempts the doctors/persons who have obtained their undergraduate degree in medicine from Pakistan universities prior to the promulgation of PMC Act, 2020 is thus based on correct legal approach and the benefit whereof cannot be extended to the petitioners who have graduated for foreign universities.

13. The law is by now settled that the effect of repeal of a law and on its re-enactment the existing rights and obligations arising out of the repealed law in favour of any person are not affected unless by an express enactment or necessary indictment retrospective operation is given in the repealing law. "Muhammad Ishaq vs. State (PLD 1956 SC (Pak) 256), State vs. Muhammad Jamil (PLD 1965 SC 681),

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Abdul Rehman vs. Settlement Commissioner (PLD 1966 SC 362)
and Adnan Afzal vs. Capt. Sher Afzal (PLD 1969 SC 187)."

14. In the present case, the present students were under statutory obligations to qualify NEB Examination for obtaining a full license from the Regulatory (PMDC/PMC). Thus, on promulgation of the PMC Act, 2020 when the eligibility/competency of a doctor for joining profession is evaluated through NLE, the same does not offend any substantive right of the present petitioners.

15. Even otherwise, the petitioners are estopped by their conduct to have filed this petition for the reason that they have appeared in the NLE examination and when they could not qualify the said examination, they have approached this Court through the instant petition thus, their conduct speak against them.

16. In view of the above, we find no merit in this petition which is accordingly dismissed.

Announced
31.10.2022


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