

ISSUE TODAY

LAHORE HIGH COURT, LAHORE
(Judicial Department)

J.C.B.

No. 26651 /Writ-II
Dated 10/8/23
C.P. No. 180637, 189683, 180916
188927, 189396, 1821
179808, 170652

From,

The Additional Registrar (Judicial)
Lahore High Court,
Lahore.

To,

The District & Sessions Judge,

The Senior Civil Judge,

ISB
R No. ② PAKISTAN Medical and Dental Council
Mauve Area G/10/4
Islamabad through



Subject:

WRIT PETITION NO.

26651-23

Vs.

Dear Sir,

In continuation of this Court's letter No. _____ dated _____, I am directed to say that the case cited on subject has been disposed of. A copy of the order/Judgment dated 08.06.23 is enclosed herewith for necessary action. A copy of petition on which the said order has been passed is also enclosed.

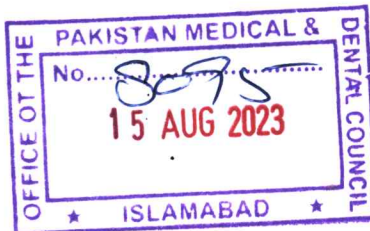
2. Compliance Report Grant recall this case within stipulated period of time.

Your's faithfully,

[Signature] 10/08/23

ASSISTANT REGISTRAR (WRIT-II)
FOR ADDITIONAL REGISTRAR (JUDICIAL)

CCDE



Stereo. H C J D A 38.
Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT
Case No. W. P. No. 26651 of 2023.

Judicial Activism Panel, etc.

Versus The Federation of Pakistan, etc.

JUDGMENT

Date of Hearing:	08.06.2023
Petitioner(s) by:	Ms. Salma Riaz, Advocate for petitioner No.1. M/s Rana Rashid Akram Khan and Mian Sheraz Javed, Advocate for petitioners No.2 and 3.
Respondent(s) by:	Syed Sajjad Haider Rizvi, Assistant Attorney General for Pakistan. M/s Waqqas Ahmad Mir, Ahmad Hassan and Momina Taufeq, Advocate for respondent No.4 (Pak Red Crescent Medical and Dental College). Mr. M. Imran Sarwar, Advocate for respondent No.3/UHS. Mr. Iftikhar Ahmad Samdani, Advocate for applicant/proforma respondents in C.M. No.3 of 2023. Dr. Habib Ullah, Deputy Registrar, PMDC.

Shahid Jamil Khan, J:- Responsibility of the State in providing professional education, like medicine, is of setting standards for curriculum and training, accreditation of institutions to ensure implementation of the standards, with the paramount object of maintaining quality of the professional education for the professionals providing health and services.

Pakistan Medical and Dental Council (“PMDC”) is established (reconstituted) through Pakistan Medical and Dental Council Act, 2022 (“Act of 2022”), preamble of which discloses the purpose, “**to establish a uniform minimum standard of basic and higher qualifications in medicine and dentistry**”.

Medical institutions are recognized under Section 21, by the Federal Government, which are included, in the First

Schedule through Notification in official Gazette. Private Medical and Dental Colleges are required to obtain affiliation with the recognized Universities, within its territorial jurisdiction under Section 20(9).

Powers to enforce the standards of Medical and Dental Education is given under Section 20. Accreditation standards, approved by PMDC, are required to be ensured by the Universities, while granting affiliation to the Colleges. Program of study, prescribed by National Medical and Dental Academic Board ("the Board") and approved by PMDC, shall be ensured by the Universities, to be conducted by the Medical Colleges. The requirements and statutory duties imposed upon the Universities and the Colleges are supervised and regulated by PMDC, which alone has power under Section 20(6), to take action for any violation.

There was a mushroom growth of Private Medical and Dental Colleges owned by entrepreneurs from private sector, therefore, many issues relating to accreditation, maintaining of standards arose and were addressed by the Courts through various judgments followed by curative legislations. The education in the field of medicine became an industry catering the students who could afford the expense. Since the non-affording students on merits, were being deprived, therefore, the Government, through legislation, and Courts, through decisions, endeavored to protect their rights.

2. One of the issues, *ibid*, is unregulated increase in tuition fee and other charges by different private colleges and unexpected increase therein during a study program. This judgment decides upon the issue of enhanced tuition fee and other charges, during a study program by private Medical Colleges.

Though this petition was filed by Judicial Activism Panel, however, two students (petitioners No.2 & 3) and other students



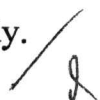
(respondents No.7 to 12) joined this petition through applications (C.M. Nos.3 and 4 of 2023) under Order 1 Rule 10 of CPC, which were allowed vide order dated 20.04.2023.

The students of private Medical Colleges being aggrieved have pleaded that enhancement of tuition fee and other charges are against Section 20(7) of Pakistan Medical and Dental Council Act, 2022 (“**Act of 2022**”) and Regulation No.9 of Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Regulations 2021 (“**Regulations of 2021**”).

3. Only respondent No.4/ Pak Red Crescent Medical and Dental College (“**College**”) represented through M/s Waqqas Ahmad Mir, Advocate. The other private Medical Colleges (respondents No.5 & 6), being not represented, are proceeded ex-parte.

Learned counsel for respondent No.4 raised objection on competence of Judicial Activism Panel to file this petition. He also raised objection on maintainability of this petition, submitting that writ cannot be issued against a private College. On merits, he submitted that Act of 2022 was promulgated with assent of the President on 12.01.2023, therefore, the Regulations of 2021, being repealed by first proviso to Section 51(2), are not applicable. For Section 20(7) he submitted that these provisions cannot be applied retrospectively. In support he placed reliance on first proviso to Subsection (2) of Section 51 of the Act of 2022.

4. In response, Mr. Iftikhar Ahmad Samdani, Advocate, representing students, read subsection (7) of Section 20 of the Act of 2022, submitted that question about existence or non-existence of the regulation is immaterial in presence of subsection (7), which contains the statutory command of not enhancing tuition fee and other charges during entire program of study.



5. Heard. Record perused.
6. The objection on competence of Judicial Activism Panel to file the writ petition loses its significance after impleadment of students, who are directly aggrieved of the impugned enhancement.

The objection of maintainability is misconceived because Pakistan Medical and Dental Council (PMDC) and University of Health Sciences (UHS) are respondents No.2 & 3 respectively and are under statutory obligation to regulate, in particular to enforce the statutory commands.

7. To examine the argument regarding applicability and retrospective application of the provisions discussed, supra, those are reproduced respective:-

Regulation No.9 of the Regulations of 2021

"9. **Payment and Charging of Fee by College.** (1) The college shall prescribe the tuition fee for the entire duration of the program divided on an annual basis, which shall not be enhanced for the student during the entire duration the student remains in the program.

Section 20(7) of the Act of 2022

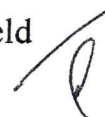
"20. **Standards of medical and dental education.-** (1)

...

(7) All medical and dental colleges shall, at least three months prior to initiating the annual admissions process, publicly declare the fixed tuition and all ancillary fee structure on an annual basis for the entire program of study in which the students are seeking enrolment and which fee structure shall not be enhanced during the students period of enrolment at the college. No medical or dental college shall seek, demand or receive from a student or a student's family, directly or indirectly, any donation or other payment prior to or at the time of admission or thereafter during the period of the students continuing enrolment at the college whether as consideration for grant of admission or otherwise."

[emphasis supplied]

In this Court's opinion, Section 6 of General Clauses Act, 1897 is to be read with Section 51 of the Act of 2022. As is held



in judgment Taza Khan and others v Ahmad Khan and others (1992 SCMR 1371) that even in absence of saving clause relevant provisions of General Clauses Act would come into play. In judgment Matli Town Committee v Abdul Majeed and others (1991 SCMR 878) the august Court held that there was no inconsistency between the repealed and repealing provisions, therefore, action taken, liability or obligation accrued, would continue.

It appears that the policy decision, by the Government, of restricting the private Colleges from enhancing the expense of entire study program was translated, first in the Regulation 9 and it continued in subsection (7) of Section 20, where intention of the legislature is unequivocal. The proviso to subsection (2) of Section 51 is repealing the regulations promulgated pursuant to repealed Act in generic manner. On the contrary subsection (2) is saving the regulations made alongwith decisions taken under the Repealed Act. Though the proviso has an overriding effect yet it has to be interpreted in context of the provision for which it is placed in the statute book. In this Court's opinion, the legislator has saved the decisions taken under regulations before its repeal under subsection (2). Section 51(2) is reproduced:-

“51. Repeals and Savings. (1) Subject to section 6 of the General Clauses Act, 1897 (X of 1897), the Pakistan Medical Commission Act, 2020 (XXXIII of 2020) hereinafter referred to as the repealed Act, shall stand repealed.

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

Provided that all regulations made and promulgated pursuant to the repealed Act, stand repealed and shall not be enforceable.”

[emphasis supplied]

Section 6 of General Clauses Act 1897 is made applicable specifically and subsection (2) further elaborate the intention of

legislature therein. The decision or policy of prohibiting the enhancement in tuition fee and other charges are, hence, protected. It is, therefore, held that the decision taken by or under the regulation are saved unless the contrary is expressly shown in the repealing Act of 2022. Prohibition against enhancement in the fee or charges, now being part of the Act of 2022, under Section 20(7) cannot even be undone through a regulation.

8. The challans of enhanced fee are hereby declared without lawful authority and respondent PMDC is directed to ensure that all Medical and Dental Colleges are charging the tuition fee and other charges as were publically declared at the time of admission for Session starting in the year 2022 and thereafter. Compliance Report be submitted before the Deputy Registrar (Judicial) of this Court, within 45-days.

The petition is allowed.

9. This Court has observed and noted, in number of cases involving enforcement of statutory or fundamental rights, that the decision of Court, in technical English language, is not properly understood by a common citizen seeking to enforce his right before a public or private authority. The language barrier in a way, restricts "access to information" guaranteed under Article 19A of the Constitution of Islamic Republic of Pakistan, 1973. Constitutional wisdom, while declaring Urdu as National language and command for arrangement to use it for official and other purpose, is to enable a common literate citizen to understand the official working and have firsthand information and knowledge of the State affairs. According to a historian; '*Muslims of subcontinent were declared as illiterate with one stroke of pen, by declaring the English as official language*'. The Colonial Rule is gone but we could not get rid of colonial system completely. There is a genuine argument for not using the Urdu as official language that transition from English to Urdu cannot be immediate, for lack of expertise to translate technical aspects

into Urdu. But the truth is that no step forward has yet been taken, at State level, to start this process. On the contrary, to capture the market in cyber world, Urdu is a workable option as language. Translating tools are available in specific softwares and in websites generally. In the age of Artificial Intelligence (AI), there is an option available to choose any language, while playing a video.

Supreme Court of Pakistan has emphasized, in number of judgments, for use of Urdu to implement and achieve the constitutional spirit under Article 251 of the Constitution and also on translation of judgments. An excerpt from the judgment in Hamid Mir and another v Federation of Pakistan and others (2013 SCMR 1880) is reproduced:-

"عدالتی کاروائی کی سماعت میں اکثر یہ احساس شدت سے ہوتا ہے کہ کئی دہائیوں کی محنت شاقہ اور کئی بے نوا نسلوں کی کاوشوں کے باوجود آج بھی انگریزی ہمارے ہاں بہت ہی کم لوگوں کی زبان ہے۔ اور اکثر فاضل وکلاء اور جج صاحبان بھی اس میں اتنی مہارت نہیں رکھتے جتنی کہ درکار ہے۔ نتیجہ یہ ہے کہ آئین اور قانون کے نسبتاً سادہ نقطے بھی انتہائی پیچیدہ اور ناقابل فہم معلوم ہوتے ہیں۔ یہ فنی پیچیدگی تو اپنی جگہ مگر آرٹیکل 251 کے عدم نفاذ کا ایک پہلو اس سے بھی کہیں زیادہ تشویشناک ہے۔ ہمارا آئین پاکستان کے عوام کی اس خواہش کا عکاس ہے کہ وہ خود پر لاگو قانونی ضوابط اور اپنے آئینی حقوق کی بابت صادر کئے گئے فیصلوں کو براہ راست سمجھنا چاہتے ہیں۔ وہ یہ چاہتے ہیں کہ حکمران جب ان سے مخاطب ہوں تو ایک پرانی زبان میں نہیں، بلکہ یا صوبائی زبان میں گفتگو کریں۔ یہ نہ صرف عزت نفس کا تقاضا ہے بلکہ ان کے بنیادی حقوق میں شامل ہے اور دستور کا بھی تقاضا ہے۔ ایک غیر ملکی زبان میں لوگوں پر حکم صادر کرنا محض اتفاق نہیں۔ یہ سامراجیت کا ایک پرانا اور آزمودہ نسخہ ہے۔"

2- تاریخ ہمیں بتاتی ہے کہ یورپ میں ایک عرصہ تک کلیسائی عدالتوں کا راج رہا جہاں شرع و قانون کا بیان صرف لاطینی زبان میں ہوتا تھا، جو راہبوں اور شہزادوں کے سوا کسی کی زبان نہ تھی۔ یہاں برصغیر پاک و ہند میں آریائی عہد میں حکمران طبقے نے قانون کو سنسکرت کے حصار میں محدود کر دیا تاکہ برہمنوں، شاستریوں اور

پنڈتوں کے سوا کسی کے پلے کچھ نہ پڑے۔ بعد میں درباری اور عدالتی زبان ایک عرصہ تک فارسی رہی جو بادشاہوں، قاضیوں اور رئیسوں کی تو زبان تھی لیکن عوام کی زبان نہ تھی۔ انگریزوں کے غلبے کے بعد لارڈ مکاولے کی تہذیب دشمن سوچ کے زیر سایہ ہماری مقامی اور قومی زبانوں کی تحقیر کا ایک ناباب شروع ہوا جو بد قسمتی سے آج تک جاری ہے۔ اور جس کے نتیجے میں ایک طبقاتی تفریق نے جنم لیا ہے جس نے ایک قلیل لیکن قوی اور غالب اقلیت (جو انگریزی جانتی ہے اور عنانِ حکومت سنبھالے ہے) اور عوام الناس جو انگریزی سے آشنا نہیں، کے درمیان ایک ایسی خلیج پیدا کر دی ہے جو کسی بھی طور قومی یکجہتی کے لئے کارگر نہیں۔ آئین پاکستان البتہ ہمارے عوام کے سیاسی اور تہذیبی شعور کا منہ بولتا ثبوت ہے، جنہوں نے آرٹیکل 251 اور آرٹیکل 28 میں محکومانہ سوچ کو خیر باد کہہ دیا ہے۔ اور حکمرانوں کو بھی تحکمانہ رسم و رواج ترک کرنے اور سنتِ خادمانہ اپنانے کا عندیہ دیا ہے۔ آئین کی تشریح سے متعلق فیصلہ اردو میں سنایا یا کم از کم ان کے تراجم اردو میں کرانا اسی سلسلے کی ایک چھوٹی سی کڑی ہے۔ عدالتِ عظمیٰ نے اسی کڑی کو آگے بڑھانے میں ایک شعبہ تراجم بھی قائم کیا ہے جو عدالتی فیصلوں کو عام فہم زبان میں منتقل کرتا ہے۔۔۔۔۔"

[emphasis supplied]

The above quoted observations were reiterated by Supreme Court of Pakistan in its judgment District Bar Association, Rawalpindi and others v Federation of Pakistan and others (PLD 2015 Supreme Court 401). The said observations were again reiterated and quoted by Supreme Court of Pakistan in its judgment Muhammad Kowkab Iqbal v Government of Pakistan through Secretary Cabinet Division, Islamabad (PLD 2015 Supreme Court 1210).

10. Now, therefore, following the constitutional command and for a common literate citizen to understand a judgment determining his rights, the Registrar of this Court is directed to make a summary with proposal to create or enhance the capacity of translating the judgments of this Court into Urdu and place it before the Hon'ble Chief Justice of this Court for further process.

Any judgment, of course, shall be translated with permission of the author judge and published on his approval.

He shall ensure that this judgment is translated in Urdu, by the relevant technical personnel, and its Urdu version is also published and placed on the official website of Lahore High Court, Lahore. It be noted that Urdu version of this judgment, published besides judgment in English shall be for public consumption and in case of any conflict or contradiction, the text of the judgment in English shall be the judgment for the purpose of interpretation/implementation or appeal.

- SQ -

(Shahid Jamil Khan)
Judge

APPROVED FOR REPORTING

^{SQ}
(SHAHID JAMIL KHAN)
Judge

Tahir Noor*

Blue slip
added
9/08/23

TRUE COPY

Examiner J.C.B (Copy Branch)
Lahore High Court, Lahore

10/8

IN THE HONOURABLE LAHORE HIGH COURT,
LAHORE

Writ Petition No. 26651 of 2023

Judicial Activism Panel, Human Rights and Public Interest Litigation Association through its Chairman, Mohammad Azhar Siddique son of Mohammad Siddique Mujahid, Advocate, Supreme Court of Pakistan, Managing Partner of Mohammad & Ahmad (Constitutional, Corporate and Tax Counsel), Ground Floor, Almas Tower, Begum Salma Tassaduq Hussain Road, near E-Plomer Building, 26-The Mall, Lahore.

.....**PETITIONER**

V E R S U S

- ✓ 1. **The Federation of Pakistan** through Secretary, Ministry of Health Services, Regulations & Coordination, Civil Secretariat, Islamabad.
- ✓ 2. **Pakistan Medical and Dental Council**, Mauve Area, G-10/4, Islamabad, through its Registrar.
- ✓ 3. **University of Health Sciences**, Punjab, Khayaban-e-Jamia, Lahore. ✓
- R 4. **Pak Red Crescent Medical and Dental College**, Dena Nath, Multan Road, District Kasur.

..... **RESPONDENTS**

- 5. **Central Park Medical College**, Central Park Housing Society, Ferozepur Road, Lahore.
- 6. **Continental Medical College**, Defence Road, Lahore.

..... **PROFORMA RESPONDENTS**