

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
[JUDICIAL DEPARTMENT]
Writ Petition No. 3094-P/2023

Yasir Ali & others
versus
Pakistan Medical and Dental Council and others


Date of hearing: 11.10.2023.

Ms. Humaira Gul, Advocate, for the petitioners.

*Sardar Saadat Ali, Advocate, for PMDC /
respondent No.1.*

*Mr. Abdul Munim Khan, Advocate, for KMU /
respondent No.4.*

JUDGMENT

SHAKEEL AHMAD, J.- This writ petition,
under Article 199 of the Constitution of
Islamic Republic of Pakistan, 1973, has been
 filed by the petitioners, praying for a
declaration that the impugned public
announcement dated 14th July, 2023, made by
Pakistan Medical and Dental Council
(respondent No.1), whereby and whereunder,
the results of Medical and Dental Colleges

Admission Test, 2022 (*hereinafter referred to as "MDCAT"*) were held to be no longer valid for seeking admission in Session 2023, is illegal, without lawful authority and of no legal effect. The petitioners further prayed for issuance of direction to the respondents to allow them to apply for admission in Medical and Dental Colleges on the basis of their MDCAT result, announced in the year, 2022.

2. It is pertinent to give a vivid background of the case before we advert to decide the issue at hand. The petitioners belong to different districts of Province of Khyber Pakhtunkhwa. Having requisite qualifications, they participated in MDCAT, held on 13.11.2022, but remained unsuccessful in getting admission in Medical and Dental Colleges, due to their low merit position. It is said that Pakistan Medical & Dental Council ("*PM&DC*") is established under the Pakistan

Medical and Dental Council Act, 2022

(hereinafter referred to as "the Act of 2022"),

after receiving assent of the President of Pakistan on 12th January, 2023, published in the official Gazette on 16th January, 2023.


Upon promulgation of the Act of 2022, the Pakistan Medical Commission ("**PMC**") came to an end. The PM&DC is a regulatory authority in Pakistan, which is established to regulate Medical and Dental education and to make rules and regulations for the conduct of admission in Medical and Dental Colleges.

The petitioners are aggrieved of public announcement issued by the respondent No.1 on 14th July, 2023, whereby it has been declared that the results of the MDCAT for the year, 2022 are no longer valid for seeking admission in the Session 2023. Feeling discontentment from the said public announcement, the petitioners visited PM&DC

and lodged their written objections, asking therein to allow them to apply for admission for the Session 2023-2024 on the basis of their previous result of MDCAT, held on 13.11.2022, but in vain. It was stated that earlier public announcement made on 14th July, 2022 also contained the similar decision, whereby the MDCAT, 2022 results were held to be no more valid for admission in Session 2023, whereas PMC Act, 2020 (*now repealed*) provided that MDCAT result is valid for two years for seeking admission in Medical and Dental Colleges. It was also contended that the Act of 2022 also provides that MDCAT results are valid for three years for seeking admission in Medical and Dental Colleges. In support of their stance, the petitioners also relied upon KMU Admission Policy, which gives validity to the previous result for seeking admission in the next Session. It was also pleaded in the

petition that petitioners have been discriminated and all their efforts to get the requisite relief from the respondent No.1 proved to be a wild goose chase, which necessitated to file the instant petition.

3. Pursuant to the order of this Court, the respondents No.1 & 2 filed their separate para-wise comments, raising therein many legal and factual objections *qua* maintainability of the writ petition.

 4. On 26.09.2023, after hearing the learned counsel for the parties, this petition was dismissed, however, at the time of writing of judgment, some anomaly cropped up and, after formulating questions, the case was fixed for rehearing for today. It will be advantageous to reproduce those questions as under:-

- i. *Whether petitioners appeared in MDCAT in the year 2022, and their rights are protected under PMC Act, 2020 and the regulations framed there under?*

- ii. *Whether under the conduct of Examinations Regulations, 2021, MDCAT result is valid for three years seeking admission in Medical and Dental College and so as the admission policy of KMU?*
- iii. *Whether under the PM&DC Act, 2022 MDCAT result is valid for a period of three years for seeking admission in the Medical & Dental Colleges?*
- iv. *Whether the rights of the petitioners were protected under Section 51 of the PM&DC Act, 2022 or not?*
- v. *Whether the petitioners were discriminated or not?*

5. Having considered the rival submissions of the learned counsel for the parties, we find that the petitioners are mainly aggrieved of the public announcement dated 14th July, 2023, issued by the respondent No.1, whereby and whereunder, it has been declared that the results of MDCAT for the year, 2022, taken under Section 18 of the (*repealed*) Pakistan Medical Commission (PMC) Act, 2020, are no longer valid for seeking admission in the Session 2023.

6. It is an admitted fact that PM&DC is established under the Act of 2022, it received assent of the President of Pakistan on 12th January, 2023 and published in official Gazette on 16th January, 2023. Upon promulgation of the Act of 2022, the Pakistan Medical Commission Act, 2020 stood repealed. The PM&DC is reconstituted to keep minimum standard of basic and higher education in Medicine and Dentistry. It possesses the power to regulate and make rules and regulations for the conduct of admission in Medical and Dental Colleges in Pakistan. The PM&DC is the sole regulator of all Medical and Dental institutions in Pakistan and all the Medical programs in the said institutions are made in accordance with the regulation and policies formulated by it, and the Medical and Dental institutions are bound to follow the laws, directions and decisions, made by it.

7. As discussed in the preceding para, the petitioners participated in MDCAT examination held on 13th November, 2022 in terms of Section 18 of the (*repealed*) PMC Act, 2020, and PMC Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Regulations, 2021 (*hereinafter referred as "the Regulation of 2021"*), notified on 4th June, 2021, which do not provide validation of previous MDCAT result for the next Session or use of highest attained result to apply to Medical and Dental Colleges in the next Session.

8. The learned counsel for the petitioners laid much stress on regulation 10 (5) of the Regulations of 2021 and MDCAT Students Guide, 2022, which provides that MDCAT results are valid for a period of two years from the date of examination and went on to say that under the said regulation and MDCAT guide,

the petitioners are entitled to use the MDCAT results for the next Session. This argument of the learned counsel for the petitioners seems to be based on misconception, *firstly*, on the ground that they appeared in MDCAT examination held on 13th November, 2022 and it has been vividly written on their results card that this result is valid for admission in Session 2022-2023, and *secondly*, that PM&DC is mandated to follow the law, which is in the field, as such reliance of the petitioners on the aforesaid regulation and MDCAT Student Guide are of no help to them because Regulation 10(5) of the Regulation of 2021, deals with all Medical and Dental examinations to be conducted by the National Medical Authority and not for Medical and Dental Undergraduate Education as is reflected from the Regulation of 2021, whereunder the petitioners appeared in MDCAT examination

for admission in Medical and Dental Colleges in Pakistan, and *thirdly*, that the MDCAT, 2022 Student Guide has no statutory backing.

It is an admitted fact that when the petitioners participated in MDCAT examination in 2022, the law in the field was PMC Act, 2020, which was repealed by the Act of 2022. The corresponding section 17 (1) (4) of the Act of 2022, deals with the MDCAT, which reads as under:-

(1) Each province, Gilgit-Baltistan and Islamabad Capital Territory as per the policy and standards approved by the Provincial Government and Federal Government respectively shall conduct on the dates approved by the Council, a single admission test based on the intermediate or equivalent syllabus for all students seeking admission in undergraduate programs both in public and private medical and dental colleges and universities.

(4) The MDCAT result of one province shall be valid for the entire country and shall be valid for a period of three years. Each province, Gilgit-Baltistan and Islamabad Capital Territory shall give preference to the students having domicile of their respective province or territory as the case may be.

9. Under the circumstances and facts discussed above, we are clear in our mind that when the petitioners appeared in MDCAT in 2022, they were governed by PMC Act, 2020 and the said Act, did not contain any provision, whereby their MDCAT result could be validated for two or three years as claimed by them. The Act of 2022, containing the provision of validation of result for three years in terms of Section 17(4) cannot be given retrospective effect. The impugned announcement, made by PM&DC, is, in fact, an administrative decision/policy, formulated by it, being a regulatory authority to regulate higher education in Medicine and Dentistry having authority to make rules and regulations for conduct of admission in Medical and Dental Colleges. This impugned decision/policy was not particularized or person specific to the petitioners, but it was

made applicable to all the students, who appeared in MDCAT, 2022, which does not seem to be discriminatory or arbitrary. Even otherwise, the impugned public announcement dated 14th July, 2023, being an administrative decision / policy of PM&DC falls outside our domain, unless and until, it is shown that it violates fundamental rights guaranteed under the Constitution of Islamic Republic of Pakistan, 1973 or is at variance to the provisions of the Constitution or opposed to any statutory provision or demonstrably arbitrary or discriminately. In this behalf, reference may be made to the case reported as *“Asaf Fasihuddin Khan Vardag .vs. Government of Pakistan and others (2014 SCMR 676)*, wherein it was observed that interference with such decision is warranted where it was vitiated on account of arbitrariness, illegality, irrationality and



procedural impropriety or where it was actuated by malafides, and not otherwise. In this behalf, further reliance can be placed on an unreported judgment of this Court dated 13.12.2022, rendered in Constitutional Petition No.4635 of 2022 titled "Feroz Khan Shuja and others .vs. Pakistan Medical Commission through President, Islamabad and another, In this context, further reliance is placed on the judgment reported as "Syed Azam Shah Vs Federation of Pakistan" (2022 SCMR 201), the Hon'ble Supreme Court, while commenting upon the jurisdiction of the Court in policy matters observed as follows:-

"The compass and magnitude of judicial review of governmental policy is now well settled and defined in which neither the court can act or represent as appellate authority with the aim of scrutinizing the rightness, fittingness and aptness of a policy nor may act as advisor to the executives on matters of policy which they are entitled to formulate. The extensiveness of judicial review of a policy is to test out whether it violates the fundamental rights of the citizens or is at variance to the

provisions of the Constitution, or opposed to any statutory provision or demonstrably arbitrary or discriminatory”.

8. Similarly, in the case of “Abdul Hameed and others Vs Water and Power Development Authority” (2021 SCMR 1230), it was held that it is not the role of the Courts to interfere in the policy decision and observed as under: -

“It is not the role of the Courts to interfere in policy decisions, unless it is manifest that, such a policy decision are the outcome of arbitrary exercise of power, mala fides, patently illegal or manifestly unreasonable. Reliance in this regard is placed on the case of Asaf Fasihuddin Khan v. Government of Pakistan (2014 SCMR 676) of which, the relevant part is reproduced as: -

“It is to be noted that the duty of the Court is to confine itself to the question of legality. Its content should be whether a decision-making authority exceeded its powers; committed an error of law; committed a breach of the rules of natural justice; reached a decision which no reasonable tribunal would have reached; or abused its powers.”

9. A larger bench of the Apex Court in the case of “Shahid Pervaiz Vs Ejaz Ahmad” (2017 SCMR 206) held that: -

“This Court in a series of judgments has held that policymaking is the domain of the executive and the Courts normally do not interfere in such matters, but when a policy is violative of the

fundament rights of individuals, the Courts are obliged to examine such policy in judicial review”.

10. Similarly, the Apex Court in the case of “Watan Party and another Vs Federation of Pakistan and others” (PLD 2013 SC 167) held that: -

“we cannot assume the functions of policy-making or determining the priorities of various development projects in the country, which are the exclusive domain and functions of the Federal and Provincial Governments, as the case may be, who have their own ministries, departments, commissions and consultants, etc. for policy making, determining the priorities of various development projects and its implementation. It is pertinent to mention here that under the scheme of the Constitution having its structure based on trichotomy of power amongst its different organs i.e. legislature, executive and judiciary, each of its organ has to work and exercise its authority strictly within its mandate, without encroaching upon or usurping the jurisdiction/functions of any other organ of the State”.

11. The same view was earlier given by the Apex Court in the case of “Asaf Fasihuddin Khan Vardag Vs Government of Pakistan and others” (2014 SCMR 676):-

“47. It is to be noted that the duty of the Court is to confine itself to the question of legality. Its concern should be whether a decision-making authority exceeded its powers; committed an error of law; committed a breach of the rules of natural justice; reached a decision which no reasonable tribunal would have reached; or abused its powers. Therefore, it is not for the Court to determine whether a particular

policy or particular decision taken in the fulfillment of that policy is fair”.

12. *In the case of “Dossani Travels PVT. LTD and others Vs Messrs Travels Shop (PVT) LTD and others” (PLD 2014 Supreme Court 1) the Apex Court held as under: -*

“28. A comparative analysis of the constitutional law from various jurisdictions would indicate that the Courts have deferred to the decisions of the administrative bodies and those entrusted with the policy making functions of the Executive if there was no violation of law”.

13. *Similar view was given in the case of “Dr. Akhtar Hassan Khan Vs Federation of Pakistan (2012 SCMR 455), the relevant para is reproduced as under: -*

“Though its policies sometimes may be open to criticism but that is for the concerned economists in the government or academics to examine and opine but once the Competent Authority in the government has taken a decision backed by law, it would not be in consonance with the well-established norms of judicial review to interfere in policy-making domain of the executive authority. ”

14. *Thus, in view of the above judgments of the Apex Court it is not the function of the High Court to exercise jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan to interfere in the policy-making domain of the universities/institutions or even the executives unless it is demonstrated that there is any violation of law or*

*violation of rules and regulations in
the matter.*

10. In the light of discussion and
observations made hereinabove, we find no
merit in the instant petition, the same is hereby
dismissed. There shall be no order as to costs.



JUDGE



JUDGE

Announced
11.10.2023

(DB) Hon'ble Mr. Justice Ijaz Anwar
Hon'ble Mr. Justice Shakeel Ahmad

Noor Shah