

IN THE HON'BLE ISLAMABAD HIGH COURT, ISLAMABAD.

W.p No 3746/2021

1. Riaz Ahmed S/o Muhammad Bashir Asad Ullah, R/o Block A, Soan Garden, Islamabad, Pakistan present resident of Saudi Arabia.
2. Abdul Shakoor S/o Muhammad Sadiq R/o Post Office Khas, Nakarkot, Mumtazabad, District Haveli (Khuta) Pakistan present R/o P.O Box No. 1150, Dubai United Arab Emirates.

Petitioners....

Versus

1. Federation of Pakistan, through Secretary Ministry of Health Services Regulations and Coordination situated at 3rd Floor, Khosar Block, Pak Secretariat, Islamabad.

2. Pakistan Medical Commission, situated at Mauve Area, G10/4, Islamabad

Respondents....

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Examiner
Supply Section
Islamabad High Court

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973, CALLING INTO QUESTION THE VIRES OF PAKISTAN MEDICAL COMMISSION MEDICAL AND DENTAL UNDERGRAUATE EDUCATION (ADMISSIONS, CURRICULUM AND CONDUCT) REGULATIONS 2021 PROMULATED BY RESPONDENT NO.2

Respectfully Sheweth:

- 1) That the subject matter of the present Writ petition is the promulgation of Pakistan Medical Commission Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Regulations 2021 by Respondent No.2, wherein the Respondents have parted away with the policy of reasonable classification on the basis of intelligible differentia in a manner detrimental to the Petitioners which is arbitrary, unreasonable and unfair.

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3746 of 2021
Riaz Ahmed and another
Versus

Federation of Pakistan through Secretary, Ministry of National Health
Services Regulations and Coordination and another

Date of Hearing: 10.11.2021
Petitioners by: Barrister Osama Amin Qazi.
Respondents by: M/s Taimoor Aslam Khan and Mudassar
Abbas, Advocates for PMC.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners, who are overseas Pakistanis, assail the *vires* of the Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Regulations, 2021 ("the 2021 Regulations") made by the Medical and Dental Council in exercise of the powers conferred by Section 40 of the Pakistan Medical Commission Act, 2020 ("the PMC Act").

2. At the very outset, learned counsel for the petitioners submitted that the petitioners' challenge to the 2021 Regulations is only to the extent of the requirement for foreign students to pass the Medical and Dental Colleges Test ("MDCAT Exam") in order to gain admission in a medical or dental Institution in Pakistan.

3. The MBBS and BDS (Admissions, House Job and Internship) Regulations, 2018 ("the 2018 Regulations") were made by the Pakistan Medical and Dental Council ("P.M.&D.C.") in exercise of the powers conferred under Section 33(2) of the Pakistan Medical and Dental Council Ordinance, 1962 ("the 1962 Ordinance"). Regulation 7(5) of the said Regulations provided that foreign or overseas Pakistani students desirous of taking admission in MBBS and BDS course against open merit or foreign quota or self-finance seats in any public or private institution in Pakistan have to meet the following additional eligibility criteria:-

"(a) *the candidate must pass English language proficiency test i.e. valid TOEFL or IELTS with a minimum score of 500 or 5.5 or have a certification by National University of Modern Languages (NUML) after one year English language course, where medium of instructions for obtaining required academic qualifications for admission test is not English.*

- (b) *candidates having foreign or overseas Pakistani students and qualified from abroad may also apply if they have passed a foreign SAT II examination with minimum 550 marks in each of the three subjects i.e. biology, chemistry and either physics or mathematics or a foreign MCAT with minimum score of 500."*

4. Regulation 8(1) of the 2018 Regulations provided that private medical and dental institutions may admit students on foreign seats quota up to fifteen percent of their total annual seats allocated by the Council purely on merit, whereas Regulation 8(2) of the said Regulations provided that no candidate shall be eligible for foreign seats quota in the public and private medical and dental institutions under Regulation 8(1) unless he holds a permanent nationality or is an overseas (being a Pakistani citizen permanently resident in a foreign country) Pakistani student, and who has studied and passed HSSC 12th grade examination or equivalent from outside Pakistan and is a resident of a foreign country at the time of applying for admission and possess a certificate from the institution last attended to this effect.

5. The Admission Regulations (Amended) 2020-2021 were made by the Medical and Dental Council under Section 8(2)(f) of the PMC Act. Regulation 16A of the said Regulations provided that a student who does not hold a Pakistani nationality, or holds a dual nationality or is an overseas or a non-resident Pakistani citizen and having obtained their HSSC or equivalent 12th grade qualification from outside Pakistan shall for the purposes of admission be deemed to be a 'Foreign Student'. Furthermore, the said Regulation provided that the admission of a 'Foreign Student' shall be strictly on the basis of merit and no exception or special quota shall be created for 'Foreign Students'.

6. The 2021 Regulations were made by the Medical and Dental Council in exercise of the powers conferred by Section 40 of the PMC Act. Regulation 2(e) of the said Regulations defines a 'Foreign Student' to mean a student who is not a Pakistani Student and holds only a foreign nationality. There is no provision in the said Regulations exempting foreign students from passing the MDCAT Exam in order to gain admission in medical or dental institutions in Pakistan.

7. Learned counsel for the petitioners, after narrating the facts leading to the filing of the instant petition, submitted that the definition of a foreign student ought not to have been narrowed by the 2021 Regulations; that earlier, students who held dual nationality or were overseas or non-resident Pakistani citizens came within the meaning

of 'Foreign Students'; that prior to the 2021 Regulations, foreign students were not required to pass any examination or test for gaining admission in a public or private medical institutions in Pakistan; that all that foreign students were required to show was HSSC or equivalent 12th grade qualification from outside Pakistan; that to restrict the definition of 'Foreign Student' only to students who hold foreign nationality is irrational and unreasonable and therefore liable to be declared as such; that the 2021 Regulations are discriminatory inasmuch as the *proviso* to Regulation 3 of the 2021 Regulations exempts the taking of the MDCAT Exam for foreign students admitted on a special program seat reserved exclusively for a Federal Government program for foreign students under bilateral agreement with other countries; that the PMC could not depart from the previous practice of exempting foreign students from taking an admission test; and that for the MDCAT Exam to be taken by foreign students, the PMC had organized exam centres only in six countries. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

8. On the other hand, the learned counsel for the PMC submitted that this Court vide judgment dated 27.09.2021 had dismissed writ petition No.2955/2021, wherein a similar relief as the ones sought by the petitioners in the instant petition had been sought; and that the PMC is planning to establish exam centres in more than six countries in the future. Learned counsel for the PMC prayed for the writ petition to be dismissed.

9. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

10. Perusal of the judgment dated 27.09.2021 passed by this Court in writ petition No.2955/2021 shows that this Court had turned down the prayer of the petitioner in the said petition to allow him to apply for admission in a medical or dental institution in Pakistan on the basis of his SAT-II result instead of an entry test / exam. This Court had also upheld the *vires* of the 2021 Regulations. The operative part of the said judgment is reproduced herein below:-

"8. Now resorting to the basic question raised in the instant petition qua the MDCAT, which has been provided in terms of Section 18 of the PMC Act, 2020 in an unequivocal terms and said statutory requirement

14. In view of the above, I do not find any merit in this petition which is accordingly dismissed with no order as to costs.

SD

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN OPEN COURT ON 12.11.2021.

SD

JUDGE

Sultan*

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15 NOV 2021

Copy of the Judgment
Authenticity of the Judgment of
Qanoon-e-Mahadad Order 1999
Islamabad High Court