

JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT

W.P No.4832-P/2023 with IR

Muhammad Ikram and others

Vs

Pakistan Medical and Dental Council through Registrar  
and others



JUDGMENT

Date of hearing: 29.11.2023

Petitioners (by): Mr. Ali Gohar Durrani, Advocate

Respondents (by): Mr. Sardar Saadat Ali, Advocate

**SYED ARSHAD ALI, J.-** The petitioners, through the instant Constitutional Petition, have approached this Court praying that:-

*"On the acceptance of this Writ Petition may it please this honorable court t:*

- a. *Declare that the notification dated 19.10.2023 and the increase of passing marks to 70% by the Council in absence of the National Medical and Dental Academic Board to be illegal, unlawful and without jurisdiction.*
- b. *Declare further that the passing marks for the foreign medical graduates to be 50% till such time that the National Medical and Dental Academic Board has not proposed increase in the passing marks.*
- c. *Direct the Respondents to pass the candidates for the NRE-I examination as per the merit set by the previous Academic Board at fifty percent (50%) and allow the passing candidates to appear in NRE-II examination.*
- d. *Grant any other relief which this Hon'ble Court deems fit in the circumstances of the case."*

2. Facts of the case are that the petitioners have graduated from foreign universities and are citizens of Pakistan. It is the contention of the petitioners that

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according to a Policy Decision dated 12.08.2022 issued by the respondents, the passing percentage of National Equivalence Board Exam ("NEB") has been approved as 50%, however, when the petitioners appeared in the National Registration Exam-I ("NRE") held on 06.08.2023, they found out that merit of 70% has been set as the passing criteria. Feeling aggrieved, the representatives of the Foreign Medical Graduates ("FMG") approached the President Pakistan Medical & Dental Council ("PMDC") on 16.08.2023 and requested him to consider the reduction of passing percentage of the NRE-1 exam from 70% to 50%. However, the PMDC issued a Notification dated 19.10.2023 whereby the request of the foreign graduates was declined and the approved passing percentage of the NRE Examination Step I & II was not changed.

3. Notice was issued to the respondents who have filed their comments wherein it is stated that NRE syllabus was updated on the official website of PMDC wherein it is clearly mentioned that the passing percentage shall remain at 70% and it was informed through public announcement dated 26.06.2023 that the NRE-I exam shall be taken on 06.08.2023. It is further stated that the petitioners appeared in the NRE-I exam where the passing marks were 70% and when failed the said exam, they impugned the Notification regarding NRE (step-II) Medical & Dental Examination 2023

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through the instant petition. Detail of results of the petitioners are mentioned below.

Petitioner No.	Name	Roll No.	Marks Obtained	Marks Percentage	Status
1.	Muhammad Ikram	1061868	127	63.5%	FAIL
2.	Amina Sadaf	1062837	129	64.5%	FAIL
3.	Zeeshan Khan	1061919	134	67%	FAIL
4.	Tufail Ahmad Khan	1062347	70	35%	FAIL

4. The learned counsel appearing on behalf of the petitioners has referred to section 9 sub-clause 2(f) of the Pakistan Medical and Dental Council Act, 2022 ("Act") and has argued that though the Council established under the Act has the mandate to frame rules and provide standard for all the examination, however, the said rules could only be made when it is recommended/proposed by National Medical & Dental Academic Board ("Board") established under section 10 of the Act.

He next argued that the impugned syllabus envisaging for 70% passing marks was published/notified on 21.06.2023 whereas as evident from the press release of the Board it was constituted on 26.07.2023, therefore, the said syllabus/rules are without lawful authority as it was never recommended by the Board as required by section 9(2)(f) of the Act. The learned counsel for the petitioners has also referred to the policy decision issued by the PMDC on 12.08.2022 which envisages 50% marks to pass the NRE exam which is conducted under section 18 of the Act, hence, all the petitioners having obtained more than 50% marks have qualified the said

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entitled to appear in the NRE-II examination.

5. The learned counsels representing the respondents while controverting the said arguments have argued that the Board had earlier decided the issue on 13.05.2022 wherein it was stated that the passing marks of NRE would be 70% and keeping in view the said decision the Council has decided on 04.06.2023 that the examination to be conducted. In this regard the syllabus was notified on the official website on 21.06.2023 and on the basis of the said syllabus, all the petitioners had applied for examination, therefore, they are estopped by their conduct to raise any objection on the said criteria. In order to appreciate the respective contentions of the parties we would like to refer to the relevant provisions of the Act.

**9. Powers and functions of the Council.— (1)**  
*The Council shall have the functions and powers of general supervision over the working of the Council and shall hold the President of the Council, national medical and dental academic board, committees and other authorities accountable for all its functions. The Council shall have all powers not expressly vested in any other authority or officer by any other law where such powers not expressly mentioned in this Act are necessary for the performance of its functions.*

*(2) Without prejudice to the generality of the foregoing powers and notwithstanding anything contained in any other law for time being in force, the Council shall have the following functions and powers, namely:—*

- (a) .....*
- (b) .....*
- (c) .....*
- (d) .....*
- (e) .....*
- (f) to make rules and regulations for the conduct of admission in medical and dental colleges and examinations to be*

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test, therefore, they are entitled to appear in the NRE-II examination.

5. The learned counsels representing the respondents while controverting the said arguments have argued that the Board had earlier decided the issue on 13.05.2022 wherein it was stated that the passing marks of NRE would be 70% and keeping in view the said decision the Council has decided on 04.06.2023 that the examination to be conducted. In this regard the syllabus was notified on the official website on 21.06.2023 and on the basis of the said syllabus, all the petitioners had applied for examination, therefore, they are estopped by their conduct to raise any objection on the said criteria. In order to appreciate the respective contentions of the parties we would like to refer to the relevant provisions of the Act.

*9. Powers and functions of the Council.— (1) The Council shall have the functions and powers of general supervision over the working of the Council and shall hold the President of the Council, national medical and dental academic board, committees and other authorities accountable for all its functions. The Council shall have all powers not expressly vested in any other authority or officer by any other law where such powers not expressly mentioned in this Act are necessary for the performance of its functions.*

*(2) Without prejudice to the generality of the foregoing powers and notwithstanding anything contained in any other law for time being in force, the Council shall have the following functions and powers, namely:—*

- (a) .....*
- (b) .....*
- (c) .....*
- (d) .....*
- (e) .....*
- (f) to make rules and regulations for the conduct of admission in medical and dental colleges and examinations to be*

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conducted by each province, Islamabad Capital Territory and Gilgit-Baltistan and approve the examination structures and standards of the national registration examination and the national equivalence board examination as proposed by the national medical and dental academic board including the standards of renewal and revalidation of registrations to practice medicine or dentistry in Pakistan;

10. **Composition of national medical and dental academic board.**— (1) The board shall comprise the following members to be notified after approval by the Federal Government through Minister-in-charge in the official Gazette, namely:—

- (a) the Chairman, Higher Education Commission of Pakistan;
- (b) the President of the College of Physicians and Surgeons of Pakistan;
- (c) two deans or heads of department of a public medical university or college nominated by each Provincials Government, Islamabad Capital Territory and Gilgit-Baltistan from amongst the universities located in the respective province or area;
- (d) one dean or head of department of a private medical university or college nominated by each Provincial Government, Islamabad Capital Territory and Gilgit-Baltistan from amongst the universities located in the respective province or area;
- (e) one dean or head of department of a public dental university or college nominated by each Provincial Government, Islamabad Capital Territory and Gilgit-Baltistan from amongst the universities located in the respective province or area;
- (f) one dean or head of department of a private dental university or college nominated by each Provincial Government, Islamabad Capital Territory and Gilgit-Baltistan from amongst the universities located in the respective province or area; and
- (g) the principal of the Anny Medical College.

(2) After the notification of the members of the board, the Council shall forthwith and not later than fifteen days from the issuance of notification call the first meeting of the newly constituted board.

(3) A dean of public sector medical university or teaching hospital or post graduate medical institution shall be the ex-officio Chairman of the board to be nominated by the Council.

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*(4) No act done by the board shall be invalid on the ground merely on existence of any vacancy in, or any defect in the constitution of, the board.*

**18. National Registration Examination (NRE).—** (1) *The Council shall at least twice a year as per schedule approved by the Council conduct the NRE for Pakistani foreign graduate students. Passing the NRE shall be mandatory for obtaining a full registration. The NRE shall be substantially 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 NRE.*

(2) *A person, having obtained an undergraduate medical or dental qualification issued by a foreign university or an undergraduate medical or dental qualification issued by a foreign institution duly recognized by the Council, be granted a provisional registration 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 registration is granted shall complete the mandatory requirement of passing the NRE at any time prior to issuance of full registration of foreign Pakistani graduates.*

(3) *Any medical or dental practitioner who has obtained a registration to practice in any foreign country after having qualified from a foreign institution recognized by the Council shall be required to qualify the NRE for grant of a full registration to practice in Pakistan.*

6. The perusal of impugned criteria for the NRE exam would show that the said criteria was issued by the PMDC and uploaded it on its official website on 21.06.2023, according to which, the passing marks for the NRE exam are 70%. Pursuant to the said impugned criteria uploaded by the PMDC, the petitioners had appeared in the said examination, however, they could not qualify it by obtaining the requisite 70% marks. The emphasis of the learned counsel for the petitioners was on a notification issued on 10.10.2022 whereby after the reconstitution of PMDC, it had decided that the passing

marks for the NRE exam are 50%. However, the respondents have also placed on file another decision of the Board passed in its 43<sup>rd</sup> meeting dated 13.05.2022 whereby it was decided that 70% marks would be passing criteria for NLE/NRE examination. The request of the students to lower the said criteria for 50% was regretted by the Board. Therefore, we are not persuaded that the PMDC notification dated 10.10.2022 has any legal backing. The only contention of the learned counsel for the petitioners was that since the Board was constituted subsequent to the impugned criteria notified on website on 21.06.2023, therefore, the said criteria is not legally correct. However, we do not tend to agree with the said submission of the learned counsel for the petitioners because the Board has already; through an explicit decision recommended for 70% passing criteria in the NLE/NRE examination, therefore, the impugned criteria envisaging 70% passing marks for passing NRE examination does not offend any provision of law.

7. Even otherwise the petitioners had applied for the NRE examination on the basis of the impugned criteria whereby not only the exam was conducted but the passing marks were also notified, therefore, it does not lie from their mouth to challenge the said criteria only to the extent of fixing the threshold of passing marks on the principle of estoppels.

8. What should be a criteria for the examination, when and how the examination should be conducted is



the exclusive domain of the PMDC. The Constitutional Court has no jurisdiction to interfere in independence of the PMDC unless a glaring illegality or irregularity is brought before this Court which has direct nexus with the enforcement of the fundamental rights of any person. In the present case, we are not inclined to interfere in the impugned policy provided by the PMDC which obviously is to uphold transparency and merit in the medical sector. The petitioners instead of engaging themselves in unnecessary litigation should better concentrate on their studies as they have yet the chances to reappear in the said examination.

9. In view of the above, this petition being not maintainable is accordingly dismissed.

*(Signature)*

JUDGE

*(Signature)*  
JUDGE

Date of hearing and announcement of judgment ..... 29.11.2023

Date of preparation and signing of Judgment .....04.12.2023

D.B Hon'ble Mr. Justice Abdul Shakoor & Hon'ble Mr. Justice Syed Arshad Ali  
Mahmood Shah, SSS

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Peshawar High Court Peshawar  
Authorized Under Article 8.7 of  
the Qanoon-e-Shahadat Act 1984

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