

**IN THE LAHORE HIGH COURT, LAHORE**

56763-21

30 OCT 2021

From

The Addl. Registrar (Judl)  
Lahore High Court, Lahore.

To

1. Pakistan Medical Commission through its Secretary, Regional Office, Khayaban-e-Jamia Punjab, PGMI Building 2<sup>nd</sup> Floor, Block - D, Muslim Town, Lahore.
2. Member Examinations, National Medical Authority, Regional Office, Khayaban-e-Jamia Punjab, PGMI Building 2<sup>nd</sup> Floor, Block-D, Muslim Town, Lahore.
3. National Medical Authority through its Executive Member, Regional Office, Khayaban-e-Jamia Punjab, PGMI Building 2<sup>nd</sup> Floor, Block-D, Muslim Town, Lahore.
4. Pakistan Medical Commission, Head Office, Mauve Area, G-10/4, Islamabad.
5. [Redacted] onal Health Services, Regulations and Coordination,

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SUBJECT: - WRIT PETITION NO- 56763-2021, including Petitions

Sir,

In continuation of this Court letter No \_\_\_\_\_ date \_\_\_\_\_

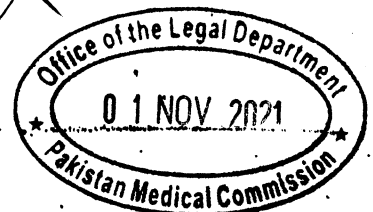
I am directed to forward for information and immediate compliance a copy of this Court's Order/Judgment dated 20-10-21 passed in the above noted case.

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Your faithfully

ASSISTANT REGISTRAR (WRIT)  
FOR ADDL REGISTRAR (JUDL)

30/K



**IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT**

**JUDGMENT**

W.P.No.56763 of 2021

Rida Fatima

Versus

Pakistan Medical Commission, etc.

Date of Hearing:	20.10.2021
Petitioners by:	Agha Intizar Ali Imran, ASC in W.P. No.56763/21. Mr. Ishtiaq A. Chaudhry, ASC (W.P.No.61614/21). Mr. Muhammad Shaukat Ali Khan, Advocate in W.P. No.61086 of 2021. Mr. Mushtaq Ahmad Mohal, ASC in W.P. No.61055 of 2021 Mian Bilal Bashir, ASC and Mian Muhammad Aslam, ASC for Petitioner in W.P. No.62356 of 2021.
Respondents by:	Ms. Sadia Malik, Assistant Attorney General for Pakistan. Barrister Ch. Muhammad Umar, Advocate for PMC assisted by Mufti Ahtsham-ud-Din Haider and Rana Muhammad Ansar, Advocates. Mr. Imran Muhammad Sarwar, Advocate for the Respondent No.3/UHS.

**JAWAD HASSAN, J.** Through this single judgment, I intend to dispose of this writ Petition as well as connected petitions i.e. W.Ps. No.57244, 57471, 58846, 59646, 61055, 61086, 61614, 62356, 62533, 63968, 64758 and 64870 of 2021, as similar question of law and facts is involved in these cases.

2. Through these writ Petitions under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioners have called in question the procedure of National Medical & Dental Colleges Admission Test (the "MDCAT") 2021 being contrary to Section 18 (1) of

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the Pakistan Medical Commission Act, 2020 (the "Act") and Pakistan Medical Commission Conduct of Examinations Regulations, 2021 (the "Examination Regulations").

**(I) BRIEF FACTS**

3. Brief facts of the case are that the Pakistan Medical Commission (the "PMC") conducted MDCAT, 2021 from 30<sup>th</sup> August, 2021 to 30<sup>th</sup> September, 2021 on daily basis. The Petitioners being shining and brilliant students applied for the said Test and have been allotted respective Roll Numbers by the PMC but despite exceptional and outstanding careers, they have faced several complications, hurdles and illegalities during the Test and resultantly could not pass the same. Hence, they challenged the Test being illegal, unlawful, contrary to the Act and the Examination Regulations.

**(II) PETITIONER'S SUBMISSIONS**

4. Agha Intizar Ali Imran, ASC submits that the procedure of MDCAT 2021 is contrary to Section 18 (1) of the Act. He adds that in Section 18(1) the word "a date" and "single admission test" is written and in singular form not in plural i.e. "Dates" or "Tests". Learned counsel relied on the judgment of this Court cited as "ABWA Knowledge Pvt. Ltd. v. Federation of Pakistan, etc." (PLD 2021 Lahore 436) wherein this Court has interpreted the provision of Section 18 of the Act and the same has been upheld by the learned Division Bench of this Court vide judgment reported as "ABWA Knowledge Pvt. Ltd. through Director and another v. Federation of Pakistan, through Secretary, National Health Services and another" (2021 MLD 1455) as well as by the Hon'ble Supreme Court of Pakistan.

5. Mr. Ishtiaq A. Chaudhry, ASC for the Petitioner/Quarat-ul-Ain argued the case mainly relying on the arguments advanced by Agha Intizar Ali Imran, Advocate with following questions of law:

- (i) Whether mandatory requirement to hold single test as provided under Section 18 of the Act, can be allowed to be violated?
- (ii) Whether the Authority established under the Act failed to perform statutory duty enshrined under Section 16(1)(a)(d)(f) of the Act?

- (iii) Whether the right of the Petitioner could be taken away in violation to the Article 4 of the Constitution?
- (iv) Whether the Examination Regulation 2021 framed under Section 40 and Sub-Section (2)(f) of Section 8 of the Act have been followed or violated?
- (v) Whether the Rules/Instructions can override the legislative enactments of Parliament?

6. Mr. Mushtaq Ahmad Mohal, ASC mainly relied on the arguments advanced by M/s. Agha Intizar Ali Imran and Ishtiaq A. Chaudhry, Advocates and submits that since the fundamental rights of the Petitioners guaranteed under Articles 3, 4, 10-A of the Constitution have been infringed, therefore, the writ Petitions be allowed and a direction be issued to the Respondents to reschedule the Test in accordance with Section 18 of the Act and Examination Regulations.

### **(III) RESPONDENTS' SUBMISSIONS**

7. Conversely, Barrister Ch. Muhammad Umar, ASC for PMC while submitting reports and parawise comments in all connected writ Petitions objected qua their maintainability on the ground that the Petitioners have right to file review before the PMC. He argued that the bare perusal of the Act makes it abundantly clear that the expression "single admission test" in Section 18 refers to the fact that every student would only be allowed to appear in and sit for one MDCAT in a year. In comparison, he submits that Section 20 of the Act clearly states that the examination shall be held at least twice a year. The entire argument of learned counsel for the Petitioners regarding construction and interpretation of Section 18 is completely flawed. He adds that the PMC has promulgated the Act on 04.06.2021, wherein in terms of Regulation 3 a maximum period of forty-five days has been provided for conducting the MDCAT but the Petitioners did not challenge the said regulation. Further states that the PMC Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Regulations, 2021 (the "Regulations 2021") promulgated on 04<sup>th</sup> June, 2021

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and amended on 12<sup>th</sup> July, 2021 requires the students to appear in MDCAT in order to get admission in Medical and Dental Colleges. He further states that MDCAT is highly competitive exam to assess/check the knowledge base of a student to determine merit and suitability for the medical education. Adds that all the students have been given instructions from time to time to follow the syllabus outlined on the PMC website to prepare for the MDCAT. Also submits that under Section 18 of the Act the National Medical Authority is required to conduct the MDCAT annually on a date approved by the PMC. He states that the PMC in its meeting dated 04.06.2021, approved the MDCAT schedule from 30<sup>th</sup> August, 2021 to 30<sup>th</sup> September, 2021.

8. Barrister Ch. Muhammad Umar, ASC next submits that in the computer based MDCAT, the students have the option of skipping a question and attempting it later during the exam time and the candidate/applicant can review the answers already selected and revise them. He adds that the system for the purpose of final scoring only considers the answer selected by the student when the exam time ends and the exam stands concluded. All final answers selected by the student when the exam time ends are fully recorded and scored. It is also clarified that the examination system is not dependent on an open external internet therefore, there should exist no concern regarding internet failure or reboot, etc. during the exam. He clarifies that the MDCAT exam system operates on local area wireless network (WIFI) and the exam is recorded and submitted locally. Even if the WIFI shows a state of signaling down for a short period, it does not affect the exam. All answers as finalized by a student on completion of the exam and submitted by the student were recorded and further submitted for scoring. He adds that the computer based system is being constantly monitored and reviewed daily by the PMC.

9. Ch. Muhammad Umar, ASC lastly states that the Petitioners are estopped by their own words and conduct from raising any objection against the MDCAT at this belated stage. He relied on the judgment of this Court

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cited as "Muhammad Zubair and 5 others v. Government of Pakistan through Secretary Health, Islamabad and 22 others"(2012 CLC 1071) wherein it has been held that in such a situation where students have appeared in an examination without raising any objection on the weightage criteria or merit and could not perform well in such examination, the principle of estoppel would fully applicable upon them.

10. Learned counsel for the Respondent/PMC further submits that the PMC has provided complete mechanism for MDCAT 2021-2022 and placed on record copy of Terms and Conditions for Review and stated that the Petitioners can file Review of their papers (the "Review") before the PMC till 22.10.2021 (now extended till 29.10.2021). The Terms and Conditions for Review are as follows:

**Terms and Conditions for Review**

- Any student who wishes to review their paper can apply to PMC online. The deadline for applying for review is 22nd October 2021.
- There shall be two Review Options. Personal Review or Referral Review. A student is required to select in the Application which option the student wishes to avail.
- The review fee shall be;
  1. Personal Review Fee: Rs.5,000.
  2. Referral Review Fee: Rs.3,500.

The fee shall be paid online at the time of applying or through bank challan.

- If the student elects a Referral Review, their paper will be de-encrypted and provided to a member of the independent Review Team nominated by the VC Quaid-e-Azam University. The paper shall be reviewed and the report provided to PMC which shall be further communicated to the student. The Referral Review shall be completed within 7 days of applying.
- If the student elects a Personal Review, the student shall be given an appointment at PMC head office for Paper Review. The appointment shall be at least three days after having applied. The student shall be required to bring their personal verification documents (CNIC/B-Form/Passport) at the time of

*the appointment.*

- *The students paper will be de-encrypted and the student will be shown to review on the secure terminal at PMC all the questions and answers that were marked as wrong in the students paper.*
- *The student will have 60 minutes to review the paper. Students shall not be allowed to talk to each other or raise verbal objections. Any student doing so shall have their review cancelled. The review process will be recorded on CCTV system.*
- *At the time of the physical review only the student shall be allowed at the terminal and in the secure facility. NO other person shall be allowed to accompany the student*
- *The student shall be provided a Review Form. The student can list on the Review Form any question and its answer that the student finds falls in any of the following categories. No other objection will be considered as valid for purposes of the Review.*
  1. *Answer given in the Key is incorrect*
  2. *Question is incorrect.*
  3. *Correct Answer as per Key shown in the system but incorrectly scored*
- *The Review Form shall be signed by the student on completion of the review and handed back to the invigilator.*

*The students Review Form and paper shall be referred to the Review Team to verify. The Review Team shall review each observation of the student contained on the Review Form and shall submit their report within 7 days of submission. If any error pointed out by the student is found to be correct, the corresponding score of the student shall be corrected and the Paper Review Fee refunded.*

In order to strengthen his arguments learned counsel relied on the above mentioned judgment (**P L D 2021 Lahore 436**), wherein this Court has already declared the PMC as a Regulatory Body to regulate the admissions to all the medical colleges including private medical colleges through this mandatory test i.e. MDCAT. Learned counsel also relied on the judgment of the Hon'ble Supreme Court of Pakistan cited as "Hubdar Hussain Malik v. Deputy Commissioner Chakwal and another"(2020 SCMR 1507).

11. Arguments Heard. Record Perused.

(IV) DETERMINATION BY THE COURT

12. The basic question involved in all these cases is regarding interpretation of Sections 18 of the Act. For ready reference Section 18 is reproduced hereunder:

18. Medical and dental colleges admissions tests (MDCAT)

(1) The Authority shall conduct annually on a date approved by the Council and as per standards approved by the Board a single admissions test which shall be a mandatory requirement for all students seeking admission to medical or dental undergraduate programs anywhere in Pakistan.

(2) No student shall be awarded a medical or dental degree in Pakistan who has not passed the MDCAT prior to obtaining admission in a medical or dental college in Pakistan.

Provided that such requirement shall be mandatory for all students who have been enrolled in medical or dental undergraduate programs in the year 2021 and thereafter.

(3) The admission to medical or dental programs conducted by public colleges shall be regulated as per the policy of the Provincial Governments strictly on merit and admission to a private college shall be in accordance with the criteria and requirement stipulated by the private college at least one year in advance of admission including any additional entrance test as may be conducted by a private college subject to any conditions imposed by the relevant university to which such college is affiliated:

Provided that the marks obtained by a student in the MDCAT conducted by the Authority shall constitute a minimum of fifty percent of the weightage for the purpose of admission in the public colleges.

Under Section 18 of the Act the National Medical Authority is required to conduct the MDCAT annually on a date approved by the Council. This Court in the judgment mentioned supra (P L D 2021 Lahore 436) has already observed that Section 18 of the Act deals with the MDCAT while the upfront construal and elucidation of Section 18(1) of the Act makes it quite obvious that mandatory requirement of MDCAT is imposed on those students who intend to seek admission to medical or dental undergraduate



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program anywhere in Pakistan. The relevant paragraphs of the judgment are as under:

“25. Section 18 of the Act deals with the MDCAT while the upfront construal and elucidation of Section 18(1) of the Act makes it quite obvious that mandatory requirement of MDCAT is imposed on those students who intend to seek admission to medical or dental, undergraduate program anywhere in Pakistan while Section 18(2) of the Act put a rigid restriction of passing MDCAT before taking admission in any medical or dental college in Pakistan which is also a precondition to grant a license to qualified doctors by the PMC. Meaning thereby, for taking admission in a public or private medical college, students from all over the country have to undertake and get through the necessary requirement of MDCAT test. Section 18(2) of the Act further cast upon a mandatory restriction that a student who does not fulfill the requirement of Section 18(1) of the Act will not be awarded degree, which is clearly suggestive of the fact that requirement of MDCAT test is mandatory requirement for admission into medical colleges as well as for awarding of degree. Mr. Salman Aslam Butt, Sr. ASC, counsel for the Petitioners has put much stress on proviso to Section 18(2) of the Act by stating that mandatory requirement of MDCAT shall be applied to Session 2021 and onwards and as such the Petitioners are exempted from the said mandatory requirement of MDCAT as the year in question is 2020 and not 2021. This argument of the Petitioners does not appeal to reason since the expression “enrolled” has been used by the Legislature by making mandatory requirement of passing MDCAT for the students who have been enrolled in the year 2021 and thereafter. However, literal interpretation of the term ‘enroll’ means ‘to register or transcribe’ (Black’s Law Dictionary, Eleventh Edition p.671). ‘Enrol is generally applied to the act of inserting names in an orderly manner into any book’ (ADVANCED LAW LEXICON, 4th Edition). According to PMC

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Admission Regulations, the admission process started in December, 2020 which would be concluded in February, 2021 and any student pursuant to this process would be enrolled with PMC for the year 2021 after passing MDCAT test. It is clearly suggestive of the fact that if a student does not appear in MDCAT test, he would not be given admission to any medical college whether private or public. In other words, enrollment of such student will take place after passing of MDCAT examination. Throughout the world, Medical Entrance Exam is the way to get admission in Medical and Dental Programs of various national and state-level universities and colleges and the same practice has also been consistently followed in Pakistan from more than decades and no admission in medical or dental colleges have ever been taken place without appearance in any entry test like MDCAT examination. Therefore, the stance of the Petitioners that one-year exception has been made in proviso to Section 18(2) of the Act is totally misconception, which has got no plausible justification or reasonable foundation to survive.”

It was further held that:

“27. It is well established principle of law that the Statute in general and sub sections of a Section are to be read together to understand the true purpose and meaning of particular provision. In “SAUDI PAK INDUSTRIAL AND AGRICULTURAL INVESTMENT COMPANY (PVT.) LTD., ISLAMABAD Versus Messrs ALLIED BANK OF PAKISTAN and another”(2003 CLD 596)the Hon’ble Supreme Court of Pakistan held that “it is a fundamental principle of interpretation of documents and statutes that they are to be interpreted in, their entire context following a full consideration of all provisions of the document or statute, as the case may be, that every attempt shall be made to save the document and for this purpose a difference between general statements and particular statements of the document be differentiated properly, to save the document rather

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*to nullify it, that no provision of the document be read in isolation or in bits and pieces, but the entire document is to be read as a whole to gather the intention of the parties, that the Court for this purpose can resort to the correspondence exchanged between the parties, that the Court shall lean to an interpretation, which will effectuate rather than one, which will invalidate an instrument. In the case reported as "R. V. Venkataswami Naidu v Narasram" (AIR 1966 SC 361) Supreme Court of India observed "A section has only one interpretation and one scope; a process resulting in more than one interpretation and scope is clearly erroneous." In another case reported as Tehsildar Singh v State of U P. (AIR 1959 SC 1012, 1022) Supreme Court of India held "Every section must be considered as a whole and self-contained." Moreover, in case reported as Gurmej Singh v Partab Singh (AIR 1960 SC 122,124) Supreme Court of India explained about the interpretation of subsections of section and observed "it is an elementary rule that construction of a section is made of all parts together." Lastly the case reported as State of Bihar v Hiralal (AIR 1960 SC 47,50) Supreme Court of India explained the principle of interpretation of subsections of section and observed "it is not permissible to omit any part of it."*

13. Perusal of Section 18(1) of the Act makes it abundantly clear that the expression "single admission test" refers to the fact that every student would only be allowed to appear in and sit for one MDCAT and the context and object of the Act shed light on the purpose underlying behind the condition laid down under the Act, which clearly suggests that the emphasis is on substance and not on form, which means that all the students must be adjudged on a single standard of testing and on a similar pattern of scoring with equal number of opportunity to participate in the exam in a single year and no preferential discrimination will be done in this regard . Moreover Section 20 of the Act clearly mentions that the examination shall be held at

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least twice a year. The Hon'ble Sindh High Court while dealing with the same issue passed a detail judgment in C.P. No.6021 of 2020 titled as "Syed Ahmed Maaz, etc. v. Federation of Pakistan, etc." (2021 CLC 937) and observed that taking the NMDCAT on two dates is not illegal. It was held by the Court:-

9. Regarding the argument advanced on behalf of the petitioners that Section 18 *ibid* allows only a single NMDCAT and as such the impugned announcement of conducting the subject tests on two different dates is *ultra vires* the PMC Act, we are of the view that a plain reading of Section 18(1) *ibid* would show that the words "on a date" and "a single admissions test" contained therein do not mean that the same must be read conjunctively. The words "a single admissions test" clearly denote a single attempt by every applicant; and the words "on a date" undoubtedly mean the date approved by the Council. In this context, the submission made on behalf of PMC that a single admissions test means a centralized test across Pakistan also has force. It is not disputed that all the applicants appearing in the subject tests on both the given dates will be allowed only one / single attempt, and both the said dates have been duly approved by the Council. As noted above, the Council has the power under Section 8(2)(f) of the PMC Act to frame regulations for the "conduct" of admissions in medical and dental colleges "and the examinations to be conducted by PMC". Therefore, the approval accorded by the Council for conducting the subject tests on two dates cannot be deemed to be illegal or *ultra vires* the PMC Act, especially when every applicant will be allowed only a single attempt. (emphasis supplied)

14. Perusal of Section 18(1) *ibid* would show that the words "on a date" and the expression "a single admission test" contained therein do not imply

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that the same must be read conjunctively. The words “a single admission test” clearly denote a single attempt by every applicant; and, the words “on a date” undoubtedly mean the date approved by the Council. In this context, the submission made on behalf of learned counsel for PMC that single admission test means a centralized test across Pakistan has no force.

10. The argument advanced by learned counsel for the Petitioners that during the process of MDCAT the Respondent/PMC did not follow the Provisions of the Act and the Examination Regulations. It is noted the PMC was enacted in 2020 and this Court in the judgment (**PLD 2021 Lahore 436**) elaborately explained the scope of Section 18 of the Act and thereafter the Respondent/PMC before conduct of MDCAT 2021-2022 published an Advertisement in Daily Nawa-i-Waqt on 13.06.2021, for its Registration by mentioning the Eligibility Criteria and Application Process with all steps, which reads as follows:

**Application Process:**

**Step 1-** Log onto *mdcat.pmc.gov.pk*

**Step 2-** Sign up for an account

**Step 3-** Fill in the form with the necessary personal Information.

**Step 4-** Pay the fee. Payment can be made via credit/debit card OR via bank after downloading bank challan (Paid challans do not need to be uploaded on the PMC Online Website)

**Step 5-** Verify the filled information. Once the form is submitted after payment the applicant will not be able to edit their information.

**Step 6-** Confirmation notification will be received with Roll Number.

**Step 7-** Log on to the PMC Online website between 20<sup>th</sup> July to 5<sup>th</sup> August 2021 and schedule your exam date by choosing MDCAT examination time slot. (There will be 2 examination slots per day to choose from between 30<sup>th</sup> August – 30<sup>th</sup> September 2021). Your requested exam date will be scheduled subject to availability and priority given to registration date. Registered applicants will be provided Online Tutorial for the computer based exam.

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*Registered applicants will be provided 1 practice examination.*

*Registered applicants will be provided sample questions in all subjects for practice.*

15. The MDCAT examination was held from 30.08.2021 to 30.09.2021 at various centers in all over the Pakistan. It is an admitted fact that all the Petitioners/Applicants applied for the MDCAT examination 2021 by following the aforesaid step by step Application criteria/process and appeared in the MDCAT by choosing their own computer based MDCAT time slot on the dates approved/given by the PMC. Now the Petitioners have challenged the whole procedure at this stage by stating that they did not practice the exams as per the Rules, Regulations and the Act. It is worth mentioning that the aforesaid Advertisement for Registration of the MDCAT examination was published on 13.06.2021 and the Petitioners could have approached the PMC regarding any inconvenience/hurdle but they opted to take part in the exam and now after their failure they filed these writ Petitions, which raised a serious question about the bona fide of the Petitioners.

16. With respect to the arguments of the learned counsel for the Petitioners that the Rules/Instructions have gone beyond the legislative enactment of parliament, it is observed that delegated legislation forms an important part of the statutory law, which expounds and explain the skeleton principles of the parent statute in order to achieve the purposes of the said legislation. The renowned Jurist John Salmond in his treatise "*Jurisprudence, 12<sup>th</sup> Edition p. 116*" defined the term as "that which proceeds from any authority other than sovereign power and is therefore dependent for its continued existence and validity on some superior or supreme authority". According to the Major Law Lexicon 4<sup>th</sup> Edition, 2010 page. 1890, it denotes to the legislation made by a person or body other than the Sovereign in Parliament, by virtue of powers conferred either by statute or by legislation which is itself made under statutory powers. As per Judicial

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Dictionary 16<sup>th</sup> Edition Volume 1 page. 536, delegated legislation permits utilization of experience and consultation with interests affected by the practical operation of statutes. While referring to Sir Cecil Thomas Carr's Concerning English Administrative Law (1941), the purpose and scope of Delegated Legislation was aptly narrated in M P Jain & S N Jain's Principles of Administrative Law (6<sup>th</sup> Edition at page 43) in the following manner:-

*“Usually, what happens is the Legislature enacts a law covering only the general principles and policies relating to the subject matter in question, and confers rule-making power on the Government, or on some other administrative agency. The delegation of legislative power is permissible only when the legislative policy is adequately laid down and the delegate is empowered to carry out the policy within the guidelines laid down by the legislature”.*

17. The Hon'ble Supreme Court of Pakistan in MUHAMMAD AMIN MUHAMMAD BASHIR LIMITED Versus GOVERNMENT OF PAKISTAN through Secretary Ministry of Finance, Central Secretariat, Islamabad and others (2015 S C M R 630) has laid down the principles regulating the object and scope of delegated legislation in the following manner:-

*The principles of delegated legislation are very clear and hardly require any reiteration by us at this late stage. In brief, they entitle the delegate to carry out the mandate of the legislature, either by framing rules, or regulations, which translate and apply the substantive principles of law set out in the parent legislation or by recourse to detailed administrative directions and instructions for the implementation of the law. They are intended to enforce the law, not override it. They can fill in details but not vary the underlying statutory principles. In case of conflict they must yield to the legislative will. They are below and not above the law. The minutiae can be filled in but the basic*

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*law can neither be added to nor subtracted from. (Underlined for emphasis)*

18. Now the question arises under what circumstances a delegated legislation or any part thereof can be put under judicial scrutiny to be followed by declaratory dictum of its being illegal and *ultra vires*. Suffice is to observe that it is well established principle of interpretation that if delegated legislation is directly repugnant to the general purpose and object of the very Act, under which such powers were created and passed on, or if it is repugnant to any settled and well established principle of statute or result of excessive delegation then it can be declared *ultra vires*. However, delegated legislation cannot be questioned on the ground of mala fide or unreasonableness because there is a strong general presumption attached to its legality and the onus to prove otherwise will be on the person who asserts it to be against the statute.

19. The Honorable Supreme Court in SUO MOTU CASE NO.11 OF 2011 (P L D 2014 Supreme Court 389) laid down the very foundational principle of strong presumption in favour of constitutionality and *intra vires* in favour of delegated legislation and further laid down the test for striking down any such subordinate legislation on the ground of being violative of fundamental rights guaranteed under the Constitution, contravention with Constitutional provisions, beyond the scope of delegate or being beyond the scope of parent statute. The Court held as under:-

*In Ummatullah's case (supra), it was held that Strong presumption as to constitutionality, legislative competence, legality, reasonableness and intra vires attached to a statute is also attached with full force to subordinate legislative instruments as well, such presumption though refutable, onerous burden is cast on person challenging validity or vires of legislative instrument, on any count. In order to strike down a subordinate legislative instrument, challenger has to show that any of the*



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disqualification exist namely (a) it impinges upon fundamental rights guaranteed under the Constitution (b) it is in conflict with any Constitutional provision (c) it is beyond the legislative competence of the delegatee making it and or (d) it is violative or beyond the scope of the parent or enabling statute.

It was further held:

A subordinate legislation apart from being intra vires, the Constitution should not also be ultra vires the parent Act under which it has been made. A subordinate legislation, it is trite, must be reasonable and in consonance with the legislative policy as also give effect to the purport and object of the Act and in good faith. (Underlined for emphasis)

20. Now, applying the aforementioned test of the Act to the question under determination, it is evident that Section 18 laid down a basic and mandatory requirement of single admission test for all students seeking admission to medical or dental under-graduate program anywhere in Pakistan and empowered the Authority as defined under section 2(1)(i) of the Act and composed under Section 15 of the Act to conduct the same annually. Now perusal of the Examination Regulations clearly unveils that a comprehensive mechanism and program is chalked out to conduct the admission test on annual basis by clearly providing the whole scheme of carrying out the process and categorically stipulating that in one calendar year, a candidate can be permitted to take examination only once. Regulations 3 and 4 of the Examination Regulations are relevant in this regard, which carry forward the purpose and object provided under Section 18 of the Act. Regulation 3 provides that the Authority shall conduct or cause to be conducted in each calendar year between 1<sup>st</sup> July and 15<sup>th</sup> October, the Medical and Dental Colleges Admissions Test on dates to be notified in accordance with the structure and standards approved by the

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Council. Sub-Regulations 3 further laid down that the MDCAT exam shall be conducted through a fully computerized and secure method at examination centers in Pakistan. The eligibility for MDCAT examination and number of Attempts are provided under Regulation 4 wherein under sub-regulation 3 it is clearly provided that a person shall be permitted to take the MDCAT exam only once in each calendar year. Now putting these Regulations 3 & 4 in juxtaposition to Section 18 of the Act, does not portray any of the violations, which are necessary to strike down a piece of delegated legislation, as categorically laid down in the judgment mentioned *supra*. These Regulations are well within the object and purpose of the Act and does not deviate or run contrary or beyond the mandate of neither Section 18 nor they are inconsistent or derogatory to any fundamental rights as guaranteed under the Constitution. The expression "single admission test" as used in Section 18 does not mean that such examination is to be conducted on a single day throughout the country rather the context of the provision clearly spell out the object of such condition as to enable an eligible candidate to participate in such an annually conducted examination only "single time in a year" and not specifically "on a single day throughout the country" because the intent and context of Section 18 provides the principle which is more of a substance and less of a form. Even otherwise, Section 13 of the General Clauses Act, 1897 also states that unless the subject or context dictates otherwise, the words used in singular shall include the plural and vice versa. The Honourable Supreme Court enunciated similar principle in the case of GOVERNMENT OF PAKISTAN and others v. Messrs SAIF TEXTILE MILLS LTD. and 6 others (2003 S C M R 265) while observing as follows:-

*It needs no detailed discussion that at a time the word used in a singular form can also be construed in a plural sense to achieve the object of the law.*

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This Court in HAQ NAWAZ and another Versus BASHIR AHMAD and 2 others (2006 Y L R 3024) also reiterated the same view while holding as follows:-

*Needless to state that under the applicable rules of interpretation contained in the Federal and the Provincial General Clauses Acts, singular includes plural and vice versa.*

In these circumstances, there is no force in the argument of Examination Regulations being ultra-vires and the same are repelled with disapproval accordingly.

21. As regard the argument advanced by learned counsel for the Respondent/PMC that the Petitioners can file review before the PMC, this Court in the aforesaid judgment (**P L D 2021 Lahore 436**) has already declared the PMC as a Regulatory Body to regulate the process of admissions to all the medical colleges including private medical colleges through this mandatory test i.e. MDCAT. The relevant paragraph of the judgment is reproduced as under:

*“22. Although, the term ‘medical profession’ is not provided in the Act yet the preamble of the Act provides for establishment of a uniform minimum standard of basic and higher medical education. The function of the PMC under the Act is of Regulator, which is being regulated by (i) Council (ii) Authority and (iii) Board. So, the word ‘uniform’ clearly shows the intent and purpose of regulator i.e. PMC which can regulate the admissions to all the medical colleges including private medical colleges through this mandatory test i.e. MDCAT. The language of Section 18(1) of the Act clearly demonstrates that the Authority shall conduct annually on a date approved by the Council as per standards approved by the Board a single admission test which shall be mandatory requirement for all students seeking admission to medical or dental under-graduate program. The Commission is formed with its Authority, Board and*

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*Council as defined under Section 2 and powers and functions are given under Section 8 of the Act. Sections 10 and 15 of the Act deals with the Board and the Authority and if they are read together, the purpose of Commission to regulate the medical profession through its Council, Board and Authority is achieved for the sole purpose as mentioned in the Preamble."*

22. Upshot of above discussion is that the Petitioners have failed to make out a case for interference by this Court within the parlance of Article 199 of the Constitution because the entire process (step by step) has been published in newspapers and website (<https://www.pmc.gov.pk/>), whereupon the Applicants/Students from all over the Pakistan applied for MDCAT by taking all those steps, hence, no illegality has been found in applying the Rules, Regulations and the Act during the entire process of MDCAT 2021-2022. Therefore all these Petitions being failed to establish their merits and being not maintainable are **dismissed accordingly**.

23. Since the matter relates to the future of the Medical Students, therefore, the Petitioners, if so advised, may file their review(s) before the PMC for redressal of their grievance under the Terms and Conditions as mentioned in Paragraph No.10, for which the deadline has been extended till 29.10.2021. It is directed that if the Petitioners apply for Review, the PMC shall decide the same strictly in accordance with law within a period of one (01) week from its filing.

Copy **dasti** on payment of usual charges.

ZIA.UR.REHMAN

Approved for Reporting

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In Case No.....  
Examiner J.C.B. (Copy Branch)  
Lahore High Court, Lahore  
30

(JAWAD HASSAN)  
JUDGE

(Jawad Hassan)  
JUDGE

IN THE LAHORE HIGH COURT, LAHORE

Writ Petition No. 56763 / 2021

Rida Fatima d/o Rasheed Ali R/o H. No.17-A, Street No.83, Khawaja Park,  
Nadeem Shaheed Road, Samanabad, Lahore.

Petitioner

Versus

1. Pakistan Medical Commission through its Secretary, Regional Office, Khayaban-e-Jamia Punjab, PGMI Building 2<sup>nd</sup> Floor, Block - D, Muslim Town, Lahore.
2. Member Examinations, National Medical Authority, Regional Office, Khayaban-e-Jamia Punjab, PGMI Building 2<sup>nd</sup> Floor, Block-D, Muslim Town, Lahore.
3. National Medical Authority through its Executive Member, Regional Office, Khayaban-e-Jamia Punjab, PGMI Building 2<sup>nd</sup> Floor, Block-D, Muslim Town, Lahore.
4. Pakistan Medical Commission, Head Office, Mauve Area, G-10/4, Islamabad.
5. Ministry of National Health Services, Regulations and Coordination, Islamabad.

Respondents

AMMENDED WRIT PETITION

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Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

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*Respectfully Sheweth that :-*

1. Petitioner obtained 97.09% Marks i.e. 1068 Marks with "A" Grade out of total Marks 1100 in "Science Group" in the Secondary School Certificate (Annual) Examination, 2019 held by Board of Intermediate and Secondary Education, Lahore under the Roll No.149319 and achieved the outstanding position.

*Copy of Petitioner's "Secondary School Certificate" is annexed as Annexure "A"*

2. In "FSC PRE MEDICAL" Final examination/ Intermediate (Part-II) Annual Examination, 2021, the petitioner is looking ahead to obtain more than 96% Marks as per her brilliant appearance in the said