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JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.54112 of 2020

*ABWA Knowledge Pvt Ltd and V/S Federation of Pakistan and another
another.*

JUDGMENT

Date of hearing	21.12.2020
Petitioner(s) by	Mr. Salman Aslam Butt, Senior ASC assisted by Mr. Muhammad Shoaib Rashid, ASC.
Respondent(s) by	Ms. Sadia Malik, Assistant Attorney General for Pakistan. Barrister Ch. Muhammad Umar, Advocate for the Respondent/Pakistan Medical Commission.

JAWAD HASSAN, J. The Petitioners have invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “*Constitution*”) with the following prayer:

“In view of the above, it is humbly prayed that the Impugned Actions, including Impugned Decisions taken in the meeting dated October 02, 2020 and the Impugned Regulations dated October 02, 2020 may kindly be declared as ultra vires the provisions of the Pakistan Medical Commission Act, 2020 illegal, unlawful and without jurisdiction”.

I. CONTEXT

2. The Petitioner No.1, Abwa Knowledge Village (Private) Limited, being a private limited company, established a hospital on the outskirts of Faisalabad to provide health care facilities to general public and a teaching hospital has also been formed by them under

the name of Abwa Medical College, Faisalabad (the “*College*”) for educational purposes in medical sector. The Pakistan Medical Commission Act, 2020 (the “*Act*”) was enacted by the Parliament and Ministry of National Health Services, Regulations & Coordination, Islamabad (the “*Ministry*”) made Pakistan Medical Commission Admission Regulations 2020-2021 (the “*PMC Admission Regulations*”). The said Regulations have been challenged by the Petitioners being ultra vires to the Act. The Petitioners have also sought interpretation of Section 18 of the Act.

3. Report and parawise comments have been filed on behalf of the Respondents vehemently denying the allegations levelled in the petition and praying for dismissal of the same.

II. PETITIONERS ARGUMENTS/SUBMISSIONS

4. Mr. Salman Aslam Butt Sr. ASC/counsel for the Petitioners *inter-alia* contended that impugned actions of the Respondents are not in consonance with Sections 3(1) and 3(4) of the Act as neither the Board nor the Authority has yet been constituted therefore, the Council, without constitution of PMC, cannot perform its functions; that the Council has power to frame regulations for conduct of admissions in medical and dental colleges but in the absence of PMC, such powers could not be exercised assuming power of the Board and framing regulations in such matters as such the purported exercise of power by the Council in order to approve the standards with regard to admission test and decision with respect to conduct of the admission test are ultra-vires to the provisions of the Act; that Section 18 (1) and (2) of the Act envisage that MDCAT examination is mandatory but proviso to the said sub-section (2) provides for a temporary carve out of the said mandatory requirement by providing that the same shall apply to session 2021 and onwards and as such, on the basis of the foregoing, the session 2020-2021 is exempted from the said mandatory requirement of MDCAT.

5. Mr. Shoaib Rashid, ASC argued that The Pakistan Association of Private Medical and Dental Institutions (“*PAMI*”)

has no *locus standi* to make an application and file a petition for personal and individual grievances of its members as such no sanctity, can, therefore, be attached to the purported Agreement between PAMI and PMC nor any such agreement can bind any of the private medical or dental colleges; that Section 18(3) of the Act provides that the admission to medical or dental programs conducted by public colleges is to be regulated as per the policy of Provincial Governments, however, admission to a private college shall be in accordance with the criteria and requirements stipulated by the private colleges; that Regulations 13 and 14 of the Amended PMC Admission Regulations bars/conditionalize the unfettered rights of a private college to make admissions; that Amended PMC Regulations do not correct the inconsistencies with the provisions of the Act as was directed by this Court in its order dated 17.11.2020 passed in Writ Petition No. 55760 of 2020; that the impugned PMC Admission Regulations of the Council for conducting centralized admissions in private and dental colleges are not only violative to express provision of Section 18(3) of the Act but also against the fundamental rights of trade and business as guaranteed under Article 18 of the Constitution;

6. Mr. Salman Aslam Butt, Sr. ASC strenuously argued that Regulation 13 of the impugned PMC Admission Regulations is discriminatory as it exempts Agha Khan University and National University of Medical Sciences (“NUMS”) as well as its affiliated colleges from the operation of PMC Amended Regulations as such it is violation of Article 25 of the Constitution; that PMC Admission Regulations have been framed without seeking any input from private medical colleges including the Petitioners; that MDCAT is not mandatory upon the Petitioners for the session 2020-2021 because proviso to Section 18 (3) of the Act stipulates that the minimum weightage to be given to the MDCAT result would be fifty percent (50%) for admissions in the public colleges while the said proviso is silent vis-à-vis private colleges, which, reflects the

apparent intent of the Legislature; that there is no such requirement of minimum weightage for the private medical colleges; that the purpose of a proviso is to exempt something from the main provision, to qualify the generality of the main provision and to exclude some possible misinterpretation of it as extending to cases not intended by the legislature; that if the intention of legislature was not to exclude “Private Medical Colleges” from the minimum weightage requirement of MDCAT marks, there was no need or requirement of inserting the above referred proviso to section 18 (3) of the Act as redundancy cannot be attributed to any act of the legislature; that Section 19 (7) of the Act confers an unfettered right on all private medical and dental colleges to fix tuition fee along with ancillary fee structure on annual basis, which does not envisage any kind of finalization or review or supervision by PMC but PMC Admission Regulations 24 and 27 of the Amended Regulations are in conflict and derogation of Section 19 (7), which empowers PMC to review and finalize the fee proposed by medical and dental colleges; that a rule/regulation cannot go beyond the scope of parent statute as such the impugned PMC Admission Regulations being beyond the mandate and scope of section 18 (3) of the Act, are liable to be held as ultra vires. In order to strengthen the arguments, Mr. Salman Aslam Butt, Sr. ASC has relied on “SUO MOTU CASE NO.11 OF 2011” (PLD 2014 Supreme Court 389), “SUO MOTU CASE NO.13 OF 2009” (PLD 2011 Supreme Court 619), “HAMDARD DAWAKHANA versus COMMISSIONER OF INCOME-TAX, KARACHI” (PLD 1980 Supreme Court 84), “EAST AND WEST STEAMSHIP CO. versus PAKISTAN” (PLD 1958 Supreme Court (Pakistan) 41), “MUHAMMAD UNEEB AHMED Versus FEDERATION OF PAKISTAN through Secretary, Ministry of Science and Technology, Islamabad”(2019 MLD 1347), “PAKISTAN through Secretary Finance, Islamabad Versus ARYAN PETRO CHEMICAL INDUSTRIES (PVT.) LTD., PESHAWAR”(2003 SCMR 370), “I.A. SHARWANI versus

GOVERNMENT OF PAKISTAN” (1991 SCMR 1041), “AFTAB AHMED KOLACHI versus FEDERATION OF PAKISTAN through Secretary, Ministry of Finance, Islamabad”(2009 PLC (CS) 258), “LAHORE ELECTRIC SUPPLY COMPANY LIMIED (LESCO) Versus NATIONAL ELECTRIC POWER REGULATORY AUTHORITY” (PLD 2018 Isb 20) and “WELLCOME AGENCIES (PRIVATE) LIMITED COMPANY”(1988 CLC 206).

III. RESPONDENTS ARGUMENTS/SUBMISSIONS

7. Barrister Ch. Muhammad Umar, Advocate for the Respondents submitted report and parawise comments and raised preliminary objection to the maintainability of the petition on the ground that the Petitioners have not impleaded PMC as Respondent in the titled petition because Medical & Dental Council is merely a component of PMC in terms of Section 3(4) of the Act. He argued that the Petitioners have no locus-standi to challenge the compulsory requirement of MDCAT under Section 18 of the Act as it is not only a mandatory requirement imposed on students seeking medical admission but also a precondition to grant license to qualified doctors. He referred to Section 18(3) of the Act according to which criteria stipulated for the private medical and dental colleges may in addition to MDCAT have any additional entrance test subject to any condition imposed by the relevant university to which such college is affiliated. Barrister Ch. Muhammad Umar strenuously argued that the criteria made by the Petitioners as advertised in prospectus is incomplete as it does not specify how much weightage would be given to the marks of F.Sc, MDCAT and the aptitude test as such it is clear violation of Section 18(3) of the Act. He further argued that as per the provisions of the Act and PMC Admission Regulations, every private college is required to publicly represent its fixed fee for the entire period of the program while separating the optional fees but the Petitioners have exorbitantly increased the rate of fee in order to earn windfall profits from potential students without affording any transparency. He adds that Section 19(7) of the Act

must be read with Section 19(8) of the Act as such PMC has right to seek explanation for any proposed fee structure and the colleges have been required to provide such explanation. Next stated that the PMC and PAMI (the representative of all private medical colleges), agreed upon resolution with regard to admission in the private colleges in terms of Section 18 of the Act and as such the Petitioners are estopped from raising any objection at this stage. He has placed reliance on “MUHAMMAD AKRAM versus Mst. ZAINAB BIBI”(2007 SCMR 1086), “DISTRICT BAR ASSOCIATION, RAWALPINDI versus FEDERATION OF PAKISTAN”(PLD 2015 SC 401), “MUHAMMAD ANWAR versus Mst. ILYAS BEGUM”(PLD 2013 SC 255), “PAKCOM LIMITED versus FEDERATION OF PAKISTAN”(PLD 2011 SC 44), “MANSAB ALI versus AMIR”(PLD 1971 SC 124), “MUHAMMAD ABDUS SALAM versus CHAIRMAN, EAST PAKISTAN ELECTION AUTHORITY”(PLD 1965 SC (Ind) 231), “SANCHIT BANSAL versus JOINT ADMISSION BOARD (JAB)”(2012 SCMR 1841), (AIR 1984 SC 1543) and (AIR 2009 SC 2322).

8. Arguments heard and record perused.

IV. DETERMINATION BY THE COURT UNDER ARTICLE 201 OF THE CONSTITUTION

9. On the issues raised by learned counsel for the Petitioners, this Court will determine and decide the question of law based upon the interpretation of Section 18 of the Act by enunciating the principles of law elicited from the judgments of Supreme Court of Pakistan, which is binding on this Court under Article 189 of the Constitution.

10. This petition was filed by the Petitioners on 24.10.2020 by challenging the First Council Meeting dated 02.10.2020 as well as PMC Admission Regulations 2020-2021 which came up for hearing on 26.10.2020. While the petition was pending, the PMC amended its regulation in view of the order dated 17.11.2020 on which the Petitioners have raised certain objections. The main objection of the

Petitioners was that the PMC Admission Regulations are in conflict with certain provisions of the Act as such PMC be restrained from holding MDCAT without constituting the National Medical Authority (the “**Authority**”) and the National Medical & Dental Academic Board (the “**Board**”). It is pertinent to mention here that during the pendency of this petition; the *Ministry* notified the members of Board in terms of Section 10(1) of the Act vide Notification dated 12.11.2020 while the Authority was established by the Council in terms of Section 15(1) of the Act vide Notification dated 16.11.2020. Therefore, the contention of the Petitioners regarding non-constitution of the Board and the Authority is met with.

11. Moreover, during the pendency of this petition, another petition was filed by PAMI raising certain reservations regarding admission to private colleges and the enforcement and application of Section 18 of the Act which were ultimately resolved between the PMC and PAMI in terms of Agreement and this Court allowed the petition vide order dated 17.11.2020 (the “**Settlement Order**”), relevant portion of which is reproduced as under:-

“In view of the above, keeping in mind the future concerns of the medical students and in order to avoid delay or any legal hindrance in smooth running of the admission process for the academic year 2020-2021 only, this joint application, which is also supported by affidavits of both the parties, is allowed. Resultantly, the Agreement shall be made part of the titled writ petition as Mark-A, which is also disposed of in terms of the aforesaid understanding/consensus arrived at between the parties. As, according to learned counsel for the Petitioners, certain provisions of the Regulations are not in consonance with the mandate of the Act, therefore, the PMC is directed to make necessary amendments in the Regulations for securing future of medical students in better way”.

12. Pursuant to aforesaid *Settlement Order*, PMC amended its PMC Admission Regulations 2020-2021 which are annexed at Annex-C of the report and parawise comments of the Respondents.

13. So far as the argument of learned counsel for the Petitioners that the Agreement between PAMI and PMC is not binding on the Petitioners, is concerned, it is observed that the PAMI is the representative association of all private medical and dental colleges throughout Pakistan and works with Government, PMC and UHS to provide quality education, finest research and secure the interests of institutions, its employees and members of the Association. For the sake of arguments, if this stance of the Petitioners is admitted as correct, then it will, not only go against the Agreement settled between the PAMI and PMC but also it will amount to review of the *Settlement Order* which will further result into contradictory interpretations of Section 18 of the Act and an unequal treatment with all private medical and dental colleges. Since the Petitioners being a private medical college are the members of the PAMI and have been reaping the benefits cultivated out of all other decisions taken by PAMI in the past, as such its decisions, agreements with the Government or PMC, made from time to time, are also obligatory and binding on them. Thus, this argument of the Petitioners is not tenable and accordingly turned down.

14. In respect of question raised by the Petitioners with regard to applicability of MDACT, this issue has already been settled between the PAMI and PMC by this Court on 17.11.2020 through the *Settlement Order* in the following manner:

- a. Central Induction – There shall be no system of Central Induction or the like enforced in future (2021-22) admissions. PMCs automated system / portal shall only be used for purposes of admissions to the upcoming admission for the January 2021 session. The system shall not be used for the purpose of admission in any Medical College in the future.*
- b. Automated System Operation -PMC shall put up the online admission portal with an automated system. Students seeking admission to Private Colleges will apply on the portal submitting their F.S.c / HSSC*

marks. When applying a student will have the choice to select as many colleges as they are interested in applying to. Application fee charged by PMC for use of the portal will be Rs.500 paid to PMC by the student for the automated system.

- c. MDCAT and Aggregate** – PMC having conducted the MDCAT examination as per the Act shall calculate weightage up to 80% of the aggregate to determine merit of each applying student. This shall be allocated 50% to MDCAT and 30% to FSc.

Having calculated 80% of the aggregate merit, PMC shall forward the total list pertaining to all the relevant colleges on 1st January 2021, who shall carry out their own interview which shall have a weightage of 20%. Each college will display on their website the structure of the interview for the information of students before 25th November 2020.

The college shall apply the performance of the interview and consolidated with the MDCAT / FSc aggregate of the student. The college shall finalize the total aggregate out of 100% for final merit of the students. This aggregate shall be used by the college for the purpose of admission to the MBBS / BDS classes. The colleges shall provide to PMC the final merit of all applying student after calculation of the 100% merit aggregate on completion of interviews.

The college shall not seek to admit any student other than students who have applied to the college as per the list provided by PMC. The admissions shall be concluded by all colleges by 15th February 2021.

If any seats remain vacant after 15th February 2021, each college shall have 7 days to fill such seats from students who may have applied to other colleges but did not obtain admission in such colleges, subject to them being interviewed by the college and admission being on merit.

The admitted student will pay the fee advertised by the college in advance directly to the college and confirm their admission.

- d. Post Admissions** - Each college will publish on its website the final admitted list of students and send its final admitted list to its affiliated University who will certify the same and send to PMC after verifying the students F.S.c degree and marks etc. directly.

15. As all the medical colleges agreed with the resolution in compliance with this Court's order, therefore, at this stage, when the admissions are in process, the Petitioners cannot by-pass the law and

the arrangement made hereinabove. It is inviolable obligation of every citizen/medical colleges to obey command of the Constitution, the Law and the Policies made by the Government. Article 5(2) of the Constitution states that:

*“Obedience to the **Constitution** and **law** is the inviolable obligation of every citizen wherever he may be and of every other person for the time being within **Pakistan**.”*

16. The word “inviolable” used in Article 5(2) of the Constitution means that it is never to be broken and infringed. In the case of “*President Balochistan High Court Bar Association and others versus Federation of Pakistan and others*”(2012 SCMR 1784), August Supreme Court of Pakistan has held that *“to be loyal to the State is the basic duty of all citizens and they have to be obedient to the Constitution and the law, wherever they may be. Thus, adherence to the Constitution and the Law by the citizens is mandatory. Non-compliance of the Constitution and the Law makes a citizen liable for action, in accordance with law”*. It would also include principles of natural justice, procedural fairness and procedural propriety. Laws are always made not to be violated but to be obeyed. In *Suo Motu Case No.15 of 2009 (PLD 2012 SC 610)* August Supreme Court of Pakistan held that *“it is expected from every citizen of Pakistan that he shall be loyal to the State and the basic duty of every citizen is to be obedient to the Constitution and law as ordained under Article 5 of the Constitution.”*

17. Although certain vital issues between PMC and PAMI were resolved vide *Settlement Order* yet the Petitioners are insisting upon the interpretation of Section 18 and 19(7) of the Act alongwith amended PMC Admission Regulations mainly on the grounds *firstly*, that MDCAT shall be mandatory for all students who have been enrolled in medical or dental under-graduate programs in the year 2021; *secondly*, the requirement of admission in private

medical colleges in terms of Section 18(3) of the Act; and *thirdly* the fee structure provided in Section 19(7) of the Act.

V. PMC BEING A REGULATOR

18. Before proceeding further, it is imperative to discuss the purpose and object of the Act. The preamble to a statute is though not an operational part of the enactment but it is a gateway, which opens before us the purpose and intent of the legislature, which necessitated the legislation on the subject and also shed clear light on the goals which the legislator aimed to secure through the introduction of such law. The preamble of a statute, is therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law. The August Supreme Court of Pakistan in “DIRECTOR GENERAL, FIA AND OTHERS Versus KAMRAN IQBAL and others” (2016 SCMR 447) laid down the similar principle by holding that :-“*indeed, preamble to a Statute is not an operative part thereof, however, as is now well laid down that the same provides a useful guide for discovering the purpose and intention of the legislature. Reliance in this regard may be placed on, the case of Murree Brewery Company Limited v. Pakistan through the Secretary of Government of Pakistan and others (PLD 1972 SC 279). It is equally well-established principle that while interpreting a, Statute a purposive approach should be adopted in accord with the objective of the Statute and not in derogation to the same.*”

19. The Preamble of the Act provides for **regulation** and control of medical profession and all the teaching institutions which are part of medical profession. For the ease of reference, the preamble of the Act is reproduced hereunder:

“to provide for the regulation and control of the medical profession and to establish a uniform minimum standard of basic and higher medical education and training and recognition of qualifications in medicines and dentistry”.

20. It is unequivocal that law is but a conscious reflection of a sovereign command which always has a clear history, aim and

purpose behind its enactment and also a clear objective and purpose ahead of it. Henceforth, a law cannot be read or truly understood in isolation with the very purpose it was enacted for. Accordingly, the purposive approach of construction provides the Court objective and necessary aid to unearth the underlying true intention of the legislature. The Apex Court in “SAIF-UR-REHMAN Versus ADDITIONAL DISTRICT JUDGE, TOBA TEK SINGH and 2 others” (2018 S C M R 1885) has also held that:-“It is now settled law that a purposive rather than a literal approach to interpretation is to be adopted while interpreting Statutes. An interpretation which advances the purpose of the Act is to be preferred rather than an interpretation which defeats its objects. Reference, in this behalf, may be made to the judgments reported as Federation of Pakistan through Ministry of Finance and others v. M/s. Noori Trading Corporation (Private) Limited and 14 others (1992 SCMR 710) and Hudabiya Engineering (Pvt.) Limited v. Pakistan through Secretary, Ministry of Interior, Government of Pakistan and 6 others (PLD 1998 Lahore 90). (emphasis supplied)

21. In this connection, this Court must also address the decision of Lord Griffiths of the House of Lords in “HART Versus PEPPER (INSPECTOR OF TAXES)” cited as [1992]3 WLR 1032 = [1992] UKHL 3 and reported as (1993 SCMR 1019) highlighted the significance of purposive approach of interpretation by observing that:- “the ever increasing volume of legislation must inevitably result in ambiguities of statutory language which are not perceived at the time the legislation is enacted. The object of the Court in interpreting legislation is to give effect so far as the language permits to the intention of the legislature. If the language proves to be ambiguous I can see no sound reason not to consult Hansard to see if there is a clear statement of the meaning that the words were intended to carry. The days have long passed when the Courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The

Courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted.”

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 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.

23. The Division Bench of this Court in “MST. ALIA MEHBOOB VERSUS UNIVERSITY OF SARGODHA THROUGH VICE-CHANCELLOR AND 6 OTHERS” (2015 CLC 378) adjudicated the grievance of foreign students/children of expatriate Pakistanis who were granted provisional admission by a private medical college and despite payment of all the dues their admissions were subsequently cancelled as Higher Education Commission did not confirm their seats because the private medical college did not fulfill the procedure for application as prescribed by Higher

Education Commission/PM&DC and the University of Health Sciences. His Lordship Justice Ijaz ul Ahsan, as his Lordship then was, while expressing the opinion of the Bench in this judgment held that Higher Education Commission being **Regulator** should exercise vigilance and exercise strict control on medical and dental colleges, which grant such illegal and unlawful admissions. It was held that *“it must be highlighted that medical colleges/universities cannot grant direct admissions and that such admissions if granted are not recognized by the Higher Education Commission or the University of Health Sciences. The only channel for such admission is to apply through Higher Education Commission. Further the Higher Education Commission being regulator should be vigilant and strict. It should take prompt action against medical and dental colleges which grant such illegal and unlawful admissions.”* (Emphasis supplied).

VI. INTERPRETATION OF SECTION 18 OF THE ACT

24. Now coming to reservations raised by the Petitioners with regard to seeking interpretation of Sections 18 and 19(7) of the Act. 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 under-graduate 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 under-graduate 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.

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 under-graduate 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 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.

26. So far as the argument of learned counsel for the Petitioners, Mr. Salman Aslam Butt, Sr.ASC that Section 18 (3) of Act exempts the Private Medical Colleges from MDCAT is concerned, same is misconceived as said Section says that admissions in Medical & Dental Colleges shall be regulated by the policy of Provincial Governments strictly on merit. It further says that if any private Medical College wants to lay down any **“Additional”** criteria for

admission, it can take an Entry Test for the admission in its College in addition to MDCAT. The term “Addition” is defined as ‘A structure that is attached to or connected with another building that predates the structure; an extension or annex.’ (**Black’s Law Dictionary, Eleventh Edition**) whereas the term “Additional” ‘involves the idea of joining or uniting one thing to another so as thereby to form one aggregate.’ (**ADVANCED LAW LEXICON, 4th Edition**). In these circumstances, the contention of learned counsel for the Petitioners that Regulations No.13 and 14 are ultra vires of the Act is also misconceived as these Regulations are continuation and explanation of Section 18(3) of the Act and in line with the Section 18(3) of Act which authorizes the Private Medical Colleges for taking **Additional** entry test for admission in Private Medical Colleges in addition to MDCAT. The Agha Khan University and National University of Medical Sciences (“NUMS”) are taking **additional** entry test in addition to MDCAT as previously they were conducting the same too, meaning thereby if any student wants to get admission in above said medical universities, he has to qualify the entrance test of said university as well and in case of failure, he will not be eligible for admission in above said universities even though he has passed the MDCAT. So these Regulations are not ultra vires or violative of the Act.

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 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.*”

28. As discussed above, Section 18 (1) of Act provides MDCAT as mandatory requirement for **All Students** seeking admission to Medical or Dental under graduate program. The plain language of sub Section 1 of 18 of Act clearly shows that the law does not make any **Bifurcation** among the students of Public or Private College rather Legislator used the word “All Students” anywhere in Pakistan. If for the sake of arguments, this contention of the Petitioners is admitted as correct, then it will open new pandora box and will be a violation of Article 25 of the Constitution as well as the very basic object of this Act which is enacted with an aim of

ensuring **Uniform** minimum standard of medical education. It is also settled principle of interpretation that where the intention of the legislature is clear and the object for which law has been enacted is well reflected in the statute, then courts are not allowed to interpret such a law in a manner which could impede or defeat the object for which such law has been enacted. The Hon'ble Supreme Court of Pakistan in "BANK OF PUNJAB and another Versus HARIS STEEL INDUSTRIES (PVT.) LTD. and others"(PLD 2010 Supreme Court 1109) observed in para 64 of judgment that "in view of the fact that no interpretation was permissible which could have effect of defeating the clear intention and object of legislature and finally in view of, the, fact that what could. not be achieved directly could not be allowed to be accomplished indirectly."

29. So far as the objection of the Petitioners with regard to fee structure of all medical and dental colleges is concerned, Section 19(7) of the Act deals with the fee (breakdown of fee of entire program of study for the students who are seeking enrollment/admission in those medical colleges). This Section also bars the medical colleges from enhancing the fee during the entire program. It is also imperative for all the medical colleges prior to initiating annual admission process to publicly declare the fixed tuition and all ancillary fee structure for the entire program of study. Section 19(8) of the Act binds all medical colleges to submit their annual financial statement to the Authority. So far as the Regulations No.24 to 29 are concerned, the same are in continuation and explanation of Section 19(7)(8) and of the Act as these Regulations bind the medical colleges to give justification of fee fixed by them to PMC.

30. Prima-facie it appears that the Petitioners want to get liberty of unchecked authority regarding fixation of fee as per their own wishes, which under the law is not permissible and regarding which PAMI, an Association which also holds membership of the Petitioners, has also agreed on the resolution of certain disputes

which admittedly have been resolved through the *Settlement Order* hence, the Petitioners objections do not hold water and thus turned down.

31. The purpose and intent behind the enactment of the Act is thus imperatively clear and unambiguously explicit and palpable that PMC is created as a regulatory authority, for the regulation and control of the medical profession and to establish a uniform minimum standard of basic and higher medical education in medicine and dentistry. The functions of a Regulator are comprehensive and exhaustive ranging from formulation of policies, regulations etc. in furtherance of the cause of legislation to administratively govern and oversee the implementation of those policies/rules/regulations to ensure that the same are observed in the very spirit in which the law intended it. If a Regulator is barred from exercising any of such functions, the purpose of law will not only be compromised but the intent behind making of such law will also be jeopardized.

32. In view of the above discussion, this petition stands **dismissed** having no legal force.

**(JAWAD HASSAN)
JUDGE**

APPROVED FOR REPORTING

JUDGE

*Usman**