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IN THE LAHORE HIGH COURT BAHAWALPUR BENCH BAHAWALPUR
(Constitutional Jurisdiction)

Writ Petition 910 / 2022 / BWP

Bahawalpur Medical & Dental College (BMDC), Main Ahmadpur Road, Opposite, National Highway & Motorways Patrol Office, Bahawalpur Thorough its Chairman Prof. Dr. Muhammad Rafiq Sabir

...Petitioner

VERSUS

1. Pakistan Medical Commission ("PMC") through its Secretary, Mauve Area, G-10/4, Islamabad
2. National Medical Authority through Member Education & Evaluation, Mauve Area, G-10/4, Islamabad
3. Member Education, National Medical Authority, PMC, Mauve Area, G-10/4, Islamabad
4. Member Executive, National Medical Authority, PMC, Mauve Area, G-10/4, Islamabad
5. University of Health Sciences through its Vice-Chancellor, Khayaban Jamia-e-Punjab, Lahore

...Respondents

Writ Petition under article 199 of the Constitution of Pakistan, 1973

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Form No.HCJD/C-121

ORDER SHEET

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

Writ Petition No.910 of 2022

Bahawalpur Medical & Dental College

Versus

*Pakistan Medical Commission through
its Secretary and others*

S.No.of order/ Proceeding	Date of Order/ Proceeding	Order with signature of Judge, and that of parties' counsel, where necessary
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08.02.2022 M/s. Muhammad Nawazish Ali Pirzada and Muhammad Abbas Azeem, Advocates for the petitioner.
Mr. Khalil-ur-Rehman Khan, Deputy Attorney General for Pakistan (On Court's call).
Barrister Ch. Muhammad Umer, Advocate/Legal Advisor for respondents No.1 to 4.

Through this writ petition, the petitioner has challenged the order dated 31.01.2022 issued by respondent No.3, whereby recognition granted to it by the Pakistan Medical Commission through letter dated 21.01.2022 has been suspended.

2. At the very outset, learned Legal Advisor for respondents No.1 to 4 has raised an objection with regard to the maintainability of the titled writ petition in view of the alternate remedy of appeal provided before the Medical Tribunal under Section 37 of Pakistan Medical Commission Act, 2020 ("Act"). In support of the above contention, he has relied upon the order of this Court dated 13.01.2022 passed in Writ Petition No.4146 of 2021 at Rawalpindi Bench. On Court's query as to whether any jurisdiction is conferred by the Act upon the Authority to suspend (withdraw on a temporary basis) recognition whereas provisions of Section 31 of the Act suggest otherwise, learned Legal Advisor for the said respondents states that the impugned order has been issued on approval of the suspension of the recognition by the Council on 31.01.2022.

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3. In rebuttal to the above, learned counsel for the petitioner states that Section 37 of the Act cannot be read in isolation from the provisions of Section 36 of the Act, therefore, the remedy of appeal before the Medical Tribunal, as provided under Section 37 of the Act is available to any person aggrieved by an act which is an offence under the Act to enable him to institute a complaint or claim before the Medical Tribunal.

4. Heard. Record perused.

5. To appreciate respective contentions of the learned counsels for the parties, it would be advantageous to reproduce the relevant provisions of the Act:-

Section 36:- Cognizance of offences-(1) *No court shall take cognizance of any offence or matter under this Act to which the jurisdiction of the Medical Tribunal extends.*

(2) *Any person aggrieved by an act which is an offence under this Act may institute a complaint or claim before the Medical Tribunal.*

Section 37:- Appeals to the Medical Tribunal-(1) *Any person including an employee of the Commission aggrieved by any order or direction of the Commission, including the Council, Authority or disciplinary committee, under any provision of this Act, or rules or regulations may prefer an appeal only before the Medical Tribunal within thirty days of the date of communication of the impugned order or direction.*

(2) *An appeal to the Medical Tribunal shall be in such form, contain such particulars and be accompanied by such fees as may be prescribed.*

Section 2 definitions —(1) in this Act, unless there is anything repugnant in the subject or context—

(i) **“Authority”** means the National Medical Authority established under this Act;

(iv) **“Commission”** means the Pakistan Medical Commission established under section 3;

 (vi) **“Council”** means the Medical and Dental Council constituted under this Act;

(xx) **“Tribunal”** means the Medical Tribunal as constituted pursuant to the Medical Tribunal Act, 2020;

6. From perusal of Section 36 of the Act, it is abundantly clear that while sub-section (1) thereof embodies an ouster clause that ousts jurisdiction of any other court to take cognizance of any offence or matter under the Act to which jurisdiction of the Medical Tribunal extends, sub-section (2) thereof confers original jurisdiction upon the Medical Tribunal to provide remedies of a complaint or claim to any person aggrieved by an act which is an offence under the Act. Needless to observe here that the original jurisdiction conferred under Section 36(2) of the Act provides remedies to an aggrieved person on criminal as well as civil sides i.e. a criminal complaint and a civil claim in relation to an act which constitutes an offence under the Act.

7. It is apparent from the plain reading of Section 37(1) of the Act that it confers appellate jurisdiction upon the Medical Tribunal in contradistinction to the original jurisdiction visualized under Section 36 of the Act. The remedy of appeal under that Section is available to any aggrieved person including an employee of the Commission. The word “person” has not been defined in the Act, however, it has been judicially defined by the Hon’ble Supreme Court of Pakistan in the case of Executive Engineer, Central Civil Division Pak. PWD Quetta versus Abdul Aziz and others (PLD 1996 SC 610) to mean a human being or a legal person. Such remedy is available against any order or direction of the Commission including the Council, Authority or Disciplinary Committee under any provision of the Act or Rules or Regulations. Limitation of thirty days from the date of communication of the impugned order or direction is also provided in the said Section. It is, therefore,

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abundantly clear that original and appellate jurisdictions of the Medical Tribunal under Section 36(2) and 37(1) of the Act are independent of each other and argument of the learned counsel for the petitioner that the aforementioned provisions cannot be read and given effect in isolation from each other, is apparently without force.

8. Legislature is competent to exclude jurisdiction of a court, however, there exists a presumption against the ouster of jurisdiction. Any law or statutory provision which denied access to courts was to be construed strictly. Ouster of jurisdiction must either be explicitly expressed or clearly implied and is not to be readily inferred. Language used by the legislature in this regard ought to show express and unequivocal manifestation of legislative intent to exclude jurisdiction of the courts. If language of an ouster clause is so clear and unmistakable that it left no doubt as to intention of the legislature in ousting jurisdiction in all circumstances, then the same should be given effect. Reliance in this regard is placed on the cases of Karamat Ali and another v. Muhammad Younas Haji and others (PLD 1963 SC 191); Muhammad Ismail and others v. The State (PLD 1969 SC 241); and Abbasia Cooperative Bank (Now Punjab Provincial Cooperative Bank Ltd) and another v. Hakeem Hafiz Muhammad Ghaus and 5 others (PLD 1997 SC 3). If an ouster of jurisdiction clause is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction of the court. Reliance in this regard is placed on decision of House of Lords (UK) in the case of Anisminic Limited versus the Foreign Compensation Commission and another {{1969} 1 All E.R. 2008}.

9. As regards scope of Section 36(1) of the Act, suffice it to say that the ouster of jurisdiction therein is confined to taking of cognizance of any offence or matter under the Act to which the jurisdiction of the Medical Tribunal extends i.e. the matters falling within the original and the appellate jurisdiction of the Medical Tribunal under the Act. Needless to observe here that conferring of jurisdiction under the Act does not control, curtail or restrict the

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jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 to entertain and decide a constitutional challenge qua *vires* of any provision of the Act, Rules or Regulations made thereunder.

10. The remedies provided under Sections 36 and 37 of the Act are meant to be efficacious in view of constitution of the Medical Tribunal. Such Tribunal constituted under the Medical Tribunal Act, 2020 consists of the Chairman who has been a Judge of the High Court appointed on nomination by the Chief Justice of Pakistan and other members half of whom are to be Judges of the High Court and remaining half to be technical members with suitable professional qualifications and experience in the medical fields.

11. Adverting now to the facts of this case, the impugned order dated 31.01.2022 has been communicated to the petitioner by the Member Education, National Medical Authority. Regardless whether the impugned order has been passed by the Authority or the Council, the same is appealable under Section 37 of the Act before the Medical Tribunal. The petitioner has alleged various illegalities and jurisdictional defects in the titled writ petition attributable to respondents No.1 to 4 while passing the impugned order, which this Court does not consider appropriate to dilate upon in view of the objection qua maintainability of the instant petition.

12. For the foregoing reasons, this writ petition is **dismissed** being not maintainable since the petitioner has an alternate remedy provided to it under Section 37 of the Act.

sd
(RAHEEL KAMRAN)
JUDGE

*P.A. Manzoor**

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[Signature]
11/2/22
SUPERVISOR
COURT
Bahawalpur