

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI

C.P. Nos.D-4953, 5036, 5158, 5237 of 2020

Date	Order with signature of Judges
-------------	---------------------------------------

Present

Mr.Justice Muhammad Ali Mazhar
Mr.Justice Adnan Iqbal Chaudhry

C.P. No.D-4953 of 2020 :

Peoples University of
Medical & Health Sciences
for Women & others vs.
Pakistan & others

C.P. No.D-5036 of 2020 :

Ramsha Haider & others
vs. The Federation of Pakistan
& others

C.P. No.D-5158 of 2020 :

Dr. Waris Ali & others
vs. Pakistan & others

C.P. No.D-5237 of 2020 :

Gautam Dawani & another
vs. Federation of Pakistan
& another

Date of hearing 11.11.2020.

Mr. Sarmad Hani, Advocate for the Petitioners in C.P. Nos.D-4953 & 5158 of 2020 assisted by Mr. Saadi Sardar, Adv.

Mr. M. Jibran Nasir, Advocate for the Petitioners in C.P. No.D-5036/2020.

Ms. Umaimah Mansoor Khan & Mr.Zeeshan Bashir Khan, Advocate for the Petitioners in C.P. No.D-5237 of 2020.

Mr. Zeeshan Abdullah, Advocate for the P.M.C. along with Mr. Adnan Abdullah, Advocate.

Mr. Munir Ahmed Rajpar, Advocate for N.T.S.

Mr. Kashif Sarwar Paracha, Acting Additional Attorney General.

Mr.Hussain Bohra, Assistant Attorney General.

Mr. Sheharyar Mehar, Assistant Advocate General.

Mr. Gulshan Ali Memon, V.C. Peoples University of
Medical & Health Sciences.

Muhammad Ali Mazhar-J: Heard the arguments. For reasons to follow, we dispose of the subject petitions by a common order as follows:

(i) Sections 4 and 18 of the Pakistan Medical Commission Act, 2020 are *intra vires* the Constitution of Pakistan.

(ii) PMC Admission Regulations 2020-2021 made by the Medical & Dental Council under section 8 (2) (f) of the PMC Act, 2020 have been framed with lawful authority and all previous regulations have been repealed in terms Section 50 of PMC Act 2020. As a consequence thereof, the concept/scheme of holding MDCAT by Admitting University ceased to exist as provided under Section 18 of the PMC Act, 2020.

(iii) The learned counsel for the PMC has shown us two different syllabus. The last revised syllabus was produced by PMC's counsel on 27.10.2020. The PMC has taken the plea that for MDCAT a common syllabus has been compiled so that no topic should be outside of any existing recognized syllabi of FSC in Pakistan. On 23-10-2020, the Medical & Dental Council published the following announcement:

“Official Announcement

Syllabus Clarification

1. *MDCAT common syllabus has been created on the singular principle that no topic is outside any of the existing recognized syllabi of FSC in Pakistan. It has been reviewed by a committee of provincial universities and IBCC.*

2. *The question bank for MDCAT paper is also based on the singular principle that no question appears which is outside any of the existing recognized syllabus of FSC in Pakistan*

3. *If any question appears in the paper which is outside of any syllabus, it shall be removed from scoring by the Examination Paper Review Committee immediately for all students.*

4. *Students appearing in the MDCAT exam will be provided an objection form at the examination center in which they can record any objection to any question they believe is outside the syllabus of the relevant Board. (underlining supplied for emphasis).*

5. All objections will be reviewed immediately after completion of the MDCAT exam on 15th November 2020 and any question found to be outside the identified syllabus shall be removed from the scoring.”
(underlining supplied for emphasis)

6. All objections being communicated regarding any topics at this time are also being constantly reviewed by the relevant committee finalizing the question bank of the paper”.

Despite asserting and claiming a common syllabus to all, the above announcement has been made which created uncertainty and gross confusion and perplexity in the minds of all applicants. Now the question paper of the MDCAT would be subject to a process of objection and review, which ironically compromises its very structure and standard and is sure to open a flood-gate of challenges subsequent to the MDCAT throughout the country. This is quite a unique idea that every applicant will be provided objection form at the time of entering into examination hall, so first he should be obliged to do audit exercise as to how many questions are out of his syllabus. Much time of the candidate would be lapsed and consumed to go through the entire question paper as an examiner and then filling the objection forms. No further mechanism has been provided in the above announcement as to how and when the students appearing in the MDCAT will come to know whether objections raised by them were considered and the question considered by them to be outside the identified syllabus have been removed from scoring or not. Such unreasonable and nonstandard conditions amount to create hardship, distress and uncertainty amongst the candidates and their future is also on stake unless the proper syllabus is made out by the competent authority with due deliberation and examination of FSC syllabus of country to make out a common syllabus without any doubts so that the candidates should not be asked to fill objection forms in the examination hall.

(iv) It is an admitted position that National Medical & Dental Academic Board has not been constituted under Section 10 of the PMC Act 2020 which has been vested various powers and functions under Section 13 of the PMC Act including the powers to formulate

the examination structure and standards for the MDCAT for approval of the Council, therefore without constituting and notifying the National Medical & Dental Academic Board, MDCAT cannot be conducted.

(v) It is also an admitted position that no National Medical Authority, has been constituted under Section 15 of PMC Act 2020, however the learned counsel for the PMC produced copies of seven office orders issued by President of the Council for temporary appointment of members of the National Medical Authority. The appointment of temporary members to the National Medical Authority made by the Medical & Dental Council on 05-10-2020, said to be in exercise of powers under sub-section (2) of section 51 of the PMC Act, 2020 are beyond the scope and compass of the said transitory provision. We must elucidate here that under sub-section (1) of Section 51 (Transitory Period), it is the Federal Government who shall provide officers on deputation for a period not exceeding 90 days as may be requested by the Council to assist in the operations of the Commission until members, officers and necessary employees of the Commission are appointed; whereas in contrast, sub-section (2) only envisages the appointment of persons by the Council on contract basis; so in our considered view, the niceties of sub-section (2) of Section 51 of PMC Act, 2020 cannot be stretched or applied for the appointment of members of National Medical Authority on temporary basis. Furthermore, we have not been shown any compliance of sub-section (3) of section 15 of the PMC Act, 2020 which in fact explicates that the Federal Government on the recommendation of the Council shall from amongst the members listed in clauses (a) to (c) of sub-section (1) (of Section 15 of the PMC Act, 2020), appoint one member as the executive member who shall act as the executive and administrative head of the authority to exercise such functions in accordance with Regulations as may be made by the Council. At present no head of the National Medical Authority has been appointed which has been vested various powers under Section 16 of the PMC Act including the powers to conduct all examinations

provided for under the Act; whereas under Section 18 (1) of the PMC Act, it is categorically mentioned that the National Medical Authority shall conduct the MDCAT on a date approved by the Council and as per standards approved by the National Medical & Dental Academic Board.

(vi). The constitution of the commission is provided under Section 3 of the PMC Act 2020. According to sub-section 4 of Section 3 of the Act, the Pakistan Medical Commission is consist of (a) the Medical and Dental Council; (b) the National Medical and Dental Academic Board and (c) the National Medical Authority consisting of members as provided under Section 15. The Connotation and magnitude of this section is quite meaningful and carrying great weight that every component of Pakistan Medical Commission has much importance and indispensable. In the absence of a validly constituted National Medical Authority and not constituting the National Medical & Dental Academic Board, the Pakistan Medical Commission is restrained from holding the MDCAT scheduled to be conducted on 15-11-2020. However, the competent authority under Sections 10 and 15 of the PMC Act, 2020 shall within 15 days hereof appoint the National Medical & Dental Academic Board and the National Medical Authority in line with the said provisions; thereafter, within 10 days, the National Medical & Dental Academic Board shall review the formulation of the examination structure and standards for the MDCAT and announce common syllabus thereafter MDCAT shall be conducted through National Medical Authority on a date to be fixed and announced afresh at the earliest. All applicants who had applied to the PMC and their application forms were accepted before the cut-off date shall be allowed to attend the MDCAT with their same registration and admit cards if any issued to them.

(vii) The reliance placed by learned counsel for PMC on the judgment dated 06-11-2020 passed by the Lahore High Court in W.P. No. 55685/2020 is misplaced inasmuch as, in that case the plea of the petitioner was that MDCAT all across Pakistan should be held on

the basis of syllabus prescribed by University of Health Sciences, Lahore in June 2020, which plea was rejected. Therefore, that case is completely distinguishable as it did not involve questions of non-compliance of the provisions of the PMC Act, 2020 and the effect of non-appointment of the National Medical & Dental Academic Board and the National Medical Authority.

(viii) Learned counsel for the PMC pleaded that in terms of clause (d) of sub-section (1) of section 10 of the PMC Act, 2020 the Sindh Government failed to nominate their representative to the National Medical & Dental Academic Board, and therefore the Board was not constituted. It is beyond comprehension that merely due to no nomination by the Government of Sindh the Board could not be constituted despite it is clearly provided under sub-section (4) of section 10 of the PMC Act, 2020 that no act done by the Board shall be invalid on the ground merely of existence of any vacancy in or any defect in the constitution of the Board; so also, section 12 of the PMC Act, 2020 germane to meeting of the Board which clearly provides under sub-section (3) that a minimum of two-thirds of members of the Board shall form a quorum and all of the acts of the Board shall be decided by a majority of the members present and voting.

(ix) Section 18 (3) of the PMC Act, 2020 and Regulation 16 of the PMC Admission Regulations 2020-2021 permit the Provincial Governments to make policy to cater the domicile condition for admission to public and private medical institutions not inconsistent with the PMC Act, 2020.

(x) The Medical & Dental Council shall make Regulation to set criteria for admission priority in the scenario where marks/score of applicants are the same/equal.

Judge

Judge