

**ORDER SHEET
HIGH COURT OF SINDH, KARACHI**

C.P. No.D-3642 & 3881 of 2020

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.

Mr. Justice Arshad Hussain Khan.

C.P. No.D-3642 of 2020

Karachi Institute of Technology & EntrepreneurshipPetitioner

Versus

Federation of Pakistan & anotherRespondents

&

C.P. No.D-3881 of 2020

Ussamah Sultan AhmadPetitioner

Versus

Federation of Pakistan & others..Respondents

Date of hearing 19.11.2020

Mr. Faisal Siddiqui advocate for the petitioner in C.P. No.D-3642 of 2020 a/w Mr. Saad Fayyaz advocate.

Ussamah Sultan Ahmed, petitioner in person in C.P. No.D-3881 of 2020.

Mr. Hussain Bhora, Assistant Attorney General.

Mr. Shehriyar Mehar, AAG.

Tahir Abbas Zaidi, Director General, Accreditation & Attestation, Higher Education Commission, Islamabad.

Athar Awan, Deputy Director, Sindh Higher Education Commission, Government of Sindh.

Muhammad Ali Mazhar, J: The petitioner in C.P. No.D-3642 of 2020 has challenged the letter dated 28.01.2019 available at page No. 535 issued by HEC on 28.01.2019 to the Founder and President of Karachi Institute of Technology & Entrepreneurship (KITE). This letter is basically focused on the inspection carried out by the representative of the HEC for the petitioner institute in which various deficiencies have been pointed out and finally the

petitioner (KITE) was advised to fulfill all deficiencies and submit compliance report to the HEC, Islamabad within stipulated period. It was also stated that reinspection of the institution shall be carried out for the confirmation of compliance for the grant of HEC-NOC with further observations that no admission announcements shall be made by KITE till issuance of HEC-NOC.

2. Whereas, C.P. No.D-3881 has been filed by a former student of KITE in which he has prayed for the directions against the HEC Islamabad to attest his degree and transcript so that he may continue his further higher education in some other institution. Basically, this petition is dependent on the outcome of C.P. No.D-3642 of 2020 filed by KITE for obtaining NOC from HEC Islamabad.

3. Learned counsel for the petitioner (KITE) at the very outset pointed out the minutes of the 35th meeting of Council of Common Interest (CCI) which was convened on 07.03.2018 in which paragraph-6 germane to the functions that require to be performed by the Federal Government which are mentioned in clause (a) to (g) in a separate table. Learned counsel for the petitioner pointed out clause (c) which pertains to the minimum standards for higher education and (d) relates to attestation of degrees, whereas, in table (C) of para-6 some functions are mentioned to be performed by provincial governments including the function mentioned in clause (b) in which provincial government has been empowered to provide guideline and NOC for establishment of institution of higher education in the province in line with minimum national standards set by National body of higher education.

4. Learned counsel for the petitioner further contended that the deficiencies pointed out by the HEC, Islamabad in the impugned

letter have been responded and their reply is also attached with the petition. He further argued that the deficiencies mentioned in the impugned letter are beyond the HEC guidelines and they cannot take cognizance for the alleged deficiencies. He further submits that at the time of issuance of impugned letter, the minutes of meeting of CCI were not considered in which certain powers have been demarcated between the Federal and Provincial Governments and all objections raised were beyond the guidelines of the HEC/CCI. He proposed that some directions may be issued to the Chairman, HEC to provide an opportunity of hearing to the petitioner by the Commission or the sub-committee, if any, constituted by the HEC Islamabad, thereafter, the final report of the committee may be produced before the Commission for their approval and decision.

5. Mr. Tahir Abbas Zaidi, Director General, Accreditation & Attestation, Higher Education Commission, Islamabad is present and he submits that objections were raised on physical inspection of the institute. He further stated that he is not aware to the CCI decision taken in the aforesaid meeting, however, he referred to an order dated 12.04.2011 passed by the hon'ble supreme Court in Civil Petitions No. 33 to 35 of 2011 in which the apex court held that status of Higher Education Commission as it has been assigned to it under Higher Education Commission Ordinance, 2002 with its functions covered by the Constitutional provisions namely entries at Serial Nos. 16 and 17 of the part I and Sr. 7, 11 and 12 of Part-II of the Federal Legislative list, shall remain intact unless the same is changed by promulgation of some legislation in this behalf. At this juncture, learned counsel for the petitioner pointed out that aforesaid petitions were disposed of by the apex

court on 22.01.2013 and argued that in the disposal order there is no such observations or findings given by the apex court as mentioned in the interim order pointed out by the representative of Higher Education Commission which fact has been admitted by Mr. Tahir Abbas.

6. However, Tahir Abbas Zaidi, Director General, Accreditation & Attestation, Higher Education Commission, Islamabad accepts the proposal that proper opportunity of hearing shall be provided to the petitioner where they can place all material available in their defence to justify the grant of NOC and the minutes of CCI will also be considered by the Commission at the time of hearing. Learned Assistant Attorney General also supported this proposal.

6. In view of this statement, petition is disposed of with the directions to the Chairman, HEC Islamabad to provide ample opportunity of hearing to the petitioner's representative. Learned Chairman HEC may constitute a committee of atleast three members to provide hearing and the petitioner shall be allowed to place on record all material documents to justify their application for grant of NOC. The committee members shall also consider the effect of CCI minutes of meeting which have already been referred to in this order and forward their recommendations to the Commission thereafter the commission shall pass speaking order after hearing the petitioner. The entire exercise should be completed within a period of sixty (60) working days. Copy of this order may be transmitted to the learned Assistant Attorney General as well as Chairman, HEC, Islamabad. Till decision of the HEC no adverse action shall be taken against the petitioner.

JUDGE

JUDGE