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

Dates of hearing: 03.11, 04.11, 05.11, 06.11, 10.11 & 11.11.2020.

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

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

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

Mr. Zeeshan Abdullah, Advocate for P.M.C. (in all petitions) with Malik Altaf Hussain, Advocate.

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

Mr. Kashif Sarwar Paracha, Acting Additional Attorney General.

Mr.Hussain Bohra, Assistant Attorney General and Mr. Khilji Bilal, Assistant Attorney General.

Mr. Hakim Ali Shaikh, Addl. A.G. Sindh.

Mr. Sheheryar Mehar, Assistant Advocate General Sindh.

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

Mr. Behzad Amir Memon, Deputy Director, Ministry of National Health Services, Regulation & Coordination.

Mr. Sikandar Ali Memon, Chief Technical Officer, Health Department, Government of Sindh.

Mr. Kazim H. Jatoi, Secretary Health, Government of Sindh.

Muhammad Ali Mazhar, J: In point of fact, out of aforementioned constitutional petitions, some petitioners brought this action to challenge the vires of Pakistan Medical Commission Act, 2020 and the Regulations 2020-2021 framed thereunder. Quite the reverse, some of them have only entreated for the implementation of the same law effectually rather than combating the vires of PMC Act 2020. For the ease of reference, the synthesis and divergent aftermath of the prayer clauses jot down in each petition is reproduced one after the other as under:

1. C.P.No.D-4953/2020. .

The petitioners have entreated for the declaration that Section 18 of the Act 2020 is ultra vires the Constitution, and PMC Regulations 2020-2021 framed by the Council under the Act 2020 are without lawful authority. Notification dated 24 September 2020 issued by the Respondent No.1 for withholding the admission process already initiated by the petitioner No. 1 is ultra vires Section 18 of the Act 2020 and allow Admitting University to continue the admission process as initiated pursuant to the MBBS & BDS Regulations 2020 made in accordance with the Pakistan Medical and Dental Council Ordinance 1962.

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

In pith and substance, the petitioners have virtually prayed that MDCAT being conducted by the respondent No.3 in second week of November without fulfilling mandatory legal criteria of setting up an Academic Board is without lawful authority and in violation of PMC Act. Direct respondent No.4 to furnish the applicable syllabus and explain with clarity to the admission criteria.

3. C.P.No.D-5158/2020

Declare that Section 4 of the Act 2020 is *ultra vires* the Constitution and is liable to be struck down. Declare that the Notification dated 25 September 2020 issued by the Respondent No. 1 appointing Respondent Nos. 4 to 10 as members of the Medical and Dental Council is without lawful authority and without jurisdiction. Declare that the Respondent Nos. 1 to 10 have no authority in law to conduct MBBS and BDS entry test by invoking the provisions of Section 18 till such time that a national curriculum is issued. Sub-section 2 of section 50 of the Act 2020 are violative of the Constitution. Declare that the MBBS and BDS Regulations 2020 framed by the erstwhile PMDC and all decisions taken by the Ad-hoc Council are saved under Section 50 (2) of the Act 2020 and cannot be undone by inserting the provisos to Section 50 (2).

4. C.P.No.D-5237/2020

Declare that the MDCAT under Section 18 of the PMC Act, 2020 being conducted by Respondent No.2 without fulfillment of legal requirements is unlawful and in violation of the fundamental rights of the petitioners. To declare that the Regulation 16 and 17 of the PMC Regulation 2020-2021 framed by the Respondent No.2 under the Act, 2020 have been issued without any lawful authority and are in violation of

fundamental rights under Article 4, 9 and 10A of the Constitution and are of no legal effect. To direct the respondent No.2 to frame policy, clear procedure with regards to the admission based on domicile.

2. Mr. Sarmad Hani, learned counsel for the petitioners in CP.No.D-4953/2020 and C.P.No.D-5158/2020, argued that education after promulgation of 18th Amendment has become a Provincial subject which has been overlooked in 2020 Act. Every Province may set its own curriculum and syllabus for Higher Secondary education therefore centralized admission test would tantamount to violate legislative competence of the Province therefore Section 18 of the Act 2020 is violative of the Constitution. The directives issued by the Deputy Secretary of the Respondent No. 1 on 24 September 2020 are without lawful authority. It was further contended that Section 18 (3) of the Act is in conflict with sub-section 1 & 2 of Section 18 of PMC Act as much as the policy for admissions to Medical and Dental programs conducted by the Public Colleges are regulated on the basis of the policy formulated by the Provincial government and not otherwise. The PMC Regulations 2020-21 promulgated by the Council are without any lawful authority and in complete derogation of Section 8 (2) of the Act 2020. It was further averred that Section 4 confers unrestricted and unimpeded powers to the Prime Minister to appoint members of the Medical and Dental Council without providing any selection criteria or competitive process which is violative of the fundamental rights envisioned in the Constitution. He also referred to the judgment of Islamabad High Court in the case of Saira Rubab Nasir vs. President of Pakistan (PLD 2020 Islamabad 130) in which the learned Islamabad High Court held that appointments were made without any selection criteria and that they were compromised. He further argued that Section 50 (2) of the Act 2020 saves all the decisions taken, regulations made or amended and disciplinary action(s) taken by the defunct PMDC pursuant to the repealed Ordinance, whereas sub-section (2) of the Section 50 of the Act, 2020 saves all acts, decisions and regulations of the erstwhile PMDC and provides that the same have been validly

made. After saving the aforesaid acts of the repealed Ordinance, a proviso to subsection (2) of Section 50 has been inserted which contradicts and nullifies the saving enacting section i.e. Section 50(2). The proviso, therefore, cannot be given effect to as the same is in direct conflict with the enacting section which cannot override the enacting provisions.

3. Mr. Jibran Nasir Advocate for petitioners in C.P. No.D-5036 of 2020, argued that the respondents while assuming powers to formulate and conduct national and provincial tests cannot ignore the basic fundamental rights of the students for whose benefit the said tests are to be conducted. The perplexity created on promulgation of 2020 Act resulted much confusion with regard to the syllabus, criteria and weightage of the MDCAT. In simple terms this is a gross failure in determination of the merit upon which the petitioners and students across Sindh are to secure admission in private and public medical and dental universities and colleges. In fact the learned counsel made much emphasis that without constituting the Authority and Board, the announcement to hold MDCAT is without lawful authority and PMC issued a press release which is also available at their website which shows that they themselves are not confident that syllabus of MDCAT has been harmonized and set according to FSC syllabus of all Provinces and it has been left on the candidates to collect objection form before appearing in the examination hall and submit objections on it if they feel that some questions are out of syllabus. During course of argument, the learned counsel on instructions stated at bar that he does not press prayer clause (3) of his petition.

4. Ms. Umaimah Mansoor, Advocate for the petitioners in C.P.No. D-5237/2020 argued that PMC Act, 2020 and PMC Regulations 2020 effectively deny the students the right to choose the university of their choice and leaves the discretion upon the respondent No.2 without any check and balance wherefore the student is deprived

of his fundamental right and the respondent No.2 is left unchecked depriving the students of merit and the chance to study in the medical college of their choice. It was further contended that Regulation No. 16 and 17 of PMC Regulations, 2020-2021 are unreasonable. The learned counsel also made much emphasis that without appointing Authority to conduct MDCAT and the Board for setting syllabus, the holding of MDCAT is illegal and grave violation of PMC Act 2020.

5. Mr. Zeeshan Abdullah, learned counsel for the PMC argued that all provisions of Pakistan Medical Commission Act 2020 ("PMC Act, 2020") have been validly enacted by the Parliament therefore these are intra-vires. Section 18 is not inconsistent with any fundamental right enshrined under the Constitution, 1973. The Notification manifests that it only conveyed information that as per Section 18 of the Act, 2020 MDCAT shall be conducted by PMC for students seeking admission anywhere in Pakistan. It was further contended that Proviso to Section 18 (2) states that MDCAT shall be mandatory for all students who have been enrolled in medical or dental under-graduate programs in the year 2021 and thereafter. The Council did not stop the Sindh Admitting University from taking an entrance exam if they wanted that as part of their additional criteria in addition to the MDCAT for admission to public colleges. The syllabus is a common syllabus ensuring that no topic or question exceeds the syllabus of any Province which has been finalized by a Committee set up with the Examination Committee of the Council and a representative of each Province was invited but Province of Sindh did not send their representative. The Academic Board's function under Section 13(1)(c) to formulate standard of MDCAT is subject to approval of Council, which is the primary approving authority, hence in the absence of the Board the Council has the power under Sec.8 (2) (f) read with Sec.13 (1) (c) to formulate the MDCAT standard and structure. The learned counsel further argued that the judgment passed by the Islamabad High Court was related to Pakistan Medical Commission Ordinance, 2019,

promulgated by the President of Pakistan in exercise of power conferred in him under Article 89 of the Constitution 1973, however, the instant legislation has been made by the Parliament, therefore, the said Judgment is not applicable to the Act impugned in the instant Petition. Moreover, to challenge the above judgment, ICA is pending in IHC. He further argued that Higher Education and Professional Education was never devolved under 18th Amendment of the Constitution 1973. PMC is the licensing regulator, if each Province wants to have its own standards and regulators than no one in the world will recognize a degree or license from Pakistan as there will be no uniform methodology to verify the same. He further contended that the Council invited all the Provinces in a conference to set MDCAT paper. It was further contended that petitioners have failed to consider impact of Entry 12 of Federal Legislative List, part-II, of Constitution, 1973. After passing Bill in respect of PMC Act 2020, by the Parliament, the President assented on 22.09.2020 and subsequently Act, 2020 was notified on 24.09.2020. The impression of admitting university that since they started the process hence no law could have been made is nothing but a misconception of law.

6. Mr. Sheheryar Mehar, the learned A.A.G, argued that the PMC Act 2020 is against the policy of Province of Sindh. The open merit should be only for provincial level and not for general. The syllabus and curriculum for the students sitting in entry test for admission in MBBS and BDS program should be structured by Provincial Government. The syllabus of the Sindh cannot be compared to other Provinces therefore the policy of the PMC Act is not suitable for the students of Sindh. It was further contended that there is no provincial representation in the Council and the PM has been given absolute power of selecting the members of the Council, whereas in Ordinance 1962 the members were elected. The 2020 Act does not provide any guideline and criteria of qualification for the appointment of the members of the Council. The single admission

test is not possible in the country because there is no common syllabus at national level.

7. The learned DAG argued that the law in question has been validly enacted by the Parliament. The petitioners failed to point out any infringement or violation of fundamental rights. The petitioners cannot be construed aggrieved persons hence petitions are not maintainable. The provisions challenged under the Act are intra vires and within the legislative competence of the Parliament in line with the Federal Legislative List.

8. An Intervenor National Testing Service also moved an application under Order 1 Rule 10 C.P.C for joining them as proper and necessary party on the foothold that due to cancellation of aptitude test as was being conducted by admitting university under old PMDC Regulations through them on 18.10.2020, NTS has suffered monetary losses as they had already made some arrangements on their engagement of services by the petitioner No.1 (C.P.No.D-4953/2020). In fact, this Intervenor has entreated for the directions to pay their dues by the Petitioner No.1 of the aforesaid petition.

9. In the beginning, we would like to embark upon the question raised up in two petitions that Section 4 and Section 18 of the Pakistan Medical Commission Act, 2020 (PMC Act, 2020) are ultra vires the Constitution and as a consequence, Pakistan Medical Commission Admission Regulations 2020-2021 have no legal effect. For the ease of convenience, Section 4 and 18 of PMC Act 2020 are reproduced as under:

Section 4 of PMC Act 2020

"4. Composition of the Council.-(1) The Council shall comprise the following members to be notified after approval by the Prime Minister of Pakistan in the official Gazette, namely:-

(a) three members of civil society who shall be nominated by the Prime Minister of Pakistan consisting of a nationally recognized philanthropist or person of known repute, a legal professional and a chartered accountant;

(b) three members being licensed medical practitioners with at least fifteen years' experience of outstanding merit and not being the vice-chancellor, dean, principal or administrator or owner or shareholders of a medical or dental university, college or hospital, nominated by the Prime Minister;

(c) one member being a licensed dentist with at least fifteen years' experience of outstanding merit and not being the vice-chancellor, dean, principal, administrator or owner or shareholder of a medical or dental university, college or hospital, nominated by the Prime Minister of Pakistan;

(d) one member being the Surgeon General of the armed forces medical service or his nominee; and

(e) the Secretary of the Division.

(2) After the notification of the members of the Council, the Division shall forthwith and not later than fifteen days of the issuance of notification, call the first meeting of the newly constituted Council. A minimum of seven members of the Council shall constitute a quorum for the purposes of meeting of the Council.

(3) The President and Vice-President of the Council shall be appointed from amongst the members of the Council by the Federal Government.

(4) No member shall enter upon office of the member of the Council until he signs and submits a declaration of no conflict of interest.

(5) The Council shall be deemed to be not properly constituted if its membership falls below six members.

(6) Subject to sub-section (5), no act done by the Council shall be invalid on the ground merely of existence of any vacancy in or any defect in the constitution of the Council."

Section 18 of PMC Act 2020

"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 admission 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 no 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 requirements stipulated by the private college at least one year in advance of admissions 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 purposes of admission in the public colleges."

10. The learned counsel for the petitioners upstretched the plea that appointment of the members under Section 4 of the PMC Act 2020 in the Pakistan Medical Commission should be channeled

through an open and transparent policy and equal opportunity should be provided to all persons who may apply for the post of members in the Council whereas unbridled or boundless powers have been accorded to the Prime Minster. In the case of **Syed Mahmood Akhtar Naqvi and others vs. Federation of Pakistan & others reported in PLD 2013 S.C. 195,** the apex court held that whenever there are statutory provisions or rules or regulations which govern the matter of appointments, the same must be followed, honestly and scrupulously; even no explicit rules governing the appointment process and the appointments are to be made in the exercise of discretionary powers, such discretion must be employed in a structured and reasonable manner and in the public interest. It was further held that appointing authorities cannot be allowed to exercise discretion at their whims or in an arbitrary manner; rather they are bound to act fairly, evenly and justly and their exercise of power is judicially reviewable. In the case of **Syed Mubashir Raza Jaffri and others vs. Employees Old-Age Benefits Institutions (EOBI) & others (2014 SCMR 949),** again apex court held that appointments to public offices are to be made strictly in accordance with applicable rules and regulations, without any discrimination and in a transparent manner. All appointments to public institutions must be based on a process that was palpably and tangibly fair and within the parameters of its applicable rules, regulations and bye-laws. Whereas in the case of **Muhammad Yasin vs. Federation of Pakistan and others. (PLD 2012 Supreme Court 132)** it was held that if the criteria prescribed by law are not met, any appointment made would be violative of the law and would, therefore, necessarily be subject to judicial review.

11. If we preview the prelude and prologue of Pakistan Medical Commission Act, 2020 it unambiguously expounds that it lays down the law to regulate and control medical profession with an eye to establish uniform minimum standard of basic and higher medical education and training and recognition of qualifications in

medicine and dentistry. Section 3 of Act commands the Federal Government to establish Pakistan Medical Commission. In tandem, Section 4 writes down the configuration and constituents of Council to be notified in pursuit of approval of Prime Minister in the official gazette. In the same section, the benchmarks for the appointment and qualification are also jot down. The learned counsel for the petitioners challenging the vires of this section made much emphasis that unbridled discretionary powers have been bequeathed to the Prime Minister to appoint the members and no parameters or see-through and or translucent procedure have been provided for the appointment of members. What we have deciphered from the solemnity of this section is that Clauses (a) to (e) in essence converged to the members of the Council appointed by the Prime Minister that is to say three members of the civil society consisting of a nationally recognized philanthropist or person of known repute, a legal professional and a chartered accountant; three members amongst licensed medical practitioners and one member being a licensed dentist, all should have at least 15 years experiences of outstanding merit and not being the vice chancellor, dean, principal or administrator or owner or shareholders of a medical or dental university, college or hospital; one member being the Surgeon General of the armed forces medical service or his nominee and the Secretary of the Division. Nonetheless the Council is to be notified after approval of the Prime Minister but the qualification and experience of each member to be appointed is clearly mentioned in Section 4. With the intention of avoiding conflict of interest or any bias, Section 4 has also disqualified and debarred the persons from consideration including vice chancellor, dean, principal or administrator or owner or shareholders of a medical or dental university, college or hospital. It is further provided in sub-section 4 that no member shall enter upon office of the member of the council until he signs and submits a declaration of no conflict of interest while Section 5 of the Act, lays emphasis on that no person, his spouse or children shall be eligible to become a member of the council if they or any one of

them has any conflict of interest being an owner or having any direct or indirect financial interest in medical or dental institution which in our outlook is a footstep to uphold and keep up transparency in the affairs of the Council so that the decision of the Council should be free from decision structured on personal interest, nepotism and or preconceived notion.

12. Nonetheless under Section 4 of the PMC Act 2020, powers have been given to appoint members with the approval of the Prime Minister and we also declared such provision intra vires in our short order but here we feel it our utmost sense of duty to put into operation the doctrine of reading down of a statute. What we have noted that no guiding principle, procedure or modus has been assimilated to structure the discretionary powers or to begin with the recruitment or appointment process of members of the council and if we glance at Section 15 of the PMC Act 2020 in juxtaposition which is in particular associated to the composition of National Medical Authority, it sets down in sub-section 2 that council shall appoint the members of this authority through a “transparent process” on merits but this expression “transparent process” which has manifold connotations and broad spectrum is missing from the provision crafted for the appointments of the members of the council under Section 4 before approval of P.M. In our considerate visualization, prior to accomplishing or getting hold of approval of Prime Minster for appointment, there must be evenhanded procedure and watertight course of action to short list the interested candidates’ profile and after due diligence, short listing and weighing the credentials and antecedents if found commensurate to the required qualification, a dossier should be placed before the P.M for his approval.

13. As a general rule or by and large, the recruitment or selection process in the statutory bodies or in other government departments is guided and navigated by some rational and translucent principles and procedure to afford fair and equal opportunity to all eligible

candidates who intend to join recruitment/selection process. Regardless that the appointments are being made directly under a statute without the intervention of competitive process or public service commission but to ensure transparency and fair-mindedness, applications could be invited through advertisements of vacant posts in the vernacular newspapers with defined procedure for submitting curriculum vitae and walk-in job interview so that the best of the best could be appointed. The utmost compelling advantage of transparency in the recruitments essentially ratifies and disseminates public confidence in the impartiality and authenticates that the appointment process is not manipulated or sham but it is free from favoritism, nepotism or bias.

14. We are sanguine that while reading down of a statute two principles had to be kept in view; first that the object of 'reading down' was primarily to save the statute and in doing so the paramount question would be whether in the event of reading down, could the statute remain functional; second, would the legislature have enacted the law, if that issue had been brought to its notice which was being agitated before the court. (Ref: **Province of Sindh and others vs. M.Q.M. and others. (PLD 2014 Supreme Court 531).** In the case of Delhi Transport Corporation vs. D.T.C. Mazdoor Congress (equivalent citations: AIR 1991 SC 101, 1990 Supp 1 SCR 142), the court held that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible, one rendering it constitutional and the other making it constitutional the former should be preferred. The doctrine can never be called into play where the statute requires extensive additions and deletions. The Doctrine of Reading Down is therefore an internal aid to construe the word or phrase in a statute to give reasonable meaning but not to detract, distort or emasculate the language so

as to give the supposed purpose to avoid unconstitutionality. Thus the object of reading down is to keep the operation of the statute within the purpose of the Act and constitutionally valid. **Lord Reid** in **Federal Steam Navigation Co. v. Department of Trade and Industry,[1] (as also extracted by Cross-Statutory Interpretation, Butterworths' Edition, 1976 at page 43 in preposition 3)** has stated thus: *"the judge may read in words which he considers to be necessarily implied by words which are already in the statute and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute".* The legislature enacts and the Judges interpret. The rules of interpretation come into play only where clarity or precision in the provisions of the statute are found missing. It is the duty of the court to endeavor as far as possible to construe a statute in such a manner that the construction results in validity rather than its invalidity and gives effect to the manifest intention of the Legislature enacting that statute. It is also permissible for the court to "read down" a provision in order to so understand it as not to attempt something beyond the competence of the legislative body which is called principle of "reading down". In line with the dictum laid down by the apex court in the case of **Rana Aamer Raza Ashfaq and another vs. Dr. Minhaj Ahmad Khan and another, (2012 SCMR 6)** while construing any piece of legislation, the court has to examine and keep in mind three things; (i) the statement of reasons and objects given therein; (ii) the statement of objects given in other laws in pari materia to the one under consideration; and (iii) mandate of Constitutional provision which stands adopted by way of reference. Societies grow and nations progress by strict adherence to rule of law. Judges have nothing to do with shades of public opinion which holders of public office may represent or with passions of the day which sway public opinion. Task of Judges is to tenaciously and fiercely uphold and implement the Constitution and the law. **Lord Denning**

expressed on exercise of discretionary authority in his book 'The Closing Chapter' when relying on a judgment of Court of Appeals of England & Wales (1948 1 KB 223, 234) authored by Lord Greene (Master of the Rolls) that if a public authority is entrusted, as part of its public law function with the exercise of a discretion, it must take into account all relevant considerations. It must not be influenced by any irrelevant consideration. And its discretion must be exercised reasonable in this sense, that it must not be so unreasonable that no reasonable authority could have reached it. The apex court in the case of **Independent Newspapers Corporation (Pvt.) Ltd. (1993 SCMR 1533)** held that where express statutory power is conferred on a public functionary, it should not be pushed too far, for such conferment implies a restraint in operating that power, so as to exercise it justly and reasonably. **Excessive use of lawful power is itself unlawful**.

15. We are also conscious and mindful to Section 39 of the PMC Act 2020 in which Division may by notification in the official Gazette make Rules for carrying out the purpose of the Act. According to **Clause (viii) of Section 2 of the Act, "Division" means the Division to which business of the Act stands allocated.** In all fairness, Section 4 of the PMC Act 2020 ought to be read down to streamline and make available a fair chance of restructuring the appointment procedure for the members of the PMC. We direct the Ministry of National Health Sciences, Regulations and Coordination, Government of Pakistan to frame Rules within 90 days for the appointment of members of the Council so that future appointments may be made in accordance with prescribed procedure in Rules so that after shortlisting of applications invited through advertisements in newspapers and interview by the appointment committee/selection board, the recommendations along with credentials and antecedents of short listed candidates may be placed for the approval of P.M.

16. So far as the challenge to Section 18 of PMC Act, 2020 is concerned, it predominantly elucidates that National Medical Authority shall conduct medical and dental college admissions tests annually on a date approved by the Council and as per standards approved by the Board. A single admission test has been made obligatory for all students seeking admission to medical or dental under-graduate programs anywhere in Pakistan. Earlier than PMC Act, 2020, the aptitude test of medical student was being taken under the old PMDC/PMC Regulations, however, under the said regulations, the task was given to “Admitting University” of a Province in a rotary motion to conduct test but the fact remains that the matter was being regulated by PMDC constituted under the Federal piece of legislation and not by any Provincial law. The learned counsel for the petitioners challenged the legislative competence of the Federation and argued that after Eighteenth Amendment, the Provincial Government is competent to make their own laws but it is a fact that Sindh Government has not made any law to regulate medical profession but for all intents and purposes all affairs were already being regulated under the former PMDC laws and now the law in field. It was further argued that it is an exercise of colourable legislation which infringed the fundamental rights of the students.

17. The doctrine of ultra vires is the basic doctrine in administrative law. The doctrine envisages that an authority can exercise only so much power as is conferred on it by law. An action of the authority is intra vires when it falls within the limits of the power conferred on it but ultra vires if it goes outside this limit. To a large extent the courts have developed the subject by extending and refining this principle, which has many ramifications and which in some of its aspects attains a high degree of artificiality. **In the case of Mir Shabbir Ali Khan Bijarini and others VS. Federation of Pakistan and others). (PLD 2018 Sindh 603) (Authored by one of us Muhammad Ali Mazhar-J.)**, the doctrine of ultra vires was discussed which expression means "beyond the powers". If an act

entails legal authority and it is done with such authority, it is symbolized as intra vires (within the precincts of powers) but if it is carried out shorn of authority, it is ultra vires. Acts that are intra vires may unvaryingly be acknowledged legal and those that are ultra vires illegal. It is well settled that constitutionality of any law can be scrutinized and surveyed. The law can be struck down if it is found to be offending against the Constitution for absenteeism of lawmaking and jurisdictive competence or found in violation of fundamental rights. At the same time it is also well-known through plethora of dictums laid down by the superior courts that the law should be saved rather than be destroyed and the court must lean in favour of upholding the constitutionality of legislation unless ex facie violative of a Constitutional provision. The apex court in the case of **Federation of Pakistan and others vs. Shaukat Ali Mian and others (PLD 1999 Supreme Court 1026)**, held that a colourable legislation is that which is enacted by a Legislature which lacks the legislative power or is subject to Constitutional prohibition but it is framed in such a way that it may appear to be within the legislative power or to be free from Constitutional prohibition or where the object of the law is not what is contemplated under the Constitutional provision pursuant whereof it is framed. Whereas in the case of **Benazir Bhutto vs. Federation of Pakistan and another, (PLD 1988 Supreme Court 416)** the apex court held that vires of an Act can be challenged if its provisions are ex facie discriminatory in which case actual proof of discriminatory treatment is not required to be shown. Where the Act is not ex facie discriminatory but is capable of being administered discriminately then the party challenging it has to show that it has actually been administered in a partial, unjust and oppressive manner. The apex court in the case of **Sui Southern Gas Company Ltd. and others vs. Federation of Pakistan and others, (2018 SCMR 802)** held that when a law was enacted by the Parliament, the presumption was that Parliament had competently enacted it and if the vires of the same are challenged, the burden is always laid upon the person making such challenge

to show that the same was violative of any of the fundamental rights or the provisions of the Constitution. Where two opinions with regard to the constitutionality of an enactment were possible, the one in favour of the validity of the enactment was to be adopted. Court should lean in favour of upholding the constitutionality of a legislation and it was thus incumbent upon the Court to be extremely reluctant to strike down laws as unconstitutional. Such power should be exercised only when absolutely necessary as injudicious exercise of such power might well result in grave and serious consequences. In the case of **M.Q.M. and others vs. Province of Sindh and others). (2014 CLC 335) (Authored by one of us Muhammad Ali Mazhar-J),** it was held that courts generally leaned towards upholding the constitutionality of a statute rather than destroying it, however if a statute was ex facie discriminatory or capable of discriminatory application or violated any provision of the Constitution, it may be declared void ab initio since its inception. Doctrine of severability permitted a court to sever the unconstitutional portion of a partially unconstitutional statute in order to preserve the operation of any uncontested or valid remainder but if the valid portion was so closely mixed up with the invalid portion that it could not be separated without leaving an incomplete or more or less mixed remainder, the court would declare the entire act void.

18. Article 97 of the Constitution provides that subject to the Constitution, the executive authority of the Federation shall extend to the matters with respect to which Majlis-e-Shoora (Parliament) has power to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan, provided that the said authority shall not, save as expressly provided in the Constitution or in any law made by Majlis-e-Shoora (Parliament), extend in any Province to a matter with respect to which the Provincial Assembly has also power to make laws. In contrast, Article 137 germane to extent of executive authority of a Province that subject to the Constitution, the executive authority of the

Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws, provided that in any matter with respect to which both Majlis-e-Shoora (Parliament) and the Provincial Assembly of a Province have power to make laws, the executive authority of the Province shall be subject to and limited by the executive authority expressly conferred by the Constitution or by law made by Majlis-e-Shoora (Parliament) upon the Federal Government or authorities thereof, whereas under Article 142 of the Constitution, Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to any matter in the **Federal Legislative List. In Part-II of Federal Legislative List (Fourth Schedule appended to the Constitution),** *Entry No.11 pertains to the legal, medical and other professions, whereas Entry No.12 is related to the standards in institutions for higher education and research, scientific and technical institutions*, whereas in the **Concurrent Legislative List omitted by Constitution (Eighteenth Amendment) Act, 2010**, *Entry No.38 was in respect of curriculum, syllabus, planning, policy, centers of excellence and standards of education and Entry No.43 was related to legal medical and other professions.* The learned counsel for the petitioners could not advance any argument on the niceties of Entry No.11 of the Federal Legislative List but he only objected to the legislative competence of the Federation and according to him entry No.12 is confined to the standards in institutions for higher education and research, scientific and technical institutions but in our considerate view, under the Federal Legislative List, the Parliament is competent to make legislation according to entry No.11 in relation to the "legal, medical and other professions" and so far as the Entry No.12 is concerned, we have no doubt that qualifying the MDCAT is also a gateway to the higher education i.e. the medical profession, so such a restrictive or conservative interpretation cannot be anticipated to the rudiments of this entry. In fact this is also a standard formulated under the PMC Act, 2020 by way of MDCAT which is a mandatory qualification for securing admission in medical and dental educational institutions. In the

case of **Government of Sindh and others vs. Dr. Nadeem Rizvi and others. (2020 SCMR 1),** the honourable Supreme Court held that Fourth Schedule must be liberally construed and given the widest possible meaning and amplitude. Following are the principles of interpretation with respect to Legislative Lists in the Constitution:

(i) **The entries in the Legislative Lists of the Constitution were not powers of legislation but only fields of legislative heads;**

(ii) **In construing the words in an Entry conferring legislative power on a legislative authority, the most liberal construction should be put upon the words;**

(iii) **While interpreting an Entry in a Legislative List it should be given widest possible meaning and should not be read in a narrow or restricted sense;**

(iv) **Each general word in an Entry should be considered to extend to all ancillary or subsidiary matters which could fairly and reasonably be said to be comprehended in it;**

(v) **If there appeared to be apparent overlapping in respect of the subject-matter of a legislation, an effort had to be made to reconcile the Entries to give proper and pertinent meaning to them;**

(vi) **A general power ought not to be so construed so as to make a particular power conferred by the same legislation and operating in the same field a nullity;**

(vii) **Legislation under attack must be scrutinized in its entirety to determine its true character in pith and substance; and**

(viii) **After considering the legislation as a whole in pith and substance, it had to be seen as to with respect to which topic or category of legislation in the various fields, it dealt substantially and directly and not whether it would in actual operation affect an item in the forbidden field in an indirect way.**

Messrs.' Sui Southern Gas Company Ltd. and others v. Federation of Pakistan and others 2018 SCMR 802 ref.

19. We do not subscribe the stance articulated by the learned counsel that Section 18 or 4 of the PMC Act 2020 have been enacted beyond the legislative competence. Quite the reverse we have no hesitation or reluctance to hold that the challenge to legislative competence is misconceived and unsubstantiated. No fundamental right of any student/candidate is infringed if a centralized or unified MDCAT is conducted under the PMC Act, 2020 nor it is a vested right of any student to claim MDCAT to be continued under the old regulations of PMDC/PMC through Admitting University of Province despite centralized policy. Neither Section 18 is discriminatory nor colourable or beyond the legislative competence of the Parliament nor this infringes fundamental right of any citizen of Pakistan. In the case of **Ms.**

Saba vs. The Province of Sindh and others. (2020 PLC (C.S.) 113), (authored by one of us Muhammad Ali Mazhar-J), it was held that a vested right is free from contingencies but not in the sense that it is exercisable anywhere and at any moment. There must always be occasions at which and circumstances under which the right may be exercised. Such rights have peculiar characteristics of their own. So far as plea of discrimination, it always involves an element of unfairness and bias. The factum of bias could not be substantiated without any convincing evidence. A Court of Law cannot exercise unfettered or unrestricted powers to administer equity not based on justiciable foundation but it must be satisfied before exercising its power that some illegal wrong has been inflicted or is about to be inflicted. In the case of **Lahore Development Authority and others vs. Ms. Imrana Tiwana and others, (2015 SCMR 1739),** following principles are deductible for striking down or declaring a legislative enactment as void or unconstitutional:

(i) **There was a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute was placed next to the Constitution and no way could be found in reconciling the two;**

(ii) **Where more than one interpretation was possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favoured validity;**

(iii) **A statute must never be declared unconstitutional unless its invalidity was beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid;**

(iv) **Court should abstain from deciding a Constitutional question, if a case could be decided on other or narrower grounds;**

(v) **Court should not decide a larger Constitutional question than was necessary for the determination of the case;**

(vi) **Court should not declare a statute unconstitutional on the ground that it violated the spirit of the Constitution unless it also violated the letter of the Constitution;**

(vii) **Court was not concerned with the wisdom or prudence of the legislation but only with its Constitutionality;**

(viii) **Court should not strike down statutes on principles of republican or democratic government unless those principles were placed beyond legislative encroachment by the Constitution; and**

(ix) **Mala fides should not be attributed to the Legislature.**

Province of East Pakistan v. Sirajul Haq Patwari PLD 1966 SC 854; Mehreen Zaibun Nisa v. Land Commissioner PLD 1975 SC 397; Kaneez Fatima v. Wali Muhammad PLD 1993 SC 901; Multiline Associates v. Ardeshir Cowasjee 1995 SCMR 362; Ellahi Cotton Mills Limited v. Federation of Pakistan PLD 1997 SC 582; Dr. Tariq Nawaz v. Government of Pakistan 2000 SCMR 1956; Mian Asif Aslam v. Mian Muhammad Asif PLD 2001 SC 499; Pakistan Muslim League (Q) v. Chief Executive of Pakistan PLD 2002 SC 994; Pakistan Lawyers Forum v. Federation of Pakistan PLD 2005 SC 719; Messrs Master Foam (Pvt.) Ltd. v. Government of Pakistan 2005 PTD 1537; Watan Party v. Federation of Pakistan PLD 2006 SC 697; Federation of Pakistan v. Haji Muhammad Sadiq PLD 2007 SC 133; Dr.

Mobashir Hassan and others v. Federation of Pakistan and others PLD 2010 SC 265 and Iqbal Zafar Jhagra v. Federation of Pakistan 2013 SCMR 1337 ref.

20. Now we would like to distillate Section 50 of the PMC Act, 2020 which is in particular focused on repeal and savings. This section subject to Section 6 of the General Clause Act, repealed Pakistan Medical and Dental Council Ordinance, 1962, however, under Subsection (2) it is provided that notwithstanding the repeal of the repealed Ordinance or anything contrary herein, all decisions taken, regulations made or amended and disciplinary actions taken by the Council of the dissolved Pakistan Medical and Dental Council pursuant to the repealed Ordinance and the Pakistan Medical and Dental Council Ordinance, 2019 shall be deemed to have been validly made. Two provisos attached to sub-section (2) of the PMC Act, 2020 are reproduced as under:

> **"Provided that all regulations made and promulgated pursuant to the repealed Ordinance, or the Pakistan Medical and Dental Council Ordinance, 2019 (II of 2019) stand repealed and shall not be enforceable subject to sub-section (6):**
>
> **Provided further that the Council shall have the exclusive power to review and modify any saved decision taken, regulation made or amended and disciplinary action taken."**

21. The learned counsel for the petitioner argued that the admitting university initiated the process of MDCAT at provincial level under the MBBS and BDS (Admissions, Examinations, House Job or Internship) Regulations, 2020 framed pursuant to Subsection (2) of Section 33 of Pakistan Medical and Dental Council Ordinance, 1962, therefore, insertion of proviso for repealing the previous regulations is unlawful. In the case of **M.Q.M. and others vs. Province of Sindh and others, (2014 CLC 335), (Authored by one of us Muhammad Ali Mazhar-J),** it was held that proviso attached to any section could not be read in isolation. Powers given in the proviso could not be uncontrolled or independent to the original section. Normal function of a proviso was to except something out of the enactment or to qualify something enacted therein, which but for the proviso would be within the purview of the enactment. When the enacting portion of a section was not clear, a proviso appended to it might give an indication as to its true

meaning. 'Proviso', 'Exception' & 'Saving Clause'. 'Exception' was intended to restrain the enacting clause to particular cases; 'Proviso', was used to remove special cases from the general enactment and provide for them specially; and 'Saving Clause' was used to preserve from destruction certain rights, remedies or privileges already existing. The Apex court held in the case of **Ibrar Hussain and other vs. Government of N.WF.P. and others. (2001 SCMR 914)** that statute has to be read as a whole and not in bits and pieces. Three functions were ascribed to a proviso: (1) To exempt something from the enacting clause; (2) to qualify or restrain its generality and (3) and to exclude some possible misinterpretation of it as extending to cases not intended by Legislature. It was further held that it is duty of the court to reconcile the enacting clause and the proviso and to avoid repugnancy between the two, proviso must be considered with relation to the principal clause to which it is attached. Ordinarily, a proviso is governed by the operative portion of the section. In fact Section 50 while saving some action, repealed the old laws with all previous regulations. In keeping with apex court judgment rendered in case of **Tasnim Jalal and others vs. Deputy Director, A.N.F. and others (2010 SCMR 72),** saving clause is generally used to preserve from destruction certain rights, remedies or privileges already existing. Saving means that it saves all rights the party previously had but it does not create any new right in his favour.

22. We could not catch on any substance in the articulation that the proviso in question has overridden or outweighed the section enacted for. Rather in our ability to see, the whole section pertains to the repeal and savings, the proviso enacted does not obliterate or destroy the enacted section but it is manifesting from the intention of legislature that it has been added as normal function of a proviso to except something out of the enactment within the purview of the enactment and appended to give an indication as to

its true meaning and qualify its generality and exclude some possible misinterpretation.

23. In conjunction with sub-section (4) of Section 3 of the PMC Act, 2020, Pakistan Medical Commission is consist of (a) Medical and Dental Council; (b) National Medical and Dental Academic Board; and (c) National Medical Authority consisting of members as provided under Section 15. Under Section 18, it is the responsibility of the authority to conduct MDCAT and according to definition clause (i) 'authority' means the National Medical Authority. The Authority was to be constituted under Section 15 of the PMC Act, 2020 consisting of seven members appointed by the Council through a transparent process on merit for a term of four years with the rider that no member shall be appointed for more than two terms as a member. It was also obligatory on the part of the Federal Government to appoint one member as the executive member to act as executive and administrative head of the Authority to exercise such functions in accordance with regulations as may be made by the Council. At this juncture we must take a step back to Section 18 in accordance with which the Authority has to conduct MDCAT as per standards approved by the Board and here the 'Board' means the National Medical and Dental Academic Board constituted under Section 10 of the PMC Act, 2020 which was to be notified after approval by the Prime Minister in the official gazette. Further dissection demonstrates the powers and functions of the Board as provided under Section 13, sub-section (1), clauses (a) to (h) which involves and integrates the function of formulating the examination structure and standards for the MDCAT for approval of Council, whereas the functions of the Authority are provided under Section 16, sub-section (1), clauses (a) to (k) including a function and power to conduct all examinations provided for under the Act. It is the duty of the court to try to get real intention of the Legislature by carefully attending to the whole scope of the statute to be construed. As a general rule, a statute is understood to be directory when it contains matter merely

of direction, but not when those directions are followed up by an express provision that in default of following them, the acts shall be null and void. To put it differently, if the Act is directory, its disobedience does not entail any invalidity; if the Act is mandatory, disobedience entails serious legal consequences amounting to the invalidity of the act done in disobedience to the provision. (Ref: **Human Rights Cases Nos.4668 of 2006, 1111 of 2007 and 15283-G of 2010. PLD 2010 Supreme Court 759).**

24. The actuality of aforesaid segments were mandatory and indispensable but neither the Academic Board was constituted nor the National Medical Authority but the date of MDCAT was announced in absenteeism of basic components. Since the connotation and magnitude of above sections were found quite meaningful with great weightage therefore vide short order, Pakistan Medical Commission was restrained from holding the MDCAT on 15-11-2020 with the directions to appoint within 15 days National Medical & Dental Academic Board and the National Medical Authority to review and formulate the examination structure and standards for the MDCAT and announce common syllabus for conducting MDCAT. We also turned down the plea of PMC counsel en route for appointment of temporary members to National Medical Authority which according to him was protected under Section 51, Subsection (2) of the PMC Act, 2020 but in our vision and sagacity, under sub-section (1) of Section 51, it is the Federal Government which may provide officers on deputation for a period not exceeding 90 days if requested by the Council to assist in the operations of Commission until members, officers and necessary employees of the Commission are appointed. Concomitantly, sub-section (2) of Section 51 only envisages the appointment of persons by the Council on contract basis, therefore, we have already held in our short order that niceties of sub-section (2) of Section 51 of PMC Act, 2020 can neither be stretched too long nor licenses to take advantage of appointing members of National Medical Authority on temporary basis under this fabric.

We were also astounded on paying a visit to the announcement of syllabus clarifications which was in fact classifying MDCAT a unique type of examination in which the applicants/students were to be handed over an objection form in the examination hall to fill in if any question is considered to be out of F.Sc. syllabus. Such type of one and only innovative idea was highly dangerous and tantamount to ruin the future of innocent stakeholders which is nothing but to have caused bewilderment, misunderstanding and distress in their mind to first read the question paper and after going through the audit exercise they must fill in objection form pointing out different questions considered to be out of syllabus and then start the main paper for attempting the questions which are considered to be within the syllabus. Further there was no mechanism to deal with as to how a particular person shall be informed by the Commission about the fate of his objection whether the objection raised by him was sustained or rejected and if sustained, how many questions have been excluded from marking in his particular case. There was also likelihood of grave misunderstanding and confusion and the possibility could not have been ruled out if the Commission was allowed to act according to syllabus clarifications which could have created multiplicity of litigation throughout the country and open the floodgate in different jurisdiction, therefore, this was also crucial to restrain MDCAT on the last given date to save the innocent students from such type of serious questionable lapses on account of non-making of proper syllabus due to unavailability or absenteeism of Academic Board.

25. Last but not least, even though under Section 18 of the PMC Act, 2020 only single admission MDCAT has been made a mandatory requirement for all students seeking admission to medical or dental under-graduate programs anywhere in Pakistan but under Subsection (3) it is clearly provided that 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 requirements stipulated by the private college at least one year in advance of admissions 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. A proviso is also attached that the marks obtained by a student in the MDCAT conducted by the Authority shall constitute a minimum fifty percent of the weightage for the purposes of admission in the public colleges. It is an admitted fact that PMC Admission Regulations 2020-2021 shall be applicable to all private and public medical and dental college admissions in Pakistan for the 2020-2021 Session only. It was argued that since the private medical colleges could not be able to submit their admission policy one year in advance before the present MDCAT, therefore, this aspect has been covered in the PMC Admission Regulations 2020-2021 for this year only.

26. Here we would like to draw attention to an expression “Federalism” which represents and epitomizes a mixed or compound mode of government that combines a “federal government with provincial governments in a single political system”. It is parity between the two levels of government established. The terms "federalism" and "confederalism" both have a root in the Latin word foedus, meaning "treaty, pact or covenant". This would be worthwhile to quote a passage from a judgment rendered in the case of **Punjab Higher Education Commission vs. Dr. Aurangzeb Alamgir and others (PLD 2017 Lahore 489)** in which honourable Lahore High Court held that a critical feature of cooperative federalism is the balance it strikes between complete federal preemption (a preemptive federalism) and uncoordinated federalism (dual federalism). Under preemptive federalism, federal law preempts a provincial law to enter the common legislative field. While under dual federalism two legislatures retain their uncoordinated domains. Cooperative Federalism blends these two models. Cooperative federalism rejects the suggestion that federal law demands uniformity in all

situations. Rather, cooperative federalism presumes that supplementation of a uniform minimum standards should be left to the States. Cooperative federalism is embedded into our constitutional architecture under Part V. Chapter 1 of this part deals with distribution of legislative powers, while chapter 2 deals with administrative relations between Federation and Provinces. Chapter 3 deals with special provisions including Council of Common Interest (CCI) which forms the fulcrum of cooperative federalism under our Constitution. Cooperative Federalism, being an intrinsic part of our constitutional design, is also an effective and potent interpretative tool for the courts. The overlap in legislative space between the Federation and the Province over standards in institutions of higher education and education and the limits of exclusivity under Article 142 of the Constitution can be resolved through purposive interpretation with this clear constitutional purpose in mind. Article 142 opens with: "subject to the Constitution." This means that while interpreting the article, other provisions of the Constitution and foundational constitutional principles envisaged in the Constitution will take preference over Article 142. The legislative subjects of standards in institutions of higher education and education have to be contextualized within the constitutional architecture of federalism and made to co-exist under the principles of cooperative federalism. Courts must, therefore, favour functional coexistence of the federal and provincial statutes in cases where there is vertical sharing or an overlap of legislative powers. Cooperative federalism flowing through the Constitution helps prevail over and dilute the exclusivity of Article 142 into a more workable and constitutionally compliant inclusivity. Giving both the legislatures space to co-exist. Only in cases of irreconcilable inconsistency between the federal and provincial statutes, Article 143 provides a solution, but only as a last recourse.

27. The straightforward construal and elucidation of sub-section (3) of Section 18 makes it quite discernable that 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 requirements stipulated by the private colleges at least one year in advance of admissions 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. If it is gauged in juxtaposition with the proviso of Regulation 16 of PMC Admission Regulations 2020-2021, it is made clear that for the purposes of admission to private medical or dental colleges no restriction as to domicile of the students exists, if a restriction is imposed by a Provincial Government in exercise of any executive power otherwise vesting in the Provincial Government, it shall be accounted for in admissions undertaken by the Commission subject to fulfillment of merit. A glimpse to the repealed MBBS and BDS (Admissions, Examinations, House Job or Internship) Regulations, 2020, deciphers that Regulation 09 was linked to the private medical and dental institutions admissions test wherein Sub-Regulation (9) of Regulation 9, it was unambiguously provided that for admission in private medical and dental college first priority shall be given to the students who hold the domicile and appeared in the admission test of the same Province/region. Vacant seats if any shall be offered to the students of other Provinces/region for admissions. In the PMC Act, 2020 and the PMC Admission Regulations 2020-2021 a Provincial Government can make the admission policy which aspect has already been covered by us in our short order in clause (ix) with further directions to the PMC to make regulation to set criteria for admission priority in the scenario where marks/score of applicants are same/equal as provided in earlier Sub-Regulation (14) of Regulation 9 that in case of final merit of more than one candidate is equal up to four decimals, the candidate older in age shall stand higher in merit, therefore, the necessary directions were already issued.

28. After hearing the arguments, we had disposed of aforesaid petitions by means of a short order dated 11.11.2020 which is replicated as under:

> **"(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 of 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 indispensible. 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."

29. So far as the application of Intervenor National Testing Service is concerned, they are not proper and necessary party in the above petitions in which some petitioners have challenged the vires of PMC Act 2020 and others came for the implementation of same Act. If NTS has suffered any alleged losses on account of any breach of contractual obligations or cancellation of aptitude test as was being conducted by admitting university **(the petitioner No.1 in C.P.No.D-4953/2020)** under old PMDC regulations through them on 18.10.2020, they cannot ask for compensation in the writ jurisdiction, however, they may file their independent proceedings in accordance with law.

30. Above are the reasons assigned to our short order dated 11.11.2020.

Karachi:-
Dated. 11.12.2020. **Judge**

Judge