

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

C.P.Nos.D-2526 & 2623 of 2021

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before:-

**Mr.Justice Muhammad Ali Mazhar.
Mr. Justice Amjad Ali Sahito.**

1. Shumaila Salman Shah & others
(C.P. No.D-2526 of 2021)
2. Nabeel Rashid
(C.P. No.D-2623 of 2021).....Petitioners

Versus

Federation of Pakistan & othersRespondents

Date of Hearing: 22.04.2021 & 23.04.2021.

Mr. Muhammad Jibrán Nasir, Advocate for the Petitioners in C.P. No. D-2526 of 2021.

Mr. Abdul Ghaffar Ahmed, Advocate for the Petitioner in C.P. No.D-2623 of 2021 along with M/s. Mazhar Ali Shaikh and Samil Malik Khan Advocates.

Mr. Jawad Sarwana, Advocate for Cambridge Assessment International Education/Respondent No.2 in C.P.No.D-2526/ 2021 & Respondent No.3 in C.P. No.D-2623 of 2021

Mr. Asim Mansoor Khan, Advocate for the Intervener (CMA No.11730/2021 in C.P. No.D-2526 of 2021 a/w M/s. Zeeshan Bashir Khan, Farmanullah and Amir Haider Advocates. Mr. Asim Iqbal, Advocate/Intervener.

Mr. Kashif Sarwar Paracha, Acting Additional Attorney General of Pakistan.

Mr. Hussain Bohra, Assistant Attorney General.

Mr. Jawad Dero, Addl. A.G. Sindh.

Dr. Ghulam Ali Mallah, CEO/Secretary, Inter Board Committee of Chairmen (IBCC), Ministry of Federal Education & Professional Training, Government of Pakistan, Islamabad.

Muhammad Ali Mazhar, J: The aforesaid petitions have been brought to entreat a declaration that decision of National Command and Operation Centre (NCOC) to conduct physical exams for A and AS Levels and O Level are unlawful and in violation of Articles 4, 8, 9 and 25 of the Constitution of the

Islamic Republic of Pakistan. The directions have also been sought against the respondent No.1 (Federation of Pakistan through Ministry of Federal Education & Professional Training) to adopt the option provided for evaluating the students in O, A and AS level exams through the method of School Assessed Grades failing which approximately 85,000 students will face irreparable loss. Along with the main petition an interlocutory application has also been moved under Order 39 Rules 1 and 2 CPC to restrain the respondents from conducting physical examination for A and AS levels and O level and direct them to evaluate the students according to method of school assessed grades. In essence, the petitioners have avowed that during pandemic, there is no justification to hold physical examinations in Pakistan. On notice, the Federation of Pakistan and Cambridge Assessment International Education filed their replies. Heard the arguments. For reasons to be recorded later, the aforesaid petitions are disposed of in the following terms:-

- i) Holding physical exams for A and AS levels and O level according to notified schedules does not infringe or intrude any fundamental rights of the petitioners. The petitioners cannot claim any vested right to evaluate or appraise their credentials and competence by dint of “school assessed grades” and not by means of physical examination.
- ii) The decision of physical examination of O/A/AS levels was taken in the meeting of respondent No.1/National Command and Operation Centre on 18.04.2021. Under the dominion of Judicial review, the court reviews the lawfulness of a decision or action made by a public body. In fact this is a process under which executive or legislative actions may be subject to review by the judiciary. The court may invalidate laws, acts and governmental actions that are incompatible with a higher authority more so, an executive decision may be invalidated for being unlawful and also maintains check and balance. This can be sought on the grounds that a decision arises when a decision-maker misdirects itself in

law, exercises a power wrongly, or improperly purports to exercise a power that it does not have, which is known as acting ultra vires; a decision may be challenged as unreasonable if it is so unreasonable that no reasonable authority could ever have come to it or a failure to observe statutory procedures. (Ref: PLD 2020 Sindh 42. Hajj Organizers Association of Pakistan vs. Federation of Pakistan). In our view the policy decision impugned in these constitution petitions is based on number of circumstances on facts and expert opinion, forethought and premeditation of all pros and cons and it does not seem to be arbitrary, discriminatory or violative of any constitutional, statutory or any other provisions of law hence we do not find any justification or rationale to interfere in this policy decision when all arrangements have already been made for physical examination and large number of students throughout the country are geared up to appear in the examination while few students only approached to the court of law for staying the examination and hamper the entire process which is totally unwarranted and prejudicial to the interest of large number of those students who are ready to appear and making preparation religiously.

iii) On 22.04.2021, Ministry of Federal Education and Professional Training, Government of Pakistan communicated Country Director British Council Pakistan for enforcement of SOPs during physical examination of A, AS levels and O level according to the schedule. In the same letter it is visibly conversed to the British Council for observance and adherence to Covid SOPs that Desk to be placed 6 ft. apart; face masks to always be worn; hand wash facilities to be provided at all venues; mandatory temperature checking and venues to be sanitized completely before and after exams. The counsel for the Cambridge Assessment International Education has also produced a copy of SOPs with clear assurance and undertaking that during the physical examination the SOPs shall be strictly followed and implemented. He has also produced a copy of letter communicated by British Council to the Federal Minister Education and Professional Training,

Government of Pakistan assuring to follow the SOPs and also attached the document. For the ease of convenience, the SOPs document is reproduced as under:

“Health and Safety SOPs O and A Level Exams.

SOPs for venues

- Venue sanitization before every exam session.
- Minimum 2 meters distance between candidates throughout their exam journey.
- Minimum 2 meters distance between candidates’ desks.
- Mandatory temperature check for all security guards.
- Mandatory masks for all venue and security staff.
- Hand sanitizers and disinfectant wipes will be available at all venues.
- Dedicated team of venue staff to implement the H&S SOPs at venues.

SOPs for Candidates

- Candidates and schools are informed about early arrival at venues and late departure to ensure the social distance and crowd control.
- Mandatory temperature check by using thermal gun before entry in exam hall.
- Candidates quick scanning and ID check.
- Candidates to directly enter in exams hall and wait on their designated desks until exams start. No waiting area for candidates.
- Mandatory masks for all candidates throughout their exam journey.
- Candidates exit in batches with 05 minutes gap to ensure the social distancing.
- Waiting area only for under 18 candidates those will opt safe collection option.
- Where possible, different entry and exit points for candidates to ensure the social distancing.

SOPs for Venues Staff

- Weekly consent and forms are signed by invigilators.
- Temperature check for all venue staff upon arrival at venue.
- Masks are provided by the British Council and it is mandatory for venue staff to wear the mask.
- Gloves are provided to handle the question papers and answer scripts.
- Face shields are provided and mandatory for the venue staff performing candidates scanning and ID check duties.
- Mandatory social distance at venues throughout the exam activity.

SOPs for Staff

- Wearing mask is mandatory for staff

- Use of gloves while handling question papers and answer booklets.
- Regular use of hand sanitizer.
- To ensure social distancing while performing their duties at venues.
- Dedicated staff to manage the exam venues and back office work to eliminate their physical interaction.
- Only one staff will travel in vehicle along with driver (mask is mandatory for driver)."

iv) The counsel for the Cambridge Assessment International Education (CAIE) referred to certain assurance given in their comments in order to safeguard and protect the interest of all candidates, the relevant paragraphs are reproduced as under:-

"B26. The Respondent No.3 ("CAIE") also has put in place measures to ensure that most students taking exams can get a result, even if they miss some exam components due to Covid-19.

B-27. Respondent No.3 ("CAIE") recognises that the Covid pandemic has increased the likelihood that some candidates may miss some or all their exams due to Covid illness or a requirement to self-isolate, and has introduced measures to ensure that as many of these students can still receive a result. For example, (1) Respondent No.3 has relaxed its normal rules so that if a student misses all but one of the component exams for a qualification, Respondent No.3 can still assess a grade on the basis of the one component exam, as shown in the two (2) documents titled "Covid-19 Exemption Components 9 December 2020" and "Covid-19 Exemptions for March and June 2021 Factsheet" which are attached and marked as Annexures "CAIE/9" and "CAE/10", respectively.

B-28. The Respondent No.3 ("CAIE") has put in place measures to ensure that most students taking exams can get a result, even if they miss some exam components due to Covid-19.

B-29. Respondent No.3 recognises that the Covid pandemic has increased the likelihood that some candidates may miss some or all their exams due to Covid illness or a requirement to self-isolate, and has introduced measures to ensure that as many of these students can still receive a result.

For example, Respondent No.3 has relaxed its normal rules so that if a student misses all but one of the component exams for a qualification, Respondent No.3 can still assess a grade on the basis of the one component exam. If a student is not able to take any component for covid-related reason and if they inform Respondent No.3 ("CAIE") within seven days of the exams, the Answering Respondent will refund their full exam fee and they will be able to sit in exam in CAIEs future series, for example, the October / November 2021 series. This is shown in the two (2) documents titled "Covid-19 Exemption Components 9 December 2020" and "Covid-19 Exemptions for March and June 2021 Factsheet" which are attached and marked as Annexures "CAIE/9" and "CAE/10", respectively.

B-30. Unfortunately, there may be some candidates who miss all of the component exams for a qualification and it will not be possible to provide them with a result; the latter will however work with their school to help them sit in a subsequent exam series. Even in normal years, this happens to a small number of students who are unwell during their exams or prevented by some other means from taking exams, such as natural disaster. The Respondent No.3 recognises that this will be disappointing for these students and will support their schools and them to prepare for the next available exams; however, health, safety and wellbeing of students and staff is the highest priority.

B-31. Respondent No.3 is also providing advice to schools to help them support the mental health, safety and wellbeing of all students during these very difficult times, as shown in documents titled "How to Manage Stress and Learn Effectively at Home", and "Transcript Mental Health and Wellbeing during a Time of Uncertainty" which are made available as resources by Respondent No.3 online and are attached and marked as Annexures "CAIE/11" AND "CAIE/12", respectively.

B-32. It is incorrect to suggest that students in Pakistan who are able to take exams will be at a clear disadvantage to candidates in countries where exams have had to be cancelled and alternative school assessed grades used. Respondent No.3 has always and will continue to take clear steps to ensure that the grades awarded by either route are comparable, as set out in Annexure "CAIE/7".

B-33. The Respondent No.3 will and has ensured that students taking exams are not systematically disadvantaged (or advantaged) in their results, compared to students receiving results by other assessment methods. This does not, however, detract from Respondent No.3's clear position, which is accepted by education ministries and exam regulators, that assessment of candidates by exam is the fairest method, where those exams are safe.

B-34. The Respondent No.3 ("CAIE") charges the same fees to schools whether they are in a country taking exams or a country where school assessed grades are being used. There is no monetary benefit to the Respondent No.3, and the Answering Respondent strongly refutes that monetary concerns are guiding its policy. The Respondent No.3 is acting foremost to protect the health, safety and wellbeing of students and school staff during the pandemic, and second most to use the fairest forms of assessment to enable students to progress with their education."

v) The counsel for the CAIE during course of arguments also produced a letter dated 08.04.2021 issued by Cambridge Assessment International Education to all Principals across Pakistan in which a further relaxation has been given that if a student or parent is not comfortable to take exam in May/June 2021 series they can withdraw their entries any time until the end of the series and sit in any future exam series without any additional financial burden. If the petitioners are not in a position to appear in physical examination according to the present schedule they may avail the relaxation which is across the board.

VI) Nevertheless, we have upheld the NCOC decision of holding physical examination in Pakistan in line with notified schedule and also rejected the prayer for awarding school assessed grades in lieu of physical examination but in unison, we also direct the respondents to ensure the strict adherence and compliance of SOPs reproduced in paragraph (iii) and the fair assurances given by CAIE which are mentioned in paragraph (iv) and (v) of this order.

Judge

Judge

Karachi.

Dated: 23.04.2021.