

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.979 of 2004
alongwith
Suit No.692 of 2006

Date	Order with signature of Judge
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1. For hearing of CMA No.5955/2004
2. For hearing of CMA No.5956/2004
3. For hearing of CMA No.7354/2004
4. For hearing of CMA No.167/2005
5. For hearing of CMA No.1283/2005
6. For hearing of CMA No.8645/2004
7. For hearing of CMA No.8646/2004
8. For hearing of CMA No.8647/2004
9. For hearing of CMA No.8648/2004
10. For orders on CMA No.11768/2022

18.08.2022

Khawaja Shams-ul-Islam, Advocate for the plaintiffs
Khawaja Naveed Ahmed, Advocate for the Intervener.
Ms. Noshaba Haq Solangi, AAG.
Muhammad Ali, Intervener is also present.

While this Court's order dated 12.08.2022 in details has dealt with the controversy at hand and was passed in the presence of all counsels, the matter pending as of 2004 was adjourned for today to consider the names of different individuals who could replace Dr. Zafar-u-Islam and Dr. Abdul Basit from the recommendation of the Inquiry Committee as these gentlemen since have been either relocated or expired.

When this matter is taken up today, Court's attention is drawn towards CMA No.11768 of 2022 fixed for orders. Whilst the Court was considering contents of the said application, a gentleman who introduced himself with the name of Muhammad Ali and who had not attached any documents with the instant application claimed that he is Vice Chancellor of the Institute and stated that he has moved this application (CMA No.11768/2022) which office has fixed for orders today. The application is not supported with any document that could have been considered by this Court to show that the applicant/intervener is a necessary and/or proper party to be included in these proceedings, at this belated stage. Who has appointed him as a V.C is not known, and whether he is V.C or not is even ascertainable as no *prima facie* proof has been attached. Learned counsel for the plaintiff waived notice and questioned *bona fide* and authenticity of the applicant that he held any position in the Institute and if so, who has

appointed him and why the applicant has not attached any single document to prove his claim. Proceedings in these matters have already been culminated with the findings given by the Inquiry Committee as discussed in this Court's order dated 12.08.2022. The instant application is thus dismissed in *limine*.

As decided yesterday, that suits were to be disposed of in terms of the finding of the Inquiry Report, these findings are reproduced hereunder:-

“(i) Removal of the plaintiff Mr. Zafar-ul-Islam from the post of Vice Chairman PIMSAT without adopting proper legal procedures including issuing any show cause and assigning any reason, if any etc. was illegal and was motivated for certain personal reasons.

(ii). The events of August 1 to 5, 2004 indicate that of the SGMs of MES on August 4th and 5th 2004 were held with malafide intentions, and the decisions taken involved misuse of the powers of the Board of Governors of PIMSAT by the MES.

(iii). The Managements of MES and MET appear to be constantly involved in the mismanagement of the funds, assets, and properties of PIMSAT and Preston University by misinterpreting the provisions of the Charters of these institutions to their advantage.

(iv). However, notwithstanding anything different mentioned above, it would be desirable to consider a positive approach, as well as, take some strong and firm actions to create an example for other institutions also and help these two institutions to be streamlined with justice to the positions of all concerned and conforming also to the parameters laid down by the Honourable High Court in its order placed at Annexure 1 and reproduced in para 5 of this report. These include:

- a. to regulate the mismanagement and the administrative and financial discipline, and affairs in general, in the larger interests of the institutions.
- b. to end the controversy raised in the Court and not to allow the dispute to be continued in the Court.

(v) There is, therefore, great and urgent need to take appropriate stern actions to streamline these two institutions and regulate their administration and financial discipline property.”

It is, therefore, recommended that the Governor Sindh/Patron invoking his powers under Sections 7 and 6, and subsections 5 and (3)e of the Charters of PIMSAT an Preston University, respectively, may consider to order necessary action in respect of the following:-

1. The orders of the removal of Mr. Zafar-ul-Islam, the Plaintiff, as Vice Chairman of PIMSAT, be declared illegal and he be restored to the position of Vice Chairman of PIMSAT.

2. The proceedings of Special General Meetings of Management Educational Trust held on 4th and 5th August be declared null and void except for the acceptance of resignations of Dr. Abdul Basit and his brother Mr. Abdul Hamid from the basic membership, which they had tendered themselves. This would render the PIMSAT and Preston University function independently.
3. All properties, funds, assets, etc. transferred by MES to MET and hence Preston University be returned to PIMSAT, as they were on 5th August 2004 with any benefits/profits, etc. accrued to them afterwards. This will apply to all campuses and set-ups of PIMSAT within and outside Pakistan.
4. The induction of the two members of MES, as a result of the meetings held on 4th, 5th August 2004, Syeda Najla Rafi and Mr. Sohail Ayoub be cancelled.
5. Syed Ahsan Rafi and Mr. Zafar-ul-Islam be directed to continue as Vice President and General Secretary of the MES and convene a meeting of all the five remaining original members of the MES and induct two new members, who should be eminent Educationists/Scientists or persons of reputation and high standing in society, with mutual consent among Syed Ahsan Rafi and Mr. Zafar-ul-Islam. Alternately, these be nominated by the Governor Sindh/Patron. One of the new members be elected by the members within mutual consent among Syed Ahsan Rafi and Mr. Zafar-ul-Islam or be appointed by the Governor Sindh/Patron as the President of MES and, hence, Chairman of PIMSAT.
6. Alternate to what is contained in 5 above, a suitable person be appointed by the Governor Sindh/patron as an Administrator of MES in accordance with the provisions of the Societies Registration Act 1860 and, hence, Chairman of PIMSAT for its campuses inside or outside Pakistan.
7. The Governor Sindh/Patron may order the immediate holding of the meeting of Board of Governors after the President of MES and Chairman is appointed, as above, to take stock of the situation and do all things and take all necessary actions to manage the affairs of the institution properly and maintain financial discipline, directing all members, especially the Government functionaries to attend the meeting.
8. Independent Auditors be appointed for MES/PIMSAT and MET/Preston University to regulate all financial matters/transactions of the institution and their parent bodies MES and MET; and investigate into them and assess any individual unlawful benefits drawn by the members of these bodies incurring such loss to the institutions, which be got returned to the bodies and institutions.
9. These Auditors appointed should also look into the financial and other claims and counter claims among Dr. Abdul Basit and Mr. Zafar-ul-Islam and any other.

10. The Charters of PIMSAT and Preston University be immediately amended to bring in line with standard provisions, as indicated in other Charters to close the door for their deliberate or indeliberate misinterpretation and use for any personal gains and to provide powers to the institution rather than to the respective Trusts/Societies/Companies, etc. and, hence their members/owners to manage, transfer, etc. the funds, assets, properties of the institutions.
11. The Governor Sindh/Patron may simultaneous to above necessary actions direct the three persons, Dr. Abdul Basit, Syed Ahsan Rafi and Mr. Zafar-ul-Islam to serve the best interests of the two institutions and, hence, their students and the public at large, through cooperation without developing the disputes and bringing the matters to the Courts and be discontinued, which would affect the reputation of the institutions and the future of students and harm the public interests.
12. The Governor Sindh/Patron may order above and/or any other actions to be taken in the best interests of the institutions and their students and public at large and to also address the concerns of the Honourable High Court.”

This Court vide order dated 14.03.2005 has held that:-

“.....It appears some dispute has arisen between the parties to the suit as to manner in which a Chartered Institute is to be run, maintained and regulated.

Qazi Khalid, learned A.A.G has drawn my attention to Sections 7 & 8 of the Preston Institute of Management, Science and Technology Ordinance, 2001 and so also the Preston University Act 1999. It appears that the Governor of Sindh under the both the Enactment is possessed of wide range of powers, authority and jurisdiction to take stock of the situation and pass appropriate orders regulating mismanagement and financial discipline in the Chartered Institution. Since large number of student would be effected by any dispute if allowed to be continued in Court. It is deemed appropriate that the Governor of Sindh may exercise the powers as conferred under the enactment referred to above and decide the controversy as raised in suit, and take such measure, so as to resolve the controversy and regulate the administrative and financial affairs in the best and larger interest of the Institution.

Needless to say that, all the parties may be given fair opportunity of being heard. Qazi Khalid learned A.A.G states that on account of pressing engagement of the Hon’ble Governor of Sindh efforts will be made to decide the matter preferably within a period of three months. Let this matter may be fixed in Court after such time.”

Also on 16.04.2015 this Court held that:-

“...Learned Counsel for the plaintiff submits that vide order dated 14.3.2005 this Court while hearing applications including application under Order VII Rule 11 CPC had issued some directions to the learned Governor of Sindh to exercise the powers as conferred under Section 7 & 8 of the Preston Institute of Management, Science and Technology Ordinance, 2001 and so

also the Preston University Act, 1999 and to decide the controversy as raised in the Suit. Learned Counsel further submits that such report / inquiry has been placed on record dated 18.2.2006, whereas, instant matter has not been proceeded thereafter due to one reason or the other including change of counsels by the defendants. Learned Counsel further submits that such report has already been taken on record on 18.4.2006 whereas no objections have been filed on such report by any of the defendants.

Be that as it may, as a last and final chance matter is adjourned, however, with the caution that if nobody appears on behalf of the defendants on the next date, appropriate orders may be passed for disposal of the instant Suit.”

Now coming to the issue for which the case was adjourned for today, i.e. to consider the question as to who will replace Syed Ahsan Rafi and Dr. Abdul Basit. It was proposed to this Court in the last date of hearing by the learned counsel of the plaintiff and Mr. Asad Iftikhar, learned AAG that contact be made with Mr. Justice (Retd) Faheem Ahmed Siddqui and upon his consent, Justice (Retd) Faheem Ahmed Siddqui to take the position in place of Syed Ahsan Rafi. For the position of Dr. Abdul Basit, Prof. Dr-Ing. Jameel Ahmed Khan (if he agrees to such a proposition) would also prove to be an asset. Let communication be made in this regard and if Dr-Ing Khan is unavailable contact may be made to Prof. Dr. Engr. Muzaffar Mahmood for this assignment. Both the Drs. could be reached via VC of NED University of Engineering & Technology, Karachi.

Whereas this Court vide order dated 14.03.2005 found it appropriate that *“Since large number of student would be effected by any dispute if allowed to be continued in Court. It is deemed appropriate that the Governor of Sindh may exercise the powers as conferred under the enactment referred to above and decide the controversy as raised in suit, and take such measure, so as to resolve the controversy and regulate the administrative and financial affairs in the best and larger interest of the Institution.”* These suits are accordingly disposed of in terms of the recommendations of the Inquiry Report detailed at Sr.01 to 12 above except with the changes pointed out with regards Syed Ahsan Rafi and Dr. Abdul Basit as suggested in the above paragraph.

JUDGE