

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C. P. No. D-5597 of 2021

Date	Order with signature of Judge
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PRIORITY.

1. For hearing of CMA No.13689/2020.
2. For orders on Office Objection.
3. For hearing of CMA No.23649/2022.
4. For hearing of main case.

27.10.2022.

M/s. Muhammad Najeeb Jamali and Muzzammil Hussain
Jalbani Advocates for the Petitioner.

M/s. Moin Azhar Siddiqui and Ali Ahmed Turrabi, Advocates
for the Respondents No.1 to 3.

Mr. Sandeep Malani, Assistant Advocate General, Sindh.

YOUSUF ALI SAYEED, J. - The case of the Petitioner is that he had obtained admission in the Bachelor of Laws (“**LL.B**”) Program at the Sindh Muslim Law College, Karachi, in the year 2018, in pursuance of which had paid the requisite fee and attended classes of the First Year so as to go on and sit the LL.B-I Examination held in the month of October 2020 after being issued an Admit Card, but his result was then withheld by the Respondent No.1, being the University of Karachi, which then proceeded to cancel his enrolment and communicated as much to the College. As such, the Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution so as to impugn such cancellation and elicit consequential relief for continuation of his studies.

2. The comments forthcoming on behalf of the Respondent No.1 acknowledge that admission had been granted to the Petitioner and that an Admit Card had also been issued for his participation in the annual examination, but go on to state that the Petitioner’s enrolment was then cancelled as it was subsequently found that he had been ineligible for admission as per the criteria laid down in Rule 28 of the relevant Code, which required a candidate to hold at least a 2nd Class Bachelor Degree, whereas the Petitioner’s Degree was in the 3rd Division.

3. As such, it was explained that admission had been granted to the Petitioner erroneously and in violation of that Rule, hence had been cancelled, and a letter dated 01.09.2021 had been addressed by the Respondent No.1 to the Principal of the College in that regard, which reads as follows:-

**“ENROLMENT SECTION
UNIVERSITY OF KARACHI**

Ref: Enrol No. Sept-2021

Dated 01-SEP-2021

**The Principal,
S.M. Law College
Karachi**

Subject: **NOT ELIGIBLE**

*After the scrutiny of the Enrolment Form of **Mr. Saqlain** s/o **Mr. Rasool Bakhsh Jalbani** student of your college session 2018-2019 found not eligible for the admission in (B.L) due to 3rd Division in his Bachelor Marksheet.*

*Therefore, Enrolment form of **Mr. Saqlain** hereby cancelled as per rule.*

Note: Mr. Saqlain's Enrolment form was under objection due to non-submission of Bachelor documents.

**Deputy Registrar
Settlement Office”**

4. For the purposes of reference, it is expedient to reproduce Rule 28 from the Code of the Respondent No.1, being the relevant rule laying down the criteria for admission in the LL.B Program, which reads as follows:-

28. “Bachelor of Laws (LL.B) At least Second Class Bachelor's Degree (Pass) or (Honours) in Arts. Science or Commerce: B.O.L, B.Sc (Agr), Bachelor of Engineering, B.Sc in Home Economics, B.Sc. Animal Husbandry or Veter; Sc; M.B.B.S Bachelor of Dental Surgery; Higher National Diploma in Business Studies from Deptt: of Education Science, U.K B. Pharmacy, Bachelor of Theology.”

5. Succinctly stated, the case of the Petitioner gravitates around the assertion that the defect/deficiency stood cured by his having subsequently attained a higher qualification in the form of a Master Degree in Economics in the 2nd Division from Shah Abdul Latif University, Khairpur in the year 2005, with reliance being placed on a judgment of a learned Division Bench of this Court in the case reported as Mrs. Nazneen Farooqui v. Province of Sindh 2007 YLR 1776.
6. Proceeding with his submissions, learned counsel for the Petitioner pointed out that in the case of Nazneen Farooqui (supra), the very Rule 28 had been considered in the context of admission granted to students at the same College, which had similarly been resisted by the Respondent No.1 on the basis that those students had passed their B.A Examinations in the 3rd Division. However, observing that those students had also obtained a Master's Degree in either the First or Second Divisions, it had been held by a learned Division Bench of this Court that the requirement of Second Class undergraduate degree was the minimum threshold in terms of the relevant Rule and therefore, if a person had subsequently acquired a higher qualification (i.e. a Master Degree in the first or second divisions) the disability ought to be treated as having been removed. He argued that the case of the Petitioner was on same footing and the Petition ought to be allowed by following the same principle.
7. Conversely, learned counsel for the Respondent No.1 argued that Rule 28 had been validly set by the Respondent No.1 and the Court should not act so as to substitute its own view as to what the admission criteria ought to be. He relied upon the judgment of learned Division Bench of this Court in the case reported as Jamila Bano v. University of Karachi 2006 YLR 567, where the denial of the admission to a student in the LL.B Program on the touchstone of Rule 28 had been upheld.

8. Having considered the arguments advanced, we are of the view that the judgment cited on behalf of the Respondents is quite distinguishable as it did not pertain to the subject of whether a higher subsequent qualification cured the defect of graduation in a lower division than what was envisaged under the admission criteria, whereas the case of Nazneen Farooqui (supra) appears to be on all fours with and squarely applicable to the matter in hand, constituting a binding precedent in view of the principle laid down in the case of Multiline Associates v. Ardeshir Cowasjee and 2 others PLD 1995 SC 423.

9. As such, the Petition is allowed to the extent of the cancellation of the Petitioner's enrollment being set aside and his being declared eligible and entitled to continue his studies in the LL.B program and appear in the upcoming examination, subject to compliance with all other relevant rules and requirements.

JUDGE

CHIEF JUSTICE

MUBASHIR