

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

C. P. No. D-3895 of 2020

M. Saeed Shahzad & another.....Petitioners

Versus

Province of Sindh & others.....Respondents

C. P. No. D-4206 of 2020

Qamar Shahzad.....Petitioner

Versus

Province of Sindh & others.....Respondents

Date of hearing.

01.02.2023.

Petitioner in person in C. P. No. D-3895/2020, along with Abdul Sami Domki, Mohsin Ali Chandio and Ms. Rimsha Ali Zaidi, Advocates. Talha Abbasi, Malik Naeem Iqbal and Faizan Memon, Advocates for Petitioner in C. P. No. D-4206/2020.

Kazi Abdul Hameed Siddiqui, DAG.

Zulfiqar Ali, Advocate for the Intervener (CMA No.29647/2021) in C. P. No. D-3895/2020.

Soofia Saeed, M/s. Aijaz Ali and Umer Sikandar, Advocates for the Intervener (CMA No. 30713/2021) in C. P. No. D-3895/2020, alongwith Intervener Muhammad Ali Haider.

Mr. Shahryar Mahar, Assistant Advocate General, Sindh.

Mr. Abdul Samad Memon, Advocate for the HEC alongwith Nasir Shah, Director General, HEC and Satram Das, A.D. HEC.

Mr. Ameenuddin and Ms. Adeela Ansari, Advocates for Respondent No.2 (University of Karachi) alongwith Prof. Dr. Abdul Waheed, Registrar, Asif Mukhtiar, Director (Legal), University of Karachi.

ORDER

YOUSUF ALI SAYEED, J. - The captioned Petitions impugn the standing of the University of Karachi (the “**University**”) to conduct a doctoral program in the field of law on the ground that it failed to meet the basic criteria prescribed in that regard by the Higher Education Commission of Pakistan (the “**HEC**”), including the quality of its faculty.

2. Whilst one would not expect such shortcomings to afflict an institution of the stature of the University, the comments submitted on behalf of the HEC raised the spectre of certain discrepancies, with it being stated *inter alia*:-

“3. That the respondent No. 3 (HEC) has made mandatory for all the Higher Education Institutions through letter No. DG/QA/HEC/Gen/2013/1214, dated 7th November 2013 to take prior approval from HEC before launching any MS/MPhil/equivalent of PhD Program (Annex-B). HEC also advertised a Student Alert and Notification No. DG/QAD/HEC/Gen/2019/647 dated 06 December 2019 asking all the Public/Private Sector Universities to take approval from respondent No. 3 (HEC) about their new launching or back dated MS/MPhil/equivalent or PhD programs till 1st June, 2020 and after this date, the degrees of passed out graduates of these programs will not be attested by HEC (Annex-C) Due to COVID 19, this date is being extended till 31st December 2020. While it is important to mention here that the University of Karachi (respondent No. 2) has not applied for issuance of NOC of PhD Law to HEC yet.”

3. In the wake of the comments, the HEC had been directed to scrutinize the affairs of Law Department of the University vide an Order dated 15.09.2021, and after conducting that exercise, had submitted a Program Review Report dated 03.11.2021 (the “**Report**”) on 04.11.2021.

4. A perusal of the Report reflects that a committee comprising of (i) Prof. Dr. Gul Hassan, Dean Faculty of Law, University of Turbat, (ii) Prof. Dr. Shahbaz Ahmed Cheema, Professor, University of Law College, University of the Punjab, Lahore, (iii) Ms. Malieka Farah Deeba Malik, Head of Law Department, Bahria University, Islamabad, and (iv) Syed Afaq Ahmed, Assistant Director of the HEC, Regional Centre, Karachi, had conducted an inspection, with the following findings and recommendations then being made:-

“FINDINGS:

- The relevant statutory approvals to start the LLB, LLM, and Ph.D Programs were available on record.
- It is a matter of grave concern that no full time/permanent Ph.D. faculty member was hired for teaching and conducting research of Ph.D. law program which is a sheer violation of HEC rules.
- Total number of 71 students have been enrolled in PhD program during the year 2014 to 2020. However, record/proof of Ph.D admission tests conducted by the University is not available in the students’ files. This fact demonstrates that the results of admission tests are not properly maintained by the University. Year wise Ph.D enrolment is attached as Flag-B.
- No written test for admission in Ph.D program was conducted by the University in the year 2020 and the students were enrolled on the basis of interview only.
- The school was not able to present any record with regard to conduct of course work and comprehensive examination of the Ph.D. students. As per HEC guidelines, the course work of 18 credit hours preferably in the first year is required to be completed and followed by a comprehensive examination for granting candidacy as Ph.D. researcher.

- The educational documents of the enrolled students were not verified/attested and equivalence certificate of some foreign LLM degrees were found missing.
- The Committee also visited the School and found that the existing infrastructure needs renovation in order to provide conducive learning environment to the students. The departmental library contains around 3000 books which are barely sufficient for the academic needs of the students. The library of the school is managed by a permanent librarian. Additionally, there is a central library including digital access on the campus that supplements the research facilities.

Recommendations:

Based on the findings, the following recommendations have been made by the Committee:

- The University should ‘HALT’ all the activities of Ph.D. Law Program, including conduction of classes, holding of examination, thesis defense and award of degrees. The University is further advised to strictly comply with HEC policies as defined in PhD admission criteria, faculty appointment, curriculum, semester system guidelines and also maintain student teacher ratio regarding Ph.D. supervision notified from time to time in true letter and spirit.
- The admission test for the session 2020 was not conducted as per HEC guidelines. It is therefore recommended that the admission in Ph.D. law for the above mentioned session may be cancelled, and the fresh process of admission be announced once all the required standards and criteria are met as prescribed by the HEC.
- The University is advised to comply with the recommendations of the expert committee and addressed the deficiencies highlighted in the findings. The compliance report may be communicated to the HEC for further necessary action.”

5. The representatives of the HEC emphasised before us that the University remained non-compliant and that in the absence of the requisite remedial measures to ensure compliance with the applicable rules/regulations and policies, the degrees issued by the University in relation to the Program would not be recognised and attested by the HEC.

6. As it stands, no objections were forthcoming in respect of the Report on behalf of the University. On the contrary, when queried on the matter, the Registrar and the Director (Legal) of the University, both acknowledged that whilst the findings of the HEC were relevant and applicable, the discrepancies identified in the Report had existed since the inception of the Program and continued to subsist. However, they sought to justify the absence of Ph.D. faculty members by submitting that various initiatives had been taken to recruit persons possessing the required academic qualifications, but such endeavours had failed to yield any positive results to date. For his part, learned counsel appearing on behalf of the University also sought to impugn the *bona fides* of the Petitioners, arguing that they had been actuated by malice due to having been declined admission to the Program, rather than out of a genuine desire to advance the public interest.

7. Various students who had been admitted to the Program had also come forward as Interveners during the course of proceedings, claiming that their interests would be affected by the outcome of the *lis*, and with learned counsel appearing on their behalf seeking dismissal of the Petitions while arguing that they had unknowingly obtained their admission and ought to be allowed to continue their course of study.

8. Under Section 10 of the Higher Education Commission Ordinance, 2002, the HEC has *inter alia* been entrusted with the power and function to formulate policies and guidelines for higher education institutions and prescribed conditions under which they may be opened and operated, as well as to evaluate their performance. The primacy of such policies and guidelines has been recognized in the seminal judgments of the Honorable Supreme Court in the case reported as Pakistan Bar Council through Chairman and others v Federal Government through Establishment Division and others 2018 SCMR 1891. As such, it is apparent in our view that the Program cannot be continued whilst the University consistently fails to meet the relevant requirements and obtain a NOC from the HEC in that regard. The motive of the Petitioners is of little relevance under the circumstances and pales into insignificance when the larger ramifications of the matter are taken into account.

9. As regards the concerns of the Interveners, while the fate of such persons is of course intertwined from an academic perspective with that of the Program, the weight of their numbers do not alter the fact that the discrepancies identified by the HEC go to the root of the matter and no useful purpose would be served if the Program were allowed to continue due to misplaced notions of hardship when the degrees issued in relation thereto would not be recognized or attested. Indeed, we would be remiss in our function to countenance such an approach and allow for such an eventuality.

10. Needless to say, if the Interveners have been induced into enrolling in the Program on the basis of non-disclosure or misrepresentation on the part of the University, they remain at liberty to seek compensation by way civil actions before the competent Court having jurisdiction over the matter.

11. Thus, while taking the Report on record, we dismiss the Applications of the Interveners and dispose of the Petitions along with the other pending miscellaneous Applications, directing the University to discontinue the Program forthwith until such time as it satisfies the requirements and obtains a NOC from the HEC.

JUDGE

CHIEF JUSTICE

MUBASHIR