

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
 Suit No.2320 of 2017

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DATE ORDER WITH SIGNATURE OF JUDGE

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**Plaintiff:** Ms. Nafeesa Naz through  
Mr. Ovais Ali Shah, Advocate.

**Defendant No.2:** The Admission Committee, Medical Universities,  
Sindh, Through Mr. Wasiq Mirza, Advocate.

**Defendant No.3:** Shaheed Mohtarma Benazir Bhutto University  
Larkana Through Mr. Asif Hussain Chandio,  
Advocate.

**Defendant No.4:** National Testing Service Through Mr. Tahir  
Hussain Meo, Advocate.

For hearing of CMA No. 105/2018.  
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**Date of Hearing: 20.02.2018**

**Date of Order: 20.02.2018**

**ORDER**

**Muhammad Junaid Ghaffar J.** This is an application filed subsequently in this Suit through which the Plaintiff has sought directions for release of her result withheld by Defendant No.4 with further directions to Defendant No.3 to provisionally grant admission to the Plaintiff in the MBBS Course for academic year 2017-2018.

2. Learned Counsel for the Plaintiff submits that the Plaintiff was granted admission in “**BDS**” for the Session 2016-2017 pursuant to letter/offer dated 5.6.2017 at Bibi Aseefa Dental College of Shaheed Mohtarma Benazir Bhutto Medical University, Larkana and she joined the said College. He further submits that when the admissions for the next year were announced, the

Plaintiff on the basis of the Prospectus for the Session 2017-2018 for the Medical Universities of the entire Province of Sindh and after considering Para-18 of the Eligibilities of the Candidates applied for admission in the MBBS category and was issued admission form whereafter the Plaintiff appeared in the aptitude test conducted by N.T.S. According to the learned Counsel, thereafter the Defendants withheld the result and in fact attempted to cancel the **“BDS”** admission of the Plaintiff on the ground that in the Prospectus for 2016-2017 in Clause 10.24 there was a prohibition for reappearing of a candidate in the entry test, who has already been admitted at the said University. Per Learned Counsel such attempt on the part of defendants was without any lawful authority and justification, therefore instant Suit has been filed. Learned Counsel submits that after filing of this Suit Order dated 04.01.2018 was passed, the withheld result was announced and the Plaintiff qualifies on merits, whereas, one seat was reserved in her District. Therefore, considering the fact that the session has already started, the Plaintiff be admitted provisionally subject to final outcome of this Suit as according to the learned Counsel, the defendants are misconstruing the language employed in the two prospectuses in question.

3. Learned Counsel for Defendant No.3 has contended that the Plaintiff already stood admitted on the basis of Prospectus for the year 2016-2017 and was attending classes of BDS, whereas, an affidavit was also sworn by her to the effect that she will be governed by the Prospectus of 2016-2017, and therefore, by appearing in the fresh entry test for 2017-2018, she has violated the terms and conditions of her admission making her liable for its cancellation. Per learned Counsel, the Plaintiff has concealed such

facts and did not follow the proper procedure, whereas, her admission(s) are to be governed by the Prospectus of 2016-2017. In support he has relied upon **2016 SCMR 134 (University of Health Science, Lahore and others v. Arslan Ali and another)**.

4. I have heard both the learned Counsel and perused the record. To have a better understanding of the controversy in hand, it would be advantageous to refer to the two relevant provisions under consideration as stated in the Prospectus of the University for the year 2016-2017 and 2017-2018, which reads as under:-

**Clause 10.24 (for the year 2016-2017)**

“10.24 **Re appearing of candidate in the entry test for any reason, who already has been admitted at SMBBMU is strictly prohibited.** Any student found doing this practice shall get his/her previous admission cancelled and also shall not be given admission if his/her name stands in fresh list of selected candidates.”

**Clause 18 (for the year 2017-2018)**

“18. **Those students who are studying in 1st year MBBS course against any seat of tagged districts are not entitled to re-appear/Re-sit in Entry Test.** If any selected student will Re-appear/Re-sit in Entry Test his/her admission will be cancelled immediately and University have the right to take legal proceedings against that student.”  
(Emphasis supplied)

5. Perusal of Prospectus Clause 10.24 for the year 2016-2017 reflects that Re-appearing of candidate in the entry test for any reason, who already has been admitted at SMBBMU is strictly prohibited and any student found involved in this practice shall get his/her previous admission cancelled and also shall not be given admission if his/her name stands in fresh list of selected candidates. On the contrary in Clause 18 of the Prospectus for the year 2017-2018 it is provided that those students who are

studying in Ist year MBBS course against any seat of tagged districts are not entitled to Re-appear/Re-sit in Entry Test and if any selected student will Re-appear/Re-sit in Entry Test, his/her admission will be cancelled immediately and University have the right to take legal proceedings against that student. When both these provisions are read in juxta-position, it appears that there is some conscious difference and change insofar as its application is concerned. In the Prospectus for 2016-2017, it applies to any student, whereas, in the Prospectus for the year 2017-2018, it is only applicable on the students of MBBS course. Admittedly the plaintiff was not in MBBS Course in the year 2016-2017. It is a basic principle that whatever is not prohibited is deemed to be permitted.<sup>1</sup> Again it is an established principle of law that whatever is not prohibited, it is permitted unless it specifically violates any law or rules.<sup>2</sup> For the Session 2017-2018 it is only applicable to such students, who are already admitted in MBBS course and not under any other discipline including “**BDS**”. Therefore, I am of the view that the Plaintiff was justified in appearing in the entry test for the Session 2017-2018 on the basis of exclusion provided in Clause 18 (ibid), which does not apply to the Plaintiff’s case.

6. Insofar as the arguments of learned Counsel for Defendant No.3 that the Plaintiff shall be governed by the Prospectus of 2016-2017 is concerned, I may observe that there is no cavil to such proposition. However, it would only be applicable in respect of matters, which require its application during the course of study. Insofar as, the Re-appearance in an Entry Test is concerned, she could not be governed by the Prospectus of 2016-2017 for the simple reason that in that year it was her first attempt for

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<sup>1</sup> Islamia University Bahawalpur v Muhammad Hameed Bhatti (2004 SCMR 649)

<sup>2</sup> Additional Collector-II Sales Tax Lahore v Abdullah Sugar Mills Ltd., (2003 SCMR 1026)

admission as she was a fresh student and there could not have been any question or applicability of this clause, which only applies on students re-appearing in the test. She appeared in the Session 2016-2017 for the first time and there was no Re-appearance on her part. In fact, she is to be governed by the Prospectus Clause 18 of Session 2017-2018 as at that time, she was re-appearing in an entry test. The said Clause is not applicable to "BDS" students who have been admitted in the University in the year 2016-2017. Insofar as the reliance on the case of *University of Health Science, Lahore (supra)* is concerned, I may observe that facts of this case are peculiar in its nature and only require interpretation of the two prospectuses in question, and therefore, the ratio of that case is not applicable. In that case a finding of fact was recorded against the Appellant / Petitioner to the effect that he was not disabled on the basis of which he was claiming and asserting his right to admission.

7. In view of hereinabove facts and circumstances, of this case and the discussion made thereunder, listed application was allowed by means of a short order on 20.02.2018 and these are the reasons thereof.

Judge