

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

C.P. No.D-8179 of 2018

C.P. No.D-8774 of 2018

C.P. No.D-8484 of 2018

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Agha Faisal

C.P. No.D-8179 of 2018

Tariq Aziz.....Petitioner

Versus

Province of Sindh & others.....Respondents

C.P. No.D-8774 of 2018

Shaheed Mohtrama Benazir Bhutto

Medical College Lyari Karachi.....Petitioner

Versus

Province of Sindh & others.....Respondents

C.P. No.D-8484 of 2018

Muniba Tahir & others.....Petitioners

Versus

Province of Sindh & others.....Respondents

Date of hearing:08.02.2019

Mr. Muhammad Asif Javed, Advocate for petitioner in
C.P. No.D-8179/2018.

Mr. Ahmed Ali Ghumro, Advocate for petitioner in
C.P. No.D-8774/2018.

Mr. Obaid-ur-Rehman, Advocate for petitioners in C.P. No.D-8484/2018 along with Mr. Noor Z. Khattak, Advocate.

Mr. Abdul Waheed Siyal, Advocate for JSMU.

Mr. Sohail H.K. Rana Advocate for PMDC.

Mr. Jawwad Dero, Addl. A.G. Sindh along with D.M. Imran Khan, (Internee).

Mr. Kafeel Ahmed Abbasi, Deputy Attorney General.

M/s.Waheed Ahmed, Additional Secretary (Health) and Mr. Ibrahim Memon, Deputy Secretary Health, present.

Dr. Jamaluddin Jalalani, Ex-Additional Health Secretary (Tech) present.

Mr. Saleem Ali, Executive Engineer, Prov. Buildings, Division Karachi, Works & Services Department present.

M. Anwar Alam, Officer Incharge, PMDC Karachi office present.

Dr. Abdul Rehman Rajput, Deputy Director Admission Cell, Jinnah Sindh Medical University, Karachi present.

Prof. Dr. Anjum Rehman, Principal, Shaheed Mohtarma Benazir Bhutto Medical College Lyari, Karachi present.

Dr. Ameer Ali, Vice Principal, Shaheed Mohtarma Benazir Bhutto Medical College Lyari, Karachi present.

Ms. Umme Habiba from Students Affairs, Shaheed Mohtarma Benazir Bhutto Medical College Lyari, Karachi present.

Muhammad Ali Mazhar, J: The aforesaid Constitution Petitions have been brought to seek directions against the Government of Sindh to provide relevant facilities, release of funds and fulfill all necessary requirements before the next inspection of Shaheed Mohtarma Benazir Bhutto

Medical College, Lyari, Karachi by the Pakistan Medical and Dental Council. The cumulative and composite effect, besides in quest of abovementioned directions against Government of Sindh, virtually a restraining order has also been implored against the Pakistan Medical and Dental Council from curtailing 50 seats of the Shaheed Mohtarma Benazir Bhutto Medical College Lyari, Karachi.

2. In fact the nucleus of all these petitions is based on the decision of Pakistan Medical and Dental Council (hereinafter to be referred to as PMDC) whereby they curtailed fifty seats of Shaheed Mohtarma Benazir Bhutto Medical College Lyari, Karachi. Indeed on 17.08.2018, PMDC communicated a letter to the principal of the said college with regard to a comprehensive inspection. The inspection (first inspection) was carried out by the PMDC inspection team on 10.05.2018. The report was placed before the Executive Committee in its meeting held on 14.07.2018. The Council decided as under:-

“It was pointed out by the Executive Committee that marks scored by the college are also deficient in infrastructure. The Executive Committee after perusing the inspection report, recommendations made by the inspection team and having deliberate discussion unanimously decided that there are significant and severe deficiencies found and college is liable to reduce the seats from 100 to 50 admissions. However, college will be re-inspected before commencement of new admission i.e. 2018-2019 to see whether deficiencies pointed out have been rectified, if the college is failed to rectify the same, the seats will be reduced to half.”

3. The decision of the Council manifests that while cautioning and foretelling that the college seats will be curtailed from 100 to 50, at the same time it was further avowed in the decision that the college will be re-inspected before commencement of new admission (Academic year 2018-2019) to see whether deficiencies pointed out in the report have been rectified and if the college is found to be

failed to rectify the same, the seats will be reduced to half. However, on 13.11.2018, Jinnah Sindh Medical University, Karachi (the admitting university) informed the principal of Shaheed Mohtarma Benazir Bhutto Medical College Lyari, Karachi that PMDC has sent a list of recognized medical and dental colleges in the province of Sindh with their seat allocation. Shaheed Mohtarma Benazir Bhutto Medical College Lyari, Karachi has been allocated 50 seats only for this academic year. This shows that without conducting any inspection as directed in the decision of the Council, the admitting university was directed prematurely to communicate the college the curtailment of 50 seats without conducting re-inspection, however, on 18.12.2018, re-inspection was carried out by the PMDC and the principal of the college was communicated vide letter dated 27.12.2018 that 50 seats of the college have been reduced and the deficiencies will be communicated to the college and they should be directed to fulfill the deficiencies and once the requirements are completed by the college it may inform PMDC so that inspection may be carried out to verify the same. It is clear from the record that before second inspection, the admitting university had already conveyed the decision of PMDC for curtailing 50 seats so in this set of circumstances and state of affairs, the college was found guilty before second inspection which was carried out subsequently to support and cover up the accusation.

4. The aforesaid petitions were filed before the letter communicated by PMDC to the principal of the College on 27.12.2018. It is an admitted position that in the first inspection the college was given 658 marks, whereas in the second inspection carried out by the PMDC in the month of December the institution has secured 697.05 marks. Since

this college is totally owned and under the administrative control of the Sindh Government, therefore, during pendency of these petitions, we called the Secretary Health, Additional Secretary Health as well as Secretary Works and other related officers to explain as to why the Sindh Government is not taking interest in the college wellbeing and why they have no remorse or regret on the curtailment of 50 seats not on the defect of college management which is totally dependent and under the financial and administrative control of Government of Sindh but the seats were curtailed due to lack of interest and inattentiveness of the Sindh Government in which they have found fail to equip and endow necessary infrastructure with proper funding to maintain high standards of education and well-brought-up of the institution.

5. On 18.01.2019, Mr.Muhammad Usman Chachar, Secretary Health and Additional Chief Secretary, Government of Sindh appeared personally and he filed a report in which he pointed out that four summaries have been moved to the Chief Minister Sindh and for some other allied matters, permissions have already been granted to the principal to act accordingly. Today, the Additional Secretary (Health) submitted a fresh progress report in which he has apprised this court as under:

- “i. Two years contract of faculty of college in question with the approval of Honourable Chief Minister Sindh has been extended (Annexure-I).**
- ii. After the approval of Honourable Chief Minister Sindh, Summary for allocation of Rs.10 million for establishment of Mortuary at Lyari Medical College has been sent to Finance Department for releasing of funds (Annexure-II).**
- iii. Health Department Government of Sindh had also floated summary for approval of Rs.796,007,200/- for procurement of machinery equipment and Rs.31,998,000/- for purchasing CC Cameras, Ambulances**

for Lyari Medical Hospital. However, the matter has been referred to Standing Committee of the Cabinet in Financial matters for want of funds through outside budget during current financial years 2018-19 (Annexure-III).

- iv. Health Department Government of Sindh has also initiated summary for Chief Minister Sindh on the recommendation of selection committee for appointment of faculty for clinical as well as basic Medical Sciences, Professors, Associate Professors, Assistant Professors, Senior Registrar 7 other employees on contract basis for initial period of two years (Annexure-IV).**
- v. Health Department Government of Sindh has accorded permission to Principal Shaheed Mohtarma Benazir Bhutto Medical College Lyari Karachi to start recruitment process of BS-01 to BS-15 and Additional Secretary (Admin-I) Health Department has been nominated by the department whereas, Note for Chief Secretary Sindh has also been floated for seeking permission for two years contractual appointment of teaching faculty (Annexure-V, VI & VII)."**

6. In previous hearings, we had been informed that new college building is already under construction and according to the principal of the college, the possession of the ground floor has been partially handed over to the college and it is expected that within three months major portions of the building will be completed and possession will be handed over to the college. The representative of Works Department confirmed this statement. The Secretary Works is directed to complete the building and handover its complete possession to the college. In case of any deficiency in funds requirement or its release to an early date for completion of building, the Government of Sindh shall release the funds accordingly and ensure that the building is completed without any obstruction or hindrance.

7. The learned counsel for the PMDC informed us that the minimum 750 marks are required to be secured by the institution to fulfill the criteria of the PMDC. Today the progress report submitted by the Additional Secretary (Health) demonstrates unambiguously that two years

contracts of faculty members of college in question have been extended and they have also attached a copy of Notification dated 30.01.2019. The names shall be forwarded to PMDC for their registration in accordance with law. This overtly expounds that the contract period of 09 Professors, 17 Associate Professors, 08 Senior Registrars and 01 Accounts Officer have been extended. The Chief Minister Sindh has allocated Rupees Ten Million for establishment of mortuary at Lyari Medical College. The Health Department has also floated a summary for approval of Rs.796,007,200/- for procurement of machinery and equipment and Rs.31,998,000/- for purchasing some other apparatus and ambulances. The summary has also been moved for the appointment of new faculty members on contract basis, whereas the principal of the college has also been allowed to start recruitment process of the employees in BS-01 to BS-15 in which process, the Additional Secretary (Admin-I) Health Department has also been nominated by the Health Department.

8. Though the Sindh Government at an earlier time failed to take thought-provoking and proactive measures in order to save 50 seats of the college but on notice of these petitions and cognizance taken by this court, they come up with a progress report to accentuate their seriousness that in spite of everything, at least some concrete and substantial efforts have been made by them to shield 50 seats in the ongoing academic session. On this premise, the learned Additional Advocate General also made a request that the PMDC and admitting university both may be directed to restore 50 seats of college so that fifty more students may be accommodated on merits.

9. We have been informed that the annual fee of Mohtarma Benazir Bhutto Medical College Lyari, Karachi is Rs.50,000/-, whereas in private medical colleges the slab of annual fee is more than Rs.12,00,000/-. The ratio or quantity of medical colleges is otherwise insufficient to cater the need of deserving students. Instead of applying serious and mindful efforts to increase the number of medical colleges in Sindh, the fifty seats in one of the government colleges were curtailed due to reckless attitude and lacking concentration amounts to exploitation of deserving students/candidates. We are also sanguine to the disparity between the haves and the haves not. It is not an easy task in an average income or for each and every one in this hard-hitting epoch to admit their children in the private medical colleges/universities or other private intuitions in different discipline and bear exorbitant annual fee. Article 3 of our Constitution makes its incumbent upon the state to ensure elimination of all forms of exploitation and the gradual fulfillment of fundamental principles from each according to his ability to each according to his work. Under Article 37, (Principle of policy), it is responsibility of the State to promote, with special care, the educational and economic interests of the backward classes or areas; remove illiteracy and provide free and compulsory secondary education within minimum possible period; make technical and professional education generally available and higher education equally accessible to all on the basis of merit; make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex and maternity benefits for women in employment and enable the people of different areas, through education,

training, agriculture and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Pakistan. Whereas under Article 25-A, it is also responsibility of the state to provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law. While under Article 38, the State is responsible to provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment and reduce disparity in the income and earnings of individual including persons in the various classes of the service of Pakistan. To enjoy the protection of law and to be treated in accordance with law is inalienable right of every citizen. Reading of Article 4 of the Constitution of Islamic Republic of Pakistan shows that it incorporates the doctrine of equality before law or equal protection of law and no action detrimental to the life, liberty, body, reputation or property of any person can be taken except in accordance with law. Public functionaries are supposed to function in good faith honestly and within the precincts of his power so that person concerned should be treated in accordance with law. At this juncture, the learned counsel for the petitioners robustly argued that the Sindh Government is only interested to work in its area of interest hence they have no anxiety or concern for the institution and its goodwill, no matter seats are remained intact as 100 or reduced to 50.

10. The Officials of Sindh Government distinctly affirmed and self-confessed that a number of deficiencies and shortcomings have already been rectified and remedied.

The most crucial issue was in fact the deficit and scarcity of employment contracts extension of faculty members which have been done and if expected marks on this account alone are added in the score, that would be sufficient to meet the minimum threshold or ceiling of marks required to be secured under the prescribed criteria and standards of PMDC. They are also self-confident to get hold of some more marks within fifteen days' time on induction of more faculty members and after completion of college building before new inspection.

11. At this juncture, the learned counsel for the PMDC referred to the Medical Council Ordinance, 1962 in which Section 21 was germane to inspection. It was provided in that section that the Executive Committee shall appoint such number of medical or dental inspectors as it may deem requisite to attend at any or all of the examinations held by medical or dental institutions in Pakistan for the purpose of granting recognized medical or additional medical, or dental, qualifications or in respect of which recognition has been sought. In Sub-section (3) it was provided that the Executive Committee shall forward a copy of any such report to the medical or dental institution concerned and shall also forward a copy with the remarks of such medical or dental institutions thereon to the Central Government. The learned counsel also referred to Pakistan Medical and Dental Council Ordinance, 2019 in which Section 22 is germane to inspection. In this section it has been provided that the Council shall approve a list of inspectors and the President shall commission such number of medical or dental inspectors from the approved list as he may deem appropriate to inspect the facilities for training available at the medical or dental institutions. The

inspectors appointed under Sub-Section (2) were given the responsibility to submit a comprehensive report on the prescribed format about the facilities for training in the institution. Finally the report was to be submitted before the Executive Committee with their remarks with a copy to the Council, however, under Section 22 of Medical and Dental Council Ordinance, 1962, the power of withdrawal of recognition was vested in the Council in which the council could have stopped the further intake of the students and forward a summary of its findings to the medical or dental institution with an intimation of the period within which the medical or dental institution may submit its explanation to the council, however, if the council was not satisfied with the explanation it could have recommended to the Federal Government for closure of institution. The learned counsel submits that on 05.01.2019, the Pakistan Medical and Dental Council Ordinance, 2019 has been promulgated. In Section 22, the council may approve the list of inspectors to inspect the facilities for training available at the medical or dental institution. The inspector appointed under this section shall form a comprehensive report on the prescribed format about the facilities for training in the institution, however, the President shall forward a copy of report to the medical or dental institution for its remarks and shall forward a copy with the remarks of such medical or dental institution thereon along with its recommendations to the council. The withdrawal of recognition is provided under Section 23 of Pakistan Medical and Dental Council Ordinance 2019. In the Medical and Dental Council Ordinance, 1962, the power of withdrawal of recognition vested in the Council but in Pakistan Medical and Dental Council Ordinance 2019, it is provided that if the Council is not satisfied with

the explanation or where no explanation is submitted within the stipulated time, then on expiry of that period, it shall recommend to the ministry for closure of the institution subject to the conditions that students who are enrolled in such medical or dental institution during the period it was recognized by the council shall not suffer any loss in terms of the period of education already undertaken and remaining period to be undertaken by them. A proviso is also attached to Sub-section (3) of Section 23 which emphasized that for purposes of protecting the rights of existing students, the Council may approve a scheme which may include the management of the medical or dental institution being handed over to an interim committee administrator or persons appointed by the Council with the approval of the Ministry.

12. The learned counsel for the PMDC after citing the relevant provisions from the old and new laws, articulated that at this point in time, the Council does not exist or persevere but according to Section 4 of the Pakistan Medical and Dental Council Ordinance 2019, Council will be notified soon after approval of the Prime Minister of Pakistan however no such notification has been issued so far. What we have noted that even in the last letter dated 27.12.2018, issued by PMDC in the old law, though they curtailed 50 seats but not in perpetuity rather it was clearly mentioned that once the deficiencies are fulfilled, the inspection will be carried out by the PMDC again to ascertain whether all deficiencies are removed or not.

13. What we have comprehended that the recommendations were made on the basis of first inspection report for which letter was issued on 17.08.2018. It was communicated that if the deficiencies

are not removed the seats of the college will be curtailed from 100 to 50 but this condition was subject to re-inspection however another letter was issued on 13.11.2018 before the inspection prematurely in which a decision was communicated for curtailing 50 seats for the academic year 2018-19 thereafter, the inspection was carried out on 18.12.2018 after curtailing 50 seats in any event before second inspection. The institution under discussion is not a new entrant in the field but in existence for last considerable period and a number of students in different session/batches have been passed out. What is transpiring from the conduct of PMDC that firstly they warned to rectify the deficiencies before second inspection but before second inspection, the PMDC in a hasty manner informed the college ahead of time through admitting University, that their fifty seats have been curtailed and only to justify this act of curtailment of seats second inspection was carried out after drastic action which is neither fair nor within the spirit or quintessence of new or old PMDC laws.

14. The learned counsel for the PMDC raised an objection that under Sections 34 and 35 of the Pakistan Medical and Dental Council Ordinance 2019, an equally efficacious and alternate remedy has been provided where an aggrieved person may approach the Medical Tribunal which has conferred certain powers and jurisdiction to deal and decide similar issues so these writ petitions are not maintainable. When we confront him whether the Medical Tribunal has been constituted, the learned counsel very frankly conceded that no Tribunal has been constituted so far. The learned counsel also referred to Section 39 which relates to abatement of suit and other proceedings

regarding any matter within the jurisdiction of a Medical Tribunal pending in any court. Again we would like to distinguish here that once the Medical Tribunal is constituted, the bar of jurisdiction to some extent will come into play but at present when the Medical Tribunal has neither been constituted nor functional, the plea with regard to the of bar of jurisdiction cannot be considered nor the petitioners can be nonsuited on this ground.

15. As a result of above discussion, the decision of the PMDC, curtailing 50 seats of Mohtarma Benazir Bhutto Medical College Lyari, Karachi is set aside. Consequently, the admitting University is directed to send the names of 50 more students to the college according to the merit list. The Sindh Government is directed to rectify the residual deficiencies within three months positively and without fail, thereafter; the college shall send a request letter to the PMDC for re-inspection of the institution. In case deficiencies are not found to be removed or rectified on re-inspection consistent with the benchmark and yardstick articulated by PMDC, then action may be taken by the PMDC against the college in line with law which may include the ramifications of Section 23 of the Ordinance, 2019. Petitions are disposed of accordingly along with pending applications.

Judge

Judge