

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

**C.P.No.D-187 of 2019
C.P.No.D-334 of 2019
C.P.No.D-1119 of 2019**

Date	Order with signature of Judge
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**Present
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Agha Faisal**

C.P.No.D-187 of 2019

Muhammad Mushtaque & others.....Petitioners

V E R S U S

Federation of Pakistan & others.....Respondents

C.P.No.D-334 of 2019

Sakina Shah Perver.....Petitioner

V E R S U S

Province of Sindh & another.....Respondents

C.P.No.D-1119 of 2019

Mahnoor.....Petitioner

V E R S U S

Federation of Pakistan & others.....Respondents

M/s. Sajjad Qadir Awan & Muhammad Ajmal,
Advocates for the Petitioners in C.P. No.D-187/2019.
M/s. Khalid Mehmood Siddiqui & Ghulam Rasool Korai,
Advocates for the Petitioner in C.P. No.D-334/2019.
M/s. Zuhaib Ahmed & Naimatullah Soomro,
Advocates for the Petitioner in C.P. No.D-1119/2019.
Mr. Suhail H.K. Rana, Advocate for PMDC
in C.P. Nos.D-334/2019 and 1119/2019.
Mr. Abdul Waheed Siyal, Advocate for JSMU.
Mr. M. Arif, Advocate for Respondent No.2
in C.P. No.D-187/2019.
Mr. Ghulam Mujtaba Saheto, Advocate for
Baqai University.
Mr. Ishrat Zahid Alvi, Assistant Attorney General.
Mr. Anwar Alam, Officer Incharge PMDC Karachi.
Prof. Atta ur Rehman, Deputy Director (Admissions), JSMU.
Dr. Abdul Rehman Rajput, Deputy Director Admissions Cell, JSMU.

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Muhammad Ali Mazhar, J: The aforesaid petitions have been brought to seek directions against the Jinnah Sindh Medical University (Admitting University) to include the names of the petitioners in the merit list for their admissions in the MBBS and BDS for the Academic Session 2018-2019. Admittedly, the petitioners in the aforesaid petitions have the domiciles of different places outside the Province of Sindh.

2. The brief facts of the case are that according to the public notice published in the newspapers by the Jinnah Sindh Medical University, Karachi (Admitting University) for admissions in MBBS and BDS for Academic Session 2018-19 in pursuance of Pakistan Medical and Dental Council (PM&DC) MBBS and BDS (Admission, House Job and Internship Regulation 2018), a centralized admissions policy was evolved and expounded for all public and private sector medical and dental universities and colleges by the admitting university of the respective province/region and Jinnah Sindh Medical University Karachi was declared admitting university for the current academic session which invited applications for admissions in the public and private sector medical and dental institutions of Sindh.

3. The learned counsel for the petitioners argued that there is no such condition in the advertisement that students having domiciles outside the province of Sindh would not be eligible to apply, however, he admitted that the petitioners could not be considered for the admissions in the MBBS and BDS in the colleges located at the place of their domiciles due to insufficient percentage.

4. The learned counsel for the petitioners further argued that there is a sheer discrimination and despite having the

domiciles outside the Province of Sindh the petitioners are entitled to get the admissions in the MBBS or BDS for the academic session 2018-19 in Sindh and the policy decision of the PMDC in this regard is unlawful and unconstitutional which seriously infringed the fundamental right of petitioners.

5. The Pakistan Medical and Dental Council and Jinnah Sindh Medical University (Admitting University) have filed their comments and basically they relied on the admission policy circulated by the Pakistan Medical and Dental Council to the Vice Chancellor of Jinnah Sindh Medical University (admitting university). In the letter dated 30.11.2018 the Acting Registrar, PM&DC reproduced the decision taken by the Council in its 186th Session held on 29.10.2018. For the ease of convenience, the letter is reproduced as under:

**“Prof. Dr. Tariq Rafi,
Vice Chancellor
Jinnah Sindh Medical University,
Rafiqui H.J Shaheed Road Karachi.**

Dated: 30th November, 2018

Subject: ADMISSION IN PRIVATE COLLEGE.

I am directed to refer your e-mail received dated 26th October, 2018 on the subject cited above. It is informed that the Council in its 186th session held on 29th October, 2018 considered the matter and decided as under:-

“The Council after having detailed deliberation unanimously decided that 1st priority in any private medical colleges of a province/region should be given to local candidates of respective province/region and vacant seats if any may be filled from amongst the candidate of other provinces.

Further a committee was constituted comprising of following under the Chairmanship of President, PM&DC to devise a mechanism to standardized the entry test from next year.

- 1. Vice Chancellor, KMU, Peshawar**
- 2. Vice Chancellor, UHS, Lahore**
- 3. Vice Chancellor, JSMU, Karachi**
- 4. Vice Chancellor, NUMS, Rawalpindi**
- 5. Vice Chancellor, BUMS, Quetta”**

Respectful regards.

**Sd./-
Mrs. Sara Rubab
Acting Registrar”**

6. The decision of the PM&DC makes it unequivocally clear that there is no absolute or explicit bar that the students outside the Province of Sindh may not apply for admissions in Sindh, however, the learned counsel for the admitting university informed us that in the Province of Sindh already thousands of students appeared in the prequalification test (NTS) and cleared their test against the limited seats and if all number of seats available including the Government and private medical universities and colleges for MBBS and BDS are taken into consideration in totality, even now, the number of seats are insufficient to accommodate all the students and the same situation is being faced in other provinces, therefore, in order to cope with and manage the situation levelheadedly, the PM&DC took the decision in their meeting that first priority of a province/region should be given to the local candidates of respective province/region and vacant seats if any may be filled from amongst the candidates of other provinces.

7. The counsel for the PM&DC and the admitting university in one voice confirmed that the same criteria is being followed by the other provinces where also the first priority has been given to the local candidates for their admissions and the policy decision of the PM&DC has been applied across the board with the same spirit without any element of discrimination or bias.

8. It is well settled exposition of law which is time and again envisioned in the dictums laid down by the superior courts in which doctrine of classification has been judicially accepted as an integral part of the equal protection clause. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. One who assails the

classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis but it is essentially arbitrary. The guaranty of equal protection of the laws means the protection of equal laws though it forbids class legislation but it does not forbid classification which rests upon reasonable grounds of distinction. The principle is well recognized that a state may classify persons and objects for the purpose of legislation and makes laws applicable only to persons or objects within a class. In the case in hand the decision taken by PMDC demonstrates a reasonable classification based on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out and that the differentia giving priority or preference to the local students of each province separately has rational nexus to the objects sought to be achieved by the aforesaid classification. What is unreasonable in one given set of circumstances may well be reasonable in another different set of circumstances. The policy decision of PMDC is applicable across the board and we have been told that this policy has been adhered to by all the provinces for granting admissions in their universities and colleges. The courts always slow in interfering with the policy decision of the authority so long the policy decision is within the domain of jurisdiction of such authority and it is not possible for the court to sit on the judgment over such action if it does not appear that such policy decision is based on colorful exercise of power, mala fide, discriminatory or in abuse of power. The expression as envisaged in Article 25 of the Constitution means that no person or class of persons is denied the same protection of laws which is enjoyed by other persons or other class of persons in like circumstances in respect of their life, liberty, property or pursuits of happiness.

Mere differentiation and inequality of treatment would not per se amount to discrimination unless selection or differentiation is shown to be unreasonable or arbitrary. We reiterate that PMDC decision did not impose a complete bar but priority is to be given first to local students/candidates and this was the reason that the learned counsel for the admitting university had given a clear statement that after granting admissions to the students residing in the Province of Sindh, the petitioners will also be considered as per merit if some seats are remained vacant which is a quite fair and reasonable statement within the precincts of PMDC decision.

9. We do not find any justification to interfere in the decision of the PM&DC nor we find out any discrimination if the policy decision applies in all provinces with the same criteria, hence the petitions were not maintainable. We had dismissed these petitions vide our short order dated 07.03.2019 in the following terms:

“For the reasons to be recorded later the petitions are dismissed. However, learned counsel for the admitting university has given a clear statement that after granting admissions to the students residing in the Province of Sindh, the petitioners will also be considered as per merit if some seats are remained vacant.”

Above are the reasons of short order.

Judge

Judge

Karachi.

Dated.13.03.2019.