

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**C.P. No.D-683 of 2020**

**Before:  
Mr. Justice Abdul Maalik Gaddi  
Mr. Justice Adnan-ul-Karim Memon**

Dr. Muhammad Khan Shar  
& others ----- Petitioners

VERSUS

President Pakistan Medical Association  
Centre & others ----- Respondents

**Date of hearing & Decision: 11.08.2020**

Mr. Muhammad Hashim Laghari, advocate for the petitioners.  
Mr. Allah Bachayo Soomro Additional Advocate General  
Mr. Muhammad Humayoon Khan Deputy Attorney General  
Mr. Parkash Kumar advocate for respondents No.1 to 10

**ORDER**

**ADNAN-UL-KARIM MEMON, J.-** Invoking the constitutional jurisdiction of this Court, the petitioners through the present petition have challenged the legality of notification dated 10.06.2020 issued by President Pakistan Medical Association Centre / Chief Election Commissioner whereby respondents 3 to 10 had been declared un-opposed winners for their respective posts in Pakistan Medical Association (PMA) Sindh.

2. Brief facts of the case are that Respondent - Pakistan Medical Association is an autonomous society registered under Societies Registration Act, 1860, and has its own mechanism for raising funds and has been duly constituted, which consists of some outstanding and exceptional experts from the field of medical and dental profession.

3. Preliminary objection has been raised by learned counsel for contesting respondents 1 to 10 that the petitioners were neither aggrieved persons nor had any locus standi to invoke the constitutional jurisdiction of this Court as they have no vested right to call in question the validity of Election of PMA and in this regard while referring Counter Affidavit and Statement filed by him on behalf of Respondents 1 to 10 argued that the

instant petition on this score was also liable to be rejected being not maintainable, before this Court.

4. We queried from learned counsel for the petitioners as to how this petition is maintainable against Pakistan Medical Association and its office bearers, having no legal character. Learned counsel, while responding to the above query, contended that Respondent-Association was a body representing Doctors' community and respondents 1 to 10 through the impugned notification, attempted to usurp the autonomy of PMA which they could not do under any circumstances, and that the actions, deeds and conduct of respondents 3 to 10 militated against the principles of fundamental rights as envisaged under the Constitution. Learned counsel attempted to give brief history of the case and argued that all the petitioners submitted their nomination forms, which were duly accepted by the competent authority. It is contended that on 19.02.2020 President PMA Centre Dr. Ikram Ahmed Tunio started conducting elections of the Office bearers of PMA Centre without assigning any cogent reason. Learned counsel emphasized that on 21.05.2020, Dr. Ikram Ahmed Tunio issued new letter for scrutiny of papers on 27.05.2020 at PMA House Hyderabad; however the petitioners along with other candidates appeared for scrutiny, but neither such scrutiny was conducted nor any meeting was held; that on 03.06.2020 the petitioners communicated a letter of protest to PMA Centre citing the massive irregularities in the process of elections, but nothing could be done; that PMA Centre issued the impugned notification declaring respondents.3 to 10 as successful candidate (unopposed). That nothing was communicated to the petitioners showing that either their nomination papers were accepted or rejected. Learned counsel while arguing on the maintainability of instant petition submitted that if an educated community of doctors is deprived of their rightful representation then who will fight for their just rights; that Article 17 of the Constitution of Islamic Republic of Pakistan, 1973, guarantees the right of freedom of association to every citizen who is well within his right to form an association or union subject to any reasonable restrictions and that right to vote in such an association is the right of basic nature of a foremost importance; that this right cannot be derogated on some technical grounds; that this Court has ample jurisdiction to safeguard the fundamental rights of the individuals as against the Societies / Associations; that this Court may take cognizance of the fact to promote the democratic order and encourage the election process in such professional associations which will ultimately build up institutions in accordance with democratic norms and further it will build up a democratic culture in our society which is the only way of survival of this nation; that this Court time and again has

come forward to rescue and protect the fundamental rights of an individual; that right to form an association, contest elections and cast vote is as important fundamental right as other fundamental rights enshrined in Constitution of Islamic Republic of Pakistan, 1973. Learned counsel in support of his contentions has relied upon the unreported order of *Sindhi Adabi Sanghat Sindh v. Province of Sindh and others* passed in CP No. D-1881 of 2019.

5. Learned Additional Advocate General & Deputy Attorney General have supported the stance of learned counsel representing respondents 1 to 10.

6. We have heard learned counsel for the parties and have perused the material available on record including the case law cited at the bar.

7. The main questions of law arising in the instant matter stand on the following pivotal questions of maintainability:-

- i. Whether Pakistan Medical Association (PMA) was a 'person' performing public functions in connection with the affairs of Federation under Article 199(1) (a) of the Constitution?
- ii. Whether a writ is maintainable against Pakistan Medical Association (PMA) in terms of Article 199(1)(c) of the Constitution?

8. It is an undisputed fact that Pakistan Medical Association is neither controlled by Federal / Provincial Government or Local Authority, nor is a statutory body and nor has its Statutory Rules.

9. To answer the aforesaid questions, we have noticed that Pakistan Medical Association does not satisfy the function test in terms of Article 199(5) of the Constitution as laid down by Honorable Supreme Court in the cases of *Salahuddin and 2 others v. Frontier Sugar Mills and Distillery Ltd. Tokht Bhai and 10 others* (PLD 1975 SC 244), *Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others* (PLD 2010 SC 676), *Anoosha Shaigan v. Lahore University of Management Sciences and others* (PLD 2007 SC 568), *Pakistan Red Crescent Society and another v. Syed Nazir Gillani* (PLD 2005 SC 806) and *Abdul Wahab and others v. HBL and others* (2013 SCMR 1383).

10. In our view Pakistan Medical Association is not a 'person' in terms of Article 199(5) supra, therefore no writ of Certiorari or Mandamus can be issued against its office holders, in terms of Article 199(1)(a) supra. Merely registration under Societies Registration Act, 1860 or affiliation if

any with Pakistan Medical & Dental Council does not confer the status of a public body; therefore, Pakistan Medical Association is not a person exercising functions in connection with the affairs of Federation / Province and Local Authority in terms of Article 199(1)(a)(i) and (ii) of the Constitution. On the aforesaid proposition, we are fortified with a decision rendered by Honorable Supreme Court in the case of Pakistan Olympic Association through President and others v. Nadeem Aftab Sindhu and others (2019 SCMR 221).

11. For the aforesaid conclusion, we do not see any merit in this petition which is dismissed along with pending application(s) with no order as to costs. However the petitioners, if yet subsist grievance against the respondents, may avail their remedy in accordance with law.

JUDGE

JUDGE

Irfan Ali\*