

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

Present:

Muhammad Ali Mazhar and
Yousuf Ali Sayeed, JJ

Constitutional Petition No. D-4622 of 2020

Petitioner : Mashal Khalidi, through G. N. Qureshi, Advocate.
Respondents : Nemo.
Date of hearing : 29.09.2020

ORDER

YOUSUF ALI SAYEED, J - The Petitioner professes to be a second-year intermediate student, who is desirous of sitting for the Medical College Admission Test (“**MCAT**”), which, as per the pleadings, is scheduled to be conducted by the National Testing Service (the “**NTS**”) on 18.10.2020, in compliance with the MBBS and BDS (Admission, Examinations, House Job or Internship) Regulations, 2020 (the “**Regulations**”) issued by the Pakistan Medical & Dental Council (the “**PMDC**”), as per which the relevant eligibility criteria for registration with the Council, as applicable to the case of the Petitioner, is that the student “*must have passed obtaining minimum sixty five percent marks, in higher secondary school certificate (HSSC) or F.Sc (Pre-medical) or equivalent examination having minimum twelve years of education*”.

2. Apparently, due to the outbreak of the Covid-19 pandemic, a change was brought about in the Education Policy, which was subsequently implemented at a Provincial level vide Notification bearing No. SO(B)/U&B/GEN/S/S /SELD/2020 dated 20.08.2020. (the “**Impugned Notification**”) whereby the Government of Sindh, at a Cabinet meeting held on 22nd July, 2020,

approved a Policy for the promotion of students of Secondary and Higher Secondary Schools (SSC-I & II and HSC Part-I & II) in pursuance of Sub-Section 1-A of Section 12 of Sindh Board of Technical Education Ordinance of 1970 and Sub-Section 1-A of Section 11 of the Sindh Board of Intermediate & Secondary Education Ordinance of 1972 (Amendment) Act 2020, the relevant excerpts of which read as follows:

“All regular and private candidates appearing in class 10 & 12 examination shall be declared pass based on their class 9 & 11 examination result with an increase of 3% marks in their respective examination result (i.e. Class 10 & 12).”

“Candidates who applied for improving their result of class 11 & 12 examination shall be given 3% increase of marks in their respective subjects for improvement. In case, those who wish to opt for re-appearing in the special examination subject to normalcy, they shall have to apply to their respective Boards.”

3. The grievance espoused vide this Petition under Article 199 of the Constitution, is that the Petitioner cleared the first-year Intermediate examination held by the Board of Intermediate & Secondary Education (the “**BISE**”) in the month of April 2019, in the Pre-Medical Group, and obtained 63.45% marks, however, as the regular examinations for the year 2020 were cancelled due to the pandemic and it was decided in terms of the Impugned Notification that the students of SSC-II and HSC-II would be promoted on the basis of their marks in SSC-I and HSC-I, but with only an increase of 3% Marks of their obtained score, her percentage in terms of that policy would come to only 64.40%, short of the 65% eligibility requirement imposed by the PMDC as per the Regulations, thus depriving her of the chance to appear in the MCAT without an opportunity to appear in the HSC-II Examination and improve her grades.

4. The case set up by the Petitioner in this backdrop is that the cancellation of the examinations by the Respondent No. 1 to 3 (i.e. the Federation of Pakistan, the Province of Sindh, and the BISE) amounts to an infringement of her fundamental right enshrined under Article 25 of the Constitution, as she was resultantly deprived of a fair chance to obtain a better percentage than that awarded in terms of the Impugned Notification, and had such chance been provided her percentage would have been more than 65% percent and she would have thus been eligible to apply for the upcoming MCAT. On that basis, it has been prayed *inter alia* that this Court may be pleased:

- “1. To set aside the impugned notification dated 20.08.2020 and declare it as null and void.
2. To direct the Respondent No.4&5 to amend and bring relaxation in their eligibility criteria in wake of COVID-19 and its impact on Education policies.
3. To direct the Respondent No. 4 to entertain Petitioner’s application for appearance in MCAT.”

5. On query posed as to (a) how the cancellation of the examination or the implementation of the promotion policy in terms of the Impugned Notification offended Article 25 of the Constitution, (b) how the setting aside of the Impugned Notification would conceivably advance the cause of the Petitioner, and (c) how it even fell within the province of this Court under Article 199 of the Constitution to direct the PMDC to relax the eligibility criteria set out in the Regulations, learned counsel was unable to advance any cogent legal argument on either score, but contended vide a lateral submission that a special examination should be scheduled so as to

accommodate the Petitioner and until such time the MCAT should not be held. When queried further as to how the interests of thousands of prospective candidates aspiring to the MCAT could be subjugated to the individual interests of the Petitioner, and it was pointed out that the Petitioner could, if she so desired, sit the examination in the coming year, learned counsel was again found wanting, and merely fell back on the emotional plea that a year of the Petitioner would be wasted.

6. As the matter stands, the Petitioner does not meet the requirement imposed in terms of the Regulations, and it is speculative to say that she would do so upon being provided an opportunity through an examination. Whilst we are cognizant of the fact that the Covid-19 pandemic may have resulted in hardship in many ways, including perhaps in matters of education, it falls to be considered that there is no perfect solution to mitigate the effects of the measures taken to curb the spread of disease, including the cancellation of examinations, and the individual interests of the Petitioner cannot be accorded primacy over those of the public at large on that basis. Furthermore, it is not the case of the Petitioner that the Impugned Notification or Regulations are being selectively applied to her detriment, hence the plea taken on the ground of discrimination with reference to Article 25 of the Constitution appears to be misconceived.
7. These are the reasons due to which the Petition was dismissed *in limine*, vide a short Order made in Court on 29.09.2019, along with all pending Miscellaneous Applications.

JUDGE

JUDGE

Karachi
Dated _____