

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P. Nos.D-4953 & 5036 of 2020

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.

Mr. Justice Adnan Iqbal Chaudhry.

Date of hearing 16.10.2020

Mr. Sarmad Hani advocate for the petitioners in C.P. No.D-4953 of 2020

Mr. M. Jibran Nasir advocate for the petitioners in C.P. No.D-5036 of 2020.

Mr. Zeeshan Abdullah advocate for the PMC.

Mr. Shehriyar Mehar, AAG.

Mr. Karshif Sarwar Paracha, Acting Additional Attorney General.

Kazim H. Jatoi, Secretary Health, Government of Sindh.

Gulshan Ali Memon, V.C. Peoples University of Medical & Health Sciences.

Muhammad Ali Mazhar, J: The C.P.No.D-4953/2020 has been filed by five Medical & Health Universities whereas the petitioner No.1 is admitting University. Mr. Sarmad Hani, learned counsel for the petitioners argued that Section 18 of the Pakistan Medical Commission Act, 2020 is ultra vires the Constitution of Islamic Republic of Pakistan 1973. PMC has no right to regulate the entry test nor have any jurisdiction to stop the entry test being conducted by admitting university on 18.10.2020. It was further contended that the Pakistan Medical Commission Admission Regulations, 2020-2021 framed by the Council under the Act, 2020 have been issued without any lawful authority and have no legal effect. It was further averred that Notification dated 24th September, 2020 issued by the respondent No.1 for withholding the admission process initiated by the petitioner No.1 is ultra vires Section 18 of the 2020 Act. The learned counsel entreated for the permission of this court to allow the admitting university

(petitioner No.1 in C.P. No.D-4953/2020) to continue the admission process and the entry test on 18.10.2020. It was further argued that after promulgation of 18th amendment, the education has become a provincial subject.

2. In C.P. No.D-5036 of 2020, Mr. Jibran Nasir learned counsel for four petitioners sought the declaration that entry test being conducted by the respondent No.4 on 18.10.2020 as per Pakistan Medical & Dental Council Admissions Regulations, 2020 is without lawful authority mainly for the reason that admission process initiated under the Regulations, 2020 framed pursuant to Pakistan Medical & Dental Council Ordinance, 1962 have already been repealed by the Act of 2020. He has also referred to Section 50 of the Pakistan Medical Commission Act, 2020 in which it is clearly provided that subject to Section 6 of the General Clauses, Act, the Pakistan Medical & Dental Council Ordinance, 1962 is repealed and a proviso attached to sub-section (2) clearly explicates that all regulations made and promulgated pursuant to the repealed Ordinance or the Pakistan Medical and Dental Council Ordinance, 2019 stand repealed and shall not be enforceable subject to sub-section (6), whereas, sub-section (6) provides that all registrations, recognitions etc. granted by the dissolved Pakistan Medical & Dental Council under the repealed Ordinance shall be deemed to be the registrations, recognitions granted by the Commission subject to not being in conflict with the Act of 2020.

3. In C.P. No.D-4953 of 2020, the petitioners as an interim measure moved an application under Order XXXIX Rules 1 & 2 C.P.C. with the prayer to allow the Admitting University i.e. petitioner No.1 to continue the admission process as initiated pursuant to advertisement dated 18th September, 2020 in terms of MBBS & BDS Regulations, 2020. Whereas, in C.P. No.D-5036 of 2020 the petitioners have taken the divergent plea in favour of 2020 Act and filed an application under Order XXXIX Rules 1 & 2 C.P.C. to restrain the Admitting University

from conducting the entry test till all fulfillment of obligations as mandated by the PMC Act, 2020.

4. Mr. Zeeshan Abdullah advocate has filed vakalatnama for Pakistan Medical Commission and submits that within three days the comments shall be filed. The same statement has been given by the learned DAG and learned AAG.

5. The bone of contention is the alleged vires of Section 18 of Pakistan Medical Commission Act, 2020. For the ease of convenience, it is reproduced as under:-

18. Medical and dental colleges admissions tests (MDCAT).-(1) The Authority shall conduct annually on a date approved by the Council and as per standards approved by the Board a single admissions test which shall be a mandatory requirement for all students seeking admission to medical or dental under-graduate programs anywhere in Pakistan.

(2) No student shall be awarded a medical or dental degree in Pakistan who has not passed the MDCAT prior to obtaining admission in a medical or dental college in Pakistan:

Provided that such requirement shall be mandatory for all students who have been enrolled in medical or dental under-graduate programs in the year 2021 and thereafter.

(3) The admission to medical or dental programs conducted by public colleges shall be regulated as per the policy of the Provincial Governments strictly on merit and admission to a private college shall be in accordance with the criteria and requirements stipulated by the private college at least one year in advance of admissions including any additional entrance test as may be conducted by a private college subject to any conditions imposed by the relevant university to which such college is affiliated:

Provided that the marks obtained by a student in the MDCAT conducted by the Authority shall constitute a minimum of fifty percent of the weightage for the purposes of admission in the public colleges.

6. Admittedly, Act of 2020 has been notified on 24th September, 2020 and the first petition to challenge the Law has been presented on 10th October, 2020 and the entry test is scheduled to be convened on 18th October, 2020 just after one day. Fact remains that Pakistan Medical & Dental Council Ordinance, 1962 has been repealed and MBBS AND BDS (Admissions, Examinations, House Job or Internship) Regulations, 2020 are also repealed though learned counsel for

the petitioners (Universities) argued that Regulations of 2020 are protected despite repealing the parent law.

7. It is well settled exposition of law that the validly legislated law remains in field unless it is struck down but the operation of law cannot be suspended as an interim measure. In 2020 Act, National Medical Authority has been established to conduct a single admissions test being a mandatory requirement for all students seeking admission to medical or dental under-graduate programs anywhere in Pakistan with a further rider that no student shall be awarded a medical or dental degree in Pakistan who has not passed the MDCAT (Medical and Dental College Admission Test) prior to obtaining admission in a medical or dental college in Pakistan. The letters of law is clear that admitting university (petitioner No.1) cannot conduct any entry test under the new Law.

8. At this stage the learned counsel for the petitioners as well as learned Additional Advocate General made a joint request that they may allowed to conduct entry test subject to the final outcome of the petitions whereas Mr.Jibran Nasir has also raised a plea that since MDCAT is now to be taken by PMC, therefore on this notion many students have not applied in the entry test of admitting university mainly for the reason that they will sit in MDCAT conducted by PMC.

9. The grounds raised by the first petitioners with regard to the vires of law require attention and consideration but if at this stage, the entry test is allowed to be conducted by admitting university, it will have serious repercussions and it will also create multiplicity of proceedings, hardship and uncertainty so in order to protect and safeguard the interest of all such students it would be in the interest of justice to postpone/defer the entry test rather than allowing it on 18th October 2020.

10. As agreed by all learned counsel, the comments of the official respondents shall be filed within three days with

advance copy to the petitioners counsel. Also repeat notice to the unserved respondents. Office shall also issue notice under Order 27A of C.P.C to the learned Advocate General Sindh and learned Attorney General Pakistan. However as an interim measure, the admitting university shall postpone/defer the entry test which is scheduled to be conducted on 18.10.2020 till further orders of this court and all applicants shall be notified through print and electronic media as well as website of NTS. Adjourned to 22.10.2020 at 11:00 a.m.

Judge

Judge