

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

C. P. No. D-3977 of 2021

Present:-

Ahmed Ali M. Shaikh CJ &
Yousuf Ali Sayeed, J

Petitioner : Muhammad Azhar through
Shahenshah Hussain, Advocate.

Respondent No.1 : Federation of Pakistan, through
Khaleeque Ahmed, DAG.

Respondent No.3 : Pakistan Medical Commission
through Zeeshan Abdullah,
Advocate.

Date of hearing : 30.09.2021

JUDGMENT

YOUSUF ALI SAYEED, J. - The Petitioner is apparently an aspiring doctor, who was admitted to the Faculty of Medicines & Allied Sciences at Isra University, Hyderabad, Sindh in the Programme of Bachelor of Medicine and Bachelor of Surgery (“**MBBS**”) in the Academic Years 2015-16. He satisfactorily completed that programme in 2019-2020, with a Provisional Passing Certificate being issued on 11.01.2021, followed by a Degree Certificate on 27.02.2021. A Provisional Registration Certificate was then issued to him on 03.02.2021 by the Pakistan Medical Commission (the “**PMC**”), in pursuance of which he is said to presently be undertaking his one-year house-job at Liaquat University Hospital Hyderabad.

2. In the given factual backdrop, the Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution eliciting a declaration that passing the National Licencing Examination (“**NLE**”), as prescribed under Section 20 of the Pakistan Medical Commission Act, 2020 (the “**PMCA**”) is not applicable in his case and cannot be a condition imposed on him by the PMC for obtaining a full licence to practice medicine. He claims to be entitled to a full license upon successful completion of his house-job, without further ado.

3. For proper appreciation of the matter, it merits consideration that S.20 of the PMCA stipulates as follows:

“20. **National licensing examination (NLE)**--- (1)
The Authority shall at least twice a year as per schedule approved by the Council conduct the NLE. Passing the NLE shall be mandatory for obtaining a full licence. The NLE shall be substantially based on objective computer based multiple choice questions and a practical component if determined by the Council:

Provided that there shall be no limit on the number of times a person may attempt in NLE:

Provided further that Pakistan armed forces cadets who upon successful completion of their undergraduate degree program and pre-requisite military training are commissioned in the Pakistan armed forces shall be granted an armed forces provisional licence and shall qualify their NLE during service as regulated by the service head quarters prior to grant of full licence.

(2) A person, having obtained an undergraduate medical or dental qualification issued by a university in Pakistan or an undergraduate medical or dental qualification issued by a foreign institution duly recognized by the Commission, shall be granted a provisional licence to undertake his house job within fourteen days of verification of their qualification by the granting institution:

Provided that the person to whom a provisional licence is granted shall complete the mandatory requirement of passing the NLE at any time prior to issuance of full licence.

(3) Any medical or dental practitioner who has obtained a licence to practice in any foreign country after having qualified from Pakistan or from a foreign institution recognized by the Commission and does not hold a postgraduate qualification recognized by the Council, shall be required to qualify the NLE for grant of a full licence to practice in Pakistan:

Provided that a medical or dental practitioner who has obtained a licence to practice in a foreign country or qualified from a foreign institution, not cognized by the Commission, but has acquired a postgraduate qualification in Pakistan or from a foreign institution recognized by the Council shall not be required to qualify the NLE and shall be granted a full licence to practice on the basis of the recognized postgraduate qualification.”

4. As is manifest from a plain reading of S.20, the same makes it mandatory for every aspirant to a full license to pass the NLE.

5. Nonetheless, the case set up by the Petitioner and as advanced by learned counsel appearing on his behalf is that the course syllabus given to a medical student when he joins a medical teaching institution, albeit comprised of various phases, is essentially a single transaction that continues to completion according to the terms on which it is commenced. In that vein, it was submitted by counsel that as per the statutory regulatory framework in force when the Petitioner commenced the MBBS programme - viz the Pakistan Medical and Dental Council Ordinance, 1962 (the “**Ordinance**”), he was entitled to the grant of a full licence after successfully completing the five professional examinations and one-year compulsory house job. It was argued that since the mandatory requirement of passing the NLE was introduced subsequently through the PMCA (repealing the Ordinance), it would not operate retrospectively. As such, the imposition of that requirement on the Petitioner went beyond the intendment of the latter enactment and offended Article 4 of the Constitution. It was

submitted that the repeal of the Ordinance would not affect any right or privilege acquired or accrued under the Ordinance; it being contended that the Petitioner thus had a vested right to a full licence upon meeting the requirements prescribed under the erstwhile statutory framework, which could not be impaired by imposing a new obligation of having to pass the NLE. As regards the saving of rights and liabilities accrued under the Ordinance, attention was drawn to sub-sections (1) of Section 50 of the PMCA, specifying that the repeal of the Ordinance was subject to Section 6 of the General Clauses Act, 1897 (the “GCA”), which provides *inter alia* that the repeal of an enactment shall not “affect any right, privilege, obligation or liability acquired, accrued or incurrent under any enactment so repealed”. It was also emphasised that sub-sections (2) of Section 50 of the PMCA itself provided as follows:

(2) Notwithstanding the repeal of the repealed Ordinance or anything contrary contained herein, all decisions taken, regulations made or amended and disciplinary actions taken by the Council of the dissolved Pakistan Medical and Dental Council pursuant to the repealed Ordinance and the Pakistan Medical and Dental Council Ordinance, 2019 (II of 2019) and by the Pakistan Medical Commission pursuant the Pakistan Medical Commission Ordinance 2019 (XV of 2019) shall be deemed to have been validly made:

Provided that all regulations made and promulgated pursuant to the repealed Ordinance, or the Pakistan Medical and Dental Council Ordinance, 2019 (II of 2019) stand repealed and shall not be enforceable subject to subsection (6):

Provided further that Council shall have the exclusive power to review and modify any saved decision taken, regulation made or amended and disciplinary action taken.”

6. Conversely, learned counsel appearing on behalf of the PMC argued that passing the NLE was presently a mandatory requirement for obtaining a full license in terms of S.20 of the PMCA and no vested right had been created in favour of the Petitioner prior to its promulgation so as to exempt him from that requirement, as he had secured his Provisional

Passing Certificate, been awarded his Degree, and been issued his Provisional Registration Certificate after the PMCA came into force on 24.09.2020, hence had clearly only been midstream in so far as completing the requirements for a full license was concerned at the time. As such, no vested right had accrued at the time of enactment of the PMCA, hence Section 6 of the General Clauses Act was of no avail and the dictate of S.20 was fully applicable in the matter.

7. Having considered the arguments advanced at the bar in light of the given facts circumscribing the controversy, it is apparent that the Petitioner's contention is that the condition of the NLE cannot now be imposed on him as his case is to be treated as per the framework of the Ordinance and Admission in MBBS and BDS Course and House Job/Internship/Foundation Year Regulations- 2013 (the "**2013 Regulations**") made thereunder by the erstwhile Pakistan Medical and Dental Council (the "**PMDC**"), as were in force at the time he embarked on his MBBS. That contention is based on the claim that he acquired a vested right to obtain a full license upon fulfillment of the requirements prevailing at such point of inception, and that the PMCA would operate only prospectively and be inapplicable to the Petitioner as regards the subject of his full license.

8. When the Petitioner's argument is dissected, it is manifest that the entire construct of the case, as predicated on the hypothesis that a vested right accrued to him at inception, is fallacious in as much as even under the earlier dispensation, the prerequisites of a full license were fulfilled only upon successful completion of the academic program and the house-job. Indeed, this was the scheme envisaged in terms of the 2013 Regulations, with Regulations 14 to 18 falling under Part-III thereof reading as follows:

“14. All rules regarding House job gazetted [sic] in the Pakistan Registration of Medical and Dental Practitioners Regulations 2008 shall continue to apply.

15. A house job is compulsory for full registration with Pakistan Medical and Dental Council. Only provisionally registered Doctors shall be eligible for house job and house job can only commence after provisional registration. Any internship done prior to the provisional registration shall not be acceptable as house job towards attainment of full registration.

16. House job Training shall be carried out in a hospital recognized by the Pakistan Medical & Dental Council for the house job.

17. The institution providing the house job shall ensure that the candidate possesses a valid PM&DC Provisional registration for house job when the house job training slot is being awarded.

18. For full registration as a medical practitioner, the house job/Foundation year shall have following criteria;

For full Registration the medical practitioner shall have the following modules as shown in the two modules;

Modules of Medicine and Allied -----six months.

Modules of Surgery and Allied -----six months.

Each module has to be completed separately, and should be in the same hospital or some other institution provided that is recognized by the PM&DC.

Regarding the breakup of the modules there is confusion as nothing is mentioned about other specialties in both the modules (Medical and allied, Surgical and allied), the break shall be left for the candidate choice and the concerned department related with the said modules.

It was informed that the breakup of the columns of the house job modules can be deleted and be replaced by the above mentioned distribution.

BLS course shall be mandatory during house job if not done during final year.

Assessment exam after completion of house job is also a requirement to be fulfilled by the institution and the completion certificate shall be issued to the doctor after fulfillment of these requirements.”

9. The requirement remained essentially the same through the various regulatory legislative changes leading up to the promulgation of the PMCA, which reflect a similar passage to a full license, subject to the further requirement of the NLE, with Sections 27 and 29(1) of the PMCA addressing the subject of the House Job and Licensing as follows:

“27. House job. — (1) Every person having obtained a provisional licence under sub-section (2) of section 20 shall be required to undergo and successfully complete a mandatory one year house job, internship or foundation year, by whatever name called, at an institution recognized by the Commission or an equivalent of a house job outside Pakistan as may be recognized by the Commission.

(2) Every medical or dental college in Pakistan shall be responsible to provide a paid house job, at its own affiliated teaching hospital to all of its graduates have acquired a provisional licence. Failure to provide a house job shall result in the medical or dental college reimbursing the stipend paid to the graduate by the training hospital where the graduate obtains house job training:

Provided that in the event the graduate opts voluntarily to pursue training in any other teaching hospital, their salary or stipend shall not be the responsibility of the medical or dental college of the graduate:

Provided further that the stipend or salary paid to house officers shall be determined by the Provincial Government or Federal Government as applicable for public colleges and private colleges shall pay a stipend or salary not being less than the amounts applicable to public colleges.

(3) A house job, internship or foundation year shall consist of full time and structured training as specified by the Board and approved by the Council.

(4) The teaching hospital shall issue on the conclusion of the house job a certificate confirming that the provisional licence holder has satisfactorily completed the mandatory house job modules for grant of full licence.”

“29. Licensing.—(1) The Authority shall grant a full licence to practice basic medicine or dentistry as a general practitioner to a person who subsequent to qualifying the NLE has completed his mandatory one year house job or foundation year or internship satisfactorily or has successfully completed a house job, internship or foundation year equivalent to a house job at a foreign teaching hospital or institution recognized under sub-section (3) of section 28.”

10. When the cited provisions of the 2013 Regulations and the PMCA are viewed in juxtaposition, it is apparent that neither regime admits to any vested right accruing to an aspirant at the outset of the MBBS program, and it is manifest that even under the earlier dispensation the right to a full license would at best have crystalized only upon satisfactory completion of the House-Job and clearance of the assessment exam. As such, it is apparent that the Petitioner's argument is patently flawed and bereft of legal basis.

11. Indeed, the definition of "vested rights", as per Black's Law Dictionary (Sixth Edition) reads thus:-

"Vested rights. In constitutional law, rights which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or canceled by the act of any other private person, and which it is right and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare. Such interests as cannot be interfered with by retrospective laws; interests which it is proper for state to recognize and protect and of which individual cannot be deprived arbitrarily without injustice. *American States Water Service Co. of California v. Johnson*, 31 Cal.App.2d 606, 88 P.2d 770, 774. Immediate or fixed right to present or future enjoyment and one that does not depend on an event that is uncertain. A right complete and consummated, and of such character that it cannot be divested without the consent of the person to whom it belongs, and fixed or established, and no longer open to controversy. *State ex Rel. Milligan v. Ritter's Estate*, Ind.App., 46 N.E.2d 736, 743."

12. Furthermore, as to Section 6 of the GCA, it merits consideration that the scope of that provision was most eruditely explained by the High Court of Punjab and Haryana in the case of *Satbir Singh v. State of Haryana and Others*, where with reference to reported judgments

of the Supreme Court of India¹ and those of the Courts of England relating to analogous statutes in that jurisdiction², it was observed that what is preserved by Section 6 is a right which already stands accrued, whereas the mere hope that one would acquire a right or would be at liberty to apply for a right or take benefit of a certain provision does not qualify as such. Needless to say, on that basis of that principle, what would *inter alia* remain unaffected repeal of the Ordinance is a registration already made thereunder, as indeed stands recognised vide Section 50(6) of the PMCA, stipulating that:

“(6) All registrations, recognitions etc., granted by the dissolved Pakistan Medical and Dental Council under the repealed Ordinance or the Pakistan Medical Commission under the Pakistan Medical Commission Ordinance, 2019 (XV of 2019) shall be deemed to be the registrations, recognitions granted by the Commission subject to not being in conflict with this Act and the provisions of this Act or the same being within the power of the Commission to recognize and register pursuant to this Act.”

13. However, it is manifest that the benefit of Section 6 of the GCA does not extend to a student such as the Petitioner, who was still in the midst of the MBBS program at the time of enactment of the PMCA and had not even embarked upon his one-year house-job. No question of prospective or retrospective application of the PMCA is involved in the matter at hand, and the real issue is merely the applicability of the statute in force on the date that the Petitioner completes his medical education, which in this case is the PMCA, thus rendering his case liable to the application of Section 20 thereof. Ergo, the Petitioner cannot be heard to say that his case for a full license should be governed under the erstwhile Ordinance.

¹ AIR 1955 SC 84, (1985) 1 SCC 436, (1971) 3 SCR 815, AIR 1989 SC 1614, AIR 1997 SC 412

² (1895) AC 425, (1969) 1 All ER 121

14. That being so, the Petition fails and stands dismissed accordingly.

JUDGE

Karachi
Dated _____

CHIEF JUSTICE