

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

C. P. No. D-3527 of 2021

Present:

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

Petitioners : Muhammad Haseeb & others
through Ms. Wajiha Aman,
Advocate.

Respondent No.1 : M/s. Indus University through
Javed Ahmed Qazi, Advocate

Respondent No.2 : Province of Sindh through
Muhammad Sharyar Mahar,
Assistant Advocate General,
Sindh.

Respondents No.3&4 : Higher Education Commission
(HEC) and;

National Technology Council
(NTC) through Khaleeque
Ahmed, DAG alongwith
Mukhtiar Ali Junejo, Assistant
Attorney General.

Date of hearing : 31.03.2022.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioners profess to have been admitted and enrolled in the month of February 2017 in the 4-year undergraduate degree program titled BS Mechanical Engineering Technology (the “**Program**”) offered by the Respondent No.1 through the Faculty of Engineering Science and Technology (hereinafter referred to as “**FEST**”), and have resorted to the instant Petition under Article 199 of the Constitution seeking that they be issued degree certificates corresponding to that nomenclature.

2. The case of the Petitioners is that the Program was advertised by the Respondent under that description and its prospectus for the year 2017-2018 (the “**Prospectus**”) also reflected the name accordingly. However, after investing 4-years towards completing all the requisite courses, the Petitioners were informed that the name of the Program had been changed so as to omit the word ‘Engineering’ and the title of the degree certificate awarded to them would therefore be truncated so as to read “BS Mechanical Technology”. As such, the Petitioners have prayed that the Respondent No.1 be directed not to remove the word “Engineering” from the title of the Program and to issue them degrees bearing the title reflected in the Prospectus; and that the official Respondents, namely the Province of Sindh, the Higher Education Commission (the “HEC”) and National Technology Council be directed to take appropriate action against the Respondent No.1 on that account.

3. Proceeding with her submissions, learned counsel for the Petitioners emphasized that the decision of the Respondent No.1 to change the title of the degree to be awarded to the Petitioners was sudden and contrary to the Prospectus, and was sought to be implemented without any proper notification having been issued in that regard. Attention was invited to the relevant part of the Prospectus, showing that one of the 4-year undergraduate programs offered under the FEST was that of “BS Mechanical Engineering Technology”, for which the applicable eligibility criteria was that of “Intermediate or any other equivalent qualification with Science Group and with a minimum of ‘D’ Grade”, along with an Aptitude Entry Test and Interview.

4. Conversely, learned counsel for the Respondent No.1 impugned the maintainability of the Petition and refuted the claim of the Petitioners. He argued that the Prospectus specifically mentioned that the Program was subject to approval of the Academic Council, and at the time of taking admission the Petitioners had been made aware and counseled that the Program was a Non-Engineering course which was not accredited or recognised by the Pakistan Engineering Council (“PEC”). It was pointed out that each of the Petitioners had executed an Undertaking by way of acknowledgement in that regard. For purpose of reference, the form of such Undertaking is reproduced, reading as follows:

“UNDERTAKING

I, Muhammad Sarmad son of Muhammad Mian having CNIC No.42201-5126439-9 student of BS (Mechanical) Batch Spring 2017, do hereby state on my own free will that I have got myself admitted in BS (Mechanical) having been clearly told at the time of admission by the concerned staff of the Indus University that BS (Mechanical) program is a Non-Engineering program and it has no relevance/concern with any accreditation or recognition with the Pakistan Engineering Council (PEC) and that after passing this program, I will neither apply nor demand PEC registration.”

5. Furthermore, it was pointed out that the Admission Forms submitted by the Petitioners showed that the Program for which they were seeking admission was “BS Mechanical”, the Student Account Fee Package issued by the Respondent No.1 and accepted by the Petitioners as well as their guardians under their respective signatures designated the Program as “Bachelor of Science Mechanical Technology”, and the fee challans issued to and paid by the Petitioners at the time of their admission

also accordingly reflect the Program as “BS(Mech)-17A”, with the word ‘Engineering’ being conspicuously absent. It was also emphasised that after taking admission in the Program, the Petitioners had appeared periodically in the mid-term and final examinations and signed their examination attendance sheets with the same degree title (i.e. "BS Mechanical Technology"), which was also mentioned on their admit cards and examination answer books.

6. It was argued with reference to the Prospectus that both the courses offered by the Respondent No.1 which properly qualified as engineering programs, being a BE Electrical (Electronics) Engineering or BE Electrical (Power) Engineering respectively, had a different eligibility criteria from that applicable in respect of the Program, requiring candidates to have “Intermediate (Pre Engineering)/ equivalent qualification with minimum 60% marks” Diploma of Associate Engineering Examination (DAE) in disciplines Electrical, Electronics with minimum 60% marks”, prior to sitting a University Based Entry Test.

7. In rebuttal, learned counsel for the Petitioner conceded that the program was not an engineering course and the degree was not an engineering degree as would entitle the holder to seek registration as an engineer with the Pakistan Engineering Council, but nonetheless maintained her stance that the Petitioners ought to be awarded degree certificates of the particular nomenclature.

8. Having considered the matter, we are cognizant that the Respondent No.1 is a private institution and not amenable to a writ under Article 199(1)(a); nor has any case been made out as to a denial of fundamental rights warranting correction in terms of Article 199(1)(c). Indeed, in the case reported as *Anoosha Shaigan v. Lahore University of Management Sciences through Chancellor and others* PLD 2007 Lahore 568, it was held by Mian Saqib Nasir, J (as he then was, later appointed to the Honourable Supreme Court and as the Honourable CJP) that the particular University, being under private control, was not amenable to a writ of mandamus under Article 199 of the Constitution. After considering a host of decided cases for resolving the question as to whether the Lahore University of Management Sciences could be regarded a “person” for purposes of Article 199 of the Constitution, the learned Judge held as follows:

“7. On account of the above case law, I am of the considered view that the absolute control over the management of a body/an organization by the federation etc., is a condition most important for declaring it to be a "person" performing its functions in connection with the affairs of the Federation etc; the Federation etc. should have a complete domination to do and undo whatever it decides in running the affairs of such a body and should have the exclusive, complete and final authority to take the vital policy decisions. Such control must be absolute, unfettered, unbridled and exclusive, besides, the State must also have the financial control of the Organization; the power of hiring and firing the employees thereof appointing and removing the management body meant for running the routine affairs of the Organization. But from the Presidential Order of 1985, though the President is the Chancellor of the LUMS, but this is notional and more with the status of a Patron-in-Chief; in practical terms except for the nomination of the persons on the Board or the Council, he does not have the administrative or policy-making control, which is the authority of the Board of Trustees and the Council of LUMS, which manages its affairs. It has been rightly pointed out by the respondents counsel that the funds to LUMS are not being provided by the Government on regular basis, those

are generated by the LUMS itself either from the fees or the donations and may be occasionally in the nature of donation, the government also contributes, but this contribution cannot be held to be within the concept of "financial control" of the Organization. The judgments cited by the learned counsel, for the petitioner, in the light of the catena of judgments from the respondents' side which have been discussed above, not only are distinguishable, rather do not apply to the facts and circumstances of the present case.

Therefore, when both the "administrative" and the "financial" control of the Federation over respondent No.1 is lacking, I am constrained to hold that LUMS is not a "person" within the meaning of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, which could be held to be performing its duties in connection with the affairs of the Federation or the Province. Resultantly, this writ petition against the respondents is incompetent, which is hereby dismissed.”

9. Even otherwise, it is paradoxical that despite it being conceded that the program was not an engineering program and the degree was not an engineering degree, the Petitioners nonetheless seek to incorporate the word ‘engineering’ in their degree certificate so as to convey an impression to the contrary. We have also perused the comments/report submitted in response to the Petition by the Respondent No.3, the Higher Education Commission of Pakistan, which reflect that at the time of the Spring 2017 intake the relevant accreditation for the course of “BS Mechanical Engineering Technology” was not in place and was only forthcoming as of Fall that year onwards. The relevant excerpt from the comments/report reads as follows:

“It is respectfully submitted that the case was thoroughly reviewed and noted that certain information from the Respondent No.1/University was needed to further access the matter. The university was asked for the same through email. In response, the Respondent No.1 has submitted their response regarding the matter through email dated on 6th October 2021. Further clarification was

sought from the university through email. In response, the university submitted its response vide email dated 8th October, 2021. After review of the information provided by the university, following facts were noted:

i. The petitioners were enrolled in Spring 2017 in the program of BS Mechanical Technology.

ii. On the recommendation of the National Technology Council, the name of the program was later changed to “BS Mechanical Engineering Technology” and that the change of name was effective for Fall 2017 and onward batches only. Copy of email and reply/documents provided by university are attached as **(Annex-A)**.

In view of foregoing, the students enrolled in Spring 2017 in the program of “BS Mechanical Technology” cannot be entitled for the award of degree with the title “BS Mechanical Engineering Technology” that is approved for Fall 2017 and onwards batches only.

10. In the face of the Declarations signed by the Petitioners at the time of obtaining admission and in the wake of the comments submitted by the HEC, no case for interference stands made out in that regard in exercise of the Constitutional jurisdiction under Article 199. We are fortified in this assessment by the dicta of the Honourable Supreme Court in Civil Petition No. 3429 of 2021, captioned Khyber Medical University, etc. v. Ajmal Khan, where it was observed that:

“7. Raison d’etre of courts is to settle disputes, which come before them. It is not the constitutional mandate of the courts to run and manage public or private institutions or to mirco-manage them or to interfere in their policy and administrative internal matters. Courts neither enjoy such jurisdiction nor possess the requisite technical expertise in this regard. Courts should step in only when there arise justiciable disputes or causes of action between the parties involving violation of the Constitution or the law.”

11. Needless to say, if the Petitioners considered that any misrepresentation was made as to the nomenclature of the degree that would be awarded to them and were of the view that they had suffered damage as a consequence, they could have availed the appropriate remedy by way of civil proceedings before the competent forum.

12. In view of the foregoing, the Petition stands dismissed along with the pending miscellaneous application, but with no order as to costs.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: