

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

**Present:**

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

**C. P. No. D-692 of 2022**

Nawal & another-----Petitioners

Versus

Federation of Pakistan & others-----Respondents

**C. P. No. D-1098 of 2022**

Ms. Hiba Rehan-----Petitioner

Versus

Federation of Pakistan & others-----Respondents

Aaqib Rajper, Advocate for the Petitioners in C. P. No. D-692 of 2022. Nazir Ahmed Shar, Advocate for the Petitioner in C. P. No. D-1098 of 2022.

Zeeshan Abdullah, Advocate for the Pakistan Medical Commission.  
Abdul Waheed Syal, Advocate for Jinnah Sindh Medical University.  
Muhammad Wasiq Mirza and Syed Israr Hussain, Advocates for the Respondents/Dow University of Medical & Health Science, Karachi.  
Talha Abbasi, Advocate for Shaheed Mohtarma Benazir Bhutto Medical University, Larkana  
Muhammad Jawwad Dero, Additional Advocate General, Sindh.  
Kazi Abdul Hameed Siddiqui, DAG.

Date of hearing : 14.11.2022.

## ORDER

**YOUSUF ALI SAYEED, J.** - The question essentially arising for determination in these Petitions is whether a Pakistani citizen domiciled in this Province and holding a Permanent Residence Certificate (“**PRC**”) validly issued under the Sindh Permanent Residence Certificate Rules 1971 (the “**PRC Rules**”) can be disqualified from applying for admission to a general merit seat for the Bachelor of Medicine, Bachelor of Surgery (“**MBBS**”) program at public sector colleges.

2. That question arises as the Prospectus for the year 2021-22 issued by the Health Department of the Province of Sindh (the “**Prospectus**”) essentially classifies prospective Pakistani applicants who have acquired two years education from outside the country and attained their Higher Secondary School Certificate (“**HSSC**”) or equivalent certification from abroad as Overseas Pakistanis (“**OPs**”), in as much as it restricts their eligibility to seats reserved for that category.
  
3. While we have not been definitively assisted as to the number of such reserved seats in the Province or whether the aforementioned restriction was applicable in preceding years, or indeed, is or has been applicable in the other Provinces, we are given to understand that the reserved seats constitute a small fraction of the total number of seats, and that too, with the applicable fee being denominated and payable in US Dollars and far exceeding the Pak Rupee denominated fee payable in respect of a general merit seat. Suffice it to say that the impact of such a classification is thus significant.

4. As it stands, the relevant excerpt from the Prospectus setting out the eligibility criteria in general, and for OPs and foreign candidates in particular, reads as follows:

**ELIGIBILITY CRITERIA OF THE CANDIDATES**

1. The minimum educational qualification of candidates for admission to the First Year MBBS/BDS course in institutes of Sindh Province under all admission categories is Higher Secondary Certificate Examinations (HSSC) or F.Sc. (Pre-Medical) with atleast '65%" (715/1100) marks unadjusted or an equivalent examination from any other Board or Institution recognized by IBCC with at least 65% marks.
2. In pursuance of Sindh Cabinet's decision taken in meeting held on 02nd December 2021 (agenda item No: 8); vide notification No: SO (ME)I-I-AP/2021-22, dated 07th December 2021, issued by Health Department Government of Sindh, the Public and Private Medical and Dental universities/colleges are directed to admit candidates in MBBS/BDS having marks not less than 50% in MDCAT-2021 only, for the session of admission 2021-22, for the candidates of Sindh Province.
3. Candidates who appeared in MDCAT-2020 shall be eligible subject to equivalence of their scores as per guidelines of Pakistan Medical Commission, Islamabad.
4. Candidates for admission under the categories of general merit, merit-cum-choice, University Development Program, University Education Assistance Program and disabled seats must be having Permanent Residence (as mentioned in B-Form / CNIC and Domicile certificates of respective tagged districts of Sindh. His/her father/mother in case of death of the father divorce) must also be holding the domicile of Sindh province. Successful candidates will be admitted in institute as per tagged district on merit-cum-choice basis, and in case of Shaheed Mohtarma Benazir Bhutto Medical College, Lyari Karachi, as per allocation of towns as well.
5. The candidate shall apply for admission by submitting SSC, HSSC or F.Sc. and MDCAT result. The merit list shall be prepared by a weightage formula as under:
  - SSC/Equivalent Examination (10%)
  - HSSC/F.Sc (Pre Medical) or Equivalent examination (40%). (only Science Subjects shall be considered)
  - MDCAT (50%)
6. Candidates for admission under category of Overseas Pakistani must have documented evidence of having a Pakistani background, and getting education in institute located outside Pakistan.

Candidates who have acquired education at least two years (HSSC or equivalent) from outside Pakistan shall only be considered on overseas Pakistani/Foreign Category.

(fees shall be charged equivalent to foreign national/overseas Pakistani category as mentioned in the respective portion of each university/college. (the “

### **ELIGIBILITY CRITERIA FOR OVERSEAS PAKISTANI CANDIDATES**

1. Marks certificate of Secondary School Certificate/O Level Equivalence Certificate duly certified by IBCC.
2. Dual nationality holder or overseas Pakistani student desirous of taking admission in MBBS or BDS courses against overseas Pakistani's quota seat in any public institution of Sindh must have passed and obtained minimum sixty five percent marks in aggregate, in an examination of a course from a foreign university or its examining body or its education system in at least three subjects i.e. biology, chemistry and either physics or mathematics and such course must have been duly certified by IBCC as equivalent to HSSC, F.Sc. or intermediate level of Pakistan.
3. The candidate must have studied last two years from institutions outside Pakistan.
4. MDCAT conducted by PMC 2020/2021 with at least 65% Marks. (equivalence for MDCAT 2020 shall be required).
5. Candidate applying under the category of Overseas Pakistanis should submit the proof of his/her father/mother/parent working outside Pakistan.

### **ELIGIBILITY CRITERIA FOR SELF FINANCE FOREIGN NATIONAL CANDIDATES:**

1. No candidate shall be eligible for foreign quota seats in the public medical and dental institutions unless, he/she holds a permanent foreign nationality or dual nationality, and who has studied and passed HSSC 12th grade examination or equivalent examination from outside Pakistan.
2. HISS (Pre-Medical) or Equivalent examination last two years from abroad with minimum 65% marks and equivalency from IBCC.
3. Secondary School Certificate/O Level Equivalence Certificate duly certified by IBCC.
4. MDCAT conducted by PMC 2020/2021 with 65 % Marks. (equivalence for MDCAT 2020 shall be required).

5. Passport with valid visa and Police Registration Certificate.
6. NOC issued by Ministry of Foreign Affairs of concerned country or by the concerned Foreign Mission in Pakistan is mandatory.

NOTE: Pakistani students having passed from foreign education system (i. O levels, A levels etc) in Pakistan shall not be eligible for foreign/overseas pakistani quota seats.

[underlining added]

5. As it transpires, the general condition of 50% marks in the Medical & Dental Colleges Admission Test (“**MDCAT**”) for the admission session 2021-22, as set out in the Prospectus, was a relaxation accorded by the Sindh Government as against the 65% threshold otherwise prescribed by the Pakistan Medical Commission (the “**PMC**”). However, the Notifications issued by the Government in that regard were declared to be *void ab initio* and of no legal effect vide an Order dated 18.03.2022 made by a Full Bench of this Court (including one of us, namely Yousuf Ali Sayeed, J) in Constitutional Petition Number D-949 of 2022 (Re; Pakistan Medical Commission v. Province of Sindh & others), for the detailed reasons that followed.
6. Reverting to the matter at hand, the case of the Petitioners is that they are citizens of Pakistan by birth and are permanent residents of Karachi (Sindh), holding the requisite domicile certificates and PRCs, thus are eligible to apply for admission to the MBBS program at public sector colleges against general merit seats, and that the applications submitted by them in that regard ought to be entertained and processed as per the applicable weightage formula attached to the requisite academic qualifications in terms of the Prospectus.

7. However, whilst the Petitioners ostensibly possess the basic academic credentials and have passed the MDCAT, the application forms submitted by them within the envisaged timeframe for admission on general merit seats were not entertained on the ground that they fell afoul of the portion of Clause 6 of the eligibility criteria underlined hereinabove (the “**Impugned Classification**”), as they had studied abroad during the past two years and received the equivalent of their higher secondary education in the Kingdom of Saudi Arabia. The distinction in the case of the Petitioner in CP No.1098/2022 is that subsequent to her application against a general merit seat being declined on such score, she had then applied for and obtained admission on a seat reserved for OPs, with it being averred that such a step had been taken under compulsion.

8. In view of the statements made by learned counsel for the Respondents during the course of the proceedings as regards the status of the Petitioners and availability of seats, an interim Order had been made on 21.05.2022 so as to provisionally allow their attendance in classes. That Order *inter alia* reads as follows:

“Learned counsel appearing on behalf of Pakistan Medical Commission (PMC) has submitted that such categorization for fee purposes is not permissible in terms of Rules and Regulations formulated by the PMC. He has invited our attention to Regulation 9 (4) of the Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Regulations, 2021 issued by the Pakistan Medical Commission, which reads as follows:-

“9(4) Notwithstanding scholarships granted to a student, the college shall charge the same fee to all [category of] Pakistani Students. The college may charge a higher fee from a Foreign Student.

He submits that under the given circumstances, the forms of the Petitioners ought to have been processed and their case considered on merits as Pakistani Students. He submits that certain MBBS Seats remain vacant in the Province and provisionally the Petitioners may be accommodated against those seats if otherwise qualified.

On query posed, Mr. Muhammad Wasiq Mirza, learned counsel for Dow University of Health Sciences/Respondent No.5 in C. P. No. D-1098/2022 and Respondent No.6 in C. P. No. D-692/2022, submits that certain seats are vacant at Dow Medical College and Dow International Medical College, and a tentative assessment of the Petitioners aggregate marks places them potentially within the band of successful candidates, subject however, to such final computation as may be made for finally determining their admission and fee status.

Under the given circumstances, and keeping in view the fact that the Petitioners have made a timely approach to this Court so as to advance their case for admission, therefore, as an interim arrangement, it is ordered that the Petitioners be provisionally allowed to attend classes at Dow International Medical College subject to final outcome of these Petitions.”

9. Proceeding with their submissions, learned counsel for the Petitioners argued that an invidious distinction had been drawn between the Petitioners and other candidates who were Pakistani citizens, similarly domiciled in Sindh and possessing the requisite PRCs, so as to render them ineligible on the touchstone of a mere foreign educational qualification. They averred that the Impugned Classification was unreasonable and violated the fundamental rights of the Petitioners, who were citizens of Pakistan and were otherwise eligible in all respects to apply for admission on general merit seats for the MBBS program in public sector medical colleges of the province. They contended that the Petitioners qualified for admission to the MBBS program on general merit and prayed that they be granted admission accordingly.

10. No comments were forthcoming on behalf of the province in either Petition; nor was any serious endeavour made on the part of the Additional Advocate General to present a proper rationale for the Impugned Classification, with it instead being left up to counsel for the PMC and the respective educational institutions arrayed as respondents to defend their position vis-à-vis the Petitioners' contentions.
  
11. For his part, learned counsel for the PMC submitted that the Impugned Classification offended the definition of a "Pakistani student" under the PMC Medical and Dental Undergraduate Education (Admission, Curriculum and Conduct) Regulations 2021 (the "**Regulations**"), which embraced OPs within the meaning of that term, and further submitted that no distinction could be made as per the prevailing Regulations of the PMC between OPs and local students for purpose of the fee chargeable, which was to be uniform in either case. He invited attention to Regulation 2, which defined and differentiated a 'Foreign Student' from a 'Pakistani Student', but defined and categorized OPs as Pakistani Students, with it being stipulated through Regulation 9(4) that all Pakistani Students were to be charged the same fee. Learned counsel submitted that charging a higher fee in respect of seats reserved for OPs than the amount charged from local students in respect of the general merit seats thus violated the Regulations. He invited attention to a Notification issued by the PMC in pursuance of the Regulations, directing all colleges to deal with OPs as Pakistani Students and charge the fee as per policy for Pakistani Student, which reads as follows:



**NOTIFICATION**  
**FEES FROM OVERSEAS PAKISTANIS**

It has been brought to the notice of Pakistan Medical Commission that some of the institutes are charging the foreign student fee from Pakistani students.

As per PMC Medical and Dental Undergraduate Education Regulations 2021 (Amended), foreign and Pakistani students are defined in section 2 (e) and (i) as:

“(e) “foreign student” means a student who is not a Pakistani Student and holds only a foreign nationality;

(i) “Pakistani Student” means a student who is a Pakistani national or defined as an Overseas Pakistani under applicable law and may hold dual nationality and may be resident or non-resident in Pakistan.”

Therefore, all public medical and dental colleges are required to deal with Overseas Pakistani Students as “Pakistani Students” and charge the fees as per policy for “Pakistani Students”.

12. Conversely, learned counsel for the Dow University of Health Sciences, Karachi, and Shaheed Mohtarma Benazir Bhutto Medical University, Larkana, stood by the Impugned Classification and submitted that the Petitioners applications submitted by the Petitioners in respect of general merit seats had been declined on that basis. Yet, when queried as to the rationale for such classification, the only answer forthcoming was that local students who had received their education in Pakistan through the public sector school system would not be able to compete against OPs, and would thus be marginalized. However, no submissions were made regarding the Regulations.

13. We have considered the arguments advanced at the bar in light of the pleadings and material placed on record.
  
14. From the pleadings of the Respondents, it is apparent that the Petitioners sought to apply on general merit, but were declared ineligible due to having received their last two years of schooling overseas. The relevant excerpts from the comments submitted by the Vice Chancellors of the Dow University and Shaheed Mohtarma Benazir Bhutto Medical University read as follows:

**DUHS in CP D-**

7. ... That the said candidate name with merit No. 441 appeared because of some technical error, as she did not fulfill the eligibility of local merit category, moreover, she had studied last two years from outside Pakistan. i.e. from the Kingdom of Saudi Arabia. Therefore, according to given eligibility criteria of the candidates (**mentioned at point No. 06 of page No. 99 of prospectus**). She falls under the category of Overseas Pakistani Category.

8. ... she did not fulfill the criteria of local merit category seat as per rules mentioned in the prospectus as she has studied last two years from abroad. It is pertinent to mention herein that she was not at all coerced or pressurized to take admission in Overseas Pakistani Category seat at Jinnah Sindh Medical University, rather she was properly guided and facilitated in the light of rules / procedure / criteria mentioned in the prospectus that she can take admission in any of the public sector medical college on Overseas Pakistani Category seat including Dow University of Health Sciences, Jinnah Sindh Medical University and Karachi Medical & Dental College. However, she opted for MBBS Overseas Pakistani Category seat at Jinnah Sindh Medical University, moreover, she submitted the admission fee and original documents for confirmation of seat, which is a proof that she has taken / confirmed the seat, which is now blocked and cannot be given to any other candidate as admission process has been closed by Pakistan Medical Commission (PMC). It is pertinent to mention herein that the above fact was not disclosed / concealed in the petition by the petitioner for ulterior motives.

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“4. ... they physically studied abroad and obtained their intermediate degree from Saudi Arabia, hence, they fall within the category of overseas Pakistani.

Slot of overseas Pakistani is also separate therefore, their merit is also determined and considered in between overseas and foreign students excluding local merit, hence, the Petitioners fall within the category of overseas Pakistani and they cannot be treated as local students.”

“7. ... the Petitioners are not foreign national but they are overseas Pakistani and as per rules, the Petitioners fall within the category of overseas Pakistani, hence, they have been rightly declared ineligible on local merit by the concerned university.”

15. In the case reported as Abdul Baqi and others versus Muhammad Akram and others PLD 2003 Supreme Court 163, the Apex Court observed *inter alia* that:

“6. ...according to majority opinion in Mst. Attiyya Bibi Khan (ibid) was that reading of Article 25 alongwith Articles 2-A, 22 and 37-C of the Constitution would show that only such classification could be deemed reasonable which fosters the objects of the Constitution i.e. to make higher education available on merits and at the same time to accommodate the interests of the socially or economically disadvantaged section of the people for the purpose of fostering genuine rather than nominal equality. In this sequel reference to the case of Gul Khan v. Government of Balochistan through Secretary, Education and 4 others (PLD 1989 Quetta 8) would not be out of context because in this report a learned Division Bench of Balochistan High Court examined provisions of Article 22(4) of the Constitution with reference to admission policy regulating admission to an educational institution and held that this Article empowers a public authority for making provisions for advancement of socially backward class of citizens. It was further held in this case with reference to Article 25 of the

Constitution that a citizen's rights as a human being are not affected by reason of his descent, religion, social or official status, economic condition or place of birth or residence and further that all citizens are equally subject to the general law of the land. It was further held, that equal protection of law envisages that no person or class of persons shall be denied the same protection of laws, which are enjoyed, by other person or persons or class or classes in same circumstances. It would be beneficial to reproduce hereinbelow the principles of equal protection of law referred to hereinabove as it has been recapitulated by this Court in the case of I.A. Sherwani v. Government of Pakistan 1991 SCMR 1041:-

- (i). That equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;
- (ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;
- (iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;
- (iv) that no standard of universal application to test responsibilities of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;
- (v) that a law applying to one person or one class of persons may be Constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;
- (vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;

(vii) that in order to make a classification reasonable, it should be based---

(a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;

(b) that the differentia must have rational nexus to the object sought to be achieved by such classification."

7. The above principles have been reiterated in number of judgments prominently in the cases of Government of Balochistan through Additional Chief Secretary v. Azizullah Memon and 16 others PLD 1993 SC 341 and Mehram Ali and others v. Federation of Pakistan and others PLD 1998 SC 1445. It may be noted that Principle No.(vii) quoted hereinabove provides two bases for reasonable classification i.e. an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out and that the differentia must have rational nexus to the object sought to be achieved by such classification."

16. Similarly, in the case of Mst. Attiyya Bibi Khan v. Federation of Pakistan through Secretary of Education (Ministry of Education, Civil Secretariat, Islamabad and others 2001 SCMR 1161, it was observed that:-

"... Article 25 of the Constitution unambiguously guarantees that all citizens are equal before law and are entitled to equal protection and that they shall not be discriminated on the basis of sex alone. Inter alia, Articles 2-A, 18 and 25 of the Constitution are designed, intended and directed to bring about an egalitarian society based on Islamic concept of social justice. Needless to reiterate, there is no difference between individuals of mankind on the basis of race, colour and territory and that all human beings are equal in the eyes of Allah as He created all from a quintessence of clay....

(7) No doubt, concept of reasonable classification has been held to be implicit in Article 25 of the Constitution which guarantees equality of citizens and equal protection of law as has been clearly explained in I.A. Sherwani's case (supra) mentioned in paragraph 5 above. Nevertheless, it is equally well-settled that the classification must be reasonable and must have been nexus with the objects sought to be achieved by such classification. What needs to be seen is whether the classification impugned before the High Court could be termed reasonable or not.

(8) .... Article 25 apart from stipulating equality and equal protection of law to all citizens expressly prohibits discrimination on the basis of sex and provides that the State may make special provisions for protection of women and children. Article 22 of the Constitution forbids discrimination on the grounds of race, religion, caste or place of birth in educational institutions, receiving aid from public revenue but enables a public authority to make provisions for the advancement of any socially or educationally backward class of citizens. Article 37(c) inter alia requires that the State shall make technical and professional education generally available and higher educational equally accessible to all on the basis of merit.

... Thus, reading Article 25 along with Articles 2-A, 22 and 37(c) of the Constitution would show that only such classification could be deemed reasonable which fosters the objects of the Constitution i.e. to make higher education available on merit and at the same time to accommodate the interest of the socially or economically disadvantaged sections of the people for the purpose of fostering genuine rather than nominal equality.”

17. Viewed through that prism, we find the rationale advanced by learned counsel in defense of the Impugned Classification to be quite remarkable to say the least, for if candidates who have studied abroad for a mere 2-year period, no matter where that may be, are considered to be at an academic advantage compared to candidates who have acquired their education in Pakistan, that amounts to a damning indictment of the overall state of education in this country.
  
18. Furthermore, an examination of the Impugned Classification in the overall context of the admission criteria begs the question as to the fate that would befall a candidate who is domiciled in Pakistan and a permanent resident of this province, but has studied abroad for 2 years without his/her family residing abroad or whose father/mother/parent does not work outside Pakistan? How would the Impugned Classification be juxtaposed and reconciled with Clause 5 of the Eligibility Criteria for OPs, as aforementioned? No satisfactory response was forthcoming in that regard.
  
19. To our minds, while a distinction may perhaps be drawn for purposes of admission between local Pakistanis and persons who are OPs, we are of the view that the latter genre cannot be broadened vide the Impugned Classification, merely on the basis of two-years of foreign education, so as to encompass persons who are Pakistani citizens and otherwise possess the qualifications and thus preclude them from applying for general merit seats. In our view, the Impugned Classification is unreasonable and cannot be introduced in the Prospectus as a device to put an otherwise eligible Pakistani citizen beyond the pale of consideration.

20. For example, whilst provision may similarly be made by reserving certain seats for persons with disabilities or hailing from a particular area, that would not mean that a Pakistani citizen who otherwise qualifies under either category can be barred from applying on general merit and restricted to applying only for a reserved seat.
  
21. Indeed, whilst the PRC Rules specify that no person shall be eligible for admission to a Medical College in Sindh unless he or she furnishes to the authority competent to make the admission a certificate of his permanent residence in Sind from the District Magistrate of the area where he is permanently residing, a distinction has already thereby been recognized between residents and non-residents, with it being clarified that the requirement does not apply to admissions against seats which have been reserved for special interest or for persons who are not permanent residents of Sindh.
  
22. In view of the foregoing and since the Petitioners had submitted applications seeking admission on general seat and have then been diligent in approaching this Court without undue delay, as earlier observed, we would direct the concerned Respondents to process their applications for admission under the category of general merit, subject to their otherwise meeting the applicable criteria, and accommodate them against any suitable vacant seat(s) if it be determined that they or any of them, as the case may be, qualify for a seat in terms of placement in the overall merit list.



23. As to the matter of charging of fees in respect of seats reserved for OPs, since that is not the subject or focus of the case advanced by the Petitioners and has only been raised collaterally on the part of the PMC, we leave the matter open for determination in an appropriate proceeding or to otherwise be taken up by the PMC with the concerned quarter in light of the Regulations.

24. The Petitions stand allowed in the foregoing terms.

JUDGE

CHIEF JUSTICE

MUBASHIR