

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

C. P. No. D-3643 of 2019

Present:

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

Petitioners : Shah Nawaz & others through
Javed Anwar, Advocate.

Respondent No.1 : Government of Sindh through
Sandeep Malani, Assistant
Advocate General, Sindh.

Respondent No.2 : Pakistan Medical Commission
Through Muhammad Arif,
Advocate.

Respondents No.3-5: Dow Medical University of
Health Sciences and Dow
International Medical College
through Hassan Arif, Advocate.

Date of hearing : 12.09.2022.

ORDER

YOUSUF ALI SAYEED, J. - The Petitioners were admitted to the MBBS Program at the Dow International Medical College (“**DIMC**”) in the 2017 Session, and have invoked the Constitutional jurisdiction of this Court while seeking to agitate a grievance as to the quantum and payment of fees being charged from them in that regard.

2. The Petitioners' case proceeds on the assertion that they had unsuccessfully applied for admission at DIMC on open merit, but had then been goaded by the administration to take admission against seats for the Overseas Sponsored Category, in respect of which the fees was denominated and payable in US Dollars. It is said that whilst certain payments were initially made, the financial burden became unbearable over time as the Pak Rupee continued to lose ground to the US Dollar at a rapid pace, with the Petitioners approaching the administration for relief, but to no avail. In the backdrop portrayed, the Petitioners have sought that DIMC be directed to charge the fee in Pak Rupees instead of US Dollars, and be restrained from taking any action adverse to the Petitioners, whether by way of striking off their names from the student roll or restraining them from appearing in examinations, or otherwise.

3. The comments forthcoming on the part of DIMC belied the Petitioners contentions, with it being explained that it had been established specifically to cater to students who were either foreign nationals or resident abroad or those who had overseas/foreign sponsors, and the assertion of the Petitioners that they firstly applied to DIMC for admission on merit was patently false. Reference was also made to the Admission Forms and Affidavits that had been executed in the case of each of the Petitioners to demonstrate that they had thereby applied on the Overseas Sponsored Category and designated a foreign sponsor while undertaking that timely payment of fees would be made in US Dollars. Furthermore, it was stated in the comments of the erstwhile PMDC that none of the Petitioners had ever approached it for redressal of their grievance.

4. Notwithstanding the Admission Forms and Affidavits placed on record, learned counsel for the Petitioners sought to maintain that the Petitioners were entitled to the relief claimed. It was contended that a number of seats in the session to which the Petitioners had been admitted had remained vacant, and as the MBBS and BDS (Admissions, House Job and Internship) Regulations 2018 (the “**Regulations**”) issued by the erstwhile Pakistan Medical and Dental Council, since adopted by the Pakistan Medical Commission, envisaged that any vacant foreign or self-finance seat was to be transferred to the quota of open merit seats and students so admitted were to be charged the lesser fee prescribed for the latter category, such benefit ought to be extended to the Petitioners. Attention was invited to Regulation 8(3), which reads as under:

“Where any seat of foreign or self-finance quota remain vacant due to unavailability of eligible candidates or otherwise, it shall stand transferred to open merit quota and the student shall be charged fee and charges prescribed for open merit seat. An ineligible candidate shall not be admitted such seats.”

5. On the other hand, learned counsel for DIMC placed emphasis on the admission forms submitted by the Petitioners and invited attention to the fact that each of them had specifically designated a foreign sponsor and also separately executed an Affidavit countersigned by a parent/guardian which contained an unequivocal undertaking that all fees would be paid in US Dollars within the due dates and according to the university policy till the completion of the course.

6. Furthermore, learned counsel drew attention to a Statement subsequently filed in the matter, reflecting that during pendency of the Petition the Petitioners had signed and submitted affidavits reiterating their commitment to continue paying in US Dollars after availing a \$2000 discount on humanitarian grounds and being allowed to pay their fee in installments, with some of those Affidavits also having been placed on record.
7. As to the Regulations, it was submitted that the same had been notified subsequent to the admission of the Petitioners and the reliance of the Petitioners thereon was misplaced as the DIMC had been established to cater to only those students who were either permanently residing overseas, held foreign citizenships or had an overseas sponsor and has no seats on open merit and the cited provision even otherwise stipulated that '*any ineligible candidate shall not be admitted to such seats*'.
8. Having considered the arguments advanced in light of the pleading and material on record, we have noted that there is nothing to support the contention of the Petitioners that they had applied to DIMC on open merit or that such a category of seat even exists at that institution. On the contrary, it is apparent that the Petitioners had applied on the Overseas Sponsored Category and they and their sponsors had expressed willingness to pay the applicable fee in US Dollars at the time of admission, with the grievance espoused having subsequently arisen due to the continued decline of the Pak Rupee in relation to the US Dollar.

9. Furthermore, the Petitioners reliance on the Regulations is misplaced, as in our view Regulation 8(3) is intended to fill the seats that remain vacant in the foreign or self-finance quota by transferring/redesignating them as seats of open merit and is not meant to confer any benefit to persons who had applied for and taken up such seats, hence is inapplicable in the case of the Petitioners. That is to say, where for example there are seats in a particular medical college/university across various categories, based on open merit as well as foreign quota and/or self-finance as the case may be, then upon the open merit seats being exhausted if any of the seats of those others categories remains vacant, such vacant seat(s) would be transferred to the open merit quota so as to be taken up by candidates as per their standing on the merit list.

10. However, that does not mean that those candidates who had applied for and taken up foreign or self-finance seats could seek the transfer of such further seats of either category as remained vacant to the open merit quota and to be accommodated against those transferred seats. Even otherwise, we do not see how the rule could conceivably be brought to bear in the case of an institution such as DIMC, which caters only to students who are either foreign nationals/residents or have overseas/foreign sponsors and does not offer seats on open merit. It also falls to be considered that the conduct of the Petitioners in availing a concession from the DIMC was contrary to the case sought to be advanced with reference to the cited Regulations. Needless to say, it is well settled that a party cannot be allowed to approbate and reprobate so as to accept a benefit and then seek to resile from the earlier position so as to avoid the related burden. On the contrary, he would be bound by his previous conduct.

11. As such, we are of the view that the Petition is devoid of force, and dismiss the same accordingly along with all pending miscellaneous applications.

JUDGE

CHIEF JUSTICE

Karachi.
Dated: 03.10.2022