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IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D- 1857 / 2024

10/4/2024

Additional Registrar (Wri)

M~~s~~. Alishba Gulzar  
Daughter of Gulzar Ahmed Rajput,  
Muslim, Adult, Resident of  
House No. E-2/102, Steel Town,  
Karachi. ....Petitioner

VERSUS

- 1) Professor Anjum Rehman  
The Principal,  
Shaheed Mohtarma Benezir Bhutto Medical College,  
Lyari hospital Road  
Rangiwara Karachi.
- 2) Dr. Ameer Ali Khaskheli  
The vice principal,  
Shaheed Mohtarma Benezir Bhutto College,  
Lyari hospital Road  
Rangiwara Karachi.
- 3) Mr. Arman  
Class Assistant  
Shaheed Mohtarma Benezir Bhutto College,  
Lyari hospital Road  
Rangiwara Karachi.
- 4) Mr. Awais  
The Student Liaison Executive  
Shaheed Mohtarma Benezir Bhutto College,  
Lyari hospital Road  
Rangiwara Karachi.
- 5) Naveed  
Transport Incharge  
Shaheed Mohtarma Benezir Bhutto College,  
Lyari hospital Road  
Rangiwara Karachi.
- 6) Pharma Lab Demonstrator  
Shaheed Mohtarma Benezir Bhutto College,  
Lyari hospital Road  
Rangiwara Karachi.
- 7) Mst. Arshiya  
GR



Shaheed Mohtarma Benezir Bhutto College,  
Lyari hospital Road  
Rangiwara Karachi.

8) The Pakistan Medical & Dental Council,  
(PMDC), through its chairmen/President,  
Islamabad.

9) The Principal  
Dow University  
Health Sciences Mission Road  
New Labour Colony  
Nanakwara, Karachi.

10) The Principal Karachi Medical and Dental College,  
Block M, North Nazimabad Town,  
Karachi.

11) The Government of Sindh  
Through Secretary health,  
health Department,  
Tughlaq House, Sindh Secretariat,  
Karachi.....Respondents

**CONSTITUTION PETITION UNDER ARTICLE 199  
OF THE CONSTITUTION OF ISLAMIC REPUBLIC  
OF PAKISTAN 1973**

The Petitioner most respectfully submits the instant petition before this Hon'ble Court on following facts and grounds, amongst other that will be raised at the time of hearing of this Petition:-

**FACTS**

- 1) That the petitioner is a law abiding and peace loving citizen of Pakistan, residing at the above noted address and belongs to an educated and noble family having good reputation in the society.
  
- 2) That the Father of the petitioner was Assistant Manager Pak Steel Mill CRM Department, as such being an educated and highly designated person the father of the Petitioner always pursue to provide best education to his children/the Petitioner.

# IN THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Mohammad Karim Khan Agha, J,  
Mr. Adnan Ul Karim Memon, J,

CONST. PETITION NO.D-1857 OF 2024

Petitioner: Ms. Alishba Gulzar d/o. Gulzar Ahmed Rajput, through Ms. Naila Kausar Shaikh, Advocate

Respondent No.1 to 7: Through Mr. Muhammad Talha Abbasi, Advocate.

Respondent No.8: PMDC through Mr. Sohail Hayat Khan Rana, Advocate

Respondent No.9: Through Mr. Wasiq Mirza and Ms. Sajida Arshad, Advocates

The State : Through Mr. Jawad Dero, Assistant Advocate General Sindh and Ms. Wajiha M. Mehdi, Assistant Attorney General of Pakistan.

Date of Hearing 19.12.2024.

Date of Order 19.12.2024.

## ORDER

*Mohammed Karim Khan Agha J.* The petitioner is a first year medical student in MBBS at Shaheed Mohtaram Benazir Bhutto Medical College (SMBBMC) in Lyari and her main prayer is that she be declared by this court to be a lawful medical student (MBBS) at SMBBMC and that she may continue with her studies at SMBBMC.

2. The brief facts of the case is that the petitioner appeared in the MDCAT test and based on the merit list she could not be accommodated for the MBBS course at SMBBMC and as such she elected to study for a BDS degree in dentistry at Karachi Medical and Dental College. Shortly after her MDCAT results were known and the seniority list was prepared the petitioner had elected to study for a BDS degree however one candidate on the merit list whose marks were above hers and who had a place on the MBBS course was dropped by SMBBMC as his credentials did not stand the test of verification. As such since the petitioner actually wanted to study medicine as opposed to dentistry she requested that she be transferred from the BDS course to the MBBS course which request was approved by SMBBMC and as such the petitioner paid the relevant

fees and started to attend the MBBS medical course at the SMBBMC. Thereafter  
according to her the staff at SMBBMC stopped her from attending classes and  
hence she approached this court for interim relief to enable her to attend the  
classes still disposal of this petition which was granted.

3. Learned counsel for the petitioner re affirmed the above facts and contended that the exams were around the corner and the SMBBMC had no legal authority to cancel her admission to the MBBS course as she had been accepted according to the merit list and as such she should be declared to be a lawfully admitted MBBS medical student of SMBBMC and enabled to sit for her exams and continue her medical studies at SMBBMC until she graduated and her petition be allowed.

4. On the other hand learned counsel for SMBBMC contended that in actual fact the petitioners admission to the MBBS course at SMBBMC was on a provisional basis until 31<sup>st</sup> March when they had to inform the Pakistan Medical and Dental Council (PMDC) of the final 100 MBBS students who had been admitted to the MBBS course at SMBBMC as per PMDC allocation of seats being 100. He conceded that initially a student named Aizaz Ali had been originally put on the preliminary admissions list based on the merit list however he was later removed from the list as his credentials were not positively verified where after his seat was allotted to the petitioner. He further contended however when the credentials of Aizaz Ali were sent for re verification they were found to be in order and the original glitch had been made on the part of the Mukhtikhar/DC who had failed to carry out his verification with due diligence. As such based on the merit list Aizaz Ali was again given admission to the MBBS course which resulted in the petitioner being dropped from the list. According to him whilst the petitioner was being informed about this unfortunate situation the petitioner rushed to the court and obtained interim relief which enabled her to continue her MBBS studies at the SMBBMC. He contended that since all admissions were provisional up until 31<sup>st</sup> March when the portal for registration of PMDC closed SMBBMC acted lawfully in cancelling her seat for an MBBS degree at SMBBMC as until she was registered on the portal of PMDC her admission remained provisional and was not confirmed.

5. We have heard the parties and perused the record and considered the relevant law.

6. This is obviously a distressing case for the petitioner whose dream was to become a medical doctor and now her immediate progress in that field appears to be in jeopardy. We as individuals have every sympathy for the petitioner however

as judges were are bound to decide the petition objectively and strictly in accordance with the law and put our emotions and personal feelings aside. We even called the representative of the PMDC and the Principle of SMBBMC to assist us in this matter to see if some via media could be reached which could sit within the frame work of the law and be acceptable for all parties but unfortunately despite our best efforts we were not able to find a way forward.

7. Many students in this country and indeed throughout the world dream of studying MBBS and becoming medical doctors and as such the regulatory body in this case being the PMDC is constrained to allocate a limited number of seats based on merit as the number of applicants for the course of MBBS is bound to exceed the available seats. In this respect for PMDC the seats for SMBBMC is 100 and we are not inclined to direct the PMDC to increase the allocation of seats for SMBBMC as this is a policy decision which through their expertise and knowledge of the available resources in this scientific field they are best equipped to deal with and decide on. It might also open the flood gates in many such cases which would result most likely in the decline in medical education in this country as the classes might become over crowded with the end result being doctors graduating who were not so well qualified. In this respect we place reliance on the case of **Vice Chancellor Agriculture University Peshawar V Muhammad Shafiq** (2024 SCMR 527) which held as under in material part.

*“7. At this juncture, it is underlined that the process of regularization is a policy matter and the prerogative of the Executive which cannot be ordinarily interfered with by the Courts especially in the absence of any such policy. It does not befit the courts to design or formulate policy for any institution, they can, however, judicially review a policy if it is in violation of the fundamental rights guaranteed under the Constitution. The wisdom behind non-interference of courts in policy matters is based on the concept of institutional autonomy which is defined as a degree of self-governance, necessary for effective decision making by institutions of higher education regarding their academic work, standards, management, and related activities. Institutional autonomy is usually determined by the level of capability and the right of an institution to decide its course of action about institutional policy, planning, financial and staff management, compensation, students, and academic freedom, without interference from outside authorities. The autonomy of public institutions is not just a matter of administrative convenience, but a fundamental requirement for the effective functioning of a democratic society, as public sector organizations are guardians of the public interest. Democracy, human rights and rule of law cannot become and remain a reality unless higher education institutions and staff and students, enjoy academic freedom and institutional autonomy. More recently, the concept has in its longstanding and idealized form been well captured in the Magna Charta Universaitum 2020 that states “...intellectual and moral autonomy is the hallmark of any university and a precondition of its responsibilities to society.”*

8. *Courts must sparingly interfere in the internal governance and affairs of educational institutions i.e., contractual employments. This is because the courts are neither equipped with such expertise, nor do they possess the relevant experience that would allow for interference in such policy matters. Under this autonomous realm, educational institutions are entitled to deference when making any decisions related to their mission. At the same time, any transgression by Courts would amount to the usurpation of the power of another, which would be against the spirit of Article 7 of the Constitution as it is not the role of the Courts to interfere in policy decisions. The judicial pronouncement of the Courts in other jurisdictions i.e. United States of America, United Kingdom and India also provide that courts should not interfere in the internal affairs of educational institutions.”(bold added)*

8. Likewise in the case of **Muhammad Mumtaz Khan v. Siraj Bibi** (20024 SCMR 956) which also concerned admission to a university it was held as under:-

*“In the affairs of admission and examination in the educational institutions, the concerned authorities are vested with the powers and jurisdiction to lay down the eligibility criteria in their own rules, regulations, or prospectus. They are independent to follow their own policy for admission, and in other affairs, therefore, the academic, administrative, and disciplinary autonomy of a university must be respected. The interference by the courts in the admission policy would give rise to glitches for the said institutions to administer the matters harmoniously and efficiently. The educational institutions are competent to manage their own affairs without any outside intervention from executive or judicial organs unless they contravene or disregard the compass of their authority or act in breach of applicable statutes or admission policies as laid down in the prospectus. There is no ambiguity in the eligibility criteria mentioned in the prospectus; hence, it was not open to any other interpretation. Nothing on record shows that while cancelling admission of the respondent No.1, the University committed any act in violation of their rules and regulations.”*

9. Since we cannot increase the number of seats the issue is how can we accommodate the petitioner? The only option would appear to be to swap her seat with that of Aizaz Ali who is not even on notice. Even otherwise we find no reason to do so since the rules of admission of SMBBMC make it clear that until the PMDC’s portal is closed the admissions are **only provisional**. So once the credentials of Aizaz Ali stood verified within the given time frame he was entitled to take the seat allocated for him on the MBBS course based on his position in the merit list and the petitioner’s provisional admission has to necessarily to be cancelled.

10. It also appears however that the petitioners actions might not have been entirely in good faith as when SMBBMC realized that the petitioner would lose her seat she was called for counseling by SMBBMC and it was suggested at

that time that since she was going to lose her admission at SMBBMC for the MBBS course it was suggested to her that she could still at that time revert back to her BDS course which she had earlier transferred from for which some seats were still available. Instead, however, of considering the wise counsel of SMBBMC who were trying their best to resolve an unforeseen situation which was neither the fault of the student nor the University apparently on her father's insistence who was determined for her to study medicine the petitioner rushed to this court for interim orders before SMBBMC could even issue her with a letter cancelling her admission and thereafter the petitioner survived on stay orders from this court for which we judges also share part of the blame in not deciding the petition expeditiously but only a few days before the petitioner was about to sit her exams.

11. Be that as it may we find that the petitioners admission was provisional up until 31<sup>st</sup> March and in that time a student who was above her on the merit list who initially had been denied admission based on the wrongful verification of his credentials was able to have those credentials re verified in time and as such entitled to reclaim his initially wrongfully declined admission to MBBS.

12. Based upon the above discussion the admission of the petitioner to the MBBS course at SMBBMC stands cancelled and the petition is dismissed, however the SMBBMC shall repay to the petitioner her admission fee and the petitioner is at liberty if so advised to approach the Karachi Medical and Dental College to take her back to her BDS seat which she earlier vacated if it still remains available subject to all just legal exceptions.

13. The petition is disposed of in the above terms.

 19/12/24  
HEAD OF CONST. BENCHES

JUDGE  
