JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO. : W.P. NO.2445-2021
Pakistan Association of Private Medical and Dental Institution (PAMI), Islamabad & Another
Vs.
Federation of Pakistan etc.

Petitioners by	**:**	**Mr. Ashtar Ausaf Ali, Advocate Supreme Court** **Barrister Usama Rauf, Advocate** **Barrister Asad Rahim Khan, Advocate**
Respondents by	**:**	**Sardar Taimoor Aslam Khan, Advocate for PMC.** **Mr. Attique-ur-Rehman Siddiqui, Assistant Attorney General** **Prof. Noor ul Iman, Principal, North West School and Medicine, Peshawar (CM No.3042-2021)** **Mr. Jamil Asghar Butt, Advocate in CM No.3043-2021** **Mr. M. Soban Hayat, Legal Officer for SZABMU (CM No.3044-2021)** **Majid Khan, A.D. (Legal), Ministry of NHSR &C**
Date of decision	**:**	**13.07.2021**

AAMER FAROOQ J. Petitioner No.1 namely Pakistan Association of Private Medical and Dental Institutions (PAMI) is an Association and is aggrieved of decisions of Pakistan Medical Commission (respondent No.2) dated 30.06.2021. In this behalf, under the first decision taken by respondent No.2 which was made public through notification of Council's decision in the meeting dated 25.06.2021, the previously framed accreditation standards were adopted for a period of three months or until such time Academic Board finalizes the new standards, whichever was earlier. It was also intimated through the impugned decision that adoption has been made for immediate and urgent inspections in different pending cases. Under the second Notification of even date, Council of respondent No.2 approved 'Phased Approach' to be adopted by the Medical Institutions for their improvement and in this behalf, it was decided to score the

institutions and award Grades from A+, A, B, C to F rather than numerical marks so as not to be in conflict of Higher Education Commission prerogative of awarding marks to the institutions.

2. At the very outset, learned counsel for respondent No.2 objected to the maintainability of the petition on the ground that after the enactment of Pakistan Medical Commission Act, 2020 as well as Medical Tribunal Act, 2020, the jurisdiction vests exclusively with the Medical Tribunal. It was contended that even-otherwise, adoption of accreditation standards was solely for urgent actions; with respect to awarding of Grades, it was added that, same is not in conflict with any rules or regulations and this has been done to avoid any conflict with High Education Commission's marking criteria.

3. Learned counsel for the petitioners, adverting to the initial objection taken by learned counsel for respondent No.2 with respect to maintainability of instant petition, submitted that under Medical Tribunal Act, 2020, the decision taken by Pakistan Medical Commission Act of 2020 is not mentioned. He drew attention of the Court towards sections 4, 6 & 8 of the Act of 2020. With respect to merits, it was contended that after the statement made by learned counsel for respondent No.2 that accreditation criteria shall only be used for immediate and urgent inspections, the petitioners have no grouse in the matter. It was contended that however grading of the institutions is neither justified nor is with lawful authority.

4. During course of proceedings, a number of applications were filed by various medical institutions i.e. CM No.3042-2021, CM No.3043-2021, CM No.3044-2021 & CM No.3047-2021 to be impleaded as a party. Learned counsel for the applicants lent support to respondent No.2 and contended that accreditation criteria as well as grading system is for betterment and

improvement of medical institutions, hence any effort made to strike down decision of respondent No.2, would be prejudicial to the medical institutions.

5. Arguments advanced by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

6. Previously, medical profession and education were regulated and dealt with by Pakistan Medical and Dental Council under Pakistan Medical and Dental Council Ordinance, 1962 as amended from time to time. In 2019, an Ordinance was promulgated to change the system and a new Body namely Pakistan Medical Commission was constituted. The Ordinance was challenged before this Court and its various provisions were struck down vide judgment reported as 'Saira Rubab Nasir etc. Vs. President of Pakistan etc. (2020 PLD 130 Islamabad). A Bill was introduced in the National Assembly with respect to medical education and profession as well as constitution of a separate forum to determine disputes viz-a-viz decisions taken by Pakistan Medical Commission. In this behalf, Parliament passed Pakistan Medical Commission Act, 2020 as well as Medical Tribunal Act, 2020. Both the Acts received assent of the President of Pakistan on 22.09.2020, however Pakistan Medical Commission Act, 2020 was published in the Official Gazette of Pakistan as Act No.XXXIII of 2020 on 24.09.2020 and Medical Tribunal Act was published in the Official Gazette of Pakistan on the same date as Act No.XXXIV of 2020. Under section 37 of Pakistan Medical Commission Act, 2020, any person including an employee of the Commission aggrieved by any order or direction of the Commission, including the Council, Authority or Disciplinary Committee, under any provision of this Act, or rules or regulations may prefer an appeal before the Medical Tribunal within thirty days of the date of communication of the impugned order or direction. In this behalf, Tribunal is

defined in section 2(xx) of the Act No.XXXIII of 2020 and means the Medical Tribunal as constituted pursuant to the Medical Tribunal Act, 2020. Under section 4 of the Medical Tribunal Act, 2020, Medical Tribunal is constituted by the order of the Prime Minister of Pakistan through a Notification in the Official Gazette; the Tribunal is to consist a Chairman who has been a judge of a High Court to be appointed by the Prime Minister upon nomination by the Chief Justice of Pakistan and also shall consist of at least four members. Under subsection (10) of section 4 ibid, no act or proceedings of the Tribunal are invalid only for the reason of the existence of a vacancy in, or defect in the constitution, of the Tribunal. Likewise, under subsection (8) of section 4 of the Act of 2020, the Tribunal shall not merely because of a change in its composition, or the absence of any member from any sitting, be bound to recall and rehear any witness who has given evidence, and may act on the evidence already recorded by, or produced, before it. The jurisdiction has been conferred on the Medical Tribunal by section 6 ibid, which is as follows: -

> ***6. Jurisdiction and powers of Medical Tribunal****.— **(1)** All offences provided for under the Pakistan Nursing Council Act, 1973 (XXVI of 1973), Pakistan Health Research Council Act, 2016 (XII of 2016), the Unani, Ayurvedic and Homeopathic Practitioners Act, 1965 (II of 1965), the Pharmacy Act, 1967 (XI of 1967), the Pakistan Medical and Dental Ordinance, 1962 (XXXII of 1962), the Pakistan Medical Commission Ordinance, 2019 (XV of 2019) or any other law as may be notified by the Federal Government, shall be triable by the Tribunal.*
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> ***(2)*** *All appeals against decisions, orders and acts of the relevant apex authorities or councils formed pursuant to the Pakistan Medical and Dental Ordinance, 1962 (XXXII of 1962), Pakistan Medical Commission Ordinance, 2019 (II of 2019), the Pakistan Nursing Council Act, 1973 (XXVI of 1973), Pakistan Health Research Council Act, 2016 (XII of 2016) and the Unani, Ayurvedic and Homeopathic Practitioners Act, 1965 (II of 1965), the Pharmacy Act, 1967 (XI of 1967) or any other law as may be notified under sub- section (1) shall be heard and decided by the Tribunal.*
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> ***(3)*** *All claims or complaints arising out of acts or obligations pursuant to the Pakistan Medical and Dental Ordinance, 1962 (XXXII of 1962), Pakistan Medical Commission Ordinance, 2019 (II of 2019), the Pakistan Nursing Council Act, 1973 (XXVI of 1973), Pakistan Health Research Council Act, 2016 (XII of 2016) or the Unani, Ayurvedic and Homeopathic Practitioners Act, 1965 (II of 1965), the Pharmacy Act, 1967 (XI of 1967) or any other law as may be notified under sub-section (1), where the original jurisdiction is not vested in the relevant apex*

authorities or councils formed thereunder shall be heard and decided by the Tribunal.

(4) *All cases in which the offender is sentenced to a fine, whether with or without imprisonment, it shall be competent for the Tribunal to direct that in default of payment of the fine the offender shall be punishable with imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentences.*

(5) *The term for which the Tribunal directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum penalty prescribed for the offence in the relevant statute or rules or regulations framed thereunder.*

(6) *In exercise of its criminal jurisdiction, the Tribunal shall have the same powers as are vested in Court of Sessions under the Code of Criminal Procedure, 1898 (Act V of 1898).*

(7) *In exercise of the civil jurisdiction, the Tribunal shall have the same powers and shall follow the same procedure as civil court under the Code of Civil Procedure, 1908 (Act V of 1908).*

(8) *In all matters with respect to which no procedure has been provided for in this Act, the Tribunal shall follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908). The Tribunal shall make such rules for its functioning as deemed appropriate by the Chairman in consultation with the members.*

(9) *The Tribunal may issue bailable warrant for the arrest of any person against whom reasonable suspicion exists, of his having been involved in any contravention punishable under this Act:*

Provided that such warrant shall be applied for, issued and executed in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898):

Provided further that if the person arrested executes a bond with sufficient surety in accordance with the endorsement on the warrant he shall be released from custody, failing which he shall be taken or sent without delay to the officer in-charge of the nearest police station.

(10) *All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1898 (Act XLV of 1898) and the Tribunal shall be deemed to be a court for the purpose of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).*

(11) *The Tribunal shall hear and decide all appeals, complaints or claims instituted before it within one hundred twenty days without exception and shall refuse all requests for adjournments if sought by any party if such adjournment would lead to the Tribunal not being able to decide a case within the stipulated period.*

(12) *The Tribunal shall impose penalties as may be prescribed under the relevant statute or rules or regulations made there-under and in the absence thereof determine reasonable penalties for reasons to be recorded subject to a fine not exceeding fifty million Rupees and imprisonment not exceeding seven years.*

Likewise, section 8 of Medical Tribunal Act, 2020 also confers jurisdiction to the Medical Tribunal and is as follows:-

8. Appeals to the Medical Tribunal*.— **(1)** Any person aggrieved by any order or direction of the authorities pursuant to the Pakistan Medical and Dental Council Ordinance, 1962 (XXXII of 1962), Pakistan Medical Commission Ordinance, 2019*

> *(II of 2019), the Pakistan Nursing Council Act, 1973 (XXVI of 1973), Pakistan Health Research Council Act, 2016 (XII of 2016) or the Unani, Ayurvedic and Homeopathic Practitioners Act, 1965 (II of 1965) or the Pharmacy Act, 1967 (XI of 1967) and subject to the provisions of the Pakistan Medical and Dental Council Ordinance, 1962 (XXXII of 1962), Pakistan Medical Commission Ordinance, 2019 (II of 2019), the Pakistan Nursing Council Act, 1973 (XXVI of 1973), Pakistan Health Research Council Act, 2016 (XII of 2016) or the Unani, Ayurvedic and Homeopathic Practitioners Act, 1965 (II of 1965), the Pharmacy Act, 1967 (XI of 1967) or any other law as may be notified under sub-section (1) of section 6, may prefer an appeal before the Tribunal within thirty days of the date of communication of the impugned order or direction.*
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> ***(2)*** *An appeal to the Tribunal shall be in such form, contain such particulars and be accompanied by such fees as may be prescribed.*

The bare reading of section 8 of Medical Tribunal Act, 2020, in juxtaposition with section 37(1) of Pakistan Medical Commission Act, 2020, shows that Medical Tribunal has the jurisdiction with respect to decisions taken or orders passed by respondent No.2 either under Pakistan Medical Commission Act, 2020 or rules or regulations made there-under or laws mentioned in section 8(1) ibid. In this behalf, section 37(1) of Pakistan Medical Commission Act, 2020 is to be read with the provisions of Medical Tribunal Act, 2020 and the harmonious interpretation upon reading of both the Acts clearly shows that intention of legislature is that decisions taken or acts done under the Act of 2020 by respondent No.2 are to be adjudicated by the Medical Tribunal.

7. It was argued by learned counsel for the petitioners that at present, the Medical Tribunal is not properly constituted inasmuch as only Chairman and one Member is available. In this behalf, it is observed that section 4 of Medical Tribunal Act, 2020 adequately caters the argument by learned counsel for the petitioners and reading of the same, as reproduced above, shows that no proceeding of the Medical Tribunal is defective only because of availability of vacancy and it is not essential that in every proceedings, the entire Tribunal consisting of the Chairman and the Members, have to sit together or in Benches of the Tribunal as constituted by the Chairman.

8. In view of foregoing, since the dispute/controversy, raised in the instant petition, falls within the jurisdiction of Medical Tribunal hence the petitioners have an adequate and efficacious remedy by way of agitating the matter before the Medical Tribunal.

9. For the above reasons, instant petition is not maintainable and is accordingly dismissed. All pending applications are accordingly disposed of.

10. Since the petition is being decided on the basis of availability of forum, hence no finding is required to be rendered on merits.

(AAMER FAROOQ)
JUDGE

Zawar