JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3440 of 2021
Mahum Shaukat and others
Versus
Federation of Pakistan and others

Dates of Hearing:	27.10.2021, 01.11.2021, 04.11.2021, 05.11.2021, 10.11.2021, 22.11.2021 & 24.11.2021
Petitioners by:	M/s Hassan Raza Pasha, Sheikh Muhammad Suleman and Hifsa Suleman, Advocates in writ petition No.3440/2021 M/s Naveed Malik and Asim Ali, Advocates in writ petition No.3646/2021 Mr. Adnan Haider Randhawa, Advocate in writ petition No.3723/2021 Mr. Moazzam Habib, Advocate in writ petition No.3732/2021 Dr. G.M. Chaudhry, Advocate in writ petitions No.3771 and 3965 of 2021
Respondents by:	Raja Saad Sultan, learned Assistant Attorney-General, M/s Taimoor Aslam Khan, Mudassar Abbas and Muhammad Ali Raza, Advocates for the Pakistan Medical Commission.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.3440/2021, 3646/2021, 3723/2021, 3732/2021, 3771/2021 and 3965/2021 since they entail certain common features.

2. Through the above-referred petitions, the petitioners assail the *vires* of the provisions of the Pakistan Medical Commission Conduct of Examinations Regulations, 2021 **("the 2021 Regulations")** made by the Medical and Dental Council in exercise of the powers conferred by Section 40 read with Section 8(2)(f) of the Pakistan Medical Commission Act, 2020 **("the PMC Act")**.

3. In writ petitions No.3723/2021 and No.3732/2021, the petitioners have assailed the *vires* of Regulations 5(5), 6(3), 6(4), 6(5) and 10(2) of the 2021 Regulations. In the prayer clause of writ petition No.3440/2021, no specific Regulation of the 2021 Regulations has been challenged. However, it has been prayed that *"the relevant provisions"*

of the 2021 Regulations may be declared *ultra vires* the spirit of the Constitution.

4. Learned counsel for the petitioners submitted that Regulation 5(4) of the 2021 Regulations requires the Council to notify the syllabus at least 60 days prior to the start of the MDCAT exam whereas this year the syllabus was issued 57 days before the examination; that Regulation 6(3) provides *inter alia* that no person shall have the right to object to the questions contained in the exam; that if any question in the exam is out of the syllabus, the said provision restricts a person taking the examination to object to such an irregularity; that the restriction in Regulation 6(4) to disclose the questions or answers in the exam after the conduct of the exam is most unreasonable; that the requirement for the exam to be taken online or through a computer is also unreasonable since not all students who take the exam are computer-literate; that the registration fee has been raised from Rs.500/- to Rs.6,000/- which amounts to denial of the fundamental right to education; that in the last MDCAT exam, there were several questions which were out of the syllabus; and that there were also questions which had been repeated more than once. Learned counsel for the petitioners prayed for the petitions to be allowed in terms of the relief sought therein.

5. On the other hand, learned counsel for the PMC submitted that a few petitioners have passed the MDCAT exam, and they just want another opportunity to take the exam so as to improve their results; that the grievance of the petitioners who have failed the MDCAT exam is belied by fact that thousands of students have passed the MDCAT exam and they have already been granted admissions in medical and dental colleges; that there was no substantial change in the syllabus of the MDCAT exam conducted in 2021; that any student having a grievance regarding the questions in his/her exam could file a review application before the PMC; that the PMC has allowed several review applications; and that there is no prohibition in the law for the MDCAT exam to be computer-based or to be taken on different dates as long as one student takes one MDCAT exam in one year. Learned counsel prayed for the petitions to be dismissed.

6. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

7. Section 8(2)(f) of the PMC Act empowers the Pakistan Medical and Dental Council ("Council") to frame regulations for the conduct of admissions in medical and dental colleges and examinations to be conducted by the Pakistan Medical Commission ("PMC") and approve the examination structure and standards of the medical and dental colleges admissions test, national licensing examinations and the national equivalence board examinations as proposed by the national medical and dental academic board including the standards of revalidation of licenses to practice medicine or dentistry in Pakistan.

8. The petitioners do not question the authority or capacity of the Council to make the 2021 Regulations nor do they assert that the Council did not have the statutory power to make the said Regulations.

9. The Medical and Dental Colleges Admissions Test ("MDCAT") is to be conducted in accordance with Section 18 of the PMC Act which is reproduced in "Schedule-A" hereto. Section 18(1) makes it mandatory for a student to pass a single admissions test (i.e., the MDCAT) in order to be admitted in a medical or dental undergraduate programmes in the year 2021 and thereafter anywhere in Pakistan. The MDCAT is required to be conducted annually by the National Medical Authority ("NMA") on a date approved by the Council and as per the standards approved by the National Medical and Dental Academic Board. The marks obtained by a student in the MDCAT exam are to constitute a minimum of 50% of the weightage for the purposes of admission in public colleges.

10. This year, the MDCAT exam was conducted by the NMA at 25 different examination centres in Pakistan and 6 centres abroad between 30.08.2021 to 02.10.2021. The 276 students who were suffering from COVID-19 or Dengue infections took the MDCAT exam on 09.10.2021.

11. All the petitioners participated in the MDCAT exam. None of them challenged the *vires* of the 2021 Regulations prior to taking the MDCAT exam. It was only after some of the petitioners failed the MDCAT and others were not able to obtain the marks that they were hoping for that they decided to challenge the *vires* of different provisions of the 2021

Regulations. The marks obtained by the petitioners in the MDCAT are set out in "Schedule-B" hereto.

12. Learned counsel for the petitioners had submitted that Regulation 3(1) of the 2021 Regulations, which authorized the NMA to conduct the MDCAT on different dates between 1st July and 15th October of each calendar year, was repugnant to Section 18 of the PMC Act which according to the petitioners' interpretation required the MDCAT to be taken on one date throughout the country. Although Regulation 3(1) of the 2021 Regulations has not been specifically challenged by any of the petitioners, the Hon'ble High Court of Sindh vide judgment dated 03.12.2020 passed in Constitutional petition No.D-6021/2020 had spurned the challenge to the said Regulation in the following terms:-

> ***"9. Regarding the argument advanced on behalf of the petitioners that Section 18 ibid allows only a single NMDCAT and as such the impugned announcement of conducting the subject tests on two different dates is ultra vires the PMC Act, we are of the view that a plain reading of Section 18(1) ibid would show that the words "on a date" and "a single admissions test" contained therein do not mean that the same must be read conjunctively. The words "a single admissions test" clearly denote a single attempt by every applicant; and the words "on a date" undoubtedly mean the date approved by the Council. In this context, the submission made on behalf of PMC that a single admissions test means a centralized test across Pakistan also has force. It is not disputed that all the applicants appearing in the subject tests on both the given dates will be allowed only one / single attempt, and both the said dates have been duly approved by the Council. As noted above, the Council has the power under Section 8(2)(f) of the PMC Act to frame regulations for the "conduct" of admissions in medical and dental colleges "and the examinations to be conducted by PMC". Therefore, the approval accorded by the Council for conducting the subject tests on two dates cannot be deemed to be illegal or ultra vires the PMC Act, especially when every applicant will be allowed only a single attempt."***

13. Since I am in respectful agreement with the said above-referred conclusion of the Hon'ble High Court of Sindh regarding the *vires* of Regulation 3(1) of the 2021 Regulations, the petitioners challenge to the said Regulation is decided in terms of the said judgment.

14. Regulation 5(5) of the 2021 Regulations provides that the MDCAT exam shall be an assessment exam to determine the competence and suitability of a person to be inducted in a medical or dental undergraduate programme in Pakistan. It also provides that the National Medical and Dental Academic Board when formulating the syllabus of the MDCAT exam shall not be bound to any textbook or

HSSC Board's syllabus: provided that the MDCAT exam syllabus in the science subjects does not exceed the general maximum curriculum of HSSC offered in Pakistan.

15. It was asserted on behalf of the petitioners in writ petition No.3965/2021 that in the MDCAT exam syllabus framed this year, the curriculum of HSSC offered in Pakistan was ignored for the science subjects. This is a question of fact and even if it is assumed that the curriculum of HSSC offered in Pakistan was ignored for the science subjects while framing the syllabus for MDCAT exam this year, this is no valid ground to strike down Regulation 5(5) of the 2021 Regulations. Whether the questions framed in the MDCAT exam were out of the syllabus is also a question of fact, and cannot cause this Court to strike down the said Regulation. The pleadings of the petitioners in the said writ petition regarding the questions in the MDCAT exam being out of the syllabus are vague and generalized. It has not been pleaded as to which specific question, the petitioners were unable to answer on account of being out of the syllabus. The question bank may well have been secured but no student pointed out any particular question which according to him / her was out of the syllabus.

16. The petitioners challenged Regulation 6(3) of the 2021 Regulations which provides that for the MDCAT exam, a student would be provided a unique examination paper randomly selected by the computer programme, and that no person shall have the right to object to the questions contained in the examination. The petitioners assert that although Section 20 of the PMC Act provides that the NLE would be based on *"objective computer based multiple choice questions,"* there is no provision in Section 18 of the said Act, which deals with the MDCAT exam, for the said exam to be computer-based. Suffice it to say that the lack of prescription in Section 18 of the said Act for the MDCAT exam to be computer-based does not mean that a computer-based MDCAT exam is prohibited. None of the petitioners asserted that they were not computer-literate or were unable to operate the tablets provided by the NMA to them for taking the MDCAT exam. As mentioned above, none of the petitioners prior to taking the MDCAT exam objected to the same being computer-based. Therefore, they are estopped from

throwing a challenge to Regulation 6(3) of the 2021 Regulations. Even otherwise, there is nothing irrational or unreasonable in the said Regulation, nor does it, in my view, transgress any of the provisions of the 2021 Regulations.

17. The petitioners also assailed Regulation 10(2) of the 2021 Regulations which provides that result of the MDCAT exam as communicated and issued shall be final and shall be neither available for rechecking or any other objection from the person having taken the exam. The petitioners asserted that the said Regulation was unreasonable inasmuch as the MDCAT exam taken by a student was neither available for rechecking or any other objection from the person having taking the exam could be entertained. Learned counsel for the PMC submitted that the Council has decided that in order to satisfy the students, an opportunity shall be provided to the students to review their wrongly answered test questions on the computer terminal. It was also decided to make necessary amendments in the 2021 Regulations so as to provide for an opportunity of a review. He brought on record documents showing that in all 8,766 cases for review were registered out of which the result was changed in 1,669 cases. The last date for filing a review application was 10.11.2021. None of the petitioners opted to go in review before the PMC and/or the NMA. With the decision of the Council to give an opportunity of a review to students, the petitioners' challenge to Regulation 10(2) of the said Regulations is rendered redundant.

18. The petitioners have also complained that no practice MDCAT exam was conducted by the NMA in fulfillment of its obligations under Regulation 6(5) of the 2021 Regulations. Even if it is assumed that no practice MDCAT exam was conducted by the NMA, this *ipso facto* would not cause to hold that the requirement to conduct a practice MDCAT exam is *ultra vires* the provisions of the parent Act and/or the Constitution.

19. The petitioners submitted that the NMA had violated Regulation 5(4) of the 2021 Regulations by not making the syllabus for the MDCAT available at least 60 days prior to the start of the MDCAT exam. It was also asserted that there was a substantial alteration in the syllabus and

therefore, it would have been made available at least 120 days prior to the start of the MDCAT exam as required to the *proviso* to the Regulation 5(4) of the said Regulations. It is an admitted position that the syllabus for the MDCAT exam had been uploaded on PMC's website on 04.06.2021 whereas the MDCAT exam commenced on 30.08.2021. Since there was a gap of 85 days between the said dates, Regulation 5(4) had not been violated. The PMC, in its written comments, has asserted that there was no substantial change in the syllabus. Whether or not there had been a substantial change in the syllabus requiring a gap of 120 days between the syllabus being made available prior to the start of the MDCAT exam is a question of fact which cannot be adjudicated upon in the Constitutional jurisdiction of this Court.

20. In the case of Modern Textile Mills Limited Vs. Collector of Central Excise and Land Customs (2000 CLC 1583), it has been held that the Court must explore all avenues for upholding the validity of an instrument before striking down the same as *ultra vires* whereas in the case of Khawaja Ahmad Hassaan Vs. Government of Punjab (2005 SCMR 186), it has been held that rules may be declared *ultra vires* if the same are not made, published or sanctioned in the manner prescribed by the enactment, repugnant to it, uncertain or unreasonable, made in bad faith, misconstruction of the enabling Act, failure to comply with the conditions prescribed under the enactment and violation of the object and reasons of the enactment. Since the test for striking down Regulations made in exercise of statutory power has not been satisfied in the case at hand, the petitions are liable to be dismissed.

21. Learned counsel for the petitioners were candid in their submission that what the petitioners actually wanted was to be given another opportunity to take the MDCAT exam which should not be based on multiple choice questions through the computer but should be a pen and paper exam. They asserted that if such an opportunity is granted to the petitioners, they would be in a position to improve their results. A better result would enable them to get admission in the medical and dental colleges of higher standards. With this avowed purpose, the petitioners have thrown a challenge to the *vires* of the 2021 Regulations.

22. As per the data provided by PMC, 194,133 students took the MDCAT out of whom 68,680 have passed. The last date for getting admissions in medical and dental colleges was 19.11.2021. Strong vested rights have been created in favour of all the students who have passed the MDCAT exam and on the basis of their result they have obtained admissions in the medical and dental institutions in Pakistan. Such rights cannot be undone in absence of the students who have already been admitted in the medical or dental institutions. Even if it is assumed that the petitioners had made out a case for the issuance of a writ, given the present circumstances it would be most inequitable to issue a writ.

23. In view of the above, I do not find any merit in these petitions which are accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 16/12/2021

(JUDGE)

Qamar Khan*

"SCHEDULE-A"

18. **Medical and dental colleges admissions tests (MDCAT)**--------

(1) The Authority shall conduct annually on a date approved by the Council and as per standards approved by the Board a single admissions test which shall be a mandatory requirement for all students seeking admission to medical or dental under-graduate programs anywhere in Pakistan.

(2) No student shall be awarded a medical or dental degree in Pakistan who has not passed the MDCAT prior to obtaining admission in a medical or dental college in Pakistan:

Provided that such requirement shall be mandatory for all students who have been enrolled in medical or dental under-graduate programs in the year 2021 and thereafter.

(3) The admission to medical or dental programs conducted by public colleges shall be regulated as per the policy of the Provincial Governments strictly on merit and admission to a private college shall be in accordance with the criteria and requirements stipulated by the private college at least one year in advance of admissions including any additional entrance test as may be conducted by a private college subject to any conditions imposed by the relevant university to which such college is affiliated:

Provided that the marks obtained by a student in the MDCAT conducted by the Authority shall constitute a minimum of fifty percent of the weightage for the purposes of admission in the public colleges.

"SCHEDULE-B"

INTERIM & FINAL RESULT OF THE PETITIONERS IN W.P.Nos. 3732, 3723, 3440 & 3646/ 2021

SR. No.	NAME	ROLL No.	MDCAT INTERIM RESULT (ANNOUNCED ON DAY OF EXAM)	MDCAT FINAL RESULT (ANNOUNCED ON 9TH OCTOBER)	STATUS
1.	Aleena Tahir	1088183	156	175	Pass
2.	Tayyaba Javid	1017096	115	137	Pass
3.	Mona Kameer	1044456	135	155	Pass
4.	Mehkan-ul Jannah	1032102	134	147	Pass
5.	Muhammad Huzaifa Asghar	1004982	150	165	Pass
6.	Maryam Mansoor	1029622	119	132	Fail
7.	Sara Sajjad	1103793	125	147	Pass
8.	Muhammad Ahmed	1015536	103	130	Fail
9.	Fawad Ali	1166511	76	100	Fail
10.	Amina Hafeez	1166270	149	174	Pass
11.	Mushtaq Ahmed	1090674	58	73	Fail
12.	Sumana Batool	1053819	89	104	Fail
13.	Jaffar Khan	1035054	112	129	Fail
14.	Abdul Hameed	1079801	131	150	Pass
15.	Hamna Naeem	1004570	149	162	Pass
16.	Shiza Amjad	1082469	131	153	Pass

Sr. No.	NAME	ROLL No.	MDCAT FINAL RESULT (ANNOUNCED ON 9TH OCTOBER)	STATUS
17.	Mahum Shaukat	1101779	169	Pass
18.	Zunaira Shahzadi	1010384	144	Pass
19.	Hamna Ayub	1097733	152	Pass

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