JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3729 of 2023
Al Nafees Medical College, Islamabad
Versus
The Pakistan Medical and Dental Council and another

Dates of Hearing:	21.12.2023 and 16.01.2024.
Petitioner by:	Syed Faraz Raza, Advocate
Respondents by:	Mr. Muhammad Bin Abdullah, Advocate for respondent No.1 / PM&DC. Syed Riaz Hussain, Advocate along with respondent No.2 in person.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Al Nafees Medical College, Islamabad (**"ANMC"**), impugns the decision taken by the Admission Committee of the Pakistan Medical and Dental Council (**"PM&DC"**) on 27.10.2023, whereby a direction was issued to the ANMC to admit Ayesha Iftikhar, who had applied for admission in MBBS in the ANMC and had more marks than the last admitted student in the said College.

2. The record shows that on 27.03.2023, respondent No.2, Col. Malik Muhammad Iftikhar Khan, had filed a complaint before PM&DC taking the position that his daughter, Ayesha Iftikhar, had secured an aggregate merit of 66.34% and had applied online to ANMC for admission in MBBS. Her grievance was that students with a lower merit had been granted admission. The proceedings culminated in the decision dated 11.04.2023 made by the acting Registrar of PM&DC, whereby a direction was issued to the petitioner to grant admission to Ayesha Iftikhar and additionally a fine of Rs.15,00,000/- was imposed on the petitioner. The petitioner assailed the said decision before this Court through writ petition No.1450/2023, which was allowed vide order dated 06.06.2023. This Court remanded the matter to PM&DC with the direction to decide the complaint within a period of ten days.

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Against the said order, PM&DC preferred intra Court appeal No.193/2023 which is still pending adjudication.

3. The complaint filed by Ayesha Iftikhar's father came to be considered by the Admission Committee of PM&DC. Vide order dated 27.10.2023, the Admission Committee of PM&DC recommended that Ayesha Iftikhar be granted admission in Session 2022-2023 by the petitioner, and that for the upcoming subsequent academic year, the allocated seats of the petitioner shall be reduced by one. Additionally, a fine of Rs.15,00,000/- was recommended to be imposed on the petitioner. The said recommendations were approved by PM&DC on 27.10.2023. The said decision of PM&DC has been assailed by the petitioner in the instant writ petition.

4. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that Ayesha Iftikhar was at serial No.1518 on the merit list posted by the petitioner; that the petitioner contacted each applicant, including Ayesha Iftikhar and informed them about the deadline of 31.01.2023 for accepting the offer for admission by depositing the fee; that Ayesha Iftikhar did not respond within the said deadline; that as per the public notice dated 22.12.2022 issued by PM&DC, the date for closing the admissions was 31.01.2023; that the students admitted by the petitioner commence their formal education on 01.02.2023 and thereafter the petitioner submitted the merit list to PM&DC which approved the same on 22.03.2023; and that Ayesha Iftikhar's father filed the complaint before PM&DC after the deadline for the deposit of fee had passed and the admission process had been completed.

5. Furthermore, it was submitted that under the Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Policy and Regulations, 2022 (**"the 2022 Regulations"**), review of the admission process is to be completed within 30 days from the final date of admissions; that Ayesha Iftikhar's father had filed the complaint against the petitioner on 28.03.2023 i.e., 58

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days after the final date of admissions; that after approving the petitioner's merit list on 22.03.2023, PM&DC could not have turned around and start proceedings on the complaint filed on 28.03.2023; that PM&DC erred by not appreciating the import of Regulation 5(12), (13) and (14) of the 2022 Regulations; that the 2022 Regulations do not proscribe for any mode of communication between medical colleges and applicants; and that since the academic year started on 01.02.2023, it is not possible for Ayesha Iftikhar to attain the criteria of 75% attendance for appearing in examinations. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

6. On the other hand, learned counsel for respondent No.2, who is Ayesha Iftikhar's father, submitted that the impugned order dated 27.10.2023 was passed by PM&DC pursuant to an order passed by this Court in writ petition No.1450/2023; that the petitioner had misled this Court by asserting that respondent No.2's daughter had been granted admission when infact she had not been permitted to attend classes; that the petitioner had made an excuse that it was unable to register a student electronically on PM&DC's portal; that PM&DC, vide letter dated 28.11.2023, issued a stern warning to the petitioner and directed it to comply with PM&DC's decision to admit respondent No.2's daughter; that although respondent No.2's daughter's name appeared at serial No.1518 in the initial merit list issued by the petitioner, but her name did not find mention in the merit list in response to which she could have deposited the admission fee within the deadline; and that the impugned order dated 27.10.2023 does not suffer from any legal or jurisdictional infirmity so as to warrant interference in the Constitutional jurisdiction of this Court. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition

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have been set out in sufficient detail in paragraphs 2 and 3 above and need not be recapitulated.

8. The admitted facts are that Ayesha Iftikhar applied for admission to ANMC in the MBBS program. She had secured an aggregate merit of 66.34%. Her name appeared at serial No.1518 in the merit list initially issued by the petitioner. The said merit list is not in order of merit. In other words, an applicant with the highest merit is not placed higher than a candidate with lower merit in the said list. This list has apparently been issued pursuant to Regulation 5(6) which provides that *"each college shall submit the merit list of all students who have applied for the admissions within three days after the closing date of admission."* As per the schedule issued by PM&DC on 24.11.2022, the closing date of admissions for private medical colleges was 31.01.2023.

9. Subsequently, ANMC issued a final merit list for admission in MBBS Session 2022-23. This list contains the names and credentials of 100 students. This is because ANMC has 100 sanctioned seats for MBBS. In this list, Ayesha Iftikhar's name is not mentioned. As mentioned above, Ayesha Iftikhar's aggregate merit was 66.34% but perusal of the said list shows that students with lesser aggregate merit were granted admission by ANMC. The final merit list issued by ANMC is also not in order of merit. The final merit list is issued pursuant to Regulation 5(11) of the 2022 Regulations which provides that *"each college shall issue a final merit list of all students on their official website taking into account results of MDCAT and other exam results as prescribed under the Regulations."*

10. Learned counsel for the petitioner had contended that in terms of Regulation 5(12), the final merit list was to represent an offer to an applicant on the basis of merit and that the offer could be accepted within three working days by submitting the required fees. He had further contended that since Ayesha Iftikhar had not deposited the required fees within the deadline, she had no right to claim admission in ANMC. I find this contention to be fallacious

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inasmuch as the final merit list issued by ANMC pursuant to Regulation 5(11) did not contain Ayesha Iftikhar's name. Therefore, the said list could not be construed as an offer for admission to her. In these circumstances, the question of her accepting the offer by depositing the fee within the deadline did not arise.

11. As regards the merit list in which Ayesha Iftikhar's name was appeared at serial No.1518, that list is not a final merit list issued under Regulation 5(11) but under Regulation 5(6) which does not constitute an offer for admission to a candidate named in such list.

12. Regulation 5(12) provides that *"the final merit list shall represent an offer by the college to the students on the basis of their merit against the allocated seats of each college. Any student not accepting the offer shall enable the next student in the merit list to avail of the offer."* Additionally, Regulation 5(13) provides that *"the college shall give to the applicant at least three working days to submit their fee which shall represent the acceptance of the offer by the students."*

13. Since the final merit list issued by ANMC under Regulation 5(11) admittedly did not mention Ayesha Iftikhar's name, it is safe to hold that ANMC had not made any offer of admission to her. Learned counsel for the petitioner did not deny that in the MBBS Session 2022-23, ANMC had admitted students with a lesser aggregate merit than that of Ayesha Iftikhar. Therefore, PM&DC's decision to impose a fine on ANMC does not suffer from any legal or jurisdictional infirmity so as to warrant interference in the Constitutional jurisdiction of this Court.

14. According to respondent No.2, who is present in person, Ayesha Iftikhar having become fed up with ANMC has been able to secure admission in MBBS in some other college. Therefore, there is no need to issue a direction to ANMC to admit her in the MBBS program. But this does not mean that she was treated fairly or

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rather lawfully by ANMC by not mentioning her name in the final merit list so that she could have accepted the offer for admission.

15. In view of the above, the instant petition is dismissed. The petitioner shall bear respondent No.2's costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 07.02.2024.

(JUDGE)

*Ahtesham**

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