JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No. 2188 of 2024

Munibah Qureshi

Versus

National University of Science & Technology (NUST) and another

Petitioner by:	M/s. Muhammad Asif Gujjar and Mr. Jam Khurshid Ahmed, Advocates.
Respondent No. 1 by:	Mr. Aasim Shafi, Advocate.
Respondent No. 2 by:	Mr. Shahid Habib, Advocate.
Assisted by:	Muhammad Yahya Khan Niazi, Judicial Law Clerk.
Date of Hearing:	**21.04.2025**

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INAAM AMEEN MINHAS, J:- Through the instant writ petition, the petitioner has assailed the orders dated 14.03.2024, 26.04.2024 and 24.05.2024 **("Impugned Orders")**, passed by respondent No.1/National University of Sciences & Technology **("NUST")**, Islamabad and sought declaration that these orders are illegal, discriminatory, without jurisdiction, *coram-non-judice*, violative to the HEC's Graduate Education Policy, 2023 **("HEC's Policy, 2023")** as well as sections 14 & 15 of the National University of Sciences and Technology Act, 1997 **("NUST's Act, 1997")** and prayed that the petitioner may be granted 6 months' time to formally complete the PhD degree program.

2. The facts, in brief, leading to the filing of the instant writ petition are that the petitioner, after obtaining her MSc in Biomedical Sciences from NUST in January 2016, enrolled in the PhD program in March 2016 and successfully completed all examinations and coursework with high grades. In 2019, she was awarded the HEC IRSIP fellowship and undertook research at Yale University, necessitating a year-long relocation abroad. Upon her return in January 2020, her research progress was significantly impeded by the COVID-19 pandemic, personal circumstances including marriage, temporary relocation to Quetta, a complicated pregnancy and serious health issues as well as the absence of her supervisor, who was on leave from 2019 to 2021, resulting in a lack of supervision, funding, and laboratory resources. The petitioner faced further delays due to persistent equipment failures and bureaucratic hurdles at NUST and collaborating institutions, particularly in accessing specialized equipment essential for her research on an Anti-Cancer Drug Delivery System, which required approvals from multiple departments and was often unavailable or out of order. Despite these considerable challenges, the petitioner made every effort to complete her research, including updating experiments while caring for her newborn child and finalized her research work, with two articles published or pending in international journals and her thesis was in the final stage of submission. The petitioner could not complete her PhD program within required time frame under NUST Statutes/Regulations, therefore, the petitioner was withdrawn form PhD degree on account of being time barred through impugned order dated 14.03.2024. The petitioner filed multiple requests for extension of time to the NUST administration, which were declined through the impugned orders dated 14.03.2024, 26.04.2024 and 24.05.2024.

3. The learned counsel for the petitioner contended that NUST failed to adopt and implement the HEC's Policy, 2023, which expressly permits extensions in cases of force majeure; that the petitioner's appeal was neither properly presented to nor decided by the Academic Council or Executive Committee in terms of sections 14 and 15 of the NUST's Act, 1997. He

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further contended that NUST's statutes have not been updated since 2013 to reflect subsequent policy changes introduced by the HEC, resulting in a failure to provide uniform relief, therefore, the petitioner was subjected to differential treatment without justification and the delays in timely completion of the petitioner's research were occasioned by circumstances entirely beyond her control, including the COVID-19 pandemic, post-partum complications, the prolonged absence of her supervisor, persistent equipment failures and institutional hurdles, and that the refusal to grant an extension in such circumstances is arbitrary and unlawful. Lastly, the learned counsel submitted that the Impugned Orders are non-speaking, discriminatory and in violation of the principles of fairness and due process, as they failed to address the applicability of HEC's Policy, 2023.

4. Conversely, the learned counsel for NUST contended that all actions were taken in accordance with the policies framed by respondent No.2 i.e. HEC, including the HEC's Policy, 2023 and the revised NUST PhD policy, which, stipulates a maximum duration of eight years for completion of the PhD degree with no provision for extension; that the petitioner failed to fulfill the requirements for the PhD degree within the prescribed period and any delay in completion of studies is attributable solely to the petitioner, who neither reported any issue regarding laboratory equipment nor availed the option to change her supervisor as provided under the relevant policy; that the petitioner was not subjected to any discrimination and all the Impugned Orders are well reasoned and in accordance with prevailing rules and regulations. Lastly, the learned counsel submitted that the eight-year limit is sufficient to accommodate all contingencies and any extension beyond this period would compromise academic standards, a position well within the university's autonomous policy-making authority as recognized by the HEC and that the petitioner's case does not fall within the exceptional circumstances contemplated in HEC's Policy, 2023 and thus no relief is warranted.

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5. Learned counsel for HEC/respondent No.02 contended that the provision/clause 3.12 of HEC's Policy, 2023 does provide for extension in case of circumstances beyond the students' control but the HEC cannot direct or influence such decision decision and it is discretion of the universities to determine whether the students' requests fall within the definition of force majeure and that the policy prescribed by the HEC designates the universities as the appropriate authorities to determine the legitimacy and validity of the extension request on case to case basis, particularly in circumstances that may be classified as force majeure, i.e., delay caused by circumstances beyond the control of the students.

6. I have given anxious consideration to the arguments of the learned counsel for the parties and perused the record with their able assistance.

7. The petitioner's primary grievance pertains to the refusal of a grant of six-month extension to complete her PhD degree due to "force majeure" (COVID-19 and post-partum complications) and the delays (supervisor's absence, equipment failure and institutional hurdles) that were beyond the petitioner's control.

8. While considering the background of the matter in hand and the grounds raised by the parties, following significant questions need adjudication by this Court:-

i. *Whether NUST failed to grant academic extension under the relevant laws and policies that allow for extension in force majeure situations?*

ii. *Whether the Impugned Orders are non-speaking, discriminatory and violate principles of fairness and due process?*

9. Before dealing with the afore-referred questions, it is appropriate to take exception in the present matter to the argument of the learned counsel for NUST that educational institutions possess academic, administrative and disciplinary autonomy to establish and implement their own admission and

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examination policies and further that autonomy of a university must be respected for which he placed reliance on ***Pakistan Engineering Council through its Chairman vs. Muhammad Sadiq (2024 SCMR 956).*** However, the present writ petition has been entertained by this Court in view of the alleged violation of the fundamental rights of a woman and it is the primary duty of a Constitutional Court to safeguard the fundamental rights of all citizens, with particular regard to the rights of women. In ***Ch. Manzoor Elahi vs. Federation of Pakistan and others (PLD 1975 SC 66),*** the Honourable Supreme Court ruled that the High Court's powers under Article 199(1)(c) of the Constitution are expansive and can be exercised not only where a citizen's fundamental rights are offended but also to enforce an individual's rights under Article 4, which is inalienable. In ***Abdul Wahab and others vs. HBL and others (2013 SCMR 1383),*** the Honourable Supreme Court observed that the fundamental rights guaranteed by the Constitution are sacred and one of the primary duties of the State and its institutions at all levels is to respect and enforce them. Similarly, the Honourable Supreme Court in a case reported as ***Dossani Travels (Pvt.) Ltd. vs. Messrs Travels Shop (Pvt.) Ltd. and others (PLD 2014 SC 1)*** has laid down that in absence of any illegality, arbitrariness or established *mala fide*, it was not open for the High Court to annul the policy framed by the competent authority. This shows that a decision can be challenged if it fails to meet the criteria of legality or is *mala fide* or suffers from arbitrariness or is based on colorful exercise of jurisdiction. Even otherwise this Court is cognizant of the principle that educational institutions are competent to manage their own affairs without any outside intervention from executive or judicial organs. However the Court can exercise its Constitutional jurisdiction when there is a grave violation of applicable law, rules and regulations, which contravene or disregard the compass of the institutions' authority as held in ***Pakistan Engineering Council through its Chairman vs. Muhammad Sadiq (2024 SCMR 956)***. Moreover, while exercising Constitutional jurisdiction, facts and circumstances of case should be seen in their entirety to find out if there is miscarriage of justice. High Court does

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not issue a writ, if equitable considerations do not permit it. High Court in exercise of such jurisdiction intervenes where justice, equity and good conscience require intervention. Reliance is placed on ***Multan Electric Power Co. Ltd. v. Muhammad Ashiq (PLD 2006 SC 328)*** and ***Muhammad Kamran Asghar v. Board of Intermediate and Secondary Education (1999 YLR 1019).***

10. In order to adjudicate the first question, it is essential to examine the legal framework governing the extension of academic deadlines for PhD program. In the present matter, NUST's Act, 1997 and the HEC's Policy, 2023 are of particular relevance. NUST performs its functions under the policy directives of the HEC, as mandated by section 10 of the HEC Ordinance, 2002, pursuant to which the HEC has promulgated the HEC's Policy, 2023. Furthermore, the administrative, academic and financial affairs of NUST are regulated by the National University of Sciences & Technology (Enforcement of Academic, Service & Financial Matters) Statute, 2005 (as amended in 2013), which have been framed under section 21 of the NUST's Act, 1997. Accordingly, any determination regarding the extension of academic deadlines must be made within the parameters set by these statutory and policy instruments.

11. As per HEC's Policy, 2023, the prescribed duration for completion of a PhD program is not less than three years and not more than eight years, with the possibility of extension in exceptional circumstances, such as cases of force majeure. It is appropriate to produce the relevant portion hereunder:-

> *"3.12 Degree Completion Timeline:*
>
> *i. The PhD degree shall be awarded by the universities not before the completion of three years or six regular semesters and not after completion of eight years or 16 regular semesters, save exceptions mentioned at clause 3.12(iv).*

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> *ii. ……*
>
> *iii. ……..*
>
> *iv. In case a student is unable to secure a PhD degree within the prescribed timeframe and claims for extension in duration, the university may constitute appropriate authority and determine the causes for delay. In event of force majeure i.e., delay on account of circumstance beyond the control of student, the university may grant an extension in the period of award of PhD degree in accordance with the duration limiting factor(s) and shall also take corrective measures in case the delay is caused due to process or administrative reasons."* ***[Emphasis added]***

12. It is pertinent to mention that footnote of the afore-stated provision states that, *"The students enrolled before the enactment of this policy shall also be dealt following the procedure outlined in this document"*. Therefore, the applicability of this provision stands affirmed. The afore-stated provision further provides the possibility of extension in exceptional circumstances, such as cases of force majeure. Where the question of "force majeure" arises, the intention is to save the performing party from the consequences of anything over which he has no control. This is the widest meaning that can be given to "force majeure". However, it is useful to further shed light on the term "force majeure" which has been defined in the *Halsbury's Laws of England, 4th Edition, Volume 51* as follows:--

> ***"2.300: Force majeure:-*** *In certain contexts and legal relationships, force majeure may justify derogating from the strict requirements of the law, especially from the legal consequences resulting from the non-fulfilment of an obligation. Force majeure presupposes an external cause which has consequences which are inexorable and inevitable to the point of making it*

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objectively impossible for the person concerned to comply with his legal obligations."

13. *Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition*, explains "force majeure" as follows:-

"Events outside the control of the parties and which prevent one or both of the parties from performing their contractual obligations;

A contract provision that stipulates that unforeseen events - wars, acts of God, certain strikes - that will excuse a party from its duty to perform the contract;

Standard clause in a contract that absolves either of the parties of blame for non-fulfillment of obligations caused by events beyond their control, such as earthquakes, floods or acts of war;

A contractual provision allocating the risk if performance becomes impossible or impracticable as a result of an event or effect that the parties could not have anticipated or controlled."

14. In the case of ***Dhanrajamal Gobindram vs. Shamji Kalidas***, reported as ***AIR 1961 SC 1285***, it has been held in paragraph [19] as follows:-

"19. McCardie J. in Lebeaupin v. Crispin [1920] 2 K.B. 714, has given an account of what is meant by "force majeure" with reference to its history. The expression "force majeure" is not a mere French version of the Latin expression "vis major". It is undoubtedly a term of wider import. Difficulties have arisen, in the past as to what could legitimately be included in "force majeure". Judges have agreed that strikes, breakdown of machinery, which, though

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> *normally not included in "vis major" are included in "force majeure". An analysis of rulings on the subject into which it is not necessary in this case to go, shows that where reference is made to "force majeure", the intention is to save the performing party from the consequences of anything over which he has no control. ..."*

15. The phrase *"Force majeure"* has also been the subject of consideration in the case of ***Abdul Waheed v. Additional District Judge and others (PLD 2021 Lahore 453)***, wherein it has been held that *"force majeure"* refers to events beyond the control of the parties, which prevent one or both of them from performing their contractual obligations.

16. Perusal of the record, with the assistance of learned counsels reveals that the petitioner was confronted with unforeseen challenges beyond her control that significantly impeded her research progress, including the onset of the COVID-19 pandemic and post-partum complications. Furthermore, persistent equipment failures and bureaucratic impediments at NUST and other collaborating institutions contributed to further delays. During the COVID-19 pandemic the country was under a nationwide lockdown, thus, the non-availability of chemicals required for the research hampered her research progress due to import restrictions and access to university facilities further presented challenges. It is astonishing that these factors were not considered by NUST especially when the HEC's Policy, 2023 provides extension in such circumstances.

17. In light of the provision/clause 3.12 of HEC's Policy, 2023 that accounts for both "force majeure" and administrative reasons and the above stated interpretations the NUST did not interpret the provision of "force majeure" to meet exigencies and as a result failed to consider the genuine case with proper explanation and sufficient cause of extension due to "force majeure" circumstances. Non-exercise of discretionary powers in legitimate cases, requires expediency in favour of the subject and withholding of such

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discretionary powers, without any rhyme or reason tantamount to denial and negation of powers conferred upon an authority to meet a particular situation, which was beyond the control of party seeking relief. Universities must act fairly and consider individual circumstances, especially when national or personal emergencies impact students' ability to comply with regulations. The Impugned Orders are against the spirit of the powers granted to the NUST since it failed to recognize "force majeure" events (Covid-19 pandemic, post-partum complications and delays caused by the supervisor's absence, equipment failures and institutional hurdles) are valid grounds for extension or relaxation in academic deadline. Therefore, the answer to the first question is in the affirmative.

18. Now this Court addresses the second question as to whether the Impugned Orders are non-speaking, discriminatory and violate the principles of fairness and due process. It is reflected from the record that neither due process was followed nor the Impugned Orders are the speaking orders. The petitioner initiated the process of requesting a six-month extension on 29.01.2024, wherein she raised all her contentions. However, the NUST issued the petitioner's withdrawal from PhD Program vide impugned order dated 14.03.2024. The said order simply declared her *"Withdrawn"* from the PhD degree on account of being *"Time Barred"*. The said order had not been passed on objective consideration. Perusal of record further reveals that the petitioner took all the grounds and narrated the factual position in her requests, however, the said order show mechanical approach of the NUST, without constituting any grievance committee and following the due process. Resultantly, no reason for the conclusion was recorded in the said order, which would have enabled the petitioner to set up her appeal, or petition as well as enable the Courts to exercise their jurisdiction properly and to appreciate the controversies in the correct perspective. Thereafter, the petitioner agitated this procedural impropriety with the director academics and rector NUST, whereupon, an institutional grievance committee meeting was held.

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19. The institutional grievance committee was notified vide office order dated 26.03.2024 comprising of seven members and the meeting was convened on 28.03.2024. The petitioner received the second impugned order/notification issued by Director Academics, Dr. Adnan Maqsood on 26.04.2024 denying the petitioner's request is reproduced as under:-

> *"After careful deliberation, the committee concluded that the total duration of PhD degree is 8 years (NUST statutes chapter II, para 12c). Furthermore, there is not any provision of extension beyond the maximum allowed time. Therefore, the extension in PhD duration is not recommended."*

20. Perusal of the above impugned order reveals that the institutional grievance committee neither addressed nor rebutted the grounds/contentions raised by the petitioner especially the grounds of "force majeure" (COVID-19 and post-partum complications) and the delays (supervisor's absence, equipment failures and institutional hurdles) that were beyond the petitioner's control and provided for in HEC's Policy, 2023, which is sheer violation of section 24-A of the General Clauses Act, 1897, whereby any authority, office or person making any order must give reasons for its decision. Therefore, the second impugned order dated 26.04.2024 is not a speaking order being devoid of reasoning and application of mind. It is trite law that orders lacking such criteria were declared to be without lawful authority and of no legal effect and hence beyond jurisdiction and *coram non judice*. Reliance is placed on ***Muhammad Amin Muhammad Bashir Limited vs. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad and others, (2015 SCMR 630)***, ***Khalid Humayun vs. The NAB through D.G. Quetta and others, (PLD 2017 SC 194), Commissioner of Inland Revenue (Legal), Peshawar vs. Khalid Umar Khan, (2016 PTD 832)***, **Mollah Ejahar Ali vs. Government of East Pakistan and others**, **(PLD 1970 SC 173), Muhammad Ibrahim Khan vs. Secretary M/o Labour and others, (1984 SCMR 1014)** *and* **Muhammad Iqbal Chaudhry and another vs. Secretary M/o Industries**

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and Production, Government of Pakistan and others, (PLD 2004 SC 413). Thereafter, the petitioner requested for a central grievance committee at a higher level under the chairmanship of the Pro-Rector (Academics), which was held on 08.05.2024 and comprised of eleven members. The central grievance committee gave its findings vide the third impugned order dated 24.05.2024. The relevant part is reproduced hereunder:-

> *"After a thorough discussion, committee unanimously decided that your request can not be accepted. As a result the grievance committee has recommended that Ms Munibha Qureshi should not be granted any further extension in the duration of PhD degree."*

21. Perusal of the third impugned order dated 24.05.2024 reflects that the central grievance committee constituted to consider the matter also passed a non-reasoned order, which does not reflect application of mind and sound reasoning while deciding the matter. It is a settled principle that an adjudicatory order issued by an authority must be a reasoned or speaking order, clearly demonstrating that the authority has duly considered and applied its mind to the issue at hand for its proper resolution. Even if the decision is the result of considerable deliberation, the absence of reasoning or the presence of arbitrariness in the final order inevitably leads to the belief that justice has neither been done nor appears to have been done. Such deficiencies undermine the integrity of the judicial process, reducing it to mere authoritarian pronouncements devoid of the logic and reasoning, thereby eroding their essential qualities of propriety and judicial balance. Thus, the third impugned order dated 24.05.2024 is also a non-speaking order.

22. There is another aspect to the instant matter that the Courts support reasonable or positive discrimination for women under Articles 25, 34 and 35 of the Constitution, which are reproduced as under:-

> *"**Article 25.** Equality of citizens.*

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> *(1) All citizens are equal before law and are entitled to equal protection of law.*
> *(2) There shall be no discrimination on the basis of sex.*
> *(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.*
> *"**Article 34.** Steps shall be taken to ensure full participation of women in all spheres of national life.*
> *"**Article 35.** The State shall protect the marriage, the family, the mother and the child."*

23. These articles allow for special provisions for women, which are not considered discriminatory but necessary for achieving substantive equality especially when such measures are designed to address systemic barriers faced by women. True equality may require treating women differently in order to level the playing field and ensure their full participation in the society.

24. It is trite law that fundamental rights in a living Constitution must be liberally interpreted so that they continue to embolden freedom, equality, tolerance and social justice as held in ***Jurist Foundation vs. Federal Government through the Secretary Ministry of Defence and others, (PLD 2020 SC 1).*** Thus, while interpreting a Constitutional provision, the approach should be dynamic, progressive and driven by a desire to address the situation effectively. The interpretation must not be restricted or pedantic.

25. A collective reading of these articles, the HEC's Policy, 2023 and judicial precedents regarding interpretation of fundamental rights reflect that the NUST should have considered relaxation or accommodation in the academic deadline to the petitioner due to health-related issues including, by analogy, post-partum complications under principles of fairness, non-discrimination and equal opportunity. The underlying rationale for this is to

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safeguard the health, well-being, and equal participation of women in academic pursuits. It has been held in ***Sobia Nazir vs. Province of the Punjab etc., (2022 LHC 2413)*** that Article 11 would be violated, if a woman is compelled to work during advanced stages of pregnancy or immediately after childbirth. Thus, this principle can be analogously extended to the academic sphere, affirming the necessity of accommodating women's health issues, thereby ensuring substantive equality and the effective realization of women's rights in educational settings. Therefore, NUST cannot deny this right to the petitioner on the basis of discretion. This would reflect the broader legal and constitutional commitment to gender equality and non-discrimination in academic sittings.

26. In view of the above discussion, this Court is of the view that the NUST failed to consider the grant of academic extension to the petitioner to complete her PhD degree under the relevant laws and policies that allow for extensions in "force majeure" situations and "delays due to process or administrative reasons". Therefore, the matter is remitted to NUST with the direction to consider the request of the petitioner for extension in time for completion of her PhD Program in the light of the observations made above and strictly in accordance with law and policies, through a well-reasoned/speaking order after providing proper opportunity of being heard to the petitioner from the initial forum of institutional committee within thirty (30) days from the receipt of this order. Consequently, the Impugned Orders are **set aside** as being non-speaking and discriminatory.

27. The instant writ petition is **disposed of** in above terms.

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 29.05.2025.

JUDGE

M. YAHYA KHAN NIAZI, L.C

APPROVED FOR REPORTING.

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