Form No: HCJD/C-121

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

I.C.A. No. 265 of 2017

Al-Khair University through Additional Registrar

Versus

Higher Education Commission through Chairman, Islamabad and another

W.P. No. 2282 of 2019

Al-Khair University through Registrar

Versus

Higher Education Commission through Chairman, Islamabad and others

W.P. No. 2549 of 2019

Muhammad Zulfiqar Ali and others

Versus

Higher Education Commission through its Chairman, Islamabad and others

W.P. No. 3258 of 2019

Yasir Nawaz and others

Versus

Higher Education Commission through its Chairman, Islamabad and others

W.P. No. 3554 of 2019

Amir Waseem Khan

Versus

Higher Education Commission through its Chairman, Islamabad and others

W.P. No. 308 of 2019

Sajid Khan and others

Versus

Higher Education Commission of Pakistan, Islamabad and others

Appellant/Petitioners by	:	M/s Niaz Ahmed Rathore, Munawar Iqbal Duggal, Ehtasham Aslam Khan, Hassan Raza Pasha and Ms. Nabeela Irshad, Advocates.
Respondents By	:	M/s Muhammad Abdul Rafeh and Qaiser Sarwar, Advocates. Mr. Saqlain Haider Awan, learned-AAG. Nasir Hayat, Section Officer, M/o Kashmir Affairs and Gilgit Baltistan.
Date of Hearing	:	18.02.2020.

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AAMER FAROOQ, J. - This judgment shall decide the instant appeal as well as Writ Petitions No. 2282/2019, 2549/2019, 3258/2019, 3554/2019 and 308/2019, as similar questions of law and facts are involved.

2. Al-Khair University is a private educational institution created through the Al-Khair University, Azad Jammu and Kashmir Act, 1994 (hereinafter referred to as "**Al-Khair University**") with its principal campus in Bhimber, Azad Jammu & Kashmir. Al-Khair University initially applied to Higher Education Commission for permission and recognition for imparting education and awarding degrees. The matter was the subject matter of communication between the University and the Higher Education Commission of Pakistan (hereinafter referred to as "**HEC**") for some time, however, in its 18th meeting of the Managing Board the referred Regulator took certain decisions with respect to recognition of the University and on 16.05.2009, HEC wrote to the Government of Azad Jammu & Kashmir for implementation of its decisions of 31.03.2009. The main cause of concern was that Al-Khair University started affiliating colleges and other educational institutions within the territory of Pakistan; HEC categorically communicated to the Government of Azad Jammu & Kashmir that the students admitted after 30.04.2009 in campuses or affiliated educational institutions within the territory of Pakistan would not be recognized. In this behalf, the Government of Azad Jammu & Kashmir was advised to fulfill the criteria and other prescribed requirements in its declared principal campus at Bhimber, AJ&K. On 17.10.2011, HEC granted permission to Al-Khair University after inspection. The terms of recognition and approval of launching degrees programmes were as follows:-

"HIGHER EDUCATION COMMISSION
Sector H-9, Islamabad Ph:9040900-0911 Fax No.90400902
URL: www.hec.gov.pk

Deputy Director
Accreditation & Attestation

No. 16-08/HEC/A&A/2011/903
October 17, 2011

The Registrar,
Al-Khair University,
Al-Jawad Plaza, IJP Road,

Opposite I-8, Grid Station,
Islamabad.

Subject: **INSPECTION OF AL KHAIR UNIVERSITY, BHIMBER, AJ&K**

Dear Sir,

With reference to your letter No.AU-1(7)GA/2010 dated 19th September, 2011 and on the recommendation of the Inspection Committee the competent authority has been pleased to allow the Al Khair University, Bhimber to launch degree programmes in the Departments of Management Sciences, Computer Sciences, Pakistan Studies, Islamic Studies, Education and Urdu subject to availability of required faculty with the following terms and conditions:

- On campus operation at Bhimber is allowed.
- No campuses in AJ&K and Pakistan shall be allowed.
- No affiliation in AJ&K and Pakistan shall be permitted.
- The University will be required to submit on judicial paper duly notarized and registered in Court of Law they will operate only on campus at Bhimber.
- University will not initiate any legal proceedings against the HEC in AJ&K and Pakistan.

This issues with the approval of Competent Authority.

Yours sincerely

(Tahir Farooq)"

Despite the restriction regarding opening of campuses in Pakistan or granting affiliations, Al-Khair University continued affiliating colleges and educational institutions and also launched MS/M.Phil and equivalent program at Bhimber, AJ&K. In this behalf, inspection was conducted by HEC and certain observations were made regarding deficiencies, which were communicated to Al-Khair University vide letter dated 16.09.2015. Meanwhile, the controversy continued regarding recognition and was the subject matter of a petition under Article 199 of the Constitution, filed by Al-Khair University (W.P. No. 1278/2012). The referred writ petition was disposed of by this Court vide order dated 30.09.2015 on the basis of certain undertakings made by the learned counsel for the petitioner. Order dated 30.09.2015 is as follow:

"Through the instant writ petition, following prayer has been made by the petitioner University: -

"In view of the aforesaid and urgency of the matter involved, it is most respectfully prayed that this Honourable Court may kindly be

pleased to accept the titled petition, declare the impugned letter as illegal, unlawful, without lawful authority and set aside it."

2. At the very outset, learned counsel for the petitioner-University submits that in view of new development, the petitioner-University wanted to appoint some Faculty Members in order to cure the lapses observed by the Higher Education Commission for which posts have been advertised. He, however, seeks disposal of instant writ petition with the observation to allow the petitioner-University for accomplishing such exercise. He, however, on the objection raised by learned counsel for the respondents, undertakes that petitioner-University will not award any degree till 30.11.2015 and till then, deficiency observed by HEC during inspection will be cured. He further undertakes that no fresh admission will be given to any new student till then. The undertakings extended by learned counsel for petitioner-University are agreed by other side. In this regard, learned counsel for petitioner-University submitted a copy of letter dated 21.09.2015, addressed to D.G. (Quality Assurance Agency), HEC along with advertisement published in Daily 'Jang' dated 22.09.2015 with the expectation that petitioner-University, in this way, wanted to cure the deficiency after recruitment of staff as referred above, on the pointation of HEC in its inspection.

3. At this verge, learned counsel for respondents raised another objection that respondent Higher Education Commission may conduct a fresh inspection to look into the efforts towards making up deficiency. Learned counsel for the petitioner-University conceded such proposal.

4. The undertakings made above shall continue till finalization of queries raised by High Education Commission.

5. In view of above, instant writ petition stands disposed of. "

Inspection was conducted pursuant to order passed by this Court, in which again certain observations were made as noted above. Meanwhile, another writ petition was filed by a number of institutions, which had been granted affiliation by Al-Khair University (W.P. No.326/2012). The said writ petition was disposed of by this Court vide judgment dated 14.11.2017, in the following terms:-

"8. In the light of the above, the petitions are disposed of in the following terms:

a) The Commission shall nominate an authorized officer to afford an opportunity of hearing to the petitioners. The authorized officer shall pass speaking orders after hearing the petitioners.

b) The Higher Education Commission shall decide the grievances of the petitioners in accordance with law, inter alia, having regard to the judgment of this Court, dated 22.06.2017, passed in W.P. No. 2523/2016.

c) This order shall not in any manner be interpreted or construed as affecting the orders passed or actions taken by the Higher

Education Commission in relation to the University since the same stand confirmed pursuant to rendering of the judgment, dated 22.06.2017, passed in W.P. No. 2523/2016."

Al-Khair University filed yet another writ petition assailing letter dated 20.05.2016. The contents of the referred letter are as follows:-

"Director General
(Accreditation & Attestation)

No. 16-08/HEC/A&A/2014/519
May 20, 2016

Subject: **Inspection Recommendations of Al-Khair University, AJ&K**

Dear Sir,

Reference is made to the recent inspection of the Al-Khair University, AJ&K on April 20, 2016 by the HEC Inspection team.

2. This is to inform you that after assessing the available academic, physical and financial infrastructure of the University, serious irregularities and mismanagement have been reported by the HEC Inspection team. Despite providing ample time for taking corrective measures, no tangible improvements have been made by the University till to date. Hence, keeping in view the persistent non-serious attitude of the University, following recommendations are being submitted for your information and compliance on immediate basis:

1. Until and unless the University provides gazette notifications of all of its graduated students till date as per attached format and affidavit alongwith place of study, no degree issued by the Al-Khair University, AJ&K will be attested. An affidavit on stamp paper as per attached format be provided;
2. New enrollments at all program levels must be stopped immediately;
3. University must immediately halt all proceedings of all MS/M.Phil. & PhD. Level programs that includes conduct of classes, examination, thesis defense, award of transcript/ degrees etc. until HEC permits;
4. The University must ensure mentioning of place of study/campus/affiliated college on the transcripts/DMCs of its graduates;
5. The University must vacate the stay orders taken by its affiliated colleges at the earliest followed by a de-affiliation notice to all concerned, under intimation to HEC.
6. The University shall provide tax deduction details of all of its full time employees;

7. University must reimburse all the dues taken by the students enrolled in its MS/MPhil/PhD programs which remained continued after the ban imposed by the HEC w.e.f Fall 2014;

3. Meanwhile, HEC would alert the general public that the Al-Khair University has been banned for taking further intake w.e.f Fall 2016 for undergraduate programs and for all MS/M.Phil. & Ph.D level programs w.e.f. Fall 2014.

4. It is therefore, advised to submit your compliance report for the aforementioned recommendations within two (02) weeks from the issuance of this letter.

Yours faithfully,

(Tahir Abbas Zaidi)"

The said writ petition was dismissed by this Court vide judgment dated 22.06.2017 and is the subject matter of the instant appeal (I.C.A. No. 265/2017). Meanwhile, correspondence between Al-Khair University and HEC as well as affiliated colleges and the students affected from the policies and decisions of HEC continued as fate of the degrees awarded by Al-Khair University and its affiliated colleges was in dark due to refusal on part of HEC to certify the degrees awarded by Al-Khair University. HEC, keeping in view the interest of the students and ex-students of Al-Khair University, devised a policy on 31.08.2018 and communicated the same to the University. In this regard, data of the students and ex-students was required so that their qualifications could be recognized and certified provided they succeeded in the examination to be conducted by HEC. The Policy dated 31.08.2018 is as follows:-

"HIGHER EDUCATION COMMISSION

Director General
(Accreditation & Attestation)

No. 16(08)/A&A/Acc/HEC-2017/1075
August 31, 2018

Subject: **Graduates of Al-Khair University, AJ&K**

Reference your letter No. AU-1[17] GA-2017 dated June 07, 2017 on the subject cited above. Keeping in view the best public interest as well as suffering of graduates of Al-Khair University, AJ&K; Competent Authority has taken the following decisions with regard to graduates of Al-Khair University, AJ&K.

i. *Degrees of all students enrolled up to April 30, 2009 including the graduates studied at affiliated colleges/campuses will be recognized by HEC subject to fulfillment of all codal formalities and in line with rules and regulations. Moreover, degrees of students enrolled and studied after October 17, 2011 at main campus Bhimber, AJ&K will also be recognized. The recognition of professional degrees (LLB/DHMS/BHMS/ B Architecture/ BSc Engineering/ BE electrical etc.) will be subject to registration by relevant professional accreditation councils.*

ii. *No degree of students enrolled during the ban period will be recognized i.e. April 30, 2009 – October 17, 2011.*

iii. *However, students enrolled & studied after October 17, 2011 at affiliated colleges/campuses of Al-Khair University AJ&K other than main campus Bhimber in violation of directions of this Commission would be required to appear in a comprehensive test for recognition of their awards. Each such student would be given only one (01) opportunity to appear in test and obtain 50% marks in the comprehensive test for verification of his/her degree failing which their degrees will not be recognized. All the expenditure on the conduct of test would be borne by Al-Khair University, AJ&K. Also,* ***university shall reimburse one time fee/ expenses incurred to all such students*** *who were enrolled & studied after October 17, 2011at affiliated colleges/campuses of Al-Khair University, AJ&K other than main campus at Bhimber as the University violated this Commission's directives and the students have suffered in terms of loss of time and mental agony.*

iv. *Degrees of all MS/ M.Phil & Ph.D programs would not be recognized by HEC as the University was clearly directed vide letter No. 16-08/HEC/A&A /2010/85 dated January 30, 2012 to refrain from launching any MS/M.Phil & PhD programs.* ***The University will reimburse three times fee/expenses incurred to all these students*** *as they have suffered a lot. These students would also be entitled to claim any other damages from the University for the wastage of their precious time and money.*

v. *All those graduates of Al-Khair University, AJ&K whose degrees would not be recognized by the Commission; the* ***University would be liable to reimburse three times fee/expenses incurred to all such students.*** *They would also be entitled to claim ay other damages from the University for the wastage of their precious time and money.*

vi. Admissions/fresh intake of Al-Khair University, AJ&K shall continue to be banned/closed (effective from Fall-2016) as already communicated vide letter No. 16-08/HEC/A&A/2014/519 dated Many, 20, 2016.

2. However, attestation & verification as per above decision would only be resumed on the bass of date of 75,894 graduates already submitted by Al-Khair University, AJ&K vide letter No. AU-1(17)GA-2017 dated June 07, 2017. In case of any discrepancy in data, further disciplinary action would be taken against the University. It would be solely the responsibility of Al-Khair University, AJ&K to confirm the genuineness of previous academic credentials and maintenance and availability of all record of Al-Khair University, AJ&K students including Admission/Registration form, tabulation sheets, award lists, and gazette notifications. Further, the University would also enter its data into Pakistan Qualification Register (PQR) prior to attestation of degrees of its graduates as per above decision and submit 6 copies of data of 75, 894 graduates as already submitted by Al-Khair University, AJ&K vide letter No. AU-1(17)GA-2017 dated June 07, 2017 to HEC **latest by September 10, 2018.**

3. Modalities for conduct of Comprehensive examination for students who enrolled & studied after October 17, 2011 at affiliated colleges/campuses of Al-Khair University, AJ&K other than main campus at Bhimber will be communicated soon by HEC to the University.

4. These decisions have been taken due to the fact that the students were suffering since long due to the actions of the Al-Khair University. However, in the interest of students, the university is hereby advised to abide by all the directions and policies of HEC mentioned above in true letter and spirit.

5. This issues with the approval of the Competent Authority.

(Tahir Abbas Zaidi)"

Al-Khair University challenged letter dated 31.08.2018, which is the subject matter of Writ Petition No. 2282/2019. Likewise, former students of Al-Khair University, who had been awarded degrees after completion of studies with affiliated colleges of Al-Khair University, have also challenged letter dated 31.08.2018 by HEC, which is the subject matter of Writ Petitions No. 3258/2019, 3554/2019 and 308/2019. Some of the former students holding qualifications of MS, M.Phil from Bhimber, AJ&K campus of Al-Khair University have also challenged letter dated 31.08.2018 (W.P. No. 2549/2019).

3. Learned counsel for the appellant, *inter alia,* contended that HEC has no authority whatsoever with respect to affairs of Al-Khair University as it is a Chartered University created through the Act passed by the Government of Azad Jammu & Kashmir; that under the provisions of the Act, the University has authority to open campuses in AJ&K as well as Pakistan and also grant affiliation and in light of the same, affiliated colleges/institutions could not have been restricted or banned by HEC. It was contended that even otherwise, Al-Khair University has always complied with the directions and orders of HEC in fulfillment of the requisite criteria; that restrictions imposed on the University by HEC vide decision dated 20.05.2016 are uncalled for and in excess of the authority.

4. Mr. Niaz Ahmed Rathore, ASC while arguing the case on behalf of Al-Khair University in W.P. No.2282/2019 submitted that letter dated 31.08.2018 is arbitrary and without any justification or basis. It was submitted that directions as made in the letter are impracticable inasmuch as thousands of graduates have passed since inception of the University and asking them to re-sit for the examination for recognition and certification of the degrees is next to impossible. It was further submitted that a large number of students of Al-Khair University on the basis of graduation have undertaken their post-graduate qualifications from different other universities and that letter dated 31.08.2018 has created an anomalous situation. This Court was asked to show indulgence in the matter in light of its inherent powers to save the future of those students who have graduated from Al-Khair University.

5. Mr. Hassan Raza Pasha, ASC appearing on behalf of ex-students of Al-Khair University (W.P. No. 308/2019), *inter alia,* contended that more than sixty four thousand students of Al-Khair University have graduated and got their degrees verified and only the students who were enrolled after 17.10.2011 at affiliated colleges have been asked to sit in the examination vide letter dated 31.08.2018, hence the same is discriminatory. It was submitted that ban was

imposed after 2016 by HEC on fresh admissions and the Regulator stopped the attestation, which too is discriminatory. It was further contended that all the students were not aware about the controversy/dispute between Al-Khair University and HEC and inquiries were duly made by the students and the website of the University was also accessed which clearly showed that Al-Khair University is duly a recognized institution. It was reiterated that many students after completion of studies from Al-Khair University obtained employment and are now working successfully; that many students obtained higher qualifications after graduating from Al-Khair University and due to controversy between Al-Khair University and HEC, their future is in doldrums. It was also submitted that the petitioners were enrolled and duly completed their studies with affiliated colleges of Al-Khair University, which was competent to grant affiliation in light of section 5 of the Al-Khair University Act, 1994. It was further contended that violation, if any, has been committed by Al-Khair University and on the basis thereof, the petitioners cannot be made to suffer.

6. Learned counsel for the petitioners in Writ Petition No.3258/2019 and Writ Petition No.3554/2019 adopted the arguments addressed by the learned counsel for the petitioners in Writ Petition No. 308/2019.

7. Mr. Munawar Iqbal Duggal, ASC appearing for the petitioners in W.P. No. 2549/2019, *inter alia,* contended that the petitioners completed their M.S and M.Phil qualifications from Al-Khair University, Bhimber Campus, AJ&K. It was submitted that in terms of permission granted by HEC, the petitioners got admission at Bhimber Campus and duly completed their degrees. It was further submitted that refusal on part of HEC to recognize the qualifications vide letter dated 31.08.2018 is without lawful authority. In this behalf, it was contended that HEC is not acknowledging degrees of M.S, M.Phil and even Ph.D by refusing to certify the documents. It was further contended that HEC all along knew about the actions/inactions of the University and its refusal to act amounted to acceptance that Al-Khair University was competent to impart education and grant

the degrees in the courses of MS., M Phil. and PhD. It was also submitted that HEC by its conduct is estopped now at this stage from refusing to acknowledge qualifications of the petitioners. It was further contended that the petitioners have vested rights as they have completed qualifications and awarded degrees. It was contended that this Court being custodian of the fundamental rights can issue appropriate directions to HEC, in this behalf. It was submitted that under *de fecto* doctrine, degrees/qualifications can be recognized in light of the case law reported as Malik Asad Ali and others **versus** Federation of Pakistan through Secretary, Law, Justice and Parliament Affairs, Islamabad and others **(PLD 1998 SC 161)**. It was further contended that the principle of *sub silentio* is attracted in the facts and circumstances. Reliance was placed on cases reported as Riaz-ul-Haq **versus** Selection Committee Constituted for Admission to Bolan Medical College through Secretary, Principal Bolan Medical College, Quetta and 6 others **(1997 SCMR 1845)**, Chairman, Selection Committee/Principal, King Edward Medical College, Lahore and 2 others **versus** Wasif Zamir Ahmad and another **(1997 SCMR 15)** and Usama Javaid **versus** Chairman, Higher Education Commission and 4 others **(2010 MLD 588)**.

8. Learned counsel for HEC in I.C.A.No.265/2017, *inter alia,* contended that since Al-Khair University did not fulfill the requisite criteria, hence number of restrictions were imposed, including ban on admission in M.S and M.Phil. It was further contended that HEC is a regulator for all higher educational institutions in Pakistan as well as Azad Jammu and Kashmir; that even otherwise, affiliated colleges of Al-Khair University come directly under the control of HEC. It was further argued that under the law HEC is required to attest all foreign qualifications on the basis of which any person wishes to obtain jobs or pursue further studies. Learned counsel pointed out that time and again various advertisements were issued and communications were made to Al-Khair University for compliance with the orders/directions, but the University failed to do so and contumaciously ignored the same. It was contended that in order to

save the future of many students, policy decision was taken on 31.08.2018 by recognizing all the students who have studied in Bhimber Campus, AJ&K of Al-Khair University. It was further contended that letter dated 31.08.2018 is a policy decision and cannot be interfered with by this Court.

9. Learned counsel appearing in other cases contended that since there was a ban on admission and creation of affiliate colleges, hence students who have graduated from such colleges cannot be recognized or acknowledged by HEC. It was further contended that no vested right has been created in favour of any such student or college.

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

11. The controversy leading to filing of the instant appeal and petitions under Article 199 of the Constitution have been mentioned in detail in the preceding paragraphs, therefore, need not be repeated.

12. The key letters for determination of present controversy are letters dated 17.10.2011, 31.01.2012, 20.05.2016, and 31.08.2018 emanating from HEC. The bare perusal of the letter dated 17.10.2011 shows that HEC allowed Al-Khair University to launch degree programs in the departments of Management Sciences, Computer Sciences, Pakistan Studies, Islamic Studies, Education and Urdu only from the Bhimber Campus, Azad Jammu & Kashmir; it was specifically provided that no other campus in Azad Jammu & Kashmir or Pakistan would be allowed to be opened and no affiliation as such should be granted. The said letter make it very specific that Al-Khair University could only operate from Bhimber, AJ&K campus and no campus or affiliate college is to be opened, and since the controversy was ongoing as Al-Khair University was not adhering to the directions and orders of HEC, consequently another letter was issued on 30.01.2012 by the regulator when it came to its knowledge that Al-Khair

University is advertising courses in MS, M.Phil & Ph.D. The contents of the letter dated 30.01.2012 are as follows:-

"**HIGHER EDUCATION COMMISSION**
Sector H-9, Islamabad Ph:9040900-0911 Fax No.90400902
URL: www.hec.gov.pk

Director General
Accreditation & Attestation

No. 16-08/HEC/A&A/2010/851
January 30, 2012

Dr. A.Q. Ansari,
Vice-Chancellor
Al-Khair University,
Al-Jawad Plaza, IJP Road,
Opposite I-8, Grid Station,
Islamabad.

Subject: **OPERATION OF AL-KHAIR UNIVERSITY, BHIMBER.**

Dear Sir,

This is with reference to advertisement floated by the Al Khair University, AJ&K in the National Press regarding admission in different disciplines for Spring Semester, 2012, which is against the commitment and in deviation of the university charter. Therefore, you are requested to implement the decision of the Commission within **10 days from the date of issuance of this letter** and a comprehensive report in this regard may also be furnished:

1. Float a corrigendum in the same Newspapers withdrawing the said advertisement.
2. Restrict to on-campus programmes at B.S., M.A. and M.Sc. level involving 16 years education and refrain from launching of MS and Ph.D programmes till guidelines provided by the Commission are fulfilled and approved.
3. Refrain from offering education through Distance Mode of Education as there is no provision for the same in the charter of AI Khair University.
4. Courses leading to Matriculation and Intermediate must not be offered.

Failing which the degree awarded by the University under this mode of education will not be validated and Higher Education Commission will also float a Parent Alert in the National Press for information of general public and student in particular.

(Fida Hussain)"

The referred letter specifically directed Al-Khair University to only offer courses/programs on-campus (Bhimber, Azad Jammu and Kashmir) and refrain from launching M.S, M.Phil and Ph.D, however, operation of the impugned letter was suspended by this Court vide order dated 08.05.2012, in C.M. No. 02/2012, filed in Writ Petition No. 1278/2012, titled "Al-Khair University **versus** Higher

Education Commission through Chairman, Islamabad and another". The said injunctive order continued as was extended through orders of this Court and finally lapsed and merged in the final order passed on 30.09.2015. The said writ petition was disposed of by this Court in light of undertakings given on behalf of Al-Khair University. Similarly, HEC vide letter dated 20.05.2016, categorically provided that until and unless the University provides gazette notifications of all of its graduated students, no degree issued by Al-Khair University shall be attested; new enrollments at all levels should be stopped; all M.S, M.Phil and Ph.D programs should be halted; the University was required to mention place of study/campus/affiliated college on the degrees awarded. The University did not abide by the said directions as well which eventually led to letter dated 31.08.2018, providing that the degrees of all students enrolled up to 30.04.2009 either in Bhimber campus or affiliated college would be recognized; degrees of students enrolled after 17.10.2011 at Bhimber campus will also be recognized; the recognition of professional degrees from Bhimber campus would be subject of accreditation by relevant professional councils. Degrees of students during ban i.e. 30.04.2009 and 17.10.2011 would not be recognized. Students who graduated after 17.10.2011 either at affiliated college of Al-Khair University shall be required to sit in the test for recognition of their degrees. MS, M.Phil & Ph.D programs would not be recognized in light of ban of the same vide letter dated 30.01.2012.

13. There is no defence to offer on behalf of Al-Khair University for continuing to defy the directions/orders passed by HEC. The main thrust of the arguments on behalf of the Al-Khair University was that HEC does not have authority over it inasmuch as it is a Chartered University having principal campus at Bhimber, Azad Jammu & Kashmir. Never ever during the course of communication between HEC and Al-Khair University, the latter took up the said plea and questioned the authority of HEC. It is only after the letter dated 20.05.2016 was issued and the referred matter was agitated in the writ petition

where such plea was agitated for the first time; prior to said letter and filing of the writ petition, Al-Khair University continued to obey and abide by the directions of HEC. Learned counsel for Al-Khair University failed to point out any law or provision on the basis of which the said attack has been made. HEC is a regulator pertaining to higher education in Pakistan and also in Azad Jammu & Kashmir; as the latter does not have its own regulator. Even otherwise, campuses opened by Al-Khair University in Pakistan and affiliated colleges are subject to the authority of HEC being in Pakistan and it is to abide by laws/rules and regulations of the referred authority. The stance of Al-Khair University regarding having no authority seems to be an afterthought and attempt to wriggle out of its obligations and failures to comply with the directions issued to it by HEC from time to time. Even if the said argument of Al Khair is upheld, it will be of no avail to it inasmuch as the degrees need, issued by Al Khair in cases of graduates from affiliated colleges of the University or those students who after graduation are pursuing further studies in Pakistan or are working or applying for work in Pakistan or abroad require such degrees to be certified by HEC and it is only when it was intimated to Al-Khair University vide letter dated 20.05.2016 that HEC would not certify/attest the degrees, the matter was agitated before this Court. In so far as affiliated colleges are concerned, they are equally responsible for their negligence, which is grave in nature as they have played with the future of so many students. In this behalf, vide letter dated 17.10.2011, HEC categorically specified that no campus shall be opened by Al-Khair University in Pakistan and/or no affiliation would be granted. The referred direction was ignored brazenly and Al-Khair University continued in defiance. In this behalf, nobody but Al-Khair University and affiliated colleges are responsible to the students. It may be observed that HEC as a regulator has shown no vigilance as it should have in the matter, as on its website it did not provide a red flag or alert regarding the University with respect to affiliated colleges and opening up campuses in Pakistan and AJ&K.

14. In an attempt to resolve the issue pursuant to directions issued by this Court in W.P. No.326/2012, vide order dated 14.11.2017, policy decision was taken by HEC which came out through letter dated 31.08.2018. All the students of affiliated colleges of Al-Khair University, who were enrolled after 17.10.2011, have been provided opportunity of regularizing their qualifications and have the same certified by sitting in the examination to be conducted by HEC. The decision taken is a policy consideration on part of HEC. It is trite law that this Court does not interfere with the policy decision of the executive unless the same is patently illegal or in violation of law. Reliance is placed on Dossani Travels Pvt. Ltd and others **versus** Messrs Travels Shop (Pvt) Ltd and others **(PLD 2014 SC 1)**. Al-Khair University and/or the petitioners in other abovementioned writ petitions failed to point out any illegality in the policy decision of HEC. We are of the opinion that it is appropriate and a just action on part of HEC to provide an opportunity to former students of affiliated colleges of Al-Khair University to sit for examination and have their qualifications recognized, which otherwise, are in violation of directions of HEC as issued vide letter dated 17.10.2011. This Court has no inherent jurisdiction to issue directions to HEC regarding recognition of the degrees awarded by Al Khair or otherwise interfere in the policy decisions of the executive. Undoubtedly a large number of students and graduates of Al Khair are likely to suffer due to non adherence by the University of the orders/directions of the HEC, but the same cannot form basis for setting aside the decisions of HEC. It is also an admitted position that every citizen of Pakistan has a fundamental right to life and education, however, the same as well does not justify interference in the matter.

15. Learned counsel for the appellant, in the above mentioned Intra Court Appeal, failed to point out any error of law in the judgment impugned in the instant appeal which otherwise is well reasoned and takes into account all the aspects of the controversy. Likewise no relief can be granted to the

petitioners in Writ Petitions No. 2282/2019, 3258/2019, 3554/2019 and 308/2019 in view of the observations made in the preceding paragraphs.

16. In so far as the petitioners in Writ Petition No. 2549/2019 are concerned, their position is anomalous as undoubtedly, vide letter dated 30.01.2012, restrictions were imposed upon Al-Khair University not to continue or conduct MS, M.Phil and Ph.D programs, however, the said letter was suspended by the order of this Court in the abovementioned writ petition. It is trite law that no one is prejudiced by the act of the court; the effect of the above order is that letter dated 30.01.2012 was put on hold from the moment the suspension order was passed and until finally it merged in the final order. The effect of that would be that the admissions by the Al-Khair University and degrees awarded with respect to courses mentioned in the referred letter would not amount to any violation of the same. The referred suspension as mentioned continued till final disposal of the writ petition. Dates relevant for the said purposes are 08.05.2012 till 30.09.2015. HEC is required to look into this aspect of the matter in light of the order of this Court passed in W.P. No. 1278/2012 inasmuch as it is no fault of the students, who were admitted in that period and duly qualified as they acquired vested rights. In this behalf, judgments relied upon by the learned counsel for the petitioners in W.P. No.2549/2019 is instructive inasmuch as the august Apex Court has acknowledged the rights of such students who have been admitted to their courses either directly or indirectly. Reliance is placed on cases reported as Riaz-ul-Haq **versus** Selection Committee Constituted for Admission to Bolan Medical College through Secretary, Principal Bolan Medical College, Quetta and 6 others **(1997 SCMR 1845)**, Chairman, Selection Committee/Principal, King Edward Medical College, Lahore and 2 others **versus** Wasif Zamir Ahmad and another **(1997 SCMR 15)** and Usama Javaid **versus** Chairman, Higher Education Commission and 4 others **(2010 MLD 588)**.

17. In view of above discussion of law and facts, Writ Petition No. 2549/2019 is **disposed of** with direction to HEC to consider the matter in light of the observations made by this Court hereinabove and revisit its policy regarding M.S, M.Phil students as provided vide letter dated 31.08.2018 with respect to all admissions and degrees awarded between the period of 08.05.2012 till 30.09.2015. I.C.A No. 265/2017 as well as above-mentioned other writ petitions are hereby **dismissed being without merit.**

(GHULAM AZAM QAMBRANI)
JUDGE

(AAMER FAROOQ)
JUDGE

Announced in open Court this 30th day of April, 2020.

JUDGE **JUDGE**

M.Shah/.

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