

**IN THE LAHORE HIGH COURT, LAHORE**

From

The Addl. Registrar (Judl)  
Lahore High Court



To

*JS 23/6/21*

1. Pakistan Medical Commission (PMC), through its President, 4 Service Road South, G-10 Mauve Area G 10/4, G-10, Islamabad.
2. Sahara Medical College (affiliated with University of Health Sciences), Muridke Road, Narowal.

SUBJECT: - WRIT PETITION NO- 30346-21 + 30078-21 + 30479-01 + 30812-21

Sir,

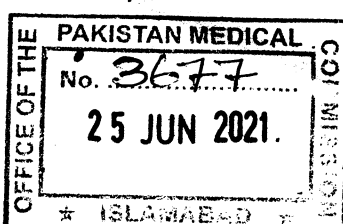
In continuation of this Court letter No \_\_\_\_\_ date \_\_\_\_\_

I am directed to forward for information and immediate compliance a copy of this Court's Order/Judgment dated 09-6-21 passed in the above noted case.

Your's faithfully

ASSISTANT REGISTRAR (WRIT)  
FOR ADDL. REGISTRAR (JUDL)

*23/6/21*



*25/6/21*

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Judgment Sheet  
IN THE LAHORE HIGH COURT AT LAHORE  
JUDICIAL DEPARTMENT

WP No.30346/2021

Hamza Bashir etc.

*Versus*

Pakistan Medical Commission through its President etc.

**J U D G M E N T**

Date of Hearing	9.6.2021
Petitioners By:	Mr. Muhammad Safdar Shaheen Pirzada and Mr. Toseef Shaheen Pirzada, Advocates for the Petitioners in WP Nos.30346/2021 and 34213/2021. Mian Ismat Ullah and Mr. Shakeel Ahmad Pasha, Advocates for the Petitioners in WP No.30078/2021. Mr. Altaf Hussain Bajwa, Advocate Vice Mian Muhammad Saeed, Advocate for the Petitioners in WP Nos.30479/2021 and 30812/2021.
Respondents By:	Ms. Ambreen Moeen, Deputy Attorney General for Pakistan along with Mr. M. Rashid Umar, Assistant Attorney General for Pakistan. Barrister Chaudhary Muhammad Umar and Rana Muhammad Ansar, Advocates for Respondent PMC. Mr. Imron Muhammad Sarwar, Advocate for Respondent UHS. Mr. Mahmood A. Sheikh, Advocate for Respondent Al-Aleem Medical College, Lahore in WP No.30812/2021. Mr. Adeel Shahid Karim, Advocate vice Mr. Khalid Ihsaq, Advocate for Respondent Sahara Medical College in WP Nos.34213/2021 and 30346/2021. Mr. Muhammad Rashid and Mr. Farooq Saeed Khan, Advocates for Respondent Akhtar Saeed Medical College in WP No.30078/2021.

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**Ayesha A. Malik J.** This common judgment decides upon the issues raised in the instant Petition as well as connected WP Nos.30812/2021, 30078/2021, 30479/2021 and 34213/2021 as all the Petitions raise common questions of law and facts. The Petitioners are students of the Respondent medical and dental colleges and have challenged advertisement dated 29.4.2021 issued by the Examination Department, Pakistan Medical Commission, Islamabad (“PMC”) wherein the process of re-admission is to take place with respect to the listed colleges, which includes the college of the Petitioners along with order dated 24.4.2021 issued by the PMC in the instant Petition as well as in WP No.30479/2021, WP No.30078/2021 and WP No.30812/2021.

2. Facts of the case are that the Petitioners are all students who took admission in medical and dental colleges for the 2020-21 session. They have paid the fees and are attending classes for the past three months. The Petitioners are aggrieved by the advertisement dated 29.4.2021 issued by the Examination Department PMC which essentially calls for the process of re-admission in the medical and dental colleges which includes the college of the Petitioners that is Sahara Medical College, Narowal (WP No.30346/2021 and WP No.34213/2021), Akhtar Saeed Medical and Dental College, Lahore (WP No.30078/2021) and Al-Aleem Medical College, Lahore (WP No.30812/2021 and WP No.30479/2021).

3. The case of the Petitioners is that there is no justification whatsoever for commencing this process of re-admission given that the Petitioners have participated in the admission process and have passed the Medical and Dental Colleges Admission Test (“MDCAT”) but also the interview. After participating in an extremely competitive process they were admitted in the respective colleges and have commenced their education in terms thereof. The Petitioners are also

aggrieved by the order dated 24.4.2021 issued by the PMC on the basis of which PMC has concluded that the admission process for the respective medical colleges are tainted, in contravention to the admission regulations and that the interview process is non-transparent, in violation of the regulations, hence cancelled. The Petitioners stated that on the basis of a general order, the rights of the Petitioners with respect to their admission in medical colleges has been severely prejudiced; that they have not been heard and that the allegations levelled against the respective Respondent colleges do not necessarily establish any involvement of the Petitioners in procuring admission nor does it suggest that the merit of the Petitioners does not warrant admission.

4. Report and parawise comments have been filed on behalf of Respondent PMC in all the Petitions. They have raised a preliminary objection with respect to the maintainability of the Petitions on the ground that remedy of appeal under Section 37 of the Pakistan Medical Commission Act, 2020 (“**PMC Act**”) is available to the Petitioners and they can challenge the impugned orders of 24.4.2021 by filing an appeal before the Medical Tribunal which has been established pursuant to the Medical Tribunal Act, 2020 (“**MT Act**”). Learned counsel for the Respondent PMC stated that since the Medical Tribunal is functional and its rules and regulations have been framed, hence the Petitioners may approach the Medical Tribunal for redressal of their grievance. In this regard, learned counsel has relied upon Section 10 of the MT Act which provides for the abatement of any suit or proceedings with reference to any matter which falls within the jurisdiction of the Medical Tribunal. Learned counsel also stated that the PMC received numerous complaints with reference to the admission process of different colleges and after giving a hearing to the relevant colleges, the PMC concluded that there were serious violations of the regulations; that the interview process was not

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transparent and that the colleges were unable to substantiate that they followed due process and the regulations with reference to the admissions. Learned counsel pointed out that some of the discrepancies highlighted are that the challan forms issued by the colleges were paid prior to any merit list being issued; that the students were admitted after the cutoff date; that no interview was conducted nor any merit list was issued; that the various different provisions of the PMC Act and the Admission Regulations (Amended) 2020-2021 ("**2020 Regulations**") have been violated. Learned counsel stated that notices were issued to the colleges pursuant to which the impugned order dated 24.4.2021 was issued. In this regard, he further explained that the impugned advertisement does not mean or suggest that the admission of the Petitioners have been cancelled. The advertisement basically calls upon students to apply for admissions, being those students who did not get admission in any college yet are on the merit, so that their cases can be considered with reference to the colleges listed in the advertisement. Hence he stated that the objective is to find students who were deliberately denied admission even though they fell within the merit of the college.

5. Reply has also been filed on behalf of the respective colleges. It is their common case that the allegations levied are totally without basis; that they are general in nature and that the complaints filed against the colleges do not necessarily suggest that the college has compromised on the merit. It is their case that a proper inquiry has not been conducted in the matter and instead a general order has been passed declaring their admission process faulty which is totally without basis. In this context, learned counsel for Al-Aleem Medical College, Lahore in WP No.30812/2021 stated that the allegation levied against the college has nothing to do with the admission process rather it is with reference to the procuring a proper insurance policy. In this regard, learned counsel for Respondent PMC has



clarified that show cause notices were issued to all the colleges before the Court regarding the irregularities in the admission processes for the session 2020-21, including A-Aleem Medical College, Lahore.

6. In terms of the reply filed in the instant Petition by Sahara Medical College, documents have been appended along with specific replies to all the allegations essentially to counter the fact that the complaints filed necessitated PMC to issue the impugned advertisement. It is their case that they followed the rules and regulations; they published the interview schedule along with merit list and that with reference to the complaints appended with the reply of the PMC most of the students do not even fall within the cutoff merit of the college. So it is stated that the closing merit of Sahara Medical College is 75.909% whereas the complainants referred to in the reply filed by the PMC do not meet this merit. Essentially they have refuted the factual basis on which PMC has concluded that the college has contravened the requirements of the 2020 Regulations.

Preliminary Objections

7. The preliminary objection raised by the counsel for PMC is that in terms of Section 37 of the PMC Act, an appeal lies to the Medical Tribunal against any order of the PMC. Hence, the instant Petitions are not maintainable as the Petitioners can file an appeal before the Medical Tribunal. Section 37 of the MT Act is reproduced as under:

(1) Any person including an employee of the Commission aggrieved by any order or direction of the Commission, including the Council, Authority or disciplinary committee, under any provision of this Act, or rules or regulations may prefer an appeal only before the Medical Tribunal within thirty days of the date of communication of the impugned order or decision

(2) An appeal to the Medical Tribunal shall be in such form, contain such particulars and be accompanied by such fees as may be prescribed.

The MT Act establishes the Medical Tribunal under Section 4, to hear appeals, complaints or claims in terms of Section 6(11) of the MT Act. In terms of the PMC Act, Section 32 provides for disciplinary

proceedings, suspension or cancellation of license. Sub Section 3 of Section 32 provides that the PMC shall on the complaint of any person or authority or of its own motion on information received, initiate disciplinary proceedings against any recognized institution in respect of medical negligence, misconduct or violation of any obligation under the Act or any rules or regulations or directions of the PMC. This order is appealable under Section 37 of the PMC Act before the Medical Tribunal. Hence a complaint can either be heard by the PMC or can be heard by the Medical Tribunal with respect to irregular admissions or invalid admissions or refusal of admission. In these cases PMC has statedly heard about 400 complaints against different colleges with reference to irregular admissions.

8. In this context, it is also important to note that although PMC claims to have taken action as a consequence of the 400 complaints that were heard, surprisingly they have not concluded in any of the impugned orders that any one of the 400 complainants deserves admission on merit and was not granted the same. They have also not concluded that any particular complainant has established that they were deliberately and wrongfully denied admission. The PMC concluded in the impugned orders that the admission process lacked transparency and is in contravention to the 2020 Regulations. However they have not pointed out which of the admitted students was wrongfully admitted against the merit and in contravention of the 2020 Regulations. Furthermore the impugned advertisement calls for students who were denied admission to come forward, with their merit so that it can be checked as to whether the colleges acted against the 2020 Regulations yet there appears to be no justifiable reason to issue the advertisement in search of *other students* who have been denied admission, when in the first instance PMC should have decided upon the complaints and the fate of the complainants admissions before it went in search of other candidates. The fundamental flaw in the

impugned advertisement is that it appears to be reaching out to candidates, once again to apply to the named medical and dental college on the basis of their previous merit to ascertain whether or not they were left out of the process. If these candidates have not approached the PMC till date, notwithstanding the fact that the PMC was hearing complaints on the matter, there appears to be no reason for issuing the impugned advertisement and reaching out to candidates who have not filed any complaints. Furthermore PMC should have inquired into the individual complaints filed before it to ascertain whether or not the college violated the 2020 Regulations and denied a deserving candidate admission. In this context, the biggest issue before the PMC was the discretion exercised by the colleges with respect to 20% marks that were allocated pursuant to the interviews. One of the PMC's grievance is that the interview marks were given without any guideline in a non-transparent manner, adverse to merit. However, this too is a general impression and the PMC has admittedly not considered the case of each and every complainant viz-a-viz the allocation of marks given in the interview to a candidate to conclude wrongful exercise of discretion. Although discretion is given to private medical colleges to grant 20% marks for the interview, there is nothing in the impugned orders to show that the PMC has identified candidates who were wrongfully admitted, hence their admission should be cancelled.

9. Learned counsel for PMC claims that the PMC heard 400 complaints and thereafter passed the impugned orders with respect to each of the Respondent medical college. The impugned orders before this Court, however are not specific orders against 400 complaints statedly filed, rather in all Petitions before the Court, the impugned orders are identical. When confronted with the same, learned counsel for PMC tried to show that there are distinguishable features in each of the orders. However, a bare reading of each order shows that



essentially they are identical in terms of content and at best, each of the impugned orders with respect to each of the medical colleges before this Court, only gives reference the name of one student admitted beyond the cut off date. All other content is identical, reference to the Regulations that were breached are identical and the conclusion drawn in each of the impugned orders with respect to admission of the students and cancellation of the interview marks is the same. On the face of it, the impugned orders show lack of due process and natural justice as the admission of the admitted students have been suspended and their interview marks have been cancelled without hearing them and without determining whether in fact these students were in any manner responsible for procuring their admissions contrary to the merit. As the rights of these students are adversely affected, their right to due process has been totally ignored in the decision making process. More so, even though PMC claims to have heard 400 complaints with reference to the various different medical and dental colleges, the impugned orders do not reference any specific complaint or name any of the complainants or conclude that the complaint is genuine and that candidate was deprived of admission. Hence the conclusion drawn by the PMC through its disciplinary committee in the impugned orders is presumptive and not based on a factual inquiry or due process. Consequently the entire decision making process is flawed and against the mandate of the law.

10. The primary objection raised by the Petitioners is that the impugned order and the advertisement is against the norms of due process and violates the principles of natural justice as the Petitioners who are all students were never heard yet in terms of the impugned order their admissions have been suspended and their interview marks have been cancelled. This means that none of the Petitioners before the Court were given a chance to reply or refute any claims made by any of the complainants before the PMC nor were they confronted

with any evidence to suggest that they were in any manner involved in wrongfully procuring admission at their respective college. There is no provision under the PMC Act or its 2020 Regulations which allows the PMC to pass an omnibus order against 400 complaints that too without giving affected parties a hearing. It may be that the PMC has formed an impression that the admission processes for some colleges was tainted and that the Respondent medical college did not diligently exercise their discretion with respect to the interview process and the interview marks or that they did not follow 2020 Regulations but PMC is required to hear a specific complaint and pass an order on its merit.

11. This Court in constitutional jurisdiction can review all actions which are contrary to the principles of natural justice, due process, in violation of statute or rules and regulations framed thereunder. The entire argument of the Respondent PMC is that the Medical Tribunal has been established under the MT Act to hear and decide all appeals, complaints or claims instituted before it. Hence the Petitioners could file a complaint before the Medical Tribunal, being the adequate, statutory remedy available to them. In this regard while the general rule is that where there is a statutory remedy available, then writ jurisdiction should not be invoked, there are exceptions to this rule, which will depend on the facts and circumstances of the case. The august Supreme Court of Pakistan in various different judgments has held that constitutional jurisdiction can be invoked to rectify errors for which there is no adequate or efficacious remedy; where orders are patently illegal; in abuse of authority, without jurisdiction or in excess of jurisdiction, in violation of the statute or even to avoid multiplicity of disputes so as to protect and preserve the rights before the Court. The august Supreme Court of Pakistan has defined adequacy and efficacious remedy so as to ensure that the forum available should redress the grievance appropriately. Reliance is placed on Town

Committee, Gakhar Mandi v. Authority under the Payment of Wages Act Gujranwala and 57 others (PLD 2002 SC 452), Muhammad Aslam v. Senior Member (Colonies), Board of Revenue, Punjab and others (2004 SCMR 1587), Dr. Sher Afghan Khan Niazi v. Ali S. Habib and others (2011 SCMR 1813) and Haleem ur Rehman v. Province of Sindh and others (2019 SCMR 1653). In the instant cases, the impugned orders are not appealable before the Medical Tribunal because they are not specific orders passed on a specific complaint. The impugned orders are all identical and have suspended the admission of the Petitioners and their interview marks without hearing them. On the face of it, PMC has not exercised its authority as per law and the entire decision making process is contrary to the principles of due process.

12. Therefore in the context of the above, this Court can always in constitutional jurisdiction review the decision making process in order to ensure that the competent authority has acted in accordance with law, maintained the principles of natural justice and due process and has not in any manner abused its authority. To the mind of this Court, the orders impugned through these Writ Petitions are in violation of the statutory mandate given to the PMC to hear complaints and decide upon the same. They are also in violation of the statutory mandate given to PMC to oversee the admission process and to take disciplinary action where required. As this aspect of the matter touches merits of the case, I deem it appropriate to decide the same on its merits holding that the instant Petitions are maintainable and that the remedy before the Medical Tribunal is neither adequate nor efficacious for the purposes of the dispute before this Court.

On merit

13. The basic issue before the Court is whether the PMC is authorized under the PMC Act to pass the impugned orders and issue

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the impugned advertisement on the basis of which it has attempted to initiate admission for candidates who applied to a medical or dental college in the published list, as per the advertisement, yet were not admitted in the medical or dental college and are re invited on the basis of the advertisement to submit their intent for admission.

14. The PMC was established pursuant to the PMC Act. The preamble of the PMC Act sets out its objectives that is to provide regulations and control of the medical profession as well as to establish a uniform minimum standard of basic and higher medical education and training and recognition of qualifications in medicine and dentistry. One of the basic functions of the PMC is to frame regulations for conduct of admissions in medical and dental colleges and to approve the examination structure and standard of the MDCAT. It is important to note that the PMC in terms of Section 3 of the PMC Act consists of a Medical and Dental Council, the National Medical and Dental Academic Board and the National Medical Authority. The National Medical and Dental Academic Board in terms of Section 13(c) of the PMC Act is responsible to formulate examination structures and standards for the MDCAT for approval by the Council. The National Medical Authority is responsible to conduct the examinations provided for under the PMC Act and is also responsible to implement the decisions of the Council and the Board. The MDCAT is conducted pursuant to Section 18 of the PMC Act, annually on a date approved by the Council as per the standard approved by the Board. Section 18(3) of the PMC Act provides for admission to medical or dental programs conducted by public colleges to be regulated as per the policy provided by the Provincial Government and admissions to private college in accordance with the criteria and requirements stipulated by the private college, at least one year in advance of the scheduled admissions which will include any entrance test to be conducted by a private college. It also provides that

the marks obtained in the MDCAT will constitute fifty percent of the weightage for the purposes of admissions in public colleges. Section 18 does not provide any information with reference to the admission criteria and the weightage that is to be given by a private college for admission. In this context, the 2020 Regulations which were issued pursuant to Section 8(2)(f) of the PMC Act are relevant. These Regulations are applicable to all private and public medical and dental colleges with reference to '2021 session specifically. It is important to note that it is with reference to these regulations that the impugned orders have concluded that the Respondent Colleges have not been compliant with the prescribed admission requirements.

15. The 2020 Regulations provide that any student seeking admission in any medical or dental college has to pass the MDCAT exam and the passing marks were statedly 60%. All admissions in public and private medical and dental colleges had to be concluded before 21.2.2021 and classes were required to begin from February 2021. All private and public colleges have allocated number of seats and no college is allowed to admit beyond the allocated seats. These Regulations also regulate admissions in private colleges. Relevant to the dispute are Regulations 18, 19, 19A to 19F which PMC has relied upon to show that the Respondent colleges have not fulfilled the prescribed requirements.

16. By way of background it is important to note that the PMC was established pursuant to the PMC Act which was promulgated on 22.9.2020 and was published in the official gazette on 24.9.2020. The advertisement for holding the MDCAT by the PMC was published on 22.10.2020 and the MDCAT was conducted on 29.11.2020 and 13.12.2020 (for students who had tested Covid-19 and were unable to appear on the examination held on 29.11.2020). The result of the MDCAT was announced on 16.12.2020. During this time the relevant Regulations were the Admission Regulations 2020-2021. The PMC

thereafter issued the Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Regulations, 2021 (“**2021 Regulations**”) on 4.6.2021 which now govern the admission process. However, so far as the 2020 Regulations are concerned, it is important to note that these Regulations were amended twice, once on 17.11.2020 and then on 23.12.2020. Hence it would be fair to state that until 23.12.2020 the process of regulating the admissions for the year 2020-21 was undergoing 'change. In this regard, the Private Association of Medical and Dental Institutions (“**PAMI**”) also challenged the role of the PMC with reference to admissions in private colleges and ultimately with the intervention of the Court, a consensus was reached between the PMC and PAMI whereafter the 2020 Regulations were amended and specifically Regulation 19A to 19F were incorporated. A significant change was brought about which allowed private medical and dental colleges to give weightage, such that 50% MDCAT, 30% F.Sc or its equivalent and 20% marks reserved for interview by the private colleges. For the purposes of the dispute at hand, PMC has raised questions specifically with respect to the manner in which the 20% marks were given, that is the decision making process and the discretion exercised by the private colleges when awarding 20% marks in the interviews. The basic contention of PMC before the Court is that transparency and merit be maintained and it is in the context of achieving these goals of transparency and merit that this entire exercise is being undertaken. Hence PMC states that it is scrutinizing the admission process and the merit list to ensure that the 2020 Regulations have been complied with, that the merit list has not been compromised and more importantly candidates who claim that they were deliberately ousted from the system notwithstanding their merit are not denied the opportunity to pursue a career in the medical or dental profession.



17. In the context of the instant Petition, as per the record, notices were issued to the college on 5.4.2021 to appear on 8.4.2021 and the impugned order was passed on 24.4.2021. As per the impugned order, para 7 refers to one student who was admitted after the close of the admission deadline in violation of Regulation 19D of the 2020 Regulations. The impugned order makes reference to various provisions of the 2020 Regulations and finds that there are inherent discrepancies and irregularities in the admission process; that the interview process is not properly documented and that the college should adopt a transparent system to inform students of the interview so as to ensure that a fair opportunity is given to all candidates; that no merit list based on the interview marks was available and that the record shows that the students were admitted on the day of their interview. So the impugned order concludes that a pick and choose approach seems to have been adopted, therefore it suggests that some students who may have been on the merit were not duly considered. In this context, they have relied upon fee deposit slips to show that fees have been deposited prior to the issuance of the merit list. The impugned order concludes that the admission process is in contravention to the 2020 Regulations and therefore the admission of the students for the session 2020-21 in the college are deemed as suspended and the interview marks by the college were held to be non-transparent and cancelled. The PMC thereafter decided that an advertisement should be issued informing any student who appeared on the national merit list of the college to re-apply if they did not get admission in any college, within five days of the impugned advertisement. A bench mark merit has been awarded to the colleges and the objective is to determine whether any candidate has a higher merit than the bench mark and has been left out from the admission process. Interestingly the impugned orders in all connected Petitions being for Al-Aleem Medical College and Akhtar Saeed Medical

Colleges are identical to the impugned orders in the instant Petition. The allegations are similar with reference to the admission of students after the close of the admission date naming one specific student and the date of their admission in the context of each of the respective colleges. However, to the extent of the specific complaints raised and the conclusions drawn by PMC from a review of the documents, the impugned orders do not specifically deal with any of the complaints it was statedly hearing. These impugned orders have led this Court to conclude that notwithstanding the complaints before the PMC, an omnibus order has been passed without checking the merit of the complaint or veracity of the complainant and a general observation has been made that the admission process is tainted, hence should be re-advertised so as to *invite candidates* who believe that they were wronged or pushed out of the admission process deliberately. To my mind this approach by the PMC is not only in contravention to the 2020 Regulations but also defies the logic raised. As per their own contentions there were 400 complaints which were heard and decided. However the decision of 400 complaints is in the form of an omnibus order with respect to 20 colleges. So it is unclear as to what the specific grievance of each of the complainant was and with respect to which college. Furthermore no relief was granted to any of the 400 candidates, that is no candidate has been found entitled to admission. The record of the admitted students has not been referred to, so it is unclear as to why their admission has been suspended and interview marks cancelled. Apparently, the specific allegations of each and every complainant with reference to a specific medical and dental college has not been duly considered. Where the complainant has alleged that they have been left out of the process and that even though they have the merit they were not properly considered, it required PMC to investigate/ inquire and determine whether or not that a particular candidate was left out of the process unfairly and





whether they are entitled to admission. Similarly where the complainant has alleged that they were never called for the interview or that the merit list was never published, it required PMC to make some sort of factual finding before it could assume that the respective Respondent colleges have not been compliant with the 2020 Regulations. Although it is stated that the record was checked, the mere fact that there are identical orders in all Petitions before the Court suggests that the record was not properly checked and a presumption was made with respect to the admission process undertaken.

18. It is also important to note that in terms of the 2021 Regulations issued on 4.6.2021, the PMC has set out the processes with respect to the admissions for public as well as private colleges but relevant to the dispute at hand, it has also set out its ability to regulate the admission process. In terms of Regulation 10 of the 2021 Regulations, reproduced hereunder, the PMC can review the admission process during or after the completion of the process and it has the power to cancel any admission if that admission is in contravention to the Regulations *after* giving the student a right of hearing. Also important to note is that a student can submit a complaint to the Authority or the Medical Tribunal in respect of irregular admissions made or admission being refused by a college and that this complaint has to be decided by the Authority or the Medical Tribunal within 15 days.

10. Review of Admissions Process by Authority.-(1) The Authority may review the admissions process of each college during and on completion of the process where such process shall be completed by the Authority within thirty days of the final date of admissions.

(2) If the Authority finds any irregular admission having been made by the college, the Authority shall have the right to cancel such admission subject to having granted both the college and the affected student a right to be heard.

(3) A student may submit a complaint to the Authority or the Medical Tribunal in respect of any irregular admission made or admission invalidly refused by a college. Such complaint if made to the Authority shall be heard and decided within fifteen days of the same being submitted after hearing both the complainant and the college.



Regulation 28 of the 2021 Regulations provides for penalties that the PMC can impose on the medical and dental college for violation of any provision of the Regulations. Appendix 1 set outs the contraventions and provides the penalties that can be imposed.

28. Penalties. - The Authority shall impose a penalty as may be prescribed by the Medical and Dental Council and provided for in Appendix I for any violation of any provisions of these Regulations. In the event a specific penalty is not provided for any violation, the Authority may advise the Medical and Dental Council to prescribe a penalty for such violation and if approved the same would be imposed notwithstanding that such penalty was not provided for in Appendix I.

19. On the basis of the 2021 Regulations, PMC can decide a complaint and it can declare the admission of a candidate illegal or irregular thereby cancelling it subject to granting the college and the affected students a right of hearing. This is not the process that was undertaken by the PMC with respect to the impugned orders where the Petitioners being students who were granted admission have not been heard and more importantly there is no clear specific order on a complaint made before the PMC rather an omnibus order has been passed with respect to all the colleges before the Court. Furthermore in terms of Regulation 28 of the 2021 Regulations, PMC can impose a penalty on any college for violating the Regulations. However, the impugned orders set out to suspend the admissions and cancel the interview marks but does not impose any penalty on the colleges. The mandate of the 2021 Regulations clearly provide that PMC is to hear a complaint and decide upon it and thereafter can impose a penalty if it is required. Although it was argued that the 2021 Regulations came in June 2021 and the impugned orders and advertisement were issued before the 2021 Regulations, PMC is obligated to follow the principles of due process, justice and to avoid vague and generalized enforcement as it affects the requirements of predictability and stability leaving potential for unfair surprises in their decision making. In this case, the PMC has neglected to decide upon the 400

complaints. Instead it has formed a general opinion of irregularities which it is now attempting to defend before this Court. It is clarified that even if the objective of the PMC is to retain transparency and merit, it has attempted to do so in a manner that it is not authorized under the law. Even though the 2021 Regulations were notified in June 2021, this is the PMC's own doing and there is nothing in the 2020 Regulations or the PMC Act which permits PMC to pass a general order on 400 complaints. This by itself is a violation of the mandate under the PMC Act and the MT Act.

20. In this regard, it is important to note that the process of admission from the time of announcement of the schedule of the MDCAT exam to the issuance of the merit list and the filling up of vacancies is regularly litigated upon not only by the colleges but also by students on one pretext or the other. A common dominant cause over the last few years has been the constant change in the regulator, the statute and the admission processes, that too just before the MDCAT exam. Not only have these frequent changes led to confusion and multiple litigation but has also destroyed confidence in the regulator and the system on the basis of which admission is granted in a highly competitive profession. This Court in various different judgments has looked into the issues raised and has held that change in law and admission processes should never be made at the last moment, before the MDCAT exam or during an academic session so as to disturb the preparation that candidates have made in anticipation of the MDCAT exam. Reference is made to Pakistan Medical and Dental Council v. Shahida Islam Medical Complex (Pvt.) Limited etc. (2019 CLC 1761). This Court has also held that it is the function of the regulator to set out uniform standards and prescribed conditions for admission in public and private medical colleges and that the regulator can take penal action against an institution for non-compliance with its regulations. Reference is on Muhammad Fahad

Malik through Safdar Ali Malik v. Pakistan Medical and Dental Council through its President etc. (PLD 2018 Lahore 75). This judgment has been upheld by the august Supreme Court of Pakistan in Pakistan Medical and Dental Council through President and 3 others v. Muhammad Fahad Malik and 10 others (2018 SCMR 1956) which means that the PMC as a frontline regulator should perform its functions so as to preserve the merit and confidence of the colleges and students and refrain from arbitrary and discriminatory decisions. The present impugned orders have created further disruption by placing the Petitioners and other admitted candidates in a state of flux, as their admission stands suspended as do their interview marks and PMC has not stated what is their fate once candidates re-surface for admission. Are these admitted students to re-apply? or will their merit be scrutinized? As to the college if they have breached the 2020 Regulations to what consequence and how will PMC ensure that it is not repeated? Hence even though they allege that the college violated the 2020 Regulations, there is no action against the college, rather admitted students have been penalized without any hearing or allegation against them.

21. Hence the PMC's contention that there are irregularities and illegalities with respect to the admission process of the listed colleges in the advertisement has not been established by way of the impugned orders. The Respondent medical colleges in their report and parawise comments have addressed the various different allegations raised in the impugned order to assert their contention that they did not compromise on the merit and that they did not in any manner prejudice the rights of any of the candidates especially the complainants but stated that they were entitled to admission in the instant Petitions. As per the report and parawise comments filed in the instant Petition and the documents appended by Sahara Medical College, the complainants who stated that they were not given

admission despite their merit did not meet the cut off merit of the college, hence were not granted admission. These documents and facts suggest that the PMC was required to adjudicate on each complaint separately in order to ascertain its veracity and merit and that the impugned orders are based on presumptive. In this regard, where the PMC is of the opinion that a college has not complied with the terms of the 2021 Regulations, it can issue notice setting out its case with respect to breach of regulations and compromise on merit, giving not only the college but the respective complainant and any candidate who may be adversely affected by an order of the PMC an opportunity of hearing. PMC can also impose penalty on the colleges that breaches its regulations in order to curtail and prevent any of the discrepancies and irregularities/illegalities set out by PMC.

22. The fundamental job of the regulator PMC is to ensure that the processes of admission is not tainted, it is complied with the regulations so as to ensure that the students with the higher merit are given admission. The admission process itself is competitive and since private colleges were given discretion of 20% marks with respect to the interview, the entire dispute before the Court hinges on the manner in which 20% marks were granted. It is also important to note that although PMC has asserted that merit and transparency is necessary and it is in order to attain merit and transparency that this exercise has been undertaken, the manner in which the PMC is attempting to resolve the problem is in contravention to its own 2020 and 2021 Regulations and in negation to the authority it can exercise under the PMC Act. PMC should have addressed each and every complaint on its merit, passing a specific order with respect to the basic complaint against the respective college, which order would be appealable before the Medical Tribunal.

23. In view of the aforesaid, these Petitions are allowed, impugned advertisement dated 29.4.2021 and impugned orders dated 24.4.2021

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issued by the PMC are set aside. However, PMC can take necessary action against the Respondent college or others in accordance with the 2021 Regulations by following due process.



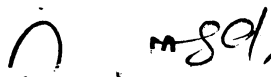
(AYESHA A.MALIK)  
JUDGE

Approved for reporting

Blue Slip attached.

  
18/6/21

Allah Baksh\*

  
AYESHA A. MALIK  
JUDGE

**TRUE COPY**

In Case No. /21

Examiner, J.C.B (Copy Branch)  
Lahore High Court, Lahore