IN THE HONORABLE HIGH COURT OF SINDH AT KARACHI

CONSTITUTIONAL PETITION NO. D-6021/2020

(1)

Presented on 26-11-2020.

Additional Registrar (Writ)

1. SYED AHMED MAAZ
   MUSLIM, ADULT,
   S/O SYED MASOOD IRFAN
   BEARING CNIC 42101-0260044-5
   R/O F-10/1, PRIME VILLA, BLOCK 9
   CLIFTON, KARACHI.

2. HASSAN AHMED
   MUSLIM, ADULT
   S/O SYED IRSHAD HUSSAIN
   BEARING CNIC 42101-0359575-3
   R/O A-151 SECTOR II-A NORTH KARACHI

3. ADEEL UR REHMAN
   MUSLIM, ADULT,
   S/O SHADI UR REHMAN
   BEARING CNIC 42501-4211630-3
   R/O FLAT #101 BLOCK J, CHAPPAI GARDENS
   ABU HASAN ISPHANI ROAD, KARACHI

4. MUSTAFA JELANI
   MUSLIM, ADULT,
   S/O SYED NADEEM JELANI
   BEARING CNIC 42201-6326841-5
   R/O B-182, JELANI HOUSE, KHUDADAD COLONY, KARACHI

----PETITIONERS

VERSUS

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-6021 of 2020

Date	Order with signature of Judge

Fresh Case

1.For order on Misc. No.25879/2020.
2.For order on Misc. No.25880/2020.
3.For order on Misc. No.25881/2020.
4.For hearing of main case.

26.11.2020

Mr. M. Jibran Nasir, Advocate for the Petitioners.

This matter may not be fixed before a bench in which one of us (Arshad Hussain Khan, J) is a member. Since the learned counsel for the petitioners claims urgency, let this matter be fixed before some other bench today according to roster.

Sd/- Muhammad Ali Mazhar
Judge

Sd/- Arshad Hussain Khan
Judge

Rs. 2 TWO RUPEES SEAL OF THE HIGH COURT KARACHI PAKISTAN COURT FEE

Fresh Case

1. For order - Misc No: 25879/20 (ms)
2. P ---------- 25880/20 (Ex A)
3. For order - Misc No 25881/20 (ms)
4. For Hearing of Main Case

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D – 6021 of 2020

Date	Order with signature of the Judge

1. For order on Misc. No.25879/2020 (Urgency) :
2. For order on Misc. No.25880/2020 (Exemption) :
3. For order on Misc. No.25881/2020 (Stay) :
4. For hearing of main case :

26.11.2020 :

Mr. Muhammad Jibran Nasir, advocate for the petitioners.

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1. Urgency granted.

2. Exemption is granted subject to all just exceptions.

3 & 4. Learned counsel for the petitioners files statement dated 26.11.2020, which is taken on record. Petitioners, who are seeking admission in medical colleges / universities, have impugned 'Official Announcement' (page 151) made by respondent No.3 / Pakistan Medical Commission (PMC), whereby it has been announced that the upcoming MDCAT examination will be held on two separate dates i.e. on 29.11.2020 for applicants who are not suffering from COVID-19 and on 13.12.2020 for applicants who have tested positive, or will be tested positive up till 29.11.2020, for COVID-19. It is urged that the impugned announcement / decision of PMC is in violation of Section 18 of the PMC Act under which only a single MDCAT examination can be held. It is further urged that the subject examination should he held simultaneously for all the applicants so that there should be one yardstick for judging the performance of all the applicants and awarding marks to them. Learned counsel submits that if the subject examination is allowed to be held on two separate dates, the criteria for judging the performance of the applicants and awarding marks to them will not be the same. He further submits that instead of taking the impugned decision, PMC ought to have held the subject examination on the same day at two different places / venues. Issue notice to the respondents as well as to learned DAG. As the subject examination is scheduled for 29.11.2020, notice be issued to respondent No.3 / PMC during course of the day through facsimile. To come up on **27.11.2020 at 10:00 a.m.**

Sd/- Nadeem Akhtar
Judge

Sd/- Adnan-Ul-Karim Memon
Judge

Zahid/*

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No. D – 6021 of 2020

Date	Order with signature of Judge

Priority :
1. For hearing of Misc. No.258881/2020 (Stay) :
2. For hearing of Main Case :

27.11.2020 : Mr. Muhammad Jibran Nasir, advocate for the petitioners.
Mr. Zeeshan Abdullah, advocate for respondent No.3.
Mr. Muhammad Nishat Warsi, DAG.

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Learned counsel for the petitioners files statement dated 27.11.2020 along with copies of the documents listed therein, which is taken on record.

Mr. Zeeshan Abdullah advocate undertakes to file power on behalf of respondent No.3 / PMC. He has submitted a statement dated 27.11.2020 along with copies of the annexures listed therein, which is taken on record.

Learned counsel for the petitioners and respondent No.3 as well as learned DAG have concluded their submissions. For the reasons to follow, the instant petition and listed application are dismissed, however, with the direction to respondent No.3 / PMC to ensure that all SOPs in relation to the Covid-19 pandemic prescribed by the National Disaster Management Authority (NDMA), Ministry of Health Government of Pakistan, and the Ministry of Health of the Province concerned, are strictly followed in letter and spirit by the students, invigilators and all persons / staff present at the examination centres during the subject MDCAT examination. There will be no order as to costs.

Sd/- Nadeem Akhtar
Judge

Sd/- Adnan-ul-Karim Memon
Judge

"CP D-6021-20/27.11.2020/Short Orders DB/Court Work/ARK/D"

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D – 6021 of 2020

Before :
Mr. Justice Nadeem Akhtar
Mr. Justice Adnan-ul-Karim Memon

Petitioners	:	Syed Ahmed Maaz, Hassan Ahmed, Adeel-ur-Rehman and Mustafa Jelani, through Mr. Muhammad Jibran Nasir Advocate.
Respondents 1 & 2	:	The Federation of Pakistan, through Mr. Muhammad Nishat Warsi, DAG.
Respondent No.3	:	The Pakistan Medical Commission, through Mr. Zeeshan Abdullah Advocate.
Date of hearing	:	27.11.2020

NADEEM AKHTAR, J. – Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, **('the Constitution')** the petitioners have prayed that the two National Medical and Dental College Admission Tests (NMDCAT) **('the subject tests')** announced by respondent No.3 / Pakistan Medical Commission **('PMC')** to be held on 29.11.2020 and 13.12.2020 be declared *ultra vires* The Pakistan Medical Commission Act, 2020, **('the PMC Act')**, particularly Section 18 thereof ; direction be issued to PMC to conduct the subject tests in accordance with the PMC Act after ensuring necessary and effectual safety measures and standard operating procedures **('SOPs')** to curb the spread of Covid-19 ; PMC be restrained from conducting the subject tests till fulfillment of all obligations as mandated by the PMC Act ensuring necessary SOPs ; and, the respondents, including PMC, be restrained from taking any action that may prejudice the petitioners.

2. Relevant facts pertaining to this matter, as averred in the petition, are that the petitioners have duly registered themselves for the subject tests as they are seeking admission in the under-graduate medical degree programs in public and private universities and colleges across Pakistan. After constituting and notifying the National Medical & Dental Academic Board **('the Board')** and the National Medical Authority **('the Authority')** in compliance of the common order passed by this Court on 11.11.2020 in Constitutional Petition Nos. D-4953/2020, D-5036/2020, D-5158/2020 and D-5237/2020, PMC announced that the subject tests will be held on 29.11.2020. Thereafter, PMC issued an 'Official Announcement' on 25.11.2020 whereby it was announced that the subject tests will be held on two separate dates i.e. on 29.11.2020 for

the applicants who were not currently Covid-19 positive and on 13.12.2020 for those who have tested positive for Covid-19 or will have tested positive up till 29.11.2020. The above Official Announcement issued / made by PMC has been impugned in the present petition.

3. The main thrust of the arguments advanced by learned counsel for the petitioners was that the impugned announcement made by PMC is *ultra vires* the PMC Act inasmuch as under Section 18 thereof only a single NMDCAT can be held, therefore, the subject tests cannot be held on two different dates. According to him, the impugned announcement is liable to be declared *ultra vires* the PMC Act on this ground alone. In addition to the above, it was contended by him that the impugned announcement is also not sustainable on the ground that if the subject tests are held on two different dates, the question papers / MCQs will be different for both batches of applicants, and as such the criteria for judging them and awarding marks to them will not be the same ; the competition amongst all the applicants across Pakistan should be equal and fair, therefore, the criteria for judging them should be the same ; there should be no distinction or discrimination in such judgment ; and, the subject tests for the applicants appearing on 29.11.2020 will be more difficult and tougher than those appearing on 13.12.2020 as the former will have to prepare themselves for the entire syllabus, whereas instead of covering the entire syllabus, the latter will have to prepare for the subject test from the remaining syllabus. It was also contended by the learned counsel that PMC has not announced or taken any precautionary or safety measures for observing the SOPs in the wake of the second wave of the Covid-19 pandemic. It was urged by him that PMC should be directed to hold the subject tests of all the applicant-students across Pakistan on the same day, and to ensure strict adherence of all the prescribed SOPs.

4. At the outset, learned counsel for PMC submitted that the petition is not maintainable as the petitioners are not aggrieved persons as contemplated in Article 199 of the Constitution ; there is no violation by PMC, as alleged or otherwise, of any fundamental right of the petitioners or other applicants ; and, the impugned announcement is not contrary to any of the provisions of the PMC Act and/or any other law. In order to justify the impugned announcement / decision, it was contended by him that the same was taken by PMC on 25.11.2020 in the light of the guidelines issued by the National Disaster Management Authority (NDMA) in view of the sharp and rapid rise in the cases of Covid-19 ; because of the peculiar nature of the Covid-19 virus, it is not possible or advisable at all to allow applicants carrying the virus to appear in the subject tests on the same day along with other applicants ; in order to ensure

the safety and wellbeing of all the applicants and the persons / staff interacting with them at the examination centres, which is of paramount importance in the prevailing circumstances, PMC decided to conduct the subject tests as per schedule i.e. on 29.11.2020 ; but for those applicants who have tested positive for the virus, it was decided that their tests will be held on a separate date i.e. on 13.12.2020 ; all the prescribed SOPs shall be followed by PMC on both the given dates ; and, it is imperative that the subject tests are held as soon as possible on the dates announced by PMC as in view of the rising cases of Covid-19 on daily basis, any delay therein may result either in further exposure and infection to the applicants and the staff or cancellation of the subject tests. It was further contended by him that the question of discrimination does not arise at all as the question papers for the subject tests on both the dates shall be prepared from the prescribed syllabus, and every applicant is not only aware of the syllabus, but is also required to prepare himself / herself according to the same.

5. It was further submitted by learned counsel for PMC that Section 18 of the PMC Act empowers the Authority established under the PMC Act to conduct the subject tests on a date approved by the Council constituted under the PMC Act and as per the standards approved by the Board constituted under the PMC Act. It was urged by him that the impugned decision / announcement was made by PMC strictly in accordance with Section 18 ibid after prior approval of both the dates of the subject tests by the Council, which shall be held as per the standards approved by the Board. It was pointed out by him that before the enactment of the PMC Act, all four Provinces of the country used to take separate entrance tests of the applicants, but now under Section 18 ibid PMC has been empowered to take a centralized admissions test for all the applicants across Pakistan. It was urged by him that the words "*a single admissions test*" have been used in Section 18 ibid in this context. It was further urged by him that in any event the requirement of a single admission test on annual basis, as envisaged in Section 18 ibid, shall be met as every applicant will be allowed only a single admission test.

6. With regard to the official respondents 1 and 2, it was stated by learned DAG that this Court may pass any order as it may deem fit and proper in the facts and circumstances of the case. However, in view of the rival contentions of the petitioners and PMC, it was suggested by him that the subject tests may be conducted across Pakistan on the same day via video link in order to restrict the applicants positive for Covid-19 virus to their respective places of isolation. This suggestion was opposed by learned counsel for PMC by submitting that such extensive arrangement for about 125,000 applicants is not possible on

short notice and also as every applicant may not have the facility of an internet / WiFi connection.

7. We have heard learned counsel for the parties and have examined the material available on record with their able assistance, particularly the relevant provisions of the PMC Act. Before embarking upon the merits of the case, we deem it expedient to briefly discuss such powers and functions of the Council, the Board and the Authority constituted under the PMC Act, enumerated in Sections 8, 13 and 16, respectively, of the PMC Act, that are relevant for the purposes of the case at hand. Section 8(1) of the PMC Act, *inter alia*, provides that the Council shall have all powers, not expressly vested in any other authority or officer by any other law, where such powers not expressly mentioned in the PMC Act are necessary for the performance of its functions. Under Section 8(2)(f) of the PMC Act, the Council shall have the power, *inter alia*, to frame regulations for the "*conduct*" of admissions in medical and dental colleges "*and the examinations to be conducted by PMC*". By virtue of Section 8(2)(t) of the PMC Act, the Council shall have the power, *inter alia*, to do all such matters as are ancillary including issuance of policies or framing of regulations, convenient for or which foster or promote the advancement of these matters and the objectives of the PMC Act. Section 13(1)(c) of the PMC Act provides that the Board shall have the functions and power to formulate the examination structure and standards for the NMDCAT for approval of the Council. Under Section 16(1)(f) of the PMC Act, the Authority shall have the functions and power to conduct all examinations provided under the PMC Act, and under Section 16(1)(h) of the PMC Act, to implement all decisions of the Council and the Board. Section 16(2) of the PMC Act empowers the Authority to exercise all powers as shall enable it to effectively perform its functions.

8. Sub-Section (1) of Section 18 of the PMC Act empowers the Authority established under the PMC Act to conduct a single admissions test on annual basis on a date approved by the Council constituted under the PMC Act and as per the standards approved by the Board constituted under the PMC Act. It is not the case of the petitioners that the subject tests have been announced by PMC on two different dates without the approval of the Council or the same are being held contrary to the standards approved by the Board. Perusal of the impugned announcement / decision shows that it was specifically mentioned therein that the same was made with the approval of the Council. Thus, the condition precedent for conducting the subject tests, as envisaged in Section 18(1) ibid, was admittedly fulfilled by PMC. It is also mentioned in the impugned

announcement by PMC that the subject test on 13.12.2020 shall be conducted with the same structure and standard as the test being conducted on 29.11.2020. This statement clearly rules out the possibility of any discrimination, as averred by the petitioners.

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

10. We must not lose sight of the extraordinary and dangerous situation prevailing due to the Covid-19 pandemic which, *prima facie*, compelled the Council and PMC to announce separate dates for conducting the subject tests in order to segregate the applicants into two groups viz. the ones who are not infected with the Covid-19 virus and the ones who have tested positive for this potentially lethal virus or will have tested positive up till 29.11.2020. This reason appears to be not only genuine, but also in the best interest of all concerned. Additionally, it also prevents applicants from missing the subject test, which is mandatory for seeking admission in medical or dental college / university, on account of being unwell, and gives them a chance to appear for the NMDCAT thereby ensuring they are not academically disadvantaged or their studies are not delayed by one whole academic year. Had there been any other reason or ground, conducting the subject tests on two different dates would have become

questionable. Needless to say extraordinary measures are permissible in extraordinary circumstances, provided such extraordinary measures are not contrary to any law. Due to this reason, we are of the view that the impugned announcement / decision of PMC and our observations and findings in respect thereof should not be treated or cited as a precedent for NMDCAT to be held in future.

11. In view of the above discussion, we conclude that the impugned announcement / decision has not infringed any fundamental right of any of the applicants, including the present petitioners, and the same is not contrary to any of the provisions of the PMC Act and/or any other law.

12. Foregoing are the reasons of the short order announced by us on 27.11.2020 whereby this petition was dismissed in the following terms and with the following direction to PMC :

> *"Learned counsel for the petitioners and respondent No.3 as well as learned DAG have concluded their submissions. For the reasons to follow, the instant petition and listed application are dismissed, however, with the direction to respondent No.3 / PMC to ensure that all SOPs in relation to the Covid-19 pandemic prescribed by the National Disaster Management Authority (NDMA), Ministry of Health Government of Pakistan, and the Ministry of Health of the Province concerned, are strictly followed in letter and spirit by the students, invigilators and all persons / staff present at the examination centres during the subject MDCAT examination. There will be no order as to costs."*

PMC is further directed to ensure that results of the subject tests held on 29.11.2020 and 13.12.2020 must be announced together and a single merit list is issued in respect of the tests held on both the above dates.

Sd/- Nadeem Akhtar
Judge

Sd/- Adnan-ul-Karim Memon
Judge

03/12/2020

SEAL OF THE COURT OF SINDH

CP D-6021-20/Judgments DB/Court Work/ARK/D