

[Supreme Court of Pakistan]

Present: Umar Ata Bandial, Syed Mansoor Ali Shah and Munib Akhtar, JJ

C.M.A.5777/2021 IN C.P.NIL/2021

(Against the order of Lahore High Court, Lahore dated 26.01.2021, passed in I.C.A. No.5251/2021)

and

Civil Petition No.4944 of 2021

(Against the order of Islamabad High Court, Islamabad dated 02.8.2021, passed in W.P No.2391/2021)

MAMOON WAZIR and others---Petitioners

Versus

ABWA KNOWLEDGE VILLAGE (PVT) LIMITED FAISALABAD and others.---Respondents

C.M.A. No. 5777/2021 in C.P. NIL/2021 and Civil Petition No.4944 of 2021, decided on 27th

September, 2020.

Pakistan Medical Commission Act, 2020---

---Ss. 8(1), 8(2), 8(3) & 18---Pakistan Medical Commission Admission Regulations 2020-2021, Reglns. 13 & 14---Medical and dental undergraduate programs for the academic year 2021---Admission---"Medical and dental colleges admissions test" ("MDCAT")---MDCAT was the basic minimum mandatory requirement, across the board, for admission to all medical and dental colleges, both public or private, in the country---Said requirement had been made applicable to students who had enrolled in the medical and dental undergraduate program for the year 2021 and onwards---While the private colleges enjoyed the flexibility of setting their own admission criteria including an entrance test (detailed in their prospectus) any such criteria or entrance test were over and above the basic statutory minimum requirement of MDCAT, which was mandatory for admission to both the private or public medical and dental colleges - Regulation 14 of the Pakistan Medical Commission Admission Regulations 2020-2021 ('the Regulations') did not in any manner dispense with the requirement of MDCAT and therefore had no bearing on the issue of MDCAT, which stood regulated under S. 18 of the Pakistan Medical Commission Act, 2020 ('the Act')--Even otherwise, Regulations, being subordinate to the Act, could not dilute or dispense with the statutory requirement provided under the Act---Regulations 13 & 14 of the Regulations, neither authorized the private colleges to dispense with the requirement of MDCAT nor were they inconsistent with S. 18 of the Act.

Muhammad Akram Ch. Senior Advocate Supreme Court, Noor Alam Khan, Advocate Supreme Court and Syed Rifaqat Hussain Shah, Advocate-on-Record for Petitioners.

Ch. Muhammad Umar, Advocate Supreme Court for Respondents.

Date of hearing: 27th September, 2021.

ORDER

SYED MANSOOR ALI SHAH, J.---C.M.A. No.5777/2021: The applicants seek permission to file the instant petition against the decision of the learned Division Bench of the Lahore High Court dated 26.01.2021 passed in I.C.A. No.5251 of 2021, reason being that the said judgment has been adopted and followed by the Islamabad High Court, Islamabad in its judgment dated 02.08.2021 passed in Writ Petition No.2391 of 2021, which is impugned before us by the petitioner in Civil Petition No.4944 of 2021, fixed with this case today. As same question arises for determination in the instant matter, we allow this application, therefore, the petition filed by the applicants/ petitioners be put up for hearing along with C.P. No.4944/2021 before us today, after it is registered and numbered by the office.

Main Petitions:

2. Petitioners are newly enrolled students in the medical and dental undergraduate program for the academic year 2021 at the ABWA Knowledge Village (Pvt.) Limited (respondent No.1), a private medical college. Their admissions were subsequently cancelled due to their failure to pass the "medical and dental colleges admissions test" ("MDCAT"). They have challenged the pre-admission requirement of MDCAT introduced through section 18 of the Pakistan Medical Commission Act, 2020 ("Act") on the ground that

it is violative of Regulations Nos.13 and 14 of the Admission Regulations (Amended) 2020-2021 ("Regulations")¹ in as much as the admissions to a private medical college is governed by the respective prospectus of the medical college, which in this case, did not require the petitioners to take MDCAT.

3. Learned counsel for the petitioners explaining their ground of challenge submitted that the Prospectus issued by respondent No.1 (private medical college), did not provide for MDCAT, but instead, set out their own admission criteria, which the petitioners have successfully met and were thereafter granted admission. They cannot be subjected to the requirement of MDCAT which falls outside the prospectus. Learned counsel for the respondent on the other hand supported the impugned judgment and submitted that statutory requirement of MDCAT under the Act is a mandatory requirement and even the Regulations do not dispense with the said requirement.

4. We have heard the learned counsel for the parties and have examined the Act and the Regulations. Section 18 of the Act and regulations Nos. 13 and 14 of the Regulations are reproduced hereunder for convenience:-

Section 18 of the Act:

18. Medical and dental colleges admissions tests (MDCAT)----(1) The Authority shall conduct annually on a date approved by the Council and as per standards approved by the Board a single admissions test which shall be mandatory requirement for all students seeking admission to medical or dental undergraduate programs anywhere in Pakistan.

(2) No student shall be awarded a medical or dental degree in Pakistan who has not passed the MDCAT prior to obtaining admission in a medical or dental college in Pakistan:

Provided that such requirement shall be mandatory for all students who have been enrolled in medical or dental under-graduate programs in the year 2021 and thereafter.

(3) The admission to medical or dental programs conducted by the public colleges shall be regulated as per the policy of the Provincial Governments strictly on merit and admission to a private college shall be in accordance with the criteria and requirements stipulated by the private college at least one year in advance of admissions including any additional entrance test as may be conducted by a private college subject to any conditions imposed by the relevant university to which such college is affiliated:

Provided that the marks obtained by a student in the MDCAT conducted by the Authority shall constitute a minimum of fifty percent of the weightage for the purposes of admission in the public colleges.

Regulations Nos.13 and 14 of the Regulations:

Private College Admissions

13. Both Agha Khan University and NUMS in respect of its constituent, affiliated and administered colleges have a previously declared admission criteria for admissions which includes in addition to the MDCAT an entry test and other criteria specific to such colleges hence substantially fulfilling the requirement of prior disclosure of admission criteria pursuant to Section 18(3) of the PMC Act, 2020. Therefore, admissions in the Army Medical College and all constituent, affiliated and administered colleges of NUMS shall be undertaken by NUMS and admissions to Agha Khan Medical College shall be undertaken by Agha Khan University respectively, subject to the mandatory requirement of any student admitted having passed the MDCAT. Any student seeking to apply to said colleges shall be required to apply directly to the relevant university and fulfill the additional requirements for admission imposed and declared by such colleges.

Provided quota for special seats in colleges under the administrative control of NUMS shall be regulated by NUMS as may be notified by the relevant Directorate and approved by the Ministry of Defence subject to the maximum allocated seat limit of each college.

Provided further, that students admitted against special quotas seats shall be required to have mandatorily passed the MDCAT and obtained a high school leaving certificate/degree.

14. Admissions to all private medical and dental [colleges] shall be conducted only for the 2021 Session through a centralized automated admission system.

Section 18 of the Act clearly mandates that the Authority (i.e., the National Medical Authority constituted under section 15 of the Act) shall conduct MDCAT, which shall be a mandatory requirement for all students seeking admission to medical or dental undergraduate program anywhere in Pakistan. Subsection (2) provides that no student shall be awarded a medical or dental degree in Pakistan who has not passed the MDCAT prior to obtaining the admission in a medical or dental college in Pakistan. MDCAT is the basic minimum mandatory requirement, across the board, for admission to all medical and dental colleges, both public or private, in Pakistan. This requirement has been made applicable to students who have enrolled in the medical and dental undergraduate program for the year 2021 and onwards.

5. Section 8(3) of the Act when read with sections 8(1) and 8(2) shows that while the private colleges enjoy the flexibility of setting their own admission criteria including an entrance test (detailed in their prospectus) any such criteria or entrance test are over and above the basic statutory minimum requirement of MDCAT, which is mandatory for admission to both the private or public medical and dental colleges. Proviso to section 18(3) lays down that public colleges are to assign 50% weightage to MDCAT, while no such weightage requirement is provided for the private colleges. However, for the enrollment in the year 2021 (as in this case) the weightage of 50% was retained by the private colleges and is not in dispute² or under challenge in this case.

6. Coming to the Regulations framed under section 8(2)(f) of the Act. Regulation 2 provides as follows:

2. Any student seeking admission in any medical or dental college shall mandatorily be required to have passed the MDCAT examination held by PMC. The passing marks for the MDCAT examination shall be 60%.

..

Regulation 13 reiterates the mandatory requirement of MDCAT for private colleges and is, therefore, in sync with section 18. Regulation 14, according to PMC, was a one-time arrangement for admissions to the year 2021. As per PMC, MDCAT was introduced through the Act in September, 2020 and students took the MDCAT in November, 2020, leaving little time for the students to apply to colleges independently, therefore, in order to meet the shortage of time, PMC extended the database facility of Centralized Automated Admission System to the students whereby the students could directly apply online through the PMC portal. Other than this administrative facility, Regulation 14 does not in any manner dispense with the requirement of MDCAT and therefore has no bearing on the issue of MDCAT, which stands regulated under section 18 of the Act. Even otherwise, Regulations, being subordinate to the Act, cannot dilute or dispense with the statutory requirement provided under the Act. Regulations 13 and 14, therefore, in no manner authorize the private colleges to dispense with the requirement of MDCAT or are inconsistent with section 18 of the Act. The criteria, as well as, other entrance tests devised by private colleges are in addition to MDCAT, which is the basic minimum statutory requirement for admissions to any medical college in Pakistan, be it private or public.

7. In light of the above, we see no reason to take a view different from the one taken by the High Court in the impugned judgment and in the judgment of the learned single judge. These petitions are, therefore, dismissed and leave refused.

MWA/M-78/SC Order accordingly.