

Present: Umar Ata Bandial, Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmad, JJ

CIVIL PETITION NO. 271 OF 2021

MUHAMMAD UNEEB AHMED---Petitioner

Versus

FEDERATION OF PAKISTAN and others---Respondents

(Against the judgment of Lahore High Court, Lahore dated 30.11.2010, passed in I.C.A. No. 33510 of 2019).

CIVIL PETITION NO.293 OF 2021

ABDUL REHMAN and others---Petitioners

Versus

FEDERATION OF PAKISTAN and others---Respondents

(Against the judgment of Lahore High Court, Lahore dated 30.11.2010, passed in I.C.A. No. 1554 of 2020).

CIVIL PETITION NO.617 OF 2021

CHENAB COLLEGE OF ENGINEERING AND TECHNOLOGY---Petitioner

Versus

FEDERATION OF PAKISTAN and others---Respondents

(Against the judgment of Lahore High Court, Lahore dated 30.11.2010, passed in I.C.A. No. 33510 of 2019)

Civil Petitions Nos. 271, 293 and 617 of 2021, decided on 18th October, 2021.

(a) Pakistan Engineering Council Act (V of 1976)---

---Ss. 3A & 25A(c)---B.Sc. (Engineering) program, admission to---Candidates with Diploma of Associate Engineers ("DAE")---Reserved quota of 2% imposed by the Pakistan Engineering Council for admission--Legality---Pakistan Engineering Council or its Governing Body is not empowered to restrict the admission of candidates with Diploma of Associate Engineers ("DAE") to the B.Sc. (Engineering) program by reserving 2% seats for them---Candidates holding an F.Sc. degree and DAE holders were to apply through open competition for a position in B.Sc. (Engineering), and there was no reserved quota for DAE holders---Both the said degrees are at par for admission into B.Sc. (Engineering)---Decision of Pakistan Engineering Council fixing 2% reserved seats for DAE holders is not only unsustainable under the Pakistan Engineering Council Act, 1976 but is also discriminatory.

There is no provision in section 8 of the Pakistan Engineering Council Act, 1976 ('the 1976 Act') that authorizes the Pakistan Engineering Council ('the Council') to reserve admission seats to an engineering program. In the absence of any such power available with the Council, the Governing Body, which under section 3A, exercising the powers of the Council, is also unable to impose such a condition. Perusal of sections 8 and 25A of the 1976 Act shows that the Council or the Governing Body has no power or authority to prescribe reserved seats for DAE for admission into any engineering program.

Decision of the Council reflected in its letter dated 25.03.2015 provides that the Governing Body of the Council has reserved seats upto a maximum of 2% for holders of DAE eligible for admission to B.Sc. (Engineering) program offered by the Engineering Institutions. This decision of the Governing Body does not find support from section 8 or 25A of the 1976 Act.

Other than the fact that the Council or the Governing Body has no power to impose such a condition (of 2% reserved quota), it is also ex-facie discriminatory against the DAE holders, especially when they are considered eligible for the B.Sc. (Engineering) Program along with the F.Sc. degree holders.

Both the holders of F.Sc. and DAE are considered eligible qualifications for the purposes of seeking admission to the B.Sc. (Engineering) program under Article 2 of the 'Regulations for Engineering Education in Pakistan' ('the Regulations'). In the absence of any power to reserve seats for admission to the B.Sc. (Engineering) program, both the set of candidates with F.Sc. and DAE have to be treated at par. This parity is created by equal eligibility of DAE for admission. Therefore, the decision of PEC dated 25-

03-2015 fixing 2% reserved seats for DAE holders is not only unsustainable under the 1976 Act but is also discriminatory. Since the Council cannot reserve seats for any program, the condition of "reserved seats" by the Governing Body under Article 2(c) of the Regulations is also illegal, ultra vires the 1976 Act, having no legal effect.

The best way forward is to allow admissions to B.Sc. (Engineering) on open merit and through open competition amongst the F.Sc. and DAE holders. Such a level playing field encourages competition and allows the best of the best amongst the F.Sc. and DAE to be admitted to the B.Sc. (Engineering) Program. Petitions for leave to appeal were converted into appeals and allowed.

(b) Interpretation of statutes---

---Regulations framed under an Act---Scope---Such Regulations have to remain within the four corners of the statutory mandate of the Act.

Azam Nazir Tarar, Advocate Supreme Court and Ch. Akhtar Ali, Advocate-on-Record for the Petitioners (in C.Ps. Nos.271 and 293/21).

Barrister Haris Azmat, Advocate Supreme Court assisted by Bar. Hamid Leghari and Ch. Akhtar Ali, Advocate-on-Record for Petitioner (in C.P. No. 617 of 2021).

Yasin Hatif, Advocate Supreme Court for the PEC.

Nemo for Federation.

Date of hearing: 18th October, 2021.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---The question that has come up for our determination is whether the Pakistan Engineering Council ("PEC") constituted under the Pakistan Engineering Council Act, 1976 ("Act") is empowered to restrict the admission of candidates with Diploma of Associate Engineers ("DAE") to the B.Sc. (Engineering) program by reserving 2% seats for them, as opposed to allowing them to apply on open merit for the said program, like the candidates holding an F.Sc. degree. PEC has imposed the said restriction through its decision communicated vide letter dated 25.03.2015, which has been the main bone of contention between the parties and the main subject of challenge before us.

2. The grievance of the petitioners, who are holders of DAE, having secured more than 81% marks, is that instead of allowing them to apply and be considered on open merit in the B.Sc. (Engineering) program, the impugned decision of PEC dated 25.03.2015 has reserved 2% seats for DAE seeking admission in the B.Sc (Engineering), a power which the PEC does not enjoy under the Act. The learned Single Judge of the High Court allowed the writ petitions of the petitioners holding that the PEC has no authority to reserve seats for the holders of the DAE seeking admission in B.Sc. (Engineering). However, the learned Division Bench of the High Court overturned the decision of the learned Single Judge through the impugned judgment dated 30.11.2020 upholding the restriction of 2% reserved seats for DAE holders applying for admission to the B.Sc. (Engineering) program, hence these petitions.

3. The primary argument of the learned counsel for the petitioners has been that under the Act there is no power with the PEC to reserve seats for DAEs for admission to the B.Sc. Engineering Program. The prime purpose of the PEC under section 25A of the Act is to set minimum qualifications for enrollment to engineering programs and minimum standards for holding admission examinations, hence the impugned decision of PEC dated 25.03.2015 is ultra vires and violative of the Act. Learned counsel for the respondent PEC, however, supporting the impugned judgment reiterated that such a power is available under Article 2(c) of the Regulations for Engineering Education in Pakistan ("Regulations").¹

4. We have heard the learned counsel for the parties and examined the record with their able assistance. The decision of the PEC passed in its 15th Governing Body Meeting communicated through letter dated 25.03.2015 of the PEC, reads as follows:-

"The maximum reserved seats for relevant DAEs admission to an engineering program shall be upto 2% of the total enrollment in the program for the universities/HEIs offering admissions to DAE students against reserved seats."

We need to examine whether PEC can reserve seats for DAE holder applying for admission into B.Sc. (Engineering). Perusal of the Act reveals that the purpose of the Act and the role of PEC is to regulate the engineering profession which includes engineering education² and set standards of professional competence and ethics for engineers and engineering institutions³ as reflected from its preamble. Sections 3, 8, 9 and 25A of the Act lay down the functions of PEC; the executive power of the Governing Body to act on behalf of PEC and to make regulations. The functions of PEC provided under section 8 of the Act are reproduced hereunder for reference:

8. Functions of the Council.---The following shall be the functions of the Council, namely:---

- (a) maintenance of a Register of persons qualified to work as registered engineers, professional engineers, consulting engineers, constructors and operators;
- (b) accreditation of engineering qualifications for the purpose of registration of registered engineers, professional engineers;
- (c) removal of names from the Register and restoration to the Register of names which have been removed;
- (d) laying down of standards of conduct for the members;
- (e) safeguarding the interests of the members;
- (f) promotion of reforms in the engineering profession;
- (g) management of the funds and properties of the Council;
- (h) promotion of engineering education and review of courses of studies in consultation with the Universities;
- (i) levy and collection of fees from applicants for registration or temporary licences and members;
- (j) exercise of such disciplinary powers over the members and servants of the Council as may be prescribed;
- (k) formation of such committees and subsidiaries as may be prescribed;
- (l) assistance to the Federal Government as a Think Tank;
- (m) promotion of engineering profession in totality;
- (n) encouragement, facilitation and regulation of working of professional engineering bodies for creativity and as custodian of engineering under the umbrella of the Council;
- (o) ensuring and managing of continued professional development through engineering academies and professional bodies;
- (p) establishing standards for engineering contracts, cost and services;
- (q) facilitating engineering sector industries;
- (r) coordinating between various engineering forums and Federal Government;
- (s) providing forum for arbitrations, pertaining to disputes in construction and consultancy contracts, and
- (t) performance of all other functions connected with, or ancillary or incidental to, the aforesaid functions.

There is no provision in section 8 that authorizes the Council to reserve admission seats to an engineering program. In the absence of any such power available with the Council, the Governing Body, which under section 3, exercising the powers of the Council, is also unable to impose such a condition. Under section 25A of the Act, reproduced hereunder, the Governing Body is authorized to frame regulations:---

25A. Power to make regulations.---The Governing Body may, in consultation with the committee of Vice-Chancellors of the Universities of Engineering and Technology of Pakistan set up by the Higher Education Commission, make regulations, not inconsistent with the provisions of the (sic) this Act and the bye-laws, to provide for-

- (a) minimum standard of courses of study and practical training for obtaining graduate and post-graduate engineering qualifications to be included in the First and Second Schedules;
- (b) minimum requirement for the content and duration of courses of study as aforesaid;

- (c) minimum qualifications for admission to engineering institutions offering course of study and laying down minimum standard for holding admission examinations;
- (d) qualification and experience required of teachers for appointment in engineering universities, colleges and institutions;
- (e) minimum standards of examinations, and duration and standard of practical training, for securing accreditation of engineering qualifications under this Act; and
- (f) qualifications and experience required of examiners for professional examinations of accredited engineering qualifications.

Perusal of the above shows that the relevant portion for admissions is section 25A(c), which authorizes the Regulations to provide for minimum qualifications for admission to engineering institutions and minimum standards for holding admission examinations. Section 25A of the Act also does not authorize the Governing Body of PEC to reserve admission seats to the B.Sc. (Engineering) program. The only restriction that can be imposed under section 25A, in the context of the present case, is the minimum qualification for admissions to an engineering institution.

5. The decision of PEC reflected in the letter dated 25.03.2015 provides that the Governing Body of the PEC has reserved seats upto a maximum of 2% for holders of DAE eligible for admission to B.Sc. (Engineering) program offered by the Engineering Institutions. This decision of the Governing Body does not find support from section 8 or 25A of the Act.

6. We now examine the Regulations. Needless to say that Regulations are framed under the Act and have to remain within the four corners of the statutory mandate of the Act. Article 2 of the Regulations provides for the minimum qualifications for admission to BSc (Engineering) programs, while the original Article 2(c) promulgated in the year 1985 provides as follows:-

- (c) For admission in Engineering Institution/ University candidates who have passed Diploma of Associate Engineer shall be eligible for admission only against reserved seats.

DAE were eligible for admission only against the reserved seats. Subsequent to the decision of the Governing Body dated 25.03.2015 fixing 2% of the reserved seats for DAE holders, Article 2(c) also underwent a change and was duly amended vide SRO 417(I) of 2016 dated 14.05.2016 in the following manner:

ARTICLE 2. MINIMUM QUALIFICATION FOR ADMISSION TO ENGINEERING BACHELOR'S DEGREE PROGRAMMES OFFERED BY ENGINEERING INSTITUTIONS AND UNIVERSITIES

A candidate seeking admission in an Engineering Institution/ University for working towards Bachelor's Degree in any recognized branch of Engineering must fulfill the following minimum requirements:--

(a)-(b) ...

- (c) (i) A candidate who has passed the Diploma of Associate Engineer (DAE) Examination, securing at least 60% aggregate marks shall be eligible for applying in admission against reserved seats in relevant discipline of Engineering in which he or she has passed the DAE examination; and the relevancy of DAE will be as determined by Accreditation Committee of this Council; and

(d) ...

While maintaining the condition of reserved seats, additional condition of obtaining 60% aggregate marks in DAE Examination was inserted as a requirement to apply against the reserved seats. Regarding the requirement for applying against reserved seats prescribed in the year 1985, we were informed by the learned counsel for the parties that prior to the amendment in Article 2(c) in 2016, the percentage of reserved seats for DAE holders was not specified and would largely vary from one Engineering Institution to another. Perhaps due to an equitable percentage of reserved seats maintained by the Engineering Institutions for the DAE, it never posed a problem earlier and hence was not challenged since 1985. The impugned restriction of 2% of reserved seats for DAE holders has highlighted the issue and has brought up the question whether admission seats can be reserved by PEC under the Act. Besides petitioners today

are aggrieved by it and have challenged the same and cannot be deprived of the right to make this challenge on the ground that earlier students had not challenged the said Regulation. Perusal of sections 8 and 25A of the Act shows that the PEC or the Governing Body has no power or authority to prescribe reserved seats for DAE for admission into any engineering program.

7. Another dimension of the case is that on one side the Regulations provide for the eligibility criteria/qualifications required to be admitted to the B.Sc. (Engineering) program and allow both the F.Sc. and DAE to be eligible to apply for B.Sc. (Engineering) program, subject to meeting the requirement of 60% aggregate marks in the respective examinations. Yet on the other hand, the Regulation puts a clog on the admission of DAE holders by imposing the condition of reserved seats on them. Other than the fact that the PEC or the Governing Body has no such power to impose such a condition, it is also ex-facie discriminatory against the DAE holders, especially when they are considered eligible for the B.Sc. (Engineering) Program along with the F.Sc. degree holders.

8. The issue of equivalence of F.Sc. and DAE also comes to an end, as both the holders of F.Sc. and DAE are considered eligible qualifications for the purposes of seeking admission to the B.Sc. (Engineering) program under Article 2 of the Regulations. The counsel for the respondent also failed to justify why DAE should not be considered at par with the F.Sc. students on open merit when both of them are eligible for admission under the Regulations. In the absence of any power to reserve seats for admission to the B.Sc. (Engineering) program, both the set of candidates with F.Sc. and DAE have to be treated at par. This parity is created by equal eligibility of DAE for admission. Therefore, the decision of PEC dated 25.03.2015 fixing 2% reserved seats for DAE holders is not only unsustainable under the Act but is also discriminatory. Since PEC cannot reserve seats for any program, the condition of "reserved seats" by the Governing Body under Article 2(c) of the Regulations is also illegal and ultra vires the Act.

9. The best way forward is to allow admissions to B.Sc (Engineering) on open merit and through open competition amongst the F.Sc. and DAE holders. Such a level playing field encourages competition and allows the best of the best amongst the F.Sc. and DAE to be admitted to the B.Sc. (Engineering) Program. The learned Division Bench of the High Court has failed to appreciate the scope and extent of Sections 8 and 25A of the Act and the unlawful imposition of reserved seats for DAE holders through the decision dated 25.03.2015 and through Article 2(c) of the Regulations.

10. For the above reasons, while upholding the decision of the learned Single Bench dated 13.03.2019 and setting aside the impugned judgment dated 30.11.2020 of the Division Bench of the High Court, we hold and declare that the decision of the PEC passed in its 15th Governing Body Meeting dated 25.03.2015 and the words "reserved seats" in Article 2(c) of the Regulations are ultra vires the Act hence they are set aside, having no legal effect. In this view of the matter, these petitions are converted into appeals and allowed.

11. Foregoing are the reasons for our short order dated 18.10.2021 which for the sake of convenience and for completion of record is reproduced hereunder:-

"For reasons to be recorded later, these petitions are converted into appeals, allowed and the impugned judgment is set aside."

MWA/M-6/SC Appeals allowe