

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.1775 of 2017

Muhammad Junaid Alam

Versus

**Federation of Pakistan through its Secretary, Islamabad &
others**

J U D G M E N T

Date of hearing: 19.07.2018.
Petitioners by: M/s Hasham Ahmad Khan, Shehryar Gondal, Mian Waqas Akhtar and Rehan Ahmad Maan, Advocates.
Respondents by: M/s Noshab A. Khan and Ch. Muhammad Umar, Advocates and Mr. Zahid Hussain Malik, Assistant Attorney General of Pakistan.

MUHAMMAD SAJID MEHMOOD SETHI, J.- This consolidated judgment shall dispose of instant writ petition along with following connected writ petitions as common questions of law and facts are involved in these cases:-

1. **W.P. No.1776 of 2017** titled *Kiran Shehzadi v. Federation of Pakistan through its Secretary, Islamabad & others*
2. **W.P. No.1777 of 2017** titled *Imran Khan v. Federation of Pakistan through its Secretary, Islamabad & others*
3. **W.P. No.1778 of 2017** titled *Rizwan Ali v. Federation of Pakistan through its Secretary, Islamabad & others*
4. **W.P. No.1779 of 2017** titled *Ansar Aslam v. Federation of Pakistan through its Secretary, Islamabad & others*

5. **W.P. No.1780 of 2017** titled Usman Shahid v. Federation of Pakistan through its Secretary, Islamabad & others
6. **W.P. No.1781 of 2017** titled Atta ur Rehman v. Federation of Pakistan through its Secretary, Islamabad & others
7. **W.P. No.1782 of 2017** titled Hassan Javed v. Federation of Pakistan through its Secretary, Islamabad & others
8. **W.P. No.1783 of 2017** titled Waseem Akram v. Federation of Pakistan through its Secretary, Islamabad & others
9. **W.P. No.1784 of 2017** titled Irfan Ellahi v. Federation of Pakistan through its Secretary, Islamabad & others
10. **W.P. No.1785 of 2017** titled Inaam Rasool v. Federation of Pakistan through its Secretary, Islamabad & others
11. **W.P. No.1786 of 2017** titled Atif Rashid v. Federation of Pakistan through its Secretary, Islamabad & others
12. **W.P. No.1787 of 2017** titled Abdul Manaam v. Federation of Pakistan through its Secretary, Islamabad & others
13. **W.P. No.1788 of 2017** titled Wasiq Bashir Khan v. Federation of Pakistan through its Secretary, Islamabad & others
14. **W.P. No.1789 of 2017** titled Muhammad Qamar Ikram v. Federation of Pakistan through its Secretary, Islamabad & others
15. **W.P. No.1790 of 2017** titled Mohsin Ali v. Federation of Pakistan through its Secretary, Islamabad & others
16. **W.P. No.1792 of 2017** titled Muhammad Ahsan Abbas v. Federation of Pakistan through its Secretary, Islamabad & others
17. **W.P. No.1793 of 2017** titled Umer Farooq v. Federation of Pakistan through its Secretary, Islamabad & others
18. **W.P. No.1794 of 2017** titled Umer Sharif v. Federation of Pakistan through its Secretary, Islamabad & others

19. **W.P. No.8662 of 2017** titled Tauqeer-ul-Hassan & others v. Federation of Pakistan through its Secretary, Islamabad & others
20. **W.P. No.98315 of 2017** titled Rizwan Mansoor Bajwa & others v. Federation of Pakistan through its Secretary, Islamabad & others
21. **W.P. No.151535 of 2018** titled Irfan Azeem & others v. Federation of Pakistan through its Secretary, Islamabad & others
22. **W.P. No.151537 of 2018** titled Mehwish Riaz & others v. Federation of Pakistan through its Secretary, Islamabad & others
23. **W.P. No.151541 of 2018** titled Maham Asif & others v. Federation of Pakistan through its Secretary, Islamabad & others
24. **W.P. No.160203 of 2018** titled Muhammad Abu Bakar v. Federation of Pakistan through its Secretary, Islamabad & others
25. **W.P. No.201076 of 2018** titled Sana Ullah Khan & others v. Federation of Pakistan through its Secretary, Islamabad & others
26. **W.P. No.215588 of 2018** titled Sheher Bano & others v. Federation of Pakistan through its Secretary, Islamabad & others

2. Through instant as well as connected petitions, petitioners have challenged the vires of the Regulations No.48 & 60 of the Pakistan Registration of Medical and Dental Practitioners Regulations, 2008 (“**the Practitioners Regulations**”), being *ultra vires* the Section 15 of the Medical and Dental Council Ordinance, 1962 (“**the PMDC Ordinance**”) as amended in the year 2012 through the Medical and Dental Council (Amendment) Act, 2012 (“**the Amendment Act**”) and Articles 9 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973 (“**the Constitution**”), with the following prayer:-

“In view of the above, it is, therefore, most respectfully prayed that the Regulations 48 and 60 of the Regulations, 2008 are illegal, unlawful and *ultra vires* the Section 15 of the Ordinance, 1962 and

Articles 9 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

It is further prayed that pending disposal of this petition, the respondents No.3 and 4 may kindly be directed to do what they are by law required to do i.e. to allow the petitioner to sit in the national examination board and forward the name of the petitioner to the Federal Government, if found in possession of sufficient knowledge in the area of medicine, as per the criteria in field.”

3. A major development in reorganization and reconstitution of body of Pakistan Medical and Dental Council (interchangeably referred to as “**PMDC**” or ‘**the Council**’ where appropriate) was brought about by the PMDC Ordinance, after which gradual changes owing to growing needs were introduced through various amendments. Deriving authority from different provisions (mainly Section 33), the PMDC time and again made different Rules / Regulations / Decisions to achieve the purposes of the PMDC Ordinance. The main outcome of exercise of rule-making power delegated to PMDC appeared in shape of promulgation of the Practitioners Regulations. A large number of amendments / substitutions / additions were brought in the PMDC Ordinance by way of enactment of the Amendment Act of 2012. Now, the Practitioners Regulations and the Amendment Act of 2012 are the basis of litigation involving interpretation and reconciliation of their various provisions, scope and extent of delegated legislation and exercise of discretion etc. In present petitions, petitioners have completed their medical degrees from different foreign universities and thereafter applied to appear in the examination conducted by National Examination Board (“**NEB Examination**”) to procure practice licenses, under Section 15 of the PMDC Ordinance. They were declined to appear in NEB Examination on the strength of Regulations No. 48 & 60, which provided that requisite No Objection Certificate (“**NOC**”) before getting admission in a foreign institution and minimum 60% marks in F.Sc. / Intermediate

examination were required in order to appear in NEB Examination. This controversy between petitioners and respondent-PMDC constrained petitioners to file present petitions.

4. Learned counsel for petitioners submit that petitioners completed their M.B.B.S. Degrees from foreign institutions and approached the PMDC for seeking permission to sit in the examination to be conducted by the NEB for registration as medical practitioners, but they are not being permitted on the premise that their marks in F.Sc. are less than 60% and no NOCs were obtained by them from PMDC before getting admission in foreign universities. They further submit that according to Section 15 of the Ordinance of 1962, the only condition for registration with PMDC is the clearance of examination to be conducted by the NEB, thus, the condition of minimum 60% marks in F.Sc. / NOC is against the provisions of the parent statute. They add that when regulations offend against clear cut provisions of the parent statute, same do not carry any legal sanctity. In support of their last contention, learned counsel have referred to Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad and others (2015 SCMR 630), National Electric Power Regulatory Authority v. Faisalabad Electric Supply Company Limited (2016 SCMR 550), Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others (AIR 1981 Supreme Court 746). They add that if foreign degree holders are not allowed to sit in examinations to be conducted by NEB, they would be deprived of their right to earn bread and butter which is against the spirit of Article 9 of the Constitution. In support of their submissions, they have relied upon The Collector of Sales Tax and others v. Superior Textile Mills Ltd. and others (PTCL 2001 CL. 237), Khawaja Ahmad Hassaan v. Government of Punjab and others (2005 SCMR 186), Suo Motu Case No.11 of 2011 (PLD 2014 Supreme

Court 389), Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others (PLD 2016 Supreme Court 808), Basit Ali v. Additional Chief Secretary, Government of the Punjab, Civil Secretariat, Lahore and 3 'others (2005 MLD 599), Sheikh Muhammad Yousaf and another v. District Collector / District Registrar (DOR), Okara and 4 others (PLD 2010 Lahore 123), Messrs D.S. Textile Mills Limited v. Federation of Pakistan and others (PLD 2016 Lahore 355), Ahmad Daniyal v. Islamia College, Peshawar through Registrar and 10 others (PLD 2017 Peshawar 193), Independent Newspapers Corporation (Pvt.) Ltd. and others v. Federation of Pakistan and others (PLD 2017 Lahore 289), New Allied Electronics Industries (Pvt.) Ltd. v. Federation of Pakistan through Secretary, Revenue Division and another (2017 PTD 130), Muhammad Khalid Qureshi v. Province of Punjab through Secretary, Excise and Taxation Department, Lahore and another (2017 PTD 805), Abdul Ghaffar Mallah and others v. Province of Sindh through Chief Secretary and others [2018 PLC (C.S.) Note 26], Waqas Aslam and 2 others v. Lahore Electric Supply Company (LESCO) through Chief Executive and 4 others [2018 PLC (C.S.) 243] and Moazzam Habib and others v. Federation of Pakistan and others (2018 YLR 222).

5. Conversely, learned counsel for respondent-PMDC assisted by Assistant Attorney General in response to notice of Order 27-A of the Code of Civil Procedure, 1908, submit that at the time of admission of petitioners in the foreign institutions, the Practitioners Regulations were in field, therefore the petitioners were bound to fulfill the criteria laid therein. They add that in a number of cases, the Superior Courts have already declared that Regulations framed by PMDC enjoy legal status and eligibility criteria fixed thereunder is *sine qua non*. They further contend that as the petitioners did not obtain requisite NOC prior to their admission in

foreign institutions and some of them even did not clear F.Sc. with 60% marks, hence, they are not entitled for registration under PMDC. They add that as the medical practitioners have to deal with issues relating to health of the general public, thus, quality of medical education may not be allowed to be compromised. To fortify this contention, learned counsel have relied upon Aqib Rasheed and 3 others v. Government of the Punjab through Secretary Health and 4 others (PLD 2011 Lahore 1) and judgment dated 29.10.2014, passed by the Hon'ble Islamabad High Court, Islamabad in **W.P. No.3944 of 2013** titled Omer Ismail Khalid etc. v. Pakistan Medical & Dental Council etc. They submit that Section 15 of the Ordinance of 1962 does not relate to eligibility criteria, thus, the same does not come to rescue the petitioners, rather PMDC enjoys power to determine eligibility criteria in terms of Section 33 of the PMDC Ordinance and unless a person fulfills the eligibility criteria, he cannot be allowed to appear in the examination to be conducted by NEB. In support of their contentions, learned counsel have referred to Nadir Khan and others v. Principal, Khyber Medical College, Peshawar and others (1995 SCMR 421) and Dr. Muhammad Zaheer Babar v. Pakistan Medical and Dental Council through Chairman, Islamabad and 4 others (PLJ 2013 Islamabad 130). They argue that PMDC is a body to regulate the matters relating to admission and registration of medical practitioners, therefore, any Regulation made by it cannot be declared illegal and unlawful on the whims of any individual. They further argue that in view of low standard of education in medical field provided by foreign institutions, firstly, it is incumbent upon an applicant to get requisite NOC from PMDC prior to getting admission and secondly, after completion of degree, has to pass the examination to be held by NEB to prove his eligibility as a practitioner but the petitioners did not obtain requisite NOC, therefore they are not eligible for registration as medical practitioners with PMDC. In support of their contentions,

learned counsel have referred to Pakistan Medical and Dental Council v. Dr. Raza Muhammad Khan (1992 SCMR 1621), Pakistan Medical and Dental Council v. Ziauddin Medical University and others (PLD 2007 Supreme Court 323), Salim Javed Baig and others v. Federal Ombudsman and others (PLD 2016 Lahore 433), All Pakistan Paramedical Staff Federation Unit, SZPMI, Lahore v. Federation of Pakistan and others (PLD 2017 Lahore 640), Pakistan College of Law v. University of Punjab and others (PLD 2017 Lahore 830) and Muhammad Fahad Malik v. Pakistan Medical and Dental Council and others (PLD 2018 Lahore 75).

6. Arguments heard. Available record perused.

7. The very purpose of promulgation of the PMDC Ordinance is duly reflected in its preamble, which is reproduced hereunder:-

“Whereas it is expedient to consolidate the law relating to the registration of medical practitioners and dentists and reconstitute the Medical and Dental Council in Pakistan in order to establish a uniform minimum standard of basic and higher qualifications in medicine and dentistry.”

It is evident from the bare reading of preamble that the PMDC was reconstituted to set up uniform minimum standard of basic and higher qualifications in medicine and dentistry. In the year 2012 major changes have been brought in the PMDC Ordinance by promulgating the Amendment Act, therefore it is important to examine the scheme of the PMDC Ordinance, before and after the amendments through the Amendment Act.

Before the Amendment Act, there were five Schedules of the Ordinance. The recognized medical qualifications granted by medical institutions in Pakistan and outside Pakistan were notified under the First and Second Schedule, respectively. The Third Schedule related to the recognized additional medical qualifications; the Fourth Schedule was for registrable medical

licences and diplomas, while the Fifth Schedule dealt with the recognized dental qualifications.

Section 11 of the PMDC Ordinance governed the recognition of medical institutions and the medical qualifications granted by medical institutions in Pakistan, while sections 12, 13 and 14 dealt with recognition of medical qualifications granted by institutions outside Pakistan. Section 15 provided for the powers of the Council, and the Federal Government, in case of qualifications granted by medical institutions outside Pakistan, other than those notified in the Second Schedule. Section 23 provided for the qualifications, conditions and procedure for registration of medical practitioners possessing qualifications which were recognised medical qualifications for the purposes of the Ordinance. The three provisos to section 23 laid down the conditions for registration. The registration was envisaged in two stages; initially, a person holding qualifications from a recognised medical institution was granted 'provisional registration', and after fulfilling certain conditions, was entitled to get 'full registration'. Section 2(i) defined "recognized medical qualification" as meaning any of the medical qualifications included in the First and Second Schedule or recognized under sections 14 or 15, while section 2(I) defined "registered medical practitioner" as meaning a medical practitioner registered or provisionally registered under the Ordinance.

Pursuant to its powers, particularly under Section 33 of the PMDC Ordinance, the PMDC framed Practitioners Regulations which were notified in the official gazette on 26-1-2009. Part VII of the Practitioners Regulations deals with foreign qualifications and the National Examination Board. The NEB Examination is prescribed to determine the professional competence, or otherwise, of a Pakistani citizen, holding basic medical qualifications from a foreign medical institution. The NEB examination was, therefore,

introduced for the first time through the Practitioners Regulations. The Practitioners Regulations provided that every student obtaining admission in a foreign medical institution was required to get an NOC before joining the medical institution outside Pakistan. The object and purpose of the NEB Examination was to determine the competence, or otherwise, of a candidate for registration and equivalence of the foreign basic or postgraduate medical or dental qualification, as defined in Regulations 2(iv) and (xvii) respectively. Sub-Regulation 1, of Regulation 59, related to those persons who had acquired a foreign basic medical or dental qualification from such medical institutions as were included in the Second Schedule or Fifth Schedule of the Ordinance. The said Regulation provided that they were not required to qualify the NEB examination for being provisionally registered under section 23 of the Ordinance.

A combined reading of the provisions of the Ordinance, as they existed prior to the Amendment Act, read with the Practitioners Regulations, makes it obvious that the requirement to qualify the NEB Examination, so as to be entitled to full registration under the Ordinance was mandatory, for those who held medical qualifications from a foreign medical institution other than those notified under the Second Schedule.

8. The Amendment Act of 2012 made fundamental changes in the law. Section 15 of the PMDC Ordinance was substituted with new provision, which incorporated in the statute the concept and procedure for registration of students qualifying from educational institutions outside Pakistan, previously provided in the Practitioners Regulations. The Second Schedule of the PMDC Ordinance was omitted and instead Section 15 has been inserted, which deals with the registration and recognition of qualifications granted by medical institutions outside Pakistan. Section 15, as

inserted through the Amendment Act, is as follows:-

“15. Power of the Council to certify certain persons to be possessed of sufficient medical qualifications.— (1) If, after an examination by a board constituted by the Council, the Council is satisfied that a person holding a qualification granted by a medical institution outside Pakistan, is possessed of sufficient knowledge and skill to be registered as a practitioner for the purpose of this Ordinance, it may recommend to the Federal Government to issue a notification in favour of such person to register him and his qualification. Upon such notification, the Council shall register the qualification possessed by the person without it being entered in any of the Schedules of this Ordinance.

(2). The Council shall register the qualification granted by a medical institution outside Pakistan, Possessed by the person by maintaining a separate list in the Register.”

Section 15, as amended through Amendment Act of 2012, has restricted the powers of respondents to the extent of assessing medical knowledge of the students qualifying from educational institutions outside Pakistan by taking an examination. After having taken the examination, if the respondents are satisfied that candidates holding foreign degrees are possessed with sufficient knowledge and skill, then the names of all those qualified candidates are to be recommended to the Federal Government to issue a notification in their favour to be registered as medical practitioners in Pakistan.

9. The Practitioners Regulations of 2008 were made prior to the substitution of Section 15 of the PMDC Ordinance brought in the year 2012. The impugned Regulation No. 48 imposes a condition upon candidates who intend to get admission in a medical institution outside Pakistan to obtain NOC from the Council. The said Regulation reads as under:-

“48. On the commencement of these regulations, a person who gets admission in any medical or

dental course in a foreign country without being in possession of a valid no objection certificate issued by the Council to him prior to joining the course abroad shall not be eligible for processing of registration of his qualification if it is not included in the Second, Third, or Fifth Schedule to the PM&DC Ordinance 1962. No person shall be allowed to appear in the National Examination Board examination without the eligibility certificate issued by the Council. Persons admitted in medical and dental courses on or before the approval of these regulations shall be issued eligibility without the no objection certificate by the Council provided they fulfill all other requirements.”

Whereas the impugned Regulation No. 60 debars the foreign qualified candidates with less than 60% marks in F.Sc. from taking NEB Examination. The said Regulation is reproduced herein below:-

“60. A candidate who acquires admission after the end of the year of commencement of these regulations into a foreign medical school with less than 60% marks in F.Sc. premedical or equivalent qualification shall not be entertained for NEB Examination under any circumstances.”

The Practitioners Regulations to the extent of dealing with foreign qualified students appear to be in conflict with the substituted Section 15 of the PMDC Ordinance. The newly substituted Section 15 now only empowers the respondents to take examination and after having taken the same, if the Council is of the opinion that a candidate does not possess sufficient knowledge and skill to practice, then it may decline to recommend such candidate’s name to the Federal Government to be registered as a medical practitioner in Pakistan.

By virtue of Regulations No.48 & 60 of the Regulations of 2008, medical students having foreign degrees have been restrained not only from seeking knowledge of medicine from foreign country but have also been denied an opportunity to

demonstrate that they possess sufficient knowledge and skill to practice in Pakistan, whereas no such restriction has been placed in Section 15 of the Ordinance of 1962, reproduced supra.

10. The Practitioners Regulations have been framed in exercise of powers conferred upon PMDC under Section 33 of the Ordinance of 1962 but a careful appraisal of Section 33 makes it clear that said provision of law is silent about powers to make Regulations regarding candidates intending to get admission in foreign medical institutions, students getting medical education abroad and candidates who completed medical education from medical institutions outside Pakistan. For ease of reference, Section 33 is reproduced hereunder:-

33. Power to make Regulations.— (1)The Council may, with the previous sanction of the Federal Government, make Regulation generally to carry out the purposes of this Ordinance, and, without prejudice to the generality of this power, such Regulations may provide for—

- (a) the management of the property of the Council and the maintenance and audit of its accounts;
- (b) the summoning and holding of meetings of the Council, the times and places where such meetings are to be held, the conduct of business thereat and the number of members necessary to constitute a quorum;
- (c) the powers and duties of the President and Vice President;
- (d) the mode of appointment of the Executive Committee and other Committees, the summoning and holding of meetings, and the conduct of business of such Committees;
- (e) code of practice and ethics for the medical and dental practitioners;
- (f) the appointment, powers, duties and procedures of medical and dental inspectors;
- (g) the conditions and procedure for maintenance, compilation and publication of the Register of medical and dental practitioners and of health care

- providing facilities and their minimum requirements and the fees to be charged for registration and, if necessary, for opening of sub-offices or branches for this purpose;
- (h) the procedure for any inquiry under sub-section (1) of section 31; and
 - (i) any matter for which under this Ordinance provision may be made by regulations.
- (2) Notwithstanding anything contained in sub-section (1) the Council shall make Regulations which may provide for—
- (a) prescribing a uniform minimum standard of courses of training for obtaining graduate and post-graduate medical and dental qualifications to be included or included respectively in the First, Third and Fifth Schedules;
 - (b) prescribing minimum requirements for the content and duration of courses of study as aforesaid;
 - (c) prescribing the conditions for admission to courses of training as aforesaid;
 - (d) prescribing minimum qualifications and experience required of teachers for appointment in medical and dental institutions;
 - (e) prescribing the standards of examinations, methods of conducting the examinations and other requirements to be satisfied for securing recognition of medical and dental qualifications under this Ordinance;
 - (f) prescribing the qualifications, experience and other conditions required for examiners for professional examinations in medicine and dentistry antecedent to the granting of recognized medical and dental and additional medical and dental qualifications;
 - (g) registration of medical or dental students at any medical or dental college or school or any university and the fees payable in respect of such registration;
 - (h) laying down criteria including university affiliation, conditions and requirements for recognition and continuation of recognition and for grant of status of a teaching institution of institutions and organizations under this Ordinance and on all connected matters of inspection of medical and dental institutions for recognition and continuation of recognition and

- inspection of examinations in these institutions and fee for such inspections;
- (i) terms and conditions of service for all employees appointed under section 9;
 - (j) election of members of the Council; and
 - (k) prescribing a uniform minimum standard for continuous professional development for registered graduate and post-graduate medical and dental practitioners.”

It is clear from above provisions of Section 33 of the Ordinance that power of the Council to make Rules / Regulations is clearly defined. Methodology and guidelines have been provided. Discretion has been structured. Power of PMDC has been regulated through a statutory provision leaving no scope of unfettered and arbitrary powers to make Regulations. Imposition of conditions on candidates intending to get admission in foreign medical institutions through impugned Regulations is not in line with the express provisions of substituted Section 15 of the Ordinance, which tantamount to enhancement of powers overriding the statutory provision and is not permissible. It is settled that power is controlled and regulated by the parent statute and rule-making authority cannot enhance it. It has to remain within the scope of delegated legislative power given by the parent statute. In the instant case, impugned Regulations are not at the same pedestal as its parent statute. The efficacy of provisions of a statute cannot be left to the kind mercy of rule-making power of the Council. The command of legislature cannot be overridden by the fiat of the Council. Complete, absolute, unclear, unguided and uncontrolled rule-making power has not been given by the parent statute. For the sake of arguments even if the impugned Regulations are considered to be made within the purview / scope of Section 33 of the Ordinance and given effect thereto, then it will make the Section 15 of the Ordinance redundant whereas under the principles of interpretation, statutory provision must be interpreted

within the meaning that was attributed to it by the language and specific words used by the Legislature. Redundancy cannot be attributed to any word used therein and while interpreting the law, a specific provision of any statute, which is independent in nature, cannot and should not ordinarily be held to be redundant, especially on the touchstone of another independent provision of the same statute. All possible efforts should be made to apply and adhere to the rules of purposive and harmonious construction, so that the allegedly conflicting provisions should be reconciled and saved. Hence, impugned Regulations are *ultra vires* the provisions of Section 15 read with 33 of the Ordinance of 1962. Reference can be made to Waqar Zafar Bakhtawari and 6 others v. Haji Mazhar Hussain Shah and others (PLD 2018 Supreme Court 81), Searle IV Solution (Pvt.) Ltd. and others v. Federation of Pakistan and others (2018 SCMR 1444), Aman Ullah Khan and others v. The Federal Government of Pakistan through Secretary, Ministry of Finance, Islamabad and others (PLD 1990 Supreme Court 1092), Director Food, N.-W.F.P. and another v. Messrs Madina Flour and General Mills (Pvt.) Ltd. and 18 others (PLD 2001 Supreme Court 1), Khawaja Ahmad Hassaan's case supra, Dr. Mobashir Hassan and others v. Federation of Pakistan and others (PLD 2010 Supreme Court 265), Messrs S.M. Ilyas and Sons Ltd. v. Monopoly Control Authority, Islamabad and another (PLD 1976 Lahore 834), Muhammad Aslam and others v. Punjab Government and others (1996 MLD 685) and Shaukat Ali Mian and another v. The Federation of Pakistan (1999 CLC 607).

11. It is equally well-settled that rules / regulations can neither go beyond the scope of the parent statute nor can they, by themselves, enlarge the scope of statutory provisions. They cannot also militate against the provisions under which they were made. Rule-making power is an incidental power that must follow and not run parallel to the parent statute. They are meant to deal with

details and can neither be a substitute for the fundamentals of the parent statute nor can add to them. There are two main checks on the power of the legislature to delegate, these being its good sense and the principle that it should not cross the line beyond which delegation amounts to abdication and self-effacement. The only requirement of law in such situations is to insist that the subordinate body charged with the duty of making rules / regulations must strictly confine itself within the sphere of its authority for the exercise of its subordinate legislative power and in each case, it is the duty of the Courts in appropriate proceedings to be satisfied that the rules / regulations so made are:

- (a) by the authority mentioned in the Act and
- (b) within the scope of the power delegated therein.

12. A rule-making body cannot frame rules / regulations in conflict with or gating from the substantive provisions of the law or statute under which the rules / regulations are framed. A rule / regulation, which the rule-making authority has power to make, is liable to be declared invalid on the following grounds:-

- (1) Powers entrusted for one purpose are deliberately used with the design of achieving another, itself unauthorized or actually forbidden.
- (2) It shows on its face a misconstruction of the enabling law or a failure to comply with the conditions prescribed under the parent statute for the exercise of the powers.
- (3) It is not capable of being related to any of the purposes mentioned in the parent statute.

The initial difference between subordinate legislation and statute law lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority, and that Courts of law, as a general rule, do not give effect to the rules / regulations, etc. thus made, unless satisfied that all the conditions precedent to the validity of the rules / regulations are fulfilled. The

Courts, therefore, will require due proof that the rules / regulations have been made and promulgated in accordance with the statutory authority. In the absence of express statutory provision to the contrary, the Courts may inquire whether the rule-making power has been exercised in accordance with the provisions of statute by which it is created either with respect to the procedure adopted, the form or substance of the regulation, or the sanction, if any, attached to the regulation. It follows that the Courts may declare as invalid and *ultra vires* a regulation which fails to comply with the statutory essentials.

13. It is also relevant to observe here that when the legislature confers power on authority to frame rules / regulations it is expected that such powers will be used only bona fide, in a responsible spirit and in the true interest of the public and in furtherance of the object for the attainment of which such powers were conferred. It cannot be said that an unlimited right of delegation is inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. Legitimacy of delegation depends entirely upon its being used as an ancillary measure which the legislature considers to be necessary for the purpose of exercising its legislative powers effectively and completely. The legislature must retain in its own hands the essential legislative functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of law, and what can be delegated is the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the power to make it. Rules / regulations continue to be rules subordinate to the parent statute, and though for certain purposes, including the purpose of construction, they are to be treated as if contained in the statute, their true nature as subordinate legislation is not lost. Rule of interpretation is that if subordinate legislation is directly repugnant to the general purpose

of the statute which authorizes it, or indeed is repugnant to any well established principle of statute, it is either *ultra vires* altogether, or must, if possible, be so interpreted as not to create an anomaly. If reconciliation was found to be impossible between the provision of statute and the rules / regulations made thereunder and the latter is found to be in excess of the statutory power authorizing them, the subordinate provision, the rules / regulations so made, must give way and such rules / regulations shall be held to be *ultra vires* the parent statute. But before going to that length, the Courts will have to struggle against such a construction and will have to make an effort within the bounds of reason to bring them within the ambit of the rule-making power if that can be possibly so done. Analyzing Regulations No.48 & 60 on the touchstone of rules of interpretation, discussed in the foregoing paragraphs, Regulations No.48 & 60 are in gross contradiction to the provisions of Section 15 of the Ordinance of 1962 as well as against the spirit of Section 33 of the Ordinance *ibid*, reproduced *supra*, which do not provide any parameters / guidelines for rule-making *viz a viz* foreign qualified students. Resultantly, impugned Regulations, being *ultra vires* the Section 15, are illegal and without lawful authority. Reference can be made to *Khawaja Ahmad Hassan v. Government of Punjab and others* (PLD 2004 Supreme Court 694), *Suo Motu Case No.13 of 2009* (PLD 2011 Supreme Court 619), *Suo Motu Case No.11 of 2011* (PLD 2014 Supreme Court 389) and *Independent Newspapers Corporation (Pvt) Ltd and others v. Federation of Pakistan and others* (PLD 2017 Lahore 289).

14. Even otherwise, the respondents on many occasions have allowed private medical colleges to give admission to candidates who have obtained less than 60% marks in their F.Sc. examination in the year when some of the petitioners were also undergoing their medical degree outside Pakistan. In this regard, petitioners have

referred to letter dated 16.01.2017, issued by the respondent-PMDC, which is reproduced hereunder:-

“Subject: **RESERVATIONS ON CRITERIA FOR ADMISSION IN MBBS / BDS IN BALOCHISTAN.**

Dear Sir,

Your request regarding the subject matter was considered by the Council in its 149th Session held on 14th January, 2017. The Council deliberated over the need of facilitation for such regions as being done worldwide. The Council felt that there is dire need of provision of education facilities to these regions and hence relaxed eligibility criteria thereof.

After having deliberate discussion the Council unanimously decided that applicants having acquired equivalent to or more than 50% marks in FSc / HSSC / Intermediate level shall be allowed to take admission in MBBS / BDS courses, for a period of five years, only for public sector colleges and students having physically studied in Balochistan from the same regions.

However a proposed mechanism of development alongwith details of affected regions for which facilitation is required will be submitted by the Provincial Government.

This issued with the approval of the Competent Authority.”

Learned counsel for respondent-PMDC argued that concession given to candidates belonging to the Province of Baluchistan is justified as the same was done with intent to facilitate and develop such regions where literacy rate is very low and PMDC Management Committee took a decision to facilitate students from said province, thus, dissimilar treatment in dissimilar circumstances is permissible. There is no cavil to this argument, however, at the same time, learned counsel for respondent-PMDC is not extending this concession to the foreign qualified students rather submits that foreign qualified students will discriminate the students in Pakistan who could not obtain 60% marks in F.Sc. and

could not get admission in medical colleges whereas regarding students hailing from the Province of Baluchistan, he contends that dissimilar treatment in dissimilar circumstances is justified.

Needless to observe here that dissimilar treatment is permissible on the touchstone of reasonable classification and intelligible differentia. Reasonable classification is permissible under Article 25 of the Constitution. It does not offend against equal protection principle. The State may classify persons for purpose of legislation and pass laws applicable only to persons and objects within designated class according to the intended public object. However, class legislation against some and favouring others within a particular class is prohibited. Reliance is placed upon Muhammad Khalid Qureshi v. Province of Punjab through Secretary, Excise and Taxation Department, Lahore and another (2017 PTD 805), Moazzam Habib and others v. Federation of Pakistan and others (2018 YLR 222), Abdul Ghaffar Mallah and others v. Province of Sindh through Chief Secretary and others [2018 PLC (C.S.) Note 26] and Waqas Aslam and 2 others v. Lahore Electric Supply Company (LESCO) through Chief Executive and 4 others [2018 PLC (C.S.) 243].

15. Learned counsel for PMDC has also argued that this Court cannot sit as a Court of appeal over the decisions of statutory bodies. Suffice it to say that as per Articles 4 & 5 of the Constitution, every citizen is entitled to be treated in accordance with law whereas respondents are under legal duty to obey the command of law and the Constitution. Section 15 of the Ordinance has placed no restriction on the foreign qualified candidates from sitting in NEB examination, after clearing which they can be recommended for registration as practitioner in Pakistan. The manifest provisions of Section 15 have to be given effect against any decision / Rules / Regulations made by respondent-PMDC contradicting the statutory provisions. Furthermore, Article 18 of

the Constitution safeguards fundamental right of the citizens / petitioners of freedom of trade, business and profession. Respondent-PMDC is under statutory obligation to secure equal protection of law to all citizens. Reliance is placed on Tariq Khan Mazari and 3 others v. Government f Punjab through Secretary Industries and 3 others (PLD 2016 Supreme Court 778) and Dossani Travels (Pvt.) Ltd and others v. Messrs Travels Shop (Pvt) Ltd. and others (PLD 2014 Supreme Court 1)

16. As far as argument of learned counsel for respondent-PMDC, that impugned Regulations have been introduced in order to ensure quality medical education, is concerned, suffice it to say that even candidates having foreign medical qualification have been required under Section 15 to undergo examination for the test of their professional ability and skill. The said Section clearly lays down that after clearing NEB examination, they may be recommended for registration as Practitioners in Pakistan. The case law, relied upon by learned counsel for respondent-PMDC, is not relevant for the reasons that none of the said cases pertains to the issue of vires of impugned Regulations with reference to Section 15 of the PMDC Ordinance as amended in the year 2012 through the Amendment Act.

17. I have also examined the recent judgment dated 12.01.2018, passed by the Hon'ble Apex Court in **Civil Appeals No.3 and 4 of 2018 etc** titled Pakistan Medical and Dental Council through its President v. Muhammad Fahad Malik etc. In the said esteemed judgment of the august Court of the country has answered the following questions mentioned in its Para No. 5:

(a) Whether after the 18th constitutional amendment, whereby the medical profession was included in Part II of the Federal Legislative List, the laws, especially, the Medical and Dental Council (Amendment) Ordinance, 2013 (*the Ordinance of 2013*) and the Ordinances of 2014 and 2015 (*collectively referred to as the 'Amendment Ordinances'*),

amending the Ordinance of 1962, were validly enacted or the approval of the Council of Common Interests (CCI) was necessary before promulgating those laws;

(b) Whether the approval of CCI was necessary before making the Regulations of 2016;

(c) Whether after the lapse/repeal of the Amendment Ordinances, the amendments/substitution made thereby would survive or be gone with them;

(d) Whether the actions/activities undertaken by PMDC during the period when the Amendment Ordinances were in the field and those undertaken after the lapse/repeal thereof, were protected/saved, and if yes, to what extent; and

(e) If the amendments/substitutions made by the Amendment Ordinances have gone with their lapse/repeal, whether the members/President of the PMDC, existing prior to that, stood revived or not?

Although, in the afore-referred case, the Hon'ble Supreme Court has held that the Parliament has conferred rule-making powers to the PMDC and has authorized to monitor the whole process of admission, but in the afore-referred judgment, vires of the Regulations No.48 & 60 of the Regulations of 2008 have not been examined with reference to the amended provisions of Section 15 of the PMDC Ordinance, therefore, this Court can safely examine the vires of the impugned Regulations *viz a viz* Section 15 *ibid*.

18. Furthermore, right to life / livelihood of petitioners and many other foreign qualified candidates is involved, which could not hang on to fancies of individuals in authority and includes all those aspects of life which go to make a man's life meaningful, complete and worth-living. By disallowing the petitioners to sit in NEB Examination in violation of amended Section 15, the respondents have deprived the petitioners to earn their livelihood and to sustain their life and to thrive in the field of medicine. Prohibition placed on the petitioners and similarly placed foreign qualified doctors has far reaching implications and amounts to

depriving the petitioners of their right of livelihood, guaranteed and protected under Section 15 of the Ordinance of 1962 read with Article 9 of the Constitution. Reliance is placed on National Engineering Services Pakistan [Nespak] (Pvt.) Limited and others v. Kamil Khan Mumtaz and others (2018 SCMR 211), Suo Moto Case No. 19 OF 2016 (2017 SCMR 683) and Pir Imran Sajid and others v. Managing Director/General Manager (Manager Finance) Telephone Industries Of Pakistan and others (2015 SCMR 1257)

19. In view of the above discussion, impugned Regulations 48 and 60 of the Practitioners Regulations are declared illegal, unlawful and *ultra vires* the Section 15 read with Section 33 of the PMDC Ordinance. The respondents No.3 and 4 are directed to allow the petitioners to sit in the forthcoming NEB Examination (if not possible within three months from today) and if they are found in possession of sufficient knowledge and skill to be registered as practitioners for the purpose of the PMDC Ordinance, they shall be recommended to the Federal Government to issue a notification in their favour to register them and their qualification.

20. This and connected petitions are **allowed** in the above terms.

(Muhammad Sajid Mehmood Sethi)
Judge

Announced in open Court on 09.10.2018.

Judge

APPROVED FOR REPORTING

Judge