

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mian Saqib Nisar, HCJ
Mr. Justice Umar Ata Bandial
Mr. Justice Ijaz ul Ahsan

Civil Petition No.766 of 2018

Against order dated 06.03.2018 passed by the
Islamabad High Court, Islamabad, passed in Writ
Petition No.855 of 2018.

Hashmat Medical and Dental College

Petitioner

VERSUS

Pakistan Medial and Dental Council through its
President and others

Respondents

For the Petitioner:

Mr. M. Ahsan Bhoon, ASC.
Ch. Akhtar Ali, AOR

For Respondents No.1-3:

Hafiz Arfat Ahmed, ASC.
Dr. Waseem Hashmi,
Registrar, PM&DC

For Respondents No.2:

Brig. M. Azhar, Registrar, RIPHA a/w
Mr. Shamshadullah Cheema, ASC.

For students:

Dr. Babar Awan, Sr. ASC.

For FIA:

Dr. Usman Anwar, Dir, FIA, Lahore.
Mr. Sami ur Rehman Jami, Dy. Dir. FIA.
Mr. Qasier Masood, Addl. Dir. (Law) FIA.

Date of hearing:

04.04.2018

ORDER

IJAZ UL AHSAN, J.- The petitioner seeks leave to
appeal against an order dated 06.03.2018 passed by the
Islamabad High Court, Islamabad in Writ Petition No.855 of
2018. Pending adjudication of the main case, the petitioner
filed an application for interim relief to the effect that,
Respondent No.2 may be directed to conduct examination of
the students forthwith to save their educational career.
Through the impugned order the relief sought, was declined.

ATTESTED,

Court Associate
Supreme Court of Pakistan
Islamabad

2. Briefly stated the facts necessary for decision of this *lis* are that the petitioner, Hashmat Medical and Dental College (*the petitioner-college*) filed a writ petition seeking restraining orders against Pakistan Medical & Dental Council (*Respondent No.1*) from interfering in the smooth running and functioning of the petitioner-college and stopping it from admitting students. A declaration was also sought that the actions of Respondent No.1 be declared illegal and without lawful authority for all times to come and it may be directed to refrain from interfering in the affairs of the petitioner-college in any manner whatsoever. It was also prayed that Riphah International University (*Respondent No.2*) be directed to conduct first MBBS professional examination of the students of the petitioner-college before 15.03.2018.

3. It was averred in the petition that the petitioner-college was established in the year 2011 under the name and style of Hashmat Medical and Dental College, Tanda Chowk Jalalpur Jattan, District Gujrat. It was recognized by Respondent No.1 on 02.01.2012. The petitioner-college was affiliated with University of Health Sciences, Lahore (UHS) on 09.10.2012. However, subsequently, Respondent No.1 did not permit students of the petitioner-college to appear in the examination which were held in the year 2013 and also stopped it from further admissions. This prompted the petitioner-college to file a writ petition bearing No.30970 of 2013 before the Lahore High Court, Lahore. In the specific facts and circumstances of the case, the learned High Court

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

permitted the students to appear in the examination. However, it restrained the petitioner-college from undertaking further admissions. Having found that the petitioner-college lacked even the basic facilities, infrastructure, paraphernalia and faculty necessary for setting up and running a medical college, as per requirements of Respondent No.1, the petitioner was directed to deposit a sum of Rupees 70 Million for refund of fees paid by the students who had been granted admissions but could not receive medical education. Under directions of the learned High Court, students who had cleared the examination were adjusted in other medical colleges by Respondent No.1 and the Ministry of Health. It is pertinent to mention that on 27.11.2013, Respondent No.1 stopped the petitioner-college from further admissions and the UHS disaffiliated it.

4. It appears that having come to a dead end with Respondent No.1 and the UHS, the petitioner-college chose to look to other avenues. It approached Respondent No.2 and sought affiliation with the same. Simultaneously, it approached Respondent No.1 for registration. While the matter was under process and apparently without meeting the basic requirements for setting up and running a medical college, in terms of infrastructure facilities and faculty, the petitioner-college filed a writ petition bearing No.4380 of 2016 before the Islamabad High Court, Islamabad in which the following order was passed:-

"Learned counsel for the petitioner after seeking instructions has submitted that the petitioner's college is

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

taking emergent steps to clear all the deficiencies in the petitioner's college so as to meet all the requirements under the Pakistan Medical and Dental Council ("PM&DC") Ordinance, 1962, read with all the applicable regulations.

2. Learned counsel for the PM&DC submits that the PM&DC shall carry out an inspection of the petitioner's college within a period of six months from today after due notice to the petitioner, so as to determine whether all the requirements under the said laws had been satisfied by the petitioner's college. In the event, the petitioner upon such an inspection, falls short of the requirements of the PM&DC, any admissions made in the interregnum, shall be at the risk and cost of the petitioner.

3. Disposed of in the above terms. This issues with the consent of the learned counsel for the contesting parties."

5. It also appears that between 27.11.2013 when Respondent No.1 stopped the petitioner-college from further admissions and the UHS disaffiliated the same, it had been undertaking unauthorized and illegal admissions despite the fact that it neither had affiliation with a medical university nor had it been allowed or recognized by Respondent No.1. As a matter of fact, Respondent No.1 repeatedly wrote letters to the petitioner-college not to admit students and warned that if any student was admitted before issuance of permission by Respondent No.1, the responsibility of any adverse effect shall be entirely on the petitioner-college. The order passed by the Islamabad High Court reproduced above also contained a warning to that effect.

6. When the matter came up before this Court, considering that it has been undertaking an extensive exercise of scrutinizing the affairs of a large number of medical colleges all over the country in the private sector in

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

its Suo Moto jurisdiction Respondent No.1 (PM&DC) in its capacity as the regulator of medical colleges in the country was also summoned. The petitioner claims to be an affiliated college of Respondent No.2 (Riphah International University), Islamabad. Surprisingly, and to our utter dismay and disappointment the representatives of Respondent No.2 informed us that the petitioner-college had only provisionally been accepted as a constituent college which was subject to submission of a registration certificate issued by Respondent No.1 and fulfillment of a number of other terms and conditions contained in the letter issued by Respondent No.2 in this behalf.

7. This Court was informed by Respondent No.1 in no uncertain terms that the petitioner-college neither fulfilled the requirements nor met the minimum benchmarks of infrastructure facilities, affiliation with hospitals and availability of faculty as per requirements of the PM&DC. We were further informed that a team of Respondent No.1 had been constituted to visit the petitioner-college, conduct an inspection and submit a report. In addition, we were also informed that despite questionable legality and propriety of their actions, lack of affiliation and denial of registration by Respondent No.1, the petitioner-college had charged excessive amounts of fees from students in the form of admission fee, tuition fee, hostel fee, other miscellaneous charges and donations, etc.

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

8. On the basis of above information, we in the presence of learned counsel for the petitioner-college, representatives of Respondents No.1 and 2, learned counsel for the students and two representatives of Federal Investigation Agency, passed the following order on 27.03.2018.

"This matter was taken up in the morning when during the course of hearing, we come across two writ petitions concerning the petitioner Medical College pending before the learned High Court bearing Writ Petitions No.943 and 855 of 2018. Therefore, it was directed that the record of both the noted writ petitions be summoned through special messenger today by 4 o'clock. The record is available before us now.

2. *Heard. As we have directed vide our order dated 24.3.2018 in SMC No.1/2010 while sitting in Branch Registry of this Court at Lahore that all the Medical Colleges shall refund any amount which has been received by them from the students in excess to Rs.8,50,000/- (inclusive of hostel charges and transportation charges) received in the nature of any donation/charity/contribution, etc., within a period of ten days. Dr. Usman Anwar, Dir. FIA Punjab Lahore is directed to take over the required record of the petitioner Medical College by the end of this Week and submit a report as to what amount has been charged in excess of the above mentioned amount by the petitioner from its students.*

3. *As regards the question whether the petitioner Medical College is equipped with all standardized faculty as also the requisite equipment, etc., and about the inspection conducted by the PMDC, we have been apprised by the Registrar of the PMDC that such report shall be considered by the PMDC in its next meeting scheduled to be held on 29.03.2018. Let the PMDC submit a report about the deficiencies which have been noticed in the petitioner Medical College which are the necessary requirement of a Private Medical College as per the standards laid down by the PMDC. In the meantime, subject to meet the requirements of the respondent University, the respondent University on the receipt of the fee of Rs.40,000/- per student, which is to*

ATTESTED

[Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

be paid to the University within one week from today, shall conduct the examination of 1st Year of the students of the petitioner Medical College. In case the petitioner Medical College does not fulfill the requirements of the respondent University, the University is not bound to take the examination. However, for the purpose of resolving the issues, if any between the petitioner and the respondent University, the matter be brought before this Court through Miscellaneous Application in order to save the educational career of the students. The petitioner college shall also provide its merit list on the next date of hearing. Re-list on 04.04.2018.

9. When the matter was taken up for hearing today, Dr. Usman Anwar, Director FIA, Punjab, Lahore appeared and submitted a voluminous and comprehensive investigation report, the contents of which are highly disturbing—to say the least. We have been informed that the petitioner-college had been charging excessive amounts of fees from the students for which no receipt was issued. This information was collected from the students on a proforma distributed amongst them to provide information about the sums of money paid by them by way of tuition fee, admission fee, registration fee, hostel fee and donation, etc. No accounts or formal record of amounts received had been maintained in any form. On the basis of information collected by the FIA, it appears that a sum of Rs.48,153,000/- has been received by the petitioner-college from its students in excess of Rs.850,000/- per student annually, which had been allowed by this Court to be charged by legitimate private medical colleges with the requisite facilities, registrations and affiliations from students. It has also been mentioned in the report that educational facilities including teaching staff and hospital, general environment,

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

classrooms and other related facilities are much worse than some of other medical colleges including Red Crescent Medical College which was recently visited by the FIA team. Further, the quality of education is highly substandard, the so-called affiliated hospitals have no facilities, their wards were found empty and some were even locked indicating that there were no patients, which is a prerequisite for a teaching hospital. The report has been concluded in the following words:-

"It is evident from the above narrated facts that college was not maintaining single set of record for concealment of their wrong doings. Consultant cum agent were hired by the college for admission of the students. Consultant charged extra amounts in the name of donations in cash and that was not deposited in regular account of the college and no receipts were given to students. Admissions for the session 2017-18 have been conducted surreptitiously by college administration and records have not yet been provided to the accounts branch for record keeping."

10. The Registrar of the PM&DC is also present in Court. He submits that a team of PM&DC which visited the petitioner-college and the so-called hospitals (with which it claims to have been affiliated), had submitted a report stating that neither the petitioner-college nor the hospitals meet the required standards; are deficient in staff; do not possess the requisite facilities; and that the petitioner-college is not in a condition to impart any form of education let alone medical education to the students.

11. The above state of affairs is a sad commentary on the state of medical education being imparted by non-professional, unethical and unscrupulous elements whose


ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

sole purpose is generation of money at the cost of poor students whose parents pay huge sums of money as fees/donations to fulfill their dream of getting a good medical education for their children. Having examined the ground realities and landscape of medical education in the private sector prevailing in the country we are of the firm view that medical education needs strict and stringent regulation and monitoring by the PM&DC. It must be ensured that only those medical educational institutions which have all requisite facilities, equipment, paraphernalia, infrastructure, faculty and support staff together with affiliation with genuinely operating and functional hospitals—are allowed to function. And fake colleges which have been set up by unscrupulous and unprofessional commercial investors who consider this to be a convenient avenue to multiply their investment are weeded out firmly, quickly and permanently. Any institution that fails to meet the requirements and fulfill the standards set by PM&DC, after being given reasonable time to make up the deficiencies needs to be shutdown with its registration cancelled and affiliation withdrawn.

12. In the above background, we have gone through the impugned order passed by the learned High Court. We find that the order has validly and correctly been passed and is based upon a proper appreciation of the principles governing grant of mandatory injunctions. Even otherwise, this Court does not ordinarily interfere in interim orders. Therefore, no interference in the order of the learned High Court is called for. However, in the interest of justice, let a

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

copy of this order be placed before the learned High Court in Writ Petition No.855/2018 for further proceedings in accordance with law.

13. In view of the aforesaid facts and circumstances and keeping in view that a large number of students have been granted admissions after payment of excessive amounts of fees and donations and have their future career linked to a medical education, we are constrained to direct as follows:-


- a) *FIA shall lodge an FIR against the owners, sponsors and management of the petitioner-college. FIA shall seal the records, investigate the matter from all angles and take appropriate action in accordance with law;*
- b) *The management of the petitioner-college is directed in the first instance by way of a provisional step to return all amounts in excess of Rs.850,000/- per student per year received by it from the 98 students whose names appear in the report submitted by the FIA within fifteen days from today in addition to all other students from whom amounts in excess of Rs.850,000/- per year per student have been recovered in the past;*
- c) *The Management shall within 15 days refund the entire amount received from each of the students who were granted admission but did not study for the whole year which would have entitled them to appear for the first professional MBBS examination;*
- d) *That the petitioner-college is restrained and prohibited from undertaking any admissions in the future. Respondent No.1 shall issue*

ATTESTED

appropriate orders for cancellation of its registration;

- e) That Respondent No.1 shall immediately remove the petitioner-college from its website and publicize this fact through the print and electronic media with adequate prominence that it is neither recognized by the PM&DC nor does it have the status of a constituent college or affiliation with any medical university. Public at large shall be made aware that the petitioner-college is not authorized to grant admission or impart Medical/Dentistry education;
- f) As far as concerns the students who fulfilled the requirements to appear in the first year MBBS professional examination and on whose behalf a sum of Rs.40,000/- per student has been deposited with Riphah International University, they shall be examined by the said University for MBBS first year professional examination only;
- g) Riphah University shall also allow those students who fail to qualify in the first attempt, to sit for supplementary examination in accordance with its rules/regulations, on payment of the requisite fee;
- h) Those students who qualify the examination shall be adjusted by PM&DC in other approved, affiliated and functional medical colleges in Punjab; and
- i) PM&DC shall decide the application of the petitioner-college for registration in accordance with law, in light of the inspection

ATTESTED

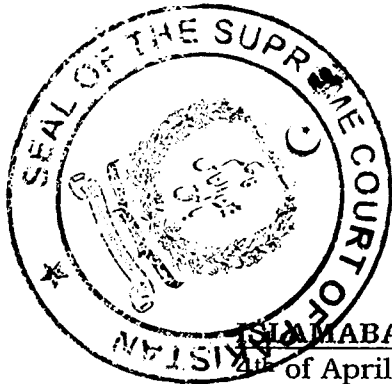

Court Associate
Supreme Court of Pakistan
Islamabad

report already submitted with it. In case, the petitioner-college has any grievance against the order of PM&DC, it shall be brought to the notice of this Court in view of the fact that this Court is seized of the matter of medical education in the private sector in its suo motu jurisdiction.

14. In view of the above and subject to the directions issued in paragraph 13 above, we do not find any merit in this petition. The same is accordingly dismissed. Leave to appeal is refused.

Sd/- Mian Saqib Nisar, HCJ
Sd/- Umar Ata Bandial, J
Sd/- Ijaz Ul Ahsan, J

Certified to be True Copy



ISLAMABAD, THE
4th of April, 2018

ZR/*

NOT APPROVED FOR REPORTING

Court Associate
Supreme Court of Pakistan
Islamabad

GR No: 9267/18 Civil/Criminal

Date of Presentation: 04/04/18

No of Words: 3600

No of Folios: 36

Requisition Fee Rs: 5.00

Copy Fee in: 22.32

Court Fee Stamps: 27.32

Date of Completion of Copy: 26/4/18

Date of delivery of Copy: 26-4-18

Compared by/Prepared by: [Signature]

Received by: Aman Bakht