

**SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Qazi Faez Isa  
Mr. Justice Amin-ud-Din Khan  
Mr. Justice Shahid Waheed

**SUO MOTO CASE NO.4 OF 2022**

(Regarding grant of Additional 20 marks to Hafiz-e-Quran while admission in MBBS/BDS Degree under Regulation 9(9) of the MBBS and BDS (Admissions, House Job and Internship) Regulations, 2018)

**In Attendance:**

For PMDC : Mr. Afnan Karim Kundi, ASC

On Court Notice : Mr. Shehzad Atta Elahi,  
Attorney General for Pakistan with  
Raja Muhammad Shafqat Abbasi, DAG

Malik Naeem Iqbal, ASC  
(*Amicus Curiae*)

Date of Hearing : 15.03.2023

**ORDER**

**Shahid Waheed, J.** I have read the order ("the order") proposed in this case. I regret greatly that I find myself in disagreement with my learned brethren.

2. Before I enter upon to express my opinion, it would be appropriate to mention the facts that led to the constitution of this Bench. On 10<sup>th</sup> of January 2022, Civil Petition No.397-K of 2002, came up for hearing before a Division Bench comprising Hon'ble Mr. Justice Qazi Faez Isa and Hon'ble Mr. Justice Yahya Afridi and was dismissed with the following directions:

".....2.However, this petition has brought to the fore regulation 9(9) of the Regulations and the awarding of twenty additional marks to those candidates who had memorized the Holy Qur'an. Whether the memorization of the Holy Qur'an is a relevant criteria for the determination of the candidates for an MBBS or BDS degree needs consideration. It also needs to be considered whether regulation 9(9) of the Regulations conforms with Article 25 of the Constitution of the Islamic Republic of Pakistan. Therefore, while dismissing this petition we retain its paper-book to

consider this aspect of the case. Notice be issued to the Pakistan Medical and Dental Council, which we are informed is now the Pakistan Medical Council, (**the Council**) and the Council is directed to submit a concise statement which should address the aforesaid queries and to explain how the memorization of the Holy Qur'an makes a candidates more eligible for an MBBS or BDS degree. The Council should also file the decision which lead to the incorporation of regulation 9(9) in the Regulations and the reasons, if any, for such incorporation. Notice be also issued to the Attorney-General for Pakistan in terms of Order XXVII-A of the Code of Civil Procedure, 1908".

3. In compliance with the above directions, the office issued notices to the concerned persons for submission of a concise statement. The notices were not responded to and this inaction was brought to the notice of the Hon'ble Judges of the Division Bench by a note placed before them in their chambers, whereon the office was directed in the following terms:

"... Since the concerned, despite four reminders, have adamantly refused to respond, it may be appropriate to fix this matter in court to the extent of the points noted in paragraph 2 of the order dated 10<sup>th</sup> January 2022".

4. Under the above, the office solicited the order of the Hon'ble Chief Justice as to whether "(a) a *Civil Misc. Application* may be registered for non-compliance of order dated 10.01.2022 and the matter be fixed before the Bench headed by Mr. Justice Qazi Faez Isa, at Principal Seat Islamabad, Or (b) any other order may be passed as deemed appropriate". Upon this note the Hon'ble Chief Justice made the following order:

"Treat the order dated 10.01.2022 as recommendation for invocation of suo moto jurisdiction. Allowed."

5. In the above background, this Bench has been constituted by the Hon'ble Chief Justice under his administrative powers only to consider the points framed in the order dated 10<sup>th</sup> of January 2022, issued in Civil Petition No.397-K of 2002. Be it noted that during the proceeding of any case, a Court ordinarily passes three types of orders, the first type of order is that of regulatory nature whereby the proceedings of the case are regulated, managed, or controlled. The second type of order relates to a formal decision of

a Court about a claim or dispute, and this may be called adjudicatory order. While the third type is regulatory cum adjudicatory order and it not only contains a formal expression of any decision of a Court on a particular issue but also a direction for further progress of the case. Mindful of the above classification of the orders, it is to be seen what kind of order is necessitated in this case. When we assembled for the hearing of this case, at the outset, the Attorney General for Pakistan sought an adjournment to file a concise statement, while the PMDC's counsel submitted that the impugned regulation has been withdrawn, and thus, sometime be granted to him to bring the amended regulation on record. So, in my view, the requests for adjournment alone were to be considered by the Bench, and our order ought to have been confined to it. This means a regulatory order was to be passed. On the contrary, I find that the said requests have been left unattended but certain other points have been discussed in the order which has led me to record this dissenting note.

6. The first point to be examined is whether the objection to the constitution of this Bench could be brought under consideration in this case. I think it cannot for two reasons. One, a Bench, special or regular, is constituted by an administrative order of the Hon'ble Chief Justice, and as such, the present Bench in conformity with the principle settled in *Suo Moto Case No.4 of 2021 (PLD 2022 SC 306)*, has been lawfully constituted to hear this case. It is to be noted that judgment in the *Suo Moto Case No.4 of 2021* is of a Five-Member Bench and thus, takes precedence over all precedents of this Court regarding the power of the Hon'ble Chief Justice to constitute any kind of Benches. It appears that for this reason neither the Attorney General for Pakistan nor the PMDC's lawyer had any objection to the constitution of this Bench. Given these circumstances, in my humble view, none of the Judges of this Bench can object to the constitution of the Bench, and if they do so, their status immediately becomes that of the complainant, and consequently, it would not be appropriate for them to hear this case and pass any kind of order thereon. This reasoning has the backing of the basic code of judicial ethics, to wit, no man can be a Judge in their own cause. It is important to state here that this principle confines not merely to the cause where the Judge is an actual party to a case, but also applies to a case in which he has an interest.

Forbye, judicial propriety requires that if any Judge of the Bench has any objection, the proper course for him is either to recuse himself from the Bench or to refer the matter to the Hon'ble Chief Justice with the concurrence of other Judges of the Bench, so that the case is assigned to some other Bench. Two, the administrative order of the Hon'ble Chief Justice regarding the constitution of the Bench becomes *fait accompli* when a Judge in compliance thereof starts hearing the case. Hence, any Member of this Bench, after having accepted the administrative order of the Hon'ble Chief Justice, is estopped to question the constitution of the Bench on the well known doctrine of estoppel.

7. I now advert to the other question relating to the validity of the Prohibition Order issued by the Pakistan Electronic Media Regulatory Authority (PEMRA) through which all satellite TV Channel licencees were forbidden to telecast anything against State institutions and not to discuss the conduct of the Hon'ble sitting judges of High Court and Supreme Court, in any manner. Can this also be considered in this case. Again I am at odds with my learned brethren. To keep the record clear, I deem it pertinent to mention here that this question was not agitated by any lawyer, on the contrary, it was brought under discussion by the learned Senior Member of this Bench and copies of the Prohibition Order was also presented by his Law Clerk to the other Members of the Bench, the Attorney General and to PMDC's counsel. Although much can be said on this question, it suffices to say that it would be otiose to discuss it here as it was neither urged by any counsel nor was it raised in the pleadings. In fact, no party was on notice to address on this question. PEMRA was also not in attendance to present the rationale of the Prohibition Order. Therefore, in my view, the principle of fairness obliges us not to express a definite opinion on this question until all concerned have had an opportunity of being heard.

8. The other reason which prevents me from endorsing the observations/findings made by my learned brethren on the above-stated second question is that, I hold the view that no Court should try any question and also pass order thereon which is not directly and substantially in issue in a case pending before it. In the case at hands, the matter in issue is whether the memorization of the Holy

Quran is a relevant criteria for the determination of the candidates for an MBBS or BDS degree. Indubitably, the above-stated second question is not related to the issue involved in this case, and thus, it cannot be brought under debate, nor can any conclusion be drawn thereon.

9. I think, in the aforesaid circumstances of the case, the appropriate order would be to allow the Attorney General for Pakistan and the PMDC to file their respective concise statements before the next date of hearing. Order accordingly.

**(Shahid Waheed)**  
Judge

Islamabad, the  
30.03.2023  
"Approved for reporting".  
Sarfraz Ahmad/-