134/23

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Yahya Afridi
Mrs. Justice Ayesha A. Malik
Mr. Justice Syed Hasan Azhar Rizvi

(AFR)
Civil Petition Nos.3747 and 3748 of 2023

[Against the judgments dated 09.10.2023 of the Peshawar High Court, Peshawar passed in W.P. Nos.4015-P of 2023]

Hafsa Habib Qureshi
(in C.P. No.3747 of 2023)

Talha Shah and others
(in C.P. No.3748 of 2023)

...Petitioner(s)

Versus

Amir Hamza and others
(in both cases)

...Respondent(s)

For the Petitioner(s) : Mr. Abid S. Zuberi, ASC
Mr. M. Habib Qureshi, ASC
(in C.P. No.3747 of 2023)
Mr. Ikram Chaudhry, ASC
(in C.P. No.3748 of 2023)
Mr. Muddasir Khalid Abbasi, ASC
(in CMA No.9477 of 2023)

For the Respondent(s) : Mr. Abdul Munim Khan, ASC
(in both cases)

Date of Hearing : 17.11.2023.

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JUDGMENT

Syed Hasan Azhar Rizvi, J.— Through these petitions, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"), the petitioners have impugned the judgment dated 03.10.2023 ("**impugned judgment**") of the Peshawar High Court, Peshawar. The said judgment disposed of the constitution petition filed by respondent No.1, along with 87 connected petitions, while upholding the decision of the provincial government to retake the Medical College Admission Test ("**MDCAT**").

2. The factual background of the present case is that on 15.09.2023, respondent No.1 (Amir Hamza) filed a complaint with the Chief Justice of the Peshawar High Court, Peshawar, raising serious allegations of cheating with modern devices in the MDCAT held on 10.09.2023. The said complaint was converted into a writ petition (W.P. No.4015-P/2023) under Article 199 of the Constitution by the Chief Justice of the Peshawar High Court, vide an order dated 15.09.2023 on the administrative side and was fixed before a Division Bench of that court for regular hearing. The applications of the petitioner (Hafsa Habib Qureshi in Civil Petition No.3747/2023) and the petitioners (Talha Shah & 63 others in Civil Petition No.3748/2023) for their impleadment as a party were accepted and they were arrayed as respondents in the above writ petition. Meanwhile, the Government of KPK, after receiving multiple reports of the use of unfair means in MDCAT, constituted a Joint Investigation Team ("**JIT**") via Notification No. SO(Prosecution)/HD1-6/2023/Misc. dated 15.09.2023 with the mandate to unearth the complete facts of the matter; identify the planners and perpetrators behind the alleged use of sophisticated communication equipment for unfair means, determine the complicity, if any, of any Government servant; expose any organized racket involved therein; specify the legal action to be taken, and propose measures to prevent such attempts in the future. Accordingly, on 20.09.2023, the JIT submitted its report to the KPK Government, revealing that several perpetrators and accomplices were involved in making Bluetooth and other devices available and selling them to the candidates before the examination on 10.09.2023; substantial amounts were exchanged with the involved candidates, and nearly eight hundred candidates may have had access to the unfair means. The JIT report was presented before the KPK Caretaker Provincial Cabinet during its special meeting held on

28.09.2023. The Cabinet annulled the MDCAT held on 10.09.2023 and directed a retake within 6 weeks. Later, two groups of candidates, one dissatisfied and the other in support of the MDCAT conducted on 10.09.2023, filed separate writ petitions. The Peshawar High Court, through the impugned judgment, disposed of all the writ petitions and upheld the decision of the Provincial government; hence, these petitions.

3. Mr. Abid S. Zuberi, ASC appearing on behalf of the petitioner in Civil Petition No.3747 has argued that the petitioner is a brilliant student having excellent academic record and to pursue further education she selected the Medical Profession. The entry test for short listing of the candidates was held, wherein about 45000 students appeared and out of these only about 219 students were caught using unfair means, which makes up only 0.48% of the total candidates, who appeared for the said entry test. After conducting the entry test the keys of the said test were uploaded on the official websites. The Petitioner also passed her NUMS entry test with 86.957% Marks; furthermore, she obtained 1082 marks in the Matric examination, 511 marks in FSC (1st Year) and the 2nd-year result is awaited; however, it is expected that the total FSC marks will be around 1030+, and ETEA marks are 192.

Added that the impugned judgment has been passed in violation of the law laid down by this Court to the effect that the High Court does not enjoy suo-motu power. The High Court has not given any credence to the stance taken by the Regulator i.e. PM&DC and merely relied upon the report of JIT and the decision of caretaker cabinet. The JIT had neither associated PM&DC with its investigation nor shared the report. The PM&DC had clearly suggested to the High Court an alternate solution. Furthermore, even the Government of KPK has not consulted the PM&DC before taking the drastic decision. Similarly, the Peshawar High Court overlooked the consistent view of this Court that the Courts should not interfere in the internal affairs of the Educational Institutions. Thus, the High Court erred in law while upholding the cabinet decision to re-conduct the MDCAT.

4. Further submitted that a meeting "Post Examination Analysis of MDCAT-2023" was held on 15.09.2023 at PM&DC premises, which was attended by Vice Chancellors (VCs) of all provincial admitting universities, including the VC of Khyber Medical University (KMU). As per the press release of the meeting issued on the same date, the KMU provided details of the MDCAT conducted in Khyber Pakhtunkhwa,

according to which a total of 46,339 students were registered in the province, while only 45,640 students appeared for the test and 799 remained absent. The Vice-Chancellor of KMU informed the meeting that among the 45,640 students who took the test, 219 were caught using unfair means, leading to legal action against them. Only these 219 individuals (equivalent to 0.4732% of the total) face potential test cancellation, while the majority of students completed the MDCAT properly. Therefore, there is no need to jeopardize the tests for the majority, avoiding unnecessary uncertainty.

5. Mr. Muhammad Ikram Ch. ASC representing the petitioner in Civil Petition No.3748 has made almost similar submissions; however, the most notable is that the retake of the MDCAT is not only illegal, incorrect and unconstitutional but also more specifically has not been supported by any provision of Pakistan Medical and Dental Council Act, 2022 **(the Act)**, Rules, Regulation etc. Moreover, it is the consistent view of this Court that no interference would be made by the Court in policy matters, disciplinary proceedings, admission and examination of educational intuitions. And, relied upon the judgments of this Court reported as *University of Health Sciences v. Arslan Ali and another* (2016 SCMR 134); *Khyber Medical University and others v. Aimal Khan and others* (PLD 2022 SC 92); and *Aina Haya v. Principal Peshawar Model Girls High School-I, Peshawar and others* (2023 SCMR 198).

6. We have heard the arguments of learned counsel for the petitioners and have perused the record, pleadings raised and the relevant materials placed before the Court.

7. An objection regarding the jurisdiction of a court is of a serious nature and demands careful consideration. It is incumbent upon such a court to give due attention to this objection, diligently examine the relevant legal provisions and precedents, and arrive at a well-reasoned decision regarding the maintainability of any dispute before it.

As in this case, the petitioners raised an objection about the jurisdiction of the Peshawar High Court by asserting that the said High Court has assumed *suo motu* jurisdiction in the matter which is not permissible under the law. So, we advert to decide this objection *first*. Without any hesitation, we firmly agree with the argument that the High Court cannot exercise *suo motu* jurisdiction under Article 199 of the Constitution. Back in 2013, the Balochistan High Court in the case of

the *High Court Bar Association and others v. Government of Balochistan through Secretary, Home and Tribal Affairs Department and six others* (**PLD 2013 Balochistan 75**) held that the High Court could exercise *suo motu* jurisdiction but the same has been declared as *per incurriam* by a 3-member bench of this Court in the case of *Dr. Imran Khattak and another versus Ms. Sofia Waqar Khattak, PSO to Chief Justice and others* (**2014 SCMR 122**). In that case, this Court thoroughly examined the provisions of Article 199 of the Constitution and the relevant case law and had arrived at a definitive conclusion that *'a High Court cannot exercise suo motu jurisdiction under Article 199 of the Constitution.* This position was reiterated by a subsequent bench in the case of *Jahanzaib Malik versus Balochistan Public Procurement Regulatory Authority* (**2018 SCMR 414**). The view expressed in *Sofia Waqar Khattak* was later affirmed by a larger bench (5-member bench) of this Court in the case of *Raja Muhammad Nadeem versus the State and another* (**PLD 2020 Supreme Court 282).** Subsequent benches of this Court also followed the judgment in *Sofia Waqar Khattak* in the cases of *Mian Irfan Bashir versus the Deputy Commissioner (D.C.), Lahore and others* (**PLD 2021 Supreme Court 571**) and *Messrs Sadiq Poultry (Pvt.) Ltd. Versus Government of Khyber Pakhtunkhwa through Chief Secretary and others* (**PLD 2023 Supreme Court 236**).

In light of the aforementioned legal position, it is unequivocally reiterated that the High Court lacks the authority to exercise *suo motu* jurisdiction under Article 199 of the Constitution. Prior to exercising judicial power under Article 199 of the Constitution, there must be an existing dispute before the High Court, which must be brought to its attention by an aggrieved person.

8. Many legal systems throughout the world retain the use of Latin words or phrases that originated centuries ago in the legal system of ancient Rome. The term *'suo motu'* is one of those. It means 'on its own motion' or 'voluntarily'. In the context of a court or legal proceedings, "*suo motu* power" refers to the inherent authority of a court to initiate legal proceedings or take action on its own accord without being prompted by a party involved in a case. In *Collins* English Dictionary, the term *'suo motu'* is defined as "on its own motion" and the term generally refers to a situation wherein a judge acts without request by either party to the action before the Court.

When a court exercises *suo motu* power, it means the court is acting on its own initiative, often to address a matter it deems important or to ensure that justice is served. This authority allows the court to intervene in certain situations even if no formal complaint has been filed. S*uo motu* power is often invoked in cases where there is a perceived violation of law and fundamental rights, public interest, or the principles of justice as this Court is empowered under Article 184(3) of the Constitution. However, in this case, the Peshawar High Court did not initiate the present proceedings on its personal knowledge, information or through a press clipping, or a note put up by its Registrar. Instead, the proceedings have been commenced on the basis of a complaint filed by an individual who considers himself aggrieved by the alleged cheating in the MDCAT. There is no doubt that the High Court lacks supervisory control over the provincial government or the admitting university, as it does with respect to subordinate courts under Article 203 of the Constitution. Therefore, no complaint alleging illegality on the part of or violation of law committed by the provincial government could be made to the High Court. The said complaint, in all respects, is a writ petition, although questions may arise regarding the non-observance of the formalities prescribed for drafting and filing the writ petition before the High Court.

9. Besides, the High Court has the power to convert and treat one type of proceeding into another type. After doing so, it can proceed to decide the matter itself, provided it has jurisdiction over the issue, or it may remit the matter to the competent authority, forum, or court for a decision on its merits. Reference in this regard may be made to the cases of *Muhammad Akram versus DCO, Rahim Yar Khan and others* (**2017 SCMR 56**); *Sher Alam Khan versus Abdul Munim and others* (**PLD 2018 Supreme Court 449**); and *the Commissioner of Income Tax (Legal) RTO, Abbottabad versus Messrs Ed-Zublin AG Germany and another* (**2020 SCMR 500**).

However, the High Court, in the peculiar circumstances of the case, should have treated the said complaint as a writ petition instead of converting it into a writ petition under Article 199 of the Constitution. Even otherwise, during the ongoing proceedings of the said writ petition, numerous other students also filed writ petitions under Article 199 of the Constitution, some in support and others in opposition, to the provincial government's decision to retake the MDCAT, on the basis of similar

allegations of cheating. All the petitions were jointly disposed of by the High Court through the impugned judgment. Consequently, the matter of initiating *suo motu* proceedings under Article 199 of the Constitution becomes inconsequential.

10. The medical profession is undoubtedly one of the most critical and esteemed fields in society, as it directly impacts the health and well-being of individuals. The responsibility borne by medical professionals is immense, necessitating a high level of competence, ethics, and integrity. Recognizing the gravity of this profession, it is essential to ensure that the individuals entering the medical field are genuinely qualified and possess the necessary knowledge and skills. To achieve the above goal, the MDCAT has been introduced. Its basic aim is to extract the best available talent from among the candidates. The test is structured on the premise that students selected for medical colleges through the screening provided by the entry test tend to perform better than those admitted solely based on their F.Sc. marks. If individuals were to pass the test through unfair means, it would undermine the fundamental purpose of the examination.

11. The origins of the Medical College Admission Test **(MCAT)** coincide with the rise of scientific psychology and quantitative approaches to mental measurement in the late 19th and early 20th centuries. The MCAT, originally known as the Scholastic Aptitude Test for medical schools, was developed in 1928. The Association of American Medical Colleges has developed this Test, which is used as the entry screening assessment for medical schools in the United States.[1] It was often referred to as the "Moss Test" after the lead test author who was a physician/surgeon. It covered memory, knowledge of scientific terminology, reading comprehension, and logic in a true-and-false examination format. For the first time, MCAT enumerated areas of general education and basic science preparation to be covered in the exam, which helped to shape a consensus model of what constituted premedical education. The original MCAT achieved its objective of reducing medical student attrition rates from a high of 50% in the 1920s

[1] William C. McGaghie, PhD, 'Assessing Readiness for Medical Education Evolution of the Medical College Admission Test' 2002 The Journal of the American Medical Association 1085

to 7% in 1946. In all, the MCAT in the USA has been revised five times up till now.[2]

12. On the same lines, the Entry test for admission to medical colleges was introduced in the Khyber Pakhtunkhwa ("**KPK**") province vide Notification No.SO-II (Health)/2-2/95-96 dated 02.09.1996 from the academic year 1996-97. The legality of the said test was challenged before this court in the case of *Miss Nina Javed and others versus Government OF N.-W.F.P. and others* (**1998 SCMR 1469**). This Court upheld the legal status of the said test and observed that "*...In the case before us, the provision in the prospectus issued by the medical colleges of N.W.F.P. for the academic year 1996-97 making entry test compulsory for students seeking admission to 1st year M.B.B.S. classes, not only had the legal sanction of the Regulations issued by PMDC at its back but it was reinforced by the direction of the Provincial Government of N.W.F.P. issued on 2-9-1996 which was constitutionally valid.*" Similarly, the Medical College Entry test was introduced in Punjab from the year 1999. See *Ms. Aisha Khan versus Government of Punjab through Secretary, Education Department, Punjab and others* (**1999 M L D 2764**). From 1998 to 2007, it was conducted by the King Edward Medical University, Lahore. In 2008, the University of Health Sciences, Lahore conducted the test in Punjab. Other provinces also started conducting their medical entrance exams in the years to follow. Initially, the Institute of Business Administration used to conduct separate Entry Tests for MBBS and BDS courses in public colleges of Sindh under the provincial government. Later, the National Testing Service (NTS) started to conduct the tests. After the PMDC regulations were amended in 2016, NTS started to conduct a centralized Entry Test for public and private medical and dental colleges in Sindh. For the first time, in 2021, the test was computerized and conducted internationally through a local testing service. At present, the mode of examination has been shifted back to pen-and-paper based and provinces have been given the authority to conduct the exam through their respective Admitting Universities, *vide* the Act.

13. Section 17(1) of the Act provides for the passing of the MDCAT as a mandatory condition before getting admission to any public

[2]Karen Mitchell, 'The New Medical College Admission Test: Implications for Teaching Psychology' 2017 National Library of Medicine USA

and private medical and dental colleges and universities in Pakistan. It contemplates that each province, Gilgit-Baltistan and Islamabad Capital Territory as per the policy and standards approved by the Provincial Governments and Federal Government respectively shall conduct on the dates approved by the Council, a single MDCAT based on the intermediate or equivalent syllabus for all students seeking admission in undergraduate programs both in public and private medical and dental colleges and universities. Further, no student shall be awarded a medical or dental degree in Pakistan who has not passed the MDCAT prior to obtaining admission in a medical or dental college in Pakistan provided that the mandatory requirement of MDCAT shall not apply to students seeking admission on a special program seat predefined exclusively for foreign students and on the seats reserved for overseas Pakistanis (See S.17(2) of the Act). Under the Act, the ultimate regulator of medical education in Pakistan is the Pakistan Medical and Dental Council ("**Council**") constituted under section 3 of the Act which is solely empowered to make rules and regulations for the conduct of admission in medical and dental colleges and examinations to be conducted by each province, Islamabad Capital Territory and Gilgit-Baltistan, as per section 9(2)(f) read with section 47 of the Act. The Council in the exercise of that power has made the Medical and Dental Undergraduate Education (Admission, Curriculum and Conduct) Policy and Regulation, 2023 **("the Regulations")**. A conjoint reading of the afore-noted provisions of law would reveal that the Province alone is responsible for conducting a single admission test/MDCAT in their respective province but on the dates approved by the Council and subject to the procedure/formalities provided under the relevant Regulations. The Act or the Regulations do not offer any mechanisms for addressing unforeseen situations, like the present one, during the MDCAT. Consequently, in the absence of any specific laws, rules, or regulations, the provincial government has the competence to cancel and/or retake the MDCAT in terms of section 21 of the General Clauses Act, 1897, as rightly held by the Peshawar High Court in the impugned judgment. The provision of Section 17 of the Act is reproduced hereunder for ease of reference:-

> ***"17. Medical and Dental Colleges Admission Tests (MDCAT).***—*(1) Each province, Gilgit-Baltistan and Islamabad Capital Territory as per the policy and standards approved by the Provincial Governments and Federal Government respectively shall conduct on the dates approved by the Council, a single admission test based on the intermediate or equivalent syllabus for all students seeking admission in undergraduate programs both in public and private medical and dental colleges and universities.*

> *(2) No student shall be awarded a medical or dental degree in Pakistan who has not passed the MDCAT prior to obtaining admission in a medical or dental college in Pakistan:*
>
> *Provided that the mandatory requirement of MDCAT shall not apply to students seeking admission on a special program seat predefined exclusively for foreign students and on the seats reserved for overseas Pakistanis.*
>
> *(3) The admission to medical and dental programs conducted by public and private colleges and universities shall be regulated as per the policy and standards of the Federal Government through Minister-incharge, Provincial Government and Gilgit-Baltistan strictly on merit. However, private colleges may take any additional entrance test subject to any condition imposed by the relevant university to which such college is affiliated:*
>
> *Provided that the marks obtained by a student in MDCAT conducted by the province shall constitute a minimum of fifty percent of the weightage for the purposes of admission in the public and private colleges.*
>
> *(4) The MDCAT result of one province shall be valid for the entire country and shall be valid for a period of three years. Each province, Gilgit-Baltistan and Islamabad Capital Territory shall give preference to the students having domicile of their respective province or territory as the case may be.*
>
> *(5) Admissions on vacant seats shall be decided by the respective provincial government and respective authority in case of Gilgit-Baltistan and Islamabad Capital Territory."*

14. The learned counsel for the petitioners placed much emphasis on the ground that only 219 students (0.4732% of the total 45,640 students) were caught red-handed while using unfair means of cheating, whereas the rest of the students had properly completed the MDCAT. Therefore, the test results of the remaining students should not be cancelled. It was further added that during the post-examination analysis meeting of the MDCAT 2023, attended by the Vice Chancellors of all the provincial conducting universities, the Vice Chancellor of Khyber Medical University briefed the Council regarding the issue of unfair means used by the aforementioned 219 students. The Vice-Chancellor also highlighted the steps taken by the university to address the issue and to check the other students. Even then, the Council appreciated the efforts of all admitting universities and directed them to announce their results through their official websites. However, the provincial government, without consulting the Council, held that the Educational Testing and Evaluation Agency **(ETEA)** failed to conduct a fair and transparent test. As a result, the government directed a retake of the MDCAT.

15. It is a matter of record that the present incident of cheating through the use of modern devices during MDCAT 2023 has widely been reported through electronic and social media and raised serious concerns about the fairness of the MDCAT. Such unethical practices not only compromise the integrity of the examination process but also pose a

significant threat to the quality of healthcare professionals being produced. In response to this challenge, the provincial government has rightfully taken the decision to retake the exams. The decision to conduct a re-examination is a commendable step towards upholding the standards and values of the medical profession. Those who resort to dishonest means to secure a place in medical colleges not only violate the principles of fairness but also jeopardize the trust that society places in healthcare providers.

The retake of the MDCAT is a necessary measure to rectify the damage caused by the cheating scandal and to ensure that only qualified and deserving candidates enter the medical profession. It is understandable that some candidates who performed legitimately in the MDCAT 2023 may feel aggrieved by the decision to retake the tests. However, it is important to emphasize that the greater good lies in maintaining the integrity of the medical profession. Competent and deserving candidates should view the retake of the MDCAT as an opportunity to reaffirm their capabilities. If they are truly competent, they should have confidence in their abilities to succeed once again, and the retake of the test should be seen as a fair and transparent means to identify the most qualified individuals for the medical profession. No doubt, the above issue was properly addressed by the Peshawar High Court, after referring to case law from both domestic and Indian jurisdictions and rightly upheld the Provincial Government's decision to retake the MDCAT.

16. So far as the ground of interference by the Court in the internal affairs of the educational institutions is concerned, we are of the view that educational institutions occupy a special niche in our society which provides them a substantial right of "educational autonomy," within which public higher educational institutions are insulated from legal intrusion. Within that autonomous realm, educational institutions are entitled to deference when making academic decisions related to their educational mission. Thus, any interference by Courts of law with orders passed by educational institutions in the interest of the maintenance of discipline would defeat the very purpose for which these institutions exist or it would stultify the powers of the authorities/in charge of educational institutions or prevent them from taking any action against students' misconduct. The Universities and educational institutions generally are armed with abundant powers of disciplinary action against

recalcitrant students and the Courts are, in no way, minded to deprive them of their powers. Reference in this regard may be made to the cases of the University of Dacca v. Zakir Ahmed (**PLD 1965 SC 90**); *Ahmad v. Vice-Chancellor, University of Engineering and Technology* (**PLD 1981 SC 464**); *Tahir Saeed Qureshi v. the Board of Intermediate &Secondary Education* (**1996 S C M R 1872**); *Chairman, Joint Admission Committee, Khyber Medical College, v. Raza Hassan* (**1999 S C M R 965**); *Board of Intermediate &Secondary Education v. Umar Asif Malik* (**1999 S C M R 1583**); *Prof. Noor Muhammad Khan Marwat v. Vice-Chancellor, Gomal University* (**PLD 2001 SC 219**); *MianMuhammad Afzal v. Province of Punjab* (**2004 SCMR 1570**); *Muhammad Ilyas v. BahauddinZakariya University* (**2005 SCMR 961**); *Amir-FerozShamsi v. Institution of Business Administration* (**2006 S C M R 412**); *Syed Muhammad Arif v. University of Baloc*histan (**PLD 2006 SC 564**); *Muhammad Ishfaq Ahmad Sial v. BahauddinZakariya University* (**2011 SCMR 1021**); *Secretary Economic Affairs Division v. AnwarulHaq Ahmed* (**2013 SCMR 1687**); *Government College University v. SyedaFiza Abbas* (**2015 SCMR 445**); *University of Health Science v. Arslan Ali* (**2016 SCMR 134**);*Khyber Medical University v. Aimal Khan* (**PLD 2022 Supreme Court 92**) and *Aina Haya v. Principal Peshawar Model Girls High School-I, Peshawar & others* (**2023 SCMR 198**).

17. We would think it appropriate to have a bird's eye view as to how Courts of different jurisdictions have contextually perceived the concept of educational autonomy. The U.S. Supreme Court in *Keyishian v. Bd. of Regents* (**385 U.S. 589**) and *Sweezy v. New Hampshire* (**354 U.S. 234**) has held that our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. It was further observed that when judges are asked to review the substance of a genuinely academic decision they should show great respect for the faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment. See *Regents of University of Michigan v. Ewing* (**474 U.S. 214**).

Similarly, *Justice Frankfurter* of the U.S. Supreme Court explained the importance of a university's freedom in the words that, "*it is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail "the four essential freedoms" of a university -- to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.*" See *Bd. of Regents v. South worth* (**529 U.S. 217**), *Brown v. Li,* (**308 F.3d 939**) and *Healy v. James*, (**408 U.S. 169**).

18. In England, the King's Bench Division in *R v Dunsheath; Ex parte Meredith* **[1950] 2 All ER 741** (Also see Thorne v University of London [1966] 2 All ER 338: Thomas v University of Bradford [1985] 2 All ER 786) has held that the court will not interfere in a matter within the province of the visitor, and especially this is so in matters relating to educational bodies such as schools and colleges. I see no difference for this purpose between a college and a university. Any question that arises of a domestic nature is essentially one for a domestic forum, and this is supported by all the authorities which deal with visitorial powers and duties, and, although the question has generally arisen with regard to election to fellowships, I see no difference in principle between the question whether a particular person ought to be elected to a fellowship or whether a particular person is a fit and proper person to be appointed or retained as a teacher or student at a university or a school.

19. The Supreme Court of India in *J.P. Kulshreshtha v. Chancellor, Allahabad University* (**AIR 1980 SC 2141**); *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* (**AIR 1984 SC 1543**); *Hindi Hitrakshak Samiti v. Union of India* (**AIR 1990 SC 851**); *K. Shekar v. V. Indiramma* (**AIR 2002 SC 1230**) and *Shamshad Pathan Convener v. State of Gujarat* (**2012)2 GLR 1364**) held that the Court should not substitute its judgment for that of academicians when the dispute relates to educational affairs. While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But university organs, for that matter any authority in our system, are bound by the rule of law and cannot be a law unto itself. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the Court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the Court out.

20. While there exists a general principle of judicial restraint, implying that courts should be cautious in intervening in the internal matters of educational institutions, it is not an absolute ban. This restraint is exercised with prudence, and courts may step in when university authorities exceed the defined scope of their authority or act in violation of the statutes. In such cases, the courts play a crucial role in upholding legal standards and ensuring that educational institutions operate within the bounds of the law.

The delicate balance between non-interference and necessary intervention is maintained to safeguard the integrity of academic institutions while also holding them accountable to legal frameworks. However, in this case, the Peshawar High Court did not interfere in any affairs of the educational institution. Instead, it upheld the decision of the provincial government to retake the MDCAT, as the government is fully competent to conduct including the retake of the said test, in accordance with Section 17 of the Act.

21. Keeping in view the above facts and circumstances and after careful consideration of the impugned judgment, this Court finds the impugned judgment to be a well-reasoned and judiciously crafted decision. The High Court, in its thorough analysis of the relevant legal principles and available facts, has arrived at a sound and reasoned conclusion that is both legally sound and just.

22. Foregoing in view, the leave is refused and the petitions are dismissed. Consequently, all the pending CMAs are also dismissed. No order as to costs.

Judge

Judge

Judge

Islamabad, the
17th November, 2023
Not approved for reporting
*Ghulam Raza/**