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[Lahore]

Before Shahid Bilal Hassan and Ayesha A. Malik, JJ

PAKISTAN ENGINEERING COUNCIL---Appellant

Versus

FEDERATION OF PAKISTAN and others---Respondents

I.C.A. No.33510 of 2019, decided on 30th November, 2020.

(a) Pakistan Engineering Council Act, 1975 (V of 1976)---

---S.25A---Pakistan Engineering Council Regulations for Engineering Education in Pakistan, Regls. 2(a)(i) & 2(c)(i)---Constitution of Pakistan, Art.25---Fixation of a 2% quota for holders of Diploma of Associate Engineer (DAE) for admission in B.Sc. Engineering---Whether fixation of such quota was not legal and also discriminatory---Regulating authority for the purposes of admission in an engineering program was the Pakistan Engineering Council ('the Council'), which was duly authorized under the law as well as under the Pakistan Engineering Council Regulations for Engineering Education in Pakistan ('the Regulations') to determine the admission criteria---As far as the fixation of a 2% limit/quota was concerned, the Council on the basis of facts and deliberation in a meeting duly considered the issue pertaining to the DAE examination, the equivalence given by the Inter Board Committee of Chairmen ("IBCC") and by the Punjab Board of Technical Education ("PBTE") and decided to streamline the exercise of discretion by the different universities and colleges, so as to ensure that not more than 2% candidates holding DAE were given admission against the reserved seats---Council by way of quantifying the reserved seats had not acted in contravention to the Pakistan Engineering Council Act, 1976 or the Regulations or acted discriminately---Intra-Court Appeals were allowed and impugned judgment of Single Bench of High Court was set-aside.

Section 25A of the Pakistan Engineering Council Act, 1976 ('the 1976 Act') gave the Governing Body of the Pakistan Engineering Council ('the Council') the power to make regulations which included the power to make regulations stipulating the minimum qualifications for admission to engineering institutions and laying down the minimum standard for allowing admission for examinations. Pursuant to section 25A of the 1976 Act, the Council issued the Pakistan Engineering Council Regulations for Engineering Education in Pakistan ('the Regulations'). Article 2 of the said Regulations provided for the minimum qualification for admission to Engineering Bachelor's Degree Programmes offered by Engineering institutions and universities. Article 2(a)(i) of the Regulations provided for the requirement of a Higher Secondary School Certificate, Pre-Engineering Examination with Physics, Chemistry and Mathematics as the basic criteria for admission in the B.Sc Engineering program. This meant that F.Sc was

the criteria for admission in B.Sc Engineering. Article 2(c)(i) of the Regulations provided that a candidate who had passed the Diploma of Associate Engineer (DAE) examination, securing at least 60% aggregate marks shall be eligible for applying in admission against reserved seats in relevant discipline of engineering in which he or she had passed the DAE examination and the relevancy of DAE would be determined by the Accreditation Committee of the Council. In terms of the Regulations for the purposes of DAE examination, the Regulations originally provided that the DAE candidate, who secured at least 60% aggregate marks would be eligible to apply for admission against reserved seats, however the number of seats was not quantified. This Regulation was amended vide SRO 417(I)/2016 dated 14-05-2016 such that the Regulation inserted 2% limit on the DAE candidates against reserved seats. This meant that although originally a DAE candidate was eligible against reserved seats, the Council quantified a 2% limit for all colleges and universities against the reserved seats.

The issue of the 2% quota for the reserved seats was considered in a meeting held by the Council in which it was discussed that engineering universities as a special provision allowed DAE students admission if they had the aggregate marks, however, since the DAE students did not study the subjects of physics, chemistry and mathematics in the rigorous manner as the F.Sc students, the Council decided to regulate the discretion to admit against reserved seats by the universities by way of a 2% limit for reserved seats for all universities.

For the purposes of Regulation 2(c) of the Regulations, DAE candidates were always considered against reserved seats. The argument that since DAE was equivalent to F.Sc, hence students holding the said qualification were entitled to be considered as F.Sc candidates was without basis as the admission of DAE candidates was always limited to reserved seats stipulated by the relevant university. The Single Bench of the High Court) while considering the 2% limit failed to take into consideration Regulation 2(c) of the Regulations which by itself, in its original form had limited the admission of the DAE candidate against reserved seats. Therefore, even with the abolishment of the 2% limit, the holders of DAE qualification were not entitled to admission in B.Sc Engineering program on the basis of DAE being equivalent to F.Sc as their admission was subject to the number of reserved seats in the respective colleges/universities.

Respondents failed to make out a case of discrimination or unreasonable classification as the original Regulations limited their admission against reserved seats and by way of fixing the number of reserved seats to a 2% no discrimination was made out.

Reliance of the Single Bench (of the High Court) on the equivalence given by the Inter Board Committee of Chairmen ("IBCC") and by the Punjab Board of Technical Education ("PBTE") was without basis as the equivalence granted by both these independent institutions was not relevant for the purposes of admission in the engineering program. The regulating authority for the purposes of admission in an engineering program was the Council, which was duly authorized under the

law as well as under the Regulations to determine the admission criteria. Council by way of quantifying the reserved seats had not acted in contravention to the 1976 Act or the Regulations or acted discriminately. Intra-Court Appeals were allowed and impugned judgment of Single Bench of High Court was set-aside.

(b) Constitution of Pakistan---

---Art.199---Constitutional jurisdiction of the High Court---Scope---Policy decision made by a professional regulatory body in accordance with law---High Court could not interfere with such a policy decision in its constitutional jurisdiction.

Mian Muhammad Wasim, Umer Ijaz Gilani, Usama Khawar and Ms. Ruqia Ismail with Shah Jahan Khaltak, Deputy Registrar, PEC Head Quarter, Islamabad for Appellant.

Malik Sohail Murshad for Respondent No.3, Punjab Technical Board.

Barrister Haris Azmat and Barrister Maryam Hayat for Respondent No.4 College.

Barrister Hamid Azim Laghari, Muhammad Qasim Tarar and Rafae Naguib Saigal for Respondent No.5 (Student).

Mrs. Ambreen Moeen, Deputy Attorney General.

Akhtar Javed, Additional Advocate-General.

Date of hearing: 30th November, 2020.

JUDGMENT

AYESHA A. MALIK, J.----The Appellant, Pakistan Engineering Council ("PEC") has filed the instant ICA and ICA No.1554/2019 wherein they have impugned judgment dated 13.03.2019 whereas in ICA No.78117/2019 PEC has impugned order dated 22.5.2019 passed in W.P. No.235395/2018 which has relied upon the impugned judgment dated 13.3.2019. The matter in issue in all ICAs is whether the holders of Diploma of Associate Engineer ("DAE") are eligible for admission in B.Sc Engineering being equivalent to F.Sc. Originally ICA No.78117/2019 was fixed for 20.01.2021, however, with the consent of the parties, the case was fixed for today so as to ensure that the common issues raised in these ICAs are addressed through this common judgment.

2. The objection of limitation has been raised by the Respondents in all these ICAs essentially stating that these ICAs have been filed beyond the period of limitation. In this regard, applications for condonation of delay have been filed under Section 5 of the Limitation Act read with Section 151 of the Civil Procedure Code, 1908 in all three ICAs. For the purposes of the instant ICA and ICA No.1554/2019 as per the contents of the applications for condonation of delay, the judgment was reserved on 13.03.2019 by the learned Single Bench. On 20.03.2019

the Appellant applied for the certified copy of the judgment. On 16.04.2019 after one month and three days as per the stamp, the certified copy of the judgment was prepared. However, learned counsel for the Appellant stated that no express intimation of the preparation of the certified copy was issued by the Copy Agency of this Court to the Appellant, who was regularly visiting the copy branch to obtain the certified copy of the impugned judgment. On 07.05.2019 the copy was made available to the Appellant and the appeals were filed after one day of obtaining the certified copy of the judgment. Learned counsel for the Appellant argued that a period of limitation for filing an ICA is 20 days from the date of the decree or judgment, however, in this case although the case was reserved for judgment on 13.03.2019 the Appellants could not file the ICAs as they were not aware of the outcome of the case. As soon as the certified copy of the judgment was made available, the Appellant filed the instant appeals before this Court. Learned counsel argued that the circumstances were beyond the control of the Appellant and has placed reliance on *Province of Punjab and others v. Zafar Ullah and others* (PLD 2015 Lahore 220) and *Multan Khan v. Ghazni Khan and 13 others* (2016 CLC 1600) to urge the point that it was incumbent upon the Copy Agency to issue information to the Appellant that a certified copy of the judgment was prepared. Learned counsel further argued that despite the fact that the Appellant was repeatedly visiting the Copy Agency for obtaining the certified copy of the judgment, it was not made available until 07.05.2019, which goes to show that the certified copy was not available for delivery to the Appellant. On behalf of the Respondents it is argued that the appeals are barred by time; that the period of limitation is 20 days and there is no justifiable reason to condone the delay in these cases.

3. We have heard the arguments on the issue of limitation and find that the Appellant has raised sufficient grounds to condone the delay in these appeals. We also note that the matter in issue as raised by the Appellant is important for the purposes of admission in B.Sc Engineering hence we condone the delay and proceed to decide these ICAs on its merits. So far as, ICA No.78117/2019 is concerned, since the matter in issue in this appeal essentially arises of the impugned judgment dated 22.05.2019 passed in W.P. No.235395/2018, the delay in this appeal is also condoned and we proceed to decide this ICA on its merits as well.

4. Learned counsel for the Appellant argued that the Respondents before this Court being students of Chenab College of Engineering and Technology and the college itself essentially filed writ petitions before the learned Single Bench challenging the fixation of a 2% quota for reserved seats for holders of DAE for admission in B.Sc Engineering. The impugned judgment considered the case of the Respondents and granted their prayer on the ground that the DAE is equivalent to Intermediate Examination of the Board of Intermediate and Secondary Education (F.Sc), as per the equivalence issued by the Inter Board Committee of Chairmen ("IBCC") and by the Punjab Board of Technical Education ("PBTE"). The second ground for allowing the writ petitions of the Respondents is that the 2% quota is discriminatory and offends Article 25 of the Constitution of Islamic Republic of

Pakistan, 1973 ("Constitution") and does not amount to a reasonable classification. The third reason being that the Regulation 2(c) of the Regulations for Engineering Education in Pakistan ("Regulations") is beyond the mandate provided in Section 25A of the Pakistan Engineering Council Act, 1976 ("the Act"). Learned counsel argued that the impugned judgment failed to take into consideration that the Appellant has acted in accordance with the mandate under Section 25A of the Act and that the amendment to the Regulations with the insertion of a 2% quota for DAE students was in consonance with the earlier Regulations, which had never been challenged. Learned counsel further argued that the imposition of a 2% quota for DAE students was a policy decision so as to facilitate and enable students who are unable to study in F.Sc program. He argued that it is the form of affirmative action got its quantum which restricted to reserved seats. Learned counsel further argued that for the purposes of admission in B.Sc Engineering, F.Sc is the fundamental requirement as it entails the study of the basic sciences being physics, chemistry and mathematics especially calculus which is essential in any world class engineering program. The DAE program does not focus on the sciences in the manner required by the Appellant for an engineering degree. The Appellant has placed reliance on a comparative analysis of the science subjects studied in F.Sc with that in the DAE program in support of his arguments. Learned counsel argued that this was a policy decision made by the Appellant, which did not call for any interference by the learned Single Bench. Furthermore, that the Appellant has duly considered the matter in terms of its international commitment under the Washington Accord which involves 21 countries whose engineering education is given worldwide recognition. Hence the Appellant has ensured that the subject requirements as per the F.Sc are vital for the purposes of admission in a B.Sc Engineering program. Learned counsel further argued that Regulation 2 (c) of the Regulations historically allowed independent universities to determine their quota for the purposes of admission of DAE in B.Sc engineering, therefore, there was always a quota for admission of DAE candidates. However in order to streamline the discretion exercised by the colleges/universities carrying B.Sc Engineering program the Appellant fixed a 2% limit against the reserved seats so as to ensure that the admissions in the engineering degree program were maintained fairly and a uniform policy was followed throughout the country. Learned counsel argued that the Regulations are in accordance with Section 25A of the Act of 1976 and that no illegality has been committed.

5. On behalf of the Respondents, it is argued that Section 25A of the Act is the power to make Regulations and there is no specific power to create a quota for the purposes of admission in B.Sc Engineering program, hence the insertion of a 2% quota for the DAE candidates is against the mandate of Section 25A of the Act. Learned counsel argued that this quota is discriminatory particularly when IBCC along with PBTE recognize DAE being equivalent to F.Sc, hence there is no justifiable reason to create a 2% quota and oust the Respondents from the admission process. Reliance is placed on *The Agricultural and Research Department and others v. Muhammad Tariq Javed and others* (2019 CLC 1972), *Pak Leather Crafts Limited and others v. Al-Baraka Bank Limited* (2019 CLD 659),

Mian Muhammad Sabir v. Malik Muhammad Sadiq through Legal Heirs and others (PLD 2008 SC 577), The Inspector General of Police, Punjab through District Police Officer v. Abdus Salam and another (2019 CLC 1156), Hafiz Junaid Mahmood v. Government of Punjab and others (PLD 2017 Lahore 1), Ansa Farrukh v. Vice Chancellor and others (2020 MLD 1484), Shrin Munir and others v. Government of Punjab through Secretary Health, Lahore and another (PLD 1940 SC 295), Miss Asma Javaid and another v. Government of Punjab through Secretary Health Department and 2 others (2015 CLC 907), Government of the Punjab, Secretary Home Department through Deputy Secretary (Police) Interior Department and others v. Qanoot Fatima and others (2018 PLC (CS) 22) and Arif-ur-Rehman v. Government of N.W.F.P through Secretary Education, N.W.F.P and others (2005 SCMR 340).

6. We have heard the counsel at length. The mandate of the Act is to regulate the engineering profession. Section 3 of the Act provides for the constitution and establishment of the Engineering Council ("PEC") and in terms of Section 8, the functions of the PEC have been provided which includes the function of promoting engineering education and review of courses of studies in consultation with the universities. Section 25A of the Act is the power to make regulations which includes the power to make regulations stipulating the minimum qualifications for admission to engineering institutions and laying down the minimum standard for allowing admission for examinations. Pursuant to Section 25A of the Act the Appellant issued the Regulations for engineering education in Pakistan vide SRO No.1142(I)/85 dated 20.11.1985. Article 2 of the Regulations provides for the minimum qualification for admission to Engineering Bachelor's Degree Programmes offered by Engineering Institutions and Universities. Article 2(a)(i) of the Regulations provides for the requirement of a Higher Secondary School Certificate, Pre-Engineering Examination with Physics, Chemistry and Mathematics as the basic criteria for admission in the B.Sc Engineering program. This means that F.Sc is the criteria for admission in a B.Sc engineering. Article 2(c) (i) of the Regulations provides that a candidate who has passed the DAE examination, securing at least 60% aggregate marks shall be eligible for applying in admission against reserved seats in relevant discipline of engineering in which he or she has passed the DAE examination and the relevancy of DAE will be determined by the Accreditation Committee of PEC. In terms of these Regulations we note that for the purposes of DAE examination, the Regulations originally provided that the DAE candidate, who secured at least 60% aggregate marks would be eligible to apply for admission against reserved seats, however the number of seats was not quantified. This Regulation was amended vide SRO 417(I)/2016 dated 14.05.2016 such that the Regulation inserted 2% limit on the DAE candidates against reserved seats. This means that although originally a DAE candidate was eligible against reserved seats, the Appellant quantified a 2% limit for all colleges and universities against the reserved seats. The issue of the 2% quota for the reserved seats was considered in the meeting held by PEC on 16.05.2017 in which it was discussed that engineering universities as a special provision allowed DAE students admission if they had the aggregate marks, however, since the DAE

students does not study the subjects of physics, chemistry and mathematics in the rigorous manner as the F.Sc students, the Appellant decided to regulate the discretion to admit against reserved seats by the universities by way of a 2% limit for reserved seats, for all universities. Consequently, DAE candidates can apply for admission in B.Sc Engineering program, however they can be admitted against reserved seats only to the extent of a 2% limit. Therefore, we note that for the purposes of Regulation 2(c) of the Regulations, DAE candidates were always considered against reserved seats. The argument of the Respondents that since DAE is equivalent to F.Sc, hence they are entitled to be considered as F.Sc candidates is without basis as the admission of DAE candidates was always limited to reserved seats stipulated by the relevant university. For the purposes of the writ petitions filed by the Respondents, they specifically challenged the imposition of the 2% limit vide letter dated 25.03.2015 meaning thereby that they did not challenge SRO 417(I)/2016 dated 14.05.2016 on the basis of which the amendment was made to the Regulations. In this regard, we further note that the basic prayer of the Respondents before the learned Single Bench was that the 2% quota be abolished and that they be granted admission in the B.Sc Engineering program. The learned Single Bench while considering the 2% limit failed to take into consideration Regulation 2 (c) of the Regulations which by itself, in its original form has limited the admission of the DAE candidate against reserved seats. Therefore, even with the abolishment of the 2% limit, the Respondents before this Court were not entitled to admission in B.Sc. Engineering program on the basis of DAE being equivalent to F.Sc as their admission was subject to the number of reserved seats in the respective colleges/universities. The impugned judgment has stressed on the issue of discrimination as well that DAE is equivalent to F.Sc as per the equivalence provided by the IBCC and PBTE, however, failed to take into consideration that the Regulations themselves stipulate that the relevancy of the DAE will be determined by the Accreditation Committee of PEC meaning thereby that the issue of equivalence, if at all, had to be considered by the Appellant itself and not by the IBCC or by the PBTE for the purposes of admission in B.Sc Engineering. We are therefore of the opinion that the Respondents failed to make out a case of discrimination or unreasonable classification as the original Regulations limited their admission against reserved seats and by way of fixing the number of reserved seats to a 2% no discrimination was made out.

7. We also find that the Appellant was well within its authority under Section 25A of the Act to set the minimum qualification for admission in engineering programs which includes regulating reserved seats. In this regard, we are of the opinion that the reliance of the learned Single Bench on the IBCC and PBTE equivalence is without basis as the equivalence granted by both these independent institutions is not relevant for the purposes of admission in the engineering program. The regulating authority for the purposes of admission in an engineering program is the Appellant, which is duly authorized under the law as well as under the Regulations to determine the admission criteria. So far as the fixation of a 2% limit is concerned, we find that the Appellant on the basis of facts and deliberation in the meeting held on 16.05.2017 duly considered the issue pertaining to the DAE

examination, the equivalence given by the IBCC and PBTE and decided to streamline the exercise of discretion by the different universities and colleges, so as to ensure that not more than 2% candidates holding DAE were given admission against the reserved seats. Therefore we observed that the Appellants by way of quantifying the reserved seats has not acted in contravention to the Act or Regulation or acted discriminately. It is a policy decision made in accordance with the law which cannot be interfered by this Court.

8. For what has been discussed above, these ICAs are accepted and the impugned judgment dated 13.03.2019 passed in W.P. No.1286/2016 and W.P. No.57079/2019 and order dated 22.5.2019 passed in Writ Petition No.235395PO I on the basis of impugned judgment is set aside.

MWA/P-2/L Appeal allowed.

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