

By Special Messenger
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IN THE COMPETITION APPELLATE TRIBUNAL

2ND Floor, Federal Courts Complex, G-11/1, Islamabad
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Tel No: 051-9320208, Fax No: 051-9320203

No. 547
Dated: 18-04-2024

Women Medical & Dental College, Abbottabad

Vs.

Competition Commission of Pakistan

NOTICE

Diary No.16/2019

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **17-04-2024** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 18th day of April, 2024.



S. Saad Afzal
(SAEED AFZAL)
Registrar

REGISTRAR
Competition Appellate Tribunal
Government of Pakistan
Islamabad

Women Medical & Dental College, Abbottabad,
Through its Managing Director,
Muree Road, Nawanshehr,
Abbottabad.

Barrister Adnan Saboor Rohaila,
Rohaila, Chistina & Kiyani Advocates, Consultants &
Legal Advisors,
Office Apartment 104, first Floor, Block-A, Abu Dhabi Towers
F-11 Markaz,
Islamabad.
0308-8887878

✓ **Competition Commission of Pakistan,**
7th Floor ISE Towers, 55-B, Jinnah Avenue,
Islamabad.

FORM A
BEFORE THE COMPETITION APPELLATE TRIBUNAL,
ISLAMABAD

APPEAL # _____/2019

WOMEN MEDICAL & DENTAL COLLEGE,
Murree Road, Nawanshehr, Abbotabad
Through its Managing Director
Phone:- 0992-390337, 0992-391443

Appellant

VERSUS

COMPETITION COMMISSION OF PAKISTAN
Through its Registrar
7th Floor South, ISE Towers, 55B Jinnah Avenue, Islamabad

APPEAL UNDER SECTION 42 OF THE COMPETITION ACT 2010
READ WITH RULE 3 OF THE COMPETITION APPELLATE
TRIBUNAL RULES 2015 AGAINST THE DECISION OF THE
COMMISSION DATED 26th MARCH 2019 IN SHOW CAUSE NOTICE #
09/2015

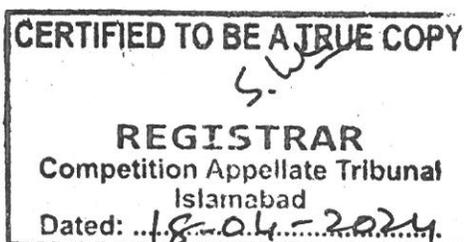
DECLARATION QUA JURISDICTION

It is declared by the appellant that the matter falls within the purview and statutory jurisdiction of the Appellate Bench under section 42.

DECLARATION QUA LIMITATION

It is further declared that the appeal is within time as per the limitation period prescribed in Section 42 and mode of calculation given in Rule 4 Competition Appellate Tribunal Rules 2015.

FACTS OF THE CASE



**BEFORE THE
COMPETITION APPELLATE TRIBUNAL, ISLAMABAD**

WOMEN MEDICAL & DENTAL COLLEGE, ABBOTTABAD

.... APPELLANT

VERSUS

COMPETITION COMMISSION OF PAKISTAN

...RESPONDENT

Appeal No.16/2019

Present: Justice Mazhar Alam Khan Miankhel, Chairperson
Muhammad Asghar Ch., Member Technical
Raja Saad Sultan, Member Technical.

For the appellant: Mr. Adnan Saboor Rohaila, Advocate

For the Respondent: Mr. Danial Hassan, Law Officer, along with
Hassan Ahsen Mian, Law officer, for the CCP.

Date of hearing: 06.04.2022, 16.06.2022, 23.06.2022,
05.10.2022, 22.11.2022, 02.02.2023,
22.02.2023, 04.04.2023, 16.05.2023,
12.12.2023, 19.12.2023 & 20.12.2023.

JUDGMENT

Muhammad Asghar Ch., Member Technical.

Through the instant appeal Women Medical & Dental College, Abbottabad, (WMC) the appellant under section 42 of Competition Commission of Pakistan Act, 2010 (the Act) has challenged the Orders of the Competition Commission of Pakistan (the Commission) dated 26.03.2019, wherein the Commission decided that the appellant contravened the provisions u/s 10 of the Act, and imposed a penalty of Rs. 7.5 Million to be deposited with the Registrar of the Commission in 60 days from the date of the order. According to the findings of an authorized Enquiry the Commission concluded that the Screenshot of the website of the WMC clearly indicated that the

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college indeed claimed to be recognized by the PMDC. Evidence in Enquiry Report shows that WMC advertised the last date to apply for admission for 2013-14 sessions as 28th September, 2013 and it would hold aptitude test on 7th to 12th October of 2013. WMC advertisement as well as information on its website is a breach of PMDC instructions of 19th June, 2013, conveyed through a letter, to cease admission for 2013-2014.

2. Brief facts of the case are that the Appellant is a recognized Medical and Dental College, which is governed by the Medical & Dental Council Ordinance 1962 amended by PMDC amendment Act 2012. The Pakistan Medical & Dental Council (PMDC) had issued a press release on 12th November, 2013, against 22 Medical and Dental Colleges, in which they were stopped from taking admissions for the year 2013-2014. The Commission in view of this press release issued by the PMDC took Suo-moto action and initiated an Enquiry against 8 Medical and Dental Colleges, in exercise of its power under Section 37(1) of the Competition Act, 2010 to investigate, *"Whether the marketing/advertising practices of medical colleges/institutes are in prima facie violation of Section 10 (deceptive marketing practices) of the Act"*.

3. The Enquiry Report concluded as follows;

"Keeping in view the above and the fact that the medical education is the bedrock on which high quality healthcare is built. Therefore, every Medical & Dental College/Institution intending to establish a medical/dental college must apply for an inspection to the PMDC prior to advertisement for applications of admission in First Year class. The advertisement can only be issued after No Objection Certificate is obtained from PMDC. Whereas, NOC for taking admission can only be obtained after going through

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the complete feasibility report and 1st inspection by PMDC”

In view of the findings of enquiry report, proceedings were initiated against the Appellant under Section 30 of the Competition Act, 2010 and a Show Cause notice dated 06-07-2015 was issued to the Appellant. The Appellant submitted his reply before the Commission and contested the matter.

4. The proceedings of the Commission finally held that ‘a case of deceptive marketing in violation of Section 10 of the Act has been made against three undertakings, namely BDMC, WMC and PRC M&D. As stated above, the entire case turns on the timing of advertisements as they were appeared on websites on print media. There is sufficient evidence to prove that these three institutes had advertised admissions for the 2013-2014 session despite, PMDC’s instructions to these institutes wherein they were directed to cease admissions for the session in question based on their questionable and unconfirmed recognition status.

5. The learned counsel for the appellant in his verbal and written arguments submits that, the Medical and Dental Colleges are regulated for the purpose of uniform standards and all other technical matters by the Pakistan Medical and Dental Council, which is the apex body and the regulatory Authority of the Medical and Dental profession and the Medical and Dental Colleges & Institutions. The Recognition of the Medical and Dental Colleges and all matter ancillary to it are governed by the Medical and Dental Council Ordinance 1962 amended by PM&DC (Amendment) Act, 2012. It is contended that due to misunderstanding a letter was issued by the Pakistan Medical and Dental Council stopping admission of the Women Medical and Dental College on 19th June 2013, whereas it is matter of record that the letter was replaced after inspection with letter dated 11.01.2016 and

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appellant was allowed 100 admissions each year, whereas admission of all the students were regularized and the same fact was also incorporated by the Peshawar High Court on 25.07.2017 in W.P # 369-A/2014.

6. The learned counsel for the appellant submits that in consequence of the advertisement various applications were received whereas tests and interviews were conducted and the process of admissions was completed. Whereas the stop admission letter was contested before the Federal Government as the same was issued without approval of competent authority as the setup at PMDC was only installed to conduct elections and could not interfere in the working of colleges as per the dicta laid down in 2015 SCMR 1205 AND CP # 30/2015. Recommendations of the Parliamentary Sub Committee was also put on record. Learned counsel for the appellant submits that in view of Section 10 (1) & (2) (b) of the Competition Act, 2010, admission of medical colleges cannot be termed as a normal business activity in a competitive market and the students cannot stricto sensu be termed as consumers as every medical and dental college has its own allowed strength of intake which is determined by the notification of the Federal Government, neither it would benefit nor would deprive any other undertaking of any admissions nor would it constitute any unfair competition, moreover, the whole exercise was carried out on the basis of a press release issued by the PM&DC neither any complaint was made by any of the stake holders or competitors for the purpose of deceptive marketing nor any student approached any forum let alone the Competition Commission alleging any fraud or representation, which has induced them to believe the facts not known to them or they were deceived by the representations. Moreover, as the matter was already decided by the Supreme Court during pendency of the show cause notice proceedings thus the commission has committed grave illegality by deciding a matter differently on the same point of law and fact, ignoring a regulatory law as well as Judgment of the Supreme Court. He further submits that the Enquiry was against

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22 colleges. Learned counsel for the appellant submits that the PM&DC Ordinance 1962 is an independent statute which governs the Medical and Dental Education in the country, under various regulations and is an exclusive regulatory authority for the purpose of affairs of the Medical and Dental Colleges in Pakistan. If there is any kind of violation of the Ordinance by the PM&DC of its Law or there is any report of non transparency in any of its working the complaint is to be referred by the Federal Government to Commission of Inquiry vide Section 35 of the PMDC Ordinance 1962, amended by section 38 of the PMDC (Amendment) Act, 2012. PM&DC Law overrides the Competition Act 2010 and it cannot encroach upon or take any action in any matter which falls under the purview of the PM&DC Law unless the matter is referred to Competition Commission by the Federal Government after due process under Section 35 of the PM&DC Law. As per record, the Council did not forward any complaint to the Federal Government nor has the Federal Government forwarded any complaint to the Competition Commission regarding the matter of transparency of process of recognition of medical and dental colleges. Even otherwise any request made by caretaker setup has no legal value in view of SCMR 1205. Learned Counsel submits that the claim on website about the recognition of a medical college cannot be termed deceptive in case of any regulatory letter issued as the recognition is done by none less than a notification in the official gazette whereas the same gets withdrawn by a statutory process and only by a de-notification in absence of any notification for withdrawal of recognition the undertaking is authorized and legal to be claiming recognition by the Federal Government and the Medical and Dental Council, thus the appellant has not caused any illegality or deception by claiming recognition.

7. The learned counsel for the appellant submits that the Commission did not have any jurisdiction to adjudicate upon the matter and take cognizance under section 10 of the Competition Act

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2010 as a special law already existed to cater for any violation nor any process was referred to the Competition Commission either by the PMDC or the Federal Government nor any competitor or effectee had approached the Commission in almost 5 years of proceedings. The matter of domain of any other institution in the affairs of a medical or dental college in presence of a regulatory authority PMDC and special law was declared unlawful by the Peshawar High Court Peshawar in W.P # 542-A/2014 reported as 2016 PLD 92 Pesh in the case titled "Women Medical College Vs. NAB etc". Concluding his arguments, the learned counsel for the appellant submits that the Hon'ble Competition Appellate Tribunal may kindly allow the appeal, set aside the impugned order of the Commission, as taking cognizance of such violations is not being in its jurisdiction under the law.

8. The learned Law Officer for the CCP through his arguments in the bar states that he is aware that Women Medical College was allowed to continue with its admissions process by the Hon'ble Peshawar High Court, Abbottabad Bench vide Court Order dated 3rd July, 2014. The appellant earlier however was advertising that the last date of admissions was 28th of September 2013 in defiance of PMDC's instructions to desist from admissions issued on 19th June, 2013. During the period the WMC was advertising the admissions, there was no court order in the field allowing them to do so. Therefore, the Commission is of the considered opinion that the Undertaking has acted in violation of Section 10 (2)(a) and Section 10 (2)(b) of the Act, having disseminated misleading information to consumers. The Law Officer, referring to the Supreme Court Judgment, as cited in the impugned order titled "Hashmat Medical & Dental College Vs. Pakistan Medical & Dental Council" reported as 2018 SCMR 1310 that the august Supreme Court directed that PMDC must after a reasonable period withdraw a medical institution's affiliation by cancelling its registration if it fails to meet the standard set. The Apex Court further directed PMDC to ensure that if a particular college is no longer

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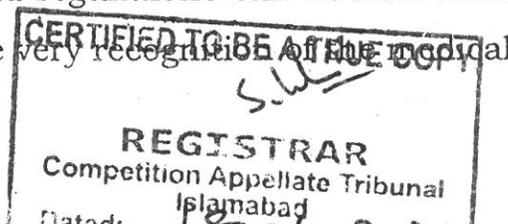
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recognized by and registered with PMDC, this information must be out in the open in the electronic and print media with adequate prominence for the knowledge of the public at large as it would act as a mechanism to spread awareness of the withdrawal of authorization by PMDC. The obligation on PMDC was imposed to ensure that the public is made well aware as to which medical and dental colleges are not authorized to grant admission or impart education.

9. The learned law officer further emphasis that the undertaking, the appellant continued advertisement on website, though he was banned to do so for intake of students for Session 2013-2014. He therefore, contravened the provisions under section 10 of the Competition Act, 2010, therefore, the orders of the Commission be upheld and the Commission be allowed to proceed further for recovery of the penalty.

10. We heard the arguments of both the parties and perused the available record.

11. We have noted that the commission held the appellants responsible for contravening the provisions of Section 10(2)(a), 10(2)(b) and Section 10 (1) of the Competition Act, 2010 (the Act). The Commission took the cognizance of the matter suo moto. The Commission vide its order was of the view that the appellants in violation of the directions of the PMDC admitted the students on the basis of false and misleading information and thereby committed the violations of the provisions of Section 10 of the Act which amounts to a deceptive conduct and thereby penalized the appellants under the Act. Whereas when we go through the provisions of Medical and Dental Council Ordinance, 1962 as amended by Act XIX of 2012, we see that any of the medical college or institutions who violates the provisions of the Ordinance or PMDC rules and regulations can be held liable and penalized by the PMDC itself. The very recognition of the medical



institutions is granted by the Federal Government on the recommendation of PMDC and its complete procedure has been provided in section 11 of the Ordinance as amended by Act XIX of 2012. Similarly the said recognition can be withdrawn by the Federal Government on the recommendation of the PMDC if any report to that effect is sent to it. A complete mechanisms and the procedure has been provided in Section 22 of the Ordinance as amended by Act XIX of 2012. Any of the medical colleges or institutions which is in the field, without recognition or violating any of the provisions of the Ordinance or the regulations can well be dealt with by the newly added Section 22-A of the Act XIX 2012 by the council and similarly such institution can be penalized under newly added Section 22B. When a special body is acting under a special law regulating all the mechanism and issues concerning the medical institutions, policy and admissions of the students etc., we do not think that any other body, authority can intervene and step in to look into all the above said matters and issues. In presence of PMDC, the Commission had no authority to step in and take cognizance of the matter which was purely concerning the admission policy issue between the Sector regulator and the medical colleges and that too Suo Moto, not on the complaint of the any of the students or any aggrieved person. Yes! A possibility would have been there, had a reference in this regard been sent to it by the Federal Government under sub-Section (1) of Section 37 of the Act or, where the deceptive marketing practice on the part of Medical colleges had been proved.

12. During the course of hearing we had repeatedly asked the counsel for parties and especially the counsel for respondent (the commission) regarding the question of jurisdiction of Commission (the Commission) specially in presence of the Medical and Dentil Council Ordinance, 1962 as amended by the Act XIX of 2012, and the relevant rules and regulations of Pakistan Medical and Dental Council (PMDC) having the complete mechanism to regulate its business. Though this

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Islamabad
Dated: 18-04-2024

objection was in favour of appellants and their answers to the question were much less plausible. Similar was the answer of the learned counsel for the commission and they were unable to satisfy us.

13. Besides the above, the purpose of the Act, 2010 and the role of the Commission under the law is to provide for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behaviors.

14. The Commission has relied upon the findings of the Enquiry Report which has suggested that the advertisement calling for admissions should only be issued after obtaining no objection certificate from the PMDC. This in a "way" is a direction to an independent statutory body whose job is to look into all such matters of admissions etc. according to its own laws, rules and the regulations. It is not the job of the Commission to decide, whether NOC would be the requirement or not before inviting the admissions.

15. We noted that the appellant along with nine other Medical & Dental Colleges were categorized by the Enquiry Committee of the Commission as Medical Colleges / Institutes though recognized by PMDC but not allowed to take admission in the year 2013-2014. Accordingly, the objection regarding recognition status is overruled. All the Medical and Dental Colleges / Institutes are regulated under Pakistan Medical & Dental Council Ordinance 1962, amended vide PMDC (amendment) Act, 2012. The recognition of these institution is covered under section 12 of this Act. The inspections are made by Executive Committee of PMDC vide section 24 and the violating provisions are contained under section 22 of PMDC Ordinance, 1962, as amended under section 25 of PMDC Act, 2012. The Council is empowered under section 25 (1)(2) to stop further intake of students in the institutions as well, if not satisfied with the explanation. Then it makes a recommendation to the Federal Government for closure of the institution to which shall include a ~~senior~~ adjustment of students

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in other recognized institutions of the correspondent public or private sector, as the case may be.

16. We perused the provision of the Competition Act, 2010 Section 10, Deceptive Marketing and find that all Medical and Dental Colleges / Institutions in the country have approved number of intakes (seats) each year by the PMDC / Federal Government. These seats are always filled through admissions tests and on merit. In this case the business interest are never undermined or harmed by any such institution as they are to make admission against their allocated seats and on merit. The selected students, on merits, in one or many other institutions have option to join any such Medical & Dental College, if he / she falls in the merit of the college of choice. So this provision in this case is not attracted. The website advertisement is lacking basis (as not allowed by PMDC) but it did not harm the consumers. The prospective students did apply for admission for 2013-2014 intake and approved number were selected through tests in October 2013 as per the merit criteria. These students completed the studies and got degrees. Moreover, factually, the appellant had already completed the admissions for session 2013-2014, when he was asked to stop the admissions in December, 2013. If the undertaking, through their advertisement contravened the directions of the PMDC for 2013-14 intake as per CCP, then it was to be penalized under section 22 of PMDC Ordinance 1962, as amended vide PMDC (Amendment) Act, 2012 and not under the Competition Act, 2010.

17. Where there are two special laws, then the purpose and object of the laws needs to be considered. The Supreme Court in case 2017 SCMR 1218 held;

(13). Thus, when there are two special laws both of which contain overriding clauses, in the case of conflict between the two laws generally the statute later in time will prevail over the statute prior in time. However, we are of the opinion that this

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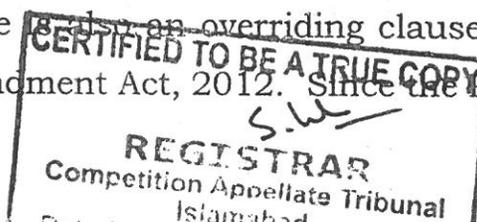
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presumption is not automatic: instead a host of other factor including the object, purpose and policy of both statutes and the legislature's intention, as expressed by the language employed therein, need to be considered in order to determine which of the two special laws is to prevail).

18. The purpose of PMDC Ordinance 1962 as amended by PMDC (Amendment) Act, 2012 was to consider 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. Whereas, the legislative intent of the Competition Act, 2010 is provided in the preamble as;

“An Act to provide for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behaviour. Whereas, it is expedient to make provisions to ensure free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behaviour and to provide for the establishment of the Competition Commission of Pakistan to maintain and enhance competition, and for matters connected therewith or incidental thereto;”

In view of the above legislative intent of the Competition Act, 2010, Medical Colleges as a part of broader commercial activity are also subject to scrutiny by the CCP only in matters related to the competition amongst such institutions in the country. As far as the purpose and object of PMDC Ordinance / Act is concerned, we are of the view that the regulation of admission policy is the sole prerogative of PMDC. Furthermore, there is also an overriding clause S. 36-A in the PMDC Ordinance / Amendment Act, 2012. Since the PMDC



regulates the admission policy, therefore, even if there is a violation of the order of the PMDC, then the PMDC has power to initiate proceedings and penalize the appellants under the relevant provisions of PMDC Ordinance / Amendment Act, 2012 after conducting a formal enquiry.

19. Furthermore, **Regulation 35 of Competition Commission (General Enforcement) Regulations, 2007** provides for cooperation between the Commission and other Regulatory bodies.

Regulation 35, Competition Commission (GER) 2007, provides,

35(1) ... "Subject to Section 48, the Commission may enter into any agreement with any regulatory authority for the purposes of;

- (a) Facilitation and cooperation between the Commission and the regulatory authority in the performance of their respective functions in so far as they relate to issues of competition between undertakings;
- (b) Avoiding duplication of activities by the Commission and the regulatory authority, being activities involving the determination of the effects on competition of any act done, or proposed to be done; and
- (c) Ensuring as far as practicable, consistency between decisions made or other steps taken by the Commission and the regulatory authority in so far as any part of those decisions or steps consist of or relates to a determination of any issue of competition between undertakings."

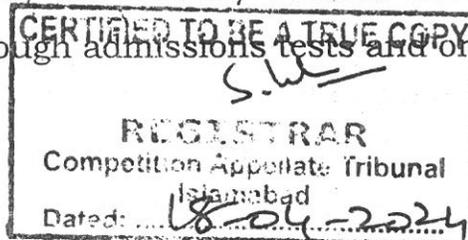
20. In view of **Section 50 of the Competition Act, 2010, and Regulation 35 of Competition Commission General Enforcement Regulations, 2007**, the Commission in order to perform its functions more effectively was required to obtain the relevant information from the concerned regulatory authority. However, the Commission has not consulted Pakistan Medical and Dental Council (PMDC) and gave such findings in the enquiry report, which were outside the scope and object of the Competition Act. In instances where one statute treats a subject

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Dated: .../8/04/2021.

in general terms and other deals with only part of the same subject matter, then it's advisable to interpret and reconcile the two statutes together.

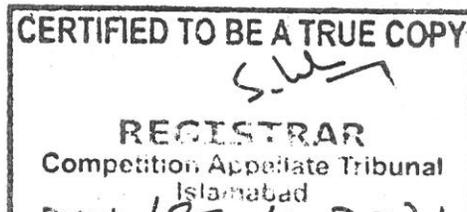
21. We find that all Medical and Dental Colleges / Institutions in the country have approved number of intakes (seats) each year by the PMDC / Federal Government. These seats are always filled through admissions Tests and on merit. In this case the business interest of other medical colleges have never been undermined or harmed by any such institution. So this provision in this case is not attracted. The website advertisement is lacking basis (as not allowed by PMDC) but it did not harm the consumers. The prospective students did apply for admission for 2014 intake and approved number were selected through tests in October 2014 as per the merit criteria. These students completed the studies and got degrees. The undertaking through their advertisement contravened the directions of the PMDC for 2013-14 intake and accordingly is to be penalized under section 22 of PMDC Ordinance 1962, amended as PMDC (Amendment) Act, 2012 and not under the CCP Act, 2010. We also noted fact about the case that Lahore High Court in final disposal of the petition on 15th July, 2015 envisaging the continuation of PRC M&D'S functions till a comprehensive inspection stipulated in Medical and Dental Institutions (Recognition, Eligibility criteria for enhancement in Annual Admissions and accreditation standards) Regulations 2012 is conducted. The court decision was endorsed by PMDC and an inspection was carried out on 18th April, 2016 and as a result of this inspection, the appellant continued students intakes.

sd- 22. The reply of the appellant states that all Medical and Dental Colleges / Institutions in the country have approved number of intakes (seats) for admission each year by the PMDC / Federal Government. These seats are always filled through admissions tests and on merit.



In this case the business interest of one undertaking are never undermined or harmed by any other such institution as they are to make admission against their allocated seats and on merit. The selected students, on merits, in one or many other institutions have option to join any such Medical & Dental College, if he / she falls in the merit of the college of choice. So this provision in this case is not attracted. The website advertisement is lacking basis (as not allowed by PMDC) but it did not harm the consumers. The prospective students did apply for admission for 2013-2014 intake and approved number were selected through tests as per the merit criteria though under Peshawar High Court Orders. These students completed the studies and got degrees. If the undertaking, through their advertisement contravened the directions of the PMDC for 2013-14 intake as per CCP, then it was to be penalized under section 22 of PMDC Ordinance 1962, as amended vide PMDC (Amendment) Act, 2012 and not under the CCP Act, 2010.

23. From above we are of considered opinion that no deceptive marketing i.e, dissemination of false information under section 10 2(a)(b) read with section 10 (1) of the Act is proved. The students (100) who applied for admissions for academic year 2013-2014 were selected through merit criteria of institute against approved seats. The violation or contravention as claimed by the Commission is the violation of stoppage letter, which factually was done by the appellant during the period from 19.06.2013 to 03.07.2014, when Peshawar High Court, Abbottabad Bench allowed to continue the admission. If it was the violation, then the regulatory authority i.e, PMDC, was required to initiate the proceedings and penalize the appellants under the relevant provisions of PMDC Ordinance 1962 / Amendment Act, 2012 after conducting a formal Enquiry.



24. Accordingly, appeal is allowed. The impugned order of the Commission dated 26.03.2019 is also set aside.

Announced in open court on
17.04.2024

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Justice Mazhar Alam Khan Miankhel,
Chairman

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Muhammad Asghar Ch.,
Member Technical

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Raja Saad Sultan,
Member Technical

