

COMPETITION APPELLATE TRIBUNAL
ISLAMABAD

APPEAL NO. 04 OF 2016

The University of Faisalabad..... APPELLANT

VERSUS

Competition commission of Pakistan..... RESPONDENT

APPEAL NO. 05 OF 2016

M/s Institute of Business Management (IBM)... APPELLANT

VERSUS

**Competition Commission of Pakistan and another.
RESPONDENTS**

APPEAL NO. 06 OF 2016

Wah Engineering College.....APPELLANT

VERSUS

Competition Commission of Pakistan.... RESPONDENT

APPEAL NO. 12 OF 2016

M/s Synthetic Fibre Development and Application

Centre College of Textile Engineering... APPELLANT

VERSUS

Competition Commission of Pakistan.... RESPONDENT

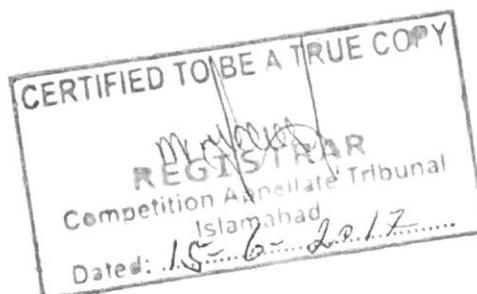
Present: Justice (R) Mian Fasih Ul Mulk, Chairperson
Mr. Ahmed Owais Pirzada, Member Technical.
Justice (R) Miftah-Ud-Din, Member Technical

For the appellants: Mr. Waqas Ahmed Mir, Ahmed Atta Ur

Rehman, Kashif Haneef and Akhter
Aziz Khan, Advocates

For the respondents: Mr. Sultan Mazhar Sheikh and Umer
Gillani Advocates.

Dates of hearing: 09.03.2016, 30.03.2016, 11.05.2016,
07.12.2016, 01.02.2017, 07.03.2017,
29.03.2017 & 02.05.2017

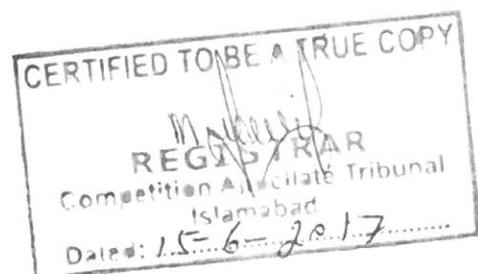


JUDGMENT

JUSTICE (R) MIAN FASIH UL MULK, CHAIRMAN: - The above four appeals arise out of one and the same Order of the learned Competition Commission of Pakistan, therefore, all the appeals shall stand disposed of through this common judgment in Appeal No. 04 of 2016.

2. The Learned Competition Commission of Pakistan on receipt of letter from one Firdous Ayub that certain Institutions in the Country are offering engineering degrees/courses without being accredited by the Pakistan Engineering Council (PEC), took suo moto notice by initiating enquiry under sub-section (1) of Section 37 of the Act, which culminated into identifying 27 Institutions (hereinafter called Undertakings) to have been involved in deceptive marketing practices, as these Undertaking were not accredited by the PEC. After receipt of the Inquiry Report dated 18.06.2012, the learned Competition Commission issued show-cause notices to the said Undertakings, as the Inquiry Report revealed that the said undertakings had published advertisements for the Session 2011 thereby offering degrees/courses accredited by the PEC but the actual facts were in contrast with the information that had been disseminated. The Undertakings were thus asked to place before the Commission the facts and materials in support of their stance on the matter within 14 days.

3. After doing the needful by the Undertakings, proper opportunity of hearing was afforded to them, where after the Order



dated 1.3.2013, impugned in the Appeals before this Tribunal, was passed. The learned Competition Commission in the impugned Order divided the Undertakings into three categories. In the first category, 07 Undertakings were found to have claimed the words 'approved', 'permitted' or 'allowed' instead of claiming to be accredited. The learned Commission was of the view that the term used by PEC before giving accreditation to an engineering program is called 'green signal' and instead of using the said terminology for a new program in the advertisements, the Undertakings have potentially misled the consumers by making the claims in their advertisements. The learned Commission, keeping in view the facts and circumstances, and in the interest of justice reprimanded the said Undertakings subject to giving written commitment to make due disclosures to the student body in terms of the impugned Order in general and, in particular, as stated in paragraph 63 of the Order for future advertisements inviting admissions to engineering programs.

4. In the second category, 15 Undertakings were similarly found to have ensured/achieved accreditation prior to graduation of the students and none of the students who have graduated so far are without an accredited program degree and are thus eligible for registration with PEC as qualified engineers. The learned Competition Commission took a lenient view in respect of this category also though their advertisements were too deceptive as the term 'accredited by PEC' was expressly used while advertising and

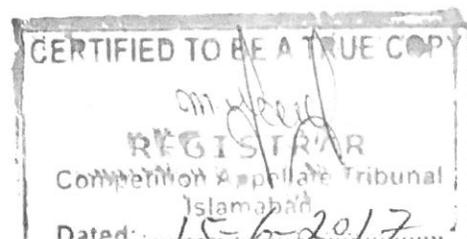


inviting admissions for 2011 programs which was factually incorrect.

These Undertakings were also directed to give in writing commitment to rectify the behavior and disclosure requirements for future advertisements.

5. The third category consisting of 5 Undertakings was found that their students despite graduation have not received an accredited program degree so far and are still not eligible to be registered with PEC as engineers. This was found as a serious violation not condonable and the Undertakings were burdened with a penalty of Pakistan Rs. Five Million each.

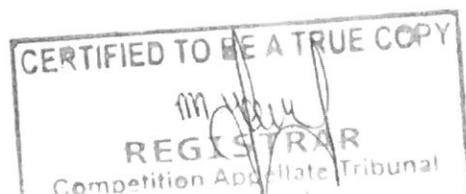
6. Out of the above 5 Undertakings, 4 institutions (appellants before this Tribunal) have questioned the legality of the Order of the Competition Commission of Pakistan in these appeals on the grounds that the appellants were not Undertakings of the nature involved in production or selling some goods in the Market but they being charitable Institution, duly constituted under the relevant Acts for imparting engineering education since its inception were previously granted accreditation by the PEC and to its courses; One of the appellants submitted that it had claimed to be duly accredited by PEC and the word "duly" has a special significance in this context. It explained that by making the claim in its advertisement, it meant that all programs that were due for accreditation have been accredited while some are not still due for accreditation. It was added that the findings of commission that graduates of appellant from the year 2009 to 2012 are not eligible



for registration with PEC as the relevant degree program has not been accredited so far is patently and fundamentally flawed. The correct position is that even for the year 2008 accreditation was granted and since accreditation has been granted for batches of 2007 and 2008, it means that students graduating in 2011 and 2012 are eligible for registration with PEC. In any case the year 2012 was not the subject of the impugned enquiry report or the impugned show cause notice since it focused on advertisements in the year 2011. The appellants further submitted that they have been discriminated against the other two categories, which were similarly placed to the appellants in violating the provisions of the Competition Act, if any; and that the impugned Order being based on erroneous assumptions is thus liable to be set aside. A preliminary issue of maintainability of the proceedings before the Competition Commission was also raised.

7. In one of the Appeals, the PEC was also represented and the stance of the PEC was that the Competition Commission had no jurisdiction to award such penalties; the proper course of action would have been to lodge a complaint in the PEC under Section 27 of the PEC Act. The Competition Commission's decision thus constitutes an encroachment upon PEC'S jurisdiction.

8. Learned Counsel for Competition Commission of Pakistan controverted the arguments of learned counsel for the appellants and that of PEC. It was argued that the impugned order was passed after thoroughly deliberating on all issues and taking

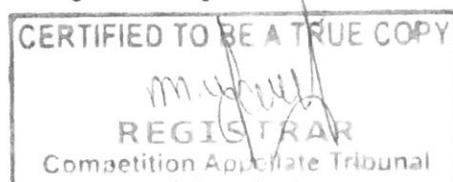


much pain in highlighting each and every aspect of the matter. In reply to the arguments of PEC it was highlighted that Competition Commission of Pakistan had never entered into the domain of PEC, however the Commission has every power and authority to take cognizance of deceptive marketing practices.

9. Before dilating on merits of the case it is to be mentioned that learned counsel for Competition Commission of Pakistan raised preliminary objection to the competency of appeal No. 06 of 2016 and appeal No. 12 of 2016 on the ground that appeals are not maintainable as the same have not been filed through authorized persons. It was alleged that the appellants have not attached either the charter or resolution of its Governing body authorizing the persons to file the appeals.

10. Learned Counsel for the appellant in appeal No. 06 of 2016 submitted that the appeal was filed on behalf of Wah Engineering College through its principal who is duly empowered therefor pursuant to the statute of the University of Wah. The University of Wah Act 2009 was produced wherein the powers and duties of the Board are mentioned. Learned counsel stated that the Board under clause 21 may delegate its powers, duties or functions to any person or a committee. It is in this background that the Board, while delegating its powers authorized Principal Wah College to file this appeal.

11. Learned counsel for the appellant in appeal No. 12 of 2016 submitted that the appellant is not a juristic person and the



appeal was filed by the Acting CEO of the appellant who is competent and has been duly authorized in his capacity as Acting CEO. Learned counsel for Competition Commission of Pakistan after hearing arguments of the appellants did not seriously press the preliminary objection.

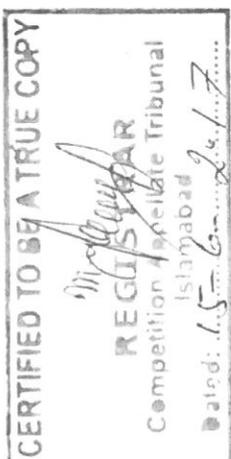
12. We have heard arguments of the learned counsel for the parties and have also perused the available record.

13. The Learned Competition Commission, in its Order has formulated certain questions for determination in the light of findings of the Inquiry Report and the submission made by the learned counsel for the parties. The questions, so formulated, are to the effect that: -

- Whether the institutions are conducting an economic activity and fall within the purview of the term “undertaking”?
- Whether student can be defined as ‘consumer’?
- What does the expression ‘accredited by PEC’ mean or connote in the subject advertisements?
- Whether the subject advertisements by the educational institution can be termed as deceptive marketing in terms of Section 10 and thus a violation under the Act?

While answering the question as to Whether the Undertakings are involved in performing any commercial or economic activity, the learned Competition Commission referred to the term of ‘service’ as used in Section 2(1)(o) of the Competition Act that: -

“Services” means a service of any description whether Industrial, trade, professional or otherwise”.



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Industrial, trade, professional or otherwise”.

It also referred to the term ‘undertaking’ as defined in Section 2(1)(q) of the Act, that: -

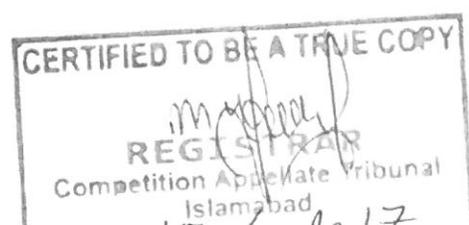
“undertaking” means natural or legal person, governmental body including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged, directly or indirectly in the production supply distribution of goods or provision or control of services and shall include an association or undertaking.”

14. The accepted definition of the term ‘economic activity’ as per Business Dictionary is that it relates to production, distribution, exchange, and consumption of goods and services. Similarly, a ‘commercial activity’ includes any transaction or any regular course of conduct that is of a commercial character. It includes the selling, bartering or leasing of donor, membership, or other fund-raising lists. The ‘Gross Domestic Product’ includes the monetary value of all the finished goods and services produced within a country’s borders in a specific period, though GDP is usually calculated on an annual basis. It includes all of private and public consumption, government outlays, investments, and exports less imports that occur within a defined territory. As quoted above, the definition of ‘undertaking’ includes the word ‘services’ and as all the universities/institutions are offering services on a market i.e. engineering courses/degrees in distinct fields against receiving handsome amount of money from the students, are duly covered by



the definition of the terms 'service' in view of its wide ambit under the Competition Act. We, therefore, concur with the findings of learned Competition Commission that all subject institution are undertakings, in term of Section 2 (1)(q) of the Act and the learned Competition Commission could take cognizance on a complaint or on its own, if the same are found to have involved in deceptive marketing practices. Under Section 37(1) of the Act, the Commission has ample powers to initiate an enquiry on its own initiative. Although, in the inquiry proceedings the appellants were not participated yet the show-cause notices issued to the Appellants under Section 30 of the Act was an opportunity for them to make submissions in writing and to present their case through an authorized representative in the hearing conducted by the Commission. The Appellants have duly availed such opportunity by presenting their cases, as prescribed under the Act, and no violation seems to have been committed by the Competition Commission while conducting proceedings in the cases. The objection thus agitated qua maintainability of the proceedings before the Commission is devoid of any force and has rightly been over-ruled by the Commission.

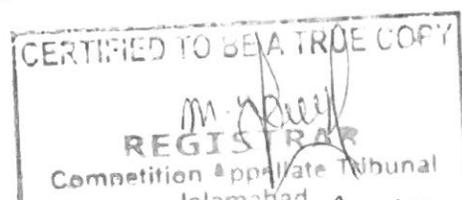
15. Now coming to the findings on merit of the appeals it is apparent from the impugned Order that the learned Commission has reprimanded the first two categories of undertakings on the grounds that the former had used the words, 'approved', 'permitted' or 'allowed' were found to be different from the word 'accredited by PEC' in the advertisement in question while the latter had used the words



'accredited by PEC'. The words, 'approved', 'permitted' or 'allowed' were found to be different from the word 'accredited by PEC' in the advertisements but the students who had graduated without an accredited program degree were subsequently held eligible for registration with PEC as qualified engineers. However, the appellants before this Tribunal were found to have used the word "accredited" and still no accreditation has been granted to their courses/degrees by the PEC and hence not eligible for registration with PEC as Engineers.

16. It is not the case here that none of the Undertakings were granted accreditation by the PEC, as under the respective Acts where under the Undertakings were constituted, accreditation to the institutions as well as their courses/degrees was granted by the PEC for the previous Sessions(s) but for the Session 2011 the same was not granted to them. This would lead this Tribunal to the conclusion that after start of engineering courses, the Universities, Colleges etc. were having all the requisite facilities to run their programs and that is why they were given green signal to start the courses in their campuses and subsequently on completion of such courses, the degrees awarded to the students by the Institutions were duly recognized by the PEC. The dispute in this case relates to the session 2011 and the advertisements made by the Undertakings.

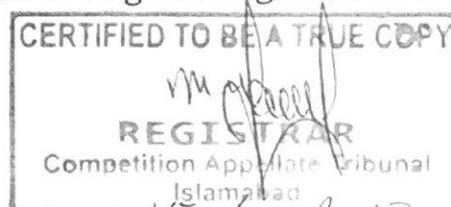
17. Accreditation is a process through which the PEC certifies that engineering programs offered by various engineering institutions in the country meet requisite standard. This



accreditation of a program means that its graduates can, upon graduation, register with the PEC as certified engineering professionals and can enter the job market both at home and abroad. This process can be divided into stages. First, when a new engineering program is about to be launched by a particular University, the PEC is formally invited by the University for a "zero visit". During zero-visit, a program's first and second year requirements are assessed, with emphasis on first year labs, faculty, facilities, etc. and this takes place six months prior to the launch of a program. It is at this stage that a program is given a "green signal" to go ahead with operations. Subsequent to the first inspection and the green signal, in accordance with the PEC Manual, interim visits take place every year. The purpose of a zero-visit is to ensure that the first batch of a new program will be taught in a way and offered education of a standard that is in accordance with the criteria laid down by PEC in its Accreditation Manual. After the start of admitting students by a university for a particular program, the actual accreditation of a program takes place in the 3rd year of a program as per Clause 7.2 of PEC Accreditation Manual. Thus, in the 3rd year of a program, the future of prospective graduates is secured by enabling them to register upon graduation with PEC as certified professionals.

18. Section 14 of the PEC Act provides procedure for accreditation of engineering institutions which is reproduced below:-

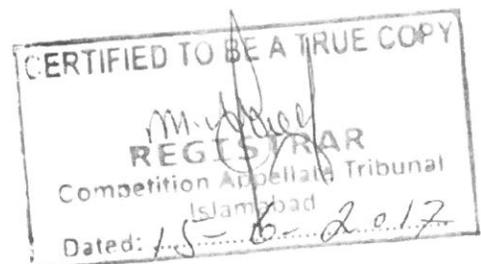
"Section 14. Accreditation of engineering institutions:



(1) *The Council shall constitute an Accreditation Committee for organizing and carrying out a comprehensive program of accreditation of engineering universities, colleges and institutions etc, according to the criteria approved by the Governing Body in consultation with Higher Education Commission.*

(2) *The curricula of courses of studies in various disciplines of engineering and minimum level and standard of such courses including lectures, laboratory, design, drawing and field works shall be examined and scrutinized by the Accreditation Committee who shall submit its report to the Governing Body for approval.”*

Bare reading of the above section would make it abundantly clear that the accreditation committee for accreditation of college and institution shall take into consideration all essential requirement by the college and institution regarding the curricula of courses of studies in various disciplines and standard of such courses including the teaching faculty, infrastructure, syllabus, laboratory and equipment, admission criteria, fees structure and scholarship, library facilities, financial aspects etc. similarly section 16(1) provides that the Pakistan Engineering Council shall maintain a registrar in the prescribed manner wherein the name and other particulars of a person possessing accredited engineering qualification shall be entered, working without registration with the council would be a criminal offence.



Similarly, the Higher Education Commission Ordinance, 2002 reveals that it deals with the institutional accreditation only, whereas under the PEC, Act 1976 engineering program/courses are accredited by PEC. Section 10 of the Pakistan Engineering Council Act 1976 which deals with the accreditation of engineering qualification states as under: -

“10. Accreditation of engineering qualifications granted by institutions in Pakistan :- (1) *The engineering qualifications granted by institutions in Pakistan which are included in the First Schedule shall be the accredited engineering qualifications for the purposes of this Act.*

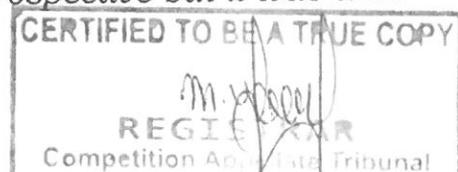
(2) *Any engineering institution in Pakistan which grants an engineering qualification not included in the First Schedule may apply to the Council to have such qualification accredited and the Council may, by notification in the official Gazette, amend the First Schedule so as to include such qualification therein”.*

19. The august Supreme Court of Pakistan in the case of **CHAIRMAN PAKISTAN ENGINEERING COUNCIL, ISLAMABAD and others versus MUHAMMAD MAJID HANIF and others (PLJ 2008 SC 896)**, has held as under: -

“Admittedly, respondent College was granted accreditation by the PEC in the year 2003 but with the intake of Batch 2003 only and nothing was mentioned with regard to the students who had joined the said

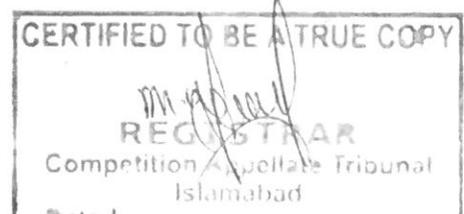


situation has, in the impugned judgement, unequivocally held that PEC was responsible for such an omission rather there was slackness on its part to impart reply of acceptance or refusal to the University College of Engineering and Technology, Islamia University, Bahawalpur with regard to those years of which session it had commenced from 1999 onward and that it was the duty of the PEC to accord permission of accreditation or to decline it with reasons and to inform the said College about its decision but their inaction adversely affected future of the students besides damaging reputation of the institution and that grant of accreditation for one year by the PEC is indicative of the fact that the University College of Engineering and Technology, Islamia University, Bahawalpur, was not lacking the requirements necessary for the grant of accreditation. It is not disputed by the petitioner that University College of Engineering and Technology, Islamia University, Bahawalpur, had applied for accreditation initially in the year 1999, where after the matter remained under consideration, as correspondence was being made by the parties. As stated above, Respondent No. 3 was granted accreditation in the year 2007 with the intake of batch of 2003 only, meaning thereby that accreditations was not prospective but it was with

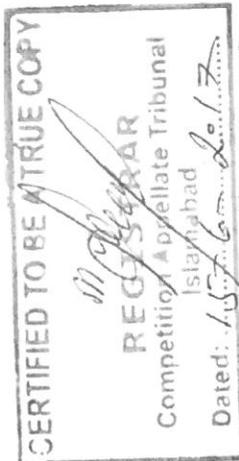


retrospective effect. It has been contended on behalf of the petitioners that since the institution was lacking in requisite qualifications/facilities prior to 2007, therefore, accreditation could not have been afforded but the argument has the germs of its own destruction for the simple reason that if the College was lacking in requisite qualifications prior to 2007, say in the year 2006, as to how then accreditation could have been accorded retrospectively with the intake of the batch of 2003? The decision made by the petitioner, therefore, leads to the clear inference that in the year 2003 too the institution was not lacking in the requisite qualification of teaching material and equipments. In our view, therefore, the learned Judge in the High Court was right in saying that inaction on the part of the petitioner was the main cause and future of those students who were not at fault and had studied for full four years by toiling day and night to gain success could not have been allowed to be marred or destroyed by the petitioner's refusal to accredit the College without any reason. We have specifically questioned the learned counsel for the petitioners as to how accreditation was accorded to the other universities, retrospectively, but he is unable to answer the query".

The petitions were therefore dismissed and leave was declined.



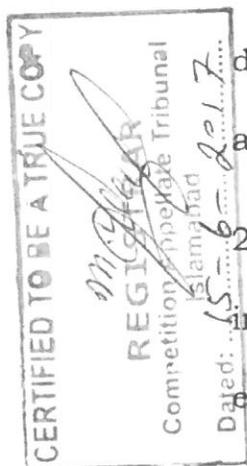
20. The above verdict of the apex Court would also apply here, when accreditation to the courses/degrees was granted by the PEC to the appellant's institution in the previous years but for the session 2011 the same was either not granted despite correspondence from the institutions with the PEC or the same was granted subsequently at a stage when the students were already granted degrees by the institutions. There is nothing on the record or in the reply of the PEC as to why the courses/degrees of the appellant's institutions were not recognized by the PEC. The appellants in appeal No. 04 of 2016 have categorically alleged in their memo of appeal that the appellant received accreditation for its programs in the year 2011 and year 2012 as well as in in previous years, a fact completely ignored in the impugned Order. This assertion was supported by an Affidavit and was not controverted through any counter Affidavit either by Competition Commission of Pakistan or Pakistan Engineering Counsel. We also enquired from learned counsel for PEC as to whether there is a single student who has been refused registration. His reply was "NOT TO HIS KNOWLEDGE", anyhow, this Tribunal would not further comment on this point, as the question before the learned Competition Commission and this Tribunal was/is that the Undertakings were involved in deceptive marketing practices.



21. The synonymous of the word "accredit" as per Oxford Dictionary is to "recognize, license, authorize, approve, certify, warrant, empower, depute, endorse, sanction, vouch for, put one's seal of approval on, appoint." In view of this synonymous to the word

'accredit', it is evident that the two categories of Undertakings, who have been only reprimanded, had certain common features with the appellants. Therefore, it does not make sense to punish some universities while allowing others lenient treatment. The exercise of discretion that violates, inter alia, Articles-3,4 and 10-A of the Constitution of Islamic Republic of Pakistan, 1973. The most interesting aspect of the case is that neither any student nor their parents have filed any complaint against the Undertakings that they have been deceived by the institutions in the matter of accreditation of their degrees. So much so that in the written reply of the PEC, the only attack on the impugned Order is that the institution do not cover under the definition of Undertakings and thus nothing has been brought on record as to whether the PEC has rejected the request of the appellants for accreditation of the courses/degrees for the session 2011 or considering the same for accreditation. In view of the above, we find that the impugned Order of the learned Competition Commission is not based on equal protection of law and discriminatory amongst the similarly placed institutions as well as against the established norms of natural justice.

22. Accordingly, the appeals in hand are accepted, the impugned Order of the learned Competition Commission to the extent of imposing penalty on the appellant's undertakings is set aside and to bring the things in harmony, the appellants besides being reprimanded shall also give written commitment to make due disclosures to the student body as stated in Paragraph No. 63 of the



impugned Order for future advertisements inviting admissions to engineering programs.

23. Before parting with the Judgment, we observe that the enquiry committee constituted for the purpose found prima facie deceptive marketing practices by institutions advertising various Engineering programs with the words Accredited/Approval/Permitted/Allowed by PEC during the year 2011. Section 10 of PEC Act, 1976 talks about constitution of a committee for Accreditation of INSTITUTIONS. Section 14 of PEC Act, 1976 refers to the QUALIFICATIONS for Accreditation whereas some provisions of PEC manual gives the procedure for Accreditation of various PROGRAMS/DISCIPLINE. We would, therefore, advise Pakistan Engineering Council to constitute a committee comprising of Senior Expert Engineers and legal Experts to examine various provisions of PEC Act, 1976 and PEC Manual and recommend suitable amendments wherever required in order to remove anomaly and bring harmony/conformity therein so that confusion in future is avoided.

No order as to costs.

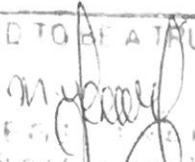
Announced in open court
07.06.2017


Justice (R)
Mian Fasih Ul Mulk,
Chairperson


Justice (R) Miftah-Ud-Din
Member Technical


Ahmed Owais Pirzada
Member Technical

Application No.	284
Dated	15-06-17
Applicant	CEP
No. of Pages	19
Applying Fee	
Search Fee	
Registration Fee	
Total Fee	
Date of Presentation of Copy	15-06-17
Date of Delivery	15-06-17

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REGISTRAR
Competition Commission Tribunal
Date: 15-6-2017