

PLJ 2015 Lahore 908 (DB)
[Bahawalpur Bench, Bahawalpur]

Present: ALTAF IBRAHIM QURESHI AND SADAQAT ALI KHAN, JJ.

MURAD ALI KHAN--Appellant

versus

VICE-CHANCELLOR, UNIVERSITY OF HEALTH SCIENCES, LAHORE and others--Respondents

Intra Court Appeal No. 9-2014/BWP, heard on 18.3.2014.

University of Health Science Lahore Ordinance, 2002--

---S. 10--Law Reforms Ordinance, 1972, S. 3(2)--Educational institution--Admission in MBBS course--Name was dropped by administration--Challenged through writ petition which was allowed--Intra Court Appeal was not maintainable--Respondent was selected for admission in MBBS against reserved seat--In domicile, columns of place and date of arrival in place of domicile were left blank and certificate of verification of birth registration that there was no entry in birth registration record pertaining to birth entry quota of cholistan and appellant was selected and no provision was provided for second revision in Ordinance and selected candidate had rightly filed writ petition for redressal of grievances--Remedy of revision was available against order for admission which was to be treated as original order and revision filed by appellant was entertained by authority of university and was allowed--Bar of filing of appeal of proviso of Section 3(2) of Law Reforms Ordinance was fully attracted and ICA was not competent.

[Pp. 912 & 914] A, B, C & D

Mr. Muhammad Ali, Advocate for Appellant.

Mr. M.A. Hayyat Harraj, Advocate for Respondent No. 1/UHS.

Mr. Farooq Warind, Advocate for Respondent No. 2.

Mr. Muhammad Ayyaz Kalyar, Advocate for Respondent No. 3.

Date of hearing: 18.3.2014.

JUDGMENT

Sadaqat Ali Khan, J.--The instant Intra Court Appeal No. 09-2014/BWP has been filed by Murad Ali Khan against the judgment dated 07.02.2014 passed by Single Judge of this Court in Writ Petition No. 7351 of 2013 filed by Respondent No. 3 *Mst. Tehreem Fatima Lashari* according to which same was allowed and list dated 2.12.2013 of successful candidates for admission in MBBS course to the extent of present appellant Murad Ali Khan was set aside whereas list dated 16.11.2013 of successful candidates for admission in MBBS course was restored in which name of Respondent No. 3 *Mst. Tehreem Fatima Lashari* was existed.

2. Brief facts of this Intra Court Appeal are that Respondent No. 3 *Mst. Tehreem Fatima Lashari* filed a Writ Petition No. 7351/2013 against the present appellant and; Respondents No. 1 and 2 stating therein that she is by birth permanent resident of village Chak No. 120/DNB Cholistan, Tehsil Yazman, District Bahawalpur; that she passed her F.Sc. (Pre-Medical) in the year 2013 and obtained 916/1100 marks. She applied in MBBS course at Sheikh Zayed Medical College, Rahimyarkhan through University of Health Sciences, Lahore on 14.10.2013 against the seat reserved for Cholistani students being Cholistani. According to merit list (Session 2013-2014) displayed on the website of University of Health Sciences, Lahore she was selected for admission in MBBS course at Sheikh Zayed Medical College, Rahimyarkhan against one seat reserved for Cholistani students being Cholistani. She stated in her writ petition that when she approached the said Medical College on 02.12.2013 for paying her dues and other necessary process and was advised to bring her original documents on 03.12.2013 for further process, called by the college authority. On 03.12.2013 petitioner in writ petition went to Sheikh Zayed Medical College, Rahimyarkhan where she was informed that her name was dropped by the Administration of the said college and Murad Ali Khan Respondent No. 3 in writ petition present appellant was selected without any prior notice or intimation to the petitioner in writ petition. She further stated that she is entitled for admission in MBBS course on the strength of one reserved seat for Cholistani students being Cholistani by birth and the admission of Respondent No. 3 in writ petition present appellant is based upon fake assessment as present appellant/Respondent No. 3 in writ petition is not a Cholistani by birth. Present appellant and present Respondent No. 1 and 2 contested the writ petition which was allowed on 07.02.2014 by the Single Judge of this Court and name of the present appellant Murad Ali Khan was cancelled from the list dated 02.12.2013 pertaining to successful candidates and name of *Mst. Tehreem Fatima Lashari* Respondent No. 3 in the instant appeal was restored in the list of successful candidates considering her Cholistani by birth. Hence, this Intra Court Appeal.

3. Learned counsel for the appellant submitted that the writ petition of Respondent No. 3 was not maintainable before the Hon'ble Single Judge of this Hon'ble Court without availing the remedy provided by University of Health Sciences, Lahore in Para-F(vi) of the Prospectus for admission in MBBS course (Session 2013-2014) i.e. complaint if any against the selection list may be lodged within ten days of the Notification. It is further submitted that according to the birth certificate of present Respondent No. 3 *Mst. Tehreem Fatima Lashari* the entry in birth register was made with the delay of two years as Respondent No. 3 was born in 1997 and entry regarding her birth was made in the relevant register in the year 1999. So there is ambiguity regarding birth place of the Respondent No. 3. It is further submitted that father of Respondent No. 3 is an employee of Cholistan Development Authority and he resides at Bahawalpur and Respondent No. 3 had studied from Class-I to F.Sc. at Bahawalpur but her father being influential person had got entered the name of Respondent No. 3 in the birth register in Chak No. 120/DNB. It is further submitted that appellant had been deprived from his fundamental right of his education only on the point that the word "by birth" is not mentioned in residential certificate issued in favour of the appellant. It is further submitted that residential certificate was issued by the Cholistan Development Authority in favour of the appellant and also domicile certificate issued to the appellant support the version of the appellant and admission has been granted to the appellant by the admission board after completion of the process and appellant paid his fee and classes have started. Thus on the doctrine *locus penitential* a vested right has been created in favour of the appellant and admission of the appellant could not be disturbed. It is lastly submitted that by virtue of the power contained under Section 21 of General Clauses Act (1897) be receding, amending, withdrawing or canceling any order could only be available to the authority (Respondents No. 1 and 2) in case the same has not been carried into effect and reliance placed on PLD 1963 Lahore 53 and PLD 1965 Peshawer 47.

4. On the other hand learned counsel for Respondents No. 1 and 2 and learned counsel for Respondent No. 3 both have supported the impugned judgment and submitted that under Article 10 of the University of Health Sciences, Lahore Ordinance, 2002 revision is available. Thus under Section 3(2) of Law Reforms Ordinance, 1972 this Intra Court Appeal is not maintainable.

5. We have heard the learned counsel for the parties and perused the record.

6. We think before proceeding to the merits of the case it is most relevant to reproduce the relevant Para of prospectus for admission in MBBS course of Government Medical and Dental Institution of the Punjab for the year 2013-2014 pertaining to one reserved seat for MBBS course for Cholistani students at Sheikh Zayed Medical College Rahimyarkhan which is hereby reproduced:--

"The Chief Minister Punjab has approved reservation of one (01) seat for MBBS course (w.e.f. session 2010-11) for Cholistani students at Sheikh Zayed Medical College, Rahimyarkhan, out of its current allocation on open merit basis with the following criteria:

1. Such a candidate should otherwise be eligible for admission into Medical College (having passed F.Sc. from any of the Districts Bahawalnagar, Bahawlnpur or Rahimyarkhan and passed Entry Test in accordance with the required percentage.
2. The candidate must be Cholistani by birth and should have actual residence in Cholistan, as verified by Cholistan Development Authority."

Mst. Tehreem Fatima Lashari petitioner in writ petition and Respondent No. 3 in the instant appeal applied for admission in the MBBS course at Sheikh Zayed Medical College Rahimyarkhan against the seat reserved for Cholistani students claiming herself Cholistani on the basis of following documents:--

- (i) Certificate of domicile issued on 21.08.2013 by DCO Bahawalpur according to which place of domicile is mentioned Chak No. 120/DNB Cholistan. Name of Tehsil is mentioned Yazman and date of arrival in place of domicile is mentioned since birth.
- (ii) "B" Form of Respondent No. 3 issued on 16.09.2011 by National Database and Registration Authority showing therein that Respondent No. 3 *Mst. Tehreem Fatima Lashari* was born in District Bahawalpur on 09.01.1997.
- (iii) Birth certificate of Respondent No. 3 *Mst. Tehreem Fatima Lashari* issued on 06.12.2013 by Secretary Union Council Meerana (106) District Bahawalpur according to which *Mst. Tehreem Fatima Lashari* was born on 09.01.1997 in District Bahawalpur at Chak No. 120/DNB Tehsil Yazman, District Bahawalpur and entry in the register of birth was made on 01.02.1999 at Sr. No. 6 of old register much prior to the present dispute of admission in MBBS course of Respondent No. 3 when she had no imagine that she would get admission being Cholistani at Sheikh Zayed Medical College, Rahimyarkhan.
- (iv) ID Card of Imtiaz Hussain Lashari real father of Respondent No. 3 *Mst. Tehreem Fatima Lashari* according to which permanent address is mentioned Cholistan Chak No. 120/DNB

Tehsil Yazman, District Bahawalpur and this ID Card was issued on 08.11.2007 much prior to dispute of the admission of the Respondent No. 3 *Mst. Tehreem Fatima Lashari* rather she had not passed F.Sc. at that time.

- (v) Certificate dated 21.10.2013 issued by Assistant Director, Cholistan Development Authority, Bahawalpur certifying therein that *Mst. Tehreem Fatima Lashari* present Respondent No. 3 is Cholistani by birth and permanent residence of Chak No. 120/DNB Cholistan, Tehsil Yazman, District Bahawalpur.

7. In view of the above *Mst. Tehreem Fatima Lashari* was selected for admission in MBBS at Sheikh Zayed Medical College, Rahimyarkhan against the reserved one seat for Cholistani students being Cholistani according to the list dated 16.11.2013 issued by Respondents No. 1 and 2 for successful candidates. Present appellant Murad Ali Khan present appellant has applied for admission in MBBS course against one seat reserved for Cholistani students claiming himself as Cholistani on the basis of following documents:--

- (i) Certificate of domicile issued on 17.07.2012 according to which in column address in Pakistan is mentioned Chak No. 147/DB Cholistan P.O. Kaduwala, Tehsil Yazman, District Bahawalpur but column of place and column of date of arrival in the place of domicile is left blank in the domicile.
- (ii) Certificate dated 10.02.2014 issued by Election Officer Bahawalpur according to which Muhammad Ramzan grandfather of the appellant Murad Ali Khan is mentioned as voter member at Sr. No. 208 and his address is mentioned Chak No. 147/DB Cholistan Yazman, District Bahawalpur.
- (iii) Certificate dated 10.02.2014 issued by Election Officer of Bahawalpur according to which Muhammad Ali real father of present appellant Murad Ali Khan is mentioned as voter member at Sr. No. 210 and address is mentioned Chak No. 147/DB Cholistan Yazman.
- (iv) Certificate dated 06.11.2012 issued by Managing Director Cholistan Development Authority Bahawalpur certifying therein that Murad Ali Khan present appellant is a permanent resident of Chak No. 147/DB Cholistan Tehsil Yazman, District Bahawalpur.
- (v) ID Card of Muhammad Ali real father of the present appellant Murad Ali Khan according to which permanent address is given Chak No. 147/DB Tehsil Yazman District Bahawalpur and considering these documents of appellant, Respondents No. 1 and 2 dropped *Mst. Tehreem Fatima Lashari* from the list dated 16.11.2013 for successful candidates in the admission of MBBS course and selected Murad Ali Khan present appellant by issuing list on 02.12.2013, showing Murad Ali Khan appellant as successful candidate for the admission in MBBS course on the quota of Cholistan considering him Cholistani.

Mst. Tehreem Fatima Lashari had placed on record "B" Form of National Data Base and Registration Authority pertaining to Murad Ali Khan present appellant through C.M. No. 397 of 2014 moved in Writ Petition No. 7351/2013 during the pendency of writ petition according to "B" Form Murad Ali Khan present appellant was born on 01.04.1995 in District Vehari. His sister *Mst. Kishwer Khanum* and his brother Fayyaz Ali Khan were also mentioned in "B" Form and were born in District Vehari and further there is another document regarding verification of birth registration issued by Administrator Union Council No. 107 Chak No. 75/DB (Cholistan) on 07.12.2013 certifying therein that birth registration record of Chak No. 147/DB (address given by the appellant Murad Ali in his domicile) of Union Council No. 107 Chak No. 75/DB Cholistan, Tehsil Yazman has been minutely checked but no birth entry dated 01.04.1995 of Murad Ali Khan S/O Muhammad Ali has been found available. During the arguments when we confronted these two documents to learned counsel for the appellant he could not rebut these two documents and in view of these two documents it is admitted position that Murad Ali Khan present appellant was born on 01.04.1995 at District Vehari as mentioned in "B Form" and not born at Chak No. 147/DB Cholistan P.O. Khudwala Tehsil Yazman District Bahawalpur which address is mentioned in his domicile and we think that rightly in domicile of the appellant columns of place and date of arrival in the place of domicile are left blank and certificate of verification of birth registration dated 07.12.2013 issued by the Administrator shows that there is no entry in the birth registration record of Chak No. 147/DB of Union Council No. 107 Chak No. 75/DB Cholistan pertaining to the birth entry dated 01.04.1995 of Murad Ali Khan (sic)

(sic) quota of Cholistan and present appellant was selected and no provision is provided for second revision in the ordinance and Respondent No. 3 *Mst. Tehreem Fatima Lashari* has rightly filed Writ Petition No. 7351 of 2013 for redressal of her grievances and further submitted that as revision was provided under Article 10 of the University of Health Sciences, Lahore Ordinance, 2002. Hence, Intra Court Appeal before the Division Bench against the judgment of Single Judge of this Court is not maintainable. Article 10 is hereby reproduced:

“Revisional Powers of the Chancellor: The Chancellor may, of his own motion or otherwise, call for and examine the record of any proceedings in which an order has been passed by any authority for the purpose of satisfying himself as to the correctness, legality or propriety of any finding or order and may pass such order as he may deem fit.”

8. In view of the above, we are, therefore, convinced that a remedy of revision was available in the matter against the order-dated 16.11.2013 for the admission of Respondent No. 3 which is to be treated as the original order for the purpose of Section 3(2) proviso one of Law Reforms Ordinance, 1972 and revision filed by the present appellant was entertained by the authority of the University and was allowed and Respondent No. 3 was dropped whereupon present appellant was selected on 02.12.2013 in the list of successful candidate for admission in MBBS course in the quota of Cholistan. So the bar of filing of the instant appeal of proviso of Section 3(2) of Law Reforms Ordinance 1972 is fully attracted in the instant case and the instant Intra Court Appeal is also not competent. Reliance is placed on case “*Vice Chancellor University of Health Sciences vs. Breeha Zainab and others*” 2011 MLD 1652 in which it is held as under:

“We are, therefore, convinced that a remedy of revision was available in the matter against the order of refusal of admission to the Respondent No. 1, which is to be treated as the original order for the purpose of Section 3(2) proviso one of Law Reforms Ordinance, 1972. Additionally a revision was entertained by the Chancellor of the University and was rejected by him *vide* order dated 24.10.2009 and this fact has been narrated in reply to Paragraph No. 3 of the parasewise comments by Respondents No. 1 and 2 before the learned Single Judge in Writ Petition No. 7848 of 2009, the extract of

which has been reproduced above, therefore, the bar of proviso to Section 3 sub-section (2) of Law Reforms Ordinance, 1972 is fully attracted in the instant case and the instant ICA is not competent for the above reasons.”

For the foregoing reasons the instant Intra Court Appeal is dismissed on merits as well as being not maintainable.

(R.A.) I.C.A. dismissed