

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
[JUDICIAL DEPARTMENT]

Writ Petition No.392-P/2024

Miss Nigareen Zeb

versus

*Government of Khyber Pakhtunkhwa through Secretary
Home & Tribal Affairs Department, Peshawar & others*

Date of hearing: 27.06.2024.

Petitioner by: *Mr. Muhammad Jehangir Khan
Mohmand, Advocate.*

Provincial Govt: by: *Mr. Azhar Rahim, AAG.*

Respondent/KMU by: *Mr. Abdul Munim Khan, Advocate.*

J U D G M E N T

SHAKEEL AHMAD, J.- In this writ petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has sought the following relief: -

"It is, therefore, most humbly prayed that on acceptance of this writ petition, this honourable Court may be pleased to;

- a) Declare the impugned admission policy with regard to open and reserved seats allocation and selection as illegal, unfair, illogical, discriminatory and arbitrary and in violation of the fundamental rights.*
- b) Declare the binding of candidates by the respondents to apply for each category separately and non-consideration by the respondents of a candidate for not having applied*

for a specific category of seats, as illegal, arbitrary and discriminatory.

- c) *Declare, as a consequence of the above, that the petitioner, if found lawfully eligible may be directed to be admitted to a medical college as per her merit, along with any other relief deemed appropriate please”.*

02. Facts giving rise to filing of the writ petition, briefly stated are that the petitioner belongs to newly merged District of Mohmand. She passed her SSC annual examination from Peshawar Board in the year 2020 by securing 1020 marks out of 1100 in Grade A1. She did her F.Sc Annual Examination 2023 by securing 1021 marks out of 1100 in Grade A1. She remained successful in her MD-CAT test having secured 159 marks out of 200. Her name was placed at serial No.66 of the merit list from Mohmand District with overall aggregate of 86.1, but, she could not get admission in the Public Sector Medical Colleges against the reserved seats for Mohmand District being low on merit as

compared to the other candidates, who got admission against the reserved seats of District Mohmand. On failure to get admission in the Public Sector Medical Colleges, she filed the instant petition, challenging the criteria for admission to Public Sector Medical Colleges and the formula provided in the prospectus for admission on merit and other reserved quotas. She pleaded that as many as twenty-two (22) candidates who belong to Mohmand District having better merit positions as compared to the candidates of settled area, could have been granted admission in open merit, but, it was not done, resultantly, she and many other candidates, who could have been granted admission against the reserved quota of District Mohmand were deprived of admission against the said quota. All her efforts in this respect proved to be a wild goose chase, which necessitated to file the instant petition.

03. Pursuant to the order dated 13.02.2024 of this Court, respondent No.2 & 3 filed their separate para-wise comments. Respondent No.3 (KMU-AC) resisted the claim of the petitioner on various legal and factual grounds.

04. Heard both sides and record perused.

05. A perusal of the record reflects that petitioner belongs to District Mohmand, the newly merged area having Domicile of the said District. She passed her SSC Annual Examination (Session 2020) from F.G Public Secondary School No.1, Warsak Road, Peshawar Cantt., and F.Sc (HSSC) from Frontier College for Women, Peshawar (Session A/2023). She completed her education in District Peshawar and on the basis of her qualifications, mentioned above, she appeared in MD-CAT test and secured 159 marks out of 200, with overall aggregate of 86.1. She applied for admission in the Public Sector Medical Colleges of

Khyber Pakhtunkhwa against the reserved seats of Ex-FATA (after merger, District Mohmand) and General Self Finance Seats. At this stage, we deem it appropriate to reproduce the criteria of eligibility for admission in the Public Sector Medical Colleges of Khyber Pakhtunkhwa incorporated in the admission policy 2023-24, based on Pakistan Medical & Dental Council Act, 2022, as under: -

U. MERGED AREA DISTRICTS (MADs) RESERVED SEATS.

a. Merged Areas Districts (MADs) seats include all seats reserved in Medical and Dental Colleges of Khyber Pakhtunkhwa other Provinces and AJK. Out of the total reserved seats for MADs:

i. The top ninety percent seats will be shared between the candidates who have passed SSC (Science), HSSC (Pre-medical) from institutions located both inside and outside MADs. Including Domicile, location certificate and educational testimonials.

ii. The remaining ten percent seats are reserved only for those candidates who have obtained their Primary, Middle, SSC (Science) & HSSC (Pre-medical Part-I & Part-II) education from institutions within MADs while,

iii. Any candidate, who has obtained any part of his /her education outside MADs, will not be considered as inside candidate.

iv. In case of non-existence of school/college or non availability of the facility for teaching science subjects, the candidate will have to provide a solid proof in the form of a certificate (as per specimen given on KMU website) duly verified by the concerned DEO (Education) and countersigned by the concerned DC.

v. In case a candidate nominated against MADs reserved seat does not avail the facility for which he/she has been nominated; the Nominating Agency should be informed by him/her immediately, failing which a penalty of debarring for one/two years will be imposed on the defaulter candidate(s) for his/her future selection/ nomination against reserved seats.

b. The candidates applying against MADs reserved seats in Khyber Pakhtunkhwa Medical and Dental Colleges as well as elsewhere in Pakistan shall apply to the Chairman KMU-AC on prescribed online forms as well as submit a photocopy of admission form along with attached documents in the Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar whose concerned authorities will verify the documents especially the domicile.

c. The KMU-AC will finalize the merit list of MADs candidates on the basis of inter se merit. Selection will be subject

to rules framed by the SAFRON/ Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa.

The candidates must fulfill the following criteria:

i. Possess valid Merged Area Districts (MAD) domicile certificate showing clearly date of issue and serial number.

ii. His/her father must possess a valid domicile of Merged Area Districts (MAD). In case father of the candidate is not alive then the mother's valid domicile of Merged Area Districts (MAD) along with death certificate will be considered.

d. Any student seeking admission in any medical or dental college shall mandatorily be required to have passed the MDCAT examination. The passing marks for the MDCAT examination shall be 55% for admission into MBBS and 50% for admission into BDS.

e. Fulfill all other criteria laid down for admission in Khyber Pakhtunkhwa Medical & Dental Colleges.

f. Up gradation on vacant seats shall be made on merit cum choice basis.

V. FEDERAL RESERVE AND QUOTA SEATS:

I. MERGED AREA DISTRICTS (MAD)/ BALOCHISTAN PROJECT SEATS.

The seats have been created under the project titled Provision of Higher Education Opportunities for Balochistan & Merged Area Districts (MAD).

The candidates applying against MADs/ Balochistan Project seats reserved in Khyber Pakhtunkhwa Medical and Dental Colleges shall directly apply to Higher Education Commission on the prescribed form. The HEC shall finalize the list of candidates to be admitted as per Policy formulated for the said project. Nomination of candidates shall be sent by HEC, Islamabad to the KMU-AC through Secretary Health, Government of Khyber Pakhtunkhwa. In order to avoid duplication on rest of MADs reserved seats HEC will invite MADs Secretariat while awarding scholarships to these candidates.

II. SEATS RESERVED FOR AJK & GILGIT BALTISTAN (NORTHERN AREAS).

The AJK & Gilgit Baltistan (Northern Areas) seats include all seats reserved in Medical and Dental Colleges of Khyber Pakhtunkhwa for candidates from AJK & Gilgit Baltistan (Northern Areas).

The candidates seeking admission from AJK & Gilgit Baltistan (Northern Areas) against the seats reserved in Khyber Pakhtunkhwa Medical/ Dental Colleges should apply to Secretary Nomination board Muzaffarabad and Director of Education Gilgit Baltistan (Northern Areas) respectively.

The candidates must fulfill the following criteria:

a. The candidate and his/her father shall possess Gilgit Baltistan (Northern Areas) valid domicile certificate/ AJK valid state subject certificate/ domicile certificate. In case father of the candidate is not alive then the mother shall possess Gilgit Baltistan (Northern Areas) valid domicile certificate/ AJK valid state subject certificate/ domicile certificate.

b. The nominated candidates must have passed the Entrance Test conducted by the Pakistan Medical and Dental Council (PM&DC) for admission and have obtained at least 60% unadjusted marks in their FSc (Pre-Medical) or equivalent examination. Fulfilling all other criteria laid down for admission in Khyber Pakhtunkhwa Medical & Dental Colleges.

The selected candidates of AJK/ Gilgit Baltistan (Northern Areas) must report to the principal of the concerned Medical/Dental Colleges of Khyber Pakhtunkhwa before the closing date of admission”.

06. It will also be advantageous to reproduce the criteria for admission against the *Open Merit Seats*, which reads as under: -

“M. OPEN MERIT SEATS.

These Seats are open to applicants possessing valid domicile certificate of Khyber Pakhtunkhwa including the backward areas of Khyber Pakhtunkhwa. The applicant’s father shall also possess valid domicile

certificate of Khyber Pakhtunkhwa including the backward areas of Khyber Pakhtunkhwa and if father is not alive then the mother's valid domicile of Khyber Pakhtunkhwa including the backward areas of Khyber Pakhtunkhwa will be considered".

07. A perusal of the eligibility criteria (iii), reveals that any candidate, who has obtained any part of his/her education outside MADs will not be considered as inside candidate. A glance over her educational testimonials reflects that she did SSC and F.Sc (pre-medical) from outside MADs, thus, she was rightly considered as "OUT" student for the purpose of admission in Public Sector Medical Colleges of Khyber Pakhtunkhwa alongwith NMAD/Ex-FATA reserved seats in terms of condition (iii) of eligibility criteria, referred to above.

08. The Merged Area Districts (MADs) reserved seats have been reserved in Public Sector Medical Colleges of Khyber Pakhtunkhwa for the

candidates belonging to the newly merged area District/Ex-FATA. These seats were reserved keeping in view the backwardness/lack of educational facilities in the Ex-FATA to the candidates/students. Most of the candidates, who belong to FATA having domicile of the said area take education in the out District of the province and even outside the province. The detail of the candidates, who applied for admission in Session 2023-24 having domicile of NMAD/Ex-FATA, is given below: -

Number of Applicants applied for admission into MBBS/BDS against 333 seats of NMADs.

S.No	District/FRs	IN	OUT	Total
MBBS				
1	Bajour	122	73	195
2	Khyber	52	125	177
3	Kurram	73	78	151
4	Mohmand	14	155	169
5	NWA	103	80	183
6	Orakzai	14	117	131
7	SWA	77	143	220
Sub Total District (MBBS)		455	771	1226
1	Adam Khel/FR Kohat	17	19	36
2	Hasan Khel/FR Peshawar	11	26	37
3	Bittani/FR Lakki	2	16	18
4	Wazir/FR Bannu	27	54	81
5	Darazinda/FR DIKhan	1	26	27
6	Jandola/FR Tank	13	25	38
Sub Total FRs (MBBS)		71	166	237
Total (MBBS)		526	937	1463
BDS				
1	Bajour	47	49	96
2	Khyber	37	88	125

3	Kurram	57	57	114
4	Mohmand	6	121	127
5	NWA	64	58	122
6	Orakzai	11	84	95
7	SWA	50	89	139
Sub Total District (BDS)		272	546	818
1	Adam Khel/FR Kohat	16	15	31
2	Hasan Khel/FR Peshawar	11	19	30
3	Bittani/FR Lakki	2	15	17
4	Wazir/FR Bannu	16	39	55
5	Darazinda/FR DIKhan	2	20	22
6	Jandola/FR Tank	9	17	26
Total FRs (BDS)		56	125	181
Grand Total (MBBS+BDS)		854	1608	2462

09. A look at the *Schedule*, reproduced hereinabove, reflects that most of the candidates of NMADs have obtained education from the outside area of Ex-FATA, availing the benefits of reserved seats and also the educational facilities as available to the students of other settled Districts of Khyber Pakhtunkhwa, they are also entitled to compete against HEC FATA Project Seats (75 seats) and even on General Self Finance Seats (149 seats) as available to the candidates of other Districts of Khyber Pakhtunkhwa.

10. As per admission policy, referred to above, the candidate having domicile of Ex-FATA (NMAD) can apply for admission against Ex-FATA reserved

seats (333 seats) and General Self Finance Seats (149 seats) and can uniformly compete with other candidates of the settled area, therefore, no discrimination at all was made with the petitioner and other similarly placed candidates.

11. We find from the record that, in the province of Khyber Pakhtunkhwa, total 1354 seats have been allocated to open merit. Under the eligibility criteria mentioned in the preceding para, the open merit seats are those seats, which are open to the candidates/students, who possess a valid domicile of Khyber Pakhtunkhwa including the backward area of Khyber Pakhtunkhwa. As per condition "M", not only the candidate but his/her father must also possess valid domicile of Khyber Pakhtunkhwa including the backward area, if his/her father is not alive then the mother's valid domicile of Khyber Pakhtunkhwa including the backward area of Khyber Pakhtunkhwa will be considered for

admission against *Open Merit Seats*. Under the said criteria, candidates belonging to Ex-FATA/NMADs are not entitled to apply for admission against the *Open Merit Seats* for the reasons *firstly*, that if the candidates of Ex-FATA (MADs), who possess domicile of the said area, are allowed admission against *Open Merit Seats*, having higher merit score then they will capture/occupy more seats and deprive the candidates of settled and backward areas and *secondly*, that if this practice is exercised as argued by the learned counsel for the petitioner, then it will be discrimination with the candidates of settled area/non-NMADs area, who have been restrained to apply against 333 reserved seats plus 75 (merged area Districts project seats/HEC scholarship seats), which are subsidized and financed from the tax collected from the settled area/non-NMAD, because, the residence of Ex-

FATA/NMAD enjoy exemption from payment of taxes. In our view, the admission policy is based on reasonable classification being based on Article 37 of the Constitution of the Islamic Republic of Pakistan, 1973.

12. Before parting with the judgment, it is observed that the petitioner has challenged the current admission policy for admission in the Public Sector Medical Colleges, alleging it to be discriminatory, seeking admission against the *Open Merit Seats* for the students of Ex-FATA/MADs. It is by now settled that through various judgments that it is not the function of the High Court to make interference in the policy-making domain of the Universities/ Institutions or even the executive, unless it is violative of law or statutory rules and regulations. In this context, reliance can be placed on the judgments reported as "Watan Party and another vs. Federation of

Pakistan and others” (PLD 2013 SC 167), “Asaf Fasihuddin Khan Vardag vs. Government of Pakistan and others” (2014 SCMR 646), “Dosani Travels PVT. LTD and others vs. Messrs Travels Shop (PVT) LTD and others” (PLD 2014 Supreme Court 1), and “Dr. Akhtar Hassan Khan vs. Federation of Pakistan” (2012 SCMR 455).

13. Thus seeking wisdom from the judgments cited above, we are of the considered opinion that the Admission Policy 2023-24 incorporated in the prospectus of Khyber Medical University, based on PM&DC Act, 2022, is neither violative of any Statutory Law or rules or regulations nor discriminatory, calling for interference.

14. Last but not least, the petitioner has not arrayed the candidates of the settled area, who have been granted admission against the seats reserved for open merit, if the instant writ petition is allowed, definitely, their merit position would be

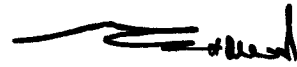
disturbed, on this score too, her petition warrants dismissal.

15. For what has been discussed hereinabove, this writ petition must fail. Hence, the same is dismissed being devoid of merits. No order as to costs.

Announced
27.06.2024.



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DB

Hon'ble Mr. Justice S.M Attique Shah
Hon'ble Mr. Justice Shakeel Ahmad

Himayat. CS