

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Raja Saeed Akram Khan, J.

1. Civil Appeal No.189 of 2018
(PLA filed on 13.06.2018)

Fizza Murtaza Mughal d/o Ghulam Murtaza Mughal, r/o
Girls College Road, Nia Mohallah Muzaffarabad.

.....APPELLANT

VERSUS

1. Joint Admission Committee for admission in Medical Colleges of AJ&K through its Chairman having his office at Civil Secretariat Muzaffarabad.
2. Azad Government of the State of Jammu & Kashmir through Secretary Higher Education having his office at New Secretariat Muzaffarabad.
3. Principal Muzaffarabad Medical College Having his office at Narul Muzaffarabad.
4. Secretary Health Azad Govt. of the State of Jammu and Kashmir having his office at Civil Secretariat Muzaffarabad.

.....RESPONDENTS

[On appeal from the judgment of the High Court
dated 18.04.2018 in Writ Petitions No.254, 343, 357 & 531 of 2018]

FOR THE APPELLANT: Sardar M. R. Khan,
Advocate.

FOR THE RESPONDENTS: Raja Ikhlaq Hussain
Kiani, Additional
Advocate-General.

2. Civil Appeal No.191 of 2018
(PLA filed on 13.06.2018)

Khush Bakhat Mir D/o Mumtaz Ahmed Mir, R/o Naluchi
Tehsil and District Muzaffarabad.

.....APPELLANT

VERSUS

1. Joint Admission Committee Azad Jammu and Kashmir for MBBS/BDS Seats through its Chairman office of Principal Poonch Medical College Rawalakot.
2. Principal Muzaffarabad Medical College Office situated at Jalalabad District Muzaffarabad.
3. Principal Benazir Bhutto Medical College Mirpur Office situated at City Mirpur.
4. Department of Health through Secretary Health Azad Government of the State of Jammu and Kashmir office situated at New Secretariat Muzaffarabad.
5. Department of Higher Education through Secretary Higher Education Azad Government of the State of Jammu and Kashmir office situated at New Secretariat Muzaffarabad.
6. Azad Jammu & Kashmir Government through Chief Secretary Azad Government of the State of Jammu

and Kashmir office situated at New Secretariat Muzaffarabad.

.....RESPONDENTS

7. Pakistan Medical and Dental Council through its Chairman office situated at Islamabad, Pakistan.

.....PROFORMA-RESPONDENT

[On appeal from the judgment of the High Court dated 18.04.2018 in Writ Petitions No.254, 343, 357 & 531 of 2018]

FOR THE APPELLANT: Mr. Jamshed Ahmed Butt, Advocate.

FOR THE RESPONDENTS: Raja Ikhlq Hussain Kiani, Additional Advocate-General.

Date of hearing: 12.12.2018.

JUDGMENT:

Raja Saeed Akram Khan, J.- The supra titled appeals by leave of the Court have been filed against the consolidated judgment of the High Court dated 18.04.2018, whereby the writ petitions filed by the appellants, herein, in both the appeals, have been dismissed along with some other writ petitions.

2. Necessary facts for disposal of the instant appeals are that four separate writ petitions were filed in the High Court, out of which two were filed by the appellants, herein, in both the appeals. In the writ petitions, filed by the appellants, herein, it was claimed that they applied for admission in the Medical Colleges established in the Azad Jammu & Kashmir against the self-finance scheme. As per policy promulgated in year 2015, three seats in each college set up in AJ&K were kept reserved for the students belonging to Indian Occupied Kashmir. According to the policy, the applications submitted by those candidates can only be considered if received through Embassy, however, through another Government Notification dated 21.04.2013, it was clarified that if any seat remains vacant against any reserved quota, then the same shall be filled in on self-finance basis. On failing to get the admission on self-finance basis, the appellants, herein filed separate writ petitions in the High Court. During pendency of the said writ petitions, the appellants, got knowledge that the Government-respondent vide

notification dated 12.09.2017, amended the previous notification dated 24.04.2013, to the extent that the bar of nomination by of the Ministry of Foreign Affairs is not imposed upon the candidates having the state subjects. The appellants, filed the applications for amendment in the writ petitions, so that the policy dated 12.09.2017 could be challenged. The applications were resisted by the respondents by filing objections, however, the said applications were accepted and the appellants were allowed to file the amended writ petitions. On filing of the amended writ petitions the respondents filed amended written statements, wherein, it was disclosed by the respondents that the nomination against the seats in questions has already been completed from the Ministry of Foreign Affairs, thus, the appellants constrained to file subsequent applications to amend the writ petitions for the purpose to challenge the Notification dated 15.11.2017 as well as to array the students nominated through notification dated 15.11.2017, as party in the line of the respondents. The said applications were kept pending

by the learned High Court for consideration at the time of final hearing. After necessary proceedings the learned High Court dismissed the writ petitions through the impugned consolidated judgment dated 18.04.2018, and also rejected the applications filed by the appellants for amendment. Hence these appeals by leave of the Court. As the titled appeals are the outcome of common judgment of the High Court, therefore, these were heard together and the disposal of the same through this single judgment is felt advised.

3. Sardar M. R. Khan and Mr. Jamshed Ahmed Butt, Advocates, counsel for the appellants in the respective appeals, submitted that the impugned judgment of the learned High Court is against law and the record. They forcefully argued that the appellants filed the writ petitions while seeking the direction for admission in Medical Colleges against the seats kept reserved for the students of Indian held Kashmir in pursuance of the Notification dated 24.04.2013 but during the pendency of the writ petitions the

Notification dated 24.04.2013 was amended while introducing new method for nomination against the disputed seats vide notification dated 12.07.2017, thus, the appellants filed the applications for permission to amend the writ petitions which were allowed and consequently, the amended writ petitions were filed. On filing of the amended writ petitions, the respondents also filed the amended written statements from which it transpired that the candidates who migrated from occupied Kashmir in years 1947 and 1989 have been nominated for admission against the seats reserved for the candidates of Indian held Kashmir vide Notification dated 14.11.2017. Thus, the appellants filed subsequent applications seeking further amendment in the writ petitions to challenge the Notification dated 14.11.2017 and array the students nominated for admission, as party in the line of the respondents. Along with the applications the appellants also annexed the important documents to prove the fact that the candidates who have been nominated for admission are the refugees of 1947 and

1989 but the learned High Court rejected the applications without proper appreciation of the documents, and also dismissed the writ petitions which amounts to miscarriage of justice. They further argued that the learned High Court also fell in error of law while recording the observation that the quota reserved for the refugees of 1947 and 1989 is only for Medical Colleges in Pakistan and not for the Colleges of Azad Jammu and Kashmir. They submitted that the learned High Court failed to appreciate the record in its true perspective and rejected the applications through a telegraphic order. Thus, the impugned judgment is not sustainable. They requested for acceptance of appeals.

4. Conversely, Raja Ikhlaq Hussain Kiani, the learned Additional Advocate-General, submitted that no illegality has been committed by the learned High Court while dismissing the writ petitions. He submitted that the students of Indian held Kashmir have been granted the admission after obtaining the entry test according to the law as well as the

Admission Policy for MBBS and BDS in the Medical Colleges. The appellants, herein, failed to get the admission on self-finance basis, therefore, they are not aggrieved by any stretch of imagination. The learned High Court has delivered the impugned judgment after appreciation of the whole record in its true perspective, which is not open for interference by this Court.

5. We have heard the learned counsel for the appellants as well as the learned Additional Advocate-General and gone through the impugned judgment along with the other material made available on record. The case built up by the appellants is that during pendency of the writ petitions they filed applications for permission to amend the writ petitions to the effect that the Notification dated 24.04.2013 was amended during pendency of the writ petitions, while introducing new method for nomination against the seats reserved for the students of Indian held Kashmir vide Notification dated 12.07.2017, hence the said Notification was required to be challenged. The

amendment was also sought to array the Secretary Health Azad Jammu & Kashmir as party in the line of the respondents. The learned High Court while accepting the applications allowed the amendment consequently, the amended writ petitions were filed. The amended written statements were also filed by the respondents from which it transpired that the candidates who migrated from occupied Kashmir in years 1947 and 1989 have been nominated for admission against the seats reserved for the students of Indian held Kashmir vide Notification dated 14.11.2017. Thus, the appellants filed subsequent applications for amendment to challenge the notification dated 14.11.2017, and also to array the names of said candidates as party in the line of the respondents. According to the appellants along with the applications they also annexed some important documents to prove the fact that the candidates who have been nominated for admission are the refugees of 1947 and 1989, but the learned High Court neither appreciated the said documents nor decided the

applications through a speaking order. To appreciate this crucial argument, we have perused the impugned judgment as well as the file of the learned High Court. The learned High Court has recorded the observation regarding the applications for amendment in the following terms:

“... The petitioners failed to append any record to prove their stance that the aforesaid candidates are refugees of 1947 and 1989. The petitioners moved applications for amendment to make party to the aforesaid students in the line of respondents who also craved to challenge their nominations which according to my considered view, will be a futile exercise to indulge innocent students in baseless litigation.”

From the perusal of the record, it reveals that apart from other documents the appellants also annexed with the applications the State Subjects Certificates of two candidates namely Saleema Bibi and Samia Sadiq, wherein it is clearly mentioned that the said candidates are the refugees of 1947 and 1990, whereas, the learned High Court has recorded the findings (*reproduced hereinabove*) that the appellants failed to append any document to prove the fact that the candidates are the refugees of 1947 and 1989. Thus,

the argument of the counsel for the appellants that the learned High Court failed to appreciate the record in its true perspective, has substance. It was enjoined upon the learned High Court to decide the applications on the strength of the documents annexed therewith and dispose of the same through a speaking order but the learned High Court has failed to do so.

6. During the course of arguments when this position was confronted to the learned Additional Advocate-General he failed to controvert the same and submitted that the proper course is to remand the case to the learned High Court to decide the same afresh after decision of the amendment applications on the strength of the documents annexed therewith.

7. In view of the above, without attending the other aspects of the case which may prejudice the case of the either party, we are constrained to accept the appeals. Resultantly, the case is remanded to the learned High Court with a direction to decide the matter afresh after decision on the applications filed by the appellants, herein, for permission to amend the

writ petitions while taking in to consideration the documents annexed with the applications, through a speaking order. As the matter pertains to the admission of the students in the Medical Colleges, and a considerable time has already been consumed in the litigation, therefore, the learned High Court shall decide the matter afresh within a period of one month positively, from the receipt of this judgment.

The appeals are disposed of in the terms indicated hereinabove with no order as to costs.

JUDGE
Muzaffarabad.

CHIEF JUSTICE