

PLJ 2017 Quetta 37 (DB)*Present:* MRS. SYEDA TAHIRA SAFDAR AND ZAHEER-UD-DIN KAKAR, JJ.BALOCHISTAN MEDICAL ASSOCIATION through
President--Petitioner

versus

GOVERNMENT OF BALOCHISTAN through Secretary Health, Civil
Secretariate & others--Respondents

C.P. No. 64 of 2013, decided on 16.5.2017.

Educational Institution--

---Admission To MPH programme--Filing of writ petition by unregistered association--*Locus standi*--Aggrieved person--Balochistan Medical Association--A person cannot be said to be an aggrieved person unless he has a right in performance of statutory duty by a person performing functions in respect of any right which he may have in relation to performance of such functions--Petitioner cannot claim to be a recognized body for purpose of in case, as it is not a registered association of Doctors--Further president of B.M.A., who has filed petition is not even employee and he is not eligible for admission to MPH Programme at Institute of Public Health, because as per policy and guidelines for admission of candidates to MPH program at IPHQ issued by Health Department that MPH Programme at IPHQ is an in service training program akin to various long and short courses under taken at NIM-NSPP for general and administrative cadres of civil service side.

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Constitution of Pakistan, 1973--

---Art. 199--Enforcement of fundamental rights--It is also a settled legal proposition that a person who does not fall within ambit of aggrieved person have not right to invoke jurisdiction under Art. 199 of Constitution--Except, for relief in nature of Habeas Corpus or *quo warranto* a petitioner has to show that he is an aggrieved person and it is also imperative for him to show that any of his propriety or personal right as recognized by law has been invaded or denied--Any person, who fails to demonstrate prerequisites as recognized by law has no *locus standi* or any cause of action to seek any relief under Art. 199 of Constitution.

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Mr. Zahid Malik, Advocate for Petitioner.

20. Mr. Zahid Mugeem Ansari, Advocate for Respondents No. 3 to

Mr. Saleem Baloch, AAG for Respondents No. 1 & 2.

Date of hearing: 26.4.2017.

JUDGMENT

Zaheer-Ud-Din Kakar, J.—This Constitutional Petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 "the Constitution", carries the following prayer:

"It is, therefore, respectfully prayed that in the interest of justice the record of the respondents for the last five years may kindly be called for in respect of selections in Post Graduate Institute for training, may kindly be scrutinized and particularly present selections of about 18 candidates may also be set aside and the respondents may also be directed to select the eligible competent candidates according to prescribed rules policy.

Any other relief deem fit and proper in the circumstances of the matter any kindly be awarded to the petitioner."

2. It was the case of the petitioner that without adopting any procedure as per Rules, the private respondents were selected for training in Post Graduate Institute.

3. Learned counsel for the petitioner contended that the Respondent No. 1 has nominated a number of doctors for doing Masters in Public Health from the Institute of Public Health contrary to the earlier practice whereby qualified doctors were invited through advertisements and subsequently selected against the rules and regulations.

4. Conversely, the learned AAG as well as learned counsel for the private respondents vehemently opposed the petition and contended that since the petitioner is not an aggrieved person, therefore, he has no *locus standi* to file the instant petition. It is added that the petitioner filed instant petition being President, Balochistan Medical Association, which is not a recognized body, at this score too the petition is not maintainable.

5. We have heard learned counsel for the parties and have gone through the available record. Before proceeding ahead, it would

be necessary to mention here that on 14.3.2017, this Court passed the following order:

"While going through the main petition the fact appeared that the petitioner is Balochistan Medical Association through its President. It is asked from the learned counsel whether the petitioner Association is a registered body, and representing whom?

The learned counsel seeks time to place before the Court certificate of registration. He is directed to place before the Court memorandum of Association of the petitioner's Association. Further, to address whether the petitioner is competent to seek for the relief? He is directed to address maintainability of the instant petition before going into merit of the case".

6. On 26.4.2017, the learned counsel for the petitioner when asked to satisfy the Court as to how the petition is maintainable and directed to address maintainability of the instant petition and further directed to produce Memorandum of Association of the petitioner's Association, but neither he produced Memorandum of Association of petitioner's Association as directed *vide* order dated 14.3.2017, nor satisfied the Court regarding maintainability of the petition. Meaning thereby that the petitioner's Association is neither registered, nor affiliated with Pakistan Medical Association, which is a recognized body of the Doctors.

7. The first and foremost question which arises for determination in this Constitution Petition is whether the petitioner is an 'aggrieved person' from the selection of the private Respondent Nos.3 to 6 for Master of Public Health (MPH) training? and whether the petitioner has *locus standi* to maintain the writ petition? Under Article 199 of the Constitution, a petition can only be made by an aggrieved person. A person cannot be said to be an aggrieved person unless he has a right in the performance of statutory duty by a person performing functions in respect of any right which he may have in relation to the performance of such functions. Reference may be made to the case of *Ahbah Cooperative Housing Society Ltd v. Commissioner, Lahore Division* reported in PLD 1978 Lahore 273. Likewise a person invoking constitutional jurisdiction of High Court must establish a direct or indirect injury to himself and substantial interest in the subject matter a proceedings. Reference may be made to the case of *Jan Muhammad v. Government of NWFP* reported in 1993 CLC 1067. Keeping in view this broad principle, the case of the petitioner has to

be examined. Admittedly, the petitioner cannot claim to be a recognized body for the purposes of this case, as it is not a registered Association of Doctors of Health Department. Further, the President of the Balochistan Medical Association, who has filed this petition, is not even employee under the Health Department and he is himself not eligible for admission to the MPH program at the Institute of Public Health, Quetta (IPHQ), because as per Policy and Guidelines for admission of candidates to the MPH program at the IPHQ issued by the Government of Balochistan, Health Department *vide* Memorandum dated 5.12.2012 clearly shows that the MPH program at the IPHQ is an in-service training program akin to the various long and short courses under taken at the NIM-NSPP for the general and administrative cadres of the Civil Service sides.

8. Admittedly, the constitutional jurisdiction of this Court could be invoked by all citizens when there is infringement of any fundamental rights. Thus, in like case it is the duty of Court to protect Fundamental Rights, guaranteed by the Constitution. Thus the powers available under Article 199 of the Constitution this Court could issue appropriate directions for enforcement of a Fundamental Right. To invoke the 'constitutional jurisdiction' of this Court one is required to first qualify the test of being 'aggrieved person' and then to show that his case falls in any of the categories, so defined by the Article 199 of the Constitution, that there is no alternate legal remedy else the petition. To satisfy the requirements of an "aggrieved person" in public interest litigation under Article 199 of the Constitution, the petitioner needs to disclose a person interest in the performance of legal duty owed to him which if not performed would result in the loss of some personal benefit or advantage or curtailment of a privilege in liberty or franchise. Reliance is placed on decision given in the case of *Ardeshir Kowasjee and 10 others v. Karachi Building Control Authority (KMC) Karachi* reported in 1999 SCMR 2883. It has also been stated that to establish *locus standi* in the context of public interest litigation, the petitioner would have to show that he belongs to class of affected persons who are unable to access the Court for the protection of their rights. Reliance is placed on judgment in case of *Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others* reported in 2012 SCMR 455. It is also a settled legal proposition that a person who does not fall within the ambit of aggrieved person have no right to invoke the jurisdiction under Article 199 of the Constitution. Except for relief in the nature of *Habeas Corpus* or *Quo Warranto* a petitioner has as to show that he is an aggrieved person and is also imperative for him to show that any of his proprietary or personal right as recognized by law has been invaded or denied. Any person who fails

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to demonstrate the above pre-requisites as recognized by the law has no *locus standi* or any cause of action to seek any relief under Article of the Constitution. The petitioner in the instant case remained unable to meet the requirement, thus, have no *locus standi* to file the instant petition.

9. For the foregoing reasons, the writ petition has no merit, therefore, the same is accordingly dismissed.

(Z.I.S.)

Petition dismissed.
