

PLD 2017 Lahore 830

Before Syed Mansoor Ali Shah, C.J., Shams Mahmood Mirza and Mudassir Khalid Abbas, JJ

PAKISTAN COLLEGE OF LAW---Petitioner

Versus

UNIVERSITY OF PUNJAB and others---Respondents

Writ Petitions Nos.45178 of 2017, 40218 of 2016, 54945 and 47756 of 2017, decided on 10th August, 2017.

(a) Words and Phrases---

---"Equivalent", meaning---"Equivalent" meant equal in value, amount, function or meaning.

New Oxford American Dictionary, Third Edn. p.586 rel.

(b) Interpretation of statutes---

---"Ejusdem generis" doctrine of---Application, scope and illustration---"Ejusdem generis" postulated that when a drafter had tacked on a catchall phrase at the end of an enumeration of specifics, for example "dogs, cats, horses, cattle, and other animals," then "other animals" in the same was to be read as other similar animals, the same implied addition of the word "similar" after the word "other" ---- When a general word or phrase followed a list of specifics, such general word or phrase would be interpreted to include only items of the same class as those listed.

Antonin Scalia and Bryan A Garner, Reading Law: The Interpretation of Legal Texts. 2012. p.199; Black's law Dictionary. 10th Edition, p.631; Mercantile Traders (Pvt.) ltd. and another v. State Bank of Pakistan 2002 SCMR 250 and Jamat-i-Islami Pakistan through Syed Munawar Hassan, Secretary General v. Federation of Pakistan through Secretary Law. Justice and parliamentary Affairs PLD 2000 SC 111 rel.

(c) Constitution of Pakistan---

---Arts. 142, 143 & 199---Legal Practitioners and Bar Councils Act, (XXXV of 1973) Ss. 55 & 56 ---Pakistan Bar Council Legal Education Rules, 2015 R. 4---University of Punjab Admission Regulations 2016-2017, Regln. 24---Cooperative federalism---Overlap of legislative competence between Provinces and Federation---Educational Institution---Public University---Legal education (LLB)---Admission criteria---Petitioner, which was an affiliated Law College of the University of Punjab, impugned letters issued by the University, whereby students holding third division in their intermediate examinations, were denied admission to LLB, on the ground that students must hold at least a second division to be eligible for admission---Contention of petitioner inter alia was that the Rule 5 of Pakistan Bar Council Legal Education Rules,

2015, framed under Legal Practitioners and Bar Councils Act, 1973 did not provide a minimum threshold of second division for LLB program, therefore, the University Regulations, framed under a Provincial Law, could not override the same---Validity--- Regulation 24 of the University of Punjab Admission Regulations 2016-2017 included all Bachelors and Masters programs and ineligibility of students holding third division was clearly laid down by the University since the year 2011 and the petitioner, being an affiliated law college, was bound to follow such statutory requirement---Federal law on the subject, catered to all Provinces and set an overarching standard that addressed legal education across the country and Provincial legislature also enjoyed independent legislative space to legislate on legal education under the rubric of education but only to the extent of improving and enhancing the overarching, general, countywide standards in legal education set by the Federal Legislature---Such two powers had been reconciled on the principle of cooperative federalism and Provincial Legislature was free to improve upon standards set by the Federal legislature by setting more robust and stringent standards for admission in the Province---High Court further observed that the Provincial Legislature could not lower standards set by the Federal Legislature and held that the minimum eligibility threshold of second division for admission into LL.B imposed under by the University was in accordance with the Constitution and the law---Constitutional petitions were dismissed, in circumstances.

University of Health Science, Lahore through Vice Chancellor and others v. Arslan Ali and another 2016 SCMR 134; Muhammad Asif Khan v. Province of Sindh and others (2014 YLR 1038) Government of N.W.F.P., Health and Social Welfare Department through its Secretary v. Dr. Sheikh Muzaffar Iqbal and others 1990 SCMR 1321; Punjab Higher Education Commission v. Dr. Aurangzeb Alamgir and others pLD 2017 Lah. 489; Dr. Hassan Amir Shah v. Province of Punjab through Chief Secretary and 5 others 2012 PLC (C.S.) 290, Ch. Nazir Ahmad v. Government of Punjab and others PLD 2013 Lah. 621 and State of T.N. and another v. S.V. Bratheep (minor) and others 2004 (4) SCC 513 ref.

Punjab Higher Education ?Commission v. Dr. Aurangzeb Alamgir and others PLD 2017 Lah. 489 and 2014 PTD 1939 rel.

PETITIONERS BY

Muhammad Afzal Khan for Petitioner.

Malik Asrar Elahi, Irfan Ahmad wattoo vice Muhammad Safdar Shaheen Pirzada and Sohaib Ahmad Sidhu for Petitioners in connected writ petitions.

RESPONDENTS BY

Shan Gul, Anwar Hussain and Ahmad Hasan Khan, Addl. Advocate-General, Punjab.

Anwar Kamal, Advocate-Chairman Law College Commission.

Malik Muhammad Awais Khalid, Advocate/Legal Adbvisor of the University of the Punjab, Lahore.

Raza Chohan, Director General, Higher education Commission, Islamabad.

Nazeer Hussain, Director General, Higher Education Commission, Lahore.

Hamayun Rasheed, law Officer, higher Education Commisison.

ASSISTED BY

Mohsin Mumtaz, Civil Judge/Research Officer, Lahore High Court Research Centre (LHCRC).

Date of hearing: 10th August, 2017.

JUDGMENT

"Education is the passport to the future, for tomorrow
belongs to those who prepare for it today"

SYED MANSOOR ALI SHAH, C J.--

Facts

Petitioner College, an affiliated law college of the University of the Punjab, enrolled students holding 3rd division ("3rd division students") in F.A/F.Sc. and B.A/B.Sc. in the 3 and 5 years LL.B program for the academic year 2016-2017. After a year of schooling (LL.B first year) when the names of the students were put up before the University of the Punjab, for registration, for the purposes of examinations, the University denied them the right to be registered/enrolled vide letters dated 19.04.2017, 7.06.2017 and 13.06.2017 (Impugned letters). The refusal was on the ground that students holding 3rd division in F.A/F.Sc. or B.A/B.Sc. are not entitled to be registered/enrolled in LL.B and, therefore, are not allowed to sit the LL.B examinations. This petition challenges the impugned letters through which students holding 3rd Division in F.A/F.Sc. or B.A/B.Sc. were denied admission in LL.B, 3 and 5 years program.

Arguments

2. Learned counsel for the petitioner submits that letters dated 26.07.2016, 02.11.2016, 04.11.2016 and 25.11.2016 did not intimate the Petitioner College that students holding 3rd division in F.A/F.Sc. or B.A/B.Sc. are not allowed to be admitted to the LL.B program. He submits that the University, for the first time, through letters dated 19.04.2017 and 07.06.2017, pointed out this eligibility threshold, which was much after the 3rd division students were admitted to the LL.B program for the academic year 2016-2017 in September-October, 2016. He submits that petitioner College submitted a reply to these letters, vide letter dated 20.04.2017, however, there has been no response to the said letter by the University.

3. Grievance of the petitioner college is that there is no law that prohibits the Petitioner College from enrolling students holding 3rd Division in the LL.B. Program. He then referred to Regulation 24 of the Admission Regulations 2016-2017 ("Regulations") issued by the University of the Punjab and points out that there is no mention of LL.B (3 years) in the said Regulations. Hence, there is no clear prohibition against the enrollment of 3rd Division students. He submits that the insertion of LL.B (3 years) in Regulation 24 has been after the admissions were granted by the Petitioner College for the academic year 2016-2017 and cannot have a retrospective effect. He also challenges the source and legality of the said amendment.

4. Learned counsel for respondent University, while referring to Regulation 24, underlined that it applied to all the equivalent programs offered by the University including LL.B (3 years). He submits that, as far as, the introduction of the Regulations on the website of the University is concerned, it was introduced on 19.12.2016 after the interim order of this Court dated 24.10.2016 whereby LL.B. (3 years) was allowed and the admissions granted by the Petitioner College are after the said date. He referred to letters dated 06.10.2015 and 08.10.2015 to point out that it has been a consistent policy of the University that students holding 3rd division in F.A/F.Sc. and B.A/B.Sc. are not allowed admission in any program at the University. He submits that the same eligibility threshold is maintained at Quaid-i-Azam University, Islamabad and University of Gujrat, Gujrat. He also referred to letter dated 11.08.2016 to show that all the affiliated colleges were informed about the Admission Regulations, 2016-2017 well before they granted admission for the academic year 2016-2017. He contends that Regulation 24 fully covers the LL.B program. He relied upon *University of Health Science, Lahore through Vice Chancellor and others v. Arslan Ali and another* (2016 SCMR 134) and *Muhammad Asif Khan v. Province of Sindh and others* (2014 YLR 1038) to submit that the University Statutes are best interpreted by the University itself.

5. Learned Law Officer appearing in response to notice under Order 27-A of CPC submits that Petitioner College has no locus standi to maintain this petition. No student has come forward to challenge the impugned letters issued by the respondent University, besides the Petitioner College being an affiliated college of the University is bound by the Admission Regulations of the University. He further submits that even the students have no right to challenge the Regulations set by the University. He placed reliance on *Government of N.W.F.P., Health and Social Welfare Department through its Secretary v. Dr. Sheikh Muzaffar Iqbal and others* (1990 SCMR 1321). He further submits that the Pakistan Bar Council Legal Education Rules, 2015 framed by Pakistan Bar Council are silent regarding the admission threshold for the LL.B program, but the University under *University of the Punjab Act, 1973* read with the Admissions Regulations, 2016-2107 provide such a threshold He relied on *Punjab Higher Education Commission v. Dr. Aurangzeb Alamgir and others* (PLD 2017 Lahore 489), *Dr. Hassan Amir Shah v. Province of Punjab through Chief Secretary and 5 others* (2012 PLC (C.S.) 290), *Ch. Nazir Ahmad v. Government of Punjab and others* (PLD 2013 Lahore 621) and *State of T.N. and another v. S.V. Bratheep (minor) and others* (2004 (4) SCC 513) to submit that the Rules and Regulations can co-exist in regulating admissions to the LL.B program.

OPINION OF THE COURT

6. We have heard the arguments of the learned counsel for the parties and have gone through the relevant law and the documents on the record.

Question of law

7. Whether students holding 3rd division in FA/FSc or BA /BSc are entitled to admission in LLB (3 or 5 years) program at the University of the Punjab or its affiliated law colleges?

Background

8. Admission/Implementation Committee of the University of the Punjab in its meeting held on 14.06.2011, inter alia, resolved the following, under agenda Item No.1, i.e., "Eligibility Criteria for admissions - Year 2011 for MS/M.Phil/MD/Ph.D/BS/MA/M.Sc or Equivalent":-

"ii. The applicant must have at least 2nd division in FA/F.Sc or equivalent and BA/B.Sc or equivalent for admission in BS 4-years programs or equivalent and MA/M.Sc or equivalent programs respectively."

Thereafter in a meeting held on 06.10.2015 the Admission/ Implementation Committee once again resolved the matter under agenda Item No.2 i.e., "Admission of 3rd Divisioners in LL.B Part-1 Classes, in the following manner:

"The Chairman, Admission Committee briefed that he was in receipt of applications from some of the candidates having 3rd division in graduation for admission in LL.B Classes. The members, as per policy decision already taken in this regard, did not allow the request of the candidates having 3rd division in graduation for admission in Master classes anywhere in the Punjab University."

It was followed by Notification dated 08.10.2015 issued by the University of the Punjab, which clearly states as follows:

"(iii) The 3rd division graduation degree holders are not entitled to apply for admission in Master/LL.B. classes anywhere in the Punjab University and its Affiliated Colleges."

The said Notification was dispatched to all the Principals of the affiliated colleges, as is evident from the said Notification.

9. In the meeting of Admission/ Implementation Committee dated 05.05.2016 under Current Work, agenda Item No.2 i.e., "To waive 3rd Division Graduation Degree Holders for Admission in LL.B to various Affiliated Colleges with Punjab University." The following was duly resolved:

"The Chairman, Admission Committee briefed the members that a large number of applications received having 3rd division in graduation for

admission in LL.B. classes through Registration Branch, University of the Punjab and forwarded by the Principals of Affiliated Colleges with Punjab University:-

1. The Principal, Quaid-e-Azam Law College, 10-G, Model Town, Lahore.
2. The Principal, Pakistan College of Law, 46, Tipu Block, New Garden Town, Lahore.
3. The Principal, Muhammad Ali Jinnah Law College, Sialkot Bypass Road, Near Green Valley Phase # 2 Gujranwala.
4. The Principal, Rawalpindi Law College, F-746, Siddiqui Chowk, Satellite Town, Rawalpindi.
5. The Principal, Punjab Law College, F-749, Siddiqui Chowk, Satellite Town, Rawalpindi.
6. The Principal, The Best Law College, Rawalpindi.
7. The Principal, Capital Law College, 313-A, Murree Road, Rawalpindi.
8. The Principal, Islamia Law College, Pasrur Road, Sialkot.
9. The Principal, Jinnah Law College, Near Kutchery, Jehlum.
10. The Principal, School of Law, 74-B/III, Gulberg-III, Lahore.
11. The Principal, Himayat-i-Islam Law College, 119 Multan Road, Lahore.

Decision:

After long discussion, it was unanimously decided that:-

- i) One time waiver of 3rd Division in Graduation Degree for Admission in LL.B. for the session 2015-16 may be granted
- ii). All the Principals, Affiliated College are directed that 3rd division graduation degree holders may not be granted admission in LL.B. in future.
- iii) It was further suggested that this will not be precedent in future.
- iv) Such cases are eligible for admission in LL.B. for the session 2015-16 only." ___ (emphasis supplied)

In the above meeting, the Principal of the petitioner college was also present.

Admission Regulations, 2016-2017 and Equivalent program.

10. Regulation 24 of the Admission Regulations, 2016-2017 ("Regulations") of the University, provides as follows:-

"Eligibility for BS or Equivalent:

The candidates holding F.A/F.Sc or equivalent qualification with at least 2nd division and age not more than 24 years are eligible for admission in BS/B.Sc (Engg) BBIT/Pharm-D/B.Com/BBA/BFA/ LLB (5 Years)/ B.Arch/or equivalent. The candidate holding 3rd division is not eligible for admission in BS or equivalent program. 2 marks will be deducted from percent academic marks for each late session to a maximum of previous five sessions/years for male and female students. They have to furnish an affidavit to the effect that he/she did not get admission in any Institution in the period intervening between the year of passing the Exam. and year of application for admission (vide notification No.S.O (C.A) 1-28-2015 dated 20th July 2016). Clearance of Pre-Admission Entry Test is mandatory for the admission against merit as well as reserved seats if it having candidates by any department. However, foreign students are exempted from this entry test.

Eligibility for MA/MSc or Equivalent:

The candidates holding B.A/B.Sc (14-Years of Education) or equivalent qualification with at least 2nd division and age not more than 26 years are eligible for admission in MA/M.Sc or equivalent/MPA/MBA/M.Com/MBEconMIM/MIOM/ MBSM. The age limit of candidates applying for Masters Program in College of Art & Design should not be more than 28 years. The candidate holding 3rd division is not eligible for admission in MA/M.Sc. or equivalent program. 2 marks will be deducted from percent academic marks for each late session to a maximum of previous five sessions/years for male and female students. They have to furnish an affidavit to the effect that he/she did not get admission in any Institution in the period intervening between the year of passing the Exam. and year of application for admission (vide notification No.S.O (C.A) 1-28-2015 dated 20th July 2016). 50% seats are reserved for graduates from Punjab University and rest of 50% shall be filled on open merit basis. Clearance of Pre-admission Entry Test is mandatory for the admission against merit as well as reserved seats if it having candidates by any department. However, foreign students are exempted from this entry test." (emphasis supplied)

11. The above Decisions of the Admission / Implementation Committee and Regulation 24 of the Regulations show that since 2011 a minimum eligibility threshold of 2nd division has been a standard admissions policy for the BS, M.A/M.Sc. or Equivalent programs offered by the University. It has also been pointed out by the learned counsel for the University, as well as, the learned law officer that this eligibility threshold is maintained across the board for all the programs and is also followed in other Universities.

12. LL.B (3 years), according to the learned counsel for the University, was inserted in the Regulations after permission was granted by this Court on 24.10.2016 to resume the 3 years LL.B program. It is submitted that the Petitioner College allowed admissions after the said Court order and the subsequent change in the Regulations. Without going into the factual dispute regarding the timing of the amendment in the Regulations and the admissions allowed by the Petitioner College, we intend to examine the Regulations as they stood at the start of the academic year 2016-2017 and admittedly provided that students holding 3rd division are not eligible to Bachelors or Masters or Equivalent programs including LL.B (5 years).

13. Relevant portions of Regulation 24 provide:

..The candidate holding 3rd division is not eligible for admission in BS or equivalent program .

The candidate holding 3rd division is not eligible for admission in MA/M.Sc. or equivalent program .

What is the scope and extent of the term equivalent program in the above Regulation. The word equivalent means equal in value, amount, function, meaning. Here, the interpretative canon of ejusdem generis needs to be applied, which postulates that when a drafter has tacked on a catchall phrase at the end of an enumeration of specifics, as in dogs, cats, horses, cattles, and other animals, we are to read other animals as other similar animals. It implies the addition of the word similar after the word other. When a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed. Reliance with advantage is placed on *Mercantile Traders (Pvt.) Ltd. and another v. State Bank of Pakistan* (2002 SCMR 250) and *Jamat-i-Islami Pakistan through Syed Munawar Hassan, Secretary General v. Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs* (PLD 2000 SC 111).

14. Applying this canon of construction to Regulation 24, the word equivalent would include all the other Bachelors and Masters programs offered by the University to students applying after F.A/F.Sc. or B.A/B.Sc., including the LL.B. This interpretation finds support in the decisions of the Admission/ Implementation Committee and the Notifications mentioned above besides mention of LL.B (5 years) in the Bachelors program under the Admission Regulations 2016-2017.

15. We are, therefore, of the view that the ineligibility of students holding 3rd Division in F.A/F.Sc or B.A/B.Sc. is clearly laid down by the University since 2011 and the Petitioner College, being an affiliated college, was bound to follow this statutory requirement. The contention of the Petitioner College that it was not aware of any such Regulation or condition at the time of admissions for the academic year 2016-17, is not acceptable and belied by the record.

16. It has also been pointed out that all the three Universities i.e., University of the Punjab, Lahore, Baha-ud-Din Zakariya, University, Multan and Islamia University,

Bahawalpur have a standard policy of not admitting students holding 3rd division in any of their academic programs.

Rule 4 (Federal Law) versus Admission Regulations (Provincial Law): Cooperative Federalism

17. Learned Counsel for the petitioner students, has argued that Rule 4 of the Pakistan Bar Council Legal Education Rules, 2015 ("Rules") framed under Legal Practitioners and Bar Councils Act, 1973 ("Act") does not provide for a minimum eligibility threshold of 2nd Division for the LLB program, and, therefore, the University under the Admission Regulations, 2016-2017 read with University of the Punjab Act, 1973 ("University Act"), being a provincial law, cannot override the federal law.

18. Rule 4 of the Pakistan Bar Council Legal Education Rules, 2015 states as under:

4. Admission to LL.B. class:

(i) A person having passed the examination of Higher Secondary Education i.e. Intermediate, shall be eligible for admission to 1st year of (5 years) LL.B. programme.

(ii) A graduate with law as optional subject shall be preferred for admission to 1st year of (3 years) LL.B. programme.

Provided that three years LL.B. programme shall be discontinued after three years of the enforcement of these Rules.

(iii) Admission to LL.B. (1st year) shall be on merits.

(iv) Subject to the provisions of sub-rules (i), (ii) and (iii) above, 5 percent seats shall be reserved for the sons/daughters of Advocates who shall compete for admission in order of merit inter se.

(v) A candidate shall not be eligible for admission to LL.B. if he.-

(i) has been convicted of an offence involving moral turpitude; or

(ii) has been dismissed or removed from service of Government, any local Authority or institution incorporated by the Government under any statute, for corruption or misconduct.

19. Sections 13(j) and 55(q) of the Legal Practitioners and Bar Councils Act, 1973 provide as follows:

13(j): to promote legal education and prescribe standards of such education in consultation with the universities in Pakistan and the Provincial Bar Councils and Islamabad Bar Council.

55(q): the standards of legal education to be observed by universities in Pakistan and the inspection of universities for that purpose.

While Sections 28(2)(c) and 32(1)(c), (d) & (e) of the University of the Punjab Act, 1973 provide as under:

28(2):

(c) to regulate the admission of students to the courses of studies and examinations in the University;

32 (1):

(c) admission of students to the University;

(d) conditions under which students shall be admitted to the courses and the examinations of the University and shall become eligible for the award of degrees, diplomas and certificates;

(e) conduct of examinations;

The eligibility standard mentioned in the Admission Regulations, 2016-2017 has been reproduced above. The power to set admission standards are, therefore, provided under both the federal and provincial laws.

20. Under the Constitution (Article 142), the legislative competence for enacting Legal Practitioners and Bar Councils Act, 1973 is with the federal legislature under Entry No.11, Part-II of the Federal Legislative List which states as under:

"Legal, medical and other professions"

Without going into the question whether legal education falls within the above Entry (this matter has not been argued before us and can be taken up in an appropriate case), we proceed further with the assumption that legal education is part of Legal Profession under Entry 11 above.

21. "Education", as a subject has devolved to the Provinces through the constitutional amendment under the Constitution (18th Amendment) Act, 2010 after the abolition of the Concurrent List. Therefore, while the Federal Legislature enjoys the legislative competence on the subject of legal education, so does the Provincial Legislature under the subject of education, in the unwritten residuary list available to the Provincial Legislature after the abolition of the Concurrent List. There is, therefore, an overlap between the two legislative domains on the subject of legal education. The scope of powers of the respective legislatures in such an overlap came up before this Court, in the under-mentioned case, and this Court declared that the two legislative powers can be reconciled through our core constitutional value of federalism, through its variant-cooperative federalism. In Punjab Higher Education Commission v. Dr. Aurangzeb Alamgir and others (PLD 2017 Lahore 489) this Court has held as follows:

"14. Lets begin by mapping "education" as a legislative subject. Under Government of India Act, 1935 "education" fell within the exclusive domain of the Province. While the subject dealing with "federal agencies and institutes for the purposes of research, professional or technical training or for the promotion of special studies" fell within the federal domain. Entry 20 of the Provincial List, of the 1956 Constitution, vested exclusive power in the provincial legislature regarding "education" including universities, technical education and professional training. While Entry 21 of the Federal List, of the 1956 Constitution, dealt with "federal agencies and federal institutions for the promotion of special studies and special research; libraries and museums financed by the Federation." Similar was the position under the 1962 Constitution where Article 132 provided that Provincial Legislature shall have power to make laws for the Province with respect to any matter other than enumerated in the Third Schedule. Education as a subject did not fall in the Third Schedule, while entry 30 of the Third Schedule provided for central agencies and central institutions for the promotion of special studies and special research. Under the 1973 Constitution (pre-18th constitutional amendment), "education" fell under entries 38 and 39 of the Concurrent List in the following manner:

38. Curriculum, syllabus, planning, policy, centers of excellence and standards of education.

39. Islamic Education

While the Federal Legislative List under entries 16 and 17 covered the following:

16. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

17. Education as respects Pakistani students in foreign countries and foreign students in Pakistan.

Post 18th constitutional amendment, the Concurrent Legislative List was abolished and "education" became part of the invisible and unwritten, Residuary List, falling within the exclusive domain of the Provincial Legislature, under Article 142(c) of the Constitution. Standards of higher education now fall under Entry 12 of Part-II of the Federal Legislative List in the following manner:-

12. Standards in institutions for higher education and research, scientific and technical institutions.

20. There is more. What if a legislative subject falls within the legislative competence of both the Governments? For example, as in the present case "Education" as a subject surely includes "standards in education". How do we read the exclusivity under Article 142 of the Constitution when there is vertical

sharing of legislative power, somewhat akin to the erstwhile concurrent sharing of power? According to the Federal Principle, even in such an overlap, no matter how uneven and lopsided the overlap is, both the Governments enjoy plenary legislative power on the subjects assigned to them. It is important to highlight and recall that under the late Concurrent Legislative list, same legislative subjects were common to both the legislatures, this evenness and symmetry allowed the entire subject to be occupied by either of the two legislatures and if the federal legislature occupied it, provincial legislature stood ousted. 18th constitutional amendment by removing the Concurrent Legislative List, gives more legislative space to the Province and boosts provincial autonomy. There is no common legislative list anymore but subjects in Part-II of the Federal Legislative List might overlap with the corresponding subjects in the unwritten Residuary List, as in the instant case. Post 18th constitutional amendment, the commonality of the legislative subjects is asymmetrical and uneven e.g. "education" (Residuary List) versus "standards in higher education...(Federal Legislative List)". Even in such an uneven overlap, Federal Principle applies and both the governments enjoy plenary legislative power on the subject but federal legislature does not oust the legislative power of the provincial legislature as was the case under the erstwhile Concurrent Legislative List. The only exception is when the federal and provincial statutes are locked in an unavoidable and ineluctable direct conflict. In such a unique situation, there federal law prevails under article 143 to resolve the impasse. However, such conflicts are not encouraged and do not sit well with the theme of Federalism.

How is the legislative power to be shared in the new constitutional scheme in cases of overlap? 18th constitutional amendment gives way to cooperativeness and coordination between the governments to deal with such overlaps. This coordination is a derivative of federalism and has come to be known as co-operative federalism or participatory federalism.

21. Constitution is not a straitjacket, but a breathing document, that is alive and living. Intergovernmental cooperation and coordination in administrative and legislative matters under Chapter 2 of Part V of the Constitution reflect constitutional vitality. The biological architecture of our constitution rests on co-operative federalism, which is a concept of federalism in which national, state and increasingly local governments interact cooperatively and collectively to solve common problems, rather than making policies separately. Cooperative federalism, also known as marble-cake federalism, is a form of federalism where there is mixing of powers, resources, and programs between and among the national, state, and local governments. Federalism is a system of government in which power is divided between a central government and regional or sub-divisional governments. In marble cake federalism there will be an intermingling of all levels of government in policies and programming. This is also known as co-operative federalism. Cooperative Federalism simply refers to making federalism work through cooperation between various levels of government. It emphasizes the partnership between the different levels of government providing effective public service for the nation the various levels

of governments, under this arrangement are seen as related parts of a single government system, and characterized more by cooperation and shared functions than by conflict and competition.

A critical feature of cooperative federalism is the balance it strikes between complete federal preemption (a preemptive federalism) and uncoordinated federalism (dual federalism). Under preemptive federalism, federal law preempts a provincial law to enter the common legislative field. While under dual federalism two legislatures retain their uncoordinated domains. Cooperative Federalism blends these two models. Cooperative federalism rejects the suggestion that federal law demands uniformity in all situations. Rather, cooperative federalism presumes that supplementation of a uniform minimum standards should be left to the States. Supreme Court of Canada went further in acknowledging that the principle of federalism encouraged intergovernmental cooperation. It rejected rigid formalism and favoured accommodating cooperative intergovernmental efforts to challenge complex issues that could not be allocated to any specific head of power. Cooperative federalism is embedded into our constitutional architecture under Part V. Chapter 1 of this part deals with distribution of legislative powers, while chapter 2 deals with administrative relations between Federation and Provinces. Chapter 3 deals with special provisions including Council of Common Interest (CCI) which is forms the fulcrum of cooperative federalism under our Constitution.

22. Cooperative Federalism, being an intrinsic part of our constitutional design, is also an effective and potent interpretative tool for the courts. The overlap in legislative space between the Federation and the Province over standards in institutions of higher education and education and the limits of exclusivity under Article 142 of the Constitution can be resolved through purposive interpretation with this clear constitutional purpose in mind. Article 142 opens with: "subject to the Constitution." This means that while interpreting the article, other provisions of the Constitution and foundational constitutional principles envisaged in the Constitution will take preference over Article 142. The legislative subjects of standards in institutions of higher education and education have to be contextualized within the constitutional architecture of federalism and made to co-exist under the principles of cooperative federalism. Courts must, therefore, favour functional coexistence of the federal and provincial statutes in cases where there is vertical sharing or an overlap of legislative powers. Cooperative federalism flowing through the Constitution helps prevail over and dilute the exclusivity of Article 142 into a more workable and constitutionally compliant inclusivity. Giving both the legislatures space to co-exist. Only in cases of irreconcilable inconsistency between the federal and provincial statutes, Article 143 provides a solution, but only as a last recourse.

23. Coming to our Constitution, in matters of standards in education and standards in institutions of higher education, the principle of cooperativeness, leads us to understand the scope of Entry 12. We see that national or federal

standards are so designed as to fit all the institutions of higher education in the country. Any such standards are equally applicable to all the provinces irrespective of their state of development in higher education. Hence, federal or national standards by design will always be the baseline minimum national standards, reflective of national integrity and unity. This overarching national architecture of minimum standards provides a baseline for institutions of higher education. The provincial public sector universities and the provincial government exercising their legislative power under the Residuary List are fully empowered to go beyond these minimum standards by setting their own higher standard of excellence. Federation cannot stifle or stunt the progress of higher education in the Provinces, if the Provinces wish to progress and build higher and more robust standards of learning. The only limitation on the Province is that its standards must be at par or higher than the federal minimum standards but cannot be below the federal standards as it would offend national unity and the federal compact. In case of vertical power sharing, as in the case of "education", federalism encourages cooperation and interdepartmental coordination, which takes the form of participatory or cooperative federalism.

24. In conclusion, the federation can set standards in institutions of higher education, however, they will always pass as minimum or mean standards as they cater to all the public sector universities in the country. Simultaneously, the Provinces are fully empowered to develop their own standards in institutions of higher education as long as they are not below the federal standards. This limitation supports national unity and the federal principle.

26. The scheme of the HEC Ordinance, provides for minimum guidelines and standards, giving leeway to the Province to improve on these standards exercising its own legislative and executive power. There is, therefore, no conflict between HEC Ordinance, setting minimum standards and Section 14 of the Act providing for qualifications, experience and criteria for appointment of a Vice Chancellor. In the present case, the Province has fully applied the minimum guidelines issued by the HEC without objecting to its directory nature. The view of the learned Single Judge that setting standards in institutions of higher education fall within the exclusive domain of the federal legislature just because of Entry 12, is not sustainable for the reason that HEC Ordinance itself provides for minimum guidelines which are non-binding. Even if this was not so, constitutional scheme of cooperative federalism would have given space to both the federation and the province to have a functional co-existence."

22. Federal law (i.e., Legal Practitioners and Bar Councils Act, 1973 and the Rules thereunder) caters to all the provinces in Pakistan and, therefore, sets an overarching standard that addresses legal education across Pakistan. Provincial legislature also enjoys independent legislative space to legislate on legal education under the rubric of education but only to the extent of improving and enhancing the overarching, general, countywide standards in legal education set by the federal legislature. The two powers have been reconciled on the principle of cooperativeness under cooperative federalism, applying the principle settled in Punjab Higher Education Commission case (above).

The Provincial Legislature is free to improve upon the overarching standards set by the Federal legislature by setting more robust and stringent standards for admission in the Province. Provincial Legislature cannot, however, lower the standards set by the Federal Legislature.

23. In the present case, the standards set out under Rule 4 of the Pakistan Bar Council Legal Education Rules, 2015 framed under the Legal Practitioners and Bar Councils Act, 1973 can be improved upon by the Province under the University of the Punjab Act, 1973 read with the Admission Regulations, 2016-2017. Rule 4 and Admission Regulations 2016-2017. Rule 4 and Admission Regulations 2016-2017 are therefore, constitutionally compliant and can co-exist under cooperative federalism which is an integral part of our core constitutional value of Federalism. The minimum eligibility threshold of 2nd Division for admission into LL.B (3 or 5 years) imposed under the Regulations by the University of the Punjab is, therefore, declared to be in accordance with the Constitution and the law.

Restitution

24. Petitioner College has argued that students (holding 3rd Division) have already completed their first year LL.B, therefore, as a one-time concession, they be allowed to sit in the examination. We are afraid that standards in education, especially in professional education e.g., LL.B, cannot be compromised and must be upheld and maintained at all costs. These students can be future lawyers, who one day would be entrusted with the responsibility of dealing with the life and property of others. There can be no compromise on standards in legal education. Any concession granted today can be hugely disadvantageous to the public tomorrow. Strong institutions are built on rule based systems, with no margin for compromises and concessions. In this particular case, students holding a 3rd division in F.A/F.Sc. or B.A/B.Sc., if they wish to pursue higher education, must first improve their grade/ division by re-sitting their F.A/F.Sc. or B.A/B.Sc., as the case may be, and then re-apply for admission. It must be loud and clear to the students that there are no shortcuts in life. However, as a measure of restitution for the students, considering that it was the Petitioner College which was at fault in granting admission to them, we direct that the Petitioner College refunds the academic fee charged from these students for the academic year 2016-2017. Retention of fee by the Petitioner College would amount to unjust enrichment, which is not permissible under the law.

Held

25. For the above reasons, it is declared that students holding 3rd Division in F.A/F.Sc. or B.A/B.Sc. are not eligible for admission to LL.B (3 or 5 years) and the refusal by the University to register the said students for LL.B examination is declared to be in accordance with law. In order to reconstitute the students, petitioner college shall refund the academic fee paid by the students for the academic year 2016-2017.

26. The instant petition, as well as, connected Writ Petitions Nos.40218/2016, 54945/2017 and 47756/2017 are dismissed with no order as to costs.

KMZ/P-12/L Petitions dismissed.