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THE MEDICAL TRIBUNAL ACT, 2020

[23rd September, 2020]

ACT NO. XXXIV OF 2020

An act to provide for the setting up of special judicial tribunal to efficiently and expeditiously hear and decide disputes arising out of matters pertaining to the medical and health sectors

WHEREAS it is expedient to provide for the setting up for a special judicial tribunal to efficiently and expeditiously hear and decide disputes arising out of matters pertaining to the actions of authorities formed to regulate different areas of the medical sector in Pakistan and to provide cost effective adjudication of such disputes;

It is hereby enacted as under:—

1. Short title and commencement.— (1) This Act shall be called the Medical Tribunal Act, 2020.

(2) It shall come into force at once.

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context,—

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“Bench” means bench as constituted by the Chairman of the Medical Tribunal;

“Chairman” means Chairman of the Medical Tribunal;

“members” means members of the Medical Tribunal;

“prescribed” means prescribed rules or regulations made under this Act, as the case may be;

“Registrar” means the registrar of the Medical Tribunal and includes any other person authorized by the Tribunal to perform the functions of the Registrar under this Act;

“regulations” means regulations made under this Act;

“rules” means rules made under this Act; and

“Tribunal” means Medical Tribunal established under this Act.

3. Cognizance of offences.—(1) No court shall take cognizance in any matter to which jurisdiction of the Tribunal extends.

(2) Any person or entity aggrieved by an act which is an offence under any law for the time being in force triable by the Tribunal or by an order or act which is appealable before the Tribunal may institute a complaint or claim or appeal as the case may be before the Tribunal.

(3) The Tribunal may also initiate appropriate proceeding on dependable information against any individual or institution after issuing notice against an act or omission which falls within the jurisdiction of the Tribunal.

4. Medical Tribunal.—(1) The Prime Minister of Pakistan shall, by notification in the official Gazette, establish the Tribunal which shall exercise jurisdiction under this Act.

(2) The Tribunal shall consist of a Chairman who has been a judge of a High Court to be appointed by the Prime Minister of Pakistan upon nomination by the Chief Justice of Pakistan.

(3) In addition to the Chairman, the Tribunal shall consist of at least four members and the Federal Government may increase the number of members as required.

(4) The members of the Tribunal shall be appointed by the Prime Minister of Pakistan in consultation with the Chairman of the Tribunal, of which half shall be jurists who have been judges of High Court and half shall be technical members with suitable professional qualifications and experience, in the medical fields.

(5) The powers and functions of the Tribunal may be exercised or performed by Benches as constituted by the Chairman of the Tribunal.

(6) The principal seat of the Tribunal shall be at Islamabad. The Benches of the Tribunal may function at any of the provincial headquarters as per schedule directed by the Chairman.

(7) If the members of the Bench differ in opinion as to the decision to be given on any point, the case shall be referred to the Chairman and the decision of the Tribunal shall be expressed in terms of the opinion of the Chairman.

(8) The Tribunal shall not, merely because of a change in its composition, or the absence of any member from any sitting, be bound to recall and rehear any witness who has given evidence, and may act on the evidence already recorded by, or produced, before it.

(9) The Tribunal may hold its sittings at such places within its territorial jurisdiction as the Chairman may decide.

(10) No act or proceeding of the Tribunal shall be invalid by reason only of the existence of a vacancy in, or defect in the constitution, of the Tribunal.

(11) The terms and conditions of service of the Chairman and members of the Tribunal shall be such as may be prescribed by rules.

5. Tenure of office—The Chairman and members of the Tribunal shall hold office for a period of three years which may be extended by the Federal Government for another term subject to consent of the Chief Justice of Pakistan to the extended term of the Chairman and the consent of the Chairman to the extended term of a member.

6. Jurisdiction and powers of Medical Tribunal.— (1) All offences provided for under the

Pakistan Nursing Council Act, 1973 (XXVI of 1973), Pakistan Health Research Council Act, 2016 (XII of 2016), the Unani, Ayurvedic and Homeopathic Practitioners Act, 1965 (II of 1965), the

Pharmacy Act, 1967 (XI of 1967), the Pakistan Medical and Dental Ordinance, 1962 (XXXII of 1962), the Pakistan Medical Commission Ordinance, 2019 (XV of 2019) or any other law as may be notified by the Federal Government, shall be triable by the Tribunal.

(2) All appeals against decisions, orders and acts of the relevant apex authorities or councils formed pursuant to the Pakistan Medical and Dental Ordinance, 1962 (XXXII of 1962), Pakistan Medical Commission Ordinance, 2019 (II of 2019), the Pakistan Nursing Council Act, 1973 (XXVI of 1973), Pakistan Health Research Council Act, 2016 (XII of 2016) and the Unani, Ayurvedic and Homeopathic Practitioners Act, 1965 (II of 1965), the Pharmacy Act, 1967 (XI of 1967) or any other law as may be notified under sub- section (1) shall be heard and decided by the Tribunal.

(3) All claims or complaints arising out of acts or obligations pursuant to the Pakistan Medical and Dental Ordinance, 1962 (XXXII of 1962), Pakistan Medical Commission Ordinance, 2019 (II of 2019), the Pakistan Nursing Council Act, 1973 (XXVI of 1973), Pakistan Health Research Council Act, 2016 (XII of 2016) or the Unani, Ayurvedic and Homeopathic Practitioners Act, 1965 (II of 1965), the Pharmacy Act, 1967 (XI of 1967) or any other law as may be notified under sub-section (1), where the original jurisdiction is not vested in the relevant apex authorities or councils formed thereunder shall be heard and decided by the Tribunal.

(4) All cases in which the offender is sentenced to a fine, whether with or without imprisonment, it shall be competent for the Tribunal to direct that in default of payment of the fine the offender shall be punishable with imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentences.

(5) The term for which the Tribunal directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum penalty prescribed for the offence in the relevant statute or rules or regulations framed thereunder.

(6) In exercise of its criminal jurisdiction, the Tribunal shall have the same powers as are vested in Court of Sessions under the Code of Criminal Procedure, 1898 (Act V of 1898).

(7) In exercise of the civil jurisdiction, the Tribunal shall have the same powers and shall follow the same procedure as civil court under the Code of Civil Procedure, 1908 (Act V of 1908).

(8) In all matters with respect to which no procedure has been provided for in this Act, the Tribunal shall follow the procedure laid down in the Code of Civil Procedure, 1908 (Act V of 1908). The Tribunal shall make such rules for its functioning as deemed appropriate by the Chairman in consultation with the members.

(9) The Tribunal may issue bailable warrant for the arrest of any person against whom reasonable suspicion exists, of his having been involved in any contravention punishable under this Act:

Provided that such warrant shall be applied for, issued and executed in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898):

Provided further that if the person arrested executes a bond with sufficient surety in accordance with the endorsement on the warrant he shall be released from custody, failing which he shall be taken

or sent without delay to the officer in-charge of the nearest police station.

(10) All proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Pakistan Penal Code, 1898 (Act XLV of 1898) and the Tribunal shall be deemed to be a court for the purpose of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(11) The Tribunal shall hear and decide all appeals, complaints or claims instituted before it within one hundred twenty days without exception and shall refuse all requests for adjournments if sought by any party if such adjournment would lead to the Tribunal not being able to decide a case within the stipulated period.

(12) The Tribunal shall impose penalties as may be prescribed under the relevant statute or rules or regulations made thereunder and in the absence thereof determine reasonable penalties for reasons to be recorded subject to a fine not exceeding fifty million Rupees and imprisonment not exceeding seven years.

7. Offences by bodies corporate.—(1) Where any contravention has been committed by a body corporate and it is proved that such offence has been committed with the consent or connivance or, is attributed to any negligence on the part of, any director, partner, manager, secretary, trustee or other officer of the body corporate, they shall be deemed to be guilty of such contravention along with the body corporate and shall be punished accordingly:

Provided that in the case of company as defined under the Companies Act, 2017 (XIX of 2017), only the chief executive officer shall be liable under this section.

Explanation.— For the purpose of this section, “body corporate or institution” includes a firm, association of persons, a society registered under the societies Registration Act, 1860 (XXI of 1860) or under the Co-operative Societies Act, 1925 (VII of 1925) and a trust created under the Trust Act, 1882 (II of 1882).

(2) Where any contravention has been committed by any Government agency, local authority or local council and it appears from the relevant documents that such contravention has been committed with the consent or connivance of or is attributed to any negligence on the part of the head or any other officer of the Government agency, local authority or local council, such head or other officer shall also be deemed guilty of such contravention along- with the Government agency, local authority or local council and shall be liable to be proceeded against and punished accordingly.

8. Appeals to the Medical Tribunal.— (1) Any person aggrieved by any order or direction of the authorities pursuant to the Pakistan Medical and Dental Council Ordinance, 1962 (XXXII of 1962), Pakistan Medical Commission Ordinance, 2019 (II of 2019), the Pakistan Nursing Council Act, 1973 (XXVI of 1973), Pakistan Health Research Council Act, 2016 (XII of 2016) or the Unani, Ayurvedic and Homeopathic Practitioners Act, 1965 (II of 1965) or the Pharmacy Act, 1967 (XI of 1967) and subject to the provisions of the Pakistan Medical and Dental Council Ordinance, 1962 (XXXII of 1962), Pakistan Medical Commission Ordinance, 2019 (II of 2019), the Pakistan Nursing Council Act, 1973 (XXVI of 1973), Pakistan Health Research Council Act, 2016 (XII of 2016) or the Unani, Ayurvedic and Homeopathic Practitioners Act, 1965 (II of 1965), the Pharmacy Act, 1967 (XI of 1967) or any other law as may be notified under sub-section (1) of section 6, may prefer an appeal before the Tribunal within thirty days of the date of communication of the impugned order or direction.

(2) An appeal to the Tribunal shall be in such form, contain such particulars and be accompanied by such fees as may be prescribed.

9. Appeals from orders of the Medical Tribunal.— Any person aggrieved by any final order in suit, in appeal or against any sentence passed by the Tribunal may, within thirty days of communication of such order or sentence, prefer an appeal to the Supreme Court of Pakistan.

10. Abatement of suit and other proceedings.— All suits, appeals, complaints or applications regarding any matter within the jurisdiction of the Tribunal pending in any court immediately before the commencement of this Act shall abate forthwith:

Provided that any party to such proceedings may, within ninety days of the establishment of the appropriate Tribunal, approach to the Tribunal in respect of any such matter which is in issue in such suit, complaint, appeal or application etc.

11. Limitation.—The provisions of sections 5 and 12 of the Limitation Act, 1908 (IX of 1908), shall apply to appeals etc. under this Act.

12. The officers of Federal, Provincial and local Governments to assist Tribunal.—The officers of the Federal Government, Provincial Governments and local governments including the Islamabad Capital Territory police and the Provincial police shall assist the Tribunal and its officers in the discharge of their functions under the provisions of this Act and the rules and regulations made there under.

13. Rules.—The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

14. Regulations.—The Tribunal may, by notification in the official Gazette, make regulations to carry out purposes of this Act.

15. Overriding effect.—The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

16. Savings.—All appointments, orders, notifications made, passed or issued or duly done by the competent authority in relation to the Tribunal, or by the Tribunal under the repealed Medical Tribunal Ordinance, 2019 (XIV of 2019) are saved and deemed continued.