

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

“W.P No.1718 of 2020”

Jehad Ali

Versus

The Chairman Arbitrary Council, Islamabad.

Petitioner By:	Mr. Ahmed Ejaz Yousaf, Advocate.
Respondent No.1 By:	Mr.Abid Hussain Chaudhry, Advocate.
Respondent No.3 By:	Mr.Zahid Ali Khan, Advocate.

Date of hearing:	20.07.2020
------------------	------------

Ghulam Azam Qambrani, J: Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has invoked the jurisdiction of this Court with the following prayer;-

“It is therefore, most respectfully prayed that this Honorable Court may very graciously be pleased to set-aside Order dated 29.04.2020, and declare that all proceedings before the respondent No.1 and 3 as without jurisdiction/ lawful authority, and of no legal consequence.

Any other relief to which the petitioner may be found entitled to in the circumstances of the case may also be awarded.”

2. Brief facts of the case are that the petitioner got married with respondent No.3 in the year 2014 at Mardan and out of the said wedlock, two daughters were born. On 10.06.2018, parents of respondent No.3 took her alongwith minor daughters with them amicably, but thereafter, in-spite of the best efforts of the petitioner, she did not return. The petitioner submitted an application before the concerned Arbitration Council for grant of permission for contracting second marriage, which was accepted and the petitioner entered into second marriage. Respondent No.3 not only filed a suit against the petitioner at Family Court, Islamabad, for grant of maintenance, dissolution of marriage but she also filed an application against the petitioner to respondent No.1 (Chairman

Arbitration Council, Islamabad) for initiating of proceedings against the petitioner on contracting second marriage without her permission. In response to said application, the petitioner appeared before respondent No.1 and filed reply with the prayer for dismissal of the application filed by the respondent No.3 on the ground that respondent No.1 has no jurisdiction in the matter; and also that neither the petitioner has committed any offence within his jurisdiction nor he is resident of Islamabad. It was also stated that he had obtained permission from the Chairman/ Nazim of the cornered union council for contracting second marriage. Thereafter, due to pandemic and lockdown in the country, the petitioner could not appear before respondent No.1 and after relaxation in the lock down by the government, the petitioner approached the office of respondent No.1 where it was informed that the matter has been decided against him due to his non-appearance vide order dated 29.04.2020 and the case has been referred to the learned Judicial Magistrate, Islamabad for further proceedings hence, the instant petition.

3. Learned counsel for the petitioner submits that impugned order is violative of the principle of natural justice; that he same has been passed in absence of the petitioner; that respondent No.1 should have adjourned the case due to prevailing pandemic condition in the country; that the impugned order is a nonspeaking one and no ground is mentioned in the impugned order for initiation of criminal proceeding against the petitioner; that the petitioner has been deprived of his fundamental right of fair hearing; therefore, the same is liable to be set-aside.

4. On the other hand, learned counsel for respondent No.3 submitted that the petitioner has filed a fake document; that the petitioner failed to appear before respondent No.1 in spite of repeated opportunities and prayed for dismissal of instant petition.

5. Arguments heard, record perused.

6. Perusal of the record reveals that the respondent No.3 filed an application before the Chairman Arbitration Council, Islamabad,

under Section 7 (2) of the Muslim Family Laws Ordinance, 1961 for award of punishment for contracting second marriage by the petitioner without her permission. The petitioner appeared before respondent No.1 by submitting a petition for dismissal of the said application for want of jurisdiction with the averments that marriage between the petitioner and respondent No.3 was solemnized at Mardan on 29.11.2014. Record further reveals that the petitioner contracted second marriage on 25.6.2018 at Mardan after obtaining necessary permission from the Chairman/ Nazim of the concerned Union Council, which was granted to him vide certificate dated 13.06.2018. The same is available on the file at page 20 of this petition.

7. The record further shows that the petitioner could not appear before respondent No.1 due to the prevailing pandemic condition and lockdown in the country which was beyond his control but the impugned order has been passed against the petitioner without providing proper opportunity of hearing, the same is against the principle of natural justice. Reliance in this regard is placed upon the judgment report as "Messrs DEWAN SALMAN FIBER Ltd. and others versus Government of N.W.F.P., through Secretary, Revenue Department, Peshawar and others" (PLD 2004 SC 411). In the case reported as "Muhammad Rafique versus University Of The Punjab through Registrar and others." (2020 YLR 42), it has been held as under:-

"It is also not discernible from the impugned orders that petitioner was afforded reasonable opportunity of hearing to advance his defence, which amounts to violation of well-enshrined and celebrated principle of audi alteram partem i.e. no one should be condemned unheard. Said principle is applicable to judicial, quasi-judicial and non-judicial proceedings. No order affecting the right of a party could be passed without affording opportunity of hearing. Reliance is placed upon Naeem Abbas v. Government of Punjab through Secretary and 4 others [2017 PLC (C.S.) 404]"

In the case reported as "Engineers Study Forum (Registered) and another Versus Federation Of Pakistan and others" (2016 SCMR 1961) it has been held as under:-

"It is true that while hearing a case before it, the Court has to keep into consideration well enshrined and celebrated principle of Audi Alteram Partem (no man should be condemned unheard) and the Court was well informed of this principle while hearing a matter before it."

8. In view of what has been discussed above, this writ petition is **accepted**. Impugned order dated 29.04.2020 passed by respondent No.1 is set-aside. The application filed by the respondent No.3 shall be deemed to be pending before respondent No.1. Parties are directed to appear before the respondent No.1 on 06.08.2020, who is directed to decide the application of respondent No.3, keeping in view all the relevant documents and point of jurisdiction, strictly in accordance with law after providing proper opportunity of hearing to both the parties preferably within a period of one month after a receipt of certified copy of this judgment.

(Ghulam Azam Qambrani)
Judge

Announced in open Court on this 24th day of July, 2020. ✓

~~JUDGE~~

M.4