

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Justice Amin-ud-Din Khan, Senior Judge  
Justice Jamal Khan Mandokhail  
Justice Naeem Akhter Afghan  
Justice Shakeel Ahmad  
Justice Aamer Farooq

**Civil Petition No. 1477 of 2023**

(Against the order of the Lahore High Court, Lahore dated 01.02.2023 passed in W.P. No. 36748 of 2022)

***Senior Joint Director Foreign Exchange  
Operations Division SBP***

*...Petitioner(s)*

***Versus***

***Federation of Pakistan and others***

*...Respondent(s)*

For the Petitioner(s) : Mr. Faisal Siddiqui, ASC  
Dr. Muhammad Usman, AOR

For respondent No.1 Rana Asadullah Khan, Addl. AGP

For respondent No. 8 : Mr. Waqas Ahmad Mir, ASC

For respondents 2-7 Not represented

Date of Hearing : 20.03.2025

**O R D E R**

**Jamal Khan Mandokhail, J.** The respondent No. 8 filed a petition before the Lahore High Court, challenging the vires of section 23C (4) of the Foreign Exchange Regulation Act, 1947 (**‘FERA’**) and rule 8 of the Adjudication Proceedings and Appeal Rules, 1998 (**‘the Rules’**). The petition was allowed by means of order dated 01.02.2023 and struck down the said provision of FERA and rule 8 of the Rules as unconstitutional, hence, this petition.

2. Arguments heard and have perused the record. Under section 23C of the FERA, a decision of the Adjudicating Officer, made under section 23B(4) is though appealable before the Foreign Exchange

Regulation Appellate Board (**'Appellate Board'**), but it shall not be admitted for hearing unless the appellant deposits in cash with the Appellate Board the amount of penalty or, at the discretion of the Appellate Board, furnishes security equal in value to such amount of penalty, as provided by its subsection (4). The main controversy for determination is whether the pre-condition of deposition of the amount of penalty for admission of an appeal as provided by section 23C(4) of the FERA and rule 8 of the Rules, is constitutional. There is always a possibility of error, mistake of facts or law in a decision at the level of initial forum, therefore, the right of appeal is a substantive right of an aggrieved person. It existed since the establishment of judiciary, with its primary function to protect against miscarriage of justice. A right of access to justice and a right to a fair trial and due process is a fundamental right of a citizen, guaranteed by Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973 (**'Constitution'**), which includes an appeal to a higher, independent and impartial forum to scrutinize the decision of the *fora* below. It plays a role to review very carefully, to interpret and apply law in most accurate and uniform manner within the limits of legal procedure, in order to eliminate a slightest instance of miscarriage of justice. Denial of right of appeal violates the fundamental rights of a citizen, the principles of natural justice and the injunctions of Islam. In Khan Asfandyar Wali<sup>1</sup>, this Court has declared as under:

*"The purported denial of the right of appeal is violative not only of Article 2A of the Constitution but also power of the Superior Courts to correct such orders through exercise of their Constitutional jurisdiction. Clearly, the denial of right of appeal is contrary to the norms of justice as also violative of principles of natural justice. Also refer Messrs Chenab Cement Product (Pvt) Ltd. and others v. Banking Tribunal, Lahore and others (PLD 1996 Lahore 672). Thus, section 13(c) which denies the right of appeal is violative of the principles of the Islamic Injunctions and the same needs to be suitably amended so as to allow right of appeal to the accused as well as to the non-accused/third party whose claim or objection against freezing of property is dismissed by the Accountability Court."*

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<sup>1</sup> PLD 2001 SC 607

This Court in the case of Federation of Pakistan<sup>2</sup> has held as under:

*“We also consider that the Islamic Injunctions of Adal, Qist and Ihsan warrant that in cases where authentication of the declaration is refused by the District Magistrate, the aggrieved party should be entitled to test the correctness of such an important decision effecting the livelihood of a person, by way of an appeal.”*

Similarly, in the case of Ministry of Defense<sup>3</sup>, the Court has declared that the right of appeal was recognized by the Holy Prophet (PBUH). The relevant portion thereof is reproduced below:

*“The Federal Shariat Court in its impugned judgment has also held that the right of appeal was recognised by the Holy Prophet (Peace be upon him) as well as by the Khulafa-e-Rashideen and discussed this question in great detail. Nothing has been shown to us in refutation thereof. The plea, thus, that barring the right of appeal does not offend against the Injunctions of Islam, cannot be accepted.”*

#### **Imposition of Condition upon Admission of Appeal:**

3. The Constitution guarantees that every person enjoys the protection of law and is to be treated in accordance with law, therefore, no clog, condition or restriction should be imposed by a simple act or law on a fundamental right conferred upon him by the Constitution, except in specific situation and according to due process, only in the larger interest of public. The authority of the Parliament to legislate is derived from the Constitution, which must be consistent with and in accordance with the Constitution. Any enactment, a part of it or amendment introduced in it, if inconsistent or in violation of any provision of the Constitution, shall to the extent of such inconsistency or violation, be void. It is well settled that the right of appeal derives through a Statute. The Constitution does not restrict the Legislature to impose conditions or restrictions, while granting the right of appeal. However, those conditions or restrictions must be with due regard to the public requirement and reasonable. Making a fundamental right subject to any clog, condition or restriction, contrary to the constitutional provisions or beyond the parameters of reasonableness, would be violative of the fundamental rights guaranteed by the

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<sup>2</sup> PLD 1988 SC 202

<sup>3</sup> PLD 1989 SC 6

Constitution. Reliance is placed on the case of M/s Eastern Rice Syndicate<sup>4</sup>.

4. Unreasonable conditions attached to an appeal would likely be one that is not justified, disproportionate or infringed upon the fundamental rights or the legal process. An unreasonable condition could make it impossible or unfairly difficult to exercise the right to appeal. Similarly, conditions that obstruct the normal and fair functioning of the due process for an appellant, such as, the payment of excessive amount could be considered as unreasonable. There is no justification for deposition of such an excessive amount nor has it been shown that the condition attached to the appeal is with due regard to the public requirement. Directing a party to deposit the total amount of the subject matter, before admission of his appeal would be unreasonable, resulting into preventing that party from exercising his right of appeal, which violates his fundamental right of fair trial and due process, guaranteed by Article 10A of the Constitution. If permitted, this will not only deprive the respondents from their fundamental right of challenge to the decision of the executive authority before an independent and impartial higher forum, but will also give a license to the powerful executive to misuse its authority. The condition of deposition of the fine amount imposed by subsection (4) of section 23C of the FERA is so excessive and unreasonable that it would amount to denial of the right to appeal, which violates Article 10A of the Constitution, hence, cannot sustain.

5. The learned counsel for the petitioner states that the condition attached under section 23C(4) of the FERA is not absolute, rather it is the prerogative of the Appellate Board either to direct the appellant to deposit the penalty or to ask him to furnish a security equal to value of such amount of the penalty. He stated that by applying constitutional interpretation as well as the theory of reading down the words "discretion of the Appellate Board", a direction to the Appellate Board be given to adopt any of the condition for admission of the appeal, depending upon the *prima facie* facts and circumstances of the case. When the law provides an act to be done in a particular manner,

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<sup>4</sup> PLD 1959 SC (PAK) 364

it is to be done accordingly, unless the said provision of the Act is *ultra vires* the Constitution. This Court has no jurisdiction to read in or read out into any provision of the Constitution or an enactment. The learned counsel for the petitioner has not been able to point out any illegality, irregularity or jurisdictional defect in the impugned judgment, warranting interference.

Thus, in view of the above, leave is refused and the petition is dismissed.

Judge

Judge

Judge

Judge

Judge

Islamabad  
20.03.2025  
K.Anees and Waqas Ahmad, LC  
**APPROVED FOR REPORTING**

**Shakeel Ahmad, J:-** I have had the privilege and the benefit of going through the judgment authored by my learned brother, Jamal Khan Mandokhail J. The factual background of the case, including the events that culminated in the institution of the constitutional petition before the Lahore High Court, has been comprehensively set out in the said judgment. I fully agree with the judgment of my learned brother. However, I have considered it proper to add my views on the legal and constitutional issues arising therefrom, separately.

2. The issue at hand pertains to the constitutional validity of Section 23-C(4) of the Foreign Exchange Regulation Act, 1947 (the "**Act**") as well as Rule 8 of the Adjudication Proceedings and Appeal Rules, 1988 (the "**Rules**") (*to the extent that the Rule makes the receipt of an appeal subject to compliance with Subsection (4) of Section 23C of the Act*), which mandates a mandatory condition for filing an appeal, namely, the deposit of the penalty amount or furnishing of a security equivalent thereto with the Appellate Board. The core question before us is whether this provision amounts to an infringement of the fundamental right of access to justice, which encompasses the right to file and pursue an appeal before a competent forum.

3. It is by now firmly entrenched in our jurisprudence that the right of access to justice is a fundamental right, enshrined in Article 9 of the Constitution of the Islamic Republic of Pakistan ("**Constitution**") and is equally found in the doctrine of due process of law, which includes the right to be treated in accordance with law, the right to a fair and proper trial as well as the right to have an impartial court or tribunal<sup>1</sup>. This Court, in a plethora of consistent judgments, has categorically held that access to legal remedies cannot be rendered conditional upon the economic means of the aggrieved and that equal access to legal

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<sup>1</sup> Shaikh Riaz-ul-Haq v. Federation of Pakistan (PLD 2013 SC 501)

recourse is not a privilege reserved for the fortunate ones but rather a fundamental right of all members of society.

4. Now, a statutory condition such as the one present in Section 23-C(4) of the Act and Rule 8 of the Rules, requiring a deposit of the penalty amount or furnishing of equivalent security as a precondition for admitting an appeal may, in its practical operation, create a financial barrier. While the right of appeal may formally remain intact, the imposition of such a requirement effectively curtails its exercise for individuals who lack the financial capacity to comply. This stipulation thus has the tendency to disproportionately affect individuals with limited financial resources whilst effectively denying them the right to appeal, and broadly speaking, the fundamental right to access to justice.

5. It is trite that the legislature is sovereign within its domain of law-making, but this sovereignty is not unfettered. The legislature cannot enact any provision whatsoever which is inconsistent with, or violative of fundamental rights enshrined in the Constitution. Any such provision must be tested on the touchstone of constitutionality and struck down if found to be inconsistent with fundamental rights.

6. This Court, in the case of *Commissioner of Income Tax, Peshawar Zone*<sup>2</sup> held that Courts are bound to apply Islamic principles unless explicitly excluded, even over conflicting interpretive methods from other legal or jurisprudential traditions. This obligation applies equally to fiscal laws. Article 227 of the Constitution mandates that all existing laws be brought into conformity with the Injunctions of Islam, as prescribed in the Holy Quran and Sunnah, the primary sources of Islamic law. In Surah *Sad* (38:21-24), the Quran recounts an incident involving Prophet Dawood (PBUH), wherein two disputing parties appeared before him for adjudication. The Prophet rendered a decision in favour of the plaintiff based on a mere claim without affording the

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<sup>2</sup> *Commissioner of Income Tax, Peshawar Zone, Peshawar v. M/S Siemen A.G* (PLD 1991 SC 368)

respondent an opportunity to be heard. The Quranic text itself highlights this as a procedural flaw that led to divine admonition. This event serves as a guiding principle for the right to appeal, as it demonstrates that judicial fallibility necessitates a review mechanism to ensure fair and just adjudication. Just as Prophet Dawood (PBUH) revisited his ruling upon realising the flaw in due process, therefore, an appellate forum is essential to prevent miscarriages of justice.

7. A similar principle is found in Surah *An-Nisa* (4:59), which reinforces that when people dispute the decision of those in authority, the matter should be referred to Allah and His Messenger (PBUH). By analogy, this principle translates into modern appellate structures, where a higher judicial forum must exist to review legal determinations and rectify misapplications of law.

8. This Court, time and again, has recognised the Islamic Injunctions of *Adl* (justice), *Qist* (equity), and *Ehsan* (fairness) and has consistently held that an aggrieved party must have the right to challenge the correctness of a decision. The right to appeal, thus, is not only a procedural safeguard but a substantive requirement under the Islamic law. Provisions that preclude an appeal have been held contrary to the Injunctions of Islam. In *Federation of Pakistan v. Public at Large*<sup>3</sup> and *Pakistan v. General Public*<sup>4</sup>, this Court reaffirmed that the right to appeal is an indispensable component of due process and Islamic justice. In this context, further reliance can be placed on *Federation of Pakistan's* case (*supra*) wherein validity of certain provisions of West Pakistan Press and Publications Ordinance (XXX of 1963) which denied an aggrieved party from the right to appeal, were considered and it was held that the said provisions were against the Islamic Injunctions and that the same must be amended, and the right of appeal

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<sup>3</sup> *Federation of Pakistan v. Public at Large* (PLD 1988 SC 202)

<sup>4</sup> *Pakistan v. General Public* (PLD 1989 SC 6)



was provided. The view expressed was reaffirmed in the case of the Federation of Pakistan v. Public at Large (*supra*), wherein it was observed as follows:

*"And indeed, the harshness in similar provisions of the West Pakistan Press and Publications Ordinance (XXX of 1963), was removed by the Court in the same judgment. Remedial measures were ordered."*

9. These principles also find historical endorsement in the instructions of Caliph Umar ibn al-Khattab to his appointed judge, Musa al-Ash'ari, in his famous letter. In the said letter, Caliph Umar instructed that if a judge rendered a judgment on one day but, upon reconsideration, arrived at the correct conclusion on another, he should not hesitate to revisit and rectify his prior ruling, for justice is eternal. It is better to retract from error than to persist in an incorrect decision. This directive affirms the primacy of justice in Islamic jurisprudence and establishes that a judicial system must provide recourse for an aggrieved party to challenge an erroneous decision. The principle articulated by Umar (RA) mirrors the function of appellate courts, ensuring that justice is not only done but is manifestly seen to be done.

10. The question as to whether the right of appeal can be made subject to the condition of deposit came for consideration before this Court in the M/S Eastern Rice Syndicate<sup>5</sup>, wherein it was ruled that such a condition amounts to a negation of the right of appeal itself. Following the above referred judgment of the Supreme Court, the Lahore High Court, in M/S Chenab Cement<sup>6</sup> while examining the vires of the proviso to Section 9 of the Banking Tribunals Ordinance (LVIII of 1984), held that requiring a deposit as a condition for filing an appeal effectively amounted to denial of the right to appeal itself. This jurisprudential position was reaffirmed by this Court in

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<sup>5</sup> M/S Eastern Rice Syndicate v. Central Board of Revenue (PLD 1959 SC (Pakistan) 364)

<sup>6</sup> M/S Chenab Cement Product (Pvt.) Ltd. v. Banking Tribunal, Lahore (PLD 1996 Lahore 672).

the Khan Asfandiyar Wali case,<sup>7</sup> where it was observed that denial the right of appeal is contrary to the norms of justice and violative of the principles of natural justice and the principles of Islamic injunctions.

11. Furthermore, on a bare perusal of Section 23-J of the Act, I find that it provides a full mechanism for the recovery of sums due to the Government. In light of these enforcement measures already available to the State, the imposition of an additional precondition of depositing the penalty amount or furnishing security equivalent thereto under Section 23-C(4) at the appellate stage appears wholly disproportionate and oppressive and does not serve to further any legitimate governmental interest that is not already safeguarded under Section 23 (J).

12. In light of the above discussion and in my view, Section 23-C(4) of the Foreign Exchange Regulation Act, 1947, as well as Rule 8 of the Adjudication Proceedings and Appeal Rules, 1988, which mandate a financial precondition for filing an appeal, constitute an unreasonable and unconstitutional restriction on the fundamental right of access to justice. Such a provision, clearly and disproportionately affects individuals with limited financial means, effectively denying them the opportunity to challenge adverse decisions. Therefore, the High Court rightly declared Section 23-C(4), as well as Rule 8 of the Rules (*to the extent that Rule makes the receipt of an appeal subject to compliance with Subsection (4) of Section 23C of the Act*), unconstitutional/ultravires of the Constitution and struck down the said provision.

**Judge**

Islamabad  
20.03.2025  
APPROVED FOR REPORTING  
M.Rizwan/Rameen Shahram, L.C.

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<sup>7</sup> Khan Asfandiyar Wali v. Federation of Pakistan, (PLD 2001 SC 607)