

**Form No:HCJD/C-121**  
**ORDER SHEET**  
**IN THE LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

C.M. No.41049 of 2023 U/S 12(2) C.P.C.

**Muhammad Ashfaq & others.    Versus                      Imran Nadeem etc.**

S.No. of order/ proceeding.	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
--------------------------------	------------------------------	--

<b>01.</b>	<b><u>16.06.2023</u></b>	Malik Zahid Hussain, Advocate for the petitioners.
------------	--------------------------	--

This application under Section 12(2), C.P.C., has been filed by the applicants for setting-aside the order dated 16.02.2021 passed by this Court.

2. Brief facts of the case are that respondent No.1 had filed a Constitutional Petition bearing W.P.No.10408 of 2021 whereby he made complaint about the inaction of the Director General, Faisalabad Development Authority, Faisalabad (respondent No.2 herein) regarding non-deciding his pending application and sought direction to that authority for disposal of his pending application expeditiously. This Court by mentioning some relevant facts as alleged/reiterated by the writ petitioner (respondent No.1), vide order dated 16.02.2021, issued writ of mandamus while disposing of the said petition to respondent No.2 herein in the following terms:-

*“4. Be that as it may, since the application for recalling of the aforesaid order dated 13.1.2007 is pending with respondent No.1/Director General, FDA, I deem it appropriate to direct that the said application (annexed with this petition at Page-39, Annexure-G) shall be decided strictly in accordance with law by providing opportunity of hearing to all concerned, within a period of one month from receipt of certified copy of this order.*

*5. With the above direction, this petition stands disposed of.”*

3. Now the present applicants have filed an instant application under Section 12(2), C.P.C., for

recalling/setting-aside the aforementioned order, which, mandamus in nature just issued direction for expeditious disposal of respondent No.1's application in accordance with law, alleging therein that the order regarding direction to the Director General, Faisalabad Development Authority, Faisalabad, for disposal of his application, was obtained by respondent No.1 from this Court by concealment of facts. To elaborate his contention it was added that on account of inaction of the Authority regarding this pending application he instituted a declaratory suit for obtaining the same relief as alleged in the said application, which was dismissed vide judgment and decree dated 10.11.2012. An appeal whereof, preferred by respondent No.1, was also dismissed as withdrawn by the learned first appellate Court vide order dated 28.07.2015, therefore, the application filed by the petitioner in the year 2008 before the Authority had become infructuous and there was no occasion for respondent No.1 to file the writ petition for getting direction from this Court to that authority for decision of his said alleged pending application. Thus an instant application has been filed by the applicants for setting-aside the order/direction dated 16.02.2021, allegedly obtained by respondent No.1 by committing fraud and concealment of facts in the terms explained above.

4. I have heard learned counsel for the applicants and gone through record of the case.

5. There are five kinds of writs under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, i.e.:

Writ of Mandamus [Clause (1)(a)(i)],  
 Prohibition [Clause (1)(a)(i)],  
 Certiorari [Clause (1)(a)(ii)],  
 Habeas Corpus [Clause (1)(b)(i)] and  
*Quo Warranto* [Clause (1)(b)(ii)]

Here, I exercised the writ of Mandamus; hence, first of all, I would like to expound on the meaning of the writ of Mandamus. Article 199(1)(a)(i) of the Constitution empowers this Court to issue direction to the authorities working within its territorial jurisdiction who have failed to decide any pending matter and thus have not performed their duties as required by law. Therefore, with this expectation, this Court can (and must) issue direction to every functionary to do the needful provided that this is done in accordance with law as it is their duty to act fairly, justly and reasonably in the discharge of the said duties.

There is no doubt that the application filed by respondent No.1 was not decided by respondent No.2 and accordingly he preferred to approach the Civil Court by way of filing a declaratory suit challenging the oral decision taken by the Director General, Faisalabad Development Authority, Faisalabad, which was dismissed vide judgment and decree dated 10.11.2012 and appeal whereof also met the same fate as it was withdrawn. But the question to be looked into is, 'whether a direction issued by this Court to any Authority for taking decision on allegedly pending/undecided application of any applicant empowers him to decide it against law or by overlooking the relevant facts and law'. It was his foremost duty rather legal obligation to consider all aspects of the case, which were to be complied with by that Authority in letter and spirit after hearing all the parties. And in that eventuality, the Authority to whom a direction is issued by this Court is under obligation not only to receive all the relevant documents from both the parties but also by applying a judicious mind to decide it. Had it been decided after receiving all the relevant documents by the Authority, the position would have been different. However, the aggrieved party still retains right to challenge that order before an appropriate

forum. Further, if an authority makes an incorrect decision, it does not create any right in favour of any party to approach this Court to ask for recalling/setting-aside the order of mandamus, as that concerns only the decision of the pending application which was to be decided in accordance with law. The direction of this Court was only to take a decision on the undecided/unattended application in accordance with law. It should have been decided by the Authority after considering all the facts and circumstances of the case, relevant laws and affording proper opportunity of hearing to both the parties. If any illegality has been committed by the Authority while deciding the application by not giving due weight to the documentary evidence produced by the applicants, in such eventuality, the said order is liable to be challenged on the same grounds before an appropriate forum. Concealment of facts may be a good ground to challenge the validity of the order but it cannot be considered a ground for setting-aside the order passed by this Court.

6. In case, if this Court is issued direction for disposal of alleged pending application, however, in the event, that had already been decided, then informing to the petitioner by sending its earlier order regarding his application, would be enough to the compliance of the order/direction of this Court because this direction did not provide another life to that application if it had already been disposed of/decided by that Authority.

7. Another impression also seen to be taken by the Authority where alleged application had been filed that the decision must be in favour of the applicant as was the case in this instance. It was never the intention of this Court while issuing direction to decide it in favour of the applicant but the only purpose of direction was to point-out to that Authority to perform its duty as required by law. This order

was never issued to favour any of the parties. It only demands a resolution of the pending issue within the parameters of law.

Another aspect is also noticed by this Court, sometime, inadvertently or mistakenly, the applicant files the application before an incompetent Authority, meaning an authority out of whose domain lies decision making powers on the said issue. However, upon receiving the direction from this Court that Authority assumes jurisdiction merely on the ground that it had been directed by this Court, which is wrong. It is the duty of any such Authority upon receiving any such direction from this Court to first decide its/his competency about decision making powers regarding the concerned matter and on the basis of that either return application or forward the same to the concerned competent Authority for its decision along with a copy of order of this Court. However, it must be stressed that assumption of jurisdiction on the basis of this Court's direction does not make any such incompetent authority's order in accordance with law even if such a decision arises under misconception that jurisdiction was assumed under direction of this Court.

8. For what has been discussed above, this application, on the face of it, is not maintainable and as such it stands **dismissed in limine.**

(MUHAMMAD AMEER BHATTI)  
CHIEF JUSTICE

Approved for reporting.

CHIEF JUSTICE