

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.2888-P/2017**  
**With Interim Relief,**

**JUDGMENT**

Date of hearing.....20-09-2017.....

Petitioner: (Muhammad Saleem Hassan Wattoo) by Qazi Muhammad Anwar and Mr.Muhammad Tariq Afridi, Advocates.

Respondents:(Chairman National Accountability Bureau (NAB) and others) by Mr.Ali Jan, ADPGA for NAB.

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**YAHYA AFRIDI, C.J.-** Muhammad Saleem Hassan

Wattoo, petitioner, seeks the constitutional jurisdiction of this Court, praying that ;-

*“It is, therefore, most humbly prayed that on acceptance of this writ petition orders dated 06.07.2017 of respondent No.2 mentioned in letter dated 13.06.2017 authorizing the fresh inquiries in the closed matters be declared in excess of lawful authority and jurisdiction and also misuse of authority and be set aside and appropriate directions be issued to respondent No.1 to initiate inquiry against respondent No.2 and his staff, so as behind the curtain, dealings, understanding and negotiations of respondent No.2 with respondents 4 to 6 could come on surface and appropriate action be taken against respondent No.2 and his staff and also directions that respondent No.2 and his staff be restrained from harassing,*

*intimidating, pressurizing petitioner in any manner on the complaints of respondents 4 to 6 or other fabricated complaints which respondent may obtain from others against the petitioner and also that no fresh inquiry can be conducted in the closed matter relating to Bab-e-Peshawar.”*

2. In essence, the grievance of the petitioner is that despite closure of an inquiry initiated by the National Accountability Bureau, Peshawar (“**NAB**”), the same has been again illegally re-opened which is in complete violation of the provisions contained in section 18(h) of the National Accountability Bureau Ordinance, 1999 (“**Ordinance**”) and is aimed only to harass the petitioner and restrain him from effectively carrying his duties as Director General of Peshawar Development Authority (“**PDA**”).

3. The respondent-NAB was put to notice. They have in their comments denied the assertion made by the petitioner in the instant petition. In particular, it was reiterated that;

*“It is, further, clarified that the complaints against the petitioner as DG PDA, which have been referred in the present writ petition were all dealt with at very initial level i.e. Complaint Verification. The scope of the complaint verification is very limited and cannot be taken as substitute to a full-fledged inquiry authorized under NAO 1999. No inquiry or investigation was carried out against the petitioner as mentioned in his writ petition. However,*

*earlier an inquiry was authorized in 2016 against the petitioner and others when he was posted as CEO Cantonment Peshawar, way back in 2013-14 and it was closed. The present Complaint Verification was authorized by the competent authority on the basis of fresh complaint received. The CV was authorized as there were fresh/ new allegations supported by fresh incrementing material and disclosures. As this is a fresh complaint and there is prima facie involvement of DG PDA and his staff, therefore, the detail probe of all such allegation are the subject matter of Complaint Verification (CV), process under the procedure (SOP).*

*In the instant case, even no inquiry or investigation has been authorized as mentioned above. It is also added that the complainant has also alleged that the petitioner being the head of PDA has not provided complete record and concealed the actual facts, therefore, further verification of the allegation is in accordance with the mandate of the law. It is to be noted that the petitioner has been asked to provide record regarding the allegations but despite lapse of a considerable time, he is not providing the same.*

*It would not be out of place to mention here that recently two (02) fresh complaints has also been received by this Bureau in which allegations regarding misuse of authority while dealing with the funds of PDA without any legal sanctity and in violation of rules regulations. Verdicts of superior courts are leveled which will also be dealt with strictly in accordance with law.*

*(emphasis provided)*

4. As far as the order of this Court, so vehemently relied upon by the respondent-NAB in its comments is concerned, the same was passed when the present private respondent had earlier approached this Court in W.P.No.2087-P/2017, wherein this Court vide order dated 15.06.2017 directed that;

*“Today, the learned DPGA, present in Court, in the main case, submitted at the bar that if at all the petitioners would have any grievance, they instead of knocking the door of this Court may better to first approach the NAB authorities for the redressal of the same. When the learned counsel for the petitioners was confronted with the proposition, they did not oppose the same and express their willingness with regard to the approach of the petitioners to the NAB authorities. In this view of the matter, we without touching the merits of the case, lest it may prejudice the case of either party, would like to direct the petitioners to approach the NAB authorities for redressal of their grievance while the later is directed to treat them in accordance with law. This petition is disposed off in the above terms.”*

*(emphasis provided)*

5. In addition to the above factual stance taken in the comments, the worthy Prosecutor for the NAB raised a legal objection that this Court lacks the jurisdiction to entertain the present petition. He argued that the petitioner is seeking to interfere in the complaint verification against the petitioner carried out by NAB under the Ordinance. The worthy Prosecutor placed reliance on *Muhammad Yousaf’s case* (2000 SCMR 453), *Ghulam Rasool’s case* (2001 MLD 661), *Ch. Muhammad Anwar’s case* (2002 PCrIJ 2014), *Muhammad Ajmal Khan’s case* (2003 YLR 701), *Col, ® Syed Mukhtar Hussain’s case* (2004 CLC 1019), *Ardeshir Cowasjee’s case* (PLD 2004 SC 70), *Waqar Alam Saeed’s case* (2005 YLR 1742), *Mian Muhammad Asif’s case* (2010

YLR 944), Liaqat Ali's case (2011 MLD 1179),  
Mumtaz Khan's case (2011 PCrLJ 1209),  
Muhammad Gulfam's case (2012 PCrLJ 1493),  
Syed Abid Hussain Shah's case (2013 PCrLJ 974),  
Ali Muhammad Baloch's case (2015 YLR 666),  
judgment dated 01.12.2011 passed in  
W.P.No.40/2010 and order dated 07.11.2013 passed  
in C.M.No.614-P/2013 in W.P.No.749-P/2013 of this  
Court.

6. In rebuttal, the worthy counsel for the petitioner vehemently contended that the complaint verification, is to be carried out by the NAB in accord with the provisions of the Ordinance, and in no way could it provide the NAB unbridled discretion to proceed to malign any citizen of this Country in a biased or *malafide* manner leading to a vilifying campaign.

7. Valuable arguments of the worthy counsel for the parties heard and record perused carefully with their assistance.

8. It is by now settled principle of safe administration of justice that a constitutional Court exercising authority under Article 199 of the Constitution would ordinarily avoid interference in matters relating to enquiry or investigation unless the

same smacks of *malafide*, blatant abuse of authority or is being carried out without legal sanction.

9. These are contesting claims of the parties, the petitioner is aggrieved of the proceedings carried out by the NAB, while the NAB vehemently asserts that there is no inquiry or investigation against the petitioner, and insists that it is in receipt of a complaint against the petitioner, which is under verification, and that is being hindered by his refusal to provide the information sought by NAB.

10. Let us first consider the legal mandate of a private person to file a complaint before the NAB under the Ordinance. The essential reference to a *complaint* is provided under clause (h) of section 18 of the Ordinance, which provides that;

*“Section 18(h).If a complaint is inquired into and investigated by the NAB and it is concluded that the complaint received was prima facie frivolous or has been filed with intent to malign or defame any person the Chairman NAB or Deputy Chairman NAB or an officer of the NAB duly authorized by the Chairman NAB, may refer the matter to the Court, and if the complainant is found guilty, he shall be punishable with imprisonment for a term which may extend to one year (or fine) or with both.”*

11. The above provision clearly provides the authority to the NAB to receive and consider the complaint filed against any person. And in order to

decide, whether the said complaint is *prima facie* frivolous or intended to defame any person, NAB would require to seek information relating thereto from all concerned, including the person against whom the complaint is filed. Now, denying this authority to the NAB to seek information regarding the complaint would in fact put a legal clog over the discretion vested in it under clause (h) of section 18 of the Ordinance.

12. Thus, to start with, it can now safely be stated that; *firstly*, a private person can file a complaint against a holder of public office or any person before the NAB for having indulged in corrupt or corrupt practices as envisaged under the Ordinance *secondly*, that while considering the said complaint, the NAB has the authority to seek information from any person including the person against whom the complaint has been made.

13. Moving on to the next crucial question for our determination is whether NAB can entertain a complaint, which it had previously closed. Surely, no person should be subjected to repeated or prolonged scrutiny on complaints filed against him to NAB under the Ordinance. At the same time, the person against whom the complaint has been filed has to

respond to all the queries raised by NAB in regard thereto. Thus, there has to be maintained a delicate balance between safeguarding the rights of a person complaint against and ensuring the effective authority of the NAB to verify the allegation contained in the complaint so filed against the said person. The legislature in its esteem wisdom has in clause (h) of section 18 of the Ordinance provided the safe solution to maintain the said balance; NAB has been mandated to ensure that frivolous complaints or those aimed to defame a person lead to penal consequences upon the author of the said complaint.

14. In this regard, NAB was asked to provide the record of those cases, which after complaint verification, were formally closed and led to prosecution of the complainant. NAB response was very disheartening. It was noted that in the last decade only one such prosecution has been initiated by NAB.

15. Surely, the intent of the legislature in providing for penal consequences for frivolous or vilifying complaints was to put the public on guard to ensure that only those complaints having substance are lodged with NAB. Thus NAB is under the legal command to prosecute a person for filing a frivolous complaint or one intended to defame a person which it



has not carried out. This inaction on the part of NAB warrants correction.

16. Interestingly, it is further noted in the instant case, there are contested claims of the parties; **Firstly**, regarding the number of complaints against the petitioner, and the very stage of the verifications carried out by the NAB; **Secondly**, the earlier closure thereof; and **Finally**, the receipt of fresh evidence warranting its re-opening by the respondent-NAB.

17. Faced with such contested claims of the parties, it would **not** be appropriate for this constitutional Court to pass any finding on the contents of the complaints, so filed by the private respondents before NAB, and the response made thereto by the petitioner, lest it may prejudice the ultimate outcome thereof, as provided under the enabling provisions of the Ordinance. However, the discretion so vested in NAB under the Ordinance has to be exercised responsibly and with care to ensure that it is not abused in any manner, whatsoever.

18. This being the position, this Court would hold and direct as under;-

- I. NAB has the authority to accept complaints of any person against a holder of public office for committing corrupt or

corrupt practices as envisaged under the Ordinance.

- II. NAB can accept fresh evidence from the complainant or any other person regarding a complaint against a holder of public office for committing corrupt and corrupt practices as provided under the Ordinance, which is still under verification and not formally closed.
- III. NAB can accept and consider not only fresh evidence from the complainant or a fresh complaint by another person regarding a matter which has been formally closed subject to seeking sanction of the authority that had approved the closure of earlier complaint.
- IV. NAB on closure of all complaints has to record in writing, whether the same are *prima facie* is frivolous or intended to defame any person, and if so, has to proceed against the said complainants, as provided under 18(h) of the Ordinance.
- V. NAB can proceed against the petitioner keeping in view the above directions.
- VI. The petitioner is directed to respond to the queries raised or provide all information or record sought by the NAB in furtherance of the complaints received against him.

Accordingly for the reasons stated hereinabove, the instant writ petition is disposed of, in the above terms.

**Dt.20-09-2017.**

**CHIEF JUSTICE**

**J U D G E**

**F.Jan/\***

**(DB) Hon`ble Mr.Justice Yahya Afridi, Chief Justice.  
Hon`ble Mr.Justice Muhammad Nasir Mahfooz, Judge.**

This Court in an earlier decision relating to the powers of the NAB under the Ordinance in **Syed Abid Hussain Shah's case (WPNo.40 of 2010)** decided on 01.12.2011 has reiterated the same in terms that;-

*“The aforementioned overriding authority of the provisions of Ordinance is further supplemented by the vast power vested in Chairman NAB or an officer of the NAB duly authorized by him to;*

- I. even transfer pending criminal cases from any Court or Tribunal (Section 16-A) to accountability Court;*
- II. call and seek information from any person, public or private, in furtherance of any inquiry or investigation (section-19);*
- III. initiate proceedings against a person by referring the matter for inquiry or investigation (section 18(c));*
- IV. the inquiry or investigation of an offence to be the responsibility of the NAB to the exclusion of any other agency or authority unless any such agency or authority is required to do so by the Chairman NAB or any person authorized by him (section 18(d));*
- V. investigation of an offence under the Ordinance may if the Chairman NAB thinks fit be conducted in conjunction with any other agency or person (section 22(a)&(b));*
- VI. seek assistance, call for documentary evidence and information from any person, private or public, in connection with an inquiry or investigation pending before NAB (section 27);*

*and finally, any person who hampers the inquiry or investigation so conducted by NAB can be proceeded against and lead to penal consequences which may extend to ten years (section 31).”*