

ORDER SHEET
LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.1027 of 2025

Aamir Nawaz Minhas and others V/S *National Accountability Bureau and others*

| <i>S.No.of order / Proceedings</i> | <i>Date of order /Proceedings</i> | <i>Order with signatures of Judge, and that of parties or counsel, where necessary.</i> |
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08.04.2025 Mr. Shahzeb Jafar, ASC and Barrister Moeed Ahmed, Advocate for the Petitioners.
M/s Husnain Khurshid, Muhammad Wasiq Hassan and Tayyaba Abbasi, Special Prosecutors for NAB.
Mr. Sajid Khan Tanoli and Sayed Azher Naveed Shah, Deputy Attorney Generals with Arshad Mehmood Malik, Assistant Attorney General for Pakistan.
Barrister Raja Hashim Javed, Assistant Advocate General and Syed Muhammad Ali Shahid Bahar, Advocate.
M/s Muhammad Taqi Hasnain, Hassan Askari Kazmi and Muhammad Fahad Shabbir and Syeda Maria Nashir, Advocates.
Additional Registrar (Judicial) and Deputy Registrar (Judicial).

Pursuant to order dated 07.04.2025, the Court, while referring to High Court Rules and Orders, (Volume V) Chapter-3, Part-2 (the “*Rules*”) and The National Accountability Ordinance, 1999 (the “*Ordinance*”), confronted learned counsel for the parties and Additional Registrar (Judicial) that on what basis, this constitutional petition (writ of mandamus, certiorari and prohibition) under Article 199(1) of the Constitution of Islamic Republic of Pakistan, 1973 (the “*Constitution*”) is fixed before this Division Bench; in

response thereto, Additional Registrar (Judicial) of this Court stated that it is a long-standing practice which is being followed by the Office for referring NAB matters to Division Bench.

2. Primarily, this writ petition was filed by the Petitioners making following prayers:

- a. *Declare that the inordinate delay in proceeding with the inquiry on the complaints of the petitioners by respondent No.1 is unlawful and in violation of their statutory duties.*
- b. *As a consequential relief, direct respondent No.1 to expeditiously proceed with the inquiry pending before it as per the law.*
- c. *Declare that the respondent No.1, as an investigative agency, cannot initiate voluntary return or plea bargain arrangements with any accused persons at any stage of the matter and only consider the offers of such arrangements made by accused persons.*
- d. *Direct respondent No.1 to ensure transparency and formulate a mechanism through which updates regarding the status of the proceedings are provided to complainants, in compliance with their right to information under Article 19A of the Constitution of the Islamic Republic of Pakistan, 1973.*

3. When further confronted that the prayer made hereinabove seeking writ of mandamus and certiorari under Article 199 of the “*Constitution*” ought to be placed before learned Single Bench for its adjudication in the light of case laws reported in “AZGARD NINE LIMITED and others versus REGISTRAR OF COMPANIES and others” (2022 CLD 114), “PGP CONSORTIUM LTD. versus SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN and others” (2020 CLD 541), “AL-ARABIA SUGAR MILLS LTD versus SECURITIES AND EXCHANGE

COMMISSION OF PAKISTAN and others” (2020 CLD 748) and “The CHAIRMAN, NATIONAL ACCOUNTABILITY BUREAU (NAB) versus RAMZAN SUGAR MILLS LIMITED and others” (2020 CLD 1462) whereas the Division Bench can only hear appeals in terms of Section 32 of the “*Ordinance*” arising out of final judgment, he stated that the Office only followed the practice in vogue for referring even NAB matters directly to the Division Bench for adjudication.

4. The question looms large before us is, what is the legal basis of such long-standing practice of the office for placing the NAB matters directly before the Division Bench without advertizing to proper procedure provided under the “*Rules*” and the law?

5. The “*Rules*” were made by the Lahore High Court under Article 202 of the “*Constitution*”. These Rules are meant to regulate the practice of fixing and hearing of cases and other matters related to Lahore High Court. Chapter No.3, Part-2 relates to the jurisdiction of a Single Judge and Benches of the Court. Rule 1 of the “*Rules*” reads as under:

1. *Save as provided by law or by these rules or by a special order of the Chief Justice, all cases shall be heard and disposed of by a Judge sitting alone.*

Explanation. – A case includes a motion application, petition, reference, suit, revision or other proceedings to be heard and disposed of by the High Court under any law in the exercise of its ordinary, extra-ordinary, original or appellate jurisdiction.

The above Rule provides three eventualities viz
(i) Save as provided by law (which in the case in hand is the “*Ordinance*”), (ii) by these rules (the “*Rules*”)

and (iii) by a special order of the Chief Justice; meaning thereby, any matter in constitutional jurisdiction of the High Court will be referred, heard and disposed of by a Single Judge sitting alone unless provided by law or the Rules or the order of the Chief Justice.

6. Through the petition in hand, the Petitioners seek directions to the Respondent No.1 to expediate the inquiry on the complaints initiated by them before the Respondent No.1/National Accountability Bureau which is not performing its duties provided under the “*Ordinance*”. Though the preamble to a statute is not an operational part of the enactment but it is a gateway, which discusses the purpose and intent of the legislature to necessitate the legislation on the subject and also sheds clear light on the goals that the legislator aims to secure through the introduction of such law. The preamble of a statute, therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law as held by the Hon’ble Supreme Court of Pakistan in “DIRECTOR GENERAL, FIA AND OTHERS Versus KAMRAN IQBAL and others” (2016 SCMR 447) holding that “*indeed, preamble to a Statute is not an operative part thereof, however, as is now well laid down that the same provides a useful guide for discovering the purpose and intention of the legislature*”. The Preamble of the “*Ordinance*” provides for the setting up of a National Accountability Bureau so as to eradicate corruption and corrupt practices and hold accountable all those persons accused of such practices and matters ancillary thereto. The “*Ordinance*” further provides available forums

for redressal of grievance of persons before the Court defined under Section 5(g) and established under Section 16 of the “*Ordinance*”, decision thereto is further challenged under Section 32 of the “*Ordinance*” by way of appeal/revision before the High Court. The said section reads as under:

32. Appeal [and revision].:- (a) Any [person convicted or the Prosecutor General Accountability, if so directed by [the Chairman] NAB,] aggrieved by the final judgment and order of the Court under this Ordinance may, within thirty days of the final judgment and order of the Court prefer an appeal to the High Court of the Province where the Court is situated
[Provided that no appeal shall lie against any interlocutory order of the Court]
(b) All Appeals against the final judgement filed before the High Court will be heard by a Bench of not less than two judges constituted by the Chief Justice of High Court and shall be finally disposed of within thirty days of the filing of the appeal.
(c) No revision shall lie against any interlocutory order of the Court]

Underlining for emphases

The above provision of law mandates the Division Bench of High Court constituted by the Chief Justice to decide the cases arising out of final judgment or order of the Court. It is pertinent to mention here that no provision (express or implied) is available under the “*Ordinance*” which deals with direct placement of matters before the Division Bench of High Court except the appeals arising out of final judgment or order of the Court under Section 32 of the “*Ordinance*”.

7. The High Courts were defined under Chapter-3, Part-VII of the “*Constitution*” and constituted under Article 192 of the “*Constitution*” with jurisdiction to

deal with the matters under Article 199 of the “*Constitution*” by way of constitutional petitions. The High Courts have also jurisdiction over the matters under Article 204, Chapter-4, Part-VII of the “*Constitution*” however, after 26th Amendment in the “*Constitution*”, Article 202A has been added which deals with the Constitutional Benches of the High Courts whereas Article 202 of the “*Constitution*” deals with the Rules of Procedure of the High Court which may make rules regulating the practice and procedure or any of court subordinate to it. Rule 2, Chapter 3, Part A of the “*Rules*” states that “*The Judges will sit singly or in benches of two or more Judges in accordance with a roaster to be prepared by the Deputy Registrar with the approval of the Chief Justice from time to time*”, which means that the Judges, depending on the roster, will conduct the Court singly or in benches for decision of the cases to be fixed before it but no provision of the “*Ordinance*” mentions the placement/fixation of a case directly before the Single Bench or the Division Bench to be heard in exercise of its ordinary, extra-ordinary, original or appellate jurisdiction. Chapter-3, Part-J deals with RULES FOR THE ISSUE OF ORDERS/DIRECTIONS UNDER ARTICLES 199 AND 202 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973 AND CLAUSE 27 OF THE LETTERS PATENT. Part-II whereof deals with the constitutional remedies, Rule 3 thereof reads as under:

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3. *Unless otherwise ordered by the Chief Justice the application shall be laid before a Single Bench which may*

summarily dismiss it or pass such order as it may deem necessary. During vacation the application may be disposed of by a Vacation Judge.

The above rule outlines the procedure for presenting a particular type of writ petition, unless a law permits, before a Single Judge for its decision unless the Chief Justice orders something different.

8. It is inalienable right of every person to be treated as per law and rule of justice which has two major component first is access to justice and second is dispensation of justice and if the cases before the Division Bench are directly fixed or filed, it will deny the access to justice to a party's right to file appeal against the order of a Single Judge of the High Court before the Division Bench leaving aside a party remediless. Article 4 of the "*Constitution*" itself deals with enjoyment of protection of law and to be treated as per law and Article 10A of the "*Constitution*" deals with right of fair trial and due process. Reliance is placed on "Mrs. SHAGUFTA SHAHEEN and others versus The STATE through D.G. NAB, Khyber Pakhtunkhwa and another" (**2019 SCMR 1106**) wherein the Hon'ble Supreme Court of Pakistan has held that "*long delays in deciding matters did not sit well with the right to fair trial and due process guaranteed as a Fundamental Right under Art. 10A of the Constitution*". There are plethora of judgments of this Court whereby the learned Single Judges alone heard and decided the NAB matters in the constitutional petitions filed under Article 199 of the "*Constitution*". Some of them are as under:

**1 "MUHAMMAD YASEEN versus LAHORE DEVELOPMENT AUTHORITY and another"
(2023 CLC 1507)**

6. Now reverting to the merits of the base, I have noted that the request of the petitioner was turned down due to caution marked by the NAB against the said plots but while filing the report and parawise comments, they have not appended any document whereby the NAB directed the LDA Authorities to mark caution against the said properties rather they have appended two letters, one relating to summoning of record and the other written by the LDA Authorities to the Investigating Officer to apprise 'about the fate of inquiry/investigation. The said documents, by no stretch of imagination, can be considered as proof of caution marked by the NAB.

7. There is no cavil with the proposition that any action of a government functionary during pendency of inquiry/investigation by the NAB in a matter entails serious consequence but the same cannot be used until and unless the NAB restrains the department concerned to do a particular act. Moreover, mere extension in building period does not permit the petitioner to further alienate the said property and if request of the petitioner is not acceded to, he would be burdened with the penalty for delay in applying for extension in building period.

8. It is relevant to note that in a number of cases the NAB has not been able to conclude inquiry/investigation pending before it despite lapse of years and years whereas on the other hand public at large has been made to suffer as they are not allowed to deal with their own properties according to their own wishes. If the NAB fails to conclude an investigation within the next decade, what remedy would be available to the petitioner".

**2 "AZGARD NINE LIMITED and others versus REGISTRAR OF COMPANIES and others"
(2022 CLD 114)**

"In view of above, as the matter has been concluded by the NAB Lahore against the Petitioner/Company and the issue is no more alive, therefore, with the concurrence of learned counsel for the Parties, by issuing the writ of mandamus under Article

199(1)(a)(i) of the Constitution, the Respondent No.1/Registrar, Companies Registration Office, SECP, Lahore is directed to do what is required by law to do and not to fix stamped note on certified copies of corporate record of the Petitioners obtained from Lahore office only. Because as stated above, no inquiry is pending against the Petitioners in NAB, Lahore, as stated by the Special Prosecutor, NAB, Lahore.”

3 “PGP CONSORTIUM LTD. versus SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN and others” (2020 CLD 541)

“7. Today learned counsel for the Petitioner by filing the Application (C.M. No.08 of 2019) placed on record certain documents including the Board Resolution of the Company dated 28.11.2019, Banker's Cheque along with undertaking wherein it is stated that in compliance of order dated 26.11.2019, the Petitioner Company will deposit Pay Order (Banker's Cheque) equal to the 0.367% shares of Hussain Lawai, amounting to Rs.15,000,000/- (Rupees Fifteen Million Only) with the Deputy Registrar (Judicial) of this Court as security. Learned counsel further states that the Petitioner-Company unconditionally guarantees and undertakes that the shares of Hussain Lawai shall not be transferred/alienated to any third party without prior approval of NAB. He adds that the NAB has not marked caution on the Petitioner-Company, therefore, Section 23 of the NAB Ordinance with reference to charge on property, is not applicable in this case, nevertheless the Petitioner-Company undertakes to deposit the aforesaid B amount equal to the share of Hussain Lawai (accused before the NAB) in order to secure and protect the interest of the NAB.

8. In response thereof, Mr. Muhammad Wasiq Malik, Senior Prosecutor, NAB with Malik Uzair Rehan, Assistant Director, NAB. under instructions submit, that the NAB had only reservation regarding the alienation of the share of Hussain Lawai. Further the property/assets/shares of Hussain Lawai (accused before the NAB), cautioned by the NAB, will be secured by depositing Rs.15,000,000/- (Rupees Fifteen Million Only) with the Deputy Registrar (Judicial) of this Court by the Company, with the undertaking, the NAB has no objection, if an appropriate order is passed by this Court.

4 "AL-ARABIA SUGAR MILLS LTD versus SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN and others" (2020 CLD 748)

"4. Today, Mr. Arshad Qayyum, Special Prosecutor, NAB with Aamir Javed, Assistant Director, NAB produced photocopy of letter No.1(61)HQ/974/IW-II/NAB-L, dated 07.11.2019 issued by the NAB, Lahore to the Chairman, SECP, Islamabad, which is taken on record as "Annex-F". Copy of this letter was handed over to learned counsel for the Petitioner.

5. Learned counsel for the Petitioner-Company after pursing the aforesaid letter stated that the Petitioner-Company would be satisfied and have no objection if this Petition is disposed of with the direction to the Respondent No.2/Assistant Registrar, Companies Registration Office, SECP, Lahore for registration of the charge of any other financial institution and security documents under Sections 100, 105 and 448 of the Act read with Regulations 4 and 18 of the Regulations and in the light of Paragraph No.3 of the aforesaid letter.

6. In view of above, with the concurrence of learned counsel for the Parties, by issuing the writ of mandamus under Article 199(1)(a)(i) of the Constitution, the Respondent No.2/Assistant Registrar, Companies Registration Office, SECP, Lahore is directed to do what he is required by law to do and register the charge of any other financial institution and security documents of the Petitioner-Company under sections 100, 105 and 448 of the Act read with Regulations 4 and 18 of the Regulations, in the light of Paragraph No. 3 of letter No.1(61)HQ/974/IW-II/NAB-L, dated 07.11.2019, which reads as follows:

"3. In this regard, it is intimated that Competent Authority has allowed the creation/registration of Charge in the matter as mentioned in SECP is referred letter and its enclosures dated 11.10.2019. Furthermore, it is also advised that permission may be sought from this Bureau for such future transaction(s) i-e registration / modification / vacation of mortgage/charge documents of Messrs Al-Arabia Sugar Mills Limited."

5 *The CHAIRMAN, NATIONAL ACCOUNTABILITY BUREAU (NAB) versus RAMZAN SUGAR MILLS LIMITED and others* (2020 CLD 1462)

“4. It is reflected from perusal of record that the Appellant is aggrieved from judgment dated 28.05.2020 passed by learned Single Judge in Chamber whereby writ petition filed by the Respondent No.1 was allowed and the Respondent No.2 Security and Exchange Commission of Pakistan (SECP) was directed to register the charge immediately. In the said petition, the order dated 07.01.2020 issued by the Respondent No.2 was assailed declaring the same to be illegal having no authority in law.

5. The order impugned in the writ petition has been passed by Additional Joint Registrar of Companies, under Companies Act, 2017, which is an appealable order in view of Section 480 of the Act. It has also transpired that the appellant had already filed objection petition under Section 13 of NAO 1999 before the learned Accountability Court, Lahore which is still pending”.

9. Primarily, the Petitioners have made the NAB as party and are only praying to issue writ of mandamus under Article 199(1)(a) of the “*Constitution*” with the stance that their fundamental rights have been infringed by inaction and arbitrary conduct of the Respondent No.1/National Accountability Bureau, which failed to perform its duties provided under the “*Ordinance*” which action definitely violates the rights guaranteed under Article 4, 37(d) and 10A of the “*Constitution*” as held by the Hon’ble Supreme Court of Pakistan, in the matter of NAB titled *Mrs. SHAGUFTA SHAHEEN and others versus The STATE through D.G. NAB, Khyber Pakhtunkhwa and another* (2019 SCMR 1106) holding that “*long delays in deciding matters did not sit well with the right to fair trial and due process guaranteed as a*

Fundamental Right under Art. 10A of the Constitution”

10. For reiteration, the Petitioners, in this case, have only sought writ of mandamus and certiorari against the NAB for expeditious disposal of the complaints, hence, we are deciding the question of its fixation in light of the “*Rules*” and the judgments, referred to above, which covers that any such matter should be placed and decided by the Single Judge alone.

11. In view of the law laid down in aforesaid judgment, the “*Rules*” and the “*Ordinance*” and in order to ensure the proper fixation of the cases in accordance with the “*Rules*”, the Additional Registrar (Judicial) of this Court is directed to fix this matter before the learned Single Judge. It is also emphasized that due care shall be taken in future to ensure the categorization of cases at the time of their filing whether they are to be placed before a Single Judge or a Division Bench. The Additional Registrar (Judicial) of this Court is also directed to circulate a copy of this judgment to the Additional Registrars (Judicial) at Principal Seat and its Benches i.e. Multan and Bahawalpur for compliance.

(TARIQ MAHMOOD BAJWA) JUDGE (JAWAD HASSAN) JUDGE

Approved For Reporting

JUDGE

JUDGE