

**In the Supreme Court of Pakistan**  
(Appellate Jurisdiction)

**Present:**  
Mr. Justice Anwar Zaheer Jamali  
Mr. Justice Iqbal Hameedur Rahman  
Mr. Justice Qazi Faez Isa

**Civil Appeal No.1038 of 2000.**  
(On appeal from judgment of Lahore High Court, Lahore,  
dated 30.6.2000, passed in Writ Petition No.914 of 2000)

The Chairman, National Accountability Bureau

**...Appellant**

**Versus**

Fehmida Begum & others

**... Respondents**

For the appellant: Raja M. Ibrahim Satti, Sr. ASC.  
Mr. Fauzi Zaffar, Addl.DPG NAB.

For respondents No.1&2: Mr. M.A. Siddiqui, ASC.

Respondents No.3 to 8: Ex-parte.

Date of hearing: 10.11.2014.

**JUDGMENT**

**Anwar Zaheer Jamali, J.-** This civil appeal with leave of the Court in terms of the order dated 16.8.2000, is directed against the judgment dated 30.6.2000, passed by a five member Bench of the Lahore High Court, in Writ Petition No.914/2000, whereby the said petition filed by respondent No.1 was allowed and consequently the pending proceedings in Reference No.8/2000, against respondent No.2, Mukhtar Hussain, the husband of the petitioner, were quashed with a majority of three to two.

2. The controversy involved in the said petition revolved around the interpretation of "person" as defined in sub-section (o) of Section-5 of the National Accountability Bureau Ordinance, 1999 (in short "the NAB Ordinance"), which at the relevant time read as under:-

"(o) "Person" includes in the cause of a corporate body, the sponsors, Chairman, Chief Executive, Managing Director, elected Directors, by whatever

name called, and guarantors of the company or any one exercising direction or control of the affairs of such corporate body, but will not include employees appointed and designated as Director or Chief Executive; and in the case of any firm, partnership or sole proprietorship, the partners, proprietor or any person having interest in the said firm, partnership or proprietorship concern or direction or control thereof."

3. As per the majority view of the Lahore High Court, respondent No.2, being employee of the Company, despite being a guarantor, was not liable for prosecution before the NAB Court in such capacity. While as per the separate dissenting notes of the other two Hon'ble Judges, despite being an employee of the company, respondent No.2 being also a guarantor as regards the loan, which was the subject matter of the NAB reference, the proceedings in the NAB Court against him could not have been quashed and he was liable to face such prosecution.

4. Raja M. Ibrahim Satti, learned Sr. ASC for the appellant in his submissions, referred before us the definition of "person" under the NAB Ordinance, as reproduced above and contended that the mere fact that as per the assertions of the petitioner, respondent No.2 was also an employee of the said company, his status of being a guarantor on behalf of the company would not change. Thus, he will still be liable to face prosecution before the Accountability Court in his capacity as a guarantor of the company. In addition to it, he also referred before us the judgment in the case of Abdul Aziz Memon v. State (PLD 2013 SC 594), wherein, inter alia, the definition of "person", though it was slightly amended during the pendency of these proceedings, has been thoroughly examined and regarding its scope and application, the following observations have been made:-

"16. For what has been discussed above we hold and declare that the provisions of the National Accountability Ordinance, 1999 are applicable even to a person who is not holder of a public office and also to a person who has not aided, assisted, abetted, attempted or acted in conspiracy with holder of a

public office and the words "any other person" appearing in section 9(a) of the said Ordinance are to be understood and applied accordingly. For removal of any doubt or ambiguity it is clarified that a stand alone private person can be proceeded against under the said Ordinance if the other conditions mentioned in that Ordinance in that respect are satisfied."

5. Conversely, learned ASC for respondents No.1 & 2, has strongly supported the majority view of the three Hon'ble Judges contained in the impugned judgment as regards the scope and application of sub-section (o) to section-5 of the NAB Ordinance so as to extend benefit of acquittal to respondent No.2 in terms of the said judgment. However, when he was confronted with the ratio of the judgment in the case of Abdul Aziz Memon (supra), the learned ASC had no plausible defence to offer except to agitate that during the intervening period, the definition of "person" has been drastically amended. In this context, he however did not controvert that under the old definition of "person", at the relevant time, the guarantor of a company was fully covered, as also under the amended definition of "person". Faced with this situation, he further argued that the proceedings in Reference No.8/2000, wherein respondent No.2 was one of the accused, have already been disposed of by the Accountability Court, therefore, no fruitful purpose will be served in case the impugned judgment is set aside at this stage, and respondent No.2 is called upon to face the proceedings in the said reference after lapse of more than 14 years.

6. In reply to it, learned ASC for the appellant has brought to our notice the fact that an appeal against the said order of the Accountability Court is pending before the Lahore High Court, and contended that the impugned judgment as regards the interpretation of "person" defined in sub-section (o) to section-5 of the NAB Ordinance, has affected a large number of NAB cases. Therefore, in the light of the judgment in the case of Abdul Aziz Memon (supra)

and the law, its applicable interpretation is to be corrected by this Court as of duty. He further contended that the trial of respondent No.2 before the Accountability Court in Reference No.8/2000 will of course be subject to its revival/resurrection by the appellate Court, thus, its earlier disposal cannot be made basis for disposal of this appeal without proper adjudication on the relevant question of law involved in it.

7. We have carefully considered the above noted submissions, which, on facts, are not disputed. Thus, now the only point for consideration in this appeal before us is the true import and interpretation of the word "person" as contained in sub-section (o) of section 5 of the NAB Ordinance. The majority view of the Lahore High Court, observed that by using the word "includes" in the definition of "person" the intention of the legislature was to restrict the meaning of "person" to sponsors, Chairman, Chief Executive, Managing Director, elected Directors, by whatever name they are called, and guarantors of the corporate body or anyone exercising direction or control of the affairs of such a corporate body. It was further observed that the definition of "person" contains an exclusionary element as well, whereby employees of a corporate body appointed or designated as Directors are excluded from the definition for the purposes of the NAB Ordinance to save the employees of a corporate body from unwarranted prosecution under the Ordinance. The Lahore High Court thus held, by way of majority, that as Respondent No. 2 was neither a sponsor nor the owner of the defaulting corporate body; nor did he exercise any dominative influence in the workings of the company, therefore, he was not a "person" as defined in sub-section (o) of section 5 of the NAB Ordinance.

8. We are, however, unable to agree with the majority view of the Lahore High Court. The observations of the High Court, as summarized hereinabove, appear to be contrary not only to the purpose and preamble of the

NAB Ordinance, but also to settled principles of statutory interpretation. As per the preamble, one mischief that the Ordinance sought to curb was recovery of outstanding amounts from those persons who committed default in the repayment of amounts to Banks, Financial Institutions, Government Agencies and other agencies. Admittedly, Respondent No. 2 was the surety or guarantor of the loan facilities etc., availed by Ittefaq Foundry (Pvt.) Ltd., which form the subject matter of the instant case. The terms of the guarantee executed by Respondent No. 2 have been reproduced by the two learned Judges of the Lahore High Court, in their respective dissenting notes. According to the terms of the guarantee, Respondent No. 2's responsibility under the guarantee is that of a principle debtor and he is liable under the guarantee until all moneys due from Ittefaq Foundry (Pvt.) Ltd. have been paid. Therefore, once the company defaulted in its liability to repay the loan amount, it was the obligation of Respondent No. 2 to repay the said amount. As rightly pointed out by one of the learned judges of the Lahore High Court, in his dissenting note, if the personal guarantees of the nature executed by Respondent No. 2 were to be read in the exclusionary clause of the definition of "person" it would have disastrous effects on the recovery of loans advanced by banks.

9. Furthermore, the Lahore High Court in holding, by way of majority, that Respondent No. 2 was not a "person" for the purposes of the NAB Ordinance since he "was neither sponsor nor owner of the defaulting corporate entity; nor he exercise any dominative influence in the working of defaulting Company" seems to have overlooked the fact that the NAB Ordinance applies with equal force to guarantors of a company as to sponsors or "owners" of a company. It may be noted that a person may be a Director or employee of the company while at the same time be a guarantor as well. The NAB Ordinance only provides for exclusion of those individuals from the definition of "person" who

are in fact employees but have been appointed as the Chief Executive or Directors of the company. In the instant case, Respondent No. 2 was not only a Director of Ittefaq Foundary (Pvt.) Ltd., but he was also its guarantor. Therefore, the question of the applicability of the exclusion contained in sub-section (o) of section 5 of the NAB Ordinance does not arise in the instant case.

10. We are further fortified in our view, that Respondent No. 2 is a “person” for the purposes of the NAB Ordinance, by the judgment in the case of Abdul Aziz Memon (supra), the relevant portion of which has been reproduced above. It may be observed at this point that although the definition of “person” appearing in sub-section (o) of section 5 of the NAB Ordinance has been amended from time to time, however, admittedly, the amendments have brought no material change in the scope of the said word, in the context of guarantors of a company.

11. The upshot of the above discussion is that this appeal is allowed and the judgment of the three Hon’ble Members of the Bench of the Lahore High Court, passed in Writ Petition No.914/2000 dated 30.6.2000, is set aside. However, any further proceedings against respondent No.2 in NAB Reference No.8/2000, will be subject to the fate of the appeal pending before the Lahore High Court.

Judge

**Announced.**  
Islamabad,  
25<sup>th</sup> November, 2014.

Judge

Judge

Judge

Not approved for reporting.

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