

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

MR. JUSTICE JAWWAD. S. KHAWAJA, HCJ
MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE QAZI FAEZ ISA

CMA 3325 of 2013 in CRP 270/2011 in Const.P. 42/2011

(Progress Report of NAB in OGRA Case)

CrI.M.A. 547/2012 in CrI.M.A. 565/2012 in CrI.O.P. 63/2012

(Show Cause Notice to Mr. Arshad Ali Chaudhry, AOR in compliance with this Court's order dated 13.09.2012)

For the applicants:	Mr. Muhammad Yaseen, in person
On Court's Notice:	Mr. Salman Aslam Butt, Attorney General for Pakistan Mr. Ahmed Hosain, Addl. AGP
For NAB:	Mr. Waqas Qadeer Dar, PG Mr. Akbar Tarar, Addl. PG Mr. Fauzi Zafar, DPG
For Motorway Police:	Mr. Ali Akbar Wains, SP (Legal)
For OGRA:	Kh. Azhar Rasheed, ASC Mr. M. S. Khattak, AOR
For the respondents:	Mr. Arshad Ali Chaudhry, AOR Mr. Tauqir Sadiq (in CrI.M.A. 547/12)
Date of hearing:	21.8.2015

ORDER

Jawwad S. Khawaj, CJ. The National Accountability Bureau has been established under the National Accountability Ordinance, 1999 (No. XVIII of 1999), the preamble of which states that, "*... it is expedient and necessary to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse or abuse of power or authority, misappropriation of property, taking of kickbacks, commissions and for matters connected and ancillary or incidental thereto.*" Cases involving NAB have been coming up before us including the cases of implementation of our judgment in Constitutional Petition

No. 42 of 2011 dated 25.11.2000, and a number of other cases, i.e. NRO Implementation Case (SMC.4/2010), Rental Power Project Implementation Case (CMA 3685/2012), Fiaz Case (CP 2132/2014), Manzoor Ghauri Case (CP 2133/2014), Double Shah Case (CMA 1522/2015), Asad Kharal Case (CMA 1656/2015), Khalid Rashid Case (CMA 1556/2015), SMC 10 of 2015 etc.

2. On 10.07.2013 we had passed an order. In this order we had highlighted what appeared to us to be serious short comings in NAB including the way in which OGRA had been dealt with by NAB. In para 2 of the said order we had also noted that according to NAB an enquiry was initiated within NAB to ascertain whether persons within NAB or outside it had facilitated the escape of Tauqir Sadiq from Pakistan even though his name appeared on the ECL and despite the fact that on a few relevant dates the said person was inside the NAB Headquarters but was not apprehended. We had also noted that persons whether in the National Highway Police or Punjab Police or FIA/Immigration had aided or abetted Tauqir Sadiq to leave Pakistan. Apparently millions of rupees were spent in locating and bringing Tauqir Sadiq back to Pakistan.

3. We are informed by the learned Prosecutor General that with regard to the matter of OGRA a report (CMA No.4601/2014) was prepared by NAB in respect of persons within NAB who may have been complicit in unlawful activities and another report (CMA No. 4602/2014) in relation to persons outside of NAB. The learned Prosecutor General was repeatedly asked to state his opinion as to the findings/conclusions of the two reports which had ended in the finding by the Chairman that no further action was required, but, unfortunately, the learned Prosecutor General did not proffer his own opinion as to the conclusions in the two reports although he was repeatedly asked to do so. We have also noticed that in a number of cases which have been mentioned above, we have been asking NAB to furnish reports, information etc., but there has been a marked absence of diligent effort on the part of NAB. In many cases, *prima facie*, there appears to have been

deliberate concealment of important facts. Just to illustrate this point, we may add that vide order dated 1.7.2015, a list of the biggest 150 scams was sought relating to financial corruption, land grabbing etc. and misuse/abuse of official position. A list was furnished, but without giving details as to the pendency of inquiries/investigations and even more seriously, without giving details of 29 mega scams which emerged at a subsequent date. Some of the scams mentioned in the list filed by NAB in CMA No. 1656 of 2015, it is apparent that a probe into the functioning of NAB is necessary. We may mention that NAB itself did not possess any monitoring and evaluation system but this matter was taken up on prodding of this Court and involvement of LJCP that a monitoring and evaluation system framework was prepared. There were many delays in this process on the part of NAB and in fact an important component of such framework in the form of a value chain analysis was completely missing. Even today there are many aspects of the working of NAB which raise questions but to which satisfactory answers have not been forthcoming from NAB. We may emphasize that NAB has been created as a principal watchdog against corruption in Pakistan. Corruption is itself rightly perceived as eating into the very foundation and vitals of society. A corruption watchdog which, therefore, does not function efficiently adversely affects *inter alia*, the fundamental rights in Articles 14, 18, 19A, 23 and 24 of the Constitution.

4. We, therefore, in exercise of judicial powers conferred upon this Court under Articles 187 and 190 of the Constitution, Order XXXII, Rules 1 & 2 read with Order XXXIII, Rule 1 of the Supreme Court Rules, 1980 coupled with the principles of Civil Procedure Code including Order XXVI, Rule 10 appoint Khawaja Ahmad Hosain, Additional Attorney General to act as a Local Commission to examine the said two reports and submit his report with regard to whether NAB, FIA, National Highway Police and/or the Punjab Police had facilitated the escape of Tauqir Sadiq. The amount spent on bringing Tauqir Sadiq back to Pakistan and whether such amount has been realized shall also be determined. The local commission shall also

look into the performance of NAB in pursuing high profile mega scams referred to above and may select those which have remained pending for the longest period with NAB without reaching a conclusion or filing of references. Furthermore, the failure of NAB to disclose full information including particulars of 29 mega scams subsequently identified and the persons/officials, if any, who may have been responsible for omissions/incompetence in various cases with NAB and action, if any, which may have been taken against such officials. There are reported cases in law journals which have highlighted the acts/omissions/misdeeds of certain persons. These cases appear neither to have been probed by NAB nor does it appear that any action was taken in respect of such shortcomings and persons who may have abused their official positions.

5. NAB, FIA, National Highway Police, Islamabad and Punjab Police and all other Federal and Provincial ministries, departments, agencies, etc. shall extend full cooperation to the Commissioner. Report to be submitted on or before the next date of hearing, i.e. 2.9.2015.

Chief Justice

Judge

Judge

Islamabad, the
21st August, 2015
(Zulfiqar)