

THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE SH. AZMAT SAEED

Suo Motu case No.17 of 2016.

(Action taken by this Court to examine the vires of Section 25(a) of the NAB Ordinance.

In Attendance:

Mr Ashtar Ausaf Ali, Attorney General for Pakistan.
Ch. Aamir Rehman, Addl.A.G.
Barrister Asad Rehman, Consultant to A.G
Mr Waqas Qadeer Dar, PG, NAB
Mr. M. Azam, DPG, NAB.
Mr Imranul Haq, Spl. Prosecutor NAB.
Mr Abdul Latif Yousafzai, AG, KPK.
Mr Ayaz Swati, Addl.A.G, Balochistan.
Mr Zamir Hussain Ghumro, A.G, Sindh.
Mr Sheharyar Qazi, Addl.A.G, Sindh.
Akhtar Rehana, Addl.P.G Sindh.
Mr Asjad Javed Ghural, Addl.P.G. Punjab.
Mr Mudassar Khalid Abbasi, Asstt.A.G, Punjab.
Mr Asad Kharral, Applicant in CMA No.6374 of 2016.

Date of hearing

24.10.2016.

ORDER

AMIR HANI MUSLIM, J.- This Court on 02.09.2016, during hearing of Civil Appeal No.82-K of 2015, noticed abuse of authority by the NAB while taking cognizance of petty matters in terms of Section 9 of the National Accountability Ordinance, 1999 (hereinafter referred to as the Ordinance). The Ordinance was primarily legislated to counter the cases of mega scandals and initiate proceedings against the accused persons who are involved in scandals of mega corruption and corrupt practices.

2. The Court also noticed that in terms of Section 25(a) of the Ordinance, the NAB authorities after issuance of call up notices suggest to the accused that they may opt to come forward with the offer of voluntary return of the amounts that have allegedly been acquired or earned illegally by them. Section 25 (a) (*ibid*) empowers the Chairman, NAB, to accept such voluntary returns made by the accused persons, the amount is deposited with NAB in installments at the discretion of the Chairman, NAB. Alarming, on payment of certain portion of the amount, such person is given clean chit by the NAB to rejoin his job. The frequent exercise of powers under Section 25 (a) (*ibid*) by the NAB on one side has multiplied the corruption usurping the jurisdiction of the F.I.A and Anti-Corruption agencies and defeated the object of the Ordinance on the other hand. In this regard the matter was referred by a Bench of this Court to the Hon'ble Chief Justice of Pakistan, for examining the vires of Section 25(a) (*ibid*) vis-à-vis un-bridled powers of the Chairman, NAB to accept the offer of voluntary return from a person regardless of the size of the amount by any mode adopted at his discretion which falls within the domain of the judiciary. The matter was placed before the Hon'ble Chief Justice of this Court, who directed the office to fix the matter in Court, treating it as a Petition under Article 184 (3) of the Constitution. On 02.09.2016, the NAB authorities were further directed to provide the following details

- (i) The list of the cases in which NAB authorities are conducting enquiries and investigations and or references pending in the NAB Courts, involving an amount of less than Rs.100 Million;
- (ii) The list of the persons, civil servants and or public servants, to be provided by relevant departments of the Governments and or State owned organizations, who entered into Voluntary Return.
- (iii) The action which the Federal/Provincial Governments and or statutory organizations have taken against their employees after their offer of Voluntary Return was accepted by NAB in terms of Section 25(a) of the NAB Ordinance.

3. On 28.09.2016, the matter was adjourned at the request of the learned Law Officers of the Federation and the Provinces as well as the NAB authorities for today. In response to the order dated 02.09.2016, the required reports have been submitted by the Federal Government and the Provincial Governments. The NAB has also filed its report as C.M.A.No.6376 of 2016, giving details of the persons who have offered voluntary return of the monetary gains that they acquired through corrupt practices and such offer was accepted by the Chairman, NAB. From the reports submitted by the Federal Government and the respective Provincial Governments, it appears that no departmental action has been taken against the officers/employees of different organizations including Govt. departments, who had voluntarily returned illegally acquired monetary gains, which is very unfortunate. Once a person accused of corruption or corrupt practices volunteers to offer to return the amount he has pocketed or gained through illegal means, *prima facie*, cannot hold any Government/Public Office, as the very act of his offering the voluntary return falls within the definition of “misconduct” under the service law and calls for initiation of disciplinary action against the accused person(s). The report filed by the NAB mentions that hundreds of employees/civil servants and others who have voluntarily returned the amounts in terms of Section 25(a) (*ibid*) are still enjoying their office, without being exposed to any departmental proceedings which has further multiplied the corruption in the country.

4. This inaction on the part of the departmental authorities towards the accused has patronized corruption, by providing a window to the NAB as

well to the employees, who plunder public money and after paying back a portion of the alleged amount of corruption/corrupt practice continue in their jobs.

5. Primarily, the concept of voluntary return under the Ordinance, was confined to those accused against whom the proceedings were yet to start and they, on their own, had approached the NAB authorities by offering the voluntary return of the amounts illegally gained or acquired by them. This concept, however, was side tracked and instead the accused persons against whom call up notices were issued on the strength of some complaint or otherwise are extended favours by the NAB under the garb of Section 25(a) which was never intended for.

6. In the given circumstances, what has further disturbed us is that the amounts so collected by the NAB in installments or otherwise is not being deposited in its entirety with the concerned Government/Department forthwith, instead some of the amount under the garb of Rules or otherwise is retained by the NAB authorities for distribution to its official towards award.

7. We inquired from the Prosecutor General, NAB, to provide us the details of the amounts of voluntary return recovered from different accused persons and details of its deposit. The P.G, NAB, states that no amount is withheld by the NAB authorities for distribution to its officers who conduct the investigation of the cases as award.

8. The NAB shall provide us the details of the amounts which they have collected from accused persons, during the last 10 years and the

amounts which they have deposited with the different Governments. These details should reach this Court by 05.11.2016 positively. Likewise, the Attorney General for Pakistan as well as the Advocate Generals of the Provinces shall handover the copies of C.M.A.No.6376 filed by the NAB to the Secretary, Establishment Division and the Chief Secretaries of all the four provinces, who in turn shall ensure initiation of departmental proceedings against the accused persons mentioned therein who have voluntarily returned the amounts under Section 25(a) of the Ordinance, besides they shall further provide the details of the amounts which different departments have received from the NAB in terms of Section 25(a) (*ibid*).

9. We, therefore, direct the Secretary, Establishment Division and all the Chief Secretaries of the Provinces to ensure initiation of departmental proceedings forthwith against the employees mentioned in C.M.A.No.6376 of 2016 who have voluntarily returned the amounts in terms of Section 25 (a) (*ibid*), without further loss of time and report compliance.

10. In the meanwhile, the Chairman, NAB, or any other Officer authorized by him in this behalf, is restrained from accepting any offer of voluntary return in terms of Section 25(a) of the Ordinance. The office is directed to re-list the matter on 07.11.2016.

Chief Justice

Judge

Islamabad the,
24th October, 2016.
Not approved for reporting.
Sohail/**

Judge