

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.3886 of 2015  
M/s Moin Sons (Pvt.) Limited  
**Versus**

Capital Development Authority through its Chairman and others

<b>Date of Hearing:</b>	16.09.2020
<b>Petitioner by:</b>	Barrister Muhammad Umer Riaz, Advocate
<b>Respondents by:</b>	Mr. G. Shabbir Akbar, Advocate for C.D.A. in writ petition No.3886/2015. Mr. Intizar Hussain, Advocate for C.D.A. in review application No.52/2015. Barrister Rizwan Ahmed, Special Prosecutor, N.A.B.

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**MIANGUL HASSAN AURANGZEB, J:-** Through this judgment, we propose to decide writ petition No.3886/2015 and review application No.52/2015 since they entail certain common features.

2. Through writ petition No.3886/2015, the petitioner, M/s Moin Sons (Pvt.) Limited, impugns:-

- (i) Letter dated 06.04.2006 from the National Accountability Bureau ("N.A.B.") to the Chairman, Capital Development Authority ("C.D.A."), whereby the latter was informed that the investigation with respect to corruption and corrupt practices in the construction of Parliament Lodges, Islamabad had revealed that a loss of Rs.73.138 million had been caused to the State on account of below specification work, unjustifiable substitution of items and over fake measurement as well as payments for civil works and Rs.5.798 million for electrical and mechanical works. Furthermore, in the said letter, N.A.B. had taken the view that the loss should be recovered from the contractors and adjusted in the final payments by C.D.A. and that the persons responsible for the loss should appropriately be dealt with by C.D.A. C.D.A. was called upon to take

necessary action for recovery from the contractors and for departmental action against the officials of C.D.A.

- (ii) Letter dated 23.08.2006 from the Works Division of C.D.A. to the petitioner directing the latter to deposit Rs.4.271 million with C.D.A. within a period of seven days. The petitioner was warned that in case of failure to deposit the said amount, recovery would be affected from the petitioner's dues in any of the projects and the balance amount would be recovered through the Collector/Special Magistrate, C.D.A. under the provisions of the Land Revenue Act.

3. The facts essential for the disposal of this petition are that vide letter dated 23.08.1994, C.D.A. informed the petitioner that its bid for the award of the contract for the construction of Parliament Lodges in G-5 (Phase-II), Islamabad had been accepted by the competent authority. The works under the contract was reckoned to have commenced on 01.09.1994. The contract was to be completed within two years. The contract between the petitioner and C.D.A. is annexed at page 259 of this petition.

4. The matter regarding corruption and corrupt practices in the construction of Parliament Lodges at Islamabad was investigated by N.A.B. Vide letter dated 06.04.2006, N.A.B. informed the Chairman, C.D.A. that as per the findings in the investigations, a loss amounting to Rs.73.138 million had been caused to the State. C.D.A. was called upon to recover the loss from the contractor and also to take departmental action against C.D.A. officials involved in the matter. On the basis of the said letter dated 06.04.2006, C.D.A. directed the petitioner, vide letter dated 23.08.2006, to deposit Rs.4.271 million with C.D.A. failing which recovery would be affected from the petitioner's dues under any project and the balance amount would be recovered through the Collector/Special Magistrate, C.D.A. under the provisions of the Land Revenue Act.

5. The said letter dated 23.08.2006 was assailed by the petitioner in writ petition No.1975/2006 before the Hon'ble

Lahore High Court, Rawalpindi Bench. After this Court was established, the file of the said writ petition was transferred to this Court. Vide judgment dated 02.04.2012, the said writ petition was dismissed as meritless and incompetent. In the said judgment, it was observed that the petitioner had neither challenged the findings of N.A.B. nor had impleaded it as a party in the petition and that the petition against C.D.A. was not proper *“because the C.D.A. on its own ha[d] not taken any action against the petitioner.”*

6. The said judgment dated 02.04.2012 was assailed by the petitioner in intra Court appeal No.157/2012. Vide order dated 29.10.2015, this Court dismissed the said appeal as not pressed. This Court had recorded the submission of the learned counsel for the appellant that he intended to file a separate petition impleading N.A.B. as a party.

7. On 27.11.2015, the petitioner filed an application for the review of the said order dated 29.10.2015. On 27.11.2015, the petitioner also filed the instant writ petition.

8. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, drew the attention of the Court to C.D.A.’s letter dated 23.08.2006 and submitted that the said letter was solely based on N.A.B.’s letter dated 06.04.2006; that there is no provision in the National Accountability Ordinance, 1999 (“N.A.O.”) which authorizes N.A.B. to call upon statutory bodies to affect recovery from its contractors or to initiate departmental proceedings against its employees; that the investigation conducted by N.A.B. did not culminate in the filing of a reference against the petitioner; that the petitioner’s rights and obligations vis-à-vis C.D.A. have to be determined in accordance with the terms of the contract executed between the said parties; that the said contract provides for a dispute resolution mechanism as well as the procedure for the determination of contractual claims; that till date, C.D.A. has not instituted any proceedings for the determination of the amount which it considers to be due and payable by the petitioner; and that the contract between the

petitioner and C.D.A. is based on the FIDIC form and C.D.A. is at liberty to initiate a process for the determination of the amount which it considers due and payable by the petitioner in accordance with the terms of the said contract. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

9. On the other hand, learned Special Prosecutor, N.A.B. submitted that the investigation in the case regarding corruption and corrupt practices in the construction of Parliament Lodges had been closed by N.A.B. after the issuance of the said letter dated 06.04.2006 to C.D.A.; and that N.A.B. did not issue any direction to C.D.A. and that a letter was issued to the Chairman, C.D.A. with a request to take necessary action at its own end regarding the loss caused to the national exchequer.

10. Learned counsel for C.D.A. submitted that the instant writ petition is liable to be dismissed due to severe *laches*; that on the basis of N.A.B.'s letter dated 06.04.2006, C.D.A., vide letter dated 23.08.2006, directed the petitioner to deposit Rs.4.271 million within a period of seven days; that C.D.A. did not take action against any of its officials or affect recovery from the petitioner due to the pendency of writ petition No.1975/2006, I.C.A.No.157/2012 and this petition; that the procedure envisaged by the provisions of the contract between the petitioner and C.D.A. for the recovery of C.D.A.'s claims had not been initiated at any stage; and that N.A.B.'s letter dated 06.04.2006 was enough for C.D.A. to initiate a process for recovery of Rs.73.138 million from the petitioner. Learned counsel for C.D.A. prayed for the writ petition to be dismissed.

11. We have heard the contentions of the learned counsel for the contesting parties as well as the learned Special Prosecutor, N.A.B. and have perused the record with their able assistance.

12. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 3 to 7 above and need not be recapitulated.

13. The authority of N.A.B. to investigate allegations of corruption and corrupt practices during the execution of the

contract for the construction of Parliament Lodges is not disputed. N.A.B. may well have carried out investigation in the matter and its findings may well have been that recoveries should be affected from the petitioner or that departmental action should be taken against employees of C.D.A. However, the investigation carried out by N.A.B. did not culminate in the filing of a reference against the petitioner or the employees of C.D.A. After having given findings in the inquiry report, there was nothing preventing N.A.B. from filing a reference against the petitioner and/or the employees of C.D.A. Instead N.A.B., vide letter dated 06.04.2006, requested the Chairman, C.D.A. to recover the loss from the petitioner and to take necessary action against the officials of C.D.A. Solely on the basis of the said letter, C.D.A., vide letter dated 23.08.2006, directed the petitioner to deposit Rs.4.271 million with C.D.A. within a period of seven days failing which the recovery would be affected from the petitioner's dues under other projects and the balance amount would be recovered through the Collector/Special Magistrate, C.D.A. under the Land Revenue Act.

14. The learned counsel for C.D.A. admitted that till date, no departmental proceedings has been initiated against any of the officials of C.D.A. on the basis of N.A.B.'s letter dated 06.04.2006. He also admitted that no claim had been submitted by C.D.A. against the petitioner in accordance with the provisions of the contract executed between the said parties.

15. Learned counsel for C.D.A. could not point out any provision in the N.A.O. which authorizes N.A.B. to call upon a statutory body to affect recoveries from a contractor only on the basis of N.A.B.'s findings in its investigation report. Unless the findings of N.A.B. in an investigation or an inquiry report are proved in an adjudicatory process by an Accountability Court in accordance with the provisions of N.A.O., the persons against whom such findings are given would be presumed to be innocent.

16. At best, N.A.B.'s letter dated 06.04.2006 could be treated as provision of information and material to C.D.A. so that the

latter could apply its mind and initiate a process in accordance with the provisions of the contract and the law for the determination of its claims and the recovery of the amount so determined in its favour. C.D.A. without having filed a claim against the petitioner in accordance with the provisions of the contract and without having determined such a claim in its favour could not have directed the petitioner to deposit Rs.4.271 million. Inquiry or investigation reports of N.A.B. alone cannot be treated as conclusive proof of guilt or liability of persons with whom findings in such reports are given. As mentioned by N.A.B. in its letter dated 14.09.2020, it did not make any direction to C.D.A. and the letter dated 06.04.2006 was issued to the Chairman, C.D.A. with the request to take necessary action “*at its own end*” regarding the loss to the national exchequer. Since the relationship between the petitioner and C.D.A. was governed by the provisions of contract for the construction of Parliament Lodges, the action for the determination of C.D.A.’s claims and the recovery of the determined amount from the petitioner was to take place in accordance with the provisions of the said contract.

17. In view of the above, the instant writ petition is allowed and the letter dated 23.08.2006 from C.D.A. to the petitioner is set-aside. Before parting with this judgment, it may be observed that C.D.A. shall be at liberty, subject to law, to initiate a process of having its claims against the petitioner determined and recover the determined amount, if any, from the petitioner in accordance with the provisions of the contract.

18. As regards review application No.52/2015, learned counsel for the petitioner was unable to point out any error apparent on the face of the record which would justify review of the order dated 29.10.2015 passed by this Court. As mentioned above, through the said order dated 29.10.2015, this Court had dismissed the intra Court appeal against the judgment dated 02.04.2012 passed by the learned Judge-in-Chambers. Through the said judgment, writ petition No.1975/2006 filed by the petitioner was dismissed primarily on the ground that N.A.B. had

not been impleaded as a party in the said petition. Since C.D.A.'s letter dated 23.08.2006 was solely based on N.A.B.'s letter dated 06.04.2006, N.A.B. was indeed a necessary party in the said petition, which was correctly dismissed due to the non-impleadment of the necessary party. Consequently, the instant review application, being bereft of merit, is dismissed.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2020**

**(JUDGE)**

**(JUDGE)**

*Qamar Khan\**

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