

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 50 of 2014

INAM-UL-RAHIEM

Vs

THE CHAIRMAN, NAB, ISLAMABAD.

PETITIONER BY: Mr. Laiq Khan Swati, Advocate alongwith
petitioner.

RESPONDENTS BY: Mr. Raza Bashir, Senior Prosecutor, NAB.

DATE OF HEARING: **25-01-2018.**

ATHAR MINALLAH, J.- Through the instant petition,
the petitioner has sought the following prayers:-

*"It is, therefore, respectfully prayed that a Writ
may kindly be issued directing the Respondent No.1
to proceed against the Respondent No.2 in
accordance with law and to submit report before this
Hon'ble Court in respect of findings arrived at by the
Respondent No.1 regarding the complaint/reference
filed by the petitioner.*

It is further prayed that respondent No.2 may kindly be restrained from alienating/disposing his assets, properties till the final disposal of the instant Writ Petition.

Any other relief which this Honourable Court deems fit may also be granted."

2. The facts, in brief, are that the petitioner had filed a complaint before the National Accountability Bureau (hereinafter referred to as the "**Bureau**"), for initiating an inquiry against General (Rtd) Pervez Musharraf, alleging that he had declared assets in his nomination papers which were beyond his known sources of income : A copy of the complaint is attached with the instant petition at page 7 as annexure-A along with details of immovable properties and bank accounts. The Bureau, vide letter dated 25.04.2013, had informed the petitioner that his complaint could not be entertained for want of jurisdiction because, as a member of the Armed Forces, General (Rtd) Pervez Musharraf was immune from being proceeded against under the National Accountability Ordinance, 1999 (hereinafter referred to as the "**Ordinance of 1999**").

3. The learned counsel appearing on behalf the petitioner has contended that; the respondent no.2 i.e. General (Rtd) Pervez Musharraf, besides having served in the Pakistan Army, had also held the public office of the President of Pakistan and, therefore, he was not immune from being accountable under the Ordinance of 1999.

4. A learned counsel who had appeared on behalf of General (Rtd) Pervez Musharraf requested that he may be given audience. However, he was informed that neither could his power of attorney be entertained nor could he be heard because General (Rtd) Pervez Musharraf has been declared a proclaimed offender by the competent courts of Pakistan. It is settled law that a person who is a fugitive from the law and who does not surrender to the process of justice is neither entitled to any relief, nor can a power of attorney executed by him in favour of a counsel be accepted, except under exceptional circumstances. Reliance is placed on "Hayat Bakhsh and others vs. The State", **PLD 1981 SC 265**, "Chan Shah vs. The Crown", **PLD 1956 FC 43**, "Mohtarma Benazir Bhutto, M.N.A, Leader of the Opposition, Bilawal House, Karachi vs. The State through Chief Ehtesab Commissioner", **1999 SCMR 1619** and "The State through National Accountability Bureau, Islamabad vs. Haji Nasim-ur-Rehman", **PLD 2005 SC 270**.

5. The learned counsel for the petitioner has been heard and the record perused with his able assistance.

6. General (Rtd) Pervez Musharraf had served as the tenth President of the Islamic Republic of Pakistan from 2001 till tendering his resignation in 2008. He resigned from the military post of Chief of Army Staff in November, 2007. He, therefore, continued to hold the Constitutional post of the President of Pakistan even after resigning

from the Armed Forces. A short question is involved for our consideration in the instant petition i.e. whether the Bureau has correctly interpreted the provisions of the Ordinance of 1999 by concluding that it has no jurisdiction to inquire into or to investigate the alleged offences of corruption or corrupt practices against General (Rtd) Pervez Musharraf under the Ordinance of 1999, as the petitioner was informed vide letter dated 25-04-2013. In order to answer this question it would be beneficial to examine the relevant provisions of the Ordinance of 1999.

7. The Bureau has been established under the Ordinance of 1999, inter alia, to achieve the object and purpose for which the said statute has been enacted. The preamble of the Ordinance of 1999, inter alia, describes its object and purpose as to provide for the 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. Section 3 expressly declares that the provisions of the Ordinance of 1999 shall have an overriding effect notwithstanding anything contained in any other law. Section 4 provides that the Ordinance of 1999 extends to the whole of Pakistan and applies to all persons, that is to say all citizens of Pakistan and persons who are or have been in service of Pakistan, wherever they may be, including areas which are part of the Federally and Provincially Administered Tribal Areas. Section 5 defines various

expressions. Clause (a) of section 5 defines 'accused' as including a person in respect of whom there are reasonable grounds to believe that he is or has been involved in the commission of any offence triable under the Ordinance of 1999 or is the subject of an investigation or inquiry by the Bureau. The expression 'assets' is defined in clause (c) of section 5 as meaning any property owned, controlled by or belonging to any accused, whether directly or indirectly, or held benami in the name of his spouse or relatives or associates, whether within or outside Pakistan. Section 5 (da) defines 'benamidar'. Clause (m) of section 5 defines the expression 'Holder of public office'. The said definition has seven distinct sub clauses describing various categories of posts which are covered under the definition. Sub clause (i) explicitly provides that a holder of public office means a person who has been the President of Pakistan or the Governor of a Province. It is pertinent to note that the expression 'has' has been used in sub clause (i) in respect of the President while 'is' has been omitted, while the law maker has used both these expressions in relation to the categories described in clauses (ii) to (iv) and (va). Sub clause (iv) of clause (m) of section 5 is in respect of a person who 'is' a holder or 'has' held the office or post in the service of Pakistan. The only exception is a person who 'is' a member of any of the Armed Forces of Pakistan. Even in case of this latter category a person is not exempted from the definition of 'Holder of public office' if he or she is holding or has held a post or office in any public Corporation, Bank, financial institution, undertaking or any other institution or organization established, controlled or administered by or under the Federal

Government or a Provincial Government. The most significant and relevant category for the adjudication of the instant petition is described in sub clause (vi) of clause (m) of section 5 and the same is reproduced as follows:-

"[...] has served in and retired or resigned from or has been discharged or dismissed from the Armed Forces of Pakistan."

8. 'Offence' is defined in clause (n) of section 5 meaning the offences of corruption and corrupt practices and other offences as defined in the Ordinance of 1999 and includes the offences specified in the Schedule thereto. The expression 'person' has been defined in section 5 (o). Section 9 defines the offences of corruption and corrupt practices under sub clauses (i) to (xii) of clause (a) of section 9. The controlling part of the said section explicitly declares that a 'holder of a public office' and 'any other person' is said to commit or to have committed the offence of corruption and corrupt practices described in one or more of clauses (i) to (xii) *ibid*. Section 10 prescribes the punishment for committing the offences described under section 9.

9. A combined reading of the above provisions unambiguously shows that the jurisdiction of the Bureau extends to all the persons who fall within the ambit of the definition of 'Holder of public office' under clause (m) of section 5 of the Ordinance of 1999. A person who 'is' a member of any of the Armed Forces of Pakistan has been

excluded except if he or she is holding or has held a post or office in any public Corporation, Bank, financial institution, undertaking or other organization established, controlled or administered by or under the Federal Government or a Provincial Government. When sub-clause (iv) and sub-clause (vi) of clause (m) of section 5 are read together, it leaves no doubt that a person who has served in and retired or resigned from the Armed Forces of Pakistan becomes amenable to the jurisdiction of the Bureau under the Ordinance of 1999. Likewise, a person who has been the President of Pakistan is not immune from being investigated, tried or convicted for an offence of corruption and corrupt practice under the Ordinance of 1999 even though he or she is or has been a member of the Armed Forces. The public office of the President of Pakistan makes the holder subject to the jurisdiction under the Ordinance of 1999. A member of the Armed Forces who has been the President of Pakistan cannot claim immunity or exemption from being subjected to the Ordinance of 1999. Likewise a member of the Armed Forces after retirement or resignation becomes exposed to being proceeded against under the Ordinance of 1999 because the immunity in such an eventuality comes to an end. Any interpretation otherwise will render sub clauses (i) and (vi) of clause (m) of section 5 as redundant. The august Supreme Court in the case of "Abdul Aziz Memon and others vs. The State and others", **PLD 2013 Supreme Court 594** after examining the provisions of the Ordinance of 1999 in detail has declared and held that the provisions thereof are applicable even to a person who is not a holder of public office and also to a person who has not aided, assisted attempted or acted in conspiracy

with holder of a public office. It has been explicitly declared that a 'stand alone private person can be proceeded against' if the other conditions under the Ordinance of 1999 are satisfied. It is settled law that redundancy cannot be attributed to the legislature and that every word and part of the statute must be given effect. The courts always presume that every word and expression used by the legislature has a purpose and intent. Courts cannot assume the role of a legislature by the addition or substitution of words in a statute. Moreover, the Ordinance of 1999 is a penal statute and, therefore, its provisions must be strictly construed.

10. The august Supreme Court in the case titled "Abdul Aziz Memon and others vs. The State and others", **PLD 2013 Supreme Court 594** has reiterated and affirmed the observations of the apex Court in the earlier judgment in relation to section 5 (m) of the Ordinance of 1999 and the relevant portion is as follows:-

"The "sea change" regarding spreading the net wider and enlarging the scope of the accountability law referred to by Mr. K. K. Agha in his submissions with reference to the Ehtesab Act, 1997 and the National Accountability Ordinance, 1999 already stands noticed and recognized by this Court in the case of Khan Asfandiyar Wali (supra) and it was observed by this Court in that case as under:

"106. Mr. Minto submitted that while examining the vires of this law, the following provisions may be given deeper consideration:

- * Section 5(a) wherein 'accused' has been extensively defined;*
- * Section 5(m) defines 'holder of public office', which has been gathered from all the previous statutes on the subject and thus the scope and purview of the process of accountability has been enlarged;*
- * Clause (iv) of section 5 (m) has brought all persons in the service of Pakistan within the purview of accountability, inasmuch as even the serving officers of the Armed Forces, who are employed in organizations other than the Armed Forces, have been included;*
- * Likewise in clause (vi) (ibid), all those persons have been included who have served in, resigned, retired, discharged or dismissed from the Armed Forces and thus only a limited class of persons employed in the Armed Forces, who are within the discipline of the Force*

concerned, have been excluded within a view to maintaining integrity in the institution inasmuch as public trial in such cases would not be in the interest of the Institution. Even otherwise, such persons are amenable to the discipline of the Force concerned."

11. In the light of the above discussion General (Rtd) Pervez Musharraf is amenable to be proceeded under the Ordinance of 1999 and thus investigated, tried or convicted there under because of two eventualities; firstly, for having held the Constitutional post of the President of Pakistan and secondly, clause (vi) of section 5(m) of the Ordinance of 1999 is attracted because he had resigned and stands retired from the Armed Forces of Pakistan.

12. For what has been discussed above, we are satisfied that the Bureau has indeed erred in misinterpreting the provisions of the Ordinance of 1999 by refusing to consider and entertain the complaint, which had been filed by the petitioner. The letter dated 25-04-2013, issued by the Bureau, is declared as illegal and has been issued without lawful authority. The Bureau is vested with the power and jurisdiction to consider the complaint of the petitioner and after such consideration if it is of the opinion that an offence under the Ordinance of 1999 is prima facie made out, then it will become a duty of the latter to proceed to inquire, investigate and take all other steps mandated under the Ordinance of 1999. Across the board accountability is an onerous

statutory obligation of the Bureau under the mandate of the Ordinance of 1999. Public trust and confidence is the hallmark of effective and result oriented accountability. It is the duty of the Bureau to consider every information or complaint laid before it by a citizen and then to fulfill its statutory obligations by proceeding under the Ordinance of 1999 in a fair and transparent manner without fear or favour.

13. This petition is, therefore, disposed of in the above terms.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(ATHAR MINALLAH)
JUDGE

Announced in open Court on 08-02-2018

JUDGE

JUDGE

Asif Mughal*

Approved for Reporting