

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

W.P No. 562/2016

Jamshoro Joint Venture Ltd and another

Versus

Federation of Pakistan and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(04)	24.02.2016	Ch. Aitzaz Ahsan, Khawaja A. Tariq Raheem, Mr. Muhammad Azhar Siddique, Barrister Gohar Ali Khan, Advocates for the petitioners. Syed Hassan Ali Raza, Advocate for Respondent No. 2. Ch. Munir Sadiq, Deputy Prosecutor General, NAB.

MOHSIN AKHTAR KAYANI J. Through the instant writ petition, petitioners have assailed the Call up Notice issued U/S 19 NAO 1999 by Respondents No. 9 &10 and proceedings initiated by Respondent No. 5 in Terms of para- 2 of the Notice dated 21.01.2016 which is reproduced hereunder:-

"The preliminary Inquiry reveals that gas fields worth billions of rupees have illegally been handed over to your company for extraction of LPG & NGL contents/molecules, without following the respective laws & procedures, which caused huge losses to national exchequer by giving undue & illegal benefits to JJVL."

The above referred preliminary inquiry is outcome of inquiry against Dr. Asim, Ex-Federal Minister for Petroleum & others.

2. Petitioner No. 1, Jamshoro Joint Venture Limited hereinafter Called JJVL is a Public Limited Company and Plant of the Company is situated at Jamshoro Sindh and is operating under the license granted by OGRA vide license dated 10.03.2015.

3. Respondent No. 6, Chairman, NAB authorized an inquiry dated 12.09.2015 against Dr. Asim Hussain, former Federal Minister for Petroleum & Natural Resources. Inquiry Officer (Respondent No. 9) issued Call up Notice U/S 19 NAB Ordinance 1999 to the JJVL, CEO, petitioner No. 2 for 28.01.2016 whereupon petitioner No. 2 appeared before NAB Authorities at Karachi.

4. During the course of inquiry, Respondent No. 10 Inquiry Officer, raised question regarding process fee for extraction charges in respect of gas from Kunnar Pasakhi Deep U/S 237/MT which is subject matter of contract between JJVL and OGDCL, Inquiry Officer started inquiring the bidding process and award of contract etc.

5. As per allegations raised by NAB, Inquiry Officer, Dr. Asim Hussain, former Petroleum Minister, former SSGCL MD Azeem Siddiqui, former SSDCL, MD Zuhair Ahmed Siddiqui, former SSGCL MD Shoaib Warsi, Khalid Rehman and others are accused of misappropriation of funds of SSGCL and OGDCL by providing illegal benefits to JJVL Ltd from 2011 onwards worth billions of rupees which caused a loss of approximately Rs. 10 billion to the national exchequer.

6. On issuance of Notice U/S 19 NAO 1999, petitioners have filed instant writ petition with the following prayer:-

"That as against the Petitioner (s), all proceedings initiated by NAB including issuance of notice under Section 19 of NAB Ordinance in pursuance of authorization of inquiry, if any, under Section 18 of the Ordinance are illegal, without jurisdiction, malafide, violative of the Judgments of the superior courts read with Article 9,14,10-A, 18, 48&5 of the Constitution of Pakistan, 1973. That

Respondent No. 6 be restrained from taking any action adverse to the petitioner including any authorization of investigation or filing of Reference in view of the facts stated hereinabove as all above actions are illegal and without jurisdiction. That NAB has no jurisdiction to inquire or investigate into past and closed contractual matters already validated by judicial and administrative fora and having complete approval of the relevant authorities in accordance with the provisions of law inclusive of PPRA Rules and acceptance by the superior courts.

It is further prayed that till the adjudication of the Writ Petition, Respondent No. 6 and other authorities of the NAB be restrained from taking any coercive/adverse measures including change of inquiry into investigation, filing of Reference and arrest of Petitioner No. 2 and other Directors or employees of Petitioner No. 1.

7. Learned Counsel for the Respondent, NAB at the very outset raised the question of jurisdiction and confronted that instant writ petition is not maintainable for want of jurisdiction as the investigation was clearly under process against Dr. Asim Hussain at Karachi and present Call up Notice dated 21.01.2016 was also issued from the office of NAB, Karachi, Respondent No. 9&10.

8. Conversely learned Counsel for the petitioners have drawn our attention towards previous proceedings of W.P. No. 3209/2011, wherein contract of JJVL for extraction of LPG/NGL from Kunnar Pasakhi gas field awarded by OGDCL was declared fair and transparent vide Order dated 13.01.2012 by Islamabad High Court, Islamabad and as per High Court judgment there is nothing on record to show any financial irregularity involved in the whole case, hence, Islamabad High Court endorsed the tender of the said

contract, therefore, Islamabad High Court has jurisdiction to entertain the instant matter.

9. Learned Counsel for petitioners have also argued that it was closed and past transaction which cannot be reopened by any authority including NAB as once a matter stands judicially settled by the Superior Courts no executive authority has the right to challenge the same. It is also argued by the learned Counsel that certain accused persons in OGRA Tauqeer Sadiq case are facing trial before Accountability Court, Islamabad. Kunnar Pasakhi Deep gas field was duly inquired by NAB and report was submitted before Supreme Court of Pakistan and before NAB Court. Learned Counsel of petitioner further argued that in compliance of the Call up Notice, petitioner No. 2 has joined the inquiry at Karachi and during the course of inquiry petitioner No. 2 has submitted the license of OGRA issued in March, 2005 for their Plant situated at Jamshoro Sindh:-

- b) Copies of MOU.
- c) Copies of invoices issued SSGC.
- d) Copies of interim invoice of SSGC.
- e) Copy of JJVL, OGDCL, LPG&NGL, extraction project for a period of 02 years regarding Kunnar Pasakhi Deep Gas fields KPD.
- f) Publication notices.

10. The learned Counsel further argued that the offices of NAB, Respondent No. 5,6,7,8) OGDCL (Respondent No. 3,4) and Federation of Pakistan are situated at Islamabad even the authorization of inquiry and investigation was given in EBM at NAB headquarter, Islamabad, cause of action accrued at Islamabad, Provision of Section 20 (c) CPC has to be applied in writ petition, hence this Court has Territorial

jurisdiction to decide the matter under the law. Learned counsel has relied upon:-

2009 CLD 1998, 1985 SCMR 758, 1997 SCMR 1874, 1996 CLC 539, PLD 2006 SC 328, PLD 2006 SC 328, 2006 CLD 18, 2012 CLC 884 (ISB), PLD 1970 SC, PLD 2013 Lahore 343, 2013 PTD 556, 2012 PLC (CS) 1223, 2010 CLD 1648, PLD 2013 Sindh 536.

11. Learned counsel has vehemently argued that it is the choice of petitioners to invoke the jurisdiction of both Islamabad High Court and Sindh High Court as both the High Courts have concurrent jurisdiction to adjudicate upon the matter.

12. Arguments heard, record perused.

13. From the perusal of record, it is very much proved that Jamshoro Joint Venture Limited JJVL is a Public Limited Company, whose plant is situated at Jamshoro Sindh and JJVL-OGDCL, LPG & NGL extraction project for a period of 02 years was executed on 16.01.2012. It is also confirmed from record that separate inquiry and investigation was ordered by EBM, NAB Karachi against Dr. Asim Hussain alongwith former SSGCL MD Azeem Iqbal Siddiqui, former SSGCL MD Zuhair, Ahmed Siddiqui, former SSGCL MD Shoaib Warsi Khalid Rehman and others co-accused who misappropriated funds of SSGCL and OGDCL at Karachi where Dr. Asim Hussain is facing remand at Karachi and finally sent to judicial custody by the NAB Courts situated at Karachi.

14. It is also proved from record that during the course of earlier investigation, matter relating to JJVL came on surface whereas Ex-MD SSGCL is under investigation in Dr. Asim Hussain case, benefit worth billion of rupees was extended

to JJVL illegally and national exchequer has suffered approximate loss of Rs. 10 billion.

15. NAB Inquiry Officer, Respondent No. 10 issued Call up Notice dated 21.01.2016 in Dr. Asim Hussain Ex-Federal Minister for Petroleum and Natural Resources case, to the petitioners. In response to said Call up Notice, petitioner No. 2 joined the inquiry at NAB office at Karachi and he has submitted record of his company, including invoices, MoU, Agreements, licenses etc. Petitioners have admittedly been called by Karachi, NAB Office, whereas petitioner No.2 joined the inquiry at Karachi and provided fact sheets of Kunnar Pasakhi Deep, Bobi Gas Processing, Sunjhor Gas processing and Niamat Basal processing, and has also placed previous record of visit of NAB authorities in connection with alleged unauthorized use of gas from Kunnar Pasakhi Deep field in OGRA case.

16. The core question of Territorial jurisdiction has been raised by the NAB authorities which can be determined on the basis of following facts:-

- a) Dr. Asim Hussain Ex-Federal Minister for Petroleum and Natural Resources was inquired, investigated by NAB at Karachi.
- b) Dr. Asim Hussain remained on physical remand at Karachi on the orders of NAB Court, Karachi.
- c) JJVL plant is situated at Jamshoro Sindh.
- d) All documents of invoices relating to Gas Supplied from KPD gas fields were initiated by SSGCL, Karachi Office.
- e) Inquiry Officer (Respondent No. 10) issued Call up Notice dated 21.01.2016 from Karachi NAB Office.
- f) Petitioner No. 2 joined investigation and submitted record to Karachi NAB Office in response to Call up Notice.
- g) Inquiry and then investigation of NAB, Karachi is relating to KPD, Bobi, Sanjhor, Naimat Basal fields whereas in previous

round FIA has conducted inquiry on Badin Gas field only.

- h) After filing of instant writ petition NAB EBM has converted inquiry pending at Karachi into investigation.

Hence, it has been proved that NAB Karachi has already investigated the case of Dr. Asim Hussain under physical remand (at that time) regarding allegations of misuse of authority and misappropriation of Government funds and during the said process it has been revealed that gas fields worth billion of rupees have illegally been handed over to petitioner company for extraction of LPG & NGL without following the respective laws and procedures which caused huge losses to national exchequer by giving undue and illegal benefits to JJVLL, therefore, it is settled law that if a matter has already under investigation by an investigation agency of a particular place and any other issue has been raised relating to connected matter, then the same Investigation Officer has to deal with the said investigation. In the present case, NAB Karachi and I.O at Karachi has already exercised their powers of investigation, even otherwise the invoice of payments were issued from SSGCL Karachi office, the plant and gas fields are situated within the province of Sindh which are the subject matter of the instant writ petition at this stage.

17. It is pertinent to mention here that the concept of cause of action has not been defined in CPC in particular, rather the same has only been referred in Order 7 Rule 1(e) CPC which only denotes the facts in pleadings hence, while examining the issue have to go through the available documents, petitions in the writ petition which collectively constitute the cause of action and especially the events, facts

and actions referred in different paragraphs of writ petition are considered while assuming jurisdiction of the Court. However, NAO 1999 is a Federal Law and the Head office of NAB is situated at Islamabad but at the same time its Regional Offices are situated in all four Provinces having provincial Headquarters and in other cities of Pakistan, hence, it is assumed that all High Courts have concurrent jurisdiction but in order to regulate the procedural aspect of the inquiries, complaints, investigations, references and trials at least certain principles are required to govern the situation where:-

- i) Concurrent jurisdiction of two High Courts are involved or;*
- ii) Subject matter of inquiry or complaint relates to one province and the Authorization has been ordered from Head office of NAB at Islamabad or ;*
- iii) Accused or person under inquiry are residents of one province or different provinces, loss caused to other provincial exchequer, project under inquiry is situated in other province.*

The aggrieved persons usually seeks relief in Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 from the High Courts of their choice keeping in view their convenience on the analogy of Section 20 CPC where part of cause of action has been accrued but in order to understand the legal principle one has to keep in mind that Civil Procedure Code, 1908 is only applicable as General Law in writ jurisdiction in terms of Section 117 CPC but where Special Law is available like National Accountability Ordinance 1999 or Criminal Procedure Code, 1898 and subject matter relates to a criminal act and where civil rights are not in issue, the applicability of procedural aspect to regulate such Constitutional Petitions are different from ordinary Rules.

Therefore, in order to understand the concept of jurisdiction one has to keep in mind the following factors to comprehend term "**Cause of Action**" in Criminal matters:-

- a) Place of occurrence of Crime;*
- b) Place from where major portion of evidence is collected to link the chain of events;*
- c) Loss caused to Public exchequer of Province;*
- d) Investigation Officer inquired the matter to confirm the prima facie involvement of any person in any Crime with a view to proceed for future course of action.*
- e) NAB Head Office has given any instruction/order for inquiry at particular place or territory keeping in view the chain of events;*
- f) Matter in question relates to provincial authority or Federal Authority from where major evidence is to be collected to connect the accused with the offence;*
- g) Whether any court has already exercised its jurisdiction qua the subject matter during pendency of any inquiry, investigation and NAB authorities have not raised any objection regarding territorial jurisdiction of the Court;*
- h) NAB authorities have submitted/filed Reference against the accused persons in any Court or transferred the Trial to any other Court under the Provisions of NAO 1999.*

The High Court has to evaluate all these factors while deciding the issue of Territorial jurisdiction. Therefore, on the basis of factors (a) to (h), the Islamabad High Court has no jurisdiction at this stage to exercise the same against any action or event complained by the petitioner.

18. The case laws referred by learned Counsel on the point of jurisdiction are distinguishable as Section 20 (C) CPC 1908 deals with Cause of action and choice of party when two Courts have concurrent jurisdiction but if the said legal issue relates to civil disputes governed U/S 9 of CPC 1908. Although there is no cavil with the proposition that CPC is applicable to

writ petition for the purpose of procedure but the issue in hand is relating to alleged crime committed with regard to Gas fields situated at Sindh and Ex-federal Minister, Dr. Asim Hussain has allegedly caused loss to national exchequer who is under investigation at Karachi NAB and entire collection of evidence has been made at Karachi, even the said evidence is meant for any future criminal trial/prosecution of all the accused in the reference hence, the procedural application of CPC 1908 is limited to regulate the proceedings of the Court under General Law whereas Special Law of NAO 1999 as well as Criminal Procedure Code, 1898 provides the procedure for any inquiry, Trial and investigation. In order to understand the true intent of NAO 1999

Section 2(f) defines "**Code**" means the Code of Criminal Procedure 1898

And

Section 2 (n) defines "**offence**" means the offences of corruption and corrupt practices (and other offences) as defined in this Ordinance and includes (the offences) specified in the schedule to this Ordinance.

Whereas the concept of cognizance of the offence has been provided under the said law. In order to define the jurisdiction, cognizance of offences is provided in Section 18 of NAO 1999:-

Cognizance of offences

- (a) The Court shall not take cognizance of any offence under this ordinance except on a reference made by (Chairman NAB or an officer of the NAB duly authorized by him)
- (c) Where the Chairman NAB, or an officer of the NAB duly authorized by him, is of the opinion that it is, or may be, necessary and appropriate to initiate proceedings against any person, he shall refer the matter **for inquiry or investigation.**

- (g) The Chairman NAB or an officer of the NAB duly authorized by him) shall appraise **the material and the evidence placed before him** during the inquiry and the investigation, and if he decides that it would be proper and just to proceed further, [and there is sufficient material to justify filing of a reference] he shall refer the matter to a Court.

In view of above provision of Section 18 of NAO 1999, it is clear that the cognizance of offence can only be taken by the Chairman NAB or an officer authorized by him, hence there is no concept of "**cause of action**", **or application of principle of choice**. Even the Chairman NAB or the officer has to decide on the basis of material and evidence collected during the inquiry and investigation for further proceedings, which further shows that absolute authority vests with Chairman NAB under this Special Law, therefore, in order to examine any person for such inquiry and investigation with the facts and circumstances of the case, the Chairman NAB and the authorized officer can issue notice to call for information U/S 19 of the NAO 1999, however, this Special Law is dependent upon the General Law of Criminal Procedure Code, 1898 on the basis of definition referred in Section 2 (f) and 2 (n) of NAO 1999.

In order to understand the basic structure the entire matter rests upon provisions of Code of Criminal Procedure 1898, Section 2 (j):-

"High Court" means the highest court of criminal appeal or revision for a province.

Which further confirms that any matter pending before the Trial Court, if agitated in appeal or revision, the same shall be filed before the High Court of that province in whose territory

the subordinate Criminal Court is situated, whereas the jurisdiction for trial of offences is referred in Section 5(2) of Cr. P.C.

Trial of offences against other laws, all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to same provisions, but subject to any enactment for the time being in force regulating the matter or place of investigating, inquiring into, trying or otherwise dealing with such offences.

19. From the above discussion it is clear that the question of jurisdiction while dealing with offences of NAO 1999 is to be applied with reference to Criminal Procedure Code 1898 and all inquiries and investigations if directed by Chairman NAB have to be followed in that manner otherwise, the General Law of Cr.P.C. shall apply, however, the question relating to initiation of inquiry till the order of investigation by the Chairman NAB will not be considered in terms of word **"cause of action"** referred in CPC due to the fact that the Special Law as well as the General Law for all such situations is only NAO 1999 and Criminal Procedure Code 1898 on the following three reasons:-

- a) Where High Court exercises jurisdiction under Special Law, it will be governed by the provisions of Special Law and not by the CPC.
- b) The High Court is not a Civil Court but the Section 117 CPC makes the Court to applicable to it for procedural purposes in respect to civil rights.
- c) When Special Law is silent on some point then guidance can be taken from the General Law in that case provisions of General Law are attracted, NAO 1999 is a Special Law and Cr.P.C. 1898 is a General Law in that manner.

Therefore, dominant factor regarding application of NAO 1999 in Criminal Procedure Code which attracts the Territorial jurisdiction of Sindh High Court.

20. As far as the judgments referred by the learned counsel for the petitioners are concerned, the same are not applicable to the instant case and are quite distinguishable from the facts and circumstances of the case in hand. we have meticulously perused the same and brief description of each judgment is given hereunder:-

PLD 2013 Lahore 343, Barrister Sardar Muhammad V.s Federation of Pakistan and others:-

The subject matter of the case relates to a writ of Quo Warrantto regarding Chairman PTA having its Head Office at Islamabad.

2013 PTD 556 (Commissioner Inland Revenue, Zone-III, Karachi V.s Messrs Adam Sugar Mills Limited, Karachi.)

The subject matter of the case relates to Income Tax Ordinance and Sales Tax Act and confers jurisdiction upon concerned High Courts, subordinate Courts/Tribunals for the purpose of any interpretation issue in the Fiscal Statutes.

2012 MLD 1438 (Ghulam Haider V.s Farkhanda Iqbal and 2 others)

The subject matter of the case relates to Supardari of Tractor which was granted by Magistrate and thereafter, SSP ordered for recovery of the same.

2012 PLC (CS) 1223 (Muhammad Athar V.s Ministry of Defence, Government of Pakistan, through Secretary Defence, Rawalpindi and 6 others)

The subject matter of the case relates to employees of Armed Forces against mala fide action of authorities which were coram non-judice.

2010 CLD 1648 (A. R Khan & Sons (Pvt). Ltd. Through Authorized Officer and 3 others V.s Federation of Pakistan through Secretary, Ministry of Commerce, Islamabad and 3 others.)

The subject matter of the case relates to violation of Rules by Trading Corporation of Pakistan & PSA Gawadar. Both fall within the jurisdiction of same High Court.

PLD 2013 Sindh 536 (Messrs Syngenta Pakistan Ltd. Through Authorized Supply Manager V.s S.M. Asif and 2 others)

The case law relates to interpretation of Article 207 (3) (b) of the Constitution of Pakistan, 1973 and also the status of Hon'ble Retd. Judge of High Court, as to whether the Hon'ble Judge of the same High Court can plead or act in any Court or any authority within its own jurisdiction.

2013 P.Cr.L.J. 449 (Muhammad Hanif V.s Station House Officer, Police Station Naushehro Feroze and another)

The subject matter of case relates to registration of Criminal Case where Justice of Peace has exercised jurisdiction for registration of case.

PLD 2013 Sindh 277 (Lucky Enterprises, Goods Forwarding Agency through Proprietor V.s Messrs Zeal Pak Cement Factory Ltd. through Chairman/Managing Director)

Cause of action for filing of suit was accrued at Karachi but the property is situated outside territorial jurisdiction of Karachi and is situated in Rawalpindi.

1997 SCMR 1874 (Flying Craft Paper Mills (Pvt.) Limited V.s Central Board of Revenue, Islamabad and 2 others.

The subject matter of the case relates to Sales Tax exemption wherein order of Collector customs and Central Excise Peshawar is under question and relief was also claimed against CBR functionaries at Islamabad and both the High Courts have concurrent jurisdiction but the objection of Territorial Jurisdiction was raised for the first time before Supreme Court of Pakistan which was not entertained due to the fact that it was raised for the 1st time.

PLD 2006 Karachi 479. (Messrs Facto Tractors Limited Karachi and another V.s Federation of Pakistan through Secretary, Ministry of Industries, Production and Special Initiatives Islamabad and others)

Actions of authorities ECC were challenged on the ground that Order of authorities was not transparent and court has declared that Federation is everywhere and thus every High Court has jurisdiction but the issue relates to Civil Rights and not relating to criminal proceedings.

21. In view of above, the inquiry/investigation is already under process regarding Ex-Federal Minister, Dr. Asim Hussain at Karachi NAB where NAB Court has already taken

cognizance of the matter. Complete record of the said inquiry is at Karachi, inquiry relates to KPD, Bobi, Naimat Basal and Sanjhoru Gas fields which fall within the Territorial jurisdiction of Sindh High court. Even the petitioners have not challenged the process of inquiry of Dr. Asim Hussain, therefore, petitioners case could not be isolated from the said matters and approval in this regard has been granted by EBM NAB, hence all factors reflected in this writ petition revolves around the actions of Inquiry Officer of NAB Karachi who collected the evidence, interviewed the petitioner No. 2 at Karachi, petitioner No.2 was confronted with the collected evidence at Karachi and on the basis of collected evidence/material during the inquiry, EBM NAB has authorized investigation at Karachi. Even this Court has already expressed the similar view in W.P No. 1965/2015 **tilted as "Saadat Anwar Qumbrani V.s National Accountability Bureau etc."** whereby the matter relating to construction of Zhob-Mir Ali Khail Khajuri Kach Road, Balochistan was filed before this Court and the Writ Petition was dismissed for want of jurisdiction.

22. In view of above, this writ petition is devoid of merit and the same is hereby dismissed for want of jurisdiction.

(MOHSIN AKHTAR KAYANI)
JUDGE

(SHAUKAT AZIZ SADDIQI)
JUDGE

Ramzan

Approved for Reporting

[Signature]