

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

**Civil Appeal No. 22/2016 in
CPLA. No. 20/2015.**

1. Muhammad Arif SVP/RBC (R) and senior Coordinator r/o Khashrote Gilgit.
2. Ghulam Mustafa OG-II Manager NBP Sost Branch r/o Nagaral Gilgit.
3. Amir Wali Khan OG-II NBP Gilgit.
4. Gul Abbas OG-II Regional Office NBP Gilgit.
5. Amir Ali Assistant NBP Gulmit Branch Hunza.
6. Izzat Baig OG-II NBP Main Branch Gilgit.

Petitioners.

Versus

1. National Bank of Pakistan through President NBP Head office I.I Chadrigar Road Karachi.
2. National Bank of Pakistan Regional office Gilgit.
3. National Accountability Bureau through Director General, NAB Head Quarter Islamabad.
4. Director General FCIW, NAB head Quarter Islamabad.
5. Deputy Director General National Accountability Bureau Gilgit.
6. Amjad Zaman Khan Investigating Officer FICW RNC Boys Hostel No. 3 Rawal Road Rawalpindi.
7. Federal Investigating Agency Gilgit through Deputy Director FIA Gilgit.

Respondents.

PETITION FOR LEAVE TO APPEAL AGAINST IMPUGNED JUDGMENTS/ORDERS DATED 25.11.2014 PASSED IN CIVIL REVIEW PETITION NO. 84/2012 AND JUDGMENT/ORDER DATED 11.9.2012 IN WRIT PETITION NO. 58/2009 PASSED BY THE DIVISION BENCH GILGIT-BALTISTAN CHIEF COURT, WHEREBY LEARNED DIVISION BENCH DISMISSED CIVIL REVIEW PETITION AND WRIT PETITION.

PRESENT:-

1. Mr. Amjad Hussain Advocate for the petitioners.
2. Mr. Muhammad Hussain Shehzad Advocate for respondent.
3. Mr. Muhammad Abbas Additional Prosecutor General NAB Gilgit-Baltistan.

DATE OF HEARING: - 19.04.2016.

DATE OF ANNOUNCEMENT OF JUDGMENT:- 03.05.2016.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition was directed against the impugned order dated 25.11.2014 in Review Petition No.84/2012, passed by the learned Chief Court Gilgit-Baltistan. The petitioners initially filed Writ Petition No. 58/2009 which upon hearing was dismissed being groundless. Instead of filing petition for leave to appeal in this court, they preferred to file Review Petition which was also dismissed being meritless.

2. Briefly the facts of the case are that the petitioners were the officials/employees of the National Bank of Pakistan Regional Office Gilgit-Baltistan who granted loans to the different borrowers against the relevant provisions of Rules and Regulations under National Bank of Pakistan “Loan Advancing Policy”. Subsequently the petitioners with the collusion of the borrowers were involved in the fraudulent practices causing huge loss to the Government exchequer. The NAB authorities initiated inquiries and sought information under Section 19 of the NAB Ordinance 1999 against the petitioners in the year 2009 vide its letter dated 08.09.2009 which is reproduced as under:-

“Quote”

Government of Pakistan
 National Accountability Bureau
 RMC Boys Hostel No. 3 Rawal Road
 Rawalpindi
 PH# 051-9280841 Fax # 051-9281132
 No.6(24)/FCIW/NAB(R)/2009
 08 Sep, 2009

Mr. A. Saeed Khan
 SVP, Legal Affairs & Wing
 HR Management Administration Wing
 NAB Coordinator
 National Bank of Pakistan, Head Office,
 I,I Chaundgrgar Road
 Karachi.
 Fax # 021-9211219

Subject:- INFORMATION UNDER SECTION 19 OF NAB ORDINANCE, 1999
INQUIRY AGAINST MUHAMMAD ARIF SVP/RBC (RETIRED)
NATIONAL BANK OF PAKISTAN GILGIT & OTHERS

1. The concerned quarter at National Bank of Pakistan be directed to provide the following information/record which is required in connection with the subject inquiry being conducted at this Bureau.
 - a. Original personal files of following National Bank of Pakistan officers/officials with their bio data showing details of their present & previous postings, attested copies of their CNICs, Photographs, Account Opening forms, SS Cards and statements of their accounts since inception.
 - i. Muhammad Arif SVP/RBC (Retired) & Chief Coordinator Gilgit.
 - ii. Mr. Shahid Pervaiz Dar, VP/ ROC Regional Office Gilgit.
 - iii. Mr. Ghulam Mustafa, Ex-Manager National Bank of Pakistan, Sost Branch Gilgit.
 - iv. Mr. Amir Wali Khan OG-II, Ex- Manager National Bank of Pakistan Sost Branch Gilgit.
 - v. Mr. Naseer-ud-Din Alqultoshi, OG-I National Bank of Pakistan Sost Branch Gilgit.
 - vi. Mr. Izzat Baig OG-III Manager National Bank of Pakistan Sost Branch Gilgit.
 - vii. Mr. Muhammad Issa Khan Ex. Regional Business Chief, RO Gilgit.
 - viii. Mr. Gul Abbas, Credit Manager Sost Branch Gilgit.
 - ix. Mr. Amir, Temporary Assistant National Bank of Pakistan Sost Branch Gilgit.
 - x. Mr. Kifayat Ullah, OG-III/ Cashier National Bank of Pakistan Sost Branch Gilgit.

- b. Details of record pertaining to the subject matter handed over or sought by FIA, attested copies of record sent to FIA are required.
 - c. List of National Bank of Pakistan officers /staff at NBP. Sost Branch since 01.01.2005 till to date. These lists should also contain their present place of posting since joining the bank i.e. place of posting, tenure and designation /assignment.
 - d. Attested copies of departmental inquiries conducted against the NBP. Officers/officials found negligent /involved in the case and detail of the punitive action taken by the bank against delinquents be intimated.
 - e. List of all borrowers who availed loans, running finance and other credit facilities from NBP. Sost Branch Gilgit since 01.01.2005, attested copies of relevant sanctions advised and present status of all such finances be provided.
2. It should be ensured that copies of the required record must contain complete texts of the original (both sides where applicable) and the original record should be kept separately with the custodian so that the same is readily available where required by the concerned accountability court/NAB.
3. The requisite information /record be sent to Lt Col ® Amjad Zaman Khan , investigation Officer , FCIW , RMC boys hostel No.III Rawal road Rawalpindi by 20.09.2009 positively.

Yours truly,

-Sd-

Karim Akram Khan
Director FCIW.

“Unquote”

3. Further the NAB authorities vide its letter dated 03.06.2011 addressed to Mr. Nisar Ahmed Special Prosecutor NAB Rawalpindi informed that the investigations/enquiries were in progress by this Bureau and complaint lodged by NAB against the misappropriation and embezzlement of loans by way of misuse of authority as provided under Section 9 of NAO 1999 and schedule thereto against the petitioners and others which is also reproduced as under:-

National Accountability Bureau
 RMC Boys Hostel No. 3 Rawal Road
 Rawalpindi
 PH# 051-9281126 Fax # 051-9281147

No.6(24)/FCIW/NAB(R)46/2010
 03 June 2011.

Mr. Nisar Ahmed,
 DD/Special Prosecutor/
 NAB Rawalpindi/
 Sub Office Gilgit.
 Fax # 05811-920518

Subject:- CASE TITLED MUHAMMAD ARIF ETC V/S NBP. , PREFERRED BY WRIT PETITION BEFORE THE CHIEF COURT, GILGIT-BALTISTAN.

Reference: your letter No. NAB/GLT-1 (13)/2011 dated 10.05.2011.

1. The subject investigation is under progress at this bureau on a complaint lodged by NBP. Regional Office Gilgit dated 01.06.2009 (copy of copy enclosed) on the allegation of misappropriation and embezzlement by way of misuse of authority as leveled under Section 9 of NAO 1999 and schedule thereto against the subject persons.
2. Therefore it may be submitted before the Hon'ble' Chief Court Gilgit-Baltistan that since the subject case is not being conducted u/s 31-D of NAO 1999 , therefore permission is not required to be obtained from the Governor, State Bank of Pakistan u/s 31-D of NAO 1999.

-sd-
 Imran Majeed
 A/Dy . Dir (Coord) FCIW.

4. On receipt of the said notice the petitioners filed Writ Petition No. 58/2009 in the learned Chief Court which was decided on 11.09.2012 by holding that there is no bar to initiate enquiries/investigations by NAB against the Petitioners. It was further held that since no fundamental right of the petitioners has been infringed by any authority including NAB who exercised its powers to initiate inquiries/proceedings against the petitioners in accordance with law. Consequently, the petition was dismissed being devoid of merits. The petitioners instead of filing petition for

leave to appeal in this Court preferred to file Review Petition vide Civil Misc No. 84/2012 on the ground that the NAB has no authority to initiate inquiries/investigations against the petitioners in absence of the approval from the Governor, State Bank of Pakistan as provided under Section 31-D of the NAB Ordinance 1999. It was averred therein that the petitioners being the employees of Banking Organization and disciplinary Rules have already been framed by the organization for penalization of the officials in connection with any illegality or using access powers with regard to financial affairs. The petitioners have faced the inquiries conducted by the department and all of them have already undergone through the penalties awarded by the Bank. Resultantly some have been dismissed from their service and some of the petitioners have reversed from their positions to lower grades and scales, that the NAB/FIA are legally not authorized to conduct inquiries/investigations in the cases of loans by the Banking officials and they are saved under Section 31-D of NAB ordinance 1999 unless prior permission from the State Bank of Pakistan would not be obtained.

5. The learned counsel for the petitioner submits that the petitioners are the high officials of the National Bank of Pakistan and they have given loans to various borrowers in accordance with the relevant provisions of Rules and Regulation of National Bank of Pakistan on the basis of "Loan Advancing Policy". He further submits that the mandatory procedural pre-condition under

Section 31(d) of the National Accountability Ordinance 1999, has not been adopted and according to which reference by Governor State Bank of Pakistan is mandatory to obtain approval from Governor State Bank of Pakistan which has yet not been obtained by the respondent No.02 and the respondents unauthorizedly and illegally made request to the NAB Authorities to take the petitioners for inquiry which is unlawful and illegal as per provision of NAB Ordinance.

6. The learned counsel for the petitioners also contends that a Civil Suit filed by the National Bank of Pakistan on the same subject which preclude the NAB to entertain the complaint of NBP and to investigate or conduct inquiry against the petitioners. He also contends that it is a case of double jeopardy as no one can be vexed twice for the same offence. The petitioners have already been prosecuted by the departmental authorities under E&D Rules. He also contends that the impugned order dated 25.11.2014 in Civil Misc. No. 84/2012 and the judgment/order dated 11.09.2012 in Writ Petition No. 85/2009 passed by the learned Chief Court may pleased be set aside and the respondents be restrained thereto to conduct inquiries/investigations against the petitioners as sanction/approval has not been obtained from the Governor, State Bank of Pakistan. While submitting so he supports his contentions by relying upon case laws reported as (2010 PCr.LJ, 13), (2005 PLD, Lahore 692), (PLD 2001 Karachi, 419), (PLD 2001 SC, 60) and (NCR 2003, Criminal 361).

7. He finally submits that the impugned judgment dated 25.11.2014 as well as the judgment dated 11.09.2012 passed by the learned Chief Court are the result of misconception of law and misreading of the facts of the case, hence, the same are not tenable and required to be set aside to meet the ends of justice. The said judgments of the Chief Court are contradictory to its own unreported judgment passed in a similar nature case i.e. Qalb Ali etc versus The State through NAB.

8. On the other hand the learned Additional Deputy Prosecutor General for NAB at Gilgit and Mr. Muhammad Hussain Shehzad learned counsel appearing on behalf of respondent No. 02 M/s National Bank of Pakistan submit that the Writ Petition No. 85/2009 was filed by the petitioners in the learned Gilgit-Baltistan Chief Court to defeat the investigation process initiated by the NAB authorities in order to unearth the truth and punish to the fraudsters. They submit that no fundamental right, if any, of the petitioners has been infringed by any authority including NAB. The process of inquiry/investigation cannot be prohibited & precluded by exercising the extraordinary jurisdiction of the courts. They further submit that prime facie the petitioners have committed offences under section 9 of NAB Ordinance 1999 which can only be determined after conducting inquiry/investigation. They further submit that the petitioners were employed with the financial institution and they might have faced the departmental inquiries/investigation etc. The notices issued by the respondents have been

issued under Section 9 of NAB Ordinance 1999, whereby any involved person can be investigated for the offences mentioned therein. The departmental inquiry can be held and initiating of inquiry/investigation under the provisions of criminal law does not amount to double jeopardy. In case the authorities empowered under the law are of the opinion that any matter is required to be inquired or investigated they cannot be restrained on the excuse of departmental inquiries. They contend that under Section 9 of NAB Ordinance, no exemption has been granted to any class of people. Accordingly Section 31-D of NAB Ordinance has been provided for the purpose of imprudent loans but never restrict the scope of Section 9 of the said ordinance which is purely meant for the corruption and corrupt practice falling under that provision of law. Consequently, the petition being groundless was dismissed by the Chief Court. They further submit that Review Petition was not maintainable which was filed just to gain time and to frustrate the process of inquiries/investigations initiated by NAB. The petition is also time barred and liable to dismissed. The learned Chief Court has rightly dismissed the same. They relied upon the case laws reported as (2009 SCMR 335) and (PLD 2009 Karachi 469).

9. They finally submit that the impugned Order dated 25.11.2014 in Civil Misc No. 84/2012 and the Judgment dated 11.09.2012 in Writ Petition No. 85/2009 passed by the learned Chief Court Gilgit-Baltistan are well reasoned and well founded, hence, no interference is warranted thereto.

10. We have heard the learned counsel for the respective parties at length, perused the record of the case file and gone through the impugned order dated 25.11.2014 in Civil Misc. No. 84/2012 and the judgment dated 11.09.2012 in Writ Petition No. 58/2009 passed by the learned Chief Court Gilgit-Baltistan as well as the case laws relied upon by the learned counsels for the respective parties.

11. We have also gone through the provisions of Sections 18 and 19 of the NAB Ordinance 1999 which are reproduced as under:-

“ Section 18. Cognizance of offences:-

(a).....

(b) A reference under this Ordinance shall be initiated by the National Accountability Bureau on....

(i). a reference received from the appropriate government; or

(ii). Receipt of a complaint; or

(iii). its own record.

(c).....

(d) The responsibility for inquiry into an investigation of an offence alleged to have been committed under this Ordinance shall rest on the NAB to the exclusion of any other agency or authority, unless any such agency or authority is required to do so by the Chairman (NAB) or by an officer of the NAB duly authorized by him.

(e). the Chairman NAB and such members, officers the learned Advocate-on-Record servants of the NAB shall have and exercise, for the purpose of an inquiry or investigation the power to arrest any person, and all the powers of an officer in-charge of Police Station under the Code, and for that purpose may cause the attendance of any person, and when and if the assistance of any agency, Police officer or any other official or agency shall render such assistance provided that no person shall be arrested without the permission of the Chairman (NAB) or any officer (of NAB) duly authorized by the Chairman NAB.

12. The plain reading of Sub Section (e) of Section 18 of the ordinance insists that for purpose of an inquiry or investigation, the officer so inquiring /investigating shall have all the powers as are available with officer –in-charge of a police station under the code , which are so provided under Chapter XIV of the Criminal Procedure Code. Needless to add here that Chapter XIV of the Cr. PC also

includes the Section 160 to 164 Cr.PC which deal with power to require attendance, recording of statement. Since from the bare reading of Section 18(b) of the ordinance it becomes clear that an inquiry /investigation could be initiated only by the Chairman or an officer of the NAB, duly authorized by him, thus the officer, so authorized for conducting such an inquiry /investigation, shall enjoy all powers as are available to an officer-in-Charge of a police Station within meaning of the Chapter XIV of the Criminal Procedure Code.

Section 19 . Power to call information... the Chairman NAB (an of the NAB duly authorized by him) may , during the course of inquiry or investigation of an offence under this ordinance or any rule or order made thereunder :-

(a). Call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this ordinance or any rule or order made thereunder;

13. A bare reading of the said provisions reveals that if an inquiry or investigation is ordered in respect of offence punishable under the Ordinance by Chairman NAB then during the course of the said inquiry or investigation of such offence any officer duly authorized by Chairman is competent to call for information from any person for the purpose of Satisfying himself whether there has been any contravention of the provisions of the Ordinance or any rule or order made thereunder. Thus it is manifest that it empowers the authorized officer to examine any person acquainted with the facts and circumstance of the case. “Any Person” includes witnesses or an accused even. We are in complete agreement and

acknowledge the legal position that one cannot be compelled to answer a question which can expose him to criminal charges and that one cannot be forced to be a witness which is so evident from the section 161 of the Code and Article 13 (2) of the Constitution.

Both the said section and article are reproduced as under:-

Section. 161. Examination of witness by Police.... (1) any Police officer making an investigation under this chapter or any Police Officer not below the rank as the Provincial Government may, by general or special order, prescribe in this behalf, acting on the requisition. Of such officer many examine orally any person supposed to be acquainted with the facts and said circumstances of the case.

(2) such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answer to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Article 13 of the Constitution of Islamic Republic of Pakistan. No person....

(a).....

(b) Shall, when accused of an offence, be compelled to be a witness against himself.

However, the criminal administration of justice demands that version of the accused should also come on record during the course of the investigation, therefore, above referred Article and provision shall not justify the Investigating Officer for non-examination of the accused nor shall disentitle him (Investigating Officer) from asking a question which he feels necessary for proper interrogation. This is the object because of which the word "examination" has been used with deliberation under this chapter.

14. Keeping in view the above touchstone, let's examine whether call up notices impugned in this petition, prime facie serves its purpose or otherwise. Perusal of the said notice and reflects that matter (inquiry being conducted) a reference as to for what purposed the examination and production of documents or necessary, is evident, therefore, call-up notices cannot be said to be entirely illegal.

15. Without prejudice to the above, what would we like to make it clear that issuance of notice, even if found to be not within its purpose and object, yet a wrongly issued notice shall not , under any case, justify quashing the route (an investigation , initiated under Section 18 (c) of the Ordinance) or be taken as a sword to keep the prosecution out of its right to dig out truth for simple that an authorized officer (investigating Officer) was negligent of not issuing notice properly. A mere irregularity or even illegality on the part of the Investigating Officer in following procedure within meaning Chapter XIV of the Criminal Procedure Code, shall not cost an offence to go un-attended because an irregularity or illegality in procedure may be cured but not the impacts and effects of an offence if the same is let un-touched despite its being coming to light. The moment and offence is committed the effect thereof start but a procedural error , irregular and even illegality by Investigating Officer can well be judged by the competent Court toward the effects and consequences.

16. In view of the above discussions and the case laws relied upon by the learned Counsel for NAB and National Bank of Pakistan regional Office Gilgit-Baltistan and in our considered view the NAB authorities cannot be precluded to issue call-up notices or restrain to conduct an inquiry/investigation under NAB Ordinance 1999. The case laws preferred by the learned Counsel for the petitioners are distinguishable whereas the case laws relied upon by the learned counsels for the respondents are applicable.

16. Consequently, we hold that the NAB authorities are lawfully authorized to conduct inquiry/investigate and interference into the authorities of the NAB would seriously prejudice to the prosecution towards its right in probing into an investigation /inquiry of an offence. The learned counsel for the petitioners could not point out any illegality and infirmity in the impugned judgments/order. The impugned judgment is well reasoned and well founded, therefore, no interference is warranted. Consequent thereto, we convert this petition into an appeal and the same is dismissed. The impugned Order dated 25.11.2014 in Civil Misc. No. 84/2012 and the judgment dated 11.09.2012 in Writ Petition No. 58/2009 passed by the learned Chief Court Gilgit-Baltistan are maintained.

17. The appeal is dismissed.

Chief Judge.

Judge.

Whether the case is fit to be reported or Not?