

PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

WP No. 2924-P/2021 with IR

Durre Shehwar

.....Petitioner.

V/s

National Accountability Bureau
through its Chairman,
Headquarter NAB, Blue Area,
Islamabad and others

.....Respondents.

For the Petitioner: Qazi Jawad Ehsanullah,
Advocate.

For the Respondents: Mr. Muhammad Riaz Mohmand,
ADPG.

Date of hearing: 17.11.2021 Announced on
24.12.2021

JUDGMENT

SYED ARSHAD ALI, J.- Durre Shehwar, the petitioner is facing trial before the learned Accountability Court-I, Peshawar in a Reference No. 04/2017 wherein she is accused of corrupt and corrupt practices.

Through the instant petition, the petitioner has called into question the Authority of Director General NAB to grant pardon to the alleged accomplice and subsequently the order of the learned Accountability Court-I Peshawar dated 27.03.2021 whereby her objection on the depositions of two witnesses i.e. PW-16 Tabbasum & PW-17 Shazia Bano, who were granted pardon by the DG NAB, was dismissed.

2. The learned counsel appearing on behalf of the petitioner has argued that in National Accountability Ordinance, 1999 (“***Ordinance***”), the Chairman of the National Accountability Bureau (“***Bureau***”) exercises certain statutory functions under the Ordinance, some of his authority is person/office specific i.e. to say that the said authority has to

be exercised by himself whereas in certain cases while exercising he can delegate his authority keeping in view the tenure of the section allowing him to delegate the said authority. In this regard, he has referred to certain powers of Chairman NAB like the power to freeze property under Section 12 of the Ordinance; to apply to the Court for transfer of the case under Section 16-A of the Ordinance; to grant pardon under Section 26 of the Ordinance; and issuing direction for filing of appeal under Section 32 of the Ordinance are his exclusively powers which he cannot delegate as the said provision of law do not authorize him to delegate the said powers to any other officer of the Bureau. However, certain provisions of Ordinance do authorize the Chairman to delegate these powers to any officer of the NAB. In this regard, he has referred to Section 18(c) of the Ordinance which clearly envisages that these powers can be exercised by the Chairman NAB or an officer of the NAB duly authorized by him. He next contended that Section 34-A of the Ordinance authorizing the Chairman NAB, to delegate his powers, is applicable to only those provisions of the Ordinance where it is expressly provided that the Chairman NAB can delegate his powers to an officer of the NAB and thus, the provision of Section 34-A cannot be stretched to an extent authorizing the Chairman NAB to delegate his powers to an officer of the NAB when it is not provided in the Section empowering the Chairman NAB to do a particular function, therefore, granting pardon to PW-16 and PW-17 by the Director General NAB is contrary to the scheme of the Ordinance. The learned counsel, in support of his arguments, has placed reliance on the judgment of the Apex Court in the case of **Muhammad Rafiq**¹.

¹ 2019 SCMR 846

3. On the other hand, the learned ADPG representing the NAB while rebutting the arguments of learned counsel for the petitioner has argued that under Section 34-A of the Ordinance, the competent authority has issued a Notification dated 30.10.2015 whereby the Chairman NAB has delegated certain statutory powers to various officers mentioned in the said Notification to be performed by them and the pardon granted by the Director General NAB is in accordance with the said Notification, therefore, the impugned order of the learned Accountability Court is in accordance with law.

4. Arguments heard and record perused.

5. National Accountability Bureau (“**NAB**”) has been established under Section 6 of the Ordinance. Similarly, the appointment, tenure and terms & conditions of the Chairman NAB have been provided under Section 6 of the Ordinance. Section 6(b) (iv) of the Ordinance envisages that the Chairman NAB may delegate any of his powers to, and authorize performance of any of his functions by, any officer of the NAB as he may deem fit and proper, for carrying out the purposes of the Ordinance. For ease reference, Section 6(b) (iv) of the Ordinance is reproduced as under:-

“6. National Accountability Bureau:-

(a).....

(b) Chairman National Accountability Bureau:

.....

(iv) The Chairman, NAB may delegate any of his powers to, and authorize performance of any of his functions by, an officer of the NAB as he may deem fit and proper, subject to such conditions, if any, as may be specified in the order, for carrying out the purposes of this Ordinance”.

Similarly, Section 34-A of the Ordinance, authorizes the Chairman NAB to delegate his authority to any office of the NAB. The said Section reads as under:-

“34-A. Delegation of Powers.- *The Chairman NAB may, by an order in writing, delegate any of his powers to and authorize performance of any of his functions by, an office of the NAB as he may deem fit and proper, subject to such conditions, if any, as may be specified in the order, for carrying out the purposes of this Ordinance”.*

6. The Chairman being head of the Bureau has been clothed with certain powers under the Ordinance in respect of investigation, filing of the Reference and other matter ancillary for the purpose of inquiry and investigation. Certain provisions of the Ordinance, as mentioned above, it is specifically mentioned that these powers are to be exercised by the Chairman NAB or an officer authorized by the NAB whereas in certain provisions it is only mentioned that the said powers are to be exercised by the Chairman NAB. For ease reference let us refer to the relevant provisions:

12. Power to freeze property:- *(a) The Chairman NAB or the Court trying [an accused] for any offence as specified under this Ordinance, may at any time, if there appear reasonable grounds for believing that the accused has committed such an offence, order the freezing of his property, or part thereof, whether in his possession or in the possession of any relative, associate or person on his behalf:*

.....”

18. Cognizance of offences: *(a) The Court shall not take cognizance of any offence under this Ordinance except on a reference made by [the Chairman NAB or an officer of the NAB duly authorized by him].*

b.

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.”

19. Power to call for information: *The Chairman NAB or [an officer of the NAB duly authorised by him] may, during the course of an inquiry [or investigation] [of an offence under this Ordinance]:-*

(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.

.....”
24. Arrest:- (a) *The Chairman NAB shall have the power, at any stage of the inquiry and investigation under this Ordinance, to direct that the accused, if not already arrested, shall be arrested.*

.....”
26. Tender of a pardon:- (a) *Notwithstanding anything contained in the Code, at any stage of [inquiry, investigation or trial] the Chairman NAB may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to any offence, tender a full or conditional pardon to such a person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relating to the said offence including the names of the persons involved therein whether as principals or abettors or otherwise.*

.....”
32. Appeal and revision:- (a) *Any [person convicted or the Prosecutor General Accountability, if so directed by the Chairman NAB] aggrieved by the final judgment and Order of the Court under this Ordinance may, within ten days of the final judgment and order of the Court prefer an appeal to the High Court of the Province where the Court is situated;*

[Provided that no appeal shall lie against any interlocutory order of the Court]

(b) *All Appeals against the final Judgment and Order filed before the High Court will be heard by a Bench of not less than two Judges constituted by the Chief Justice of the High Court shall be finally disposed of within thirty days of the filing of the Appeal.*

[(c) No revision shall lie against any interlocutory order of the Court.]

[(d).....]

7. It is the main emphasis of the learned counsel for the petitioner that the law-makers have intentionally drawn a distinction between the powers to be exercised by the Chairman NAB himself whereas certain powers can be delegated by him only when in a particular section it has been specifically provided for example Section 18, which envisages that a Reference can be filed before the Court by the Chairman NAB or an officer authorized by him. Whereas the power of Chairman NAB to grant pardon under Section 26 of the Ordinance cannot be delegated to any other officer of the

NAB as it is established principle of law that a delegatee cannot some delegate his powers. We do not find ourselves in consonance with the assertions of the learned counsel for the petitioner for the obvious reason that it is clearly envisaged under Sections 6(b) (iv)/34-A of the Ordinance that the Chairman NAB can delegate his authority/power to any officer of the NAB. The said delegation has been notified through Notification dated 30.10.2015, according to the said Notification, power under Section 26 to tender pardon has been delegated to DG Operations NAB HQ and DGs Regional NAB with certain conditions. The said paragraph reads as under:-

Statutory Notification (S.R.O)
Government of Pakistan
NATIONAL ACCOUNTABILITY BUREAU
ORDERS
Islamabad 30th October 2015.

S.R.O.____ In exercise of powers vested in me under Section 34-A of National Accountability Ordinance, 1999, and in supersession of notification SRO No. 1153(I0/2014 dated 10th December 2014, I, the Chairman National Accountability Bureau hereby delegate my powers to the officers of NAB to the extent indicated below for carrying out the purposes of the Ordinance with respect to authorization of the following functions w.e.f. 2.11.2015:-

<i>S.No.</i>	<i>Section</i>	<i>Nature of Power/function</i>	<i>Officers of NAB Authorized</i>	<i>Extent of delegation</i>
.....
14.	Section 26	To render pardon	1. DG Operations NAB HQ. 2. DGs Regional NABs.	To any person privy to any offence relating to:- 1. Grade 20 and below. 2. Holder of any office or post in connection with the affairs of Local Council. 3. All employees of Banks and Development Financial Institutions (DFIs) etc in Grade of Vice President and below. 4. A businessman employing up to 49 persons in a single business entity or

				<p><i>in all of his business concerns, put together.</i></p> <p>5. <i>All registered contractors as categorized by Pakistan Engineering Council (PEC) falling within the categories C2 to C6 and all unregistered contractors irrespective of the amount involved.</i></p> <p>6. <i>Any person other than businessmen, politicians, contractors, government servants, employees of Development Finance Institutions (DFIs) and employees of financial institution, whose annual income is less than Rs. Five million (if confirmed from legal sources).</i></p>
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If we accept the arguments of learned counsel for the petitioner to read Section 26 of the Ordinance in isolation without any recourse to the internal aid provided in Section 6(b) (iv) and 34-A of the Ordinance, it would render the said provision redundant.

8. The history of the National Accountability Bureau Ordinance and amendment would show that in the original Statute, the Chairman NAB was not authorized to delegate his power/authority, however, under Section 6 (b) (iv) and Section 34-A were added through Ordinance No. XXIV of 2000 and Ordinance No. XXXV of 2001respectively, whereby the Chairman was authorized to delegate his authority to other officer of NAB. It is further established principle of law that even in one Statute the subsequent amendment being later in time would be given preference over the original text in the Act. Therefore, the powers to delegate which were introduced subsequently under Section 6(b) (iv) and Section 34-A of the Ordinance would be given full meaning being the golden rule of interpretation.

Therefore, the combined reading of Sections 6 (b) (iv), 26 and 34-A of the Ordinance would show that the Chairman NAB has the authority to delegate the power of granting pardon to the Director General NAB which has been done through Notification (SRO) dated 30.10.2015 . It would be pertinent to note that the legality of this SRO has not been challenged before this Court.

9. It is trite law that a statute is passed as whole and not in sections and it may well be assumed to be animated by one general purpose and intent. It is thus not safe to adopt the process of etymological dissection and after taking words out of their context and applying definitions given by lexicographers to proceed to construe the statute on the basis of such definitions. Parliamentary enactments must be construed as a whole and their meaning attributed to the words should, as general rule be inspired by the context and the nature and object of the subject matter, for the words may be enlarged or restricted to harmonize with the provisions of statute².

Similarly, M. Farani in his Interpretation of Statutes has stated that a statute must be read as a whole; the conventional method of ascertaining the intention of the legislature after reading the statute as a whole is more likely to lead to discovery of its true intent and is always a safer rule to follow. A statute must be read as a whole and all parts made consistent with one another if possible, each portion throwing light, if need be, on the rest. Whenever it is possible to do so, it is the duty of the court to construe provisions which appear to conflict so that they harmonise, it is legitimate and even necessary to adopt the rule of liberal construction so as to give

²

N.S. Bindra, The Interpretation of Statutes and G.C Act, 4th edn, p-33

meaning to all parts of the provision and to make the whole of it effective and operative³.

In order to discover the intention of the Legislature the enactment should be read as a whole. This general rule of construction is applicable to all statutes alike, is spoken of as construction *ex vis-ceribus actus*, i.e. within the four corners of the Act. This rule of construction has frequently been recognized and acted upon by courts of law from Coke's time down to the present day. It has been said⁴:

“The key to the opening of every law is the reason and spirit of the law; it is the animus imponents, the intention of the law-maker expressed in the law itself, taken as a whole. Hence to arrive at the true meaning of the particular phrase in a statute, the particular phrase is not to be viewed detached from viewed in its context in the statute; it is to be viewed in connection with its whole context, meaning by this as well the title and preamble and the purview or enacting part of the statute”.

10. On harmonious interpretation of different provision of Statutes and to avoid redundancy of one provision of law by another provision, the Indian Supreme Court in the case of **Sultana Begum vs. Prem Chand Jain** (AIR 1997 **Supreme Court 1006**) has laid the following rules:-

“On a conspectus of the case law indicated above, the following principles are clearly discernible:

- (1) It is the duty of the Courts to avoid a head on clash between two Sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.*
- (2) The provisions of one Section of a statute cannot be used to defeat the other provisions unless the Court, in spite of its efforts, finds it impossible to effect reconciliation between them.*
- (3) It has to be borne in mind by all the Courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, is possible, effect should be given to both. This is the essence of the rule of “harmonious construction”.*

³ M. Farani, The Interpretation of statutes, chapter 4, p-54

⁴ Craies, Statute Law, p-98

- (4) *The Courts have also to keep in mind that an interpretation which reduces one of the provisions as a “dead letter” or “useless lumber” is not harmonious construction.*
- (5) *To harmonise is not to destroy any statutory provision or to render it otiose”.*

Thus, the assertions of the learned counsel for the petitioner that Section 26 of the Ordinance would be read in isolation and not in juxtaposition with Section 34-A of the Ordinance are without any legal force.

11. Moving on to the judgment of the Apex Court in **Muhammad Rafiq’s case** (supra). The Apex Court in Para-10 of the said judgment has discussed the impact of Section 18(g) as well as Section 32 of the Ordinance. The issue before the Apex Court was that the authority to file a reference by an officer other than Chairman NAB and appeal under Section 32 of the Ordinance. A similar SRO was referred by the Apex Court in the said judgment, which was issued on 13.06.2006, according to the said SRO and even under the SRO issued on 30.10.2015, the Chairman NAB has never delegated his powers under Section 32 of the Ordinance to any officer of the Bureau to direct the filing of appeal, therefore, for filing an appeal, it is the Chairman NAB himself to direct the Prosecutor General to file the appeal and in absence of any delegation no officer can exercise the said authority, therefore, the judgment of the Apex Court is clearly distinguishable and does not apply to the present case.

12. In view of the above, we hold that the authority exercised by the Director General granting pardon to the two witnesses is intra vires and thus, the impugned order does not

call for interference. Resultantly, this petition having no merit, which is accordingly, dismissed along with Interim Relief.

Announced
24.12.2021

JUDGE

JUDGE

