

Judgment Sheet

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

JUDGMENT

W.P. No. 2792-P/2014
Date of hearing 16.03.2017.
Zaki Ullah versus NAB.

Petitioner by Qazi Jawad Ehsanullah Qureshi, advocate.
Respondent by Mr. Umar Farooq, ADPG for NAB.

WAQAR AHMAD SETH J:- Through this Constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioner has asked for the following relief that;-

- “On acceptance of this writ petition, the august Court may be pleased to
- a. set aside and quash the order No. 7-9 (19)/ FCIW-II/ NAB/ (KP)/1354 dated 10.06.2014 passed by respondents Nos. 4 & 5, by declaring the same illegal, without jurisdiction, malafide and without lawful authority; and
 - b. Direct the respondents to defreeze the Bank accounts of the petitioner and refrain them from creating hindrances in day-to-day/transactions therein; and
 - c. Pass any other order deemed appropriate”.

2. The laconic relevant facts of the case are that petitioner was serving as Secretary Housing, Government of Khyber Pakhtunkhwa since 22.02.2012.

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On 02.05.2013 he was transferred and posted as Member (General) Provincial Inspection Team (BPS-20) and lastly posted as Officer on Special Duty (O.S.D) in the Provincial Government Establishment Department. That Chairman NAB vide letter No. NAB's U.O.P. File No. 3-2(2)/ Inq-21/ KP-II/ IM-II/ NAB/ 2013 dated 03.10.2014 authorized the Director General NAB Khyber Pakhtunkhwa to conducted inquiry against the Zaki Ullah petitioner within the meaning of section 18(c) NAO 1999 into a case pertaining to acquisition of land in Moza Darwaza, Nathiagali by the Khyber Pakhtunkhwa House Authority. Thus the petitioner was booked as one of the co-accused and was arrested on **23.05.2014** as per allegation that he being Secretary Housing, in connivance with other accused persons caused colossal loss to Government Exchequer in acquisition of land in Moza Darwaza Nathiagali over Rs. 400 Million and have received an amount of Rs. 02 Cror 10 lac, as illegal gratification from accused Muhammad Asif/Navid Qadir and caused loss to Government Exchequer, thus was arrested on **23.05.2014**. For his release petitioner filed **W.P. No. 2010-P/2014** titled **Zaki Ullah versus NAB** etc which in due course of process was allowed and petitioner was admitted to bail subject to furnishing of Bail Bonds to the tune of **Rs. 21 Millions** with two sureties

by this Court vide order dated **06.08.2014**. In the meanwhile, respondents Nos. 4 & 5 had issued impugned letter **No. 7-4 (19)/FCIW-II/NAB/1354 dated 10.06.2014** addressed to Manager Operation, Habib Bank Limited, Civil Secretariat Branch, Peshawar for provision of information regarding **A/C No. 0898-00085165-03** and **A/C No. 0898-79272874-03** so maintained by the petitioner and stopped further withdrawal under section **23 of NAO 1999**. Thus feeling aggrieved from above cited impugned letter dated **10.06.2014** petitioner knocked the door of this Court under its constitutional jurisdiction. Later on vide interim order dated **22.10.2014** petitioner was allowed/permitted to draw cash amount upto Rs. 2,00,000/- (Rupees Two lac) per month only from his salaried **A/C No. 0898-00085165-03**.

3. Hence the instant constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner seeks the quashment of order dated 10.06.2014.

4. Respondents/NAB Authorities were put on notices, who have contested the suit vehemently by submitting their written reply/parawise comments on behalf of respondents Nos. 1 to 5, by raising preliminary objections.

5. Coalesce lengthy arguments of both the parties were heard and record perused with their able assistance.

6. The disputed document dated 10.6.2014 is signed by Additional Director, FCIW NAB (KP) Peshawar Naveed Haider Zahid & Member FCIW NAB (KP) Peshawar Amir Rehman, i.e respondent No.4 & 5 addressed to Manager Operation, Habib Bank, Ltd, Civil Secretariat branch with the subject and contents which reads as under:-

Subject: PROVISION OF INFORMATION U/S 19 OF NAO, 1999- INQUIRY INTO CORRUPTION AND CORRUPT PRACTICES BY OFFICIAL OF PHA AND OTHERS IN ACQUISITION OF LAND AT MOUZA DARWAZA NATHIA GALI.

1. National Accountability Bureau Khyber Pakhtunkhwa is conducting an inquiry in the subject case.
2. Mr. Zaki Ullah s/o Aman Ullah (CNIC No. 17301-1238294-5), Ex-Secretary Housing is maintaining the following Accounts at your Bank:-

S. No.	Title of Account	CNIC No.	Account Detail
1.	Mr. Zaki Ullah	17301-1238294-5	CD 851-65
2.	Mr. Zaki Ullah	17301-1238294-5	Freedom A/c

3. Please provide us attested copies of following documents in respect of above mentioned accounts.
 - a) Account opening Forms & KYC Forms.
 - b) Statement of accounts since opening of account till date.
 - c) Specimen Signature Cards.
4. Beside the above caution U/s 23 of NAO 1999 may also be placed on the above accounts immediately to stop further withdrawal.

We look forward to a prompt response from your end in the matter.

7. In nutshell the above quoted letter is a freezing order whereby the proceeds of bank account owned by the petitioner has been blocked under the garb of section-23 of the NAO, 1999 and as such it would be imperative to read sections 12 & 23 of the NAO, 1999, which reads as under:-

Section-12. “The Chairman NAB or the Court trying an accused for an 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.”

Section-23. (a) Notwithstanding anything contained in any other law for the time being in force after the Chairman NAB has initiated an inquiry or investigation into any offence under this Ordinance, alleged to have been committed by an accused person, such accused person or any relative or associate of such accused person or any other person on his behalf, shall not transfer by any means whatsoever or, create a charge on any property owned by him or in his possession, while the inquiry, investigation or proceedings are pending before the NAB or the Court; and any transfer of any right, title or interest or creation of a charge on such property shall be void.

(b) Any person who transfer, or creates a charge on property in contravention of sub-section (a) shall be punishable with rigorous imprisonment for a term, which may extend to three years and shall also be liable to fine not

exceeding the value of the property involved.

Provided that such transfer of any right, title or interest or creation of a charge on such property shall not be void if made with the approval of the Court, subject to such terms and conditions as the Court may deem fit.

8. The plain reading of above quoted section would show that it's only the chairman NAB who can order for freezing. If at all, we go to section 34(A) of the NAB Ordinance, 1999 which talks of delegation of powers in this respect the Chairman NAB may, by an order in writing, delegate any of his powers to and authorize performance of any offence function 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." There is nothing on record showing that the two officials, who have signed the impugned letter dated 10.6.2014 were authorized in this respect by an order in writing under section 34(A) of the NAO, 1999. In the case of The State through prosecutor General Accountability, NAB, Islamabad versus Babar Ali Kharal, reported in PLD-2008, Lahore-347, it has been held as under:-

----Ss. 12 & 32---Freezing of property---Procedure---Principles--
-Appeal to High Court against the judgment passed by Accountability Court vide which application for return of vehicles and jewellery

etc had been accepted--- Maintainability---Provisions of S.12, National Accountability Ordinance, 1999 dealing with freezing of property, were self sufficient and exhaustive provisions of law which had conferred powers on NAB Authorities for the purpose of freezing / seizing, attachment etc. of property of accused or any party thereof, whether in his possession; or possession of his relative, associate or person on his behalf--- Said provision however had placed certain obligations on the Authorities to mandatory that if any property was frozen/seized by the NAB Authorities, the order had to be passed by the Chairman NAB for freezing / seizure of the same, which was non-existent in the present case---Even if an order of seizure/frozen, attachment or prohibition was passed by the Chairman NAB, that would remain enforced for a period not exceeding 15 days unless confirmed by the Court where the reference against accused was sent, but in the present case, there was no confirmation by the court concerned regarding the said claim / seizure by the NAB Authorities--- Retaining property of respondent was in absolute violation of proviso to S. 12(iv) of National Accountability Ordinance, 1999 as it could not be left at the discretion of NAB Authorities that they could choose according to their wishes any provision of law and apply same for their own benefit or to justify their illegal actions to deprive an individual of his property---Even otherwise the Legislature in its wisdom had prohibited right of appeal against an interlocutory order and impugned order was not final in nature as reference was still pending with NAB; appeal by NAB, was dismissed being incompetent in circumstances.

9. Since, under section 12 of the NAB Ordinance, which provides for freezing of property, the Chairman National Accountability Bureau alone or the Court trying an accused, are conferred upon jurisdiction and competence by law to issue a freezing order and there is nothing on record regarding delegation of power on the relevant day of the impugned order, the impugned order seems to be illegal, unlawful and void.

10. In view of above, this writ petition is allowed as prayed for.

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ANNOUNCED.
29.03.2017.