

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial, CJ
Mrs. Justice Ayesha A. Malik
Mr. Justice Syed Hasan Azhar Rizvi

(AFR)

Civil Petition No.1303 of 2020

[Against judgment dated 10.03.2020, passed by the High Court of Sindh at Karachi
in Constitution Petition No.D-1884 of 2017]

Ghulam Mustafa Lund.

...Petitioner(s)

Versus

***National Accountability Bureau through its
Chairman, Islamabad and others.***

...Respondent(s)

For the Petitioner(s)	: Mr. Rasheed A. Rizvi, Sr.ASC Mr. Haq Nawaz Talpur, ASC
For the NAB	: Raja Rizwan Ibrahim Satti, Special Prosecutor
Date of Hearing	: 03.08.2023

JUDGMENT

Syed Hasan Azhar Rizvi, J.- Through this petition, filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"), the petitioner has impugned the judgment dated 10.03.2020 of the High Court of Sindh, Karachi whereby the constitution petition filed by the petitioner to challenge the legality of the final notice issued to him by the respondents was dismissed.

2. Succinctly facts necessary to appreciate the controversy in the present petition are that the petitioner was a Government Officer (PS-18) in the Finance Department, Government of Sindh, Karachi. For having assets beyond means, an inquiry was initiated against the petitioner by the National Accountability Bureau ("**NAB**") and he was arrested therein on 15.03.2016. During the inquiry, the petitioner, through the hand-written application, made an offer to the Director General, NAB for voluntary return ("**VR**") and showed his willingness to return all the assets gained/acquired by him which were the subject

matter of the said inquiry. The respondents determined the liability of the petitioner as Rs.210.311 Million and as such the petitioner, on the direction of the respondents, filed an affidavit dated 28.03.2016 for the agreement under section 25(a) of the National Accountability Ordinance, 1999 ("**NAO**") whereby the petitioner undertook to pay the above liability as per the schedule mentioned/agreed therein. The said offer of the petitioner was approved by the competent authority i.e. Director General, NAB, Karachi on 29.03.2016. The petitioner started making the agreed payments and was released from the custody of the respondent/NAB on 27.04.2016. Later, the respondents, through a Final Notice dated 21.02.2017, demanded an amount of Rs.140.62 Million in addition to the earlier agreed amount of Rs.210.311 Million from the petitioner on the ground that the earlier liability was re-determined/re-evaluated/re-assessed in compliance of an order dated 02.04.2016 of the learned Administrative Judge, Accountability Court, Sindh at Hyderabad.

3. Being dissatisfied, the petitioner challenged the legality of the said Final Notice before the learned High Court of Sindh, Karachi by filing a Constitution Petition but remained unsuccessful; hence, this petition.

4. Mr. Rasheed A. Rizvi, learned counsel for the petitioner argued that the petitioner entered into the VR for an amount of Rs.210.311 Million and signed the affidavit dated 28.03.2016 which was duly approved by the Competent Authority on 29.03.2016. The demand of an extra amount of Rs.140.62 Million was neither consented to by the petitioner nor he had voluntarily agreed to pay the same, therefore, the said demand is illegal, unlawful, unjustified, act of *mala fide* and the same is *void ab-initio* as well as of no legal effect.

Moreover, the respondents, at the time of entering into the VR by the petitioner on 29.03.2016, were not legally required to get its approval from any court and as such order dated 02.04.2016 of the learned Administrative Judge, Accountability Court, Sindh at Hyderabad directing the respondents to re-determine/re-evaluate/re-assess or recalculate the liability of the petitioner was passed without lawful authority and is *coram-non-judice*; thus, the respondents were not required to adhere to or to comply with the said order under the law.

Under section 25(a) of the NAO, once the offer of VR is made by the accused and the Competent Authority, after assessing all material, fixed the liability upon the culprit which was professedly deposited by him in favour of the NAB, the same cannot be re-determined/re-evaluated/re-assessed in compliance of the said court order dated 02.04.2016. Even otherwise, the Accountability Court was legally bound to put the petitioner on notice as to whether the amount determined and finalized by the respondents could be re-determined/re-evaluated/re-assessed before passing the said order. As the said order dated 02.04.2016 was without jurisdiction and was *void ab-initio* in view of section 25(a) of the NAO read with clause 2 of Article 175 of the Constitution, any superstructure built on the basis of *void* orders is liable to be collapsed. The learned Division Bench of the High Court of Sindh grossly erred by not appreciating the provisions of the NAO in its true perspective and further erred by wrongly noting the facts of the case. The learned Division Bench of the High Court ought to have interpreted the provisions of law while keeping in view the scope of Articles 4,9,10-A, 13 & 25 of the Constitution; hence, order dated 02.04.2016 as well as the subsequent

demand raised by the respondents *vide* final notice is unlawful and of no legal effect, thus liable to be set-aside.

5. Raja Rizwan Ibrahim Satti, Special Prosecutor, NAB representing respondents argued that the D.G. NAB, Karachi authorized an inquiry on 04.08.2015 against the petitioner on the allegation of accumulation of assets beyond known sources of income. During inquiry, the allegations were found correct and the petitioner as such admitted that he carried out heavy transactions into his as well as his family members' accounts so also purchased properties from the money embezzled during his service. The petitioner was arrested on 15.03.2016 and he, during his physical remand, offered to enter into VR through an application made to Director General NAB requesting that he be allowed to voluntarily return the embezzled money. Initially, the financial criminal liability calculated by NAB against the petitioner was to the tune of Rs. 210,311,046/-, a VR of which was approved by the competent authority on 29-03-2016 and was placed before the Accountability Court Hyderabad with the application dated 02.04.2016 for release of accused on the basis of VR. However, the Accountability Court observed that the assessment was not carried out properly as the value of assets was calculated merely on the basis of the value of the property as mentioned on the sale deeds and further advised the then Investigating Officer to re-value the assets of the petitioner on the basis of market value from some reliable sources and thereafter place the request again for consideration of the court. Whereupon, the assets of the petitioner were re-assessed/re-valued on the basis of market value and their value was worked out to be Rs. 356,598,264/- which was agreed by the petitioner *vide* his application and undertaking dated 19.04.2016 and was also approved

by the competent authority on 21.04.2016. Subsequently, the accused was released by the Accountability Court, Hyderabad *vide* order dated 27.04.2016. The petitioner has paid an amount of Rs.210.311064 Million out of total liability of Rs.356.598264 Million, whereas an amount of Rs.146.287 Million is still outstanding against the petitioner. The petitioner has not challenged his release order dated 27.04.2016 passed by the Accountability Court wherein he agreed to pay the re-assessed VR liability to the tune of Rs.356.598264 Million; therefore, the instant petition is not maintainable and is liable to be dismissed.

6. We have heard the learned counsel for the petitioner as well as the Special Prosecutor NAB and scanned the material available on the record.

7. The record shows that the petitioner, while in the custody of NAB and facing an inquiry for owning assets beyond his known sources, voluntarily came forward and made an offer by a handwritten application under section 25(a) of NAO to the competent authority to return the assets or gains acquired by him in the course. His offer was graciously accepted by the competent authority and in consequence thereof, the NAB authorities were required to determine or fix his liability against his offer of VR. Finally, the NAB authorities determined an amount of Rs.210.311/- Millions to be paid by the petitioner under his plea of the VR. A formal affidavit for the agreement under section 25(a) of the NAO was executed by the petitioner on 28.03.2016 wherein the petitioner affirmed that he, with his free consent and without any coercion, duress, or undue influence, voluntarily came forward to deposit the VR amount in installments till 30.04.2016. Whereupon, the inquiry against the petitioner was

concluded by the Investigating Officer *vide* a Voluntary Return proforma u/s 25(a) of NAO, and was submitted for the approval of the Director-General NAB. In the said proforma, under part-II (Financial Calculations/Evaluation) the amount worked out by the Combined Investigation Team (CIT) and offered by the petitioner as VR was the same as Rs.21,03,11,046/-. And the petitioner made the prescribed down payment (47.55% i.e. 100 Million out of total liability) through four pay orders dated 21.03.2016, accordingly. Finally, the Director-General NAB, being a competent authority, formally approved the offer of VR by the petitioner on 29.03.2016. Surprisingly, the respondents, through the impugned final notice are demanding an extra amount of Rs.140.62 Million in addition to the earlier approved amount of Rs.210.311 Million under VR.

8. The version of the respondents is that initially the financial criminal liability calculated by NAB against the petitioner was to the tune of Rs. 210,311,046/- as VR, which was approved by the competent authority on 29-03-2016 and placed before the Accountability Court Hyderabad with the application dated 02.04.2016 for release of accused on the basis of VR. However, the Accountability Court observed that the assessment was not carried out properly as the value of assets was calculated merely on the basis of the value of the property as mentioned on the sale deeds and further advised the then Investigating Officer to re-value the assets of the petitioner on the basis of market value from some reliable sources and then place the request again for consideration of the court. Whereupon, the assets of the petitioner were re-assessed/re-valued on the basis of market value, and their value was worked out to be Rs. 356,598,264/- which was agreed by the petitioner *vide* his application and undertaking

dated 19.04.2016 and was also approved by the competent authority on 21.04.2016. Subsequently, the accused was released by the Accountability Court, Hyderabad *vide* order dated 27.04.2016. The petitioner has paid an amount of Rs.210.311064 Million out of total liability of Rs.356.598264 Million whereas an amount of Rs.146.287 Million is still outstanding against the petitioner.

9. Now, the legal question that arises for the determination by this Court is whether the Accountability Court has the jurisdiction to direct the I.O. to calculate or re-assess/re-value the VR liability, in certain manners, which has already been approved by the Competent Authority and whether the NAB authority is bound by such order and can unilaterally enhance the value/amount of the VR while ignoring the voluntary offer made by the petitioner.

To answer the above legal questions, it is required to delve into the extent of the NAO's scope, as well as to thoroughly comprehend the true intent and meaning of the provisions outlined in section 25 of the NAO. These aspects hold profound significance in providing accurate and comprehensive responses to the aforementioned legal questions.

10. The 'Preamble' of the NAO reveals that the Ordinance is aimed to provide effective measures for the 'detection, investigation, prosecution and speedy disposal of cases involving corruption and corrupt practices'. Thus, we can divide the functions of NAB, as provided in the NAO, into three different categories namely detection, investigation, and prosecution. The present case deals with the first category relating to 'detection'. This is the stage of 'inquiry', duly authorized by the Competent Authority of the NAB on a complaint or information, so received regarding the alleged offence of corruption,

and corrupt practices by the petitioner. It is during this stage, the petitioner entered into an 'arrangement' with the NAB authorities for being discharged from the 'inquiry'. The 'arrangement', so conceived is termed a 'voluntary return'.

11. There is no manner of doubt that the intricacies and complications involved in 'white collar crime' cannot be dealt with effectively through the traditional methods of inquiry and investigation. Thus, *inter alia*, the concept of voluntary return as well as of plea of bargain have gained significance in investigative techniques used in various jurisdictions. In our country, the provisions of section 25 of the NAO provides for 'voluntary return' and 'plea bargaining'. The provisions of said section, as it presently stands, read as under:

"25. Voluntary return and plea bargaining: --

(a) *Notwithstanding anything contained in section 15 or in any other law for the time being in force, where a holder of public office or any other person, prior to the authorization of investigation against him, voluntarily comes forward and offers to return the assets or gains acquired or made by him in the course, or as the consequence, of any offence under this Ordinance, the Chairman NAB may accept such offer and after determination of the amount due from such person and its deposit with the NAB discharge such person from all his liability in respect of the matter or transaction in issue:*

Provided that the matter is not sub judice in any court of law

(b) *Where at any time after the authorization of investigation, before or after the commencement of the trial or during the pendency of an appeal, the accused offers to return to the NAB the assets or gains acquired or made by him in the course, or as a consequence, of any offence under this Ordinance, the Chairman, NAB, may, in his discretion, after taking into consideration the facts and circumstances of the case, accept the offer on such terms and conditions as he may consider necessary, and if the accused agrees to return to the NAB the amount determined by the Chairman, NAB, the Chairman, NAB, shall refer the case for the approval of the Court, or as the case may be, the Appellate Court and for the release of the accused:*

Provided that statement of an accused entering into plea bargain or voluntarily return shall not prejudice case of any other accused:

Provided further that in case of failure of accused to make payment in accordance with the plea bargain agreement approved by the Court, the agreement of plea bargain shall become inoperative to the rights of the parties immediately.

- (b) *Where an accused challenges validity of order approving plea bargain or it comes to the knowledge of the Court otherwise that the plea bargain was a result of duress, coercion or any other illegal pressure exerted on the accused during the course of inquiry or investigation, the Court after hearing both the parties may recall the approval of plea bargain to the extent of that accused.*
- (c) *The amount deposited by the accused with the NAB shall be transferred to the Federal Government or, as the case may be, a Provincial Government or the concerned bank or financial institution, company, body corporate, co-operative society, statutory body, or authority concerned."*

Clause (a) relates to the case of VR and clause (b) deals with the cases of the Plea Bargain ("**PB**"). There is a clear difference between the two clauses; under clause (a) the phrase "deposit with the NAB" and under clause (b) "agrees to return to the NAB" present two different 'transactional arrangements. One envisages full deposit and the other a commitment to pay. VR is linked with the condition of full deposit whereas PB becomes operative if the accused "agrees to return" to the NAB the amount determined by the Chairman, NAB, and the Court approves such agreement.

12. Plea of "voluntary return" is available to a person under inquiry or even before inquiry but before authorization of investigation against him, to come forward to discharge his liability by making a voluntary return of the amount due against him. A VR settlement, as a concept, is structured around and dependent upon the volition of the person who wishes to settle. VR, therefore, constitutes (i) an offer of a holder of public office or any other person to make a voluntary return of the assets acquired or gains made by him in the course, or as a consequence, of any offence under the Ordinance (ii) acceptance of that offer by the Chairman NAB (iii) determination of the amount due from such person by the Chairman NAB and (iv) deposit by such person with the NAB of the amount so determined. The reference here may be made to the case of National Accountability Bureau v. Shabbir Ahmed Malik (PLD 2020 Supreme Court 193). Anything short of this

does not constitute a valid VR settlement. VR is, therefore, a one-off voluntary return facility linked with the liability of the accused as determined by the Chairman NAB. Being a voluntary payment, any failure thereof simply puts an end to the facility of VR. VR under the law is a one-time facility of depositing the determined amount and not a long-term repayment arrangement. Even if the accused is allowed to pay the amount in installments, VR will only be effective once the determined amount is deposited in full.

13. We are mindful of the fact that in constructing and interpreting Statutes, the Court has first to look at the language of the law and interpret the same in accordance with the ordinary meaning and usage of the words. The context in which the said words have been used by the legislature as is evident from the language of the provisions itself can also be considered without adding to or subtracting anything from the same. In case of lack of clarity, as a second step, the Court may look for the intent and purpose of the Lawmaker in using a particular language and words as is evident from the language of the Statute. The reference here may be made to the case of Allied Bank Limited v. Zulfiqar Ali Shar (2021 SCMR 1213) and Jurists Foundation thr. Chairman v. Federal Government (PLD 2020 Supreme Court 1).

14. To our mind, the language of section 25(a) admits of no interpretation as the language used therein is so simple and plain. And, by applying the above principle of interpretation, it has been found that the Accountability Court has got no role, power, or authority to direct or supervise the VR proceedings. It is only the Chairman NAB (or his delegate u/s 34-A of NAO, if any) who is competent to accept the offer of VR and determine or fix the liability of

an accused thereunder. Contrarily, the cases of PB under clause 25(b) require approval of the Court. Moreover, Article 175 of the Constitution, by its clause (1), ordains that there shall be a Supreme Court of Pakistan and a High Court of each province, and recognize "such other Courts as may be established by law". Clause (2) of that Article provides that "no Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law". The learned Accountability Court had exercised a jurisdiction not vested in it; hence, its order directing the I.O. to re-asses or re-value the VR liability of the petitioner (which had already been approved by the competent authority) is nothing but nullity in the eyes of law being *coram-non-judice*, as was also, even rightly, observed by the learned Division Bench of the High Court of Sindh in paragraph No. 8 of the impugned judgment.

15. From the above, it does not, in any manner, mean that the Chairman NAB has had no authority to re-value or re-assess the liability of an accused already approved by him under the VR or to again initiate an inquiry for the same allegations. There are certain situations under which he is empowered to do so. For instance, in Dan Gunnar Bjarne Anderson v. Federation of Pakistan (PLD 2019 Islamabad 566), the petitioner, a foreign citizen, incorporated a private limited company in Pakistan and induced members of the general public to invest in a scheme that was not covered under the objects for which the Company had been incorporated. The NAB initiated an inquiry under the NAO and during the course of the proceedings before the Bureau, he and another Director, namely, Atif Kamran, offered voluntary return under section 25(a) of the Ordinance of 1999. The NAB informed him that pursuant to acceptance of his

offer of voluntary return, he had been discharged to the extent of the liability for which the voluntary return had been offered. Later, the NAB received more than 2,000 claims from members of the general public, and, therefore, a fresh inquiry was approved. The petitioner approached the Islamabad High Court and challenged the inquiry proceedings by filing the Constitution petition under Article 199 of the Constitution. The learned Court disposed of the petition with the following observation:-

"11. We, therefore, hold and declare that for a voluntary return to be valid and binding under section 25(a) of the Ordinance of 1999 it inevitably has to be based on a full and complete disclosure of all the assets and entire gains made in the course of or in consequence of the commission of the offence for which the accused has been proceeded against, otherwise the acceptance or consequent discharge will be a nullity in law. However, the Chairman, before proceeding in such an eventuality, will satisfy himself that the concluded voluntary return was based on intentional misrepresentation of material facts or failure to make a full and complete disclosure with the intent to deceive. There is no force in the argument raised by the learned counsel for the petitioner that, since the Chairman had accepted the offer after determination, therefore, the voluntary return would continue to be valid and further proceedings would be barred. The determination for the purposes of section 25(a) is essentially dependent on the disclosure made by the accused through his offer. The option of voluntary return can only be exercised at the initial stage of the inquiry and, therefore, for making a determination the Chairman cannot resort to authorizing investigation. The Chairman is thus dependent on the disclosures made through the offer and this factor further highlights the importance of making a full and complete disclosure of all the assets or gains made in the course or in consequence of the commission of the offence.

(Underlining is for emphasis)

The High Court, after properly appreciating the facts of the case and the law on the subject, has drawn the right conclusion that the NAB is empowered to inquire whether, at the time of making the offer under section 25(a) of the Ordinance of 1999, the petitioner had made

full and complete disclosure of all the assets and gains acquired or made in the course of the commission under NAO. If it is satisfied that the petitioner had failed in fulfilling his statutory obligation at the time of making an offer which had led to his discharge, then the NAB would be at liberty to proceed under NAO and the earlier concluded voluntary return will not be an impediment in prosecuting the petitioner. It has been noted with great importance that the respondents, in the present case, have not alleged that the petitioner has not made full and complete disclosure of all the assets or gains made in the course or in consequence of the commission of the offence nor do the respondents assert that the earlier determination of the VR liability is based on wrong facts and a result of some miscalculations. Rather, the respondents throughout the proceedings have consistently maintained that they have re-assessed or re-valued the VR liability in compliance with the order of the Accountability Court which has been found by us as *void*, illegal order and without lawful authority. However, if there are some laws, rules, regulations or SOPs available for the determination/calculation of the VR liability, the Court, in that eventuality, may draw the attention of the respondents to abide by them in letter and spirit. But, unfortunately, no such laws, rules, regulations, or SOPs are available on the subject, as informed by the Special Prosecutor for the respondents.

In a plethora of judgments, it was held by this Court that when the basic order is *void*, the superstructure built thereon is also *void* and it would fall to the ground automatically. In this respect, reference may be made to the cases of Yousaf Ali v. Muhammad Aslam Zia (PLD 1958 SC 104), Province of the Punjab v. Dr. S. Muhammad Zafar Bukhari (PLD 1997 SC 351), Mansab Ali v. Amir (PLD 1971 SC 124),

Abdul Salam alias Abdul Khair v. Alah Miah Serang (PLD 1971 SC 189), Khuda Bakhsh v. Khushi Muhammad (PLD 1976 SC 208), Nawabzada Zafar Ali Khan v. Chief Settlement Commissioner (1999 SCMR 1719), Muhammad Ramzan v. Member (Rev.) CSS (1997 SCMR 1635), Muhammad Tariq Khan v. Khawaja Muhammad Jawad Asami (2007 SCMR 818) and Executive District Officer (Education) v. Muhammad Younas (2007 SCMR 1835). Therefore, the subsequent undertaking/affidavit dated 22.03.2016 as well as approval of revised VR liability by the Director-General on 21.04.2016 would not advance the case of the respondents. Admittedly, the petitioner has made the full payment of Rs.210.311064 Million under the VR as determined by the Director General NAB on 29.03.2016, therefore, the petitioner is held to be discharged of his liability under the subject inquiry by the NAB.

16. Even otherwise, the word 'voluntary' as used in section 25(a) *supra* is of immense significance. The plain and simple dictionary meaning of the word 'voluntary', as per 'The Oxford Dictionary', is that; 'Of actions: Performed or done of one's own free will, impulse or choice'. Whereas, as per 'Black's Law Dictionary', Eighth Edition, the word 'voluntary' means: - 'Done by design or intention, Unconstrained by interference; not impelled by outside influence'. Thus, there can be no question of any duress, coercion or threat to be imposed by any officer of the NAB upon the person, who is under an 'inquiry', so as to extract a commitment of the 'voluntary return', stipulated under section 25(a) *supra*. It is simply an 'offer' made by the person concerned, which if 'accepted', by NAB, would constitute a valid contract. The 'consideration' of which is the return of the illegal gains made by the person to the NAB and finally to the respective department of the

Government. Being so, the respondents could not unilaterally have enhanced the already agreed/settled amount under VR.

17. For what has been discussed above, this petition is converted into an appeal and allowed and the impugned judgment dated 10.03.2020 passed by the High Court of Sindh, Karachi is set-aside.

The above are the reasons for our short order of even date which is reproduced as under:-

"For reasons to be recorded later, this petition is converted into an appeal and allowed."

CHIEF JUSTICE

JUDGE

Bench-I
Islamabad, the
3rd August, 2023
~~NOT~~ APPROVED FOR REPORTING

JUDGE