

JUDGMENT SHEET.**IN THE ISLAMABAD HIGH COURT,**
ISLAMABAD.**W.P. No.1165/2023**

Imran Ahmed Khan Niazi

Versus

National Accountability Bureau, through its Chairman, Islamabad, etc.

Petitioner(s) By : Kh. Haris Ahmad, Sr. ASC and Dr. Yaser Aman Khan, ASC.

Respondents By : Sardar Muzafar Ahmed Khan Abbasi,
Learned Deputy Prosecutor General and
Mr. Muhammad Rafay Maxood, Senior
Special Prosecutor, NAB.
Mr. Mumtaz Yousaf, Law Officer, NAB,
HQ.
Muhammad Adil Shahzad, Associate
IO/AD, NAB.

Date of Decision : 27.04.2023.

AAMER FAROOQ, C.J. – The present order shall dispose of the captioned writ petition as well as writ petition No.1166/2023 as common questions are involved.

2. The petitioners, in both the writ petitions, have received call up notices from National Accountability Bureau (**NAB**) dated 17.02.2023 and 16.03.2023 alongwith questionnaire. The petitions in hand challenged the call up notices issued by NAB.

3. Learned counsel for the petitioners, *inter alia*, contended that call up notices are in violation of section 19(e) of National Accountability Ordinance, 1999 (**the Ordinance**). In this behalf, it was contended that pursuant to amendment made in the Ordinance through National Accountability (Second Amendment) Act, 2022, sub-section (e) of section 19 was incorporated and, under the same, it is

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now mandatory for NAB to point out that call up notice issued to any person is in his capacity as an accused or otherwise so that he can file his defence. It was further contended that even otherwise, call up notices are in violation of the law laid down by the Sindh High Court as well as this Court and the Supreme Court of Pakistan. In support of his contentions, learned counsel placed reliance on judgments reported as Ghulam Hussain Baloch and another versus Chairman, NAB and 2 others (PLD 2007 Karachi 469), Asim Ahmed Afzal versus NAB through Chairman and others (PLD 2021 Islamabad 323) and Dr. Arsalan Iftikhar versus Malik Riaz Hussain and others (PLD 2012 SC 903).

4. Sardar Muzaffar Ahmed Khan Abbasi, learned Deputy Prosecutor General, NAB, *inter alia*, contended that the instant petitions have become infructuous inasmuch as the petitioners never responded to the call up notices challenged in the instant petitions. It was further contended that the petitioners are not joining the inquiry, hence they have not approached the Court with clean hands; he added that even the questionnaire has not been answered by the petitioners.

5. Submissions made by the learned counsels for the parties have been heard and the documents placed on record examined with their able assistance.

6. As noted above, the petitioners have challenged call up notices dated 17.02.2023 and 16.03.2023, issued by NAB to the petitioners. Under section 19 of the Ordinance, the Chairman NAB or an officer of the NAB duly authorized by him may, during the course of inquiry or investigation of an offence, call for information from any person with regard to an inquiry or investigation for the purposes of satisfying himself, whether there has been any contravention of the provisions of the Ordinance or any rules or order made thereunder; likewise, under sub-section (b), NAB can also require a person to produce any document useful for the inquiry or investigation or for that matter examine any person acquainted with the facts and circumstances of the case. Sub-section (e) was

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added in section 19 *ibid* through National Accountability (Second Amendment) Act, 2022, which was notified on 16.08.2022. The relevant provision of law is reproduced below:-

"19(e); any person called to provide information in relation to an offence alleged to have been committed under this Ordinance, shall be informed if he is an accused person or otherwise, and if the person is alleged to have committed an offence he shall be informed of the allegations against him in such manner as would enable him to file his defence."

The bare reading of the referred sub-section shows that under the newly incorporated sub-section, any person called to provide information in relation to an offence would be informed if he is an accused person or otherwise and if he is an accused then he shall be informed of the allegations against him so as to enable him to file his defence. It seems that the referred sub-section was added to comply with the constitutional requirement of Article 10-A, which provides for fair trial and the due process. The examination of the call up notices, on the touchstone of section 19(e), shows that compliance of sub-section (e) has not been made inasmuch as the petitioners have not been informed as to whether they are being called to provide information as accused or otherwise.

7. The call up notices are also not in conformity with the principles laid down in Ghulam Hussain Baloch and another versus Chairman, NAB and 02 others (PLD 2007 Karachi 469), wherein the Division Bench of Sindh High Court observed as follows:-

"For the purpose of present case, the provisions of section 19(a), (b) & (c) are relevant, therefore, discussion would be in respect of said provisions. 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 the Chairman NAB then during the course of said inquiry or investigation of such offence the Chairman NAB or any officer duly authorized by him is authorized to call for information from any person for the purpose of satisfying himself whether there has been any contravention of provisions of the Ordinance or any rule or order made thereunder. In this clause, "any person" would mean all persons including

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witnesses and accused from whom the information is required. The question arises as to what sort of information the person is required to furnish to the competent authority. The information would be in respect of offence alleged or any matter which can suggest that the provisions of the Ordinance, rule or order made thereunder have been contravened. For that purpose competent authority is required to ask any person from whom such information is required to provide information which has nexus with the above provisions. If a person does not know the point or allegation or offence or fact on which information is to be provide or the person against whom such information is required then how such person would be in a position to help the competent authority, therefore, while calling the information from any person, the person must be informed the fact, point, allegation, offence, name of accused, specified matter, if any, concerning the matters of the provisions in the B notice so that the person can furnish such information. If such specified information is of such a nature which, if furnished through any mode will serve the purpose, then such person should not normally be called to appear in person.

The improvements as pointed out by the learned DPG in the investigation process before the NAB authorities are basically carried out to facilitate all the concerned persons to give them due respect, not to harass them, to provide all reasonable facilities, relieve them within shortest possible time, without detaining them unnecessary or put any hardship to, any person then in all fairness the person at the initial stage should not normally be asked to appear in person and furnish such information, which otherwise, can serve the purpose by furnishing such information through any other manner. This does not mean that the authorities have no power to call such person, but in unavoidable circumstances where the presence of the person is necessary then the person can be called by signing reasons as required under section 24-A of General Clauses Act, which stipulates that where any authority or officer is empowered to make order or give any direction, such power is required to be exercised reasonably, fairly, justly and for the advancement of the purpose of enactment and give reasons for making such order. The copy of such order should find place and be made available in the case diary.

It is pointed out that if a person is called then in the summons or notice the date, time and place of his appearance should be specifically mentioned. After doing the needful an endorsement be made on the notice or summons showing the date, time and place of his appearance and the date, time and departure from the place to which he was summoned, which shall be delivered to the said person. All such orders mentioning such facts and information should be attached to the case diary. It is also pointed out that no avoidable trouble

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should be given to any person from whom information is called for or inquiries are made and no person should be unnecessarily detained.

As regards the clause (b) under which the Chairman NAB and an officer duly authorized by him, is authorized to require any person to produce or deliver any document or thing useful or relevant to the inquiry and investigation of the offence: this clause, person can also be asked to produce or deliver the document or thing which will help the Investigating Officer in the inquiry or investigation of the offence. Under this clause, the Investigating Officer is also required to specify the offence, name of the accused person, particulars of the document or thing, if available or any document or thing concerning the offence and accused having nexus with inquiry or investigation, which is required to be produced or delivered in the notice. Under this clause also at the initial stage, normally the person should not be asked to appear in person and to produce such document or thing for the simple reasons that when the document or thing is received by the Investigating Officer it will serve the purpose and if for any reason attendance of such person is required then he can be called by assigning valid and cogent reasons which shall appear in the case diary. The date, time and place of his appearance and production of the document or thing should be mentioned in the notice or summons. After appearance and doing the needful, an endorsement be made on the copy of notice or summons showing the date, time and place of his appearance and the date, time of his production of document or thing and departure from the said place which shall be delivered to the said person and the copy of such order shall be attached with the case diary.

As regards the clause (c), the Chairman NAB or any officer duly authorized by him is empowered to examine any person, who is acquainted with the facts and circumstances of the case having nexus with the inquiry or investigation of offence. Under this clause also, the normal practice is that the Investigating Officer normally records the statements of the witnesses at the place of incident without loss of time by personally going there. In the cases before the NAB authorities, the statements can also be recorded at the place of incident or residence of the person. For any reason, if the Investigating Officer finds that the witness or any person should be examined at certain place then he can issue such summons or notice showing the name of accused and particulars of offence with date, time and place of this appearance. As soon as he appears before him then his statement should be recorded. After doing the needful, an endorsement be made on the copy of notice or summons, showing the date, time and place of his appearance and the date, time of his departure from the said place, which shall be delivered to the said person and such order should also be filed with the case diary.

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It is not out of place to mention here that the concerned officer is authorized to record statements of witnesses, but he cannot force any of the witnesses to make a statement other than one which such witness voluntarily likes to make. The law does not permit such officer to beat the witness or confine him for the purpose or inducing him to make a particular statement. One of the purposes of examination of witness is to obtain evidence preliminary to arrest the accused.

The words "any person" appearing in the clause include the accused person also. The Constitution gives guarantee to the citizen under Article 4 that they will be treated according to law. Under Article 13 protection has been given to the accused of an offence that he will not be compelled to be a witness against himself. It is also against the natural justice and principles of Criminal Law to compel a person to give evidence against himself in the offence instituted against him and then base the charge on such evidence. During the interrogation, the accused can refuse to answer only those questions which are incriminatory, but he is required to answer all other questions. The protection against self incrimination is available to accused not only in respect of his words, but also on the use of documents, books, papers etc. Forcing a person to produce, deliver or turnover incriminating written materials is in effect requiring him to testify against himself. Reference is invited to 116 US 616 (1886) as reported at page 96 of Constitution of Pakistan, 1973 by Shaukat Mahmood. It is also against the guarantee provided under Article 13 of the Constitution.

In the last half of the Seventeen Century privilege against self-incrimination was well-established in England: The adoption of privilege marked a great advance over earlier practices when suspects were not only required to give testimony against themselves, but were tortured to force them to do so.

The privilege has been incorporated in the Criminal Procedure Code. It has been regarded as one of the great landmark in man's struggle to make himself civilized and assuming that a man is presumed to be innocent until proved guilty. All the other protection facilities as discussed under clause (a) should also be provided to the persons in respect of clauses (b) and (c) of section 19 of the Ordinance."

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The principles laid down in the said judgment were endorsed by the Supreme Court of Pakistan in Dr. Arsalan Iftikhar versus Malik Riaz Hussain and others (PLD 2012 SC 903). Even this Court in PLD 2021 Islamabad 323 supra followed the principles in its earlier judgment in Mst. Rukhsana Bangash versus Chairman,

NAB and others (Writ Petition No.2994/2020), wherein the following principles were laid down:

- i) If notice is issued to a person, who is a suspect in inquiry or investigation, the nature of allegations against him.
- ii) The name and identity of complainant; if NAB has initiated inquiry/investigation, then it should be stated so in notice.
- iii) Documents, if any, sought from person called as suspect or witness.
- iv) If person is called as a witness, it would be so stated in call up notice.
- v) If custodian of any material document or record is called for examination of same, the call up notice should state so and the details of documents and record.
- vi) Date, time and place, where person called, is to appear.
- vii) Any other relevant information.

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Copy of the Judgment of the Court of Sessions, Islamabad, dated 03/05/2023, in W.P. No. 2994/2020, is hereby certified to be a true copy.

Learned Deputy Prosecutor General, NAB submitted that petitions have become infructuous inasmuch as notices were never acted upon. The position taken by the learned Deputy Prosecutor General, NAB might be correct inasmuch as pursuant to the notices, the petitioners never appeared but as already observed, they are not in conformity with the law. In case, petitions are disposed of as

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having become infructuous, the respondents might issue fresh notices suffering from similar defect.

8. In view of above, the instant petitions are **disposed of** with observations that notices impugned are not in accordance with law and having no legal effect. Needless to observe that NAB shall be at liberty to issue fresh notices to the petitioners in line with the observations made hereinabove as well as law on the subject.

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(BABAR SATTAR)
JUDGE

(CHIEF JUSTICE)

M. Shah/*