

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

C.P No.D-1465 of 2024

Present

**Mr. Justice Amjad Ali Sahito
Mr. Justice Khadim Hussain Soomro**

Petitioner/NAB: Through M/s. Zahid Hussain Baladi, Niaz Hussain Mirani Special Prosecutors NAB & Sattar Muhammad Awan, D.P.G NAB.

Respondents: Through M/s. Prakash Kumar Deputy A.G & Bashir Ahmed Almani, Asst. A.G for Pakistan.

State: Through M/s. Allah Bachayo Soomro, Additional Advocate General Sindh and Muhammad Yousuf Rahpoto Assistant Advocate General Sindh.

Date of hearing: 20.11.2024

Date of Judgment: 18.12.2024

ORDER.

AMJAD ALI SAHITO, J.- Through this constitutional petition, the Petitioner/National Accountability Bureau (“**NAB**”) has assailed the order dated 29.08.2024 passed by National Accountability Court-II, Hyderabad in Reference No.01 of 2023 [Re: *The State v. Adnan Rasheed & others*] by which the application of the Petitioner/NAB claiming 25% share against the embezzled funds of M-6 Motorway Project District Matiari & Noushero-Feroz was dismissed.

2. It is the case of the Petitioner/NAB, that during investigation, it came on record that a set of accused persons/main beneficiaries involved in the offence of embezzlement of funds of M-6 Motorway Projects in both districts i.e. District Matiari and District NousheroFeroz. The accused persons embezzled an amount of Rs.5.8 Billion in both the districts. After completing the investigation, Reference No.01 of 2023 [*The State v. Adnan Rasheed& others*] was filed before Accountability Court-II, Hyderabad, wherein an application was

filed by the Special Prosecutor, NAB, requesting that the amount deposited by accused Ashique Hussain Akhlaque through “Plea-Bargain” total amounting to Rs.878,118,000/-; hence, as per SOPs, NAB was entitled to get 25% share of the total amount so recovered from the accused persons i.e. 219,529,500/-. However, after hearing the Special Prosecutor, the said application was dismissed vide order dated 18.01.2024 passed by Accountability Court-II, Hyderabad, which is impugned in these proceedings.

3. Before filing this petition, a Constitution Petition being C.P No.D-331 of 2024 was filed by the NAB Authorities and vide order dated 08.08.2024, the learned trial Court was directed to pass a fresh order after providing the opportunity of hearing to learned Special Prosecutor, NAB and the learned counsel appearing for Acquiring Agency/National Highway Authority (“**NHA**”) and the petition was disposed of accordingly.

4. The learned trial Court after hearing the parties, vide order dated 29.08.2024 dismissed the claim of the NAB and ordered that a 25% share, deducted by the NAB from the amount deposited by the accused through plea-bargain process, be remitted to NHA within a period of one (01) month.

5. Learned Special Prosecutors, NAB duly assisted by Mr. Sattar Muhammad Awan, D.P.G NAB submits that as per Rules/SOPs, the NAB is entitled for 25% amount from the total recovery; that the learned trial Court had exceeded its jurisdiction by exercising Suo-Moto powers and issuing the order dated 18.01.2024 without any application from either of the parties which are not within the mandate of Accountability Court. It is, however, very respectfully submitted that the points of legality or otherwise of Rules namely: “National Accountability Bureau (Recovery and Reward) Rules, 2002” (hereinafter referred to as “**Rules, 2002**”) and or Notification/letter dated 6th July 2000 issued by Federal Government of Pakistan Finance Division (Office of AFS (Exp) are/were neither subjudice before Trial Court nor before this Court. These rules and notifications/letters are legal having proper statutory and constitutional backing/support.

6. They further argued that the Honorable Supreme Court has observed in many decisions regarding the mandate of

Judiciary, Executive and Legislature. The legislature is assigned the task of law-making, the executive to execute such laws and the Judiciary to interpret the laws, none of the organs of the State can encroach upon the field of the others (**PLD 2012 Supreme Court 917**). They further submitted that the Honorable Supreme Court of Pakistan has also held in its judgment reported in **2024 SCMR 997**, that the Judiciary can adjudicate upon the matter which is subjudice before it; that original section before amendment conferred powers on the President of Pakistan to frame rules, in consultation with the Chief Justice of Pakistan, to carry out the purpose of National Accountability Ordinance (“**NAO**”); that it was further provided in the Rules so framed shall be read as part of NAO. They have relied upon (un-amended) section 34 of the NAO, 1999, which is reproduced as follows:

“The President of the Islamic Republic of Pakistan in consultation with the Chief Justice of the High Court of the concerned Province may make Rules for carrying out the purpose of this Ordinance and the said Rules, shall on promulgation be a part of this ordinance.”

7. They further argued that the rules were framed through SRO 655 (1) 2002 and, on 09.09.2002 SRO 655 (I)/2002, the President of the Islamic Republic of Pakistan in consultation with the Honorable Chief Justice of Pakistan had promulgated the rules that are called “National Accountability Bureau (Recovery and Rewards) Rules 2002 and the same were published in Gazette of Pakistan on 26th September 2002); that the Notification dated 6th July 2000 issued by Federal Government of Pakistan also authorize NAB to retain portion of recovered/discovered amount for the purposes as mentioned therein; that the notification and the rules mentioned herein above are also protected under the provisions of sub-article (2) of Article 27AA of The Constitution of the Islamic Republic of Pakistan, 1973; that Rule 4 of above mentioned Rules, 2002 which were subsequently published in official Gazette, clearly mentioned about the share of NAB from recovered amount; that the Accountability Court No.1 at Hyderabad has hastily passed an impugned order without applying judicial mind as the deduction of 25% share from the amount deposited by the

accused through plea-bargain is legal and following law, Constitution of Pakistan and rules framed thereunder, and therefore, not contrary to the law; that High Court of Balochistan passed an order against NAB in an identical matter which was reported in **PLD 2016 Baluchistan 69**; that NAB filed an Appeal against the decision of the Balochistan High Court which was set aside by the Honourable Supreme Court of Pakistan in Civil Appeal No.1004 of 2019 and remanded the matter for rehearing and now the issue is still pending before the Honorable High Court of Balochistan. They further submitted that identical matters are also pending before the High Court of Sindh at Karachi, the High Court of Islamabad and the High Court in Lahore. They submitted that the Accountability Court instead of passing impugned order should have waited for the decision of the High Court(s); that on 16.10.2024 this Honorable Court framed a question about the mechanism of distribution of the recovered amount by way of Voluntarily Return (V.R) and Plea Bargain (P.B) by the NAB; that NAB does not keep 25% retained amount from VR/PB with NAB; that the NAB has always deposited this amount in the Federal Consolidated Fund; that the NAB authorities do not utilize such recovered amount/retained amount via V.R / P.B; that on the direction of this Court details submitted by the Additional Director Finance, NAB Islamabad through the Special Prosecutor state that the retained amount has already been deposited in the Government Treasury and NAB share in the Federal Consolidated Fund; that the NAB has been left with no amount in its hands after depositing in the Consolidated Fund. They submitted that the NAB has properly and duly complied with the mandate of Article 78 (2) (b) of the Constitution after depositing the amount in the Federal Consolidated Fund. Lastly, they prayed that the impugned order may be set aside.

8. On the other hand, Mr. Noorul Haq. N. Qureshi, learned *Amicus Curiae*, argued that Rules promulgated by exercising powers conferred upon the Chairman to make rules and approval of the President to carry out the purposes of Ordinance 1999 drawing powers U/S: 34 thereof; that Section 33-A, providing glaring features for payment of bonuses or ex-

gratia payments to the officers of the staff of the NAB, other government servants, public servants and rewards to members of the public for rendering commendable services in detection and does not include levy of 25% amount; that the rules have been formulated contrary to wisdom and powers so exercisable. Hence rule-making by itself without statutory powers having no legal force.

9. Learned *Amicus Curiae* further submitted that the NAB being a statutory body bound to investigate and prosecute all those cases falling within their domain defined as offences under NAB Laws; Section 10 of NAO depicts assets and pecuniary sources of public holder office to be disproportionate to non-source of income, which otherwise obtained on acquire through the corruption shall be forfeited to the appropriate government; that Section 25 of the NAO enunciates that if the assets or gains acquired by a holder of public office or by any other person are voluntarily returned or enters into Plea Bargain; that the Chairman may accept such offer and then such amount has to be deposited with the NAB of permission of Court U/S: 25 (a) by following the procedure laid down under sub-section (c).

10. He further submitted that Article 78 and Article 118 of the Constitution of Pakistan specifying the glaring legal position of Federal consolidation funds and public accounts; that similarly, Article 118 provides Provincial consolidated funds and public accounts; that by virtue of Rules, 2002 the instruction by the Finance Department referred is a proposal for rewarding NAB officials for their statutory duties in such eventuality it amounts sort of levy of the tax dealing Art. 77 of the Constitution. Therefore, except for promulgation of the Act by Parliament or Provincial Assembly, it cannot be levied as depicted. Hence the letter issued by the Finance Division dated 06.07.2000 without such legal backing as enunciated by Article 77 for deduction of 25% out of the recovered amount would be contrary to Article 77 of the Constitution.

11. He further argued that besides the above legal and factual position, hereferred letter dated 04.05.2000 issued by the Chief of Staff of the Chief Executive of Pakistan addressed to Chairman NAB disclosing approval of NAB proposal for retaining

a certain portion from the recovered amount through NAB operations having no legal backing Under Article 270-AA of Constitution which defining all President Orders, Ordinances, Martial Law Regulations, Martial Law Orders including Referendum Order, 1984 and other President Order of like nature, not includes Chief Executive approval; hence not fall within such affirmations guaranteed by Article 270-A and therefore declaration and confirmation of those laws defined Under Article 270- AA of the Constitution, hence, the power drawn and continuously exercised by the NAB authorities having no legal backing as such same is not warranted by law.

12. Mr. Ishrat Lohar, learned *Amicus Curiae* argued that the recovery of ill-gotten money was effected through due process of law as envisaged under section 25 of the NAO; that the trial Court was fully competent under section 25(c) of NAO to order that the amount deposited with NAB be transferred to the Federal Government, Provincial Government, or the concerned authority within one (01) month from the date of deposit; that the directions given were within the spirit of the Law and the Court has a authority to order for disposal of property or recovery effected through the process of plea bargaining. He further argued that Section 33-A of NAO only provides for payment of bonuses or ex-gratia payments to NAB officers, government servants and reward to members of the public for rendering commendable service in detection, investigation, and prosecution of offences under the Ordinance, and that detection of 25% from the recovered amount is therefore, illegal. Lastly, he supported the impugned order passed by the trial Court.

13. Notices were also issued to the Attorney General for Pakistan and Advocate General, Sindh to assist this Court on the legality or otherwise of the aforesaid notification issued by the Finance Division and as to whether legally the NAB can claim any amount recovered under the NAO, from the accused persons towards the corruption money. Further, it was informed that this notice be treated in terms of Order XXVII-A of CPC. However, the parties were directed to come prepared on the issue involved in this petition and the petition shall be heard and decided at Katcha Peshi stage. In pursuance of the notice Mr. Parkash

Kumar Deputy Attorney General for Pakistan & Mr. Bashir Ahmed Almani Assistant Attorney General for Pakistan showed their appearance and argued that the amount originated from NHA for the purpose of acquiring land for the construction of the M-6 project, intended to facilitate the public at large, however due to corruption, the project was subsequently abolished; that without lawful justification the 25% amount was deducted by NAB. The funds were granted to the Federal Government for the purpose of construction of the M-6 project. They lastly supported the impugned order.

14. Mr. Allah Bachayo Soomro Learned Additional Advocate General, Sindh supported the arguments advanced by Mr. Noorul Haq, learned Amicus Curiae.

15. Heard the learned counsel for the respective parties and learned Amicus Curiae and perused the material available on record.

16. From the record, the factual position appears to be that the Petitioner/NAB during investigation discovered that a set of private accused persons who were made beneficiaries were involved in the offense of embezzlement of funds of M-6 Motorway Project in both the districts that is District Matiria and District Noushero-Feroz. The charge of embezzlement against the accused persons was Rs.5.8 Billion in both districts. On completion of the investigation, the NAB filed Reference No. 01 of 2023 (*State v Adnan Rasheed and others*) before the Accountability Court No-II, Hyderabad. An application was made in the reference by the Special Prosecutor, NAB, praying therein that the amount deposited by the accused Ashique Hussain Kaleri and Ikhlaque Hussain Shah under the "Plea-Bargain", the total of which was Rs. 878,118,000/-. It was prayed that as per the SOPs, NAB was entitled to get 25% of the total amount recovered from the two accused under "Plea-Bargain" which according to the NAB was Rs. 219,529,500/-. However, NAB Court after hearing the parties dismissed the application of NAB Prosecutor by the impugned order which is the subject matter of these proceedings.

17. Prior to these proceedings, a Constitution Petition being C.P No.D-331 of 2024 was also filed by the NAB Authorities

in which by an order dated 08.08.2024, the learned trial Court was directed to pass a fresh order after providing the opportunity of hearing to the learned Special Prosecutor NAB and the learned counsel appearing for Acquiring Agency/NHA and the said petition was disposed of in those terms. The present proceedings are the outcome of the fresh order which was passed by the Accountability Court after hearing the parties in compliance with the order in C.P No.D-331 of 2024 and had dismissed the application of NAB.

18. The objection by the learned Special Prosecutor, NAB, in regard to the jurisdiction of the trial Court *inter alia* on the ground that the trial Court passed the impugned order by exceeding its jurisdiction by exercising *Suo-Moto* powers is not substantiated by the material which has been placed by the parties before this court. The record reflects that the accused Ashique Hussain Kaleri and Ikhlaque Hussain Shah voluntarily entered into the process of "Plea-Bargain" as provided under section 25(b) of NAO which was forwarded to the Regional Board of Management (RBM) and after appropriate legal sanction by the NAB authorities the same was placed before the trial Court with an application. A report in detail mentioning the disbursement of the deposited amount was submitted by the Investigating Officer on 18.01.2024 before the Registrar of the trial Court who placed it before the court along with a submission note. The Statement/Report disclosed the amount deposited by the accused Ashique Hussain Kaleri through "Plea-Bargain" was Rs.875,138,000/- while the amount deposited by Ikhlaque Hussain Shah under "Plea-Bargain" was Rs. 20,980,000/-, total amounting to Rs. 878,118,000/-. Out of the aforesaid amount, the NAB authorities claimed to have deducted 25% as their share which is Rs. 219,529,500/- as per their SOP and the remaining recovered amount after deducting the aforesaid amount of 25% share, which comes to Rs. 658,588,500/-, was returned to NHA. Upon this material, the NAB court, after examining the quantum of amount unilaterally deducted by the NAB agency from the recovered amount of the plea bargain was justified, sought an explanation from the NAB authorities as this was the public money which was owned by the NHA for a public project. Such

an exercise, by the NAB court cannot be equated as a *Suo-Moto* power more so when such power was conferred not only by the inherent jurisdiction of the NAB court but was further under a directive given by this Court in C.P No. D-331 of 2024.

19. Therefore, the objection that the NAB Court did not have the power to examine the legality or otherwise of the 25% share claimed and deducted by the NAB authorities under the garb of SOP was without any substance. Section 25(b) of NAO provides that at any stage of the investigation before or after the commencement of the trial or during the pendency of the appeal if the accused offers to return to the assets or gains acquired or made by him in the course or as a consequence of any offence under this ordinance then the NAB authorities after taking requisite approval from the competent authority will approach the trial Court and/or the Appellate Court as the case may be and the trial Court or Appellate Court may in the public interest accept such a “Plea-Bargain” and on deposit of such amount in terms of 25(c) of NAO, the NAB shall transfer it to the Federal or Provincial government or to any statutory or concerned department within one month from the date of such deposit. For the sake of convenience, section 25(c) of NAO is reproduced as under:

“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 (as the case may be) or the concerned Bank or Financial institution, company, body corporate, co-operative society, statutory body, or authority concerned within one month from the date of such deposit”.

20. From the plain reading of the aforesaid section, it is clear that the amount recovered under a “Plea-Bargain” by the NAB authorities shall be transferred to the Federal or Provincial government or any other authority concerned within one month. It is the prime duty of the NAB court to ensure that the entire recovered amount under “Plea-Bargain” shall be transferred to the concerned department or agency which was being cheated or who’s amount was being embezzled. This by itself is sufficient to overrule the objections of the learned Special Prosecutor, NAB that the law does not permit any share of the NAB authority.

21. The next submission of the learned Special Prosecutor NAB was a reference to Rules, 2002 and submitted that in the said rule, it is clearly mentioned about the share of the NAB. Rule 4 states that bonus or ex-gratia to the officers, staff of the NAB, and other government servants and public servants, the given rewards for their commendable in detection, investigation and prosecution of any offence under NAO. The contention so raised by the Learned Special Prosecutor is relatable to section 33-A of NAO which is produced hereunder:-

“33A. [Payment of bonuses etc.-There may be paid bonuses or ex-gratia to the officers and staff of the NAB, other Government servants, public servants and rewards to the members of public for rendering commendable services in detection, investigation and prosecution of [any offence under this Ordinance as may be prescribed by rules]”.

22. The provisions regarding bonus or ex-gratia payment for extraordinary performance, as outlined in Rule-4 (d) of the Rules, 2002, spells out that the bonus is capped at a maximum of **“one year's basic salary”** of the awardee and not 25% of each recovered amount. It further has a rider that it can only be awarded **once a year**, and therefore, it can neither be claimed as a right nor be awarded for each recovery. Even otherwise, bonus or ex-gratia payment as contemplated in the rules could only be given to those officers and/or staff members whose performance on evaluation was found as extraordinary shall be given to those officers and staff members whose performance has been extraordinary. The amount so awarded shall ordinarily be at the maximum of equivalent to basic salaries of one year and that too once in a year on the recommendation of the committee. It further provides that the amount of the award shall be decided on the basis of (1) the Nature of the work performed. (2) Size of recovery made. (3) Risk and initiative involved; and (4) Rank and status of the awardee. This limitation ensures that the reward remains special and not a regular feature. Such payments are to be awarded to officers and staff members based on their exceptional contributions, under the recommendation of the Committee constituted under Rule 3, with the NAB Chairman holding the authority to approve them.

23. TERM “EX-GRATIA & BONUS” INTERPRETED BY APEX COURTS: In the case of “(M/S) The National Embroidery Mills Ltd. and Others vs. Punjab Employees Social Security Institution and Others, 1993 SCMR 1201” August Supreme Court ruled that;

8. The amount paid by the employer is in discharge of his legal duty and contractual obligation for service rendered by the employee. Such payment the employee gets as matter of rights and entitlement under the contract or law and not as ex gratia, charity, dole, grace, reward, gift or compensation on compassionate grounds at the mercy and will of the employer.

24. There is unanimity of view that any payment ex-gratia to an employee does not fall within the definition of "wages". The ex-gratia payment is not made under any contract or law but at the sweet will of the employer. The wage is remuneration for service and therefore, the payment has a direct nexus with the services rendered and cannot be termed to the ex-gratia payment or merely a reward or gift to the employees.

25. It is also important to observe over here that the amount payable means anything which was due on account of any legal/vested right expressed or implied but ex-gratia grant being discretionary in nature cannot be claimed as of right. The amount paid by the employer is in the discharge of his legal and contractual obligation for the services rendered by the employee. Such payment, the employee gets as a matter of right and entitlement under the contract or law and not as ex-gratia, charity, dole, grace, reward, gift or compensation on compassionate grounds at the mercy and will of the employer. The other characteristic is that the payment should not be irregular in character and must have a direct nexus with the actual performance of work. Any payment ex-gratia to an employee does not fall within the definition of "wages". **The ex-gratia payment is not made under any contract or law but at the sweet will of the employer.** Reliance is placed in the case of “(M/S) The National Embroidery Mills Ltd. and Others vs. Punjab Employees Social Security Institution and Others, 1993 SCMR 1201.”

26. Turning to Rules, 2002, Rule 2 (m) defines Reward as follows: **“Reward”** means the amount payable to, an informer being a member of the public for providing material evidence.

27. Whereas **Black Law Dictionary provides a Definition of REWARD:-** A recompense or premium offered by the government or an individual in return for extraordinary services to be performed, or for special attainments or achievements, or **for some act resulting to the benefit of the public**; as, a reward for useful inventions, for tile discovery and apprehension of criminals, for the restoration of lost property. **Pakistan Law Site Definition of Reward:** something of value, use money, given in return for some service or achievement such as recovering property or providing information that leads to the capture of a criminal. **Britannica Dictionary definition of Reward:** money or another kind of payment that is given or received for something that has been done or that is offered for something that might be done. **Cambridge Dictionary Definition of Reward:** an amount of money given to someone who helps the police or who helps to return stolen property to its own; **MERRIAM WEBSTAR DEFINITION OF REWARD:** something that is given in return for good or evil done or received or that is offered or given for some service or attainment Legal Dictionary Definition of Reward A sum of money or other compensation offered to the public in general, or to a class of persons, for the performance of a special service.

28. Rule 3. of Rule 2002 provides that the committee *shall make recommendations to the Chairman NAB for sanction of rewards*, other ex-gratia payments such as others from the recovery and rewards expenditures from the recovery fund following these rules. **Rule 4, Recovery and Rewards Fund:** There Shall be established a fund to be called the NAB’s Recovery and Rewards Fund which shall consist of the ***NAB’s Share in the recovered amount approved by the Chief Executive.*** However **14.07 (iv) of National Accountability Bureau (NAB) Employees Terms and Condition of Service (TCS), 2002**, provides that ex-gratia or remuneration or honorarium or reward to any employee in recognition of his extraordinary service for the NAB under instruction of the Chairman NAB. The word

“remuneration” has a wider significance than salary and wages. It includes payments made, besides the salary and wages. It may be in the nature of allowance, the reward for services rendered and also monetary value for the house or reimbursement allowance spent in the performance of the duty. (1993 SCMR 1201).

29. The plain reading of NAO clearly reflects that the wisdom of legislature while promulgating the NAO was confined to unearth, discover, or eradicate the corruption, but with an exception that the power so exercised under the NAO shall be in regards to the offenses which have mega scandals. NAO does not in any way confer power either on the NAB authorities or on other financial authorities whom the NAB authorities claimed to transfer the amount of 25% share under the garb of any SOP to treat it as revenue generating authority. The employees of NAB are public servants and they are obligated to discharge duties for which they are paid salaries and other perks and previllages. NAO does not in any manner encourage the investigating authorities to share any amount so recovered in the discharge of their duties from the accused person under NAO. The wisdom behind the promulgation of the NAO was to ensure that all mega-scandals shall be handled with iron hands by the officers of the NAB and they were given ample powers under the NAO being special law to adopt different modes during investigation which powers are neither conferred on regular police or any other agency investigating any corruption either on the Federal or Provincial Government.

30. In other words, the NAB authorities are pocketing the embezeled amount recovered by them which was required to be utilised by the public functionaries for the larger interest of the public at large in different projects. If such a practice is allowed to continue then it would imbalance the entire progress in the country as 25% of the amount of the project if it pocketed by any agency or deposited in Federal Consolidated Fund, the projects will never complete and this being the under developed country will further be taxed.

31. The documents, SOPs or other letters relied upon by the NAB authorities to justify the deduction of an amount of 25%

of their share are misconceived. These letters or SOPs are in conflict with the object for which NAO was promulgated and therefore being in conflict cannot be given any legal sanctity as rules are always subordinate to the sections and if once they are found in conflict then they have to be declared as nullity.

32. The exception created by the rules to grant funds through an award to the employees again is a debatable issue as a mere discharge of duties under NAO does not entitle an employee to be awarded a bonus or other monetary compensation unless it is shown that he, in the discharge of duties, has travelled beyond his call of duties and his performance was extraordinary. The committee itself cannot grant or award monetary benefits merely on the ground that he has detected an ordinary case which is in normal course was duty bound to detect or investigate. A line has to be drawn for awarding monetary benefits to such a person under the ruse but in no way the language of the ordinance permits that the employee would be entitled to the embezeled amount which have been awarded under the garb of the rules.

33. From the face of impugned order it appears that after deducting 25% share by the NAB from the depositing amount the rest of the amount was deposited with the Accountability Court. It further appears that nearly Rs.210 million were deducted by the NAB whereas sub-rule 2 of Rule 4 of Rules, 2002 specifies sanctioning authority for the payments drawn in accordance with Rule-4 shall be the Chairman NAB and it has been further classified from 2-A to 2-F, which includes the hiring of experts or consultants, Development of National Strategy on eradication of corruption, Purchase of equipment and transport, bonus or ex-gratia for extraordinary performance, rewards for informer and welfare measures, further it reveals Rule-5 shows accounting procedure with regard to NAB share by virtue of Section 5 (8) of NAO, shall be deposited in the account maintained with NBP CE Sect-II Branch, while for foreign exchange shall be surrendered to State Bank of Pakistan and equivalent thereto shall be deposited in the same account.

34. We have confronted the above position to learned Special Prosecutors, NAB so also learned DPG, NAB on which

they stated that Rule-4 of Rules, 2002 is based upon the approval of the Chief Executive and it provided that the Chief Executive of Pakistan has been pleased to approve NAB's proposal for retaining the portion of money recovered/discovered through NAB's operation with view to sustain accountability process and make NAB self-sufficient with regard to its funds. They further state that Rule 4 (mentioned supra) is based upon the approval of the Chief Executive and it specified that the Chief Executive of Pakistan has been pleased to approve NAB's proposal of retaining a portion of the money recovered/discovered through NAB's operation, intending to sustain accountability process and make NAB self-sufficient with regards to funds. It is appropriate to reproduce the relevant letter/notification dated 06.07.2000, as under:-

*“Government of Pakistan
Finance Division
(Office of the AFS (Exp)*

.....

2000

Islamabad, the 6th July,

Subject: FINANCING OF NAB OPERATION.

Please find enclosed a copy of letter No.1(5)DS/B&A/2000-NAB, dated 4th May, 2000 from COS to Chairman, NAB addressed to Finance Secretary on the above subject. The Chief Executive of Pakistan has been pleased to approve NAB's proposal of retaining a portion of money recovered / discovered through NAB operations, with a view to sustain accountability process and make NAB self sufficient with regards to funds as follows:-

<i>a. Recovery of Bank Default</i>	<i>3%</i>
<i>b. Recovery of write offs</i>	<i>20%</i>
<i>c. Recovery from known CBR dues</i>	<i>10%</i>
<i>d. Discovery and recovery of CBR due</i>	<i>30%</i>
<i>e. Recovery of corruption money</i>	<i>25%</i>

2. All relevant quarters i.e. Banks, Provincial Government, CBR and all corporations / corporate bodies are requested to kindly see the decision of the Chief Executive for further necessary action at their end.

*Sd/-
(Syed ShamsamulHaq)
Addl. Finance Secretary (Exp)”*

35. After going through the referred letter, Section, and Rule(s) relied upon by the learned Special Prosecutor NAB a question arises as to whether NAB is entitled to get a 25% share from the recovered amount and whether such a mechanism is available under the law i.e. NAO. The learned Special Prosecutors

NAB as well as learned DPG heavily relied upon Rule-4 of Rules, 2002. This empowers NAB to get a 25% share from the recovered amount, however, they admit that neither it is mentioned in NAO nor in the Rules but they are deducting 25% based on the letter dated 06.07.2000. (supra).

36. It appears that the Rules were framed in the year 2002 through SRO 655 (1) 2002 and on 09.09.2002 SRO 655(I)/2002, which reflects that the President of Pakistan in consultation with the Chief Justice of Pakistan had promulgated the rules which are called as “National Accountability Bureau (Recovery and Rewards) Rules, 2002”, and the same were published in Gazette of Pakistan on 26th September 2002.

37. When we enquired from the learned DPG, NAB that the letter was issued on 06.07.2000 by the Federal Government and at that time no Rules were framed by the NAB, as such, how did said notification/letter apply to the present case then he has submitted that notification and the Rules mentioned or protected under the provisions of Sub-Article (2) of Article 270-AA of the Constitution of Islamic Republic of Pakistan, 1973. However, from the face of the notification/letter (supra), it appears that the Chief Executive of Pakistan has approved the NAB’s proposal for retaining the portion of the money recovered through NAB operation but nowhere it is written that the said proposal was covered with Sub-Article (2) of Article 270-AA of the Constitution of Islamic Republic of Pakistan, 1973. Further, Section 10 (a) of NAO has significant features which precisely the commission of the offence of corruption by a public servant which later on shall be forfeited to the appropriate government. Coupled with Section 25 (a) of NAO, 1999, specifying on voluntarily return and plea bargain by the accused with the Chairman NAB, who may accept such offer and after determination of the amount due from such person and its deposit discharge such person from all his liability in respect of matter and transaction in issue.

38. Likewise Section 25 (c) of NAO, clarifies such deposit by the accused with the NAB shall be transferred to the Federal Government or Provincial Government as the case may be or concern bank or Financial Institute or company, body corporate, co-operative society, statutory body, or authority concerned

within one month from the date of such deposit, totally disapproves such establishment of funds which shall consist of the NAB share in the recovered amount directly corresponding approved by Chief Executive as endorsed in the letter dated 06.07.2000 without lawful authority deemed to be an administrative approval cannot be equated as legislative validation.

39. Thus, the rules when inconsistent with the very law cannot be substantiated as part of the original law. Particularly Rule-4 drawing authority from the approval of the Chief Executive not to be considered as legal legislation in the shape of rules contrary to the basic wisdom that prevailed in Sections 8 & 25 (a & c) of the original NAO, hence, deemed to be not warranted by law.

40. From the perusal of the above, the NAB Reward Rules are very much silent about when NAB authority can deduct a share from the recovered amount, however, Rule-4 is expressing only NAB will have the share in recovered amount approved by the Chief Executive. It means the NAB has no autonomous authority to deduct the amount directly from the recovered amount, whereas in accordance with statutory law NAB has to deposit the whole recovered amount in National Exchequer. Hence, Section 25 (c) of NAO (supra) is very much clear in this regard.

41. Besides, Articles 77 & 78 of the Constitution of the Islamic Republic of Pakistan, 1973 provide that:-

Article -- 77. LEVY OF TAXES --- DELEGATION OF POWERS --- Legislature merely delegates powers to Federal Government so as to enable it to work out certain details and exercise its discretion in order to achieve object of the stature. Legislature, by no stretch, by no stretch of imagination abdicates its power and authority expressly provided under Article 77 of the Constitution.

Article -- 78. FEDERAL CONSOLIDATED FUND AND PUBLIC ACCOUNT --- (1) All revenues received by the federal government, all loans raised by that Government and all moneys received by it in repayment of any loan shall from part of a consolidated fund, to be known as the federal Consolidated Fund. (2) All other moneys (3) Received by or on behalf of the federal Government; or (4) received by or deposited with the Supreme Court or any other Court established under the authority of the Federation shall be credited to the public account of the federation.

42. Article 77 of the Constitution states that no tax shall be levied for the purpose of the federation except by or under the authority of the Act of Parliament. In such eventuality, if any, such levy by any organization or other entity is authorized by the government to receive or collect any such amount is to be considered without any legal backing rather could be by the enactment of law promulgated through Parliament or Provincial Assembly. According to Articles 78, 79, and 118 of the Constitution any recovered amount, if any, should be deposited in the public account of the Federation or Provincial Government. NAB authorities or the Ministry of Finance are not authorized to deduct amounts recovered through plea bargains.

43. As discussed supra, we do not find any illegality or irregularity in the impugned order, which is upheld and as a result whereof, instant Constitution Petition being devoid of merits is hereby **dismissed** along with the listed applications.

44. Before parting with the order, this Court expresses its sincere gratitude for the time, effort, and expertise expended by the learned *Amicus Curiae*, M/s. Noor-ul-Haq Qureshi and Ishrat Ali Lohar, ASCs, in assisting the Court in navigating the intricate legal questions and for their commitment to upholding the integrity of the judicial process. The Court recognizes the significant contributions made by the *Amicus Curiae* in facilitating a thorough and impartial understanding of the legal issues involved in this matter. The Court appreciates the selfless service rendered, which has undoubtedly assisted in the proper presentation of legal arguments and in the advancement of justice.

JUDGE

JUDGE

Abdullahchanna/PS