

# IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Acctt. Appeal Nos.13, 14 & 15 of 2012

Muhammad Akbar Zardari  
& others ----- Appellants

Versus

The State ----- Respondent

BEFORE:

Justice Maqbool Baqar  
Justice Muhammad Shafi Siddiqui

Date of Hearing: 15.05.2012

Appellants: Through M/s. Syed Mahmood Alam  
Rizvi, Obaid-ur-Rahman Khan and  
Zakir Laghari Advocates.

State: Through Mr. Noor Muhammad Dayo  
Senior Prosecutor General NAB

## J U D G M E N T

Muhammad Shafi Siddiqui, J.- The above referred appeals are directed against the judgment dated 28.3.2012 rendered by the Accountability Court No.2, Sindh, Karachi in Reference No.05/2005 whereby the appellants have been convicted under section 10 of the National Accountability Ordinance, 1999 (hereinafter referred to as the Ordinance, 1999) for the commission of an offence under section 9(a)(vi) of the Ordinance, 1999.

The facts giving rise to these appeals are that initially the case was registered by the Anti Corruption Establishment against the appellants who were the officials of the Market Committee, New Sabzi Mandi for allegedly allotting 413 shops/plots in violation of the policy in Agricultural & Wild Life Department, Government of Sindh vide Notification No.5(158)SO (EXT.) 1994 dated 04.9.1994 and decision of the Standing Committee held under the Chairmanship of the Chief Secretary Sindh on 13.3.2002. The notification ibid is reproduced as under:

*“Dated Kar: the 4<sup>th</sup> Sept. 1994*

### NOTIFICATION

*No:5(158)80(Ext)/94: It is hereby notified for the information of general public and all concerned that the Government of Sindh will follow following policy regarding allotment of plots of all categories and types of plots in newly constructed Fruit & Vegetable Market on Super Highway, Karachi.*

1. ALLOCATION OF QUOTA FOR EXISTING TRADERS, DEALER AND COMMISSION AGENTS

- (i) *Approximately 45% of total area is earmarked for existing allottees of above category.*

(ii) TERMS & CONDITIONS FOR EXISTING TRADERS, DEALERS AND COMMISSION AGENTS

- (a) He should be a licence holder of Market Committee, Karachi continuously for last 3 years.
- (b) He should be bonafide allottee of KMC on the existing market on the University Road.
- (c) He should not have been declared as defaulter regarding payment of Market Fee at any time during last three years.
- (d) He should not have been found guilty of violating any provision of Agricultural Produce Markets Act, 1939, and Rules and Bye-Laws framed there-under.
- (e) He must be engaged in wholesale business of fruits and vegetables including Potatoes and Onions in KMC Market on University Road.

II. ALLOCATION OF QUOTA TO GROWERS

- (i) Approximately 30% of total area is earmarked for growers to encourage them to market their own produce.

(ii) TERMS & CONDITIONS FOR GROWERS

- (a) He must be cultivating vegetable or fruit himself or through tenants or hired labor.
- (b) He should and be engaged in any way in sale or storage of agricultural produce of other growers and should not be working as dealer or broker.
- (c) He should be able to furnish proof, if so required, that he has been regularly bringing his crop or fruits and vegetables for sale in the existing mandi on University Road.
- (d) He should be able to produce a copy of Deh Form-VII from concerned Mukhtiarkar, if so required by allotting authority.

III. ALLOCATION OF QUOTA FOR NEW BONAFIDE DEALERS, TRADERS AND COMMISSION AGENTS-ETC

- (i) For new bonafide dealers, traders and commission agents approximately 25% area is earmarked.

(ii) TERMS & CONDITIONS FOR EXISTING TRADERS, DEALERS AND COMMISSION AGENTS

- (a) He should furnish acceptable proof of his financial standing like bank statement, membership of association of traders and registration with Income Tax Department.
- (b) He should provide proof of some previous experience in the relevant field.

2. The mode of payment for price of plots earmarked for above three categories shall be as under:-

- i) 25% of price shall be payable at the time of allotment.
- ii) Additional 25% shall be payable at the time of handing over possession.
- iii) Balance 50% will be payable in monthly instalments, Numbers of instalments for each allottee shall be determined after he declares whether he shall pay balance 50% in lump sum or instalments.

*For Utility Plot Holders following terms and conditions are prescribed:-*

- a) *He should furnish acceptable proof of his financial standing like bank statement, membership of association of traders and registration with Income Tax Department.*
  - b) *He should provide proof of some previous experience in the relevant field.*
  - c) *If the applicant is an existing holder of utility plot in the Mandi on University Road, he should not have been determined a defaulter in paying dues in Market Committee of KMC and should not have been found guilty of violating any provision of Agricultural Produce Markets Act, 1939, and Rules and Bye-Laws framed there-under. Above qualification will be applied in respect of truck-stands, hotels, canteens, parking area, weight-bridges etc. These plots will be allotted on an annual rental basis which will be recovered in 12 equal instalments. Allotment will be made by auction in which only eligible applicants will be able to take part. The auction shall be supervised by an Allotment Committee.*
4. *The qualifications listed in para 3 above will also be applicable in case of persons desirous of obtaining commercial plots for cold storages and petrol pumps. These plots will carry a reserved price per square yard ( to be fixed later). Disposal of plots for cold storages and petrol pumps will also be by auction among eligible persons. Auction shall be supervised by Auction Committee. Besides the reserved price, allottee will also pay annual rent to be fixed on per square yard basis.*
5. *An Allotment Committee has been constituted with the following composition to handle matters relating to auction and allotment of plots and verification of antecedents of applicants in various categories:-*
1. *Director General (Ag: Ext) Convenor*
  2. *Director, BSP, Karachi Member*
  3. *Chairman/Administrator, Market Committee, Karachi. Member*
  4. *Secretary, Market Committee, Karachi Member*
6. *The scope of work of Allotment Committee shall over following aspects:-*
- a) *To scrutinize the applications and their contents and accompaniments.*
  - b) *To check and verify the qualifications of the traders, dealers, commission agents and growers (in prescribed manner):-*
  - c) *To submit periodical and final reports of allotments to Minister for Agriculture for his information through proper channel.*

*Sd/-  
AFTAB AHMED KHAN  
Secretary to Government of Sindh*

Subsequently reference bearing No. 05/2005 was filed by the Chairman NAB before the Accountability Court against the appellants. Thereafter supplementary reference under section 13(g) of the Ordinance, 1999 was filed on 23.2.2007. On filing of this reference, first charge was framed on 30.1.200 which was amended on 10.3.2010. The amended charge as framed on 10.3.2010 is as under:

*“I, Mir Muhammad Shaikh, Judge Accountability Court No.II, Karachi, do hereby charge you accused:*

1. *Muhammad Akbar Zardari S/o Saleh Zardari*
2. *Abdul Rasheed Shaikh S/o Jamaluddin Sheikh*
3. *Ghulam Mohammad Memon S/o Abdul Latif*
4. *Aziz-ur-Rehman Sheikh (Rtd. S/o Abdul Rehman Sheikh*

5. *Mohammad Ayaz Khan S/o Shehbaz Khan*
6. *Khadim Hussain S/o Kazim Hussain*

*That you, accused Muhammad Akbar Zardari, while posed as Administrator market committee, New sabzi mandi Karachi, along with co-accused (Nos.2 to 6) in their respective official position in connivance with each other made allotments of 549 plots/shops in the year 2004, and out of these allotments 413 plots have been found against the policy as laid down in Agriculture and wildlife Department, Government of Sindh vide Notification No.5(158)SI(EXT)94 dated 4<sup>th</sup> September, 1994 and decisions of standing committee held under the chairmanship of Chief Secretary Sindh on 13<sup>th</sup> March, 2002.*

*I further charge you, accused Muhammad Akbar Zardari that you being holder of public office during the period January, 2004 to September, 2004 allotted 145 plots/shops to the Karachi metropolitan corporation (KMC) traders, 35 plots/shops to the growers and 233 plots/shops to the new comers as administrator market committee, New sabzi mandi, Karachi, acting against the Agriculture and wildlife Department, Government of Sindh's notification mentioned above.*

*That I further charge you, accused Abdul Rasheed Sheikh that you while working as Secretary of market committee, New sabzi mandi, Karachi allotted 145 plots/shops to Karachi metropolitan corporation (KMC) traders, 33 plots/shops to growers and 233 plots/shops to new comers (new bonafide dealers, traders and commission agents) from July, 2004 to September, 2004.*

*That I also charge you accused Ghulam Mohammad Memon that you being Incharge of allotment Cell of Market committee, New sabzi mandi, Karachi illegally allotted 132 plots/shops to Karachi metropolitan corporation (KMC) traders, 15 plots/shops to growers and 168 plots/shops to new comers from July, 2004 to September, 2004.*

*That I also charge you accused Aziz-ur-Rehman Sheikh that you being Incharge of allotment Cell of Market committee, New sabzi mandi Karachi illegally allotted 10 plots/shops to growers and 65 plots/shops to the new comers in September, 2004.*

*That you accused Muhammad Ayaz Khan and Khadim Hussain illegally issued challis to 513 allottees in violations of Agriculture and wildlife Department of Sindh Notification No.5(158)SO(EXT)/94 dated 4<sup>th</sup> September, 1994.*

*That as a result of the above illegal acts you accused named above were involved in illegal allotments of 413 shops/plots to unauthorized allottee of New sabzi mandi, Karachi in the category of KMC traders, growers and new comers and thus caused loss to the tune of Rs.17 millions to the government.*

*I further charge you accused Abdul Rashid Sheikh and co-accused Muhammad Ayaz Khan, being holder of public office in your respective official positions illegally issued 30 token challans of Rs.10,000/- each to the thirty employees of market committee New sabzi mandi, Karachi in the month of September 2004 and one challan to the employee of Sindh secretariat for allotment of plot/shop on 28<sup>th</sup> September, 2004 and thus created a liability of Rs.375,050/- on the part of Market committee fund New Sabzi mandi.*

*I further charge you accused named above that you in connivance and collaboration with each other misused your authority for your own benefit and gave benefit to those who were not legally entitled to those allotments, thus caused loss to the state exchequer of Rs.1,73,38,591/- and thereby committed the offence of corruption and corrupt practices as defined in clause (iv)(vi) and (xii) of Section 9(1) and punishable u/s 10(a) of National Accountability Ordinance, 1999 and schedule thereto.”*

The trial Court commenced on the basis of the charge mentioned above and the appellants pleaded not guilty. The prosecution has examined 29 witnesses in support of the aforesaid reference, charge and the allegations leveled against them.

The learned trial Court framed three points which are as under:

1. Whether the above named accused persons being holder of public office were involved in illegal allotments of 413 plots/shops to un-authorized allottees of New Subzi Mandi in the category of KMC Trader, Growers and New Comers and

caused loss to the tune of Rs.17 Millions to the Government during the period from June, 2004 to September, 2004?

2. Whether the accused Abdul Rashid Sheikh and Muhammad Ayaz Khan being holder of public office illegally issued 30 token challans of Rs.10,000/- each to the thirty employees of the Subzi Mandi in the month of September, 2004 and one challan to the employee of the Sindh Secretariat for allotment of shop on 20<sup>th</sup> September, 2004 and thus created liabilities of Rs.3,75,050/- on the part of Market Committee funds in the New Subzi Mandi, Karachi?
3. Whether the accused persons are liable to be punished u/s 9(a) and 10(a) of the National Accountability Ordinance, 1999?

That out of the eight accused two were acquitted by the trial Court prior to the date of amendment of charge i.e. 10.3.2010. The two accused who were acquitted by the trial Court are Mansoor Akbar and Haji Shah Jehan who were acquitted under section 265-K Cr.P.C.

As stated earlier the prosecution has examined the following 29 witnesses:

1. Syed Saeedul Hassan
2. Ghulam Nabi
3. Abdul Rahim Shaikh
4. Mujtaba Hussain Mirza
5. Syed Naeem ul Hassan
6. Hakim Ali
7. Agha Muhammad Abid
8. Asif Ali
9. Anwar Ali
10. Rahim Bux
11. Muhammad Hanif Shaikh
12. Karam Illahi
13. Rajab Ali Soomro
14. Mushtaq Ali
15. Akbar Ali Soomro
16. Shaikh Muhammad Ayub
17. Munawar Ahmed
18. Akhlaq Ahmed
19. Muhammad Hanif
20. Muhammad Ashraf Kaka
21. Ashfaq Hussain
22. Gul Muhammad Mahar
23. Nizamuddin Khan
24. Basheer Ahmed Soomro
25. Mir Muhammad Waseem Talpur
26. Muhammad Aashiq
27. Muhammad Mushtaq Qureshi
28. Sultan Ahmed Panhwar
29. Shahzada Imtiaz Ahmed

On the basis of the evidence of 29 witnesses the trial Court decided all three points in affirmative and thereby convicted all appellants under section 265-H(2) Cr.P.C. and awarded

sentence for the charge under sections 9(a) and 10(a) of the Ordinance, 1999 for five years Rigorous Imprisonment and fine of Rs.3 lakh each and in case of non payment of fine both will suffer further Rigorous Imprisonment for six months.

That aggrieved of the said conviction the appellants have preferred these appeals.

We heard the learned Counsel for the appellants as well as the learned Senior Prosecutor General NAB. The main contention of the learned Counsel for the appellants is that the prosecution utterly failed to substantiate and establish the allegations leveled in the reference as well as in the charge framed. They submitted that there is no iota of evidence to rope in and convict the appellants in the Reference No.05/2005. They further submit that none of the witnesses who were examined by the prosecution were able to prove the charges leveled under the reference and thus the evidence lead by the prosecution is not sufficient for conviction.

We have carefully considered the contentions raised by the learned Counsels for the parties and have assessed the material available on the record. We would like to reproduce the jist of the evidence of all 29 witnesses who have been examined:

PW No.1 was the secretary of Market Committee. His appointment was made after the registration of the aforesaid case. He has stated that he knows nothing about the case.

PW No.2 was the Administrator of the Market Committee since 2005. He submitted that since the record is not with him, he is unable to depose about the facts of the alleged allotments.

PW No.3 acted as Deputy Director, Agriculture Market Committee Larkana. He has not said any thing about the accused and their alleged corruption in the matter.

PW No.4 acted as authorized officer to discharge the duties of the Administrator. He stated that a criteria was followed by the Market Committee regarding allotments of plots and shops in the New Sabzi Mandi.

PW No.5 remained Administrator of the Market Committee from 2004 to 2005. He stated that before he could take over the charge as Administrator of the Market Committee, the entire record was sealed and removed by the Anti-Corruption Establishment and he had no access to the relevant record.

PW No.6 in his deposition stated that in the year 2006 he was posted as Inspector of Market Committee. He applied for the allotment of shop from the quota of employees of the Market Committee and subsequently challan of Rs.10,000/- was issued. Remaining challans were also issued and deposited by him. However, he has not been allotted the shop. (In cross examination he submitted that the quota of employees of Market Committee was settled in the period of Muhammad

Bux, Deputy Director). He further has accepted the suggestion that the demand by the employees of the Market Committee was made before the allotment of shops with regard to keeping quota for the employees.

PW No.7 was the sub-inspector of the Market Committee. He stated that he applied for allotment of shop from staff quota of employees of the Market Committee and initially deposited Rs.10,000/- as token money in Habib Bank Limited and also deposited utility bills. The shop however was not yet allotted to him by the Market Committee.

PW No.8 acted as Computer Operator in the Market Committee. He had applied for shop on the basis of quota for the employees of the Market Committee and deposited a sum of Rs.10,000/- through challan. The shop is not yet allotted to him.

PW No.9 was a Market Supervisor and stated that he applied for shop under the quota of employees and deposited Rs.10,000/- as token money through Bank Al-Habib.

PW No.10 was a Fees Collector. He deposed that in those days D.G. Hyderabad had issued a letter regarding the fixed quota for the employees of Market Committee for allotment of shops in New Sabzi Mandi and accordingly he applied and deposited Rs.10,000/- through Bank Al-Habib.

PW No.11 was a Senior Fee Collector and had stated that he applied for allotment of shops pursuant to the employees quota of the Market Committee and deposited Rs.10,000/- via Bank Al-Habib.

PW No.12 worked as Sub-Inspector. He deposed that he came to know that the Market Committee had allocated a quota for the employees of the Market Committee and hence he applied on such basis and deposited Rs.10,000/- through Bank Al-Habib.

PW No.13 stated that he being a Sub-Inspector applied on the basis allocated quota for the employees of Market Committee and deposited Rs.10,000/- through challan.

PW No.14 was the Electrician in the Market Committee and applied for the allotment of shop on the basis of quota allocated for the employees of the Market Committee and deposited Rs.10,000/- vide Bank Al-Habib. The shop, however, is not yet allotted to him.

PW No.15 was the Sub-Inspector. He stated that he applied as employee of the Market Committee and deposited Rs.10,000/- as token money with Bank Al-Habib. He further stated that he and several other applicants were still awaiting for the allotment.

PW No.16 appears to be an old trader running shop of vegetable in Bolton Market, Karachi. He stated that in the year 2000 they shifted from Old Sabzi Mandi to New Sabzi Mandi and shops, bearing No.101 to 104 were allotted by the Market Committee with their file numbers. He produced allotment orders and possession orders. At the relevant time accused Akbar Zardari was the Administrator of the Market Committee whereas accused Abdul Rasheed was the Secretary. He produced the challans of the utility bills and challan of charge form issued by the Market Committee. Covered platform allotted to this witness was of 8645 sq. feet bearing No.37, 38, 85 and 86. He submitted that the possession of the allotted covered platform was not allotted by the officials of the Market Committee at the relevant time. In cross examination the witness agreed to a suggestion that the accused Akbar Zardari and Abdul Rasheed have not committed any irregularity or illegality during the allotment process.

PW No.17 was allotted platform No.35, 36, 83 and 84 in the year 2004. The challans of the utilities were also deposited via Bank Al-Habib. The allotment was issued by accused Akbar Zardari who was the Administrator at the relevant time. *In cross examination he submitted that he was neither an allottee nor a tenant of Sabzi Mandi, though he owns 209 acres land near Old Sabzi Mandi.*

PW No.18 was an employee of Karachi Development Authority and retired in June 2002. He deposed that during the tenure of his service the layout plan of the New Sabzi Mandi was not submitted. During the cross examination he admitted that in case of submission of plan by the Market Committee, it is deemed to have been approved after 60 days of its submission.

PW No.19 *worked as a middleman between commission agent and vegetable seller.* He stated that he applied for the allotment of the shop in the New Sabzi Mandi. The Market Committee allotted No.1079 on the application. He submitted that he approached the Market Committee for the possession of shops but one Akbar Ali Zardari demanded Rs.250,000/- from him for the allotment of shops. However, in his examination-in-chief he further stated that he could not identify any of the accused who demanded bribe and no one from them was present in Court. In the cross examination he submitted that his statement was recorded with regard to non-allotment of shop. He further admitted that in the year 2000 Army Monitoring team took over affairs of New Sabzi Mandi and the allotments of the shops and plots were done under their authority. He also admitted that the facts regarding demand of Rs.250,000/- as bribe was not stated before the Anti-Corruption police.

PW No.20 *is a retired primary school teacher. He stated that he also applied for two shops and paid some advance for purchase of the shops. (period is not deposed)* He submitted that somebody gave him hope for the possession of the shops but he did not remember his name and designation.

PW No.21 is an employee of KBCA posted at Gadap Town. He submitted that he is not aware if the building plan was received in the office of KBCA at the relevant time.

PW No.22 stated that he applied for allotment and deposited challan of Rs.10,000/-. Thereafter the Market Committee issued provisional allotment order of Plot No.116. He submitted that it has been informed verbally that the army authorities have cancelled the plot which was allotted to him. He submitted another application and after its scrutiny he was again issued allotment order dated 22.7.1999. However, still awaiting for possession.

PW No.23 stated that in the year 1994 he and his brother Umer Farooq applied for allotment of shops and deposited Rs.10,000/-. They were allotted file No.1061 and 1062. After balloting both were allotted two shops. *They then went to the Market Committee for the purpose of allotment where they were informed that the balloting stood cancelled whereafter the Market Committee issued allotment orders along with possession, however, still they are awaiting for the possession. (the witness has not deposed the period of allotment of the shops).*

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PW No.24 is the Inspector FIA. He stated that he remained as investigating officer in NAB from 2001 to 2007 on deputation. On 07.06.2006 the I/O of this case Shehzada Imtiaz seized the documents of allotments of shops in his presence and prepared the seizure memo and he has produced these documents.

PW No.25 submitted that in the year 1994 there was an announcement on behalf of the Market Committee that the shops are being allotted to Zamindars and accordingly he applied and a shop was allotted to him. However, the Market Committee did not hand over the possession. He submitted that the possession was not handed over on the pretext that the same were in unlawful possession of some persons. He then met accused Ghulam Muhammad Memon of the Market Committee who informed that the issue of unlawful possession is a matter between Market Committee and the unlawful occupants and that he should wait. He further deposed that one agent of the Market Committee approached him for allotment of shop and the agent of the market committee demanded Rs.200,000/- as bribe which ultimately settled at Rs.100,000/-. Further arrangement for the payment in installments was made. On 30.09.2004 he reached at the office of Market Committee at about 3.30. He came to know that the Anti-Corruption police raided the office of the Market Committee and accordingly he met DSP Nizamuddin and narrated him the entire story. He disclosed the fact regarding the bribe of Rs.20,000/- which he had brought with him. The DSP noted the numbers of the currency and also kept Rs.20,000/- and issued receipt to him which money was returned to him. He identified accused Ghulam Muhammad Memon only on the basis of agent disclosing him that he has to pay the bribe to accused Ghulam Muhammad Memon. *(Neither the evidence of this agent was recorded nor his name was disclosed)*. He also admitted in the cross examination that the accused persons did not demand bribe from him.

PW No.26, a fruit seller, doing business in Old Sabzi Mandi applied for shop in New Sabzi Mandi and deposited Rs.10,000/-. He stated that he was allotted shop No.F-2/037, however, has not been given the possession.

PW No.27, a vegetable seller, applied for shop in New Sabzi Mandi and was allotted two shops on deposit of Rs.10,000/- and thereafter deposited other amounts but was not given the possession.

PW No.28, Inspector Anti-Corruption, stated that he submitted the interim challan in the Court of Special Judge. He has recorded the statements of two witnesses Syed Muhammad Zaki and Muhammad Sarwar Bajwani. In cross examination he admitted that he has no evidence to show that there was a ban on the allotment of shops in the New Sabzi mandi in those days. He also admitted in the cross examination that the inquiry of the allotment of shops pertain to the period from June to September, 2004.

PW No.29 is the I.O, Deputy Director NAB who stated that on the allegation of illegal allotment of shops in new Sabzi Mandi he conducted the investigation. He submitted that during investigation he issued letter to the Administrator Market Committee about the production of complete documents for illegal allotment made by the accused Muhammad Akbar Zardari and others which has been exhibited as 52/1 through witness namely Bashir Ahmed. A general statement was recorded by the said witness that out of 549 only 413 allotments were illegal which were in violation of the prescribed criteria set by the Standing Committee of Agriculture Department which resulted in loss to the national ex-chequer to the tune of Rs.17.00 million. In cross examination the said witness agreed to a suggestion that the Market Committee comes under the control of Government of Sindh and that he has not sent any of the alleged illegal allotment to the Agriculture Department for its verification or its authenticity. The entire record since its seizure remain in his custody.

The prosecution has not produced a single witness to demonstrate that such and such allotment during the tenure of the accused were violative of such and such terms and conditions of the Notification No.5(158)SO (EXT.) 1994 dated 04.9.1994 and the decision of the standing Committee held under the Chairman ship of Chief Secretary Sindh on 13.3.2002 (hereinafter referred to as the notification and the decision of the Standing Committee).

It is significant and mind boggling that the prosecution has based their charge on two documents i.e. notification and decision of the Standing Committee. However, both these documents were neither exhibited before the trial Court nor were produced in any way, hence the core documents by which the allegations can be proved are missing from the record. We have asked the learned Counsels to provide us a copy of the said notification and decision of the Standing Committee who have placed before us only notification dated 04.09.1994.

After bare examination of the evidence, we thus reached to a conclusion that the prosecution has miserably failed to prove charge against the appellants and consequently the appeals of the

appellants are allowed and the appellants are acquitted from the case/Reference No.05/2005. They shall be released forthwith, if not required to be detained in any other case.

JUDGE

JUDGE