

**IN THE HIGH COURT OF SINDH, KARACHI**

Before:-

Mr. Justice Ahmed Ali M. Shaikh, C.J.

Mr. Justice Mohammed Karim Khan Agha, J.

**Const. Petition No.D-4256 of 2016**

Mrs. Sharmila Faruqui (Petitioner)

Vs.

Government of Sindh and others (Respondents)

**Counsel for the Petitioner.**

Mr. Najeeb Jamali, Advocate for Petitioner

**On Court Notice:**

Mr. Salman Talibuddin, Additional Attorney General for Pakistan

**Counsel for the Respondents.**

Mr. Mohammed Altaf, Special Prosecutor, NAB.

Date of Hearing: 26.04.2018.

Date of Order: 28.05.2018

**ORDER**

**Mohammed Karim Khan Agha, J.** In essence this petition revolves around a single question of law. Namely for how long, if at all, Miss Sharmila Faruqui (the petitioner) stands disqualified from holding public office on account of her entering into a plea-bargain with the National Accountability Bureau (NAB) under section 25-(a) of the National Accountability Ordinance, 1999 (NAO) which was accepted by the trial Court vide Judgment dated 28.04.2001.

2. The brief facts of the case are that Ehtesab Reference No. 16/1997 was filed u/s 14 (i) of the Ehtesab Ordinance, 1996 on 11<sup>th</sup> March-1997 against Mr. Usman Farooqui Ex-Chairman Pakistan Steel Mill Ltd Karachi, Mrs Aneesa Farooqui and Miss Sharmila Farooqui on the allegation that Mr. Usman Farooqui by abusing his official position before and after becoming the Chairman of PSM obtained undue pecuniary advantage for himself and for his wife and daughter (the petitioner) respectively which falls within the ambit of corruption and corrupt practices as defined in section 3 of the Ehtesab Ordinance, 1996.



3. That at the stage when the Reference was pending for the final arguments before the Ehtesab Bench of High Court the National Accountability Bureau Ordinance, 1999 (NABO) was promulgated which repealed the Ehtesab Ordinance 1996 and Ehtesab Act 1997, and all the proceedings pending before the Ehtesab Bench of High Court under the repealed Ehtesab Ordinance 1996 and Ehtesab Act 1997 were transferred to the NABO and in pursuant of such provision of law this Reference was transferred to the accountability court for further proceedings.

4. After the trial of the reference by the accountability court all the aforesaid accused, including the petitioner, were convicted u/s 4 of Ehtesab Act, 1997 r/w section 10 of the NABO and were sentenced to undergo R.I for 5 years.

5. That the aforesaid judgment passed by the accountability court No.IV Sindh at Karachi was assailed by the petitioner before the Hon'ble High Court of Sindh at Karachi through Criminal Appeal No.4/2000 which was allowed vide judgment dated 21.6.2000 to the extent that the impugned judgment was set aside and the case was remanded back to trial court which may frame a proper charge and decide the matter after giving the opportunity to lead evidence in defense.

6. That fresh charge was framed under section 9 (a) (v) & (vi) of NABO r/w section 3(i) (e) of Ehtesab Act 1997 punishable under section 10 of NABO r/w 4 of Ehtesab Act 1997 and the matter was proceeded by the accountability court which recorded the depositions of PWs, DWs, statement of accused and when the matter was fixed for announcement of judgment on 27.04.2001 an application u/s 25(a) of NABO was filed by all the aforesaid accused, including the petitioner, and DPG RAB.

7. That application u/s 25(a) of NABO was duly accepted by the Chairman NABO and was approved by the accountability court and all the accused, including the petitioner, were disqualified from holding public office for a period described under section 15 of NABO.

8. Learned counsel for the petitioner submitted that Ehtesab Reference No16 of 1997 was filed against the petitioner and other family members on 11.03.1997 in essence for corruption



committed during the period 1987 to 1996 and in this respect the petitioner was only a benamidar. That since the reference had been filed on 11.3.1997 and the offence had been committed between 1987 to 1996 the Ehtesab Ordinance was the appropriate law that the petitioner should be sentenced under if she entered into a voluntarily return, plea bargain or was otherwise convicted for the offence. That under the Ehtesab Ordinance, 1996 there was no period of disqualification from holding public office prescribed for entering into voluntarily return or plea bargain and as such the petitioner could not have been disqualified from holding public office. However, she had been disqualified from holding public office for a period of 21 years which was entirely illegal and was contrary to Article 12 of the Constitution. In this respect he relied on the following authorities **Abdul Qadir Tawakkal v. NAB** (PLD 2016 Sindh 105), **Mirza Ali Khan v. Hidayat Ullah Khan**, (2014 PCr.L.J 78), **Abdul Qadir Tawakkal v. The State** (PLD 2013 Sindh 481), **Maqbool Ahmed & others v. The State** (2007 SCMR 116), **Jan Parvez v. Haji Fazal Hussain** (PLD 2007 Peshawar 179), **Mansoor Ahmed Qureshi v. The State** (PLD 2005 Karachi 443), **Muhammad Waseem v. Sessions Judge, Islamabad** (2004 YLR 2867), **Abdul Rehman v. The State**, (1978 SCMR 292), **Nabi Ahmed v. Home Secretary of WP** (PLD Lahore 1969 SC 599).

9. He also contended that there was no time limitation in setting aside an order which was void in law as in this case as the trial court had no authority to disqualify the petitioner. In this respect he placed reliance on **Senate v. Shahiq Ahmed Khan**, (2016 SCMR 460), **PoS v. Ghulam Fareed**, (2015 PLC (CS) 151), **Rehmatullah v. Saleh Khan** (2007 SCMR 729), **Evacuee Trust Property v. Mst. Sakina Bibi** (2007 SCMR 262), **Muhammad Shafi v. Mushtaque Ahmed** (1996 SCMR 856). That subsequently following the case of **Khan Asfandiyar Wali v/s Federation of Pakistan** (PLD 2001 SC 607) the NABO was amended and the disqualification period was reduced from 21 years to 10 years and as such the petitioner should have the benefit of this legislation which should be given retrospective effect. Even otherwise he submitted that a minor (which was the case of the petitioner) cannot commit an offence of corruption under the NAO even if it was said to be done in her name. Namely as in this case her father placing proceeds of crime into her name. In this respect he placed reliance on **Mst. Tehseen v. NAB** (2013 P.Cr.L.J 1137). Thus for



all the above reasons he contended that as a matter of law the petitioner's disqualification from holding public office should be held to be for no period of time as opposed to 21 years as per the judgment accepting the petitioners plea bargain as the court had no power under the relevant law to disqualify the petitioner.

10. On the other hand learned special prosecutor for the NAB contended that the petitioner had rightly been disqualified for a period of 21 years under the NABO on account of her entering into a plea bargain. At the outset he submitted that since this matter concerned a factual controversy this court had no jurisdiction to hear this matter in its constitutional jurisdiction. Even otherwise according to him although the petitioner had originally been charged under the Ehtesab Ordinance 1997 when the NABO was promulgated and which repealed the Ehtesab Ordinance 1996 and Ehtesab Act 1997 all the proceedings pursuant to the Ordinance and the Act were specifically transferred to the accountability courts established under the NABO and thereafter would proceed under the NAO without the need of recalling any witness or again recording such witnesses evidence. According to him at the time when the petitioner entered into a plea bargain under section 25 (a) of the NABO section 15 (a) of the NABO was in the field which provided that anyone who entered into a plea bargain should stand disqualified from holding public office for a period of 21 years. Since this was the relevant law at the time when the petitioner entered into the plea bargain with the NAB the petitioner was therefore rightly disqualified by the accountability court from holding public office for a period of 21 years and as such her petition should be dismissed.

11. Learned Additional Attorney General for Pakistan submitted that although the petitioner's case was lastly transferred to the accountability court under the NAO it had been initiated under the Ehtesab Ordinance 1996 and as such the punishment applicable was that which was applicable under the Ehtesab Ordinance 1996 when the reference was filed against the petitioner. Furthermore, the effect of Article 12 of the constitution would also ensure that this was the case and that only beneficial amendments could apply to the petitioner even if the NAO was to have retrospective effect which an increased sentence would not be. That for the present purposes, the punishment prescribed in the case of a dependent of



the holder of a public office falling within the definition set out in section 3 (1) (e) of the Ehtesab Ordinance, who elected voluntarily to return assets and properties gained or acquired through corruption or corrupt practices was, in addition to such fine or penalty as the court sees fit, only the requirement to resign from any 'representative office'. As such, since the petitioner was not holding any such office at the time of the passing of the judgment, the latter limb of the punishment under the Ehtesab Ordinance was not applicable to her. Namely, the petitioner would not be subject to any disqualification on account of the judgment.

12. We have considered the arguments of the parties, perused the record and considered the case law cited at the bar.

13. At the outset we do not consider that this petition concerns a factual controversy. As mentioned at the start of this order this matter involves a question of law. Namely what sentence was applicable at the time when the petitioner entered into the plea bargain with the NAB as approved by the accountability court on 28.04.2001.

14. It appears from the record that The Chief Ehtesab Commissioner filed the reference of **State V Mr. Usman Farooqui and others** (including the petitioner) on 11.03.1997 under S.14 (1) of the Ehtesab Ordinance for the offense of corrupt practices whereby in effect Mr. Usman Farooqui by abusing his official position obtained undue pecuniary advantage for himself, his wife and his daughter (the petitioner) which fell within the ambit of corrupt practices under the Ehtesab Ordinance 1996. **Under the Ehtesab Ordinance 1996 there was no period of disqualification on conviction.** It is significant that the basic offense was committed under this Ordinance and therefore as a matter of clarity and certainty the sentences under the initial law under which the petitioner faced a reference ought to apply.

15. The Ehtesab Act 1997 promulgated on 31-05-1997 repealed the Ehtesab Ordinance of 1997 and at S.33 provided that any proceedings before a court under the Ehtesab Ordinance shall continue under this Act and it shall not be necessary to recall any witness or once again record any evidence that may have been taken down. Hence the reference was transferred and preceded under the Ehtesab Act 1997. At this juncture it is important to



note that there was no provision of Plea bargain (PB) and only voluntary return under S.17 which did not lead to disqualification. S.9 dealt with disqualification which only applied to public office holders (the petitioner at that time was not a public office holder) and only extended to a maximum disqualification of 5 years if he was convicted for over two years and such disqualification period would start from the time of his release. Significantly S.29 of the Act provided as under,

**“29. Protection against retrospective punishment.—** Nothing contained herein shall authorize the punishment of a person for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed and the Court while imposing a penalty, may, if necessary, modify it to such extent as may be necessary”.

16. There after the National Accountability Ordinance 1999 (NAO) was promulgated on 17-11-1999 which through S.35 repealed the Ehtesab Act 1997 and provided that any proceedings pending under the Ehtesab Ordinances and Ehtesab Act 1997 immediately before the commencement of this Ordinance (NAO) and transferred to any court shall be proceeded with and all consequent proceedings shall be completed in accordance with and under the provisions of this Ordinance (NAO). This was reinforced by S.33 of the NAO which provided that “Any and all proceedings pending before a Court under the Ehtesab Act, 1997 shall stand transferred to a Court as soon as it is constituted under this Ordinance (NAO) within the same Province and it shall not be necessary to recall any witness or again to record any evidence that may have been recorded.”

17. Following the promulgation of the NAO Ehtesab Reference No.16/97 under which the petitioner was being tried was transferred to the accountability courts under the NAO and re numbered as NAB Reference 03/2000.

18. On 12.04.2000, judgment was passed against the petitioner convicting her for 5 years under Section 4 of Ehtesab Act 1997 read with Section 10 of NAB Ordinance.

19. On 14.04.2000, Criminal Appeal No.3 of 2000 was filed against the judgment dated 12.4.2000. The Hon'ble High Court



was pleased to set aside the judgment and remand the case back to the NAB Court.

20. On 27.4.2001, application for plea bargain was filed with the NAB Court. On 28.4.2001, the NAB Court approved the plea bargain vide judgment. In para 49 of the judgment, the learned Judge disqualified the petitioner under Section 15 of the NAB Ordinance.

21. In our view after considering the above chronology of events the real issue is what sentence could have been legally imposed on the petitioner in terms of disqualification.

22. The first reference filed against the petitioner was Ehtesab Reference 14(1) under the Ehtesab Ordinance (CXI) of 1996 (the 1<sup>st</sup> Ordinance) on 11-03-1997 which as per S.1(2) was applicable to holders of public office. Under the Ordinance it is **doubtful** whether the petitioner qualified as a holder of public office as defined under S.2(f) (although she may be seen as an aider and abettor under S.4(2)), that the punishment for corruption under the Ordinance under S.4 was imprisonment for a term up to 7 years or with fine or with both; under S.5 the imposition of a fine not less than the gains derived by the accused; under S.15 voluntary return was available (there was no concept of PB), that S.9 provided for the holder of public office to be disqualified for the same period as under Article 63(1) (h) of the Constitution which in effect states that if a person is convicted for an offense involving moral turpitude, sentenced to a period of imprisonment for a term of not less than two years then he/she will be disqualified for a period of 5 years from the date of his release.

23. The Ehtesab Ordinance (XX) 1997 (the 2<sup>nd</sup> Ordinance) which repealed the 1<sup>st</sup> Ordinance on 1<sup>st</sup> February 1997 contained similar provisions to those mentioned in respect of the 1<sup>st</sup> Ordinance mentioned above.

24. The 2<sup>nd</sup> Ordinance was repealed by the Ehtesab Act 1997 (the Act) which contained similar provisions to those mentioned in the second Ordinance as mentioned above except that the term of disqualification was specifically set out in line with Article 63(I)(h) of the Constitution.



25. The Act was repealed by the National Accountability Ordinance 1999 (NAO) which made several changes to the earlier sections referred to in the Ehtesab Act 1997

26. The petitioner was convicted in Reference 03 of 2000 (Old Reference 16/1997) vide Judgment dated 28-04-2001 (the Judgment). Para 1, 5, 6 and part of para 7 are reproduced below which briefly sums up the prior events which lead to this trial and Judgment;

"1.The above named three (3) accused were sent up by the former Chief Ehtesab Commissioner under the Ehtesab Ordinance 1996 for their trial before the Ehtesab Bench of the Hon'ble Sindh High Court on 11.03.1997 for the offense under S.3/4 Ehtesab Ordinance 1996"

2.....  
3.....  
4.....

"5.At the stage when the reference was pending for the final arguments before the Ehtesab Bench of Hon'ble High Court of Sindh the National Accountability Bureau Ordinance, 1999 was promulgated which repealed the Ehtesab Ordinance, 1996 and The Ehtesab Act, 1997 and all the proceeding pending before the Hon'ble High Court under repealed Ehtesab Ordinance, 1996 and Ehtesab Act 1997 were transferred to the Accountability Courts established under National Accountability Bureau Ordinance, 1999 and in pursuant to such provisions of law this reference was transferred to this Court for further proceedings.

6. Since the reference was pending for final arguments before its transfer, this Court, heard the final arguments of both the sides and pronounced the judgment on 12.4.2000 **convicting all the three accused under Section 4 of Ehtesab Act, 1997 read with Section 10 of National Accountability Bureau Ordinance, 1999 and sentenced them to undergo 5 years R.I. Forfeiture of bearer certificates amounting to Rs.3,95,00,000/- to the Government also ordered.**

7.The accused agitated the judgment before the Hon'ble High of Sindh in Accountability Appeal No.03/2000 which was allowed, **the reference was remanded back with the direction to frame a proper charge and decide the matter after giving the parties an opportunity to lead evidence.**"  
(bold added)

27. That the accused made an application before the NAB for a plea bargain under S.25 of the NAO which NAB approved and made the following application to the accountability court on 27.04.2001 which is reproduced below for ease of reference:



IN THE ACCOUNTABILITY COURT NO.4 SINDH KARACHI  
ACCOUNTABILITY REF. NO.03/2000  
STATE  
VS.

1. Usman Farooqui
2. Mrs. Anisa Farooqui
3. **Miss. Sharmila Farooqui**.(the petitioner)

APPLICATION U/S 25 OF NAB ORDINANCE, 1999

It is submitted on behalf of the NAB as under:-

1. That on an application submitted jointly by all the accused **for Plea Bargaining under the NAB Ordinance, 1999**, the Chairman NAB has been pleased to **accept the same in lieu of all the accused person on voluntarily returning the Saving Certificates involved in this reference and which were being held by the accused persons** and the same have been found to be disproportionate to the known sources of income and thus earned through illegal gains and thus they were indicted u/s 10 of the NAB Ordinance.
2. That henceforth all the Saving Certificates of the face value of Rs.39.5 millions which have been seized under the orders of this Honourable Court will be ordered to be returned to the Chairman NAB, for their discharge/encashment in favour of the state alongwith all the profits/interest and the claims accrued thereon or may be accrued in future and for all purposes till the process of encashment is completed, the Chairman NAB will be deemed to be the holder of all those Saving Certificates /other Certificates details of which have been given in this case and same may part form of this application henceforth.
3. That in lieu of return of the all the Saving Certificates / other Certificates/valuable securities involved in this case, **the Chairman NAB, being the competent authority vested with power to enter into plea-bargaining, has agreed to accord sanction for release of the accused and withdraws from the prosecution against the accused persons.**
4. That the Saving Certificates/other Securities seized by the order of this Honourable Court and has been kept in the custody may kindly be ordered to be brought in the Court and after discharge of the same, the same may kindly be handed over to the competent authority for disposal at their end to be ultimately transferred to Federal Government.

It is therefore, prayed that this Honourable Court may be pleased to accord consent for compounding of the above reference on the above said terms and for release of the accused and disposed off the case against the accused persons in the interest of justice. (bold added)

Karachi.  
Dated:27.04.2001.

Sd.-  
MUHAMMAD ANWAR TARIQ  
DY.P.G.A.  
RAB SINDH, KARACHI.

1. Sd/-  
Muhammad Usman Farooqui.
2. Sd/-  
Mrs. Anisa Farooqui.
3. Sd/-  
**Miss. Sharmila Farooqui** (the petitioner)

Sd/-  
Advocate  
26.4.01

28. As per the Judgment, the above plea bargain was accepted by the trial court in the following terms at Para 49 of the Judgment:



**"49. The upshot of my above discussion is that the plea of barraging (sic) of accused persons under Section 25 (a) NAB Ordinance, 1999 duly accepted by the Chairman, NAB is hereby approved and the application of the prosecution for withdrawal of the reference is allowed. Consequently, all the three accused are hereby released. However all the three accused stand disqualified for being elected and appointed or nominated as a member or servant of any public office or any statutory or local authority of government of Pakistan and they shall not be allowed to avail any financial facility in the form of any loan or advance from any bank or financial institutions owned or controlled by the Government for a period described under Section 15 NAB Ordinance, 1999." (bold added)**

29. At the time of the Judgment S.15 of the NAO entailed disqualification for 21 years, although this was subsequently reduced to 10 years following the Supreme Courts finding in **Asfandiyar Wali Khan's case** (Supra)

30. In our view when the reference was **first filed** against the petitioner either the 1<sup>st</sup> Ordinance or the 2<sup>nd</sup> Ordinance contained the applicable sentence and other disqualifications for the petitioner if the petitioner was convicted or entered into voluntary return (there was no concept of plea bargaining under these Ordinances).

31. It is true that both of these Ordinances were repealed and later replaced by the Ehtesab Act 1997 and then the NAO. **However the offense remained the same throughout.**

32. It may be that the NAO provided that it should take effect as from 01-01-1985 but these cases were transferred from the Ordinances to the Act and finally to the NAO. In so far as the procedural changes are concerned on transfer it is settled law that these will have both retrospective and prospective effect. In this regard reliance is placed on **Adnan Afzal V Capt Sher Afzal** (PLD 1969 SC 187), **The State V Maulvi Muhammed Jamil** (PLD 1965 SC 681).

33. However, as even recognized in the above cases if the change in the law effects substantive rights it will not be retrospective in that respect. Reference is made to the case of **Malik Gul Hasan & Co V Allied Bank** (1996 SCMR 237) which after a detailed review of the relevant law on this issue held as under at P.243.



"From the principle enunciated in these Judgments it emerges that statute providing change of forum pecuniary **or otherwise** is procedural in nature and has retrospective effect **unless contrary is provided expressly or impliedly or it affects the existing right or causes injustice or prejudice**".

34. **Likewise** In the case of **Mst Sarwar Jan V Mukhtar Ahmed** (PLD 2012 SC 217) in terms of retrospectivity of statutes the Supreme Court held as under at P.221

"7. In order to examine if as per its own force section 4 *ibid* has a retrospective effect, **it is settled rule that any statute or a provision thereof forming part of substantive law, which creates or extinguish or affect the rights of the persons/citizen shall ordinarily have a prospective effect**, except where by the clear command of the law, it is made applicable retrospectively." (bold added)

35. In the case of **Muhammed Tariq Badar v. NBP** (2013 SCMR 214) P.333 it was held as under

"Before further proceeding with the matter it may be mentioned that according to the settled law a change in the substantive law which diverts and adversely affect the vested rights of the parties shall always have prospective application, unless by express word of the legislation and/or by necessary intendment/implication such law has been made application retrospectively. **In other words the vested and substantive rights of the parties are and should be decided according to the law which was prevalent when the action was initiated and the door of the Court was knocked, and/or the machinery (of the Court) was set in motion/**"(bold added)

36. In our view a change in the sentence and disqualification period were substantive vested rights which the petitioner had acquired and could not be taken away to her detriment by repealing the law. Article 264 of the Constitution and S.6 of the General clauses Act also support this proposition.

37. Furthermore, Article 12(1) of the Constitution provides as under

**12. Protection against retrospective punishment.**  
**(1) No law shall authorize the punishment of a person---**

- (a) for an act or omission that was not punishable by law at the time of the act or omission; **or**
- (b) **for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.**(bold added)



38. Article 12 was successfully relied upon in the case of **Abdul Rehman V The State** (1978 SCMR 292) where the Hon'ble Supreme court held as under at P.293

"The occurrence took place in 1964 when punishment for murder was death or transportation for life. Transportation for life under section 57, P.P.C. meant transportation for 20 years. The amendment in the Penal Code was introduced with effect from the 14<sup>th</sup> of April 1972 by Law Reforms Ordinance XII of 1972. According to the amended section 302 the punishment for murder was death or life imprisonment and life imprisonment according to section 57, P.P.C. meant imprisonment for 25 years.

According to Article 12 of the Constitution no law could authorize punishment of a person for an offence by a penalty than the penalty prescribed by law for the offence at the time the offence was committed. The accused could not therefore be sentenced to life imprisonment. He had to be sentenced to transportation for life. We therefore accept this petition and convert the punishment of the petitioner on each of the two counts to transportation for life instead of life imprisonment."

39. In a case which is more on point in respect of the instant case on the question of the period of disqualification under the NAO in the case of **Mansoor Ahmed Qureshi V The State** (PLD 2005 Kar 443) it was held as under vis a vis Article 12 and retrospective effect in the case of the disqualification period under the NAO being increased through amendment and that increased disqualification period would **not** apply to the accused whom a reference had been referred against prior to the amendment in the following terms at P.448 to 449:

"11. It would thus be seen that subsection (a) and proviso to section 15 were amended on 10-08-2001 to include the punishment of a convicted accused to hold public office and to be disqualified for a period of ten years from being elected as a member or representative of any public body or authority etc. Consequently, it is an admitted position that when the Reference No.29/2001 was filed on 14-07-2001, the punishment under the proviso to section 15(a) of the Ordinance did not include the accused ceasing to hold public office which only came into effect on 10-08-2001. Hence, now it would have to be considered whether the appellant could be given a retrospective, punishment.

12. In this regard, it would be seen that Article 12(1) of the Constitution provides that no law shall authorize the punishment of a person.

- (a) for an act or omission that was not punishable by law at the time of the act or omission; or
- (b) for an offence by a penalty greater than, or of a kind different from the penalty prescribed by law



for that offence at the time the offence was committed.

13. **The aforementioned Article has been interpreted by the superior Courts of this Country to mean inter alia that all laws shall apply prospectively viz. from the date of their promulgation and hence a person cannot be punished for an offence which did not exist on the statute book on the date when it was committed and also cannot be sentenced to a punishment higher or different than what was provided in the law at the time the crime was committed.** In this respect reference can be made to *Nabi Ahmed v. Home Secretary*, *Abdul Majid v. The State*, *Abdul Rehman v. The State*, *Muhammad Yunus v. The State*, *Mian Muhammad Nawaz Sharif v. The State* and *Lal Bux v. The State* (supra).

14. In this connection, it would be seen that in the case of *Muhammad Yunus v. The State* (supra) the Hon'ble Supreme Court came to the conclusion that where the occurrence took place on 13-7-1971, on which date the appellant/accused could only be awarded transportation for life for committing murder, he could not be sentenced to life imprisonment vide the amendment brought about in the law on 14-4-1972. The Hon'ble Supreme Court also came to the same conclusion in the case of *Abdul Rehman v. The State* (supra) and this Court in the case of *Abdul Majid v. The State*. **Consequently, we are, of the opinion, that although section 2 of the NAB Ordinance provide for its retrospective application from 1-1-1985, this is only with reference to the offence and punishments therefor provided in the body of the Ordinance on the date when it was promulgated i.e. on 16-11-1999. Where new offence are created along with corresponding punishments or new punishments are provided for existing offences, by virtue of amendments to the Ordinance, they would not apply retrospectively.** Hence in the present case, it would be seen that Ordinance XXXV of 2001 promulgated on 10-8-2001 is to have effect from the date of its promulgation. Consequently, we are of the opinion that the appellant could only be deemed to be convicted under the un-amended proviso to section 15(a) of the NAB Ordinance.

15. For the foregoing reasons we would allow this appeal by ordering that the appellant could only be convicted under the proviso to section 15(a) in its un-amended form i.e. as it stood prior to 10-8-2001. Order accordingly. Appeal stands disposed of in the foregoing terms."

40. It is also trite law that no time limitation period would be applicable to any void order. In this respect reliance is placed on ***Rehmatullah V Salah Khan*** (2007 SCMR 729) and ***Evacuee Trust Property Board V Mst Sakina Bibi*** (2007 SCMR 262).

41. In our view since either the 1<sup>st</sup> Ordinance or the 2<sup>nd</sup> Ordinance applied in the petitioners case there was no concept of a



plea bargain and thus prima facie the plea bargain and its resultant sentence in the Judgment are prima facie void. Under the 1<sup>st</sup> and 2<sup>nd</sup> Ordinances only a voluntary return (VR) could have been entered into which reads as under in respect of each Ordinance;

"15. **Voluntary return, etc.**---Where before the commencement of trial or at any time, with the leave of the Court, the holder of public office or any other person specified in subsection (2) of section 4 voluntarily returns to the Chief Ehtesab Commissioner, property, asset, gain acquired through corruption or corrupt practices, the Court may not proceed with the trial subject to such conditions as to fine or penalty as may be imposed by the Court and he resigns from the representative office or, if he is a person specified in sub-clause (iv) of clause (f) of section 2, he accepts termination from his service."

42. In both the 1<sup>st</sup> and 2<sup>nd</sup> Ordinances S.9 in terms of disqualification reads as under;

"9.**Disqualification to contest election.**--- Where a person is **convicted** for an offence of corruption and corrupt practices the Court may, keeping in view the nature and gravity of the offence, **direct that the holder of public office** shall stand disqualified for the period specified in sub-clause (h) of clause (1) of Article 63 of the Constitution of the Islamic Republic of Pakistan from being elected or chosen as a member of Parliament or a Provincial Assembly;

Provided that where the convicted person is a member of Parliament or Provincial Assembly, the Court may direct that such person shall cease to be such member on his conviction under this Ordinance (bold added).

43. In terms of disqualification under the Constitution Article 63 (1) (h) reads as under:

63. Disqualification for membership of Majlis-e-Shoora chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if---

- (a).....
- (b).....etc

"(h). he has been, on **conviction** for any offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release."(bold added)

44. Thus, taking all the above particular facts and circumstances of this case and the relevant law into account it would appear that the plea bargain offered by the petitioner,



accepted by the NAB and approved by the court in the Judgment can be deemed by us, acting in our constitutional discretionary jurisdiction in order to do justice between the parties, to be a Voluntary Return under either the 1<sup>st</sup> or 2<sup>nd</sup> Ordinance and the disqualification period under S.15 NAO (as it then read) can be held as void and be substituted by S.9 of either the 1<sup>st</sup> or 2<sup>nd</sup> Ordinances concerning disqualification which are the same.

45. The upshot of the above discussion is that we find that the petitioner will **not** be disqualified from holding public office at all based on her voluntary return under S.9 of either of the Ordinances which would result in no conviction being recorded against the petitioner since she was neither convicted nor a public office holder at the time of the offense. Even otherwise for the sake of argument, **if** the petitioner is considered to be a public servant/holder of public office at the time when the offense was committed (which we doubt) **or** is hit by S.4(2) of the 1<sup>st</sup> and 2<sup>nd</sup> Ordinance **and** is considered to have been **convicted** for an offense under the either the 1<sup>st</sup> or 2<sup>nd</sup> Ordinances (which we doubt) for a period exceeding two years she will at the **most** stand disqualified for a period of 5 years from the date of the Judgment which period has already expired.

46. As such, we find that the letters dated 03-06-2106 and 19-07-2016 both of which have been impugned by this petition stand struck down as having been passed pursuant to the Judgment whose finding in part (in terms of disqualification in para 49 and plea bargain being deemed as a voluntary return only) has been held as void. For the avoidance of doubt it is made clear that all other parts of the Judgment remain in full force and effect including those parts of para 49 in so far as they do **not** relate to disqualification.

47. The petition stands disposed of in the above terms.