

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-3147 of 2025

[Sindh Public Service Commission and another v. National Accountability Bureau and others]

Before;

Mr. Justice Zulfiqar Ali Sangi;

Mr. Justice Nisar Ahmed Bhanbhro.

Petitioners : Sindh Public Service Commission and Aijaz Ali Khan through M/s. Raj Ali Wahid Kunwar and Kashif Khan, Advocates.

Respondents 1 to 3 : NAB and 2 others through Syed Khuram Kamal, Special Prosecutor NAB a/w Mr. Irfan Ali, I.O./Deputy Director NAB Karachi.
Mr. Muhammad Akbar Khan, Assistant Attorney General.

Date of Hearing : 21.07.2025 & 24.07.2025.

Date of Short Order : 24.07.2025.

Dated of detailed order: 18.08.2025

J U D G M E N T

Nisar Ahmed Bhanbhro, J. Through the instant petition, the petitioners Sindh Public Service Commission [SPSC] and Aijaz Ali Khan, have challenged the inquiry proceedings initiated by National Accountability Bureau Karachi (NAB) under the allegations of corruption and corrupt practices against the Former Chairman, Members and Officials of SPSC.

2. Succinctly stated, the facts of the case as spelt out from the averments are that the Petitioner No 1 (SPSC) is a statutory body performing its functions in connection with the affairs of the province of Sindh. The Petitioner No 2 is an ex-member of SPSC, who claims to have discharged his duties diligently and honestly. The SPSC was tasked under SPSC Act 1989 & 2022 to conduct examination, make recommendations for recruitment to the posts in grade 16 and above. SPSC conducted Combined Competitive Examination - 2018 (CCE – 2018) for recruitment to various positions in grade 17 in different departments of Government of Sindh. The candidates who were not recommended for appointment and other organizations sent applications to NAB complaining corruption, favoritism and nepotism in recruitment process of CCE – 2018. The NAB initiated inquiry into the allegations of corruption and corrupt practices and issued call up notice dated 17.07.2020 and 05.05.2020 under Section-19 of National Accountability

Ordinance, 1999 (NAO, 1999) requiring Chairman SPSC to furnish record pertaining to CCE - 2018. In compliance to the notice, complete record pertaining to CCE-2018 was furnished to NAB through authorized officer on 24.02.2020 and 05.05.2020. The NAB, through call up notices dated 26.04.2022, 08.09.2022 and 01.11.2022 desired Chairman SPSC to provide complete record for CCE 2018, the directions were accordingly complied with. The NAB remained silent until 2025, when vide call up notice dated 04.06.2025 issued under Section 19 of NAO 1999, the Chairman SPSC was required to furnish information and records pertaining to CCE – 2018 and other examinations and personal details of the former Chairman, Former Members and Officers of SPSC. The Petitioners appeared before NAB, where they were subjected to harassment and humiliation. The Petitioners informed NAB that matter regarding CCE – 2018 was a past and closed transaction and settled at rest by Honorable Apex Court and cannot be re-opened. The continuation of inquiry by NAB, on the ill-founded allegations of misuse of authority, was abuse of the process of law. They have prayed for quashing the inquiry.

3. On notices, the investigation officer of the case, Deputy Director NAB, Mr Irfan Ali along with Special Prosecutor NAB appeared before the Court and filed reply along with copies of complaints and relevant record. NAB asserted that the inquiry in the matter was initiated on complaints, containing allegations of corruption, corrupt practices, favoritism, anomalies and malpractices in recruitment process of CCE – 2018. The inquiry was approved by Chairman NAB in year 2021. The inquiry was assigned to incumbent IO in the month of January 2025. In order to unearth the charges of corruption and corrupt practices allegedly committed by Former Chairman, Former Members and Officers of the SPSC call up notice under section 19 of the NAO, 1999 was issued to furnish relevant record. No harassment was caused to the accused under inquiry. The SPSC was not cooperating with inquiry officer, the inquiry was under progress and conducted in accordance with law. Petition was not maintainable and liable to be dismissed.

4. Mr. Raj Ali Wahid Learned Counsel for the Petitioners contended that Petitioners were under unabated harassment at the hands of NAB since year 2020. The NAB was probing in the matter pursuant to the complaints of misuse of authority, corruption and corrupt practices in CCE – 2018. He argued that the aggrieved candidates also filed Petition No D-2696/2019, (titled Imtiaz Thebo & another vs. Province of Sindh and others), before this Court at its Circuit Bench Hyderabad. The Petition was disposed of along with other connected petitions vide a consolidated Judgment dated 03.06.2021, wherein results of CCE 2018 were declared null and void and cancelled. He argued that SPSC challenged the order passed by this Court before Honorable Apex Court through Civil Appeal Nos.1502 to 1508 of year 2021. The Honorable Supreme Court of Pakistan in its Order dated 06.09.2022 validated the recommendations of SPSC for CCE-2018 and

restored SPSC for further operations. He argued that the NAB initiated inquiry to probe into the anomalies in the recruitment process of CCE – 2018. He argued that NAB issued notice dated 17.02.2020 directing SPSC to furnish the complete and relevant record pertaining to CCE-2018. In compliance to the said directive, SPSC submitted relevant record to NAB on 24.02.2020. NAB thereafter issued another notice dated 05.05.2020 for submission of additional record and information which was provided to NAB through office letter dated 19.05.2020. He contended that the Honorable Supreme Court of Pakistan set at rest the dispute regarding CCE – 2018 and pursuant to the recommendations of SPSC, the appointment letters were issued to the successful candidates by Government of Sindh and they were working as regular employees. He contended that NAB remained silent for about more than Three Years and issued call up notice dated 04.06.2025 directing SPSC to produce the record of CCE – 2018 and other examinations. The SPSC through its authorized officers submitted the entire record vide letter dated 30.06.2025. He contended that inquiry was an attempt to harass and humiliate the officers of SPSC as since 2020 no material was collected to substantiate the allegations of corruption and corrupt practices. He argued that the inquiry was nothing but a colorful exercise of powers. He contended that the NAB under the garb of inquiry was holding media trial of SPSC and its staff members. He contended that there was no evidence against the Petitioners to substantiate the charges of corruption and corrupt practices. In last he prayed for quashing the inquiry.

5. Syed Khuram Kamal, Learned Special Prosecutor NAB, assisted by Mr Muhammad Akbar Khan Assistant Attorney General for Pakistan and Mr. Irfan Ali, I.O./Deputy Director NAB Karachi contended that NAB Head Quarters Islamabad and its Karachi Bureau received several complaints regarding corruption and corrupt practices by the Members, Chairman and Officers of SPSC. Complainants accused the Chairman, Members and Officers of SPSC were involved in corruption, malpractices, favoritism and nepotism and recommendations for recruitment in CCE – 2018 were made under extraneous considerations. He argued that there were complaints of corruption and corrupt practices against the Chairman, Members and Officers of SPSC, which were the subject matter of the inquiry. He contended that the inquiry was being conducted in accordance with law and allegations of harassment and misuse of powers were baseless. He argued that this Court lacked jurisdiction to interfere into the inquiry proceedings. He contended that the matter was still at inquiry stage and NAB summoned SPSC to produce record, they failed to furnish complete record. He contended that SPSC was under an obligation to furnish record relevant to the inquiry but it failed and assailed the inquiry proceedings before this Court. He contended that the petition was not maintainable, vague and misconceived, hence liable to be dismissed with costs.

6. Heard Arguments, perused material available on record.

7. The Respondent/NAB has disputed the maintainability of this Petition on the score that this Court cannot interfere into inquiry proceedings. Article 199(1)(a)(ii) of the Constitution empowers this Court to judicially review the acts done or proceedings taken by the persons performing functions in connection with the affairs of the Federation, a Province or a local authority. It is within the dominion of this Court to exercise its power of judicial review to evaluate and weigh upon the executive actions in order to maintain and sustain the rule of law, check and balance and render such action or decision null and void an unlawful and of no legal effect, if found taken beyond the bounds of law. The judicial review can be sought if the decision maker was misdirected in terms of the law, exercised a power wrongly, or improperly purported to exercise a power that it does not have, which is known as acting ultra vires. The officer of the NAB while conducting an inquiry or investigation for the offences of corruption and corrupt practices discharge their duties in connection with the affairs of Federation and actions taken by them were thus amenable to the jurisdiction of this Court under Article 199(1)(a)(ii) of the Constitution for judicial review. This Court can declare such acts of the NAB, to have been taken without lawful authority and of no legal effect if found to be so and can also make any appropriate incidental or consequential order to put into force its decision.

8. This View is fortified by the judgment of Honorable Supreme Court in the case of F.I.A. through Director General, FIA and others Versus Syed HAMID ALI SHAH and others reported as P L D 2023 Supreme Court 265 wherein it has been held:

“6. Article 199(1)(a)(ii) of the Constitution empowers the High Courts to judicially review the acts done or proceedings taken by the persons performing functions in connection with the affairs of the Federation, a Province or a local authority and if find such acts or proceedings to have been done or taken without lawful authority, to declare them to be so and of no legal effect. The registration of an FIR and the doing of an investigation are the acts of officers of the police department (a provincial law enforcement agency) who perform functions in connection with the affairs of a Province and are thus amenable to the jurisdiction of the High Courts under Article 199(1)(a)(ii) of the Constitution. The High Courts can declare such acts of the police officers, to have been made without lawful authority and of no legal effect if they are found to be so and can also make any appropriate incidental or consequential order to effectuate its decision, such as quashing the FIR and investigation proceeding. The acts of registering the FIR and conducting investigation by the officers of the FIA, in the present case, are also subject to said jurisdiction of the High Court, as

they have been done by the officers performing functions in connection with the affairs of the Federation.”

9. Since the NAB was conducting inquiry into the charges of corruption and corrupt practices against the Officers, Members and Chairman of the SPSC. The accused facing inquiry were the aggrieved persons and can challenge such inquiry before this Court under its writ jurisdiction for judicial review. Since SPSC is a legal entity and no criminal proceedings can be initiated against SPSC. The officers, Members and Chairman if found involved in corruption and corrupt practices, they shall be held accountable under personal capacity for the said charges. Since SPSC was not an aggrieved party, therefore, instant Petition to the extent of Petitioner No 1 was not maintainable. So far as the grievance of Petitioner No 1, regarding medial trial and character assassination of the institution are concerned, the NAO 1999 provided an adequate remedy and relief in terms of section 33F and 33G, the SPSC may resort to the referred provisions of law for prosecution of the concerned NAB officials if so advised. We will therefore examine this Petition in respect of the Petitioner No 2 only.

10. We advert to the issue of quashing the inquiry proceedings initiated by the NAB against the Petitioner No 2 and others. The scanning of the material made available to this Court by the parties, revealed that NAB Head Quarter Islamabad and NAB Karachi received complaints from Faiz Mohammed, Riaz Ahmed Narejo, staff of SPSC, Shafqat Ali, Ghulam Nabi, Arshad Ali, unknown candidates of SPSC for CCE – 2018 raising serious questions over the recommendation of SPSC for CCE – 2018. After the complaint verification, the NAB Islamabad placed the case before 359th Executive Board Meeting held on 22.04.2021 for approval of inquiry, which was accorded and matter was referred to Chairman NAB for authorization. The Chairman NAB by exercising its powers conferred under section 34 – A of the NAO, 1999, authorized Director General NAB Karachi to inquire into the complaints through order dated 22.05.2021. Record evidenced that Director General NAB Karachi through its letter dated 23.09.2021 appointed Mr. Ghulam Abbas as Investigation Officer. The matter remained under inquiry for about three years when Director General NAB Karachi vide its letter dated 15.10.2024 changed the investigation officer and appointed Mr Nimar Bahadur Ghori to conduct further inquiry. It appears that Second investigation Officer could not proceed with the inquiry therefore again investigation officer was changed and vide letter dated 17.01.2025, Mr Irfan Ali Deputy Director NAB was appointed Investigation Officer to conduct further inquiry and submit final report. The Investigation Officer through call up notice dated 04.06.2025 required the Chairman SPSC to furnish record of the Constitutional Petitions filed against SPSC either pending or disposed of, regarding irregularities in recruitment process of CCE – 2018 or against any recruitment process. Complete record of service,

including personal files of Former Chairman, Members and Officers of SPSC. Para No 3 of the call up notice being relevant is reproduced for the ease of reference:

"3. You are also requested to direct the concerned officer to produce the wing original record and its certified copies on the above-mentioned date:

- a) **Complete record of all constitutional petitions filed against Sindh Public Service Commission (SPS) in Apex Courts (either pending or disposed of regarding irregularities in recruitment process of CCE-2018 or against any other recruitment process carried out by SPSC afterwards.**
- b) **Complete record of service including Personal files maintained by the department, Assets Declaration Proforma, summary of service record and detail of Disciplinary proceedings (if any) of following:**

Sr No.	Name	Designation
1.	Noor Muhammad Jadmani	Ex-Chairman
2.	Ejaz Khan Durrani	Member
3.	Aftab Anwar Shah	Member
4.	Haresh Channder	Member
5.	Saindad Solangi	Member
6.	Ghulam Shabbir Shaikh	Member
7.	Ahmed Ali Qureshi	Secretary
8.	Abdul Karim Durrani	Secretary
9.	Hadi Bux Kalhoro	Controller
10.	Saukat Ujjan	Controller
11.	Javed Chaher	Director, IT
12.	Imtiaz Jagirani	Add. Controller
13.	Muhammad Usman Memon	Asst. Controller
14.	Abdul Khaliq Jamali	Asst. Controller
15.	Ikhlaq Ahmed Kalwar	Deputy Director
16.	Sohail Patoli	Asst. Director

Any other information relevant to the fact in issue

4. It is made clear that non-compliance of directions contained in this notice, will amount, consciously and deliberately and with malice compromises, hampering, misleading, jeopardizing or defeating the inquiry for which you shall be liable to be

prosecuted under Section 31 of NAO, 1999 having the punishment up to ten years

11. The language contained in the call up notice inferred that NAB was seized with an inquiry related to CCE – 2018 and the charges of Corruption and Corrupt Practices against officers, ex – Chairman and former members of SPSC. The NAO, 1999 was enacted to probe into the matters of mega corruption, as for the offences relating to corruption and corrupt practices were concerned, “The Prevention of Corruption Act 1947” was in the field. The Federal Investigation Agency at Federal Level and Anti-Corruption Establishment at Provincial Level were engaged in detection of white-collar Crimes and prosecution of the accused.

12. As evidenced from record, besides the complaints received by NAB, Imtiaz Ali Thebo and others who were candidates in SPSC challenged the recommendations of SPSC for CCE – 2018 through constitution Petition bearing No. D-2696/2019 filed before Circuit Bench Hyderabad of this Court. The Learned Division Bench of this Court disposed of the petitions vide a consolidated Judgment dated 03.06.2021. The operative part (Para No 38) of the judgment is reproduced hereunder for ease of reference: -

"38. Having come to the irresistible conclusion that, when (a) the framers of the Constitution consciously chose to abstain from making provisions for mandatory creation of Public Service Commission; (b) the Chief Minister of Sindh having no powers to appoint Chairman and Members of the Commission under Rule 5(II)/Schedule-III/Entry(3) of the Sindh Government Rules of Business 1986; (c) the appointments of Chairman and Members of the Commission made under Rule 5(2) and (3) of Sindh Public Service Commission (Appointment of Chairman and Member) Rules 2017 being violative of the Rules of Business and made with utter disregard to the maintenance of political neutrality of the Commission; (d) No right to appeal having been provided to an aggrieved person; (e) Chairman and Members having taken no oath of office; (f) function of "Examination" of candidates restricted to Testing and then narrowed down to Interviewing under the Sindh Civil Servants (Functions) Rules, 1990 being ultra vires to the provisions of 1989 Act; (g) no Annual Reports as required by Section 9(1) of the Act, 1989 having been made available to the Public; (h) no data having been made available with regards advice refusal of the Commission under Section 8 of the Act, 1989 then how could one expect that any legit and useful fruit could be borne by this skewed and merit-throttling recruiting process; that's why Courts are kept engaged by

Commission's Members and operatives constantly on a permanent basis since inception of the Commission in the year 1989 when the said Act was enacted for no Constitutionally compelling reasons in the presence of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974; the Sindh Civil Servants (Probation, Confirmation and Seniority) Rules, 1975; the Sindh Civil Servants Act, 1973 and half a dozen alike laws/rules; and whereas, the Province (to a great extent) had been well served by honest, qualified and motivated civil servants before 1989 when this institution in its present form was born-according to one view, to serve as "one window facility to foster wholesale corruption" , has lost every shred of legitimacy and ought to be brought to a nullity in its present form. Accordingly for these reasons:

- i. Implementation of Sindh Public Service Commission Act, 1989 (in Its present form) being ultra vires to the Constitution, Sindh Public Service Commission (Appointment of Chairman and Member) Rules 2017 being violative of the Sindh Government Rules of Business, 1986; Sindh Public Service Commission (Functions) Rules, 1990 being ultra vires to the Sindh Public Service Commission Act 1989 are suspended forthwith.*
- ii. All test, Interviews, selection, appointments, tenders etc. or any act doable under the Sindh Public Service Commission Act, 1989 or the Rules/Regulations made thereunder are suspended forthwith. Individuals suspended by our order dated 15.04.2021 shall remain so.*
- iii. In case the Provincial Government wishes to re-enact these Lazus/rules, it may draw some Inspiration from such laws enacted in developing countries like Australia or New Zealand to deliver the premise of "right man/woman for the right Job" without fear or favour.*
- iv. In the meanwhile, all new recruitments strictly on merit be made in the same manner as those appointments were made prior to the enactment of the Sindh Public Service Commission Act, 1989, as if the said Act never existed.*
- v. In view of the foregoing, results and proceedings ensued in respect of Combined Competitive Examination 2018 are set aside and cancelled.*
- vi. Results of the 1,783 posts of Medical Officers & Women Medical Officers (BPS-17) purported to be appointed through advertisement dated 19.07.2018 are set aside and cancelled.*

vii. *The Petitioners, affecttes and all those interested to apply to the concerned departments for the relevant Jobs after these departments place de novo advertisement in accordance with law for such appointments and the departments) to consider received applications purely on merit, following all applicable formalities.*

These petitions along with all pending applications are disposed of in the above manner. Let a copy of this order be sent to all Heads of Departments listed in Column 4 of Schedule-1 (Rule - 3 (i) of the Sindh Government Rules of Business, 1986 forthwith and let website of the Sindh Public Service Commission (where none of the laws, rules or regulations pertaining to the Commission were made available) be immediately taken off the Internet".

13. Learned Division Bench of this Court declared SPSC, Act 1989 and SPSC Rules 2017 ultra vires to the constitution, consequently the recommendations for CCE – 2018 and appointments of Medical Officers were set at naught and cancelled. The provincial government was set at liberty to enact new recruitment laws by taking assistance from the laws applicable in the developing countries.

14. The record further transpired that Order dated 03.06.2021 passed by this Court was assailed before Honorable Supreme Court through Civil Appeal Nos.1502 to 1508 of 2021. The Honorable Apex Court disposed of the civil appeals vide order dated 06.09.2022. The Honorable Apex Court not only restored the SPSC in its original position but also validated the appointments made under the CCE-2018. The order reads as follows: -

"2. Having heard the learned counsel for the parties, gone through the judgment of the High Court as well as examining the provisions of Section 14 reproduced above, the position that merges is that a new situation has arisen by virtue of repeal of the Sindh Public Service Commission Act, 1989 and enactment of the Act, 2022. Considering the fact that in most instances, the prayers granted by the Sindh High Court were limited to the extent of suspending the proceedings being undertaken under the old law. However, in terms of paragraphs No.5 & 6 of the operative part of the impugned judgment, we have sought clarification from the Additional Secretary, Services Sindh who has clarified, on instructions and after consultation with the Advocate General, Sindh to the following effect:

- i. *The medical officers and women medical officers B-17 who had been appointed, 1783 in numbers, had been duly appointed after following the procedure provided in law, had appeared for the said posts and met the educational and experience requirements. They have been in service since 2018 and have also completed their training. They shall continue to work in the posts against which they were appointed and their appointments stand saved by virtue of the afore-noted saving clause.*
- ii. *The employees who had been appointed having passed the combined competitive examination 2018 against various posts including MS officers, Excise and Taxation Officers, Ward Rationing Officers etc. have also completed their training and have been in service since 2018. They shall also continue to serve in the said positions and their appointments shall not be disturbed.*
- iii. *As far as concerns those respondents who had approached the Sindh High Court complaining that they had unlawfully been kept out of the appointment process and others had been appointed despite having scored higher marks in the examination or were better qualified, the petitioners agree that the cases of such petitioners shall be treated as pending cases and would be processed under the new law by the Public Service Commission. If they do not qualify or are not appointed on account of non-availability of seats, they shall be considered for appointment against posts that may subsequently become available subject to all just and legal exceptions and provided they participate in the fresh process including written tests and interviews.*
- iv. *For avoidance of doubt, it is clarified that those of the respondents, who may in the meantime and during pendency of these proceeding may have crossed the prescribed age limit, they may move appropriate applications for relaxation of the age limit owing to the specific facts and circumstances of these cases. If and when such applications are moved, the Sindh Public Service Commission/Government of Sindh shall consider their cases sympathetically and pass appropriate orders in accordance with law.*

All these appeals/petitions are disposed of in the terms noted above".

15. Para No (ii) and (iii) of the order explicitly set at rest CCE – 2018 dispute. The Recommendations for recruitment by SPSC were upheld and the appointees were allowed to continue jobs. The SPSC was directed to process the cases of complaining candidates for appointment under the new law if found qualified. The order of the Honorable Apex Court reflected that the civil appeals were disposed of with the consent of the complaining candidates and government of Sindh. The NAB was not competent to inquire into the validity or otherwise of CCE – 2018 examination after its adjudication by Honorable Supreme Court and it became a closed and past transaction. The SPSC Act 2022 and Regulations 2023 framed thereunder, provided a mechanism for inquiring into the correctness of the results, which was the proper forum for the aggrieved party to seek redressal of the grievance. NAB cannot call for the answer sheets of any of the candidates from SPSC, it was the prerogative of the SPSC only to do so on the application of the aggrieved party, if permissible under the law.

16. From call up notices issued by NAB, it transpired that the NAB was holding inquiry under the charges of corruption and corrupt practices against the Former Chairman, Members and Officers of SPSC. At the time, when instant inquiry was initiated, the NAO, 1999 did not provide any pecuniary limits for initiating inquiry. However, under the SOPs framed by NAB, amount of Rs 10 million and above was treated as an offence falling within the ambit of the NAO, 1999. Pursuant to amendment made by parliament in year 2023 in NAO, 1999, through amendment Act No XXIV of 2023, pecuniary limit of an amount of Rs 500 million and above is defined as an offence of corruption and corrupt practices falling under the domain of NAB for inquiry and investigation. Section 5 (o) of the NAO, 1999, defines offence in the following manner:

5(o). “Offence” means the offences of corruption and corrupt practices and other offences as defined in this Ordinance of the value not less than five hundred million rupees and includes the offences specified in the Schedule to this Ordinance

The definition of the Offence in the above provision of law enunciated that an offence of corruption triable under this ordinance would involve the pecuniary limits which shall not be less than Five Hundred Million Rupees. The offence of corruption and corrupt practices below this threshold would be triable under the provisions of “Prevention of Corruption Act 1947” and cannot be investigated by NAB.

17. The Petitioner No 2 is accused of misuse of authority. Section 9 of the NAO, 1999 defines the Corruption and Corrupt practices. For the purposes of instant inquiry, sub section a(vi) of Section 9 would be relevant. Provision of the referred law envisaged that nothing shall be an offence of the misuse of authority unless it is proved through

material evidence that the holder of the public offence has gained monetary benefit or asset from the person in whose favor the act of misuse of authority has been rendered. Section 9(a)(vi) is reproduced for the ease of reference:

9. Corruption and corrupt practices.*(a) A holder of a public office, or any other person, is said to commit or to have committed the offence of corruption and corrupt practices:*

i.

ii.

iii.

iv.

v.

(vi) if he intentionally misuses his authority by dis-regarding law so as to gain any monetary benefit or favour for himself or any other person related to him or on his behalf.

Explanation I.—That an act done in good faith and in discharge of duties and performance of official function shall not constitute an offence under this clause.

Explanation II.—That nothing shall be an offence of misuse of authority unless it is proved through material evidence that the holder of public office has gained any monetary benefit or asset from the person in whose favour the act of misuse of authority has been rendered.

18. When confronted, what incriminating evidence was collected during the period of last three years to establish that the persons under inquiry had gained monetary benefits through misuse of authority. Mr Irfan Ali IO of the case informed that he was authorized inquiry in the month of January 2025, he issued notices to SPSC for production of record but complete record was not furnished. When asked about the incriminating material collected by the two previous IOs, he candidly conceded that no incriminating evidence was collected during the last three years. IO reverted to an excuse that he was facing difficulty in collecting information, however on Court's query he failed to produce any call up notice issued to any other entity, bank or financial institution calling for the information or seeking assistance in the matter, which was required and halted to jeopardize the process of inquiry. The record demonstrated that the NAB through the impugned call up notice called for the record of the former chairman, former members and officers of SPSC. Per SPSC that the record to the extent of Officers of SPSC was provided to NAB way back in year 2022, the same also stands substantiated from the letter dated 23.09.2022 written by the SPSC to Respondent No 1 regarding submission of record required by NAB.

19. Under the provisions of NAO, 1999 NAB can initiate the inquiry and investigation proceedings for filing of reference before the Accountability Court, on receipt of a reference from Government or on complaint from any person or of its own. Section 18 of the NAO, 1999 empowers the NAB to inquire and investigate the matters related to charges of corruption and corrupt practices and file reference for trial if sufficient incriminating material was collected during investigation. Section 18 reads as under:

18. Cognizance of offences: (a) *The Court shall not take cognizance of any offence under this Ordinance except on a reference made by the Chairman NAB or an officer of the NAB duly authorised by him.*

(b) *A reference under this Ordinance shall be initiated by the National Accountability Bureau on—*

(i) a reference received from the appropriate government; or

(ii) receipt of a complaint; or

(iii) its own accord.

(c) *Where the Chairman NAB, or an officer of the NAB duly authorized by him, is of the opinion that it is, or may be, necessary and appropriate to initiate proceedings against any person, he shall refer the matter for inquiry. If after completion of inquiry the allegations of commission of an offence under this Ordinance are substantiated with material evidence, the matter shall be converted into investigation:*

Provided that the report of the inquiry shall be provided to the accused.

(d) *The responsibility for inquiry into and investigation of an offence alleged to have been committed under this Ordinance, shall rest on the NAB to the exclusion of any other agency or authority, unless any agency or authority is required to do so by the Chairman NAB or by an officer of the NAB duly authorised by him*

(e) *..... omitted*

(f) *Any Inquiry or Investigation under this Ordinance shall be completed within six months.*

(g) *The Chairman NAB, or an officer of the NAB duly authorized by him, shall appraise the material and the evidence placed before him during the inquiry and the investigation, and if he decides that it would be proper and just to proceed further and there is sufficient material to justify filing of a reference, he shall refer the matter to a Court.*

(h) *If a complaint is inquired into and investigated by the NAB and it is concluded that the complaint received was prima facie frivolous or has been filed with intent to malign or defame any persons, the Chairman NAB or Deputy Chairman NAB or an officer of the NAB duly authorised by the*

Chairman NAB, may refer the matter to the Court, and if the complainant is found guilty he shall be punishable with imprisonment for a term which may extend to one year, or with fine or with both.

20. The provision of the above referred law binds the NAB to complete any inquiry or investigation within a period of six months. The purpose to frame this time limit is to save national exchequer usually spent in the lengthy process of inquiry and investigation and to save the persons under inquiry or investigation of unnecessary harassment, pain and mental agony caused due to prolonged prosecutions at pretrial stage. The law further necessitated for conversion of an inquiry into investigation when sufficient incriminating material was collected and to complete the investigation within a period of six months. In all, the NAB has got a period of six months to complete inquiry and if the matter is converted into investigation a further time of six months for completion of investigation, the NAB cannot go beyond the period of Twelve months for completion of entire proceedings that would culminate into filing of reference or a report under section 9 (c) of the NAO, 1999 for discharge of the accused under investigation.

21. To carry out the purposes of the NAO, 1999, the NAB has formulated a Revised Standard Operating Procedure (SOP) with an aim to provide for a more focused handling of legally cognizable complaints. SOP was intended to streamline the Complaints, Acceptance and Processing framework with an emphasis to discourage mala fide/ frivolous/ pseudonymous Complaints. Clause 4 of the SOP deals with the procedure to handle the complaints received from the private persons. Clause 4 reads as under:

4. Measures to Stem Fake / Anonymous Complaints

(i) No anonymous/ Pseudonym Complaint will be entertained.

(ii) Only those Complaints meeting the laid down criteria will be processed.

(iii) All pending complaints which do not meet the criteria shall be disposed off by respective Regional Bureaus and reports shared with Director, Central Complaint Cell at NAB (HQ) by 10 February 2024.

(iv) In case of on going anonymous / pseudonymous complaints, where some evidence is also available, the Regional Bureaus will have the option to trace the complainants first and on confirmation will seek NAB HQ approval for continuation of Complainant Verification (CV) process. This exercise is to be completed by March 1, 2024. Thereafter No old CV will be allowed to be processed.

(v) Above considerations will not be applicable to cases, which have been converted into Inquiry, Investigation or a Reference has been filed.

22. The Provisions of Clause 4 of the SOP make the identification of complainant mandatory. It places restraint for taking up any inquiry in absence of the identification of the complainant. Though sub – clause v of clause 4 of the SOP excluded the operation of this provision of SOP to the instant inquiry as the complaint was already converted into inquiry. However, conversion of a complaint into inquiry prima facie led to an inference that sufficient incriminating material was collected at the time of complaint verification stage that necessitated to conduct inquiry. We have examined the complaints filed by the IO NAB along with a report. All the Complainants were pseudonym in nature, at the complaint verification stage or thereafter none from the complainants appeared before IO to verify the contents of the Complaint. There were generalized and vague allegations of favoritism for blue eyed boys without any substantial proof to that regard, the riddle still needs clue that what weighed with the NAB to convert the complaint into inquiry or even to take up the matter at its own by invoking powers under section 18 (c) of the NAO, 1999, when no evidence was available on record to constitute an offence of corruption and corrupt practices.

23. During the hearing of Instant Petition, we called record of the inquiry for our perusal. We were expecting that sufficient incriminating material was collected during the period of last more than Three years and the Petitioners were making hue and cry of victimization by NAB without any reasons. But to our utter surprise, IO NAB placed on record a case brief which contained the details of members and officers of SPSC whose kith and kin got favor and were recommended for appointment in key posts in provincial management cadre Government of Sindh, but no appointment letter or proof that such appointments were made during the tenure of the accused under inquiry was furnished. The list contained the name of beneficiary Shazaib Khan who was claimed by NAB, to be the son of Petitioner No 2 Ajjaz Khan Durrani. Rejoinder to the objection was filed by the Petitioner Aijaz Khan along with his Family Registration Certificate (FRC) issued by NADRA controverting the claim of NAB. Petitioner No 2 specifically denied his parental relationship with Shahzaib Khan. FRC revealed that Petitioner Aijjaz Khan had no son in the name of Shahzaib Khan. IO NAB was repeatedly asked to bring on record any material to satisfy that sufficient incriminating evidence was collected during the last three years since inquiry was initiated to establish a charge under section 9 of the NAO, 1999, against the accused persons. The IO NAB frankly conceded that no serious efforts were made to collect the incriminating material against the accused persons under probe excepting that their close relatives including brothers, sons and daughters were appointed in different cadres of service of Government of Sindh.

24. To probe into the charges of Corruption and Corrupt practices, the NAO, 1999 and SOPs framed thereunder, provided a three-tier investigation system. The matters relating to probe into the white-collar crime are very sophisticated and require concrete

evidence to prove charges, which some time become difficult to collect, for the reason that the persons facing accusation of corruption usually enjoy administrative positions and wield sufficient influence on the affairs of the office to deny the access of investigating agency to the record. Under the Police Rules, 1934, Local Police was required to complete investigation within fourteen days in ordinary cases and ninety days in Terrorism cases. Federal Investigation Agency and Anti-Corruption Police were required to complete investigation within ninety days, under the NAO, 1999 the NAB was provided a twelve months' time to complete both inquiry and investigation and furnish its results to the Court having jurisdiction. In comparison to other agencies involved in detecting white collar crimes, NAB was given vast powers under the NAO, 1999 to call for information from any person or department regarding any material or document, seek assistance of any other department and even make a request for mutual legal assistance and cooperation of a foreign country in the matters of inquiry or investigation.

25. In the digital age, it takes minutes to seek personal information of any person accused of amassing wealth through ill gains, which in the past took years because of the manual records. No department can refuse to transmit the record if called by the NAB for the purposes of inquiry or investigation. Section 19 of the NAO, 1999, conferred vast powers to an officer of the NAB to call for any record. Section 19 reads as under:

19. Power to call for information: *The Chairman NAB or an officer of the NAB duly authorised by him may, during the course of an inquiry or investigation of an offence under this Ordinance:*

(a) call for information from any person with regard to particulars of the subject inquiry or investigation for the purpose of satisfying himself whether there has been any contravention of the provisions of this Ordinance or any rule or order made there under;

(b) require any person to produce or deliver any document or thing useful or relevant with regard to the subject inquiry or investigation;

(c) examine any person acquainted with the facts and circumstances of the case with regard to the subject inquiry or investigation ; and

(d) require an bank or financial institution, notwithstanding anything contained in any other law for the time being in force, to provide any information relating to any person whatsoever, including copies of entries made in a bank's or a financial institution's books such as ledgers, day books, cash books and all other books including record of information and transactions saved in electronic or digital form, and the keepers of such books or records shall be obliged to certify the copies in accordance with law with regard to the subject inquiry or investigation.

(2) Any person called to provide information under sub-section (1) in relation to an offence alleged to have been committed under this Ordinance, shall be informed if he is an accused person or otherwise, and if the person is alleged to have committed an offence he shall be informed of the allegations against him in such manner as would enable him to file his defence.

26. Provisions of section 19 of the NAO, 1999 mandated the IO of the case to call for any information from any Person (person includes authority, entity, organization or Bank etc.). The person who is called by NAB to furnish record cannot take any excuse and deny the production of record or evidence. The Petitioners are accused of the misuse of authority and the offence of corruption and corrupt practices related to misuse of authority was linked with the monetary gains therefore it was necessary to establish that the misuse of authority resulted in gains to the accused. Under section 20 of the NAO, the financial institutions were obliged to transmit the information of suspicious transactions through the quickest possible means, failure to provide information was treated as offence punishable up to five years' imprisonment. The system of the banks and financial institutions has not only been digitalized in our country but made available under One Link System and Bank can transmit the required information within minutes time through the digital channels. Section 20 reads as under:

20. Reporting of suspicious financial transactions. — (a) *Notwithstanding anything contained in any law for the time being in force, it shall be the duty of all banks and financial institutions to take prompt and immediate notice of all unusual or large transactions in an account, which have no apparently genuine economic or law full purpose and upon bonafide professional judgment of the Bank or financial institution] that such transactions could constitute or be related to an offence under this Ordinance, the manager or director of such Bank or financial institution shall report all such transactions to the Chairman NAB forthwith by the quickest possible mode of communication to be confirmed in writing.*

(b) Whoever fails to supply the information in accordance with sub-section (a) shall be punishable with rigorous imprisonment which may extend to 5 years, and with fine.

[Explanation. —For the purposes of this section, a transaction in cash over two million Rupees shall be considered as an unusual or large transaction.]

27. Provisions of the above section burdened the banks and financial institutions to convey the required information to an officer of NAB without any loss of time and with

no excuse to escape. The compliance to the request of the NAB for provision of information was mandatory, as non-compliance entailed penal consequences of prosecution and conviction. Things did not stop there, the NAO, 1999 empowered NAB to seek assistance of any department of the Federal Government, Provincial Government, Local Authority, Bank, Financial Institution, person or any authority and institution or department in the public or the private sector and require or demand any information or document under Section 27 of the NAO, 1999, which reads as under:

27. Power to seek assistance. The Chairman NAB, or an officer of the NAB duly authorised by him, shall have the power to seek full and complete assistance and call for all or any documents and information relevant to or in connection with any matter or inquiry or investigation pending before the NAB, or disposal of any property surrendered to or seized by the NAB, from any department of the Federal Government, Provincial Government, local authority, bank, financial institution, person or any authority and institution or department in the public sector or the private sector, as he may deem fit and proper to demand or require, except to seek information, document or assistance the secrecy of which is protected under the law.

28. To provide requisite information to NAB was mandatory, every person working in any public or private entity or organization was under an obligation to transmit the information called for or required by the NAB, without any loss of time, failure thereof entailed penal consequences. Refusal to extend assistance in the inquiry or investigation tantamount to hamper the process of inquiry or investigation, any attempt to hinder the due process of law to happen in the matters related to NAO, 1999 were treated as an offence under section 31, which reads as under:

31. Prohibition to hamper investigation.—(a) Notwithstanding anything contained in any other law for the time being in force, if any person concerned with the inquiry, investigation and prosecution of a case consciously and deliberately and with malice compromises, hampers, misleads, jeopardizes or defeats an inquiry or investigation of a case under process before NAB or any concerned agency or authority or the Court or any other court he shall be guilty of an offence under this Ordinance punishable with rigorous imprisonment for a term which may extend to ten years.

(b) No person will be proceeded against under this section except with the sanction of a Committee comprising the Chairman NAB Deputy Chairman NAB and the Prosecutor General Accountability.

29. In presence of such unfettered powers for conducting inquiry and investigation envisaged under the provisions of the NAO, 1999 referred supra, it is always expected that the Corruption Watchdog would not falter to book the culprits involved in the white-collar crime within a reasonable time by collecting sufficient incriminating evidence, leaving no chance of escape for the accused during trial. The corruption in any society in any form is not tolerable, it attacks as termite and erodes the society as whole, the nations have not fallen due to wars but crippled due to the menace of corruption. The institutions established under the law to detect the offence of corruption and corrupt practices were saddled with a sacred duty to bring the culprits before the Court of Justice with a zero degree of tolerance.

30. This Court normally does not interfere into the matters relating to investigation or inquiry. This Court has always adopted a reasonable restraint to exercise the powers of judicial review in the matters of inquiry and investigation and allowed the investigating agency to collect the material without any hindrance. Investigation of the criminal case was always allowed to take its due course in order to sift grain from the chaff and provide credible information regarding guilt or innocence of the accused facing charge. This Court cannot assume the role of investigator and it is for the investigation agency to conduct the investigation in accordance with law.

31. It is settled notion of law that an accused is presumed innocent unless proved guilty. Under the NAO, 1999, the NAB has been given a time limit to complete the process of inquiry or investigation. The wisdom of legislature is quite clear that prolonged inquiries result in undue harassment and humiliation of the person under investigation as discussed supra. In the present case, Petitioners have placed on record media clips to demonstrate that the Petitioners were under continued harassment and subjected to media trial due to the pendency of inquiry. Under the provisions of the Constitution of the Islamic Republic of Pakistan, 1973, reputation of a person 'has received the highest protection in Article 4(2)(a). Further under Article 14 the dignity of man and, subject to law, the privacy of home, shall be inviolable right of each and every citizen. The defamation of any person or citizen through spoken or written words or any other means of communication lowers the dignity of a man, thus, it is the constitutional obligation of all the organs of the State to respect and show regard to dignity of every person.

32. The Petitioners have alleged serious malice on the part of the NAB for investigating the matter which was set at rest by the Honorable Supreme Court. Though allegation of malice has not been substantiated by any proof or evidence, yet the malice in fact were difficult to be proved. As malice in fact required the evidence that the action was actuated with an ulterior purpose to harm another or benefit oneself. The NAB was

burdened under the law to investigate the mega scams, thus any action to investigate the charges of corruption and corrupt practices would not amount to malice in fact. Plea of malice in fact required a high standard of proof. The rationale behind such an approach was that a plea of malice in fact frustrated the process of justice. After a complainant established malice in fact against a person, the entire proceeding by the latter was brought to an end. This resulted in the merits of the case being ignored. The Honorable Supreme Court of Pakistan in the case of Said Zaman Khan v. Federation of Pakistan (2017 SCMR 1249) recognized another category of malice as “*malice in law*”, holding that actions that were manifestly illegal or so anomalous that they lacked nexus with the law under which they were taken, were the actions malice in law. We are of the view, that the malice in fact were not established in the present case, but the careful examination of the record established the malice in law, as the NAB without any substantial material on record converted the complaint into inquiry and kept it pending for long time without any reasons.

33. Honorable Supreme Court of Pakistan in the case of SAID ZAMAN KHAN and others Versus FEDERATION OF PAKISTAN through Secretary Ministry of Defence and others reported as 2017 S C M R 1249 has held that

82. All judicial and quasi-judicial forums for that matter even the Executive Authorities exercise only the powers conferred upon them by law so as to fulfill the mandate of such law and to achieve its declared and self-evident purpose. However, where any action is taken or order passed not with the intention of fulfilling its mandate or to achieve its purpose but is inspired by a collateral purpose or instigated by a personal motive to wrongfully hurt somebody or benefit oneself or another, it is said to suffer from malice of facts. In such cases, the seat of the malice or bad faith is the evil mind of the person taking the action be it spite or personal bias or ulterior motive. Mere allegations, in this behalf, do not suffice. Malice of fact must be pleaded and established at least prima facie on record through supporting material.

83. All persons purporting to act under a law are presumed to be aware of it. Hence, where an action taken is so unreasonable, improbable or blatantly illegal that it ceases to be an action countenanced or contemplated by the law under which it is purportedly taken malice will be implied and act would be deemed to suffer from malice in law or constructive malice. Strict proof of bad faith or collateral propose in such cases may not be required.

34. The record evinced that in the instant matter, the inquiry was assigned to IO Mr. Ghulam Abass on 21.09.2021 no material worth incriminating was collected until 15.10.2024. The inquiry was then assigned to Mr Nimar Bahadur Ghori for a reason of rationalization of workload but no material was collected and for the third time it was assigned to Mr Irfan Ali vide letter dated 17.01.2025 for the similar reasons, but until now no incriminating material was collected. We are surprised that after the lapse of about Three years' time when complaint was converted into inquiry, no material worth incriminating has been collected to bring the charge within the ambit of definition of an offence under section 5(o) and 9(a)(vi) of the NAO, 1999. Honorable Supreme Court of Pakistan has depreciated the practice of successive investigations and inquiries in the Case of Bahadur Khan Versus Muhammad Ramzan and 2 others reported as 2006 SCMR 373 and Riaz Hussain and others Versus the State reported as 1986 S C M R 1934. In the present case too, the successive inquiries were conducted without any plausible explanation, for no rationale behind it.

35. The NAB was seized with the inquiry since year 2021 and under the provisions of NAO, 1999 it would have been completed within a period of six month and presented to the Competent Authority for perusal and making a determination that inquiry should culminate into investigation or not. Least to say that IO for the period of about more than three years did not record the statements of complainants, the statements of beneficiaries of CCE – 2018 to collect incriminating evidence that any of the candidates in SPSC were favored under extraneous considerations. Surprisingly IO even did not record the statements of the complaining candidates who filed petitions before this Court. No information from FBR, Revenue Authorities and Banks was collected to say that Petitioners and other accused under inquiry had amassed wealth beyond known sources of income. The law required that the things should be done in the manner as provided under the law. There is no concept of successive inquiries, further inquiries under the NAO, 1999.

36. The NAO, 1999 was promulgated to detect mega corruption scams. NAO, 1999 underwent significant changes by the passage of time. While interpreting statutes, the cardinal rule is to take the purposive approach which means to look at the meaning of the words and the object and purpose of the law, which states the aim and objective of the law. Discovering the aim of the legislature carries significant weight while construing the meaning of the words. In the instant case, the Amendment Act XXIV of 2023 changed the definition of offence of misuse of authority, and made it subject to monetary gains. The definition of offence under the changed law stood at variance from the provisions of old law, wherein the issues of pecuniary limits and monetary gains were not involved, the amended law articulated that any offence involving the corruption of Five Hundred Million and above would be cognizable under the NAO, 1999 and misuse of authority

was an offence if it resulted in monetary gains. The material, whatever, so far has been placed on record of this Court, it did not elicit that the Petitioner No 2 and the accused facing inquiry misused authority and obtained pecuniary gains amounting to Rs 500 million or above to attract the ingredients of the offence defined under section 5(o) and 9(a)(vi) of the NAO, 1999. The NAB in such a situation lacked jurisdiction to entertain inquiry. Prima facie fundamental rights of the petitioner as to the dignity and to be dealt in accordance with law were compromised. The NAB inquiry was a colorful exercise of powers and resulted into abuse of the process of law. Therefore, a case for indulgence of this Court and to exercise the powers of judicial review in the instant matter is made out.

36. The Honorable Supreme Court of Pakistan in the case of CHAIRMAN, NATIONAL ACCOUNTABILITY BUREAU and another Versus MUHAMMAD IRSHAD KHAN reported as 2008 S C M R 1012, upheld the judgment passed by the Learned Division Bench of the High Court quashing NAB inquiry and it was held:

8. On bare perusal of the impugned judgment it will transpire that the judgment is supported by strong and convincing reasons. It may be observed that at least three investigations were conducted by the NAB authorities. On two occasions though the Investigating Officer recommended the filing of the reference but the case could not be filed for the reasons that in the opinion of the Legal Expert the case against the respondents was weak. In the third investigation, the Investigating Officer furnished the report stating that there was no sufficient evidence to submit the reference before the Court of law for successful prosecution against the accused, therefore, he submitted that the case might be considered for closure after taking legal opinion in the matter. When the matter was referred for legal opinion, the Legal Expert concurred with the view of the Investigating Officer but still the Deputy Director-General, NAB, was not satisfied and he again referred the matter for investigation. It is obviously evident from the record that in the first instance, the investigations were initiated in the year 2001 but no sufficient evidence could be collected against the respondent despite repeated investigations for the purpose of his prosecution. Evidently, a futile exercise of reinvestigation continued for six years causing undue harassment to the respondent. Thus the learned High Court rightly issued directions in the nature of judgment which is impugned before us.

37. For what has been discussed herein above, we have reached to an irresistible conclusion that the Petitioner No 2 Aijaz Khan has made out a case for indulgence of this Court to exercise the powers of judicial review under article 199 of the Constitution. In

view of the above legal and factual position, it is held that NAB lacked jurisdiction to entertain the subject inquiry which prima facie fell outside the purview of section 5(o) and 9(a)(vi) of the NAO, 1999, the acts of the NAB of carrying out inquiry in the present case are declared to be without lawful authority, perverse and without jurisdiction, accordingly set aside and the inquiry No. NABK20191128197616 titled “Authorization of Inquiry u/s 18(c) of NAO, 1999 against Noor Mohammed Jadmani, Chairman, Ejaz Ali Khan Durrani, Member of Sindh Public Service Commission (SPSC) and others” stands quashed.

38. For the aforementioned reasons, the instant petition was allowed and the subject enquiry was quashed by a short order dated 24.07.2025 and above are the reasons for the same.

JUDGE

JUDGE

Karachi

18.08.2025

Approved for reporting

Ayaz Gul