

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT**

BEFORE:

***Mr. Justice Syed Arshad Hussain Shah, Chief Judge
Mr. Justice Wazir Shakeel Ahmed, Judge***

Cr.PLA Under Objection No. 53/2020

(Against Order dated 03.09.2020 passed by the Gilgit-Baltistan
Chief Court in Writ Petition No. 115/2020)

Chairman National Accountability Bureau
Through Prosecutor General Accountability
NAB Headquarters, Shahrah-e-Jamhuriat
Section G-5/1, Islamabad.....**Petitioners**

Versus

Syed Akhtar Hussain Shah s/o Syed Raza Shah
Caste Syed Rizvi, presently working as Secretary Education
Gilgit-Baltistan, Gilgit..... **Respondent**

PRESENT:

For the Petitioners : The Special Prosecutor,
NAB Office Gilgit
Mr. Shakoor Khan AOR

For the respondent : Malik Shafqat Wali Sr. Advocate
Respondent in person

On Court Notice : Advocate General, GB

Date of Hearing: **27.11.2020**

JUDGMENT

Syed Arshad Hussain Shah, Chief Judge:- This judgment shall dispose of the above Civil Petition for Leave to Appeal directed against Order dated 03.09.2020 passed by the learned Gilgit-Baltistan Chief Court, Gilgit whereby Writ Petition No. 115/2020 filed by respondent was accepted.

2. Brief facts of the case are that a written complaint was lodged with National Accountability Bureau, Islamabad by one Captain (R) Muhammad Shafi against Syed Akhtar Hussain Shah s/o Muhammad Raza Shah (respondent herein). The said complaint was with regard to carrying out an investigation into the matter of approval of a development project and receipt of compensation to the tune of Rs. 18 million by the respondent against his land acquired for a project namely “Re-Carpeting of the Roads in Skardu Town”. The complainant further alleged in his complaint that, the respondent while serving as Secretary Works, Gilgit-Baltistan approved the development project in question and received land compensation to the tune of Rs. 18 Millions against a barren land and converted rest of his land into commercial one through construction of link roads from both sides of his land. The complainant in his complaint alleged that the respondent, while working as Secretary Works, Gilgit-Baltistan, misused his authority whereby he caused a loss of millions of rupees to the government exchequer in the shape of receipt of compensation in respect of his barren land. Consequent upon submission of the complaint, the Chairman, National Accountability Bureau (NAB) in a meeting of Executive Board held on 19th May, 2020, approved an inquiry against the present respondent. When the respondent came to know about approval of inquiry against him, he approached the learned Gilgit-Baltistan Chief Court with a writ petition bearing No. 115/2020 seeking directives for quashing the inquiry proceedings approved against him. The writ petition was accepted and the inquiry proceedings were ordered to be quashed accordingly. Being aggrieved and dissatisfied with the order of quashing the inquiry proceedings, the

petitioners have now approached this Court with the instant Civil Petition for Leave to Appeal.

3. The learned Special Prosecutor, NAB, Gilgit argued that the impugned Order passed by the learned Gilgit-Baltistan Chief Court was not sustainable in the eyes of law because the discretionary powers conferred on the learned Gilgit-Baltistan Chief Court for quashing inquiry against the respondent in NAB cases were required to be exercised in judicious manner and not in a mechanical or arbitrary manner. He next contended that in presence of National Accountability Ordinance, which is a special law, the learned Gilgit-Baltistan Chief Court was barred to exercise its constitutional jurisdiction. He next contended that prosecution had sufficient evidence against the respondent inasmuch as, the respondent did not qualify for quashing inquiry at a stage where NAB authorities have just initiated inquiry against the respondent. The learned Special Prosecutor added that quashing of inquiry against the respondent would lead to hamper/interfere with the proceedings initiated by NAB authorities. In support of arguments, the learned Special Prosecutor, NAB relied upon judgments of superior Courts of Pakistan reported as PLD 1971 Supreme Court 677, 1994 SCMR 2142, 2010 SCMR 1835, PLD 2014 Sindh 490, 2018 MLD 1326 Peshawar and PLD 2007 Karachi 469. In view of submissions made herein above and on the basis of case law relied upon, the learned Special Prosecutor, NAB prayed for setting aside the impugned Order passed by the learned Gilgit-Baltistan Chief Court. On the other hand, the learned counsel for the respondent vehemently defended the impugned Order.

4. We have heard arguments advanced by the learned Special Prosecutor, NAB, Gilgit-Baltistan. The record of the case as well as the impugned Order passed by the learned Gilgit-Baltistan Chief Court has also been perused minutely.

5. It is observed that the complaint lodged by the complainant with National Accountability Bureau authorities was a piece of document containing mere allegations, deficient of proof in support of the allegations. It seems that NAB authorities, in their meeting, without appreciating the factum that the allegations leveled in the complaint were not supported by any proof attached therewith, which could call for initiation of an inquiry against the respondent. However, NAB authorities converted the complaint into an inquiry without considering that it was not necessary and not appropriate which phenomena of being necessary and appropriate is sine qua non for initiation of inquiry against an accused. The relevant provision of law i.e. the National Accountability Ordinance is reproduced herein below:

Section 18 (c)

“Where the Chairman National Accountability Bureau is of the opinion that it is or may be necessary and appropriate to initiate proceedings against any person on receipt of a reference or complaint or on his own accord, as the case may, he shall refer the matter to Deputy Chairman National Accountability Bureau or to any other officer for inquiry and investigation:.

It is well settled principle of law that violation of the mandatory provision of law itself nullifies/vitiates the whole proceedings as Section 18 (c) of the National Accountability

Ordinance is mandatory by its nature. Therefore, some concrete material must be available on record in order to convert a complaint into an inquiry. However, the petitioner approved the inquiry against the respondent by violating the mandatory provision of law as provided in National Accountability Ordinance and in consequent thereto, the concerned NAB authorities started collecting information from all concerned quarters in support of the allegations leveled against the respondent in the said complaint. During the course of collecting the information a letter dated 8th September, 2020 issued by the Director General Operations Division, NAB Islamabad was addressed to the Director, Banking Policy Regulations Department, State Bank of Pakistan, Karachi whereby, the Director Banking Policy Regulations, State Bank of Pakistan was asked to provide details of all domestic & foreign accounts etc of the respondent in all Banks/Financial Institutions operating within Pakistan. The Assistant Director NAB Sub Office Gilgit also addressed a letter dated 21st August, 2020 to the Deputy Commissioner Gilgit, with regard to furnishing of the information regarding existence/ possession or otherwise of any land/ property in the name of respondent. The Deputy Commissioner Gilgit vide letter dated 22nd September, 2020 furnished the information which revealed that a piece of land measuring 01 Kanal having grey structure on it situated at Sakwar, Gilgit was owned and possessed by the respondent. Information regarding declaration of which has already been provided to NAB through S&GAD Department, Gilgit-Baltistan. It is noted that NAB authorities failed to collect information regarding the accounts maintained by the respondent because, till the last date of hearing, no information in this regard was

brought into notice of the Court by NAB authorities, which proved that there was nothing with the Banks against the respondents. All that the NAB authorities succeeded was an information with regard to a piece of land measuring 01 Kanal with grey structure situated at Sakwar Gilgit, which cannot be termed to be purchased by the respondent by corruption or corrupt practices simply because a low salaried government employee too can afford to purchase a piece of land measuring 01 Kanal in Sakwar Gilgit. In addition to this, the learned Special Prosecutor, NAB Gilgit-Baltistan was directed to submit information collected by NAB authorities, if any, with the office of this Court. However, no information was submitted by him till writing of this judgment which proved that NAB Authorities could not collect any sort of further information which could connect the respondents with the allegations leveled in the complaint.

6. Now we would like to advert to allegations regarding receipt of land compensation to the tune of Rs. 18 Millions by the respondent against the land acquired for the purpose of construction of the roads in Skardu Town or converting the rest of the land into commercial land. The NAB authorities failed to bring on record any proof with regard to receipt of a single penny by the respondent as land compensation out of the compensation amount. Contrarily, it was apprised, rather proved that the land acquired for the purpose of construction of the said roads was owned and possessed by the father of the respondent, and the compensation amount was also received by him under protest. In addition to this, the amount of compensation as alleged to be Rs. 18 Millions could not be

proved; while the amount of compensation received by the father of the respondent is stated to be an amount of Rs. 12,852,923/-. When questioned, learned Advocate General Gilgit-Baltistan submitted that the locality where the roads are being constructed is situated in the heart of city and to reduce the pressure of heavy traffic, it was decision of the government of Gilgit-Baltistan to construct the roads in question not by respondent in his personal capacity. It is to be clarified here that father of the respondent is an independent person having all legal rights to enjoy property rights which is guaranteed under the constitution of Islamic Republic of Pakistan read with relevant article of the Government of Gilgit-Baltistan Order, 2018. For the sake of brevity, Article 24 of the Government of Gilgit-Baltistan Order, 2018 is reproduced herein below:

“24. Provisions as to Property. Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to acquire, hold and dispose of property”.

As such, the allegation of receiving compensation in respect of the land acquired for the purpose of construction of project stood baseless and concocted.

7. As far as contentions of the learned Special Prosecutor, NAB with regard to wrong assumption of constitutional jurisdiction by the learned Gilgit-Baltistan Chief Court in quashing the inquiry in presence of Special Law i.e. the NAB Ordinance in such cases are concerned, it is clarified that the Government of Gilgit-Baltistan Order, 2018 read with the Constitution of Islamic Republic of Pakistan is supreme law of the area, hence the NAB Ordinance, being a sub-constitutional statute, cannot override the GB Order, 2018 or the Constitution. In this

regard, the Hon'ble Supreme Court of Pakistan in case reported as Rustam Ali Khan Vs. Muhammad Hanif, 1997 SCMR 2008, has held as under:

“It would, therefore, be seen that if an investigation is launched malafide by the Investigation Agencies, the same is open to correction by invoking the constitutional jurisdiction of the High Court under Article 199 of the Constitution”.

Similar view has also been taken by the Hon'ble Supreme Court of Pakistan in a case titled Chairman, National Accountability Bureau Vs Muhammad Irshad Khan 2008 SCMR 1012, relevant para whereof is produced below:

“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.

In addition to this, the Indian Supreme Court has declared exercise of constitutional jurisdiction for the sake of protecting civil liberties as an obligation for the Courts. The Indian Supreme Court in a case titled State of West Bengal & others Vs. The Commission for Protection of Democratic AIR 2010 SC 1476 held as under:

“Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly”

Foregoing in view, we are of the considered opinion that the learned Gilgit-Baltistan Chief Court, in exercise of its jurisdiction under enabling articles of the Government of Gilgit-Baltistan Order, 2018, has rightly interfered in the matter and quashed the inquiry accordingly.

8. So far as the contentions of the learned Special Prosecutor, NAB Gilgit-Baltistan in respect of misuse of authority by the respondent in approving the development project are concerned, NAB authorities failed to bring on record any incriminating material connecting the respondent with the allegations of misuse of authority in approving a development project with ill motives of gaining compensation in respect of the alleged barren lands acquired for construction of the roads and converting the rest of the land in commercial one. It is well known to the complainant (who happens to be Ex. Member of GBLA) and NAB authorities as well, that power to propose a development schemes rests with the elected public representatives, in national level MNAs and in provincial level, MPAs. The development projects so proposed undergoes a hectic process of approval and the ultimate authorities to approve the development projects in provincial level are the Chief Minister/ Chief Secretary. In this way, neither Secretary Works (respondent) alone can approve a development scheme nor can he compel any MPA/MLA for proposing a development project of his choice. Collective responsibility of authorities cannot be attributed to one officer. No documentary evidence was provided to prove/ support the allegations and to connect the respondent with the allegations. The scheme was

approved by the appropriate forum after completing all the procedural requirements/formalities and the same was approved in the larger interest of public which fact, on Court question, was also affirmed by the learned Advocate General during the course of arguments.

9. The Scheme of Re-Carpeting of Roads in Skardu Town Phase-I is statedly reflected in the ADP 2014 by the then Chief Minister in the interest of public at large, which was processed in the year 2014 and its PC-1 was approved in the year 2016. The land acquired for the purpose of construction of road from Workshop to Masjid Ali Raza was owned by one Syed Raza Shah (father of the respondent), as such, the father of the respondent received compensation amount not by the respondent. Thus, it can be held that the allegations of approving the said project in order to get undue benefits/gains by the respondent (then Secretary Works) were baseless and misconceived as the Secretary Works, GB (the respondent) did not possess or exercise any discretionary power to approve a development scheme/ project in his single capacity. Be that as it may, we are of the considered view that under the law, onus to prove these allegations was on NAB authorities, however they, notwithstanding carrying out investigation behind the back of the respondent, failed to collect any sort of incriminating information/ evidence which could connect the respondent with the allegations of misuse of authority. In order to strengthen our above observations, we would rely upon a judgment of the Hon'ble Supreme Court of Pakistan in a case titled Ghani-Ur-Rehman Vs National Accountability Bureau PLD 2011 Supreme Court 1144, wherein it has been held as under:

“8. The learned counsel for the appellant has also been found by us to be quite justified in maintaining that the Reference filed against the appellant as well as the Charge framed against him by the learned trial court had alleged that the appellant had accumulated the relevant assets and pecuniary resources by misusing his authority as Chairman of a District Council and as a Provincial Minister but the prosecution had not produced any evidence worth its name before the learned trial court to establish any misuse of his authority by the appellant as Chairman or Provincial Minister so as to develop and establish any nexus between misuse of his authority and amassing of wealth or accumulation of assets by him. In the complete absence of any evidence brought on the record by the prosecution in the above mentioned regard it could not be held by the learned courts below that the Charge, as framed against the appellant, stood established by the prosecution”.

In this regard, in another case reported as 2014 SCMR 985 the Hon’ble Supreme Court of Pakistan has as under:

“12. In M. Anwar Saifullah Khan v. State (PLD 2002 Lahore 458), the Court while advertng to the initial burden on prosecution to prove the charge of misuse of authorities or powers held at page 477 as under:--

"20. Misuse of authority means the use of authority or power in a manner contrary to law or reflects an unreasonable departure from known precedents or custom. Every misuse of authority is not culpable. To establish the charge of misuse of authority, the prosecution has to establish the two essential ingredients of the alleged crime i.e. "mens rea" and "actus reus". If either of these is missing no offence is made out. Mens rea or guilty mind, in context of misuse of authority, would require that the accused had the knowledge that he had no authority to act in the manner he acted or that it was against law or practice in vogue but despite that he issued the instruction or passed the order”

In the *ibid* judgment, the Hon’ble Supreme Court of Pakistan, while discussing the definition of misuse of

authority as contemplated in Section 9 of the NAB Ordinance, has held as under:

“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 misuses his authority so as to gain any benefit or favour for himself or any other person, or renders or attempts to render or willfully fails to exercise his authority to prevent the grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority.

10. In terms of the afore-referred charging provision, the initial burden is on the prosecution to prove that the accused was guilty of any of the offences for which he was being charged”.

When the above provision is placed in juxtaposition with the facts of present case, it is evident that nothing can be attributed to the present respondent which could be termed as corruption and corrupt practices. Respondent is having no connection at all with the land owned by his father. The amount or rate at which the compensation was paid to his father has not been alleged to have been exorbitant nor it was alleged that the father of the respondent got more than his lawful claim. Therefore, the father of respondent got a sum of amount which was his lawful right in lieu of his land as provided in the Land Acquisition, Act 1894. Hence all the legal

procedures were adopted by the competent authority while acquiring the land of the father of the respondent as provided under the Land Acquisition Act, 1894. There is nothing on the record to show that the respondent acted in a manner to illegally benefit his father. We, therefore, keeping in mind the legal position explained above, observe that the father of respondent got his lawful claim of amount in the same manner as other affectees got the amount of compensation. In our view no illegality has been committed rather affectees were paid amount compensation in compliance of the fundamental right guaranteed under GB Order, 2018. It would be pertinent to mention here that being aggrieved with the award, the father of the respondent filed a reference bearing Suit No. 02/2018 under Section 18 of the Land Acquisition Act before the learned District Judge Skardu. The learned District Judge Skardu accepted the reference partially. Against the decision of the learned District Judge Skardu, the father of the respondent filed an appeal under Section 45 of the ibid Act before the learned Chief Court, which is pending.

10. In view of the forgoing circumstances, we hold that the learned Gilgit-Baltistan Chief Court rightly came forward to save the dignity and social respect of the respondent from further damaging. It is painfully noted that the NAB authorities, merely on the basis of a piece of document, that too deficient of any valid incriminating evidence/ proof, inasmuch without checking the veracity of complaint, approved an inquiry against the respondent, which resulted in nothing but caused damages to the dignity and reputation of the respondent for no fault of his.

11. The nutshell of the above discussion and observations is that we did not find any illegality, infirmity or irregularity in the impugned Order. Therefore, leave in the above Cr.PLA Under Objection No. 53/2020 is refused. The impugned Order dated 03.09.2020 passed by the learned Gilgit-Baltistan Chief Court in Writ Petition No. 115/2020 is maintained. The above were the reasons of our short order dated 27.11.2020, which is reproduced below:

“Case heard and record perused.

We are not convinced with the arguments advanced by the learned Deputy Prosecutor General, NAB, Gilgit-Baltistan. Therefore, for the reasons to be recorded later, leave in the above Cr. PLA Under Objection No. 53/2020 is refused. Impugned judgment dated 03.09.2020 passed by the learned Gilgit-Baltistan Chief Court, Gilgit in Writ Petition No. 115/2020 stands maintained”

Chief Judge

Judge

Whether fit for reporting **(Yes / No)**