

W.P. No. 189554/2018

Shaukat Ali

NAB etc.

27.06.2018 Ch. Mushtaq Ahmed Khan and Morris Nadeem, Advocates for the petitioner.
Mr. Zahid Sultan Khan Minhas, Special Prosecutor for NAB.
Mr. Waqar A. Sheikh, Advocate for LDA.

This order shall dispose of the instant petition as well as Writ Petition. No. 209510 of 2018 titled "*Omega Residentia (Pvt.) Ltd versus NAB etc*", as well as Writ Petition No. 204017 of 2018 titled "*Waleed Iftikhar versus NAB etc*", as common questions of law and facts are involved in all these petitions.

2. Through these constitutional petitions petitioners have challenged notice dated 19.03.2018 issued by respondent No.1/NAB Lahore to Chief Metropolitan Planner (CMP), LDA/respondent No.7 with a copy to "all concerned" under the heading of "**Devising Preventive Measures to Prevent Corruption and Corrupt Practices**", under which a committee namely, "**Awareness and Prevention Regime for monitoring of actions being taken by Lahore Development Authority (LDA) against 33 illegal housing societies of District Sheikhpura**", was constituted by the

Director General, NAB/respondent No.1, through which following informations were required by LDA from the petitioners:-

1. **Detail of total land ownership.**
2. **Details of plot sold.**
3. **Accounts statements**
4. **Affidavit stating that no further sale/purchase, development, or advertisement will be carried out till final approval by the LDA.**

3. Brief facts giving rise to the filing of these petitions are that petitioners being developers of private housing schemes purchased or inherited agricultural land and got prepared a formal location plan of the site and submitted it for approval before the competent authority. Vide letter dated 26.11.2013, the jurisdiction of the LDA was extended to Lahore Division in respect of the private housing schemes including District Sheikhpura. Meanwhile, Writ Petition No. 7955 of 2015 titled "*Mrs. Imrana Tiwana etc versus Province of Punjab etc*" was decided and reported as **PLD 2015 Lahore 522** which has been approved by the Hon'ble Supreme Court in **2015 SCMR 1739** holding that LDA had no authority to usurp the functions of the local bodies as contained in Local Government Act, 2013. Meanwhile, notice dated 27.09.2017 was issued by the LDA under Section 40(2) of the Lahore Development Authority Act, 1975 requiring the petitioners to demolish the temporary structure i.e. entry gate, demarcation wall

and refrain from further proceeding/ processing, developing private housing scheme, was impugned in Writ Petition No. 89134 of 2014 which is pending before the learned Single Judge of this Court. As the processing of scheme was being delayed by Zila Council, Sheikhpura, Writ Petition No. 97733 of 2017 was filed before this Court which is also pending. Thereafter, the impugned notice was issued, hence this writ petition.

4. Learned counsels for the petitioners submit that **Ajwa Garden, Omega Residential and Shadmaan Town**, are still at pre-natal stage and their case is pending before the Zila Council, Sheikhpura for grant of the approval and that the competency of Zila Council has already been decided by this Court as well as the apex Court in Mrs. Imrana Tiwana's case. Adds that under Section 33-C of NAO, 1999 respondents/NAB have no jurisdiction to issue such notice to LDA who illegally required the above said information from the petitioner. Adds that there is no bar in purchasing the land and developing the private housing scheme to be regulated by the concerned Zila Councils, hence prays for setting aside of the impugned notice.

5. In the report and parawise comments submitted by NAB authorities, it has

specifically been stated that inspite of attending the meeting, the petitioners preferred to file instant petitions with malafide intention; the questions raised in the writ petitions involve factual controversies. Adds that under Section 3 the NAO, 1999 has over-riding effect on other Acts. On merits, it is submitted that keeping in view the gravity of the matter, chairman NAB constituted the “prevention Committee” vide noting dated 25.05.2012 with a mandate mentioned therein, pursuant thereto, list of the illegal housing schemes/societies was called from the regulators and it transpired that 751 housing schemes/societies were illegal, un-approved or are un-processed. Since the petitioner/society had committed the violation of relevant rules and regulations, therefore, they were called up for the investigation to determine the extent of illegal activities and, therefore, prays for dismissal of the writ petition.

6. In the reply submitted by the LDA, it was stated that LDA acted on the notice issued under Section 33-C read with Section 27 of NAO, 1999. They issued a performa to the housing societies to provide the necessary information and also prays for dismissal of the writ petition.

7. Arguments heard. File perused.

8. In the present writ petition, the question of extension of jurisdiction/issuance of notice by the LDA officials to the petitioners requiring certain information has been challenged. The stand taken by the NAB is that it is exactly within the scope of Section 33-C and 27 of NAO, 1999. For convenience, said sections are reproduced as under:-

27. Power to seek assistance: The Chairman NAB, [or an officer of the NAB duly authorized 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 it fit and proper to demand or require, provided that in any case in which a question of secrecy is involved or is raised at any time, the [Chairman NAB's] decision shall be final.

A perusal of the said section makes it clear that NAB Chairman or any authorized person enjoys powers to seek full and complete assistance and call for any information/document relevant with connection to any matter pending before NAB from any department, institution or persons, authority in public and private sectors, but with maintaining secrecy.

9. Besides, this Court is guided by the observation given by the apex Court in ABDUL AZIZ MEMON and others versus The STATE and others (PLD 2013 Supreme Court 594), in respect of the scope of NAO, 1999, when compared to Ehtisab Act, 1997 with reference to Section 35-C. Relevant extract from relevant para 12 at page 630 is reproduced as under;-

“..... The Preamble to the Ehtesab Act, 1997 manifested that the said law had been enacted only "for eradication of corruption and corrupt practices from the public offices" whereas the Preamble to the National Accountability Ordinance, 1999 does not even mention "public offices" and instead it states the objects to be achieved as to eradicate corruption and corrupt practices and hold accountable all those persons accused of such practices; to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse or abuse of power or authority, misappropriation of property, taking of kickbacks, commissions; recovery of outstanding amounts from those persons who have committed default in the repayment of amounts to banks, financial institutions, governmental agencies and other agencies; recovery of State money and other assets from those persons who have misappropriated or removed such money or assets through corruption, corrupt practices and misuse of power or authority; to seek, obtain or give mutual legal assistance internationally in matters concerning corruption; and to educate the society about the causes and effects of corruption and corrupt practices and

to implement policies and procedures for the prevention of corruption in the society. It is but obvious that the scope of applicability of the National Accountability Ordinance, 1999 is much larger than the scope envisioned in the Ehtesab Act, 1997 and, thus, it would be naive to examine the former through the narrow prism of the latter. The stated object of the National Accountability Ordinance, 1999 was to rid the whole society of the menace of corruption and that is why section 33C of the said Ordinance had provided as follows:

33C. Measures for the prevention of corruption and corrupt practices.- The Chairman NAB, shall from time to time as he deems fit, constitute committees comprising officers of the NAB or other persons or organizations from the private or public sectors to—

(a) educate and advise public authorities, holders of public office and the community at large on measures to combat corruption and corrupt practices;

(b) develop, arrange, supervise, participate in or conduct educational programmes or media campaigns, and generally to disseminate information on the detrimental effects of corruption and corrupt practices and the importance of maintaining the integrity of public administration;

(c) examine the laws in force, and also rules and regulations relating to the practice and procedure of various ministries, departments of the Federal Government or Provincial Government, statutory or other public corporations or bodies, and the conduct of holders of public office and to recommend amendments in such laws, rules or regulations, as the case may be, in order to eliminate corruption and corrupt practices;

(d) instruct, advise and assist any statutory or other public corporation or bodies or upon request, any organization in the private and public sector on measures for the reduction and elimination of corruption and corrupt practices; and

(e) monitor the implementation of the instructions and advice as aforesaid and to assess and evaluate the success or otherwise of such instructions and advice on the reduction and elimination of corruption and corrupt practices.”

10. Perusal of the said section 33-C(d) reveals that committees can be constituted by Chairman NAB of other organizations from public or even private sector to assist, advise on measures for reduction and elimination of corruption and corrupt practices. In our considered opinion, Section 33-C has to be interpreted dynamically for prevention of corruption and corrupt practices and to check this menace and to act as a whistle blower for the good of our society. Admittedly, no inquiry under Section 19 of NAO, 1999 is pending before the respondent/ NAB. It is also not denied by the petitioners that housing schemes were developed on agricultural land without approval of the LDA or the relevant Zila/Local Councils. Avoiding any meeting with the LDA raises certain questions on the conduct of the petitioners. Even otherwise, perusal of the questionnaire reveals that LDA wants to update itself of certain information relevant for taking measures for the reduction and elimination of corruption and corrupt practices.

11. In Lahore Development Authority through D.-G. and others versus Mrs. Imrana Tiwana and others” decided and reported as

(2015 SCMR 1739), it has not been held that LDA cannot collect any information from the housing societies in Lahore Division but it laid down that if there is any conflict between LDA and the local Council, it will be resolved according to the prevailing laws. Para 74 of the judgment is reproduced for ready reference:-

“74. The solution, therefore, lies in reading the provisions of the two statutes in harmony. The LDA Act, 1975 is to be regarded as an enabling statute. It allows LDA to act in support of and to complement the Local Government in the exercise of its functions and responsibilities. Where the Local Government is unable to act because of a lack of resources or capacity, or where the project is of such a nature that it spills over from the territory of one Local Government to another or where the size of the Project is beyond the financial capacity of the Local Government to execute; the LDA can step in and work with the Local Government. Economies of scale, spillovers and effectiveness are merely illustrative of the situations in which the LDA can act in the exercise of its functions to carry out developmental and other work and perform its statutory functions. These are not exhaustive. Life and time may throw up other situations and create circumstances which may warrant LDA action to be taken in consultation with the Local Government within the purview of PLGA, 2013. Closing the categories today will freeze growth and retard progress.”

The pendency of the other referred writ petitions will not affect the present proceedings as in the present case the information is sought from the petitioners on the basis of letter issued by the NAB authorities under Section 33-C of NAO, 1999.

12. The accountability laws neither monitor functionality of the departments nor they even supervise or control the decisions of the government and its agencies. However, these laws introduce certain essential precautionary measures which may facilitate the functionaries to play the role of whistle blowers to rule out or at least minimize the possibility of corruption and corrupt practices. Accountability is one of golden concepts which no one can oppose since it guides in preparing policy documents and in the political discourse tends to show the image of transparency and trustworthiness. The accountability starts from accounting (book keeping). It ensures fair and equitable governance as the authorities are ultimately held accountable by the citizens. The shift from financial accounting to performance auditing and public accounting has been observed in almost all developed countries with high speed. Accountability is an icon; both instrumental and goal. Accountability is either broad or narrow. It is a conceptional umbrella and used as a synonym for transparency, equity, democracy, efficiency, and responsibility. Accountability is used interchangeably with good governance. However, accountability in the broad sense is a concept without specific termination of boundaries. Accountability is not just another

political catchword, it also refers to complete practice of account giving. In the narrow sense, accountability refers to specific set of social relations. Accountability, therefore, can be defined as a relationship between an actor (individual or an organization) and a forum; the actor has to explain his conduct whereas the forum can pose questions, pass judgment including imposition of sanctions. The relationship between the actor and the forum is crucial as the former is supposed to inform the later about the performance, tasks, outcomes and procedures.

The conduct of public functionaries varies from budgetary scrutiny to administrative fairness in the context of legal accountability. Such conduct involving interrogation and questioning the adequacy of information would establish a connection between accountability and answerability. To qualify the public accountability, there should be a public accessibility of account. Accountability is also about prevention. Accountability is to be rendered before many eyes. The political accountability within democracy, is exercised alongwith chain of principal-agent i.e. voters delegate their sovereignty to popular representative, who in turn, at least in parliamentary democracies, delegate their authority to cabinet of Ministers who delegate many of their powers to civil servants or

independent, administrative bodies. The mechanism of political accountability operates precisely in the opposite direction to that of delegation.

The legal accountability is of immense importance because a great trust placed in courts then in parliament. Thus legal accountability is the most un-ambiguous as the legal scrutiny will be based on higher legal standards prescribed by civil, penal or administrative statutes or precedents. The constitutional perspective of accountability is to prevent corruption and abuse of powers. Preventing the tyranny of absolute rulers/elected leaders, expensive and 'privatized' executive power. The independent judiciary is placed next to the voter, parliament and political officials to request that the accounts be rendered over particular aspects. In the cybernetic perspective of public accountability, the emphasis is in learning capacity of the public administrators. Accountability is useful for check as well as for prevention. It offers a regular mechanism to confront administrators with information about their own functionality and forces them to reflect on the success and failures of their past policy.

On 31st October, 2003 in General Assembly resolution 58/4 adopted in United Nations Convention against Corruption, Chapter II has been assigns to preventive

measures under which each State was required to establish and promote effective practice aimed at prevention of corruption, periodically measures and evaluate the legal instruments with a view to determine their adequacy, prevent and fight corruption, increase knowledge about prevention of corruption. It applies to public sector, lays down code of conduct for public officials, lays down opportunity for public procurement and management of public finances, emphasis on public reporting, emphasis measures relating to the judiciary and prosecution services, lays guidelines for private sector, participation of society and prescribes measures to prevent money laundering. Articles 5 and 6 of Chapter II are reproduced as under for ready reference:-

“Article 5. Preventive anti-corruption policies and practices

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

Article 6. Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

- (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;
- (b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.”

The **scope of preventive measures** for controlling and eradication of corruption and corrupt practices has been hallmark under different laws prevalent in many countries. Tracing out the compatible legal provisions in the developed and under developed countries, **Malaysian Anti-Corruption Commission**

Act, 2009 is worth refereeing, under Section 7 of which the adequate preventive measures through education have been prescribed.

Section is reproduced as under:-

Preventive and educational functions of the Malaysian Anti-Corruption Commission provided for under **Section 7 paragraphs (c), (d), (f) and (g)** of MACCA 2009 which are:

7 (c) to examine the practices, systems and procedures of public bodies in order to facilitate the discovery of offences under this Act and to secure the revision of such practices, systems, or procedures as in the opinion of the Chief Commissioner may be conducive to corruption;

7 (d) to instruct, advise and assist any person, on the latter's request, on ways in which corruption may be eliminated by such person

7 (e) to advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Chief Commissioner thinks necessary to reduce the likelihood of the occurrence of corruption;

7 (f) to educate the public against corruption; and

7(g) to enlist and foster public support against corruption.

Section 3 of **Indian Central Bureau Act, 2010** prescribes the constitution of investigating agency called C.B.I. for prevention, investigate and prosecution of offences including the schedule.

In U.K., Scotland's, France and Germany, the Ministerial Court has laid down higher standards of accountability. In **Hong Kong**, Independent Commission against

Corruption was established in 1974 with a mandate to pursue corrupt through effective detection and investigation eliminating opportunities for corruption by introducing corrupt-resistance practices and educate the public on the harms of corruption and faster their support in fighting corruption. In **Singapore**, Corrupt Practices Investigation Bureau established in 1952 also prescribes for prevention of corruption by examining the practice and procedure in the public services to minimize the opportunities of corrupt practices. In **Croatia**, Office for the suppression of Corruption and Organized Crime established in 2001, also prescribes preventive functions and is responsible for international cooperation and exchange of information in complex investigation. In **France**, Central Service for Prevention of Corruption increasingly provides training and assistance on code of conduct for public and private enterprises. The above example shows that prevention of corruption is essential for accountability laws.

Besides, we have also noticed that NAB, Punjab is conducting inquiries in respect of 20 Housing Schemes on the allegation of corruption and corrupt practices and misuse of authority which shows growing tendency of un-witnessed alluring the public-at-large seizing opportunities to exploit the weaknesses of poor and ignorant, hence the need of preventive/precautionary steps.

The above valuable research was provided by the Research Cell of Lahore High Court which is much appreciable.

13. To our considered view, NAB has not directly proceeded against the petitioners and that consequent to certain information provided to them by the petitioners, they may or may not directly proceed against the petitioners. This Court at this stage, cannot stop the respondent/NAB from collecting information which may be relevant to the allegation of corruption and corrupt practices.

14. For the above stated reasons, these writ petitions have been found meritless and are, therefore, **dismissed**.

(TARIQ IFTIKHAR AHMAD) (ALI BAQAR NAJAFI)
JUDGE JUDGE

Shahzad

Approved for reporting.

JUDGE

JUDGE