
REOPENING OF INQUIRY AFTER ITS CLOSURE



RESEARCH CENTER, HIGH COURT OF BALOCHISTAN



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COURT: HON'BLE MR. JUSTICE SHOUKAT RAKHSHANI

SUBJECT: CRIMINAL LAW

DATE: 22ND APRIL 2024.

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QUERY: CLOSING OF INQUIRY BY NAB AND ITS REOPENING?

Research Note:

Relevant Statutory Provisions: -

Section 9 (c) provides: If after completing the investigation of an offence against a holder of public office or any other person, the Chairman NAB is satisfied that no *prima facie* case is made out against him and the case may be closed, the Chairman NAB shall refer **the matter to a Court for approval** and for the release of the accused, if in custody.

(d) The closure of an inquiry or investigation shall be communicated to the accused and such inquiry and investigation **shall not be reopened without prior permission of the Court**. (Note: clause (d) was inserted by Act No. XI of 2022 dated 22nd June 2022)

Pre-amendment Judicial Precedents: -

1. The Lahore High Court in case reported as PLD 2020 Lah. 191 titled as Muhammad Sabtain Khan vs. NAB through its Chairman and three others while elaborating concept of reopening of inquiry in NAB cases made the following observations: -

Para No. 8. But surprisingly without bringing on record any fresh ground or to digging out any hidden truth, the inquiry was reinitiated on the same allegations vide letter dated 26.04.2018 issued by the D.G. NAB. The reasons and circumstances were, apparently, neither brought before the Chairman NAB, nor he had formed opinion on the basis of material. He had just ordered the re-opening of inquiry without holding any official of the NAB responsible for closure of the inquiry. It is not the whims and designs unsubstantiated by the fresh disclosed facts on the basis of which it could re-open the closed inquiry in a slipshod manner. The reasons, if any, are shrouded in mystery. Needless to observe here that with greater powers always lies the greatest responsibilities. The powers of the Chairman are also structured by law and conscience, and therefore, he must be guided by them and not by unperceived perception infatuated by his subjective

approach so as to use his discretion for taking some kind an imaginary blaming act. The prosecution has not alleged that the petitioner has got any kickbacks, made financial gains or caused any corresponding loss to the State. It is also not their case that the possession of the site was handed over to the ERPL who had started excavation and exploration of the minerals without giving any benefit to the State.

2. As far as the query regarding the closure of inquiry or investigation without approval of the Chairman NAB is concerned, it is submitted that the Lahore High Court in the reported case viz. **2008 MLD 1451** has observed that as below:-

“By virtue of Order 19/(40)/NACS(NAB)/2004 and in continuation of the order, dated 27-5-2005, relating to the exercise of powers vested in the Chairman NAB under section 34-A of the Ordinance, the powers have been delegated for carrying out the purposes of the Ordinance which are reproduced herein below:--

APPENDIX II

Government of Pakistan
National Accountability Bureau
Ata Turk Avenue, G-5/2,
Islamabad

No.19(4)/NCS(NAB)/2004

ORDER

In exercise of powers vested in me under section 34-A National Accountability Ordinance, 1999, I, Lt. General Munir Hafiez, Chairman NAB hereby delegate my powers to the officers of National Accountability Bureau to extent indicated below for carrying out the purposes of the Ordinance with respect to the authorization of the following funds:--

S.No.	Nature of power/ function	Officer of NAB authorized	Extent of delegation
1.	Closure of inquiry/ Investigation and release of accused, if in custody, under section 9(c)	All DGs Regional NABs.	(i) Grade 16 & below (ii) Holder of an office or post in connection with the affairs of a local council except District Nazim.
2.	To freeze property and mattes incidental thereto, under section 12	-do-	Full powers.
3.	To refer the matter for inquiry or investigation, under section 18(c).	-do-	(i) Grade 20 & below (ii) Holder of an office or post in connection with

			the affairs of a local council.
4.	To refer a case to Accountability Court, under section 18(g) and 24(b)	-do-	(i) Grade 16 & below (ii) Holder of an office or post in connection with the affairs of a local council except District Nazim.
5.	To arrest during inquiry Or investigation, under section 18(e)	-do-	-do-
6.	To refer the matter to the Court within the meaning of section 18(h)	-do-	Full powers.
7.	To call for information, under section 19.	DD Co-ord of each Regional NAB with approval of Director	Full powers.
8.	To inquire into and investigate any suspected offence and to conduct any investigation in conjunction with any other agency or person, under section 22(a) and (b).	All DGs Regional NABS.	(i) Grade 20 & below (ii) Holder of an office or post in connection with the affairs of a local council
9.	Power to arrest the accused, under sections 24(a)	-do-	(i) Grade 16 & below (ii) Holder of an office or post in connection with the affairs of a local council except District Nazim.
10.	Power to notify Police Station or Sub-Jail, under section 24(f).	-do-	Full powers.
11.	To accept/reject voluntary Return and plea bargain and to refer to matter to Court for approval and release of accused, if in custody, under section 25(a) and (b).	-do-	-do-
12.	Tender of Pardeon, under section 26.	-do-	(i) Grade 20 & below (ii) Holder of an office or post in connection with the affairs of a local council.

13.	Power to point officers and staff in NAB, under section 28	-do-	Upto Grade 1 to 15
14.	Power to give protection To the witnesses, under section 31-E.	-do-	Full powers
15.	To file appeal and revision, under section 32(a).	-do-	(i) Grade 16 & below (ii) Holder of an office or post in connection with the affairs of a local council except District Nazim.

This order shall come into force with immediate effect.

(Sd.)
(MUNIR HAFIEZ)
Lieutenant General
Chairman

National Accountability Bureau
Islamabad
Dated: 22nd September, 2004.

APPENDIX III

Government of Pakistan
National Accountability Bureau
Ata Turk Avenue, G-5/2,
Islamabad

ORDER

In continuation of Order No.19(40)/NACS(NAB)/2004, dated 22-9-2004, relating to delegation of powers, I, Lt. General Munir Hafiez, Chairman National Accountability Bureau in exercise of powers vested in me under section 34-A of National Accountability Ordinance, 1999, hereby further delegate following powers to the extent indicated below for carrying out the purposes of the Ordinance:--

S.No.	Nature of power/ function	Officer of NAB authorized	Extent of delegation
1.	Closure of inquiry/ Investigation and release of accused, if in custody, under section 9(c)	All DGs Regional NABs.	All employees of Banks, Financial Institutions and DFIs in grade 2 and below. Grade 16 and below.
2.	To refer the matter for Inquiry or investigation under section 18(c).	-do-	All employees of Banks, Financial Institutions and DFIs in grade of Vice President and below.

4.	To refer case to Accountability Court under sections 18(g) and 24(b)	-do-	All employees of Bank, Financial Institutions and DFIs in grade 2 and below. Grade 16 and below.
5.	To inquiry into and investigate any suspected offence and to conduct any investigation in conjunction with any other agency or person, under section 22(a) and (b).	-do-	All employees of Banks, Financial Institutions and DFIs in grade of Vice President and below.
6.	Power to arrest the accused, under section 24(a).	-do-	All Employees of Banks, Finance Institutions and DFIs in grade 2 and below. Grade 16 and below.
7.	To accept/reject voluntary return and plea bargain and to refer the matter to Court for approval and release of accused, in custody, under section 25(a) and (b).	-do-	
8.	Tender of Pardon, under section 26.	-do-	All employees of Banks, Financial Institutions and DFIs in grade of Vice President and below.
9.	To file appeal and revision, under section 32(a)	-do-	All employees of Banks, Financial Institutions and DFIs in grade 2 and below. Grand 16 and below.

This order shall come into force with immediate effect.

(Sd.)
(MUNIR HAFIEZ)
Lieutenant General
Chairman

National Accountability Bureau
Islamabad
Dated: 27th May, 2005."

In any view of the matter, the Chairman NAB had in exercise of the vested powers issued the above orders directing all the Director-Generals, Regional NAB, to carry out functions for the smooth running of the objects of the Ordinance and for

expeditious disposal of cases which contained powers to refer matters to inquiry, investigation in terms of section 18-C of Ordinance, 1999.”

Research Note:-

The judicial precedents referred hereinabove recognizes the power of the chairman NAB for reopening inquiry previously closed without permission of the Court provided that such power shall be exercised judiciously and objectively, based on reasonable facts and circumstances discovered subsequent to such closure of inquiry. However, after insertion of clause (d) in section 9 of the NAB Ordinance, 1999, no inquiry shall be reopened without the prior permission of the Court.

Annexure(s)

Relevant Judgments (Books).

RCBHC