
REOPENING OF INQUIRY AFTER ITS CLOSURE BY THE NAB
AUTHORITIES



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 OVERVIEW

QUERY: CLOSING OF INQUIRY BY NAB AND ITS REOPENING?

Subsidiary Question: Whether NAB authorities can reopen an inquiry which has been previously closed, if so, what are the legal criteria for exercise of such powers?

Subsidiary Question:- Whether authority to close inquiries solely vests in the Chairman NAB?

Subsidiary Questions:- Is it necessary to obtain judicial approval before reopening of inquiry previously closed?

My Lord! Respectfully submitted for consideration as under:-

LEGAL FRAMEWORK

The legal framework governing this issue is primarily derived from the **National Accountability Ordinance, 1999, ("The Ordinance")** and its subsequent amendments, particularly the **National Accountability (Amendment) Act, 2022 ("The Act")**. Section 9 (c) & (d) of the Ordinance, envisages the provisions relating to closure of investigations or inquiries in NAB cases, which run as under:-

Section 9: --- (c): 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-AMENDMENTS JUDICIAL PRECEDENTS: -

Judicial Interpretations concerning closing and reopening by the NAB authorities are available in the following precedents of the superior Court:-

In case **PLD 2020 Lah. 191 (Muhammad Sabtain Khan vs. NAB)** the Lahore High Court has emphasized that reopening of an inquiry by NAB must be based on fresh

grounds or new evidence, and not on arbitrary decisions. The pertinent paragraph of the judgement is presented below for kind your perusal: -

“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.

In case 2008 MLD 1451: (NIAZ A. BALOCH vs CHAIRMAN, NAB and 4 others)

Sindh High Court observed that the Chairman NAB had delegated powers for closure of inquiry/investigation under section 34-A of the Ordinance, which allowed for smooth running of the Ordinance's objectives and expeditious disposal of case. The Court 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 winch relevant part is reproduced herein below:--

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.

And in continuation of Order No.19(40)/NACS(NAB)/2004, dated 22-9-2004, relating to delegation of powers, Chairman National Accountability Bureau in exercise of powers vested in under section 34-A of National Accountability Ordinance, 1999, said 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,	All DGs Regional NABs.	All employees of Banks, Financial Institutions and DFIs in grade 2 and below. Grade 16 and below.

	if in custody, under section 9(c)		
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It has been held the Court in the said judgment that "in 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 recognized the power of the chairman NAB for **reopening inquiry** previously closed, by the Chairman NAB or by the delegate officers of the NAB to the extent of delegated powers, without permission of the Court, provided that such powers were exercised objectively, based on incriminating facts and circumstances discovered subsequent to such closure of inquiry justify the reopening of the inquiry. However, after introduction of clause (d) in section 9 of the NAB Ordinance, 1999, the legal landscape and position has undergone a significant change. This clause mandates that no inquiry which has been closed by the NAB shall be reopened without the prior permission of the Court. It may please be noted that clause (d) in section 9 of the Ordinance *ibid* was added through the National Accountability (Amendment) Act, 2022 and by virtue of section 1 (2) of the Act *ibid*, the applicability of the Act was specifically made retrospective i.e. from the date of commencement of National Accountability Ordinance 1999, which in turn commenced retroactively from 1st day of January 1985 vide section 2 of the Ordinance *ibid*. Although certain sections of the National Accountability (Amendment) Act, 2022 along with National Accountability (Second Amendment) Act, 2022 were annulled by the Hon'ble Supreme Court of Pakistan **CONST.P.21/2022 AND C.M.A.5029/2022 titled Imran Ahmad Khan Niazi v. Federation of Pakistan through Secretary, Law and Justice Division, Islamabad and another** including some part of section 8 of the Act *ibid*, which amended and added some provisions to section 9 of the Ordinance, however, the clause (d) of section 9 of the Ordinance was not declared *ultra vires* and such provisions were not affected by the Judgment of the Hon'ble Supreme Court and it continues to remain in force. Thus, the clause (d) of section 9 of the Ordinance, by fiction of law, applies to the inquiries closed before the promulgation of the National Accountability (Amendment) Act, 2022.

Annexure(s)

Referred Judgments.
