

HIGH COURT OF SINDH, BENCH AT SUKKUR

Before:

Justice Zulfiqar Ali Sangi-J
Justice Arbab Ali Hakro-J

C.P No.D-862 of 2020

[Alatf Hussain and another v. National Accountability Bureau and others]

C.P No.D-870 of 2020

[The Chairman National Accountability Bureau v. Accountability Court Judge, Sukkur and others]

C.P No.D-871 of 2020

[The Chairman National Accountability Bureau v. Accountability Court Judge, Sukkur and others]

C.P No.D-1320 of 2020

[Shaikh Azhar Ali v. Judge, Accountability Court, Sukkur and others]

Petitioners/Respondents by : Nemo
in C.Ps No.D-86 and 871 of 2020

Petitioners/Respondents NAB by : M/s Alatf Khan DPGA NAB, Mujeeb-ur-Rehman Soomro and Adnan Arshad Jatoi Special Prosecutors NAB
in C.Ps No.D-870, 871, 862 and 1320 of 2020

Petitioners/Respondents by : Through Mr.Humayoon Shaikh, Advocate
in C.P No.D-1320 and-870 of 2020

Respondent Zahid Rafique by : Nemo
in C.Ps No.870 & 1320 of 2020 : Syed Naveed Ahmed Shah, Deputy Attorney General for Pakistan

Date of hearing : **17.12.2025**

ORDER

ARBAB ALI HAKRO, J:- These connected Constitutional Petitions, being interlinked in facts and law are taken up together for disposal, as they involve a common question of law regarding the scope and interpretation of Section 9(c) of the National Accountability Ordinance, 1999 ("NAO, 1999"), the jurisdiction of the Accountability Court in considering closure applications filed by the National Accountability Bureau ("NAB") and the limits of judicial scrutiny vis-à-vis administrative discretion of the Chairman NAB. Since the controversy in all petitions arises out of identical impugned orders dated 24.08.2020, passed by the Accountability Court, Sukkur, it is deemed

appropriate to decide them through a consolidated order to avoid multiplicity and conflicting findings.

2. The first set of petitions, C.P. No. D-862 of 2020, filed by Altaf Hussain Buriro, Tasleem Dayo and C.P. No. D-871 of 2020, filed by NAB itself, arise out of the same impugned order dated 24.08.2020 concerning alleged irregular promotions and cadre changes of 170 employees of the Education Department, Jacobabad. The investigation revealed excessive payments in 53 cases, amounting to approximately Rs. 40 million, and NAB recommended their recovery under the Treasury Rules rather than prosecution. The Accountability Court, however, dismissed the closure application under Section 9(c) NAO, 1999, directed NAB to assign the investigation afresh to another officer and further ordered the initiation of proceedings under Section 31 NAO, 1999 against the Investigating Officer for allegedly misleading the Bureau. The private petitioners contend that they are law-abiding citizens against whom no offence was established, while NAB itself asserts that the Accountability Court exceeded its jurisdiction by assuming investigative and prosecutorial functions not vested in it under the Ordinance.

3. The second set of petitions, C.P. No. D-870 of 2020 filed by NAB and C.P. No. D-1320 of 2020, filed by Shaikh Azhar Ali, arise out of another impugned order dated 24.08.2020, passed in Reference No. 21 of 2018 (Ahmed Junaid Memon & others), concerning alleged embezzlement in the Rohri Canal CC-Lining Project. The investigation implicated several officers of the Irrigation Department and contractors, with a total liability of Rs. 67.41 crore assessed. NAB sought closure of the investigation to the extent of contractors, Shaikh Azhar Ali and Zahid Rafiq, contending that no incriminating evidence was found against them. The Accountability Court dismissed the closure of case application and directed NAB to file a

supplementary reference against the said contractors, holding that evidence of abetment and submission of fake CDRs connected them to the offence. NAB challenges this direction as *ultra vires*, while Shaikh Azhar Ali asserts that he was never authorised to be investigated, was not a beneficiary of any embezzlement and that the Accountability Court lacked jurisdiction to direct the filing of a supplementary reference against him.

4. Thus, across both sets of petitions, the common thread is the Accountability Court's refusal to approve closure applications under Section 9(c) NAO, 1999, coupled with directions either to reinvestigate or to initiate proceedings against NAB officers or to file supplementary references. The petitioners, whether private persons or NAB itself, uniformly contend that such directions are *ultra vires* the statutory framework, as the Accountability Court's role under Section 9(c) is confined to judicial approval or refusal of closure, and it cannot arrogate to itself investigative or prosecutorial powers.

5. It is in this backdrop that these petitions have been filed before this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "**Constitution**"), raising the pivotal question of law whether the Accountability Court, while considering closure applications under Section 9(c) NAO, 1999, can go beyond judicial scrutiny of material placed before it and issue directions to NAB for reinvestigation, initiation of proceedings against its officers, or filing of supplementary references.

6. Learned Deputy Prosecutor General Accountability, Mr Altaf Khan, assisted by Mr Mujeeb-ur-Rehman Soomro and Mr Adnan Arshad Jatoi, Special Prosecutors NAB, appearing for the petitioners in C.P. No. D-870 and C.P. No. D-871 of 2020, as well as for the respondents in C.P. No. D-862 and C.P. No. D-1320 of 2020, submitted that the impugned orders dated 24.08.2020 have been passed wholly without jurisdiction. It was argued that under Section 9(c) of the NAO, 1999, the function of the Accountability Court

is confined to either granting or refusing approval for the closure of an investigation, and the Court cannot arrogate to itself investigative or prosecutorial powers. Learned counsel contended that the directions issued by the Accountability Court to reinvestigate and initiate proceedings under Section 31 NAO, 1999, against the Investigating Officer and to file supplementary references, amount to judicial overreach and are *ultra vires* the statutory scheme. It was further submitted that NAO, 1999 has an overriding effect over the Code of Criminal Procedure and the impugned orders, being contrary to the legislative intent, are void ab initio.

7. On the other hand, Mr Humayoon Shaikh, learned Advocate appearing for the petitioner in C.P. No. D-1320 of 2020 and for respondent No. 2 in C.P. No. D-870 of 2020, contended that Petitioner Shaikh Azhar Ali was never authorised to be investigated, nor was he a beneficiary of any embezzlement, and his name did not appear in the authorisation of inquiry. Learned counsel submitted that the Accountability Court, by directing NAB to file a supplementary reference, effectively assumed the role of investigator and prosecutor, which is impermissible under NAO, 1999. He argued that the impugned order amounts to the Court itself running the investigation, thereby compromising impartiality and exceeding jurisdiction. It was emphasised that no loss to the exchequer was attributable to his client, hence no prosecution could be sustained against him.

8. As regards C.P. No. D-862 of 2020, none have appeared on behalf of the Petitioners.

9. We have heard the learned Deputy Prosecutor General Accountability, assisted by Special Prosecutors NAB, as well as learned counsel Mr Humayoon Shaikh appearing for the private petitioners and have perused the record with anxious consideration. The controversy in all petitions emanates from the impugned orders dated 24.08.2020 passed by the learned

Accountability Court, Sukkur, whereby applications under Section 9(c) of the NAO, 1999, for closure of investigations were dismissed, coupled with directions for reinvestigation, initiation of proceedings against the investigating officers, and filing of supplementary references. The pivotal question of law is the true scope of Section 9(c) NAO, 1999, and the jurisdictional limits of the Accountability Court when seized of closure applications.

10. Before advertence to the merits, it is apposite to recall the statutory scheme. Section 18(a) NAO, 1999 categorically ordains that no Accountability Court shall take cognisance of any offence except upon a reference made by the Chairman NAB or an officer duly authorised by him. Section 18(c) of the NAO empowers the Chairman or an authorised officer to refer matters for inquiry and investigation, while Section 18(g) requires the appraisal of material collected and a decision on whether to file a reference. Section 9(c), as amended post¹ provides that if, after completing the investigation, the Chairman, NAB, is satisfied that no *prima facie* case is made out, he shall refer the matter to the Court for approval and for the release of the accused, if in custody.

11. The jurisprudence of this Court has consistently emphasised that NAO, 1999 is a special law with overriding effect. In the case of **Maqbool Ahmed Sheikh**², the Division Bench held that the Accountability Court has no power to array new accused, conduct its own investigation or substitute its opinion for that of NAB. Further underscored that Section 190 Cr.P.C. has no application, as NAO provides its own mode of cognisance. The principle was crystallised, thus when law requires a thing to be done in a particular manner, it must be done in that manner and in no other.

¹ Khan Asfandyar Wali Khan v. Federation of Pakistan (PLD 2001 SC 607)

² Maqbool Ahmed Sheikh v. State (2014 YLR 2644)

12. Similarly, in the case of **Syed Khursheed Ahmed Shah**³ Another Division Bench of this Court held that under Section 9(c) NAO, the Accountability Court has no discretionary powers to pass orders other than approval or refusal of closure. Directions to submit a reference within thirty days were declared void and in excess of jurisdiction. The Bench emphasised that closure of the investigation is an administrative function of NAB, subject only to formal approval of the Court, and the Court cannot compel NAB to prosecute.

13. The matter was further refined in the case of **Abdul Sattar Dadabhoy**⁴, where the Division Bench undertook an exhaustive analysis of Section 9(c). It held that the amendment requiring Court approval was a deliberate legislative choice to impose a check-and-balance on the Chairman's otherwise unbridled power to close investigations. It was clarified that once an inquiry is converted into an investigation, there must be at least some material suggesting the commission of an offence, and that closure thereafter requires judicial oversight. The Accountability Court is not a mere post office; it must apply a judicial mind, pass a speaking order and may recommend further inquiry. However, it cannot direct NAB to file a reference, nor can it conduct the investigation itself.

14. Thus, the three authorities, read harmoniously, yield a coherent doctrinal framework. In the case of **Magbool Ahmed Sheikh**, the Court cannot add a new accused or substitute its opinion for NAB. In the case of **Syed Khursheed Ahmed Shah**, the Court cannot compel NAB to file a reference; its role is confined to approving or refusing closure. In the case of **Abdul Sattar Dadabhoy**, the Court must exercise meaningful oversight, not rubber-stamp NAB's decision; it may refuse closure with reasons and

³ Syed Khursheed Ahmed Shah v. NAB (SBLR 2014 Sindh 821)

⁴ Abdul Sattar Dadabhoy v. DG NAB (PLD 2017 Sindh 331)

recommend further inquiry, but cannot assume investigative or prosecutorial functions.

15. Applying these principles to the present petitions, it is manifest that the learned Accountability Court transgressed its jurisdiction. In C.P. Nos. In D-862 and D-871 (Buriro & Dayo), the Court not only refused closure but also directed a reinvestigation by another officer and ordered the initiation of proceedings under Section 31 NAO against the I.O. Such directions are *ultra vires*. The Court could have refused closure on the grounds, but it could not punish NAB officers or dictate internal assignments.

16. In C.P. Nos. In D-870 and D-1320 (Azhar Ali & Zahid Rafiq), the Court dismissed the closure application and directed NAB to file a supplementary reference. This is equally impermissible as the Court cannot compel NAB to prosecute. Its role is supervisory, not prosecutorial.

17. The learned Accountability Court's approach, in purporting to direct reinvestigation, supplementary references and proceedings against IOs, amounts to judicial overreach, contrary to the statutory scheme and binding precedents. The Court's jurisdiction under Section 9(c) is confined to scrutinising NAB's closure application, applying the judicial mind, and either approving or declining the closure with reasons. It may recommend further inquiry, but cannot arrogate to itself investigative or prosecutorial powers.

18. We are fortified in this view by the legislative intent discerned in the case of **Abdul Sattar Dadabhoy**, parliament consciously required Court approval for closure of investigations to enhance public confidence and prevent abuse of office, but did not empower Courts to direct prosecution. The oversight is meaningful but limited. To hold otherwise would collapse the separation of functions between investigation and adjudication and would render nugatory the overriding provisions of Section 18 NAO.

19. In view of the foregoing discussion, the impugned orders dated 24.08.2020 cannot be sustained in their entirety. They are set aside to the extent that they purport to direct reinvestigation by another officer to initiate proceedings against the Investigating Officer and to compel the filing of supplementary references. Such directions fall outside the jurisdiction conferred by Section 9(c) of the NAO, 1999. However, the Accountability Court's refusal to accord approval to NAB's closure applications may remain operative, subject to NAB's right to either address the concerns recorded by the Court and submit a fresh application under Section 9(c). It is reiterated that the Accountability Court itself has no authority to prosecute, order a reinvestigation, or impose punitive measures on NAB officers.

20. Consequently, these petitions succeed in part. The impugned orders are hereby quashed insofar as they transgress the limits of jurisdiction prescribed by Section 9(c) NAO, 1999. NAB is directed to reconsider the matter of closure in light of the Accountability Court's observations and, if so advised, to reapply for approval in accordance with law. Any directions contained in the impugned orders beyond the mere refusal of closure are declared to be without lawful authority, devoid of legal effect and stand void.

JUDGE

JUDGE

Sajjad Ali Jessar