

IN THE HIGH COURT OF SINDH AT KARACHI**Constitutional Petition No. D - 2731 of 2019***Present: Ahmed Ali M. Shaikh, CJ and Omar Sial, J*

Petitioner : Abdul Sattar Qureshi
through Mr. Malik Naeem Iqbal, Advocate

Respondents : National Accountability Bureau & another
through Mr. Hasan Akbar, Addl. P.G. NAB a/w
Imran Shaikh I.O. & Muhammad Umair Rather,
Case Officer

Date of hearing : 22.08.2019

Date of decision : 30.08.2019

ORDER

Omar Sial, J. The only issue involved in this petition is whether Chairman, NAB can order a transfer of investigation from one province to another.

2. A brief background to the case is that the petitioner is one of the persons against whom an investigation is being carried out in connection with the Roshan Sindh Program. The learned Chairman, NAB on 4-4-2019 ordered that the Investigation be transferred from Karachi to Rawalpindi. The said order was put in writing on 5-4-2019. It is this order that has been challenged by the petitioner.

3. We have heard the learned counsel for the petitioner as well as the learned Special Prosecutor, NAB and the learned Additional Prosecutor General, NAB. Our observations are as follows.

4. Both counsel representing NAB conceded that there was no express provision in the National Accountability Ordinance, 1999 which empowered Chairman, NAB to transfer an investigation from one province to another. Learned APG however attempted to justify it by referring to certain sections of the Ordinance and arguing that the power to transfer an investigation may be inferred from them. We are not completely satisfied by the submissions made by the learned APG in this regard. Subsequently, the learned APG raised the argument that the transfer of investigation has taken place on the order of the Honorable Supreme Court in Human Rights Case No.39216-G of 2018. The learned counsel for the petitioner did not agree and argued that the investigation in connection with the Roshan Sindh Program was never included

in the list of cases ordered to be transferred from Karachi to Rawalpindi by the Honorable Supreme Court.

5. The Joint Investigation Team which was constituted to investigate the fake accounts case, requested the Honorable Supreme Court (at serial 15 on page 126 of the Final Synthesis Report) that the NAB be permitted to take cognizance under the NAO 1999 and other relevant laws of the Rs. 1.32 billion kickbacks by government contractors into fake accounts and kickbacks/violation of SPPRA in award of contracts. At page 24 of the Report further details of “kickbacks by government contractors paid into fake accounts” were given. At page 26 (serial number 11) of the Report, kickbacks given by Wadood Engineering for the contract of installing solar street lights in interior Sindh was listed. The learned counsel for the petitioner argued that even if the contract awarded to Wadood Engineering was a part of the cases to be transferred from Karachi to Rawalpindi, the same would have no impact on the petitioner as he had nothing to do with Wadood Engineering.

6. The learned APG, NAB has put on record certain documents to show that allegedly an amount of Rs. 50 million was deposited by Wadood Engineering into 3 bank accounts which were found subsequently to be fake accounts. The petitioner, though not shown as being a shareholder/director/representative/officer of Wadood Engineering, was the then Director General of the Rural Development Department, Sindh and was instrumental in the scrutiny and acceptance of the bids made for the solar lighting project (some of which were found to be fake bids by the JIT). Investigation concluded that the pre-qualification process was manipulated and officers/officials of the Rural Development Department (of which the petitioner was the Director General) had acted illegally to extend illegal benefits to Wadood Engineering.

7. On 7-1-2019 the Honorable Supreme Court directed (at page 23 serial no. v of its order), amongst other directions, that “NAB is directed that if it considers expedient and appropriate to conduct any further or additional probe, inquiry or investigation involving the matters which are the subject of the report of the JIT from a point of view of determining the true facts, it shall be free to do so at Islamabad.”

8. We are of the view that the allegation of kickbacks given by Wadood Engineering in the Roshan Sindh Program form a part of the cases ordered to be inquired/ investigated in Islamabad by the Honorable Supreme Court. In fact, the same has also not been denied by the learned counsel for the petitioner. Though the petitioner is not connected with the management of Wadood Engineering, it is alleged that he indulged in corruption/corrupt practices in awarding the contract to Wadood Engineering. We are of the view that an investigation against Wadood Engineering cannot be effectively

carried out without the petitioner and his role in the scan being investigated. To us it appears that in compliance of the directions of the Honorable Supreme Court the investigation against the petitioner in connection with the Roshan Sindh Program must also be transferred to NAB, Islamabad. As we have concluded that the transfer is in compliance with the orders of the Honorable Supreme Court, the issue whether Chairman, NAB is empowered under NAO, 1999 to transfer an investigation from one province to another will be decided in an appropriate case.

9. In view of the above, the petition stands dismissed.

JUDGE

CHIEF JUSTICE