

IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD

APPEAL NO. 706-11-2020

Hidayat Ullah Khan

Vs

National Accountability Bureau

Date:12.7.2021

Fawad Malik: Information Commissioner

A. APPEAL.

1. Mr. Hidayatullah Khan, former Superintendent Engineer, Irrigation Department, Government of Khyber Pakhtunkhwa was served with a Call Up notice under section 19 of National Accountability Ordinance, 1999 vide letter dated 14.9.2020 issued by the Deputy Director (Coord) on behalf of the Director IW-II. Through the notice he was directed to appear before Mr. Aasil Khan, Investigation Officer at NAB Khyber Pakhtunkhwa office for investigation in the matter of illegal re-instatement of the accuseds.
2. The appellant through his letter dated 9.10.2020 addressed to the Designated Officer, National Accountability Bureau, Islamabad and the Designated Officer, National Accountability Bureau, Peshawar invoking the right under the Right of Access to Information Act, 2017 has requested the intimation of the name and designation of the Competent Authority taking cognizance of the subject matter in notice for his personal information and record.
3. The application was not responded with in the period provided in the Act, hence the appeal before the Pakistan Information Commission.

B. PROCEEDINGS.

4. The Public Information Officer, National Accountability Bureau, Islamabad vide letter dated 26.1.2021 submitted the reply to the notice of the Commission. The same reads as under:

“ In connection with above referred letter, it is submitted that the appellant is an alleged accused in case title “Investigation against Officers/Officials of Govt. of

Khyber Pakhtunkhwa & others regarding illegal re-instatement of Accused Gulzar Khan, Sher Adam, Hizbullah Khan and Hidayat Khan”.

The investigation in above mentioned case is at final stage which will be finalized in due course of time as per law. Since the investigation is ongoing, sharing of any information related to the case may affect the official proceedings of the case which is also covered under Article 19A of the Constitution of Islamic Republic of Pakistan and Section 7 (Exclusion of certain record) as well as Section 16 (b)(i)(j) (information exempt from disclosure) of the Right of Access to Information Act, 2017.

The applicant primarily submitted his reply to call up notice by NAB and was required to submit the information in his defence. He, in contravention of above referred provision, illegally sought information about Competent Authority.”

C. COMMISSION’S VIEW.

5. If the plea of the respondent is considered for the decision, suffice to say that every accused has the fundamental right of fair trial guaranteed under the Constitution of Pakistan. Before the inquiry the accused is supposed to be provided all the evidence that prove his/her guilt to defend the case in the interest of justice. The suspect has the basic right to be informed of the charges and the right to preparation of a defence.
6. The reading of the application reveals that the appellant has merely desired the name and designation of the Competent Authority taking cognizance of the subject matter. The copy of the notice appended with the appeal depicts that the notice was issued by the Dy. Director with the approval of the Director IW-II, NAB, Peshawar being the competent authority. In the light of the section 19 of the National Accountability Ordinance, 1999 the Chairman NAB is empowered to delegate any officer, the power of competent authority to serve the call up notice to the suspect. In the case in hand the self-speaking notice depicts that the Director IW-II, National Accountability Bureau, Peshawar is the competent authority of the case. The Section 19 of the National Accountability Ordinance, 1999 reads as under:

Power to call for information. *The Chairman NAB or [an officer of the NAB duly authorised by him] may, during the course of an inquiry [or investigation] [of an offence under the Ordinance].:-*

(a) Call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Ordinance or any rule or order made thereunder.

(b) Require any person to produce or deliver any document or thing useful or relevant to the inquiry [or investigation].

(c) Examine any person acquainted with the facts and circumstances of the case.

(d) Require any bank or financial institution, notwithstanding anything contained in any other law for the time being in force, to provide any information relating to any person whosoever, including copies of entries made in a bank's or a financial institution's books such as ledgers, day books, cash books and all other books including record of information and transactions saved in electronic or digital form, and the keepers of such books or records shall be obliged to certify the copies in accordance with law [and]

(e) where there is reasonable suspicion that any person is involved in or is privy to an offence under the ordinance, the Chairman NAB may, with the prior approval in writing of the High Court concerned, direct that surveillance of that person may be carried out through such means as may be necessary in the facts and circumstances of the case and the Chairman NAB, may in this regard seek the aid and assistance of any [Governmental] agency and the information so collected may be used as evidence in the trial under this Ordinance.

7. For the reasons mentioned the para supra this Commission is of the view that no further proceedings are required in this appeal.

D. ORDER.

8. The appeal is closed.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner
Announced on 12.7.2021

Certified that this order consists of three (3) pages, each page has been read and signed.