

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE IJAZ UL AHSAN

C. M. A. NO. 4978 OF 2017 IN CONSTITUTION PETITION NO. 29 OF 2016 ETC.
(Report by JIT).

AND

C. M. A. NO. 2939 OF 2017 IN CONSTITUTION PETITION NO. 29 OF 2016 ETC.

Imran Ahmed Khan and others. ...Applicant(s)

Versus

Mian Muhammad Nawaz Sharif,
Prime Minister of Pakistan. ...Respondent(s)

AND

CONSTITUTION PETITION NO. 29 OF 2016.
(Under Article 184 of the Constitution)

Imran Ahmed Khan Niazi. ...Petitioner(s)

Versus

Mian Muhammad Nawaz Sharif,
Prime Minister of Pakistan, etc. ...Respondent(s)

AND

CONSTITUTION PETITION NO. 30 OF 2016.
(Under Article 184 of the Constitution)

Sheikh Rasheed Ahmed. ...Petitioner(s)

Versus

Federation of Pakistan through Secretary Law,
Justice and Parliamentary Division, etc. ...Respondent(s)

AND

CONSTITUTION PETITION NO. 03 OF 2017.
(Under Article 184 of the Constitution)

Siraj-ul-Haq, Ameer Jamat-e-Islami, Pakistan. ...Petitioner(s)

Versus

Federation of Pakistan through Ministry of
Parliamentary Affairs, Islamabad and others. ...Respondent(s)

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IN ATTENDANCE.
(in Const. P. 29/2016).

For the petitioner(s): Syed Naeem Bokhari, ASC
Mr. Sikandar Bashir Mohmand, ASC
Mr. Fawad Hussain Ch., ASC
Mr. Faisal Fareed Hussain, ASC.
Ch. Akhtar Ali, AOR.

Assisted by :
Barrister Maleeka Bokhari.
Shahid Naseem Gondal, Adv.
Kashif Nawaz Siddiqui, Adv.
M. Imad Khan, Adv.

For respdt. No. 1: Khawaja Harris Ahmed, Sr. ASC.

Assisted by:
M. Amjad Pervaiz, ASC
Saad Hashmi, Adv.
Adnan Khawaja, Adv.

For respdt. No. 2: Mr. Akbar Tarar, APGA.
Mr. Arshad Qayyum, Spl. Prosecutor.
Ch. M. Fariid-ul-Hassan, Spl. Prosecutor.
Mr. Imran-ul-Haq, Spl. Prosecutor.
Mr. Ajmal Aziz, Spl. Prosecutor.

For respdts. 3 to 5 : Mr. M. Waqar Rana, Addl. A. G.
Mr. M. S. Khattak, AOR.

Assisted by :
Barrister Asad Rahim Khan.

For respdts. 6 to 9: Mr. Salman Akram Raja, ASC.
Syed Rifaqat Hussain Shah, AOR.

Assisted by :
Asad Ladha, Adv.
Ghulam Sabir Malik, Adv.
Usman Ali Bhoon, Adv.
M. Shakeel Mughal, Adv.
Aftab Zafar, Adv.

For respdt. No. 10: Dr. Tariq Hassan, ASC.
Syed Rifaqat Hussain Shah, AOR.

Const. P. 30 of 2016.

For the petitioner(s): Sheikh Rasheed Ahmed, (in person)

For the respdts. 1 & 3: Mr. M. Waqar Rana, Addl. A. G.
Mr. M. S. Khattak, AOR.

Assisted by :

For respdt. No. 2 : Barrister Asad Rahim Khan.
Mr. Akbar Tarar, APGA.
Mr. Arshad Qayyum, Spl. Prosecutor.
Ch. M. Fariid-ul-Hassan, Spl. Prosecutor.
Mr. Imran-ul-Haq, Spl. Prosecutor.
Mr. Ajmal Aziz, Spl. Prosecutor.

For respdt. No. 4: Khawaja Harris Ahmed, Sr. ASC.

Assisted by:

M. Amjad Pervaiz, ASC
Saad Hashmi, Adv.
Adnan Khawaja, Adv.

Const. P. No. 03 of 2017.

For the petitioner(s): Mr. Taufiq Asif, ASC.

Assisted by :

Atif Ali Khan, ASC.
Ajmal Ghaffar Toor, Adv.
Saifullah Gondal, Adv.
Sher Hamad Khan, Adv.

For respdts. 1 to 3: Mr. M. Waqar Rana, Addl. A. G.
Mr. M. S. Khattak, AOR.

Assisted by :

Barrister Asad Rahim Khan.

For respdt. No. 4: Khawaja Harris Ahmed, Sr. ASC.

Assisted by:

M. Amjad Pervaiz, ASC
Saad Hashmi, Adv.
Adnan Khawaja, Adv.

Date of Hearing: 17th to 21st July, 2017.
(Judgment Reserved).

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J U D G M E N T

EJAZ AFZAL KHAN, J.- This judgment is in continuation of our judgments dated 20.04.2017 in Constitution Petitions No. 29, 30 of 2016 and Constitution Petition No. 03 of 2017 which ended up in the following order of the Court :

“By a majority of 3 to 2 (Asif Saeed Khan Khosa and Gulzar Ahmed, JJ) dissenting, who have given separate declarations and directions, we hold that the questions how did Gulf Steel Mill come into being; what led to its sale; what happened to its liabilities; where did its sale proceeds end up; how did they reach Jeddah, Qatar and the U.K.; whether respondents No. 7 and 8 in view of their tender ages had the means in the early nineties to possess and purchase the flats; whether sudden appearance of the letters of Hamad Bin Jassim Bin Jaber Al-Thani is a myth or a reality; how bearer shares crystallized into the flats; who, in fact, is the real and beneficial owner of M/s Nielsen Enterprises Limited and Nescoll Limited, how did Hill Metal Establishment come into existence; where did the money for Flagship Investment Limited and other companies set up/taken over by respondent No. 8 come from, and where did the Working Capital for such companies come from and where do the huge sums running into millions gifted by respondent No. 7 to respondent No. 1 drop in from, which go to the heart of the matter and need to be answered. Therefore, a thorough investigation in this behalf is required.

2. *In normal circumstances, such exercise could be conducted by the NAB but when its Chairman appears to be indifferent and even unwilling to perform his part, we are constrained to look elsewhere and therefore, constitute a Joint Investigation Team (JIT) comprising of the following members :*

- i) *a senior Officer of the Federal Investigation Agency (FIA), not below the rank of Additional Director General who shall head the team having firsthand experience of investigation of white collar crime and related matters;*
- ii) *a representative of the National Accountability Bureau (NAB);*
- iii) *a nominee of the Security & Exchange Commission of Pakistan (SECP) familiar with the issues of money laundering and white collar crimes;*
- iv) *a nominee of the State Bank of Pakistan (SBP);*
- v) *a seasoned Officer of Inter Services Intelligence (ISI) nominated by its Director General; and*
- vi) *a seasoned Officer of Military Intelligence (M.I.) nominated by its Director General.*

3. *The Heads of the aforesaid departments/ institutions shall recommend the names of their nominees for the JIT within seven days from today which shall be placed before us in chambers for nomination and approval. The JIT shall investigate the case and collect evidence, if any, showing that respondent No. 1 or any of his dependents or benamidars owns, possesses or has acquired assets or any interest therein disproportionate to his known means of income. Respondents No. 1, 7 and 8 are directed to appear and associate themselves with the JIT as and when required. The JIT may also examine the evidence and material, if any, already available with the FIA and NAB relating to or having any nexus with the possession or acquisition of the aforesaid flats or any other assets or pecuniary resources and their origin. The JIT*

shall submit its periodical reports every two weeks before a Bench of this Court constituted in this behalf. The JIT shall complete the investigation and submit its final report before the said Bench within a period of sixty days from the date of its constitution. The Bench thereupon may pass appropriate orders in exercise of its powers under Articles 184(3), 187(2) and 190 of the Constitution including an order for filing a reference against respondent No. 1 and any other person having nexus with the crime if justified on the basis of the material thus brought on the record before it.

4. It is further held that upon receipt of the reports, periodic or final of the JIT, as the case may be, the matter of disqualification of respondent No. 1 shall be considered. If found necessary for passing an appropriate order in this behalf, respondent No. 1 or any other person may be summoned and examined.

5. We would request the Hon'ble Chief Justice to constitute a Special Bench to ensure implementation of this judgment so that the investigation into the allegations may not be left in a blind alley."

2. The Hon'ble Chief Justice of Pakistan constituted the implementation Bench consisting of Ejaz Afzal Khan, J., Mr. Justice Sh. Azmat Saeed and Mr. Justice Ijaz ul Ahsan. The Bench vide order dated 05.05.2017 constituted the JIT consisting of Mr. Amer Aziz, an Officer of (BS-21) who is on deputation with NIBAF, Mr. Bilal Rasool, Executive Director, SECP, Mr. Irfan Naeem Mangi, Director NAB, (BS-20). Brig. Muhammad Nauman Saeed from ISI, Brig. Kamran Khurshid from M.I. and Mr. Wajid Zia, Additional Director General (Immigration), FIA to head the JIT.

3. The JIT undertook the task thus assigned and submitted a complete investigation report on 10.07.2017. Parties to the proceedings were provided the report of the JIT and a weeks' time to go through it. Khawaja Harris Ahmed, learned Sr. ASC appearing on behalf of respondent No. 1 submitted a CMA expressing his reservations about the report. Dr. Tariq Hassan, learned ASC for respondent No. 10 also filed a CMA expressing his reservations about the report. Learned ASC appearing for petitioner in Const. P. No. 29 of 2016, Sheikh Rasheed Ahmed, petitioner appearing in person in Const. P. No. 30 of 2016 and learned ASC appearing for the petitioner in Const. P. No. 03 of 2017, by picking up the thread from where they left off, sought to canvass at the bar that the JIT has collected sufficient evidence proving that

respondent No. 1, his dependents and benamidars own, possess and have acquired assets which are disproportionate to their known sources of income; that neither respondent No. 1 nor any of his dependents or benamidars before or during the course of investigation could account for these assets, therefore, he has become disqualified to be a Member of Parliament. They further stated that certified copies of the correspondence between Mr. Errol George, Director Financial Investigating Agency and the Anti-Money Laundering Officer of Mossack Fonseca & Co. (B.V.I.) Limited collected through Mutual Legal Assistance prove that respondent No. 6 is the beneficial owner of the Avenfield apartments, therefore, the document showing her as trustee is a fabrication on the face of it for which she is liable to be proceeded against for forgery and using forged documents; that use of Calibri Font, which became commercially available in 2007, in the preparation of the trust deed in February 2006 is another circumstance leading to the inference that it was forged and fabricated; that narrative of Tariq Shafi vis-à-vis receipt of AED 12 million from sale of 25% shares of Ahli Steel Mills formerly known as Gulf Steel Mills is false on the face of it which has been confirmed by the JIT in its report; that whatever has been stated in Qatri letters remained unsubstantiated as the Qatri Prince neither appeared before the JIT nor ever stated his point of view through any other legally recognizable means; that respondents were given ample opportunities to provide the trail of money and answer the questions asked in the order of the Court dated 20.04.2017 but they throughout have been evasive; that the discrepancies between the first Qatri letter and affidavit of Mr. Tariq Shafi show that neither of them is credible; that the spreadsheet attached with the second Qatri letter too is of no help to the respondents as it is neither signed nor supported by any documentary evidence; that the entire story about trail of money is seriously marred by inconsistencies surfacing in the statements of the respondents recorded by the JIT; that story of

transporting machinery from Dubai to Jeddah and thereby establishing Azizia Steel Company Limited still awaits proof; that how the entire amount running to SAR 63.10 million could be utilized by respondent No. 7 notwithstanding he was entitled to only 1/3rd finds no explanation therefor, the sources establishing Hill Metal Establishment have not been proved; that failure of respondent No. 1 to disclose his assets deposited in his account on account of his being Chairman of Capital FZE would also call for his disqualification, as it being an asset for all legal and practical purposes was required to be disclosed under Section 12(2)(f) of the Representation of the People Act, 1976; that the respondent denied withdrawal of salary, but payment of salaries to all employees electronically, through the Wage Protection System, under Ministerial Resolution No. (788) for 2009 on Wage Protection used by United Arab Emirates Ministry of Labour and Rules 11(6) and 11(7) of the Jebel Ali Free Zone Rules, would belie his stance; that the assets of respondents No. 7 and 8 have surprisingly grown manifold overnight notwithstanding all of their business enterprises run in loss; that the facts and figures showing inflow and outflow of Hill Metals Establishment also appear to be fudged and fabricated when seen in the light of the material collected during the course of investigation by the JIT; that material already brought on the record and collected through the JIT leave no doubt that the assets of respondent No. 1, his children and benamidars are disproportionate to their known sources of income and that their failure to satisfactorily account for them would inevitably entail disqualification of respondent No. 1 in terms of Section 9(a)(v) of the National Accountability Bureau Ordinance, 1999.

4. Learned Sr. ASC appearing for Respondent No. 1 contended that JIT overstepped its mandate by reopening the case of Hudabiya Paper Mills when it was not so directed by the Court; that another investigation or inquiry shall also be barred by the principle of double jeopardy when the Reference

relating to the said Mills was quashed in the case of **Hudabiya Paper Mills Limited. Vs. Federation of Pakistan (PLD 2016 Lahore 667)**; that no evidence has been collected by the JIT showing respondent No.1 to have any nexus with the Avenfield apartments, Hill Metals Establishment, Flagship Investment Limited or any other business concern run by respondent no. 7 and 8; that all the material collected and finding given by the JIT do not deserve any consideration inasmuch as they are beyond the scope of investigation authorized by the order of this Court; that the investigation conducted by the JIT cannot be said to be fair and just when none of the respondents was questioned about or confronted with any of the documents tending to incriminate them and that the JIT exceeded its authority while obtaining documents from abroad by engaging the firm of the persons happening to be their near and dear. Such exercise, the learned Sr. ASC added, cannot be termed as Mutual Legal Assistance by any interpretation nor can the documents thus obtained be vested with any sanctity in terms of Section 21(g) of the National Accountability Bureau Ordinance, 1999. He next contended that no weight could be given to the finding of the JIT when it is not supported by any authentic document. An investigation of this type, the learned Sr. ASC added, which is a farce and a breach of due process cannot form basis of any adverse verdict against respondent No. 1. The learned Sr. ASC to support his contention placed reliance on the cases of **Khalid Aziz. Vs. The State (2011 SCMR 136)** and **Muhammad Arshad and others. Vs. The State and others (PLD 2011 SC 350)**.

5. Learned ASC appearing on behalf of respondents No. 6, 7, 8 and 9 contended that Avenfield apartments are owned and possessed by respondent No. 7, and that the trail of money and the way it has culminated in the acquisition of the Avenfield apartments stand explained by Qatri letters; that respondent No. 6 besides being a trustee of the apartments at some stage

of time has not been their beneficial owner, therefore, the correspondence between Errol George, Director FIA and Mossack Fonseca & Co. (B.V.I.) Limited or the certified copies thereof obtained through an MLA request cannot be relied upon unless proved in accordance with law and that the JIT report and the material collected by it during the course of investigation per se cannot form basis of a judgment in a proceeding under Article 184(3) of the Constitution of the Islamic Republic of Pakistan.

6. Learned ASC appearing on behalf of respondent No. 10 contended that assets of respondent No. 10 have been audited and examined from time to time but no irregularity was ever found in any of them; that the respondent has accounted for whatever assets he owns, possesses or has acquired; that his assets were also subject matter of Reference No. 5 of 2000 which was quashed in the case of **Hudabiya Paper Mills Limited. Vs. Federation of Pakistan (supra)**; that another criminal proceeding cannot be initiated when everything has been accounted for down to the rupee. The learned ASC by producing the income tax returns from 2007 to 2016, wealth tax returns from 1981-1982 to 2000-2001 and from 2009 to 2016 contended that every asset is property vouched and documented; that the finding of the JIT has no legal or factual basis; that no conclusion much less sweeping can be drawn on the basis of such report; that 91 times increase in his assets from 1992-1993 to 2008-2009 shown in the JIT's report is based on miscalculation; that the respondent cannot be impaled on the same charge by imputing a wrongdoing without any tangible evidence; that failure on the part of the FBR to provide the relevant record cannot be construed to the detriment of the respondent when it has been with the NAB Authorities throughout and that with this background in view, it would be rather unjust to thrust the respondent in another treadmill of tiresome trial before the Accountability Court.

7. We have carefully gone through the record, the report submitted by the JIT and considered the submissions of the learned ASCs, Sr. ASC of the parties as well as the learned Additional Attorney General for Pakistan.

8. We have already dealt with the background of the case and detailed submissions of the learned ASCs for the parties in paras 1 to 12 of the majority judgment authored by one of us (Ejaz Afzal Khan, J) and notes written by my learned brothers Mr. Justice Sh. Azmat Saeed and Mr. Justice Ijaz ul Ahsan. What necessitated the constitution of JIT has been highlighted in para 19 of the judgment which reads as under :-

“19. Yes, the officers at the peak of NAB and FIA may not cast their prying eyes on the misdeeds and lay their arresting hands on the shoulders of the elites on account of their being amenable to the influence of the latter or because of their being beholden to the persons calling the shots in the matters of their appointment posting and transfer. But it does not mean that this Court should exercise a jurisdiction not conferred on it and act in derogation of the provisions of the Constitution and the law regulating trichotomy of power and conferment of jurisdiction on the courts of law. Any deviation from the recognized course would be a recipe for chaos. Having seen a deviation of such type, tomorrow, an Accountability Court could exercise jurisdiction under Article 184(3) of the Constitution and a trigger happy investigation officer while investigating the case could do away with the life of an accused if convinced that the latter is guilty of a heinous crime and that his trial in the Court of competent jurisdiction might result in delay or denial of justice. Courts of law decide the cases on the basis of the facts admitted or established on the record. Surmises and speculations have no place in the administration of justice. Any departure from such course, however well-intentioned it may be, would be a precursor of doom and disaster for the society. It as such would not be a solution to the problem nor would it be a step forward. It would indeed be a giant stride nay a long leap backward. The solution lies not in bypassing but in activating the institutions by having recourse to Article 190 of the Constitution. Political excitement, political adventure or even popular sentiments real or contrived may drive any or many to an aberrant course but we have to go by the Law and the Book. Let us stay and Act within the parameters of the Constitution and the Law as they stand till the time they are changed or altered through an amendment therein.”

9. A careful examination of the material so far collected reveals that a prima facie triable case under Section 9, 10 and 15 of the Ordinance is made out against respondents No. 1, 6, 7 and 8 vis-à-vis the following assets:-

- “(i) Flagship Investments Limited.
- (ii) Hartstone Properties Limited;
- (iii) Que Holdings Limited;
- (iv) Quint Eaton Place 2 Limited;

- (v) Quint Saloane Limited (formerly Quint Eaton Place Limited).
- (vi) Quaint Limited;
- (vii) Flagship Securities Limited;
- (viii) Quint Gloucester Place Limited;
- (ix) Quint Paddington Limited (formerly Rivates Estates Limited);
- (x) Flagship Developments Limited;
- (xi) Alanna Services Limited (BVI);
- (xii) Lankin SA (BVI);
- (xiii) Chadron Inc;
- (xiv) Ansbacher Inc;
- (xv) Coomber Inc; and
- (xvi) Capital FZE (Dubai)."

So is the case against respondent No. 10 vis-à-vis 91 times increase (from Rs.9.11 million to 831.70 million) in his assets within a short span of time. What to do in the circumstances has already been dealt with in the majority judgment in the words as follows:-

"Any liability arising out of these Sections has its own trappings. Any allegation leveled against a holder of public office under these provisions of law requires an investigation and collection of evidence showing that he or any of his dependents or benamidars owns, possesses or has acquired assets etc disproportionate to his known means of income. Such investigation is followed by a full-fledged trial before an Accountability Court for determination of such liability. But where neither the Investigation Agency investigated the case, nor any of the witnesses has been examined and cross-examined in an Accountability Court nor any of the documents incriminating the person accused has been produced and proved in accordance with the requirements of Qanoon-e-Shahadat Order, 1984, nor any oral or documentary pieces of evidence incriminating the person accused has been sifted, no verdict disqualifying a holder of public office could be given by this Court in a proceeding under Article 184(3) of the Constitution on the basis of a record which is yet to be authenticated. We must draw a line of distinction between the scope of jurisdiction of this Court under Article 184(3) of the Constitution and that of the Accountability Court under the Ordinance and between the disqualifications envisioned by Articles 62 and 63 of the Constitution and Section 99 of the ROPA and the criminal liabilities envisioned by Sections 9, 10 and 15 of the Ordinance lest we condemn any member of Parliament on assumptions by defying the requirements of a fair trial and due process. We cannot make a hotchpotch of the Constitution and the law by reading Sections 9 and 15 of the Ordinance in Articles 62, 63 of the Constitution and Section 99 of the Act and pass a judgment in a proceeding under Article 184(3) of the Constitution which could well be passed by an Accountability Court after a full-fledged trial. Nor could we lift Sections 9 and 15 of the Ordinance, graft them onto Article 63 of the Constitution, construe them disqualifications and proceed to declare that the member of Parliament so proceeded against is not honest and ameen and as such is liable to be disqualified. A verdict of this nature would not only be unjust but coram non iudice for want of jurisdiction and lawful authority. If a person is sought to be proceeded against under Section 9(a)(v) and 15 of the NAB Ordinance resort could be had to the mode, mechanism and machinery provided thereunder. Let the law, the Investigation Agency and the Accountability Court and other Courts in the hierarchy take their own course. Let respondent No. 1 go through all the phases of investigation, trial and appeal. We would not leap

over such phases in gross violation of Article 25 of the Constitution which is the heart and the soul of the rule of law. We also don't feel inclined to arrogate to ourselves a power or exercise a jurisdiction which has not been conferred on us by any of the acts of the Parliament or even by Article 184(3) of the Constitution. Who does not know that making of a statement on oath in a trial lends it an element of solemnity; cross-examination provides safeguards against insinuation of falsehood in the testimony; provisions of Qanoon-e-Shahadat Order regulate relevancy of facts, admissibility of evidence and mode of proof through oral and documentary evidence and thus ensure due process of law. We for an individual case would not dispense with due process and thereby undo, obliterate and annihilate our jurisprudence which we built up in centuries in our sweat, in our toil, in our blood."

10. The same theme was reiterated by my learned brother Mr.

Justice Sh. Azmat Saeed by holding as under :-

"22. It is evident from a bare reading of the aforesaid provisions that the prosecution must establish that a person or his spouse or dependent or benamidar owns or possesses a property. If the aforesaid allegation is proved then the accused must give an explanation as to the source of legal funds for acquiring such property and upon his failure to do so, he becomes liable for punishment under the aforesaid law. Such punishment not only includes fine and imprisonment but also disqualification from holding a public Office, including that of Member of the Majlis-e-Shoora for a period of 10 years under Section 15 of the NAB Ordinance, 1999. Reference, in this behalf, can be made to the judgments, reported as (1) Iqbal Ahmed Turabi and others v. The State (PLD 2004 SC 830), (2) Ghani-ur-Rehman v. National Accountability Bureau and others (PLD 2011 SC 1144), (3) Abdul Aziz Memon and others v. The State and others (PLD 2013 SC 594), (4) The State through Prosecutor General Accountability, National Accountability Bureau, Islamabad v. Misbahuddin Farid (2003 SCMR 150), (5) Syed Zahir Shah and others v. National Accountability Bureau and another (2010 SCMR 713), (6) Muhammad Hashim Babar v. The State and another (2010 SCMR 1697) and (7) Khalid Aziz v. The State (2011 SCMR 136).

23. In none of the aforesaid cases was any person convicted without a definitive finding that the assets were in fact owned or possessed by the accused, his spouse, his dependents or benamidars. And thereafter, the accused had failed to account for the source of funds for acquiring the said property and if the explanation was found unsatisfactory, conviction followed."

11. Almost the same view was expressed by my learned brother Mr.

Justice Ijaz ul Ahsan in the words which reads as under:-

"58. Where there is an allegation that a holder of public office or any of his dependents or benamidars owns or possesses any assets or pecuniary resources which are disproportionate to his known sources of income which he cannot reasonably account for he can be convicted of an offence of corruption and corrupt practices and upon such conviction, penal consequences would follow. However, such conviction can only be recorded by an Accountability Court under the NAO, after a proper trial, recording evidence and granting due process rights guaranteed by the Constitution to the accused. To transplant the powers of the Accountability Court and to attach such powers to the jurisdiction of this Court under Article 184(3) of the Constitution has neither been prayed for by the petitioners nor can it be, in our opinion, done without stretching the letter of the law and the scheme of the Constitution. Further, such course of action would be violative of the

principles enshrined in Articles 4 and 25 of the Constitution, which guarantee to every citizen the right to be dealt with in accordance with law, equality before law and entitlement to equal protection of law. Adopting any other mode would set a bad precedent and amount to a constitutional Court following an unconstitutional course. This, we are not willing to do, in the interest of upholding the rule of law and our unflinching and firm belief in adherence and fidelity to the letter and spirit of the Constitution."

12. The argument that the JIT overstepped its authority by reopening the case of Hudabiya Paper Mills when Reference No. 5 was quashed by the High Court does not appear to be correct as the JIT has simply made recommendations in this behalf which can better be dealt with by this Court if and when an appeal, before this Court, as has been undertaken by Special Prosecutor NAB, is filed and a view to the contrary is taken by this Court.

13. The next question emerging for the consideration of this Court is whether respondent No. 1 as a Chairman of the Board of Capital FZE is entitled to salaries and whether the salaries if not withdrawn being receivable as such constitute assets which require disclosure in terms of Section 12(2) of the Representation of the People Act, 1976 and whether his failure to disclose them would entail his disqualification? The word asset has not been defined in the Representation of the People Act, 1976, ("ROPA"), therefore, its ordinary meaning has to be considered for the purposes of this case. The word asset as defined in Black's Law Dictionary means and contemplates "*an asset can be (i) something physical such as cash, machinery, inventory, land and building (ii) an enforceable claim against others such as accounts receivable (iii) rights such as copyright, patent trademark etc (iv) an assumption such as goodwill*". The definition of the word receivable as used in the above mentioned definition as given in the Black's Law Dictionary is also relevant which means and contemplates "*any collectible whether or not it is currently due. That which is due and owing a person or company. In book keeping, the name of an account which reflects a debt due. Accounts receivable a claim against a debtor usually*

arising from sales or services rendered". The word 'receivable' also has similar ring and connotation according to Business Dictionary which reads as under:-

"Accounting term for amount due from a customer, employee, supplier (as a rebate or refund) or any other party. Receivables are classified as accounts receivable, notes receivable etc and represent an asset of the firm".

The definitions reproduced above leave no doubt that a salary not withdrawn would nevertheless be receivable and as such would constitute an asset for all legal and practical purposes. When it is an asset for all legal and practical purposes, it was required to be disclosed by respondent No. 1 in his nomination papers in terms of Section 12(2) of the ROPA. When we confronted, the learned Sr. ASC for respondent No. 1, whether the said respondent has ever acquired work permit (Iqama) in Dubai, remained Chairman of the Board of Capital FZE and was entitled to salary as such, his reply was in the affirmative with the only addition that respondent No. 1 never withdrew any salary. This admission was reiterated in more categorical terms in the written arguments filed by the learned Sr. ASC for respondent No. 1 in the words as under:-

"So far as the designation of Respondent No. 1 as Chairman of the Board is concerned, this was only a ceremonial office acquired in 2007 when the respondent No. 1 was in exile, and had nothing to do with the running of the Company or supervising its affairs. Similarly, the respondent No. 1 did not withdraw the salary of AED 10,000. Thus, the salary shown in the Employment Contract in effect never constituted an "asset" for the respondent No. 1."

It has not been denied that respondent No. 1 being Chairman of the Board of Capital FZE was entitled to salary, therefore, the statement that he did not withdraw the salary would not prevent the un-withdrawn salary from being receivable, hence an asset. When the un-withdrawn salary as being receivable is an asset it was required to be disclosed by respondent No. 1 in his nomination papers for the Elections of 2013 in terms of Section 12(2)(f) of the ROPA. Where respondent No. 1 did not disclose his aforesaid assets, it would amount to furnishing a false declaration on solemn affirmation in violation of the law mentioned above, therefore, he is not honest in terms of Section

99(1)(f) of the ROPA and Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan.

14. As a sequel to what has been discussed in paragraphs 7 to 11 the following directions are made:-

i) The National Accountability Bureau (NAB) shall within six weeks from the date of this judgment prepare and file before the Accountability Court, Rawalpindi/Islamabad, the following References, on the basis of the material collected and referred to by the Joint Investigating Team (JIT) in its report and such other material as may be available with the Federal Investigating Agency (FIA) and NAB having any nexus with the assets or which may subsequently become available including material that may come before it pursuant to the Mutual Legal Assistance requests sent by the JIT to different jurisdictions:-

a) Reference against Mian Muhammad Nawaz Sharif (Respondent No. 1), Maryam Nawaz Sharif (Maryam Safdar) (Respondent No. 6), Hussain Nawaz Sharif (Respondent No. 7), Hassan Nawaz Sharif (Respondent No. 8) and Capt. (Retd) Muhammad Safdar (Respondent No. 9) relating to the Avenfield properties (Flats No. 16, 16-A, 17 and 17-A Avenfield House, Park Lane, London, United Kingdom). In preparing and filing this Reference, the NAB shall also consider the material already collected during the course of investigations conducted earlier.

b) Reference against respondents No. 1, 7 and 8 regarding Azizia Steel Company and Hill Metal Establishment, as indicated above;

c) Reference against respondents No. 1, 7 and 8 regarding the Companies mentioned in paragraph 9 above;

d) Reference against respondent No. 10 for possessing assets and funds beyond his known sources of income, as discussed in paragraph 9 above;

e) NAB shall also include in the proceedings all other persons including Sheikh Saeed, Musa Ghani, Kashif Masood Qazi, Javaid Kiyani and Saeed Ahmed, who have any direct or indirect nexus or connection with the actions of respondents No. 1, 6, 7, 8 and 10 leading to acquisition of assets and funds beyond their known sources of income;

f) NAB may file supplementary Reference(s) if and when any other asset, which is not prima facie reasonably accounted for, is discovered;

g) The Accountability Court shall proceed with and decide the aforesaid References within a period of six months from the date of filing such References; and

h) In case the Accountability Court finds any deed, document or affidavit filed by or on behalf of the respondent(s) or any other person to be fake, false, forged or fabricated, it shall take appropriate action against the concerned person(s) in accordance with law.

15. As a sequel to what has been discussed in paragraphs 13 above, the following declaration and direction is issued:-

i) It is hereby declared that having failed to disclose his un-withdrawn receivables constituting assets from Capital FZE, Jebel Ali, UAE in his nomination papers filed for the General Elections held in 2013 in terms of Section 12(2)(f) of the Representation of the People Act, 1976

(ROPA), and having furnished a false declaration under solemn affirmation respondent No. 1 Mian Muhammad Nawaz Sharif is not honest in terms of Section 99(f) of ROPA and Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, he is disqualified to be a Member of the Majlis-e-Shoora (Parliament);

ii) The Election Commission of Pakistan shall issue a notification disqualifying respondent No. 1 Mian Muhammad Nawaz Sharif from being a Member of the Majlis-e-Shoora (Parliament) with immediate effect, whereafter he shall cease to be the Prime Minister of Pakistan; and

iii) The President of the Islamic Republic of Pakistan is required to take all necessary steps under the Constitution to ensure continuation of the democratic process.

16. The Hon'ble Chief Justice of Pakistan is requested to nominate an Hon'ble Judge of this Court to supervise and monitor implementation of this judgment in letter and spirit and oversee the proceedings conducted by the NAB and the Accountability Court in the above matters.

17. This Court commends and appreciates the hard work and efforts made by Members of the JIT and their support and ancillary staff in preparing and filing a comprehensive and detailed Report as per our orders. Their tenure of service shall be safeguarded and protected and no adverse action of any nature including transfer and posting shall be taken against them without informing the monitoring Judge of this Court nominated by the Hon'ble Chief Justice of Pakistan.

18. We also record our appreciation for the valuable assistance provided to us by Mr. Naeem Bokhari, ASC; Khawaja Harris Ahmed, Sr. ASC; Mr. Salman Akram Raja, ASC; Dr. Tariq Hassan, ASC; Mr. Taufiq Asif, ASC; Sheikh Rasheed Ahmed, petitioner in person, Mr. Ashtar Ausaf Ali, Attorney-General

for Pakistan; Mr. Waqar Rana; Additional Attorney-General for Pakistan and Mr. Akbar Tarar, Acting Prosecutor-General, NAB and their respective teams.

19. These petitions are thus disposed of in the terms mentioned above.

JUDGE

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Announced on **28.07.2017** at **Islamabad** in open Court.

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'Approved For Reporting'
M. Azhar Malik

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

MR. JUSTICE ASIF SAEED KHAN KHOSA
MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE GULZAR AHMED
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE IJAZ UL AHSAN

C. M. A. NO. 4978 OF 2017 IN CONSTITUTION PETITION NO. 29 OF 2016 ETC.
(Report by JIT).

AND

C. M. A. NO. 2939 OF 2017 IN CONSTITUTION PETITION NO. 29 OF 2016 ETC.

Imran Ahmed Khan and others.	...Applicant(s)
<u>Versus</u>	
Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan.	...Respondent(s)

AND

CONSTITUTION PETITION NO. 29 OF 2016.
(Under Article 184 of the Constitution)

Imran Ahmed Khan Niazi.	...Petitioner(s)
<u>Versus</u>	
Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan, etc.	...Respondent(s)

AND

CONSTITUTION PETITION NO. 30 OF 2016.
(Under Article 184 of the Constitution)

Sheikh Rasheed Ahmed.	...Petitioner(s)
<u>Versus</u>	
Federation of Pakistan through Secretary Law, Justice and Parliamentary Division, etc.	...Respondent(s)

AND

CONSTITUTION PETITION NO. 03 OF 2017.
(Under Article 184 of the Constitution)

Siraj-ul-Haq, Ameer Jamat-e-Islami, Pakistan.	...Petitioner(s)
<u>Versus</u>	
Federation of Pakistan through Ministry of Parliamentary Affairs, Islamabad and others.	...Respondent(s)

.....

IN ATTENDANCE.
(in Const. P. 29/2016).

For the petitioner(s): Syed Naeem Bokhari, ASC
 Mr. Sikandar Bashir Mohmand, ASC
 Mr. Fawad Hussain Ch., ASC
 Mr. Faisal Fareed Hussain, ASC.
 Ch. Akhtar Ali, AOR.

Assisted by :
 Barrister Maleeka Bokhari.
 Shahid Naseem Gondal, Adv.
 Kashif Nawaz Siddiqui, Adv.
 M. Imad Khan, Adv.

For respdt. No. 1: Khawaja Harris Ahmed, Sr. ASC.

Assisted by:
 M. Amjad Pervaiz, ASC
 Saad Hashmi, Adv.
 Adnan Khawaja, Adv.

For respdt. No. 2: Mr. Akbar Tarar, APGA.
 Mr. Arshad Qayyum, Spl. Prosecutor.
 Ch. M. Fariid-ul-Hassan, Spl. Prosecutor.
 Mr. Imran-ul-Haq, Spl. Prosecutor.
 Mr. Ajmal Aziz, Spl. Prosecutor.

For respdts. 3 to 5 : Mr. M. Waqar Rana, Addl. A. G.
 Mr. M. S. Khattak, AOR.

Assisted by :
 Barrister Asad Rahim Khan.

For respdts. 6 to 9: Mr. Salman Akram Raja, ASC.
 Syed Rifaqat Hussain Shah, AOR.

Assisted by :
 Asad Ladha, Adv.
 Ghulam Sabir Malik, Adv.
 Usman Ali Bhoon, Adv.
 M. Shakeel Mughal, Adv.
 Aftab Zafar, Adv.

For respdt. No. 10: Dr. Tariq Hassan, ASC.
 Syed Rifaqat Hussain Shah, AOR.

Const. P. 30 of 2016.

For the petitioner(s): Sheikh Rasheed Ahmed, (in person)

For the respdts. 1 & 3: Mr. M. Waqar Rana, Addl. A. G.
 Mr. M. S. Khattak, AOR.

Assisted by :

For respdt. No. 2 : Barrister Asad Rahim Khan.
Mr. Akbar Tarar, APGA.
Mr. Arshad Qayyum, Spl. Prosecutor.
Ch. M. Fariid-ul-Hassan, Spl. Prosecutor.
Mr. Imran-ul-Haq, Spl. Prosecutor.
Mr. Ajmal Aziz, Spl. Prosecutor.

For respdt. No. 4: Khawaja Harris Ahmed, Sr. ASC.

Assisted by:

M. Amjad Pervaiz, ASC
Saad Hashmi, Adv.
Adnan Khawaja, Adv.

Const. P. No. 03 of 2017.

For the petitioner(s): Mr. Taufiq Asif, ASC.

Assisted by :

Atif Ali Khan, ASC.
Ajmal Ghaffar Toor, Adv.
Saifullah Gondal, Adv.
Sher Hamad Khan, Adv.

For respdts. 1 to 3: Mr. M. Waqar Rana, Addl. A. G.
Mr. M. S. Khattak, AOR.

Assisted by :

Barrister Asad Rahim Khan.

For respdt. No. 4: Khawaja Harris Ahmed, Sr. ASC.

Assisted by:

M. Amjad Pervaiz, ASC
Saad Hashmi, Adv.
Adnan Khawaja, Adv.

Date of Hearing: 17th to 21st July, 2017.
(Judgment Reserved).

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FINAL ORDER OF THE COURT

The National Accountability Bureau (NAB) shall within six weeks from the date of this judgment prepare and file before the Accountability Court, Rawalpindi/Islamabad, the following References, on the basis of the material collected and referred to by the Joint Investigating Team (JIT) in its report and such other material as may be available with the Federal Investigation Agency (FIA) and NAB having any nexus with assets mentioned below or which may subsequently become available including material that may come before it pursuant to the Mutual Legal Assistance requests sent by the JIT to different jurisdictions:-

- a) Reference against Mian Muhammad Nawaz Sharif, (respondents No. 1), Maryam Nawaz Sharif (Maryam Safdar), (Respondent No. 6), Hussain Nawaz Sharif (Respondent No. 7), Hassan Nawaz Sharif (Respondent No. 8) and Capt. (Retd). Muhammad Safdar (Respondent No. 9) relating to the Avenfield properties (Flats No. 16, 16-A, 17 and 17-A Avenfield House, Park Lane, London, United Kingdom). In preparing and filing this Reference, the NAB shall also consider the material already collected during the course of investigations conducted earlier, as indicated in the detailed judgments;
- b) Reference against respondents No. 1, 7 and 8 regarding Azizia Steel Company and Hill Metal Establishment, as indicated in the main judgment;
- c) Reference against respondents No. 1, 7 and 8 regarding the Companies mentioned in paragraph 9 of the judgment unanimously rendered by Mr. Justice Ejaz Afzal Khan, Mr. Justice Sh. Azmat Saeed and Mr. Justice Ijaz ul Ahsan;

- d) Reference against respondent No. 10 for possessing assets and funds beyond his known sources of income, as discussed in paragraph 9 of the judgment unanimous rendered by Mr. Justice Ejaz Afzal Khan, Mr. Justice Sh. Azmat Saeed and Mr. Justice Ijaz ul Ahsan;
- e) NAB shall also include in the proceedings all other persons including Sheikh Saeed, Musa Ghani, Kashif Masood Qazi, Javaid Kiyani and Saeed Ahmed, who have any direct or indirect nexus or connection with the actions of respondents No. 1, 6, 7, 8 and 10 leading to acquisition of assets and funds beyond their known sources of income;
- f) NAB may file supplementary Reference(s) if and when any other asset, which is not prima facie reasonably accounted for, is discovered;
- g) The Accountability Court shall proceed with and decide the aforesaid References within a period of six months from the date of filing such References; and
- h) In case the Accountability Court finds any deed, document or affidavit filed by or on behalf of the respondent(s) or any other person(s) to be fake, false, forged or fabricated, it shall take appropriate action against the concerned person in accordance with law.

2. It is hereby declared that having failed to disclose his un-withdrawn receivables constituting assets from Capital FZE Jebel Ali, UAE in his nomination papers filed for the General Elections held in 2013 in terms of Section 12(2)(f) of the Representation of the People Act, 1976 (ROPA), and having furnished a false declaration under solemn affirmation respondent No. 1 Mian Muhammad Nawaz Sharif is not honest in terms of Section 99(f) of

ROPA and Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973 and therefore he is disqualified to be a Member of the Majlis-e-Shoora (Parliament).

3. The Election Commission of Pakistan shall issue a notification disqualifying respondent No. 1 Mian Muhammad Nawaz Sharif from being a Member of the Majlis-e-Shoora (Parliament) with immediate effect, whereafter he shall cease to be the Prime Minister of Pakistan;

4. The President of the Islamic Republic of Pakistan is required to take all necessary steps under the Constitution to ensure continuation of the democratic process.

5. The Hon'ble Chief Justice of Pakistan is requested to nominate an Hon'ble Judge of this Court to supervise and monitor implementation of this judgment in letter and spirit and oversee the proceedings conducted by NAB and the Accountability Court in the above mentioned matters.

6. This Court commends and appreciates the hard work and efforts made by Members of the JIT and their support and ancillary staff in preparing and filing a comprehensive and detailed Report as per our orders. Their tenure of service shall be safeguarded and protected and no adverse action of any nature including transfer and posting shall be taken against them without informing the monitoring Judge of this Court nominated by the Hon'ble Chief Justice of Pakistan.

7. We also record our appreciation for the valuable assistance provided to us by Mr. Naeem Bokhari, ASC; Mr. Makhdoom Ali Khan, Sr. ASC., Mr. Shahid Hamid, Sr. ASC, Khawaja Harris Ahmed, Sr. ASC; Mr.

Salman Akram Raja, ASC; Dr. Tariq Hassan, ASC; Mr. Taufiq Asif, ASC; Sheikh Rasheed Ahmed, petitioner in person, Mr. Ashtar Ausaf Ali, Attorney-General for Pakistan; Mr. Waqar Rana; Additional Attorney-General for Pakistan, Mr. Waqas Qadeer Dar, Prosecutor-General, NAB and Mr. Akbar Tarar, Acting Prosecutor-General, NAB and their respective teams.

8. These petitions are thus disposed of in the terms mentioned above.

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Announced on **28.07.2017** at **Islamabad** in open Court.

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