

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raza Ali Khan, J.

Civil PLA No. 479 of 2022

Civil Misc. No. 417 of 2022

(Filed on 15.11.2022)

Tariq Pervaiz s/o Muhammad Ramzan, resident of Mera Tanolian, Tehsil and District Muzaffarabad, serving as Cashier PWD Maintenance Division, Muzaffarabad.

.....PETITIONER

VERSUS

1. The State through Advocate-General of Azad Jammu and Kashmir, Muzaffarabad.
2. Chairman Ehtesab Bureau, Azad Jammu and Kashmir, Muzaffarabad.
3. Director Investigation Ehtesab Bureau, Azad Jammu and Kashmir, Muzaffarabad.

4. Director General, Anti-Corruption Establishment, Azad Government of the State of Jammu and Kashmir, Muzaffarabad.
5. Deputy Director Legal, Anti-Corruption Establishment, Muzaffarabad.
6. Station House Officer (SHO), Police Station Anti-Corruption Muzaffarabad.
7. Secretary, Physical Planning and Housing, Azad Government of the State of Jammu and Kashmir, having his office at New Secretariat, Lower Chatter Muzaffarabad.
8. Section Officer (Admin) Physical and Housing, Secretariat Physical Planning and Housing, Azad State of Jammu and Kashmir, Muzaffarabad.
9. Syed Amjad Hussain Bukhari Executive Engineer, Public Works Department, Maintenance Division, Muzaffarabad.

.....RESPONDENTS

[On appeal from the judgment of the High Court dated 17.10.2022, in writ petition No. 2987 of 2022]

Appearances:

FOR THE PETITIONER: Mr. Shahzad Shafi Awan,
Advocate.

FOR EHTESAB BUREAU: Sardar Amjad Aslam, C.P
& Raja Anjum Feroz
D.C.P.

Date of hearing: 21.11.2022.

ORDER:

Raza Ali Khan, J.— The titled petition for leave to appeal has been addressed against the judgment of the High Court dated 17.10.2022, whereby, the writ petition filed by the petitioner, herein, has been dismissed. Today, only the application under Order VI Rule 1 & 2 of the Azad Jammu and Kashmir Supreme Court Rules, 1978, for granting interim relief was fixed for arguments, however, on the request of the learned counsel for the petitioner, the petition for leave to appeal was summoned from the registry office.

2. The matter pertains to the two separate inquiries being conducted against the petitioner, herein; one by the Anti-Corruption Establishment and the other before Azad Jammu and Kashmir Ehtesab Bureau. The petitioner, herein, was serving as the Cashier, PWD Maintenance Division, Muzaffarabad,

when he was proceeded against in the allegation of embezzlement of an amount of Rs. 2,10,07,900/-. An inquiry against him was initiated by the Anti-Corruption Establishment, on 11.05.2022. On the other hand, the Ehtesab Bureau also started another inquiry in the same allegations on 18.07.2022. Feeling aggrieved, the petitioner challenged the inquiry proceedings initiated by Ehtesab Bureau by filing the Constitutional petition under Article 44 of Interim Constitution, 1974. After necessary proceedings, the learned High Court dismissed the writ petition through the impugned judgment dated 17.10.2022, hence, this petition for leave to appeal.

3. Mr. Shahzad Shafi Awan, the learned counsel for the petitioner stated the petitioner is facing the inquiry before the Anti-Corruption Establishment and an FIR in this regard has also been lodged but the Ehtesab Bureau without any

justification and without any lawful authority started inquiry in the same charges and allegations, hence, the investigation initiated by the Ehtesab Bureau is against law and principle of natural justice. He argued that now the petitioner is facing two investigations in same alleged offences before two different investigation agencies which is against the fundamental rights of the petitioner and its amount to double jeopardy to the petitioner. He finally submitted that if the investigation of the petitioner is conducted before any of the one investigating agency, he has no objection in disposal of the instant application along-with petition for leave to appeal.

4. On the other hand, Sardar Amjad Aslam, the learned Chief Prosecutor associated by Raja Anjum Feroz, learned Deputy Chief Prosecutor, Ehtesab Bureau, conceded the position and while referring to the letter No. 6221, dated 4th August, 2022, placed on

record, submitted that the Ehtesab Bureau has already written a letter for summoning the entire record of the case under investigation in Anti-Corruption Establishment so that the effective investigation may be carried out by the Ehtesab Bureau, nonetheless, due to litigation pending in the Court, the case could not be referred to the Ehtesab Bureau. The learned Chief Prosecutor also referred to the case titled *Tariq Riaz Mughal and another vs. State and others*, Criminal revision No. 01 of 2018, decided on 22.02.2018, and submitted that under section 21(4) of Ehtesab Bureau Act, 2011, the case falls within the domain of Ehtesab Bureau, however, at the end, the learned Chief Prosecutor submitted that he has no objection in disposal of the instant petition for leave to appeal along-with application for interim relief in the light of judgment of this Court *Tariq Riaz Mughal and another vs. State and others* (supra).

3. After hearing the learned counsel for the parties and going through the record of the case, I am of the view that the two separate inquiries on the same allegations are being conducted against the petitioner before two different forums which as per the version of the petitioner, is against the law and infringement of his fundamental rights. The stance taken by the petitioner has substance. Section 21(4) of Ehtesab Bureau Act, 2001, is quite clear wherein, the Ehtesab Bureau has been authorized to investigate the matter by exclusion of any other agency or authority or by such agency or authority under the supervision of the Chairman Ehtesab Bureau. The relevant statutory provision is reproduced hereunder for better appreciation: -

“(4) The responsibility for inquiry or an investigation of an offence alleged to have been committed under this Act shall rest on the Ehtesab Bureau to the exclusion of

any other agency or authority, unless any such agency or authority is required to do so by the Chairman.”

The perusal of the statutory provision (ibid) postulates that any investigation of the offence alleged to have been committed must be conducted by the Ehtesab Bureau by excluding the other agencies unless the Chairman Ehtesab Bureau directs another agency or authority to do so under his supervision. Reliance in this regard can be placed to an unreported case titled *Tariq Riaz Mughal and another vs. State and others*, Criminal Revision No. 01 of 2018, decided on 22.02.2018, wherein, it has been held that: -

“It may also be observed her that the sole responsibility for inquiry into an investigation of the offence alleged to have been committed rests on the Ehtesab Bureau to the exclusion of any other agency or authority unless any such agency or authority is required to do so by the Chairman Ehtesab Bureau as is envisaged

under section 21(4) of Ehtesab Bureau Act, 2001. Meaning thereby, that the Chairman Ehtesab Bureau if deems it proper to get the investigation of an offence by any other agency or authority regarding schedule offences he may do so under his supervision. This practice is not prevailing at present, however, the statutory provision authorizes the Chairman Ehtesab Bureau to adopt such procedure if the same is adopted the load of work in the department of Ehtesab Bureau may be decreased”.

In this case in hand two parallel inquiries on the same subject-matter are pending before the two different forums, i.e Anti-Corruption Establishment and the Ehtesab Bureau which will not only effect the investigation rather result into multiple legal complexities and is also against the law and norms of natural justice.

As the Ehtesab Bureau has already written a letter to the Anti-Corruption Establishment for

summoning the record of the case and due to pendency of matter before Courts, the record of the case could not be transferred to the Ehtesab Bureau, therefore, with the consent of both the parties, this petition for leave to appeal along-with the application for interim relief is disposed of and the Anti-Corruption Establishment is directed to refer the matter to the Ehtesab Bureau for investigation as per their letter. No further deliberation is required in this petition, therefore, both the petition for leave to appeal and application for interim relief are disposed of accordingly.

JUDGE

Muzaffarabad,
21.11.2022.