IN THE SUPREME COURT OF PAKISTAN
(REVIEW 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

CIVIL REVIEW PETITION NO. 297 OF 2017 IN CONST. PETITION NO. 29 OF 2016
(Against the judgment dated 28.07.2017 passed by this Court in Constitution Petitions No. 29 & 30 of 2016 and 03 of 2017).

Mian Muhammad Nawaz Sharif. ...Petitioner(s)
Versus
Imran Ahmed Khan Niazi. ...Respondent(s)
AND

CIVIL REVIEW PETITION NO. 298 OF 2017 IN CONST. PETITION NO. 30 OF 2016

Mian Muhammad Nawaz Sharif. ...Petitioner(s)
Versus
Sheikh Rasheed Ahmed and others. ...Respondent(s)

AND

CIVIL REVIEW PETITION NO. 299 OF 2017 IN CONST. PETITION NO. 03 OF 2017

Mian Muhammad Nawaz Sharif. ...Petitioner(s)
Versus
Siraj ul Haq and others. ...Respondent(s)

AND

CIVIL REVIEW PETITION NO. 303 OF 2017 IN CONST. PETITION NO. 29 OF 2016

Senator Muhammad Ishaq Dar. ...Petitioner(s)
Versus
Imran Ahmed Khan Niazi and others. ...Respondent(s)

AND

CIVIL REVIEW PETITION NO. 308 OF 2017 IN CONST. PETITION NO. 29 OF 2016

Maryam Nawaz Sharif and others. ...Petitioner(s)
Versus
Imran Ahmed Khan Niazi and others. ...Respondent(s)

AND

CIVIL REVIEW PETITION NO. 309 OF 2017 IN CONST. PETITION NO. 29 OF 2016

Maryam Nawaz Sharif and others. ...Petitioner(s)
Versus
Imran Ahmed Khan Niazi and others. ...Respondent(s)

AND

CIVIL REVIEW PETITION NO. 310 OF 2017 IN CONST. PETITION NO. 29 OF 2016

Mian Muhammad Nawaz Sharif. ...Petitioner(s)

Versus

Imran Ahmed Khan Niazi and others. ...Respondent(s)

AND

CIVIL REVIEW PETITION NO. 311 OF 2017 IN CONST. PETITION NO. 30 OF 2016

Mian Muhammad Nawaz Sharif. ...Petitioner(s)

Versus

Sheikh Rasheed Ahmed and others. ...Respondent(s)

AND

CIVIL REVIEW PETITION NO. 312 OF 2017 IN CONST. PETITION NO. 03 OF 2017

Mian Muhammad Nawaz Sharif. ...Petitioner(s)

Versus

Siraj ul Haq and others. ...Respondent(s)

AND

CMA. NO. 6114 OF 2017 IN CONSTITUTION PETITION NO. 30 OF 2016.

Sheikh Rasheed Ahmed. ...Applicant(s)

Versus

Federation of Pakistan and others. ...Respondent(s)

.....

For the petitioner(s): Khawaja Harris Ahmed, Sr. ASC.
Syed Rifaqat Hussain Shah, AOR.
(in CRPs. 297-299 & 310-312/2017)

Mr. Shahid Hamid, Sr. ASC.
Dr. Tariq Hassan, ASC.
Syed Rifaqat Hussain Shah, AOR.
(in CRP.303/17).

Mr. Salman Akram Raja, ASC.
Syed Rifaqat Hussain Shah, AOR.
(in CRPs.308-309/2017).

For the respondent(s): N.R.

On Court's call : Mr. Waqas Qadeer Dar, P. G. Accountability.

For the applicant : In person (in CMA.6114/2017).

Date of Hearing: 12th to 15th September, 2017.

-.

JUDGMENT

EJAZ AFZAL KHAN, J.- These review petitions have arisen out of the judgment dated 28.07.2017 of this Court whereby Constitution Petitions No. 29, 30 of 2016 and 03 of 2017 have been disposed of in the terms as under:-

> "**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."

2. Learned Sr. ASC appearing on behalf of the petitioner in CRPs. No. 297 to 299 and 310 to 312 of 2017 contended that the five-member bench was not properly constituted after the submission of the report of the JIT as two of its members (Mr. Justice Asif Saeed Khan Khosa and Mr. Justice Gulzar Ahmed) having given their final verdicts on 20.04.2017 became functus officio.

Their judgments, the learned Sr. ASC added, could not be treated as part of the majority judgments written by Justice Ejaz Afzal Khan, Mr. Justice Sh. Azmat Saeed and Mr. Justice Ijaz ul Ahsan, therefore, it would be the latter that would prevail and hold the field and that it is in view of this anomaly that two sets of review petitions, one before the five-member bench and the other before the three-member bench have been filed. The learned Sr. ASC next contended that unwithdrawn salary could never constitute an asset even if entitlement of the petitioner thereto stemmed from a written agreement, the more so, when he on account of an understanding between him and his son opted not to receive it. The learned Sr. ASC next contended that salary as defined in Section 12(2) of the Income Ordinance, 2001 means an amount received by an employee from any employment, therefore, it cannot be extended to cover unwithdrawn salary. The learned Sr. ASC further contended that even if it is assumed, that the unwithdrawn salary constitutes an asset, omission to disclose it, involving violation of Sections 12 and 13 of the Representation of the People Act, calls for the rejection of the nomination papers or at worst removal of the petitioner from the public office he held, therefore, his disqualification in terms of Sections 99(1)(f) of ROPA and 62(1)(f) of the Constitution of the Islamic Republic of Pakistan is unwarranted. Such disqualification, the learned Sr. ASC maintained, is all the more unwarranted when the petitioner has not been given a fair chance to vindicate his position. Much greater care, the learned ASC maintained, has to be exercised in upholding the order disqualifying the petitioner in terms of Sections 99(1)(f) of ROPA and 62(1)(f) when no appeal lies against it. The learned Sr. ASC went on to argue that where an omission to disclose assets in the circumstances of the case appears to be unintentional, it would be rather presumptive to impute dishonest intention to him. To support his contention, the learned Sr. ASC placed reliance on the cases of **Muhammad Saeed and 4 others. Vs. Election Petitions Tribunal, West Pakistan, (2) Mehr**

Muhammad Arif Khan, (3) Ghulam Haider and (4) West Pakistan Government and others (PLD 1957 S.C. (Pak.) 91), Khan Muhammad Yusuf Khan Khattak. Vs. S. M. Ayub and 2 others (PLD 1973 SC 160), Syed Saeed Hassan. Vs. Pyar Ali and 7 others (PLD 1976 SC 6), Muhammad Siddique Baloch. Vs. Jehangir Khan Tareen and others (PLD 2016 SC 97), Rai Hassan Nawaz. Vs. Haji Muhammad Ayub and others (PLD 2017 SC 70) and Sheikh Muhammad Akram. Vs. Abdul Ghafoor and 19 others (2016 SCMR 733). The learned Sr. ASC next contended that the directions given by this Court to the NAB to file References against respondents in Constitution Petition No. 29 of 2016 are on the face of the record per incuriam as they amount to assuming the functions of the Chairman NAB and the Judge Accountability Court which is not only against the law but also repugnant to the provisions of the Constitution. Assumption or exercise of such powers, the learned Sr. ASC maintained, is also repugnant to the principle of tricotomy of powers which is an unchangeable feature of the Constitution. Another direction to the NAB, the learned Sr. ASC contended, to file References on the basis of the material collected and referred to by the JIT and such other material as may be available with the FIA and NAB or the one which may come before it pursuant to the Mutual Legal Assistance requests sent by the JIT to different jurisdictions is an encroachment on the authority of the NAB and violation of Article 175(2) of the Constitution. Learned ASC went on to argue that the direction to the NAB to file supplementary reference if and when any other asset, which is not reasonably accounted for, is discovered has also been issued without jurisdiction as no provision of the Constitution including Article 187 empowers this Court to issue a direction of this nature. This direction, the learned Sr. ASC added, implies unambiguous approval of the material collected by the JIT whose probative worth is yet to be established. He next contended that the direction to the Trial Court to decide the References within six months from the date of filing them

also tends to prejudice the fair trial of the petitioners. Power to superintend the proceedings of the Accountability Court, the learned Sr. ASC maintained, has not been conferred on the Supreme Court, therefore, nomination of one of the Judges of this Court to superintend them is also violative of Article 175(2)(3) of the Constitution. The petitioner, the learned Sr. ASC contended, could not be disqualified in terms of Section 99(1)(f) of ROPA and Article 62(1)(f) of the Constitution for non disclosure of his unwithdrawn income from Capital FZE in his nomination papers for the 2013 General Elections when it was not specifically averred in any of the Constitution Petitions. The learned Sr. ASC next contended that where the material collected by the JIT is not worthy of reliance and the report submitted by it is full of infirmities, commendation of JIT and its report reflected in the concluding part of the judgment under review would tend to prejudice the case of the petitioner, therefore, it needs to be qualified. The learned Sr. ASC lastly contended that the word 'judgments' used in sub-para (a) and (b) of paragraph 1 of the Order of the Court dated 28th July, 2017 requires clarification whether it refers to the minority or the majority judgments lest it misleads the National Accountability Bureau or the Accountability Court.

3. Learned Sr. ASC appearing on behalf of petitioner in CRP. No. 303 of 2017 contended that where rise in the assets of the petitioner has been explained by the relevant documents including the returns filed by him, issuance of the direction to the NAB to file a Reference against him does not appear to be well founded. He next contended that where nothing significant appeared against the petitioner during the proceedings of the Constitution Petitions, the JIT could not have collected any material against him nor could this Court direct the NAB to file a Reference against him on the basis of the material so collected, therefore, the direction to file the Reference merits a second thought.

4. Learned ASC appearing on behalf of the petitioner in CRPs. No. 308 and 309 of 2017 contended that when no material has come on the record to show any nexus between respondent No. 10 in C. P. No. 29 of 2016 and the Avenfield Apartments, the direction to the NAB to file a Reference against him is not sustainable. The learned ASC next contended that observations in the judgment under review commending the JIT and its report, also need to be diluted lest they are accepted by the NAB and the Accountability Court as being unquestionable.

5. We have carefully gone through the record and considered the submissions of the learned Sr. ASCs and ASC for the parties.

6. The first argument of the learned Sr. ASC for the petitioner in CRPs. No. 297 to 299 and 310 to 312 of 2017 is that the five-member bench was not properly constituted after the submission of the report of the JIT as two of its members (Mr. Justice Asif Saeed Khan Khosa and Mr. Justice Gulzar Ahmed) having given their final verdicts on 20.04.2017 became functus officio and that their judgments could not be treated as a part of the majority judgments written by Justice Ejaz Afzal Khan, Mr. Justice Sh. Azmat Saeed and Mr. Justice Ijaz ul Ahsan, therefore, it would be the latter that would prevail and hold the field and that it is in view of this anomaly that two sets of review petitions one before the five-member bench and the other before the three-member bench have been filed. It was mainly because of this argument that these petitions, in the first instance, were listed before a three-member bench but on the request of the learned Sr. ASC for the petitioner they were listed before a five-member bench. But when during the hearing before the five-member Bench it was pointed out that the three-member bench judgment has to prevail and hold the field, if maintained and that the objection being academic would not have much effect, the learned Sr. ASCs and ASC for the

petitioners opted not to press the review petitions filed before the three-member bench which were disposed of accordingly.

7. Next comes the question whether unwithdrawn salaries could constitute an asset when entitlement of the petitioner thereto stemmed from a written agreement. We while dealing with this aspect held as under :-

> "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 as 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."

We held in the paragraph reproduced above that the unwithdrawn salary of the petitioner is an asset. Petitioner's entitlement to salary stems from a written employment contract. Salary in this case, it may be noted, is not salary of the future which was yet to accrue. It was salary of the past six and a half years which had already accrued and accumulated. There is nothing in oral or written form, from July 2006 to January 2013 as could stop the accrual and accumulation of salary or prevent it from becoming an asset. There is also nothing in oral or written form in between July 2006 to January 2013 as could stop the withdrawal of the salary thus accrued and accumulated. Therefore, the argument that the salary even if agreed upon under the employment contract, would not be an asset if not withdrawn is not correct.

8. Now let us examine what stance the petitioner has taken with regard to the salary in the written arguments and the memorandum of the review petition. His stance is that "when respondent No. 8 in CP. No. 29 of 2016 showed his decision to wind up the company in January 2013 the petitioner categorically stated that he did not intend to nor would claim any salary from the company". The words reproduced above would unmistakably show that the salary thus accrued and accumulated till January 2013 was all along the asset of the petitioner; that the power to withdraw or waive it lay exclusively with the petitioner and that he instead of withdrawing it waived it in favour of the company. Granted, it ceased to be an asset of the petitioner from January 2013 but it remained an asset till then and the more so on 30th

June, 2012 which is the crucial date in terms of Section 12(2)(f) of ROPA. Where the salary has already accrued and accumulated from July 2006 to January 2013 and there is absolutely nothing in oral or written form in between the said dates as could stop its withdrawal, it was an asset out and out. It was thus required to be disclosed in the nomination papers of the petitioner for the 2013 General Election. The expression 'asset' as defined in Black's Law Dictionary has rightly been relied upon when it has not been defined in the ROPA and the Constitution. The expression salary as defined by Section 12(2) of the Income Tax Ordinance, 2001 would be just irrelevant for the purposes of this case when the salary having already accrued and accumulated could be withdrawn at any stage without any hindrance before January, 2013. Even if we ignore the definition of the expression "asset" as given in Black's Law Dictionary for a while, the very admission of the petitioner that he waived the salary so accrued and accumulated in January, 2013 in favour of the company speaks for itself. Had there been no admission we would not have stepped in as we did not step in when the document issued by Mossack Fonseca showing respondent No. 6 in C. P. No. 29 of 2016 as the beneficial owner of the Avenfield apartments, was disputed by her. We also did not step in when many other documents disclosing several other assets purportedly owned by the children of the petitioner were disputed as is evident from paragraph 16 of the judgment dated 20.04.2017 which reads as under:-

> *"16. The second question in the seriatim is whether respondent No. 1 or any of his dependents or benamidars owns, possesses or has acquired any assets or pecuniary resources disproportionate to his known means of income? The learned ASCs for the petitioners in their efforts to persuade us to answer this question in affirmative referred to a number of documents showing the establishment of Gulf Steel Mill at Dubai, its sale, establishment of Azizia Steel Mill at Jeddah, its sale and incorporation of Nescol Limited and Neilson Enterprises Limited in British Virgin Islands. Under the veil of the aforesaid companies, respondent No. 1 has been alleged to have acquired flats No. 16, 16-A, 17 and 17-A at Avenfield House Park Lane London. The personal information form dated 14.10.2011 purportedly issued by Minerva Trust and Corporate Services Limited shows respondent No. 6 as the beneficial owner of the flats. This document has been purportedly signed by the said respondent, but she disputed its genuineness and even her signatures*

thereon. Another document showing respondent No. 6 as the beneficial owner of the flats is the alleged correspondence between Mr. Errol George, Director FIA, British Virgin Islands and Money Laundering Reporting Officer of Mossack Fonseca & Co. (B.V.I.) Limited. A photocopy of an extract from the clients register of Director, Minerva Trust and Corporate Services Limited, according to the learned ASC for the petitioner, is yet another document proving respondent No. 6 as the beneficial owner of the flats. In any case, the questions how did Gulf Steel Mill come into being; what led to its sale; where did go its sale proceeds; how did they reach Jeddah, Qatar and the U.K.; whether respondents No. 6, 7 and 8 in view of their tender ages had the means in the early nineties to purchase the flats; whether sudden appearance of letters of Hamad Bin Jassim Bin Jaber Al-Thani is a myth or a reality; how bearer shares crystallized into the flats; how did Hill Metal Establishment come into existence; where did the money for Flagship Investment Limited and where did its Working Capital Fund come from and where did the huge sums running into millions gifted by respondent No. 7 to respondent No. 1 drop in from clamor for answers to be found by the investigation agency and then by the Accountability Court established under the National Accountability Bureau Ordinance."

It is also evident from paragraph 9 of the judgment dated 28.07.2017 which reads as under:-

> "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)."

But we could not have shut our eyes when an asset of the petitioner arising out of IQAMA (work permit) having surfaced during the investigation of the case and admitted by him to be his in no uncertain terms, was not found to have been disclosed in his nomination papers in terms of Section 12(2)(f) of ROPA. Nor could have we let him get away with it simply because he happened to be the Prime Minister of the country. Much higher level of integrity is expected of

the holder of the highest elected office of the country. But to our dismay and disappointment the petitioner has not been fair and forthright in answering any of the queries made during the course of hearing. He never came forth with the whole truth. He tried to fool the people inside and outside the Parliament. He even tried to fool the Court without realizing that "you can fool all the people for some of the time, some of the people all the time but you cannot fool all the people all the time". Refuge in evasive, equivocal and non committal reply does not help always. If fortune has throned, crowned and sceptered him to rule the country, his conduct should be above board and impeccable. Whatever he does or says must be res ipsa loquitur. (Thing speaks for itself). Resignation rather than prevarication in ambiguous terms is more honourable exit if and when anything secretly carried under the sanctimonious gown of leadership drops and gets sighted. Since the Prime Minister of the country is thought to be the ethos personified of the nation he represents at national and international level, denying an asset established or defending a trust deed written in 2006 in a font becoming commercial in 2007 is below his dignity and decorum of the office he holds. An Urdu verse may perhaps explain the feeling of a follower about the leader which reads:-

ادھر اُدھر کی نہ بات کر یہ بتا کہ قافلہ کیوں لُٹا
مجھے راہزنوں سے گلہ نہیں تیری رہبری کا سوال ہے

9. The argument that even if it is assumed that unwithdrawn salary constitutes an asset, omission to disclose it involving a violation of Sections 12 and 13 of the Representation of Peoples Act calls for the rejection of nomination papers or at its worst, removal of the petitioner from the public office and not his disqualification in terms of Section 99(1)(f) of the ROPA and Article 62(1)(f) of the Constitution is devoid of force when the petitioner deliberately concealed his assets and willfully and dishonestly made a false

declaration on solemn affirmation in his nomination papers. It is not something to be looked at with a casual eye and outlook. It is not only a legal duty but a qualifying test for the candidates who in the later days preside over the destiny of the people. This duty has to be performed without a taint of misrepresentation. This test has to be qualified without resorting to unfair means. Any concession at this stage or any leniency to the candidates or the person elected would be a prelude to a catastrophe in politics, which has already had enough of it. Since it is already touching the extreme, extreme measures have to be taken. The culture of passing the candidates by granting grace marks has not delivered the goods. It has rather corrupted the people and corrupted the system. This aspect of the case has been beautifully highlighted in the case of **Rai Hassan Nawaz. Vs. Haji Muhammad Ayub and others (PLD 2017 SC 170)** by holding as under:-

> *"7. An honest and truthful declaration of assets and liabilities by a returned candidate in his nomination papers furnishes a benchmark for reviewing his integrity and probity in the discharge of his duties and functions as an elected legislator. His statement of assets and liabilities alongwith other financial disclosures contemplated by Section 12(2) of the ROPA provide the Election Commission of Pakistan and the general public with a picture of both his wealth and income. Such disclosures are crucial for demonstrating the legitimacy and bonafides of the accrual and the accumulation of economic resources by such a candidate. In other words, the said disclosures show the returns received from his economic activities and can indicate if these activities may be tainted with illegality, corruption or misuse of office and authority. This important aspect of the financial disclosures by a contesting candidate has been noticed by this Court in Muhammad Yousaf Kaselia v. Peer Ghulam (PLD 2016 SC 689)".*

10. The argument that the petitioner could not be disqualified under Article 62(1)(f) of the Constitution without recording evidence, in a proceeding under Article 184(3) of the Constitution also runs counter to the settled law of the land as this Court in the case of **Syed Mahmood Akhtar Naqvi v. Federation of Pakistan (2012 PLD SC 1089)** while exercising jurisdiction under Article 184(3) of the Constitution proceeded to disqualify the person elected, who despite being disqualified in terms of Article 63(1)(c) of the Constitution

made a false declaration on solemn affirmation in his nomination papers to the contrary. The relevant paragraphs read as under :-

> "*we have no option but to hold that at the time of submitting their nomination papers they were disqualified and ineligible to file the same and apparently have made false statements while submitting their nomination papers*'
>
> '*From the facts noted herein-above, what appears is that respondent was holding citizenship of a foreign state, made statement on oath that he is qualified under Article 62(1)(c) of the Constitution and not disqualified under Article 63(1) of the Constitution apparently made a false statement*.'
>
> '*All members of the parliament/provincial assemblies noted above had made false declaration before the ECP while filing their nomination papers and as such appear to be guilty of corrupt practices in terms of Section 78 of ROPA, 1976, therefore, the ECP is directed to institute legal proceedings against them under section 82 of the Act read with Sections 193, 196, 197, 198 and 199 PPC in accordance with law*.'
>
> '*As regards the case of Senator A. Rehman Malik, it may be noted that at the time of filing of nomination papers for election to the senate in the year 2008, he had made a false declaration to the effect that he was not subject to any of the disqualifications specified in Article 63 of the Constitution or any other law for the time being in force for being elected as a member of the parliament/provincial assembly, therefore, reference will be required to be made to the chairman senate under Article 63(2) in view of the provisions of section 99(1)(f) of the Act of 1976, which lays down that a person shall not be qualified from being elected or chosen as a member of an Assembly unless he is sagacious, righteous and non-profligate and honest and ameen. Mr. A. Rehman Malik, in view of the false declaration filed by him at the time of contesting the election to the senate held in the year 2008, wherein he was elected, cannot be considered sagacious, righteous honest and ameen within the contemplation of Section 99(1)(f).*'

In the case of **Sadiq Ali Memon. Vs. Returning Officer, NA-237, Thatta-I and others (2013 SCMR 1246)** this Court without recording any evidence, disqualified the candidate who filed a declaration to the effect that he fulfills qualification specified in Article 62 of the Constitution and is not subject to any disqualification specified in Article 63 of the Constitution by holding as under:-

> "*In the present case, admittedly the petitioner has while filing nomination papers for contesting By-Elections of PS-84, Thatta-1, in 2010, filed a declaration to the effect that he fulfills qualifications specified in Article 62 of the Constitution and is not subject to any disqualification specified in Article 63 of the Constitution. This declaration was made by the petitioner despite the fact that he was holding dual nationality i.e. of Pakistan and of Canada and in terms of Article 63(1)(c) of the constitution on acquiring the citizenship of a*

foreign state, he was disqualified from being elected or chosen as a member of majlis e shoora or the provincial assembly'

'*Keeping in view the above state of law, it becomes apparent that while petitioner has filed a declaration, which on its face was a false and untrue declaration which will bring in to application the provisions of Article 62(1)(f) of the Constitution that he is not a sagacious, righteous, non-profligate and honest and ameen*."

In the case of **Mian Najeeb ud din Owasi. Vs. Amir Yar Waran (PLD 2013 SC 482),** this Court disqualified a candidate who made a false declaration in the nomination papers in the column meant for academic qualification, by holding as under:-

"yet if a candidate has made a declaration in the column meant for academic qualification and declared himself to be a graduate, but subsequently, it is found that he was not a graduate then he would be equally liable to face the consequences of Articles 62 & 63 of the Constitution or the other relevant provisions of the PPC. It is further to be observed that once there is a disqualification, it is always a disqualification; therefore while making a declaration in the nomination papers, a candidate must provide, a crystal clear statement about his credentials and antecedents. There is no scope of making or proving information, which is not correct, because he is one of the persons whom the electorate of a constituency, which may be having a strength of 50 thousand, are going to elect their representative. Therefore, whatever he possesses in terms of academic qualification, bank credits and taxes etc. he shall have to declare each and every thing required for the qualification to contest the election. '

'Once a person has filed a declaration under his signatures declaring that he fulfills the conditions of Articles 62 & 63 of the constitution and he undertakes that the statement is incorrect the ECP shall de-notify him for such representation, retrospectively.'

11. The argument that the omission to disclose assets could possibly be unintentional in the circumstances of the case would have been tenable had the petitioner been a novice or a new entrant in business and politics. But where he has been neck deep in business and politics ever since early 80s' it is unbelievable that he did not understand the simple principle of accounting that his accrued and accumulated salary of six and a half years was his asset and liability of the company he was an employee of. Even otherwise, this argument cannot be given much weight when it has not been pleaded by the petitioner that the omission to mention the asset was accidental, inadvertent or

unintentional. The argument that such disqualification is all the more unwarranted when the petitioner has not been given a fair chance to vindicate his position does not appear to be correct when we not only gave him a fair chance to vindicate his position before this Court, heard him at length for almost two days but also accepted whatever he stated about work permit, his employment contract with Capital FZE Jabal Ali, his position as the Chairman of the Board and his entitlement to salary which according to him was not withdrawn. The mere fact that we did not agree with the petitioner when he stated that his unwithdrawn salary is not an asset would not amount to denial of a fair chance to vindicate his position. The argument that much greater care has to be exercised in upholding the order disqualifying the petitioner in terms of Section 99(1)(f) of ROPA and Article 62(1)(f) of the Constitution when no appeal lies against it is more of an apprehension as we being conscious of our duties have dealt with this case with much greater care and circumspection in the judgment under review and while hearing and deciding this petition for review. The judgments rendered in the cases of **Muhammad Saeed and 4 others. Vs. Election Petitions Tribunal, West Pakistan, (2) Mehr Muhammad Arif Khan, (3) Ghulam Haider and (4) West Pakistan Government and others, Khan Muhammad Yusuf Khan Khattak. Vs. S. M. Ayub and 2 others , Syed Saeed Hassan. Vs. Pyar Ali and 7 others, Muhammad Siddique Baloch. Vs. Jehangir Khan Tareen and others, Rai Hassan Nawaz. Vs. Haji Muhammad Ayub and others and Sheikh Muhammad Akram. Vs. Abdul Ghafoor and 19 others (supra)** cited at the bar by the learned Sr. ASC for the petitioner being distinguishable on facts and law are not applicable to the case at hand.

12. The argument that the directions given by this Court to NAB to file References against respondents are *per incurium* on the face of the record as they amount to assuming the functions of the Chairman NAB and the judge of the Accountability Court which is not only against the law but also repugnant

to the provisions of the Constitution ensuring trichotomy of powers is not correct when both of them have been left on their own to proceed in accordance with law. What necessitated the issuance of these directions to the NAB has already been dealt with in paragraph 19 of the judgment dated 20th April, 2017 authored by one of us (Ejaz Afzal Khan, J) which deserves a look and 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."*

13. The argument that another direction to the NAB to file References on the basis of the material collected and referred to by the JIT and such other material which may be available to the FIA and NAB or the one which may come before it pursuant to the Mutual Legal Assistance Requests sent by the JIT to different jurisdictions is an encroachment on the authority of the NAB and violation of Article 175 (2) of the Constitution, could have been given some weight had there been no institutional capture, seizure and subjugation of all the important institutions of the State including NAB, SECP,

FBR, State Bank of Pakistan, National Bank of Pakistan and Intelligence Bureau through the cronies and collaborators of the person at the peak as has been evidenced during the course of hearing. We thus with our eyes open and minds awake would not let everything go into the hands of the cronies and collaborators for being taken to a dead end. Once things have been streamlined, they have to be taken to their logical conclusion. The argument that the direction to the NAB to file supplementary references if and when any other asset, which is not reasonably accounted for, is discovered has also been issued without jurisdiction as no provision of the Constitution including Article 187 empowers this Court to issue a direction of this nature is also devoid of force as this Court under Article 184(3) of the Constitution has the power to issue a direction if and when a person performing functions in connection with the affairs of the federation does not do what he is required by law to do. Supplementary References have to be filed if and when anything receivable in evidence pursuant to MLA requests sent by JIT to various jurisdictions are received. Else the leads revealed by Volume X and the outcome of the MLAs requests in respect of huge sums which have prima facie been dealt with by and on behalf of the petitioner, his sons and daughter through Montmarte Holdings S.A., L.Z. Nominees B.V.I., Fidex Registrar B.V.I., Berryvale Limited B.V.I. & E.M.S.I. (S.A.) in Luxemburg, Shamrock Consulting Corporation and Ansbacher A.G. acting through Hans Rodulf Wegmuller and Urs Specker in Switzerland would be thrown over board.

14. The argument that this direction implies unambiguous approval of the material collected by the JIT whose probative worth is yet to be established is also misconceived as none of our observations projects any such impression. The trial court in any case would be at liberty to appraise evidence including the material collected by the JIT according to the principles of the law of evidence without being influenced by any of our observations. Even

otherwise, all the observations made in the judgment, being tentative, would not bind nor would restrain the trial court from drawing its own conclusions from the evidence recorded before it in accordance with the principles and provisions of the law of evidence. The argument that the direction to the trial court for deciding the References within 6 months from the date of filing them also tends to prejudice the fair trial of the petitioner is also misconceived as the purpose behind such direction is not to prejudice the trial but to ensure expeditious conclusion of the case which more often than not has been extended even in the past by this Court, if the trial was delayed by any hardship or anything imponderable. The argument that the power to superintend the proceedings of the Accountability Court has not been conferred on the Supreme Court, therefore nomination of one of the judges of this Court to superintend them would be violative of Article 175(2) and (3) of the Constitution is also misconceived as this practice has been in vogue since long and the purpose behind it is to guard against intrusion of casualness in the proceedings before the trial court. Such practice, by no stretch of imagination, implies that the monitoring Judge would in any way influence or interfere with decision-making process of the Trial Court. It being completely innocuous to either of the parties would not tend to harm any. Its continuance, therefore, need not be objected to. The argument that the petitioner could not be disqualified in terms of section 99(1)(f) of ROPA and Article 62(1)(f) of the Constitution for non-disclosure of his unwithdrawn income from Capital FZE in his nomination papers for the 2013 General Elections when it was not specifically averred in any of the Constitution Petitions would not entail much when the proceedings before this Court under Article 184(3) of the Constitution being inquisitorial in nature cannot debar the Court from taking cognizance of a matter which is too obvious to be lost sight of. It was in view of this essential fact of the case that one of us (Ijaz ul Ahsan, J.) adverted to it in

paragraphs 87, 89 and 90(iii) of the judgment rendered on the 20th April 2017 in the words as under:

> *"87. It is also an admitted position that Respondent No.8 set up a company under the name and style of Flagship Investments Limited which received substantial sums of money in the year 2001 when the said Respondent had no source of income. Over the course of the next few years, a number of other companies were set up/taken over by Respondent No.8 allegedly for the purpose of his real estate business. The sources from which the said companies/businesses were funded are also shrouded in mystery. There is yet another company under the name and style of Capital FZE, Dubai presumably registered under the laws of UAE. Funds also appear to have been routed through the said company from time to time by / and on behalf of Respondent No.7. The real ownership and business of the said company is unclear from the record which needs to be explained. No effort has been made on the part of the Respondents to answer the questions on the afore-noted matters.*
>
> *89. Regrettably, most material questions have remained unanswered or answered insufficiently by Respondent No.1 and his children. I am also constrained to hold that I am not satisfied with the explanation offered by Respondent No.1 (Mian Muhammad Nawaz Sharif, the Prime Minister of Pakistan) and his children regarding the mode and manner in which the said properties came in their possession and what were the sources of funds utilized for acquisition of the same. Further, the source(s) of funding for Azizia Steel Mills and Hill Metals Establishment in Saudi Arabia, Flagship Investments Limited and a number of other companies set up/taken over by Respondent No.8 also need to be established. In addition the affairs of Capital FZE, Dubai which also appears to be owned by Respondent No.7 need an inquiry. The aforesaid investigation and inquiry under normal circumstances should have been conducted by NAB. However, it has become quite obvious to us during these proceedings, that Chairman NAB is too partial and partisan to be solely entrusted with such an important and sensitive investigation involving the Prime Minister of Pakistan and his family. Further owing to the nature and scope of investigation a broader pool of investigative expertise is required which may not be available with NAB.*
>
> *90. In the afore-noted circumstances, I would order as follows:-*
>
> *(iii) Evidence shall also be collected by the JIT regarding source(s) of funding of Capital FZE, Dubai; its business activities and role in transfer of funds to different entities owned or controlled by Respondents No.7 & 8".*

15. It thus cannot be said that the petitioner was taken by surprise in an inquisitorial proceeding when the facts entailing his disqualification as mentioned above have not been disputed. The argument that where material collected by the JIT is not worthy of reliance and the report submitted by it is full of infirmities commendation of JIT and its report reflected in the concluding

parts of the judgments under review would tend to prejudice the case of the petitioner, therefore, it needs to be qualified is again based on misunderstanding when the commendation or any other observation being tentative would not restrict the trial court to discard it if and when any infirmity therein became palpable on the record.

16. The argument of the learned Sr. ASC for the petitioner in CRP No. 313 of 2017 that where the rise in assets of the petitioner has been explained by the relevant documents including the returns filed by him, issuance of a direction to the NAB authorities to file a Reference against him does not appear to be well-founded need not be commented upon at this stage as it would tend to prejudice the case of the petitioner before the Accountability Court. The argument that where nothing significant turned against the petitioner, the JIT could not have collected any material against him nor could this Court direct the NAB to file a Reference does not appear to be correct when the entire case is considered in its totality.

17. The argument of the learned ASC in the CRP No. 308 and 309 of 2017 that when no material has come on the record to show any nexus between respondent No. 10 in C.P. No. 29 of 2016 and the Avenfield apartments, the direction to the NAB authorities to file a Reference against him is not sustainable is not correct when he is the spouse of respondent No. 6 in the Civil Petition No. 29 of 2016 who prima facie happens to be the beneficial owner of the Avenfield apartments. The argument that the observations in the judgments commending the JIT and its reports also need to be diluted lest they are accepted by the NAB and the Accountability Court as being unquestionable has already been attended to above.

18. The long and short of what has been said above is that no error much less patent on the face of the judgment under review has been pointed out as could call for any change or modification therein except the observations

mentioned above. These are the detailed reasons of our short order dated 15.09.2017 dismissing the review petitions.

I agree and have added a very brief note of my own.

(ASIF SAEED KHAN KHOSA)
JUDGE

(EJAZ AFZAL KHAN)
JUDGE

(GULZAR AHMED)
JUDGE

(SH. AZMAT SAEED)
JUDGE

(IJAZ UL AHSAN)
JUDGE

Asif Saeed Khan Khosa, J.- No ground has been taken in these review petitions nor any argument has been advanced at the bar questioning anything observed or concluded by me in my separate opinion recorded in the main case. The other Hon'ble members of the Bench have not felt persuaded to review their opinions already recorded. These review petitions are, therefore, dismissed.

(**JUDGE)**

ISLAMABAD.
15.09.2017.
M. Azhar Malik
'Approved for Reporting'