Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 2997 OF 2022

Doctor Nauman Hamid Niaz.

Vs

Federation of Pakistan through the Secretary Ministry of Interior, Islamabad and others.

PETITIONERS BY:	M/s Qazi Umair Ali and Mr. Nasir Mehmood, Advocates for the petitioners in W.P 2997 of 2022.
	Mr. Muhammad Ahmad Pansota, Advocate for the petitioner in W.P No.3161 of 2022.
	Mr. Kashif Ali Malik, Advocate for the petitioners in W.P Nos. 3332 & 3502 of 2022.
RESPONDENTS BY:	Mr. Muhammad Usman Warraich, Assistant Attorney General.
	Mr. Feisal Hussain Naqvi, Advocate for PTV.
	Malik Sajid Mehmood, Assistant Director, FIA/ACC Islamabad.
	Mr. Abid Mehmood Ch., Section Officer (Legal), Ministry of Information & Broadcasting, Islamabad.
DATE OF HEARING:	31.10.2024.

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BABAR SATTAR, J.- Through this judgment, this Court will decide the aforementioned Writ Petition and the Writ Petitions mentioned in Annexure-A.

2. The petitioners have impugned notices issued by Federal Investigation Agency **("FIA")** in exercise of authority under

Section 160 of Cr. P.C in relation to inquiry No. RE-150/2022 (notice dated 10.08.2022 issued to Dr. Nauman Hamid Niaz, the petitioner in W.P No.2997/2022, notice dated 23.08.2022 issued to Aamer Manzoor, the petitioner in W.P No.3161/2022, notice dated 29.08.2022 issued to Minhas Muhammad Hassan, the petitioner in W.P No.3332/2022, and notice dated 16.09.2022 issued to Jarjees Seja, the petitioner in W.P No.3502/ 2022.

3. In terms of background, Dr. Nauman Hamid Niaz (the petitioner in W.P No.2997/2022), was serving as Director Sports in Pakistan Television Corporation **("PTV")** and Aamer Manzoor (the petitioner in W.P No.3161/2022) is the former Managing Director, PTV. Jarjees Seja (the petitioner in W.P No. 3502/2022) is the Chief Executive Officer of ARY Communications and Minhas Muhammad Hassan (the petitioner in W.P No.3332/2022) is the group CFO and company secretary of ARY Communication. PTV entered into a business partnership agreement dated 16.09.2021 **("JV Agreement")** with GroupM Pakistan Private Limited and ARY Communications Limited on 10.08.2021. PTV invited expression of interest for public private partnership proposals in relation to acquisition of rights, marketing of PTV Sports, specialized programming and brand collaboration and media partnerships in relation to specialized sports by publishing an advertisement in the Business Recorder. After running an evaluation process, the JV Agreement was executed between PTV, GroupM and ARY on 16.09.2021. Independent Media Corporation (Pvt.) Ltd. and Blitz Advertising (Pvt.) Ltd., who were interested in entering into the said JV Agreement with PTV, impugned the JV Agreement before Lahore

High Court through Writ Petitions No.100 of 2022 and 1524 of 2022, respectively. The Lahore High Court in ***Independent Media Corporation (Pvt.) Ltd. vs. Federation of Pakistan and others*** **(PLD 2022 Lahore 288)** held that Independent Media Corporation could not argue that a level playing field had not been provided to it, to compete in the process of entering into a partnership with PTV, as it never filed a proposal pursuant to the advertisement published in the Business Recorder, and that the JV Agreement between ARY, GroupM and PTV was the outcome of a competitive bidding process. The Lahore High Court ruled that International Media Corporation had no cause for complaint as it had not been treated un-fairly having never participated in the bidding process that culminated in the JV Agreement. In holding so, it was held that for purposes of the said petition Lahore High Court "*need not comment upon the argument on the application or otherwise, of the provisions of the Public Procurement Regulatory Authority Ordinance, 2002, and the rules made thereunder, to the present case.*" In dismissing the petition filed by Blitz Advertising (Pvt.) Ltd, the Lahore High Court held that the, "*power of judicial review cannot be permitted to be invoked to protect private interest at the cost of public interest, particularly when it is clear that the decision of PTVC relating to execution of agreement dated 16 September, 2021, forming business partnership/joint venture with the ARY/GroupM, is bona fide and is in public interest.*"

4. The other relevant fact that needs to be mentioned is that PTV issued show cause notices and charge sheets to Dr. Nauman Hamid Niaz and Aamer Manzoor and also served a legal notice

upon ARY Communications Limited as to why the JV Agreement ought not be treated as *void ab initio*. In response to the legal notice, GroupM Pakistan Private Limited and ARY Communications Limited filed civil suits before the Sindh High Court that were clubbed with civil suits also filed by PTV and the Independent Media Group. By order dated 14.03.2023, the Sindh High Court confirmed the ad-interim injunction granted in favour of ARY and the aforementioned suits are pending adjudication before the Sindh High Court.

5. The learned counsel for the petitioners submitted that the subject-matter of the inquiry being conducted by FIA related to the procurement process that resulted in the execution of the JV Agreement. He submitted that the Lahore High Court in ***Independent Media Corporation*** had already declared that the procurement process suffered from no legal infirmity and was a transparent and competitive process in public interest. He further submitted that PTV had also initiated departmental proceedings against Dr. Nauman Hamid Niaz, through the issuance of a charge sheet in response to which Dr. Nauman Hamid Niaz had filed a detailed response and such proceedings were also pending before PTV. In this factual background, PTV had constituted a fact-finding committee comprising Secretary Information who was also the Chairman of the Board of Directors of PTV. The fact-finding committee also comprised one other member who was also a member of the Board of Directors of PTV that had approved the minutes of the 251st meeting of the Board of Directors of PTV, in which the recommendations of the Risk Management Committee of PTV (that had approved the

proposal of GroupM/ARY Communications Limited for entering into the JV Agreement) was approved. He submitted that notwithstanding its members being part of the Board of PTV that approved the proposal for entering into the JV Agreement, the fact-finding committee in its report concluded that members of the evaluation committee (on the basis of whose evaluation the JV Agreement was executed) were not well-versed with procurement rules and the JV Agreement was executed in violation of the provisions of Public Procurement Regulatory Authority Ordinance, 2002 **("PPRA Ordinance")**, and Public Procurement Rules, 2004 **("PP Rules")** and resulted in a loss to PTV. He submitted that the fact-finding committee recommended that the matter be referred to FIA for further investigation on the basis of which FIA inquiry No.RE-150/2022 was initiated and the impugned notices were issued. He submitted that as the Lahore High Court had ruled on the legality of the JV Agreement, and the matter of cancellation of the JV Agreement was pending adjudication before Sindh High Court, the FIA could not be allowed to engage in a roving inquiry to defeat the findings of the Lahore High Court in ***Independent Media Corporation*** or prejudice proceedings pending before the Sindh High Court. He submitted that the inquiry proceedings and the impugned notices are to be quashed for being mala fide and part of the witch-hunt against the petitioners initiated by an Executive that had assumed power after removal of the previous Federal Government by a vote of no confidence in the Parliament.

6. The legal contention of the learned counsels for the petitioners was that as the existence of criminal liability was

contingent on the outcome of civil proceedings pending before the Sindh High Court in a civil suit, and before the Lahore High Court in the Intra-Court Appeal filed against the judgment in ***Independent Media Corporation***, such criminal investigation proceedings are to be quashed or in the alternative suspended till the outcome of the aforementioned civil proceedings pending in two different High Courts. The learned counsel for the petitioners relied on ***SW Sugar Mills Ltd vs FBR, Islamabad and Others (2020 PTD 925), Abdul Ahad vs. Amjad Ali and Others (PLD 2006 SC 771), Misbah ud din Zaigham and Others vs. FIA and Others (2021 CLD 906), Akhlaq Hussain Kayani vs. Zafar Iqbal Kiyani and Others (2010 SCMR 1835), Universal Cables Industries Ltd. vs. Federation of Pakistan through Secretary and Others (PLD 2020 Sindh 601)*** *and* ***Muhammad Akbar vs. The State and Another (PLD 1969 SC 281).***

7. The learned Assistant Attorney General submitted that PTV had constituted a fact-finding committee by office order dated 22.04.2022 headed by Secretary Ministry of Information and Broadcasting. The fact-finding committee was given the mandate to inquire into the business partnership between PTV, GroupM and ARY and determine whether in executing the JV Agreement the relevant rules, regulations and codal formalities had been observed. The fact-finding committee found that (i) the PPRA framework had not been abided by in entering into the JV Agreement, (ii) the JV Agreement was never approved by the Board of Directors of PTV, and (iii) the terms of the arrangement between PTV, GroupM and ARY as approved by the Board of

Directors of PTV were subsequently changed in favor of ARY and GroupM to the disadvantage of PTV resulting in financial loss to PTV. It was on the basis of the recommendation of the fact-finding committee that the matter was recommended to the FIA for investigation. He submitted that there was no allegation that FIA was not vested with jurisdiction under the Federal Investigation Act, 1974 **("FIA Act")** to inquire into the matter and/or investigate the same. He submitted that while mala fide had been alleged, there was nothing on record to support such allegation and no material had been placed before the Court to establish any mala fide on part of FIA that was an investigation agency independent of PTV. He submitted that the inquiry was underway and there was no reason to conclude that the result of the inquiry would be tailored to produce predetermined consequences. He submitted that he is also representing respondents No.5 to 8 who had also filed their responses as members of the fact-finding committee to assert that they were not conflicted in any manner. It was true that respondents No.5 and 6 had remained on the Board of Directors of PTV in their ex-official capacity and they had approved the proposal furnished by GroupM and ARY to enter into an agreement with PTV. But such role in no manner prevented them from acting as members of the fact-finding committee.

8. The learned counsel for PTV submitted that the petitions were premature as no formal charges had been framed against the petitioners and the petitioners were seeking to abuse the process of the Court to obstruct an investigation into allegations of criminality that squarely fell within the domain of FIA and FIA

was under an obligation to undertake such investigation. He submitted that the Courts were usually circumspect in interfering with police investigations as doing so fell foul of the principle of trichotomy of powers. He submitted that the departmental proceedings against Dr. Nauman Hamid Niaz and Aamer Manzoor were distinct from the question of criminal liability to be investigated by FIA. And the civil disputes pending before the Sindh High Court and before the Division Bench of the Lahore High Court also had no co-relation with the criminal liability attributed to the petitioners. He submitted that the judgement passed by the Lahore High Court in ***Independent Media Corporation*** had not attained finality and had been challenged in appeal before a Division Bench and PTV had also filed an application under Section 12(2) of CPC that was pending adjudication before the Division Bench of the Lahore High Court. He submitted that the JV Agreement that formed the subject-matter of the FIA inquiry was never approved by the Board of Directors of PTV and the finalized agreement was materially different from the proposal that was approved by the Board of PTV in its 250th and 251st meetings. He also submitted that Mr. Nauman Hamid Niaz as Director Sports PTV had never been authorized by the Board of Directors to sign the JV Agreement, which was therefore not duly authorized. He submitted that as a consequence of negotiations undertaken by the evaluation committee being spearheaded by Mr. Nauman Hamid Niaz and the changes introduced in the JV Agreement, which were in conflict with the proposal approved by the Board of Directors of PTV, financial loss had been inflicted on PTV, and investigating the same was a matter independent of the determination made

by the Lahore High Court and was also independent of proceedings pending before the Sindh High Court. He submitted that the petitioners had failed to make out a case that the impugned notices suffered from mala fide or any jurisdictional defect or that the criminality attributed to the petitioners was contingent on the determination of civil rights by the Lahore High Court or the Sindh High Court in the matters pending before such Courts. He submitted that permitting the investigation to continue would not prejudice the rights of the petitioners in any way and there was no basis to conclude that the FIA inquiry was politically motivated as it was being undertaken by officials of the state vested with due powers under the FIA Act and a presumption of legality attached to the actions of such officials.

9. The legal question before the Court is whether the proceedings being undertaken in the FIA inquiry ought to be stayed pending adjudication of the question of legality of the JV Agreement before the Division Bench of the Lahore High Court and before the Sindh High Court in ***ARY Communications Limited vs. Independent Music Group (SMC-Pvt) Limited*** **(suit No.223 of 2023)**.

10. The pillar judgment in this regard is ***Muhammad Akbar vs. The State*** **(PLD 1968 Supreme Court 281)**, in which it was held that, *"normally it is true, that criminal proceedings should not be postponed pending the disposal of civil litigation connected with the same subject-matter. But where it is clear that the criminal liability is dependent upon the result of the civil litigation or is so intimately connected with it that there is a*

danger of grave injustice being done in the case if there be a conflict of decision between the Civil Court and the Criminal Court, in such event it is equally clear that the Criminal Court has not only the right to but should also stay its hand until the civil litigation is disposed of, for, it is not desirable that when the title to the property itself is in dispute, the Criminal Courts should give a finding in respect of the same question… There is now consensus of opinion that there is no invariable rule that a criminal proceeding should be stayed pending the decision of the Civil Suit, but the matter is one of discretion entirely. In exercising this discretion, the guiding principle should be to see as to whether the accused is likely to be prejudiced if the criminal proceeding is not stayed. In cases of disputed title, where it is difficult to draw a line between a bona fide claim and the criminal action alleged, a stay can be made in the proper exercise of that discretion."

11. The learned counsels for the parties cited a large number of precedents before the Court. This Court for its present purposes need not summarize the same. It is settled law that criminal proceedings can be quashed or stayed by the High Court[1], if in view of the facts of the case, it comes to the conclusion that such proceedings are rooted in mala fide or that they suffer from a jurisdictional defect[2]. Further, in cases of simultaneous civil and criminal proceedings relating to the same subject-matter, it is also settled that such proceedings can

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[1] *M. Tufail vs. The State* ***(1979 SCMR 437)****, Abdul Ahad vs. Amjad Ali* ***(PLD 2006 SC 771)****, SW Sugar Mills Ltd vs FBR* ***(2020 PTD 925)***

[2] *Shahnaz Begum vs. The Hon'ble Judges of the High Court of Sindh & Baluchistan* ***(PLD 1971 SC 677)****, Saeed Ahmed Khan vs. M.R.Toosy* ***(PLD 1974 SC 151)****, M. Tufail vs. The State* ***(Ibid.)****, Universal Cables Industries Ltd. vs. Federation of Pakistan* ***(PLD 2020 Sindh 601)***

continue simultaneously[3] except where the determination of criminal liability is contingent on the prior determination of civil rights and obligations that are in question.[4] In such case, the correct course of action is to stay the criminal proceedings till the civil rights and obligations of the contested parties have been finally determined by the Court of competent jurisdiction.[5]

12. Much of the case law cited is not relevant for our purposes as the basic question before the appeal courts in such cases was whether or not the findings of a civil court bound the determinations to be made by a criminal court.[6] The equation in the present case is different. The determinations in question have been made by the Lahore High Court and the determinations of a High Court in exercise of authority under Article 199 of the Constitution, to the extent that it decides a question of law, is binding on all subordinate courts as well as on executive functionaries in terms of Article 201 of the Constitution. Thus, to the extent that a High Court has rendered a decision deciding a question of law, a subordinate court whether adjudicating a civil dispute or a criminal matter is bound by the determination of the High Court. The other relevant fact for our purposes is the doctrine of *sub-judice*. Article 204(2)(c) of the Constitution provides that anyone doing *"anything which tends to prejudice the determination of a matter pending before*

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*[3] M. Tufail vs. The State **(Ibid.)**, Talib Hussain vs. Angar Gul Khan **(1993 SCMR 2177)**, Seema Fareed vs. The State **(2008 SCMR 839)**, State vs. Jahangir Akhtar **(2018 SCMR 733)***

*[4] Muhammad Akbar vs. The State **(PLD 1968 SC 281)**, Muhammad Azam vs. Muhammad Iqbal **(PLD 1984 SC 95)***

*[5] Akhlaq Hussain Kayani vs. Zafar Iqbal Kiyani **(2010 SCMR 1835)***

*[6] B.N. Kashyap vs. Emperor **(AIR 1945 Lahore 23)**, Malik Khuda Bakhsh vs. The State **(1995 SCMR 1621)***

the court" renders the person liable to be punished for contempt of Court. To the extent that the Lahore High Court in ***Independent Media Corporation*** has rendered a judgment on a question of law or has enunciated a principle of law, it is not for FIA or for PTV to take steps to initiate criminal proceedings that can have the effect of defeating the judgment of the Lahore High Court directly or indirectly. To the extent that a subject-matter is pending before a Divisional Bench of the Lahore High Court in appeal against the judgment of the Judge-in-Chambers in ***Independent Media Corporation*** or is pending adjudication before the Sindh High Court as the subject-matter of a civil suit, seeking to investigate the same and produce consequences through initiation and/or continuation of criminal proceedings and/or trial that could have the effect of prejudicing the determination of such matter pending before the two High Courts, would fall foul of Article 204(2)(c) of the Constitution and cannot be countenanced.

13. Now applying the principles of law discussed above to the facts of the present case, it is evident that PTV has had a change of heart since the execution of the JV Agreement. The Board of PTV approved (even if in principle in the form of a proposal) the JV Agreement that culminated from a procurement process that was not being managed in accordance with the PPRA framework, and the Board of Directors of PTV had been advised that the PPRA framework did not apply. The Board of PTV subsequently came to the conclusion that the PPRA framework did apply and the JV Agreement was therefore not the result of a procurement process that was run in accordance with the law. This was done

by a fact-finding committee comprising, amongst others, the Chairperson and another member of the PTV Board that approved the decision to enter into the JV Agreement, and on the recommendation of such fact-finding committee the PTV Board referred the matter for investigation to FIA. The question of whether or not the procurement process that resulted in the execution of the JV Agreement was required to be run in accordance with the PPRA framework was incidentally raised before the Lahore High Court in ***Independent Media Corporation*** but was left open, as the learned Judge-in-Chambers found that addressing the question was not required to render a decision in the said matter. In other words, the Lahore High Court rendered no definitive decision on the application of the PPRA framework, but it did render a decision and declared that the JV Agreement was not the product of a non-transparent or uncompetitive process and that the execution of such agreement suffered from no legal infirmity. Likewise, the question of whether or not the JV Agreement is *void ab initio* for being mired in illegalities is also the subject-matter of civil suits pending before the Sindh High Court, in which by order dated 14.03.2023, an ad-interim injunction has been confirmed by the Sindh High Court. Consequently, the question of legality of the JV Agreement (which automatically includes the question of its due authorization) and whether or not it was the product of an illegal procurement process is pending adjudication both, before the Division Bench of the Lahore High Court as well as the Sindh High Court and PTV is a party to both those proceedings.

14. To the extent that the Lahore High Court has already declared that the procurement process and the JV Agreement do not suffer from illegality, such question cannot be reopened by the executive authorities in exercise of the state's police power under the garb of undertaking criminal proceedings in relation to the said question, without the judgment of the Lahore High Court first being set aside in appeal. Consequently, the FIA inquiry and the impugned notices to the petitioners cannot be allowed to result in framing of any criminal charges against them. If the decision of the Lahore High Court that JV Agreement is legal, bona fide and in public interest, being the product of a transparent and competitive procurement process, the question of attributing criminal liability to those who facilitated the execution of the JV Agreement would not arise. Once the acts leading to the execution of the JV Agreement are declared to suffer from no illegality, there remains no basis to argue that such acts are still laced with mens rea. The JV Agreement wherein ARY Communications Limited is a party has been declared legal by the Lahore High Court in ***Independent Media Corporation*** and an appeal against such judgment is pending before a Division Bench of the Lahore High Court. Likewise, ARY Communications Limited has filed a suit No.223 of 2023 which is pending adjudication before the Sindh High Court, in which an injunctive order has been granted in favour of ARY Communications Limited. During the pendency of these matters before two High Courts, FIA cannot continue its investigation and/or frame criminal charges against the petitioners as doing so could have the effect of prejudicing the matter(s) pending before the Lahore High Court and the Sindh High Court. And to the

extent that the aforementioned Courts issue declarations with regard to the legality of the procurement process and the JV Agreement itself, any criminal proceedings against the petitioners would be tantamount to defeating the judgment and/or process of the High Courts. Consequently, the petitions are allowed. FIA had been allowed to continue its investigation in inquiry No. RE-150/2022 during the pendency of these petitions and the petitioners had been directed to join the investigation. But notwithstanding its findings in such inquiry and/or investigation, FIA shall not seek to frame criminal charges against the petitioners and will instead stay its hand till the decisions of the High Courts in the related petitions, unless appropriate applications are filed before such High Courts and permission is granted by them to initiate criminal proceedings during the pendency of the aforementioned matters before them.

15. The petitions are ***allowed*** in the above terms.

(BABAR SATTAR)
JUDGE

Announced in open Court on **21-11-2024**.

JUDGE

Approved for reporting.

Shakeel Afzal/-

ANNEXURE-A

Sr. No.	Case No.	Case Title
1.	W.P. No.3332/2022	ARY Communications Limited through its Authorized Representative and another vs. Federation of Pakistan through its Secretary Ministry of Interior, Islamabad and others.
2.	W.P. No.3502/2022	Jerjees Seja vs. Federation of Pakistan through its Secretary Ministry of Interior, Islamabad and others.
3.	W.P. No.3161/2022	Aamer Manzoor vs. Federation of Pakistan through its Secretary Ministry of Interior, Islamabad and others.