JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 2979 OF 2024

KHALID MEHMOOD

VS

NATIONAL ACCOUNTABILITY BUREAU THROUGH ITS CHAIRMAN & 02 OTHERS

Petitioner by : Mr. Zia ur Rehman Gondal, Advocate.

Respondents by : Hafiz Ejaz Mehboob, Special Prosecutor NAB.

Date of hearing : 11.03.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (**"Constitution"**), Khalid Mehmood **("Petitioner")** has challenged the Memorandum dated 9.4.2024 **("Impugned Memorandum")** issued by the Ministry of Interior whereby the Petitioner's name was placed on Exit Control List **("ECL")**.

2. The brief facts of the case, as stated in the Memo of Petition, are that the Petitioner was elected as the President of the Managing Committee of the Federal Employees Cooperative Housing Society, Islamabad, following the elections held on 21.08.2022, as per the notification duly signed by the competent authority. As a result of the illegal and unauthorized actions of the executive members, the Petitioner resigned from the position of President, and his resignation was accepted by the Managing Committee. The General Manager challenged the acceptance of the Petitioner's resignation before the Circle Registrar, Cooperative Societies Department ICT, Islamabad. In response, the Circle Registrar wrote to the Managing Committee, stating that the Petitioner's resignation was not valid until it was formally accepted at the Annual General Body meeting (AGM) and directed the Petitioner to continue serving as President. The findings of the Circle Registrar Cooperative Societies were confirmed by this Court in Writ Petition No. 2971/2023 which were later

reversed in review Petition No. 10/2023 in W.P No.2971/2023 with the observation as follows" *with the aforesaid common ground between the parties, this review petition is allowed and the order dated 27.09.2023 is modified to read that, in view of the registration of the model bylaws for the society, the approval of resignation of the office bearers is only to be required from the managing committee and not from the general body meeting".* The name of the Petitioner has been placed in ECL vide the Impugned Memorandum with the allegation of cheating public at large and illegally occupying land of M/s Banker's City (Pvt.) Limited in connivance with members of Jinnah Garden Housing Society.

3. The learned counsel for the Petitioner argued that the allegations of cheating are false, baseless and groundless; that the Petitioner has never been summoned to submit his reply about the allegations which is clear violation of the fundamental rights guaranteed under the Constitution; that there remains no justification for placing the Petitioner's name on ECL; that the Petitioner is a law abiding citizen and to travel abroad is his fundamental right guaranteed under the Constitution and he cannot be deprived of this right at the whims of the Respondents; that the Impugned Memorandum is non-speaking as such it is hit by Section 24-A of the General Clauses Act, 1897; that the Petitioner wants to perform Umrah which is his fundamental right but he cannot travel to Saudi Arabia because his name has been placed on ECL without any legal justification; that the reference of Jinnah Garden Housing Society and M/s Banker's City (Pvt.) Limited was filed in the year 2017 and at that time, the Petitioner was neither the member of the Executive Board nor President; According to Section 2(3)(c) of the Exit from Pakistan (Control) Rules, 2010, the only requirement for inclusion in the Exit Control List is that the Petitioner has been convicted by a competent court of law; that to enjoy the protection of law and to be dealt with in accordance with law, is birthright of every citizen of Pakistan. Finally, the learned counsel prayed that the present Writ Petition be accepted, and the policy under which the Petitioner's name has been blacklisted be declared ultra vires to the Constitution. Furthermore, the Impugned Memorandum should be declared illegal, unlawful, and in violation of the Petitioner's fundamental rights guaranteed under the Constitution. The learned counsel also requested that the

Respondents be ordered to promptly remove the Petitioner's name from the ECL, allowing the Petitioner to travel abroad to perform Umrah without further delay.

4. On behalf of the Respondent No. 1, it is argued that a Reference No.47/2007 was filed by NAB against the management of M/s Banker's City (Pvt.) Limited with the allegations of misuse of authority and misappropriation of funds of public at large. The said reference was concluded and decided by the learned Trial Court on 17.11.2012 and the accused persons were convicted and the property of M/s Banker's City (Pvt.) Limited was also confiscated to be auctioned for disbursement of its sale proceeds among the affectees. Against the said judgment the convicted persons filed separate Criminal Appeals before the Lahore High Court, Rawalpindi Bench. The High Court, after hearing the arguments, set-aside the impugned judgment and remanded the case back to the Trial Court vide Order dated 19.09.2023 which is now pending adjudication and the subject property has also been frozen/confirmed by the Accountability Court vide Order dated 30.09.2024. That during the pendency of said Criminal Appeals, the Petitioner, being President of Managing Committee of Jinnah Garden Housing Society, with the connivance of others, encroached the land measuring 400 Kanal approximately of M/s Banker's City (Pvt.) Limited which was already confiscated by the Accountability Court to be auctioned for disbursement of its sale proceeds among the affectees. The Petitioner, in connivance with others, created the plots on the said encroached land and subsequently allotted the same to different allottees of Federal Employees Co-operative Housing Society **("FECHS")**/Jinnah Garden Housing Society. Therefore, the Petitioner's name was recommended by NAB to be placed on ECL which was accordingly placed by the authority concerned on 02.04.2024.

5. On behalf of the Respondent No. 3, it is submitted that as per the provisions contained in Rules 21 & 22(2)(b) of the Passport Rules, 2021, the Petitioner's name was placed on Passport Control List **("PCL")** on 16.04.2024 on the recommendations of NAB, Islamabad vide Letter dated 09.04.2024. It is further submitted that the Petitioner's name will be removed from PCL on the specific recommendations of NAB, Islamabad or as per directions of this Court.

6. I have heard the learned counsel for the Parties and perused the record with their able assistance.

7. The Petitioner has filed the present Writ Petition for removal of his name from ECL so that he can travel to Saudi Arabia for performance of Umrah and has challenged the Memorandum dated 19.4.2024 issued by the Ministry of Interior, Government of Pakistan. The grounds raised are that the Petitioner has not been provided with any notice to be heard by the NAB authorities; there is no valid reason for placing his name on ECL; at the time the reference for Jinnah Garden Housing Society and M/s Banker's City (Pvt.) Limited was filed in 2017, the Petitioner was neither a member of the Executive Board nor the President of the Society. Additionally, Section 2(3)(C) of the Exit from Pakistan (Control) Rules, 2010, does not apply to the Petitioner, as he has not been convicted by any competent court of law. The allegation against the Petitioner is that in a pending Reference No. 47/2007 which was filed by NAB against the management of the M/s Banker's City (Pvt.) Limited with the allegations of misuse of authority and misappropriation of funds of public at large, the Petitioner, in connivance with others, created plots on the encroached land and subsequently allotted the same to different allottees of FECHS/Jinnah Garden Housing Society, hence, his name was recommended by NAB to be placed on ECL, which was accordingly placed by the Authority concerned.

8. Under Section 3 of the Exit from Pakistan (Control) Ordinance, 1981 **(**"Exit Control Ordinance, 1981"), the Petitioner was having remedy of review but he failed to avail the same and he filed the instant Writ Petition under Article 199 of the Constitution. Writ Petition under 199 of the Constitution can only be filed when there is no other adequate remedy available to a party. For ready reference, relevant portion of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is reproduced as under:-

> *"**199.** (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,--*
>
> *(a) On the application of any aggrieved party, make an order—*
>
> *i. Directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not*

permitted by law to do, or to do anything he is required by law to do; or"...."

9. Therefore, in view of the above discussion, the Petitioner should have pursued the legal remedy available to him under Section 3 of the "Exit Control Ordinance, 1981", rather than approaching this Court under its Writ jurisdiction. Consequently, the present Writ Petition is **dismissed** as it is misconceived and not maintainable.

(MUHAMMAD AZAM KHAN)
JUDGE

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