JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P.No.4330 of 2016
National Accountability Bureau
Versus
Director Excise and Taxation and another

Date of Hearing: 19.06.2017
Petitioner by: Sardar Muzaffar Ahmad Khan A.D.P-G,
Respondent by: Mr. Ghufran Khurshid Imitiazi, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, National Accountability Bureau, impugns the order dated 15.09.2016, passed by respondent No.1 (Director Excise and Taxation, Appellate Authority, Islamabad Capital Territory), whereby the appeal of respondent No.2 (Mir Muhammad Ghufran Khurshid Imtiazi, Advocate Supreme Court of Pakistan), under Section 36 of the Motor Vehicle Ordinance, 1965, was allowed and the ownership of the vehicle in question (i.e. Toyota Corolla (Altis) Model 2005, chassis No.ZZE-122-9301070, registration No.JH-726) was restored to him.

2. The learned Additional Prosecutor General, N.A.B. submitted that Reference No.47/2007, titled "the State Vs. Syed Rahat Mehmood Qadri etc." was filed against the C.E.O of Bankers City (Pvt.) Ltd., ("Bankers City") and others for cheating the public at large; that the said reference was decided on 17.11.2012 by Accountability Court No.III; that the learned Accountability Court while awarding ten years rigorous imprisonment to the C.E.O. of Bankers City, also ordered the attachment of all his property; that the persons convicted by the learned Accountability Court have filed an appeal before the Hon'ble Lahore High Court, Rawalpindi Bench; that during investigation, vehicle bearing Registration No.JH-726, Chassis No.ZZE-122-9301070, was seized, vide seizure memo dated 04.01.2008 by the investigation officer; that the said vehicle is presently in N.A.B.'s custody; that seven years after the seizure of the said vehicle, respondent No.2 filed an application for the release of the said vehicle before the learned Accountability

Court; that vide order dated 10.11.2014, respondent No.2's said application was dismissed; that vide order dated 20.04.2016, passed in W.P.No.738/2012, the Hon'ble Lahore High Court, Rawalpindi Bench directed the learned Accountability Court to decide the fate of the said vehicle; that on 26.04.2016, respondent No.2 filed another application before the learned Accountability Court for release of the said vehicle; that the learned Accountability Court issued notices to the Director Excise and Taxation, Islamabad, who brought on record orders showing that the transfer of the said vehicle in respondent No.2's name had been suspended on 18.09.2015, and cancelled on 03.05.2016; that respondent No.2's appeal against the said orders was allowed by respondent No.1 on 15.09.2016 without hearing the petitioner; and that respondent No.2's application for release of the said vehicle is still pending before the learned Accountability Court.

3. Learned Additional Prosecutor General further submitted that the impugned order dated 15.09.2016 was passed in violation of the principles of natural justice; that the said impugned order was passed without taking into account the import of Section 23 of the N.A.B. Ordinance, 1999, which prohibits the transfer of a property by an accused after the initiation of an inquiry or investigation; and that respondent No.2 concealed the fact as to the pendency of his application before the learned Accountability Court from respondent No.1. Learned Additional Prosecutor General prayed for the impugned order dated 15.09.2016 to be set aside.

4. The position taken by respondent No.1 in their written comments was that the said vehicle was registered in the name of Muhammad Anwar Bhinder on 10.09.2005, and transferred to Bankers City on 03.04.2007; that the said vehicle was transferred in the name of respondent No.2 on 17.10.2014 after fulfillment of all codal formalities; that on 08.06.2015, the petitioner/N.A.B. issued a letter to the effect that the said vehicle had been transferred to respondent No.2 from Syed Rahat Mehmood Qadri's name on 17.10.2014, when the latter was in judicial custody; that on 25.07.2016, the Excise and Taxation Officer

cancelled the transfer of ownership of the said vehicle to respondent No.2, who filed an appeal against the said order; and that vide order dated 15.09.2016, respondent No.2's appeal was allowed and the ownership of the said vehicle was restored in respondent No.2's name. Respondent No.1 has prayed for the writ petition to be dismissed with costs.

5. Respondent No.2 appeared in person and submitted that the said vehicle was purchased by him from Bankers City on 25.02.2007; that subsequently, he applied for the transfer of the ownership of the said vehicle in his own name; that the ownership of the said vehicle was transferred in respondent No.2's name strictly in accordance with the law; that the possession of the said vehicle was unlawfully taken away from him; that respondent No.2 had purchased the said vehicle prior to the initiation of the investigation or inquiry by N.A.B.; that respondent No.2, on the strength of the order dated 20.04.2016, passed by the Hon'ble Lahore High Court in W.P. No.738/2015 applied to the learned Accountability Court for the release of the said vehicle; that till date, the learned Accountability Court has not passed an order on the said application; and that the impugned order dated 15.09.2016 is strictly in accordance with the law and facts of the case. Respondent No.2 prayed for the writ petition to be dismissed.

6. We have heard the contentions of the learned Additional prosecutor General, and respondent No.2, and have perused the record with their able assistance.

7. The admitted position is that the vehicle in question (i.e. Toyota Corolla (Altis) Model 2005, Registration No.JH-726, Chassis No.ZZE-122-9301070) was initially registered on 10.09.2005 in the name of Mr. Muhammad Anwar Bhinder. On 03.04.2007, the said vehicle was transferred in the name of Bankers City. Respondent No.2 claims to have purchased the said vehicle through transfer deed dated 25.02.2007 from Bankers City for a total sale consideration of Rs.1,300,000/-. The said transfer deed was brought on record by respondent No.2. As per the said transfer deed, the seller is Syed Rahat Mehmood Qadri, Chief Executive Officer of Bankers City (Pvt.) Ltd.

Islamabad. It is also admitted that Syed Rahat Mehmood Qadri was one of accused in Reference No.47/2007, and was convicted by the learned Accountability Court, Rawalpindi on 17.11.2012. He was convicted for a period of ten years. His appeal is pending before the Hon'ble Lahore High Court, Rawalpindi Bench.

8. The letter dated 11.05.2016 from the Director Excise and Taxation Department shows that respondent No.2 applied for the transfer of the vehicle in his name on 17.10.2014 (i.e. about seven years after respondent No.2 claims to have purchased the said vehicle). Respondent No.2 could not explain this inordinate delay in filing an application for the transfer of the ownership of the said vehicle. Anyhow, perusal of the said letter dated 11.05.2016 also shows that the transfer letter was not verified from the earlier owner/Bankers City. The transfer of ownership of the said vehicle in respondent No.2's name was suspended on 18.09.2015 and cancelled on 03.05.2016 by the Excise and Taxation Department. The said letter dated 11.05.2016 is addressed by the Director Excise and Taxation Department to the Additional Director, N.A.B. Perusal of Excise and Taxation Department letters dated 18.09.2015 and 03.05.2017 show that the Excise and Taxation Department was cognizant of the fact that the matter pertaining to the transfer of the said vehicle by Syed Rahat Mehmood Qadri, Chief Executive Bankers City to respondent No.2 was a matter of concern for the petitioner. It appears that the transfer of the ownership of the said vehicle in the name of respondent No.2 was also cancelled at the instance of the petitioner. Therefore, respondent No.2 should have impleaded the petitioner as a party to the appeal under Section 36 of the Motor Vehicle Ordinance, 1965. Even otherwise, the Appellate Authority should have issued notice or afforded an opportunity of hearing to the petitioner before deciding the appeal.

9. In view of the fact that the vehicle in question was allegedly sold to respondent No.2 by Syed Rahat Mehmood Qadri, Chief Executive Officer of Bankers City (Pvt.) Ltd., who has been convicted by the learned Accountability Court in Reference No.47/2007, and sentenced to ten years imprisonment; and that

since the transfer of ownership of the said vehicle in the name of respondent No.2 was first suspended and later cancelled at the instance of the petitioner, it was obligatory for respondent No.1 to have afforded an opportunity of hearing to the petitioner before deciding respondent No.2's said appeal against the cancellation of ownership of the said vehicle.

10. It is also not disputed that the said vehicle is presently in the petitioner's custody. The impugned order dated 15.09.2016 restoring the ownership of the said vehicle in respondent No.2's name adversely affects the petitioner. It is well settled that the rules of natural justice have to be read as a part of every statute. In all proceedings by whomsoever, whether judicial or administrative, the principles of natural justice have to be observed if the proceedings result in consequences affecting the person or property of a person. If there is a violation of the principles of natural justice, the proceedings would be rendered *coram non judice*, and the order would be viod. Since we are of the view that the petitioner was a necessary party to the appeal filed by respondent No.2, and since the petitioner was not heard before the impugned order was passed, there is a clear violation of the principle of *audi alteram partem*. Consequently, the impugned order dated 15.09.2016 is liable to be set aside.

11. In view of the above, the instant petition is allowed, and the impugned order dated 15.09.2016 is set-aside. The matter is remanded to respondent No.1 to decide the appeal after affording an adequate opportunity of hearing to the petitioner/N.A.B. There shall be no order as to costs.

(ATHAR MINALLAH)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017.

Qamar Khan*

(JUDGE) **(JUDGE)**

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