

IN THE SUPREME COURT OF PAKISTAN

(Appellate/Original Jurisdiction)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE GULZAR AHMED
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

**SUO MOTU CASE NO.8 OF 2018 AND CIVIL MISC.
APPLICATION NO.649-L OF 2018 IN SUO MOTU CASE NO.8
OF 2018**

S.M.C.8/2018: Regarding dual nationality of
Parliamentarians

C.M.A.649-L/2018: Impleadment application by Shahzad Ali
Khan

In attendance: Syed Nayyar Abbas Rizvi, Addl. A.G.P.
a/w Barrister Minaal Tariq

Syed Ali Zafar, ASC
(For Mr. Haroon Akhtar)

Mr. Aleem Baig Chughtai, ASC
(For Mrs. Nuzhat Sadiq)

Mr. Hamid Khan, Sr. ASC
Mr. Rashid Hanif, ASC
(For Ch. Muhammad Sarwar)

Mr. Ahmer Bilal Soofi, ASC
(For Ms. Saadia Abbasi)

Sardar M. Latif Khan Khosa, Sr. ASC
(In C.M.A.649-L/2018)

Mr. Bilal Hassan Minto, ASC
(Amicus Curiae)

Mr. Muhammad Arshad, D.G. (Law)
(For ECP)

Date of hearing: 17.10.2018

JUDGMENT

SH. AZMAT SAEED, J.- During the course of hearing of Suo Motu Case No.3 of 2018, pertaining to dual nationality of Civil Servants and Officials of Autonomous Bodies, etc., it came to light that at least four newly elected Senators, namely, Ch. Muhammad Sarwar, Mr. Haroon Akhtar Khan, Ms. Nuzhat Sadiq and Ms. Saadia Abbasi, held dual nationality and apparently no conclusive evidence of their having renounced or relinquished such foreign nationality was available. Consequently, vide Order dated 05.03.2018, notices were directed to be issued for 8th of March, 2018, to the aforesaid newly elected Senators to provide proof of relinquishments of their foreign nationality.

2. In pursuance to the aforesaid notices, the said Senators entered appearance before this Court on 8th of March, 2018. On the said date, Mr. Bilal Hassan Minto, learned ASC and Mr. Khalid Javed, learned ASC, were both appointed as *amicus curiae*. Notices were also issued to the Election Commission of Pakistan (ECP) and the case was adjourned to 10th of March, 2018. On the said date i.e. 10th of March, 2018, the matter was referred to the present Larger Bench. The instant Larger Bench was

tasked with the interpretation of Article 63(1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973, along with the provisions of Section 14 of the Pakistan Citizenship Act, 1951 (Act of 1951), and to examine whether the law as laid down in the previous judgments of this Court mentioned in the aforesaid Order dated 10.03.2018, needed to be revisited. The relevant portion of the Order dated 10.03.2018, is reproduced hereunder for ease of reference:

"... in order to interpret the provisions of Article 63(1)(c) of the Constitution of Islamic Republic of Pakistan, 1973, whether a person acquiring citizenship of another country is permanently debarred and disqualified to contest the election for the Parliament and also to examine whether the law laid down in the judgment reported as **Syed Mehmood Akhtar Naqvi Vs. Federation of Pakistan through Secretary Law and others (PLD 2012 SC 1089)** is a correct enunciation of law while interpreting the aforesaid Article (*supra*) as also the provisions of Section 14 of the Pakistan Citizenship Act 1951, we issue notice to all concerned and the matter must be fixed before a larger Bench to be constituted by the Honourable Chief Justice of Pakistan. As far as the interim relief is concerned, in the light of the law laid down in the judgment reported as **Syed Masroor Ahsan Vs. Muhammad Tariq Chaudhry and others (1991 SCMR 668)**, we allow the Election Commission of Pakistan to issue the notice of the candidates those have been succeeded in the elections. Office is directed to separately number this aspect of the matter from the main case

which is regarding Dual national of Hon'ble Judges and Officials of Courts and Government officers."

3. On behalf of Mr. Haroon Akhtar Khan, a concise statement i.e. Civil Misc. Application No.8461 of 2018, was filed, followed by another Civil Misc. Application bearing No.8599 of 2018. Through the latter application i.e. CMA No.8599 of 2018, an affidavit was filed wherein it was deposed by Mr. Haroon Akhtar Khan that in the year 2014 when he was contemplating to contest the elections for the Senate, he tore his Canadian Passport and the Citizenship Card and mailed these documents back to Canada. As per his understanding, such an act was the procedure necessary for relinquishing a Canadian citizenship. However, appended with Civil Misc. Application bearing No.8599 of 2018, was a copy of an "Application To Renounce Canadian Citizenship under subsection 9(1)" (available at page 4 of the said CMA). This application appears to have been signed by him on 2nd of February, 2018. Furthermore, on a Court query, Syed Ali Zafar, learned ASC, appearing on behalf of Mr. Haroon Akhtar Khan, informed the Court that the process of relinquishment of Canadian citizenship though initiated in terms of the applicable

Canadian law has till date not been completed and concluded. Thus, admittedly on the date of filing of the Nomination Papers for the elections to the Senate, in 2018, and even upon the hearing of these instant proceedings Mr. Haroon Akhtar Khan, in law, was and continued to be a Canadian citizen.

4. However, Syed Ali Zafar, learned ASC contended that Article 63(1)(c) of the Constitution, must be interpreted in the context of globalization, which has led to the metaphoric shrinking of the world, and an archaic interpretation is no longer valid. It was also contended that the said Article must be read in conjunction with the Fundamental Rights, as guaranteed under Article 17 of the Constitution, and an interpretation limiting the right of a citizen contest elections or to hold Public Office should be avoided. He further contended that nationality of an enemy State alone could be an impediment in holding a Public Office or from being a Member of Parliament in Pakistan. However, the mainstay of the contentions of the learned counsel was that in the phrase "ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State" as appearing in Article 63(1)(c) of the Constitution, the word

'or' must be read as 'and'. Consequently, unless the acquisition of citizenship of a foreign State simultaneously results in loss of citizenship of Pakistan, the disqualification from being elected or chosen as a Member of Parliament, including the Senate, does not arise. In this behalf, he referred to the judgment of the learned Lahore High Court, reported as Umar Ahmad Ghumman v. Government of Pakistan and others (2002 Lahore 521) and contended that the dictum of this Court as laid down in the case reported as Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others (PLD 2012 SC 1089), needs to be revisited and reconsidered.

5. Mr. Ahmer Bilal Soofi, learned ASC appearing on behalf of Ms. Saadia Abbasi, adopted the contentions of Syed Ali Zafar, learned counsel for Mr. Haroon Akhtar Khan, on the legal plane. However, on the factual aspect of the matter, it was contended that indeed Ms. Saadia Abbasi, was, at one point of time, a citizen of the United States of America, however, she has renounced her such nationality through an affirmation dated 08.02.2018. A copy whereof was appended with Civil Misc. Application No.651 of 2018, filed on her behalf. It was further

contended that such an affirmation has been accepted on 20.02.2018 and a "Certificate of Loss of Nationality of the United States" was issued, (available at page 3 of the said CMA), which also bears the Certificate of Loss of Nationality from the Overseas Citizens Services Department of State. The learned counsel referred to the printed note on the foot of the document of renunciation of nationality of United States of America, available at page 5 of the said CMA, which reads as follows:

"Note: A renunciation of United States nationality/citizenship is effective only upon approval by the U.S. Department of State but when approved, the loss of nationality/citizenship occurs as of the date the above Oath/Affirmation was taken."

6. On the basis of the aforesaid documents, it was contended that in fact Ms. Saadia Abbasi had ceased to be an American citizen with effect from 08.02.2018, when affirmation was made, hence, she was not disqualified from being elected or chosen as a Senator nor from holding such an Office.

7. On behalf of Ms. Nuzhat Sadiq, a copy of Certificate of Loss of Nationality of the United States dated 09.02.2012, was filed, which was purportedly approved by the Overseas Citizens Services Department of State on 23.03.2012. The learned counsel contended

that she was not an American citizen at the time when she submitted her Nomination Papers for the elections to the Senate of Pakistan.

8. Similarly, on behalf of Ch. Muhammad Sarwar, it was contended that he has relinquished his British citizenship and to evidence the same he filed a copy of "Declaration of Renunciation of British Citizenship, British Overseas Citizenship, British Overseas Territories Citizenship, British National (Overseas) or British Subject Status" dated 02.07.2013, alongwith a letter from the Home Office, UK Border Agency, dated 18.07.2013, which confirmed the renunciation of his British citizenship. A Certificate dated 09.03.2018 from British High Commission, Islamabad, confirming that he had renounced his citizenship in July, 2013, has also been filed on his behalf.

9. Mr. Bilal Hassan Minto, learned ASC, *amicus curiae*, contended that the true impact of Article 63(1)(c) of the Constitution is that a person who ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State, is not qualified to be elected or chosen as a Member of Parliament. With regard to the acquisition of nationality of another State, he contended that such an

acquisition triggers the disqualification under the aforesaid provision of the Constitution and the disqualification was permanent. Subsequent relinquishment/renunciation of citizenship of a foreign State, in his view, would not cure the disqualification in terms of Article 63(1)(c) of the Constitution. The learned ASC further contended that even otherwise, such relinquishment or renunciation of citizenship of a foreign State would require interpretation of the laws of such State. It is added that the foreign law in view of Article 59 of the Qanun-e-Shahadat Order, 1984, is considered to be a question of fact. This Court should avoid venturing into the domain of interpretation of any foreign law. The only exception, perhaps, would be an admitted document clearly, unequivocally and conclusively evidencing such relinquishment/renunciation of citizenship.

10. The learned Additional Attorney General for Pakistan canvassed at the bar that the true and faithful interpretation of the provisions of Articles 62 and 63 of the Constitution and the relevant provisions of the Elections Act, 2017, and also the Pakistan Citizenship Act, 1951, leave no manner of doubt that, a person, who

is a citizen of Pakistan and acquires the citizenship of a foreign State, is not qualified to contest the elections until and unless, he renounces the citizenship of the foreign State and such an act of renunciation is complete under the laws of the said foreign State. In this behalf, he referred to the laws of the United Kingdom, United States of America and Canada to contend that at the relevant point of time, Ms. Saadia Abbasi and Mr. Haroon Akhtar Khan were and the latter continues to be a citizen of a foreign State, hence, are disqualified to be elected or chosen and from being a Member of Parliament, including the Senate. With regard to Ch. Muhammad Sarwar and Ms. Nuzhat Sadiq, the learned Additional Attorney General for Pakistan took up the plea that the documents submitted by them to establish their effective renunciation of citizenship of the foreign State prior to filing of their Nomination Papers for the elections to the Senate, need to be authenticated and verified and the Federation is ready, able and willing to facilitate such verification. He, however, did not endorse the view of Mr. Bilal Hassan Minto, *amicus curiae* that disqualification arising from acquiring the citizenship of a foreign State is permanent and submitted that such disqualification

would cease upon the legally effective renunciation and the relinquishment of the citizenship of the foreign State.

11. Heard. Available record perused.

12. The primary contention canvassed at the bar by Syed Ali Zafar, learned ASC that the word 'or' as appearing in Article 63(1)(c) of the Constitution, is to be read as 'and'. Therefore, the lack of qualification mentioned in the said sub-article would only be attracted, if a person ceases to be a citizen of Pakistan on account of having acquired the citizenship of another country; therefore, a dual nationality i.e. being a citizen of Pakistan and of another country, if so, permitted by the laws of Pakistan, would continue to be eligible to be elected or chosen as a Member of Parliament, as such duality of citizenship does not imply the loss of the citizenship of Pakistan.

13. There can be no escape from the fact that in common parlance 'and' is used in the conjunctive sense, while 'or' is employed in the disjunctive sense. It is equally true that in legislative instruments, the words 'and' and 'or' may in certain circumstances be interchangeable. In this behalf, reference may be made to the passage from the Maxwell on Interpretation of

Statutes, 12th Edition at page 232, wherein it is stated as follows:

"In ordinary usage, "and" is conjunctive and "or" disjunctive. But to carry out the intention of the legislature it may be necessary to read "and" in place of conjunctive "or", and vice versa."

(emphasis supplied)

In Bindra's Interpretation of Statutes 7th Edition at page 537, it is stated as follows:

"Conjunctive and disjunctive words.-- The word "and" in a statute may be read as "or" and vice versa, whenever the change is necessary to effectuate the obvious intention of the Legislature. The Courts should, however, have recourse to this exceptional rule of construction only when the conversion of the words "and" and "or" one into the other, is necessary to carry into effect the meaning and the intention of the Legislature; or produces unintelligent or absurd result. ..."

(emphasis supplied)

14. The learned Lahore High Court in its judgment reported as Farooq Ahmad Khan Leghari and 37 others v. Sh. Muhammad Rashid, Chairman, Federal Land Commission and another (PLD 1981 Lahore 159), held as follows:

"58. Even otherwise, it is not a conclusive rule of interpretation that the word 'and' is to be always used conjunctively. In fact it is for the Court to interchange these words to save redundancy, anomaly absurdity or to

conform to the clear intention of the
Legislature. ..."

(emphasis supplied)

This Court, in its judgment reported as Khadim Hussain and another v. The Additional District Judge, Faisalabad and others (PLD 1990 SC 632), after taking note of the aforesaid passages in the treatises on the Interpretation of Statutes as well as the aforesaid judgment of the learned Lahore High Court and the judgments reported as Salehon and others v. The State (PLD 1969 SC 267), Federation of Pakistan v. Hazoor Bukhsh and 2 others (PLD 1983 FSC 255), Farooq Ahmad Khan Leghari and 37 others v. Sh. Muhammad Rashid, Chairman, Federal Land Commission and another (PLD 1981 Lahore 159), Muhammad Hussain v. The Additional District Judge, Lahore and others [PLD 1966 (W.P.) Lahore 128], Muhammad Amin v. Sh. Jamshed Ali [PLD 1963 (W.P.) Lahore 523], Badsha Mian v. The State (PLD 1966 Dacca 1), Chief Inspector of Factories, U.P. v. V.K. Modi (AIR 1952 Allahabad 804), The King v. Governor of Brixton Prison Ex parte Bidwell [(1937) 1 KB 305] and R. v. Oakes [(1959) 2 All E.R.] and held as follows:

"4. From the above-cited cases and the passage from the well-known treatises on the Interpretation of Statutes, it is evident that the words

"and" and "or" are interchangeable and the word "and" can be construed as "or" and vice versa if the change is necessary to effectuate the obvious intention of the law-maker or the statutory rules framer."

(emphasis supplied)

15. Thus, it appears that no doubt occasionally 'and' may be used disjunctively and 'or' conjunctively. Both can be used interchangeably. However, such a course of action is only permissible in order to give effect to the clear and obvious intention of the legislature or to avoid absurdity, unreasonableness or redundancy. In every eventuality 'or' cannot necessarily be read as 'and' or vice versa, nor is there a prohibition on the legislature or the framers of the Constitution to employ 'or' in its common parlance i.e. "disjunctively".

16. In order to persuade us to read the word 'or' in Article 63(1)(c) of the Constitution, it was necessary for the learned counsel to exhibit that such an interpretation would be in consonance with the clear and obvious intention of the framers of the Constitution and to construe it disjunctively would result in an absurdity, unreasonableness or redundancy. The learned counsel could not demonstrate that the intention of the legislature by enacting the aforesaid Article would be

effectuated by construing the word 'or' therein as 'and'. In fact, no serious effort, in this behalf, was made. An interpretation of Articles 62 and 63 of the Constitution as well as the relevant provisions of the Elections Act, 2017, read along with the Pakistan Citizenship Act, 1951, in fact, leads to an obvious conclusion to the contrary.

17. A person to be eligible to be elected or chosen as a Member of Parliament is required to be a citizen of Pakistan as is obvious from the provisions of Article 62(1)(a) of the Constitution.

18. The lack of qualification, in this behalf, is set forth under Article 63(1)(c) of the Constitution, and an interpretation thereof is perhaps necessary for adjudication of the *lis* at hand. Article 63(1)(c) of the Constitution, reads as under:

"63(1)(c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State; or"

19. Before proceeding further, it may be noted that a "citizen" has been defined under Article 260(1) of the Constitution in the following terms:

"260. (1)
"citizen" means a citizen of Pakistan as defined by law;"

20. The mode of acquiring or loss of citizenship has not been set forth in detail in the Constitution of the Islamic Republic of Pakistan, 1973. The law to which Article 260(1) of the Constitution reproduced herein above is referring to is the Pakistan Citizenship Act of 1951.

21. An overview of the said Act, 1951, as amended from time to time reveals that as a general principle, dual citizenship or nationality is not permitted. Reference, in this behalf, may be made to Section 14(1) of the Act of 1951, which reads as follows:

“14. Dual citizenship or nationality not permitted.—(1) Subject to the provisions of this section if any person is a citizen of Pakistan under the provisions of this Act, and is at the same time a citizen or national of any other country, he shall, unless [...] he makes a declaration according to the laws of that other country renouncing his status as citizen or national whereof, cease to be a citizen of Pakistan.”

A plain reading of the aforesaid makes it clear and obvious that a Pakistani citizen who is incidentally a citizen or national of another State must make a choice and as a general rule cannot be a citizen of both countries. Until and unless he severs his relationship of nationality and/or citizenship with the foreign State in terms of laws of such State, he will cease to be a citizen

of Pakistan. Section 14(1) of the Pakistan Citizenship Act, as originally framed in 1951, envisaged a grace period of one year from coming into force of the Act for citizen of Pakistan and another State to make up his mind. This obviously catered for the situation that a large number of people who by birth or migration were entitled to be the citizen of both Pakistan and India. It is, in this context, that the grace period appears to have been granted. However, the general principle that a Pakistani citizen cannot also a citizen of another State was without exception the law of the land till 1972, when by way of an amendment, sub-section (3) of the Act of 1951, was added to Section 14, which reads as follows:

"14(3) Nothing in sub-section (1) shall apply, or shall be deemed ever to have applied at any stage, to a person who being or having at any time been, a citizen of Pakistan, is also the citizen of the United Kingdom and Colonies or of such other country as the Federal Government may, by notification in the official Gazette, specify in this behalf."

22. Various notifications have been issued under Section 14(3) of the Act of 1951, to extend the privilege of dual nationality to persons acquiring citizenship of, *inter alia*, United States of America and Canada in addition to the United Kingdom countries relevant for the adjudication of the *lis* at hand.

23. Currently, a person can be a citizen of Pakistan as well as a citizen of, *inter alia*, United Kingdom, United States of America and Canada without ceasing to be a citizen of Pakistan. It is in the above context, that the provisions of Article 63(1)(c) of the Constitution, must necessarily be interpreted. Where a citizen of Pakistan acquires the nationality of or is also a citizen of another country other than a country covered by the provisions of Section 14(3) of the Act of 1951, or the Notifications issued thereunder, permitting dual nationality, referred to above, he automatically ceases to be a citizen of Pakistan, and therefore, cannot be elected or chosen as a Member of Parliament or hold such Office in view of the Article 63(1)(c) of the Constitution in as much as it states "ceases to be citizen". In fact, he is not qualified in terms of Article 62(1)(a) of the Constitution. If the contentions of the learned counsel are to be accepted with regard to a person, would come within the mischief of Article 63(1)(c) of the Constitution, only if he loses his Pakistani citizenship on account of acquiring citizenship/ nationality of another State than the latter portion of the Article would become redundant and the intention of the

framers of the Constitution would be frustrated rather than actualized.

24. The upshot of the above is that it was clear intention of the framers of the Constitution that the word 'or' has been used disjunctively in order to cater for a separate distinct situation, where a Pakistani citizen acquires a dual nationality of a foreign State as mentioned or notified under Section 14(3) of the Act of 1951, without loss of his Pakistani citizenship in terms of Section 14(1) of the said Act. An interpretation to the contrary would render the phrase "acquires the citizenship of a foreign State" under Article 63(1)(c) of the Constitution redundant, which intention can never be attributed to the framers of the Constitution, as is the settled law, in this behalf. Reference, in this behalf, may be made to the judgments of this Court reported as Malik Shakeel Awan v. Sheikh Rasheed Ahmed and 21 others (PLD 2018 SC 643), Justice Shaukat Aziz Siddiqui and others v. Federation of Pakistan through Secretary Law and Justice, Islamabad and others (PLD 2018 SC 538), Sami Ullah Baloch and others v. Abdul Karim Nousherwani and others (PLD 2018 SC 405), Muhammad Hanif Abbasi v. Imran Khan Niazi and others (PLD 2018

SC 189), District Bar Association, Rawalpindi v. Federation of Pakistan (PLD 2015 SC 401), Application by Abdul Rehman Farooq Pirzada (PLD 2013 SC 829), Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary and others (PLD 2010 SC 61) and Shahid Nabi Malik and another v. Chief Election Commissioner, Islamabad and 7 others (PLD 1997 SC 32).

25. Thus, the conclusion drawn by this Court in the case reported as Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others (PLD 2012 SC 1089), that the word 'or' used in Article 63(1)(c) of the Constitution, is disjunctive and that a person holding a dual nationality of a foreign State though legally in view of Section 14(3) of the Act of 1951, nevertheless will not be entitled to be elected or chosen as, or hold the Office of a Member of Parliament, is correct interpretation of the Constitution and does not merit any reconsideration. Incidentally, the aforesaid view has been reiterated by this Court in its judgments reported as Dr. Muhammad Tahir-ul-Qadri v. Federation of Pakistan through Secretary, M/o Law, Islamabad and others (PLD 2013 SC 413) and Sadiq Ali Memon v.

Returning Officer, NA-237, Thatta-I and others (2013 SCMR 1246).

26. The contentions of Mr. Bilal Hassan Minto, learned ASC, *amicus curiae*, must necessarily be examined in the context that the word 'or' as used in Article 63(1)(c) of the Constitution, has been employed disjunctively with the effect that lack of qualification(s) under the said provision caters for two separate legal situations. Firstly, where a person who once being a citizen of Pakistan ceases to be a citizen of Pakistan (say under Section 14 of the Act of 1951), or secondly acquires the citizenship of a foreign State [as is permissible under Section 14(3) of the Act of 1951]. The later disqualification i.e. acquiring citizenship of a foreign State needs to be interpreted on stand alone basis as a separate category of disqualification. In the above context, Mr. Bilal Hassan Minto, learned ASC, *amicus curiae*, perhaps, correctly canvassed that such a disqualification is triggered by acquiring of the citizenship of a foreign State. We noticed that the term "acquire" has not been defined in the Constitution. Thus, we must search for its ordinary dictionary meanings. In "Words and Phrases, Permanent Edition, West Publishing Co.

Volume 1A, at page 556-557", the words "acquire" and "acquired" have been defined as under:

"ACQUIRE; ACQUIRED

In General: To "acquire" means to gain, usually by one's own exertion; to get, as one's own, as to acquire a title, riches, knowledge, skill, good or bad habits. U.S. v. Hibernia Bank Bldg., D.C.La., 76 F.Supp. 18, 19."

In Black's Law Dictionary, Fifth Edition by the Publisher's Editorial Staff, at page 23, stated as under:

"To gain by any means, usually by one's own exertions; to get as one's own; to obtain by search, endeavour, investment, practice, or purchase; receive or gain in whatever manner; come to have. In law of contracts and of descents, to become owner of property; to make property one's own."

In Legal Terms & Phrases, Judicially defined from 1947 - 2012, by M. Ilyas Khan, 2013 Edition at page 38, the word "Acquire", has been defined, while referring the judgment rendered by Mr. Justice Shabbir Ahmed, Judge, Lahore High Court, in the judgment reported as M. Aslam v. Umar Bibi (PLD 1960 Lahore 312) in the following words:

"Acquire. - "To obtain or gain usually by one's own efforts."

The phrase "acquires the citizenship of a foreign State" when examined in the context of the aforesaid definitions

of the word "acquire", leads to an irresistible conclusion that a person is not qualified, if he, obtains or gains the citizenship of a foreign State. The lack of qualification is the consequence of gaining, obtaining or acquiring a legal status i.e. citizenship of a foreign State. As long as such legal status i.e. citizenship of a foreign State holds the field the disability resulting therefrom i.e. lack of qualification to be elected or chosen or being a Member of Parliament would also exist. If such disabling legal status disappears so too will the disability. This is the only conclusion which can be drawn from a plain reading of the aforesaid provision.

In this view of the matter, where a citizen of Pakistan acquires the citizenship of a foreign State, he shall not be qualified to be elected or chosen or being a Member of Parliament until and unless such legal status i.e. being a citizen of a foreign State is obliterated or extinguished. This is only possible when the citizenship of the foreign State is renounced or relinquished and such process of relinquishment or renouncement is completed and concluded. Mere initiation of the process of relinquishment is not sufficient as during the course of such process, the dual national does not cease to be a

citizen of a foreign State and the disqualification exists. This view has already been taken by this Court in the judgments reported as Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others (PLD 2012 SC 1054), Dr. Ahmed Ali Shah and others v. Syed Mehmood Akhtar Naqvi and others (2018 SCMR 1276), Zahid Iqbal v. Hafiz Muhammad Adnan and others (2016 SCMR 430) and Sadiq Ali Memon v. Returning Officer, NA-237, Thatta-I and others (2013 SCMR 1246), we have not been persuaded to take a different view in the matter.

27. Adverting now to the matter of the newly elected Senators at hand. With reference to Ch. Muhammad Sarwar, no doubt, he was once the citizen of United Kingdom and thereafter, he has purportedly relinquished/renounced such citizenship well before the Senate elections in question. In support of his contentions, he filed a copy of "Declaration of Renunciation of British Citizenship, British Overseas Citizenship, British Overseas Territories Citizenship, British National (Overseas) or British Subject Status" dated 02.07.2013, along with a letter from the Home Office, UK Border Agency, dated 18.07.2013, which

confirmed the renunciation of his British Citizenship (available at pages 5 and 6 of CMA No.8575 of 2018). A Certificate dated 09.03.2018 from the British High Commission, Islamabad, confirming that he had renounced his citizenship in July, 2013, has also been filed on his behalf.

28. The aforesaid documents, *ex facie*, established that Ch. Muhammad Sarwar, did not hold dual nationality when he contested the elections to the Senate. However, the said documents need to be authenticated and verified.

29. On behalf of Ms. Nuzhat Sadiq, it has been submitted that she was a citizen of United States of America and renounced her nationality in the year 2012. In support of her contentions, she filed a copy of Certificate of Loss of Nationality of the United States dated 09.02.2012, which was approved by the Overseas Citizens Services Department of State on 23.03.2012. The aforesaid documents, *ex facie*, established that Ms. Nuzhat Sadiq, was not a dual national when she contested the elections to the Senate. However, the said documents need to be verified.

30. With regard to Mr. Haroon Akhtar Khan, as noted above, he admittedly is a Canadian citizen, having acquired Canadian citizenship in the year 1980, as mentioned in his Affidavit and the process for renunciation of such citizenship has been initiated by him. However, it was candidly conceded by his learned counsel that such process has not been completed, hence, Mr. Haroon Akhtar Khan, continues to be a Canadian citizen. In this view of the matter, Mr. Haroon Akhtar Khan, in view of Article 63(1)(c) of the Constitution was not qualified to be elected or chosen as a Member of Senate or to hold the Office of Senate, under the Constitution.

31. Adverting now to the matter of Ms. Saadia Abbasi, it is an admitted fact that she had a dual nationality of United States of America. It is her case that she had renounced and surrendered such nationality. In support of her contention, she has filed a copy of the Statement of Understanding Concerning the Consequences and Ramifications of Renunciation or Relinquishment of U.S. Nationality, attested on 08.02.2018, in the Consul of the United States of America; a copy of the Certificate of Loss of Nationality of

the United States dated 13.02.2018, approved on 20.02.2018; and also a copy of Oath/Affirmation of Renunciation of Nationality of United States dated 08.02.2018.

32. That by way of the Elections Act, 2017, *inter alia*, the Representation of the People Act, 1976, as well as the Senate (Election) Act, 1975, have been repealed, consolidated and re-enacted.

In Halsbury's Laws of England (Second Edition), Volume 31 at page 565, para 771, it is observed as under:

"771. ... Where a consolidating statute re-enacts sections that have come into existence at different previous dates, the statute must be construed on the same principles as one which enacts the provisions in question for the first time. ..."

Thus, provisions of the Elections Act, 2017, must necessarily be construed as they were previously interpreted. Sections 107, 110, 112 and 156(1)(b) of the Elections Act, 2017, in fact, are reenactment of Sections 10, 11, 13 and 49(1)(b) of the Senate (Election) Act, 1975, and legally identical to Sections 11, 12, 14 and 68(1)(b) of the Representation of the People Act, 1976. The latter provisions have been interpreted by this Court by holding

that a person must be qualified and not disqualified on the last date of filing of the Nomination Papers.

This Court, in the case reported as Waqas Akram v. Dr. Muhammad Tahirul Qadri and others (2003 SCMR 145), held as follows:

“6. ... the qualifying age has to be determined on the last date for filing of nomination papers, notified by the Election Commission of Pakistan. In other words the cut-off date is the last date for filing of nomination papers.”

And in the case reported as Atique Rehman v. Haji Khan Afzal and others (2007 SCMR 507), it was held that:

“... so long the decree of the Civil Court determining the age of appellant above 25 years on the date of filing of nomination papers was intact, the objection that he was less than 25 years of age on the date of filing of nomination papers could not be raised to contend that he was suffering from disqualification to contest the election. ...”

And in the case reported as Zahid Iqbal v. Hafiz Muhammad Adnan and others (2016 SCMR 430), it was observed as under:

“11. ... Disqualification on account of dual citizenship ... is not attracted in instant case as on the date of nomination papers, the petitioner was admittedly not holding any dual citizenship. ...”

Even otherwise, a plain reading of Sections 107, 110, 112 and 156(1)(b) of the Elections Act, 2017, would reveal that the accumulated effect is that the critical date for being qualified or not being qualified to be a Member of Parliament is the date when the Nomination Papers are filed.

33. The elections of the Senate were held under Chapter VII of the Elections Act, 2017, and as per Notification dated 02.02.2018, the schedule of Senate elections was issued by the ECP, with regard to Senate elections from the Provincial Assembly, Punjab, and in terms whereof, notice for invitation of Nomination Papers was issued on 03.02.2018. The last date for filing of the Nomination Papers was 08.02.2018 and the date of scrutiny was fixed as 12.02.2018. The appeals, if any, filed were required to be disposed of as on 17.02.2018. The last date of withdrawal was 19.02.2018.

34. Obviously, Ms. Saadia Abbasi, filed her Nomination Papers by or before 08.02.2018 and on that date, even as per her own case, at that point of time, she was a dual national and the alleged relinquishment still under process, leaving no room for doubt that on such dates, at such point of time, even as per her own case,

the renunciation of dual citizenship had not been approved. Hence, she was not qualified to be elected or chosen as a Member of Senate and her Nomination Papers were invalid, liable to be rejected and any election thereupon void. The subsequent approval of her renunciation even with retrospective effect could not cure the defect of not being qualified in terms of Section 103 of the Elections Act, 2017, which existed at that point of time, when she filed her Nomination Papers, on the last date of Nomination Papers and when her Nomination Papers were scrutinized. In this view of matter, her election to the Senate is vitiated and liable to be annulled, as she was not qualified at the relevant point of time.

35. The aforesaid are the detailed reasons of our short Order of event date, which reads as follows:

“As regards Ch. Muhammad Sawar, *vide* order dated 10.10.2018 we have required the verification and confirmation of certain documents and granted a period of six weeks for doing the needful. Such verification has not so far been received. Resultantly, let the case be listed for hearing before a regular Bench after a period of six weeks.

2. The learned counsel appearing for Mrs. Nuzhat Sadiq has brought on the record her certificate of relinquishment of nationality/citizenship dated 23.3.2012 which needs verification with regards to its genuineness. Therefore, the said document be sent to the Ministry of Foreign Affairs for verifying the authenticity thereof from the US Embassy in Pakistan and also from the State Department of US. Relist for hearing before a regular Bench after six weeks.

3. As far as Mr. Haroon Akhtar and Mrs. Saadia Abbasi are concerned, for the reasons to be recorded later, we hold and declare that on account of having dual nationality on the relevant dates, they were disqualified under the provisions of Article 63(1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973, therefore, upon the announcement of this order they have effectively ceased to be the Members of the Senate and accordingly are directed to be denotified by the Election Commission of Pakistan, which shall take steps for the purposes of re-election on those seats within the time provided by the law.

4. As far as the case of Mr. Shahzad Ali Khan is concerned, it has been informed that he has lost the elections, therefore, C.M.A.No.649-L/2018 stands disposed of as having become infructuous."

Chief Justice

Judge

Judge

Judge

Judge

Judge

Islamabad, the
17th October, 2018
'APPROVED FOR REPORTING'
Mahtab H. Sheikh

Judge