

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Mushir Alam

Mr. Justice Dost Muhammad Khan

Mr. Justice Sardar Tariq Masood

Civil Petition No.3181 of 2015

Against order dated 21.10.2015 of Lahore High Court, Multan Bench, Multan, passed in Writ Petition No.15261 of 2015.

Zahid Iqbal

Petitioner(s)

VERSUS

Hafiz Muhammad Adnan, etc

Respondent(s)

For the Petitioner(s) : Mr. Salman Akram Raja, ASC
Syed Rafaqat Hussain Shah, AOR

For the Respondent(s) : Mr. M. Ilyas Siddiqui, ASC
Mr. M. Afzal Siddiqui, ASC

On Court's Notice : Mr. Razzaq A. Mirza, Addl.AG, Pb.
Mr. M. Saeed, R.O

Date of Hearing : 06.11.2015

JUDGMENT

Mushir Alam, J-. The petitioner has impugned the judgment of Lahore High Court, Multan Bench, Multan, dated 21.10.2015, passed in Writ Petition No.15261 of 2015, whereby his candidature as Chairman for Union Council No.58, Tehsil Chichawatni, District Sahiwal, which was accepted by the Returning Officer on 30.09.2015 and maintained by the Election Appellate Authority, Chichawatni vide order dated 10.10.2015 was set naught.

2. Challenge to the candidature of the petitioner by the respondent was that he is disqualified to be elected as Member of Local Government as he stands disqualified from being a candidate for election to any office of a Local Government for a period of four years from the date of

declaration on account of his holding citizenship of a foreign State within the contemplation of clause (a) of sub-section 2 of Section 27 of the Punjab Local Government Act, 2013 (*hereinafter to be referred as 'the Act, 2013'*). The objections were neither accepted by the Returning Officer nor entertained by the Election Appellate Authority as noted above. Acceptance of his nomination papers was challenged through Writ Petition and learned Judge in Chambers in the High Court in consideration of the fact that the petitioner was disqualified to be elected or chosen to be a Member of Majlis-e-Shoora (Parliament) in terms of Article 63(1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973 (*to be referred as 'the Constitution'*) which is in para-materia to Clause (a) of sub-section (2) of Section 27 of the Act, 2013 and was declared as such by this Court in para 53 of the judgment reported as Mahmood Akhtar Naqvi v. Federation of Pakistan (PLD 2012 Supreme Court 1089), which reads as under:-

"As regards Mr. Zahid Iqbal, MNA, vide order dated 18.3.2012 learned ASC appearing for Mr. Zahid Iqbal, MNA was directed to file evidence/documents/certificate issued by the competent authority in terms of British Nationality Act, 1981 to the effect that he is not a citizen of UK but he failed to do so till date despite giving time, thus we have no option but to believe that Mr. Zahid Iqbal, MNA, is holding citizenship of United Kingdom, having Passport No.300997046 of Britain."

3. The learned Judge in the High Court, seized of the matter, declared him to be disqualified in terms of para 11 of the impugned judgment, which reads as follows:-

"The perusal of all the judgments referred above leaves no ambiguity that the disqualification adjudged by the Honourable Supreme Court of Pakistan by way of judgment dated 20th of September, 2012 attained finality. In such a case clause (b) of sub-section 3 of Section 27 of "The Act, 2013" will come into play with full force in the way of respondent No.3 as he was disqualified on account of holding dual citizenship on 20th of September, 2012 and at the time of submission of nomination papers, the requisite period of four years has not expired."

Hence, this petition for leave to appeal.

4. Mr. Salman Akram Raja, learned ASC for the petitioner has contended that the petitioner admittedly earned disqualification when he contested and elected as

Member, National Assembly of Pakistan in the General Elections, 2008 for holding dual citizenship of both Pakistan and the United Kingdom, which later on pursuant to the judgment of this Court, referred to above, he had renounced and is no more a UK citizen by virtue of certificate dated 04.10.2012 issued by the U.K Border Agency and since then he is holding undiluted and exclusive citizenship of Pakistan. It was urged that the petitioner put forth his candidature to contest election for NA.162-III, Sahiwal which challenge was not overturned by the Returning Officer and so also by the Election Tribunal, then comprised of the Judges of the High Court, which is also reported as Rizwan Zouq v. Returning Officer NA-16, SWL-III, Sahiwal (2013 CLC 271), however, his disqualification was sustained by the Lahore High Court, Lahore through judgment dated 07.05.2013 solely on the ground that since he was convicted by the Court of Sessions which conviction was still intact by that point in time. It is stated that the bar of conviction was also removed when he earned acquittal in Criminal Appeal No.210 of 2013 by the Lahore High Court, Multan Bench, vide judgment dated 26.12.2013. It is further stated that the petitioner is qualified in terms of the criteria laid down in Section 27 of the Act, 2013 and no other disqualification is attracted or could be imported from any other law to discredit his candidature, therefore, assumption of the learned Bench that disqualification in terms of Clause (b) of sub-section 3 of Section 27 of the Act, 2013 would come into play is not sustainable.

5. Learned counsel for the contesting respondent heavily relied on clause (b) of sub-section 3 of Section 27 of the Act, 2013 and strenuously argued that once a person has been disqualified by this Court in the case of **Mehmood Akhtar Naqvi** (*ibid*) such disqualification will continue to operate for a period of four years within the contemplation of above referred provision of Section 27 of the Act, 2013. When

learned counsel was specifically asked to point out the disqualifications within the meaning of the provision of law relied upon by him, it was strenuously urged that since the petitioner had made a false declaration in the earlier elections, he is not sagacious, righteous, non-profligate, honest and ameen within the meaning of Article 62(1)(f) of the Constitution and is therefore not eligible to contest the election. It was further urged that since he was convicted by the trial Court for filing a false declaration, acquittal earned by him on technical ground will not rescue him from disqualification. To a specific question, it was candidly conceded that no appeal against such acquittal was filed.

6. Mr. Razzaq A. Mirza, learned Additional Advocate General, Punjab, does not support the impugned judgment. According to him, disqualification if at all available in terms of Section 27 of the Act, 2013 would discredit the candidature of the petitioner and will not attract disqualification for any other office including if disqualification prescribed under Article 63 of the Constitution from being elected as Member of Majlis-e-Shoora (Parliament).

7. Mr. Salman Akram Raja, learned ASC for the petitioner exercising his right of rebuttal has contended that disqualification being imported under Articles 62 and 63 of the Constitution cannot be imported and read as a disqualification under Section 27 of the Act, 2013 as there is no legislation by reference to import the qualification and or disqualification prescribed under the Constitution and or Representation of People Act, 1976 in contravention to the Act, 2013 and that import of such disqualification has been introduced under the Sindh Local Government Act, 2013 which is not the case in the instant matter.

8. We have heard the arguments and perused the record. Qualification and disqualification for a candidate and an elected Member to hold an elected office of a Local

Government is provided under Section 27 of the Act, 2013, relevant provisions whereof read as under:-

“27. Qualifications and disqualifications for candidates and elected members.– (1) A person shall qualify to be elected as a member or to hold an elected office of a local government, if he–

- (a) is a citizen of Pakistan;*
- (b) except the youth member, is not less than twenty five years of age on the last day fixed for filing the nomination papers;*
- (c) is enrolled as a voter in the electoral rolls of the ward or the local government from which he is contesting the election.*

(2) A person shall be disqualified from being elected or chosen as, and from being, an elected member of a local government, if he–

- (a) ceases to be citizen of Pakistan or acquires citizenship of a foreign State;*
- (b) is declared by a competent court to be of unsound mind;*
- (c) is an undischarged insolvent;*
- (d) is in the service of Pakistan or of a local government;*
- (e) is in the service of any statutory body or a body which is owned or controlled by the Government or a Provincial Government or the Federal Government or a local government or, in which any of such Government or local government has a controlling share or interest, except the holders of elected public office and part-time officials remunerated either by salary or fee; provided that in case of a person who has resigned or retired from any such service, a period of not less than two years has elapsed since his resignation or retirement;*
- (f) is under an existing contract for work to be done or goods to be supplied to a local government or has otherwise any direct pecuniary interest in its affairs;*
- (g) has been dismissed from public service on the grounds of misconduct unless a period of five years has elapsed since his dismissal;*
- (h) has been removed or compulsorily retired from public service on the grounds of misconduct unless a period of three years has elapsed since his removal or compulsory retirement;*
- (i) has been convicted by a court of competent jurisdiction for a term not less than two years for an offence involving moral turpitude or misuse of power or authority under any law unless a period of five years has elapsed since his release;*
- (j) has been convicted for an offence involving activities prejudicial to the ideology, interest, security, unity, solidarity, peace and integrity of Pakistan unless a period of five years has elapsed since his release.*

(3) If a person–

- (a) is found by the Election Commission to have contravened any provisions of subsections (1) or (2), he shall stand disqualified from being a candidate for election to any office of a local government for a period of four years; or*

(b) has been elected as a member of a local government and is found by the Election Commission to have contravened any provision of subsections (1) or (2), he shall cease forthwith to be an elected member or to hold the office of such member and shall stand disqualified from being a candidate for election to a local government for a period of four years.

(4) A candidate who claims to be a Muslim shall submit to the Returning Officer the declaration given in Ninth Schedule along with the nomination papers."

9. There are as many as 13 disqualifications prescribed under Subsection 2 of Section 27 of the Act, 2013. Such stigmatizations or disqualifications are relevant for pre-election and or post election challenge and in terms of such Subsection 3 of Section 27 of the Act, 2013 if the Election Commission finds that any of the candidate and elected member has contravened any provision of subsection 1 and or 2 thereof then such candidate will be disqualified from being a candidate for election to any office of a local government for a period of four years. This exercise is to be carried out pre-election and in case any person has been elected and subsequent to his election a challenge is thrown and it is found by the Election Commission that the person elected as Member of a Local Government has contravened any of the provisions of subsection 1 or 2 of Section 27 of the Act, 2013 then such person on such determination by the Election Commission shall be ceased forthwith to be an elected member or to hold the office of such Member and shall be slapped disqualification for a period of four years.

10. It is an admitted position that the petitioner had already renounced his UK citizenship with effect from 04.10.2012, such disqualification is not perpetual and the moment a person gives up his dual nationality, he becomes eligible to put forth his candidature for election as a member or to hold an elected office of a Local Government under the Act, 2013. Contention of the learned counsel that disqualification earned in terms of Article 63(1)(c) of the Constitution is not attracted, any perpetuity once renounced

for all practical purposes a person who is a citizen of Pakistan in terms of Section 14 of Pakistan Citizenship Act, 1951 is a full-fledged citizen and is entitled and qualified to be elected as a Member and so also to hold an elected office of a Local Government. As far as contention of the respondent that disqualification would be inflicted for a period of 4 years in terms of clause (b) of Subsection 3 of Section 27 of the Act is concerned, it would be advantageous to reproduced sub clause 2 relied upon by learned ASCs for the respondents which reads as under:-

"If a person has been elected as a member of a local government and is found by the Election Commission to have contravened any provision of subsections (1) or (2), he shall cease forthwith to be an elected member or to hold the office of such member and shall stand disqualified from being a candidate for election to a local government for a period of four years."

With reference to the above quoted provision, when learned counsel for the respondent was queried as to whether there is any declaration and or finding by the Election Commission that the petitioner has contravened any provision of subsection 1 and or 2 so as to inflict a disqualification for a period of four years, it was urged that such disqualification was made pursuant to the judgment of this Court in the case of **Mehmood Akhtar Naqvi** (*supra*) PLD whereby this Court declared him to be disqualified for holding office and being Member of Majlis-e-Shoora (Parliament).

11. It was further urged that since he has made a false declaration, he is not a sagacious, righteous, honest and ameen within the contemplation of clause (f) of Article 62 of the Constitution and when he is not qualified to be elected or chosen as a Member of Majlis-e-Shoora (Parliament) he cannot be chosen or elected to hold an elected office of a Local Government. This contention on the face of it is preposterous and cannot be sustained. As noted above, there is no disqualification within the contemplation of Article 62 and or 63 attracted by implication or by reference adopted within the fold of Section 27 of the Act, 2013. Disqualification on

account of dual nationality within the contemplation of clause (a) of subsection 2 of Section 27 of the act will only continue to apply as long as any the candidate continues to hold citizenship and or nationality of any other Foreign State and the disqualification so provided under any other law including Representation of People Act, 1976 and or the Constitution by implication cannot be invoked and or read into provisions of the Act, 2013. It is not the function of the Court to read into any enactment or words that are not part of the Statute. The Court is interested to consider the provision of the Act, 2013 according to its plain meaning and not to import and or supply the deficiency of the legislation if at all any of the disqualification prescribed for any other office in any other law, same cannot be imported, added or inflicted on a person who is otherwise not within the net of such legislation. It is settled position in law that unless any provision and or law is adopted and or incorporated specifically in any provision and or legislation same cannot be read into the law or statute which is subject matter of Constitution. It is noted that disqualification for a candidate to be elected or chosen as a Member of Council (Local Government) under Sindh Local Government Act, 2013 is prescribed under Section 36 thereof. Besides, numerous disqualification some of which are in para materia to Section 27 of the Punjab Local Government Act, 2013 one of the disqualification in terms of Clause (j) to Section 36 of the Sindh Local Government Act, 2013 provides as follows:-

"he is for the time being disqualified or chosen as a member of the Provincial Assembly under any law for the time being in force"

12. Thus, it could be seen that disqualification as prescribed to be chosen as a Member of Provincial Assembly by adoption and or reference is incorporated under the Sindh Local Government Act, 2013 whereas such adoption by reference is conspicuously present under the Punjab Local Government Act, 2013. Therefore, same cannot be imported from any other legislative instrument. Therefore, in view of

the foregoing discussion the impugned judgment cannot be sustained and is accordingly set aside.

13. Above are the reasons for our short order of even date, which reads as under:-

"For the reasons to follow, petition is converted into appeal and is allowed. Impugned judgment dated 21.10.2015 passed in W.P.15261/2015 by the learned Lahore High Court, Multan Bench, rejecting nomination papers of petitioner for Election of U.C. 58 Chichawatni, District Sahiwal is set aside, and order dated 10.10.2015 passed by the Appellate Authority, Local Government Election, Chichawatni, maintaining order dated 30.09.2015 of the Returning Officer, accepting nomination papers of the petitioner is restored."

Judge

Judge

Judge

ISLAMABAD, THE
6th November, 2015
ZR/*

