

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Ijaz Ahmed Chaudhry
Mr. Justice Gulzar Ahmed

Civil Petitions No.240 & 241 K of 2013

[on appeal against the order dated 03.05.2013, passed by the High Court of Sindh, Karachi, in Constitution Petitions No.D-1644 & D-1721 of 2013]

Sadiq Ali Memon Son Of Late Abdul Hameed, **Petitioner(s)**
Resident Of Mohallah Islampur, Ward No.3, Union
Council No.2, Thatta.

VERSUS

Returning Officer, NA-237, Thatta-I & others

Respondent(s)

For the Petitioner (in both cases)	: Mr. Rasheed A. Razvi, Sr. ASC Mr. Khalid Javed Khan, ASC
For Respondent No.4 (in CP#240-K/13)	: Peer Tariq Ahmed, Advocate, in person
For Respondent No.4 (in CP#241-K/13)	: Mr. Faisal Kamal, ASC
For Respondents No.1-3	: Proforma Respondents
Date of Hearing	: 23.05.2013

ORDER

GULZAR AHMED, J.—These two Civil Petitions for leave to appeal have been filed against a common order dated 03.05.2013 passed by a learned 3 Member Bench of the High Court of Sindh at Karachi, by which the two Constitution Petitions (C.Ps.No.D-1644 & D-1721 of 2013) were disposed of setting aside the order dated 13.04.2013 passed by the Election Tribunal and

consequently maintaining the order dated 06.04.2013 of the Returning Officer rejecting the nomination papers of the petitioner.

2. Brief facts of the matter are that the petitioner has submitted nomination papers for contesting General Election 2013 as a candidate from NA-237 Thatta-I. The respondent Peer Tariq Ahmed filed objection on the nomination form contending that the petitioner at the time of contesting previous election to the seat of Provincial Assembly Sindh PS-84, Thatta-I, has filed declaration/affidavit and suppressed the fact of his being dual national viz the nationality of Canada and thus he cannot be said to be a sadiq, ameen and righteous person and is disqualified to contest the election under Article 62/63 of the Constitution. The learned Returning Officer noted that the petitioner has filed a declaration while contesting election for the seat of PS-84, Thatta-I, to the effect that he fulfils qualification under Article 62 and was not disqualified under Article 63 of the Constitution and on examining the record of Provincial Election Commissioner, Sindh, found that petitioner is holding dual citizenship and on his asking from the petitioner's counsel, the counsel admitted that at the time of contesting previous election for the seat of PS-84, Thatta-I, the petitioner has made a declaration in the said Provincial Election despite he being a foreign citizen of Canada. The Returning Officer came to the conclusion that the case of the

petitioner is covered by disqualification under Article 63(1)(c) of the Constitution and further concluded that he is neither honest nor a righteous persons and is hit by Article 62(f) of the Constitution and thus his form for candidature was rejected. The learned Election Tribunal while considering the Election appeal of the petitioner altogether ignored the finding of Returning Officer in respect of the petitioner earlier contesting the election of PS-84, Thatta-I, and making a false declaration with regard to holding of dual nationality by him at that time but confined itself to the fact that the petitioner has submitted an application for cancellation of his citizenship on 24.09.2012 and that the Canadian authorities vide letter dated 09.01.2013 have communicated the petitioner that he has ceased to be a Canadian national w.e.f.11.12.2012 and since the petitioner has ceased to be the Canadian national his nomination papers ought to have been accepted and the Returning Officer was directed to accept nomination papers of the petitioner. This order of the Election Tribunal was challenged by Peer Tariq Ahmed so also by Abdul Wahid Brohi, by two separate Constitution Petitions respectively D-1644 of 2013 and D-1721 of 2013 filed in the High Court of Sindh at Karachi. It seems that Constitution Petition No.D-1644/2013 was taken up by the High Court on 18.04.2013 and on the same day, an order was passed by which the said petition was dismissed. In this order the High Court has observed that

respondent No.4 has submitted that the petitioner was elected to Sindh Assembly while he was holding dual nationality but failed to demonstrate that petitioner ever made a declaration to the effect that he did not hold dual nationality at the relevant time and respondent No.4 has even failed to mention the date on which such declaration, if fact, was filed by the petitioner. It seems that a review application was filed by respondent No.4 before the High Court. The said review application along with Constitution Petition No.D-1721/2013 came up for hearing on 03.05.2013, when after hearing the learned counsel for the parties the Court passed an order on the same date whereby the review application was allowed and the order dated 18.04.2013 passed in C.P.No.D-1644/2013 was recalled and both the petitions were disposed of by setting aside the order of the Election Tribunal. The High Court also found as an admitted fact that at the time of contesting the election of PS-84, Thatta-I, the petitioner has made a false declaration and committed perjury by categorically mis-stating on Oath that he did not suffer from any disqualification. Hence these petitions for leave to appeal.

3. Mr. Rasheed A. Razvi, learned Sr. ASC has argued the matter on behalf of the petitioner in both the petitions and has contended that the provisions of Article 62 (1) (f) of the Constitution, is not self executory and that there has to be a declaration of the Court of law holding that the petitioner is not

sagacious, righteous, non-profligate, honest and ameen and there being no such declaration the petitioner's nomination papers could not have been rejected. In this respect, the learned counsel has relied upon the case of Dr. Mobashir Hassan & others v. Federation of Pakistan & others (PLD 2010 Supreme Court 265). The respondent Peer Tariq Ahmed who has appeared in person supported the impugned order while Mr. Faisal Kamal, learned ASC appearing for respondent No.4 in C.P.No.241/2013 while supporting the impugned order has also contended that the runner up of the election be declared to be a successful candidate.

4. We have considered the submission of the learned counsel and have gone through the record.

5. In the present case, admittedly the petitioner has while filing nomination papers for contesting By-Election of PS-84, Thatta-I, in 2010, filed a declaration to the effect that he fulfils qualification specified in Article 62 of the Constitution and is not subject to any disqualification specified in Article 63 of the Constitution. This declaration was made by the petitioner despite the fact that he was holding dual nationality i.e. of Pakistan and also of Canada and in terms of Article 63 (1) (c) of the Constitution on acquiring the citizenship of a foreign state, he stood disqualified from being elected or chosen as a Member of Majlis-e-Shoora or the Provincial Assembly. Reference in this

regard is made to the case of Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law & others (PLD 2012 Supreme Court 1089), wherein this Court has observed as follows: -

"The issue, whether a person holding citizenship of a foreign state is qualified to contest the election or not, had come for consideration before the Lahore High Court, in the case of Umar Ahmad Ghumman v. Government of Pakistan and others (PLD 2002 Lahore 521), wherein a learned Judge of this Court, Hon'ble Mr. Justice Tassaduq Hussain Jillani, as a Judge of the Lahore High Court, held that :--

"38. The contention of the petitioner's learned counsel was that the petitioner is qualified to contest the general election for the membership of the Parliament in terms of Article 62 of the Constitution which pertains to qualifications for a member of the Parliament. According to learned counsel for the petitioner, in absence of any bar for a dual national prescribed in Article 62 of the Constitution, petitioner is qualified to contest the elections and that the disqualification enumerated in Article 63(1)(c) of the Constitution comes into force only when a person has been elected as Member of the Parliament.

39. The above interpretation of the Constitutional provisions is a rather over simplification and would lead to anomalous results. Article 63(1)(c) of the Constitution explicitly mandates that "a person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State". Thus the disqualification comes into play the moment a person becomes a candidate or seeks election. This Court has declared petitioner to be a citizen of Pakistan but every citizen of a State is not allowed

to contest the election. The qualifications and disqualifications have been enumerated in the Constitution and by the law of the land. Since the petitioner has admittedly acquired citizenship of a foreign country, he is hit by the afore-referred provision and cannot contest elections unless, of course, he removes this disqualification in terms of rule 19 of the Pakistan Citizenship Rules, 1952".

6. The matter regarding making of a false declaration by a candidate contesting the election for National Assembly or the Provincial Assembly in respect of education qualification came to be considered by this Court in the case reported as Malik Iqbal Ahmad Langrial v. Jamshed Alam & others (PLD 2013 Supreme Court 179), wherein the Court has observed as follows: -

"Learned counsel for the appellant has vehemently argued that prior to 18th Constitutional Amendment, in terms of Article 62(1)(f) of the Constitution, the Court was not empowered to declare any person to be non-sagacious, not righteous or honest or an ameen, as such the observations of the Election Tribunal that the appellant was not only to contest the election in the year 2008, but was also not righteous or honest or an ameen person, was sustainable. In this regard it is to be noted that at the time of filing of nomination papers to contest the election in the year 2002, the appellant produced fake and forged education certificates and the Election Tribunal had declared him to be a impostor vide judgment dated 26.12.2002. It is to be noted that Article 62(1)(f), as it stood prior to 18th Constitutional Amendment, provides that a person shall not be qualified to elected or chosen as a Member of Majlis-e-Shoora (Parliament) unless he is sagacious, righteous, non-profligate, honest and ameen. It is clear from the plain reading of the said Article that there is no restriction upon the Court/Tribunal to declare any person to be not sagacious, righteous or ameen. Admittedly the appellant used fake documents not only in

the year 2002 but also in the year 2008 and also made false declaration making him liable to criminal action under certain provisions of PPC. In the case of Muddasar Qayyum Nahra v. Ch. Bilal Ijaz (2011 SCMR 80) this Court had upheld the findings of Election Tribunal, Punjab whereby it was held that a person who indulges into using unfair means in procuring his educational qualifications does not deserve to claim to be an honest, righteous or Ameen person so that he be assigned the high responsibilities of performing national functions of running the affairs of the country. The spirit with which the words sagacious, righteous, non profligate, honest and Ameen have been used by the Constitution of Islamic Republic of Pakistan, 1973, for the eligibility of the candidates contesting the election of Members National or Provincial Assembly cannot be allowed to be frustrated if persons who secure their educational documents through unfair means and are found guilty of such a condemnable act by the competent authority are allowed to be given entry into the doors of National or Provincial Assemblies of our country. The respondent (therein) is thus not worthy of credence and cannot be allowed to be entrusted with State responsibilities of Law Making; to be in-charge of the National Exchequer or be eligible to represent the people of Pakistan".

In our view, the test of declaration of sagacious, righteous, non-profligate, honest and ameen as laid down in the above cited case in respect of educational qualification can equally be applied to the case of holding of dual nationality with the same result.

7. In the case reported as Imtiaz Ahmed Lali v. Ghulam Muhammad Lali (PLD 2007 Supreme Court 369), this Court has held that disqualification once earned by a candidate, in view of the provisions of the Constitution and law, cannot be removed by a flux of time. Keeping in view above state of law, it becomes

apparent that while contesting the election for the Provincial Assembly PS-84, Thatta-I, the petitioner has filed a declaration, which on its face was a false and untrue declaration which will bring into application the provision of Article 62 (1) (f) of the Constitution that he is not a sagacious, righteous, non-profligate, honest and ameen. This being admitted position on the record which fact was also admitted by the learned counsel for the petitioner during the course of hearing.

8. It was argued by the learned counsel for the petitioner that the impugned order having been passed by the High Court, the petitioner applied for its suspension on the ground that the petitioner proposes to challenge the impugned order before this Court and the High Court vide order dated 09.05.2013 suspended the operation of the impugned order till 16.05.2013 and the petitioner having contested the election on 11.05.2013 has obtained highest number of votes from his constituency and by dismissing this petition it will literally amount to de-seating the petitioner. We are afraid that this submission has no force for that the petitioner was suffering from disqualification from entering into election process and this was so held by the High Court in the impugned order and it was only on the request of the petitioner that such an order was suspended for the period upto 16.05.2013. This eventuality will not make either the impugned

order of the High Court redundant or the disqualification suffered by the petitioner would be legitimized.

9. Thus we hold that the petitioner was not qualified to contest the General Election of 2013 and that his contesting of election from NA-237, Thatta-I, is of no consequence and the same are set-aside. Mr. Faisal Kamal, learned counsel for respondent No.4, in C.P.No.241-K/2013 has contended that in the wake of election of petitioner being set-aside, the runner up candidate namely Syed Riaz Hussain Shah Sheerazi be declared as a successful candidate. We are afraid that we cannot pass such declaration and that in any event it seems that the Election Commission of Pakistan will have to hold fresh election of NA-237, Thatta-I, and it is directed accordingly. These petitions were dismissed by the following short order: -

"For reasons to be recorded later, the listed petitions are dismissed with all consequences with cost of Rs.50,000/- in each case, which shall be paid to Peer Tariq Ahmed, the objector. The cost shall be deposited with the Registrar of this Court within three days from where the same shall be withdrawn by the objector against the valid receipt".

10. Above are the reasons for the aforesaid short order.

CJ.

J.

Islamabad

23.05.2013

Hashmi*

Approved for reporting

J.