

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.3748/2019

Hafiz Hamdullah Saboor

Versus

Government of Pakistan
through its Secretary Ministry of Interior & 2 others

Petitioners by : Mr Adil Aziz Qazi, Advocate.
Mr Kamran Murtaza, Advocate.
Mr Arif Majeed, Advocate.
Mr Noman Malik, Advocate.
Mr Naveed Rajpoot, Advocate.
Malik Mushtaq Ghanjera, Advocate.
Mr Muhammad Mubashir Bhatti, Advocate.
Mr Rizwan Ejaz, Advocate.
Mr Aftab Rashid, Advocate.
Raja Qaisar Ali, Advocate.
Mr Sajidur Rehman Mashwani, Advocate.

Respondents by : Syed Muhammad Tayyab, Dy. Attorney General.

Mr Obaid Ur Rehman, Law Officer, NADRA.
Mr Khalid Ishaque, Law Officer, NADRA.
Syed Junaid Jaffar, Law Officer, NADRA.

Mr Jalal Haider, Advocate for PEMRA.
Ms Laraib Kanwal, Advocate for PEMRA.
Mr Usama Akbar, Advocate for PEMRA.

Mr Zeeshan Ul Haq, Dy. Director (Ops.), NADRA.
Mr Mohsin Hameed Dogar, DGM/Legal, PEMRA.

Dates of Hearings : 22-04-2020, 07-05-2020, 13-10-2020, and
19-05-2021.

ATHAR MINALLAH, C.J.-

What would happen to a person if the latter is stripped of his or her citizenship and who does not have such a relationship with any another State? Such a person would definitely be rendered

Stateless. As aptly stated by Chief Justice of the United States Supreme Court, Earl Warren in his dissenting opinion in the case titled "*Clemente Martinez Perez v. Herbert Brownell, Jr., Attorney General of the United States of America*" [356 U.S 44 (1958)] that 'citizenship is mans' basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen.' The petitioners in the petitions listed in '**Annexure A**', attached to the judgment, complain that they have been arbitrarily stripped of citizenship by an authority which had no jurisdiction and that by doing so they have been rendered Stateless.

2. The petitioners have raised questions of pivotal public importance, affecting the fundamental rights guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the '**Constitution**'*). The petitioners are aggrieved because their respective registration as citizens of the Islamic Republic of Pakistan has either been suspended or cancelled/withdrawn. In almost all these cases the effect of the suspension, withdrawal or cancellation, as the case may be, of the registration is that the affected citizens have lost their citizenship of Pakistan and have become 'stateless'. In all these petitions, the aggrieved petitioners assert that they were born in Pakistan and, pursuant to fulfilling the requirements prescribed under the law, they were duly registered and thereafter respective Computerized National Identity Cards (*hereinafter referred to as '**CNICs**'*) were issued by the National Database and Registration Authority (*hereinafter*

referred to as the 'Authority') in exercise of powers conferred under the National Database and Registration Authority Ordinance, 2002 (*hereinafter referred to as the 'Ordinance of 2002'*). The CNIC's have either been blocked/suspended or cancelled/withdrawn pursuant to reports received from various agencies which are under the control of the Federal Government. The CNICs of the petitioners were blocked or cancelled on the sole ground that the agencies had reported that they were not citizens of Pakistan. The Authority had issued notices and, thereafter, the registrations were either blocked, suspended or withdrawn. The entire proceedings were conducted in a perfunctory and superficial manner. In order to appreciate the controversy involved in all these petitions and by way of illustration, the facts relating to the petitioner in W.P. No. 3748/2019 titled '*Hafiz Hamdullah Saboor v. Government of Pakistan through its Secretary, Ministry of Interior, etc.*' will be briefly discussed.

3. The petitioner, namely Hafiz Hamdullah Saboor (*hereinafter referred to as the 'petitioner'*) was born in a remote town of the Province of Baluchistan on 19-10-1968 and this crucial fact has not been denied. His father, namely Qari Wali Muhammad, son of Bor Muhammad, was employed by the Government of Baluchistan. Pursuant to a license granted by the competent authority on 03-04-1971, the petitioner's father had established a religious educational institution, namely Madrassa Taleem Ul Quran (*hereinafter referred to as the 'Institution'*) and the building was constructed on the private property owned by the latter. It has been asserted by the petitioner that the said land had been privately acquired by his father in 1965. The petitioner was successful in the

secondary school examinations and this fact was confirmed by the Board of Intermediate and Secondary Education Baluchistan, Quetta vide certificate, dated 19-02-1986. The University of Baluchistan, Quetta, conferred upon the petitioner the degree of Bachelors of Arts, which was formally awarded on 20-08-2002. On 14-07-1986, the District Education Officer, Pishin, had confirmed the appointment of the petitioner as a Teacher. The petitioner, his father and other family members were duly issued travel documents under the Passports Act 1974 (*hereinafter referred to as the 'Passports Act'*). The petitioner contested in the general elections held in 2002 and was notified as a returned candidate to the Provincial Assembly of Baluchistan from the constituency PB-11 Qilla Abdullah 1. The latter also served as a member of the provincial cabinet. The petitioner was later declared successful vide notification, dated 06-03-2012, as a member of the Upper House of the Majlis-e-Shoora (Parliament) i.e. the Senate of Pakistan. The petitioner's children are registered as citizens of Pakistan and one of them has the distinction of being accepted as a commissioned officer in the Pakistan Army. The Authority asserts that a report was received from one of the agencies alleging that the petitioner was not a citizen of Pakistan and, therefore, proceedings were initiated to verify his status. It is noted that the relevant public functionaries had confirmed the status of the petitioner and his antecedents. However, the Authority vide the impugned order, dated 11-10-2019, purportedly cancelled the petitioner's CNIC bearing No.54201-4851394-7 and further directed him to surrender his card within fifteen days. It is noted that the manual National Identity Card No.602-92-033673 was issued in

favour of the petitioner in 1992. On the basis of the order passed by the Authority, the Pakistan Electronic Media Regulatory Authority (*hereinafter referred to as 'PEMRA'*) vide order, dated 26-10-2019, restrained TV Channels (News & Current Affairs) from "inviting and projecting the petitioner in their programmes/talk shows, news, etc.". The petitioner has, therefore, challenged the orders passed by the Authority and PEMRA and all subsequent actions or proceedings. In the other petitions the petitioners also assert that they were born in Pakistan and pursuant to being duly registered, the Authority had issued their respective CNICs. All the petitioners have asserted that they are aggrieved because the Authority had either blocked or cancelled their respective CNICs on the sole ground that they were not citizens of Pakistan.

Arguments on behalf of the parties:

4. The learned counsels for the petitioners have argued that; the Authority is bereft of jurisdiction to suspend or cancel a CNIC on the ground that its holder is not a citizen of Pakistan; citizenship is the most valuable human right and a person cannot be made stateless in an arbitrary manner; no power vests in the Authority to adjudicate the question of citizenship; the registration of a person under the Ordinance of 2000 is affirmation of the latter's citizenship and it cannot be suspended, let alone cancelled, in a perfunctory manner; the petitioners were born in Pakistan and, therefore, their status as citizens of Pakistan cannot be altered, changed or prejudiced in any manner whatsoever by the Authority.

5. The learned counsel, who has appeared on behalf of the Authority, has contended that; the latter is empowered under section 18 of the Ordinance of 2000 to cancel, impound or confiscate cards and that the procedure for doing so has also been prescribed therein; the Ordinance of 2000 empowers the Authority to seek advice and assistance from agencies of the Federal Government to carry out the purposes *ibid*; reliance has been placed on '*Muhammad Umar v. Federation of Pakistan, through Secretary, Ministry of Interior Islamabad and 2 others*' [PLD 2017 Karachi 585], '*Najeebullah and others v. Director NADRA, Balochistan, Quetta and others*' [PLD 2016 Quetta 1], '*Khan Zaman v. Government of Pakistan through Secretary Ministry of Interior, Islamabad and 5 others*' [PLD 2011 Peshawar 47]; reference has also been made to an order passed by the august Supreme Court in C.P. No.1829/2019 titled '*NADRA v. Gulab Shah and others*' which was disposed-of by the apex Court pursuant to consent given by the parties.

6. The learned counsels have been heard and the record perused with their able assistance.

Opinion of the Court:

7. The admitted facts are that the petitioners were duly registered by the Authority under the Ordinance of 2000 after they had applied for issuance of their respective CNICs in accordance with the prescribed procedure and fulfilling the mandatory requirements. The registration was followed by the issuance of the respective CNICs

by acknowledging the crucial fact that the petitioners were citizens of Pakistan. Prior to the issuance of CNICs, most of the petitioners had obtained manual national identity cards issued under the National Registration Act 1973. It is not the case of the Authority that the petitioners have acquired citizenship of another sovereign state or that the authority competent under the relevant law had revoked, withdrawn or cancelled their citizenship. It has also not been alleged that the petitioners had given false information regarding their birth in Pakistan when they had applied for the issuance of the CNICs. There is nothing on record to show how the Authority or the concerned intelligence agency had concluded that the petitioners were not citizens of Pakistan. As would be discussed later in more detail, the Authority nor the intelligence agencies are competent to determine the question of citizenship of a person. The suspension of a duly issued CNIC or cancellation thereof has a profound and grave consequence because it virtually brings the life of an affected person to a halt and the latter, by implication, is denied the exercise of fundamental rights guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the 'Constitution'*). Such a person loses the right of employment, access to his or her own bank accounts, the right to engage in trade, business or profession. Moreover, access to education, health, etc. is denied. The family members are also equally affected. In a nut shell, the right to life guaranteed under Article 9 is virtually taken away. This phenomenon of blocking or cancelling the CNICs of citizens by the Authority in a perfunctory and arbitrary manner has remained prevalent for a long time because similar grievances have been

frequently agitated before this Court. This Court has consistently observed that the Authority was bereft of jurisdiction to adjudicate upon a question which involves the determination of the status of a person as a citizen of Pakistan and that too, on the basis of reports received from intelligence agencies which are under the control of the Government. It was observed in several cases that the petitions had been disposed of in the past because the concerned intelligence agency, after reconsideration, had changed its opinion. The petitions in hand and the grievances involved therein have raised questions of paramount public importance; whether the Authority is vested with jurisdiction to adjudicate upon and thus determine the status of citizenship of a person and, on that basis, suspend, block, cancel or revoke the registration granted under the Ordinance of 2000; whether the intelligence agencies are competent to report the factum of citizenship to the Authority; if the answer is in the negative, then which authority is competent and under what law can a person be deprived of being a citizen of Pakistan; whether a citizen can be rendered stateless and thus deprived from enjoying the fundamental rights guaranteed under the Constitution.

8. The two relevant statutes which are required to be examined in order to answer the aforementioned questions are; the Pakistan Citizenship Act 1951 (*hereinafter referred to as the 'Citizenship Act'*) and the Ordinance of 2000.

The Citizenship Act.

The expression "citizen" has been defined under Article 260 of the Constitution as meaning "a citizen of Pakistan as defined by law". Section 2(e) of the Ordinance of 2000 defines 'citizen' as meaning a person who is, or is deemed to be a citizen of Pakistan under the Citizenship Act. The distinct categories of citizenship are described under the respective provisions of the Citizenship Act which was promulgated and notified in the official gazette on 13-04-1951. The preamble declares its object as to make provisions for citizenship of Pakistan. The expression "alien" has been defined in section 2 as meaning a person who is neither a citizen of Pakistan or the Commonwealth. Section 3 is a deeming provision and describes the categories of persons who were deemed to be citizens of Pakistan on the date of commencement of the Citizenship Act. Section 4 is most crucial for the purposes of the adjudication of the petitions in hand because it explicitly declares that every person born in Pakistan after commencement of the Citizenship Act shall be a citizen by birth. The two exceptions are mentioned in clause (a) and (b) *ibid*. The scope of the exceptions is limited and restricted to only two clearly described eventualities. Birth creates a right to become a citizen of Pakistan by operation of law. The legislature has used the expression 'shall' and thus birth in Pakistan is the sole ground to become a citizen. Section 5 describes the right

to citizenship on the basis of 'descent' and the conditions and exceptions have been explicitly mentioned by the legislature. Section 5 empowers the Federal Government to register a person as a citizen who has been granted a certificate of domicile in exercise of powers conferred under section 17 and provided the latter fulfils other conditions prescribed in the provision. Section 8 confers powers on the Federal Government to register a person as a citizen residing abroad and who meets the prescribed conditions. Section 9 vests the power in the Federal Government to register a person as a citizen of Pakistan 'by naturalization' who has been granted a certificate of naturalization under the Naturalization Act 1926 and the proviso empowers to register such person under this category even if no certificate has been issued. Section 10 recognizes the right to citizenship of a married woman and the conditions in this regard have been prescribed. Subject to the conditions prescribed under section 11 the Federal Government may register a child as a citizen. Section 13 describes the conditions and procedure whereby the President may, by order, specify the persons who shall be citizens on account of incorporation of territory. Section 14 B describes conditions regarding citizenship of subjects of Jammu and Kashmir. Section 20 describes the powers of the Federal Government to register a citizen of the Commonwealth or who enjoys the status of a British protected person.

Section 14 A was inserted through the Pakistan Citizenship (Amendment) Act 1972 and it prescribes the conditions and procedure regarding 'renunciation' of the citizenship of Pakistan. Section 16 describes the power, conditions and procedure relating to 'depriving' a person of citizenship of Pakistan. Sub section 2 empowers the Federal Government to deprive a citizen of the citizenship if it is satisfied that the latter had obtained the certificate of domicile or naturalization, as the case may be, by means of fraud, false representation or concealment of any material fact. This power is thus restricted to two categories i.e. 'citizenship by migration' or 'citizenship by naturalization' under sections 6 and 9 respectively. Subsection 3 describes the power to deprive a person of citizenship by naturalization on one of the eventualities mentioned in clauses a to c. Subsection 4 vests the power in the Federal Government to deprive a person of citizenship if it is satisfied that the latter has been ordinarily a resident of another country for a continuous period of seven years and, during this period neither of the two events described in clauses a and b have happened. Subsection 5 imposes an additional condition i.e. that the Federal Government will not make an order under section 16 unless it is satisfied that it is in the public interest that the person should not continue to be a citizen of Pakistan. As a corollary, the power of

renunciation under subsections 2, 3 and 4 is subject to fulfillment of the condition unambiguously provided under subsection 5. Subsection 6 binds the Federal Government to observe the principles of due process highlighted therein before making an order under section 16. Subsection 7 vests a right in favour of the person who is proposed to be deprived of citizenship, to ask for referring his/her case to the 'Committee of Inquiry'. The composition of the said Committee has been described by the legislature. Section 16 A was inserted vide the Pakistan Citizenship (Amendment) Act 1978 and it describes how citizenship issues would be dealt with in the context of the separation of East Pakistan. Section 19 refers to the power to issue a certificate of citizenship pursuant to the filing of an application by a person if doubts exist regarding the latter's citizenship. Section 18 vests the power in the Federal Government to delegate any power conferred upon it or duty imposed under the Citizenship Act. Pursuant to powers conferred under section 23, the Federal Government has framed the Pakistan Citizenship Rules, 1952 (*hereinafter referred to as the 'Citizenship Rules'*). The Rules prescribe the procedure and requirements required to be fulfilled in relation to obtaining, renunciation or resumption of citizenship. Rule 8 sets out the procedure in case of a person who claims citizenship under section 4 i.e. citizenship by birth.

A careful reading of the Citizenship Act as a whole unambiguously shows that it is a complete self-contained special statute to deal with all matters relating to 'citizenship' of the State of Pakistan. The distinct categories have been expressly dealt with. Citizenship by birth or descent, as the case may be, are distinguishable from the other categories. In case of 'citizenship by birth' the person becomes a citizen of Pakistan automatically i.e. by operation of law. The status of such a person as a citizen is not subject to discretionary powers vested in the State as in the case of other categories e.g. citizenship by migration, naturalization etc. Rule 8 of the Citizens Rules would become relevant and attracted in cases where a person 'claims' to be a citizen by birth and seeks to obtain a certificate from the competent authority as an acknowledgment. No such process is required to be adopted by persons who are citizens by birth because it is by operation of law. Section 16 empowers the Federal Government to deprive a person of citizenship of Pakistan in certain specific and clearly described circumstances. The powers of the Federal Government under subsections 2 and 3 do not extend to 'citizenship by birth' nor 'citizenship by descent'. The power of the Federal Government in the case of circumstances described under sub section 4 of section 16 covers 'any citizen' but to justify exercising the power, the onus would be on the

competent authority to establish the eventualities explicitly mentioned in the provision and, in addition, explain the reasons for being satisfied that it would be in the public interest to deprive a citizen of the latter's citizenship. A citizen who renounces citizenship voluntarily under section 14-A may resume it in the manner provided under rule 19 B of the Citizenship Rules. Moreover, in certain specific cases, citizenship can be lost as described under section 16-A of the Citizenship Act. In a nutshell, a person cannot be denied the right of being a citizen nor deprived of it otherwise as provided under the Citizenship Act.

The Ordinance Of 2000.

The Ordinance of 2000 was published in the official gazette on 10-03-2000. The object of its promulgation has been stated in its preamble, inter alia, to provide for the registration of all persons and for the establishment and maintenance of a multipurpose database, data warehouses, etc. Section 2 defines various expressions. The expression "citizen" has been defined in clause (e) as meaning a person who is, or is deemed to be a citizen of Pakistan under the Citizenship Act. Clauses (f) and (g) define the expressions "emigrant" and "foreigner", respectively. The Authority has been established under section 3 and its purpose, object, functions and powers

are described under sections 5 and 6. Section 8 empowers the Federal Government to frame rules in order to provide for the registration of different persons or classes thereof, including citizens, foreigners and emigrants and for different things or classes thereof. Section 9 provides for the registration of citizens of Pakistan and the requirements required to be fulfilled by an applicant have been prescribed therein. Section 10 provides that the Authority, after registering a person as a citizen, shall issue or renew, or cause to be issued or renewed, in such manner and on terms and conditions, a card to be called a National Identity Card. Section 12 empowers the Authority to issue Overseas Identity Cards to such prescribed class of citizens resident abroad or such prescribed class of emigrants who have got themselves registered in the prescribed manner and such cards are called Overseas Identity Cards. Section 13 empowers the Authority to issue or renew in the prescribed manner and on the basis of the prescribed criteria, terms and conditions, cards to such classes of foreigners resident in Pakistan, whether legal or otherwise, who have got themselves registered in the prescribed manner. Section 18 vests in the Authority the power to cancel, impound or confiscate a card issued under the Ordinance of 2000. Sub section(1) empowers the Federal Government, through an order in writing, to return the card liable to be cancelled, impounded or

confiscated through separate orders. However, the legislature has explicitly provided that no order shall be made unless the person has been given notice in writing calling upon him to show cause as to why the order should not be made. Sub section (2) of section 18 restricts the scope of the powers vested in sub section (1) and the same is reproduced as follows.-

"(2) An order under sub-section (1) canceling, impounding or confiscating a card may be made only if there is reason to believe that--

- (a) the card has been obtained by a person who is not eligible to hold such card, by posing himself as eligible;*
- (b) more than one cards have been obtained by the same person on the same eligibility criteria;*
- (c) the particulars shown on the card have been obliterated or tampered with; or*
- (d) the card is forged."*

Pursuant to powers conferred under section 44, the Federal Government has made the National Database and Registration Authority (Pakistan Origin Card) Rules, 2002 (*hereinafter referred to as 'Pakistan Origin Card Rules'*) and the National Database and Registration Authority (National Identity Card) Rules, 2002 (*hereinafter referred to as the 'National Identity Card Rules'*). Moreover, the Authority, in exercise of powers

conferred under section 45 of the Ordinance of 2000, has made the National Database and Registration Authority (Application for National Identity Card) Regulations, 2002 (*hereinafter referred to as the '**Regulations of 2002**'*).

A combined reading of the Ordinance of 2000, the Rules of 2002 and the Regulations of 2002 shows that the Authority has been established for a specific purpose i.e. to register persons and to maintain the databases etc. The different categories of cards and the criteria for eligibility of each have been described under distinct provisions. For the adjudication of the petitions in hand, the discussion will be confined to the Computerized National Identity Card because of its relevance. The eligibility criterion for issuance of the card has been explicitly prescribed under section 10 read with section 9 i.e. a citizen who has attained the age of eighteen years and has been registered under section 9. The registration of a person and issuance of CNIC under sections 9 and 10 is an affirmation by the State that the latter is a citizen of Pakistan. After issuance of the card, its particulars can only be modified, altered or changed in accordance with the procedure and fulfillment of requirements described under Rule 13 of the Rules of 2002. There is no cavil to the proposition that the presumption of truth is attached with the card and the particulars recorded therein. The scheme of the Ordinance of 2000, read with the Rules of 2002, envisages registration and then issuance of the

card on the basis of information and documents submitted by the applicant. The alteration, modification or changes in an already issued card are also pursuant to an application filed by the holder thereof. Section 18 empowers the Authority to cancel, impound or confiscate, subject to the happening of the eventualities described in clauses (a) to (d) of sub section (2) *ibid*. The legislature has explicitly confined the power vested under section 18 (1) to the four grounds described under section 18 (2). Moreover, exercising the power is subject to fulfillment of the requirements of due process i.e issuance of a show cause notice. However, if disputed and contentious questions are involved which require the recording of evidence, then there is no provision in the Ordinance of 2000 empowering the Authority to adjudicate the matter. The Authority is definitely not empowered to adjudicate upon the question of citizenship of a person because it has to be exclusively dealt with under the Citizenship Act. Once a card has been issued then the incorporated particulars can only be changed, modified or altered in accordance with the manner prescribed under rule 13 of the Rules of 2002. The said rule does not entitle a third party to have the particulars changed. Nonetheless, changes or modifications can be made in execution of a decree or order passed by a competent court. Likewise, a card can be blocked pursuant to an order by a competent court e.g. in the case of a person declared as an

absconder under the law. In case of renunciation, deprivation or loss of citizenship, the blocking, cancellation or revocation of the card would be subject to completion of proceedings and passing of an order by the respective competent authorities under the Citizenship Act. The Authority is bereft of jurisdiction to initiate proceedings on the basis of reports received from intelligence agencies regarding the status of citizenship of a person who has been registered as a citizen. The latter, at best, can report a case of alleged fraud, misrepresentation or concealment of material facts along with the relevant material, to the competent authority empowered under the Citizenship Act. It is noted that the reports of intelligence agencies have to be processed and placed before the competent authority in accordance with the prescribed procedure and in the manner provided under the Rules of Business, 1973. Nonetheless, the Authority, on the basis of such reports, cannot assume jurisdiction otherwise vested in the prescribed competent authority under the Citizenship Act. The right of appeal provided under sub section 2 of section 18 of the Ordinance of 2002 cannot be a substitute to the exercise of powers vested in the Federal Government under the Citizenship Act. The learned counsels who have appeared on behalf of the Authority have confirmed that the Federal Government has not delegated its powers to deprive a citizen of citizenship.

Conclusion:

9. The survey of the two aforementioned statutes clearly shows that all matters relating to or in connection with the 'citizenship' of a person are covered and dealt with under the Citizenship Act whereas the Ordinance of 2000 has a distinct object and purpose. The Authority, after a person has fulfilled all the prescribed requirements, registers the latter as a citizen under sections 8 and 9 and thereafter issues a CNIC under section 10 *ibid*. The registration and issuance of a CNIC is a certification or acknowledgment that the person was an eligible citizen of Pakistan. The CNIC is a testament on behalf of the State of Pakistan that its holder is a citizen and thus a presumption of truth is attached to it. The Authority, under section 18(2)(a) of the Ordinance of 2000, is empowered to cancel, impound or confiscate a CNIC issued under section 10 if there are reasons to believe that the holder was not eligible and had obtained the card by posing to be eligible. In the petitions in hand the question of eligibility is in the context of citizenship of the petitioners. The Authority, pursuant to receiving information from one of the agencies, had purportedly initiated proceedings by blocking the CNIC or had recklessly adjudicated the status of an already registered citizen and consequently cancelled, impounded or confiscated the card. In essence the Authority, on mere suspicion or after adjudicating upon the status of a registered citizen, had either blocked or cancelled the cards, as the case may be. Was the Authority vested with jurisdiction to initiate proceedings regarding 'eligibility' stemming from 'citizenship'? The answer is an

emphatic NO. It is noted that the question of 'eligibility' having a nexus with 'citizenship' could only have been adjudicated by the competent authority vested with jurisdiction in this regard and that too in the manner provided under the Citizenship Act read with the Citizenship Rules. The procedure adopted by the Authority whereby cases are referred to District Committees has no backing of the law and ultra vires the Citizenship Act and the Citizenship Rules. Once the person was declared as not being a citizen of Pakistan and adjudication under the aforementioned statute had attained finality only then would the Authority have been empowered to exercise its powers under the Ordinance of 2000, particularly under section 18(2)(a) *ibid*. As discussed above, the Citizenship Act is a complete self contained statute governing all matters relating to and in connection with the status of a person as a 'citizen'. The legislature has clearly described the various categories of 'citizenship' and has provided statutory safeguards so that no person is deprived of the right of citizenship arbitrarily or in a reckless manner. No person can be deprived of citizenship except in the manner and subject to the conditions provided under section 16 of the Citizenship Act. Moreover, in the case of birthright citizenship explicitly acknowledged under section 4, if the competent authority i.e. the Federal Government on the basis of credible information has reasons to believe that a person is not eligible as a citizen then it may proceed under subsections 6 and 7 of section 16 or adopt the procedure prescribed under rule 8 of the Citizenship Rules. The course of action adopted by the Authority in order to determine the eligibility of an already registered citizen on the basis of the citizenship of the latter is ultra vires the Citizenship

Act read with the Citizenship Rules. The procedure regarding referring the cases to the purported District Committees is also alien to the statutory provisions and safeguards provided under the aforementioned statute. The legislature, in its wisdom, has not vested the Authority with the power to suspend or block a CNIC and as already noted, in order to do so a judicial order by a competent court would be required. Blocking a card would tantamount to suspending the citizenship of a registered citizen and exposing the latter to the horrendous consequences that follow. It is, therefore, declared that the Authority is bereft of jurisdiction or power to directly or indirectly determine or adjudicate upon the status and eligibility of a person's citizenship who has already been registered as a citizen. It is further declared that the exercise of powers conferred under section 18(2)(a) of the Ordinance of 2000 on the ground of eligibility relating to citizenship are subject to determination or adjudication made by the competent authority and in the manner provided under the Citizenship Act read with the Citizenship Rules. The Authority is bereft of the power to block, suspend, impound or confiscate a CNIC on the ground of eligibility relating to citizenship unless an order passed by the competent authority under subsection 6 of section 16 of the Citizenship Act has attained finality or the Authority has been informed that the competent authority has either confirmed renunciation of citizenship under section 14 A or its loss under section 16 A, as the case may be.

10. The petitioners assert that they were born in Pakistan and, on the basis of reports received from one of the intelligence agencies, the Authority, without having jurisdiction and in an

arbitrary manner, blocked or cancelled their CNICs. The respective agencies had reported that the petitioners were not citizens of Pakistan. The Authority issued notices. Perusal of the notices shows that particulars of the petitioners were filled in a pre-published standard form. Without disclosing the material to the petitioners and denying them the right of response on the touchstone of the principles of due process, the Authority either blocked or in some cases cancelled the CNICs of the petitioners. In a perfunctory manner the petitioners were deprived of being citizens of Pakistan merely because an intelligence agency had reported so. Despite the devastating impact of rendering the petitioners Stateless, no reasoned order was passed by the Authority. The sole ground for blocking or cancellation of the CNICs of the petitioners was that they had falsely declared themselves as citizens of Pakistan.

11. Citizenship is the most valuable basic right of a human. All other rights, whether social or political, cannot be enjoyed if a person does not have a bond of citizenship with a State. The fundamental rights guaranteed under the Constitution are rendered meaningless if a person is stripped of citizenship. It has a devastating impact on human lives. A person once registered as a citizen cannot be deprived of citizenship otherwise than as is provided under the law. Article 15 of the 1948 Universal Declaration of Human Rights declares that 'everyone has the right of nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality'. Article 7 of Convention on the Rights of a Child recognizes that every child has the right to acquire a nationality. The 1954 Convention relating to the Status of Stateless Persons and the

1961 Convention on the Reduction of Statelessness discourages States from creating statelessness. In a nut shell, citizenship is the sole and effective bond between a State and a human which enables the latter to enjoy all the rights guaranteed under the Constitution. It entitles the individual to the protection of the State and to enjoy civil and political rights. A State cannot adopt policies which will have the effect of even inadvertently rendering a person stateless. The Citizenship Act and the Citizenship Rules and the statutory safeguards prescribed therein are consistent with the mandate of the Constitution and the international obligations. Citizenship is so precious a right that cannot be taken away in a reckless or perfunctory manner. The facts relating to one of the petitioners, namely Hafiz Hamdullah Saboor, have been discussed above. It is not even denied that he was born within the territory of Pakistan. He and his father have lived in Pakistan all their lives. They own properties and the petitioner has held various public offices as an elected representative. His son has the distinction and privilege of having been accepted as a commissioned officer in the Armed Forces. There could not have been a more glaring example of arbitrary and reckless action by the Authority of purportedly depriving a registered citizen of his citizenship and that too when the latter had no jurisdiction under the Ordinance of 2000 to do so. In all the other petitions the petitioners assert that they were born in Pakistan and this factum has neither been verified nor adjudicated upon by the competent authority in accordance with the provisions of the Citizenship Act read with the Citizenship Rules. The Authority has exposed itself to be

sued for claim of damages for the devastating consequences and unimaginable mental agony suffered by the petitioners.

12. The Citizenship Act and the Ordinance of 2002 have already been discussed. The purpose and object of the two statutes is distinct. All matters relating to citizenship are dealt with under the Citizenship Act. The legislature, in its wisdom, has expressly recognized and upheld birthright citizenship as a right. A plain reading of section 4 unambiguously shows that the right is not subject to any condition. Birthright citizenship automatically makes a person who is born in Pakistan a citizen and in this regard the latter does not have to fulfill any prerequisites to become a citizen unlike in the case of other categories such as 'citizenship by naturalization' or 'citizenship by immigration'. It is not a privilege granted by the State but a right acquired by law. The onus is on the State to establish that, despite having been born in Pakistan, the person would not come within the mandate of section 4 of the Citizenship Act. There are about thirty five countries across the globe which have incorporated birthright citizenship in their domestic laws and Pakistan is one of them. There appear to be some countries where birthright citizenship is offered on conditional basis but that is not the case under the Citizenship Act. The United States of America, following the Civil War, had declared birthright citizenship in 1868 and it was accordingly incorporated as the Fourteenth Amendment in the Constitution. The United Kingdom withdrew this privileged legal right more than three decades ago. Section 4 of the Citizenship Act is unambiguous and the right is unqualified nor subject to fulfilling conditions. It is a right acquired by operation of law unless the State

of Pakistan is able to discharge its onus of establishing that the person does not fall within its ambit.

13. It was argued before this Court that due to wrong policies in the past ineligible persons had managed to obtain CNICs. If so, then the policy makers or public office holders responsible for formulating such policies and misgovernance ought to be made accountable but this definitely does not justify reckless and arbitrary proceedings in violation of laws enforced in Pakistan. In each case the competent authority is required to make determination of status of the person in accordance with and in the manner prescribed under the law. It is the constitutional duty of public functionaries to act strictly in accordance with the mandate of law. No innocent and eligible citizen can be allowed to suffer the devastating consequences of statelessness on account of reckless actions of public functionaries as appears to be the case in the petitions in hand. If the intelligence agencies have credible information to the effect that ineligible persons have been registered as citizens, then they are required to report the matter alongwith credible material to the respective administrative Ministry or Division, as the case may be. The latter if satisfied that a prima facie case is made out would then refer the case for determination to the designated competent authority under the Citizenship Act read with the Citizenship Rules. The intelligence agencies are bound to adopt the procedure prescribed under the Rules of Business, 1973 and also to ensure that the fundamental rights of eligible citizens are protected and that they are not exposed to the consequences of statelessness.

14. It is the duty of this Court to interpret the law promulgated by the legislature and it cannot read into a statute something not provided therein. The Majlis-e-Shoora (Parliament) is the competent Constitutional forum to amend the law. Nonetheless, the factum of birth in Pakistan or depriving a person from citizenship can only be competently adjudicated upon and determined by the competent authority declared for this purpose and in the manner provided under the Citizenship Act read with the Citizenship Rules and once the question of eligibility had attained finality only then could the Authority have competently exercised its powers provided under section 18(2)(a) of the Ordinance of 2000. The petitions are held to be maintainable on the touchstone of the law enunciated by the august Supreme Court in the cases titled "*Lt. Col. Nawabzada Muhammad Amir Khan vs. The Controller of Estate Duty and others*", [PLD 1961 SC 119], "*The Muree Brewery Co.Ltd vs Pakistan through the Secretary to Government of Pakistan, Works Division and 2 others*", [PLD 1972 SC 279], '*Commissioner of Income Tax, Companies-II and another vs. Hamdard Dawakhana (Waqf), Karachi*', [PLD 1992 SC 847], and '*Khalid Mehmood vs Collector of Customs, Customs House, Lahore*', [1999 SCMR 1881] because the actions, proceedings and orders passed by the Authority in the cases in hand were wholly bereft of authority and jurisdiction.

15. The order, dated 26-10-2019, issued by PEMRA and impugned in W.P. No.3748/2019 whereby the TV Channels have been restrained from "inviting and projecting the petitioner in the programs/talk shows, news, etc" was an obvious misuse of authority vested under the Pakistan Electronic Media Regulatory Authority

Ordinance, 2002. It was issued in derogation of the rights guaranteed under Articles 19 and 19-A of the Constitution. The said statute and the rules/regulations made thereunder do not vest absolute and unbridled powers in PEMRA to regulate the content or participants of a programme. There is nothing on record to justify passing of the impugned order by PEMRA. The order, dated 26-10-2019, is declared to have been issued illegally and wholly without authority and jurisdiction.

16. In the light of the above the petitions are **allowed**. The Authority is directed to restore the CNICs of the petitioners forthwith. Needless to mention that the competent authority under the Citizenship Act, read with the Citizenship Rules, would not be precluded from proceeding in the prescribed manner in case it is of the opinion that, based on credible material, a prima facie case is made out to deprive a person of citizenship or that the latter was not eligible for it.

(CHIEF JUSTICE)

Approved for reporting.

<u>ANNEXURE - A</u>	
<u>S. No.</u>	<u>Writ Petition</u>
1.	<u>W.P. No.3748/2019</u> "Hafiz Hamdullah Saboor v. Government of Pakistan, etc."
2.	<u>W.P. No. 1050/2020</u> "Abdul Raheem & 4 others v. Federation of Pakistan through Secretary Ministry of Interior& 2 others"
3.	<u>W.P. No. 3847/2018</u> "Naik Muhammad, etc. v. Federation of Pakistan, etc."
4.	<u>W.P. No. 4546/2018</u> "Muhammad Hanif Khan, etc. v. Government of Pakistan, etc."
5.	<u>W.P. No. 484/2019</u> "Mst. Sahib Jan, etc. v. Government of Pakistan, etc."
6.	<u>W.P. No.2175/2019</u> "Mubarak Khan, etc. v. Government of Pakistan, etc."
7.	<u>W.P. No.3395/2019</u> "Lal Muhammad, etc. v. NADRA"
8.	<u>W.P. No. 3497/2019</u> "Hayat Khan, etc. v. Chairman NADRA, etc."
9.	<u>W.P. No. 308/2020</u> "Shah Mardan v. Chairman NADRA"
10.	<u>W.P. No. 527/2020</u> "Muhammad Hanif v. NADRA"
11.	<u>W.P. No.1585/2020</u> "Najeebullah, etc. v. Federation of Pakistan, etc."