

Form No: HCJD/C-121

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.4052 of 2018

Abdullah Khan and another.

Versus

Election Commission of Pakistan, Islamabad and 03 others.

Writ Petition No.1513 of 2019

Begum Tahira Bukhari.

Versus

Election Commission of Pakistan, Islamabad and 02 others.

Writ Petition No.1514 of 2019

Shaista Pervaiz.

Versus

Election Commission of Pakistan, Islamabad and 02 others.

Petitioners By : Mian Abdul Rauf, Tariq Mahmood and Shahid Rasool Chaudhary, Advocates (in Writ Petition No.1513 of 2019 and Writ Petition No.1514 of 2019).
Mr. Osama Azeem Chaudhry, Advocate (in Writ Petition No.4052 of 2018).

Respondents By : Mr. Sana Ullah Zahid, Advocate for respondent No.1/Election Commission of Pakistan.
Mr. Sajeel Sheryar Swati, Ch. Hasan Murtaza Mann and Barrister Saman Mamoon, Advocates for respondent No.2.
Barrister Gohar Ali Khan, Advocate for respondent No.3.

Sardar Shahbaz Ali Khan Khosa, Syed Muhammad Hassan Gillani and Syed Iqbal Hussain Shah, Advocates for respondent No.4.

Mr. Arshad Mahmood Kiyani, learned Deputy Attorney-General.

Date of Hearing : 06.12.2019

AAMER FAROOQ, J. - This judgment shall dispose of the instant petition as well as Writ Petition No.1513 of 2019 and Writ Petition No.1514 of 2019 as common questions of law and facts are involved.

2. All the above-mentioned petitions are in the nature of quo warranto; in Writ Petition No.4052 of 2018, the petitioners have challenged the election of respondents No.2 to 4, who are currently Members, National Assembly elected from special seats for women and belong to Pakistan Tehreek-e-Insaf (PTI). The petitioner, in Writ Petition No.1513 of 2019, has challenged the election of respondent No.2 namely Ms. Maleeka Bukhari, as Member National Assembly on special seats for women and the petitioner in Writ Petition No.1514 has challenged the election of respondent No.2 namely Ms. Kanwal Shauzab as Member National Assembly on special seats for women.

3. Learned counsel for the petitioner, in Writ Petition No.4052 of 2018, *inter-alia*, contended that respondents No.2 to 4 have been elected on special seats for women from Pakistan Tehreek-e-Insaf (PTI). In this behalf, it was contended that the referred three respondents were not eligible to be elected as Member National Assembly (MNA) on the touchstone of Articles 62 and 63 of the Constitution of Islamic Republic of Pakistan, 1973 read with the provisions of Elections Act, 2017. Learned counsel took the Court through the

credentials of all respondents and substantiated his argument regarding disqualification.

4. In respect of respondent No.2, it was contended that Ms. Maleeka Bukhari being a dual national, on the relevant date, was not qualified to be elected. It was pointed out that as per the notification of Election Commission of Pakistan, the last date for filing of nomination papers was 11.06.2018 (06:00 P.M.) and on the said date at the prescribed time the application for renunciation of the nationality of United Kingdom, moved by respondent No.2, had not been accepted. It was submitted that as per the press release and notification of Election Commission of Pakistan, the time and date for filing of the nomination papers was 11.06.2018 till 06:00 P.M.; that as per the email dated 11.06.2018, which was received at 19:42 hours from the home office United Kingdom. The application was accepted after the requisite hours; hence the renunciation was accepted after the deadline and on that score at the relevant time respondent No.2 was not eligible and qualified to be elected as Member National Assembly in line with Article 63(1)(c) of Constitution of Islamic Republic of Pakistan, 1973.

5. It was contended that respondent No.3 filed her nomination papers before the Returning Officer on 08.06.2018; that respondent No.3 held a foreign passport, which she surrendered vide declaration of renunciation dated 25.03.2013 and became operative on 04.04.2013. It was submitted that alongwith the nomination papers respondent No.3 filed an affidavit but she did not disclose the fact that she was a national of United Kingdom and had renounced her nationality in 2013.

6. With respect to respondent No.4, learned counsel for the petitioners contended that referred respondent has been sworn as a Member

National Assembly from Constituency NA-280 and filed her nomination papers with the Returning Officer on 07.06.2018; she swore an affidavit on 13.06.2018 stating on oath that she was registered as a voter at serial No.428 in the electoral roll of electoral area F-8/3 of Tehsil/Taluka, Islamabad. It was submitted that she also contested election for Senate in March, 2018, wherein she alongwith the name of her husband stated her address to be of House No.575, Street No.110, I-8/4, Islamabad and her vote details as Serial No.420 in the electoral roll of Federal Capital. It was submitted that since respondent No.4 tendered a wrong affidavit and provided wrong credentials, hence she is not a sadiq and ameen and not eligible to hold the office of Member National Assembly. It was submitted that she filed two writ petitions in this Court in which she made a misstatement and even was reprimanded for the same by this Court.

7. It was submitted that in light of the conduct of respondents No.2 to 4, they are not sagacious, righteous, non-profligate, honest and amen in terms of Article 62(1)(f) of the Constitution.

8. Learned counsel for the petitioner, in Writ Petition No.1513 of 2019, submitted somewhat the same arguments and contended that respondent No.2 was dual national at the relevant time and date. It was reiterated that she had not effectively renounced her nationality of United Kingdom on 11.06.2018 till 06:00 P.M. It was submitted that it is only in the affidavit sworn on 19.06.2018 that she highlighted the fact that she is a citizen of United Kingdom.

9. Learned counsel for the petitioner, in Writ Petition No.1514 of 2019, *inter-alia*, contended that respondent No.2 is not sagacious and righteous in terms of Article 62(1)(f) inasmuch as she was not qualified and

yet managed to get into the parliament by deceitful means; she was a resident of Islamabad as per her earlier nomination papers and deceitfully had her vote transferred to Sargodha by misleading this Court as well as Election Commission of Pakistan. Attention was drawn towards the orders of this Court passed in Writ Petition No.2301 of 2018, dated 11.06.2018 as well as Writ Petition No.2294 of 2018, dated 08.06.2018 as well as dated 27.06.2018. Learned counsel pointed out that Election Commission of Pakistan though filed Intra Court Appeal but that was barred by limitation, hence was dismissed, vide order dated 06.08.2018 passed in ICA No.330 of 2018.

10. Learned counsel for the petitioners collectively placed reliance on cases reported as *"Suo Motu Case No.8 of 2018"* (**PLD 2019 SC 201**), *"Raja Shoukat Aziz Bhatti Vs. Major Iftikhar Mehmood Kiani and another"* (**PLD 2018 SC 578**), *"Syed Mmehmood Akhtar Naqvi Vs. Federation of Pakistan through Secretary Law and others."* (**PLD 2012 SC 1089**), *"Syed Nawabzada Iftikhar Ahmad Vs. Chief Election Commissioner, Islamabad and others"* (**PLD 2010 SC 817**), *"Imran Ahmad Khan Niazi Vs. Mian Muhammad Nawaz Sharif etc."* (**PLD 2017 SC 265**), *"Imran Ahmad Khan Niazi Vs. Mian Muhammad Nawaz Sharif, etc"* (**PLD 2017 SC 692**), *"Mian Muhammad Nawaz Sharif Vs. Imran Ahmad Khan Niazi and others"* (**PLD 2018 SC 01**) and *"Muhammad Hanif Abbasi Vs. Jahangir Khan Tareen and others"* (**PLD 2018 SC 114**).

11. Learned counsel for respondent No.2, *inter-alia*, submitted that the petitioner was and is qualified and eligible to be elected and hold the office of Member National Assembly. In this behalf, it was reiterated that respondent No.2 was citizen of United Kingdom, however, she filed nomination papers on 10.06.2018 and on the said date had already made an application for renunciation of her nationality of United Kingdom. It was pointed out that the said application was accepted on 11.06.2018 and intimation thereof was

received through email. It was submitted that the affidavit sworn by respondent No.2 after the decision of the Hon'ble Supreme Court of Pakistan on 19.06.2018 clearly depicts the position that respondent No.2 has renounced her nationality of United Kingdom. It was submitted that the instant petition is not maintainable inasmuch as the matter was agitated before the Returning Officer, who held that respondent No.2 is not qualified. Appeal was preferred before the Appellate Tribunal, which allowed the appeal and in light of the affidavit as well as the acceptance of the renunciation held the petitioner to be qualified and eligible. Learned counsel submitted that in light of the decision of the Appellate Tribunal the controversy has been put to rest inasmuch as no challenge was made to the said finding. It was contended that even otherwise in light of the recent pronouncements of the Hon'ble Supreme Court of Pakistan, the relevant date is not only the filing of the nomination papers but also the last date for filing of the nomination papers and the scrutiny of the same. Reliance was placed on "*Waqas Akram Vs. Dr. Muhammad Tahirul Qadri and others*" (**2003 SCMR 145**), "*Income Tax Officer, Central Circle II, Karachi and another Vs. Cement Agencies Ltd.*" (**PLD 1969 SC 322**), "*Suo Motu Case No.8 of 2018*" (**PLD 2019 SC 201**), "*All Pakistan Newspapers Society and others Vs. Federation of Pakistan and others*" (**PLD 2004 SC 600**), "*Asif Hassan and others Vs. Sabir Hussain and others*" (**2019 SCMR 1720**), "*Sharfuddin Vs. The Zonal Municipal Committee, District South, Karachi*" (**1994 MLD 1062**) and "*M/s Amar Nath Om Parkash and others Vs. State of Punjab and others*" and "*M/s The Food Corporation of India Vs. State of Punjab and others*" (**AIR 1985 SC 218**). Learned counsel further contended that no material fact was concealed in the affidavit filed by respondent No.2, wherever there is inadvertent and honest omission the same carries not weight. Learned counsel placed reliance on "*Khawaja Muhammad Asif Vs. Muhammad Usman Dar*" (**2018 SCMR 2128**)

as well as "*Muhammad Hanif Abbasi Vs. Jahangir Khan Tareen*" (**PLD 2018 SC 114**). It was contended that though the nomination date has not been defined in the Elections Act, 2017 but it was in Representation of People Act, 1977 and since 2017 Act is a consolidated Act and in case of any omission therein guidance can be sought from the repealed Act. Reliance was placed on "*M. Abdul Bari and others Vs. West Pakistan Soil Reclamation Board, Lahore and others*" (**PLD 1966 SC 451**), "*Haji Mian Muhammad and another Vs. Ghulam Mustafa*" (**PLD 1973 SC 394**), "*Messrs M. M. Ispahani Ltd. Vs. Messrs Pakistan Trading Company*" (**PLD 1966 Dacca 54**), "*Federation of Pakistan Vs. Haji Muhammad Saifullah Khan and others*" (**PLD 1989 SC 166**).

12. Learned counsel for respondent No.3 submitted that respondent No.3 was national of United Kingdom but she renounced her nationality in 2013 and since then has not acquired nationality of any other country. It was submitted that in light of the referred position the affidavit sworn was in accordance with the facts and nothing was concealed. It was contended that the disqualification as provided in Article 63(1)(c) is not permanent in nature and once any citizen of Pakistan is a sole national/citizen he is eligible and qualified to be elected as such.

13. Learned counsel for respondent No.4, *inter-alia*, contended that respondent No.4 has not concealed any fact rather made an application for transfer of a vote from Islamabad to Sargodha, which was not done and had filed a writ petition in this Court, which was disposed of. It was submitted that a second writ petition was filed, which was accepted by way of direction to Election Commission of Pakistan to transfer the vote of respondent No.4 from Islamabad to Sargodha and on the directions of this Court the needful was done by Election Commission of Pakistan, which order attained finality as

appeal filed by Election Commission of Pakistan was barred by limitation. It was further contended that no adverse remark was passed by this Court while deciding the second writ petition and only respondent No.3 had been admonished, which fact clearly shows that no adverse inference can be drawn from the said judgment of this Court; that in the application filed for election for Senate, it was mentioned correctly that respondent No.4 is resident of Islamabad, however, upon transfer of her vote to Sargodha the information was given accordingly.

14. In rebuttal, learned counsel for the petitioners, *inter-alia*, contended that there is no requirement of declaration while hearing and granting writ of quo warranto in terms of Article 62(1)(f). Reliance was placed on "*Sami Ullah Khan Baloch Vs. Abdul Karim Nowsherwani and others*" (**PLD 2018 SC 405**), however, this Court in a writ petition under Article 199 *ibid* can grant declaration.

15. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

16. Before embarking on examination of the case on merit some key elements regarding the law in question and the nature of writ of quo warranto need to be focused. The petitioners in principal have placed reliance on two Articles of the Constitution of Islamic Republic of Pakistan for disqualification of respondents No.2 to 4. Emphasis has been placed on Article 62(1)(f) according to which the person shall not be qualified to be Member of a Parliament unless he is sagacious, righteous, non-profligate, honest and ameen and there being no declaration to the contrary by a court of law. The second Article which is of importance is Article 63(1)(c), which provides as a

disqualification that if a Member of parliament ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State. The law governing the election, qualification and disqualification of Members; conduct of election, transfer of votes and voting roll now is governed by the Elections Act, 2017; the said Act is a consolidating Act and replaces various statutes on the subject. Under Section 57, the election programme is to be notified by the President after consultation with the Election Commission of Pakistan; under sub-section 2, within seven days of the announcement of the programme, the Election Commission of Pakistan is to notify in the official Gazette and by publication on its website, the relevant schedule which, *inter-alia*, is to provide the last date for making nominations, the scrutiny of nomination papers, the filing of objections, the decision for the same, conduct of election and even the announcement of the result. Under Section 60 *ibid*, the nomination for elections is to be made and under sub-section 2 thereof every nomination has to be made by a separate nomination papers on Form-A signed by both the proposer and seconder alongwith solemn affirmation made and signed by the candidate, which is to be accompanied by, *inter-alia*, a declaration that he fulfills the requirements and qualifications specified in Article 62 and is not subject to any of the disqualifications specified in Article 63 for being elected as a Member.

17. As noted above, the instant petitions are in the nature of quo warrant; a writ of quo warranto is a kind of writ petition, provided in the Constitution [Article 199(1)(b)(ii)], the Members of National Assembly for that matter Senate are acknowledged and recognized to be holders of public office for the purposes of writ of quo warranto. The proceedings in the writ of quo warranto generally are inquisitorial, as information is laid before the Court and the Court inquires upon the eligibility and qualification of the holder of public

office. In a recent judgment by the Hon'ble Supreme Court of Pakistan in case titled "*Asif Hassan and others Vs. Sabir Hussain and others*" (**2019 SCMR 1720**), held that a writ in the form of quo warranto is an extraordinary discretionary jurisdiction and the Court is not bound to exercise such jurisdiction in each and every case specially where on account of *laches* the matter has lost its significance or in case of minor discrepancies, sheer curable technicalities or where the approach is doctrinaire unless it is shown that non-interference would result in grave injustice or would amount to endorsing the retention of illegal gains. It was further observed that where the eligibility of a public servant is under attack on the ground of such public servant did not fulfill the substantive condition of eligibility, for such office on the cut-off date prescribed in the process and such violation of the substantive statutory requirement could not be over looked merely on the ground that pending actions in the Court such government servant has met the required conditions of the office.

18. The attack on the eligibility of respondent No.2 to hold the position of Member National Assembly has been made solely on the ground that at the time of filing of the nomination papers she was still citizen of United Kingdom. Election Commission of Pakistan notified the election schedule on 03.06.2018. As per the said notification the dates for filing of the nomination papers with the Returning Officer by the candidates were from 04.06.2018 to 11.06.2018; publication of the names of the nominated candidates was 11.06.2018 and the last date for scrutiny of the nomination papers was 19.06.2018. Respondent No.2 filed nomination papers on 10.06.2018, however, prior to that she had filed the application with Home Office United Kingdom for renunciation of her citizenship of United Kingdom. The application was on the requisite form and contained the material information. Objections were taken to the candidature

of respondent No.2 on the basis that she is still citizen of United Kingdom. The referred objection was upheld by the Returning Officer but was decided in favour of referred respondent by the Appellate Tribunal, vide order dated 23.06.2018 (Election Appeal No.89-R of 2018), no further challenge was made to the said order. The order of the Election Appellate Tribunal is dated 19.06.2018. Admittedly, respondent No.2 received her acceptance of renunciation application on 11.06.2018 at approximately 06:00 P.M. Respondent No.2 in light of the judgment of the Hon'ble Supreme Court of Pakistan tendered affidavit (judgment reported as "**PLD 2018 SC 678**" titled "*Speaker National Assembly of Pakistan, Islamabad and others Vs. Habib Akram and others.*"), in which she stated that she has announced her citizenship of United Kingdom. Petitioners have placed reliance on the order of Hon'ble Supreme Court of Pakistan in Civil Appeal No.1019 of 2018, dated 10.10.2018 to substantiate the plea that respondent No.2 at material time was disqualified. In the referred case, the august Apex Court in the short order observed that the election of respondent No.1 is declared as void for the reason that he was not qualified to contest the election on the date when he filed the nomination papers because he was a dual national at that of time and subsequently has not been able to establish the renunciation of his foreign nationality on account of lack of royal decree, which is the requirement. The august Apex Court in celebrated judgment titled "*Suo Motu Case No.08 of 2018*" (**PLD 2019 SC 201**) regarding dual nationality of parliamentarians revisited the law. The said judgment is of seven judges of the august Apex Court and in detail examines the law. Since the qualification or disqualification of respondent No.2 hinges upon the interpretation of the said judgment, it is appropriate to reproduce the relevant paragraphs of the same, which are as follows:-

"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".

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, subsection (3) of the Act of 1951, was added to Section 14, which reads as follows:

"14(3) Nothing in subsection (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, Ministry of 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 and 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.Asam 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.

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 Sarwar, 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."

The careful reading of paragraphs of 34 and 35 of the above judgment clearly show that the date set for disqualification of the candidature as provided in Article 63(1)(c) is not really confined only to filing of the nomination papers,

which generally is the law with respect to all qualifications and disqualifications and also can be inferred from Section 60(2) of Elections Act, 2017; rather a flexible approach was adopted by making the relevant dates for the purposes of qualifications/disqualifications regarding cessation of dual nationality as filing of the nomination papers; last date for filing of the nomination papers and the scrutiny of the documents. In paragraph 35, while reproducing the short order again the august Apex Court reiterated that if a person has dual nationality on the relevant dates he/she is disqualified under Article 63(1)(c). The Hon'ble Supreme Court discussed almost the entire case law on the subject, hence there is no need for the said case law to be discussed. As noted above, since this is the latest judgment on the issue and exhaustively deals with the law, hence holds the field. On the touchstone of the above judgment the renunciation of respondent No.2 had not been accepted when she filed nomination papers on 10.06.2018 but was accepted on 11.06.2018, the last date for filing of the nomination papers; at the time documents were scrutinized by the Returning Officer the application for renunciation had been accepted. In the affidavit filed in compliance of the judgment of the Hon'ble Supreme Court the said fact was stated categorically, hence it can safely be concluded that respondent No.2 before the end of the material/relevant dates had renounced her citizenship of United Kingdom, therefore, was eligible and qualified to participate in the election and be elected.

19. In so far as respondent No.3 is concerned, it is the case of the petitioners that she had renounced her nationality while contesting election in the year 2013 but when she submitted her nomination papers and filed an affidavit in the year 2018 she did not mention that she had earlier renounced her nationality of United Kingdom. It is not the case of the petitioners that after 2013 renunciation, respondent No.3 has re-acquired the citizenship of

United Kingdom rather the sole basis for attacking her credentials is that in the affidavit she has not mentioned that she had renounced her citizenship of United Kingdom. Since respondent No.3 had not re-acquired citizenship of United Kingdom, there was no need for her to state so. She categorically stated in her affidavit that she is citizen of Pakistan and does not suffer from disqualification under Article 63(1)(c), which is sufficient for the purposes of election. Moreover, her candidature and holding of position is being questioned on the basis that she does not fulfill the requirements of Article 62(1)(f). For person to be disqualified on the basis of Article 62(1)(f) there has to be a declaration from the Court of competent jurisdiction for the said purposes as is borne out by bare reading of the referred Article. There is no basis or justification, on the basis of above facts and documents, for this Court to make declaration of the kind petitioners pray.

20. Likewise, in case of respondent No.4, the affidavit to the effect that she earlier had stated that she was on the voter's roll in Islamabad which was not true on the fact that she had changed it to Sargodha. In this behalf, as noted above, respondent No.4 filed petitions before this Court. In Writ Petition No.2294 of 2018, vide order dated 08.06.2018, this Court directed the Returning Officer to accept the nomination papers of respondent No.4 for seat reserved for women on the basis of vote certificate, which would be subject to transfer. Eventually, the writ petition was decided by this Court on 27.06.2018. This Court while discussing the conduct of respondent No.4 had reprimanded her to be careful in future as she did not disclose the fact that she had earlier filed a writ petition, which was disposed of. Again challenge has been made to the position of respondent No.4 on the basis of Article 62(1)(f) which requires declaration from the Court. In this behalf, declaration is required by the Court of competent jurisdiction for the purposes of Article

62(1)(f). Reliance is placed on the judgment of the Hon'ble Supreme Court of Pakistan in case reported as "*Sami Ullah Khan Baloch Vs. Abdul Karim Nowsherwani and others*" (**PLD 2018 SC 405**). It was observed as follows:-

3. *The historical background and various amendments, which have been periodically introduced into Articles 62 and 63 of the Constitution have been very ably dealt with by my learned brother in his judgment and need not to be repeated. However, Article 62(1)(f) of the Constitution is required to be interpreted as it stands today. A plain reading of Article 62(1)(f) of the Constitution reveals that in order to be a Member of Majlis-e-Shoora (Parliament), the person must be, inter alia, sagacious, righteous, non-profligate, honest, and ameen. However, if there is a declaration by a Court of Law to the contrary i.e. he is not sagacious or righteous or non-profligate, honest, and amen then such person shall not be qualified to be a Member of Majlis-e-Shoora (Parliament). A declaration by the Court of Law would mean a conclusive finding. Obviously, such finding would be with regard to a lis before the Court, arising out of the violation of a law or non-fulfillment of a legal obligation. It is clear and obvious that lack of qualifications in terms of Article 62(1)(f) of the Constitution is the effect of a declaration by a Court of Law to the contrary, which is the cause. The obvious, legal and logical conclusion would be as long as the cause i.e. the declaration of a Court of Law holds the field its effect i.e. the lack of qualification shall also prevail. This appears to be the only possible interpretation of Article 62(1)(f) of the Constitution.*

4. *The expression declared by a Court has also been used in Article 63(1)(a) of the Constitution, which is reproduced hereunder:*

63(1)(a) he is of unsound mind and has been so declared by a competent court; or

(underlining is for emphasis)

5. *Obviously, in the aforesaid circumstances, the disqualification would continue as long as the declaration regarding the mental incapacity subsists. No sane person could seriously urge to the contrary."*

Similar observation was made by the Hon'ble Supreme Court of Pakistan in "*Khawaja Muhammad Asif Vs. Muhammad Usman Dar*" (**2018 SCMR 2128**)

and Hon'ble Sindh High Court in "*Ghaibi Sardar Khan Chandio Vs. Election Commission of Pakistan*" (**PLD 2018 Karachi 263**). Though it was argued that in light of the judgment reported as "*Imran Ahmad Khan Niazi Vs. Mian Muhammad Nawaz Sharif*" (**PLD 2017 SC 265**) as well as "*Sher Alam Khan Vs. Abdul Munim Khan*" (**PLD 2018 SC 449**) this Court as well as the Hon'ble Supreme Court in its jurisdiction under Article 184 has the jurisdiction to declare a person as dishonest, non-profligate etc; it is pertinent to observe that no material as such was placed on record which is sufficient to declare respondents No.3 and 4 as being non-sagacious, non-profligate or dishonest. The mere fact that a certain fact has not been mentioned in the affidavit or that vote was transferred on the basis of writ petition does not amount to violation of Article 62(1)(f).

21. For what has been stated above, the instant petitions are without merit and are accordingly **dismissed**.

(AAMER FAROOQ)
JUDGE

Announced in Open Court this 03rd day of March, 2020.

JUDGE

M. Zaheer Janjua