

Form No: HCJD/C-121  
ORDER SHEET  
IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W.P. No. 527/2022

Mohammad Faisal Vawda

Versus

Election Commission of Pakistan through its Secretary  
and others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	16-02-2022	Mr Wasim Sajjad, Sr. ASC, Mr Idrees Ashraf, Barrister Hassan Alam, Malik Akhtar Abbas, Advocates for petitioner.

Athar Minallah, C.J.-      Mohammad Faisal Vawda (*hereinafter referred to as the "**Petitioner**"*) has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the "**Constitution**"*) challenging order, dated 09-02-2022, passed by the Election Commission of Pakistan (*hereinafter referred to as the "**Commission**"*). The Commission after concluding that the Petitioner had submitted a false affidavit, has held that; (a) at the time of filing of his nomination papers for contesting the elections from the constituency NA 249, Karachi, he was not eligible / qualified under Article 63(1)(c) of the Constitution; (b) submission of false

affidavit and declaration attracted Article 62(1)(f); (c) Petitioner has been directed to refund all monetary benefits drawn by him as member of the National Assembly; (d) resignation from the office of the member of National Assembly was not for bonafide reasons and lastly, his subsequent election as member of the Senate of Pakistan was also void on account of submission of a false affidavit and thus notification, dated 10-03-2021, was withdrawn.

3. The Petitioner had contested from the constituency of National Assembly i.e. NA 249, Karachi, in the general elections held in 2018. Pursuant to the judgment of the august Supreme Court titled "*Speaker, National Assembly of Pakistan, Islamabad and others v. Habib Akram and others*" [PLD 2018 SC 678], the Petitioner had submitted an affidavit alongwith his nomination papers. The relevant portion of the aforementioned judgment is reproduced as follows.-

*"7. All candidates of the National and Provincial Assemblies shall file the said affidavit along with their Nomination Papers. Such candidates who have already filed their Nomination Papers, shall file the said Affidavit with the Returning Officers by or before 11<sup>th</sup> June, 2018. The Secretary, ECP, has assured*

*us that the aforesaid process will not in any manner upset the schedule of Elections so as to delay of holding of the General Elections on 25.7.2018, as already announced.*

*8. It is clarified that failure to file such Affidavit before the Returning Officer would render the Nomination Papers incomplete and liable to rejection. If the Affidavit or any part thereof is found false then it shall have consequences, as contemplated by the Constitution and the law. Since the Affidavit is required to be filed in pursuance of the orders of this Court, therefore, if any false statement is made therein, it would also entail such penalty as is of filing a false affidavit before this Court.”*

4. The Petitioner was declared as a returned candidate and pursuant thereto he was notified as a member of the National Assembly. His notification was challenged before various forums, including this Court through W.P. No.258/2020. It was alleged that he had filed a false affidavit pursuant to the aforementioned judgment of the apex Court. The Petitioner’s conduct before this Court remained evasive because, for reasons best known to him, he kept delaying the proceedings on one pretext or the other. After delaying the proceedings for more than one year, he informed the Court that he had resigned as a member of the National Assembly. The

petition seeking a writ of quo warranto had become infructuous and, therefore, it was disposed of by the learned Single Judge vide order, dated 03-03-2021. It was explicitly observed and directed as follows.-

*"However, matter of furnishing false affidavit is to be probed by the Election Commission of Pakistan since the same was submitted before it and the Commission may pass appropriate orders with respect to the same."*

5. The above order was not challenged by the Petitioner. Soon after his resignation, he was elected as a member of the Senate of Pakistan. It appears from the record that instead of establishing his bonafides by producing a certificate of renunciation of citizenship, proceedings were delayed by the Petitioner before the Commission.

6. The Petitioner again invoked the jurisdiction of this Court through W.P. No.4000/2021 and it was disposed of vide order, dated 12-11-2021. The Intra Court Appeal preferred by the Petitioner did not succeed. The relevant portion of order, dated 12-11-2021, is reproduced as follows.-

*"It is, therefore, declared that completion of the probe regarding falsity or otherwise of the affidavit submitted by the Petitioner is mandatory in the light of the direction given by the august Supreme Court. It can neither be avoided nor delayed by the Petitioner or the Commission. The Commission is, therefore, directed to complete the probe expeditiously and with due diligence, preferably within sixty days from the date of receiving a certified copy of this order. Likewise, the Petitioner is expected to establish his bonafides by participating in the proceedings regarding the probe relating to the affidavit, failing which it would amount to an attempt to frustrate the implementation of the unambiguous direction of the august Supreme Court. This Court is, therefore, not inclined to interfere with the impugned order. The petition in hand is **disposed-of** with the expectation that the Commission will conclude its proceedings within the specified period and that no delay would be caused by or on behalf of the Petitioner."*

The above litigation had ultimately led to the passing of the impugned order, dated 09-02-2022.

7. Mr Waseem Sajjad, learned Sr. ASC has been heard at great length. He has placed reliance on the judgments of the august Supreme Court reported as

*"Muhammad Salman v. Naveed Anjum and others"* [2021 SCMR 1675], *"Muhammad Salman v. Naveed Anjum and others"* [2022 SCMR 42], *"Roshan Ali Buriro v. Syed Murad Ali Shah and others"* [2019 SCMR 1939] and *"Allah Dino Khan Bhayo v. Election Commission of Pakistan and others"* [PLD 2020 SC 591]. His emphasis was regarding jurisdiction of the Commission to give a declaration in the context of Articles 63 or 62 of the Constitution.

8. It is indeed a settled law that when a citizen of Pakistan has acquired the citizenship of a foreign State, the latter shall not be qualified to be elected or chosen or being a member of the Majlis-e-Shoora (Parliament) until and unless such legal status i.e. being a citizen of a foreign State was obliterated or extinguished. Mere initiation of the process of relinquishment was not sufficient because disqualification would remain operative till completion and conclusion of the process. The critical date for being qualified to be a member of the Majlis-e-Shoora (Parliament) was the date when the nomination papers were filed. As a corollary, the process of relinquishment of the foreign nationality should have been completed and concluded before submission of the nomination papers. Reliance is placed on the case

reported as "*Suo Case No.8 of 2018 regarding Dual Nationality of Parliamentarians*" [PLD 2019 SC 201].

9. It is noted that a person is not qualified to be elected or chosen as a member of the Majlis-e-Shoora (Parliament) if he or she, as the case may be, falls within the mischief of Article 62(1)(f) of the Constitution. The august Supreme Court in the case reported as "*Samiullah Baloch and others v. Abdul Karim Nousherwani and others*" [PLD 2018 SC 405] has held that 'when a declaration made by a court of law against a candidate for election warrants a conclusion of his misrepresentation, dishonesty, breach of trust, fraud, cheating, lack of fiduciary duty, conflict of interest, dishonest misappropriation, etc. derived from a verdict, then the consequent incapacity or disqualification is that of a permanent nature'. The lack of qualification suffered under Article 62(1)(f) of the Constitution has been held to be in perpetuity. The disqualification is, therefore, for life.

10. The case in hand is of a peculiar nature. The august Supreme Court in Habib Akram's case, supra had made the draft of the affidavit as an integral part of the judgment. All the candidates contesting the general elections of 2018 were directed to submit the affidavit

alongwith the nomination papers. It was explicitly “declared” by the apex Court that “if the affidavit or any part thereof was subsequently found false then it shall have consequences, as contemplated by the Constitution and the law”. The august Supreme Court has further declared that in case any false statement is made in the affidavit, then it would entail such penalty as of filing a false affidavit before the apex Court.

11. The Petitioner had filed his affidavit pursuant to the judgment of the august Supreme Court in Habib Akram’s case, supra. The aforementioned declarations in the same judgment were, therefore, to be attracted if the affidavit submitted by him contained false statement. It is obvious from the record and the events described in the impugned order, dated 09-02-2022, that the conduct of the Petitioner remained contumacious over a long period of time. He kept delaying the proceedings before this Court as well as the Commission. He refused to submit a renunciation certificate issued by a competent authority of the foreign State. The onus to establish his bonafides by producing a certificate of renunciation of his foreign citizenship issued by a competent authority was on him. In order to avoid the quo warranto proceedings, which were pending before this Court, he resigned as member of



the Majlis-e-Shoora (Parliament). The probe conducted by the Commission and the Petitioner's own conduct established that he had filed a false affidavit pursuant to the judgment of the august Supreme Court in the case of Habib Akram, supra.

12. In the facts and circumstances of the case in hand, was a declaration required to have been obtained from a court of law and if not, then what consequences were to ensue. The learned counsel for the Petitioner was asked whether he could produce the certificate of renunciation of the foreign nationality issued by the competent authority of the concerned State. The learned counsel stated that the delay in issuance of the certificate was inadvertent and could not be attributed to any deliberate act of the Petitioner. The learned counsel has stated that there was no malafide nor malice on part of the Petitioner.

13. The fact that on the date the affidavit was submitted alongwith the nomination papers, the process of renunciation of the Petitioner's foreign citizenship was not concluded nor completed stands established, rather, candidly conceded. Was any declaration made by a competent court of law regarding the consequences?

The answer is in the affirmative. The declaration by the august Supreme Court in the case of Habib Akram, supra was sufficient to attract the disqualification of the Petitioner under Article 62, particularly 62(1)(f). The relevant portion of the judgment has been reproduced above. The august Supreme Court had already declared that 'submission of the false affidavit or any part thereof shall have consequences, as contemplated by the Constitution and the law'. Likewise the consequences contemplated in the judgment of the august Supreme Court in the case titled "*Samiullah Baloch and others v. Abdul Karim Nousherwani and others*" [PLD 2018 SC 405] were also attracted. No further declaration was, therefore, required to be sought from a court of law regarding the consequences if the falsity of the affidavit or part thereof was established.

14. It is noted that in the peculiar facts and circumstances of the case in hand, the judgments cited by the learned counsel for the Petitioner at the Bar are distinguishable. The case of the Petitioner attracts the declarations made by the august Supreme Court in the Habib Akram case, supra. The declaration to the effect that submission of a false affidavit would also attract the consequences of filing such an affidavit before the apex

Court can only be given effect by the august Supreme Court. Nonetheless, the Commission has merely given effect to the declarations explicitly made by the august Supreme Court in the case of Habib Akram, supra. The declaration to the extent of consequences as if the false affidavit was submitted before the august Supreme Court, can only be considered and acted upon by the apex Court. The impugned order has merely given effect to the consequences under the Constitution and law in the light of the declarations made by the august Supreme Court in the case of Habib Akram, supra.

15. For what has been discussed above, the Court has not been able to persuade itself that the impugned order, dated 09-02-2022, suffers from any legal infirmity requiring interference. The petition is, therefore, accordingly **dismissed**.

16. Before parting, the Court would like to observe that it is not a pleasant duty to be called upon or to refuse to examine and exercise powers of judicial review, which may lead to an elected representative being disqualified as member of the Majlis-e-Shoora (Parliament). While exercising or refusing to exercise judicial review, the courts claim no supremacy over organs that represent the

people of Pakistan. The Majlis-e-Shoora (Parliament) is a symbol of unity of the Federation and the peoples will. It deserves utmost respect and its prestige and public confidence depends on the conduct of its members who represent the actual stake holders i.e. the people of Pakistan. The judgment of the august Supreme Court rendered in Habib Akram case, supra and the explicit declarations made therein are binding on the Commission and this Court. The Commission was bound to give effect to the said declarations and the ensuing consequences. That is what it has done. The Petitioner's conduct has led to disqualification of an elected representative and, regrettably, he alone is responsible for the consequences.

(CHIEF JUSTICE)

Approved for reporting.