

PESHAWAR HIGH COURT ABBOTTABAD
BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

WP No. 124-A/2021.

Date of hearing 16.11.2022.

*Petitioner/s (Rizwan Saeed Mughal) by
M/s. Shahayar Tariq and Taimur Khan,
Advocates.*

*Respondent/s (Appellate Election
Tribunals & another) by Sardar Ali
Raza, AAG and nemo for respondent No.
3.*

FAZAL SUBHAN, J. Through this
petition filed under Article 199 of the
Constitution of Islamic Republic of
Pakistan, 1973, the petitioner *Rizwan
Saeed Mughal*, has invoked the jurisdiction
of this Court with the following prayer: -

*“That on acceptance of
instant writ petition, the
orders impugned be declared
void, without jurisdiction,
unlawful and of no legal effect
any other relief which this
Hon’ble Court deem fit and
proper may also be granted to*

the petitioner in the best interest of justice”.

2. Brief but relevant facts of the instant writ petition are that petitioner alongwith other candidates filed their respective nomination papers to contest the election on the seat of *Chairman Tehsil Council, Ghazi*. That respondent No. 3 (*Mohammad Qasim Shah*) also filed his nomination papers for the above seat. That at the time of filing nomination papers by respondent No.3, petitioner raised objections and also filed application for rejection of nomination papers disqualification of respondent No. 3 to contest the election on the ground of his dual nationality, however, the application was dismissed by respondent No. 1. Likewise, his appeal preferred against the decision of Returning Officer was also declined by learned Appellate Tribunal, hence, he presented this writ petition.

3. Arguments of learned counsel for the petitioner and learned AAG heard and record perused.

4. It is the contention petitioner that as per Local Government Act, 2013 as well as Khyber Pakhtunkhwa Local Council (Conduct of Elections) Rules, 2021, respondent No. 3 having dual nationality holder is not qualified to contest the election of local government, but despite that his nomination papers were accepted by Returning Officer, however, learned counsel for petitioner failed to point out specifically that what provision or rule bars the respondent No.3 from contesting the election of local government as no such provision is provided in the *ibid* Act/Rules.

5. For considering the assertions of the petitioner, which is based on the question of dual nationality of the petitioner, we are of the considered view that the relevant laws governing the Conduct of election to the local government is the Local

Government Act, 2013 (Act), and The Khyber Pakhtunkhwa, Local Councils (Conduct of Election) Rules, 2014 (Rules).

By virtue of section 78 of the Act, criteria has been set forth for a person to be a candidate and elected as member to the local council, which includes District Council, Tehsil Council, Town Council, Village or neighborhood Council, as the case may be, as defined in section 2(m) of the Act. The question involved in the matter in hand only relates to the dual nationality, therefore, section 78(a) of the Act is relevant, which is reproduced below for convenience: -

Qualifications for candidates and elected members-- (1) A person shall qualify to be elected or to hold an elective office or membership of a local council, if he-

(a) *is a citizen of Pakistan;*

6. The said provision not only speak of qualification of a person to be eligible and competent to be a candidate but at the same

time, any person, not having the said qualification, is rendered disqualified to be candidate or elective member of local council.

7. The Khyber Pakhtunkhwa Local Council (Conduct of Election) Rules, 2014, in rule 55 also provide grounds of declaring election of returned candidate to be void in the following conditions: -

Grounds of declaring election of returned candidate void.---(1) The Tribunal shall declare the election of the returned candidate to be void if it is satisfied that-

- (a) the nomination of the returned candidate was invalid; or*
- (b) the returned candidate was not, on the nomination day, qualified for, or was disqualified from, being elected as a member; or*
- (c) the election of the returned candidate has been procured or induced by any corrupt or illegal practice; or*
- (d) a corrupt or illegal practice has been committed by the returned candidate or his election agent or by any other person with the connivance of the candidate or his authorized agent.*

(2) The election of a returned candidate shall not be declared void on the ground-

- (a) that any corrupt or illegal practice has been committed, if the Tribunal is satisfied that it was not committed by or with the consent or connivance of that candidate or his election agent and that the candidate and the election agent took all reasonable precautions to prevent its commission; or*
- (b) that any of the other contesting candidates was, on the nomination day, not qualified for or was disqualified from, being elected as a member.*

8. Rule 55 (b) of the Rules provides a method and mechanism, that even if a candidate already returned to a local council on the day of nomination was proved to be not qualified of being elected as a member, his election may be declared void.

9. While arguing before us, learned counsel for petitioner consistently made reference to Art 63 of the Constitution, with special reference to clause (1) (c) thereof, and submitted that in view of said clause in respect of disqualification would apply to the case of respondent No. 3, but we are not convinced with the above assertion, for the reason that Article 63 of the Constitution mainly relates to the disqualification of membership of *Majlis-e-Shoora (Parliament)*, while on the other hand, the qualification or for that matter, the disqualification to be derived therefrom, to the candidates of local council, is characterized in section 78 of

the *ibid* Rules. As opposite to the said Rule, Rule 78-A, has prescribed the grounds for disqualification of member but it nowhere has provided disqualification of a member on the ground of dual nationality. Thus, the provision in respect of disqualification described for a member of parliament cannot be imported to candidate or elected member of the local council. In this respect guidance is derived from the case of *Zahid Iqbal-Vs-Hafiz Muhammad Adnan* reported in **2016 SCMR, 430**, wherein, it was held that: -

“It is neither the duty nor the function of the Court to read into or delete any word and or provisions in an enactment, unless specifically adopted or imported by reference. Courts do not legislate but interpret statute according to their ordinary and plain meaning and do not import and or supply word or provisions from "any other law", no matter how laudable and desirable it may appear

to be. In this view of the matter, disqualification prescribed under "any law" or even in "The Constitution" unless as noted above are specifically made applicable or adopted by reference, specially penal and or castigatory provisions contained in "any law" cannot be imported, read into or inflicted on a person who put forth his candidature to be elected as a Member or to hold an elected office of Punjab Local Government but his qualification and or disqualification for any office of the Punjab Local Government is to be adjudged strictly under the provisions of "the Act, 2013" only."

10. When similar matter came up before this Court in the case of *Malik Muhammad Nawaz-Vs-Government of Khyber Pakhtunkhwa and others*, in WP No. 287-A/2022, it was held therein that: -

Without prejudice to above stated reasons, Section 231 of the

Election Act, could not be pressed into service as same was specific in its import and aimed at providing qualifications and disqualifications for members of Majlis-e-Shoora (Parliament) or Provincial Assembly. Same was not a provision related to Local Bodies Election. Election Act, on the other hand, has provided a specific provision i.e. sub-Section (2) of Section 229 of the Act, wherein it is specifically mentioned that qualifications and disqualifications of a candidate in Local Government Elections or a member of Local Government would be decided under the applicable Local Government Law. The applicable law in the case in hand is Khyber Pakhtunkhwa, Local Government Act, 2013, particularly, its Section 78.

11. In view of the above discussion, we hold that provision of Article 63 of the Constitution cannot be imported to the Local Government Act, 2013 as amended up to date. The Act does not provide any provision for disqualification of a person having or acquiring dual nationality,

therefore, respondent No. 3 cannot be disqualified on this score. Resultantly, this writ petition being devoid of any merits, is dismissed.

Announced.

16.11.2022.

Tahir P/Secretary.

Date of writing judgment

28.11.2022.

J U D G E

J U D G E

*Hon'ble Justice Wiqar Ahmad &
Hon'ble Justice Fazal Subhan.*