

IN THE SUPREME COURT OF PAKISTAN

(Review/Original Jurisdiction)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE IJAZ UL AHSAN

CIVIL REVIEW PETITION NOS.242, 243 AND 245 OF 2012
IN CONST. PETITION NO.5/2012

AND

C.M.A. NO.3446 OF 2012 IN C.R.P.NIL/2012 IN CONST.
PETITION NO.5/2012

AND

CIVIL REVIEW PETITION NO.311 OF 2012 IN C.M.A.
4089/2012 IN CONST. PETITION NO.5/2012

AND

C.M.A. 5113 OF 2012 IN C.R.P.NIL/2012 IN CONST. PETITION
NO.5/2012

AND

CIVIL REVIEW PETITION NO.317 OF 2012 IN
C.M.A.2492/2012

AND

C.M.A.4089 OF 2012 IN CONST. PETITION NO.5/2012

AND

C.M.A.3053 OF 2012 IN C.M.A.4089/2012 IN CONST.
PETITION NO.5/2012

AND

C.M.A.4135 OF 2012 IN C.M.A.4089/2012 IN CONST.
PETITION NO.5/2012

AND

C.M.A.4353 OF 2012 IN C.M.A.4089/2012 IN CONST.
PETITION NO.5/2012

AND

CRIMINAL ORIGINAL PETITION NO.54 OF 2013 IN CONST.
PETITION NO. 5/2012

AND

CRIMINAL ORIGINAL PETITION NO.55 OF 2013 IN
C.M.A.4089/2012 IN CONST. PETITION NO.5/2012

AND

C.M.A.65 OF 2013 IN C.M.A.4089/2012 IN CONST. PETITION
NO.5/2012

AND

C.M.A.87 OF 2013 IN C.M.A.4089/2012 IN CONST. PETITION
NO.5/2012

AND

C.M.A.354 OF 2013 IN C.M.A.4089/2012 IN CONST. PETITION
NO.5/2012

AND

C.M.A.1217 OF 2013 IN C.M.A.4089/2012 IN CONST.
PETITION NO.5/2012

AND

C.M.A.1218 OF 2013 IN C.M.A.4089/2012 IN CONST.
PETITION NO.5/2012

AND

C.M.A.2097 OF 2013 IN C.M.A.4089/2012 IN CONST.
PETITION NO.5/2012

AND
C.M.A.2592 OF 2013 IN C.M.A.4089/2012 IN CONST. PETITION NO.5/2012
AND
C.M.A.2146 OF 2013 IN C.M.A.4089/2012 IN CONST. PETITION NO.5/2012
AND
C.M.A.66 OF 2013 IN C.M.A.4089/2012 IN CONST. PETITION NO.5/2012
AND
C.M.A.67 OF 2013 IN C.M.A.4089/2012 IN CONST. PETITION NO.5/2012
AND
C.M.A.68 OF 2013 IN C.M.A.4089/2012 IN CONST. PETITION NO.5/2012
AND
C.M.A.85 OF 2013 IN C.M.A.4089/2012 IN CONST. PETITION NO.5/2012
AND
C.M.A.86 OF 2013 IN C.M.A.4089/2012 IN CONST. PETITION NO.5/2012
AND
C.M.A.2155 OF 2014 IN C.M.A.4089/2012 IN CONST. PETITION NO.5/2012
AND
C.M.A.2108 OF 2013 IN C.M.A.4089/2012 IN CONST. PETITION NO.5/2012
AND
CIVIL REVIEW PETITION NO.38 OF 2013 IN C.M.A.4089/2012 IN CONST. PETITION NO.5/2012
AND
CRIMINAL ORIGINAL PETITION NO.71 OF 2012 IN CONST. PETITION NO.5/ 2012
AND
CRIMINAL ORIGINAL PETITION NO.82 OF 2012 IN CONST. PETITION NO. 5/2012
AND
CRIMINAL ORIGINAL PETITION NO.90 OF 2012 IN CONST. PETITION NO.5/2012

Against order dated 20.09.2012 followed by detailed judgment dated 17.10.2012 of this Court passed in Constitution Petition No.05 of 2012.

C.R.P.242 of 2012	Dr. Ahmed Ali Shah and others Vs. Syed Mehmood Akhtar Naqvi and others
C.R.P.243 of 2012	Farah Naz Isfahani Vs. Syed Mehmood Akhtar Naqvi and others
C.R.P.245 of 2012 and C.M.A.3446 of 2012	Amana Buttar Vs. Syed Mehmood Akhtar Naqvi and others
C.R.P.311 of 2012	Begum Shehnaz Sheikh Vs. Syed Mehmood Akhtar Naqvi and others
C.M.A.5113 of 2012	Dr. Muhammad Ashraf Chohan Vs. Syed Mehmood Akhtar Naqvi and others
C.R.P.317 of 2012	Muhammad Jamil Malik Vs. Syed Mehmood Akhtar Naqvi and others
C.M.A.4089 of 2012	Reply of Mr. Umar Cheema, Special Investigative Correspondent, Daily The

News, Islamabad

C.M.As.3053, 4135 and 4353 of 2012, 65, 87, 1217, 1218, 66, 67, 68, 85, 86 of 2013 and 2155 of 2014	Syed Mehmood Akhtar Naqvi
Crl.O.Ps.54 and 55 of 2013	Syed Mehmood Akhtar Naqvi Vs. Senator Rehman Malik and another
C.M.A.354 of 2013	Syed Mehmood Akhtar Naqvi Vs. Federal Government through Secretary Law and others
C.M.As.2097 and 2592 of 2013	Syed Mehmood Akhtar Naqvi Vs. Federation of Pakistan and others
C.M.A.2146 of 2013	Application for impleadment as Party by Pir Tariq Ahmed, Advocate.
C.M.A.2108 of 2013	Application on behalf of Syed Tayyab Hussain & others
C.R.P.38 of 2013	Ghulam Mujtaba Rai Vs. Syed Mehmood Akhtar Naqvi and others
Crl.O.P.71 of 2012	Syed Mehmood Akhtar Naqvi Vs. Asif Ali Zardari and others
Crl.O.P.82 of 2014	Syed Mehmood Akhtar Naqvi Vs. A.R. Rehman & others
Crl.O.P.90 of 2012	Syed Mehmood Akhtar Naqvi Vs. Nayyar Hussain Bukhari, Chairman Senate and another
For the Petitioners:	Mian Abdul Rauf, ASC. (in C.R.P.242/2012)
	Mr. Wasim Sajjad, Sr. ASC/ Ch. Akhtar Ali, AOR. (in C.R.P.243/2012)
	Nemo. (in C.R.P.245/2012 and C.M.A. 3446/2012 in C.R.P.Nil/2012)
	Mr. M. Munir Paracha, ASC a/w Begum Shahnaz Sh., Petitioner. (in C.R.P.311/2012)
	Nemo. (in C.M.A.5113/2012)
	Mr. Mehr Khan Malik, AOR (in C.R.P.317/2012)
	Mr. M. Munir Paracha, ASC. (in C.R.P.38/2013)
	In Person (in C.M.A.3053, 4135, 4353/2012, Crl.O.P.54, 55, 71, 82, 90/2012 and C.M.A.65, 87, 354, 1217, 1218, 2097, 2592, 66, 67, 68, 85 and 86/2013 and C.M.A.2155/2014.)

Mr. Shoaib Shaheen, ASC
(For Dr. Aresh Kumar)

Mr. Makhdoom Ali Khan, Sr. ASC
(For Murad Ali Shah)
Mr. Salman Akram Raja, ASC
(For Arif Aziz Sheikh C.M.A.1944/2013 and for
Dr. Asim Hussain C.M.A.3581/2013)

Sardar M. Aslam, ASC
(For Dr. Tahir Jawad & Jamil Malik)

Mr. Mehmood A. Sheikh, AOR.
(in C.M.A.2108/2013)

Syed Asghar Hussain Sabzwari, Sr. ASC.
(in CrI.O.P.90/2012)

In Person.
(in C.M.A.2618/2013)
Syed Rafiqat Hussain Shah, AOR.

Respondents on Notice: Mr. Sohail Mehmood, DAG.
Malik Mujtaba Ahmed, Addl, Director (Law) ECP.
Mr. Mehmood Akhtar Naqvi, in-person (in C.R.Ps.)

Date of Hearing: 02.05.2018

ORDER

IJAZ UL AHSAN, J-. The petitioners in these review petitions seek review of an order of this Court dated 20.09.2012 followed by detailed judgment dated 17.10.2012. Through this order they were declared to be disqualified from being Members of the Parliament (Majlis-e-Shoora)/Provincial Assemblies in view of the fact that they had acquired citizenship of foreign States and had failed to disclose the said fact in their nomination papers and other documents filed with the competent authorities. This Court also held that they had made false declarations before the Election Commission of Pakistan while filing their nomination papers and as such appeared to be guilty of corrupt practices in terms of Section 78 of Representation of Peoples Act, 1976 (RoPA). The Election Commission was accordingly directed to institute legal proceedings against them under Section 82 of the RoPA

read with Sections 193, 196, 197, 198 & 199, PPC in accordance with law. The order directed the Parliamentarians/Members of the Provincial Assemblies who had been disqualified and some of whom are before us in these review petitions to refund all monetary benefits drawn by them for the period during which they occupied the public offices and had drawn their emoluments, etc from the public exchequer including monthly remunerations, TA/DA, facilities of accommodation alongwith other perks. These were required to be calculated in terms of money by the Secretaries of the Senate of Pakistan, National Assembly and the Provincial Assemblies accordingly.

2. The learned counsel appearing on behalf of the review petitioners have unequivocally and in unison contended that they do not challenge petitioners' disqualification. However, they seek fair and compassionate treatment in the specific facts and circumstances of these petitions and pray that the order under review to the extent of initiation of criminal proceedings and refund of salaries, emoluments and other monetary benefits may be recalled.

3. The learned ASCs have argued that there was no evidence establishing *mens rea* against the petitioners. *Mens rea* is not established merely on the ground that they had filed declarations with their nomination papers in the year 2008 to the effect that they were qualified to contest elections and were not disqualified. It has been stated that such declarations were signed by the petitioners in a *bona fide*

belief that they were qualified and had made faithful disclosures of all facts as per the questions asked in the printed nomination papers. It is maintained that the nomination papers at the relevant time had no column seeking disclosure of the fact as to whether the candidate was a foreign citizen/dual national. It is further argued that in order to support a finding of guilt relating to the offence of corrupt practice in terms of Section 78 of the RoPA and other offences under the Pakistan Penal Code, the element of guilty intent was a *sine qua non*. It was totally missing in the cases of the review petitioners. It is submitted that at the time of submission of nomination papers the petitioners genuinely believed that they were qualified to contest elections as Members of the Parliament (Majlis-e-Shoora)/Provincial Assemblies.

4. The learned ASCs for the petitioners have further argued that by reason of order dated 20.09.2012 which is sought to be reviewed, the petitioners have been subjected to multiple penalties including disqualification from membership of the Parliament (Majlis-e-Shoora)/Provincial Assemblies, refund/return of salaries and other monetary benefits despite the fact that they had participated in the legislative business of the Parliament/Provincial Assemblies and had earned their salaries and other benefits. In addition, the petitioners have been burdened with liability and culpability under Section 78 of the RoPA read with Sections 193, 196, 197, 198 & 199, PPC. It is further argued that the declarations made by this

Court in positive terms would gravely prejudice the due process rights of the petitioners as enshrined in Article 10A of the Constitution of the Islamic Republic of Pakistan, 1973 and it would not leave any scope for the trial Court to record any different finding. In the presence of such declarations, conviction would be a *fait accompli* and the petitioners would not get a just, fair and unbiased trial.

5. It has finally been argued by learned ASCs for the petitioners that the salaries/perquisites and TA/DA were not ill gotten gains. These were earned *bona fide* for the duration of the time during which the petitioners held their respective offices. The learned counsel have relied upon a judgment of this Court rendered in the case Regarding Pensionary Benefits of the Judges of Superior Courts (PLD 2013 Supreme Court 829) and sought the benefit of the majority view which according to them adopts a humane and compassionate approach towards the situation. It is also argued that the sums received by the petitioners have already been spent/expended to meet personal expenses of the petitioners and their families. As such, the petitioners would be unduly burdened and face hardship in returning substantial sums of money which were received by them during a period spread over many years and many years ago and have since been spent.

6. There is no serious contest on the part of the Respondents who appear to be in agreement with the ratio of Judges Pension case and the assertion that the penalties

awarded to the petitioners may be rather harsh considering the facts and circumstances of the present cases.

7. We have heard the learned counsel for the parties and gone through the record with their assistance. It appears that the petitioners who are mostly Pakistani nationals/citizens by birth had acquired citizenship of other countries with a few exceptions where they were born in foreign countries to Pakistani parents and had therefore automatically and without any positive steps on their part acquired nationality of their respective places of birth. It further appears that despite such dual citizenship/ foreign nationality, the petitioners filed nomination papers for elections to the Parliament (Majlis-e-Shoora)/Provincial Assemblies in the year 2008. They filed nomination papers which included a declaration under Oath to the effect that to the best of their knowledge they were not disqualified from contesting elections for the Parliament (Majlis-e-Shoora)/Provincial Assemblies. Such declarations had invariably been signed by the petitioners. It is however equally clear that there was no specific provision/column in the nomination papers that required the petitioners to disclose their foreign nationality/dual citizenship or to state details of the same.

8. It also appears from the record that there was no apparent *mens rea* or intent on the part of the petitioners to defraud or deceive the authorities at the time of filing of nomination papers. As such, *prima facie* there is inadequate

material on the record to merit a finding of guilt regarding corrupt practices in terms of Section 78 of the RoPA or other offences under Pakistan Penal Code as has been held in the order sought to be reviewed. It has been argued and we have no reason to disbelieve that at the time of submission of nomination papers, the review petitioners genuinely thought that they were qualified to contest elections to the Parliament (Majlis-e-Shoora)/Provincial Assemblies and did not suffer from any legal or constitutional disqualification.

9. We also notice that through the order sought to be reviewed, the petitioners have been subjected to multiple penalties including disqualification from membership of the Parliament (Majlis-e-Shoora) / Provincial Assemblies, refund /return of salaries and perquisites, etc despite the fact that they after their election took part in the legislative business during the legislative process. It could not therefore be lightly stated that they had unjustly been enriched or got ill gotten gains or received financial benefits by exercising fraud or deception. It may further be noted that the petitioners have also been burdened with the liability and culpability without following due process provided by the RoPA. Further, the declaration made by this Court in positive terms would not leave much scope for the trial Court to inquire into the petitioners' guilt or otherwise and decide the cases independently. It appears that the decision of this Court may become the basis for action against the petitioners which would undoubtedly prejudice their Constitutional rights.

10. We have also gone through the declarations required to be submitted with Form-I i.e. nomination paper under the RoPA. We are persuaded to hold that there was no column in the said Form requiring disclosure of foreign nationality/dual citizenship and there was no conscious effort, *mens rea* or guilty intent on the part of the petitioners to conceal or withhold such information, defraud and deceive the competent authorities and receive and retain ill gotten gains. There is also merit in the argument made by the learned counsel that after their election the petitioners participated in the legislative business, performed the services that they were required to perform and it would neither be just nor fair to hold that they had received and retained ill gotten gains. It is also clear that no sooner did the petitioners hear about the initiation of proceedings and the legal position as enunciated by this Court most of them tendered their resignations and approached this Court with such information.

11. We have also given careful consideration to the ratio of the majority view taken by this Court in the Judges Pension case *ibid* and find that despite the fact that such judgment is arguably distinguishable, there are certain common and redeeming features that may be taken notice of in these proceedings. In the said judgment, a more humane and compassionate approach was adopted in so far as it was held that the Honourable Judges whose appointments had been held to be void had received salaries and perquisites, etc

under the *bona fide* belief that they had validly been appointed. They had performed services and must have spent the amounts received by them by way of salaries and perquisites, to meet their expenses and those of their immediate families. Therefore, directing them to refund all such amounts would not only be unfair and unjust but also cause considerable hardship in certain cases. By the same token, we find that the petitioners have been visited with the penalty of disqualification which by itself is a serious punishment. However, in the facts and circumstances of the present cases we have not found *mens rea*, guilty intent or intention to defraud, deceive or withhold the information which was required to be disclosed knowing that if disclosed such information would debar them from contesting elections for the Parliament (Majlis-e-Shoora)/Provincial Assemblies. The direction issued for criminal prosecution for corrupt practices under the provisions of RoPA and Pakistan Penal Code and return of salaries and perquisites received by the petitioners many years ago has appeared to us to be rather harsh in the peculiar and specific facts and circumstances of these cases.

12. None of the learned counsel for the petitioners has raised or pressed any other ground. The question of interpretation of Article 63(1)(c) of the Constitution has not seriously been raised or argued. Further, they have not challenged or contested petitioners' disqualification. We, therefore, would not like to discuss or examine the said

question and would defer it to be examined in an appropriate case and proceedings in future.

13. In view of the foregoing, the order of this Court dated 20.09.2012 followed by detailed judgment released on 17.10.2012 sought to be reviewed is modified only to the following extent:-

- i) *All findings recorded in the order dated 20.09.2012 relating to disqualification of the petitioners from being Members of the Parliament (Majlis-e-Shoora)/Provincial Assemblies in terms of Article 63(1)(c) of the Constitution shall remain intact, unchanged, unmodified and in full force.*
- ii) *The finding that the petitioners appeared to be guilty of corrupt practices in terms of Section 78 of the RoPA and the direction to the Election Commission to institute proceedings against them under Section 82 of the RoPA read with Sections 193, 196, 197, 198 & 199, PPC are hereby recalled. Any proceedings at whatever stage and any convictions whether or not implemented shall immediately and forthwith stand quashed, recalled and rendered null and void for all intents and purposes as if the same had never been initiated/passed/implemented.*
- iii) *The direction of this Court to the extent of refund of monetary benefits drawn by the petitioners for the periods during which they occupied public offices and had drawn their emoluments from the public exchequer including monthly remunerations, TA/DA, facilities of accommodation alongwith other perks to be calculated in terms of money by the Secretaries of the Senate of Pakistan, National Assembly and the Provincial Assemblies stand modified to the extent that each petitioner notwithstanding the amount actually received by him/her in the aforesaid manner shall deposit a token sum of Rs.500,000/- within a period of 30 days from the date of this order with the Secretaries of the Senate of Pakistan, National*

Assembly and the Provincial Assemblies as the case may be.

iv) A compliance report in this regard shall be sent to the Registrar of this Court for our perusal in Chambers.

v) Except and to the extent and in the manner modified hereinabove the order of this Court dated 20.09.2012 shall remain intact and in full force for all intents and purposes.

14. As a consequence, the titled Civil Review Petitions are disposed of and the Criminal Original Petitions are dismissed.

CHIEF JUSTICE

JUDGE

JUDGE

ISLAMABAD, THE

2nd of May, 2018

ZR/*

NOT APPROVED FOR REPORTING