

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik

Civil Petition No.397 of 2022

and

CMA 751 of 2022 in C.P. No.397 of 2022

[Against judgment dated 16.2.2022 passed by the Islamabad High Court
Islamabad in WP No.527/2022]

Muhammad Faisal Vawda

...Petitioner(s)

Versus

Election Commission of Pakistan, through ...Respondent(s)
its Secretary and others

For the Petitioner(s) : Mr. Wasim Sajjad, Sr. ASC
Mr. Moiz Ahmed, ASC

For Respondent No.1 : Mr. Sajeel Sheryar Swati, ASC
Mr. Muhammad Arshad, DG (Law)
Ms Saima Tariq Janjua, DD(Law)
ECP

For Respondent 6 : Mr. Farooq H. Naek, Sr. ASC

On Court's Notice: Ch. Aamir Rehman, Addl. AGP.

Date of Hearing : 25.11.2022

ORDER

UMAR ATA BANDIAL, CJ. The petitioner, Muhammad Faisal Vawda, at the very outset, stated before the Court today that he regrets the claim of renunciation of US Nationality in his nomination papers filed for NA-249 Karachi on 07.06.2018. He states that he had applied for such renunciation before the date of filing of his nomination papers. However, in fact his Certificate of Loss of Nationality of the US was issued on 25.06.2018. As a result of the

difference in the dates he was actually disqualified from contesting the election on the date when he filed his nomination papers for the election of MNA under the provisions of Article 63(1)(c) of the Constitution. Consequently, the affidavit which he filed alongwith his nomination papers made an erroneous statement. He regrets that and accepts that he stood disqualified to be elected to the National Assembly. Although the petitioner was elected to the office of Senator of Pakistan in the year 2021, however, to demonstrate good faith, hereby he resigns from that office.

2. We have heard the learned counsel for the parties and have perused the record. The Election Commission of Pakistan ("**ECP**") has, in exercise of its powers under Article 218(3) of the Constitution of the Islamic Republic of Pakistan 1973 ("**Constitution**") read with Section 8(c) of the Elections Act 2017, decided upon the matter of pre-election qualification and disqualification of the petitioner, in respect of his election as a member of the National Assembly as well as a member of the Senate. The ECP has declared the petitioner disqualified for both elections on account of his filing a false affidavit as to his citizenship of a foreign country under Article 63(1)(c) and 62(1)(f) of the Constitution, and has also withdrawn the notification whereby he had been declared the returned candidate for a seat of the Senate.

3. As per the judgments of this Court in **Muhammad Salman v. Naveed Anjum** (2021 SCMR 1675) and **Zulfiqar Bhatti v. E.C.P** (C.A. No.142 of 2019 decided on 02.11.2022), the

ECP has no jurisdiction under Article 218(3) of the Constitution read with Section 8(c) or 9(1) of the Elections Act 2017 to inquire into and decide upon the matter of pre-election qualification and disqualification of a returned candidate. Therefore, the decision of the ECP was without jurisdiction. The Islamabad High Court found that the petitioner was disqualified pursuant to the case reported as **Speaker, National Assembly of Pakistan, Islamabad and others. v. Habib Akram and others** (PLD 2018 SC 678) for submitting a false affidavit hence no declaration was required. Therefore, it was concluded that the consequences given in case reported as **Sami Ullah Baloch and others v. Abdul Karim Nousherwani and others** (PLD 2018 SC 405) would follow. By finding that a formal declaration by a court of law was not required to disqualify the petitioner under Article 62(1)(f) of the Constitution, the impugned judgment has in its paras 11, 12 and 13 therefore misconstrued both the **Habib Akram** case and the **Sami Ullah Baloch** case. Resultantly, the impugned judgment is legally not sustainable. The present petition filed under Article 185(3) of the Constitution is therefore converted into appeal and the same is allowed by setting aside both the said decisions.

4. The petitioner states before the Court that he regrets his claim of renunciation of the U.S. nationality at the time of filing his nomination papers for the election of NA-249, Karachi, on 07.06.2018. He further states that he had then initiated the process for such renunciation, but the "Certificate of Loss of Nationality of the U.S." was issued to him on 25.06.2018. He admitted that he was disqualified from contesting the election under Article 63(1)(c) of the Constitution, on the date when he had filed his nomination papers for the election of NA-249,

Karachi, and that his affidavit filed with the nomination papers thus contained an erroneous statement, which he regrets. In order to demonstrate his good faith in remorse for his mistake, he undertakes that he will resign from the office of the member of the Senate to which was elected.

5. In view of the said statement and undertaking of the petitioner, we are of the opinion that we need not proceed further in the matter in the peculiar facts and circumstances of the case. The petitioner shall be bound to comply with his undertaking and shall take immediate steps to present his resignation to the Chairman, Senate, in accordance with law. It is clarified that the petitioner shall not be considered disqualified in any subsequent election, on the basis of the instant matter.

Chief Justice

Judge

Judge

Islamabad,
25th November, 2022.
approved for reporting
Iqbal