IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT: Mr. Justice Mian Saqib Nisar, HCJ
Mr. Justice Umar Ata Bandial
Mr. Justice Faisal Arab

CONSTITUTION PETITION NO.35 OF 2016

(Under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973)

Muhammad Hanif Abbasi ... … Petitioner

VERSUS

Imran Khan Niazi and others … ... Respondents

...

For the Petitioner	:	Mr. Muhammad Akram Sheikh, Sr. ASC *(Assisted by Ms. Maryam Rauf and Ms. Umber Bashir, Advocates)* Mr. Tariq Kamal Qazi, Advocate *(With permission of the Court)* Syed Rifaqat Hussain Shah, AOR
For Respondent No.1	:	Mr. Naeem Bukhari, ASC *(Assisted by Mr. Kashif Nawaz Siddiqui, Advocate)* Ch. Akhtar Ali, AOR
For Respondent No.2	:	Mr. Anwar Mansoor Khan, Sr. ASC *(Assisted by Barrister Umaima Anwar, Advocate)* Mr. Faisal Farid Hussain, ASC Mr. Fawad Hussain Chaudhry, ASC Ch. Akhtar Ali, AOR
For Respondent No.3	:	Mr. Muhammad Waqar Rana, Additional Attorney General for Pakistan Mr. M. S. Khattak, AOR
For Election Commission of Pakistan	:	Raja M. Ibrahim Satti, Sr. ASC Raja M. Rizwan Ibrahim Satti, ASC Mr. M. Arshad, D.G. (Law), ECP Malik Mujtaba Ahmed, Addl.D.G.(Law) ECP
On Court's notice	:	Mr. Ashtar Ausaf Ali, Attorney General for Pakistan
Dates of Hearing	:	3.5.2017, 4.5.2017, 8.5.2017, 9.5.2017, 10.5.2017, 11.5.2017, 23.5.2017, 24.5.2017, 25.5.2017, 30.5.2017,31.5.2017

1.6.2017, 13.6.2017, 14.6.2017, 11.7.2017, 13.7.2017, 25.7.2017, 31.7.2017, 1.8.2017, 2.8.2017, 3.8.2017, 12.9.2017, 26.9.2017, 28.9.2017, 3.10.2017, 4.10.2017, 5.10.2017, 10.10.2017, 11.10.2017, 12.10.2017, 17.10.2017, 18.10.2017, 19.10.2017, 23.10.2017, 24.10.2017, 25.10.2017, 7.11.2017, 8.11.2017, 9.11.2017 and 14.11.2017

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JUDGMENT

MIAN SAQIB NISAR, CJ. – This petition filed under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"), in substance essence seeks a declaration by this Court that respondent No.1, Mr. Imran Khan Niazi ("**the Respondent**"), is not qualified to be and is disqualified from being a member of the National Assembly; and that upon his seat from constituency NA-56 (Rawalpindi-VII) falling vacant, respondent No.4, the Election Commission of Pakistan ("**ECP**") be directed to hold fresh election in the constituency.

2. The Respondent is the Chairman of Pakistan Tehreek-e-Insaf ("**PTI**"), respondent No.2, a political party formed in 1996 and governed by, *inter alia*, the Political Parties Order, 2002. PTI has been contesting general elections held in the country since 1997. In its first contest in 1997, PTI did not win any seats in any legislature. In the next election held in 2002, the party secured only one seat in the National Assembly, namely, by the Respondent who was elected from NA-71, Mianwali-I. PTI boycotted the following general elections held in 2008. However, it contested the 2013 general election in which the party secured 33 seats in the National Assembly and respectively obtained 30, 4 and 61 seats in the Provincial Assemblies of Punjab, Sindh and Khyber Pakhtunkhwa ("**KPK**"). In the National Assembly, the PTI became the third largest majority party, while in the KPK

Provincial Assembly it holds near majority and was able to form the government in coalition with Qaumi Watan Party and Jamaat-e-Islami.

3. On 3.4.2016, the International Consortium of Investigative Journalists ("**ICIJ**") released certain information that had been hacked from the database of a Panama-based law firm, namely, Mossack Fonseca. This information described as the Panama Papers was published worldwide in both print and electronic media. It reveals the names of hundreds of persons who formed offshore companies in various tax haven jurisdictions for obtaining secrecy and tax immunity of private property and wealth secured by means that, *inter alia,* include fraud, money laundering and tax evasion. The list of such persons covers rich people from all over the world, including heads of states, their relatives and associates, politicians and public officials, etc.

4. Strikingly conspicuous Pakistani nationals mentioned in the Panama Papers are the three children of former Prime Minister of Pakistan, Mian Muhammad Nawaz Sharif, namely, Mr. Hussain Nawaz, Mr. Hasan Nawaz (**sons**) and Ms. Mariam Safdar (**daughter**). Allegations were leveled against them by the political opposition that they own properties in London which were acquired by their father in 1990s through the misuse of his authority whilst he held the office of Prime Minister of Pakistan for two terms in 1993 and in 1997. Following worldwide outrage against political leaders abroad, the opposition in the Parliament and other political parties demanded that the Prime Minister should resign. Attempts were made for the constitution of a Judicial Commission to inquire into the allegations but as that did not materialize, the Respondent filed a petition under Article 184(3) of the Constitution (Const.P.No.29/2016) before this Court. This petition was decided by a larger Bench of five honourable Judges whereby

two of the honourable Judges in the bench ("**the Minority"**), for the reasons recorded by them, disqualified Mian Muhammad Nawaz Sharif from being a Member of the National Assembly, thus ending his tenure as the Prime Minister of the country. On the other hand, the other three learned members of the Bench ("**the Majority"**) whilst taking serious note of the allegations and the supporting material, directed the constitution of a Joint Investigation Team (**JIT**) to probe further the questions highlighted in the Majority judgment of the Court and to report back thereon to the Court in order for the petition (Const.P. No.29/2016) to be finally decided. The JIT reported adversely against the Prime Minister and members of his family. Considering admitted material the learned 5 member Bench by their unanimous judgment dated 28.07.2017 disqualified the then Prime Minister and directed the filing of References under the National Accountability Ordinance, 1999 against him and his abovementioned family members.

Petitioner's case:

5. After filing of Constitution Petition No.29 of 2016, Mr.Muhammad Hanif Abbasi ("**the Petitioner"**) who is a member of Pakistan Muslim League (Nawaz) **["PML(N)"]** the former Prime Minister's party, filed the instant petition under Article 184(3) of the Constitution. He was the PML(N) candidate from NA-56 Rawalpindi-VII in the last general election of 2013 but lost the election to the Respondent. On the grounds set out in this petition the following relief is sought by the Petitioner:

> "I. Call upon Respondent No.1 to show the authority of law under which he purports to hold membership of the National Assembly, and his seat, NA-56, may kindly be declared vacant with the consequential direction to Respondent No.4 to hold election in this constituency in accordance with law.

II. Declare Respondent No.1 to be not qualified for, and disqualified from being a member of the National Assembly;

III. Declare Respondent No.1 to be ineligible from holding or retaining any office of a registered political party as provided under the Political Parties Order, 2002;

IV. Direct that any contributions or donations acquired through prohibited sources by Respondent No. 1 and No. 2 may be confiscated in favour of the State;

V. Declare Respondent No.2 to be a foreign-aided party;

VI. Direct Respondents No. 3, 4 and 5 to probe and investigate into the financial mis-declarations, misappropriation and evasion of Respondents No. 1 and 2;

VII. Direct Respondent No. 3 to carry out a comprehensive and detailed probe to scrutinize the tax returns and assets declarations of Respondent No. 1;

VIII. Grant such other relief as this Honourable Court may deem just and appropriate and in the interest of justice; and"

6. Mr. Muhammad Akram Sheikh, learned Sr. ASC for the petitioner at the very outset of his submissions on a Court query categorically stated that the petition is in the nature of *quo-warranto*, the primary object whereof is to seek disqualification of the Respondent as a Member of Parliament (relief Clauses No.I, II and III). He also unequivocally stated that the petitioner does not seek dissolution of or imposition of any ban upon the PTI. The other reliefs sought (relief Clauses No.IV to VII) are statedly incidental to the above-noted main relief. Whereas Clause IV asks for a direction that contributions or donations collected by the Respondent

and the PTI through sources prohibited under the Political Parties Order, 2002 **("PPO")** be confiscated in favour of the State, and Clause V seeks a declaration that PTI is a "foreign-aided political party" within the meaning of the PPO for having received foreign funds from prohibited sources, it follows from the submission of learned counsel that the directions in Clauses VI and VII are not pressed by him.

7. Learned counsel for the petitioner has accordingly articulated the following written formulations (submitted in Court):

> "i. Whether Respondent No. 1 has made false declarations – statements while issuing the certificates for the years 2010 to 2013 under section 13(2)(a) of the Political Parties Ordinance 2002 pledging therein that no funds from any source prohibited under the law were received by the Party?
>
> ii. Whether Respondent No. 1 has <u>failed to disclose assets and concealed an offshore company</u> while submitting his 'statements of assets and liabilities' therefore liable to be declared disqualified from being elected or remain member of the Parliament by this august court under Article 62 and 63 of the Constitution?
>
> iii. Whether Respondent No. 1 is guilty of offences of 'corrupt practice' and 'tax evasion' by declaring that the Banigala property is a gift from his former wife in his 'statements of assets and liabilities' whereas, admittedly, she was only a *benamidar* of the said property?
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> iv. Whether mis-declarations, misstatements and contradictory pleases with regards to Banigala

property make Respondent No. 1 disqualified under Article 62 (1)(f) of the Constitution?

v. Whether Respondent No. 1 misused the tax amnesty scheme and played a fraud on public exchequer?"

Certificate by the Respondent under Article 13(2) of the Political Parties Order, 2002.

8. Learned counsel for the petitioner submitted that PTI is a foreign-aided political party in terms of Article 2(c)(iii) of the PPO as it received contributions prohibited under Article 6(3) thereof read with Article 17(3) of the Constitution. He argued that despite the above-stated position, the Respondent personally issued certificates to the ECP in terms of Article 13(2) of the PPO to the effect that PTI does not receive funds from prohibited sources meaning thereby that it is not a foreign-aided political party. These certificates make a misdeclaration of fact and thus the Respondent has proven himself to be not sagacious, righteous, honest or ameen. He is, therefore, liable to be disqualified from holding elective office or being elected thereto under Articles 62(1)(f) and (g), and 63(1)(p) of the Constitution. The learned counsel conceded that the penalty of dissolution of the PTI as a foreign-aided political party, provided in Article 15 of the PPO, is not available to any person except by order of this Court passed on a reference filed by the Federal Government. Therefore, he maintains that the petitioner confines his prayer only to the consequence of disqualification of the Respondent resulting from his conscious act of issuing false certificates, thereby concealing of the funding provided to his party by foreign entities and nationals.

9. According to the learned counsel, the following facts establish that PTI is receiving prohibited funds. In the year 2010, the Respondent as

the Chairman of PTI appointed PTI USA NA LLC, a Texas-based limited liability company, as its agent in the USA registered under the Unites States Foreign Agents Registration Act, 1938 ("**FARA"**), *inter alia*, for fund-raising for the PTI in the USA. Subsequently, in 2013 PTI USA LLC, a California-based limited liability company was substituted by the Respondent as PTI's FARA Agent in the USA which retains its said status till date. Pursuant to their FARA registration, each of the said LLCs registered in Texas and California have during their appointment as PTI's FARA Agent admittedly collected and transferred through banking channels funds from USA to PTI Pakistan. According to the learned counsel for the petitioner, the PTI USA LLC (California) was incorporated by an individual who is a US citizen. Two of the directors of PTI NA USA LLC (Texas) are Pakistani, whereas the remaining five are US nationals. He also contended that assuming the said controllers of PTI NA USA LLC (Texas) are US nationals having dual nationality of Pakistan, yet for all intents and purposes, a dual national is a foreigner which renders the PTI a foreign-aided political party. Being limited liability companies registered abroad, PTI USA LLC and PTI NA LLC are juridical entities that for all intents and purposes are a foreign national. Furthermore, both PTI NA LLC and PTI USA LLC received contributions from foreign nationals. From 2010 to 2013, these LLCs collected and transferred over $2.3 million to PTI Pakistan. The incorporation of the PTI USA LLC California is meant to conceal the true identity of its donors which includes both foreign nationals and companies. Its statements filed with FARA show that during 2013 to 2015, it collected US $1 million in the USA as political donations which were transferred to PTI Pakistan. Abraaj Capital Ltd. Dubai, a limited company which owns K-Electric Company, Karachi, sent Rs.56/- million on 7.5.2013 to one Tariq Shafi, the CEO of Crescent

Industrial Chemical Ltd. which amount was transferred to PTI for unexplained reasons. Another amount of Rs.58.8 million was received on 26.3.2013 by Tariq Shafi from Harbour Services Inc., Dubai, which was also transferred to PTI. The documents relied upon by the learned counsel for the petitioner are:

i. Five signed certificates pertaining respectively to the years 2010 to 2014 filed by of the Respondent before the ECP attesting that PTI did not receive any funds from the sources prohibited under the law (pages 288 to 292 of Const.P. No.35/2016);

ii. The certificate of formation of PTI USA NA LLC (Texas) dated 9.2.2010 (page 162 of Const.P. No.35/2016);

iii. The Respondent's letter to the Justice Department USA dated 15.2.2010 notifying that PTI NA USA LLC (Texas) was appointed as PTI's agent under FARA (page 166 of Const.P. No.35/2016). The aims and objects of the said LLC are mentioned therein; and item No.5 thereof categorically mentions collection of funds for PTI Pakistan;

iv. The list of the board of directors of PTI NA USA LLC (page 165 of Const.P. No.65/2016), particularly the names of the directors (at page 168 thereof) out of which five are US nationals and two are Pakistani;

v. The Respondent is aware of the facts and records of its FARA Agent and thus cannot claim ignorance about collections of funds made by it. (document at page 173 of Const.P.35/2016);

vi. PTI has admitted in its concise statement that PTI NA USA LLC is its declared and lawful foreign agent under the laws of USA empowered to collect political donations and contributions (para 30 at page 9 of

CMA 8037/2016). The Respondent has also admitted to this effect at pages 162 and 166 of Const.P. No.35/2016;

vii. The FARA Exb.D statement dated 30.10.2014 submitted by PTI USA LLC (California) before FARA (page 277 and another Exb.D statement dated 30.04.2015 on page 287 of Const.P. No.35/2016) wherein it is mentioned that PTI USA LLC (California) received $83,400/- as funds and transferred $90,000/- to PTI Pakistan. There is a discrepancy as apparently the amount transferred was more than the amount collected. He also referred to the party campaign funds disbursements by FARA agent (at page 283 of the petition) and a chart in para 46 at page 16 thereof;

viii. The FARA Exb.D for period February, 2010 to June, 2013 (at page-1 of CMA No.7231/2016) showing the names of the persons/ entities that made contributions of less than US $50/- each to PTI NA USA LLC (Texas) includes individuals, foreign nationals, limited companies, etc. This list has been filed by the FARA Agent of PTI before FARA. Another FARA Exb.D for the period November, 2014 to March, 2015 (at page 109 of the said CMA) mentions the names of donors making contributions in excess of US $50/- but some of the contributions do not have corresponding names;

ix. The official website of FARA shows that the donors of PTI NA USA LLC include foreign nationals; and

x. FARA returns and declarations filed by PTI NA USA LLC (Texas) at Pages 162 to 248 of Const.P. No.35/2016; at the same filed by PTI USA LLC California at page 249 to 289 exemplify the allegation

> of prohibited contributions being received by the PTI's FARA agents.

He relied upon the case of **Miss Benazir Bhutto vs. Federation of Pakistan and another (PLD 1988 SC 416)** to emphasize the significance of accountability of political parties for sources of its funding and how seriously funding from foreign sources is taken by the Constitution.

10. To explain the terms "honest" and "*ameen*" used in Article 62(1)(f) of the Constitution, learned counsel referred to the cases of **Abdul Waheed Ch. vs. Rana Abdul Jabbar (CA No.95 of 2015)** and **Rai Hassan Nawaz vs. Haji Muhammad Ayub and others (PLD 2017 SC 70)**.

Concealment of Niazi Services Limited ("NSL") by the Respondent.

11. Learned counsel for the petitioner submitted that the Respondent was the absolute beneficial or real owner of NSL which was an offshore company, owned by three other offshore companies as shareholders, namely, Barclays Private Bank & Trust Limited, Barclay Trust Channel Islands Limited and Barclay Trust Jersey Limited (page 62 of Const.P. No.35/2016). NSL was incorporated and registered as a limited liability company on 10.5.1983 (page 22 of Const.P. No.35/2016) and filed its annual tax returns from 1983 till its dissolution on 01.10.2015 (pages 118 and 125 of Const.P. No.35/2016, dissolution notice dated 30.06.2015 at page 117 thereof). He stated that the Respondent admitted that he purchased a flat in the UK **("London flat")**, however, on solicitors' advice, NSL was established to own the flat (para 6 and 7 of CMA No.7925/2016). The Respondent is an income tax filer in Pakistan since 1982/1983 (both years were mentioned on different dates of hearing) and has been contesting elections since 1997. However, he never declared NSL in his income tax returns or his nomination

papers filed before the ECP. Though the flat was sold in 2003, NSL remained in existence till 2015, thus the Respondent was bound to declare his ownership therein notwithstanding whether it owned any property or not. The Respondent also made a misdeclaration in the forms of the Tax Amnesty Scheme, 2000 to the effect that he was the owner of the London flat whereas it was NSL that admittedly owned such property. According to the learned counsel, the said statements amounted to misdeclarations made by the Respondent before the ECP and the tax authorities. Thus, he is not honest or *ameen* and is liable to be disqualified under Article 62(1)(f) of the Constitution.

Learned counsel added that after the sale of NSL's alleged sole property, the London flat in 2003, whether NSL was a shell company is doubtful because the company was kept alive for 12 long years thereafter, until 2015 during which its corporate and other returns continued to be filed by incurring substantial expense including recurring solicitors fees, trustees fees and registry fees; the latter amounting to £350/-, annual return fee evident from page 117 of Const.P. No.35/2016. To incur such a large recurring expense for keeping a mere shell company alive is highly improbable which supports the conclusion that there must be other assets of NSL that the Respondent kept hidden from the public eye.

12. In respect of the plea of concealment in the income tax returns, learned counsel referred to the statement of assets filed by the Respondent under Section 116(2) of the Income Tax Ordinance, 2001 **("the Ordinance, 2001")** for the year 2014-15 (pages 24-31 of CMA 7925/16). It is the petitioner's case that when the Respondent became an income tax filer he was a resident in Pakistan. Thus he was bound under the law to disclose both local and foreign assets owned by him as and when he became a filer.

Learned counsel submitted that under the Wealth Tax Act, 1963 repealed on 1.7.2003 **("the Act, 1963")** the Respondent was bound to declare NSL and the assets owned by it. He referred to Sections 4 [particularly sub-section (1)(a)(iii) and (5)] and 14 of the Act, 1963 and the Wealth Tax Forms (old and current). He also referred to Sections 2(64), 4, 9, 10, 11(5) and Section 116(2) of the Ordinance, 2001 to argue that when a resident person files his return he has to declare local and foreign income sources and correspondingly file a wealth statement. The form required to be filed under the Act, 1963 has a specific column for declaring assets. He also referred to a notification dated 26.6.2015. In support of his argument that the Respondent's interest in NSL was an asset which had to be declared under the law, learned counsel referred to the definition of the term "share" in Section 2(58) of the Ordinance, 2001 and stated that since the word "asset" has not been defined in the said Ordinance, therefore, its definition has to be taken from common law and according to him "asset" includes "share".

He also argued that the Respondent accepted that he is the absolute owner of NSL (para 7 of CMA No.7925/2016) and also that he is its beneficial owner (para 7 and 21 of CMA No.7925/2016). As per a news item dated 14.5.2016, the Respondent admitted that he formed an offshore company to buy the London flat to avoid paying taxes in the UK during his cricketing days (page 130 of Const.P. No.35/2016). According to the learned counsel these are major contradictions which render the Respondent to be not honest and *ameen* and therefore disqualified.

13. Coming to the submission regarding concealment of foreign property and NSL before the ECP, learned counsel referred to the statement of assets and liabilities of the Respondent for the years 2013 and 2014 filed in his Annual Returns under Section 42A of the Representation of the People

Act, 1976 **("ROPA")** with ECP (pages 154 to 156 and 159 to 161 of Const.P. No.35/2016), in which neither the property of nor the shares in NSL or the very existence of NSL is mentioned particularly under para 4(b) and 5(b) of the prescribed statement of assets in the forms. According to him the Respondent was bound to mention his foreign interests in his annual statement of assets and liabilities filed before the ECP under Section 42A of the ROPA. As per the said legal provision, if a person fails to file a statement of assets and liabilities the Chief Election Commissioner shall suspend his membership and he may be prosecuted for committing corrupt practices. Apart from the London flat, NSL was a juristic entity, incorporated and run for the benefit of the Respondent. Accordingly his ownership in NSL had to be mentioned in the declaration till dissolution of NSL on 2015. In this context learned counsel relied upon **Rai Hassan Nawaz**'s case (*supra*).

14. As regards the Tax Amnesty Scheme, learned counsel submitted that in 2000 the Respondent availed the incentive of a tax amnesty under the said Scheme announced by the then government under Section 59D of the Income Tax Ordinance, 1979 to whiten the amount of Rs.2/- million equivalent to the price of UK £117000/- paid for the London flat. For the said relief the Respondent paid income tax of Rs.240,000/-. However, NSL was not mentioned by the Respondent in his declaration under the Amnesty Scheme. He referred to the form of declaration of undisclosed income (page 50 of CMA No.7925/2016) filed under the Amnesty Scheme, wherein the Respondent admitted that in the income year 1983-84 (this is assessment year 1984-85), he had an undisclosed income of £117000 equal to Rs.2/- million to whiten the same, the Respondent paid tax in the amount of Rs.240,000/- (para 7 of CMA No.7925/2016). He submitted that what the Respondent could only whiten under the Amnesty Scheme is his personal

incomes and not the London flat which was owned by NSL as a juridical entity. The claim by the Respondent that he had declared that London flat is a mis-statement exposing him to disqualification. Even otherwise the Respondent concealed the beneficial ownership of the flat for approximately 17 years (from 1983 to 2000) until he filed Nomination Papers for contesting the general elections in 2002. Thus the Respondent is not honest and *ameen* and liable to be disqualified under Article 62 of the Constitution.

Alleged false and contradictory declarations about the Banigala property.

15. The crux of the submissions of the learned counsel in this regard is that the Respondent is guilty of money laundering and tax evasion with regard to his property in Banigala and the contradictory pleas taken in this regard amount to misdeclaration rendering the Respondent liable to be disqualified under Article 62(1)(f) of the Constitution being not sagacious and honest and *ameen*. According to the learned counsel, the above submission is borne out by the following facts.

16. The Respondent entered into an agreement for the purchase of land measuring 300 kanals and 5 marlas in village Mora Noor, Tehsil and District Islamabad vide agreement to sell dated 13.3.2002 (concise statement CMA No.7925/2016) for a total sale consideration of Rs.43.5 million payable by 30.06.2002. The concise statement states that Rs.6.5 million was paid as advance (page 15 of CMA No.7925/2016). However, the written agreement records that initially Rs.300,000/- was paid for expenses by cheque followed by payments of Rs.3.0 million on 13.3.2002 and Rs.3.5 million on 21.3.2002 totaling Rs.6.5 million. An amount of Rs.36.2 million was then paid in five installments made through cheques and another cash payment of Rs.800,000/- through cash (seller's acknowledgment receipts at

pages 75 and 76 of CMA No.7925/2016). Learned counsel for the petitioner stated that after payment of advance, the remaining sale consideration in the amount of Rs.36.2 million was allegedly borrowed by the Respondent from his ex-wife. However, no detail of any banking transfer made by the ex-wife from UK to Pakistan to the credit of the Respondent has been placed on record. Similarly, no transaction for the return of the borrowed money by the Respondent to his wife in the UK has been shown. In this regard, a certificate of Citibank was produced (page 64 of CMA No7925/2016) showing conversion of US$ amounts to PKR. These entries did not evidence any remittance nor show any connection between the remitter and the Respondent as recipient.

Learned counsel submitted that the Banigala property was 'parked' in the name of his ex-wife, Ms. Jemima Khan. The spouses were divorced in June, 2004 (para 8 of concise statement, CMA 7925/2016). On 11.6.2005 vide mutation No.7361 land measuring 45 kanals bearing a sale value of Rs.6.5 million was mutated in the name of the Respondent's ex-wife (page 85 of CMA No.7925/2016). Likewise, on the same day land measuring 50 kanals valuing Rs.7.25 million was also mutated in her name vide mutation No.7538. Why were mutation Nos.7361 and 7538 for land measuring 45 and 50 kanals respectively recorded in favour of Ms. Jemima Khan after her divorce and then ultimately retrieved by the Respondent vide gift mutation No.10696 dated 29.10.2005 whereby the entire chunk of 300 kanals land was transferred by Ms. Jemima Khan to the Respondent. This sequence of back and forth transfers was alleged by learned counsel for the petitioner to be farcical and a sham which went against the case of the Respondent as set out in his pleadings. These gift mutations in favour of the Respondent that took place in 2005 have no justification because by that time the divorce between

the Respondent and his ex-wife had already taken place in June 2004. He submitted that the intention of the Respondent behind parking the Banigala property in his wife's name was to avoid questions about the source of funding for the purchase of the Banigala property and to evade taxes.

Learned counsel referred to the nomination papers of the Respondent filed on 28.8.2002 for the general elections held in 2002 (CMA No.3125/17). In particular he referred to pages 6 and 7 to submit that the *benami* transaction of Banigala property in favour of the Respondent's ex-wife, the claimed loan from her and the three mutations already recorded in her favour were not mentioned in the relevant columns. He also referred to Annexure A of the nomination papers and stated that it was not a truthful disclosure of the position taken up by the Respondent himself.

Learned counsel submitted that the London flat was sold for £715,000.00 (pages 58 and 59 of CMA No.7925/2016). After deducting the agent's commission and other expenses; the net yield of £690,307.79 was received by the Respondent on 14.4.2003. Considering the exchange rate prevailing at that time the Respondent got approximately Rs.63 million from the said sale out of which Rs.39 million was the alleged loan amount given by his wife (figure taken from concise statement CMA No.7925/2016). No detail regarding the utilization of the balance amount of net sale value of the London flat, that is Rs.33.6 million, was provided by the Respondent. Further, there is no money trail (page 64 of CMA No.7925/2016) and there are two transfers on the same day, i.e. 31.08.2002, all of which point towards money laundering by the Respondent.

17. According to learned counsel for the petitioner, the Respondent gave three versions at different times with regard to the ownership of this Banigala property. One of the versions is that he purchased it himself. Then

there is a general power of attorney dated 21.03.2005 (at page 157 of Const.P. No.35/2016) according to which his ex-wife claimed that the Banigala property was purchased by the Respondent but mutated in her name as a *benami* transaction; and she appointed Saifullah Sarwar Khan Niazi as an attorney to get it transferred back in the name of the Respondent. According to this version, the Respondent purchased the land from his own money but he ran short of funds. Therefore, he borrowed money from his ex-wife and mutated the land in her name but on the sale of the London flat he paid back the money to his ex-wife. The second version taken by the Respondent before the ECP is that this property was gifted to him by his ex-wife. Reference is made to the statement of assets and liabilities submitted before the ECP (page 34 and para (ii) at page-35 of CMA No.7925/2016) and the Respondent's statement of assets and liabilities before FBR (page 24 of CMA No.7925/2016). The Respondent in his tax return filed before the FBR for the tax year 2014 mentions that 300 kanals 5 marlas house was gifted to him. In the statement of assets and liabilities submitted to the ECP (page 159 of Const.P. No.35/2016) it is also stated to be a gift. There is no gift deed on the record however the property is mentioned in the revenue record as *hiba*.

According to the learned counsel, the Respondent paid Rs.3.8 million from his personal resources through money laundering as such his ex-wife cannot be a *benamidar*. Thus the statement that she was the *benamidar* is a misdeclaration. Had his wife paid the money she could not be a *benamidar* rather was the actual owner. It is settled that a *benamidar* cannot make a gift. He relied on **Smt. Harjunder Kaur and others Vs. Mrs. Usha Gupta and another (1998 PTD 2477) = (222 ITR 200)** and **Sankara Hali and Sankara Institute of Philosophy and Culture vs. Kishore Lal Goenka [1996 (7) SCC 55]**. During her interview with CNBC and Samaa, the Respondent's ex-

wife said that she never paid a single penny to the Respondent nor received the same from him whereas in his statement on ARY Channel, the Respondent said that the entire money from sale of the UK flat came to Pakistan (script of TV programmes at page 31 of CMA No.1169/2017).

As precedent for disqualification of a legislator under Article 62(1)(f) of the Constitution, the learned counsel placed reliance on **Allah Dino Khan Bhayo Vs. Election Commission of Pakistan, Islamabad and others (2013 SCMR 1655)**, **Mian Najeeb-ud-Din Owasi and another Vs. Amir Yar Waran and others (PLD 2013 SC 482)** and the case of **Ch Muhammad Yousaf Kaselia Vs. Peer Ghulam Mohy-ud-Din Chishti and others (PLD 2016 SC 689)**.

18. Learned counsel then referred to the Respondent's speech made in Parliament on 18.5.2016 (page 3 and 17 of CMA No.1169/2017) and his Concise Statement (CMA No.7925/2016, page 4, para 13) to argue that both these statements were contradictory. Especially when claimed on the floor of Parliament there should be a banking transaction that all the money from the sale of the London flat was brought to Pakistan. Thus, the Respondent exposed himself to the liability of the penalty provided by Article 62(1)(f) of the Constitution on account of his deliberate, repeated mis-declaration and dishonest statements, thus he cannot be presumed to be honest and *ameen*.

19. Finally learned counsel submitted that both the Federal Government and ECP failed to perform their duty and since no forum is provided under the PPO for taking action when a false declaration is given by a party head, this Court can exercise its jurisdiction under Article 184(3) of the Constitution. Reliance was placed on the cases of **Umar Ahmad Ghumman Vs. Government of Pakistan and others (PLD 2002 Lah 521)**, **Air**

Marshal (Retd.) Muhammad Asghar Khan Vs. General (Retd.) Mirza Aslam Baig, Former Chief of Army Staff and others (PLD 2013 SC 1), **Pir Sabir Shah Vs. Shad Muhammad Khan, Member Provincial Assembly, N.W.F.P. and another (PLD 1995 SC 66)** and **Miss Benazir Bhutto Vs. Federation of Pakistan and another (PLD 1988 SC 416)**.

20. No arguments were made about the petitioner's allegation regarding Constitution Avenue property.

Respondent's reply:

21. Mr. Anwar Mansoor Khan, learned counsel for Respondent No.2 PTI, whilst answering the pleas raised by the petitioner's side about prohibited funding availed by PTI especially with reference to Clause IV, V and VI of the prayer made in the petition articulated the following formulations that were also submitted in Court in writing:

> "1. At the outset, the Chairman of his client PTI instructed him not to press any objections to the maintainability of this petition under Article 184(3) of the Constitution.
>
> 2. Whether receiving 'contribution' or 'donations' from abroad makes the PTI is a "Foreign Aided Political Party" under the Political Parties Order 2002?
>
> 3. Whether, once the accounts as required by Article 13 of the Political Parties Order 2002 have been filed by PTI, no objection having being raised by the Election Commission of Pakistan, and finding it to be proper, acted to publish it and allot the election symbol, the issue is past and closed?

4. Whether the FARA Foreign Agents Registration Act, 1938 being a mandatory requirement in the USA, wherefore the registration of PTI's agent in the FARA in fact makes transparent the accounts of the agent and donations and contributions collected from the members and supporters of PTI. Further where PTI USA LLC acted only as an agent of PTI Pakistan to remit funds received/ collected as 'Contributions'/'Donations' to its principal then could the FARA agent said to have contributed/donated such funds as a body corporate?"

22. Learned counsel submitted that the two terms 'aid' and 'contribution' appearing in the PPO with reference to funds received by a political party are distinct from each other according to their respective dictionary meanings and signify different concepts in the PPO (he referred to Chambers Dictionary, Law Lexicon and Black's Law Dictionary). Before considering the merits of the dispute, reference may be made to the following relevant provisions of the PPO that have a bearing upon the merits of the case:

> **2. Definitions.-** In this Order, unless there is anything repugnant in the subject or context,-
>
> (a) …
> (b) …
>
> (c) "foreign-aided political party" means a political party which-
> (i) …
> (ii) …
> (iii) receives any aid, financial or otherwise, from any government or political party of a foreign country, or any portion of its funds from foreign nationals;"
>
> **6. Membership fee and contributions.-** (1) A member of a political party shall be required to pay a membership fee as provided in the party's constitution and may in addition, make voluntary contributions towards the party's funds.

(2) The contribution made by members or supporters of any party shall be duly recorded by the political parties.

(3) Any contribution made directly or indirectly, by any foreign government, multinational or domestically incorporated public or private company, firm, trade or professional association shall be prohibited and the parties may accept contributions and donations only from individuals.

(4) Any contribution or donation which is prohibited under this Order shall be confiscated in favour of the State in the manner as may be prescribed.

Explanation.- For the purpose of this section, a "contribution or donation" includes a contribution or donation made in cash, kind, stocks, hospitality, accommodation, transport, fuel and provision of other such facilities.

13. Information about the sources of party's fund.- (1) Every political party shall, in such manner and in such form as may be prescribed or specified by the Chief Election Commissioner, submit to the Election Commission, within sixty days from the close of each financial year, a consolidated statement of accounts of the party audited by a Chartered Accountant containing-

(a) annual income and expenses;
(b) sources of its funds; and
(c) assets and liabilities.

(2) The statement referred to in clause (1) shall be accompanied by a certificate signed by the party leader stating that-

(a) no funds from any source prohibited under this Order were received by the party; and

(b) the statement contains an accurate financial position of the party."

15. Dissolution of a political party.— (1) Where the Federal Government is satisfied that a political party is a foreign-aided party or has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan or is indulging in terrorism it shall make such declaration by a notification in the official Gazette.

(2) Within fifteen days of making a declaration under clause (1), the Federal Government shall refer the matter to the Supreme Court whose decision on such reference shall be final.

(3) Where the Supreme Court upholds the declaration made

> against a political party under clause (1), such party shall stand dissolved forthwith."

Article 2(c)(iii) of the PPO uses the word 'aid' and the consequence of being a foreign-aided political party is contained in Article 15 thereof [read with Article 17(2) of the Constitution] which empowers a declaration of dissolution of the political party by the Federal Government. He stated that 'foreign-aided political parties' are those which work against the sovereignty and integrity of Pakistan and this phrase has only been used in Articles 2(c)(iii) and 15 of the PPO.

Learned counsel then referred to Article 6(3) of the PPO which according to him is a separate and distinct provision which deals with prohibited contributions and donations made to a political party by certain specified entities/persons, for which the penalty of confiscation is provided in Article 6(4) of the PPO. Being a penal provision, Article 6(4) *ibid* must be strictly construed and applied. He particularly dilated upon the word 'multi-national' used in Article 6(3) *ibid* which according to him did not mean a foreign company, but a company incorporated under the laws of Pakistan which is operated by a foreign company. In this context he referred to the definition of 'multi-national corporation' in Black's Law Dictionary. According to him, Articles 2(c)(iii) and 15 of the PPO on the one hand, and Articles 6(3) and 6(4) thereof on the other hand, are two distinct provisions of law which entail two different penalties. As regards the certificate to be given by a party head under Article 13 of the PPO wherein the expression 'prohibited sources' has been used, the relevant prohibition is contained only in Article 6(3) supra.

He referred to SRO No.581(I)/2002 (page 16 of CMA No.3239/17) according to which US nationals of Pakistani origin can have dual

nationality. Therefore the expression 'foreign national' used in Article 2(c)(iii) of the PPO exclude dual nationals, who are Pakistani citizens for all intents and purposes.

23. Learned counsel submitted that PTI submitted its annual audited accounts to the ECP, including the accounts relating to the PTI's receipts of foreign funds commencing from the year 2010 and thereafter, after scrutiny these accounts were gazetted by the ECP for the information of the general public. Subsequently, under the provisions of Article 14 of the PPO and as evidence of approval of these accounts, ECP allotted an election symbol to the PTI on which it contested the general elections in 2013. A political party must fulfill two conditions under Article 14 of the PPO before the ECP can allot an election symbol to it. These conditions are: (i) to conduct intra-party elections under Article 12 of the PPO; and (ii) to submit their audited accounts to the ECP as required by Article 13 of the PPO. At this juncture, he referred to Sections 3 and 3A of the Political Parties Act, 1962 **("the Act, 1962")** to argue that under the said Act, every political party was required to submit its records to the officer nominated by the ECP for the audit of its accounts and source of funds. However, this provision for audit by the ECP is absent in the PPO and instead Article 13 thereof provides for audit to be conducted by chartered accountants appointed by the political party itself. He stated that this change in the law is important and must be given due meaning.

Thus, the burden lies on the chartered accountants of a political party to scrutinize and submit accounts that comply with the provisions of the PPO. In case, anything is amiss in the audited accounts furnished then action is to be taken against him or for rectification. If the ECP finds any deficiency or defect in the accounts submitted, it can proceed under Rule 6 of the

Political Parties Rules, 2002 **("Rules, 2002")** for obtaining information or directing correction. In the present case, the ECP did not do so at the relevant time. However, according to the learned counsel, after the issuance of symbols for the general election held in 2013, the petitioner cannot now be allowed to raise the issue of accounts before this Court. In terms of Article 14 and Rule 10 the matter of accounts submitted by PTI has become a past and closed transaction and ECP cannot review its order to re-open the matter as it has become *functus officio*. Furthermore, a third person does not have the *locus standi* to question before ECP the accounts of PTI by alleging that it has availed funding from prohibited sources. The ECP cannot accept such an application particularly after super-structural actions have taken place, namely, allotment of election symbols and holding of general elections.

24. Learned counsel stated that PTI's accounts were audited by chartered accountants certified as 'A' class by the State Bank of Pakistan. Learned counsel referred to the auditor's report (page 33 of CMA No.3239/2017) and the certificate by the party head that no fund has been received from prohibited sources (page 34 of CMA No.3239/2017). None of PTI's accounts are qualified for being doubtful, erroneous or contrary to law as it would have appeared in the chartered accountants' report. In fact, the accounts filed by other parties are qualified, e.g. PML(N) and PPP (pages 67 and 68 of CMA No.3239 of 2017). PPP also appointed a foreign agent under FARA. The Government of Pakistan was also registered with FARA as donor in 2012.

He referred to the following: the internal procedure, checks and guidelines for receipt of funds by PTI (page 82 of CMA No.3239/2017). According to the guidelines, PTI requested the bank to return £97,680/- remitted by a foreign company; PTI's fund raising policy and the rules in this

regard (pages 2 and 3 of CMA No.3239/2017), particularly Para B (Fund Raising Team); the Bylaws of PTI NA LLC in which it is admitted that it is an agent of PTI Pakistan (aims and objectives at page 6 of CMA No.3239/2017; raising and disbursement of funds at page 9 and 10 of the said CMA; para–G, Clause 7 which mentions that money is only spent for the intended purposes defined in the FARA application (page 15 of CMA No.3239/2017).

25. With regard to the jurisdiction of ECP to scrutinize the accounts, learned counsel argued that Article 219 of the Constitution lays down the specific functions conferred upon the ECP; clause (e) thereof however, permits for such other functions of ECP to be provided as or specified by an Act of Parliament. The PPO provides for the submission to and scrutiny of accounts of political parties by the ECP. However, the PPO does not envisage ECP to conduct their audit. Therefore, the Rules cannot provide for what has not been provided in the parent law, i.e. the PPO, itself. According to him, the ECP under Article 6 of the PPO is neither a Court nor a Tribunal capable of making determinations; rather it can only exercise executive power under the PPO. At the time of submission of accounts of political parties containing the reports of the auditors, ECP can undertake their scrutiny and finalize such accounts. Once such accounts have been accepted by the ECP, their scrutiny cannot be reopened. Prior to the acceptance of audited accounts, their scrutiny by ECP can only be inquisitorial as opposed to adversarial in nature. In this context, he referred to Section 103AA of ROPA which confers a specific power of determination upon the ECP which is absent in the PPO. According to him, if a power has not been specifically given to the ECP by the PPO, such power cannot be read into the law and exercised by the ECP. Rule 6 which vests ECP with a power of deciding the validity of the accounts is excessive because the PPO

itself does not confer such a power on the ECP. Thus any exercise of a determinative jurisdiction by the ECP would be improper and in excess of authority. Finally, he referred to Rule 4 of the Rules and Form-I. He also relied upon Rule 10 to argue that since the ECP did not return the statements of accounts submitted by PTI thus the ECP considered these to be correct and accepted the same.

He referred to the judgments reported as **Mian Umar Ikram-ul-Haque vs. Dr. Shahida Hasnain and another (2016 SCMR 2186)**, **Independent Newspapers Corporation (Pvt.) Ltd and another vs. Chairman, Fourth Wage Board and Implementation Tribunal for Newspaper Employees, Government of Pakistan, Islamabad and 2 others (1993 SCMR 1533)**, **Pir Sabir Shah**'s case (supra) and **Sindh High Court Bar Association through its Secretary and another vs. Federation of Pakistan through Secretary, Ministry of Law and Justice, Islamabad and others (PLD 2009 SC 879)**. In support of the contention that the ECP cannot act as a Court or Tribunal, learned counsel relied upon the judgments reported as **Watan Party and another vs. Federation of Pakistan and others (PLD 2011 SC 997 @1053)**, and **Philips Electrical Industries of Pakistan Ltd. vs. Pakistan and others (2000 YLR 2724 @2734-35)**. He relied on the judgment reported as **A. R. Awan and 2 others vs. City District Government, Karachi and another (2011 SCMR 691)** on the proposition that Courts should not extend the scope of a statute.

26. With regard to the issue of FARA, learned counsel began by reading the definitions of 'foreign principal' [in §611(b) and §611(2) of FARA] and 'agent of a foreign principal' [in §611(c) of the Chapter on FARA in Title 22-Foreign Relations and Intercourse]. He also referred to §611(d) of FARA which provides what the term 'agent of a foreign principal' does not include.

According to him, PTI USA LLC falls within §611(c)(1)(iii) of FARA. It is registered in the name of an individual. It has got nothing to do with Pakistan per se but it acts as an agent of PTI for the purposes of collection and remittance of money to Pakistan as directed by the principal and in accordance with the arrangements with that agent. The agent is a body corporate for which PTI has not invested a penny. He referred to the by-laws of PTI USA LLC (page 6 of CMA No.3239/2017, particularly Para G on page 9). He referred to the letter issued by PTI (page 2 of CMA No.3239/2017), PTI Pakistan's letter of appointment of PTI USA LLC as an agent (page 14 of CMA No.3239/2017) and PTI Pakistan's fund raising Policy (page 3 of CMA No.3239/2017, hereinafter referred to as the "Policy"). It is permissible in the USA for foreign political parties to collect funds. However, it is a requirement of FARA that this is done through an agent. In fact, individuals cannot send money to political parties abroad. He also referred to §612(a) of FARA commentary in this regard. He referred to the Policy (Para E on page 4 of CMA No.3239/2017) and Section 188 of the Contract Act, 1872 which pertains to agency and submitted that PTI USA LLC is a foreign company but it is an agent of PTI Pakistan, therefore it is not sending its own funds to PTI Pakistan but collecting money on behalf of PTI Pakistan and merely sending these collections to PTI Pakistan. Therefore such receipts do not fall within the prohibited sources under Article 6(3) of the PPO.

The rationale of Article 17(2) of the Constitution read with Article 2(c)(iii) of the PPO is that no harm is done by any political party to the sovereignty and integrity of Pakistan. According to him, a "foreign national" referred in Article 2(c)(iii) means a national of a foreign state exclusively and not a dual citizen. With respect to his contention that dual nationals are not foreigners and can make contributions and donations under Article 6 of the

PPO, learned counsel referred to the judgments reported as **Nasir Iqbal vs. Federation of Pakistan** (2013 SCMR 874) and **Syed Mehmood Akhtar Naqvi vs. Federation of Pakistan through Secretary Law and others (PLD 2012 SC 1089,** Justice Jawwad S. Khawaja's note at 1128) and **Umar Ahmad Ghumman**'s case (supra) and the judgment rendered in **Const.P. No.26/1993** dated 15.11.1993 (**Yasmin Khan vs. Election Commission of Pakistan**).

27. Learned counsel pointed out that other political parties also have appointed foreign agents under FARA in the United States. These include MQM, PPP, APML. PML(N) has an agent registered in England as a private company. Its objects are to borrow or raise money, trade or business, to enter into an arrangement with any government, authority or charter (Clauses 3.1.8 to 3.1.10 at page 3 of the Memorandum of Association). According to him, this is a direct violation of Article 2(c)(iii) of the PPO. Thus, the petitioner who belongs to PML(N) has come to this Court with unclean hands.

28. Mr. Naeem Bukhari, learned ASC for the Respondent No.1 made the following submissions:

i. Till October 2002, the Respondent was not a public office holder;

ii. From 1971 till 1988 the Respondent was a professional cricketer who played county cricket in England for the Worcestershire Cricket Club and the Sussex Cricket Club, and in Australia for the Kerry Packer World Series under contract with Channel 9;

iii. The Respondent did not file tax returns in Pakistan until 1981 because he was a non-resident for income tax purposes (Learned counsel placed the original copies of his returns in a sealed envelope for this Court's consideration). During this period the Respondent was not a holder of public office;

iv. The Respondent purchased Flat No.2, 165 Draycott Avenue, London, United Kingdom, SW3 (London flat) in 1983 for a price of £117,000/-. To finance the purchase of the property, he got a mortgage on it which he redeemed after six years by payment of the mortgage money. The London flat was purchased with the income he earned from professional cricket;

v. On professional legal advice, the London flat was purchased through NSL. It was advised that purchase of the property through an offshore company would relieve the Respondent from liability to pay capital gains tax at the time of its disposal; whereas if the property were purchased in his name such tax would be leviable. It is with the said purpose that NSL was got incorporated on 10.5.1983 (page 22 of Const.P.No.35/2016);

vi. The subscribed capital of NSL was £9/-. Three financial institutions, namely, Langtry Trustees Limited, Langtry Secretaries Limited and Langtry Consultants each held £3 worth of shares in NSL (page 105 of Const.P. No.35/2016). However, there was a subsequent change in the shareholding as Barclays Private Bank and Trust Ltd. took Langtry's place and managed NSL thereafter;

vii. Though the object of purchasing the London flat in the name of an offshore company was to limit the tax liability of its beneficial owner, the Respondent, who was then resident of UK (thus non-resident in Pakistan). But by 1983 the Respondent became non-resident in UK and resident in Pakistan. Accordingly, he started filing his income tax returns from the year 1983. Since he became a non-resident in the UK at the time of sale of the London flat in April, 2003, the Respondent was not liable to capital gain tax. In hindsight the setting up of NSL was a waste of effort;

viii. According to the learned counsel, having disclosed the London flat (in the Amnesty Scheme), the omission of non-disclosure of

an offshore company with a subscribed shareholding of merely £9/- (with the Respondent having no share) rendered it a shell company. Its non-disclosure does not amount to concealment of an asset and the Respondent cannot be disqualified for it. The flat was disclosed in the income tax returns and the nomination papers filed by the Respondent in 2002. Ultimately the said flat of the Respondent was sold in 2003;

ix. The London flat purchased in 1983 was not declared in any tax return in Pakistan on advice that since it had been purchased with foreign income, there was no requirement to declare it. However, when the Amnesty Scheme was announced on 1.3.2000 (page 44 onwards of CMA No.7925/2016), the Respondent took advantage of it and on 30.9.2000 declared the income with which the London flat was bought (page 50 of CMA No.7925/2016) as well as the flat itself (page 51 of CMA No.7925/2016). Tax was paid thereupon at the rate prescribed in the scheme and the matter stood settled. The Central Board of Revenue and its successor, the Federal Board of Revenue, have not raised any issue till date.

x. According to Clause 10 of the Amnesty Scheme (page 45 of CMA No.7925/2016), the proceedings thereunder attain finality where undisclosed income is declared and tax is paid thereupon. The Respondent was always the beneficial owner of the London flat. Non-declaration of NSL is absolutely irrelevant because the finance for the purchase of the London flat was provided by the Respondent after it was sold by him in 2003 he received the sale price thereof (subject to certain deductions as is shown in the chart/statement available at page 58 of CMA No.7925/2016).

xi The Respondent never considered NSL to be his asset. It was merely a single purpose vehicle meant to be a holding entity. The Respondent was never a shareholder of NSL, therefore, it was neither declared in his tax returns nor in his nomination papers before the ECP or his statement of assets and liabilities

filed under Section 42A of ROPA. Returns of NSL had to be filed by its directors or its shareholders in Jersey and not Pakistan. Thus there was no ground for the Respondent to disclose anything about NSL in Pakistan. The Respondent has given an affidavit to the effect that NSL did not hold any other asset apart from the London flat;

xii. The London flat was declared by the Respondent in the nomination papers dated 28.08.2002 for general elections 2002 (page 6 of CMA No.3125/2017). This is the first time the Respondent secured public office. He declared the London flat prior to assuming the public office of Member National Assembly in Annex-A to his nomination papers (page-9 of CMA No.3125/2017) in which the Banigala property belonging to his then wife was also disclosed. Thus he submitted that having declared the London flat in the Amnesty Scheme and then in his nomination papers of 2002, the matter stands settled after sale of the flat in 2003.

Property at One Constitution Avenue:

xiii. As regards the property at One Constitution Avenue, learned counsel submitted that the Respondent had paid an amount of Rs.2,970,000/- as advance for the purchase of a flat in One Constitution Avenue, Islamabad. He had duly disclosed this amount in the tax returns filed by him for the year 2014 (page 25 of CMA No.7925/2016). It is the exact same amount as alleged by the petitioner (page 153 of Const.P. No.35/2016). This amount is shown to be an advance payment in his tax return. However, since no flat was allocated to him at that time, therefore, he did not mention the amount of advance paid for the purchase of the said flat in his 2014 statement of assets and liabilities filed with the ECP under Section 42A of the ROPA. Nevertheless, when a specific flat was allotted to the Respondent and its flat number became known to him, he declared that property in his 2015 statement of assets and liabilities filed with the ECP (page 32 of CMA No.7925/2016).

Moreover, since further installments for the said flat had been paid, therefore, in his 2015 tax return (page 30 of CMA No.7925/2016) the further amounts paid were added to the advance deposit to reflect the total amount of prepayment as Rs.5,970,000/-. Further sums were paid subsequently, therefore in the 2016 statement of assets and liabilities filed by the Respondent with the ECP he disclosed the further amounts deposited till that time to be Rs.11,970,000/- (page 38 of CMA No.7925/2016). Therefore, the question that the Respondent had concealed the details of his payment for the flat and in his tax returns is absolutely unfounded.

Banigala property:

xiv. Learned counsel referred to the agreement to sell dated 13.3.2002 (page 60 to 63 of CMA No.7925/2016). It is undisputed that the agreement is between the seller of the Banigala property and the Respondent. The price of Rs.43.5 million is also undisputed. The agreement refers to initial down payment of 6.5 million by the Respondent. Further payments are referred in the acknowledgment receipt dated 24.7.2003 issued by the seller (page 75 of CMA No.7925 of 2016). The date for completion of the sale was extended to 23.1.2003 (when the last payment made to seller) except for the said down payment and last installment of Rs.800,000/- the remaining amount of sale consideration was paid through banker's cheques (page 77 to 83 of CMA No.7925/2016). The amount paid with these banking instruments was provided by foreign exchange remittances made by Ms. Jemima Khan the Respondent's wife through banking channels to the account of the Respondent's representative Rashid Ali Khan. The encashment certificates of the remitted foreign exchange to PKR are at pages 65 to 74 of CMA No.7925/2016.

xv. Since the London flat could not be sold timely primarily due to a dispute with its tenant that ultimately went to Court, and as according to the agreement to sell of the Banigala property, the

Respondent had to discharge the total sale price on or before the completion date, therefore, a bridge finance was obtained by the Respondent from his wife Ms. Jemima Khan in order to meet his obligation to pay the balance sale consideration of the Banigala property. In this context, as mentioned earlier, apart from payments of Rs.7.3 million by the Respondent to the seller of the Banigala property, the remaining amount of Rs.36.2 million was temporarily funded by Ms. Jemima Khan;

xvi. For all intents and purposes the Banigala property was meant for the use of the Respondent's family, his wife Ms. Jemima Khan and their two sons. Had Ms.Jemima Khan not insisted to return the property to the Respondent after their divorce, he would never have got it transferred to his name;

xvii. The London flat was sold in April 2003 on account of which the net amount of £690,307.79 (statement at page 59 of CMA No.7925/2016) was recovered on 14.4.2003. Out of the aforesaid amount, the Respondent paid £562,415.54 to Ms. Jemima Khan (page 12 of CMA No.3657/2017), *inter alia*, to settle the bridge finance of Rs.36.2 million extended by her for purchase of the Banigala property;

xviii. He referred to a Citibank certificate (page 64 of CMA No.7925/2016), letter from Citibank establishing the identity of the remitter (page 13 of CMA No.3657/2017) and the letter dated 22.5.2017 stating the remittance of the said amount by the Respondent to his ex-wife (page 12 of CMA No.3657/2017);

xix. The Respondent's case is that in May 2003 he returned an amount of £562,415.54 to his wife that was well above the amount she had loaned to him, through her foreign currency remittances made to Mr. Rashid Ali Khan;

xx. According to the learned counsel, the Banigala property was meant to belong to the Respondent's wife and had their marriage not broken down it would still have been hers. The

Respondent's marriage with Ms. Jemima Khan ended in June 2004. He referred to pages 137 and 138 (of Const.P. No.35/2016) to state that mutations of the Banigala property at serial No.1 to 5 are in the name of Ms. Jemima Khan. As regards the fact that two of the mutations were sanctioned on 11.6.2005 much after the sale of the property, learned counsel submits that these mutations were entered in 2002-2003 but their sanction by the competent revenue officer was delayed until 2005 (tareekh-i-faisla). He then referred to the mutations on pages 139 onwards of Const.P. No.35/2016. He also referred to page 85 of CMA No.7925/2016;

xxi. Learned counsel clarified that it was never the Respondent's case that the property was benami rather it was bought in his wife's name. The word benami only appears in her power of attorney (page 157 of Const.P. No.35/2016). He states that *hiba* of the Banigala property was then made by her attorney in favour of the Respondent;

29. Learned counsel referred to the five mutations in favour of Ms. Jemima Khan and their sanction dates, namely, mutation No.7056 on 26.4.2002, mutation No.7225 on 16.8.2002 and mutation No.7246 on 28.8.2002. He added that the dispute raised by the learned counsel for the petitioner is confined to the last two mutations No.7361 and 7538 which were entered on 11.11.2002 and 4.2.2003 respectively, but were sanctioned on 11.6.2005 because of the delay in their finalization. He explained that the Respondent is in no way responsible for the delay in the sanction of the last two mutations. Although the Respondent and Ms. Jemima Khan stood divorced in 2004, these mutations had to be sanctioned in the name of Ms. Jemima Khan because the original entries in the *rapat roznamcha* were made in these terms in the years 2002 and 2003. Therefore the Respondent neither made a false statement nor manipulated or fabricated the revenue record. He further

submitted that on 21.3.2005 Ms. Jemima Khan appeared before a notary public in England to execute a general power of attorney favouring Saifullah Khan Sarwar Niazi for the Banigala property (page 157 of Const.P. No.35/2016). In this power of attorney Ms.Jemima Khan categorically states her intention to give the Banigala property back to the Respondent (paragraph 2 of the power of attorney). In this regard she authorized her attorney/agent to either transfer the said property in the Respondent's name or in the alternative to gift it to him. The attorney while exercising his lawful power under the power of attorney got a gift mutation No.10696 dated 29.10.2005 (oral *hiba*) sanctioned in favour of the Respondent.

30. As regards the question of non-declaration of NSL by the Respondent in his tax returns and the statement of assets and liabilities filed before the ECP, learned counsel pointed out that none of the documents on record that relate to NSL including those produced by the petitioner (pages 22 to 129 of Const.P. No.35/2016) show the Respondent as being a shareholder or a director of NSL. Rather, NSL's shareholders were three trustee companies; and its directors at one stage were Ms.Aleema Khan and Ms.Uzma Khan, sisters of the Respondent (at pages 60, 103, 105, 107 and 111 of Const.P. No.35/2016) but later institutional directors were appointed. According to the petitioner (sub-para-c, page 10 of Const.P.No.35/2016) the Respondent's sisters are alleged to be his *benamidars*. That is futile because directors of a company cannot own its assets. The sisters were merely trustee directors of NSL. As the Respondent was neither a shareholder nor a director in NSL, therefore, he was not obliged to disclose the existence of NSL in his tax returns nor in his statement of assets and liabilities. In any event, NSL is a legal vehicle for owning an asset and not an asset itself. The incorporation of and affairs of NSL were handled by a solicitor, chartered accountants and its

trustee directors. NSL owned the London flat and the Respondent is the beneficial owner of that asset. According to an information memo about Jersey Island laws (page 34 of CMA No.3657/2017) the beneficial ownership of a property has to be disclosed to the authorities, which according to the Respondent was done. In the Tax Amnesty Scheme, 2000 requiring declaration of undisclosed income and assets, the Respondent declared his beneficial ownership in the London flat and also foreign after tax UK income, with which he had purchased the same. According to the learned counsel, the Amnesty Scheme confers privileges and rights as envisaged in Section 59D of the Ordinance, 1979. Therefore, once having declared the London flat in the year 2000, disclosure was complete with respect to income earned and the asset acquired by the Respondent, thereby entitling him to complete immunity from all tax consequences on account of past non-disclosure. The declaration of asset by the Respondent made in the year 2000 was continued and reiterated in all the tax returns of the Respondent and his statements of assets and liabilities filed before the ECP along with his nomination paper filed for the 2002 general elections.

31. Without prejudice to the plea that the Respondent was not obliged to mention the existence of NSL in his tax returns, it is further argued that in the Respondent's statements of assets and liabilities filed with the ECP, such failure at the most tantamounts to an omission on the part of the Respondent but cannot be considered an act of dishonesty. Disqualification could only be attributed to the Respondent if he was adjudged a tax defaulter by the competent authority. Till date the erstwhile CBR and its successor the FBR have not raised any objection vis-à-vis the London flat. While answering the question as to whether NSL had any other assets, learned counsel stated that the fact that NSL has no other assets is a negative

fact, which is difficult to prove. The fact of ownership of other assets by NSL is supposed to have been proved by the petitioner. While referring to accounting details by Barclays Bank about NSL provided incompletely in CMA No.3800 of 2017, CMA No.6799 of 2017 and CMA No.7459 of 2017, learned counsel on Court's direction provided the complete bank statements of NSL from 10.3.2003 to 23.8.2012. He explained that NSL owned only the London flat and no other asset. He stated that the figure of £117,500/- in the NSL accounts of 2001-02 (CMA No.3800 of 2017) pertain to the price of the London flat, whereas the additional amount under the head 'Cash and Contracts' is the rent received from that flat. As regards the document of 2004, the head 'Investments' in the NSL accounts is reported as £0, because by that time the flat had been sold. The figure reported under 'Cash and Contracts' is the amount for payment to the solicitors for the tenancy litigation pertaining to the flat. He stated that after the London flat was disposed of, no other asset has remained with NSL. In fact, only the litigation with the tenant survived which was concluded on 10.2.2004 vide judgment of the English Court of Appeal. He refuted the petitioner's conjecture that since NSL was alive till 2015, therefore, it was doing some other business or held other properties (in addition to the London flat). However, the actual reason for keeping NSL alive was that it was embroiled in litigation with the tenant of the London flat. He stated that the Trial Court in England had granted a decree in favour of the company on 25.6.2003 which was subsequently modified by the learned Court of Appeal vide its judgment dated 10.2.2004 (page 14 to 17 of CMA No.3657/2017) that reduced the compensation awarded by the learned Trial Court from £48,000/- (plus interest) to roughly £39,000/- (plus interest). It was for the recovery of that amount from the *Dutch* tenant through execution launched in London and

then in Holland that NSL was kept alive to effect recovery in its name because NSL was the landlord.

32. Adverting to the question of the disconnect between the encashment amount of US Dollars claimed to have been remitted by Ms. Jemima Khan on the one hand and the Citibank document dated 7.1.2004 on the other hand, learned counsel referred to two documents issued by Citibank (at page 13 of CMA No.3657/2017 and page 64 of CMA No.7925/2016). He explained that under the agreement to sell for the Banigala property dated 13.3.2002 (page 61 to 63 of CMA No.7925/2016) the payment of the entire sale consideration amount is Rs.43,500,000.00 was made to the seller as follows (chart at page 12 of CMA No.3800/2017):

i. Rs.300,000/- paid in cash by the Respondent on 7.3.2000 (note: this amount was adjusted towards brokerage fee and other miscellaneous charges);

ii. Rs.3,000,000/- paid by the Respondent on the date that the agreement was executed, so acknowledged in the agreement itself (vide cheque dated 14.3.2002 on page 77 of CMA No.7925/2016);

iii. Rs.3,500,000/- was paid vide cheque dated 28.3.2002 by the Respondent to the seller (page 78 of CMA No.7925/2016). Thus the total amount paid was Rs.6,500,000 (excluding the initial cash payment);

iv. Rs.14,500,000/- was paid by Rashid Ali Khan vide bank draft dated 11.4.2002 (page 79 of CMA No.7925/2016);

v. Rs.10,000,000/- was paid by Rashid Ali Khan vide bank draft dated 1.8.2002 (page 80 of CMA No.7925/2016);

vi. An amount of Rs.2,500,000/- was paid by Rashid Ali Khan vide bank draft dated 13.9.2002 (page 81 of CMA No.7925/2016);

vii. An amount of Rs.3,500,000/- was paid by Rashid Ali Khan vide bank draft dated 2.10.2002 (page 82 of CMA No.7925/2016);

viii. An amount of Rs.5,700,000/- was paid by Rashid Ali Khan vide bank draft dated 23.1.2003 (page 83 of CMA No.7925/2016); and

ix. Rs.800,000/- paid in cash by the Respondent acknowledged by the seller through an consolidated receipt dated 24.7.2003 (page 75 of CMA No.7925/2016).

Excluding the initial payment of Rs.300,000/- the above payments total an amount of Rs.43,500,000/- which is acknowledged by the consolidated receipt dated 24.7.2003 issued by the seller who has raised no dispute or complaint about non-payment of any amount due from the Respondent or about the dishonour of any of the cheque or bank draft due from the Respondent issued on behalf of the latter.

33. He explained that remittances were made by Ms. Jemima Khan in chunks that were not necessarily encashed and converted fully into rupees immediately. In this behalf, he referred to an updated chart of remittances made by Ms. Jemima Khan to Mr. Rashid Ali Khan (page 10 of CMA No.3800/2017) which are as under:-

i. The first remittance to the Citibank, Islamabad account No.9010327943 of Mr. Rashid Ali Khan is for an amount of $258,333/- from the account of Ms. Jemima Khan at the same branch. The total transferred amount was converted on 11.4.2002 at an exchange rate of $1=Rs.59.70 equivalent to the amount of Rs.15,422,480.10 (encashment certificate is at page 66 of CMA No.7925/2016). The statement of account of Ms.

Jemima Khan's Citibank account reflecting the said transfer is attached at pages 7-10 of CMA No.4217/17;

ii. A remittance of $275,678/- was received by Mr. Rashid Ali Khan from Ms. Jemima Khan on 31.07.2002 Citibank, Islamabad's letter dated 7.1.2004 (page 13 of CMA No.3657/2017) certifies the said remittance. This amount was not converted to rupees in lump sum but in the following parts:-

   a. $200,000/- converted on 1.8.2002 at the exchange rate of $1 = Rs.59.15 and the amount received was Rs.11,830,000/- (encashment certificate at page 67 of CMA No.7925/2016);

   b. $45,000/- converted on 31.8.2002 at the exchange rate of $1 = 59.00 and the amount received was Rs.2,655,000/- (encashment certificate at page 68 of CMA No.7925/2016);

   c. $20,000/- converted on 31.8.2002 at the exchange rate of $1 = 59.00 and the amount received was Rs.1,180,000/- (encashment certificate at page 69 of CMA No.7925/2016); and

   d. $10,660/- converted on 10.9.2002 at the exchange rate of $1 = 58.85 and the amount received was Rs.627,341/- (encashment certificate at page 70 of CMA No.7925/2016).

iii. An amount of £20,000/- was remitted (electronic transfer) from Ms. Jemima Khan's UK account on 2.10.2002 and credited after conversion to rupee into a PKR account of Mr. Rashid Ali Khan. Thus encashment of the remittance was done by the bank without a separate transaction at the exchange rate of £1= Rs.91.4496 amounting to Rs.1,828,992/- (page 14 of CMA No.3800/2017);

iv. An amount of $16,000/- was transferred to Mr. Rashid Ali Khan and converted on 5.10.2002 at the exchange rate of $1=Rs.58.65. The amount received was Rs.938,400/- (encashment certificate at page 71 of CMA No.7925/2016). However, this amount is not established to have been referred by Ms. Jemima Khan.

v. A cash deposit of $5,000/- was converted on 19.11.2002 at the exchange rate of $1= Rs.58.15 amounting to Rs.290,750/- (encashment certificate at page 72 of CMA No.7925/2016). However, this transaction has no nexus with a remittance by Ms. Jemima Khan.

vi. Another cash deposit of $5,000/- was converted on 11.12.2002 at the exchange rate of $1= Rs.58.10 amounting to Rs.290,500/- (encashment certificate at page 73 of CMA No.7925/2016). However this deposit suffers from the same defect as the previous one.

vii. An amount of $100,000/- was remitted from the USA and converted on 23.1.2003 at the exchange rate of $1 = Rs.57.85. amounting to Rs.5,785,000/- (encashment certificate at page 74 of CMA No.7925/2016). However, there is no proof that this remittance was made by Ms. Jemima Khan.

viii. Lastly, an amount of $100,029/- was remitted by Ms. Jemima Khan on 20.5.2013. It was received after the last crossed payment of Rs.5.7 million on 23.1.2003 was made by Mr.Rashid Ali Khan to the seller of Banigala property; therefore, remittance was not encashed. (Reference is made to Citibank letter dated 07.1.2004 at page 13 of CMA No.3657/2017 and page 75 of CMA No.7925/2016).

34. As of 23.1.2003 the total amount remitted by Ms. Jemima Khan was Rs.33,543,813/-. As regards the remittances made after the extended cut-

off date for payment of the Banigala property, i.e. 23.1.2003, learned counsel submitted the following explanation regarding the amounts received by Mr. Rashid Ali Khan (appearing in the Citibank certificate at page 13 of CMA No.3657/2017). He stated that these amounts were not utilized towards payment of the Banigala property:

i. $110,000/- received on 12.4.2003 was not from Ms. Jemima Khan rather Mr. Rashid Ali Khan's own sources;

ii. $100,029/- was received from Ms. Jemima Khan on 20.5.2003 but was not encashed; and

iii. As regards the amount of $20,000/- received on 29.5.2005, Mr.Rashid Ali Khan has no recollection as to how this amount is reflected in his statement or from whom this amount was received. However, being a businessman, learned counsel states that such transactions are not unusual.

At the very outset Mr. Bukhari has explained the rationale behind the remittances made by Ms. Jemima Khan not directly to the Respondent but to Rashid Ali Khan which is reflected in the latter's affidavit (page 20 to 23 of CMA No.3657/2017) as follows:- "In 2002 Ms. Jemima Khan left for London with her two sons forcing Imran Khan to relocate himself in UK which seems the only way to save their marriage as she has refused to continue living in Pakistan on account of consistent harassment and lodging of FIR against her". Thus as the Respondent had to travel frequently between Pakistan and England, therefore, to be on the safe side that no default occurs in payment of consideration to the seller, the arrangement was made that the money should come to Rashid Ali Khan for onward payment to the seller. He pointed out that Rashid Ali Khan is a close friend of the Respondent.

35. Learned counsel also assailed the bona fide of the petitioner to file this petition on the ground that he had lost the general elections to the Respondent held in May, 2013; neither were his nomination papers challenged nor was an election petition filed against him. Rather, it was filed as a counterblast to Constitution Petition No.29/2016 filed by the Respondent.

Evaluation and Analysis:

36. Heard. On account of the pleadings of the parties and the oral submissions made, we find that the following questions of law and fact are involved in the matter:-

1. Whether PTI is a foreign-aided political party in terms of Article 2(c)(iii) of the PPO? What is the mechanism and the forum to adjudicate this question and what are the consequences?

2. Whether PTI has received contributions and donations prohibited by Article 6(3) of the PPO? What is the mechanism and the forum available to determine this aspect and what is the penalty?

3. If questions No.1 and 2 are answered in the affirmative, whether the certificates issued by the Respondent as the head of PTI in terms of Article 13(2) of the PPO are false and thus he should be disqualified in terms of Articles 62(1)(f) of the Constitution not being honest and *ameen*?

4. Whether the Respondent was required under the law to declare NSL in his statements of assets and liabilities filed in 2002 with his nomination papers for a National Assembly seat and in the statements of assets and liabilities filed yearly before the ECP as a member of the National Assembly? Whether he was required under the law to declare NSL in the income tax

returns and the wealth tax statements and if so, what is the effect of non-declaration?

5. Whether the Banigala property was purchased through the amount substantially sent by Ms. Jemima Khan from abroad through Mr. Rashid Ali Khan? Whether this was the amount utilized for the payment of the balance consideration of the Banigala property?

6. Whether the amount contributed by Ms. Jemima Khan for the purchase of the Banigala property was repaid to her after the sale of the London flat by the Respondent?

7. Who is the owner of the Banigala property? Whether a valid gift of the said property was made by Ms. Jemima Khan in favour of the Respondent through an attorney?

8. Whether the Respondent failed to disclose the amount paid as advance for the purchase of the flat at One Constitution Avenue, Islamabad in his tax returns? Whether he failed to disclose such flat in his statement of assets and liabilities before the ECP? If so, its effect?

1. Whether PTI is a foreign-aided political party in terms of Article 2(c)(iii) of the PPO? What is the mechanism and the forum to adjudicate this question and what are the consequences?

37. This question essentially pertains to relief Clause V whereby the petitioner seeks a declaration that PTI is a foreign-aided political party. Before answering this question, we find it expedient to briefly discuss the background of the relevant law. The preamble of the Constitution, which by virtue of Article 2A is now a substantive part thereof, *inter alia*, provides:

> "***Wherein the State shall exercise its powers and authority through the chosen representatives of the people***;
>
> ***Wherein the principles of democracy***, *freedom, equality, tolerance and social justice, as enunciated by Islam,* ***shall be fully observed***;

> ***Wherein shall be guaranteed fundamental rights, including*** *equality of status, of opportunity and before law, social, economic and political justice, and* ***freedom of*** *thought, expression, belief, faith, worship and* ***association****, subject to law and public morality;"*
>
> *[Emphasis supplied]*

A combined reading of the aforementioned clauses of the preamble to the Constitution make it clear that Pakistan is a democratic state where its citizens shall have freedom of association and the right to choose their representatives through whom the State shall exercise its powers and authority. Political parties are an essential pillar of true and effective democracies. This takes us to the fundamental right enshrined in Article 17(2) of the Constitution which reads as under:

> *(2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party,* ***subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan*** *and* ***such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court*** *whose decision on such reference shall be final.*
>
> *(3) Every political party shall* ***account for the source of its funds*** *in accordance with law.*
>
> *[Emphasis supplied]*

Article 17(2) *ibid* basically confers a fundamental right upon every citizen to form and be a member of a political party, subject to certain restrictions imposed by the Constitution and the law in the interest of the sovereignty or

integrity of Pakistan. Thus, every citizen *(not being a civil servant)* can form and become a member of a political party. But if such party is formed or is functioning in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall take a decision and make a declaration to this effect and refer the matter to the Supreme Court of Pakistan which shall then determine the validity of the decision of the Federal Government. The 'law' envisaged by sub-Articles (2) and (3) of Article 17 of the Constitution, is the PPO which stipulates the reasonable restrictions to be complied by political parties, the sources of prohibited funding and the process available to the Federal Government when a political party is formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan or is a foreign aided political party. The preamble to the PPO reads as follows:-

> *Whereas it is intended to create a political environment conducive to the promotion of a federal democratic system as enshrined in the Constitution;*
>
> *And whereas political parties play a pivotal role in fostering a constitutional, federal democratic political culture;*
>
> *And whereas the practice of democracy within the political parties will promote democratic governance in the country for sustaining democracy;*
>
> *And whereas it is expedient to provide for the formation and regulation of political parties:*

The crux of the preamble to the PPO makes it clear that it is a legislation enacted to foster democratic principles enunciated by the Constitution and to provide for a mechanism for the regulation of political parties which, as mentioned above, are an important element of any democratic party.

Proceeding ahead to discuss the substantive provisions of the PPO, Article 3 provides:

> ***3. Formation of political parties, etc.–*** *(1) Subject to the provisions of this Order, it shall be lawful for any body of individuals or association of citizens to form, organize, continue or set-up a political party.*
>
> *(2) …*
>
> *(3) …*
>
> *(4)* ***Notwithstanding anything contained in sub-section (1), a political party shall not****–*
>
> *…*
>
> *…*
>
> *(f)* ***be formed, organize, set-up or convened as a foreign-aided political party****.*
>
> *[Emphasis supplied]*

Article 3 of the Order allows for formation of a political party, *inter alia,* subject to the restrictions contained in sub-Article (4), out of which clause (f) is relevant to the instant matter as it pertains to foreign aided political parties. The term 'foreign-aided political party' has been defined in Article 2(c)(iii) of the PPO which reads as follows:-

> ***2. Definitions.–*** *In this Order, unless there is anything repugnant in the subject or context,–*
>
> *(c)* ***"foreign-aided political party" means a political party which****–*
>
> *(i) has been formed or organized at the instance of any government or political party of a foreign country; or*
>
> *(ii) is affiliated to or associated with any government or political party of a foreign country; or*
>
> ***(iii) receives any aid, financial or otherwise, from any government or political party of a foreign***

> ***country, or any portion of its funds from foreign nationals;***
>
> *[Emphasis supplied]*

It is clear from the letter and spirit of our Constitution that democracy is the essence and basic feature thereof; whereby the State shall exercise its power and authority through the chosen representatives of the people and where the principles of democracy shall be fully observed. To achieve this purpose and goal, it is essential that political parties which form the backbone of a real democratic process should be independent of any kind of foreign influence, affiliation or control, so that it should serve the State and the people, not on the basis of the dictates of vested interests and foreign elements but in the national interest. The object, purpose and rationale embedded in Article 3(4)(f) of the PPO read with Article 2(c)(iii) thereof is to bar political parties from having anything to do with foreign countries, to ensure total and complete insulation from foreign elements in order to protect the sovereignty and integrity of Pakistan as enshrined in Article 17(2) of the Constitution. While interpreting Article 17(2) of the Constitution and the term 'foreign-aided party' as found in the Act, 1962 *(which is identically defined in the PPO)*, an eleven member bench of this Court in **Benazir Bhutto**'s case *(PLD 1988 SC 416)* held that:

> *"A foreign-aided party is not expected to function within the framework of the Constitution and in the milieu of sovereignty or integrity of Pakistan it cannot be allowed to operate as it would then lead to undermining the security, solidarity and sovereignty of Pakistan as was held in Abdul Wali Khan's case. In this case there was evidence to suggest that the political party had started a large-scale guerilla campaign and insurrection with the material help and support of a*

> *neighbouring country which fact was taken into consideration while reaching the conclusion as stated above. The right which is guaranteed to a citizen to form a political party or be a member of a party necessarily connotes one whose activities are lawful and within the framework of the Constitution. Necessarily, therefore, the activities of such a foreign-aided party being prejudicial to the sovereignty or integrity of Pakistan will be covered by the expression sovereignty or integrity of Pakistan."*

38. It is not the petitioner's case that PTI was formed or organized at the instance of any government or political party of a foreign country, is affiliated to or associated with any government or political party of a foreign country, or receives any aid, financial or otherwise, from any government or political party of a foreign country. Rather, the allegation is that PTI has been receiving financial contribution and/or a portion of its funds from foreign nationals *(as not only the directors of PTI USA LLC are American citizens, but contributions have been collected from individuals and the companies that are admittedly foreign nationals)*. Nevertheless, Article 2(c) *supra* is only a definition clause and is therefore not self-executory or self-operative. A definition clause is generally meant to be declaratory in nature for the purposes of assigning some meaning to a particular word or phrase that appears in the operative provisions of a statute. However, a definition must not be inflicted unnecessarily where it does not fit with the context or the subject. [**Bank of Bahawalpur Ltd. vs. Chief Settlement & Rehabilitation Commissioner, West Pakistan, Lahore** *(PLD 1977 SC 164)*; **Iftikhar Ahmad vs. President, National Bank of Pakistan** *(PLD 1988 SC 53)*]. The said definition in Article 2(c) *ibid* is to be read in conjunction with Article 3(4)(f) *supra* which, as mentioned above, contains a prohibition against forming,

organizing, setting-up or convening foreign-aided political parties. More importantly, this definition is purposeful when it is read in the context of Article 15 of the PPO. To our minds Article 15 of the PPO is a machinery provision which has utilized and given effect to the definition of 'foreign-aided political party' contained in Article 2(c) *supra*. The clear and penal language of Article 15 makes it a mandatory provision. The said Article reads as follows:

> ***15. Dissolution of a political party.–*** *(1)* ***Where the Federal Government is satisfied that a political party is a foreign-aided party*** *or has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan or is indulging in terrorism, it shall make such declaration by a notification in the official Gazette.*
>
> *(2) Within fifteen days of making a declaration under clause (1), the Federal Government shall refer the matter to the Supreme Court whose decision on such reference shall be final.*
>
> *(3) Where the Supreme Court upholds the declaration made against a political party under clause (1), such party shall stand dissolved forthwith.*
>
> *[emphasis supplied]*

It is worthwhile to note that Article 15 *ibid* uses the terms 'foreign-aided party' as opposed to 'foreign-aided political party' but we do not consider the omission of 'political' to have any significance whatsoever; the intention is clear that reference is being made to foreign-aided political parties. Article 15 *ibid* is explicit and unequivocal. It is for the Federal Government to determine, on the basis of the material before it and by application of proper mind and by meeting the criteria of the rule of 'satisfaction' as enunciated by

the superior Court, to determine and declare if a political party is a foreign-aided political party in terms of Article 2(c) of the PPO and action is warranted under Article 15(1) thereof. In the judgment reported as **Messrs Mustafa Impex, Karachi and others vs. The Government of Pakistan through Secretary Finance, Islamabad and others (PLD 2016 SC 808)**, the phrase 'Federal Government' has been defined as the 'Cabinet' meaning thereby that all the material which comes before the executive body of the State should be placed before the Federal Cabinet which, on the basis thereof, may make the requisite declaration that shall pursuant to Article 15(2) of the PPO be referred within fifteen days of such declaration to the Supreme Court of Pakistan for adjudicating the validity of the declaration. After providing an opportunity of hearing to the concerned political party and on the basis of allegation that proved or disproved before this Court, a decision shall be given by this Court. In case the declaration of the Federal Government is upheld by this Court then according to Article 15(3) of the PPO, *inter alia,* a foreign-aided political party shall stand dissolved forthwith. This is the clear mandate and command of the law, without following which no political party can be declared to be a foreign-aided political party. We find it pertinent to mention that though the phrase 'foreign-aided political party' does not feature in Article 17(2) of the Constitution, however, in light of the reasoning of **Benazir Bhutto**'s case *(supra)* reproduced above the harmonious construction of Article 17(2) *ibid* and Article 15 of the PPO that avoids redundancy shows that a foreign aided-political party is inevitably prejudicial to the sovereignty and integrity of Pakistan. As mentioned earlier, the idea behind the prohibition of foreign-aided political party is to safeguard Pakistan from foreign elements to secure the independence of its political parties and protect them from foreign vested interests and influence.

39. It is worthy to note at this juncture that prior to the PPO, the law on the present subject was the Act, 1962. The relevant provisions thereof pertaining to foreign aided parties are reproduced hereinbelow:

> ***3. Formation of certain political parties prohibited.–*** *(1) No political party shall be formed with the object of propagating any opinion, or acting in a manner, prejudicial to the Islamic ideology, or the integrity or security of Pakistan.*
>
> *(2)* ***No person shall form, organize, set up or convene a foreign aided party or in any way be associated with any such party.***
>
> ***2. Definitions.–*** *In this Act, unless there is anything repugnant in the subject or context,–*
>
> *(b)* ***"foreign aided party" means a political party which****–*
> *(i) has been formed or organized at the instance of any Government or political party of a foreign country; or*
> *(ii) is affiliated to or associated with any Government or political party of a foreign country: or*
> *(iii)* ***receives any aid, financial or otherwise, from any Government or political party of a foreign country, or a substantial portion of its funds from foreign nationals;***
>
> ***6. Reference to Supreme Court regarding certain parties.–****(1) Where the Central Government is of the opinion that any political party has been formed or is operating in contravention of section 3, it shall refer the matter to the Supreme Court, and the decision of the Supreme Court in such question, given after hearing the person or persons concerned, shall be final.*
>
> *(2) Where the Supreme Court, upon a reference under sub-section (1), has given a decision that a political party*

> *has been formed or is operating in contravention of section 3, the decision shall be published in the official Gazette, and upon such publication, the political party concerned shall stand dissolved and all its properties and funds shall be forfeited to the Central Government.*

Although the definition of 'foreign aided party' under the Act, 1962 and 'foreign-aided political party' under the PPO are identical, the mechanism to deal with such a party was slightly different under the Act, 1962. According to the mandate of the Act, 1962, where the Central Government was of the view that a political party was formed or was operating in breach of Section 3 of the Act, 1962 which included a foreign aided party as defined in Section 3(2) of the Act, 1962, then the Central Government was to refer the matter to the Supreme Court. Thereafter it was for the Supreme Court to decide such question after giving an opportunity of hearing to the person(s) concerned and if it came to the conclusion that a political party was indeed a foreign aided party in terms of the Act, 1962, it would publish its decision in the official Gazette after which the political party would stand dissolved and its funds forfeited to the Central Government.

40. In the light of the above, the Federal Government is the competent forum to determine whether a political party is a foreign-aided political party in terms of Article 2(c) of the PPO and thus its formation is prohibited by Article 3(4)(f) thereof attracting the consequence of a declaration of its dissolution. Once the Federal Government makes such a declaration by a notification in the official Gazette as per Article 15(1) of the PPO, only then can the Supreme Court take cognizance of such matter upon a reference made by the Federal Government. Consequently, we do not find it proper to bypass the above mandate of law making it redundant and nugatory, by exercising our jurisdiction in terms of Article 184(3) of the

Constitution to peremptorily adjudicate the petitioner's objection that PTI is a foreign aided political party.

2. *Whether PTI has received contributions and donations prohibited by Article 6(3) of the PPO? What is the mechanism and the forum available to determine this aspect and what is the penalty?*

41. To answer this question, we need to examine Article 6 of the PPO which provides as under:

> ***6. Membership fee and contributions.-***
>
> *(1) A member of a political party shall be required to pay a membership fee as provided in the party's constitution and may, in addition, make voluntary contributions towards the party's funds.*
>
> *(2) The* ***contribution made by members or supporters*** *of any party shall be duly recorded by the political parties.*
>
> *(3)* ***Any contribution made, directly or indirectly, by any foreign government, multi-national or domestically incorporated public or private company, firm, trade or professional association shall be prohibited*** *and the* ***parties may accept contributions and donations only from individuals****.*
>
> *(4)* ***Any contribution or donation which is prohibited under this Order shall be confiscated in favour of the State in the manner as may be prescribed****.*
>
> *Explanation.- For the purpose of this section, a "contribution or donation" includes a contribution or donation made in cash, kind, stocks, hospitality, accommodation, transport, fuel and provision of other such facilities.*
>
> *[Emphasis supplied]*

A plain reading of the above Article 6 suggests that both members and supporters of a political party can make contributions thereto. The express prohibition is against contributions made by any foreign government, multi-national or domestically incorporated public or private company, firm, trade or professional association; however, political parties can accept contributions and donations from individuals.

42. The question that arises is which forum determines whether contributions and donations received by a political party are from sources prohibited under Article 6(3) of the PPO and what is the penalty for contravention of the said Article. According to Article 17(3) of the Constitution, *"Every political party shall account for the source of its fund in accordance with law."* This means that a political party is obliged to account for, i.e. to give a satisfactory record of its funds under the law. Undoubtedly the law framed in this context is the PPO. The mechanism for identifying the prohibited contribution offending Article 6(4) *ibid* is provided by the Political Parties Rules, 2002 framed under the PPO. According to the Rules the forum for making the requisite determination is the ECP. Proceeding further, Article 6(4) of the PPO expressly visualizes such a provision by the Rules. It stipulates that any **contribution** or **donation** which is prohibited under the PPO shall be confiscated in favour of the State in the manner as may be prescribed. The expression 'prescribed' has been defined in Article 2(e) of the PPO to mean *"prescribed by rules made under this Order"*. Article 19 of the PPO provides that the ECP may, with the approval of the President, make rules for carrying out the purposes of the PPO. The Rules were promulgated pursuant to Article 19 *ibid*. Rule 6 thereof reads as under:-

> ***6. Confiscation of prohibited funds.– Where the Election Commission decides that the contributions or donations**, as the case may be, accepted by the political parties **are prohibited under clause (3) of Article 6, it shall, subject to notice to the political party concerned and after giving an opportunity of being heard, direct the same to be confiscated in favour of the State** to be deposited in Government Treasury or sub-Treasury in the following head of the account:-*

> *"3000000-Deposits and Reserves-B-Not Bearing interest-3500000-Departmental and Judicial Deposits-3501000-Civil Deposits-3501010-Deposits in connection with Elections".*
>
> *[Emphasis supplied]*

Furthermore, Rule 6 specifically confines the ambit of proceedings before the ECP to the "*contributions or donations, as the case may be, accepted by the political parties are prohibited under clause (3) of Article 6.*" A cumulative reading of Article 6(4) of the PPO and Rule 6 makes clear that a specific and complete power has been conferred upon the ECP to **decide** whether the contributions or donations accepted by a political party are prohibited under Article 6(3) *ibid*. This is to be done after giving notice to such political party and an opportunity of hearing leading to confiscation of such prohibited contribution and donation in favour of the State for deposit in the Government Treasury or sub-Treasury in the head of account provided in Rule 6 *ibid.* There is no doubt in our mind, and it is very clear from the unambiguous language of the provisions of the PPO and the Rules that the forum and penalty provided to determine whether contributions or donations are received from prohibited sources are different and distinct from the forum and penalty provided to determine whether a political party is a foreign-aided political party. If the ECP comes to the conclusion that a case falls within the mischief of Article 6(3) of the PPO the penalty provided is confiscation of such contributions or donations and cannot impose a ban on the political party which action is restricted to only foreign-aided political parties to be decided by the proper forum; firstly, through a declaration made by the Federal Government and then the determination made by Supreme Court as mentioned above.

43. Certain ancillary questions pertaining to the above view surfaced during the course of the proceedings, including: what is the nature of the jurisdiction exercised by the ECP under Article 6(4) of the PPO read with Rule 6 of the Rules *(Court, Tribunal, etc.)*; whether the ECP can exercise its powers under Article 6(4) *ibid suo motu* or upon an application by someone; and whether there is a time limitation on the ECP with regard to the exercise of its powers under Article 6(4) *ibid*.

44. The ECP is a constitutional body created under Article 218 of the Constitution, sub-Article (3) whereof provides:

> *"It shall be the duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against."*

The ECP's duties are contained in Article 219 of the Constitution and include, *inter alia*:-

> *(e) such other functions as may be specified by an Act of Majlis-e-Shoora (Parliament):*

Although the PPO is the Chief Executive's Order *(No.18 of 2002)*, one may argue that it is not an Act of Parliament. We find that considering the period and the circumstances in which the PPO was passed, this edict falls within Article 270AA(2) of the Constitution and has thereby been saved and declared by the said Article to continue in force. The PPO has accordingly been given due status in law. The provisions of the PPO specify the functions of the ECP in relation to matters pertaining to the formation and regulation of political parties. As mentioned above, Article 19 of the PPO has given the ECP rule-making power but exercisable subject to the approval of the

President. The ECP is an independent and autonomous body which exercises executive and regulatory powers derived from the Constitution. Though it has the power to appoint Election Tribunals [Article 219(c) of the Constitution] which exercise judicial powers under Article 225 of the Constitution, the ECP itself is a supervisory body which exercises regulatory and administrative powers under the Constitution and the law.

45. Undoubtedly, the ECP is not a Court or a Tribunal as argued by the learned counsel for PTI. However, he conceded that ECP is an administrative authority and in terms of Article 17(3) of the Constitution it is the forum to which political parties are obliged to and must **account** for the sources of their funds. Besides being a limb of the executive that is charged with the duty to conduct and oversee elections in the country, we find that the ECP must necessarily possess the power to collect facts, information and data that enable it to properly and effectively perform such duty. Such a capability represents the constitutional and inherent legal power of the ECP. Therefore, in exercise of its powers under Article 6 of the PPO read with Rule 6, the ECP has all the necessary authority to ask for and collect the requisite information and facts that enable it to decide and determine whether the contributions or donations accepted by a political party are prohibited under Article 6(3) *supra*. Without such power, we are of the opinion that the ECP's power to decide as to whether a political party is receiving contributions or donations from sources prohibited under Article 6(3) *ibid* would for all practical intents and purposes be rendered redundant, nugatory and ineffective. Such a result would be against the clear command of Article 17(3) of the Constitution and the provisions of the PPO and the Rules.

46. We are not persuaded to agree with the learned counsel for the PTI that Section 3A of the Act, 1962 supports the view that the ECP lacks the

power to call financial information and data from political parties to verify the status of contributions collected by them and the correctness of their reported accounts. Under Section 3A of the Act, 1962, the finances and accounts of a political party were to be audited by an officer or authority authorized by the ECP *(see also Rules 4 and 6 of the Political Parties Rules, 1986)*, whereas presently under the PPO *(particularly Article 13)* and the Rules, the audit of accounts of a political party is undertaken by a chartered accountant appointed by the party and not by the ECP. It is urged by the learned counsel that such accounts that have been audited by a chartered accountant would upon submission to the ECP be taken to be valid for all intents and purposes, particularly, with reference to any contributions or donations that are received from the sources prohibited under Article 6(3) of the PPO. Accordingly, once the audited statement of accounts by a political party is accepted and such accounts are published by the ECP in the Official Gazette, followed by the allotment of symbol to the concerned political party in terms of Article 14 of the PPO and Rule 10, then the ECP becomes *functus officio* to undertake scrutiny for establishing the status of contributions received by that party under Rule 6.

47. We find it hard to fathom the contention that the intention behind the PPO and the Rules is to take away the administrative and regulatory power of the ECP derived from the Constitution, to call for any record, information or data from a political party to ascertain the sources of its contributions and donations; and to place such power exclusively in the hands of a party appointed chartered accountant. Learned counsel has not been able to show us from the provisions of the PPO and the Rules framed thereunder nor from any other principle of law laid down by this Court that

failure by the ECP to object the audited statement of account of a political party before its Gazette publication and before the allotment of a symbol to such party, then such action would tantamount to the acceptance of the said accounts and that thereafter the ECP would become *functus officio*. With the result that the violations, defects and omission in the accounts become a past and closed transaction and the ECP cannot inquire the matter under an implied bar against exercising its power under Article 6 *supra* and Rule 6 *supra;* or that such recourse by the ECP would be tantamount to a review which power, according to the learned counsel for PTI, is not available to the ECP under the PPO or the Rules.

48. We are not persuaded to hold that the principle of past and closed transaction would be attracted to the audited statements of accounts of a political party which have been duly published. This is because neither the PPO nor the Rules contain a provision imposing a time bar on action being taken by the ECP under Article 6(3) or Rule 6. Equally there is no direction in the said law that bestows finality upon either the event of publication of audited accounts of a political party or upon the allotment of an election symbol to such political party.

49. Similar is our view about the contention that to reconsider the statements of accounts after they have been published is tantamount to a review and such power *(of review)* is not available to the ECP. In this regard, it may be observed that a review *(if provided by the law)* is of an order passed by a judicial or quasi-judicial forum subject to the settled principles of review being squarely met. But when no order has been passed by the ECP and it is not shown that a detailed or even a cursory scrutiny of the statements of accounts submitted by a political party was undertaken by the

ECP; yet the said accounts were published as a matter of routine and in the ordinary course; then upon receipt of any information subsequently showing that contributions and donations from prohibited sources were part of such accounts, the ECP retains its jurisdiction to evaluate the status of such accounts under Article 6 of the PPO which in no way tantamounts to a review. To our mind the publication of the statement of accounts of a political party have the effect of placing these *(statements of accounts)* in the public domain and thereby make an invitation for *bona fide* comment from the concerned persons to apprise and intimate the ECP if such statement of accounts are not in accordance with law or contains contributions and donations from prohibited sources.

50. The abovementioned power of the ECP under Article 6 of the PPO read with Rule 6 is in our view a continuous supervisory power which may be exercised at any time by the ECP. Either upon an application by a third party or *suo motu*. We are not persuaded to read into the law and in the powers of the ECP any limitation as has been suggested and canvassed by the learned counsel for PTI. This power of assessing and deciding whether a political party has received contributions or donations from any sources prohibited under Article 6(3) *supra* can be exercised by the ECP on its own motion based upon the facts available in the public domain or revealed by information provided to it, subject to the condition that the information emanates from a credible source, that it is reliable and verifiable and is not a *mala fide* fabrication meant to harass and prejudice a political party, its leaders or its members. As regards the lukewarm attack made by the learned counsel for PTI on Rule 6 *supra* for suffering from excessive delegated legislative power, suffice it to say that as mentioned above, Article 19 of the

PPO gives specific power to the ECP to frame rules with the approval of the President. The rules have been framed after complying the statutory requirements, so that for all intents and purposes the provision made in the Rules shall have the force of law; and be understood and considered to have been prescribed by the statute itself. [**Sabir Shah vs. Shad Muhammad Khan** (PLD 1996 SC 66)].

51. To sum up, it is the ECP that has the jurisdiction to determine whether a political party has received contributions or donations from prohibited sources under Article 6(3) of the PPO read with Rule 6, which jurisdiction it can exercise at any reasonable point in time even after the allotment of symbol to a political party but upon the receipt of reliable and verifiable information from a third party or on its own motion. And if such determination is made against a political party, the penalty to be imposed is confiscation of such contributions and/or donations as per Article 6(4) of the Order. We consider it reasonable, if the record or information that precipitates the said penal action against a political party is entertained within five years of the date on which its objected account was published in the official Gazette.

3. If questions No.1 and 2 are answered in the affirmative, whether the certificates issued by the Respondent as the head of PTI in terms of Article 13(2) of the PPO are false and thus he should be disqualified in terms of Articles 62(1)(f) of the Constitution being dishonest and not ameen?

52. It is the petitioner's case that the certificates issued in terms of Article 13(2) of the PPO by the Respondent as the Chairman of PTI were false. Article 13 of the PPO reads as under:-

13. Information about the sources of party's fund.-

> *(1) Every political party shall, in such manner and in such form as may be prescribed or specified by the Chief Election Commissioner, submit to the Election Commission, within sixty days from the close of each financial year, a consolidated statement of accounts of the party audited by a Chartered Accountant containing-*
>
> *(a) annual income and expenses;*
>
> *(b) sources of its funds; and*
>
> *(c) assets and liabilities.*
>
> *(2)* ***The statement referred to in clause (1), shall be accompanied by a certificate signed by the party leader stating that****-*
>
> *(a)* ***no funds from any source prohibited under this Order were received by the party****; and*
>
> *(b)* ***the statement contains an accurate financial position of the party.***
>
> *[Emphasis supplied]*

The question whether the certificates tendered by the Respondent under Article 6(2) above are false, would arise if the answer to either of the two questions posed above is in the affirmative. In other words, there must first be a finding either that: (i) PTI is a foreign-aided political party in terms of Articles 2(c)(iii), 3(4)(f) and 15 of the PPO; and/or that (ii) PTI has received contributions and/or donations from sources prohibited under Article 6(3) of the PPO.

53. As regards the issue of PTI being a foreign-aided political party, we are of the view that Article 15 of the PPO specifies the mechanism whereby only the Federal Government can make a declaration of a "foreign aided political party" and the exclusive forum for adjudicating such declaration is the Supreme Court leading to the dissolution of such a party in

case of an affirmative finding is given. The said special procedure and forum has been promulgated pursuant to Article 17(2) of the Constitution. In the light of the said constitutional scheme, we are not persuaded to preempt its outcome by exercising our jurisdiction under Article 184(3) of the Constitution in the instant matter. In any event, the said declaration against a political party is available solely at the instance of the Federal Government. On the other hand, the petitioner, a private individual lost the election as a contesting candidate against the Respondent. Having challenged neither the Respondent's nomination papers nor his election through an election petition, he now seeks the disqualification of the Respondent on the allegation that the latter misrepresented that PTI has not received funds from a prohibited source. We are of the view that in light of the applicable law, the petitioner altogether lacks locus standi to seek the declaration as per relief relief Clause V, i.e. "*Declare Respondent No.2 to be a foreign-aided party*". Such a declaration is absolutely alien to the nature of a *quo-warranto* petition which according to the learned counsel for the petitioner the instant petition is meant to be. Besides when specifically asked, learned counsel for the petitioner also categorically stated that the petitioner does not seek a ban or dissolution of PTI, rather is asking for the said declaration for the limited purpose of demonstrating that the certificates issued by the Respondent pursuant to Article 13(2) of the Order are false and consequently he is not honest in terms of Article 62(1)(f) of the Constitution.

54. We now advert to the other issue of PTI having received contributions or donations from sources prohibited under the law. We were told that there are some proceedings already pending before the ECP in the context of Article 6(3) of the PPO. The record in this regard was requisitioned which shows that the precise allegation under Article 6(3), raised before us

has been levelled against the Respondent and PTI by a former office bearer of PTI on the basis of the same record. The pendency of these proceedings is sufficient for us to refrain from exercising our jurisdiction under Article 184(3) of the Constitution enabling the ECP to take a decision as warranted by law. It is perhaps relevant to mention here that during the course of proceedings, learned counsel for PTI on a Court's query and even voluntarily stated that PTI shall have no issue if the ECP is appointed as a Commission to inquire into the question as to whether any contributions or donations have been received from a prohibited source in terms of Article 6(3) *supra*. We have considered the proposal and are not inclined to constitute or appoint any Commission when the ECP is the designated forum under the law; and the particular issue regarding contributions and donations received by PTI from allegedly prohibited sources under Article 6(3) *ibid* is already pending before it. The ECP is duly empowered under the PPO and the Rules to proceed of its own motion to determine the question of receipt of contributions or donations from prohibited sources by a political party. It has a duty to ensure compliance with the law by all political parties that seek allotment of an election symbol. In this respect the proceedings undertaken by the ECP must adhere the principles of fair hearing and due process.

55. It is settled law that where the law requires something to be done in a particular manner, it must be done in that manner. Another important canon of law is that what cannot be done directly cannot be done indirectly. Therefore, as mentioned above, before any finding by a Court of law can be given as to whether a certificate issued by a head of a political party under Article 13(2) of the PPO is false or not, the question whether that political party has either received contributions or donations prohibited under Article 6(3) *supra* or is a foreign-aided political party in terms of

Article 2(c) *supra* must respectively be addressed and determined by the competent forum. Subject to an adverse finding and corresponding penal action taken under the PPO, the issue of the falsity of the certificate under Article 13(2) would then be ascertainable as a secondary fact by a competent Court of law. Accordingly, it would be appropriate for this Court not to exercise its jurisdiction under Article 184(3) of the Constitution so as to avoid interfering with the power and jurisdiction specifically conferred by the PPO upon the special *fora* i.e. the Federal Government and the ECP respectively. This is more-so the case when the petitioner himself, relies upon Article 2(c)(iii) and 6(3) PPO for seeking relief from this Court but has failed to approach the respective *fora* provided under the law for such relief. In view of the non-determination of the primary facts by the competent *fora*, we are not inclined to adjudicate the relief claimed by the petitioner that the Respondent is disqualified under Article 62(1)(f) of the Constitution for having filed false certificates under Article 13(2) of the PPO.

4. Whether the Respondent was required under the law to declare NSL in his statements of assets and liabilities filed in 2002 with his nomination papers for a National Assembly seat and in the statements of assets and liabilities filed yearly before the ECP as a member of the National Assembly? Whether he was required under the law to declare NSL in the income tax returns and the wealth tax statements and if so, what is the effect of non-declaration?

56. At the very outset of the proceedings, we questioned the learned counsel for the petitioner as to whether a Pakistani national is prohibited, under the laws of Pakistan, from purchasing property abroad when the law of the foreign country in which such property is being bought permits the same. He answered the query in the negative. We also asked as to whether such property can lawfully be bought only in one's personal

name or also in the name of a company *(albeit an offshore company)*. The answer to this question was given in the affirmative. However, the learned counsel added a clear rider that such asset and the company through which such asset was purchased is to be disclosed in Pakistan in the income and wealth tax returns of the Pakistani buyer. And if such person runs for election, he must in the statement of assets and liabilities attached with his nomination papers disclose such property. Upon becoming a member of the National or a Provincial Assembly, such person must also make the same disclosure in his statement of assets and liabilities filed every year under the provisions of ROPA. According to the learned counsel for the petitioner, this was not done by the Respondent which renders him liable to be disqualified under Article 62(1)(f) of the Constitution.

57. In this context, let us examine the admitted facts of the case. The Respondent was a professional cricketer for most of the period between 1971 and 1992. He played for the Pakistani cricket team of which he also remained captain. During the 1970s, he also played county cricket for Worcestershire and Sussex in the UK and in 1977 played the Kerry Packer Series organised by Channel Nine, Australia. These are publicly known facts which have not been denied by the petitioner's side. According to the Respondent, with his earnings from the above mentioned engagements, he purchased Flat No.2, 165 Draycott Avenue, London, SW3 **("London flat")** United Kingdom, in 1983 for £117,500/-. However, in order to avoid liability to capital gains tax payable in the event of disposal of the London flat, the Respondent whilst acting upon legal advice, put the legal ownership of the flat in an offshore company called Niazi Services Limited **("NSL")**. NSL was a Jersey-based limited liability company formed on 10.5.1983. It had a nominal capital of £10,000/- divided into 10,000 shares worth £1 each. Out of

these, 9 shares having a capital value of £9/- were subscribed by three founding members, namely, Langtry Trustees Limited, Langtry Secretaries Limited and Langtry Consultants Limited, each of which held three shares of NSL. By 1990, these trustee shareholders were replaced by Barclay Trust International Limited, Barclay Trust Channel Islands Limited and Barclay Trust Jersey Limited. According to the learned counsel for the Respondent and as is evident from the annual corporate returns of NSL filed in different years, the two directors of the company were Ms. Uzma Khan and Ms. Aleema Khan, both sisters of the Respondent. The Respondent was thus neither a shareholder nor a director of NSL. However, it is accepted by him that the sole purpose of NSL was to own and hold the London flat for the benefit of the Respondent. As such the Respondent was the beneficial owner of the London flat which was the only asset held by NSL.

58. At this juncture that we would like to briefly delve upon the concept of offshore companies. In the recent past, particularly after the outbreak of the Panama papers scandal, the term 'offshore companies' has carried a negative connotation. Such entities are often associated with the retention of the illegal gains of unlawful acts, such as fraud, money laundering and tax evasion by wealthy and influential people around the world. However, this perception is not always correct. Essentially, an offshore company is incorporated and or resident in a foreign country or jurisdiction with the object of having operations outside such country or jurisdiction. Registration of a company in a foreign jurisdiction is aimed at availing legal, financial or tax benefits offered under their local laws. No doubt it is lawful to establish and utilize an offshore company to avail the benefits assured by the local laws of its country of residence, however, such an entity can become an illegal vehicle if it is used for nurturing the fruits of

fraud, money laundering or tax evasion. There is a different between tax evasion and tad avoidance. The common and lawful reason for setting up an offshore company is to avoidance of tax due to the availability of tax benefits or exemptions in an offshore jurisdiction that is commonly described as a tax haven. One such tax haven is Jersey, an island located in the Channel between England and France. NSL was incorporated in Jersey because it does not impose capital gains tax. Broadly speaking, capital gains tax is the tax paid on the profit made upon disposal of an asset which has increased in value over time. According to UK law at the time of purchase of the London flat in 1983, capital gains tax was chargeable generally upon disposal of immovable property at varying rates. However, any capital gains made on disposal of residential property in the UK were not chargeable to tax if its legal owner was a non-resident for tax purposes. Hence, the proliferation in the use of offshore companies for owning property in the UK. Thus setting up an offshore company in Jersey in order to avoid capital gains tax on property owned by such company in the UK was a widely practiced arrangement back in 1983 or so. Recently, in the last few years, the UK law has blurred the line between UK resident and non-residents for tax purposes, rendering the latter liable to pay certain taxes, including capital gains tax, regardless of the fact that they are non-UK residents. In light of the above discussion and the petitioner's failure to bring forth any concrete evidence to establish a different purpose for NSL, we have no hesitation in believing the Respondent's contention that NSL was created solely to own and hold the London flat in order to avoid capital gains tax. Therefore, we consider that any insidious purpose attributed to NSL by the learned counsel for the petitioner with respect to its ownership of the London flat is unwarranted.

59. Coming back to the factum of non-declaration of the London flat and NSL, the learned counsel for the Respondent informed that the Respondent began filing his income tax returns in Pakistan in 1981. It is an admitted fact that he neither disclosed NSL nor the London flat in such income tax returns. It is the Respondent's case that he did not disclose NSL as an asset in his tax returns for the reason that it is a juristic person of which he was not a shareholder, director or owner. He also did not disclose the London flat upon legal advice that since it was purchased with foreign income, there was no requirement to make its declaration in his income or wealth tax returns. The fact is that the Respondent purchased the London flat in 1983, two years after he became an income tax filer in Pakistan in 1981. Even if foreign earnings as non-resident were the source of funding for the London flat, yet it was an asset which he was bound to disclose in his wealth tax return under the Wealth Tax Act, 1963 after he became a filer in 1981. Therefore, the Respondent was a defaulter in relation at least to his duty under the Wealth Tax Act, 1963. This situation continued until 1.3.2000, when the Central Board of Revenue **("CBR")** announced a Tax Amnesty Scheme 2000 **("the Amnesty Scheme")** *vide* Circular No.4 of 2000 (Income Tax) dated 01.08.2000 issued under Section 59D of the Ordinance, 1979 which reads as under:

> ***59D. Tax on undisclosed income.*** *- (1)* ***Notwithstanding anything contained in this Ordinance, the Central Board of Revenue may, make scheme of payment of tax in respect of undisclosed income.***
>
> *(2) Where any person declares his undisclosed income in accordance with the scheme and the rules the tax on such income shall be charged at such rate as may be prescribed.*
>
> *(3)* ***Where a person has paid tax on his undisclosed income in accordance with the scheme and the rules, he shall-***

> *(a) be entitled to incorporate in his books of account such undisclosed income in tangible form; and*
>
> *(b)* ***not be liable to pay any tax, charge, levy, penalty or prosecution in respect of such income under this Ordinance.***
>
> *(4) For the purpose of this section "undisclosed income" shall mean any income (including any investment to be deemed as income under section 13 or any other deemed income) for any year or years, which was chargeable to tax but was not so charged.*
>
> *[Emphasis supplied]*

The relevant clauses No.8 and 10 of the Amnesty Scheme are reproduced hereunder:

> ***8. Immunity***
>
> *(1) Where a person has paid tax on his undisclosed income in accordance with the Scheme, he shall not be liable to any further tax, charge, levy, penalty or prosecution in respect of such income under the Income Tax Ordinance, 1979.*
>
> *(2) The undisclosed assets declared in accordance with the Scheme and on which tax has been paid would be exempt from wealth tax under the Wealth Tax Act, 1963, for any assessment year commencing on or before the first day of July, 1999, and for five assessment years next following.*
>
> ***10. Finality of proceedings under the scheme***
>
> *(2) Where a declaration in respect of undisclosed income has been properly made and the tax due on such income has been fully paid, such declaration shall be accepted by Deputy Commissioner of Income Tax concerned without any further proceedings and the declarant shall be informed accordingly.*
>
> *[emphasis supplied]*

What is a tax Amnesty Scheme? It is an incentive given by government or tax authorities to people having undisclosed income or wealth to declare such

income and assets by paying tax thereupon in exchange for immunity against penalty or prosecution for previous non-disclosure. In other words, undisclosed income or assets are thereby whitened and legitimized. Such a scheme extends a promise or undertaking on behalf of the State to existing or potential tax payers that the source of their undeclared income or assets would neither be probed nor be subjected to action if any person avails such scheme. According to Section 59D(3)(b) of the Ordinance, 1979 read with the immunity clause No.8 of the Amnesty Scheme, when a person pays tax on his undisclosed income pursuant to the Amnesty Scheme and the rules, he shall be entitled to incorporate such undisclosed income in his books of account and would not be liable to pay any tax, charge, levy, penalty or be prosecuted in respect of such income under the Ordinance, 1979. As per clause No.10 of the Amnesty Scheme, where a declaration in respect of undisclosed income has been properly made and the tax due on such income has been fully paid, such declaration shall be accepted by the Deputy Commissioner of Income Tax concerned without any further proceedings and the declarant shall be informed accordingly.

60. According to his Form of Declaration of undisclosed income, the Respondent has disclosed under the head 'INCOME' as under:

Income Year in which income earned	**Assessment Year**	**Undisclosed income (Amount/ value as per part II)**	**Tax paid**
1983 – 84	1984 – 85	£117,000/- Rs.2,000,000/ -	240,000/-
	Total:		240,000/-

The Respondent also declared the London flat under the head '(E) IMMOVEABLE PROPERTY' on the said form as follows:

Description of property	**Location and Identification No. of Property**	**Income Year in which acquired**	**Comercial/ residential**	**Size of plot etc.**	**Covered area**	**Valuation as per Rule 12 of the Scheme**	**Tax paid**
	165 – Draycot Avenue London SW-3	1984-85	Residential flat		One bed Flat	£117,000 Rs.2,000,000	240,000
				Total:		2000000 -	240,000

There is an acknowledgment receipt on the record in the name of the Respondent, duly stamped by the Office of the Deputy Commissioner of Income Tax, Lahore. There is also some sort of tax payment receipt issued by the Income Tax Department, Government of Pakistan acknowledging the payment of Rs.240,000/- by the Respondent. Therefore, the Respondent made am express disclosure of his undisclosed income in UK Pound Sterling its equivalent in Pakistan Rupees and fully paid tax due thereon in the amount of Rs.240,000/-. His declaration was accepted by the income tax authorities; consequently, the Respondent became immune from any liability to pay any tax, charge, levy, penalty in respect of the newly declared income and also became protected from prosecution for such income under the Ordinance, 1979.

61. It is the Petitioner's objection that the Amnesty Scheme was availed by the Respondent for a dishonest purpose and was misused by him. Suffice it to say that the scheme was not designed for nor availed by the Respondent alone under some colourable exercise of power by the Federal Government nor for that matter any *mala fide* can be imputed to the Respondent. The Amnesty Scheme was of general application having an object and purpose that is expressly contemplated by Section 59D of the Ordinance, 1979. Very many citizens availed the benefit under the Scheme and received immunity from liability of tax penalty and prosecution for hitherto undisclosed income or assets. Under the express terms of clause 8 of the Amnesty Scheme, like other beneficiaries thereof, the Respondent received such shelter from liabilities and action under both the Ordinance, 1979 and the Wealth Tax Act, 1963. Notwithstanding his default to pay wealth tax on the London flat from the date of becoming a resident and a tax return filer in Pakistan, the Respondent got immunity from liability and

action for his past default. Therefore for all intents and purposes the legal implications and consequences of the Respondent's past disregard or violation of tax law stood exonerated and cured. For clarity one may refer to definition of 'amnesty' in Words & Phrases, Permanent Edition, Volume 3, which reads as under:

> "The distinction between "amnesty" and pardon is one rather of philological interest than of legal importance. This is so as to their ultimate effect, but there are incidental differences of importance. They are of different character and have different purposes. The one overlooks the offense; the other remits punishment. The first is usually addressed to crimes against the sovereignty of the state, to political offences, **forgiveness being deemed more expedient for the public welfare than prosecution and punishment**. The second condones infractions of the peace of the state. "Amnesty" is usually general, addressed to classes or even communities,--- a legislative act, or under legislation, constitutional or statutory,--- the act of the supreme magistrate. There may or may not be distinct acts of acceptance. If other rights are dependent upon it and are asserted, there is affirmative evidence of acceptance. *Burdick v. United States, N.Y., 35 S. Ct. 267, 271, 236 U.S.79, 59 L.Ed. 476."*
>
> *[emphasis supplied]*

To subsequently impute dishonesty and to prosecute and punish a person for availing an amnesty scheme would violate the solemn assurance of immunity given by the law and the "forgiveness" that is thereby entailed. What cannot be done directly cannot also be done indirectly or collaterally. [**Farzand Ali vs. Province of West Pakistan** (PLD 1970 SC 98]. The

argument of the learned counsel for the petitioner that the Respondent undervalued the London flat in the form of the amnesty scheme in order to pay a lesser amount as tax, is not an issue before us. It was for the relevant quarters, i.e. the tax authorities, to accept the declared value or not and once that is done the matter is a closed chapter which cannot be re-opened now.

62. We are also not convinced that by disclosing the value of the London flat under the Amnesty Scheme, the Respondent made a misdeclaration to the effect that he was owner of the same whereas it is his stance before the Court that NSL owned the said flat. This alleged misdeclaration renders the Respondent to be dishonest attracting the penalty of disqualification under Article 62(1)(f) of the Constitution.

63. After the income with which the London flat was purchased and the value of the flat itself was declared by the Respondent under the Amnesty Scheme, he declared that property in his statement of assets and liabilities attached with his nomination papers for NA-71, Mianwali-I in the general election held in the year 2002. This was the first time the Respondent got elected as MNA and became the holder of public office, therefore he duly declared the London flat prior to the assuming a public office. We now advert to the argument regarding non-disclosure of the London flat in the annual statement of assets and liabilities for the year 2003 onwards submitted by the Respondent Section 42A of ROPA. According to Section 42(1) of ROPA, ***"Every member shall, on a form prescribed under clause (f) of sub-section (2) of section 12, submit a statement of assets and liabilities of his own, his spouse and dependents annually to the Commission by the thirtieth day of September each year"***. Section 12(2)(f) of ROPA provides that *"Every nomination…shall, on solemn affirmation made and signed by the candidate, accompany…**a statement of his assets and liabilities** and those of his spouse and*

dependents on the prescribed form ***as on the preceding thirtieth day of June****;" [Emphasis supplied].* According to the completion of sale statement of the London flat, issued by the buyer's conveyancing solicitor, the date of completion of sale for the said property was 14.4.2003. As the sale of the London flat had been finalized before 30.06.2003, therefore for the purpose of the Respondent's annual statement of assets and liabilities under Section 42A ROPA made as of 30.6.2003, the London flat had ceased to be his asset. Therefore, the said property was not disclosed in that statement submitted for the years 2003 and after.

64. Declaration of the London flat in the Amnesty Scheme in 2000 followed by its disclosure in the Respondent's wealth statement as of 30.06.2002 filed under Section 58 of the Ordinance, 1979 and reporting the same in the statement of assets and liabilities annexed by the Respondent with his nomination forms in the general election of 2002, he cannot be faulted for concealment or misdeclaration under the taxation laws of the country or the ROPA. Finally, when the London flat was sold in the year 2003, the obligation of the Respondent to declare the same ended. In the light of the above, it is clear that there was no concealment or non-disclosure on part of the Respondent in this regard.

65. We now move onto the Petitioner's contention regarding non-disclosure of NSL by the Respondent in his statement of assets and liabilities *(both in the nomination papers and yearly asset statement as a member of the National Assembly)* before the ECP and in his tax returns. For all legal intent and purposes, NSL was a separate and independent juridical person from the Respondent. Barclay Trust International Limited, Barclay Trust Channel Islands Limited and Barclay Trust Jersey Limited were its shareholders and therefore under Company law principles, the residuary claimants upon

NSL's dissolution. The two sister of the Respondent were the directors and controllers of NSL. The Respondent was neither a shareholder nor director of NSL and therefore cannot be attributed the legal ownership of NSL. However, on the equitable plane, NSL was a vehicle owned and controlled by trustees/directors for the advancement and benefit of the Respondent. Accordingly, in his status of beneficiary under the trust carried out through NSL, the Respondent was the beneficial owner of assets of the NSL. These assets comprised solely the London flat with its bank accounts showing the receipts and expenses of the property plus £9/- share money contributed by NSL's trustee share holders. The remaining administrative and logistic hardware for the operations of NSL was provided by its trustee share holders and their agents, who charged a fee for their services that was deducted from the accounts of NSL. As such NSL by itself was not an asset but an entity owning the London flat as its asset. Since the London flat was NSL's sole asset and the Respondent was its sole beneficial owner; he declared the said property as his own under the Ordinance, 1979 and ROPA. Thereafter, the Respondent was not obligated to disclose the mere existence of NSL which, as mentioned earlier, owned only the London flat as its asset under a trust arrangement. Accordingly, we do not find that failure by Respondent to mention a trust vehicle company as his asset in which he neither held any shares nor any office in the management, can tantamount to misdeclaration or concealment constituting an act of dishonesty. This is especially so when we are not convinced of any benefit, financial or otherwise that was or could be derived by the Respondent on account of such non-disclosure.

66. From the record and the facts and circumstances before us, we find that after the London flat was sold by the Respondent, for all practical

purposes NSL became an empty shell company. Learned counsel for the petitioner also argued that considering that NSL was kept alive without its disclosure before the ECP or the tax authorities in Pakistan for approximately twelve years after the sale of the London flat in 2003. In this respect, according to NSL's investment portfolio report dated 30.4.2001 issued by Barclays Private Bank & Trust Limited, under the head 'MISCELLANEOUS' at page 2 thereof, there is an entry of the 'United Kingdom' which is valued at £117,500/-. On page 3 of the said report, the description of the miscellaneous entry is given as 'Great Britain, UNITED KINGDOM, DRAYCOTT AVE 165 LEASEHOLD PROPERTY' priced at £117,500/-. At the bottom of page 3 of the portfolio report, the 'TOTAL INVESTMENTS' and 'OVERALL TOTAL INVESTMENTS' are valued at £117,500/-. The other amounts in the portfolio are £24,005/- and $221/- under the head 'CASH AND CONTRACTS'. The amount of £24,005/- is stated by the learned counsel for the Respondent to be the rent received for the London flat. The same is the position with the portfolio report as at 30.4.2002, save for the value of 'CASH AND CONTRACTS' which is £19,766/- only. The portfolio report as at 3.5.2004 shows the 'Investments' value to be 0. Therefore in 2001 and 2002, it is clear that the London flat was the only asset/investment held by NSL and after its sale in 2003, NSL had no investment left in 2004.

67. As regards the period from 1983 when NSL was incorporated till 2000 and 2005 till 2015, we have no reasons to disagree with the learned counsel for the Respondent that NSL had no other assets and that it was kept alive till 2013 only for the reason that there was some litigation going on between NSL and the tenant of the London flat. By judgment delivered on 10.2.2003, the English Court of Appeal awarded NSL as the owner of the flat,

past rent amounting to £48,000/- whereas the tenant was given damages of £9050/- on his counter claim for defective installations in the flat. This brought NSL's net entitlement roughly to £39,000/-. The judgment **("NSL judgment")** delivered by the Court of Appeal (Civil Division), London titled **Niazi Services Ltd. vs. Van Der Loo ([2004] EWCA Civ 53)** dated 10.2.2004 notes that:

> "2. Niazi Services Ltd have a long lease of Flat 2, 165 Draycott Avenue, Chelsea…The defendant, Mr. Van der Loo, was the sub-tenant of Flat 2, having taken a number of annual tenancies commencing in 1996. The tenancy formally terminated in October 2001 but Mr Van der Loo held over until May 2002.
>
> 3. … Disputes broke out because of items of disrepair. Mr Van der Loo at one point refused to pay the rent saying that there should be a reduction. He was sued for the rent and judgment was obtained for the amount owing. This dispute concerns items of disrepair, raised by counterclaim…"
>
> …
>
> 5. The judge's order was in the sum of £48,000 plus interest. The bulk of this was calculated by reference to a notional reduction of 40% of the rent for a 33-month period. He reached the 40% by way of a global assessment of all the defects which he found. There was added a minor amount, £4,500, for the repainting claim.
>
> …
>
> Order: Appeal allowed in part; the award of damages made by the County Court judge on the counterclaim set aside and the amount of £9,050 plus interest to be substituted; the respondent to pay 75% of the appellant's costs of the appeal; the defendant awarded 50% of his costs on the counterclaim; permission to appeal to the House of Lords refused.
>
> (Order does not form part of the approved judgment)"

Pursuant to the Court of Appeal decree, a settlement was made with the tenant in 2006 whereunder NSL recovered £42,000/- from the tenant in installment paid until end of 2010, whereafter debit entries of only legal and administrative costs are visible in the account statements *(reflected in NSL's Euro Call Account Barclay's Bank statement attached in Respondent's CMA No.7012/2017)*. The requirement to keep NSL alive as a mere shell company after the sale of the London flat till conclusion of the execution proceedings under the said decree cannot be disbelieved in view of the banking record produced above. The Pound Sterling and Euro Call accounts statements at Barclay Bank show that after the sale of the London flat, there was no other property or asset owned by NSL. Until its dissolution, NSL was merely collecting payments made by the tenant under the settlement. Thus the assertion by the learned counsel for the petitioner that NSL owned assets besides the London flat is a baseless surmise. We also notice from the banking record of NSL that until 2013, substantial management fee of £3500/- per annum was charged, apart from solicitors' fee regarding performance of the settlement with the tenant. Ultimately, it is ironic that name of NSL was struck-off the Register of Companies and was dissolved on 1.10.2015 for non-filing of the annual return and non-payment of late filing fee. In the light of the above, we do not find any substantive material for holding that the Respondent has incurred a disqualification under Article 62(1)(f) of the Constitution.

5. Whether the Banigala property was purchased through the amount substantially sent by Ms. Jemima Khan from abroad through Mr. Rashid Ali Khan? Whether this was the amount utilized for the payment of the balance consideration of the Banigala property?

68. The Respondent entered into an agreement to sell dated 13.03.2002 with one Mr. Muhammad Maqsood *(the seller)* for the purchase of

land measuring 300 *kanals* and 5 *marlas* bearing *Khasra* No.1939 situated in Mouza Mohra Noor, Banigala, District and Tehsil Islamabad *(the Banigala property)* for a total consideration of Rs.43,500,000/-. Apart from the total consideration, initially the Respondent made a cash payment of Rs.300,000/- to the seller for the purposes of brokerage fee and other miscellaneous charges. Out of the total consideration, the following payments were made by the Respondent:

i. Rs.3,000,000 *vide* Citibank manager's cheque No.007751 dated 14.3.2002 ***(first payment)***;

ii. Rs.3,500,000 *vide* Bank Alfalah Limited banker's cheque No.001496 dated 28.3.2002 ***(second payment)***; and

iii. Rs.800,000 in cash ***(final payment)*** sometime after 23.1.2003.

69. The Respondent's case is that the remaining payments were to be made by him from the anticipated proceeds of sale accruing from the sale of the London flat. However, as already noted above the London flat became the subject matter of serious litigation between NSL and the tenant which delayed its sale until April, 2003. On the other hand completion of sale of the Banigala property was agreed to be around end January, 2003.

70. Leasehold as opposed to freehold title is a common form of ownership of immovable property in England; particularly for flats forming part of multistoried buildings comprising several units occupied by as many tenants. The NSL judgment observes that the NSL has a leasehold interest in the London flat. The tenant Mr. Van der Loo is, therefore, referred as the sub-tenant in that judgment. It is clearly mentioned there that although Mr. Van der Loo's tenancy ended in October 2001, he held over the premises until May 2002 but was successfully sued by NSL for non-payment of past rent vide judgment presumably delivered before sale of the London flat in April,

2003. Conversely, the sub-tenant also sued NSL for defective installations. On the other hand, the two initial payments of sale consideration for the Banigala property were made by the Respondent in March 2002. Also the NSL judgment dated 10.02.2004 merely reduced the damages awarded against the Respondent to £9050/-. The Euro bank statement of NSL (CMA No.7012 of 2017) shows that the judgment debtor tenant took a good five years to pay his decreed rental obligation on the basis of a 2006 compromise (CMA No.7012 of 2017). Be that as it may, the date for completion of sale of the Banigala property originally fixed as 30.06.2002 vide Clause No.3 of the agreement to sell. However, it is the Respondent's case that this date was extended till 23.1.2003 by mutual consent of the parties and the final payment of the sale consideration was made to the seller on or about the said later date. According to the London Solicitors' completion of sale statement, the sale transaction of the London flat was completed on 14.4.2003 i.e. three months after the final payment of the sale price of the Banigala property was made by the Respondent.

71. It is for the reason of the abovementioned delay in the sale of the London flat that, according to the Respondent, he entered into an arrangement with his wife, Ms. Jemima Khan to transfer during the period April 2002 until January, 2003 the requisite funds *(in foreign currency)* from abroad to make payment of the sale price of the Banigala property. Such remittances were made to the bank account of Mr. Rashid Ali Khan, a close and trusted friend of the Respondent, who converted the same to Pak rupees and utilized such amount for payment to the seller through part payments of the total sale consideration. It was also mentioned by the learned counsel for the Respondent that the raison d'être for remitting the money to Mr. Rashid Ali Khan's account and not directly to account of the Respondent, was to

ensure that payments were timely made to the seller of the Banigala property. The likelihood of failure in this regard was a real possibility because Ms. Jemima Khan along with her two sons had moved in 2002 from Pakistan to London as it turned out for a separation. This situation compelled the Respondent to frequently travel between Pakistan and London in an unsuccessful effort to save the marriage which ultimately ended in divorce in June, 2004. This position is so expressed in the Respondent's affidavit and is also corroborated by the events that followed including the place of residence taken up by Ms. Jemima Khan and her sons followed by breakup of the Respondent's marriage. Therefore, we have no reason to disbelieve the version given by the Respondent.

72. In any event, we consider that as long as the remittances to Mr. Rashid Ali Khan were indeed paid to the seller of the Banigala property, the factors causing the terms of the financial arrangement between the Respondent and Ms. Jemima Khan become irrelevant. As mentioned above, out of the total consideration of Rs.43,500,000/-, the Respondent initially paid an amount of Rs.6,500,000/- by two cheques to the seller of Banigala property in March, 2002. [***first*** *payment and* ***second*** *payment by leaving aside the disbursement of initial Rs.300,000/- for miscellaneous and brokerage etc.)* and then disbursed Rs.800,000/- **final payment** to the seller in cash sometime after January, 2003.

73. Accordingly, it is now appropriate to consider whether the remaining sale consideration was funded by the amount remitted by Ms. Jemima Khan from abroad to Mr. Rashid Ali Khan or those transfers were a mere smokescreen to launder the Respondent's tax evaded money. It may be noted that the balance consideration to be paid to the seller of the Banigala property came to Rs.36,200,000/-. In this regard, the remittances made by

Ms. Jemima Khan and their onward conversion to rupee amounts and payment to the seller of Banigala property shall now be examined in the following paragraphs.

74. The first remittance of an amount of $258,333/- is reflected in the following documents. According to a letter dated 8.4.2002 *(bearing the letterhead of Ms. Jemima Khan)*, there is a request to BNP Paribas, Luxembourg, that $270,000/- be transferred from a USD account to Citibank, New York with ABA No.FW 021000089 *(a routing or routing transfer number)* for account No.10999612 at Citibank, Islamabad for further credit to the account No.9-010534-809 of Ms. Jemima Khan. The Respondent has placed on record a bank statement in the name of 'Khan' issued by BNP Paribas of a USD current account reporting a transfer of $270,000/- on 8.4.2002. This connects with an account statement of Ms. Jemima Khan's savings account in Citibank, Pakistan bearing account No.9-010534-809 for the period 1.2.2002 to 30.4.2002 that shows an incoming telex transfer from Luxemburg on 9.4.2002 *(one day after the transfer from BNP Paribas, Luxemburg on 8.4.2002)* making a deposit of $270,000/-. This account number corresponds with the account number of Ms. Jemima Khan that is mentioned in her request to BNP Paribas for the purpose of making further credit. The account statement of Ms. Jemima Khan's saving account at Citibank, Islamabad reflects a debit/withdrawal bearing number 0411105835 of $258,333/- to have been made on 11.4.2002 (page 9 of CMA No.4217 of 2017). Correspondingly, a Citibank, Pakistan account statement for the period 1.2.2002 to 30.4.2002 of Mr. Rashid Ali Khan's savings account No.9-010327-943 records the deposit of $258,333/- on 11.4.2002 through an 'Islamabad – House Check 0411105835. The same House Check number also features as 'Islamabad – Debit' number in the Citibank, Pakistan account statement of Ms. Jemima Khan. Again on

11.4.2002 the US Dollar credit of $258,333/- to Mr. Rashid Ali Khan's Citibank, Pakistan account is shown to be transferred on 11.04.2002 vide entry 'Trf To 0521588012' which is his Citibank PKR current account. The account statement dated 21.10.2002 of the said Citibank PKR current account indicates the said mode of transaction. From these entries in the account statement (page 66 of CMA No.7925 of 2016), we understand that the first remittance by Ms. Jemima Khan to Mr. Rashid Ali Khan was encashed into Pak rupees vide encashment certificate with Ref. No.CBEC 2438 dated 11.4.2002 whereby $258,333/- were converted at the then prevailing exchange rate of USD 1 = PKR 59.70 which came to Rs.15,422,480.10. Again on 11.4.2002 the said PKR amount was partly withdrawn in the amount of Rs.14,500,000/- vide Citibank Manager's Cheque bearing No.008111 dated 11.4.2002 issued in favour of the seller of the Banigala property *(**third payment**)*.

75. The second remittance made by Ms. Jemima Khan to the same recipient Mr. Rashid Ali Khan is for an amount of $275,678/-. Again, by a letter addressed to BNP Paribas, Luxembourg dated 29.7.2002 but this time on the letterhead of one Verton Holdings Ltd., a request is made by order of Ms. Jemima Khan for transfer from a USD account of an amount of $275,678/- in favour of account No.9-010327-943 of 'Rashid Khan' Citibank Pakistan. An account statement of a USD current account in the name of 'Verton Holdings Limited/JK' issued by BNP PARIBAS records the transfer as requested of $275,678/- on 30.7.2002. (page 5 of CMA No.4217 of 2017). Correspondingly, a Citibank, Pakistan account statement of Mr. Rashid Ali Khan's USD savings account No.9-010327-943 for the period 1.5.2002 to 30.7.2002 reflects an 'Incoming Telex Transfer Fm Usa b/o J Khan' of an amount of US $275,678/- on 31.7.2002. Confirmation is also a Citibank,

Pakistan letter dated 7.1.2004 (page 67 of CMA No.7925 of 2016) addressed to Mr.Rashid Ali Khan regarding entries in his account No.9010327943 in which a telegraphic transfer from 'USA B/O J. Khan' on 31.7.2002 for an amount of $275,678.62 is shown.

76. According to the learned counsel for the Respondent, the remitted amount of US $275,678.62 was encashed piecemeal in four transactions. This appears to be true in light of the four encashment certificates filed on record:

(i) The first encashment is reflected in Mr. Rashid Ali Khan's Citibank bank statement of his foreign currency account No.9-010327-943 for the period 1.8.2002 to 31.10.2002 **("FX statement of account")** [CMA No.4217 of 2017]. This reports a transfer of $200,000 on 1.8.2002 to his PKR current account bearing No.0521588012. The said transfer corresponds to the encashment certificate bearing Ref. No.CBEC 2428 dated 1.8.2002 in respect of $200,000/- lying in the foreign currency account of Mr. Rashid Ali Khan that were encashed at the then prevailing exchange rate of USD 1 = PKR 59.15 amounting to Rs.11,830,000/-. There is a corresponding Citibank Manager's cheque bearing No.009078 dated 1.8.2002 for an amount of Rs.10,000,000/- drawn in favour of the seller *(**fourth payment**)*.

(ii) The second encashment is of an amount of $45,000/-. According to Mr. Rashid Ali Khan's FX statement of account, the said amount of $45,000/- was transferred on 31.8.2002 to his PKR current account bearing No.0521588012. This transaction corresponds to the encashment certificate with Ref. No.CBEC 2429 dated 31.8.2002, in which $45,000/- from the foreign currency account of Mr. Rashid Ali Khan was encashed at the then prevailing exchange rate of USD

1 = PKR 59.00 that came to Rs.2,655,000. There is a corresponding Citibank Manager's cheque bearing No.009467 dated 13.9.2002 for an amount of Rs.2,500,000 drawn in favour of the seller ***(fifth payment)***.

(iii) The third encashment is of an amount of $20,000. According to Mr. Rashid Ali Khan's FX statement of account for the period 1.8.2002 to 31.10.2002, there is a transfer of $20,000/- to his PKR current account bearing No.0521588012 on 31.8.2002. This corresponds to the encashment certificate with Ref. No.CBEC 2430 dated 31.8.2002, in which $20,000/- from the foreign currency account of Mr. Rashid Ali Khan was encashed at the then prevailing exchange rate of USD 1 = PKR 59.00 which came to Rs.1,180,000/-.

(iv) The fourth encashment is of an amount of $10,660/-. According to Mr. Rashid Ali Khan's FX statement of account, there is a transfer of $10,660/- to his PKR current account bearing No.0521588012 on 10.9.2002. This corresponds to the encashment certificate bearing Ref. No.CBEC 2431 dated 10.9.2002 in which $10,660/- from the foreign currency account of Mr.Rashid Ali Khan was encashed at the then prevailing exchange rate of USD 1 = PKR 58.85 which came to Rs.627,341/-.

It is worthy to note that no corresponding cheques were issued to the seller from third and fourth encashed amounts. However, as shall be seen below, these funds were utilized along with the third remittance towards subsequent payments made to the seller.

77. The third remittance by Ms. Jemima Khan is of an amount of £20,000/-. This amount was directly remitted to Mr. Rashid Ali Khan's Citibank PKR current account bearing No.0521588012 as is clear from the

bank statement dated 21.2.2002 of the said account in which there is entry for an 'INCOMING TELEX TRANSFER GBP20,000/- @91.4496 FM U.K.B/O. JEMIMA KHAN LTD.' on 2.10.2002 showing a credit of the rupee equivalent amount of Rs.1,828,992/- in the account. As mentioned earlier, the amounts of Rs.1,180,000/- and Rs.627,341/- encashed on 31.8.2002 and 10.9.2002 had not been utilized for payment to the seller but were retained in Mr. Rashid Ali Khan's Citibank PKR current account bearing No.0521588012. When the latest encashed amount dated 02.10.2002 is added to abovementioned two conversions to rupee amounts, their total comes to Rs.3,636,333/-. The balance amount in the said rupee account as on 2.10.2002 is shown in the PKR bank statement to be Rs.3,620,103.88. From this credit balance as on 2.10.2002, a corresponding Citibank Manager's cheque bearing No.009639 dated 2.10.2002 for an amount of Rs.3,500,000/- was issued in favour of the seller *(**sixth payment**)*.

78. A remittance of an amount of $16,000/- on 5.10.2002 is included in the chart of fund transfers submitted by the learned counsel for the Respondent (CMA No.4217 of 2017). However, the origin of this remittance has not been traced to Ms. Jemima Khan. Therefore, Mr. Rashid Ali Khan's Citibank bank statement (CMA No.4217 of 2017) for the foreign currency account No.9-010327-943 for the period 1.8.2002 to 31.10.2002, showing the transfer of $16,000/- on 5.10.2002 to his PKR current account bearing No.0521588012 is inconsequential. Likewise, the corresponding encashment certificate bearing Ref. No.CBEC 2432 dated 5.10.2002 reflecting the conversion of $16,000/- transferred from the foreign currency account of Mr.Rashid Ali Khan at the then prevailing exchange rate of USD 1 = PKR 58.65 amounting to Rs.938,400/- is also of no utility to the Respondent.

79. The FX statement of account of Mr. Rashid Ali Khan records two cash credit. The first on 19.11.2002 states 'Islamabad – Cash Deposit

1119111633 Value Nov 19, 02' for an amount of $5,000/- which was subsequently transferred to an account bearing No.5521588014 on the same date. This transfer corresponds to the encashment certificate bearing Ref. No.CBEC 2433 dated 19.11.2002 in which $5,000/- from the foreign currency account of Mr. Rashid Ali Khan was encashed at the then prevailing exchange rate of USD 1 = PKR 58.15 which came to Rs.290,750/-. According to Mr. Rashid Ali Khan's FX statement of account, there is a second foreign currency cash credit entry that states 'Islamabad – Cash Deposit 1209094013 Value Dec 09, 02' on 9.12.2002 for an amount of $5,000/- which was subsequently transferred to an account bearing No.5521588014 on 11.12.2002. This corresponds to the encashment certificate with Ref. No.CBEC 2434 dated 11.12.2002 in which $5,000/- from the foreign currency account of Mr. Rashid Ali Khan were encashed at the then prevailing exchange rate of USD 1 = PKR 58.10 which came to Rs.290,500. Neither of these cash deposits of $5000/- each constitute a remittance and therefore cannot be attributed to Ms. Jemima Khan as their sender. Therefore, these deposits cannot be evidence of the Respondent's plea that these funds originated from Ms. Jemima Khan for the purchase of the Banigala property.

80. In the above context of an unascertainable source of transfer of foreign funds to the account of Mr. Rashid Ali Khan, there is a claimed remittance of $100,000/- by Ms. Jemima Khan for which positive documentary proof is not available. According to Mr.Rashid Ali Khan's FX statement of account, a credit entry on 22.01.2003 records an 'Incoming Telex Transfer Fm USA B/O Citibank Value Jan 22, 03' on 22.1.2003 for an amount of $100,000/- which was transferred to an account bearing No.5521588014 on 23.1.2003. This is followed by the telegraphic transfer of $100,000/- from 'USA B/O Citibank' on 22.1.2003 into Mr. Rashid Ali Khan's foreign currency account No.9010327943 as reported to him vide the Citibank

Pakistan letter dated 7.1.2004 (CMA No.3657 of 2017). This amount corresponds to the encashment certificate with Ref. No.CBEC 2435 dated 23.1.2003 in which $100,000/- from the foreign currency account of Mr. Rashid Ali Khan were converted encashed at the then prevailing exchange rate of USD 1 = PKR 57.85 amounting to Rs.5,785,000/-. With the accumulated funds in the PKR account of Mr. Rashid Ali Khan, a corresponding Citibank manager's cheque bearing No.010657 for an amount of Rs.5,700,000/- was issued in favour of the seller of the Banigala property ***(seventh payment)***. However, since the last remittance into the foreign currency account of Mr. Rashid Ali Khan cannot be traced to Ms. Jemima Khan, therefore, notwithstanding the payment to the seller, that is derived from it, the said remittance cannot be attributed to Ms. Jemima Khan nor can the Respondent's plea of funding by her receives strength from it.

81. The documents submitted on record reveal that four foreign currency remittances have been shown on record by the Respondent to have been made by Ms. Jemima Khan to Mr. Rashid Ali Khan who converted the same to Pak rupees to finance seven onward payments to the seller of the Banigala property:

<table>
<tr><th>Sr. No.</th><th>Date:</th><th colspan="2">Amount received in Mr. Rashid Ali Khan's foreign currency account bearing No.9010327943</th><th>Encashed Value</th><th>Banker's Cheque to seller</th><th>Remaining Credit Balance:</th></tr>
<tr><td>1</td><td>08.04.2002</td><td colspan="2">$258,333/-</td><td>Rs.15,422,480/10</td><td>Rs.14,500,000/-</td><td>Rs.922,480/-</td></tr>
<tr><td rowspan="4">2</td><td rowspan="4">31.07.2002</td><td rowspan="4">$275678/-</td><td>$200,000/-</td><td>Rs.11,830,000/-</td><td>Rs.10,000,000/-</td><td>Rs.2,752,480/-</td></tr>
<tr><td>$45,000/-</td><td>Rs.2,655,000/-</td><td>Rs.2,500,000/-</td><td>Rs.4,714,821/-</td></tr>
<tr><td>$20,000/-</td><td>Rs.1,180,000/-</td><td rowspan="2">Rs.3,500,000/-</td><td rowspan="2">Rs.3,043,813/-</td></tr>
<tr><td>$10,660/-</td><td>Rs.627,341/-</td></tr>
<tr><td>3</td><td>02.10.2002</td><td colspan="2">£20,000/- (direct transfer to PKR account)</td><td>Rs.1,828,992/-</td><td></td><td></td></tr>
<tr><td>4</td><td>22.01.2003</td><td colspan="2">$100,000/- (Excluded)</td><td>Rs.5,785,000/- (Excluded)</td><td rowspan="2">Rs.5,700,000/-</td><td></td></tr>
<tr><td>5</td><td>23.01.2003</td><td colspan="2"></td><td>(Extended)</td><td>Rs.2,656,187/-</td></tr>
<tr><td colspan="4">Total amount proven from Ms. Jemima Khan</td><td>Rs.33,543,813/-</td><td></td><td rowspan="3"></td></tr>
<tr><td colspan="4">Total amount paid to seller</td><td></td><td>Rs.36,200,000/-</td></tr>
<tr><td colspan="4">Total amount of shortfall</td><td></td><td></td><td>(-) Rs.2,656,187/-</td></tr>
</table>

To recapitulate, as regards the amounts of $16,000/-, $5,000/- and $5,000/- credited to the foreign currency account of Mr.Rashid Ali Khan mentioned above, there is no indication on the record that this money was transferred by Ms. Jemima Khan; also, these accounts did not find any corresponding cheques for onward payment to the seller of the Banigala property. Therefore, these three credit amounts do not require further discussion. In this respect although during arguments learned counsel had made the claim, but he has not produced any documents to establish that said incoming telex transfer of US$100,000/- remitted on 22.1.2003 to the foreign currency account of Mr. Rashid Ali Khan had been effected on the instructions and account of Ms. Jemima Khan. Notwithstanding the availability of the corresponding encashment certificates and a Citibank Manger's cheque in favour of the seller of the Banigala property, the link with and remittance from Ms. Jemima Khan is not established. Therefore, the said remittance although noticed for payment to the seller of the Banigala property cannot be accepted as supporting the Respondent's plea regarding the source of funding for purchase of the Banigala property.

82. On the other hand, there is also a telegraphic transfer of $100,029/- bearing the description 'B/O Jemima Khan' dated 20.5.2003 into Mr. Rashid Ali Khan's foreign currency account. However, the learned counsel for the Respondent stated that notwithstanding the remittance having been made by Ms. Jemima Khan, yet this amount was never encashed for payment to the seller of the Banigala property. Accordingly, this is an internal transaction and a matter between Ms. Jemima Khan and Mr.Rashid Ali Khan. Therefore, we have no reason to disagree with the learned counsel for the Respondent. Besides, we are not, in the instant proceedings,

scrutinizing the banking transactions of Mr.Rashid Ali Khan that do not bear nexus with the issue before us today. The payments made by him to the seller and duly acknowledged by the latter correspond to remittances (including $100,000/- made on 22.1.2003 but excluded for non-proof) that are established to have been sent by Ms. Jemima Khan. Therefore, we are of the opinion that three out of foreign currency remittance by Ms. Jemima Khan from abroad to Mr.Rashid Ali Khan were fully utilized for the payment of the balance sale consideration of the Banigala property. The fourth remittance of $100,000/- dated 22.1.2003 converted to Rs.5.785 million was also paid to the seller of the Banigala property by cheque for Rs.43.5 million dated 23.1.2003. However, that remittance is not proved to have been made by Ms. Jemima Khan. Therefore, her proven remittances equal Rs.33.543 million (*i.e.* Rs.39.32 million minus Rs.5.785 million). Against the said proven receipt of Rs.33.543 million, Mr. Rashid Ali Khan paid the seller an amount of Rs.36.20 million to the seller showing a shortfall of Rs.2.656 million in proven funding by Ms. Jemima Khan.

83. To conclude, the agreement to sell the Banigala property and its sale consideration of Rs.43.5 million are not disputed. The first, second and final payments were made to the seller by the Respondent from his funds whereas the third, fourth, fifth and sixth payments were made from the funds sent by Ms. Jemima Khan through Mr. Rashid Ali Khan. Their sum total comes to Rs.40.843 million short by Rs.2.656 million from the total payment of Rs.43.5 million made to the seller. The shortfall is not decisive because it is addressed by the amount of repayments made by the Respondent to Ms. Jemima Khan. One cannot overlook the fact that the seventh payment of Rs.5,700,000/- made on 23.1.2003 by Citibank cheque to

the seller of Banigala property draws upon funds remitted from abroad on 22.1.2003. However, this remittance has not been connected with Ms. Jemima Khan through evidence, therefore, it has been excluded from the count. Be that as it may, she transferred another amount of $100,029/- on 20.5.2003 to the foreign currency account of Mr.Rashid Ali Khan. This remittance is proven through bank documentation to have been transferred by Ms. Jemima Khan (CMA No.3657 of 2017). However, this amount was not encashed by Mr.Rashid Ali Khan statedly because full payment of sale consideration had been made to the seller of Banigala property. If it is assumed that $100,000/- credited to the account of Mr.Rashid Ali Khan on 22.1.2003 originated from his own source, then the remittance of $100,029/- by Ms. Jemima Khan to his account on 20.5.2003 reimbursed his contribution. The fact is that the amounts remitted by Ms. Jemima Khan fully funded the payments made by Mr.Rashid Ali Khan to the seller including the seventh payment amounting to Rs.5,700,000/-. This view is reinforced by the amount paid subsequently by the Respondent to Ms. Jemima Khan which aspect is examined shortly herein below. Therefore, we do not find any fraud, money laundering or misdeclaration on behalf of the Respondent in this regard, warranting his disqualification under Article 62(1)(f) of the Constitution.

6. Whether the amount contributed by Ms. Jemima Khan for the purchase of the Banigala property was repaid to her after the sale of the London flat by the Respondent?

84. The total amount that Ms. Jemima Khan remitted to Mr.Rashid Ali Khan was approximately $665,340/- after excluding the cash deposits and $100,000/- telex transfer not shown to be from her. The breakdown of the established remittances by Mr.Jemima Khan is as follows:-

Sr. No.	Amounts	Comments
1.	$258,333/-)8.4.2002)	Amounts converted and utilized for payment to the seller of the Banigala property.
2.	$275,678/- (31.7.2002)	
3.	£20,000 = $31,300/- (2.10.2002) (at the exchange rate of £1 = $1.565 prevalent on 2.10.2002)	
4.	$100,000/- (22.1.2003) *(claimed but excluded)*	Amounts claimed as remitted and encashed and utilized towards payment for Banigala property but excluded as unproved.
5.	$100,029/-	Amount remitted but not encashed.
6.	**$665,340 = £417,900.89** (at the exchange rate of £1 = $1.5921 prevalent on 7.5.2003, the date payment was made to Ms. Jemima Khan)	

As mentioned earlier, the London flat was sold on 14.4.2003 for an amount of £715,000/-. According to the completion certificate, after deducting the proportion of ground rent from 15.4.2003 to 23.3.2004 *(344 days)* at £125/- per annum, and subtracting various expenses *(estate agent's commission, solicitors' costs, etc.)*, the net proceeds of sale of the London flat that NSL received were £690,307/-. Out of this amount, NSL on behalf of the Respondent paid an amount of £562,415.54 on 07.05.2003 to Ms. Jemima Khan. This payment was purported to be established by the learned counsel for the Respondent through a letter dated 22.5.2017 issued by one Ashley Cox, Managing Director of Zedra Trust Company (Jersey) (the successor to Barclay Trust Banking) confirming that:

> *"Upon a letter dated 18 April 2003 from Mr I Khan requesting that a payment be made to Mrs Jemima Khan's account with the Anglo Irish Bank, a payment of £562,415.54 was made from Niazi Services Limited's account with Barclays Private Bank & Trust Limited to Mrs Khan's account on the 7 May 2003." (Note:- We have asked the counsel for the Respondent to give us the letter of Imran Khan dated 18.4.2003 and also the relevant proof from the bank statements of NSL or Jemima Khan).*

The Court was not satisfied by the said letter as evidence on the point. *A*ccordingly, it was directed that the relevant proof from the bank statement of NSL or of Ms. Jemima Khan be placed on record. Consequently, through CMA No.6799 of 2017 (filed on 06.10.2017) the letter dated 18.04.2003 by the Respondent instructing aforesaid payment to Ms. Jemima Khan and copies of relevant Bank statements of Ms. Jemima Khan's account and NSL's account were filed on record. These documents clearly establish payment of £562,415.54 by NSL to Ms. Jemima Khan on 7.5.2003. According to calculations based on the amount of foreign currency remittances made by Ms. Jemima Khan to Mr.Rashid Ali Khan for onward payment for sale consideration of the Banigala property, the Respondent refunded to Ms. Jemima Khan approximately £114,514.65 (£562,415.54 *minus £417,900.89)* in excess of the foreign currency amount remitted by Ms. Jemima Khan to Mr. Rashid Ali Khan for payment of the price of the Banigala property. The excess payment made by the Respondent is in our opinion a matter between the spouses. It is relevant, however, to note that these *inter se* financial transfers took place while the Respondent's marriage with Ms. Jemima Khan was still intact because they got divorced in June, 2004. Therefore, exact reconciled accounts between spouses is neither necessary nor expected nor a matter for the Court to probe. Be that as it may, the banking material placed on record is relevant to the point in issue, duly corroborated by other documents, emanating from competent sources and, therefore, reliable and trustworthy. In any event, the petitioner has brought no material to contradict the said evidence. In the circumstances, we consider that the money trial for the purchase of the Banigala property by the Respondent has been duly established before us. The method adopted by the Respondent for arranging timely funding for the sale consideration through his wife is a

lawful arrangement. In any event, the funds that she contributed for the purchase of the Banigala property were duly returned by the Respondent from a lawful source that was a duly declared property.

7. Who is the owner of the Banigala property? Whether a valid gift of the said property was made by Ms.Jemima Khan in favour of the Respondent through an attorney?

85. It is the Respondent's case that he purchased the Banigala property for his then wife, Ms. Jemima Khan, and their two sons. We have no reason to disbelieve such an object. Indeed, the first and second payments to the seller of the Banigala property were both made by the Respondent. He was expecting to pay the remaining sale consideration amount of the property from the sale proceeds of his London flat. However, due to delay in such sale in the circumstances mentioned above, he made a 'bridge financing' arrangement whereby Ms. Jemima Khan remitted foreign exchange from abroad to Mr.Rashid Ali Khan, who after conversion of such amounts to Pak Rupees, paid the same to the seller. Pursuant to the stated as well as apparent object, the transfer of the Banigala property through various sale mutations was, therefore, made in favour of Ms. Jemima Khan. For all intents and purposes these sale mutations indicated that she was the absolute owner of the same.

86. The various sale mutations of the Banigala property are as follows. The first mutation No.7056 records sale of 135 kanals of land in favour of Ms. Jemima Khan. The sale was reported to the *patwari* on 10.4.2002. He forwarded the matter on 25.4.2002 to his superiors with the note that the record is complete for sanction of the mutation. Accordingly, on 26.4.2002 the competent revenue officer sanctioned the first mutation. The second mutation No.7225 records the sale of 62 kanals of land in favour of

Ms. Jemima Khan. The initial entry of particulars was made on 3.8.2002; the report of the *qanoongo* thereon is dated 15.8.2002 and the second mutation of sale was sanctioned by the competent revenue officer on 16.8.2002. The third mutation No.7246 records sale of 8 kanals of land in favour of Ms. Jemima Khan. The particulars of the transaction were entered on 20.8.2002; the report thereon by the *qanoongo* is dated 27.8.2002 and the third mutation of sale was sanctioned by the competent revenue officer on 28.8.2002.

87. The dispute raised by the learned counsel for the petitioner is regarding only the fourth and fifth mutation Nos.7361 and 7538. About these, the petitioner has questioned as to why they were sanctioned by the revenue officer in the year 2005 with a gap of nearly three years after the first three mutations finalized in the year 2002. The fourth mutation No.7361 records the sale 45 kanals of land in favour of Ms. Jemima Khan, the particulars whereof were entered in the revenue record on 11.11.2002 and the report by the *qanoongo* thereon was completed on 13.11.2002; however, the fourth sale mutation was belatedly sanctioned by the competent revenue officer on 11.6.2005. Likewise, the fifth mutation No.7538 records the sale of 50 kanals of land in favour of Ms. Jemima Khan, which was entered in the revenue record on 4.2.2003; the record was prepared by the *qanoongo* on 27.2.2003 and this mutation too was sanctioned by the competent revenue officer on 11.6.2005. Learned counsel for the Respondent has submitted that the particulars of both the sale mutations including the land to be conveyed were duly entered in the revenue record on 11.11.2002 and 4.2.2003 respectively. The record does not show that the Respondent is in any way responsible for the delay in the sanction of the said two mutations. We have perused both the mutations Nos.7361 and 7538 and note that each of these contains the phrase "بوجہ پابندی منتقلی زیرِ التوا". The said note in the file of both the

mutations indicates that there was some prohibition preventing their sanction on an earlier date. The record does not discard the initial reports filed by the *patwari* on 11.11.2002 and 4.2.2003 so that the final sanctioned mutations are based on these reports. Therefore, we have no reason to disbelieve the Respondent's stance in this regard. The petitioner also raised a question as to why mutation Nos.7361 and 7538 were sanctioned in the name of the ex-wife, Ms. Jemima Khan, when on the date of their sanction, i.e. 11.6.2005, she and the Respondent had already divorced on 22.6.2004. We have seen both the mutations and these are in favour of "مسماۃ جمائما خان زوجہ عمران احمد خان نیازی". It is also observed that the name of Ms. Jemima Khan was included in the initial entries and report for these mutations recorded on 11.11.2002 and 4.2.2003 respectively. At that time, the marriage between the Respondent and Ms. Jemima Khan was still intact. Therefore we do not find there to be any element of fraud or a sham entry in this record as asserted by the learned counsel for the petitioner.

88. It was after the Respondent had refunded, *inter alia,* the bridge financed amount to Ms. Jemima Khan on 7.5.2003 that their divorce took place in 2004. It appears that Ms. Jemima Khan reflected for sometime before deciding to return the Banigala property to the Respondent. For this purpose, she executed on 21.3.2005 before a notary public in England a power of attorney in favour of Mr. Saifullah Khan Sarwar Niazi in respect of the said property. The relevant portions of that power of attorney read as under:

> *"That a land measuring 300 Kanals and 5 Marlas in Khasra No.1939 situated in the revenue estate of village Mohra Noor Tehsil and District Islamabad was purchased*

by Mr. Imran Ahmed Khan Niazi son of Ikramullah Khan Niazi.

The land was transferred in my name through mutation Nos.7056, 7225, 7361, 7538, by my ex-husband Mr. Imran Ahmed Khan Niazi as a "Benami Transaction". ***After the Separation/ Divorce between me and Mr. Imran Ahmed Khan Niazi, I do not intend to keep the land with me****.*

Since I am unable to personally appear before the authorities to complete the transfer formalities in the name of Mr. Imran Ahmed Khan Niazi, therefore, ***I do hereby appoint Mr. Saifullah Sarwar Khan Niazi*** *son of Imran Ahsan Khan Niazi resident of H. No. 103, St. No. 2, PTV Colony, Bara Kahu, Tehsil and District Islamabad* ***to appear before the Revenue Office / Registrar, and get the land transferred in the name of Mr. Imran Ahmed Khan Niazi*** *son of Ikramullah Khan Niazi resident of 11B Clara Apartments, Diplomatic Enclave, Sector G-5, Islamabad.*

The above mentioned is also authorized to appear, on my behalf in any court, authority in connection to the affairs of the land. The attorney is also authorized to engage an advocate if so required to complete the transfer formalities.

Alternatively he is also authorized to make gift of the above mentioned entire land to the adverted Mr. Imran Ahmed Khan Niazi *son of Ikramullah Khan Niazi residing in 11B Clara Apartment, Diplomatic Enclave, Sector G-5 Islamabad and complete all the legal formalities required under the law.*

It is therefore, confirmed that anything done or act performed by the said attorney will be done on my behalf.

> *In witnesses, whereof* ***the attorney signed / executed by me of my own free will without any inducement or coercion.****"*
>
> *[Emphasis supplied]*

89. The power of attorney clearly envisages that Ms. Jemima Khan intended to give the Banigala property back to the Respondent and in this regard authorized her agent, Mr. Saifullah Sarwar, to either transfer it in the Respondent's name or in the alternative to gift it to him. The word *'benami'* only finds mention in the power of attorney and nowhere else. According to the Respondent's case, the Banigala property was always meant to be for his then wife. It was never the Respondent's case that the transaction was a *benami* transaction and that he was the actual owner and his ex-wife, its ostensible owner. We have no reason to disbelieve the Respondent's stance and it is both probable and plausible that the Banigala property was purchased in the name of Ms. Jemima Khan as a home for the family. And that the Respondent intended that she should own the property as its actual and not ostensible owner. Therefore, although part of the sale price of the Banigala property was paid by the Respondent himself yet it was mutated in favour of Ms. Jemima Khan. It appears that after the Respondent had repaid in May, 2003 the funds provided by Ms. Jemima Khan, their marriage broke down in June, 2004. It is plausible that as a consequence of her divorce, she did not need a home in Pakistan and decided to return the property to the Respondent.

90. In this regard, the power of attorney envisages two alternate methods of transfer which the attorney may have utilized: either to transfer the Banigala property to the Respondent or to make a gift of the same. The attorney while carefully exercising his power under the power of attorney got a gift mutation No.10696 dated 29.10.2005 *(oral hiba)* of the Banigala

property sanctioned in favour of the Respondent. It was entered on 22.9.2005, the report by the *qanoongo* is dated 23.9.2005 and the mutation was sanctioned on 29.10.2005. Being the owner of the Banigala property, Ms. Jemima Khan could, through her attorney, validly make a gift or *hiba* of the same in favour of the Respondent. Therefore, the word *'benami'* appearing in the power of attorney is more of a misconception about her status rather than a fraud or sham committed by the Respondent. The intention of Ms. Jemima Khan to transfer the Banigala property to the Respondent is obvious, therefore, the possible purpose to mention *benami* may have been to facilitate the property transfer by way of filing a suit or some other mode avoiding delay and expense. However, in the final analysis it was decided to make the transfer through an oral *hiba*. Therefore, the need for Ms. Jemima Khan to execute a release deed in order for the Banigala property to be returned to the Respondent did not arise. In any event, a gift is a matter between the donor and the donee which has not been disputed by or on behalf of the donor. The petitioner being a complete stranger to the gift has no *locus standi* to challenge the same. Therefore, we find that the aforementioned facts and circumstances do not in any way warrant the conclusion of the gift being a sham and fraud be sought by the learned counsel for the petitioner to the grant of the relief of disqualification under Article 62(1)(f) of the Constitution.

8. Whether the Respondent failed to disclose the amount paid as advance for the purchase of the flat at One Constitution Avenue, Islamabad in his tax returns? Whether he failed to disclose such flat in his statement of assets and liabilities before the ECP? If so, its effect?

91. It is the petitioner's case that the Respondent paid an amount of Rs.2,970,000/- in cash on 21.4.2014 for the purchase of an apartment *(2 bed flat, Type E, Level 11, Tower C)* in One Constitution Avenue, Constitution

Avenue, Islamabad *(**Apartment**)* and a further amount of Rs.3,000,000/- *vide* cheque No.0502349 dated 16.3.2015 but he failed to disclose the investment of Rs.2,970,000/- in his declaration of assets for the financial year 2014 furnished before the ECP. According to the petitioner's case, this non-disclosure is a willful concealment and a clear violation of Section 12(2)(f) read with Section 42A of ROPA, and thus has committed a corrupt practice under Section 82 thereof.

92. The law relied by the learned counsel for the petitioner is as under:

> ***12. Nomination for election.–*** *(2)* ***Every nomination*** *shall be made by a separate nomination paper in the prescribed form which shall be signed both by the proposer and the seconder and* ***shall, on solemn affirmation made and signed by the candidate, accompany****–*
>
> *(f)* ***a statement of his assets and liabilities and those of his spouse and dependents on the prescribed form*** *as on the preceding thirtieth day or June;*
>
> ***42A. Yearly submission of statements of assets and liabilities.–****(1)* ***Every member shall, on a form prescribed under clause (f) of sub-section (2) of section 12, submit a statement of assets and liabilities of his own****, his spouse and dependents annually to the Commission by the thirtieth day of September each year.*
>
> *(4)* ***Where a member submits the statement of assets and liabilities under sub-section (1) which is found to be false in material particulars, he may be proceeded against under section 82 for committing the offence of corrupt practice.***
>
> ***82. Penalty for corrupt practice.–*** *Any person guilty of corrupt practice shall be punishable with imprisonment for a term which may extend to three years, of with fine which may extend to five thousand rupees, or with both.*
>
> *[Emphasis supplied]*

According to the aforementioned law, every candidate is to file along with his nomination papers, a statement of his assets and liabilities and those of his spouse and dependents *[Section 12(2)(f) of ROPA]*. A member of an Assembly is also required to file such statement his assets and liabilities and those of his spouse and dependents every year *[Section 42(1) of ROPA]* and if the statement is found to be false in material particulars, such member may be proceeded against under Section 82 of ROPA for committing the offence of corrupt practices for which the punishment is provided therein. The question we are faced with is whether the Respondent's statement of assets and liabilities filed in 2014 *(as is the petitioner's case)* is false in material particulars in terms of non-disclosure of the investment of Rs.2,970,000/-.

93. In the statement of assets/liabilities filed along with his income tax return by the Respondent under Section 116(2) of the Ordinance, 2001 for the tax year 2014 (CMA No.7925 of 2016), the amount of Rs.2,970,000/- has been disclosed described as an 'investment *(non-business)*' category of personal assets/liabilities. This is the precise amount that according to the petitioner has been paid by the Respondent and acknowledged through a computer-generated receipt of such amount issued by Grand Hyatt, the stated developers of the high-rise tower called One Constitution Avenue. In any case, both the sides have no dispute about the amount of down payment being Rs.2,970,000/-. Thus there is an express and that too voluntary declaration of this amount. In his statement of assets/liabilities filed by the Respondent under Section 116(2) of the Ordinance, 2001 for the tax year 2015 (CMA No.7925 of 2016), the declared amount for the same investment is increased by Rs.3,000,000/- and disclosed as Rs.5,970,000/-. However, in the year 2014, there is difference in the description of the said asset. Rather than

being placed in the category of 'investment *(non-business)*' the said asset has more accurately been described as 'debt (*non-business*)'*Advance for 2 Bed flat in 1 Constitution Avenue, Grand Hayat Development Islamabad*".

94. It is the Respondent's case that he made a further payment of Rs.3,000,000/- for the Apartment in the financial year ending 30.6.2015, which amount also features in the petition. The figure of Rs.5,970,000/- is accordingly reflective of the combined amount of the initial deposit of Rs.2,970,000/- and the further payment of Rs.3,000,000/-. Thus again a clear and voluntary declaration of the total advance amount for the Apartment was made by the Respondent. Therefore, as far as declaration by the Respondent of his investment deposit for the Apartment in the tax return is concerned, his position is absolutely plain and accurate. However, we find the petitioner's plea that such plain and accurate disclosure made by the Respondent in his statement of assets and liabilities for the year 2015 but not for the year 2014 filed with the ECP is deficient and dishonest, to be groundless. In 2015, the Respondent was allocated a putative flat in the Tower building and so he mentioned its particulars with financial details. On the other hand, it is explained that in the year 2014 the only payment made by the Respondent was a deposit of Rs.2,970,000/- without any booking, reservation or allocation of a future proprietary right. The Respondent explanation that the deposit did not constitute an asset has weight. This is because no sale had been effected in favour of the Respondent. In terms of the law, a sale transaction had been initiated. Neither the sale price been paid nor the Apartment been transferred to the Respondent. There is no property which may be considered to be the Respondent's asset; therefore rendering him liable to disclose the same in his statement of assets and liabilities filed before the ECP. At the best on the payment of the deposit or advance

amount, the Respondent had an agreement to sell in his favour. Section 54 of the Transfer of Property Act, 1882 mandates:

> *"**54. "Sale Defined". "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid part-promised.***
>
> *Sale how made. Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*
>
> *In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.*
>
> *Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs in possession of the property.*
>
> *Contract for sale. **A contract for the sale of immovable property** is a contract that a sale of such property shall take place on terms settled between the parties.*
>
> *It **does not, of itself, create any interest in or charge on such property**."*
>
> *[Emphasis supplied]*

We have held in a number of judgments that an agreement to sell does not create any right, interest or title in the immovable property. At the most the vendee is entitled to seek specific enforcement of such an agreement in terms of the Specific Relief Act, 1872 and the principles settled by this Court in that regard. Therefore, the explanation by the Respondent that there was no asset to declare in the 2014 before the ECP is rational.

95. Indeed this exposes the weakness of the petitioner's argument that since the Respondent's statement of assets and liabilities of 2015 filed before the ECP provides the particulars of the Apartment and the amount of the advance payment made for it, therefore, the Respondent's failure to mention those facts be inferred that he concealed this fact in his earlier statement of assets and liabilities for the year 2014 amounts to concealment of an asset, hence an omission attracting disqualification. We are satisfied that at the time of filing his statement of assets and liabilities in 2014 before the ECP, the Respondent did not have a specific asset to declare. It was not contended that the cash amount of the deposit represents a concealed assets; and rightly so, because the movement of cash assets was never questioned. At a more practical level, the petition itself acknowledges that any omission or error in the statement of assets and liabilities under Section 42A of the ROPA is the rejection of the nomination paper not disqualification of candidature. That consequence follows from a Court of law under Article 62(1)(f) of the Constitution or Section 99(1)(f) of the ROPA. No such case has been pleaded or made out by the petitioner. In the light of the above, we are of the view that this plea of the petitioner is misconceived and unfounded and is thus discarded.

The requirement of 'dishonesty' for disqualification under Article 62(1)(f) of the Constitution.

96. A great deal of emphasis has been laid by the learned counsel for the petitioner on the declaration given unanimously by a learned larger Bench of this Court in their final order of the Court dated 28.07.2017 reported as **Imran Ahmed Khan vs. Muhammad Nawaz Sharif** (PLD 2017 SC 692) at page-716 in the following terms:

> "2. It is hereby declared that having failed to disclose his un-withdrawn receivables constituting assets from Capital FZE Jebel Ali, UAE in his nomination papers filed for the General Elections held in 2013 in terms of Section 12(2)(f) of the Representation of the People Act, 1976 (ROPA), and having furnished a **false declaration** under solemn affirmation Respondent No. 1 Mian Muhammad Nawaz Sharif is **not honest** in terms of Section 99(f) of ROPA and **Article 62(1)(f)** of the Constitution of the Islamic Republic of Pakistan, 1973 and **therefore he is disqualified** to be a Member of the Majlis-e-Shoora (Parliament)."
>
> [emphasis added]

97. Based on the foregoing declaration, the learned counsel has argued that the disqualification of the erstwhile Prime Minister proceeds solely on his false declaration made under solemn affirmation to constitute evidence of lack of honesty. There is as such no finding against the said public office holder of deception, fraud, cheating or unfair gain derived by him through the false declaration. Accordingly, the law as declared by the larger bench has made a false or incorrect declaration of assets and liabilities by a holder of public office to constitute a wrong entailing strict liability; therefore, any explanation or justification for such declaration being a *bona fide*, genuine or unmotivated omission, no longer has any relevance for ascertaining whether the Respondent has violated the condition of "honest and ameen" laid down in both Article 62(1)(f) of the Constitution and Section 99(1)(f) of the ROPA.

98. The upshot of the submission made by the learned counsel for the petitioner is that intention, object and purpose has nothing whatsoever to do with the commission of errant conduct contrary to Article 62(1)(f) *ibid* and Section 99(f) *ibid*. To our minds, the argument advanced by the learned counsel suffers from a misconception of the law. The final order of the Court

unanimously passed by the learned larger Bench carefully opens with the following words:

> "This judgment is in continuation of our judgments dated 20.04.2017 in Constitution Petitions Nos.29, 30 of 2016 and Constitution Petition No.03 of 2017 which ended up in the following order of the Court: …"

Clearly, the earlier opinion in **Imran Ahmad Khan Niazi vs. Mian Muhammad Nawaz Sharif** (PLD 2017 SC 265), given by three members of the larger Bench leading to the constitution of a Joint Investigation Team **("JIT")** are integral to the final judgment announced by the larger Bench on 28.07.2017. Each of the three learned members of the Bench concluded for separate reasons given by them, that the provisions of Section 9(a)(v) read with Section 14(c) of the National Accountability Ordinance **("NAO")** would, *prima facie*, attract to the case made out by evidence on record against the erstwhile Prime Minister, his dependants and *benamidars*. It would, accordingly, be instructive to consider the context in which such a view was entertained in the first instance by each of the learned members of the majority in their respective opinions issued on 20.04.2017, that was subsequently reinforced in their final judgment dated 28.07.2017 culminating with a direction for the NAB to prepare and file before the Accountability Court, Islamabad within six weeks from the date of the said judgment several references against the erstwhile Prime Minister, his dependents and *benamidars*, in all 10 persons, based on material collected and referred to by the JIT in its report and such other material as may be available with the FIA and NAB having nexus with assets mentioned in the judgment or becoming known pursuant to mutual legal assistance requests by the JIT to different jurisdiction. The said evidentiary context is eminently described in the judgment dated 20.04.2017 titled **Imran Ahmad Khan Niazi vs. Mian**

Muhammad Nawaz Sharif (PLD 2017 SC 265), in paragraphs 85 to 89 at pages 653ff, which are reproduced herein below:

> "84. The learned counsel for the Respondents have laid much stress on the powers of this Court under Article 184(3) of the Constitution and passing orders in terms of Articles 62 & 63 of the Constitution. In this context, the learned counsel for Respondent No.1 as well as Respondent Nos.6, 7 & 8 have emphasized that this Court has traditionally refrained from delving into situations/ cases which involve factual controversies requiring recording of evidence. The only exceptions being cases where irrefutable or unrebutted evidence is available or necessary facts are admitted by the parties. It may, however, be noted that new jurisprudence of this Court has evolved in the past few years in matters involving fake degrees and dual citizenship held by the Parliamentarians. The principles regarding exercise of powers under Article 184(3) of the Constitution are undergoing a process of evolution and fresh ground is being broken. The argument made by the learned counsel for the Respondents that evidence cannot be recorded or factual inquires cannot be conducted in exercise of powers under Article 184(3) of the Constitution may be based on some precedent but we find that this is not a hard and fast, inflexible and rigid principle of law. It has only been followed by way of practice and expediency with exceptions being created and jurisdiction being extended from time to time where the facts and circumstances so required. By way of illustration, the case of **Pakistan Muslim League (N) v. Federation of Pakistan** [PLD 2007 SC 642] may be cited. In this case, this Court held that that there was no bar on the power of this Court under Article 184(3) of the Constitution to record evidence provided voluminous record and complicated questions of fact and law were not involved. This Court is not a slave of the doctrine of *stare decisis*. We are not shackled by the chains of precedents where the interests of the people of Pakistan so demand. While remaining within the four corners of the law and limits set for us by the

Constitution, in order to do complete justice, there is no bar on the power of this Court to record evidence in appropriate cases and pass such orders as may be necessary.

85. There are serious allegations of money laundering, corruption and possession of assets beyond known means and or acquiring assets, the sources of which have not been explained. It is also important to note that Respondent No.1 has repeatedly admitted that the Mayfair Properties were purchased by his family with the funds generated from sale of Steel Mills in Saudi Arabia. Respondents No.6 to 8 have also admitted that the said properties are owned by the Sharif Family while Respondent No.7 has been claiming that the properties were purchased by him. Neither Respondent No.1 nor Respondents No.6 to 8 have placed any credible evidence or material on record that may conclusively establish the real ownership of the Mayfair Properties. Despite at least 26 hearings spread over months, it has not been made clear to us whether the real owner of the properties is Respondent No.1, Respondent No.6 or Respondent No.7. Although it has been alleged by the petitioners that Respondent No.1 is real owner of the properties, they have not been able to produce any credible evidence to substantiate their assertion. The Mayfair Properties have been continuously in possession and use of the children of Respondent No.1 since 1993/96, when admittedly they had no independent sources of income. We have already discarded the explanation offered by Respondent No.7 based on the letters of Sheikh Hamad as dubious and hard to believe. Therefore, in the facts and circumstances of the case, the possibility of direct or indirect/Benami ownership of Respondent No.1 cannot be ruled out. The position that emerges is that it is not possible for us to conclusively hold that Respondent No.1 is the owner of the properties and thereby require him to explain the source of funds which were used to acquire such properties but it is equally difficult for us to hold that he is not the owner of the said properties. Owing to the fact that provisions of Section

9(a)(v) read with Section 14(c) of the NAO are prima facie attracted, it is for them to produce the requisite evidence and record to show the real ownership of the properties and legitimate sources and transactional money trails to show lawful movement of funds for acquisition of the same in an investigation and then before Courts of competent jurisdiction.

86. It is also an admitted fact that Respondent No.7 owns and operates Hill Metals Establishment in Saudi Arabia. From the accounts of the said business, huge amounts of funds have been transmitted to Respondent No.1 in foreign exchange which have been declared by Respondent No.1 as gifts on which no income tax is payable. Respondent No.7 needs to produce all relevant evidence and record to show the source of funds utilized for the purpose of setting up the said business.

87. It is also an admitted position that Respondent No.8 set up a company under the name and style of Flagship Investments Limited which received substantial sums of money in the year 2001 when the said Respondent had no source of income. Over the course of the next few years, a number of other companies were set up/taken over by Respondent No.8 allegedly for the purpose of his real estate business. The sources from which the said companies/businesses were funded are also shrouded in mystery. There is yet another company under the name and style of Capital FZE, Dubai presumably registered under the laws of UAE. Funds also appear to have been routed through the said company from time to time by/and on behalf of Respondent No.7. The real ownership and business of the said company is unclear from the record which needs to be explained. No effort has been made on the part of the Respondents to answer the questions on the afore-noted matters.

88. In our opinion, considering the high public office that Respondent No.1 holds and the requirement of honesty, transparency, clean reputation, unquestionable integrity, financial probity and accountability for a person who holds the highest elected office of the land, it was

necessary and incumbent upon Respondent No.1 to place all information, documents and record before this Court to clear his own position and that of the members of his family. Very serious and damaging questions were raised and grave allegations levelled by the Petitioners and the local as well as international Print and Electronic Media regarding money laundering, tax evasion, corruption and misuse of authority on the part of Respondent No.1 and members of his family. Although lofty claims were made by and on behalf of Respondent No.1 regarding readiness and willingness to face accountability and clearing his name, the claims remained hollow rhetoric. Regrettably, no effort was made either on the part of Respondent No.1 or that of Respondents No.7 & 8 who are his sons before this Court, to come clean, to clear their names, place the true facts and relevant record before us and the people of Pakistan by producing all documentary evidence which was either in their possession, control or accessible to them which could have answered all unanswered questions, removed all doubts and put all allegations to rest and cleared their names once and for all. This was not done and an opportunity squandered for reasons best known to the Respondents. Instead refuge was taken behind vague, ambiguous, fuzzy and hyper technical pleas.

89. Regrettably, most material questions have remained unanswered or answered insufficiently by Respondent No.1 and his children. I am also constrained to hold that I am not satisfied with the explanation offered by Respondent No.1 (Mian Muhammad Nawaz Sharif, the Prime Minister of Pakistan) and his children regarding the mode and manner in which the said properties came in their possession and what were the sources of funds utilized for acquisition of the same. Further, the source(s) of funding for Azizia Steel Mills and Hill Metals Establishment in Saudi Arabia, Flagship Investments Limited and a number of other companies set up/taken over by Respondent No.8 also need to be established. In addition to the affairs of Capital FZE, Dubai which also appears to be owned by Respondent No.7 need an inquiry.

> The aforesaid investigation and inquiry under normal circumstances should have been conducted by NAB. However, it has become quite obvious to us during these proceedings, Chairman NAB is too partial and partisan to be solely entrusted with such an important and sensitive investigation involving the Prime Minister of Pakistan and his family. Further owing to the nature and scope of investigation a broader pool of investigative expertise is required which may not be available with NAB."

99. Having read the said background, it is clear that the precedent case has facts vastly different from the case in hand. That case involved robust allegations of corruption that resulted a unanimous finding reflected in the final order of the Court dated 28.07.2017 whereby directions were issued to the NAB to prepare and file the NAB references within six weeks of the judgment for the commission of offences, *inter alia*, including under Section 9(a)(v) read with Section 14(c) and Section 15 of the National Accountability Ordinance, 1999 that pertain to an accused, his dependents or *benamidars*, owning, possessing or having acquired a right in respect of assets, pecuniary resources disproportionate to his/their known sources of income, which he/they cannot account for. This is a case in which the learned larger Bench found sufficient evidence for directly launching a prosecution in respect of the aforementioned offences against the accused person, his dependents and *benamidars.* The gist of the allegations and the material before the Court has already been reproduced above in the quoted judgment of the learned member of the majority. It is in those circumstances that when new evidence about Capital FZE Dubai discussed in para-87 reproduced above, came to light pursuant to investigations by JIT, that the majority in its judgment dated 28.01.2017 opined as follows:

> "It has not been denied that respondent No. 1 being Chairman of the Board of Capital FZE was entitled to

> salary, therefore, the statement that he did not withdraw the salary would not prevent the un-withdrawn salary from being receivable, hence an asset. When the un-withdrawn salary as being receivable is an asset it was required to be disclosed by respondent No. 1 in his nomination papers for the Elections of 2013 in terms of Section 12(2)(f) of the ROPA. Where respondent No. 1 did not disclose his aforesaid assets, it would amount to furnishing a false declaration on solemn affirmation in violation of the law mentioned above, therefore, he is not honest in terms of Section 99(1)(f) of the ROPA and Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan."
>
> *[emphasis supplied]*

100. In the passage referred above, the Court is addressing an undisclosed asset, existence whereof is expressly admitted through the coffers of an entity whose financial dealings were already doubted and formed part of the network of persons and entities allegedly holding disproportionate assets attributed to the erstwhile Prime Minister, his dependents and *benamidars*. It cannot, therefore, be contented that dishonesty is attributed in the said judgment without reference to any alleged design, intention, scheme, background or impropriety. Consequently, to our minds the larger Bench has not expunged the requirement of establishing the "dishonesty" of conduct of an aspirant or incumbent member of a Constitutional Legislature in order for the disqualification under Article 62(1)(f) of the Constitution and Section 99(f) of the ROPA to be attracted. Each and every word in the Constitution bears a meaning and place, which must be given effect because redundancy cannot be assigned to the Constitution. Accordingly, in earlier judgments by this Court in the matter of "dishonest conduct," violation of constitutional norms required by Article

62(1)(f) in its phrase "honest and ameen" have been deduced with caution and care.

101. Recently, the Court expressed its view on the subject in **Hassan Nawaz vs. Muhammad Ayub** (PLD 2017 SC 70). The operative passage therefrom is reproduced herein below:

> "16. Indeed, honesty, integrity, probity and *bona fide* dealings of a returned candidate are matters of public interest because these standards of rectitude and propriety are made the touchstones in the constitutional qualifications of legislators laid down in Articles 62 and 63 of the Constitution of Islamic Republic of Pakistan... .
>
> 17. … Therefore, the only conclusion that can be drawn from arguments rendered by the learned counsel for the appellant is that the property owned by the appellant from which he regularly derives substantial income is disclosed and declared with his knowledge in the income tax returns of a private limited company owned by the appellant and his family. This plea is totally irrelevant, facile and meritless to rebut the allegation under Section 78(3) ROPA regarding the false statement with respect to the concealment of ownership of urban commercial property by the appellant. Further more, it is apparent that the disguised ownership of the said properties is aimed at avoiding the personal scrutiny and accountability of the appellant under the Income Tax Ordinance, 2001. At the level of income derived by the appellant that process also requires the disclosure of wealth of an assessee and a reconciliation of his total means and total expenditures. **The statement of assets and liabilities made by the appellant in his nomination papers is, therefore, intentional and not a *bona fide* or an innocuous omission made without design or purpose. It does not exonerate the appellant.**"
>
> [emphasis added]

102. The element of dishonesty as an essential element of disqualification under Article 62(1)(f) of the Constitution has found

recognition by earlier judgments of this Court. Reference is made to **Mehmood Akhtar Naqvi vs. Federation of Pakistan** (PLD 2012 SC 1089), wherein it has been observed that:

> "22. … A person who indulges into unfair means in procuring his educational qualifications and is also found guilty by the Disciplinary Committee, which is the only authority competent to inquire into the matters of such allegations against candidates appearing in the examination of the said University, does not deserve to claim to be an honest, righteous or Ameen person so that he be assigned the high responsibilities of performing national functions of running the affairs of the country. The spirit with which the words sagacious, righteous, non profligate, honest and Ameen have been used by the Constitution of Islamic Republic of Pakistan, 1973 for the eligibility of the candidates contesting the elections of Members of National or Provincial Assembly cannot be allowed to be frustrated if persons who secure their educational documents through unfair means and are found guilty of such a condemnable act by [the] competent authority are allowed to be given any entry into the doors of National or Provincial Assemblies [of] our country. The respondent No.1 not only is found guilty of a dishonest or cheatful involvement into the use of unfair means in procuring his B.A./degree/results from the University of Punjab but also made deliberately false statement before this Tribunal as well when P.W.1 was suggested that he was admittedly not holder of the B.A. degree from the University of the Punjab whereas in his written statement Exh.P12, the respondent where he was respondent No.4 in the said writ petition categorically took up the plea and claimed to be holder of a valid B.A. degree from the University of the Punjab. He is thus not worthy of credence and cannot be allowed to be entrusted with State responsibilities of Law Making; to be incharge of the

> National Exchequer (Exchequer) or be eligible to represent the people of Pakistan."
>
> [emphasis supplied]

To the same effect are observations made in **Iftikhar Ahmad Khan Bar vs. Chief Election Commissioner Islamabad and others** (PLD 2010 SC 817):

> "14. And here is a man who being constitutionally and legally debarred from being its member, managed to sneak into it by making a false statement on oath and by using bogus, fake and forged documents polluting the piety of this pious body. His said conduct demonstrates not only his callous contempt for the basic norms of honesty, integrity and even for his own oath but also undermines the sanctity, the dignity and the majesty of the said august House. He is guilty, *inter alia*, of impersonation ... posing to be what he was not i.e. a graduate. He is also guilty of having been a party to the making of false documents and then dishonestly using them for his benefit knowing them to be false. He is further guilty of cheating --- cheating not only his own constituents but the nation at large."

103. The insistence by learned counsel for the petitioner that any error or omission in the declaration of assets by a candidate for election or a legislator incurs his disqualification under Article 62(1)(f) of the Constitution posits a wide proposition of law. If at all, this may have limited relevance where the context involves corruption or money laundering in state office, misappropriation of public property or public funds, accumulation of assets beyond known means or abuse of public office or authority for private gain. These allegations are not germane to the present case. There is no involvement here of public property or funds, abuse of public office and authority, corruption or breach of fiduciary duty. Consequently, the argument of the learned counsel for the petitioner on this score fails.

Evidentiary objections by the petitioner:

104. The learned counsel for the petitioner has earnestly voiced his concern about the latitude which this Court has permitted the Respondent to file documents to explain his position regarding allegations, or otherwise insinuations that have been cast upon him by the petitioner during the course of these proceedings. The learned counsel for the petitioner has relied upon the procedural and evidentiary laws of the country that impose limits and checks upon the freedom of a litigant party to produce documents in Court. These rules are meant to prevent gaps and lacunae in a case being filled belatedly with fake or fabricated material. Such a course would be in abuse of the process of Court or in any event would prolong the proceedings impeding final resolution.

105. In the ordinary course of judicial proceedings, the reservation expressed by the learned counsel may have relevance and force. However, the proceedings under Article 184(3) of the Constitution are unique in the sense that these are inquisitorial in nature and are meant to safeguard and promote constitutional rights of the people. These proceedings are free of technical constraints imposed by the procedural and evidentiary laws of the country. Reference is made to the following instructive observations made in **General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra vs. Director Industries and Mineral Development Punjab** (1994 SCMR 2061 at page 2071):

> "5. … It is well-settled that in human rights cases/public interest litigation under Article 184(3), the procedural trappings and restrictions, precondition of being an aggrieved person and other similar technical objections cannot bar the jurisdiction of the Court. This Court has vast power under Article 184(3) to investigate into questions of fact as well independently by recording

> evidence, appointing commission or any other reasonable and legal manner to ascertain the correct position. Article 184(3) provides that this Court has the power to make order of the nature mentioned in Article 199. This is a guideline for exercise of jurisdiction under this provision without restrictions and restraints imposed on the High Court. The fact that the order or direction should be in the nature mentioned in Article 199, enlarges the scope of granting relief which may not be exactly as provided under Article 199, but may be similar to it or in the same nature and the relief so granted by this Court can be moulded according to the facts and circumstances of each case."

106. However, it may be added that limits are imposed by constitutional guarantees of due process, fair trial and non-discriminatory treatment embedded in the fundamental rights. Indeed the quest to protect the fundamental rights of the people of Pakistan under Article 184(3) of the Constitution cannot be pursued by defeating the fundamental rights of a Respondent before this Court. Having already noticed that Article 184(3) proceedings are inquisitorial, it may further be observed that in order to resolve the controversy before it, the Court is empowered to ask for relevant and reliable evidence from the parties to the *lis* or from third persons irrespective of whether such evidence is otherwise withheld by them.

106. The whole process entails queries being posed by the Court and directions being issued to persons to produce evidence on record that is relevant to the matters under scrutiny. The queries or directions emanating from the Court may travel beyond the pleas set out in the pleadings of the parties because their answers are necessary to resolve a controversy pending before the Court. Therefore, such queries and directions cannot always be anticipated by the persons who are asked to provide evidence or information. It is this feature of the inquisitorial jurisdiction under Article

184(3) of the Constitution that justifies considerable indulgence representing a fair and generous opportunity being granted to a party or person to answer a query or comply a direction that was otherwise unexpected or for which it was unprepared.

107. It cannot be disputed by the parties before us that owing to the public interest attributes of the present matter, this Court has made searching enquiries from the Respondent about important issues that had not been specifically raised in the challenge thrown by the petitioner. In this behalf, for instance, a probe into the means of the Respondent to acquire the London flat which was not disputed by the petitioner was undertaken by the Court. It was done in effect to assess whether there was any taint of money laundering or other illegality in the said acquisition causing the Respondent to avoid declaration of the London flat in his income and wealth tax returns filed in Pakistan for nearly two decades until the year 2000 under the Amnesty Scheme. Whereas, the petitioner's allegation against the Respondent was limited to non-declaration of the London flat; the allegation of money laundering or commission of other illegality for acquisition of that asset was never part of the petitioner's case. Since a new dimension of the case that could undermine the Respondent's eligibility to hold public office was *suo moto* introduced by the Court, therefore time was repeatedly granted to the Respondent to collect documents going back 35/40 years to demonstrate the lawful means with which that foreign asset was acquired and also to establish that the assets representing its sale proceeds had been declared to the ECP. In our probe, counsel for the Respondent cooperated willingly and made repeated efforts to produce such documents that ultimately answered our queries.

108. During the latter part of his arguments, an objection was raised by the learned counsel for the petitioner with respect to the Respondent's participation in the 1997 general election allegedly by concealing his London flat in his nomination papers. This plea is not contained in his pleadings nor did he produce any evidence in support thereof. At best learned counsel voiced his suspicion about the disclosures made by the Respondent in his nomination papers filed in 1997, stating that the ECP had denied the availability of that nomination paper in its record, an oral request was made for the Court to order its production.

Considering the unsubstantiated and belated plea taken, the Court did not grant indulgence on the oral request. The petitioner was merely speculating without certainty and with conjecture. The document in issue is twenty years old which the ECP statedly no longer had in its record. The nomination paper had been accepted without objection but the Respondent had lost the election. The matter was a past and closed transaction. The objection was raised as an afterthought and amounted to a random fishing enquiry. Therefore, the inquisitorial jurisdiction of the Court was declined on grounds having reference to relevance, reason and fairness.

109. As a background to the Court's proactive and incisive approach are the settled principle of Qanun-e-Shahadat Order, 1984 that the Court is entitled to draw an adverse presumption [under Article 129(g) and Article 143(4)] when the best evidence is not produced by a party and an adverse inference when an answer on a point in issue is withheld by a witness [Article 122 and Article 143(2)]. Also, since disqualification under Article 62 of the Constitution or Section 99(1) does not involve a criminal offence, therefore, the protection against self incrimination under Article 13 of the Constitution is not available in the present proceedings. Consequently,

the Court pressed for accurate documentary disclosures mostly from the records of foreign entities some of which had ceased to exist like Barclays UK Private Banking, having been acquired by ZEDRA. In these circumstances involving disclosure of foreign record that was decades old, it would have been grossly unfair if unanswered queries of this Court were used as traps against a party that failed to respond swiftly. Therefore, in order to ensure the fairness of our proceedings, the Court cautioned the parties on both sides about the adverse presumptions, inferences and deductions that were likely be drawn on account of their failure to produce relevant and cogent evidence on the points raised and particularly to cover the deficiencies or weaknesses in their availed pleas that had been taken before the Court. This included reference to the Court's power of compelling an answer under Article 15 of the QSO. The Respondent reacted positively by placing further material on record to exonerate and protect himself from any adverse presumption, inference or deduction being drawn by the Court. Accommodation in terms of time and opportunity granted to the Respondent by the Court cannot, therefore, be faulted on technical rules of pleadings, procedure or evidence.

110. The ultimate object of our proceedings is to arrive at the truth and thereby to make a fair and meritorious resolution of the questions under adjudication. Our proceedings are free from the restraints otherwise imposed by law on the conduct of a trial by a Court in adversarial proceedings. The above view does not, insofar as reception of evidence is concerned, allow anything or everything produced by a party before the Court to be accorded credence and probity without checks by the Court. The admissibility and reliability of the evidence produced by a party must however undergo further scrutiny on the basis of fair criteria to assess the truth, coherence and credibility of such material. Accordingly, the material that we have believed,

notwithstanding the fact that largely it did not comprise of original documents, is their contemporaneity with the events under scrutiny, the consistency and corroboration of the contents of such documents with the events or transactions to be proved and the custodial propriety from which such documents emanate. Most, if not all, documents produced by the Respondent have originated from a reliable source and invariably one with a living witness, be it the Respondent's ex-wife Ms. Jemima Khan, his English accountant Tahir Nawaz or banking friend in Pakistan Mr. Rashid Ali Khan. In respect of each piece of evidence that the Court believed, the identity and credibility of the person through whom such material was produced; the credibility of the keeper of such documents; the consistency of the contents of such documents with the surrounding circumstances, contemporaneous events and persons was scrutinized before granting admissibility and making reliance.

111. Having said so, it cannot be overlooked that our proceedings are not a trial. Whereas in a case involving disqualification from elective office, the petitioner shoulders the burden of bringing positive and affirmative evidence that would condemn the Respondent to disqualification; however, the same standard of proof does not rest on an elected public officer, namely, the Respondent to make out his defence. He has to present a, *prima facie*, arguable defence about the disclosure of his assets. Arithmetical accuracy in reconciling amounts and events is not required in such a case of misdeclaration of assets. Only a coherent account of the sources of funds, their application and movement should be shown by reference to consistent and reliable evidence, even though it may suffer from gaps so long as the Court is satisfied that the account is not patchy,

inconsistent or unreliable. That burden has been fully discharged by the Respondent before us.

Objection re: maintainability of these petitions:

112. Certain scepticism surrounded the maintainability of these petitions; in particular, because our indulgence now may encourage challenges by all and sundry to the qualification of the legislators who hold public office. It deserves reiteration that this petition has not been heard and adjudicated because of the consent given by the Respondent to be accountable before the Court. This petition has been heard primarily because an international upheaval followed the disclosure of the Panama Papers in April, 2016. Several leading political personalities including the heads of government, most notably, in Europe and Asia stood exposed for directly or indirectly owning foreign undeclared assets through offshore trusts and/or companies established in tax haven jurisdictions of the world. These revelations implicated amongst others, the person and family of our former Prime Minister, Mian Muhammad Nawaz Sharif. The public outrage that followed in Pakistan was spearheaded by the Respondent before us. The momentum thereby generated embraced our Parliament which unsuccessfully attempted the formation of an Enquiry Commission into the allegation against the former Prime Minister; thereby landing a petition filed by the Respondent and against the Prime Minister and his family in the lap of the Court in the middle of the year 2016. The present petitioner filed the instant challenge shortly afterwards against the Respondent who was principal accuser and detractor against the former Prime Minister of Pakistan. Ultimately by a judgment of this Court given in Constitution Petition No.29 of 2016 the said former Prime Minister was disqualified from holding the office of Member National Assembly on account of concealing

his foreign offshore assets. This petition which is based on the same genre of allegations, namely, concealment of ownership of foreign undeclared assets contrary to the election laws of the country, came up before us separately for hearing. The foregoing background of the case mandates that the Respondent as a public office holder should withstand the same rigour and test of scrutiny and accountability that he caused in the parallel proceedings on the same type of allegations.

113. Considering applicable legal criteria, it is a fundamental right of people of Pakistan that its public representatives discharge their offices in public interest and not for their personal gain. Such public officers are fiduciaries discharging a trust vested in them by the people of Pakistan for which office the attributes, *inter alia*, of probity, honesty, integrity and trustworthiness are constitutional requirements. The fulfillment of these conditions by the decision makers in Parliament and in government is essential for the existence and progress of a democratic and law based order in the polity which is a basic feature of our Constitution. Accordingly, to examine whether foreign assets were indeed owned by the Respondent that had been concealed in his declaration made before the ECP and whether any duty under law has been breached on account of or in relation to such assets, this Court on the touchstone that resort to undeclared offshore companies and trusts to conceal or shroud assets owned by public representatives cannot be allowed; and therefore unless it is established that such assets were acquired through lawful and *bona fide* means and have been declared in material particulars, the beneficial interest holders of such assets cannot remain qualified to hold legislative public offices. It is crucial at this stage to emphasize that we have expended time and efforts in our original jurisdiction for the sake of public interest in the circumstances of the public

outcry against corruption that arose as a result of the Panama Papers' leak. Otherwise, the appropriate forum in a case of such nature calling for the disqualification of an elected legislator is either the Election Tribunal or where there are established or admitted facts indicating disqualification, then before the learned High Courts of the country in their constitutional jurisdiction.

Conclusion:

114. Having considered the evidence brought on record, the applicable law and the reasons given above leads us to the following conclusion:

Firstly: The allegation that the PTI is a foreign aided political party can under Article 15 of the PPO be leveled only by the Federal Government for its validation on a reference made to this Court. The petitioner has no *locus standi* in this behalf. Whether the PTI has received political contributions and donations from sources that are prohibited under the provisions of Article 6(3) of the PPO is a matter, which for the reasons given in our opinion, is referred for determination in accordance with law by the ECP in exercise of jurisdiction conferred by the PPO and the Rules framed thereunder;

Secondly It is the duty of the ECP to scrutinize accounts of political parties on the touchstone of Article 6(3) of the PPO read in the light of Article 17(3) of the Constitution. In this behalf, the ECP must act transparently, fairly and justly, without discrimination among different political parties seeking election symbols to contest the elections to the Constitutional Legislatures of Pakistan. For

undertaking such scrutiny, it shall be reasonable for the ECP to examine the accounts of a political party within five years of the objected accounts of that party having been published in the official gazette;

Thirdly: The alleged falsity of the certificates issued by the Respondent under Article 13(2) of the PPO is a secondary fact, ascertainable by a competent Court of law after the ECP gives its findings whether any prohibited funding has been received and collected by the PTI in terms of Article 6(3) of the PPO;

Fourthly: We find that M/s NSL was established as a corporate vehicle for the legal ownership of the London flat, of which the Respondent was the beneficial owner. The Respondent was neither a shareholder nor a director of NSL which had a paid up capital of £9/- and the London flat as its sole asset. This asset held by NSL was declared by the Respondent under an Amnesty Scheme granted pursuant to Section 59D of the Income Tax Ordinance, 1979 therefore, the Respondent was under no legal obligation to disclose the corporate vehicle NSL as an asset either in his income tax returns or his statement of assets and liabilities filed with the ECP alongwith his nomination papers or in his annual returns filed under Section 42A of the ROPA;

Fifthly: We find that the purchase price of Rs.43.5 million of the Banigala property was paid to the extent of Rs.7.3 million by the Respondent and the balance amount of Rs.36.2 million were paid with amounts converted from foreign currency remittances made by Ms.

Jemima Khan, the ex-wife of the Respondent;

Sixthly: We find that during the period 8.4.2002 until 22.1.2003 Ms. Jemima Khan provided a total amount of US$665,340/- (equivalent to **UK£417,901/-** according to the exchange rate prevalent on 7.5.2003) towards the purchase of the Banigala property. The Respondent repaid on 7.5.2003 an amount of **UK£562,415.54** to Ms. Jemima Khan from the sale proceeds of his London flat in order to settle the funding temporarily provided by her;

Seventhly: The Banigala property is owned by the Respondent after it was orally gifted to him by his ex-wife Ms. Jemima Khan vide gift mutation No.10696 dated 29.10.2005 after their divorce became effective in June, 2004. Prior to that, the Banigala property had been purchased by the Respondent as a family home for his wife and children for which the financial provision extended by his wife was more than reimbursed by the Respondent on 07.05.2003;

Eighthly: We find that the Respondent has declared his advance payment made to 1-Constitution Avenue Tower, Islamabad in his statement of assets and liabilities filed with his income tax return in the tax year 2014. In the following year, the Respondent was allotted the flat and declared the same both in his assets and liabilities statement filed with his income tax return for the tax year 2015 as well as his annual return under Section 42A of the ROPA filed with the ECP in 2015. Therefore, we hold that no misdeclaration of assets was committed by the

Respondent in relation to the said property in his annual return filed with the ECP in the year 2014. There is no dishonesty in the omission made by him.

As a result of foregoing findings, there is no merit in this petition which is accordingly dismissed.

CHIEF JUSTICE

JUDGE

JUDGE

Announced in open Court
on **15.12.2017** at **Islamabad**

CHIEF JUSTICE

APPROVED FOR REPORTING.

Faisal Arab J.- I have had the privilege to go through the proposed judgment given by the Hon'ble Chief Justice and am in respectful agreement with the same except I wish to add my own opinion on the scope of the term *'honest'* contained in Article 62(1)(f) of the Constitution.

2. One of the grounds on which respondent No.1's disqualification from the membership of the National Assembly is being sought is his failure to disclose the ownership of Niazi Services Limited (NSL), an offshore company, in his nomination forms filed in 2002 and 2013 general elections and a residential flat in Grand Hyatt building, Islamabad in his yearly statement of assets and liabilities filed in 2014 with the Election Commission and thereby failing the test of honesty as envisaged under Article 62 (1) (f) of the Constitution. Before deciding the question whether non-disclosure of assets, as required under Sections 12 (2) (f) and 42A of (RoPA) amounts to dishonesty without any distinction, it would be appropriate to briefly discuss relevant facts of the controversy.

3. Taking the issue of non-disclosure of NSL in the statement of assets and liabilities, the documents filed by the petitioner show that respondent No.1 did not hold a single share in the said company. He only hired services of companies that act as trustees and hold assets in trust for the benefit of the real owner. For such purpose the trustees at the instance of the real owner form a company and become its shareholders and this company then holds the asset in its name in trust for the real owner. Hence at the instance of respondent No.1 a company by the name of NSL was incorporated in the Channel Island whose shareholders were three

trust companies. After its incorporation respondent No.1 purchased a one-bedroom flat in London in the year 1983 in the name of NSL. This was done primarily to derive tax benefits such as to avoid capital gains tax upon its sale under the laws of England prevalent at that time. For rendering their services as trustees and to keep the company operational, the shareholders of NSL charged periodical fees from respondent No.1. The respondent being the real owner had the exclusive right to use, occupy, rent out and sell it whenever he so wished without prior approval of the shareholders of NSL. Hence, they were legally bound to convey the London flat in the name of the new purchaser, which they eventually did in the year 2003. It can very well be imagined that being the ostensible owner of the London flat, NSL could legally be sued with regard to any matter connected therewith, therefore, the only right which NSL had over the London flat was to seek discharge of all claims to which the shareholders of NSL may become liable against the London flat. This obligation of respondent No.1 was in addition to the periodical charges and fees which he was required to pay to the shareholders of NSL for holding his asset in trust and to keep NSL operational under the laws of Jersey Channel Islands. Neither NSL held any proprietary interest in the London flat nor did respondent No.1 possess any proprietary interest in NSL, so it was the London flat and not NSL of which respondent No.1 was the real owner, hence he was only obligated to disclose the London flat as his asset, which he did in his nomination form that was filed in the 2002 general elections.

4. In 1983, when respondent No.1 entrusted the London flat to the shareholders of NSL to hold it in trust for him, respondent No.1's ambitions to enter politics were nowhere in sight. He formed

his political party much later in the year 1997. No doubt even after the sale of the London flat in April, 2003, NSL remained operational for several more years, primarily on account of some litigation with the ex-tenant of the London flat, but it is hard to imagine that respondent No.1, way back in 1983 intended to park ill-gotten gains in NSL when he totally remained engaged in his cricketing career. It is quite visible from the record that right from 1971 to 1992, the respondent No.1 was a fulltime renowned professional cricketer of the cricketing world. He purchased a one bed-room London flat in December, 1983 for GBP117,500/- in the name of NSL for the purposes of availing tax exemptions, which was held in trust for him. The price for the purchase of London flat was paid along-with interest accrued on mortgage money over a period of six years starting from December, 1983 and ending in December, 1989. It is nobody's case that throughout his cricketing career spanning over a period of 21 years, he held public office, so any amount that went into NSL was respondent No.1's income earned either from playing cricket or rental earnings and proceeds of sale from the London flat, nothing else. Respondent No.1 for the very first time became the member of the National Assembly through general elections held in the year 2002. It may be mentioned here that in the 2013 general elections respondent No.1's party formed a government in the province of Khyber Pakhtunkhwa but NSL was allowed to dissolve statutorily on account of non filing of annual return for the year 2014. Those who come into power with the intention to indulge in financial corruption would want such off-shore companies to remain operational in order to secretively park their ill-gotten wealth. In the present case the offshore company was not incorporated to park assets acquired from wealth accumulated through embezzlement or bribery or through tax

evasion to keep it hidden from public eye. It is a case of acquisition of an asset from legitimate tax paid income earned abroad and that too at a time when respondent No.1 was a non-resident Pakistani holding no public office cannot be perceived with the same suspicion.

5. Much reliance was placed on the case of Imran Ahmed Khan Niazi Vs Mian Muhammad Nawaz Sharif (PLD 2017 SC 265) popularly known as Panama Case in order to draw parity between the two cases. The factual controversy in that case is drastically different from the facts of the present case. In that case serious allegations of money laundering, corruption and possession of assets beyond known means were made against Mian Muhammad Nawaz Sharif after he held public office. In fact he held high public offices several times in the past thirty years in his capacity as Finance Minister, Chief Minister and Prime Minister. It was observed in that case that for such a person, honesty, transparency, clean reputation and unquestionable integrity and financial probity were necessary in order to clear his position. The sources of acquiring several assets were not satisfactorily explained by him and his family members, which included purchase of four flats in London, setting up of Azizia Steel Factory in Saudi Arabia, Gulf Steel Mills in Dubai and receiving Rs.840 million on regular basis over a period of four years from 2011 to 2015 as gifts from an entity called Hill Metals established in Jeddah by Mian Muhammad Nawaz Sharif's son. None of these assets were acquired prior to his holding of high public offices. There was either total or very little explanation as to how these assets were built, who its shareholders are, what the source of funds was and how funds were generated and routed. Then there was a company located in Jebel Ali Free Zone, United Arab Emirates in the name and

style of Capital FZE of which Mian Muhammad Nawaz Sharif was chairman with a monthly salary of 10,000 UAE Darhams, through which certain funds were also routed. This company remained operational from 2003 to 2014. The existence of Capital FZE came to light in the report of the Joint Investigation Team, which was not disclosed by the accused but when confronted with this fact, he admitted his entitlement to the salary but took the stance that he did not draw it from his accounts. This Court held that such a stance stood belied by the Wage Protection System in operation under Jebel Ali Free Zone Rules, which requires payment of salaries into the accounts of all the employees electronically. Considering the high public office which Mian Muhammad Nawaz Sharif held over the years, accumulation of his monthly salaries from Capital FZE was considered as concealment of an asset which led this Court in the Panama case to hold that it was a dishonest act on his part, falling within the ambit of Section 99 (1) (f) of RoPA read with Article 62 (1) (f) of the Constitution. Under the income tax law, salary income falling in a particular tax year has to be treated as income of that year and if taxable is liable to be assessed in that tax year. No one can avoid tax liability on his salary income accrued in a particular tax year on the ground that he has not yet collected it from his employer. So tax liability on a salary income accrued in a particular tax year if not collected voluntarily by an employee would still be liable to tax and has to be treated as an asset of the employee generated in that particular year and correspondingly it becomes the liability of the employer in the same tax year. Therefore not to collect either whole or any part of it from the employer in a tax year in which it accrued is of no legal consequence. Non-disclosure of unspent salary income which had been accumulating for a period of time was treated as

concealment of asset in the Panama case. In the present case, ownership of London flat was disclosed by respondent No. 1 in his nomination form filed in 2002 general elections.

6. It is however an admitted position that after giving up his non-resident status respondent No.1 did not declare the London flat in his income tax returns until the year 2000. The declaration came when respondent No.1 availed the benefit of an amnesty scheme launched in the year 2000 under the Tax Amnesty Scheme, 2000. This scheme was launched on the strength of the provisions of Section 59 (d) of the Income Tax Ordinance, 1979. Respondent No.1 paid the requisite tax i.e. Rs. 240,000/- being 10% of the purchase price of the London flat and obtained complete discharge from the tax authorities. In terms of paragraph 8 (1) of the Tax Amnesty Scheme, 2000, once the undisclosed income was declared and the requisite tax paid, the person making the declaration was not liable for any further tax, charge, levy, penalty or prosecution in respect of such income under the Income Tax Ordinance, 1979. In terms of paragraph 8 (2) of the Amnesty Scheme, any asset declared in accordance with the Tax Amnesty Scheme, 2000 also stood exempt from wealth tax under the prevalent Wealth Tax Act, 1963. What has come on record is that the only asset which NSL held in its name in trust for respondent No. 1 was the London flat. After securing full discharge from income tax and wealth tax liability under the amnesty scheme, the respondent No.1 listed the London flat as one of his assets in his nomination form filed in the general elections held in October, 2002. It may be mentioned here that the London flat was not something purchased from hidden, undisclosed, tax evaded income but was purchased from tax-paid clean income earned from

playing years of professional cricket abroad. So it was not a case of taking advantage of the amnesty scheme in order to convert black money into white. In any case, with the declaration of the London flat and the payment of requisite tax under the amnesty scheme, the cause of action for its non-disclosure under the tax laws of Pakistan also died with it.

7. As to the issue of non-disclosure of respondent No.1's residential apartment in Grand Hyatt Islamabad in his yearly statement of assets and liabilities, the factual position that emerged on record is that the apartment was booked in a building which was under construction against which an advance payment of Rs.2,970,000/- was made during the income year 2013-14 which was declared in the tax year 2014 after which further installment of Rs.3,000,000/- was paid in the tax year 2015, which is also reflected in the income tax returns. The occasion to make full payment and get the apartment transferred in his name had not yet arrived as the construction of the building had not been completed at the time. As long as a seller does not transfer the property in the name of the buyer, the property remains the asset of the former and all obligations attached with it such as municipal rates and taxes are of the seller and not of the buyer. This leads to the conclusion that as the title in the apartment located in an under construction building was yet to vest in the respondent, he was not liable to disclose it in his statement of assets and liabilities in the year 2014 or for that matter in 2015 with the Election Commission of Pakistan.

8. It is established from the record that the London flat upon its sale ultimately became the source of finance for the

purchase of 300 *Kanals* of land in Banigala, Islamabad which was purchased for a total sale consideration of Rs. 43,500,000/-. The respondent No.1 claims that Banigala land was initially intended to be purchased from the sale proceeds of the London flat but as its sale could not be finalized at that time he paid Rs.6,500,000/- and borrowed the remaining amount from his the then wife Ms. Jamaima Khan with the understanding to repay her from the sale proceeds of the London flat. As for the receipt of the remaining sale consideration, the documents of banking transactions filed by respondent No.1 reflect that Ms. Jamaima Khan remitted a total sum of USD 634,040/- and GBP 20,000/- both payments in US Dollars amounts to USD 665,040/-. These remittances at the then prevalent conversion rates translate into 39.33 million rupees whereas the total amount towards balance sale consideration was paid to the sellers of Banigala land from the foreign remittances that translate into 37 million rupees. Thus the remittances were more than what was required to be paid to the sellers of Banigala land. The documents produced by respondent No.1 further show that sale of London flat was finalized on 14.04.2003 for GBP 715,000/- and after deducting Estate Agent's commission and other costs and charges from this amount, the net balance that remained with NSL was GBP 690,307.79. Upon instructions of the respondent No. 1 through a letter dated 18.04.2003, NSL remitted GBP 562,415.54 into Ms. Jamaima Khan's bank account on 07.05.2003. This remittance which was made in Pound Sterling at the then prevalent conversion rates is equivalent to approximately USD 890,000/- which amount was more than sufficient to cover USD 634,040/- and GBP 20,000/-remitted by Ms. Jamaima Khan. The amount borrowed by respondent No.1 from Ms. Jamaima Khan was eventually repaid to her on 07.05.2003 out of the sale proceeds of the

London flat. The respondent No.1 has thus amply established that London flat was bought in the year 1983 i.e. about twenty years prior to his becoming a member of the National Assembly and how the proceeds of its sale have been utilized for the purchase of land in Banigala.

9. Under our Constitution, the authority of the State is to be exercised for the welfare of the people through their chosen representatives. To be a member of the National Assembly or a Provincial Assembly is to hold a public office that is a sacred trust. It is therefore highly imperative that the elected members should steer clear of financial corruption. The provisions of Sections 12 (2) (f) or 42A of RoPA are designed to bring the net-worth of all elected members on the record of the Election Commission. This is one of the tools to keep financial corruption in check after members assume charge of their office. The detail of their net-worth distinguishes the assets acquired prior to their becoming members from the assets acquired after assuming the responsibilities of office. Hence the disclosure of all assets is mandatory. Even an innocent omission to declare an asset at the time of filing of the nomination form may result in the rejection of candidate's nomination under Sections 14 (3) (c) of RoPA. If for any reason that does not happen then after the elections he could be unseated for such an omission by the Election Tribunal through an election petition. It may be clarified that while rejecting the nomination form, dishonesty cannot be attributed for nondisclosure of an asset acquired prior to becoming a Member of Parliament. To attribute dishonesty to a person is to stigmatize his character. Dishonesty has to contain elements of deceitfulness shown in one's character or behavior. In Collins dictionary, one of the synonyms of

dishonesty includes *'corruption'* as well. In a judgment from the foreign jurisdiction in the case of *Aguilar vs. Office of Ombudsman* decided on 26.02.2014 by the Supreme Court of Philippines (G.R. 197307) it was held that like bad faith, dishonesty is not simply bad judgment or negligence but is a question of intention. There can be many examples where it can be said that an omission on the face of it is not dishonest. Omission to list an inherited property or the pensionary benefits received by one's spouse or the plot allotted by the government in acknowledgment of services rendered are some of the instances which cannot be said that a member intentionally concealed its disclosure in order to cover some financial wrongdoing. Suchlike omissions at best could be categorized as bad judgment or negligence but not dishonesty.

10. In our jurisprudence, like in any other, one common penalty is never imposed for all kinds of dishonest acts, what to speak of imposing penalty for a dishonest act as well as for an omission made on account of negligence or bad judgment. Attributing dishonesty to every omission to disclose an asset should not be made a rule set in stone and applied to disqualify a member on the touchstone of Section 99 (1) (f) of RoPA or Article 62 (1) (f) of the Constitution. The courts should not close its eyes to an omission which on the face of it could not be said to be dishonest. It would turn Sections 12 (2) (f) and 42A of RoPA into the sword of Damocles hanging over the heads of the members of the National Assembly and the Provincial Assemblies, embroiling many of them in frivolous litigation even with regard to assets acquired prior to assuming the responsibilities of their office or acquired with clean money. Where an asset is acquired by a member or his spouse or any of his dependents

after becoming a member and it surfaces through any source, which he has failed to disclose, the member in *quo warranto* proceedings can be called to explain the means of its acquisition. If he is unable to extend a judicially acceptable explanation, only then such non-disclosure would be regarded as a failure to pass the test of honestly as envisaged under Section 99 (1) (f) of RoPA read with Article 62 (1) (f) of the Constitution. Apart from being declared disqualified from holding his office, the member will also face charges for possessing wealth beyond his known sources of income. Thus concealment of an asset from the public eye that was acquired after entering upon office, for which the member is unable to give a judicially acceptable explanation, is to be treated as an act of concealment with dishonest intentions. This is the difference in attributing dishonesty with regard to an omission to disclose an asset acquired before and after becoming a member of the National or a provincial Assembly.

11. It may be clarified here that dishonesty can be attributed to a member for an act committed prior to his election if he has been so adjudicated by a court of law. This is the mandate of Article 62 (1) (f) of the Constitution which reads '*A person shall not be qualified to be elected or chosen as a Member of Majlis-e-Shoora (Parliament) unless- …… (f) he is sagacious, righteous, non-profligate, honest and ameen, there being no declaration to the contrary by a court of law.*' The last phrase of Article 62 (1) (f) is clearly intended to mean that where a member is attributed to be financially corrupt before he has entered the arena to contest election for a seat in the National or Provincial Assembly then the complainant must demonstrate without any ambiguity that such a member has been declared by a court of law to be financially dishonest. Thus the term *'honest'* contained in Article 62

(1) (f) of the Constitution has to be interpreted in a restricted sense keeping the last phrase of Article 62 (1) (f) in mind which states *there being no declaration to the contrary by a court of law.*' If the application of these provisions is stretched beyond this, a political opponent in his desire to seek removal of his rival from the political scene would call in question an asset owned by his opponent that was though acquired not only prior to his becoming a member of the National or a Provincial Assembly but even prior to his holding any public office or for that matter any office of trusteeship or in his capacity as custodian of rights of others. Where a member has failed to declare an asset in his nomination form that was acquired prior to his election and there is no adjudication of dishonesty with regard to its acquisition by a competent court of law, the remedy provided under the election laws is to be availed, which only entails rejection of the nomination form simplictor. Once such remedy relating to such category of non-disclosure is availed under the provisions of election laws or the time to avail it has gone by, the same being not a case of disqualification falling within the ambit of Article 62(1) (f) of the Constitution, no more remains a live issue on account of the bar contained in Article 225 of the Constitution.

12. I am, therefore, of the considered opinion that a person's honesty prior to his becoming a member of the National or a Provincial Assembly can be called in question only if he has accumulated wealth through fraud, embezzlement, bribery or tax evasion and has been so declared by a competent court of law. Insofar as his dishonesty with regard to the assets acquired after becoming a member of the National Assembly or a Provincial Assembly are concerned, the same can be scrutinized by the Court in the proceedings in the nature of *quo*

warranto which will determine whether a case for acquisition of assets beyond known sources of income is made out.

JUDGE

Dated: 15th of December, 2017