

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ.
Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain

Constitution Petition No.05/2012 and
CMA Nos.2382, 2487, 2492, 2876 & 3446/12
Criminal Original Petition Nos.47,54, 65 & 71/2012

Syed Mehmood Akhtar Naqvi

... PETITIONER

VERSUS

Federation of Pakistan thr. Secretary Law and others

For the petitioner (s):	Patitioner in person (in Const.P.5/2012)
For the applicant (s):	Malik Waheed Anjum, ASC (in CMA-2382/12) Dr. Tariq Asad, ASC (in CMA-2487/12) Ms. Samira Basharat (in CMA-2876/12) Mr. M. Shoaib Lodhi (absent CMA-2492/12) Mr. Khawar Mahmood Khattana, ASC (in CMA-3446/12)
On Court Notice:	Mr. Irfan Qadir, Attorney General for Pakistan Assisted by Barrister Shehryar Riaz Sheikh, Advocate
For the respondents: (1,2,4,6,8,& 10)	Mr. Dil Muhammad Khan Alizai, DAG Raja Abdul Ghafoor, AOR Syed Sher Afghan, D.G. Election Commission
For respondent No.3:	Mr. Qasim Mir Jat, Addl. A.G. Sindh
For respondent No.5:	Mr. Jawwad Hassan, Addl. A.G. Punjab
For respondent No.7:	Mr. Azam Khattak, Addl. A.G. Balochistan
For respondent No.9:	Syed Arshad Hussain, Addl. A.G. KPK
For Ms. Farah Naz Isfahani:	Mr. Waseem Sajjad, Sr. ASC (absent) Ch. Akhtar Ali, AOR
For Mr. Zahid Iqbal, MNA: & Dr. Ahmad Ali Shah, MPA:	Mian Abdul Rauf, ASC

For Mr. A. Rehman Malik: Mr. Anwar Mansoor Khan, Sr. ASC
Mr. Muhammad Azhar Ch., ASC
Raja Abdul Ghafoor, AOR

(in CMA-2382/12): Mr. Muhammad Akhlaq, MPA (Pb) (absent)
Mr. Farhat Mehmood Khan, MNA (absent)
Dr. Muhammad Ashraf Chohan, MPA (absent)
Ms. Nadia Ghabool, MPA (Sindh) (absent)
Ch. Waseem Qadir, MPA (Pb) (absent)
Ch. Khadim Nadeem, MPA (Pb) (absent)

For Mr. Jameel Malik, MNA: Mr. Imtiaz Rashid Siddiqui, ASC (absent)
(Res. In CMA 2492/12)

For Mr. Shahjehan Yousaf, MNA: Hafiz S. A. Rehman, Sr. ASC
(Res. In CMA 2487/12) Mr. Mehmood A. Sheikh, AOR
With Sardar Shahjehan Yousaf, MNA

Dates of hearing: 17 & 18 September, 2012

O R D E R

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. — This petition has been filed under Article 184(3) of the Constitution with the prayer that the Parliamentarians having dual citizenship may be declared to be disqualified in terms of Article 63(1)(c) of the Constitution read with section 14 of the Pakistan Citizenship Act, 1951.

2. The matter was taken up on various dates, during course whereof notices were issued to the following Parliamentarians allegedly having dual citizenship: -

1. Mr. A. Rehman Malik, Senator
2. Mr. Abdul Hafeez Sheikh, Senator
3. Mr. Sabir Ali Baloch, Senator
4. Ch. Zahid Iqbal, MNA
5. Ch. Iftikhar Nazir, MNA
6. Ms. Farah Naz Isfahani, MNA
7. Mr. Farhat Mehmood Khan, MNA
8. Khawaja Muhammad Asif, MNA
9. Ms. Anusha Rehman, MNA
10. Mr. Jamil Ahmad Malik, MNA
11. Sardar Shahjehan Yousaf, MNA
12. Mr. Muhammad Akhlaq, MPA
13. Mr. Tariq Mehmood Alloana, MPA
14. Dr. Muhammad Ashraf Chohan, MPA
15. Ms. Nadia Gabol, MPA
16. Ch. Waseem Qadir, MPA
17. Ch. Nadeem Khadim, MPA
18. Ms. Amna Buttar, MPA

19. Dr. Ahmad Ali Shah, MPA

3. Four Parliamentarians, namely, A. Rehman Malik, Senator (Sr.No.1), Ch. Zahid Iqbal, MNA (Sr.No.4), Ms. Farah Naz Isfahani, MNA (Sr.No.6) and Mr. Jamil Ahmad Malik, MNA (Sr.No.10) entered appearance through their counsel and contested the matter. The Parliamentarians at serial Nos.1, 6 and 10 were admittedly holders of dual citizenship, however, the Parliamentarian at serial No.4 against whom sufficient material was placed on record, could not substantiate that he was not in possession of dual citizenship.

4. This Court suspended the membership of some of the Parliamentarians detail of which is mentioned hereinbelow: -

Sr.No.	Name	Date
1.	Ms. Farah Naz Isfahani, MNA	25.05.2012
2.	A. Rehman Malik, Senator	04.06.2012
3.	Dr. Ahmad Ali Shah, MPA	13.06.2012
4.	Mr. Muhammad Akhlaq, MPA	13.06.2012
5.	Ms. Amna Buttar, MPA	13.06.2012
6.	Ch. Zahid Iqbal, MNA	25.06.2012
7.	Mr. Jamil Ahmad Malik, MNA	03.07.2012
8.	Mr. Farhat Mehmood Khan, MNA	04.07.2012
9.	Ms. Nadia Gabol, MPA	04.07.2012

5. M/s Muhammad Ashraf Chohan and Ch. Nadeem Khadim MPAs, after service prayed for adjournment by sending applications, which were allowed *vide* order of even date, but subsequently they did not deny the factum of having dual citizenship.

6. On the other hand, *vide* orders dated 13.06.2012 & 4.7.2012 proceedings against the persons at serial No.2, 3, 5, 8, 9, and 13 were dropped as no material was produced against them to show they possessed dual citizenship. Mr. Tariq Asad, ASC through CMA No. 2487 of 2012 claimed that Sardar Shahjehan Yousaf, MNA was the holder of dual citizenship, but when the latter contested the application through his counsel, the former withdrew his application

and also tendered apology for leveling unsubstantiated allegation, therefore, no further proceedings are called for against Sardar Shahjehan Yousaf, MNA.

7. It is to be noted that Mr. A. Rehman Malik *vide* letter dated 19.4.2012 stated that he had renounced his citizenship of UK on 25.03.2008. Contents of the letter are reproduced herein below: -

"MINISTER FOR INTERIOR
Government of Pakistan
Islamabad

SENATOR A. REHMAN MALIK

No.I/PS/M/2012
Dated: 19th April, 2012

In Re: CONSTITUTION PETITION NO.5 OF 2012

Syed Mehmood Akhtar Naqvi

Petitioner

Vs.

The Federal Government through Secretary Law and others
Respondents

Please refer to your letter No.1(3)/2012-AGP dated 31st March 2012, concerning the above cited Constitutional Petition.

In this regard, it may be informed that by virtue of my continuous exile in UK for nine years due to political victimization and life threats in Pakistan, which is a matter of public record, I was granted British nationality but I never renounced my Pakistani citizenship as dual nationality is allowed under the Pakistani law. However, I renounced my British nationality on 25.03.2008 before I held public office. I thus do not hold any other citizenship including of British nationality except that of Pakistani citizenship.

Yours sincerely

-sd-

(Senator A. Rehman Malik)

8. It is noteworthy that along with the above letter, no re-enunciation form issued by the UK Border Agency was filed in terms of section 12(1) of the British Nationality Act, 1981 to substantiate the aforesaid claim. However, copy of letter dated 29.05.2012 issued by

UK Border Agency was placed on record subsequently. The same is reproduced herein below: -

"Home Office
UK Border
Agency

Mr. A. R. Malik
25 Norfolk Crescent
LONDON
W22YS

Our Ref M751044
your Ref
Date 29 May 2012

Dear Mr. Malik

Renunciation of British Citizenship

I am writing to inform you are now registered as having renounced British Citizenship.

Enclosed is the Declaration of renunciation bearing a stamp of registration. This confirms the date on which you ceased to be a British Citizen under Section 12(1) of the British Nationality Act, 1981.

Yours sincerely,

-sd-
Mrs CS Hughes
Managed Migration, Nationality Group
Department 73"

9. Plea on his behalf was that he had applied to renounce his British citizenship on 25.04.2008 before contesting the election of Senate of Pakistan, but the UK Border Agency did not issue certificate of renunciation of citizenship and subsequently when this matter came up before the Court, the Solicitor in UK namely, PHI (Legal) confirmed that he had renounced his British citizenship through his application dated 25.04.2008. Alongwith letter, copies of the application form and cheque of HSBC dated 25.04.2008 in the name of Accounting Officer, Home Office, issued by Dr. Saeed Rehman were also annexed. Whereas according to British Nationality Act, 1981, when a person files application form, declaring that he wishes to renounce his British citizenship or other British status, UK Border Agency returns the copy of application form officially signed and stamped, together with the documents filed with it. Despite repeated directions and opportunities granted to him, Mr. A. Rehman Malik chose not to file these papers in

Court. This aspect of the case, however, shall be discussed in the detailed order.

10. *Prima facie*, it is apparent that Mr. A. Rehman Malik renounced his citizenship after the institution of the listed petition, as is evident from the contents of the letter dated 29.05.2012 wherein he was informed that he was "... now registered as having renounced British Citizenship". In addition to it declaration of renunciation bearing stamp of registration was also enclosed in terms of legal provision noted therein. But, surprisingly the copies of this declaration were not placed on record despite the fact that the Court repeatedly directed for filing of the same. His membership as a Senator was suspended on 04.06.2012, therefore, on account of this reason he could not continue as the Interior Minister of the Government of Pakistan. However, he was appointed as Advisor to the Prime Minister.

11. It appears that to overcome the disqualification, he tendered resignation from the seat of Senate, which was accepted *vide* notification dated 11.07.2012 and against the vacant seat he participated in the fresh elections and was declared successful candidate *vide* notification dated 24.07.2012. In the meanwhile, he filed CMA No.3467/12 stating therein the following reason to resign from the membership of the Senate and to re-contest the election: -

"That serious allegations were leveled by the opposition and carried by various media that laws were being amended for him, therefore, in order to dispel any such perception and in larger interest of democracy the applicant resigned as Member of the Senate of Pakistan under his signature on 9th July, 2012. The Senate has issued a notification of acceptance of resignation on 11th July, 2012. The same are placed on record."

Be that as it may, from the above facts it is established that having renounced the citizenship and upon issuance of letter dated 29.05.2012 by the Home Office, UK Border Agency, he was satisfied

that disqualification proved against him stood removed, therefore, he should occupy his seat in the Senate free from any disqualification. In this behalf, it is to be noted that knowing well that his British Nationality/citizenship did not stand renounced, he made a false statement before the Court and the petitioner filed petitions for initiating proceedings for contempt of Court against him, which shall be considered separately later on.

12. The petitioner who appeared in person prayed to declare all the respondent Senators, MNAs or MPAs to be disqualified as they were holding those offices contrary to the provisions of Article 63(1)(c) of the Constitution. For convenience same is reproduced hereinbelow: -

“63(1) A person shall be disqualified from being elected or chosen as, and from being, a member of the *Majlis-e-Shoora* (Parliament), if -

(a) ...

(b)

(c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State”

13. Mr. Waheed Anjum, ASC has appeared as intervenor and submitted a list of elected representatives, including those who admittedly were not disqualified as they had no dual citizenship, as such proceedings against them were dropped, detail of which has been mentioned hereinabove. It is important to note that in respect of Mr. Tariq Mehmood Alloana, MPA from Punjab, the matter was seriously contested by Mr. Alloana, but Mr. Waheed Anjum, ASC stuck to his stance. But later on, it was found that on the basis of false information supplied by the FIA, he was seeking his disqualification for being an MPA and when the matter was further probed and information was collected from FIA, it transpired that attempt was being made to get him disqualified with ulterior motives. As such directions were given to

the Additional Registrar of this Court to lodge a criminal complaint against the concerned officers of FIA who had supplied incorrect information. Accordingly, on the application of Additional Registrar, Supreme Court, the case was registered on 04.07.2012. Proceedings against Mr. Alloana were, therefore, dropped.

14. Learned Attorney General appeared on Court notice in terms of Order XXVIIA CPC and did not support the contentions of either the petitioner or of the intervenors.

15. It has been emphasized by Mr. Waseem Sajjad, Sr. ASC appearing for Ms. Farah Naz Isfahani and learned Attorney General that under Article 63(1)(c) of the Constitution, the phrases, namely, "... .. ceases to be a citizen of Pakistan", or "acquires the citizenship of a foreign State" are to be read conjunctively and not disjunctively and the word 'or' appearing in between those phrases is to be read as 'and' because in such a situation, according to them, the Members of Senate, National Assembly and Provincial Assemblies having dual citizenship could continue in their offices without suffering from any such disqualification.

16. After hearing the petitioner, learned Attorney General, learned counsel for the respondents and others, taking into consideration the relevant provisions of the Constitution reproduced hereinabove and the material available on record, we are persuaded to hold that if a candidate suffers from pre or post disqualification under Article 63(1)(c) of the Constitution, no sooner such disqualification as envisaged under the said Article is attracted, becomes and is disqualified from being elected or chosen, and from being a Member of the Malis-e-Shoora (Parliament). These provisions have to be construed strictly by interpreting the same in view of the established

principle of interpretation by assigning plain and simple meanings to the words and phrases used therein and avoiding any substitution thereof as the same is not within the ambit of this Court.

17. It is to be noted that a candidate, while filing nomination papers signs a declaration on oath to the following effect: -

“DECLARATION AND OATH BY THE PERSON NOMINATED

1. I, the above mentioned candidate, hereby declare on oath that, —

(i) I have consented to the above nomination and that I fulfill the qualifications specified in Article 62 of the Constitution and I am not subject to any of the disqualifications specified in Article 63 of the Constitution or any other law for the time being in force for being elected as a member of the National Assembly/Provincial Assembly.

18. The above declaration is applicable to the candidates of membership of Parliament and Provincial Assemblies, therefore, whoever signs such a declaration is meant to be fully aware of the constitutional provisions and after signing the said declaration if the same turns out to be false, he makes himself liable to be disqualified from being elected or chosen as Member of the *Majlis-e-Shoora* (Parliament) or a Provincial Assembly for making misstatement or concealment of fact, and also exposes himself to criminal proceedings contemplated under sections 193, 196, 197, 198 and 199 PPC.

19. In view of the constitutional provisions under Article 63(1)(c) & (p) of the Constitution read with section 99(1)(f) of the Representation of the People Act, 1976 it is to be seen as to whether their cases are to be dealt with by the Speaker/Chairman under Article 63(2) or by the Election Commission under Article 63(3) or are to be de-notified by the Election Commission after having been declared to

be disqualified from being a member of *Majlis-e-Shoora* or Provincial Assemblies. This Court has earlier dealt with this matter in the case of Syed Yousaf Raza Gillani in Constitution Petition No. 40 of 2012, etc. He was convicted by a 7-Member Bench *vide* judgment dated 26.04.2012 for contempt of Court under Article 204(2) of the Constitution read with section 3 of the Contempt of Court Ordinance, 2003 and sentenced under section 5 of the said Ordinance and the reference filed by one Maulvi Iqbal Haider before the Speaker of Assembly to declare him disqualified under Article 63(2) was answered in the negative. Thereafter, the ruling of the Speaker was challenged before this Court through Constitution Petitions which were allowed and while dealing with the similar issue, the Court *vide* judgment dated 19.06.2012 held as under: -

“As a Bench of 7 Hon’ble Judges *vide* judgment dated 26.04.2012 followed by the detailed reasons released on 08.05.2012 has found Syed Yousaf Raza Gillani guilty of contempt of Court under Article 204(2) of the Constitution of the Islamic Republic of Pakistan, 1973 read with section 3 of the Contempt of Court Ordinance, 2003 and sentenced him to undergo imprisonment till rising of the Court under section 5 of the said Ordinance, and since no appeal was filed against this judgment, the conviction has attained finality. Therefore, Syed Yousaf Raza Gillani has become disqualified from being a Member of the *Majlis-e-Shoora* (Parliament) in terms of Article 63(1)(g) of the Constitution on and from the date and time of pronouncement of the judgment of this Court dated 26.04.2012 with all consequences, i.e. he has also ceased to be the Prime Minister of Pakistan with effect from the said date and the office of the Prime Minister shall be deemed to be vacant accordingly;
The Election Commission of Pakistan is required to issue notification of disqualification of Syed Yousaf Raza Gillani

from being a member of the Majlis-e-Shoora w.e.f. 26.4.2012."

20. Thus, for the reasons to be recorded later, we declare that: -

- (a) Ch. Zahid Iqbal, MNA, Ms. Farah Naz Isfahani, MNA, Mr. Farhat Mehmood Khan, MNA, Mr. Jamil Ahmad Malik, MNA, Mr. Muhammad Akhlaq, MPA(Punjab), Dr. Muhammad Ashraf Chohan, MPA (Punjab), Ms. Nadia Gabol, MPA (Sindh), Ch. Waseem Qadir, MPA (Punjab), Ch. Nadeem Khadim, MPA(Punjab), Ms. Amna Buttar, MPA (Punjab), Dr. Ahmad Ali Shah, MPA (Sindh) have been found disqualified from being members of Majlis-e-Shoora (Parliament) and Provincial Assemblies because of their disqualification under Article 63(1)(c) of the Constitution.
- (b) The Parliamentarians/Members of Provincial Assemblies, who have been declared to be disqualified, in view of the established fact that they have acquired the citizenship of Foreign States, therefore, no question has arisen, which is to be determined by the Chairman/Speaker. Thus, no reference under Article 63(2) is being made.
- (c) The Election Commission is directed to de-notify the respective memberships of Parliament/Assemblies of aforesaid persons.
- (d) All the Members of the Parliament/Provincial Assemblies noted above had made false declarations before the Election Commission while filing their nomination papers and as such appear to be guilty of corrupt practice in terms

of Section 78 of Representation of Peoples Act, 1976, therefore, the Election Commission is directed to institute legal proceedings against them under section 82 of the Act read with sections 193, 196, 197, 198 and 199 PPC in accordance with law.

- (e) The members of Parliament/Provincial Assemblies noted hereinabove, being disqualified persons are directed to refund all monetary benefits drawn by them for the period during which they occupied the public office and had drawn their emoluments etc. from the public exchequer including monthly remunerations, TA/DA, facilities of accommodation along with other perks which shall be calculated in terms of money by the Secretaries of the Senate, National Assembly and Provincial Assemblies accordingly.
- (f) The amount, so recovered from all of them by respective Secretaries shall be deposited in the public exchequer within a period of two weeks and compliance report shall be sent to the Registrar.
- (g) As regards the case of Senator A. Rehman Malik, it may be noted that at the time of filing of nomination papers for election to the Senate held in the year 2008, he had made a false declaration to the effect that he was not subject to any of the disqualifications specified in Article 63 of the Constitution or any other law for the time being in force for being elected as a member of the Parliament/Provincial Assembly, therefore, reference will be required to be made

to the Chairman Senate under Article 63(2) in view of the provision of section 99(1)(f) of the Act of 1976, which lays down that a person shall not be qualified from being elected or chosen as a member of an Assembly unless he is sagacious, righteous and non-profligate and honest and *ameen*. Mr. A. Rahman Malik, in view of the false declaration filed by him at the time of contesting the election to the Senate held in the year 2008, wherein he was elected, cannot be considered sagacious, righteous, honest and ameen within the contemplation of section 99(1)(f) of the Act of 1976. Therefore, for such purposes Article 63(p) is to be adhered to because the disqualification incurred by him is envisaged under the law, referred to hereinabove in view of his own statement that he had renounced his citizenship of UK whereas the fact remains that such renunciation along with declaration can only be seen as having been made on 29.05.2012.

- (h) Senator A. Rehman Malik is directed to refund all monetary benefits drawn by him upto 11.7.2012 for the period during which he occupied the public office in the same manner as directed in the case of other Parliamentarians noted above.
- (i) As Mr. A. Rehman Malik had made false declarations while filing his nomination papers before the Election Commission in the election held in the year 2008, therefore, the Election Commission is directed to institute

legal proceedings against him as it has been directed in the case of above said parliamentarians.

21. The Election Commission of Pakistan is also directed to examine the cases of the Parliamentarians and the members of Provincial Assemblies, individually, by obtaining fresh declaration on oath from all of them that they are not disqualified under Article 63(1)(c) of the Constitution.

22. The titled Constitution Petition is disposed of in the above terms. However, the Criminal Original Petitions are adjourned to a date in office.

Chief Justice

Judge

Judge

Announced on 20th September, 2012
at Islamabad.

APPROVED FOR REPORTING