

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 & 3446/2012.**

(Under Article 184(3) of the Constitution)

Syed Mehmood Akhtar Naqvi

Petitioner

VERSUS

Federation of Pakistan thr.
Secretary Law and others

Respondents

For the petitioner (s):

Petitioner in person
(in Const.P.5/2012)

For the applicant (s):

Malik Waheed Anjum, ASC,
In-person
(in CMA-2382/12)
Dr. Tariq Asad, ASC,
In-person
(in CMA-2487/12)
Ms. Samira Basharat,
In-person
(in CMA-2876/12)
Mr. M. Shoaib Lodhi
(absent CMA-2492/12)

On Court Notice:

Mr. M. Irfan Qadir,
Attorney General for Pakistan
Assisted by
Barrister Shehryar Riaz Sheikh, Adv.

For the respondents:
(1,2,4,6,8,& 10)

Mr. Dil Muhammad Khan Alizai, DAG
Raja Abdul Ghafoor, AOR
Syed Sher Afghan, D.G. (Elections)

For respondent No.3:

Mr. Qasim Mir Jat, Addl. A.G. Sindh

For respondent No.5: Mr. Jawwad Hassan, Addl. A.G. PB.

For respondent No.7: Mr. Azam Khattak, Addl.AG Balochistan

For respondent No.9: Syed Arshad Hussain, Addl. A.G. KPK

For Ms. Farah Naz Isfahani: Mr. Waseem Sajjad, Sr. ASC
Ch. Akhtar Ali, AOR assisted by
Mr. Idrees Ashraf, Adv.

For Mr. Zahid Iqbal, MNA: Mian Abdul Rauf, ASC
& Dr. Ahmad Ali Shah, MPA:

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

For Ms. Amna Buttar, MPA Mr. Khawar Mehmood
& Mr. Wasim Qadir, MPA Khattana, ASC

For Tariq Mehmood Aloana, Mr. Saeed Yousaf, ASC
MPA

For Ch. Iftikhar Nazir, MNA Mian Sultan Tanvir, ASC

For Ms. Anusha Rehman, Kh. Haris Ahmed, Sr. ASC
MNA. With Ms. Anusha Rehman

For Mr. Sabir Ali Baloch, Mr. Shah Khawar, ASC
Senator
Kh. Muhammad Asif, MNA
in person

For Mr. Jamil Ahmed Malik, Mr. Imtiaz Rashid Siddiqui, ASC
MNA. Mr. Mehr Khan Malik, AOR

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

For Sardar Shahjehan Yousaf, Hafiz S. A. Rehman, Sr. ASC
MNA Mr. Mehmood A. Sheikh, AOR with
Sardar Shahjehan Yousaf, MNA

Dates of hearing: 08th, 10th, 16th, 25th & 30th May,
04th, 13th, 21st & 25th June, 02nd
03rd, 04th & 23rd July, 09th, 12th,
17th, and 18th September 2012.

JUDGMENT

KHILJI ARIF HUSSAIN, J.— Through this petition, filed under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 [*hereinafter referred to as ‘the Constitution’*], the petitioner alleged that in terms of Article 63(1)(c) of the Constitution read with Section 14 of Pakistan Citizenship Act, 1951, any person holding dual citizenship is disqualified from being elected or chosen as, and from being, a Member of Majlis-e-Shoora (Parliament). He stated that as per only TV program aired on Samaa TV Channel, Ch. Zahid Iqbal, MNA; Ch. Iftikhar Nazir, MNA and Mr. A. Rehman Malik, Senator have acquired citizenship of Britain and as such they are disqualified from being Members of the Parliament. By CMA No.1185 of 2012, he further disclosed that Ms. Farah Naz Isfahani, MNA is also holder of dual citizenship of Pakistan and United States.

2. Accordingly, notices were issued to the respondents as well as the learned Attorney General for Pakistan to file their parawise comments. In response to the notice, learned Attorney General for Pakistan appeared and raised the question as to whether under Article 63(1)(c) of the Constitution “*a person shall be disqualified from being elected or chosen as, and from being, a member of Majlis-e-Shoora (Parliament), if he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign*

State". The question raised is of the highest public importance and is required to be dealt with as such.

3. By order dated 27.03.2012, we expressed our expectations that the learned Attorney General for Pakistan may collect information from the Members of the Parliament about their dual citizenships, and if it is so whether disqualification has been got removed or whatever the position may be, and that if they desire, they can also appear at their own by filing their replies alongwith allied documents to clarify their position.

4. In response to our order that any Member of the Parliament may appear on his own by filing a reply, only some of the Parliamentarians came forward by appearing in person or through counsel.

5. The Election Commission of Pakistan also through its parawise comments stated that there is nothing on record on the basis of which it could be ascertained whether any of the Parliamentarians is holding citizenship of a foreign State and that while filing the nomination papers every candidate has to file certain declaration on oath; one such declaration is reproduced herein-below:-

"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 disqualification 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".

however, in the recent election of the Senate the declaration, that the candidate has not possess the citizenship of any foreign State or County has been taken

6. On behalf of the respondent No.5 Punjab Government, objections were taken about the maintainability of the petition, however, relied upon the principles laid down in the case of Umar Ahmad Ghumman versus Government of Pakistan and others, (PLD 2002 Lahore 521).

7. On behalf of the Government of Khyber Pakhtunkhwa it is stated that according to Article 63 of the Constitution a person shall be disqualified from being elected or chosen and from being Member of the Parliament in case as citizen of Pakistan he has acquired the citizenship of a foreign State.

8. Malik Waheed Anjum, learned ASC, has filed CMA No.2382 of 2012 for impleading the following fourteen Parliamentarians who according to him are holders of dual nationality:-

Sr.No.	Name	Political Party	Nationality	Dual
1.	Muhammad Akhlaq	PML (N)	Pakistani	USA
2.	Farhat Muhammad Khan	MQM	Pakistani	USA
3.	Tariq Mehmood Alloana	PPPP	Pakistani	USA
4.	Dr. Muhammad Ashraf Chouhan	PML(N)	Pakistani	GB
5.	Dr. Ahmed Ali Shah	PPPP	Pakistani	GB
6.	Nadia Gabol	MQM	Pakistani	GB
7.	Amna Buttar	PPPP	Pakistani	USA
8.	Zahid Iqbal	PPPP	Pakistani	GB
9.	Khawaja Asif	PML(N)	Pakistani	Canada
10.	Abdul Hafez Sheikh	PPP	Pakistani	USA
11.	Anusha Rehman	PML(N)	Pakistani	Canada

12.	Sabir Ali Baloch	Dy. Chairman Senate	Pakistani	--
13.	Ch. Waseem Qadir	PML(N)	Pakistani	Norway
14.	Ch. Nadeem Khadim	PML(N)	Pakistani	UK

9. Mr. M. Shoaib Lodhi has filed CMA No.2492 of 2012 for impleading of Mr. Jamil Malik, MNA, Mr. Jamshed Rahmatullah, ASC has filed CMA No.2953 of 2012 for impleading of Mr. Jamil Ashraf, MPA and Mr. Tariq Asad, ASC has filed CMA No. 2487 of 2012 alleging that Sardar Shahjehan Yousaf, MNA is holding the citizenship of U.K.

10. Thus membership of the following Parliamentarians and members of Provincial Assembly stand challenged in the listed petition and CMAs noted above:-

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

11. Mr. Wasim Sajjad, learned Sr. ASC in reply on behalf of Ms. Farah Naz Isfahani, MNA filed CMA No. 2231 of 2012 and admitted that she is a holder of citizenship of USA, Mr. Khawar Mehmood Khatana, ASC why filed CMA No. 2797 of 2012 on behalf of Ms. Amna Buttar, MPA also admitted that she is holder of citizenship of USA and Mian Abdul Rauf, ASC has filed C.M.As. No.1975, 2731, 2296, 2597 and 2913 of 2012 on behalf of Ch. Zahid Iqbal, MPA, and stated that he is permanent resident of United Kingdom.

12. Ch. Iftikhar Nazir, MNA has filed CMA No. 1927 of 2012 and CMA No. 2362 of 2012 and specifically denied that he ever acquired the citizenship of United Kingdom.

13. Hafiz S.A. Rehman, learned Sr. ASC has filed CMA No. 3207 of 2012 on behalf of Sardar Shahjahan Yousaf and specifically stated that he (Sardar Shahjahan Yousaf, MNA) is not a citizen of any foreign State.

14. CMA No. 2456 of 2012 filed by Khawaja Muhammad Asif, MNA wherein he specifically denied that he is a holder of citizenship of any foreign State, and supported the adjudication of the matter relating to dual nationality by the Members of the Parliament.

15. On behalf of Mr. Jameel Ahmed, MNA, Mr. Imtiaz Rashid Siddiqui, ASC filed CMA No.2802/2012, CMA 2882 of 2012 and CMA 3881 of 2012, wherein he stated that his client was adopted by his real uncle in the year 1970 and after adoption under the law of Netherland he had acquired citizenship of the said country.

16. Mr. Wasim Sajjad, learned Sr. ASC for Ms. Farah Naz Isfahani, MNA argued that the Constitution must be interpreted as a living document to meet the requirements of all times to come. It is contended that word "or" should be read as "and" otherwise Article 62(1) of the Constitution will become redundant.

17. In support of his contentions, he relied upon the case of **Al-Jehad Trust versus Federation of Pakistan**, (1999 SCMR 1379). It is contended by him that his client was a born citizen of USA and as such she cannot be disqualified to be elected as a Parliamentarian. He further contended that the restriction under Article 63 (1)(c) of the Constitution relates to a citizenship of foreign State acquired by a Member after taking the oath of the Parliament. It is further contended by the learned counsel that once a person is elected as a Member of Parliament he can only be removed by filing an Election Petition.

18. Mian Abdul Rauf, ASC for Mr. Zahid Iqbal, MNA argued that his client is not a citizen of U.K but is a permanent resident of U.K. and as such he cannot be disqualified to remain as a member of the Parliament.

19. Mr. Imtiaz Rashid Siddiqui, ASC representing Mr. Jameel Malik, MNA while questioning the maintainability of the petition, contended that his client was adopted as son by his real uncle in the year 1970 when he was minor and after adoption under the law of Netherland he had acquired citizenship of the said country. Further contends that since his

client was adopted by his real uncle he had acquired citizenship of Netherland on his attaining the age of majority and that the Court has to keep difference between the persons who have intentionally acquired citizenship of foreign States and one who has not acquired it intentionally, as in the case of respondent who had acquired the citizenship being adopted son of a Netherland's citizen. Further contends that there is no concept of citizenship in the Netherland. In reply to a query, learned counsel stated that his client has not renounced citizenship of Netherland's till date.

20. Learned counsel appearing on behalf of Mr. Zahid Iqbal, MNA, contended that his client is not holding citizenship of Britain, however, he is a permanent resident of the said country. We have repeatedly asked him to place on record certificate issued by the competent authority in terms of British Nationality Act, 1981 to the effect that he is not a citizen of UK but he failed to do so.

21. Mr. Ahmed Ali Shah, MPA has not disputed that he is holding dual citizenship. Mr. Muhammad Akhlaq, MPA has also not disputed that he is holding dual citizenship.

22. Ms. Amna Buttar, MPA also admitted her citizenship of USA, however, contended that she contested the election believing that there is no bar for a dual citizen to contest the election as a Parliamentarian. It is stated by her learned counsel, that she will not contest the election now after she has come to know that a person holding dual citizenship is not qualified to be elected as member of the Parliament.

23. Mr. Anwar Mansoor Khan, Sr. ASC appearing on behalf of Mr. A. Rehman Malik argued that he has renounced his citizenship through his solicitor as per letter dated 27.04.2008 by filing an application for renunciation on 05.04.2008 and has only, travelled thereafter on Pakistani passport. It is contended by the learned counsel that law does not bar a person who is already holder of citizenship for contesting the election of Parliament. It is further contended that Articles 62 and 63 of the Constitution are to be read together, Article 62 (1)(a) of the Constitution required qualification for a member of Parliament to be a citizen of Pakistan only and Article 63(1)(c) of the Constitution relates to the post election disqualification and not to the prior election disqualification, if any. It is submitted by learned counsel that this Court cannot look into evidence while exercising jurisdiction under Article 184(3) of the Constitution. He further contended that Mr. A. Rehman Malik has resigned from the membership of the Senate on 9th July 2012, and subsequent thereto contested fresh election of Senate as his request for renunciation of citizenship of U.K. has been conveyed to him by the UK Border Agency on 29.05.2012 and if for any reason for the sake of arguments it is accepted that he was not qualified to contest election as Senator in the year 2008, he was qualified to be elected after the acceptance of his request for renunciation of his citizenship of UK in the year 2012 as Member of Parliament and as such he was rightly elected as a Senator.

24. Learned Attorney General for Pakistan has argued that none of the respondents acquired citizenship after they became Members of Parliament or a Provincial Assembly. According to him Article 62 of the Constitution pertains to pre-election qualification and Article 63 of the Constitution deals only with post-election disqualifications. Further contended that if any untrue statement is given at the time of submitting the nomination papers stating that he is qualified under Article 62 of the Constitution and not disqualified under Article 63 of the Constitution such statement is nothing more than a mistake on the part of the candidate. It is contended by the learned Attorney General for Pakistan that Articles 62 and 63 of the Constitution have to be read together and only a Parliamentarian who has acquired citizenship of a foreign State after he was elected and also ceased to be a citizen of Pakistan at the same time becomes disqualified to remain as a member of the Parliament and that otherwise there is no bar for him to hold dual citizenship. He further contended that the word 'or' used in Article 63 (1) (c) is to be read as 'and' otherwise Article 62 (1) (a) will become redundant.

25. In reply to a query, learned Attorney General for Pakistan stated that at one point of time an amendment in Article 63 (1)(c) of the Constitution for allowing a person holding dual citizenship to contest election was considered by the Government but such bill was not presented before the Parliament. He also contended that there is no restriction barring top functionaries of the State i.e. President, Chief of

Army Staff, Governors, Chief Justices and Judges of the superior Courts, Auditor General from holding dual citizenship. His submission was that merely because some of the Parliamentarian are holding dual citizenships they cannot be disqualified as member of Parliament, only because they have to take important decisions or make policy for the country.

26. We have taken into consideration respective arguments advanced by the learned Counsel and perused the record.

27. In order to appreciate the issue involved in the petition, we would like to reproduce here-in-below relevant parts of relevant parts of Articles 62 & 63 (1) (c) of the Constitution as well as Section 14 of Pakistan Citizenship Act, 1951:-

“62. (1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless:-

- (a) he is a citizen of Pakistan;*
- (b) he is, in the case of the National Assembly, not less than twenty-five years of age and is enrolled as a voter in any electoral roll in—*
- (c) he is, in the case of the Senate, not less than thirty years of age and is enrolled as a voter in any area in a Province or, as the case may be, the Federal Capital or the Federally Administered Tribal Areas, from where he seeks membership,*
- (f) he is sagacious, righteous, non-profligate, honest and amen, there being no declaration to the contrary by a court of law; and*

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—

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

For the sake of convenience Section 14 of Pakistan Citizenship Act, 1951 is also reproduced herein-below.

“14. Dual citizenship or Nationality not permitted.—(1) Subject to the provisions of this section if any person is a citizen of Pakistan under the provisions of this Act, and is at the same time a citizen or national of any other country, he shall, unless he makes a declaration according to the laws of that other country renouncing his status as citizen or national thereof, cease to be a citizen of Pakistan.”

28. To appreciate respective contentions raised by the learned ASC, it is necessary to recapitulate basic principles of Interpretation of Statutes.

29. It is a cardinal principle of construction that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary by necessary implication. The intention of the Legislator is primarily to be gathered from the language used, which means that attention should be paid to what has been said and also to what has not been said. As a consequence a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. The courts always presume that the Legislature inserted every part

thereof for a purpose and the legislative intention is that every part of statute should have effect. The Court has to discover true legislative intent while interpreting statutes.

30. It was held in the case of **Tata Consultancy Services versus State of Andhra Pradesh**, (AIR 2005 SC 371), that literal construction not to be denied only because the same may lead to penalty. It is not the duty of Court to either enlarge scope of legislation or the intention of the Legislators when the language of the provision is clear. While construing the provisions of statutes no provision should be rendered meaningless and there is no scope of placing unnatural interpretation on the meaning of language used by the legislators.

31. In *"The Interpretation and Application of Statutes"*, Reed Dickerson, at page 135 discussed the subject while dealing with the importance of context of the statute in the following terms:-

".....The essence of the language is to reflect, express, and perhaps even affect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called "conceptual map of human experience".

32. In the case of **Reserve Bank of India versus. Peerless General Finance and Investment Co. Ltd.**, (AIR 1987 SC 1023), Supreme Court of India held that:-

"....If a statutes is looked at, in the context of its enactment, with the glasses of the statute-maker,

provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act....".

33. To interpret the functions the Court is to discover the true legislative intent. To interpret the statute the Court must if the words are clear, plain, unambiguous and only one meaning given to the word, effect is given to each and every word used by the legislators. The Court always presumes that the legislators inserted every part thereof for a purpose and legislative intent in that very part of statute should have effect. The construction which attributes redundancy to the legislators will not be accepted except for compelling reasons, such as, obvious drafting error. In other words, a construction which requires for its support, addition or substitution of words or in rejecting words as meaningless is to be avoided. Primary and foremost task of a Court to interpret the statute is to ascertain intention of the legislators actual or imputed. Having ascertained the intention, the Court must then strive to interpret the statute as to promote/advance the object and purpose of the enactment. For this purpose, where necessary the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. While interpreting the provisions of statute, Court should not consider redundancy or surplus word or words.

Can the word “or” used in Article 63 (1) (c) be read as “and”.

34. Keeping in view these basic principles of interpretation of Statue/Constitution, we will now examine Articles 62 and 63 (1)(c) of the Constitution, 1973 to ascertain if a person holding citizenship of a foreign State is disqualified to be elected or chosen as and from being, a Member of the Parliament or not.

35. The issue before the Court is not whether a citizen of Pakistan holding citizenship of a foreign State is loyal to our country or not but what appears that the framers of Constitution, in their wisdom decided that such person should be disqualified to be elected as member of Parliament, which is the only body to Legislate for the citizens of this country, to check Executive, to give guideline for policies of the Government including defence, foreign, finance, etc. etc. In the case of **Iftikhar Ahmad Khan Bar versus Chief Election Commissioner Islamabad and others**, (PLD 2010 SC 817), it was held that:-

“The Parliament of any country is one of its noblest, honourable and important institutions making not only the policies and the laws for the nation but in fact shaping and carving its very destiny.”

36. The Constitution was framed by its makers keeping in view the situations and conditions prevailing at the time of its making; but being a permanent document, it has been conceived in a manner so as to apply to situations and conditions which might arise in future. The words and

expressions used in the Constitution, in that sense, have no fixed meaning and must receive interpretation based on the experience of the people in the course of working of the Constitution.

37. The word “or” is normally disjunctive and “and” is normally conjunctive, if any case law is required, reference can be made to the cases of M/s. Hyderabad Asbestos Cement Products versus Union of India, (AIR 2000 SC 314), and Abdul Razak versus Karachi Building Control Authority, (PLD 1994 SC 512), but at the time they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context.

38. In the case of Green v. Premier Glynrhonwy Slate Company, Limited, (1928) 1 KB 561, P. 568, it was held by SCRUTTON, LJ, that you do sometimes read ‘or’ as ‘and’ in a statute. But you do not do it unless you are obliged because ‘or’ does not generally mean ‘and’ and ‘and’ does not generally mean ‘or’.

39. As pointed out by LORD HALSBURY the reading of ‘or’ as ‘and’ is not to be resorted to, ‘unless some other part of the same statute or the clear intention of it requires that to be done (Mersey Docks and Harbour Board vs. Henderson Bros. (58 LJ QB 152 (HL)).

40. In the Words and Phrases Permanent Edition 7A, the word ‘comma’ has been defined as under:-

“A ‘comma’ is a point used to mark the smallest structural divisions of sentence, or a

“rhetorical punctuation mark indicating the slightest possible separation in ideas or construction.”

41. It is interesting to mention that Article 103(d) of the Constitution of 1962, is similar to Article 63(1)(c) of the Constitution of 1973. However in Article 103 (d) after the word “ceased to citizen” and before word “or” the constitutional framer not inserted “comma (,)” as inserted in 1973 Constitution, which further support view, which we have taken that “or” used in Article 63(1)(c) can not be read as “and”.

42. We have carefully scanned Article 63 of the Constitution and from a bare perusal of it, it appears that the Legislature before the word ‘or’ put a comma which manifests the intention of Legislature that “ceases to be a citizen of Pakistan” to be read separately from “holding of citizenship of foreign State” and word ‘or’ cannot be read as ‘and’ .

Does Article 63 (1) (c) relate to post election disqualification only.

43. If we compare Article 63 (1) with Article 63(A) of the Constitution inserted by 18th Amendment, the intention of the Legislature becomes clear that Article 63 (1) of the Constitution applied to pre and post election disqualification, whereas Article 63(A) applies to post election disqualification on the ground of defection.

44. Article 63 deals with “A person” disqualified from being elected or chosen as and from being, a member of the

Majlis-e-shoora, whereas, Article 63(A) deals with the disqualification of a Member of the Parliament.

45. The Legislature intentionally has not used the word "Member of the Parliament" in Article 63 to be disqualified if he acquires citizenship of a foreign State. In terms of Article 63(1), "a person" who holds dual citizenship but wishes to be elected or chosen to become Parliamentarian has to renounce citizenship of foreign State first, otherwise he would be disqualified to be elected, if at the time of submitting his/her nomination paper, he/she was holding citizenship of foreign State. Likewise if any member of the Parliament acquires citizenship of foreign State, he will become disqualified to remain member of the Parliament.

46. As regards the contention of learned counsel for the respondents that Article 63 of the Constitution, is related to pre and post election disqualification the same has no force. On plain reading of the said Article, the Legislature has used the word "a person" which demonstrates the intention that any person whether he is Member of the *Majlis-e-Shoora* shall be disqualified if any one of the disqualifications mentioned in the said Article applicable upon him. The Article further provides that the person shall be disqualified "from being elected or chosen" relates to pre post election disqualification whereas "from being a Member of *Majlis-e-Shoora*" relates to post election disqualification. The Article 63 of the Constitution has dealt with both i.e. pre and post election disqualification.

47. The general principle of Interpretation of Statues is equally applicable while interpreting any provision of the Constitution. However, while interpreting a provision of the Constitution great caution has to be taken by the Court, as the Constitution is an instrument i.e. the supreme law which creates the Legislature itself, makes ordinary statutes with respect to which canons of statutory interpretation have been formulated by the Courts. The task of expounding a Constitution is crucially different from that of construing a statute. The Statute can easily be enacted and repealed by simple majority of Members of Parliament whereas, any provision of the Constitution can be amended only by 2/3rd majority of both the Houses.

48. In the case of **Muhammad Yasin versus Federation of Pakistan**, (PLD 2012 SC 132), it was held that *"meaning of the Constitution is to be aggregated from the Constitution as interpreted in the rule based on reason."*

49. It is not out of place to reproduce the oath required to be taken at the time of acquiring citizenship of Britain and United States respectively.

"I will give my loyalty to the United Kingdom and respect its rights and freedoms. I will uphold its democratic values. I will observe its laws faithfully and fulfill my duties and obligations as a British citizen."

UNITED STATES

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or

sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God."

50. We have also noted that Members of the National Assembly have taken oath under Article 65 of the Constitution, whereby they have undertaken that they will perform their functions honestly always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan and will preserve, protect and defend the Constitution, whereas on the other hand, at the time of acquiring citizenship of United States of America they have taken oath that they will bear true faith and allegiance to the US Constitution and will bear arms on behalf of the United States when required by the law, etc.

51. The issue, whether a person holding citizenship of a foreign state is qualified to contest the election or not, had come for consideration before the Lahore High Court, in the case of **Umar Ahmad Ghumman versus Government of Pakistan and others**, (PLD 2002 Lahore 521), wherein a learned Judge of this Court, Hon'ble Mr. Justice Tassaduq Hussain Jillani, as a Judge of the Lahore High Court, held that:-

"38. The contention of the petitioner's learned counsel was that the petitioner is qualified to contest the general election for the membership of the Parliament in terms of Article 62 of the Constitution which pertains to qualifications for a member of the Parliament. According to learned counsel for the petitioner, in absence of any bar for a dual national prescribed in Article 62 of the Constitution, petitioner is qualified to contest the elections and that the disqualification enumerated in Article 63(1) (c) of the Constitution comes into force only when a person has been elected as Member of the Parliament.

39. The above interpretation of the Constitutional provisions is a rather over simplification and would lead to anomalous results. Article 63(1) (c) of the Constitution explicitly mandates that "a person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State". Thus the disqualification comes into play the moment a person becomes a candidate or seeks election. This Court has declared petitioner to be a citizen of Pakistan but every citizen of a State is not allowed to contest the election. The qualifications and disqualifications have been enumerated in the Constitution and by the law of the land. Since the petitioner has admittedly acquired citizenship of a foreign country, he is hit by the afore-referred provision and cannot contest elections unless, of course, he removes this disqualification in terms of rule 19 of the Pakistan Citizenship Rules, 1952."

Now we will deal with the matter related to respondents.

52. Ms. Farah Naz Isfahani, MNA; Ch. Zahid Iqbal, MNA; Ms. Nadia Gabol, MPA; Ms. Amna Buttar, MPA and Mr. Jameel Ahmed Malik, MNA and Dr. Ahmed Ali Shah, MPA have not denied that at the time when they submitted their nomination papers, they were holding citizenship of a foreign

state, made statement on oath that they are qualified under Article 62 (1) of the Constitution as well as not disqualified under Article 63 (1) of the Constitution, apparently knowing well that a person holding citizenship of a foreign state is disqualified from being elected or chosen as a member of the Majlis-e-Shoora (Parliament). They apparently made a false statement.

53. As regards Mr. Zahid Iqbal, MNA, vide order dated 18-3-2012, learned ASC appearing for Mr. Zahid Iqbal, MNA was directed to file evidence/documents/certificate issued by the competent authority in terms of British Nationality Act, 1981 to the effect that he is not a citizen of UK but he failed to do so till date despite giving time, thus we have no option but to believe that Mr. Zahid Iqbal, MNA, is holding citizenship of United Kingdom, having Passport No. 300997046 of Britain.

54. In CMA No. 2382 of 2012 filed by Malik Waheed Anjum, ASC The Learned Counsel categorically stated that Mr. Farhat Mehmood Khan, MNA is holder of USA Passport No. 470939019, Dr. Muhammad Ashraf Chouhan, MPA is holder of British Passport No.202052945, Nadia Gabol, MPA is holder of British Passport No.706860392. These Members of the Parliament have not disputed the question of holding dual citizenship of a foreign State despite service, therefore, we have no option but to hold that at the time of submitting of their nomination papers they were disqualified and ineligible to file the same and apparently have made false statements while submitting their nomination papers.

55. Mr. Jamil Ahmad Malik, MNA, has not denied that he is a holder of citizenship of Netherland, however, stated that he has acquired citizenship after attaining the age of majority as he was adopted by his uncle when he was minor who was citizen of Netherland.

56. Article 102 of the Indian Constitution, disqualified a person if he "voluntarily" acquired citizenship of a foreign State whereas Article 63 (1) (c) of the Constitution has specified disqualification if any person who whether voluntarily or not, acquired citizenship of a foreign State from being member of Parliament. The contention of learned ASC that his client has not acquired citizenship voluntarily and cannot be disqualified, thus has no force.

57. As regards Ch. Waseem Qadir, MPA though learned counsel has appeared on his behalf and on one date of hearing he has also appeared in person and handed over Pakistani Passport to Court Associate but till date no CMA has been filed denying the allegation that he is not holder of citizenship of any foreign State.

58. Ch. Nadeem Khadim, MPA has also not filed any CMA to dispute that he is not a holder of citizenship of any foreign State.

59. As regards Mr. Sabir Ali Baloch, Senator, Malik Waheed Anjum, learned ASC, has filed CMA No.2382 of 2012 wherein he has alleged that he (Mr. Sabir Ali Baloch, Senator) is a holder of dual citizenship but he has not mentioned the name of the State of which he is holding citizenship and no material

in support of his contention has been produced, thus request to the extent of Mr. Sabir Ali Baloch, Senator to declare him disqualified being holder of dual citizenship, is declined.

60. Ms. Anusha Rehman, MNA in reply has stated that she is a citizen of the Islamic Republic of Pakistan by birth and this is the only citizenship/nationality which she has held, and still holds and that she belongs to one of the oldest families hailing from Lahore, Mr. Waheed Anjum, petitioner also withdrew his allegation against Ms. Anusha Rehman thus to her extent the proceeding is also dropped.

61. The proceedings against Sardar Shahjehan Yousaf, MNA and Ch. Iftikhar Nazir, MNA are also dropped, as learned counsel does not press his allegations of holding dual citizenship, and tenders apology.

62. Khawaja Muhammad Asif, MNA has appeared and categorically questioned the allegation leveled against him. Learned ASC dropped the allegation leveled against him. He has also dropped allegation against Abdul Hafez Sheikh, Senator that he is holder of dual nationality.

63. As far as the matter relating to Mr. Tariq Mehmood Alloana, MPA is concerned, serious allegations were leveled against him. In support of his contentions Malik Waheed Anjum learned ASC has placed on record letter No. FIA/IBMS/Supreme Court/Qurey/1521 wherein it was affirmed that on the basis of particulars mentioned, the closest travel history of the person has been found in the system and

R-11 Form. It is alleged that he was a US National and also that he travelled on the US passport.

64. On our direction, Mr. Muhammad Azam Khan, Director (Law), FIA submitted a report, contents whereof are reproduced herein-below:-

- "1. That Malik Waheed Anjum learned ASC submitted an application to DG, FIA for the provision of travel history of Tariq Mehmood son of Lal Khan passport No.211267712. in this application the following two Pakistani passports Nos. allegedly belonging to Tariq Mehmood were also mentioned for the said purpose.*
 - a. CW151051*
 - b. CW0151052*
- 2. That on search of PISCES/IBMS database it transpired that one Tariq Mehmood holding passport No.211267712 landed at Islamabad airport by PK-718 on 14.2.2006 and departed back on 28.2.2006 by PK-717 from Karachi airport.*
- 3. The said Tariq Mehmood holder of American Passport No. 211267712 again entered in Pakistan on 19.07.2008 by PK-718 landed at Islamabad airport and from the same airport, he left the country on 01.08.2008 by PK-715. R11-travel history IBMS data form is attached. (Annex-A).*
- 4. Regarding two Pakistani passports No.CWD0151051 and CW0151052, there is nothing available in Database System about entry or exit of any person on the basis of these passports.*
- 5. On further analysis of the system it transpired that on both the occasions when Mr. Tariq Mehmood Alloana arrived at Islamabad airport, he presented his National Identify Card Overseas Pakistanis (NICOP).*

6. On NADRA database verification of NICOP No. 37201-1113961-7 (Annex. B) the following information has been produced:-
- i. Name Tariq Mehmood
 - ii. Father's name Lal Khan
 - iii. Date of Birth 15.05.1960
 - iv. Country of Stay USA
 - v. Present Address: 1099 Coney, Island Ave. Brooklyn, New Your, 11230 United States.
 - vi. Permanent Address: House No. Bviii-218 Street No.4 Mohallah Sarpak Chakwal, District Chakwal, Pakistan.

Report is submitted, please.

On behalf of Director General

Sd/-

Muhammad Azam Khan

Director/Law

03.07.2012."

65. We have heard Mr. Khawar Mahmood Khattana, ASC and Mr. Malik Waheed Anjum, ASC in detail and vide order dated 04.07.2012, the Additional Registrar of this Court was directed to lodge a criminal complaint against the DG, FIA, the Deputy Director who signed and furnished the incorrect information/documents and all other persons involved, on the strength of this order and annexure hereof. The I.G. Police, Islamabad was also directed to supervise the investigation of the case himself and to submit a report to the Registrar of this Court on weekly basis for our perusal in Chamber.

66. Malik Waheed Anjum, ASC who filed CMA No. No.2382 of 2012 alleging that Khawaja Muhammad Asif, MNA, Mr. Abdul Hafeez Sheikh, Senator, Ms. Anusha Rehman, MNA.

Ch. Iftikhar Nazir, MNA, Mr. Sabir Ali Baloch, MNA and Mr.M. Tariq Asad, ASC have filed CMA No. 2487 of 2012 praying that Sardar Shahjehan Yousaf, MNA is holding the citizenship of UK, tendered their apology to these Parliamentarians and regretted for the inconvenience caused to them. We in view of the acceptance of the apology by the learned counsel/respondents, are not imposing cost for filing application against them without any material alleging that they are holding dual citizenship, however, it is expected that in future they (learned counsel) will be more careful

67. Keeping in view the principle of Interpretation of Statute/Constitution, as briefly discussed here-in-above, Article 63 (1) (c) of the Constitution read with Section 14 of the Pakistan Citizenship (Amendment) Act 1972 (Act XVII of 1972), we have no doubt in our mind that a person holding dual citizenship is disqualified from being elected or chosen as member of the Majlis-e-Shoora (Parliament).

68. Now we will deal with the case of Mr. A. Rehman Malik, Senator. Admittedly he was holder of Nationality of U.K. It is not disputed by him that he (Mr. A. Rehman Malik, Senator) acquired citizenship of U.K, however, he alleged that he has renounced his citizenship of UK on 25.03.2008 and a letter dated 19.04.2012 was placed on record in support of his contention that he had renounced his citizenship of U.K. on 25.03.2008 and we would like to reproduce the contents of the said letter which reads:-

"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)

69. We have repeatedly asked and granted sufficient
time and opportunity to learned counsel for Mr. A. Rehman
Malik to produce certificate issued by the U.K. Border Agency
in terms of section 12(1) of the British Nationality Act, 1981
confirming that he had renounced his citizenship of UK on
25.03.2008 as alleged and he is no more citizen of U.K.

70. Learned counsel appearing on his behalf placed on record letter dated 29.05.2012 issued by the UK Border Agency. Contents of the same are 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"

71. From the certificate issued by the UK Border Agency, it appears that they have informed Mr. A. Rehman Malik on 29.05.2012 that *"you are now registered as having renounced British Citizenship"*. They have enclosed the Declaration of renunciation bearing a stamp of registration, the date on which he ceased to be a British Citizen under Section 12(1) of the British Nationality Act, 1981, however, said declaration of renunciation had not been placed on record despite we repeatedly asked that the same may be placed on record.

72. From bare reading of the said letter dated 29.05.2012 by U.K. Border Agency, it appears that Mr. A. Rehman Malik has been registered as having renounced British Citizenship on 29.05.2012. This aspect of the matter has already been discussed in our short order, thus need not be discussed in detail again but suffice it to say that apparently for this reason realizing legal position, he has resigned from membership of the Parliament on 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.

73. In the case of **Muhammad Azhar Siddiqui versus Federation of Pakistan**, (PLD 2012 SC 774, in an additional note it was held by Hon'ble Mr. Justice Jawwad S. Khawaja that:-

*"The people have thus, in the clearest possible terms, stated that they will not allow themselves to be represented by a person who has or earns a disqualification under Article 63
ibid.*

74. This Court in the judgment reported as **Muddasar Qayyum Nahra versus Ch. Bilal Ijaz and others**, (2011 SCMR 80) quoted with approval, the paragraphs No. 21 & 22 of an earlier judgment pronounced by this Court, and reported as **Ch. Bilal Ijaz versus Mudassar Qayyum Nahra and 4 others**, (2010 CLC 1692) which reads as under: -

"21. The concept of inserting Article 62 clause (f) in the Constitution is very purposeful; Constitution of Islamic Republic of Pakistan,

1972 cannot be said to have incorporated the said clause without any meaningful objective. The holders of Public offices like members of National and Provincial Assemblies are expected to be persons of unimpeachable character. The terms used in clause (f) of Article 62 of the Constitution of Islamic Republic of Pakistan, 1973 need to be understood and implemented in order to stop dishonest and cheatful persons from entering into the corridors of the National and Provincial Assemblies. The words written in clause (f) are thus reproduced below which are denied and interpreted in well known English Dictionaries as are available on web-side (site)/internet with universally accepted meanings:--

Sagacious

- (i) Skillful in statecraft or management
- (ii) Marked by artful prudence expedience and shrewdness.
- (iii) Having prompt wisdom.
- (iv) A wise leader.
- (v) Insightful; foresighted

Righteous

- (i) Morally upright, without guilt or sin.
- (ii) Characterized by accepted standard of morality or justice
- (iii) Good: morally admirable.
- (iv) Clean handed; guiltless.
- (v) Just: Used, especially of what is legally or ethically right of proper or befitting
- (vi) Moral: concerned with right and wrong or conforming to standards of behavior: morally excellent worthy.
- (vii) Virtuous; morally excellent worthy.
- (viii) Worthy; having worth or merit or value; being Hon'ble or admirable.
- (ix) Honest; blameless.

Non profligate

- (i) Recklessly wasteful.
- (ii) Wildly extravagant.
- (iii) Shamelessly immoral or debauched.
- (iv) Spendthrift.
- (v) Prodigal in their expenditures.
- (vi) Squandering

Honest:

- (i) Displaying integrity; upright.
- (ii) Not deceptive or fraudulent.
- (iii) Characterized by truth; not false.
- (iv) Sincere.
- (v) Not given to cheating.

Ameen (An Arabic word)

Meaning:

Trustworthy; faithful.

22. The concepts projected in using all the above terminology is not difficult to understand. It demonstrates a keen desire of the Constitution that persons desiring to engage themselves in the process of law making for the country must themselves be possessed with High qualities of personal character and moral values. A legislator who indulges into unfair means in earning or procuring his educational documents cannot be termed to be possessing the required standards of high personal characteristics mentioned in clause (f) of Article 62 of the Constitution of Islamic Republic of Pakistan, 1973. Members of the National or Provincial Assemblies on their successful election have been further obliged to take oath as incorporated in the third schedule of the Constitution, with necessary condition of undertaking the performance of the duties and functions honestly in accordance with constitution. Elected members are further likely

to be entrusted with the other high and onerous offices of the Prime Minister, Federal Minister, Speaker of the National and Provincial Assemblies, Deputy Speakers of the National and Provincial Assemblies and Chief Ministers of the Provinces. The swearing of solemn oath from such holders of public offices are also prescribed in the Constitution requiring similar performances of duties and functions with honesty and also to be faithful to the Constitution and the law. 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 (the) competent authority are allowed to be given any entry into the doors of National or Provincial Assemblies or (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 in-charge of the National Exchequer (Exchequer) or be eligible to represent the people of Pakistan.'

75. In the case of Iftikhar Ahmad Khan Bar versus Chief Election Commissioner Islamabad and others, (PLD 2010 SC 817) it was held that:-

"An 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...posting 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."

76 From facts noted herein-above, what appears is that respondent was holding of citizenship of a foreign State, made statement on oath that he is qualified under Article 62(1) (c) of the Constitution and not disqualified under Article 63 (1) of the Constitution apparently made false statement.

77. For ease of reference, we would like to reproduce para Nos: 17, 18 and 19 of our short order which read as under:-

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

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."*

78. As regards the contention of learned Attorney General for Pakistan that no disqualification has been provided for other important Constitutional posts like the President, Governors, Chief of Army Staff, Judges of the superior Courts and Auditor General. Since this issue is not before us, we are not expressing our opinion on it except to say that in terms of Article 41 (2) of the Constitution only a person who qualified to be elected as a Member of the National Assembly can be elected as a President in accordance with provision of 2nd Schedule by the members of the electoral college consisting of members of both the houses and the members of the Provincial Assemblies and that it is for the Legislature to decide, whether to amend the Constitution/Law if they in their wisdom decided that on the other constitutional posts, persons holding citizenship of a foreign state are not qualified to hold such posts.

Is petition maintainable under Article 184(3) of the Constitution

79. Although the question of maintainability of petition under Article 184(3) of the Constitution has not seriously been argued by the learned counsel for the respondents, the issue in the petition about the disqualification of a person to be a Member of Parliament, the State has to exercise its powers and authority through the chosen representatives of the people and Parliament one of the noblest, honourable and important

institutions of the Country to make the laws for the nation and safeguard their fundamental rights, is a question of public importance.

80. The expression "public importance" has been interpreted in a number of cases including Manzoor Elahi versus Federation of Pakistan, (PLD 1975 SC 66), General Secretary, West Pakistan Salt Miners Labour Union (CBA), Khewra, Jhelum versus Director Industries and Mineral Development, Punjab, (1994 SCMR 2061) and Mrs. Shahida Zahir Abbasi versus President of Pakistan, (PLD 1996 SC 632). It is quite clear that the question as to whether a particular case involves the element of '*public importance*' is to be determined by this Court with reference to the facts and circumstances of each case.

81. For what has been discussed above, 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.

82. 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.

83 In view of the above, the titled Constitution Petition is disposed of in the above terms.

84. These are the reasons of our short order.

Chief Justice

Judge

Judge

Islamabad

Approved for reporting

Jawwad S. Khawaja, J. I have had the benefit of going through the reasoning of my learned brother Khilji Arif Hussain, J. in support of the short order dated 20.9.2012. I am in agreement with his conclusions but am adding this concurring opinion giving my additional reasons in support of the said order.

2. At the outset it is necessary to set out with clarity the precise issue before us: Does our Constitution permit a citizen of Pakistan, who also acquires the citizenship of another State, to become a member of Pakistan's Parliament or of a Provincial Assembly? The Constitution's answer to this question is a simple "No". The basis for this is Article 63(1)(c) which states in the clearest terms that: "[a] person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if: ... (c) he ... acquires the citizenship of a foreign State..." Article 63(1)(c) also receives strong textual support from other parts of the Constitution as elaborated later in this opinion. On account of Article 113, the disqualification stated in Article 63(1)(c) also extends to members of the provincial assemblies. This constitutional imperative should have been clear to all from the very beginning; but clearly, like some other constitutional dictates, it had not been adhered to. As far back as 2002, in the case titled Umar Ahmad Ghumman versus Government of Pakistan and others (PLD 2002 Lahore 521), it was held that a Pakistani who has acquired the Citizenship of a foreign State is disqualified from membership in Parliament or a Provincial Assembly. Today, in deciding the petition presently before us, we have done nothing more than to give effect to this rule which already exists in the Constitution.

3. We reiterate that the dual citizenship held by expatriate and overseas Pakistanis is not the issue requiring adjudication in this case. The learned Attorney General and counsel representing some of the respondents appear

to have confused dual citizenship with the Constitutional disqualification contained in Article 63(1)(c) *ibid*. We may clarify that section 14(1) of the Citizenship Act, 1951, confers upon Pakistani citizens the right to hold the citizenship of certain other countries without having to forgo their Pakistani citizenship. The right, therefore, of Pakistani citizens to hold dual citizenship, as per law, remains very much a statutory right vested in them. The extent and scope of that legal right has no relevance to the question of disqualification relating to eligibility for being a member of Parliament or of a Provincial Assembly.

4. In fact, on numerous occasions in the recent past, this Court has expressed the national sentiment of gratitude for our expatriates, estimated to be in the range of 7 to 8 million in number. Most of them, particularly those working in Middle Eastern countries do not hold dual citizenship. These sons and daughters of Pakistan toil in foreign lands, away from their hearths, homes and loved ones and, in the process, provide an economic lifeline to Pakistan in these critical times. In the last financial year, these overseas Pakistanis remitted more than US\$ 13 billion in hard cash, to bolster the economy of the country. This figure is slated to increase in the current financial year. Yet, at times, these hardworking and patriotic Pakistani expatriates receive short shrift and humiliating treatment from government agencies such as the Immigration and other services, Civil Aviation Authority (CAA) and the Overseas Pakistanis Foundation (OPF), when they return to Pakistan after months or even years away from home. This Court has taken *suo moto* notice (HRC No. 24770-G/2011) of the maltreatment which overseas Pakistanis receive at the hands of such authorities.

5. The particulars of the petitioners, interveners and the respondents and the arguments presented by them have been sufficiently addressed in the

lead opinion. The reasons for considering the present petitions maintainable are also evident. The text of the Constitution is clear enough. It plainly disqualifies a person from seeking election to or from being a member of Parliament if he acquires the citizenship of another State. What is, however, worth emphasizing is also the spirit behind Article 63 (1)(c) *ibid*. This becomes clear when we read the article together with certain other relevant provisions of the Constitution. Courts in Pakistan have, repeatedly, held that the Constitution is to be read as an organic whole, whose meaning is to be gathered holistically through reason (*Munir Bhatti v. Federation of Pakistan* PLD 2011 SC 407). This is why it is a matter of utmost importance that the spirit behind Article 63(1)(c) is also fully comprehended, when interpreting and applying its clear intent.

6. When trying to understand the spirit behind Article 63(1)(c), the first point that needs to be considered is the fiduciary role envisaged for members of Parliament in our Constitution. In a number of judgments, we have emphasized the notion that all state authority is in the nature of a “*sacred trust*” and its bearers should therefore be seen as fiduciaries. In *Muhammad Yasin v. Federation of Pakistan* (PLD 2012 SC 132), we held that “*holders of public office ... are, first and foremost fiduciaries and trustees for the People of Pakistan. And, when performing the functions of their Office, they can have no interest other than the interests of the honourable People of Pakistan ...*”. Parliamentarians, while acting as trustees and the chosen representatives of the people, take decisions which are often of grave consequence for the protection of the economic, political and over-all national interests of the people of Pakistan. In other words, theirs is a fiduciary duty of the highest order. In our Parliamentary democracy, members of Parliament also

constitute the Government as defined in Article 90 of the Constitution and elect the Prime Minister who is the chief executive of the country.

7. It is well settled that the foremost obligation of a fiduciary is to show complete loyalty to the principal and to scrupulously avoid situations which may create a conflict of interest in the performance of such duty. Cognizant of this principle, our Constitution requires constitutional functionaries including members of the National Assembly, Senators and members of Provincial Assemblies to solemnly swear that they will *"bear true faith and allegiance to Pakistan"* and act *"always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan."* (Third Schedule, Constitution)

8. It should be obvious that holding dual citizenship is likely to create situations for the holder where he faces a conflict of interest in the discharge of fiduciary duty to the people of Pakistan. The conflict of interest is particularly evident when the acquisition of foreign citizenship entails taking an oath of allegiance to the foreign state and renunciation of allegiance to Pakistan. Thus, for instance, when Ms. Farah Naz Isfahani (and others such as her) acquired citizenship of the United States, she swore an oath to bear *"true faith and allegiance to"* the United States, to *"bear arms"* on its behalf and to *"renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign ... state..."* such as Pakistan. This oath is a statutory requirement stipulated in the United States Code. Its present wording was introduced by the Immigration and Nationality Act, 1952 and cannot be waived except in very rare circumstances, such as being a minor or of unsound mind. Similarly, when Mr. A. Rehman Malik (and others such as him) acquired British citizenship, he swore *"by Almighty God that on becoming a British citizen [he] will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors ..."* and that he will give his *"loyalty to the*

United Kingdom.” Clearly, oaths of this nature, do conflict with the fiduciary obligation of unswerving and undivided loyalty to Pakistan and its people. It is hard to see how someone who has openly “*renounce[d] and abjure[d]*” all allegiance to Pakistan or who has sworn allegiance to a foreign monarch, can then be safely entrusted with the “*sacred trust*” of protecting the interests of the people of Pakistan. In sum, therefore, acquiring the citizenship of a foreign state does create a serious conflict of interest; such conflict of interest renders a person unsuited for discharging a fiduciary duty as onerous as being a public representative. This is precisely the spirit in which the framers have enacted Article 63(1)(c) of the Constitution, which prevents citizens who acquire the citizenship of another state from entering or remaining in Parliament and in the Provincial Assemblies.

9. The conflict of interest situation anticipated in the Constitution is not imaginary. It is a real proposition and can easily be illustrated through an issue which is current and topical. In the case of Ms. Farah Naz Isfahani, for instance, the implications of her oath of allegiance to the United States may be contemplated. Debate within and outside Parliament has highlighted the differences between the two States (of which Ms. Isfahani has citizenship) on a number of issues such as drone strikes by the United States, on Pakistani territory and citizens. There exist or may arise similar differences between the two States. Situations like these do put dual citizens like Ms. Isfahani into possible conflict of interest. On the one hand, she is committed to “*perform[ing] her functions... in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan*”, even if that entails consequences which are adverse to the interests of the United States. At that same time, she is also expected to “*renounce ... all allegiance and fidelity to*” Pakistan and, if the need arises, “*bear arms on behalf of the United States*” against Pakistan. The framers

of our Constitution were clear enough to have found us a way out of such conflict of interest situations by expressly specifying the disqualification stated in Article 63(1)(c) and thus ensuring that there remain no doubts as to the undivided loyalty of elected representatives, towards Pakistan and its honourable people.

10. In this context we may also add that Interior Minister Mr. A. Rehman Malik was reported to have made a statement that even after our short Order dated 20.9.2012, there still remain in the houses of Parliament, persons who are dual nationals. Notice was issued to Mr. A. Rehman Malik after examination of the transcript of his statement. He appeared in Court and stated that he will task "his boys" in the Ministry of Interior who can then submit in Court a list of persons in Parliament/Provincial Assemblies holding dual citizenship. The Election Commission of Pakistan is also in the process of gathering information about such disqualified persons as has been reported in the media to ensure adherence to the Constitution. It is of the utmost importance that actions and decision-making in the highest elected bodies are not tainted and possibly rendered subject to constitutional challenge, on account of the presence of disqualified persons in such elected bodies.

11. We are aware that the question of the eligibility of dual citizens for holding office as public representatives has been dealt with somewhat differently by the Constitutions of other countries. In **India**, the very act of holding dual nationality is constitutionally barred. The Indian Constitution explicitly states: "*... no person shall be a citizen of India... if he has voluntarily acquired the citizenship of any foreign State*" (Article 9, Constitution of the Republic of India, 1950). Since no Indian citizen can be a dual citizen, dual citizens are also precluded from holding elected office. It may be noted that

up until the Pakistan Citizenship (Amendment) Act, 1972, the law in Pakistan also did not allow for holding dual citizenship. It is for this reason the Constitutions of 1956 and 1962 did not contain any express disqualification for dual citizens becoming parliamentarians because there were no dual citizens permitted under law. Permission for holding dual citizenship was legally granted in 1972 through the above-mentioned statute. The Constitution of 1973, therefore, contained Article 63(1)(c) to ensure that citizens of Pakistan who acquire dual citizenship, do not sit in Parliament. The wisdom of the framers of the Constitution is founded on the requirement of absolute and undiluted loyalty to Pakistan as a qualification for having the privilege of being a chosen representative of the honourable people of Pakistan. In **Australia** too, any person who is "*under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen ... of a foreign power...*" is disqualified from becoming a Senator or a member of the House of Representatives (Section 44 (i), Commonwealth of Australia Constitution Act). There may be States where dual citizenship will not disqualify the holder from being elected as a legislator. Pakistan, however, is not among such States.

12. The upshot of this brief over-view of comparative constitutional law is that the framers of the Constitution in different countries strike a balance between competing interests in the light of their own context. The balance struck by the Constitution of Pakistan is that it does not disallow dual citizenship, but it does prohibit dual citizens from holding high elected office. Anyone familiar with the tragic episodes of Pakistan's history would recognize why the framers adopted a careful position in this matter, and why this is an eminently reasonable position in our context.

13. To sum up, it should be clear that we do not question the citizenship rights of dual citizens under statute, nor does this Court seek to ignore their invaluable services to the nation. In fact, as noted above, the Court has taken a number of initiatives to ensure the well-being of overseas Pakistanis, some of whom might also be dual citizens. It is only the privilege of sitting in Parliament and the Provincial Assemblies and the honour of being decision-makers on behalf of the people of Pakistan which the Constitution, vide Articles 63(1)(c) and 113 requires, be given to persons who are not the citizens of another State. This is so because as discussed, in view of the onerous fiduciary duties of public representatives, the Constitution recognizes the special need to avoid all possible conflict of interest situations in the elected bodies of the country.

(Jawwad S. Khawaja)
Judge

جوابدائیں خواجہ، منج

1- میں نے 20.09.2012 کے مختصر حکم کی تائید میں فاضل برادر جسٹس خلیجی عارف حسین کے تفصیلی فیصلے سے استفادہ کیا ہے۔ میں ان سے متفق ہوں۔ یہ اضافی نوٹ ان کے فیصلے کی تائید میں لکھ رہا ہوں۔

2- اس مقدمے میں ہمارے پیش نظر جو آئینی سوال ہے اس کو واضح طور پر سمجھنا ضروری ہے۔ سوال یہ ہے کہ آیا ہمارا آئین کسی ایسے پاکستانی کو پارلیمان یا صوبائی اسمبلیوں کی رکنیت کا نا اہل قرار دیتا ہے جس شہری نے کسی اور ملک کی شہریت بھی حاصل کی ہو؟

3- آئین میں اس سوال کا واضح اور غیر مبہم جواب یہ ہے کہ ایسا شخص جو کہ دوہری شہریت رکھتا ہو پارلیمان اور صوبائی اسمبلیوں کی رکنیت کیلئے نا اہل ہے۔ آئین

کے آرٹیکل 63 کی شق (c) (1) سے یہ بات پارلیمان کی بابت واضح ہے اور جب اس شق کو آرٹیکل 113 کے ساتھ پڑھا جائے تو اسی عدم اہلیت کا اطلاق صوبائی اسمبلیوں کی رکنیت پر بھی ہو جاتا ہے۔ یہ آئینی نکتہ روز اول سے سب پر عیاں ہونا چاہیے تھا لیکن چند دیگر آئینی احکامات کی طرح اسے بھی عرصہ دراز تک کما حقہ اہمیت نہیں

دی گئی۔ مزید یہ کہ اس نکتے کی وضاحت شروع دن سے ہی آئین میں موجود ہے اور عدالت نے اپنے فیصلے کے ذریعے اس کا صرف اطلاق کیا ہے۔ یہاں پر یہ بھی کہنا ہے جا

نہیں کہ آج سے تقریباً دس سال قبل **عمر احمد گھمن بنام حکومت پاکستان وغیرہ** (PLD 2002 Lahore 521) میں لاہور ہائی کورٹ نے دوہری شہریت رکھنے والے اشخاص کی اہلیت اور نا اہلیت کے بارے میں یہی فیصلہ دیا تھا۔

4- ہم یہ بھی واضح کر دینا چاہتے ہیں کہ آئینی سوال جو ہمارے پیش نظر ہے وہ پارلیمان اور اسمبلیوں کی رکنیت کے بارے میں ہے نہ کہ دوہری شہریت کی بابت۔

فاضل انارنی جزل اور چند مسؤل علیہم کے فاضل وکلاء اپنی بحث کے دوران ابہام کا شکار نظر آئے کیونکہ انہوں نے اپنے دلائل کچھ اس طرح سے پیش کئے جیسے سائل

مقدمہ نے دوہری شہریت کو اپنا ہدف بنایا ہے۔ ہم یہ بات ابتداء میں ہی واضح کر دینا چاہتے ہیں کہ کوئی بھی پاکستانی شہری پاکستان کے شہریت ایکٹ 1951 کے تحت ایسی

بیرونی ریاست کی شہریت قانوناً حاصل کر سکتا ہے جس کی اجازت شہریت ایکٹ کی دفعہ 14 کے تحت دی گئی ہو اور ایسی صورت میں اس شخص کو پاکستانی شہریت چھوڑنا لازم

نہیں۔ لہذا بمطابق شہریت ایکٹ دوہری شہریت رکھنا کسی بھی پاکستانی شہری کا قانونی حق ہے۔ اس استحقاق کا ممبران پارلیمنٹ و صوبائی اسمبلیوں کی اہلیت کے سوال سے

براہ راست تعلق نہیں۔ اگر دوہری شہریت کا حامل پاکستانی شہری پارلیمان کی رکنیت کا امیدوار نہیں تو پھر وہ اس پینشن کے مندرجات اور اس میں مانگی دادرسی کا ہدف نہیں۔

5- حال ہی میں متعدد بار اس عدالت نے اس بات پر زور دیا ہے کہ بیرون ملک محنت کرنے والے پاکستانیوں کے ملک اور قوم پر بہت احسانات ہیں۔ ایسے

پاکستانیوں کی تعداد اندازاً 70 لاکھ سے 80 لاکھ ہے۔ ان میں سے بیشتر ایسے ہیں جو دوہری شہریت کے حامل نہیں۔ پاکستان کے یہ حب الوطن فرزند اپنے گھر بار اور اپنے

پیادوں سے دور مصروف عمل ہیں اور اقتصادی مشکل کی اس گھڑی میں پاکستان کی معیشت کا سہارا ہیں۔ گذشتہ مالی سال میں ان سمندر پار پاکستانی شہریوں نے 13 ارب ڈالر سے زائد رقم اپنی محنت اور خون پسینے کی کمائی سے پاکستان بھجوائی ہے۔ موجودہ مالی سال کے دوران اس رقم میں مزید اضافے کا تخمینہ لگایا گیا ہے۔ عدالت نے اس سے پیشتر بار بار فسوس ظاہر کیا ہے کہ ان تمام قربانیوں اور خدمات کے باوجود سمندر پار پاکستانی شہریوں کو حکومتی اداروں میں خاطر خواہ پزیرائی نہیں ملتی۔ اس وجہ سے جب یہ پاکستانی شہری واپس وطن لوٹتے ہیں تو بسا اوقات انہیں حکومتی اداروں مثلاً کسٹم، (Immigration) 'ادارہ شہری ہوابازی (CAA) اور اپنی ایف (OPF) کی جانب سے ناروا سلوک اور بے حسی کا سامنا کرنا پڑتا ہے۔ حال ہی میں عدالت نے اس بات کا ازخود (suo motu) نوٹس بھی لیا ہے

(H.R.C No 24770-G/2011 ملاحظہ ہو)۔

6۔ فاضل جج صاحب جناب جسٹس خلیلی عارف حسین کے فیصلے میں درخواست گزار دیگر سالان اور مسئول علیہان کے کوائف اور ان کی جانب سے پیش کردہ دلائل بخوبی بیان کیے گئے ہیں۔ موجودہ درخواست کو آرٹیکل (3) 184 کے تحت قابلِ سماعت سمجھنا اور اس معاملے کو پیکیج کے حوالے نہ کرنے کی وجوہات کی وضاحت بھی کی جا چکی ہے۔ اس سلسلے میں متعدد عدالتی نظائر کا حوالہ دیا گیا۔ وہ بحث یہاں دہرانا مفید نہیں۔ ویسے بھی آئین کا متن از خود واضح ہے جس کے تحت دہری شہریت کے حامل افراد کو رکن پارلیمنٹ یا رکن صوبائی اسمبلی بننے کی اجازت نہیں۔ یہاں جس نکتے کی تشریح مقصود ہے وہ آرٹیکل (c) (1) 63 کے پس پردہ اس شق کی روح ہے۔ جب ہم متذکرہ آرٹیکل کو آئین کی دیگر شقوں کے ساتھ ملا کر پڑھتے ہیں تو اس کے پیچھے محرک جذبہ ابھر کر سامنے آتا ہے۔ آئین کی تشریح کا یہ اصول ہم پہلے بھی واضح کر چکے ہیں کہ آئین کو مربوط لاکائی کے طور پر پڑھا جانا چاہیے۔ (مُنیر بھٹی بنام فیڈریشن آف پاکستان (PLD 2011 SC 407)۔ آرٹیکل (c) (1) 63 کا اطلاق کرتے وقت بھی اس آرٹیکل کی بنیادی روح و فکر کو سمجھنا از حد ضروری ہے۔

7۔ اس روح و فکر کو نمایاں کرتے ہوئے پہلا نکتہ ارکان پارلیمنٹ کو دیا گیا امانتی کردار ہے۔ گزشتہ فیصلوں میں ہم نے اس بات پر زور دیا ہے کہ تمام ریاستی اختیارات ایک "مقدس امانت" کی مانند ہیں اور جس کسی کو بھی آئین و قانون کے تحت اختیارات حاصل ہیں اسے ان اختیارات کے امین کے طور پر فرائض منصبی سرانجام دینے ہیں۔ مقدمہ محمد یسین بنام فیڈریشن آف پاکستان (PLD 2012 SC 132) میں ہم نے یہ واضح کر دیا تھا کہ "سرکاری اختیارات رکھنے والے اولین طور پر پاکستانی عوام کے امانت دار ہیں اور سرکاری فرائض کی انجام دہی کے دوران وہ پاکستانی عوام کے مفاد کے علاوہ کسی اور قسم کے مفادات کو پیش نظر نہیں رکھ سکتے"۔ ارکان پارلیمنٹ اپنے اختیارات استعمال کرتے ہوئے کئی ایسے فیصلے کرتے ہیں جن کے نتیجے میں پاکستانی قوم کی سماجی، سیاسی اور معاشی زندگی متاثر ہوتی ہے۔ بالفاظ دیگر وہ ایک گراں قدر سرمایہ اور ذمہ

داری کے امین ہیں۔

8۔ قانون کا مسلّمہ اصول ہے کہ امانت دار امانت سوچنے والے سے مکمل وفاداری کرے۔ اُس پر لازم ہے کہ ہر ایسے مقام سے دور رہے جہاں اُس کی وفاداری بٹ جانے کا

اندیشہ ہو۔ اسی اصول کے پیش نظر ہمارا آئین میرا پارلیمنٹ کو پابند کرتا ہے کہ وہ اپنی ذمہ داریاں سنبھالتے وقت پاکستان سے غیر مشروط وفاداری کا حلف لیں۔ اس حلف میں یہ اقرار

بھی شامل ہے کہ وہ پاکستان کے سچے وفادار ہوں گے اور " وہ ہمیشہ پاکستان کی خود مختاری ، سالمیت ، بہتری اور خوشحالی کے لئے عمل

پیرا رہیں گے "۔

9۔ دوہری شہریت رکھنا بذاتِ خود پاکستان کے قانون کی خلاف ورزی نہیں۔ مگر یہ ایک ایسا امر ضرور ہے جس میں شہری کی وفاداری بھی اس کی شہریت کی طرح دہری ہونے

کا خدشہ ہو سکتا ہے اور یہ امکان پیدا ہو سکتا ہے کہ مفادات اور وفاداریوں کا ٹکراؤ واقع ہو۔ مفادات میں یہ ٹکراؤ بالخصوص تب عیاں ہوتا ہے جب کوئی غیر ملکی شہریت حاصل کرتے ہوئے

اُس ریاست کے ساتھ وفاداری اور پاکستان کے ساتھ ترک وفا کا حلف لے۔ محترمہ فرح ناز صفحہ 1 کی مثال ہمارے سامنے ہے۔ جب انہوں نے امریکہ کی شہریت حاصل کی تو انہوں

نے حلفاً اقرار کیا کہ " امریکہ کے ساتھ وفادار رہیں گی " اس کے لئے ہتھیار اٹھائیں گی اور کسی بھی دوسری ریاست (مثلاً پاکستان)

کے ساتھ وفاداریاں مکمل طور پر ترک کر دیں گی "۔ یہ حلف لینا امریکی قانون کے تحت ضروری ہے اور کسی شخص کو بھی اس سے استثناء حاصل نہیں، ماسوائے نابالغ اور

فاہر العقل لوگوں کے۔ اسی طرح جب جن ملک صاحب اور اُن کی طرح دیگر ارکان نے برطانیہ کی شہریت حاصل کی تو انہوں نے حلف لیا کہ "وہ خدا کو حاضر و ناظر جانتے

ہوئے یہ عہد کرتے ہیں کہ برطانوی شہری بننے کے بعد ملکہ معظمہ الزبتھ اور اُس کی آنے والی نسلوں کے وفادار رہیں گے اور وہ

اپنی تمام وفاداریاں برطانوی سلطنت کے ساتھ وابستہ رکھیں گے "۔ صاف ظاہر ہے اس قسم کا حلف پاکستان اور پاکستان کے عوام کی جانب سے سوئی گئی

امانت سے وفادار رہنے کی راہ میں مزاحم ہوگا۔ آئین کی منشا ظاہر اور واضح ہے کہ جب کوئی پاکستان کے ساتھ اپنی وفاداری حلفاً ترک اور کسی دیگر ریاست سے عہد وفا کر چکا ہو تو اُسے

پاکستانی عوام کے مفادات کے تحفظ کی مُقدس امانت کیسے سوچی جاسکتی ہے۔ مختصر اُکسی دوسری ریاست کی دوہری شہریت رکھنے سے منتخب عوامی نمائندگان کے دہرے مفادات کے ٹکراؤ کا

خدشہ پیدا ہو جاتا ہے دو متضاد حلف ناموں اور مفادات کا ٹکراؤ بطور عوامی نمائندہ امانتی ذمہ داری نبھانے میں حائل ہو سکتا ہے۔ یہی وہ بنیادی وجہ ہے جس کی بناء پر آرٹیکل

(c)(1)63 کو آئین میں شامل کیا گیا۔

10۔ اس سلسلے میں یہ دہراتے چلیں کہ 20/09/2012 کو ہمارے مختصر فیصلے کے اجراء کے بعد وزیر داخلہ جناب عبدالرحمن ملک نے مُہینہ طور پر یہ کہا ہے کہ اب

بھی پارلیمنٹ کے ایوانوں میں کچھ ایسے افراد موجود ہیں جو دہری شہریت کے حامل ہیں۔ اُن کے اس بیان کا تحریری مسودہ دیکھنے کے بعد عدالت نے اُنہیں نوٹس دیا۔

اُنہوں نے عدالت میں یہ بیان دیا کہ وہ وزارت داخلہ میں "اپنے جوانوں (my boys) کو یہ ذمہ داری سونپ دیں گے، تاکہ وہ پارلیمنٹ اور صوبائی اسمبلیوں میں

موجودہ ہری شہریت کے حامل افراد کی فہرست عدالت کو مہیا کریں۔ میڈیا میں شائع رپورٹوں کے مطابق الیکشن کمیشن آف پاکستان بھی ایسے ارکان کا تعین کرنے میں مصروف ہے۔ یہ امر اس لئے ضروری ہے کہ پارلیمانی ایوانوں میں ایسے نااہل اشخاص موجود نہ رہیں جن کی موجودگی سے ان ایوانوں کی کارروائی اور فیصلے قانون اور آئین کی زد میں آجائیں۔

11- مفادات کے ٹکراؤ کی یہ صورت جو کہ آئین میں بیان ہے محض خیالی نہیں بلکہ ایک حقیقی قضیہ ہے۔ مثال کے طور پر محترمہ فرح ناز اصفہانی اور ان جیسے دیگر ارکان کے امریکہ سے عہد وفاداری کے مضمرات پر ذرا غور کریں۔ پارلیمنٹ کے اندر اور باہر ہونے والی بحث میں بہت مرتبہ ان دوریاستوں یعنی پاکستان اور امریکہ کے درمیان اٹھنے والے تنازعات کو اجاگر کیا گیا ہے۔ اس قسم کے حالات دوہری شہریت رکھنے والے ارکان پارلیمان مثلاً محترمہ فرح ناز اصفہانی کے لئے ذہنی الجھاؤ، کھینچا تانی اور منقسم وفاداری کا باعث بن سکتے ہیں ایک طرف وہ پابند عہد ہیں کہ "وہ تمام فرائض پاکستان کی خود مختاری، سالمیت، خوشحالی اور بہتری کے لئے سرانجام دیں گی" چاہے اُس کے اثرات امریکہ کے خلاف ہی ہوں۔ اُسی لمحے دوسرے حلف کی بدولت اُن سے امید بھی کی جاتی ہے کہ وہ کسی دوسری ریاست (ڈبھول پاکستان) سے اپنی تمام تر وفاداریاں ترک کریں اور ضرورت پڑنے پر اُس کے خلاف ہتھیار بھی اُٹھائیں۔ انہی اندیشوں اور امور کی روک تھام کی خاطر آئین نے آرٹیکل (c)(1)63 کی شرط عائد کی۔

12- عوامی نمائندگان کا عہدہ رکھنے کے لئے دوہری شہریت کے حامل افراد کی اہلیت کا سوال دیگر ممالک میں مختلف طریقوں سے دیکھا گیا ہے۔ بھارت میں تو دوہری شہریت رکھنے کی سہولت سے آئین اجازت نہیں دیتا۔ آسٹریلیا میں بھی کوئی شخص جو کہ کسی غیر ملکی طاقت سے وفاداری کا عہد کرتا ہے یا کسی غیر ملکی طاقت کا شہری بننا قبول کرتا ہے وہ سینیٹر یا ایوان نمائندگان کا رکن بننے کی اہلیت نہیں رکھتا (دفعہ 44(i) Commonwealth of Australia Constitution Act)۔ ممکن ہے کہ بعض دیگر ممالک میں معاملہ اس کے برعکس ہو۔ لیکن پاکستان کا ان دیگر ممالک میں شمار نہیں ہوتا۔

13- مختلف ممالک کے آئین پر اس طائرانہ نگاہ کا حاصل یہ ہے کہ ہر ملک کے آئین سازوں نے اپنے مخصوص حالات کو پیش نظر رکھتے ہوئے کوئی قاعدہ ترتیب دیا ہے۔ پاکستان کے آئین میں جو قاعدہ بیان کیا گیا ہے وہ یوں ہے کہ دوہری شہریت رکھنا ممنوع نہیں مگر دوہری شہریت رکھنے والے کو منتخب نمائندہ بننے کا حق نہیں۔ جو کوئی بھی پاکستان کی تاریخ کے المناک ابواب سے واقف ہے وہ بخوبی سمجھ سکتا ہے کہ آئین ساز اسمبلی نے اس معاملے میں حد درجہ احتیاط سے کام کیا۔