

**WP No. 8697-2012**

**Faisal Ilyas**

**Rana Asif Mehmood etc.**

**16.11.2012. Mr. Saif-ul-Malook, Advocate for petitioner.  
Mr. Naveed Inayat Malik, DAG.  
Mr. Jamshed Rehmat Ullah, Advocate for respondent No.1  
Mr. Muhammad Jamil Khan, Advocate/Law Officer for  
NADRA.  
Muhammad Zubair Kamal, Election Officer.**

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This petition challenges the eligibility of the respondent No.1 (**“respondent”**) to hold the office of the Member Punjab Provincial Assembly on a minorities seat on account of the respondent having incurred disqualification under Article 63(1)(c) of the Constitution. The said provision of the Constitution lays down as follows:

*“(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”*

2. In the present case, the respondent admits that he is a national of Canada and holds a passport issued by the Government of Canada.

However, he denies that he is a Canadian citizen and consequently does not incur the disqualification under Article 63(1)(c) of the Constitution.

3. Based on the admission made by the respondent, learned counsel for the petitioner has placed before the Court two Canadian Laws: firstly, the Canadian Passport Order, 1981 (“**CPO**”) and secondly, the Canadian Citizenship Act, 1985 (“**CCA**”). Section 4(2) of the CPO provides that a Canadian Passport can only be issued to a Canadian citizen. The Schedule to the CCA contains the oath of affirmation of citizenship that must be made by every person admitted as a citizen of Canada. It is re-produced below:

*“I swear (or affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and successors, and that I will faithfully observe the laws of Canada and fulfill my duties as a Canadian citizen.”*

4. The learned counsel for the petitioner refutes the plea that he has a nationality but not citizenship of Canada as being pedantic and

without support of Pakistani law apart from being contrary to the express statutory law of the State of Canada. A Canadian passport can only be issued to a Canadian citizen. Neither Pakistani law nor Canadian law recognize any notion of a non-citizen of the State being given its nationality.

5. The learned counsel for the respondent has been given several opportunities to demonstrate his aforesaid plea with reference to law. However, he has failed to cite any legal material except the judgment given in **Umar Ahmad Ghumman vs. Govt. of Pakistan and others** (PLD 2002 Lahore 521) The outcome in that case is adverse to the petitioner's stand. No law has been brought to show that the respondent holds his Canadian passport without having become a Canadian citizen.

6. On the other hand, it has been brought on record by the petitioner that the respondent holds an overseas Pakistani card issued by the Government of Pakistan recording his Canadian address allowing him a visa free entry into

Pakistan. It is contended that said card is issued only to expatriate Pakistanis having foreign citizenship who under ordinary circumstances would have to obtain Pakistani visa on their foreign passport for entry into Pakistan.

7. The said contention actually draws strength from judgment of the Hon'ble Supreme Court given in C.P No.05 of 2012 titled **Syed Mehmood Akhtar Naqvi vs. Federation of Pakistan through Secretary Law and others** announced on 20.09.2012. That judgment considers precisely the same question of law that is in issue in the present proceedings, namely, whether a pre-election or post-election disqualification under Article 63(1)(c) of the Constitution automatically disqualifies an elected member of a constitutional legislature. Upon an interpretation of the said provision and of the declaration on oath made by a candidate on his nomination paper for election to a constitutional legislature, the Hon'ble Supreme Court held that a false declaration of citizenship made by an

elected representative on his nomination paper would disqualify him from being elected or chosen as Member of the *Majlis-e-Shoora* (Parliament) or a Provincial Assembly apart from exposing him to criminal proceedings for making a misstatement or concealment of fact regarding the acquisition of citizenship of another State.

8. In the present case, both the Canadian oath of affirmation made by the respondent No.1 as well as admission that the said respondent is the holder of a Canadian passport are sufficient factual grounds for concluding that respondent is a citizen of Canada. Consequently, the disqualification under Article 63(1)(c) of the Constitution is squarely attracted to his case.

9. Before concluding the matter, it is appropriate to deal with the two preliminary objections taken by the learned D.A.G. Apart from the prayer for a writ of quo-warranto against the respondent, a number of other prayers concerning the faith of the respondent and the registration of criminal cases by NADRA against

respondent as well as preventive action by the Ministry of Interior against him are objected. His objection has force. The additional prayers apart from prayer of writ of quo-warranto deal with factual aspects on which the petitioner has no locus-standi. Infact for that reason at the early stage in this petition the learned counsel for the petitioner on Court's query withdrew those prayers.

10. It is also objected that the provisions of Article 225 of the Constitution create a bar on the jurisdiction of this Court to hear the present matter. Article 225 of the Constitution provides as follows:

*“No election to a House or a Provincial Assembly shall be called in question except by an election petition presented to such tribunal and in such manner as may be determined by Act of Majlis-e-Shoora (Parliament)”.*

That constitutional provision protects the sanctity of the election process and does not bar writ petitions filed under Article 199(1)(b)(ii) of the Constitution after the completion of the election process. Reference is made to **Farz and Ali**  
**i** **'s**

case (PLD 1970 S.C 98). Also the aforementioned judgment of the Hon'ble Supreme Court in Syed Mehmood Akhtar Naqvi 's case (Supra) is

referred to hold that a pre-election or post-election disqualification under Article 63(1)(c) of the Constitution automatically disqualifies an elected person from holding his office. This consequence follows without recourse either to an Election Tribunal or to the Speaker of the concerned legislature. It is well settled that a writ of quo-warranto is competent to enforce a disqualification of the holder of a public office on the constitutional premise that no public office can be held by a person who does not satisfy its qualification provided by law.

11. Reverting now the merits of the case. On the facts of the present case noted above and following the principle laid down by the Hon'ble Supreme Court in identical cases through judgment given in Syed Mehmood Akhtar Naqvi 's case, it is held that the respondent is

**disqualified** to hold the office of Member Punjab

Provincial Assembly on a minorities seat under Article 63(1)(c) of the Constitution. It is not established as to when he acquired his Canadian citizenship and whether he was aware of his disqualification as a result to hold his office. Accordingly, the Election Commission of Pakistan is directed to de-notify the membership of the respondent from the Punjab Provincial Assembly.

12. Petition **allowed** in the above terms.

**CHIEF JUSTICE**

Naveed\*