Form No: HCJD/C.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.258 of 2020

Mian Muhammad Faisal
Vs.
Muhammad Faisal Vawda and 4 others

Petitioner by:	**M/s. Jahangir Khan Jadoon, Mian M. Faisal Irfan, Usman Ghumman, Arshad Khan Jadoon, Advocates.**
Applicants by:	**Raja Shafqat Abbasi, Advocate in C.M. No.82/2021.** **Raja Muhammad Nazir, Advocate in C.M. No.404/2021**
Respondent by:	**M/s. Haroon Duggal & Sanaullah Zahid, Advocates.** **Saima Tariq Janjua, Deputy Director ECP.** **M. Waqar Langrial, Data Processing Officer (Litigation) National Assembly.**

Date of Decision: 03.03.2021

AAMER FAROOQ, J.- This judgment shall decide the instant petition as well as Crl. Orgl No.132/2020 as the same arises out of the main petition.

2. The facts leading to filing of the instant petition are that respondent No.1 contested the General Elections held in 2018 from NA-249 (West II) Karachi on the ticket of Pakistan Tehrik-e-Insaaf. He was declared successful and in this behalf notification was issued on 07.08.2018. The instant petition was filed in 2020 challenging the election of respondent No.1

as Member National Assembly NA-249 (West II) Karachi on account of the fact that at the relevant time when respondent No.1 filed his nomination papers for contesting 2018 Elections he held dual nationality inasmuch as he was citizen of United States of America as well. In the petition it has also been averred that since at the time of contesting Elections respondent No.1 furnished an affidavit to Election Commission of Pakistan to the effect that he is not a national of any other country; he has made a false statement on oath, hence he is disqualified under Article 62 (1)(f) of the Constitutional of the Islamic Republic of Pakistan, 1973 (the Constitution). The case was taken up initially on 29.01.2020 when notices were issued to *inter alia* respondent No.1. Due to COVID-19 pandemic since Courts were not functional on regular basis the case was taken up in August 2020 when notice was repeated to respondent No.1 as no one was in attendance on behalf of the referred respondent. First appearance of the learned counsel for respondent No.1 was made on 17.09.2020 when time was sought for filing reply which was allowed and it was also observed that needful would be done within three weeks. The matter was again taken up on 14.10.2020 and since reply had not been filed by respondent No.1 Election Commission of Pakistan was directed to bring complete record with respect to the nomination papers of respondent No.1. It is pertinent to

observe that no one appeared on behalf of respondent No.1 on the said date. On 04.11.2020 when the case was fixed next an application was filed on behalf of respondent No.1 submitting that since similar proceedings are pending before Election Commission of Pakistan the instant petition is not maintainable. Notice was issued to the parties on the said application. It is pertinent to observe that even on the said date no reply to the petition was filed and even when learned counsel for respondent No.1 was confronted about the factual aspect of the controversy *viz:* dual nationality of respondent No.1 he sought time to assist in the matter. The matter was taken up again on 12.11.2020 when Mr. Haroon Duggal, Advocate High Court entered appearance and sought permission to file fresh power of attorney and also reply which was allowed. The case was then fixed for 14.01.2021 when again reply was not filed; however, an application was filed by one of the voters/contestant of the Elections (C.M. No.82/2021) in which notice was issued. It is pertinent to observe that final opportunity was allowed to respondent No.1 to file reply. On 27.01.2021 another application was filed by a person from the same Constituency seeking to be impleaded as party (C.M. No.404/2021) in which notice was issued. Another application was filed on behalf of respondent No.1 to the effect that since Election Petition is pending in Sindh, this Court lacks jurisdiction. The matter was taken up for hearing

today i.e. 03.03.2021 without any reply on behalf of respondent No.1. At the very outset, learned counsel for respondent No.1 submitted that the instant petition has become infructuous inasmuch as no writ of *quo-warranto* can be issued since the petitioner has tendered resignation as Member National Assembly. The resignation was duly placed on record which bears the original signatures of respondent No.1 as well as receiving of the resignation by one Shehryar Khan, Secretary to Speaker National Assembly Secretariat, Islamabad. It is also reflected from the referred document that the resignation was received today (03.03.2021) at 09:25 am. When confronted learned counsel for the petitioner submitted that the instant petition has not become infructuous inasmuch as the resignation is yet to be accepted. It was also contended that even if the resignation stands accepted the petitioner is disqualified from becoming a Member of National Assembly or Senate in light of the fact that he furnished false affidavit wherein he stated that he is not dual national. It was contended that the affidavit was filed pursuant to the decision of the Hon'ble Supreme Court of Pakistan in case reported as ***Speaker, National Assembly of Pakistan, Islamabad and others v. Habib Akram and others*** **(PLD 2018 SC 678).** It was contended that even in light of the law laid down in case reported as ***Sher Baz Khan Gaadhi v. Muhammad Ramzan and others*** **(2018 SCMR 1952) s**ince Respondent No.1 is not

Honest and *Ameen*, hence he is disqualified to be a Member of National Assembly or Senate. Learned counsel also placed reliance on the case reported as ***Nawabzada Iftikhar Ahmad Khan Bar. V. Chief Election Commissioner Islamabad and others*** **(PLD 2010 SC 817).** Furthermore, learned counsel submitted that when respondent No.1 filed nomination papers on 11.06.2018 he was a citizen of USA and was disqualified. It was contended that even when his nomination papers were scrutinized on 18.06.2018 the disqualification prevailed and in light of the decision of this Court in case titled ***"Abdullah Khan and another v. Election Commission of Pakistan and 03 others*** **(W.P. No.4052/2018)** the petitioner was disqualified to be elected as Member National Assembly. It was further argued that in light of the observations by the Hon'ble Supreme Court in **PLD 2018 SC 678** tendering of the false affidavit has its consequences.

3. Learned counsel for the applicant in C.M. No.82/2021 supported the contentions of learned counsel for the petitioner. Likewise, learned counsel for the applicant in C.M. No.404/2021 also supported the contentions of learned counsel for the petitioner.

4. Learned counsel for respondent No.1 reiteratted that since the resignation has been tendered to the Speaker, National Assembly respondent No.1 has ceased to be a Member as such and no writ of *quo-warranto* can be issued.

With respect to effect of Article 62 (1)(f) of the Constitution i.e. the petitioner not being Honest and *Ameen* learned counsel for respondent No.1 placed reliance on the case reported as ***Allah Dino Khan Bhayo v. Election Commission of Pakistan and others*** **(PLD 2020 Supreme Court 591)** and an unreported judgment of the Hon'ble Lahore High Court titled ***"Waheed Sabir v. Rana Zahid Hussain Khan, etc.*** **(W.P. No.15025/2010).** He also submitted that petitions filed in Sindh have been withdrawn.

5. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. Before rendering any finding to the contentions of learned counsel for the parties, it is observed with dismay that respondent No.1 lingered on the matter by not filing reply under one pretext or the other which delayed the adjudication of the matter. Insofar as the merit of case is concerned, the petitioner seeks disqualification of respondent No.1 on the basis of two grounds. Firstly, that respondent No.1 was a dual national on the relevant dates, hence was disqualified to be elected as Member National Assembly. Secondly, that pursuant to the judgment of the Hon'ble Supreme Court of Pakistan in case reported as ***Speaker, National Assembly of Pakistan, Islamabad and others v. Habib Akram and others*** **(PLD 2018 SC 678)** he furnished a false affidavit before

Election Commission of Pakistan hence he is not Honest and *Ameen* and is disqualified under Article 62 (1)(f) of the Constitution. As noted above, on the commencement of the proceedings today, learned counsel for respondent no.1 presented in Court the resignation dated 03.03.2021 reflecting that respondent No.1 has resigned as Member National Assembly and the same has been duly received in the Office of Speaker, National Assembly on his behalf by Secretary to Speaker, National Assembly Secretariat, Islamabad at 09:25 am. Under Article 64 (1) of the Constitution a Member of Majlas-e-Shoora may, by writing under his hand addressed to the Speaker or, as the case may be, the Chairman resign his seat, and thereupon his seat shall become vacant. Under Article 64 (1) of the Constitution since the resignation has been tendered by respondent No.1, therefore, the seat has become vacant. With respect to the affidavit tendered pursuant to the decision of the august Apex Court it is observed that in case titled ***Speaker, National Assembly of Pakistan, Islamabad and others v. Habib Akram and others*** **(PLD 2018 SC 678)** the Hon'ble Supreme Court of Pakistan directed that an affidavit shall be filed by all the candidates contesting the Elections in 2018. A proforma of the affidavit was also prescribed. The relevant clauses for the present controversy are R & S of the affidavit which are as follows:

R. I have not ceases to be a citizen of Pakistan

nor have I acquired or applied for the citizenship of a foreign state.

Or

I possess Foreign Passport No……. issued by ……. [name of country (s).

S. I have no objection if information concerning myself in relation to acquisition of citizenship of foreign State or application of such citizenship is provided by any foreign state to the Ministry of Foreign Affairs of the Government of Pakistan of Election Commission of Pakistan.

7. The Hon'ble Supreme Court of Pakistan also observed that failure to file affidavit before the Returning Officer would render the nomination papers incomplete and liable to be rejected. Moreover, it was observed that if the affidavit or any part thereof is found false then it shall have consequences as contemplated by the Constitution and law. The august Apex Court further observed that since the affidavit is required to be filed in pursuance of the orders of this Court (Supreme Court of Pakistan), therefore, if any false statement is made therein, it would also entail such penalty as is of filing a false affidavit before the Hon'ble Supreme Court of Pakistan. Respondent No.1 pursuant to proforma furnished an affidavit which was filed before Election Commission of Pakistan on 11.06.2018. The dates for filing of the nomination papers pursuant to notification of Election Commission of Pakistan dated 08.06.2018 were from 04.06.2018 to 11.06.2018. The publication of the names was to be made on 11.06.2018 and the last date for scrutiny of the nomination papers was

19.06.2018. Alongwith the petition a document has been appended titled *"Certificate of Loss of Nationality of the United States"* stamped as Certificate of Loss of Nationality Approval dated 25.06.2018; meaning thereby that when the nomination papers were filed and/or scrutinized respondent No.1 was national of USA, hence had dual nationality and was disqualified to contest the Elections in light of Article 63 (1)(c) of the Constitution. Since resignation has been tendered as Member National Assembly the question regarding disqualification from contesting Elections in 2018 becomes an academic exercise as time has overtaken the cause for the reasons mentioned hereinabove. Reliance is placed on case decided by the Hon'ble Lahore High Court titled ***"Waheed Sabir v. Rana Zahid Hussain Khan, etc.*** **(W.P. No.15025/2010)** wherein it was held as follows:

> 21. *"From the above said judicial pronouncement it is clear that writ of quo warranto can be issued against a person who is holding a public office without any lawful authority or he is a usurper. The word used in Article 199 (b)(ii) of the Constitution are "**the holder of public office"** denotes that relief of writ of quo warranto will be available to a person against a holder of public office and not a retired person. The intention of the legislator is clear that relief of quo warranto is available only against those who are present not who were public office holder or would be public office holder. When the*

holder of public office ceased to hold the office, the relief of quo warranto also becomes not available to an aggrieved party or any other person.

22. The only object of the writ of quo warranto is to inquire into and determine the authority of a person holding a public office, and the consequence of the acceptance of the petition is the ouster of the person from the public office, the relief by way of writ of quo warranto remain only available so long as the person attacked is in actual possession and user of the office.

23. As a general rule, therefore, quo warranto to question a person's title to office will not be granted after he has ceased to hold that office.

25. As far as the right of a person to ask for refund of salaries or other benefits from a usurper to a public office is concerned, it could not to be determined in a proceeding for quo warranto. The said determination is an independent right and can be ascertained in appropriate proceedings according to law."

8. However, the question of false affidavit still is pertinent as was argued by the learned counsel for the petitioner. In ***Speaker, National Assembly of Pakistan, Islamabad and others v. Habib Akram and others*** **(PLD 2018 SC 678)** ***supra*** the Hon'ble Supreme Court of Pakistan clearly observed that furnishing a false affidavit shall have consequences. In this behalf, *prima facie* the affidavit is false; however, under Article 62 (1)(f) of the Constitution if someone is to be held as

not being *Sadiq* and *Ameen* a declaration has to be made to the effect by Court of law. In this behalf reliance is placed on the case reported as ***Allah Dino Khan Bhayo v. Election Commission of Pakistan and others*** **(PLD 2020 Supreme Court 591).** The august Apex Court in the said judgment observed as follows:

> *"The upshot of the said judgment is that a disqualification under Article 62(1)(f) of the Constitution can only be imposed by or under a declaration made by a court of law. By such prescription Article 62(1)(f) creates a lawful, transparent and fair mechanism for an election candidate to contest an allegation that he is disqualified under one or more of the grounds listed in the said Constitutional provision. Accordingly, in the case reported as Sardar Yar Muhammad Rind v. Election Tribunal Balochistan, Quetta and others (PLD 2020 SC 137) this Court held that a judicial declaration disqualifying a candidate under Article 62(1)(f) of the Constitution must necessarily be based on oral or documentary evidence. In the case reported as Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif (PLD 2017 SC 265), the learned Judge speaking for the majority elaborated that even an Election Tribunal can only disqualify a candidate when its declaration is issued on the basis of evidence before it. Such a requirement is implicit in Article 10A of the Constitution which makes both due process and fair trial a fundamental right in lawful judicial proceedings. Thus the determination of a*

dispute relating to a right or liability, the recording of evidence including the right of cross-examination, a hearing of the arguments of the parties and a reasoned judgment are essential attributes of a court of law (ref: Tariq Transport Co., Lahore v. Sargodha Bhera Bus Service (PLD 1958 SC (Pak) 437) and Mollah Ejahar Ali v. Government of East Pakistan (PLD 1970 SC 173).”

9. In ***Sher Baz Khan Gaadhi v. Muhammad Ramzan and others*** **(2018 SCMR 1952)** the august Apex Court held a candidate to be disqualified under Article 62(1)(f) of the Constitution on account of false affidavit. However, since **PLD 2020 SC 591** is later in time, therefore, shall prevail and be binding.

10. Moreover, the furnishing and tendering false affidavit also has consequences under Pakistan Penal code, 1860 as well as in light of the observations of the august Apex Court in ***Speaker, National Assembly of Pakistan, Islamabad and others v. Habib Akram and others*** **(PLD 2018 SC 678)** ***Supra.*** This Court was informed during the course of arguments that the matters are pending before the Election Commission of Pakistan seeking disqualification of respondent No.1 on the basis of false affidavit and dual nationality. Since the affidavits were tendered before the Election Commission of Pakistan it is just and proper that the

Election Commission of Pakistan probes into the matter of veracity of affidavit furnished by respondent No.1 on 11.06.2018 and if same is found to be false to stipulate the effect thereof pursuant to observations made in **PLD 2020 SC 591** *supra*. In light of the observations by the Hon'ble Supreme Court of Pakistan in ***Speaker, National Assembly of Pakistan, Islamabad and others v. Habib Akram and others*** **(PLD 2018 SC 678)** the effect of making a wrong statement before Supreme Court is also attracted where an affidavit tendered by a candidate turns not to be false.

11. In view of the foregoing, since respondent No.1 has resigned as Member National Assembly no writ of *quo-warranto* can be issued with respect to holding dual nationality. However, the matter of furnishing false affidavit is to be probed by the Election Commission of Pakistan since the same was submitted before it and the Commission may pass appropriate orders with respect to the same. No contempt of Court is made out in the facts and circumstances.

12. The instant petition as well as criminal original are disposed of in light of the above observations. All pending applications are also disposed of accordingly.

(AAMER FAROOQ)
JUDGE

M.Naveed