Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD (JUDICIAL DEPARTMENT)

Election Appeal No. 50 of 2024

Nadeem Ul Zafar Khan
Versus
Returning Officer, NA-47 & another

AND

Election Appeal No. 51 of 2024

Nadeem Ul Zafar Khan
Versus
Returning Officer, NA-46 & another

Appellant by	:	Usman Zakir Abbasi, Advocate. Nukhba Mumtaz Qazi, Advocate.
Respondent No.2 by	:	Muhammad Shahryar Butt, Advocate. Syed Muhammad Ali Asghar, Advocates.
ECP by	:	Saman Mamoon, Legal Advisor Zaigham Anees, Law Officer.
Amici Curiae	:	Barrister Sardar Taimoor Aslam Khan, Advocate. Zainab Janjua, Advocate.
NADRA by	:	Naveed Ahmed, Law Officer, Ubaid Ur Rehman, Law Officer, Nadeem Asghar, Law Officer.
Assisted by	:	Aneesa Noureen, Law Clerk, Sajjad Ali, Law Clerk.
Date(s) of Hearing	:	08.01.2024

Arbab Muhammad Tahir J.- The listed two appeals preferred by the appellant under section 63(1) of the Elections Act, 2017 ('Act of 2017') entail common questions of law and facts, therefore, being decided through this common judgment.

I. CONTEXT

2. The facts relevant for adjudication of the appeals are that respondent No.2 (*Nayab Ali*) filed nomination papers to contest General Elections-2024 from two constituencies i.e. NA-46 (ICT-I) and NA-47 (ICT-II) General Seats, which were accepted by the Returning Officers. The appellant has pleaded in the memo of appeal that he had raised objections before the Returning Officer on the nomination papers; however, the objections were not entertained. Therefore, being aggrieved on account of the acceptance of nomination papers of the appellant for NA-46 & 47, the instant appeal has been preferred.

The appeal was admitted for regular hearing on 04.01.2024 and notices were issued to respondents. This Court sought assistance from *Barrister Sardar Taimoor Aslam Khan*, and *Ms Zainab Janjua*, Advocates, to assist this Court as *amicus curiae* on the legal questions raised in the appeals.

II. APPELLANT'S ARGUMENTS

3. Learned counsel for the appellant has argued that; respondent No.2 is a transgender and is disqualified to contest elections; Computerized National Identity Card ("CNIC") was issued to respondent No.2 pursuant to the Transgender Persons (Protection of Rights) Act, 2018 ("Act of 2018"); the Federal Shariat Court vide judgment dated 19.05.2023 passed in Civil Shariat Appeal No.03/2023 has declared the provisions of the Act of 2018 as repugnant to the injunctions of Islam; CNICs of transgender persons have been suspended by the National Database and Registration Authority ("NADRA") pursuant to judgment of the Federal Shariat Court; the judgment of Federal Shariat Court is in the field and not yet suspended by the Supreme Court;

respondent No.2 has concealed her identity as 'Gender X' in the nomination papers; respondent No.2 did not mention her source of income in the nomination papers; respondent No.2 concealed material information in the nomination papers by virtue of such concealment and mis-declaration, respondent No.2 was not *Sadiq* and *Ameen* and hit by the relevant provisions of Article 62 and 63 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"); the concealment and mis-declarations were deliberate and dishonest; the nomination papers were liable to be rejected.

III. RESPONDENTS ARGUMENTS

4. Learned counsel for respondent No.2 has argued that; the present appeal is not maintainable; the appellant is not a registered voter of the constituencies NA-46 & 47; in fact the appellant is a resident of District Multan; only a registered voter of the referred constituencies could have filed objections/appeal under section 62(1) of the Act of 2017; the expression 'voter' has been defined in clause (xli) of section 2 of the Act of 2017; although the Federal Shariat Court had held certain provision of the Act of 2018 as repugnant to the injunctions of Islamabad, however, an appeal i.e. Civil Shariat Appeal No.03/2023 against the said judgment is pending before the Shariat Appellate Bench of the Supreme Court; the judgment of the Federal Shariat Court shall be deemed to have been suspended pending final disposal of the appeal under the proviso to sub-Article (2) of Article 203-D of the Constitution; the CNICs were initially ordered to be blocked by NADRA, however, during proceedings of W.P. No.55208/2023 before the Lahore High Court, the earlier notification was withdrawn; the transgender persons can now register and obtain CNIC with mark "X" as per the Transgender Persons (Protection of

Rights) Rules 2020; Reliance has been placed on the cases of *"Mst. Fazeelat Jan and others v. Sikandar through his Legal Heirs and others"* [PLD 2003 SC 475] and *"Mian Asia v. Federation of Pakistan through Secretary Finance and 2 others"* [PLD 2018 Lahore 54].

IV. *AMICI CURIAE* SUBMISSIONS

5. *Sardar Taimoor Aslam Khan*, ASC - learned *amicus curiae* has tendered appearance and submitted amicus brief. He has argued that; the objector must be from the constituency from where the candidate intends to contest elections; the objections should be in written form; the appellant did not mention in the memo of appeal or annexed therewith any written objections; the right of appeal under section 63 of the Elections Act, 2017 is available to a candidate or objector; a person should be a citizen of Pakistan to contest elections under Article 62(1)(a) of the Constitution; the expression "citizen" has been defined under Article 260 of the Constitution as meaning "a citizen of Pakistan as defined by law"; reliance has been placed on the case titled *"Hafiz Hamdullah Saboor v. Government of Pakistan through its Secretary Ministry of Interior & others"* [PLD 2021 Islamabad 302] in support of his contention that a person once registered as a citizen cannot be deprived of citizenship otherwise than as is provided under the law; everyone has the right to nationality under Article 15 of the Universal Declaration of Human Rights 1948; Article 7 of the Convention on Rights of a Child recognizes that every child has the right to acquire a nationality; reference has been made to 1954 Convention relating to the Status of Stateless Persons and Convention on the Reduction of Statelessness, 1961 in support of his contention, that no one should he rendered stateless; the qualification prescribed for a

candidate is merely to be based on account of candidate's citizenship and not on the basis of gender; Article 25(2) of the Constitution requires that there shall be no discrimination on the basis of sex; the Legislature through the Elections (Second Amendment) Act, 2023 had incorporated relevant provisions of the Elections Act, 2017 i.e., inter alia, in sections 3, 48, 167, 170, 203 and Rule 39 of the Election Rules, 2017 to protect and safeguard rights of transgender persons; the Federal Shariat Court rendered its judgment on 19.05.2023, whereas, the relevant amendments in respect of transgender persons were made through the Elections (Second Amendment) Act, 2023 notified on the official gazette on 05.08.2023 which demonstrates will of the legislature; the appellant did not opt to file nomination papers on the seats reserved for women; reliance has been placed on the cases titled *"Muhammad Aslam Khaki and Ors. V. S.S.P. (Operations) Rawalpindi and Ors."* [PLD 2013 SC 188] and judgment of the High Court of Judicature at Bombay Bench at Aurangabad in Writ Petition (Stamp) No.104/2021 titled *"Anjali Guru Sanjana Jaan v. The State of Maharashtra and others*".

6. *Ms Zainab Janjua*, AHC - learned *amicus curiae* has tendered appearance and submitted amicus brief. She has argued that; the appellant is neither a candidate nor objector in terms of section 62(1) of the Act of 2017; the appellant has filed nomination papers to contest elections on general seat; the general seats are gender neutral; the election to seats reserved for women is gender specific, which is not the case in hand; there is no legal barrier for a transgender person to contest election to the general seat; the Constitution as well as the Act of 2017 do not disqualify the transgender person from contesting election; Article 25 of the Constitution provides that no one should be

discriminated on the basis of sex; the recent amendments in the Act of 2017 i.e. dated 05.08.2023, reflect will of the legislature which not only acknowledges but protects and safeguards rights of transgender persons to take part in and contest elections; the referred amendments obligated the Election Commission of Pakistan ("ECP") to take special measures for protection of transgender persons; the Federal Shariat Court did not give retrospective effect to its judgment; the CNIC of the appellant was issued before the judgment of the Federal Shariat Court; the earlier notification issued by NADRA which had stopped processing the cases/registration of persons under the "gender X" has been withdrawn during proceedings before the Lahore High Court; section 11 of the Act of 2018 had not been declared repugnant to the injunctions of Islam by the Federal Shariat Court; section 11 of the Act of 2018 enables the transgender persons to contest elections and hold public offices; once a transgender person's nomination papers are accepted, then under the Election Act, 2017 it is an offence to persuade voters to refrain from voting to such candidate; under section 12 of the Act of 2017, the ECP is empowered to conduct public awareness programs and media campaigns regarding the importance of maximum voter enrollment and participation in elections by transgender persons; this court sitting as election tribunal, cannot render a finding on the gender of respondent No.2; under Article 203D of the Constitution, during pendency of the appeal before the Shariat Appellate Bench of the Supreme Court, the judgment of Federal Shariat Court shall be deemed to have been suspended; Government of Sindh has made amendments in the relevant law to enable representation of transgender persons in the local government system.

7. Heard. Record perused.

V. DETERMINATION BY THE COURT

8. The appellant through the appeals has assailed nomination papers of respondent No.2, who is a transgender person. The appeals raise a legal question as to whether a transgender person can contest elections against general seats of the National Assembly? It is pertinent to discuss the relevant laws and rules concerning the issue at hand. The *supra* question has been discussed and answered in the following manner.-

The Transgender Persons (Protection of Rights) Act, 2018 (the "Act of 2018")

The Act of 2018 received assent of the President on 18th May, 2018 and notified in the official gazette on 24.05.2018.[1] The expression "gender identity" has been defined in section 2(1)(f) the Act of 2018 as a person's innermost and individual sense of self as male, female or a blend of both or neither; that can correspond or not to the sex assigned by birth, whereas, the expression "transgender person" has been defined in section 2(1)(n) of the said Act as follows.-

> **"Transgender person"** is a person who is.-
>
> (i) intersex (khusra) with mixture of male and female genital features or congenital ambiguities; or
>
> (ii) enuch assigned male at birth, but undergoes genital excision or castration; or
>
> (iii) a transgender man, transgender woman, KhawajaSira or any person

[1] It's preamble reads as under:
" To provide for protection, relief and rehabilitation of rights of the transgender person and their welfare and for matters connected therewith and incidental thereto;"

> whose gender identity or gender expression differs from the social norms and cultural expectations based on the sex they were assigned at the time of their birth.

Section 3 of the Act of 2018 is also relevant for adjudication of this appeal, which is reproduced below.-

> 3. Recognition of identity of transgender person provides: --- (1) A transgender person shall have a right to be recognized as per his or her self-perceived gender identity, as such, in accordance with the provisions of this Act.
>
> (2) A person recognized as transgender under sub-section (1) shall have a right to get himself or herself registered as per self-perceived gender identity with all government departments including, but not limited to, NADRA.
>
> (3) Every transgender person, being the citizen of Pakistan, who has attained the age of eighteen years shall have the right to let himself or herself registered according to self-perceived gender identity with NADRA on the CNIC, CRC, driving licence and passport in accordance with the provisions of the NADRA Ordinance, 2000 (VIII of 2000) or any other relevant laws.
>
> (4) A transgender person to whom CNIC has already been issued by NADRA shall be allowed to change the name and gender according to his or her self-perceived identity on the CNIC, CRC, driving licence and passport in accordance with the provisions of the NADRA Ordinance, 2000 (VIII of 2000).

In exercise of powers conferred by section 20 of the Act of 2018,[2] the Federal Government approved the Transgender Persons (Protection of Rights) Rules, 2020 (the "Rule of 2020") which were notified in the official gazette on

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[2] Section 20 reads as below:
20. Power of Government to make rules- The Government may, by notification, make rules for carrying out the purposes of this Act.

16.03.2021. Rule 3 of the Rules of 2020 is relevant which is reproduced below.-

> **3. Amending existing CNIC:** - (1) NADRA shall appoint a designated official in each NADRA office to accommodate an applicant to change his/her name and gender on his/her CNIC.
>
> (2) In accordance with sub-section (4) of section 3 of the Act, NADRA shall register the name and gender of an applicant to "X", in accordance with is self-perceived gender identity.
>
> (3) …….

Judgment of the Federal Shariat Court concerning Act of 2018,[3]

The Shariat Petitions were filed by different individuals challenging the provisions of the Act of 2018. The bone of the contention in the referred petitions was to challenge the vires of sections 2(1)(f), 2(1)(n)(ii), 3 and 7 of the Act of 2018. As reproduced above, these provisions deals with definition of "gender identity" and "transgender person", whereas, section 3 vested a right in the transgender person to get himself registered with NADRA as per his/her "self-perceived gender identity". Furthermore, section 7 deals with the right of inheritance. The arguments which were raised before the Federal Shariat Court, as recorded in the judgment, are with respect to the "self-perceived identity of transgender persons". The Federal Shariat Court vide judgment, dated 19.05.2023, declared sections 2(1)(f), 2(1)(n)(ii), 3 and 7 of the Act of 2018 as against injunctions of Islam and ordered that the same will cease to have effect "immediately".

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[3] The case titled "*Hammad Hussain v. Federation of Pakistan & others*", PLD 2023 FSC 301.

Blocking of CNICs of transgender persons by the NADRA.

After the judgment of the Federal Shariat Court, the NADRA issued notification, dated 13.06.2023, which is reproduced below.-

> "1 In reference to subject ION, it is informed that Hon'ble Federal Shariat Court ceased the operation of the Transgender Persons (Protection of Rights) Act, 2018 and Transgender Persons (Protection of Rights) Rules, 2020.
>
> 2. Keeping above in view, the registration of Transgender Persons to be ceased immediately till further instructions. Therefore, please instruct all DAUs to process applicants with gender Male/Female.
>
> For T&D Only: Please incorporate subject changes in NIS application accordingly and provide the same on priority.
>
> For NIC Production Only: Please cease printing of cards with gender other than male or female with immediate effect."

The above reproduce notification, dated 13.06.2023, issued by NADRA was assailed before the Lahore High Court,[4] and the copy of judgment dated 07.12.2023 rendered in this case has been placed on record by respondent No.2, which reveals that NADRA had submitted a report stating that the process of issuance of CNICs to transgender persons with Gender "X" as per the Rules of 2018 has resumed. The Lahore High Court, therefore, disposed-of the petition with certain directions.

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[4] W.P.No.55208/2023 titled *"Nayab Ali v. Federation of Pakistan, etc."*

The counsel for respondent has also placed on record copy of notification, dated 25.09.2023, which shows that the earlier notification, dated 13.06.2023 had been withdrawn.

9. Subsequent to the above developments, the Act of 2017 was amended through the Elections (Second Amendment) Act, 2023 (hereinafter the "Amendment Act") whereby sections 12, 167, 170 and 203 were amended. Section 12(c) provides that the ECP shall conduct the public awareness programes and media campaign regarding importance of maximum voter enrollment and participation in elections, especially by women, non-Muslims, disabled person and transgender, dissemination of information regarding procedure of casting vote, and the importance of maintaining the integrity of the electoral process. Section 167(b) of the Act of 2017 provides that a person shall be guilty of the offence of corrupt practice if he calls upon or persuades any person or persuades any person to vote, or to refrain from voting, for any candidate on the ground that he belongs to a particular religion, province, community, race, caste, *bradari*, sect, tribe or is of a particular gender or is a transgender person. Section 170(a)(vii) of the Act of 2017 provides that a person shall be guilty of exercising undue influence if he prevents any woman or a transgender person from contesting an election or exercising the right to vote. Sub section (4) of Section 203 of the Act of 2017 provides that a political party shall encourage women and persons with disabilities and transgender persons to become its members. Section 11 of Act of 2018 (Transgender Protection Act) provides that there shall be no discrimination on the basis of sex, gender identity and/or gender expression for Transgender Persons if they wish to contest election to hold public office.

10. The legislature, through the Act of 2018 and the Amendment Act has twice acknowledged and recognized the status of transgender persons as that of "marginalized segment of the society". A transgender person soon after his birth is abandoned by his own parents and this is the reality. The facts and circumstances mentioned in the ***Mian Asia*** judgment,[5] are shocking. Even the State through the relevant departments has acknowledged this fact and laid down a policy for issuance of CNICs to transgender persons with unknown parentage. This policy is beneficial for transgender persons; however, simultaneously it demonstrates that in this society parents abandon innocent children due to their gender abnormality. After being removed from their shelter and guard by the cruel parents, these children suffer for the rest of their lives. Parents, who are otherwise bound to protect and guard those innocent children, become the first to commit injustice and then the society continues to contribute its share for rest of their lives. And, the way a marginalized segment of the society live their life is actually a reflection of a society's norms, moral values and ways of life. The society, rather than feeling embarrassed of their own reflection, needs to boost moral standards and create tolerance for the third gender by accepting their identity and contribute to their wellbeing. The least a society can do is to discourage abandoning a transgender child.

11. The Supreme Court vide order, dated 20.11.2009, passed in Constitutional Petition No.43 of 2009 had observed that this class (transgender persons) of the society has been neglected merely on account of gender

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[5] *Mian Asia v. Federation of Pakistan through Secretary Finance and 2 others"* PLD 2018 Lahore 54.

disorder in their bodies, otherwise they are entitled to enjoy all the rights granted to them by the Constitution being its subject, including their rights in inherited property. It was further observed that transgender persons are entitled for entering their names in the electoral list. This case was the first, where the rights of transgender persons were recognized and enforced. Thereafter, in titled *Dr Muhammad Aslam Khaki* case the Supreme Court observed as follows.-

> "Needless to observe that eunuchs in their own rights are citizens of this country and subject to the Constitution of the Islamic Republic of Pakistan, 1973, their rights, obligations including right to life and dignity are equally protected. Thus, no discrimination for any reason, is possible against them as far as their rights and obligations are concerned. The Government functionaries both at Federal and Provincial levels are bound to provide them protection of life and property and secure their dignity as well, as is done in case of other citizens."[6]

The above orders of the Supreme Court initiated a series of legal reforms over the following decade for the rights of transgender people in Pakistan, culminating in the enactment of the Act of 2018.

The Supreme Court of Nepal in the case titled *Sunil Babu Pant* case recognized the rights of transgender persons including their political rights in the following words.-

> "Since our traditional society has recognized only two types of sexes i.e. male and female. A dominant role has been provided to these two sexes 'male' and 'female' in the society. There exist practices of treating the people of third sex differently. The Court should take this matter into the judicial notice. Due to the lack of awareness, education and knowledge the tradition and

[6] *Dr Muhammad Aslam Khaki and another v. Senior Superintendent of Police and others"* 2013 SCMR 187

practices of treating the third gender, other than the male or female, differently continues not only in our society but also in other countries. Therefore, the claim that the people of third gender may not file the petition on their own behalf cannot be held otherwise.
The Part III of the Constitution confers various fundamental rights to the Nepali citizens. The Directive Principles and Policies of the State stipulated Part IV of the Constitution have kept the State at the centre for the upliftment and development of the citizens. All human beings including the child, the aged, women, men, disabled, incapacitated, third genders etc. are Nepali citizens. All the territory of this country including all citizens collectively constitutes the nation. The third genders among the population are also part of the Nepalese population as a whole."[7]

The Supreme Court of India in the case *"National Legal Services Authority"* has held as follows.-

"The Court interpreted 'dignity' under Article 21 of the Constitution to include diversity in self-expression, which allowed a person to lead a dignified life. It placed one's gender identity within the framework of the fundamental right to dignity under Article 21.

Further, it noted that the right to equality (Article 14 of the Constitution) and freedom of expression (Article 19(1)(a)) was framed in gender-neutral terms ("all persons"). Consequently, the right to equality and freedom of expression would extend to transgender persons.

It drew attention to the fact that transgender persons were subject to "extreme discrimination in all spheres of society" which was a violation of their right to equality. Further, it included the right to express one's gender "through dress, words, action, or behaviour" under the ambit of freedom of expression.

Under Articles 15 and 16, discrimination on the ground of "sex" is explicitly prohibited. The

[7] *Sunil Babu Pant, Executive Director of Blue Diamond Society v. Nepal Government, Office of the Prime Minister and Council of Ministers"*, Writ No.917 of 2006

> Court held that "sex" here does not only refer to biological attributes (such as chromosomes, genitalia and secondary sexual characteristics) but also includes "gender" (based on one's self-perception). Thus, the Court held that discrimination on the ground of "sex" included discrimination on the basis of gender identity.
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> Thus, the Court held that transgender persons were entitled to fundamental rights under Articles 14, 15, 16, 19(1)(a) and 21 of the Constitution. Further, the Court also referred to core international human rights treaties and the Yogyakarta Principles to recognize transgender persons' human rights."[8]

12. Article 3 of the Constitution provides that the State shall ensure the elimination of all forms of exploitation. Article 4 of the Constitution provides that to enjoy the protection of law and to be treated in accordance with law is inalienable right of every citizen. Article 25 provides that all citizens are equal before law and are entitled to equal protection of law and there shall be no discrimination on the basis of sex.

13. In the dynamic landscape of democratic societies, the principles of equality, justice, and the rule of law stand as the bedrock upon which inclusive governance is built. Within this framework, the issue of transgender individuals' right to contest elections emerges as a crucial facet of the ongoing pursuit of a more representative and equitable democracy. A nation's development and prosperity rests on the upliftment of society in general and individuals in particular. A society can have socio-economic upliftment if all the sections of the society are part of the upliftment in the society. Discrimination, marginalization, and stigmatization are attached to the lives of most persons living as transgender in Pakistan. Especially in developing countries, socially

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[8] *National Legal Services Authority (NALSA) v. Union of India*, AIR 2014 SC 1863

excluded communities are more vulnerable. The transgender community is one of the finest examples of such a group that remains lesser in the eyes of the law and is left behind in mainstream activities. Though the visibility of transgender people is increasing in daily life, they are still discriminated against, disrespected, and downtrodden. One of the main challenges faced by transgender people is how to live a normal life in a society that maintains rigid gender norms and beliefs. In a society dominated by two prominent genders, the representation of transgender persons at the local, provincial and national levels is crucial. Article 51 of the Constitution provides that every citizen of Pakistan having attained the age of eighteen years, if his name appears on the electoral roll, is entitled to vote, unless declared by a court to be of unsound mind. The Constitution and the law focus on the expression "citizen" so to exercise the right of vote and to be elected to hold public office. The provisions of the Constitution and the law to the extent of General Seats of the National Assembly are gender neutral. It may not be out of place to refer to the amendments made in the Sindh Local Government Act, 2013 through Sindh Local Government (Amendment) Act, 2021 whereby transgender persons have been given representation at the local government level, who can now participate in decision making process.

14. It is the case of the appellant that after judgment of the Federal Shariat Court, the CNICs issued to transgender persons under mark "X" shall be deemed to have been suspended and, therefore, transgender persons are not eligible to contest elections. This ground of the appellant if accepted, would firstly deprive the transgender persons from the right of franchise (right to vote) on the CNIC identifying their gender as "X", and secondly, will give effect to the judgment of Federal Shariat Court before disposal of the

Appeal pending before the Shariat Appellate Bench of the Supreme Court which is not warranted by the Constitution.

15. The appellant has placed on record copy of Notice dated 15.09.2023 issued by the Supreme Court in Civil Shariat Appeals No.2 & 3 of 2023 titled *"Farhatullah Babar and another v. Hammad Hussain and others"* filed against judgment of the Federal Shariat Court. The proviso to Sub Article (2) of Article 203D of the Constitution provides that the decision of Federal Shariat Court shall not be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been so preferred, before the disposal of such appeal. The judgment of the Federal Shariat Court shall, therefore, not be deemed to take effect before disposal of the pending appeal.

16. There is also another aspect of the matter. If the argument of the learned counsel for the appellant, that the judgment of the Federal Shariat Court has automatically suspended the CNICs of transgender persons, if accepted would render the transgender persons Stateless. The judgment of this Court in the case of *"Hafiz Hamdullah Saboor"* starts with reference to a passage from the dissenting opinion authored by the Chief Justice of the United States Supreme Court, Earl Warren in the case titled "Clemente Martinez Perez v. Herbert Brownell, Jr., Attorney General of the United States of America" [356 U.S 44 (1958)] that *'citizenship is mans' basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen."*[9] In the

[9] *"Hafiz Hamdullah Saboor v. Government of Pakistan through its Secretary Ministry of Interior & others",* PLD 2021 Islamabad 302

referred judgment, this Court in unambiguous terms held that it is only when the forums competent to decide the question of citizenship of a person under the Pakistan Citizenship Act, 1951 arrives at a conclusion, then NADRA is empowered to pass any order in respect of a CNIC already issued to a citizen. As discussed above, the judgment of the Federal Shariat Court stands suspended by operation of a constitutional provision pending disposal of the appeal. Furthermore, NADRA has withdrawn its earlier notification, 13.06.2023, whereby process of issuance of new CNICs was suspended. In fact the CNICs of transgender persons were never suspended by NADRA.

17. The learned counsel for respondent No.2 raised objections with regard to maintainability of the appeals on the ground that neither the appellant is a candidate nor qualifies as "objector" in terms of section 62(1) of the Act of 2017. The learned counsel has further argued that the appellant is resident of District Multan and not a registered voter of the constituencies i.e. NA-46 (ICT-I) and NA-47 (ICT-II). The learned counsel for the appellant, when confronted to the objection, conceded that the appellant is resident of Multan and not a registered voter of NA-46 (ICT-I) and NA-47 (ICT-II). Furthermore, sub-section (1) of section 62 of the Act of 2017 provides that "any voter of the constituency may file objections to the candidature of a candidate". Section 63(1) of the Act of 2017 provides that "a candidate or the objector, may within the time specified in by the Commission, file appeal against the decision of the Returning Officer".

18. It is for the aforementioned reasons that this court finds that individuals of the transgender community are constitutionally and legally qualified to contest elections.

Secondly, the pending appeal preferred against the Federal Shariat Court's judgment concerning the Act of 2018 remains suspended by operation of a constitutional provision - Article 203D. Moreover, the present appeal preferred by the appellant is not maintainable. The reasons for such conclusion are twofold **(a)** the appellant is not a registered voter of that constituencies - NA 46 & NA 47, and **(b)** the appellant did not "file" objections at the time of scrutiny before the concerned Returned Officers. The arguments made by the learned counsel for the appellant are not tenable in law and the appeal is completely devoid of merits. The appeals are, therefore, accordingly **dismissed.**

19. Before parting with this judgment, this Court records its appreciation for the valuable assistance rendered by the learned amici curiae *Barrister Sardar Taimoor Aslam Khan*, ASC and *Ms Zainab Janjua, AHC*.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in the open Court on 10.01.2024.

JUDGE

Approved for reporting.

**Luqman Khan.*