

# ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. SIKANDAR SULTAN RAJA  
MR. NISAR AHMED DURRANI  
MR. SHAH MUHAMMAD JATOI

CHAIRMAN  
MEMBER-I  
MEMBER-II

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1. CASE NO. F. 3(1)/2020-LAW " MIAN ASIF MEHMOOD VS FAISAL VAWDA & ANOTHER (ELECTION PETITION UNDER SECTION 139 OF THE ELECTIONS ACT, 2017 READ WITH ARTICLE 62(1)(F) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973).
2. CASE NO.F.3(NA-249)/2018-ELEC-II "APPLICATION BY QADIR KHAN MANDOKHAIL" (REQUEST FOR THE DISQUALIFICATION OF PTI MNA FAISAL VAWDA)
3. CASE NO.F.3(NA-249)/2018-ELEC-II (P/F) "PETITION FILED BY MIAN MUHAMMAD FAISAL WITH REGARD TO STATUS QUO IN RESPECT OF MR. MUHAMMAD FAISAL VAWDA NEWLY ELECTED SENATOR OF PTI FROM SINDH PROVINCE"
4. CASE NO. 11(4)/2021-LAW "PETITION FILED BY DOST ALI JESSAR UNDER SECTION 8 (B) AND (C) OF THE ELECTIONS ACT, 2017 READ WITH ARTICLE 218 (3) OF THE CONSTITUTION ALONG WITH ALL ENABLING LAWS"

For the Petitioner No. 1 (Mian Asif Mehmood)	Mr. Nazakat Hussain Abbasi alongwith petitioner in-person
For the Petitioner No.2 (Qadir Khan Mandokhail)	Raja Muhammad Nazeer, Advocate alongwith petitioner in-person
For the Petitioner No.3 (Mian Muhammad Faisal)	Barrister Jahangir Khan, Jadoon, ASC alongwith Usman Rasool Ghuman, Advocate and Petitioner in -person
For the Petitioner No.4 (Dost Ali Jessar)	Nemo
For the Respondent (Fesal Vawda)	Barrister Moez Ahmad & Hassnain Ali Chochan Advocates

Date of hearing : 23.12.2021





## ORDER

**Sikandar Sultan Raja, Chairman:** Through this consolidated order, we intend to decide the above-titled petitions as they have nexus inter-se and common questions of law and facts have been raised in these petitions.

2. The brief facts of case no. F. 3(1)/2020-law, which is a petition filed by Mian Asif Mehmood, Advocate High Court (hereinafter referred as "petitioner No.1"), are that Mr. Fesal Vawda (hereinafter referred as "respondent") to contest the general elections-2018 from constituency NA 249, Karachi ("constituency"), submitted nomination papers and made concealment of facts in the nomination papers submitted to the concerned Returning Officer ("RO"). The respondent submitted his nomination papers for scrutiny on 11.06.2018 which were accepted by the RO on 18.06.2018. In the affidavit submitted alongwith the nomination papers, he did not disclose his American nationality rather he submitted an application in the American Consulate to surrender his nationality by 22.06.2018 and got the renunciation by 25.06.2018. Therefore, under Article 63(1)(c) of the Constitution of Islamic Republic of Pakistan ("Constitution"), he was not qualified to contest the election as he was dual national at the time of filing of his nomination papers. Further, the respondent concealed the facts from the RO and submitted false affidavit in respect of his personal information, therefore, he stands disqualified under Article 62(1)(f) of the Constitution. The petitioner No.1 prayed to the Commission to disqualify the respondent and fresh election be held in the constituency and also direct the respondent to pay back all the perks and privileges he enjoyed as member of the National Assembly.

3. The brief facts of case No.F.3(NA-249)/2018-Elec-II, which is also a petition filed by Mr. Qadir Khan Mandokhail, Advocate (hereinafter referred as "petitioner No.2"), are that the petitioner No. 2 was a candidate of Pakistan Peoples Party Parliamentarian for the constituency against the respondent who was a candidate of Pakistan Tehrik-i-Insaf and won the seat in General Elections-2018. The respondent filed his nomination papers on 07.06.2018 and at the time of filing nomination papers, he was holding dual nationality of United States of America but deliberately he did not disclose his nationality in the nomination papers. His papers were accepted by the RO on 18.06.2018 with ulterior motives and *mala fide* intentions. On 22.06.2018, the respondent filed an application in the American Consulate for withdrawal of his nationality which was accepted by the Consulate on 25.06.2018. The petitioner No.2 filed application before the RO on 18.06.2018 which was dismissed by the RO on same day. The petitioner No. 2 prayed to the Commission for legal action against the respondent as well as he prayed for his disqualification on the basis of submission of false statements at the time of filing of nomination papers which is sheer violation of Articles 62 & 63 of the Constitution.

4. The brief facts of case No.F.3(NA-249)/2018-Elec-II (P/F), which is also a petition filed by Mr. Mian Muhammad Faisal, Advocate (hereinafter referred as "petitioner No.3"), are that he filed a Writ Petition before the Hon'ble Islamabad High Court for disqualification of the respondent on account of submission of false affidavit regarding his dual nationality while submitting nomination papers for General Elections 2018 from the constituency, which was disposed of by the Hon'ble High Court on 03.03.2021, on account of respondent's resignation

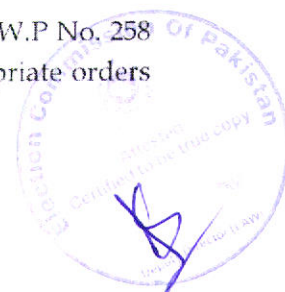




from the membership of National Assembly and matter was referred to this Commission for probing of false affidavit allegedly furnished by the respondent while submitting his nomination papers. The petitioner No. 3 prayed to the Commission that in light of the decision of the Hon'ble Islamabad High Court, respondent's notification as Senator may not be issued till the finalization of probe into the false affidavit.

5. The brief facts of case no. 11(4)/2021-Law, which is also a petition filed by Mr. Dost Ali Jessar (hereinafter referred as "petitioner No. 4") are that he contested the Senate elections from province of Sindh for general seat. He is aggrieved of the decision of the RO (Mr. Ejaz Anwar Chohan) for Senate, whereby respondent has been notified as Senator despite severe illegality in his affidavit filed during General Elections-2018 for the constituency. The respondent was unfit person under Article 62 of the Constitution to hold any public office. In pursuance of the judgment of the august Supreme Court of Pakistan reported as PLD 2018 SC 678 "Speaker National Assembly vs. Habib Akram", affidavit was filed by the respondent alongwith his nomination papers to contest the election from the constituency wherein deliberately he failed to disclose his USA nationality and in the relevant column of the nomination papers against ceasing/holding of dual nationality, he mentioned "N/A". The respondent moved an application to the US Consulate on 22.06.2018 for surrendering of his USA nationality and certificate of loss of nationality was released on 25.06.2018 by the Overseas Citizen Services Department of USA. The petitioner No. 4 has sought declaration from this Commission in respect of the following:-

- a) to pass a declaration that the Respondent No.1 Mr. Fesal Vawda has deliberately sworn a false affidavit on 11.06.2018 filed along with his Nomination Papers for National Assembly - N.A-249, Karachi Sindh, by concealing the facts that he is not a citizen of U.S.A and by further concealment that he ceased to be citizen of Pakistan by virtue of Citizenship Act, 1952.
- b) To declare the Respondent No.1 as a person not having sagacious, righteous, non-profligate, honest and ameen character as enunciated in the Article 62 and 63 of the Constitution of Islamic Republic of Pakistan 1973 as well as Elections Act, 2017.
- c) To place a complete bar on the Respondent No.1 from contesting any Election in future, pursuant to the decision of Hon'ble Supreme Court of Pakistan.
- d) To eliminate the name of the Respondent No.1 from the Impugned Order/Set-aside/suspend the operation of impugned order dated 03-03-2021 to the extent of the Respondent No.1, till the final order of this petition.
- e) It is further prayed that Respondent No.1 may not be allowed to take charge/oath/participate in any meeting in/of the Senate, pending disposal of this Appeal.
- f) That in view of the directions of the Hon'ble Islamabad High Court, in W.P No. 258 of 2020, vide its order dated 03.03.2021 the Commission may pass appropriate orders





with respect to the false Affidavit submitted by the Respondent No.1 before the Commission."

6. The brief history of the proceedings in the matters before this Commission is that on receipt of the subject petitions i.e. petitions listed at sr. No. 1 & 2 above, the respondent was put on notice by the Commission on 03.02.2020 while directing the petitioners to submit certified copies of the documents being relied upon by them. On the adjourned date i.e. 27.02.2020, the respondent was represented by counsel Mr. Mohammad Bin Mohsin, Advocate who requested for provision of copies of the petitions to him. The petitioners also appeared and stated that they had applied to the American Consulate for certified copy of the renunciation certificate of the respondent. However, Consulate has turned down their request on the grounds that it does not comment on individual cases. On another date i.e. 02.06.2020, respondent's counsel instead of submission of reply to petitions, moved miscellaneous applications for dismissal of the petitions on the grounds that the "(1) petitions are hit by Article 63(2) of the Constitution and are not maintainable and, (2) the petitions are barred by time in view of section 142 of the Elections Act, 2017. Despite orders/directions of the Commission dated 10.03.2020, 02.06.2020, 04.08.2020, 03.09.2020 and 29.09.2020, respondent failed to submit reply to the petitions. On 08.10.2020, respondent filed reply to the petitions raising therein certain preliminary legal objections regarding maintainability of the petitions. During the period from October 2020 to January, 2021, the matters remained pending for either arguments on miscellaneous applications or for submissions of their reply. It was 20.01.2021, when this Commission while hearing the arguments of the parties, had posed following three simple questions to the respondent:-

- i. What is meant by "N/A" which he had mentioned in his nomination papers against the provisions *"I have not ceased to be a citizen of Pakistan or have I acquired or applied for the citizenship of a foreign state OR I possess foreign passport No.....issued by.....?"*
- ii. Whether he ever held nationality of any country?
- iii. If he had nationality of any foreign country, when he had renounced the same?

7. On the said date, the respondent responded to question (ii) only by stating that he had held nationality of a foreign country but the same was renounced by him later on (without specifying any date and year). He was directed by the Commission to submit renunciation certificate on the next date. On the adjourned date i.e. 09.02.2021, the respondent's counsel did not appear to answer the questions nor submitted renunciation certificate and sought adjournment which was allowed by the

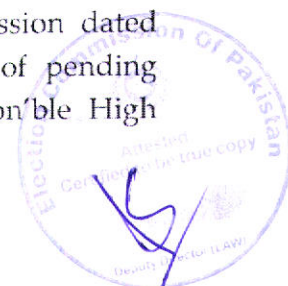




Commission subject to cost of Rs. 50,000/-. On 24.02.2021, respondent's application for dismissal of petitions i.e. petitions at sr. No. 1 & 2, on account of their non-maintainability and being time barred, were turned down by the Commission by holding that under Article 218(3) there is no time frame for challenging the qualification/disqualification of a legislator and question of jurisdiction of the Commission does not arise when challenge is made to the qualification of a person holding public office. On 10.03.2021, the petitions at sr. No.3 & 4 in the subject were taken up by the Commission alongwith the pending petitions. On the said date, the Commission after hearing brief arguments of the petitioners No.3 & 4 turned down their request for withholding of notification of the respondent as Senator as the matter of furnishing of alleged false affidavit by the respondent for General Elections-2018 from the constituency was under probe and the respondent had to submit his reply/stance to the questions of the Commission and renunciation certificate before the Commission. During hearing on 18.03.2021, respondent again moved applications for dismissal of the listed petitions i.e. petition at sr. No. 3 on account of becoming infructuous and being time barred which applications were turned down by the Commission on 12.10.2021. From 18.03.2021 to 03.12.2021, these matters have been adjourned on one or other reasons. Again during hearing on 03.12.2021, respondent's attention was drawn to the renunciation certificate appended by the petitioners with their petitions and he was confronted and asked whether he owns it or not, to which, he submitted that he outrightly disowns it and does not know anything about it. This Commission had again put three questions to the respondent i.e. whether he had any foreign nationality; whether he had renounced his nationality at the time of filing of nomination papers for General Elections-2018, and, when the foreign nationality was renounced by him? In response to these questions, the respondent stated that he is national of USA by birth and at the time of submission of nomination papers for the constituency, he was not subject to any disqualification particularly dual nationality. He further stated that he did not receive any renunciation certificate as he was by birth national of USA. Till date, the respondent has failed to submit the renunciation or loss of nationality certificate before the Commission and has also failed to inform the Commission about the date on which he had renounced his USA nationality.

8. The respondent during pendency of subject petitions invoked the jurisdiction of the Hon'ble High Court of Sindh and Islamabad High Court by way of filing two Writ Petitions under Article 199 of the Constitution, which for the purpose of just decision in these matters, are relevant to refer and discuss here. The brief history of such litigation is as under:-

1. WP No. 4000/2021, challenging the decision of this Commission dated 12.10.2021 vide which, respondent's applications for dismissal of pending petitions regarding his disqualification were dismissed. The Hon'ble High





Court was pleased to disposed of the Writ Petition in the following diction on 12.11.2021:-

"5. It is, therefore, declared that completion of the probe regarding falsity or otherwise of the affidavits submitted by the Petitioner is mandatory in the light of the direction given by the august Supreme Court. It can neither be avoided nor delayed by the Petitioner or the Commission. The Commission is, therefore, directed to complete the probe expeditiously and with due diligence, preferably within sixty days from the date of receiving a certified copy of this order. Likewise, the Petitioner is expected to establish his bonafide(s) by participating in the proceedings regarding the probe relating to the affidavit, failing which it would amount to an attempt to frustrate the implementation of the unambiguous direction of the august Supreme Court. This Court is, therefore, not inclined to interfere with the impugned order. The petition in hand is disposed-of with the expectation that the Commission will conclude its proceedings within the specified period and that no delay would be caused by or on behalf of the petitioner."

Through the above order, the Hon'ble High Court had directed this Commission to complete the probe against the respondent expeditiously and with due diligence, preferably within sixty days from the date of receiving a certified copy of the order.

2. **Constitution Petition No. 1703/2021.** On 8<sup>th</sup> March, 2021, constitutional jurisdiction of the Hon'ble High Court of Sindh was invoked by the respondent, whereby he, inter alia, challenged the jurisdiction of this Commission and prayed to the Court to restrain the Election Commission from proceedings against him. The said Petition has been dismissed as withdrawn on 24.01.2021 and there remains no further litigation in field.

9. It is relevant to add here that the petitioner No. 3 herein, in January, 2020, had invoked the writ jurisdiction of the Hon'ble Islamabad High Court through Writ Petition No. 258/2020, for disqualification of the respondent on account of submission of false affidavit regarding his dual nationality while contesting election from the constituency. The said Petition was disposed of by the Hon'ble High Court on 03.03.2021 on account of resignation of the respondent from the membership of the National Assembly, in the following terms:-

"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



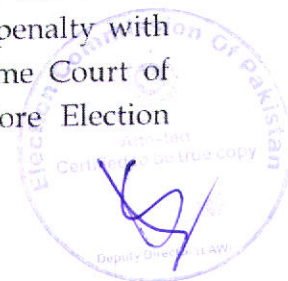


be probed by the Election Commission of Pakistan since the same was submitted before it and the Commission may pass appropriate orders with respect to the same. No contempt of court is made out in the facts and circumstances.

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."

10. The above one decision of the Hon'ble Islamabad High Court dated 12.11.2021 in Writ Petition No.4000/2021, was assailed by the respondent in next forum of Appeal through Intra Court Appeal number 569/2021 and the Hon'ble Division Bench of the Islamabad High Court was pleased to dismiss the Appeal in *limine* on 09.12.2021, with certain declarations and observations as follows:-

"4. The background leading to filing of the instant appeal has been mentioned hereinabove, therefore, need not be reproduced. As noted above, the appellant is primarily aggrieved of rejection of his application filed in the proceedings initiated by respondent No.2 seeking his disqualification. Before adverting to the merit of the arguments of the appellant it is pertinent to observe that earlier a petition, in the nature of quo warranto, was filed against the appellant (W.P. No.258/2020) titled "Mian Muhammad Faisal v. Muhammad Faisal Vawda and 4 others" in which this Court had made observation that the question of tendering false evidence by the appellant is to be probed by Election Commission of Pakistan as the referred document was submitted before it 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). As per admission by the learned counsel for the appellant the referred proceedings are pending determination. Insofar as the vires of decision dated 12.10.2021 by respondent No.1 is concerned, the referred order elaborately deals with the legal question raised by the appellant. The question of limitation in the application filed by respondent No.2 is immaterial inasmuch as Election Commission of Pakistan has ample inherent powers under Article 218 (3) of the Constitution alongwith the provisions of Election Act, 2017. Moreover, in Speaker, National Assembly of Pakistan, Islamabad and others v. Habib Akram and others case supra the august Apex Court made observations that every contesting candidate contesting elections in 2018 is to furnish an affidavit spelling out certain information and in case the affidavit turned out to be false the penalty with respect to swearing a false affidavit before the Hon'ble Supreme Court of Pakistan shall be attracted. Since the affidavit was filed before Election





Commission of Pakistan hence it is the competent body to examine the veracity of the same. Respondent No.2 in his application is not seeking the disqualification of the appellant on any additional ground and is solely seeking relief on the basis of the affidavit which was tendered in the elections of July 2018 and with respect to which a probe is underway.

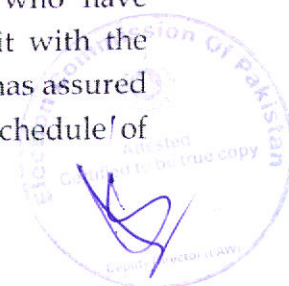
5. The order of the learned Judge in Chambers impugned before us is well reasoned and does not suffer from any error of law calling for interference.

6. For the above reasons, the instant appeal is without merit and is accordingly dismissed in limine. It is expected that the directions made in the order impugned before us qua decision in probe regarding veracity of affidavit filed by appellant in 2018 shall be duly complied with by Election Commission of Pakistan."

11. The above decisions of this Commission dated 24.02.2021 and 12.10.2021, qua maintainability of the subject petitions and jurisdiction of this Commission over the matters, having been duly upheld by the Hon'ble Islamabad High Court vide judgments dated 12.11.2021 and 09.12.2021, have attained finality. Moreover, the judgment of the Hon'ble Islamabad High Court dated 03.03.2021 in WP No. 258/2020, whereby observations were made by the Hon'ble Court regarding probe into the alleged false Affidavit of the respondent by this Commission, has also attained finality.

12. In the light of the above decisions of this Commission and the Hon'ble Islamabad High Court, we deem it inappropriate and irrelevant to refer to and discuss all legal arguments of the parties advanced in support and against the maintainability of the matters/subject petitions and jurisdiction of the Commission under Article 218(3) of the Constitution. Consequently, the only question which the Commission has to determine for the time being is falsity or otherwise of the respondent's Affidavit pursuant to the directions of the august Supreme Court in *Speaker, National Assembly of Pakistan, Islamabad and others v. Habib Akram and others* (PLD 2018 SC 678), and the above referred observations/directions of the Hon'ble Islamabad High Court. The august Supreme Court in the said case of Habib Akram's, had held it mandatory and had issued following directions for furnishing of an Affidavit by all the candidates contesting elections for the National and Provincial Assemblies ahead of General Elections-2018, in the following terms:-

"7. All Candidates of the National and Provincial Assemblies shall file the said affidavit along with their Nomination Papers. Such candidates who have already filed their Nomination Papers, shall file the said Affidavit with the Returning Officers by or before 2nd June, 2018. The Secretary, ECP, has assured us that the aforesaid process will not in any manner upset the schedule of





Elections so as to delay of holding the General Elections on 25.07.2018 as already announced.

8. It is clarified that failure to file such Affidavit before the Returning Officer would render the Nomination Papers incomplete and liable to rejection. If the Affidavit or any part thereof is found false then it shall have consequences, as contemplated by the Constitution and the law. Since the Affidavit is required to be filed in pursuance of the order of this Court, therefore, if any false statement is made therein, it would also entail such penalty as is of filing a false Affidavit before this Court."

[Emphasis added]

13. The august Court categorically held that if the Affidavit or any part thereof is found false then it shall have consequences, as contemplated by the Constitution and law.

14. The *lis* in the subject matters primarily revolves around the furnishing of alleged false Affidavit by the respondent for the constituency during the General Elections-2018.

15. Beside other disqualifications as contemplated by the Constitution in Article 63, holding of nationality of any foreign country other than of Pakistan debars a person from being elected or chosen as and from being a member of the Parliament in the following terms:-

**63. Disqualifications for membership of Majlis-e-Shoora (Parliament):**

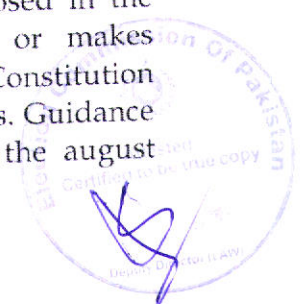
(1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if:-

(a).....

(b).....

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

16. This Article 63(1)(c) of the Constitution has been interpreted by the august Supreme Court in a number of cases and it has been held that a person holding dual nationality at the time of submission of nomination papers is not qualified to contest the election. Such person should have clear and unambiguous evidence of relinquishment of foreign nationality at the time of submission of his nomination papers for the membership of an Assembly or Senate. If a person makes false declaration about any of his personal information required to be disclosed in the nomination papers and Affidavit (part of the nomination papers) or makes concealment of material facts, then he is hit by Article 62(1) (f) of the Constitution which perpetually debars such person from contesting any future elections. Guidance in this regard may be derived from the following few judgments of the august Supreme Court:-





1. 2018 SCMR 1952 "Sher Baz Khan Gaadhi vs. Muhammad Ramzan and others"

(a) Constitution of Pakistan---

---Art. 63(1)(c)---Representation of the People Act (LXXXV of 1976), S. 12(2)(a)---  
 -Candidate contesting General Elections---Nomination papers, rejection of---  
 Dual citizenship---Submitting false affidavit with respect to dual citizenship---  
 Record indicated that the respondent-candidate submitted his nomination  
 papers on 10.6.2018 and filed the relevant affidavit in such regard on 11.6.2018---  
 -Two days later, he renounced his foreign citizenship on 13.6.2018---On the day  
 the respondent filed his nominated papers he had not renounced his foreign  
 citizenship and was a foreign citizen---Even, if it was assumed that the  
 application of renunciation of foreign citizenship had been filed earlier, no  
 disclosure of the same had been made by the respondent in the relevant  
 column of the affidavit---Respondent had filed a false affidavit and made a  
 false declaration on oath, therefore, he was disqualified from contesting  
 elections---Appeal was allowed accordingly.

2. PLD 2019 Supreme Court 201 "Suo Motu Case No.8 of 2018 and Civil Misc. Application No.649-L OF 2018

(f) Constitution of Pakistan---

---Art. 63(1)(c)---Pakistan Citizenship Act (II of 1951), S. 14(3)---  
 Disqualification for membership of Parliament---Dual nationality---  
 Renunciation of foreign nationality/citizenship---Scope---Where a citizen of  
 Pakistan acquired the citizenship of a foreign State, he shall not be qualified  
 to be elected or chosen or being a Member of Parliament until and unless  
 such legal status i.e. being a citizen of a foreign State was obliterated or  
 extinguished---Such disqualification would only be removed when the  
 citizenship of the foreign State was renounced or relinquished and such  
 process of relinquishment or renouncement was completed and concluded---  
 Mere initiation of the process of relinquishment was not sufficient as during  
 the course of such process, the dual national did not cease to be a citizen of a  
 foreign State and the disqualification existed.

3. PLD 2018 Supreme Court 578 "Raja Shaukat Aziz Bhatti vs. Major (R) Iftikhar Mehmood Kiani and another"

(c) Constitution of Pakistan---

---Art. 62(1)(f)---Member of Provincial Assembly/National Assembly---Filing a



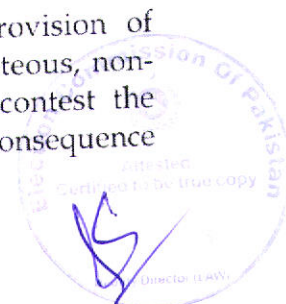


false affidavit with nomination papers---Disqualification from membership of Provincial Assembly/National Assembly---Scope---Where a candidate filed a false affidavit with his nomination papers in a general election, such person would also lose the qualification of being honest for the subsequent elections and would not be entitled to contest such (subsequent) elections or be a Member of the Parliament or the Provincial Assembly.

4. **2013 SCMR 1246 "Sadiq Ali Memon vs. Returning Officer, NA-237, Thatta-I and others"**

**(a) Constitution of Pakistan---**

---Arts. 63(1)(c), 62(1)(f) & 185(3)---Representation of the People Act (LXXXV of 1976), S. 14(3)---Disqualification for membership of Parliament (Majlis-e-Shoora)--- Person having dual citizenship/ nationality---Filing of a false declaration with regard to dual citizenship/nationality---Rejection of nomination papers---Sagacious, righteous, non-profligate, honest and ameen---Scope---Candidate in question was a dual national but did not disclose such fact at the time of contesting previous general elections---Subsequently candidate applied for cancellation of his foreign nationality, which was cancelled accordingly---After having revoked his dual citizenship/nationality candidate filed his nomination papers for the general elections in 2013---Objection was filed against nomination papers of candidate on the grounds that at the time of contesting previous general elections, he had filed a declaration/affidavit and suppressed the fact of his being dual national, thus he could not be said to be a sadiq, ameen and righteous person and was disqualified to contest the election under Arts. 62 & 63 of the Constitution---Returning officer rejected nomination papers of candidate however Election Tribunal set aside findings of Returning Officer and accepted the nomination papers---High Court set aside order of Election Tribunal and rejected nomination papers of candidate by holding that at the time of contesting previous election, the candidate had made a false declaration and committed perjury by categorically mis-stating on oath that he did not suffer from any disqualification---Validity---Admittedly the candidate had filed a declaration while filing nomination papers for contesting previous general elections, to the effect that he fulfilled qualification specified in Art.62 of the Constitution and was not subject to any disqualification specified in Art.63 of the Constitution---Such declaration was made by the candidate despite the fact that he was holding dual nationality in terms of Art.63(1)(c) of the Constitution---On acquiring the citizenship of a foreign State, candidate stood disqualified from being elected or chosen as a member of Majlis-e-Shoora or the Provincial Assembly---Candidate had filed a declaration, which on its face was a false and untrue declaration, which would bring into application the provision of Art.62(1)(f) of the Constitution, i.e. that he was not sagacious, righteous, non-profligate, honest and ameen---Candidate was not qualified to contest the general election of 2013 and his contesting of election, was of no consequence





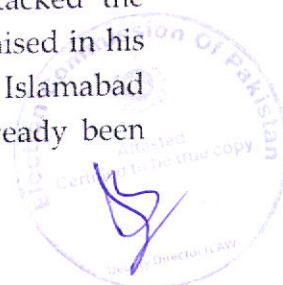
and was accordingly set aside---Petition for leave to appeal was dismissed accordingly."

17. Now we advert to the matters in hand. It is an admitted position that the respondent to contest the election from the constituency had submitted his nomination papers and Affidavit on 07.06.2018 which after scrutiny on 12.06.2018 and 18.06.2018, were accepted by the RO on 18.06.2018. The RO in his order dated 18.06.2018 had, inter alia, observed as under:-

"..... His passport was also confirmed, which revealed that he is a Pakistani national and there was some information with the undersigned that the candidate is a dual national, however, candidate produced his American passport which was not only punched but also bore seal of cancel on the same, which was sufficient that the candidate had relinquished his dual nationality prior to filing of the nomination papers...."

18. In compliance of observations/directions of the Hon'ble Islamabad High Court, this Commission to probe the falsity of the Affidavit, had put three questions to the respondent i.e. whether he had any foreign nationality; whether he had renounced his nationality at the time of filing of nomination papers for General Elections-2018, and, when the foreign nationality was renounced by him? In response to these questions, the respondent had stated that he is national of USA by birth and at the time of submission of nomination papers for the constituency, he was not subject to any disqualification particularly dual national. He further stated that he did not receive any renunciation certificate as he was by birth national of USA. It is observed with concern that the same questions were also previously asked by the Commission during hearing on 20.01.2021 and the respondent had admitted before the Commission that he was holding nationality of USA, however, the same was renounced by him before contesting election from the constituency. However, the respondent till date has failed to inform us about the date (relevant for the present issue), on which he renounced his nationality, despite repeated directions of the Commission. During the last hearing, the respondent was also confronted with a copy of certificate, namely "*Certificate of Loss of Nationality of the United States*" stamped as "*Certificate of Loss of Nationality Approval*" dated 25.06.2018, with the aim whether he owns it or not. The respondent outrightly disowned it and had stated that it does not belong to him as he does not possess any such certificate. The said certificate is part of record of the proceedings and being relied upon by the petitioners to substantiate their claims/petitions.

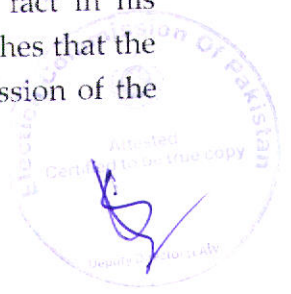
19. The respondent through his written and oral arguments has attacked the maintainability of the petitions on almost similar grounds which he had raised in his above referred Writ Petition and Intra Court Appeal before the Hon'ble Islamabad High Court, which were repelled. The said legal aspects/issues have already been





addressed by this Commission and the Hon'ble High Court and need not to be revisited. Rest of the submissions/legal arguments of the respondent in respect of holding dual nationality, which are relevant for resolution of the present controversy, are reproduced hereunder for ease of reference: -

1. According to learned counsel for the respondent entry numbered 'R' required a statement regarding three matters; first, whether the Deponent had ceased to be a citizen of Pakistan and secondly, whether he had applied for or acquired the citizenship of a foreign state. Finally, it required a declaration as to whether the deponent had, at the time of filing the affidavit, a foreign passport.
2. That the Affidavit does not talk about the date of renunciation of the foreign nationality. On a literal reading, the Affidavit does not ask whether the deponent was a foreign national or not. It just asks whether a foreign nationality had been acquired or applied for and whether the deponent has a foreign passport.
3. The respondent was born on 21-10-1973 at St. Joseph's Hospital, Chicago, Illinois, United States of America. It is thus, by virtue and reason of his place of birth that the Respondent became a citizen of the United States of America. The Merriam-Webster Dictionary describes acquired" as: gained by or as a result of effort or experience. Since the respondent was born citizen of the United States, he simply could not have acquired a foreign nationality. The said nationality naturally came to him as a result of the place of his birth. In light of the above said fact, he, being a lay man in 2018, simply wrote N/A meaning not applicable to him as he was a born citizen. There is no allegation nor has the respondent ever applied for a foreign citizenship so the answer "N/A" was also deemed appropriate for the same.
4. That the respondent, never ceased to be a citizen of Pakistan and always had a NICOP issued to him by NADRA. Thus, in light of what has been stated above, it is clear that nor did he ever "acquired" nor "applied for" a foreign citizenship and thus the column "R" was simply not applicable to him.
5. The other part of column "R" required information/declaration about whether the respondent had a foreign passport. It is submitted that he had, well before the submission of the affidavit, to fulfill constitutional requirements, had got his passport cancelled by the embassy. The same cancelled passport was shown to the Returning Officer who had also recorded the said fact in his judgment, dated 18-06-2018, on the second page. This clearly establishes that the respondent did not have any foreign passport at the time of submission of the said affidavit under scrutiny.





6. That the Petitioners rely on a so called renunciation certificate. It is submitted that the respondent does not possess the said certificate. It is further submitted that the respondent, in order to fulfill all requirements of the constitution, had duly got his passport cancelled and signed all requisite documents required by the embassy of the United States at Karachi. That he further got his NICOP, which is the National Identity Card for Overseas Pakistan, is cancelled on 29 May 2018 only after which he was issued a normal identity card. It is pertinent to mention that NADRA does not issue simple National identity cards to foreign nationals who are issued NICOP only.

7. As a result of what has been stated above, the respondent approached NADRA whereby NADRA issued a certificate to him dated 29-05-2018 categorically asserting that Mr. Fesal Vawda had ceased to be a citizen of United States of America and thus his CNIC was being issued. Thus, after attestation by the concerned governmental agency, he confidently assumed that he is a Pakistani citizen and wrote N/A i.e. not applicable in the column R of the affidavit submitted on 11-06-2018.

8. That for arguments sake, even if the renunciation certificate, being relied upon by the Petitioners is assumed to be true, then also the respondent cannot be said to have lied or submitted a false affidavit before the Election Commission. At the most, if it is assumed that the respondent renounced his citizenship on 22.06.2018, then also, at best a case under article 63(1)(c) of the Constitution of the Islamic Republic of Pakistan, causing him to be disqualified, may be applicable to his election as a member of the National Assembly NA-249, Karachi from which he resigned on 03 March 2021 and thus, any deliberation on that front would be an exercise in futility. It is further submitted that the same has been done in cases of Sadia Abbasi and Murad Ali Shah.

20. The respondent in order to support his above assertions has produced before us copy of his birth certificate, copy of his cancelled passport, copy of the order of the Returning Officer dated 18-06-2018, a copy of his National Identity Card and a copy of the certificate issued by NADRA dated 29-05-2018, as Annex A to E, respectively.

21. We have noticed that in order to support his argument that at the time of submission of nomination papers he was not a dual national, respondent is primarily relying upon (1) copy of his birth certificate issued by the ST. Joseph Hospital, America, (2) copy of his USA passport punched as "Cancelled", (3) copy of the order of the Returning Officer dated 18-06-2018, (4) a copy of his National Identity Card and (5) a copy of the certificate issued by NADRA dated 29-05-2018.





22. Now, we deem it appropriate also to examine the relevant provisions of the Pakistan's law which deal with the acquisition and relinquishment of Pakistan's nationality and nationality of a foreign country. Section 14(3) of the 'Pakistan Citizenship Act, 1951', explicitly allows a citizen of Pakistan to hold dual nationality as acquiring dual nationality through legal and honest means is not a crime. However, the Constitution debar a dual national to contest the election for National and Provincial Assembly as well as the Senate. Under section 14(1) of the Act *ibid*, dual citizenship or nationality of persons is prohibited in the following terms:-

**"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."

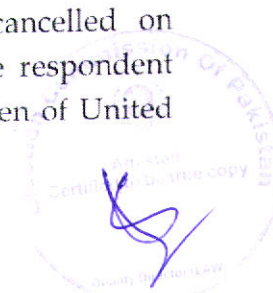
23. Under this section, it is mandatory for a dual national to obtain a declaration from the foreign country regarding renunciation of his nationality to qualify as a citizen of Pakistan. Even a person who holds nationality by birth of a foreign country is a dual national and has to fulfill the requirement of declaration as envisaged in section 14(1) *ibid*. The Rule 19 of the Pakistan Citizenship Rules, 1952, further clarifies it in the following manner:-

**"19. Renunciation of dual citizenship or nationality.** Any person who, under section 14 of the Act, makes a declaration of renunciation of his status as a citizen or national of another country, shall produce satisfactory evidence that he has made such a declaration."

24. As mentioned above, the respondent initially admitted before the Commission that he had nationality of USA which was renounced by him later on (without specifying any date and year). He further submitted that he did not possess any certificate regarding loss of USA nationality as he was by birth national of USA.

25. After perusal of above referred law and the arguments advanced by the respondent, the following questions arise for the determination of the Commission: -

- i. Whether mere a USA passport of the respondent punched as 'cancelled' produced before us and the RO, was a sufficient evidence/declaration in terms of section 14(1) of the Citizenship Act, 1952 readwith Rule 19 of the Pakistan Citizenship Rules, 1952, entitling him to contest the election from the constituency?
- ii. Whether issuance of CNIC in place of NICOP (got cancelled on 29.05.2018 as per the respondent) and a certificate to the respondent dated 29-05-2018 asserting that he had ceased to be a citizen of United

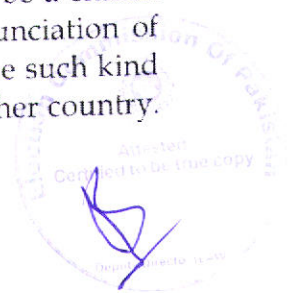




States of America, by NADRA, is a sufficient evidence/declaration in terms of section 14(1) of the Citizenship Act, 1952 readwith Rule 19 of the Pakistan Citizenship Rules, 1952, entitling him to contest the election from the constituency?

- iii. Whether it was not mandatory for the respondent to apply for the renunciation of his USA nationality under the Pakistan Citizenship Act, 1951 and Rules made thereunder and get a renunciation certificate before contesting the election from the constituency?
- iv. Whether the respondent has submitted a false declaration/Affidavit in respect of his personal information which has serious consequences?
- v. Whether the respondent at the time of filing of nomination papers for the constituency, was a qualified person to contest the election from the constituency under Article 63(1)(c) of the Constitution?
- vi. Whether any action/proceedings under Article 63(1)(c) of the Constitution take place against the respondent who has resigned from the membership of the National Assembly and has been elected as Senator on 10.03.2021?

26. We have examined the above referred nationality law of Pakistan and observed that under section 14(1) of the Citizenship Act, 1952 readwith Rule 19 of the Pakistan Citizenship Rules, 1952, a person holding nationality or citizenship of any foreign country is required to obtain a declaration from such foreign country regarding renunciation of his nationality in accordance with applicable law of that country to qualify as a citizen of Pakistan. The respondent till date has denied holding of any kind of declaration in respect of renunciation of USA nationality. Another argument of the respondent that the NICOP issued to him was got cancelled on 29.05.2018 and a CNIC was issued which confirms that he has lost nationality of USA is forceless. Mere surrendering of NICOP or cancellation of passport is no proof of surrendering of nationality as per law. Mere punching of passport and bearing a seal "cancelled" is no proof of renunciation of nationality as passport may be cancelled due to many reasons but still retaining the nationality/citizenship. To our understanding, NICOP is only a registration document which is issued to an eligible citizen of Pakistan who lives or has reference in foreign country and any citizen of Pakistan can apply and get NICOP and even can travel to Pakistan without requiring a visa in case of dual nationality. Moreover, it is not mandatory for a dual national to get a NICOP. A dual national can have an ordinary Identity Card without having NICOP. The certificate issued to the respondent dated 29-05-2018 by NADRA asserting that he had ceased to be a citizen of United States of America also does not qualify as declaration of renunciation of nationality. It is clear in our mind that NADRA is not an authority to issue such kind of certificate regarding loss or acquiring of nationality/citizenship of another country. They can only confirm whether a person is citizen of Pakistan or not.





27. Now, we have to see whether Affidavit in question submitted by the respondent for contesting the election from the constituency was false or otherwise. In the said Affidavit, the respondent on solemn affirmation declared against entry "R" as under:-

**"AFFIDAVIT BY THE CANDIDATE FOR  
ELECTION TO THE ASSEMBLIES IN GENERAL  
ELECTIONS 2018**

I, ..s/o, d/o w/o .., being a candidate for election to the National Assembly/Provincial Assembly of (name of province) from constituency No. filed/am filing my nomination papers on and in addition to Form A and form B, I do hereby solemnly affirm and declare to the best of my knowledge and belief that,---

A.....

R. **I have not ceased 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. N/A .. issued by ..[name of country(s)]."

[emphasis added]

28. The above entry 'R' which is part and parcel of the Affidavit, has originally been derived from the Constitution i.e. Article 63(1)(c), which provides as under:-

"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"

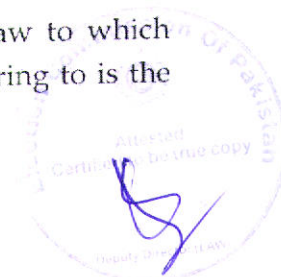
29. The above constitutional provision has been interpreted by the august Supreme Court in its following landmark judgment, as under:-

**PLD 2019 Supreme Court 201 "Suo Motu Case No.8 of 2018 and Civil Misc. Application No.649-L OF 2018**

"19. Before proceeding further, it may be noted that a "citizen" has been defined under Article 260(1) of the Constitution in the following terms:

"260. (1) "citizen" means a citizen of Pakistan as defined by law;"

20. The mode of acquiring or loss of citizenship has not been set forth in detail in the Constitution of the Islamic Republic of Pakistan, 1973. The law to which Article 260(1) of the Constitution reproduced herein above is referring to is the Pakistan Citizenship Act of 1951.





21. An overview of the said Act, 1951, as amended from time to time reveals that as a general principle, dual citizenship or nationality is not permitted. Reference, in this behalf, may be made to Section 14(1) of the Act of 1951, which reads as follows:

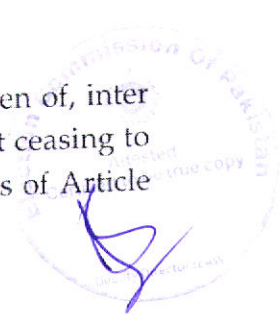
**"14. Dual citizenship or nationality not permitted.**—(1) Subject to the provisions of this section if any person is a citizen of Pakistan under the provisions of this Act, and is at the same time a citizen or national of any other country, he shall, unless [...] he makes a declaration according to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

A plain reading of the aforesaid makes it clear and obvious that a Pakistani citizen who is incidentally a citizen or national of another State must make a choice and as a general rule cannot be a citizen of both countries. Until and unless he severs his relationship of nationality and/or citizenship with the foreign State in terms of laws of such State, he will cease to be a citizen of Pakistan. Section 14(1) of the Pakistan Citizenship Act, as originally framed in 1951, envisaged a grace period of one year from coming into force of the Act for citizen of Pakistan and another State to make up his mind. This obviously catered for the situation that a large number of people who by birth or migration were entitled to be the citizen of both Pakistan and India. It is, in this context, that the grace period appears to have been granted. However, the general principle that a Pakistani citizen cannot also a citizen of another State was without exception the law of the land till 1972, when by way of an amendment, sub-section (3) of the Act of 1951, was added to Section 14, which reads as follows:

"14(3) Nothing in sub-section (1) shall apply, or shall be deemed ever to have applied at any stage, to a person who being or having at any time been, a citizen of Pakistan, is also the citizen of the United Kingdom and Colonies or of such other country as the Federal Government may, by notification in the official Gazette, specify in this behalf."

22. Various notifications have been issued under Section 14(3) of the Act of 1951, to extend the privilege of dual nationality to persons acquiring citizenship of, inter alia, United States of America and Canada in addition to the United Kingdom countries relevant for the adjudication of the lis at hand.

23. Currently, a person can be a citizen of Pakistan as well as a citizen of, inter alia, United Kingdom, United States of America and Canada without ceasing to be a citizen of Pakistan. It is in the above context, that the provisions of Article

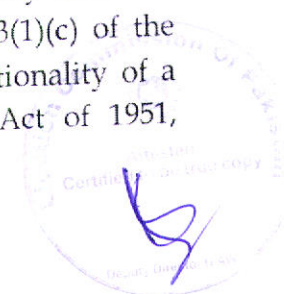




63(1)(c) of the Constitution, must necessarily be interpreted. Where a citizen of Pakistan acquires the nationality of or is also a citizen of another country other than a country covered by the provisions of Section 14(3) of the Act of 1951, or the Notifications issued thereunder, permitting dual nationality, referred to above, he automatically ceases to be a citizen of Pakistan, and therefore, cannot be elected or chosen as a Member of Parliament or hold such Office in view of the Article 63(1)(c) of the Constitution in as much as it states "ceases to be citizen". In fact, he is not qualified in terms of Article 62(1)(a) of the Constitution. If the contentions of the learned counsel are to be accepted with regard to a person, would come within the mischief of Article 63(1)(c) of the Constitution, only if he loses his Pakistani citizenship on account of acquiring citizenship/nationality of another State than the latter portion of the Article would become redundant and the intention of the framers of the Constitution would be frustrated rather than actualized.

24. The upshot of the above is that it was clear intention of the framers of the Constitution that the word 'or' has been used disjunctively in order to cater for a separate distinct situation, where a Pakistani citizen acquires a dual nationality of a foreign State as mentioned or notified under Section 14(3) of the Act of 1951, without loss of his Pakistani citizenship in terms of Section 14(1) of the said Act. An interpretation to the contrary would render the phrase "acquires the citizenship of a foreign State" under Article 63(1)(c) of the Constitution redundant, which intention can never be attributed to the framers of the Constitution, as is the settled law, in this behalf. Reference, in this behalf, may be made to the judgments of this Court reported as *Malik Shakeel Awan v. Sheikh Rasheed Ahmed and 21 others* (PLD 2018 SC 643), *Justice Shaukat Aziz Siddiqui and others v. Federation of Pakistan through Secretary Law and Justice, Islamabad and others* (PLD 2018 SC 538), *Sami Ullah Baloch and others v. Abdul Karim Nousherwani and others* (PLD 2018 SC 405), *Muhammad Hanif Abbasi v. Imran Khan Niazi and others* (PLD 2018 SC 189), *District Bar Association, Rawalpindi v. Federation of Pakistan* (PLD 2015 SC 401), *Application by Abdul Rehman Farooq Pirzada* (PLD 2013 SC 829), *Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary and others* (PLD 2010 SC 61) and *Shahid Nabi Malik and another v. Chief Election Commissioner, Islamabad and 7 others* (PLD 1997 SC 32).

25. Thus, the conclusion drawn by this Court in the case reported as *Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others* (PLD 2012 SC 1089), that the word 'or' used in Article 63(1)(c) of the Constitution, is disjunctive and that a person holding a dual nationality of a foreign State though legally in view of Section 14(3) of the Act of 1951,





nevertheless will not be entitled to be elected or chosen as, or hold the Office of a Member of Parliament, is correct interpretation of the Constitution and does not merit any reconsideration. Incidentally, the aforesaid view has been reiterated by this Court in its judgments reported as Dr. Muhammad Tahir-ul-Qadri v. Federation of Pakistan through Secretary, M/o Law, Islamabad and others (PLD 2013 SC 413) and Sadiq Ali Memon v. Returning Officer, NA-237, Thatta-I and others (2013 SCMR 1246).

26. The contentions of Mr. Bilal Hassan Minto, learned ASC, amicus curiae, must necessarily be examined in the context that the word 'or' as used in Article 63(1)(c) of the Constitution, has been employed disjunctively with the effect that lack of qualification(s) under the said provision caters for two separate legal situations. Firstly, where a person who once being a citizen of Pakistan ceases to be a citizen of Pakistan (say under Section 14 of the Act of 1951), or secondly acquires the citizenship of a foreign State [as is permissible under Section 14(3) of the Act of 1951]. The later disqualification i.e. acquiring citizenship of a foreign State needs to be interpreted on stand alone basis as a separate category of disqualification. In the above context, Mr. Bilal Hassan Minto, learned ASC, amicus curiae, perhaps, correctly canvassed that such a disqualification is triggered by acquiring of the citizenship of a foreign State. We noticed that the term "acquire" has not been defined in the Constitution. Thus, we must search for its ordinary dictionary meanings. In "Words and Phrases, Permanent Edition, West Publishing Co. Volume 1A, at page 556-557", the words "acquire" and "acquired" have been defined as under: "ACQUIRE; ACQUIRED In General: To "acquire" means to gain, usually by one's own exertion; to get, as one's own, as to acquire a title, riches, knowledge, skill, good or bad habits. U.S. v. Hibernia Bank Bldg., D.C.La., 76 F.Supp. 18, 19." In Black's Law Dictionary, Fifth Edition by the Publisher's Editorial Staff, at page 23, stated as under: "To gain by any means, usually by one's own exertions; to get as one's own; to obtain by search, endeavour, investment, practice, or purchase; receive or gain in whatever manner; come to have. In law of contracts and of descents, to become owner of property; to make property one's own." In Legal Terms & Phrases, Judicially defined from 1947 - 2012, by M. Ilyas Khan, 2013 Edition at page 38, the word "Acquire", has been defined, while referring the judgment rendered by Mr. Justice Shabbir Ahmed, Judge, Lahore High Court, in the judgment reported as M. Aslam v. Umar Bibi (PLD 1960 Lahore 312) in the following words: "Acquire. - "To obtain or gain usually by one's own efforts." The phrase "acquires the citizenship of a foreign State" when examined in the context of the aforesaid definitions of the word "acquire", leads to an irresistible conclusion that a person is not qualified, if he, obtains or gains the citizenship of a foreign State. The lack of qualification is the consequence of gaining, obtaining or acquiring a





legal status i.e. citizenship of a foreign State. As long as such legal status i.e. citizenship of a foreign State holds the field the disability resulting therefrom i.e. lack of qualification to be elected or chosen or being a Member of Parliament would also exist. If such disabling legal status disappears so too will the disability. This is the only conclusion which can be drawn from a plain reading of the aforesaid provision. In this view of the matter, where a citizen of Pakistan acquires the citizenship of a foreign State, he shall not be qualified to be elected or chosen or being a Member of Parliament until and unless such legal status i.e. being a citizen of a foreign State is obliterated or extinguished. This is only possible when the citizenship of the foreign State is renounced or relinquished and such process of relinquishment or renouncement is completed and concluded. Mere initiation of the process of relinquishment is not sufficient as during the course of such process, the dual national does not cease to be a citizen of a foreign State and the disqualification exists. This view has already been taken by this Court in the judgments reported as Syed Mehmood Akhtar Naqvi v. Federation of Pakistan through Secretary Law and others (PLD 2012 SC 1054), Dr. Ahmed Ali Shah and others v. Syed Mehmood Akhtar Naqvi and others (2018 SCMR 1276), Zahid Iqbal v. Hafiz Muhammad Adnan and others (2016 SCMR 430) and Sadiq Ali Memon v. Returning Officer, NA-237, Thatta-I and others (2013 SCMR 1246), we have not been persuaded to take a different view in the matter."

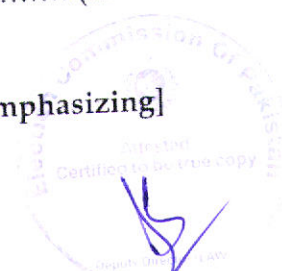
30. The above judgment of the august Supreme Court in unequivocal terms interprets and clarifies that where a citizen of Pakistan acquires the citizenship of a foreign State, he shall not be qualified to be elected or chosen or being a Member of Parliament until and unless such legal status i.e. being a citizen of a foreign State is obliterated or extinguished. This is only possible when the citizenship of the foreign State is renounced or relinquished and such process of relinquishment or renouncement is completed and concluded.

31. We have also perused the Affidavit submitted by the respondent to contest the election to Senate in February, 2021, wherein against the similar clause R of the similar Affidavit, respondent mentioned as under:-

"I have not ceased to be a citizen of Pakistan nor have I acquired or applied for the citizenship of a foreign state. HOWEVER, I WAS A US CITIZEN BY BIRTH WHICH WAS DULY GIVEN UP IN 2018, I AM A PAKISTANI CITIZEN ONLY.

I possess foreign Passport No. N/A issued by N/A.....(name of country(s)."

[Underlining is for emphasizing]





32. The respondent in the above referred Affidavit has admitted that he was a US citizen by birth which was duly given in 2018 and now he is a Pakistan citizen only. He has once again failed to disclose the date on which he relinquished the citizenship of US. In the instant case, the respondent till date has not shown us any renunciation certificate rather he has stated that he never acquired, applied and obtained such certificate. Thus, in our view, the respondent was holder of nationality of USA and has submitted false Affidavit to this effect while submitting nomination papers for the general elections 2018 from the constituency. Since, the respondent has admittedly acquired citizenship of a foreign country, he is hit by the afore-referred provision of the Constitution i.e. 63(1)(c) and thus was not eligible to contest the election from the constituency.

33. The respondent in his nomination papers submitted for the constituency had made the following declaration on oath: -

**"DECLARATION AND OATH BY THE PERSON NOMINATED**

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

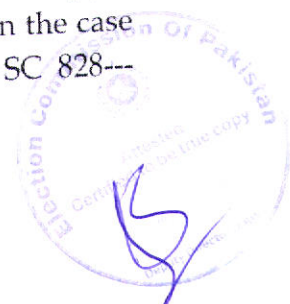
34. In order to further probe the matter, this Commission also approached the USA Consulate on 14<sup>th</sup> January, 2022, in response to which, the Consulate General, Karachi vide letter dated 26<sup>th</sup> January, 2022 confirmed that the Certificate of Loss of Nationality of the respondent was approved on 25.06.2018. This is sufficient evidence for the purpose in hand.

35. Since, the dual nationality of the respondent has been established, therefore, there is no hesitation to hold that the respondent has submitted a false declaration about his personal information which has attracted consequences of Article 62(1)(f) of the Constitution.

36. Moreover, the august Supreme Court in **PLD 2013 Supreme Court 482 "Mian Najeeb-ud-Din Owasi and another vs. Amir Yar Waran and others"** was pleased to hold that no period of limitation was relevant for declaring a person to be disqualified because such disqualification was suffered at the time when Member had filed the nomination papers by making a declaration. In said case, the august Court had passed directions for this Commission in the following terms:-

**(a) Representation of the People Act (LXXXV of 1976)---**

----Ss. 78(3)(d), 12 & 14---Constitution of Pakistan Arts. 62, 63 & 218(3)---  
Implementation proceedings of the judgment of the Supreme Court in the case of Muhammad Rizwan Gill v. Nadia Aziz and others PLD 2010 SC 828---





Members of National and Provincial Assemblies and the Senate who had submitted bogus/fake degrees (educational qualifications) at the time of getting their nomination papers during the general elections held in 2008---Duty of Election Commission of Pakistan to de-notify such Members---Scope---Supreme Court observed that when a Member of the Parliament was disqualified, before or after the election, on the account that he made a false declaration on his/her nomination form (stating) that he fulfilled the conditions laid down under Arts.62 and 63 of the Constitution, he would have no right to hold office as a Parliamentarian/Member of National Assembly/Provincial Assembly or the Senate, and in such a situation it was obligatory upon the Election Commission of Pakistan to proceed against such member by de-notifying him retrospectively, that once a person was disqualified on the basis of his own declaration under his signature, he could not plead or take that stand that as his prosecution was pending, therefore, he might not be de-notified, that notwithstanding the fact that condition of being a graduate or having a degree of equal requisite academic skills was not available (i.e. applicable) after the general elections of 2008, yet if a candidate had declare himself to be a graduate, but it was subsequently found that he was not, then he would be liable to face the consequences under Arts.62 and 63 of the Constitution or other relevant provisions of the Pakistan Penal Code, 1860; that while making declarations in the nomination papers, a candidate must provide a crystal clear statement about his credentials and antecedents, therefore, whatever a candidate possessed in terms of academic qualification, bank credits and taxes etc. he should declare each and everything required for the qualification to contest the election; that no period of limitation was relevant for declaring a person to be disqualified because such disqualification was suffered at the time when Member had filed the nomination papers by making a declaration, while having a fake degree in his hand; that regarding cases of Members which had been closed pursuant to their resignation or due to decision of different courts, or due to the condition of (bachelor's) degree being lifted, or because of other different grounds, such cases had to be dealt with (by the Election Commission) in accordance with the law and observations of the present case.

37. The august Supreme Court in another landmark judgment reported as **PLD 2012 Supreme Court 681 "Workers' Party Pakistan through Akhtar Hussain, Advocate, General Secretary and 6 others Versus Federation of Pakistan and 2 others"** has defined the duty of the Election Commission, inter alia, in the following terms:-

“(g) Constitution of Pakistan---



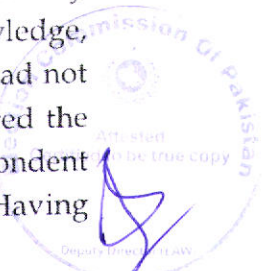


---Art. 218---Election Commission---Duties---Election process---Significance and scope---Election process was one of the key aspects of democracy and was identified and regulated by the Constitution---Article 218 of the Constitution, constituted the Election Commission and empowered it to organize and oversee the election process and to ensure, inter alia, that it was conducted honestly, justly, fairly and in accordance with law and that corrupt practices were guarded against.

38. In another judgment i.e. PLD 2018 Supreme Court 449 "**Sher Alam Khan vs. Abdul Munim and others**" the august Supreme Court upheld the findings of the Election Commission with regard to disqualification of a sitting member of the Provincial Assembly and held as under:-

**"d) Representation of the People Act (LXXXV of 1976)---**

---S. 99(1A)(k)(1)---Constitution of Pakistan, Arts. 63(1)(f) & 63(1)(k)---Disqualification from membership of Provincial Assembly---Candidate contesting election within two years of resigning from Government service---Election Commission held that respondent (returned candidate) at the time of submitting his nomination papers on 29-03-2013 was employed as a Government primary school teacher and was drawing salary as such, and that his date of resignation was 31.03.2013, hence, respondent was disqualified from contesting the elections as he had violated Art.63(1)(k) of the Constitution as well as S.99(1A)(k)(1) of the Representation of the People Act, 1976---Consequently, the Election Commission declared election of respondent as null and void and withdrew his notification as returned candidate---Plea of respondent that by impersonating and using the name, CNIC number and his educational testimonials some other person obtained employment as a primary school teacher without the knowledge of respondent---Validity---When respondent was appointed as a Special Assistant to the Chief Minister and in such capacity entitled to salary from the Provincial Government, a computerized pay slip was generated, which bore the same personal number and CNIC number as that of the primary school teacher---More importantly, it clearly exhibited respondent's length of service as about 20 years as a primary school teacher---Respondent was served with the said pay slips during his tenure as a Special Assistant to the Chief Minister, and he accepted the salary without making any attempt for rectification of the pay slip, thus, conclusively establishing that the respondent was aware that he was employed as a primary school teacher and such employment was obviously with his knowledge, consent and connivance---In such circumstances, a period of two years had not lapsed on 31-03-2013 (date of resignation) when the respondent contested the elections held in May, 2013 and submitted his nomination papers---Respondent was therefore disqualified in terms of Art.63(1)(k) of the Constitution---Having





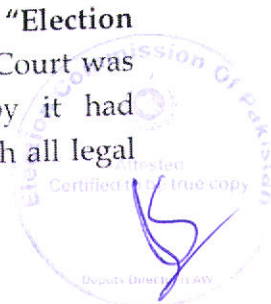
deliberately concealed material facts in his nomination papers by failing to disclose that he was disqualified under S.63(1)(k) of the Constitution and that he was a ghost employee respondent could hardly be considered to be honest in terms of Art.63(1)(f) of the Constitution---Respondent was not qualified to be and disqualified from being a Member of the Provincial Assembly at all material times, hence, was liable to be de-notified as such by the Election Commission---Supreme Court directed that respondent should return all the benefits i.e. salary and other allowances received by him as a Member of the Provincial Assembly, and that criminal proceedings as provided under the law should be initiated against him."

39. The august Court in **PLD 2010 Supreme Court 828 "Muhammad Rizwan Gill vs. Nadia Aziz and others"** with regard to commission of corrupt practices by the parliamentarians was pleased to direct the Election Commission in the following terms:-

"17. Shouldn't it then be incumbent upon the Election Commission, in discharge of its constitutional obligations to guard against corrupt practices, to launch prosecution of persons who stood accused of the commission of the same. Needless to say that punishment and consequent disqualification of such-like persons would not be an act undermining the dignity and the majesty of the Houses of Legislature but an act in aid of enhancing the same.

18. The Election Commission is, therefore, directed to initiate action against all such persons who are accused of commission of corrupt practices; of committing forgery and of using, as genuine, documents which they knew or at least had reason to believe to be forged. The Election Commission shall ensure that the investigations in these matters are conducted honestly, efficiently and expeditiously and shall depute one of its senior officers to supervise the same. The learned Sessions Judges to whom these trials shall then be entrusted, are also directed to conclude the same without any delay, in consonance with the spirit of the Elections laws as displayed, inter-alia, by the Provisos newly-added to subsection (I-A) of section 67 of the said Act of 1976 through the Amending Act No. IV of 2009 promulgated on 2-11-2009. In any case, it should not take each learned Sessions Judge who gets seized of the matter, more than three months to conclude the same."

40. In another case reported as **PLD 2018 Supreme Court 732 "Election Commission of Pakistan vs. Bibi Yasmin Shah, etc"** the august Supreme Court was pleased to uphold the decision of the Election Commission whereby it had disqualified/de-notified Bibi Yasmin Shah as a Senator retrospectively with all legal



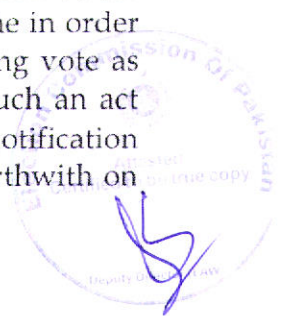


consequences from the date when she for the first time entered upon her office and directed recovery of all financial benefits from her. In the said case, the Election Commission on the report of the Higher Education Commission had found that BA degree being used by Bibi Yasmin Shah was fake and fabricated and she had defrauded the Election Commission. The said decision of this Commission was upheld by the august Supreme Court in the following terms:-

"17. We have confronted the learned counsel for Respondent No.1 with the entire original record and asked him to offer an explanation which he has not been able to provide. We are, therefore, in no manner of doubt that the degree possessed by Respondent No.1 is fake having not been issued by the University of Karachi pursuant to fulfillment of all terms and conditions and passing the requisite examination by Respondent No. 1. The Respondent has tried to defraud the system and has dishonestly filed fake and fabricated documentation with the Petitioner. Such candidates pollute the stream of democracy which must consist of honest and upright people with pristine character whose integrity is beyond any doubt. The Respondent No.1 obviously falls much short of this benchmark and cannot be allowed to join the election process."

[Emphasis added]

41. For what has been discussed above, in exercise of powers under Article 218(3) of the Constitution read with section 8(c) of the Elections Act, 2017, we conclude and hold that the respondent at the time of filing of his nomination papers for the constituency was not an eligible/qualified person in terms of Article 63(1)(c) of the Constitution and has submitted false Affidavit and declaration to this effect which squarely falls within the ambit of Article 62(1)(f) of the Constitution. Resultantly, the respondent, who has since resigned from the membership of National Assembly, is directed to refund all monetary benefits drawn by him for the period during which he occupied the seat of National Assembly and held the public office and drawn his emoluments from the public exchequer including monthly remunerations, TA/DA, facilities of accommodation along with other perks which shall be deposited with the Secretary, National Assembly within a period of two months. Moreover, it is a matter of record as discussed above that respondent had filed a false affidavit along with his nomination papers before the Returning officer on 07.06.2018, on the basis of which he contested election for the seat of National Assembly and thereafter became a Federal Minister. Admittedly, he tendered his resignation from the seat of National Assembly on 03.03.2021 (polling day of senate elections) when the case was being argued before the Hon'ble Islamabad High Court, which makes his conduct doubtful as he in order to cover his guilt resigned from the seat of National Assembly after casting vote as MNA for senate elections and presented himself for the seat of senate. Such an act further makes the issue doubtful. Therefore, we unanimously hold that notification dated 10.03.2021 to the extent of respondent as a Senator be withdrawn forthwith on





account of filing false affidavit, misstatement/false declaration on oath which bear consequences.

42. Office to take follow up action, accordingly.

(Sikandar Sultan Raja)  
Chairman

(Nisar Ahmed Durrani)  
Member

Shah Muhammad Jatoi  
Member

Announced in open Court on 9<sup>th</sup> February, 2022

