

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

**C.P. No.D-1761 of 2020**

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<b>Date</b>	<b>Order with signature(s) of Judge(s)</b>
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**Present**

**Mr. Justice Muhammad Ali Mazhar  
Mr. Justice Arshad Hussain Khan**

Abbu Hashim & another .....Petitioners

Versus

Federation of Pakistan & others.....Respondents

Date of hearing: 13.10.2020 & 18.11.2020.

M/s. Salahuddin Ahmed, Muhammad Rizwan & Saifullah Abbasi, advocates for the Petitioners.

Ch.Muhammad Farooq and Ms. Samina Maqsood advocates for NADRA.

Mr. Kafeel Ahmed Abbasi, D.A.G.

Mr. Hussain Bohra, Assistant Attorney General.

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**Muhammad Ali Mazhar, J.** This petition has been brought to entreat declaration that the show cause notices dated 03.05.2017 issued by the respondent No.2 to the petitioners are without any lawful justification hence liable to be quashed. Directions have also been sought against NADRA to restore CNIC of the petitioners.

2. The ephemeral facts move forward by means of memo of petition are that the petitioners are citizens of Pakistan. Petitioner No.1 was serving as an employee of the High Court of Sindh since 15.01.1997 and retired on 30.6.2019 in BPS-10. The petitioner No.2 is a spouse of petitioner No.1. The respondent No. 2 issued Computerized National Identity Card (CNIC) and prior to the CNIC, the petitioner No. 1 was issued manual NIC on 28.04.1982 which was renewed on 25.05.2001 due to change of address. The petitioner No.1 was issued Domicile of Karachi on 18.12.1998 from the Deputy Commissioner Karachi (South). He

was also issued computerized passport on 28.10.2006 and earlier he was also issued manual Passport by Respondent No.1. The petitioner No.1 was issued CNIC bearing No.42201-0563449-8 on 1.2.2013 and prior to CNIC, the petitioner No. 2 was also issued manual NIC on 7.2.1979. The petitioners received show cause notices dated 3.05.2017 from respondent No.2 that their CNICs have been blocked with the allegation that petitioners provided wrong information but no specific details were mentioned in the notices. The petitioners approached to the NADRA office and concerned staff gave them a form and instructed them to fill up the required details. The petitioners submitted all details and NADRA officials called them several times to answer queries and lastly on 25.11.2017 intimated them that their CNICs would be unblocked within a month. The petitioner No.1 never encountered any difficulties whilst using his CNIC for routine transactions but in the month of June, 2019 when the petitioner No.1 tried to withdraw money from his bank account, the staff of the bank informed him that he would need biometric verification to operate his account and when the petitioner No.1 attempted biometric verification, the respondent No.3 (HBL) informed him that his CNIC has been blocked and the bank is unable to perform any transaction. The petitioners served legal notices dated 4.9.2019 and 6.9.2019 and in reply, the petitioners were asked to report to the Zonal Office of NADRA for redressal of their grievance. On 10.10.2019 the petitioners met the Deputy Director NADRA who asked them to again fill the form for "verification of suspected/not traced persons and aliens". The petitioner No.2 was also asked to submit relevant documents and affidavit of her brother Javed Iqbal containing details of all family members which was submitted on 17.10.2019. The petitioners approached pillar to post for redress but their CNICs were not restored.

3. The learned counsel for the petitioners in the aforesaid backdrop argued that the action of the respondents is illegal and against the fundamental rights of the petitioners. There is no provision under the National Database and Registration Authority

Ordinance, 2000 for blocking of CNIC. Due to this illegality, neither the petitioners can travel outside country nor operate bank accounts which amounts to violation of fundamental rights guaranteed under Articles 9,14,15 and 18 of the Constitution of the Islamic Republic of Pakistan. It was further contended that the impugned notices, neither stipulated any reasons nor afforded any opportunity of hearing to the petitioners which is in violation of Article 10-A of the Constitution of Pakistan and Section 24-A of the General Clauses Act hence the same are liable to be quashed with the directions to NADRA to unblock the CNICs of the petitioners.

4. The learned counsel for the NADRA referred to the reply and argued that the petitioners remained fail to prove their National Status according to the Ministry of Interior Notification dated 19.04.2017. It was further averred that the petitioner No.1 obtained his first NIC on the basis of fake particulars in the year 1982 hence his case falls in doubtful category according to Notification of Ministry of Interior dated 19.04.2017 in which the petitioners are responsible to produce residential proof prior to 1978 in Pakistan for clearance of complex case therefore, show cause notices under Section 18 of NADRA Ordinance 2000 were served to provide fair opportunity for clearance but the petitioners failed to provide residential proof prior to 1978 and due to non-production of required documents, the Zonal Board of NADRA, recommended the cases to DLC for further investigation and verification of their National Status as per MOI notification dated 19.04.2017. He reiterated that NADRA is empowered to call proof from any citizen any time under Section 23, 18 of NADRA Ordinance 2000 read with Section 16-A of Pakistan Citizenship Act, 1951.

5. Heard the arguments. The nucleus of this petition is that on 03.05.2017, NADRA issued show cause notices under Section 18 of the National Database and Registration Authority Ordinance, 2000 in which it was stated that the petitioners obtained CNICs on wrong information and they were called upon to submit certain

documents with the cutoff date 1978 which include title documents of some land prior to 1978. According to the petitioners time and again various documents were submitted for the consideration but no action was taken and ultimately legal notices were served upon the NADRA and thereafter this petition has been filed for the redress of petitioners' grievance. In order to prove their bona fide, the petitioners have also attached certain documents with this petition. Annexure A/1 is the office order issued by Registrar of this court on 18.03.2019 which demonstrates that the petitioner No.1 was performing his duties as Driver in BPS-10 and he was sanctioned his 365 days LPR with the retirement dated 30.06.2019 on attaining the age of superannuation. Annexure A-2 is the service card issued to him by the Sindh High Court Establishment. It is further contended that the petitioner No.2 was married to one M. Siddiq Khan who expired on 14.11.2005 thereafter she married with petitioner No.1. Copy of death certificate dated 10.01.2013 is attached as Annexure B showing the name of her first husband. The marriage certificate of the petitioners is attached as Annexure C showing the date of marriage as 06.01.2013. Annexure D-1 is the CNIC of the petitioner No.1 which was issued on 25.06.2002 and was valid up to 30.04.2009. Two old NICs were also issued to the same petitioner. NIC issued in 1982 was renewed on 25.05.2001 due to change of address and the same are also attached as Annexures D-2 and D-3. The last CNIC (Annexure D-4) of the petitioner No.1 was issued on 20.02.2013 which was valid up to 20.02.2020. A certificate of domicile of the petitioner No.1 is attached as Annexure E which was issued on 18.12.1998. The copies of passport issued to the petitioner No.1 on 01.08.1982, 31.07.1987 and lastly on 28.10.2006 which was valid up to 27.10.2011 are also annexed as Annexures F-1 to F-3. The NIC of the petitioner No.2 was issued in the year 1989 and the CNIC was also issued to her on 01.02.2013 which was valid up to 01.02.2020, copies of the same are attached as Annexures G-1 and G-2. All these documents have been attached in chronological order to demonstrate that in past they were never called upon to prove

their national status as citizens of Pakistan and from time to time their CNICs were renewed and the petitioner No.1 has also submitted his credentials and service record including domicile issued in 1998 and in his domicile he is shown as citizen of Pakistan by birth. The record reflects that on 04.09.2020, the Law Officer of NADRA filed a statement that the petitioner No.1 may be directed to pursue his case before District Level Committee (DLC), South and the petitioner No.2 to visit Verification and Revocation (V&R) Branch, NADRA for clearance of her CNIC, however on 24.09.2020 an additional reply was also filed by NADRA in which a plea was taken that the petitioners failed to prove their national status according to the notification issued by Ministry of Interior dated 19.04.2017. It was further stated that the petitioners never visited/appeared before the DLC for clearance of their national status and did not submit any documentary evidence, therefore, their cases are still pending before the DLC. One statement is also available on record dated 24.09.2020 which was filed by Branch Manager, HBL, High Court Road Branch, Karachi in which it was stated that due to non-compliance of the biometric verification the account of the petitioner No.1 was blocked for all debit transactions and obviously this was done as a result of blocking of petitioners CNIC by NADRA.

6. Section 18 of National Database and Registration Authority Ordinance, 2020 depicts and characterizes the powers to cancel, impound or confiscate cards. For the ease of reference, Section 18 of the aforesaid Ordinance is reproduced as under:

**18. Power to cancel, impound or confiscate cards. —(1) A card issued under this Ordinance shall be the property of the Federal Government and may, by an order in writing under the seal of the Authority or an officer authorised by it in this behalf, be required to be returned and shall also be liable to be cancelled, impounded or confiscated by a like order:**

**Provided that no order shall be made unless such person has been given notice in writing calling upon him to show cause why the order should not be made.**

**(2) An order under sub-section (1) canceling, impounding or confiscating a card may be made only if there is reason to believe that—**

**(a) the card has been obtained by a person who is not eligible to hold such card, by posing himself as eligible;**

(b) more than one cards have been obtained by the same person on the same eligibility criteria;

(c) the particulars shown on the card have been obliterated or tampered with; or

(d) the card is forged.

(3) Any person in respect of whose card an order under subsection (1) has been made may, within thirty days of the order, appeal to the Federal Government against the order and the decision of the Federal Government in appeal shall be final:

Provided that no order on such appeal shall be passed unless the appellant has been given an opportunity of being heard.”

7. The letters of the law made it clear that the CNIC may be cancelled, impounded or confiscated only if there is a reason to believe that the card has been obtained by a person who was not eligible; duplication of card obtained by a same person; the particulars shown on the card have been obliterated or tampered with; or the card was forged. In the aftermath of cancellation, impounding or confiscation, an appeal may be filed within 30 days to the Federal Government. According to the exactitudes of Section 18 of NADRA Ordinance, any drastic and punitive action can only be taken if there is a reason to believe. The solemnity and minutiae of this provision unequivocally demonstrates that the application of this section can only be exercised by the authority if they have some reasons to believe that the card was obtained in violation of conditions mentioned in clauses (a) to (d) of Subsection (2) of Section 18 of the NADRA Ordinance. This cannot be put into effect as a routine exercise every time if a person applies for the renewal of his CNIC on the basis of his previous credentials or antecedents showing requisite and proper documents already in his custody to show his national status which is quite sufficient for the satisfaction of the authority but instead of examining those documents that were issued earlier to the said person, NADRA started inquiry without any cogent and substantive reason. This is not the region or raison d'être under the law that in each and every case Section 18 should be invoked or resort to by the authority for questioning the authenticity and genuineness of manual NIC or the earlier CNIC issued by the

same department to the person who only applied for the renewal of his CNIC and nothing else. The purpose of establishing National Database and Registration Authority under the 2000 Ordinance is to provide for the registration of all persons and for the establishment and maintenance of multipurpose databases, data warehouses, networking, interfacing of databases and related facilities and services with the whole objective that a new, improved and modernized registration and database system is the emergent need of time for its multiple beneficial uses and applications in efficiently and effectively running the affairs of the State and the general public for achieving the goals of good governance, public service and minimizing scope of corruption and inefficiency.

8. Even though, the nitty-gritties of Section 18 explicate the power to cancel, impound or confiscate the card as an eventual punitive action but no powers are integrated or en suite to block the CNIC of any person unless it is finally determined or adjudicated that the card issued to any such person should be cancelled, impounded or confiscated. Before deciding the fate of show cause notices, there is no provision under the NADRA Ordinance to block CNIC. Any such action beyond the scope of law makes a person neither here nor there being as in this case. Due to blocking of CNICs the petitioner No.1 is unable to operate his bank account which is much painful and troublesome. Nothing has been said by NADRA that the petitioners are involved in any offense or their CNIC have been blocked under some court's order or some suspicious amount is said to have been parked in their accounts through unverified source or they are suspected of any money laundering case. Despite showing off all past available record to substantiate the bona fide of the petitioners, NADRA blocked their CNICs and started fishing and roving enquiry through a show cause but the genuineness or authenticity of documents presented by the petitioners have not been questioned with the allegation that the same are forged or manipulated hence not acceptable. At this point in time what is the status of the petitioners? Whether in this

transitional or intermediary period they are supposed to have lost or deprived their citizenship of Pakistan and what would be the impending course of action in such case if the card is cancelled, impounded or confiscated? Whether any such person will be deported to somewhere else or he may be allowed to live in Pakistan with the right to apply for citizenship afresh? Nothing was answered by the counsel for the NADRA to this effect when we raised the query to him. In fact the deprivation of citizenship is provided under Section 16 of the Pakistan Citizenship Act, 1951. For the ease of reference, Section 16 is reproduced as under:

**“16. Deprivation of citizenship.- (1) a citizen of Pakistan shall cease to be a citizen of Pakistan if he is deprived of that citizenship by an order under the next following subsections.**

**(2) Subject to the provisions of this section the Federal Government may by order deprive any such citizen of his citizenship if it is satisfied that he obtained his certificate of domicile or certificate of naturalization [under the Naturalization Act, 1926 (VII of 1926)] by means of fraud, false representation or the concealment of any material fact, or if his certificate of naturalization is revoked.**

**(3) Subject to the provisions of this section the Federal Government may by order deprive any person who is a citizen of Pakistan by naturalization of his citizenship of Pakistan if it is satisfied that that citizen--**

**(a) has shown himself by any act or speech to be disloyal or disaffected to the Constitution of Pakistan; or**

**(b) has, during a war in which Pakistan is or has been engaged, unlawfully traded or communicated with the enemy or engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist the enemy in that war; or**

**(c) has within five years of being naturalized been sentenced in any country to imprisonment for a term of not less than twelve months.**

**(4) The Federal Government may on an application being made or on its own motion by order deprive any citizen of Pakistan of his citizenship if it is satisfied that he has been ordinarily resident in a country outside Pakistan for a continuous period of seven years beginning not earlier than the commencement of this Act and during that period has neither-**

**(i) been at any time in the service of any Government in Pakistan or of an International Organization of which Pakistan has, at any time during that period been a member; or**

**(ii) registered annually in the prescribed manner at a Pakistan Consulate or Mission or in a country where there is no Pakistan Consulate or Mission at the Prescribed Consulate or Mission or at a Pakistan Consulate or Mission in a country to the country of his residence his intention to retain Pakistan citizenship.**

**(5) The Federal Government shall not make an order depriving a person of citizenship under this section unless it is satisfied that it is in the public interest that the person should not continue to be a citizen of Pakistan.**

**(6) Before making an order under this section the Federal Government shall give the person against whom it is proposed to make the order**



notice in writing informing him of the grounds on which it is proposed to make the order and calling upon him to show cause why it should not be made.

(7) If it is proposed to make the order on any of the grounds specified in sub-sections (2) and (3) of this section and the person against whom it is proposed to make the order applies in the prescribed manner for an inquiry, the Federal Government shall, and in any other case may, refer the case to a Committee of inquiry consisting of a Chairman, being a person possessing judicial experience, appointed by the Federal Government and of such other members appointed by the Federal Government as it thinks proper.”

9. According to the aforesaid section, the Federal Government may by order deprive any such citizen of his citizenship if it is satisfied that he obtained his certificate of domicile or certificate of naturalization under the Naturalization Act, 1926 by means of fraud, false representation or the concealment of any material fact. It is further provided under Subsection (5) that the Federal Government shall not make an order depriving a person of citizenship unless it is satisfied that it is in the public interest that the person should not continue to be a citizen of Pakistan, whereas Subsection (6) further provides that before making any such order the Federal Government shall issue a show cause notice to such person informing him of the grounds on which it is proposed to make the order. Whereas under Section 17 of the same Act the Federal Government grants a certificate of domicile to any person in respect of whom it is satisfied that he has ordinarily resided in Pakistan for a period of not less than one year immediately before making an application and has acquired a domicile therein. The issuance of domicile certificate under Section 17 of Pakistan Citizenship Act, 1951 read with Rule 23 of Pakistan Citizenship Rules, 1952 makes it evident that a particular person is a domicile of Pakistan. In the case of **Mehmood ul Hassan Khan vs. Dow University of Health Sciences (PLD 2008 Karachi 49)**, the learned Division Bench of this court while dilating upon the dictum laid down in the case of **Joan Marg Carter vs. Albert William Carter (PLD 1961 SC 616)**; **Mehr-un-Nisa Baloch vs. Appellate Committee (PLD 1978 Kar. 214)**; **Muhammad Yar Khan vs. Deputy Commissioner-cum-Political Agent Loralai (1980 SCMR 456)** and **Ziaullah vs. District Magistrate Nawabshah (2000 CLC 406)** held that

expression “**domicile**” would reflect a person’s status as a citizen of a particular state or country, whereas expression “permanent residence” might be a pure question of fact as to his residence in a particular area.

10. According to Section 3 of the Passport Act, 1974, no citizen of Pakistan shall depart from Pakistan by any means whatever unless he is in possession of passport or visit a foreign country unless his passport is valid for such country. At the same time power to cancel, impound or confiscate passport is provided under Section 8 of the same Act which provides that the passport shall be the property of Federal Government and the same may be cancelled, impounded or confiscated by an order under the head of Secretary to Government of Pakistan or an authorized officer of the Federal Government, however, under Subsection (2) it is provided that before making an order the Federal Government shall give such person notice in writing calling upon him to show cause why the order should not be made, however, if the Federal Government has reason to believe that a person has been engaged in subversive or in activities which are prejudicial to the interest of Pakistan or to Pakistan’s relations with any foreign power, no show cause notice will be required to be issued in the above situation.

11. In the case in hand not only the petitioner No.1 produced the copy of domicile but at least two passports were issued from time to time but despite that NADRA casts doubt on his citizenship status without disclosing anything in the show cause notice as what are the reasons which led them to believe that the petitioners are not citizens of Pakistan or their earlier manual NICs were issued on some false declaration or misrepresentation. No specific allegation of any fraud shown nor any other cogent complaint has been referred to if any received by NADRA against the petitioners. Their case of renewal was delayed for a considerable period of time without any progress. Sometimes they were called upon to appear before the District Level Committee

and sometimes they appeared before the Verification and Revocation (V&R) Branch, NADRA but the fact remains that the case is lingering on at NADRA level and the fate of show cause notices has not been decided which were issued on 03.05.2017. The learned counsel for the NADRA could not point out any substantial defect in the documents produced with the petition. The past NICs and CNICs were also issued by the same department under the law so no adverse presumption can be inferred that under the doctrine of indoor management the department at that relevant time failed to apply requisite law and mind and without due diligence cards were issued to the petitioners and if so, what action has been taken against such delinquent officers at large scale for future deterrence.

12. Corresponding to definition provided in clause (e) of Section 2 of National Database and Registration Authority Ordinance, 2000, citizen means a person who is, or is deemed to be a citizen of Pakistan, under the Pakistan Citizenship Act, 1951 and in clause (k) National Identity Card means a card issued under sub-section (1) of section 14 and, where the context so admits, includes an identity card issued under the National Registration Act, 1973. (old law). Pakistan Citizenship Act, 1951 was promulgated to make provisions for citizens of Pakistan, whereas National Database and Registration Authority Ordinance 2000 was premeditated to provide for the registration of persons and establishment and maintenance of multipurpose databases, data warehouses, networking, interfacing of databases and related facilities. Section 46 of the National Database and Registration Authority Ordinance, 2000 puts forward that this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force. What is extremely dominant and assertive to ruminant or mull over that Citizenship Act as well as the NADRA Ordinance both are special laws relating to the special subjects. The Citizenship Act pertains to the grant of citizenship of Pakistan, whereas the NADRA Ordinance, 2000 relates to the registration of persons and issuing of national

identity cards according to their domain and mandate. Since both are the special laws, therefore, according to basic principle of interpretation, one special law cannot override the provisions of another special law when particularly both are governing two different aspects. The citizenship of any person cannot be confiscated and for that a particular provision is already provided under the law to deal the matter of confiscation for deprivation of citizenship under Section 16 of the Citizenship Act, 1951.

13. In unison, the niceties of Section 9 of the NADRA Ordinance, 2000 cannot do away with which articulates the registration of citizens and its second proviso intelligibly enunciates that all citizens who stand validly registered under any law immediately before the commencement of NADRA Ordinance shall be deemed to have been registered in the said Ordinance and their registration shall, subject to Sections 17, 18 and 30 remain valid till expiry of two years from the commencement of the Ordinance or such time as may be notified by the Federal Government or till such time as such citizen is registered afresh whichever is earlier, whereas under Section 10 of the same Ordinance, the authority is required to issue or renew National Identity Cards on fulfilling the conditions as mentioned in that section but in the proviso attached to this section much emphasis has been made again that all cards issued under Section 5 of the National Registration Act, 1973 to such citizens as stood registered under Section 4 of the said Act immediately before the commencement of this Ordinance shall be deemed to have been issued under this Ordinance and shall, subject to Sections 17, 18 and 30 remained valid till such period as the underlying registration of the citizens to whom such cards are issued remains valid in terms of the first proviso to Sub-section (1) of Section 9. It is further provided in the second proviso of the same section that before issuing or renewing a card under this section the authority may require a person to surrender a National Identity Card earlier issued to him under this Ordinance or the National Registration Act, 1973. The whys and wherefores of dilation and expounding of aforesaid sections lead us to

straightforward assessment that under NADRA law much sanctity has been given to the cards earlier issued to the citizens before the promulgation of this Ordinance and the cards issued under National Registration Act, 1973. Nothing was pleaded by NADRA before us that when previous CNIC was issued under old laws or even under 2000 Ordinance the due diligence was not made by the authority or the data already available in their record was not taken into consideration but a sweeping allegations were leveled in the show cause notice.

14. Even so, the powers and functions for issuing cards are provided under Section 14 of the NADRA Ordinance by which the authority is required to take such measures, exercise such powers and perform such functions as it considers necessary, expedient, incidental or consequential for or to the issuance and renewal of the cards provided for in Sections 10, 11, 12 and 13 (National Identity Cards Section 10, Pakistan Origin Cards Section 11, Overseas Identity Cards Section 12, Alien Registration Cards Section 13). According to Rule 3 of the National Database and Registration Authority (National Identity Card) Rules, 2002 a citizen shall be a resident citizen if he is not a non-resident citizen, whereas according to Rule 4 a non-resident citizen means a citizen shall be a non-resident citizen if he (a) is an emigrant or intending emigrant; (b) is, or is intending to be, resident abroad; (c) holds nationality or citizenship of any other country or state pursuant to sub-section (3) of section 14 of the Pakistan Citizenship Act, 1951; or (d) holds an emigrant or resident visa, permanent or otherwise, or equivalent authorization, permit or status, as the case may be, of a foreign state or country.

15. When we raised a query to the learned counsel for NADRA in which provision of law, they can block CNIC before issuing show cause and ultimate decision, he simply referred to a Notification of Ministry of Interior, Government of Pakistan dated 19.04.2017 which was in fact issued in exercise of powers conferred under Section 47 of the National Database and Registration Authority

Ordinance, 2000 whereby the Federal Government on the recommendations of the Parliamentary Committee was pleased to approve the mechanism for clearance of blocked CNICs. In this Notification in paragraph (1) some conditions are mentioned to clear the blocked CNICs if an applicant provides one or more of the documents. The list of documents required to be produced by a citizen to prove his citizenship and unblocking of his CNIC are as follows:

**“Blocked CNIC will be cleared if applicant provides one or more of following documents:-**

- 1. Land record registered prior to 1978 (verified by Revenue Dept.)**
- 2. Local/Domicile Certificate issued prior to 1978 and verified by issuing authority**
- 3. Pedigree (Shajra-e-Nasab) issued & verified by Revenue Dept.**
- 4. Government employment certificate (or of blood relative), employed before 1990**
- 5. Verified educational certificates (issued prior to 1978)**
- 6. Passport issued to applicant prior to 1978.**
- 7. Any other document issued by Government of Pakistan prior to 1978 and verified by issuing authority (including Arm License, Driving License or Manual NIC issued prior to 1978 duly verified by record).”**

16. The learned counsel for NADRA also pointed out a letter dated 27.04.2017 issued by Director General Operations, NADRA to all regional heads offices, NADRA for handling mechanism of temporarily cleared/blocked CNICs. In this letter too, the types of cases have been highlighted as “routine cases” and “complex cases”. For routine cases it is mentioned that all unblocked (temporarily cleared) cases will be treated as routine cases and will be handled by NADRA, whereas in category 2 the complex cases are mentioned with the condition that all the cases which are blocked as confirmed alien/non-national on the basis of agency report will be dealt by District Level Committee. Let us survey the nucleus and realm of Section 47 of the National Database and Registration Authority Ordinance, 2000 which is reproduced as under:

**“47. Removal of difficulties. If any difficulty arises in giving effect to any provision of this Ordinance, the Federal Government may make such order, not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary for the purpose of removing the difficulties.”**

17. We have scanned the law but unable to find out any provisions under which NADRA is authorized or vested with any powers to block CNIC of any person though a separate mechanism is provided under Section 18 where no such powers as an interim measure are available under the law. So far as Section 47 of the NADRA Ordinance 2000 is concerned, this by and large correlated to the removal of difficulties if arises in giving effect to any provision of the NADRA Ordinance which does not mean that any such notification may be issued for the removal of alleged difficulties in which the directions can be given beyond the spirit and scope of the parent law. It is well settled exposition of law that the rules and regulations if framed cannot travel beyond the scope of parent Act and such type of addition under the law cannot be achieved under the garb or semblance of removal of difficulties clause. All the more so, even this very notification issued by Ministry of Interior have not given any directions for blocking the CNIC but they have provided a mechanism to deal with the blocked CNIC and with the cutoff date for producing the documents without any logic or rationale that how this cutoff date was chosen from the year 1978. The blocking of CNIC is alien to NADRA Ordinance, 2000 as no specific provisions are provided.

18. No doubt under Section 18 of the NADRA Ordinance, 2000 show cause notice may be issued but for that also there must be some reason to believe that the person was not eligible but he obtained the CNIC or his card was forged. Even in the SOP dated 27.04.2017 forwarded by D.G. Operations NADRA to all RHOs (NADRA) the complex cases are those cases which are blocked as confirmed alien/non-national on the basis of agency report which cases are to be dealt with by District Level Committee. In the case in hand nothing was produced by learned counsel for the NADRA that any complaint was received against the petitioners that they were ineligible to obtain the CNIC or there was any agency report against them whereby their cases were treated to be complex cases and referred to the DLC. The purpose of providing procedure for cancellation and confiscation of cards by

the legislature does not mean to exercise these powers callously or recklessly but the guiding principle under the law is that there must be some reason to believe and the phrase “**reason to believe**” should not be based on figment of imagination but substantial and definite information and not on vague allegations.

19. All the documents filed with the petition by the petitioners when confronted to the learned counsel for NADRA, he could not deny the authenticity and genuineness of the documents except relied on Section 18 of the NADRA Ordinance. Nothing addressed to challenge the authenticity or genuineness of the documents those have been filed by the petitioners nor argued that on verification any document was found forged or manipulated. It is also strange as to why the earlier CNICs issued to the petitioners are not taken into consideration when the same department or their predecessors had issued the same and if in the NADRA there was such type of mismanagement and the cards are issued due to connivance of the staff members then what action has been taken so far against such culprits which was also remained unaddressed by the NADRA. The domicile, earlier passports even the Nikahnama of the petitioners are being rejected solely for the reason that these documents were issued after 1978 but there was no rationale or commonsensical logic as to why 1978 cutoff date has been laid down in the Ministry of Interior letter and what is the fate of those persons who were not registered prior to 1978 whether they will be treated alien in this country despite having citizenship. The proper course was to verify these documents from the authorities who issued the same rather than putting the petitioners in the pressure and embarrassing situation to prove their identity and citizenship in Pakistan after such a long time.

20. In the case of **Dr. Seema Irfan and others Versus Federation of Pakistan and others. (PLD 2019 Sindh 516). (judgment authored by one of us Muhammad Ali Mazhar-J)**, the show causes notices were found to be issued on specific grounds and definite information available to the FBR and the



petitioners were also confronted to the allegations explicitly and not merely on the basis of stereotype or generalized printed format of show cause in a slipshod manner. Though the petition was dismissed but the court held that in exercise of its extraordinary constitutional jurisdiction the court may take up writs to challenge the show cause notice if it is found to be lack of jurisdiction, barred by law or abuse of process of the court or coram non judice and obviously in such situation, may quash it but not in every case filed with the expectation and anticipation of ad-interim order by the assessee. It was further held that the lack of jurisdiction means lack of power or authority to act in a particular manner or to give a particular kind of relief. It refers to a court's total lack of power or authority to entertain a case or to take cognizance. It may be failure to comply with conditions essential for exercise of jurisdiction or that the matter falls outside the territorial limits of a court. The abuse of process is the intentional use of legal process for an improper purpose incompatible with the lawful function of the process by one with an ulterior motive in doing so, and with resulting damages. In its broadest sense, abuse of process may be defined as misuse or perversion of regularly issued legal process for a purpose not justified by the nature of the process. Abuse of process is a tort comprised of two elements: (1) an ulterior purpose and (2) a willful act in the use of process not proper in the regular conduct of the proceeding. Abuse of process is the malicious misuse or misapplication of process in order to accomplish an ulterior purpose. However, the critical aspect of this tort remains the improper use of the process after it has been issued. Ref: DeNardo v. Maassen, 200 P. 3d 305 (Supreme Court of Alaska, 2009), McCornell v. City of Jackson, 489 F. Supp. 2d 605 (United States District Court, Mississippi, 2006), Montemayor v. Ortiz, 208 SW 3d 627 (Court of Appeals of Texas at Corpus Christi-Edinburg, 2006), Reis v. Walker, 491 F. 3d 868 (United States Court of Appeals, 2007), Sipsas v. Vaz, 50 AD 3d 878 (Appellate Division of the Supreme Court of the State of New York, 2008). Whereas coram non judice is a Latin word meant

for "not before a judge," is a legal term typically used to indicate a legal proceeding that is outside the presence of a judge or with improper venue or without jurisdiction. Any indictment or sentence passed by a court which has no authority to try an accused of that offence is clearly in violation of the law and would be coram non iudice and a nullity. When a lawsuit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be coram non iudice, and the judgment is void. *Manufacturing Co. v. Holt*, 51 W. Va. 352, 41 S.E. 351.

21. The learned counsel for the NADRA referred to the judgment rendered by the learned High Court of Balochistan in the case of **Najeebullah vs. Director NADRA, Balochistan, Quetta (PLD 2016 Balochistan 1)** in which the court held that although a number of documents annexed with the petition prima facie established the fact that the petitioners were nationals of Pakistan, however, fate of the petition could not be decided on the basis of such documents, authenticity of which could only be determined and established before a civil court and it required a full-fledged enquiry and scrutiny, that too, after providing full opportunity of hearing to both the parties. The court further held that the NADRA alleged that documents presented by the petitioners could not be construed as conclusive proof for determining status of the petitioners because some of the documents were prepared through foul play in connivance with the officials in the Provincial Government for which proper investigation would be needed to set such controversy at rest which could not be resolved in the exercise of constitutional jurisdiction of the High Court. The aforesaid dictum laid down by the learned High Court of Balochistan is distinguishable as in the case in hand nothing was taken as a defence by NADRA that the documents produced by the petitioners are forged or manipulated. Whereas in two judgments rendered by this court cited by the counsel for the petitioners i.e. **Muhammad Umar vs. Federation of Pakistan (PLD 2017 Sindh 585)** the learned Division Bench of

this court held that no clear provision in the Ordinance is available to block the CNIC, however, NADRA had the power to digitally impound the CNIC in terms of Section 18 of the Ordinance after fulfilling the requirement of a notice, whereas in the case of **Syed Hasamuddin vs. Federation of Pakistan (2018 MLD 1748)** also the learned Division Bench of this court directed the NADRA to unblock the CNIC of the petitioner and his family members within two weeks, however, the NADRA was left open to conduct inquiry if they are in possession of any evidence or concrete material which could justify the allegation that the petitioner and his family members are Afghan nationals.

22. The whys and wherefores lead us to a finale that neither NADRA could demonstrate any cogent justification that the documents produced by the petitioners are forged or manipulated nor NADRA could satisfy or expound any rationale as to why these documents are not acceptable to them nor it could be demonstrated by them that there were reasons to believe that the petitioners secured documents including previous NICs and CNICs/passports/domicile on the basis of some fraud or misrepresentation/impersonation, therefore, the blocking of CNIC was unlawful. We also ruminates that both the show cause notices are beyond the bounds and precincts of Section 18 of NADRA Ordinance, 2000 and so also abuse of process of law, consequently, the show cause notices are also quashed. Since the last CNIC of the petitioner No.1 expired on 20.2.2020 and the CNIC of petitioner No.2 expired on 1.2.2020 whereas this petition was filed on 11.3.2020 after expiry of both CNICs, therefore the petitioners may apply for renewal of their CNICs and NADRA is directed to renew their CNICs within fifteen days. The petition is disposed of accordingly along with pending application.

**Karachi:-**  
**Dated.19.4.2021**

**Judge**

**Judge**