

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-1112 of 2024

<i>Date</i>	<i>Order with signature of Judge</i>
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PRESENT:

Mr. Justice Aqeel Ahmed Abbasi, C.J.
Mr. Justice Abdul Mobeen Lakho.

Dr.Parvez Gaffar Rajwani.....v/s.....The Election Commission
of Pakistan & others

30-05-2024:

M/s. Muhammad Umer Lakhani, Ishfaqe Ahmed, Shaharyar Ahmed and
Syed Talha Shah Hasni, Advocates for the Petitioner.

Mr. Saifullah, A.A.G.

Mr.Khaleeq Ahmed, D.A.G. assisted by Mr.Muhammad Usman,
Advocate.

M/s.Ghulam Shabbir Shah & Irtifa-ur-Rehman, Advocates for Respondent
No.5.

Mr.Riaz Ahmed, Director (Law), ECP and Mr.Sarmad Sarwar, Assistant
Director (Law), ECP are present in person.

ORDER

1. Through instant Petition, following declaration has been sought:

i. Declaring that the Respondent No. 3 was not eligible to and did not hold qualification under / was disqualified by virtue of Articles 62 and 63 of the Constitution of the Islamic Republic of Pakistan of 1973 to be nominated for, contest or hold in any manner or capacity membership of the Majlis-e-Shoura / Parliament as a member of the National Assembly of Pakistan in / through the General Elections of 2024 held on 08-02- 2024:

ii. Declaring that the order passed by the Election Appellate Tribunal at Karachi on 05-01-2024 allowing Election Appeal No. 07/2024 and setting aside the order passed by the Returning Officer for NA-241, Karachi, South-III on 30-12-2023, rejecting of the Respondent No.5's nominations was illegal, unconstitutional, devoid of merit and contumacious:

iii. Consequently, setting aside all and any notifications issued by the Election Commission of Pakistan under Section

98 of the Elections Act of 2017 declaring the Respondent No. 3 as successful / returned candidate for NA-241, Karachi, South-III: and de-notify the Respondent No.5 as well as also set aside and declare as illegal and unconstitutional all and any oaths which have been administered to the Respondent No.5 by the Respondent No.3 including but not limited to the oath administered on 29-02-2024:

iv. Permanently restraining the Respondent No.5 from holding any position as member of all and any committees, cabinet, ministries etc and/or causing to be so appointed in the National Assembly of Pakistan:

v. Any other relief which this court deems appropriate under the circumstances of this case:

vi. Costs of this proceedings.

2. Pursuant to Court's Notice, respondents have filed objections/comments, wherein, besides raising objections on the merits of the case, preliminary legal objection has been raised as to maintainability of instant petition in view of Article 225 of the Constitution of Pakistan as well as pendency of election petition before the Election Tribunal on the same subject and grounds.

3. Mr. Ghulam Shabbir Shah, Advocate representing respondent No.5, has vehemently argued that matter pertains to election dispute, whereas, Election Appeal No.7/2024 is already pending before Election Tribunal in respect of some controversy, which requires evidence and detailed scrutiny of record, whereas, respondent No.5 has already renounced Canadian nationality well before filing nominations, which is irrevocable, hence petition is misconceived and not maintainable.

4. After hearing the learned counsel for the parties at some length, it has transpired that the controversy agitated through instant petition, seeking declaration against Respondent No.5, who has been declared as returned

candidate and also took oath as MNA, on the ground that he is dual National, having Nationality of Canada, whereas, according to learned counsel for the Respondent No.5, he has disclosed this fact in the Nomination Form, wherein, it has been clearly stated that the Respondent No.5 has renounced his dual nationality of Canada well before Elections or filing Nomination Papers, which renouncement otherwise is irrevocable under the Canadian Law. According to learned counsel, Election Tribunal is seized of the matter in Election Appeal No.07/2024 and fully competent to decide such controversy, therefore, any decision by this Court in the instant petition purportedly filed in the nature of quo-warranto by a Voter of the constituency will prejudice the appeal already pending before the statutory forum i.e. Election Tribunal. We are of the view that the remedy under the Elections Act, 2017 to challenge the candidature of a Member of National/Provincial Assembly on the ground of dual nationality has already been availed, therefore, any interference by this Court under Article 199 of the Constitution will render such forum as redundant.

5. In view of hereinabove facts and circumstances of the case, we are not inclined to pass any order in the instant petition, which is accordingly dismissed. However, the dismissal of instant petition will not affect the merits of the case or instance of any party before learned Election Tribunal in above appeal, which shall be decided after hearing the parties in accordance with law and in the light of judgments of the Hon'ble Supreme Court of Pakistan on the subject controversy.

CHIEF JUSTICE

JUDGE