

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

ELECTION APPEAL No.85 of 2018

Date	Order with signature of Judge
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FRESH CASE.

1. For orders on office objection
2. order on CMA No.5802/2018
3. For hearing of main case.

23.06.2018.

Mr. Mohammad Luqmanul Haque Farooqi, Advocate for the appellant.

Mr. Makhdoom Ali Khan Advocate alongwith Ms/. Jam Zeeshan and Murtaza Wahab, Advocates for Respondent No.4.

Barrister Shabir Shah, Addl. Advocate General.

Mr. Abdullah Hanjra, Law Officer, Election Commission of Pakistan.

Appellant has challenged the order dated 14.06.2018 whereby the Returning Officer of PS-80, Jamshoro-I had allowed the Respondent No.4 Murad Ali Shah to contest the election for the aforesaid seat.

Learned counsel for the appellant has made the following contentions; firstly he has submitted that Murad Ali Shah was a holder of dual nationality and, therefore, was prevented from contesting the elections; secondly since Murad Ali Shah had dishonestly filed an affidavit in the past concealing his dual nationality this disqualified him from contesting the elections; thirdly Murad Ali Shah put in his nomination papers certain matters which had been concealed from the Tax Authorities for example 264,268,115 US Dollars and as such he had evaded payment of tax and this disqualified him from being a member of the parliament. He also pointed out other concealments in terms of under value of immovable properties and value of his agricultural land. .

On account of all the above he emphasized that Murad Ali Shah was disqualified for life from being a member of parliament. He relied upon various High Court and Supreme Court authorities in support of his contention which mainly concerned the question of dual nationality. However, he did not press the issue of any Iqama which Murad Ali Shah may or may not possess.

Mr. Abdullah Hanjra, Law Officer, Election Commission of Pakistan stated that if Murad Ali Shah had renounced his Canadian citizenship then this was not an issue for Election Commission of Pakistan. He further stated that since these were summary proceedings it would not be appropriate for this appellate tribunal to go into great depth of various aspects of the nomination paper and its contents and compare with the same numerous other documents available on record. In this respect, he pointed out that the question of what property Murad Ali Shah held or which amount he had in his bank account are matters of inquiry which were beyond the scope of these appellate proceedings.

Learned Addl. Advocate General, who is on Court's notice, also emphasized that these are summary proceedings and it would not be appropriate for this Court to examine in detail all the documents referred to by the appellant. In this regard he placed reliance on 2013 CLC 1101. He also submitted that at this stage was not appropriate for this tribunal to look into questions of disqualification under Article 62(1) (f) of the Constitution since the appropriate time for this was at a later stage. In this regard he placed reliance on PLD 2017 SC 265.

Learned counsel for Murad Ali Shah contended that his client had made application for renouncing of dual nationality on 29.09.2012 and in this regard Certificate was issued on 18.07.2013. He also emphasized that Murad Ali Shah had not been disqualified by the Supreme Court. In this regard he placed

reliance on the unreported Supreme Court's case of Syed Mahmood Akhtar Naqvi vs. Federation of Pakistan and others dated 28.03.2017. He also submitted that whether or not Murad Ali Shah's earlier affidavit whereby he had not disclosed his dual nationality disqualified him on account of his dishonesty has been dealt with in the Supreme Court case of Dr. Ahmed Ali Shah v. Mehmood Akhtar Naqvi and others by order dated 02.05.2018. With regard to various allegations of concealment of assets, learned counsel took this tribunal through the documents on record showing that there in fact had been no concealment and all the assets had been properly accounted for and disclosed and as such the Returning Officer had rightly accepted his nomination paper.

I have heard the parties, scanned the record and considered the relevant law cited by the learned counsel for the parties.

Dealing with the issue as to whether or not this appellate tribunal can go into great depth in dealing with election appeals I am of the view based largely on the authorities cited by the learned Addl. Advocate General that these are summary proceeding and usually tentative assessment of the material on record should be made. In this respect reliance is placed on in particular 2013 CLC 1101 which is a decision of the full bench of the Lahore High Court. Notwithstanding this fact learned counsel for Murad Ali Shah desired in order to set the record straight and because his client had nothing to hide to answer the various allegations which had been leveled against him by the appellant referring only to the documents on record.

Turning to the first issue whether Murad Ali Shah has dual nationality, which disqualifies him from contesting the election. In my view it is quite apparent from the documents which learned counsel for Murad Ali Shah has placed on record dated 23.01.2013 that he had renounced his Canadian citizenship on 18.07.2013

and to this effect a certificate of renunciation of his Canadian citizenship dated 18.07.2013 is also enclosed. As such in my view Murad Ali Shah was not a dual national at the time when he filed his nomination papers for the 2018 elections and as such this contention of learned counsel for the appellant is without merit.

With regard to the question that Murad Ali Shah would be disqualified for life for being a dual national this issue has been dealt with in the aforesaid case referred to by his counsel dated 28.03.2017 (Syed Mahmood Akhtar Naqvi, supra), which at para-4 states as under:-

"4. The order dated 02.05.2013 of this Court, operative part of which has been quoted above does not at all reflect that this Court has held that Syed Murad Ali Shah-Respondent No.2 was holding the office of Advisor to the Chief Minister Sindh on Finance unlawfully nor the said gives any direction for recovery of pay and allowances from him. The above order further nowhere declares that Syed Murad Ali Shah-Respondent No.2 stands disqualified from being elected for a period of five years or any other period. What this Court in its above order has done is that it has set aside the order dated 18.04.2013 of the High Court and maintained the orders of the Returning Officer dated 06.04.2013 and of the Election Appellate Tribunal dated 13.04.2013."

In addition Murad Ali Shah, after renouncing his dual nationality ran for the Provincial Assembly in a by election in 2014 (where his nomination papers were found in order after his earlier resignation from parliament on account of dual nationality) and won his seat. Thereafter, no objection was made to his holding a seat in the provincial Assembly because he had been disqualified for life from becoming a parliamentarian. In my view, Murad Ali Shah does not stand disqualified from running for parliament on account of giving up his dual nationality especially as he has not been disqualified by the Supreme Court or any other Court from doing so.

With regard to the issue whether Murad Ali Shah should be disqualified on account of his providing a false affidavit concealing his dual nationality in 2013, recently the Supreme Court has passed an order on 02.05.2018 in the case of Dr. Mohammad Ali Shah vs. Syed Mahmood Akhtar Naqvi which in my view makes it absolutely clear that those persons who filed their affidavits for 2013 general elections despite holding dual nationality did so under a bonafide misconception that they were entitled to run for election and, therefore, in filing their affidavits there was no mens rea on their part and as such there could be no criminality on their part. For ease of reference para Nos.8, 10 & 11 of the said order are reproduced hereunder:-

"8. It also appears from the record that there was no apparent *mens rea* or intent on the part of the petitioners to defraud or deceive the authorities at the time of filing of nomination papers. As such, *prima facie* there is inadequate material on the record to merit a finding of guilt regarding corrupt practices in terms of Section 78 of the RoPA or other offences under Pakistan Penal Code as has been held in the order sought to be reviewed. It has been argued and we have no reason to disbelieve that at the time of submission of nomination papers, the review petitioners genuinely thought that they were qualified to contest elections to the Parliament (Majlis-e-Shoora) / Provincial Assemblies and did not suffer from any legal or constitutional disqualification.

10. We have also gone through the declarations required to be submitted with Form-I i.e. nomination paper under the RoPA. We are persuaded to hold that there was no column in the said Form requiring disclosure of foreign nationality/dual citizenship and there was no conscious effort, *mens rea* or guilty intent on the part of the petitioners to conceal or withhold such information, defraud and deceive the competent authorities and receive and retain ill gotten gains. There is also merit in the argument made by the learned counsel that after their election the petitioners participated in the legislative business, performed the services that they were required to perform and it would neither be just nor fair to hold that they had received and retained ill gotten gains. It is also clear that no sooner did the petitioners hear about the initiation of proceedings and the legal position as enunciated by this Court most of them tendered their resignations and approached this Court with such information.

11.By the same token, we find that the petitioners have been visited with the penalty of disqualification which by itself is a serious punishment. However, in the facts and circumstances of the present cases we have not found *mens rea*, guilty intent or intention to defraud, deceive or withhold the information which was required to be disclosed knowing that if disclosed such information would debar them from contesting elections for the Parliament (Majlis-e-Shoora) / Provincial Assemblies. The direction issued for criminal prosecution for corrupt practices under the provisions of RoPA and Pakistan Penal Code and return of salaries and perquisites received by the petitioners many years ago has appeared to us to be rather harsh in the peculiar and specific facts and circumstances of these cases.

This being the case, I find that Murad Ali Shah had earlier filed an affidavit concerning his dual nationality which was incorrect and was on account of a bonafide mistake/misunderstanding which in my view does not disqualify him from standing for the 2018 elections on account of dishonesty especially as he had no *mens rea* and immediately resigned and renounced his nationality. As such I find no merit in this contention raised by the appellant.

With regard to the alleged concealment of US Dollars, value of property, his agricultural land and his alleged massive investment after careful examination of the record, it appears that all such matters have been duly accounted for in both his nomination papers and his tax returns by way of cross referring these documents.

It is also pertinent to note that election forms for 2013 were in a different format in some respects to those of 2018 and that filling out the same by Murad Ali Shah's complete papers in 2018 are in consonance with the answers to his nomination form in 2013 and on examination there appears to be no attempt to deliberately conceal or suppress any material information rather it would appear he has tried his best to account for most of the matters as he was required to do keeping in view the format of the new nomination papers for the 2018 elections. For example cost of assets in the 2018 form does not equate to market value in the 2013 forms.

Thus I find that there has been no deliberate concealment on the part of Murad Ali Shah of any of his assets. With regard to the question of Iqama this was not raised before this Tribunal despite learned counsel for the appellant having the opportunity to do so and as noted earlier in this order the appellant's counsel consciously after consideration stated before this Tribunal that he did not wish to press this issue. In any event Murad Ali Shah specifically denied holding an Iqama and even if one existed it was forged to malign him. There is no material on record to suggest that Murad Ali Shah holds or has held an Iqama. Thus this is a non-issue in respect of this appeal.

For the above reasons, the order of the Returning Officer is upheld and the instant appeal is dismissed.

MAK/PS