

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
SUIT NO. Nil OF 2018

Date	Order with signature of Judge
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Muhammad Afzal

PLAINTIFF

VERSUS

Federation of Pakistan & others

DEFENDANTS

Dates of hearing: 23-2-2018; 26-2-2018; 27-2-2018;
28-2-2018; 1-3-2018; and 2-3-2018

M/s. Muhammad Ali Lakhani and Mujtaba Raza, Advocates for the plaintiff

Mr. Masood Ghani, Advocate for the defendant No.5

Mr. Tanveer Ashraf Advocate for the defendant No.3

Mr. Furqan Ali, Advocate for the defendant No.2

ADNAN IQBAL CHAUDHRY J. -

Office objection:

1. The suit has not been registered due to an objection by the Additional Registrar that *“how the suit is maintainable in prayer clause (a).”* Such prayer clause impugns an order also passed by the defendant No.4 [Justice (Retd.) Shaukat Umar Pirzada - an Hon’ble retired Judge of the Lahore High Court]. I presume that the objection is raised on the basis of the bar contained in the Judicial Officers Protection Act, 1850, which bars civil suits against judicial officers described therein. However, since the defendant No.4 is a retired judge and has not been sued as a judge, the Judicial Officers Protection Act, 1850 is not attracted. The description of the defendant No.4 shows that he has been made party because he passed the impugned order in his capacity as an ‘Adjudicator’ within the meaning of Article 37 of the Constitution of the Pakistan Cricket Board. The office objection can therefore be addressed by correcting the title of the defendant No.4 in red-ink by deleting his name and by describing him as ‘Adjudicator’. Order accordingly. The suit be registered.

2. During the course of arguments, and for reasons that become apparent *infra*, Mr. Lakhani, Advocate for the plaintiff had withdrawn the suit against the defendant No.6 (Federal Investigation Agency). Therefore, the office to delete (in red-ink) the defendant No.6 from the array of defendants.

Overview of the proceedings:

3. The subject matter of the suit is the election of Zone-II Cricket Association Karachi, an association regulated under the Constitution of the Pakistan Cricket Board, 2014. The plaintiff assailed the eligibility of the defendant No.5 to contest the election for President of the said Association. His objection was rejected by the Deputy Election Commissioner of the Pakistan Cricket Board vide order dated 4-8-2017, and his appeal to the dispute resolution forum prescribed (the defendant No.4) was also dismissed vide order dated 22-12-2017; hence this suit to challenge the said orders. Vide CMA No.15/2018 the plaintiff prayed that pending this suit the election be stayed, however, the interim order passed by this Court on 1-1-2018 stayed only the announcement of the election result. Pursuant to a subsequent order dated 23-1-2018, the election result lies in a sealed envelope in custody of the Nazir of this Court.

Constitution of the Pakistan Cricket Board (PCB):

4. The present **Pakistan Cricket Board (the defendant No.2, hereinafter ‘the PCB’)** is constituted vide notification S.R.O. 43(KE)/2014 published in the official gazette on 30-8-2014, as amended vide S.R.O. 38(KE)/2015 published in the official gazette on 21-3-2015. These notifications were issued by the Federal Government in exercise of its powers under sections 3(1) and 4 of the Sports (Development and Control) Ordinance, 1962. The notification is titled the ‘**Constitution of the Pakistan Cricket Board**’ (hereinafter ‘**the PCB Constitution**’), which superseded the previous Constitution of the Pakistan Cricket Board, 2013.

5. The salient features of the PCB Constitution are as follows:

(i) Per Article 3, the PCB is a body corporate.

(ii) The affairs of the PCB are guided and managed by a Chairman, a Board of Governors which includes the Chairman, a General Body which also includes the Chairman, and a Patron who is the Prime Minister.

(iii) Per Article 6(1), the Chairman of the PCB is elected by the Board of Governors. Powers of the Board of Governors are set out in Article 12, which includes the power to formulate regulations.

(iv) Composition of the Board of Governors of the PCB is set out in Article 10, which consists of around 12 members, out of which 4 are duly elected Presidents of the 'Regions'.

(v) Per Article 2(xxvi), a 'Region' means an administrative area declared as such by the PCB. Article 14 envisages a 'Regional Cricket Association' for each Region, and per Article 2(xxvii), a 'Regional Cricket Association' means a Cricket Association of a Region as recognized by the PCB and includes a 'City Cricket Association'. Per Article 2(x), a 'City Cricket Association' means the City Cricket Association of Lahore and Karachi and includes any other cricket association of a city recognized and declared as such by the PCB.

(vi) Per Article 14(5), the electoral college for election of Regional Cricket Associations comprises of elected representatives of 'District or Zonal Cricket Associations'. Per Article 2(xvii), a 'District Cricket Association' means a Cricket Association of a District recognized by the PCB and includes a 'Zonal Cricket Association'. Per Article 15, the District or Zonal Cricket Associations are required to perform their functions under the guidance and supervision of their respective Regional Cricket Associations.

(vii) Per Article 15(2), the electoral college for election of District or Zonal Cricket Associations comprises of 'Active Clubs' on the basis of one club one vote. An 'Active Club' is defined in Article 2(ii) and one of its qualifications is that it is a cricket club which has adopted the 'Model Constitution' formulated by the Board of Governors of the PCB.

(viii) Per Article 16, there is a General Body of the PCB which includes Presidents from each 'Full Member' and Presidents from each 'Associate Member'. Per Article 17, all Regions are included in the definition of 'Full Member'. Per Article 18, each District Cricket Association having playing rights is included in the definition of 'Associate Member'.

(ix) Per Article 29, there shall be an Election Commissioner of the PCB who shall be independent of the PCB. The Election Commissioner is appointed by the Patron of the PCB. The qualification of an Election Commissioner is that of a former Judge of the Supreme Court of Pakistan or of a High Court, or a person qualified to be such, or a person who has retired from government service in BS 22 or equivalent or above. The Board of Governors of the PCB, on the recommendation of the Chairman PCB and in consultation with the Election Commissioner, may appoint one or more Deputy Election Commissioners.

(x) Per Article 37, the PCB shall maintain a panel of 'Adjudicators' comprising of former Judges of the Supreme Court of Pakistan and the High Courts or persons qualified to be such. A person aggrieved of a decision/order of the Election Commissioner may prefer an appeal to the Board of Governors which shall be referred by them to an Adjudicator.

(xi) The power of the PCB to make rules and regulations for carrying its objects into effect stems from section 5 of the Sports (Development and Control) Ordinance, 1962; and per Article 41(b) of the PCB Constitution, the PCB may make Regulations also for holding elections of the Regional Cricket Associations, the District Cricket Associations and Clubs. In exercise of such regulation-making power, the PCB made *inter alia* the following Regulations on 13-6-2015:

- **'Pakistan Cricket Board Election Regulations, 2015'** (hereinafter **'the Election Regulations 2015'**), so as to regulate elections of Clubs, District and Zonal Cricket Associations, and Regional Cricket Associations;
- **'Model Constitution of Regional Cricket Association'**, so as to regulate such Associations, which Regulations are binding on Regional Cricket Associations in terms of Article 14(1) of the PCB Constitution;
- **'Model Constitution of District/Zonal Cricket Association'**, so as to regulate such Associations, which Regulations are binding on District/Zonal Cricket Associations in terms of Article 15(1) of the PCB Constitution;
- **'Model Constitution of Club'**, so as to regulate the Active Clubs and their elections, which Regulations are binding on the Active Clubs in terms of Article 2(ii) of the PCB Constitution.

While Regulations are 'formulated' by the Board of Governors of the PCB under Article 12(a) of the PCB Constitution, since it is the Board of Governors who manage the affairs of the PCB [per Article 12(f) of the PCB Constitution], the Regulations so formulated and approved by the Board of Governors are Regulations of the PCB.

(xii) From the PCB Constitution it appears that the pyramid of the polity of Pakistan Cricket bottom-up, is such that the Presidents of Active Clubs elect the (President, Secretary and Treasurer of) the District/Zonal Cricket Associations, who in turn elect Presidents of Regional/City Cricket Associations, out of which four of the Presidents qualify for a place on the Board of Governors of the PCB.

6. Mr. Masood Ghani, Advocate for the defendant No.5, during his submissions also highlighted the following :

(i) that there are presently 16 Regional Cricket Associations in Pakistan and these are listed in Regulation 3(n) of the Model Constitution of Regional Cricket Association;

(ii) that in a Region there may more than one District/Zonal Cricket Association, and that the Region of Karachi has 7 Zonal Cricket Associations;

(iii) that the election of 6 out of 7 Zonal Cricket Associations in the Region of Karachi are complete; the one that remains i.e. the election of Zone-II Cricket Association Karachi, is the subject matter of this suit; and that only after the present controversy is decided will the electoral college be complete for electing the Regional Cricket Association of Karachi, which is also a City Cricket Association as per Articles 2(xxvi) and 2(x) of the PCB Constitution, and which is popularly known by its acronym 'the KCCA', the defendant No.3 herein;

(iv) that since the term of the office bearers of the defendant No.3 (the KCCA) had lapsed, it is presently being managed by a Provisional Committee of 3 persons (one of whom is Mr. Tanweer Ashraf Advocate); and that until election of the defendant No.3 materializes, it is not relevant to this suit;

(v) that in the interim order dated 1-1-2018 passed in this suit, the direction to the defendant No.3 (the KCCA) to bring the record of the disputed election, was made under the impression that the subject election pertained to the defendant No.3, which is not the case. The

KCCA is a Regional/City Cricket Association, while the present controversy pertains to a District/Zonal Cricket Association.

7. Mr. Muhammad Ali Lakhani, Advocate for the plaintiff, during his submissions highlighted that the eligibility of a person to contest election of a District/Zonal Cricket Association is set-out in Regulation 10 of the Election Regulations, 2015 under the part titled 'Election Regulations for District/Zonal/City Cricket Associations'. Since this Regulation is central to the case of the plaintiff, the relevant part of it, along with an amendment mentioned in a footnote, is reproduced as follows :

10. Any person wishing to contest the elections of District/Zonal Cricket Association shall fulfill the following qualification criteria:-

- a. Is a Pakistani citizen;*
- b. Is resident of the same District/Zone; ¹*
- c. Should be a member of Active club declared as such by the Scrutiny Committee PCB;*
- d. Is actively associated with the game of cricket in the area of his residence;*
- e.*
- f.*

1. As amended by The Board of Governors (BOG) in the 41st meeting of the BOG on 11th June 2016 to be read as follows and effective from such date as specified as above "is resident of the same District, except in the case of Lahore, Karachi, and Islamabad, where such person must be residing within the territorial limits of the same city"

Thus, if the amendment in the foot-note is read into Regulation 10 of the Election Regulations, 2015, it will read as under:

10. Any person wishing to contest the elections of District/Zonal Cricket Association shall fulfill the following qualification criteria:-

- a. Is a Pakistani citizen;*
- b. Is resident of the same District, except in the case of Lahore, Karachi, and Islamabad, where such person must be residing within the territorial limits of the same city;*
- c. Should be a member of Active club declared as such by the Scrutiny Committee PCB;*
- d. Is actively associated with the game of cricket in the area of his residence;*
- e.*
- f.*

Mr. Masood Ghani, Advocate for the defendant No.5, pointed that the eligibility criteria set-out in Regulation 10 of the Elections

Regulations, 2015 is identically set-out in Regulation 6 of the 'Model Constitution of District/Zonal Cricket Association'.

The dispute and the underling proceedings:

8. The case of the parties as gleaned from the record is as follows. Per the election schedule issued by the Deputy Election Commissioner PCB for election of Zone-II Cricket Association Karachi, the last date for filing objections against candidature was 31-7-2017, which were to be decided by 4-8-2017; the last date for filing an appeal against the decision of the Election Commissioner was 18-8-2017; and polling was scheduled for 26-8-2017 at National Stadium Karachi. The plaintiff, the defendant No.5 and two others were candidates for the office of President. By his letter dated 30-7-2017 addressed to the Deputy Election Commissioner PCB, the plaintiff objected to the eligibility of the defendant No.5 to contest the election, which letter reads as follows:

*The Deputy Election Commissioner
PCB
Gaddafi Stadium
Lahore.*

Dear Sir,

Re: LODGEMENT OF COMPLAINT AGAINST MR. JAVED AHMED KHAN FOR OBJECTION OF HIS DUAL CITIZENSHIP FOR THE PARTICIPATION AS PER PCB ELECTION REGULATION FOR REGIONAL CRICKET ASSOCIATIONS.

With reference the above mentioned subject, I, Mr. Afzal as Presidential candidate participating in the coming PCB Election and would like bring into the kind knowledge of the Honourable Deputy Commissioner of PCB at Gaddafi Stadium-Lahore that the candidate Mr. Javed Ahmed is participating in the PCB Election from Karachi who is having dual citizenship.

I would like to also point out that it is clearly and explicitly mentioned in the prescribed Rules and Regulations of PCB Election the eligible candidate will be only a Pakistani Citizen and must be Resident of the same Region/City and my objection is in accordance with prescribed Rulings of PCB Regional Election for Regional Association.

Hence his application does not become eligible in the said Election to participate as normal candidate according criteria given by the PCB.

I request you to kindly review the same and give decision according to prescribed Rules and Regulations of PCB.

Thanking you.

Yours truly,

*For NEW UNITED GYMKHANA CRICKET CLUB
- sd -
MUHAMMAD AFZAL
Presidential Candidate-KCCA Zone-II
30.07.2017.*

*Enclose:
Documents*

(Underlining supplied by me for emphasis)

The aforesaid objection of the plaintiff was rejected by the Deputy Election Commissioner and the nomination form of the defendant No.5 was accepted vide order dated 4-8-2017, which order reads as follows:

Objection against the candidature of Mr. Jawed Ahmed Khan-Election of Zone-II Cricket Association, Karachi.

ORDER

1. An objection against the candidature of Mr. Jawed Ahmed Khan has been filed by Mr. Muhammad Afzal, candidate, wherein, it has been alleged that:-

(a) Mr. Jawed Ahmed Khan has dual citizenship. As per PCB Election Regulation, the eligible candidate will only be a Pakistani citizen and must be resident of the same region/city therefore; he is not entitled to participate in the election.

2. In response to above objection, Mr. Jawed Ahmed Khan submitted written reply and contended that:-

- a. I am a citizen of Pakistan holding CNIC (42301-1010867-1) (Copy enclosed)*
- b. As per rule 10(a), a person wishing to contest the election of District/Zonal Cricket Association should be a Pakistani Citizen.*
- c. Objection is totally baseless & unlawful and the same to be rejected.*

3. Under paragraph 10(a) of PCB Election Regulations for District/Zonal/City Cricket Associations, any person wishing to contest the elections of District/Zonal Cricket Association should be a Pakistani Citizen.

4. It is evident from the CNIC of Mr. Jawed Ahmed Khan that he is a Pakistani citizen and as per Election rules and regulations he is eligible to contest the forthcoming election of Zone-II Cricket Association Karachi.

5. In view of above, the objection is turned down. Hence the nomination form of Mr. Jawed Ahmed Khan is accepted.

*- sd -
Ahmed Shehzad Farooq Rana
Deputy Election Commissioner PCB.*

Dated: 4th August, 2017

9. The aforesaid order dated 4-8-2017 passed by the Deputy Election Commissioner rejecting the plaintiff's objection to the eligibility of the defendant No.5 was appealed by the plaintiff under Article 37(2) of the PCB Constitution to the Board of Governors of the PCB, who as per the said Article, referred the appeal for decision to the defendant No.4 who is an 'Adjudicator' on the Panel of Adjudicators of the PCB appointed pursuant to Article 37(1) of the PCB Constitution. Per the memo of the plaintiff's appeal before the Adjudicator, the grounds taken by him were essentially: (a) that the Deputy Election Commissioner had disregarded the American passport of the defendant No.5 which made him a dual citizen and thus ineligible for election under Regulation 10(a) of the Election Regulations, 2015 (reproduced above); (b) that the failure of the defendant No.5 to mention that he was also a citizen of the USA was a misstatement in his nomination form; and (c) that while deciding the plaintiff's objections, the Deputy Election Commissioner did not provide him a hearing. As regards ground (a), reliance was also placed by the plaintiff on Article 63(1)(c) of the Constitution of Islamic Republic of Pakistan, 1973 whereunder a person is disqualified from being a member of Parliament if he acquires the citizenship of a foreign state. Though it was stated in the appeal that a copy of the American passport of the defendant No.5 was annexed to the appeal, what was actually filed was a screen-shot of a computer data-base showing the name of the defendant No.5 and a USA passport number.

In his reply to the plaintiff's appeal before the Adjudicator, the defendant No.5 stated *inter alia*: (a) that the fact that he was a Pakistani citizen as demonstrated by his CNIC, was sufficient to fulfill the requirement of Regulation 10(a) of the Election Regulations, 2015 and thus he had not made any misstatement in his nomination form; and (b) that even if he were a dual citizen, that was not a disqualification under Regulation 10(a) of the Election Regulations, 2015. He was however vague in answering whether he was a dual citizen of the USA or not.

10. Before the Adjudicator PCB (the defendant No.4), the parties were represented by legal counsel. On behalf of the plaintiff it was urged that in view of section 14 of the Pakistan Citizenship Act, 1951, once the defendant No.5 acquired another nationality he ceased to be a

Pakistani citizen; and also that Regulation 10(a) of the Election Regulations, 2015 was *ultra vires* Article 63(1)(c) of the Constitution of Islamic Republic of Pakistan, 1973. An additional argument advanced by the plaintiff's counsel before the Adjudicator was that the amendment made to Regulation 10(b) of the Election Regulations, 2015 to benefit candidates only from the bigger cities of Lahore, Karachi and Islamabad, was not based on reasonable classification and *ultra vires* Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, and if the amendment made is struck down on that score then under Regulation 10(b) as it originally stood, the defendant No.5 did not reside in the same Zone-II for which election was being held, and hence was also not eligible on that count.

The submissions made on behalf of the defendant No.5 before the Adjudicator were the same as his written reply discussed above, and therefore I do not repeat them.

11. As regards the submission of the plaintiff's counsel before the Adjudicator that the defendant No.5 was also disqualified under the original Regulation 10(b) of the Election Regulations, 2015 and that the amended Regulation 10(b) was to be struck down being *ultra vires* Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, these were rejected by the learned Adjudicator for the reason that such grounds were never taken by the plaintiff before the Deputy Election Commissioner nor in the memo of appeal before the Adjudicator. The latter submission was also rejected for the reason that an Adjudicator acting under the PCB Constitution had no jurisdiction to do so.

As regards the plaintiff's reliance on Article 63(1)(c) of the Constitution of Islamic Republic of Pakistan, 1973, the learned Adjudicator held that the disqualification thereunder cannot be imported into the Election Regulations, 2015 when the latter did not provide for it, and in holding so the learned Adjudicator relied on the case of *Zahid Iqbal v. Hafiz Muhammad Adnan* (2016 SCMR 430).

12. That before the Adjudicator, in reply to the plaintiff's contention that the defendant No.5 was not a Pakistani citizen by virtue of section 14(1) of the Pakistan Citizenship Act, 1951, the defendant No.5 relied upon S.R.O. 581(1)/2002 notified by the Federal Government under section 14(3) of the Pakistan Citizenship Act, 1951, which excluded the

provision of section 14(1) of the said Act for Pakistani citizens holding dual citizenship of the USA. After examining section 14 of the Pakistan Citizenship Act, 1951 and the said S.R.O. 581(1)/2002, the learned Adjudicator held that even if the defendant No.5 was a dual national of the USA, he did not become ineligible under Regulation 10(a) of the Election Regulations, 2015 and the plaintiff's appeal was dismissed by the Adjudicator on that score also.

13. Though reliance by the defendant No.5 before the Adjudicator on S.R.O. No.581(1)/2002 was, in my view, an acknowledgment that he (the defendant No.5) was in fact a dual citizen of the USA, while hearing the arguments of Mr. Masood Ghani (Advocate for the defendant No.5) I nonetheless asked him to do away with the ambiguity and state for the record whether the defendant No.5 was a dual citizen of the USA or not. His reply was that the defendant No.5 was. Since that left no issue of fact to be tried by evidence, learned counsels agreed and proposed that the counter-affidavits of the defendants to CMA No. 15/2018 be treated as their pleadings, and the suit be decided on the basis of admitted documents on the record by addressing what were only questions of law. Therefore, with the consent of the learned counsels I settled the following issues:

- I. Whether any objection raised by the plaintiff before the Deputy Election Commissioner to the eligibility of the defendant No.5 to contest the subject election was not considered by him? If so, to what effect?
- II. Whether the amendment to Regulation 10(b) of the Election Regulations, 2015 is invalid for not having been published in the official gazette? If not, whether the defendant No.5 was ineligible to contest election under the original Regulation 10(b)?
- III. Whether the order dated 22-12-2017 passed by the learned Adjudicator is contrary to law?

The ambiguity whether the defendant No.5 was a dual citizen of the USA having being laid to rest, I need not discuss the submissions made by Mr. Lakhani on behalf of the plaintiff to demonstrate that the defendant No.5 was a dual citizen.

Submissions in this suit in respect of Regulation 10(b) of the Election Regulations, 2015:

14. In this suit, the plaintiff's challenge to the eligibility of the defendant No.5 under the Election Regulations, 2015 is on a legal plane different from the one in appeal before the learned Adjudicator.

15. Mr. Lakhani for the plaintiff contended that since the amendment made by the PCB to Regulation 10(b) of the Election Regulations, 2015 had not been published in the official gazette as required by section 20-A of the General Clauses Act, 1897, the said amendment did not take legal effect, and consequently Regulation 10(b) exists in its original form under which the defendant No.5 is not eligible. He further contended that vide letter dated 30-7-2017 addressed to the Deputy Election Commissioner, the plaintiff had assailed the eligibility of the defendant No.5 also under the original Regulation 10(b), viz., that admittedly the defendant No.5 was not a resident of the same zone for which election was being held, but that such objection had been ignored by the Deputy Election Commissioner. However, Mr. Lakhani conceded that the invalidity of the amendment to Regulation 10(b) on the ground of section 20-A of the General Clauses Act, 1897 had never been urged by the plaintiff in the proceedings below, but he contended that that being a point of law, he can raise it at any stage. Mr. Lakhani also conceded that the ground of ineligibility under Regulation 10(b), or that the same had been ignored by the Deputy Election Commissioner, had not been taken by the plaintiff in the memo of appeal before the Adjudicator.

16. Mr. Masood Ghani for the defendant No.5, and Mr. Furqan Ali for the defendant No.2 (PCB) supported the orders dated 4-8-2017 and 22-12-2017 passed respectively by the Deputy Election Commissioner and the learned Adjudicator. They argued that grounds now being urged on behalf of the plaintiff were never taken in the proceedings below. Mr. Masood contended that the suit was frivolous, only to sabotage the election process, and as a result of it, further elections to the Regional Cricket Associations cannot be held. He also contended that the non-joinder of the Election Commissioner was fatal to the suit. Both Mr. Masood and Mr. Furqan contended that the plaintiff, like other candidates, was aware all along of the amendment to Regulation

10(b) which is identical to the one made in Regulation 6(b) of the Model Constitution of District/Zonal Cricket Association, to which the plaintiff and all other candidates are bound also by virtue of the Undertaking (prescribed in Annexure A to the Elections Regulations, 2015) duly executed by them. Both Mr. Masood and Mr. Furqan explained that the reason for amending Regulation 10(b) was in acknowledgment of the fact that in cities such as Karachi, Lahore and Islamabad, it was impractical to expect a candidate to be residing in the same district or zone with which he was affiliated for cricket, and that much is evident from the minutes of the meeting of the Board of Governors in which the amendment was approved. Mr. Furqan submitted that it is absurd for the plaintiff to contend that he was not aware of the Regulations under which he is contesting election. Both Mr. Masood and Mr. Furqan contended that Regulations made by the PCB are not required by the parent statute to be published in the official gazette and none has been so done previously, but that these have always been made public. Mr. Furqan placed reliance on the cases of *Saghir Ahmed v. Province of Punjab* (PLD 2004 SC 261) and *Printek (Pvt.) Ltd. v. Shahid Nabi Malik* (2011 YLR 2941 -DB) to contend that publication of the amendment of Regulation 10(b) in the official gazette was not mandatory where the provision under which it was made did not require such publication, and that such non-publication did not render the said amendment invalid. In rebuttal, Mr. Lakhani relied on the cases of *Karachi Metropolitan Corp. v. S.N.H. Industries* (1997 SCMR 1228) and *Ummatullah v. Province of Sindh* (PLD 2010 Kar 236 - DB) to contend that the said amendment was invalid due to its non-publication in the official gazette.

17. Section 20-A of the General Clauses Act, 1897 which was inserted in the said Act in the year 2002 reads:

“20-A. All Rules and Order etc., to be published.---All rules, orders, regulations and circulars having the effect of law made or issued under any enactment shall be published in the official gazette.”

An identical provision, i.e. section 19-A was also inserted in the year 2002 in the West Pakistan General Clauses Act, 1956 as applicable to the Province of Sindh.

Finding and decision on submissions made in respect of Regulation 10(b) of the Election Regulations, 2015:

18. Before advertng to Mr. Lakhani's challenge to the amendment of Regulation 10(b) in the Election Regulations, 2015, it will be noticed that even assuming that Regulation 10(b) stood in its original form, the plaintiff's letter/objections dated 30-7-2017 addressed to the Deputy Election Commissioner (reproduced in full in para 8 above) had never invoked Regulation 10(b) in its original form. While the original Regulation 10(b) reads that the eligible candidate should be "...resident of the same District/Zone", what the plaintiff had asserted in his letter was that the eligible candidate should be ".....resident of the same Region/City". It is no-body's case that the defendant No.5 does not reside in the same Region/City of Karachi. What the plaintiff was in fact implying in his letter was that since the defendant No.5 was a dual citizen, he cannot be said to be residing in the same Region/City. Thus, the sole objection of the plaintiff before the Deputy Election Commissioner was to the dual citizenship of the defendant No.5 which was considered by the Deputy Election Commissioner, and the assertion that the Deputy Election Commissioner had ignored the plaintiff's objection under Regulation 10(b) is baseless. This much is also established by the fact that Regulation 10(b) was never made a ground in the memo of appeal before the Adjudicator. Therefore, I decide Issue No.I (framed in para 13 above) in the negative, against the plaintiff.

19. I now turn to the first leg of Mr. Lakhani's argument, which was that since the amendment made to Regulation 10(b) had not been published in the official gazette as required by section 20-A of the General Clauses Act, 1897, it had never taken legal effect and thus Regulation 10(b) exists in its original form. Though such point was never raised in the proceedings below, I proceed to address it as Mr. Lakhani contended that it was a point of law which can be raised at any stage and as such requires adjudication. But before I proceed do so, I cannot help but observe that such argument would first cut the other way, i.e. against the plaintiff inasmuch as, Regulation 10(b) in its original form, rather the entire Election Regulations, 2015 which is being relied upon by the plaintiff to assert his case, was also never

published in the official gazette. Therefore, if section 20-A of the General Clauses Act, 1897 is mandatory in the circumstances of the case, then the Election Regulations, 2015 and the Model Constitutions made by the PCB for all cricket associations under it are invalid, in which case the plaintiff has no cause to begin with.

The case of *Karachi Metropolitan Corp. v. S.N.H. Industries* (1997 SCMR 1228) relied upon by Mr. Lakhani, was a case where rate of octroi duty duly published in the official gazette was sought to be increased by a notification that was not so published. On the other hand, the parent statute (a Provincial statute) specifically read that all levies shall be given effect by 'notification', and since 'notification' under section 2(41) of the West Pakistan General Clauses Act, 1956 meant a notification published in the official gazette, the Honourable Supreme Court ruled that the amending notification will not be effective until so published. In doing so, the Court also discussed the distinction between the words 'notification' and 'notify/notified', and held that while the former means notification in the official gazette, the latter only means to give notice, proclaim or publish in any recognized manner.

The case of *Saghir Ahmed v. Province of Punjab* (PLD 2004 SC 261) relied upon by Mr. Furqan Ali was a case where a notification under section 3 of the Punjab Acquisition of Land (Housing) Act, 1973 approving a Housing Scheme thereunder, had not been published in the official gazette, while a subsequent notification under section 4 of the said Act for acquisition of land for the Housing Scheme, was published in the official gazette. The petitioners contended that since the first notification had not been 'notified' as required by section 3 of the said Act, the second notification under section 4 of the said Act too was void. The Honourable Supreme Court reiterated the distinction drawn between the words 'notified' and 'notification' in the case of *Karachi Metropolitan Corp. v. S.N.H. Industries* (1997 SCMR 1228), and noted that while the word 'notified' was used in section 3 of the said Act, the word 'notification' was used in section 4 of the said Act – ergo the intent that while action under section 3 of the said Act was more of an internal matter of the department requiring only to 'notify', action under section 4 of the said Act effected substantial rights of citizens thus requiring a 'notification' in the official gazette. Before concluding that the non-publishing of the notification under section 3

of the said Act did not make it invalid, the Honourable Supreme Court held as follows:

“It depends on the language employed in the particular statute as to whether the provisions regarding publication of a statutory instrument or a notification in the official gazette are to be treated as mandatory or directory”.

“Even otherwise, the provisions of a statute for the publication of a notification are generally regarded by the Courts as directory and where their strict non-compliance does not provide any consequences. The legal certainty also requires that ordinarily a statutory instrument should not be treated as invalid because of a failure on the part of public functionaries to publish it in the official gazette. There may be many things done on the basis of such an instrument.”

“However no hard and fast rule of universal application can be laid down on the legal effect of non-publication of a notification in the official gazette. In certain cases, keeping in view the nature and object of a particular statute and to carry out the legislative intent, the provisions for the publication of a notification in the official gazette can be treated to be mandatory in nature where rights or liabilities of other persons are involved.”

20. It may be noted that the case of *Karachi Metropolitan Corp.* discussed *supra* was prior to the insertion of section 19-A in the West Pakistan General Clauses Act, 1956 (as applicable to Sindh); and the case of *Saghir Ahmed* discussed *supra* related to a Punjab statute to which section 19-A of the West Pakistan General Clauses Act, 1956 was not applicable; but while parting with the judgment of *Saghir Ahmed*, the Honourable Supreme Court did notice section 20-A of the General Clauses Act, 1897 and advised the Punjab Government to bring about a similar provision for Punjab statutes. The cases in which section 19-A of the West Pakistan General Clauses Act, 1956 (as applicable to Sindh) came under discussion are discussed below.

In the case of *Ummatullah v. Province of Sindh* (PLD 2010 Kar 236 - DB) the regulations under discussion were the Karachi Building & Town Planning Regulations, 2002 [KBTPR]. Though, the parent statute under which these were made, i.e. section 21-A of the Sindh Building Control Authority Ordinance, 1979 did not require regulations to be published in the official gazette, the KBTPR had in fact been so published pursuant to section 19-A of the West Pakistan General Clauses Act, 1956 (as applicable to Sindh). Subsequently, certain amendments were made to the KBTPR in the year 2002 but the amending notification was not published in the official gazette

until the year 2008. The question that thus came before the Court was, what would be the effective date of the amending notification, and it was held that the amending notification would be effective prospectively from the date of its publication in the official gazette and not from the date of the notification. Since the KBTPR had originally been published in the official gazette pursuant to section 19-A of the West Pakistan General Clauses Act, 1956, in that backdrop it was observed by the learned Division Bench that non-publication of any amendment thereto could not be defended on the ground that the parent statute did not require publication in the official gazette. However, the question of validity or invalidity of regulations due to non-publication in the official gazette did not arise in *Ummatullah's* case. That question arose in the subsequent case of *Printek (Pvt.) Ltd. v. Shahid Nabi Malik* (2011 YLR 2941 – DB), when incidentally another set of amendments to the KBTPR made in the year 2005 were published in the official gazette in the year 2008 and the matter came up before a Division Bench headed by the learned judge who had authored judgment in *Ummatullah's* case. In *Printek's* case it was held that though the amending regulations would be effective from the date of their publication in the official gazette as held in *Ummatullah's* case, the delay in their publication would not render them invalid inasmuch as, in the circumstances of the case where rights of the parties were not prejudiced by the non-publication of the amending regulations, and where some of the amending regulations were procedural not substantive, section 19-A of the West Pakistan General Clauses Act, 1956 (as applicable to Sindh) was only directory, not mandatory. In holding so, the learned Division Bench relied also on the Supreme Court case of *Saghir Ahmed supra* (PLD 2004 SC 261).

21. From the case-law discussed above, in my humble opinion, the following principles emerge :

(i) No hard and fast rule of universal application can be laid down on the effect of non-publication of rules/regulations in the official gazette, and it is the language employed in the particular statute, the nature, intent and scope of the rules/regulations, actions already taken thereunder, rights/liabilities effected/created thereby, that will indicate whether a requirement of publication in the official gazette is to be treated as mandatory or directory;

(ii) the general rule is that where a statute requires that rules/regulations shall be notified by way of publication in the official gazette, but it does not go on to provide for a consequence of such non-publication, then the provision is to be interpreted as directory, not mandatory;

(iii) in cases falling under (ii) supra, the mere non-publication of the rules/regulations in the official gazette does not render them invalid unless the plaintiff/petitioner can show that he was prejudiced or a legal right of his was impaired by such non-publication;

(iv) where the parent statute does not require rules/regulations to be published in the official gazette, then section 19-A of the West Pakistan General Clauses Act, 1956 (as applicable to Sindh), and section 20-A of the General Clauses Act, 1897 (until these provisions provide a consequence for non-publication), do not per se make publication in the official gazette mandatory. In such cases too, the nature, intent and scope of the rules/regulations, actions already taken thereunder, rights/liabilities effected/created thereby, will also be factors in determining the consequence of non-publication;

(v) where the parent statute does not require rules/regulations to be published in the official gazette, but these are nonetheless so published in compliance of section 19-A of the West Pakistan General Clauses Act, 1956 (as applicable to Sindh) or section 20-A of the General Clauses Act, 1897, then the non-publication in the official gazette of any subsequent amendment to the same rules/regulations cannot be defended on the sole ground that the parent statute did not require publication in the official gazette. In such cases too, the consequence of non-publication will also turn on the nature, intent and scope of the rules/regulations, actions already taken thereunder, and rights/liabilities being effected/created thereby.

22. Applying the above principles to the facts of this case, I find as follows :

(a) The regulation-making power of the PCB stems from section 5 of the Sports (Development and Control) Ordinance, 1962 (reproduced below), which does not stipulate that such regulations should be 'notified' or should be by 'notification' in the official gazette. Thus, the provision under which the Election Regulations, 2015 are made, does not require publication in the official gazette.

“5. *Exclusive right to make Rules for the development, control and uniformity of Sports throughout Pakistan.- A Board may make rules and regulations for carrying its objects into effect.*”

For the above reason, and as rightly contended by Mr. Furqan Ali, the case of *Karachi Metropolitan Corp. v. S.N.H. Industries* (1997 SCMR 1228) relied upon by Mr. Lakhani, does not help the plaintiff. In that case the parent statute required a ‘notification’ to be published in the official gazette, which is not the case for the subject Election Regulations, 2015. In fact, since section 5 of the Sports (Development and Control) Ordinance, 1962 does not require regulations to be by ‘notification’ or to be ‘notified’, the case of *Karachi Metropolitan Corp.* goes against the plaintiff. I also note here that while the word ‘notification’ has been defined in section 2(41) of the West Pakistan General Clauses Act, 1956 to mean “a notification published under proper authority in the Official Gazette”, the word ‘notification’ has not been defined in the General Clauses Act, 1897.

(b) Article 41 of the PCB Constitution, which also deals with the regulation-making power of the PCB, too does not require the Election Regulations, 2015 to be ‘notified’ or to be by ‘notification’ or by a notification published in the official gazette.

(c) While section 20-A of the General Clauses Act, 1897 stipulates that all regulations having the effect of law made or issued under any enactment shall be published in the official gazette, it does not go on to provide for a consequence of such non-publication.

(d) It cannot be the plaintiff’s case that he is prejudiced by the non-publication of the amendment of Regulation 10(b) in the official gazette, or that a legal right of his is impaired by such non-publication, for the simple reason that the very Election Regulations, 2015 under which the plaintiff asserts his rights in this suit, were also not published in the official gazette.

(e) By virtue of an Undertaking prescribed in Annexure A to the Election Regulations, 2015 every office bearer of a Cricket Association under the PCB (which the plaintiff claims to be as President of an Active Club) has bound himself to abide by regulations formulated or issued from time to time by the PCB.

(f) The amended Regulation 10(b) of the Election Regulations, 2015 having already been acted upon by others in the elections held for the

other 6 zones of Karachi, so also in elections held prior to those, to hold the said Regulation invalid merely for non-publication in the official gazette, would disenfranchise the others.

In view of the foregoing, I hold that in the circumstances of this case the non-compliance of section 20-A of the General Clauses Act, 1897 does not make invalid the amendment to Regulation 10(b) of the Election Regulations, 2015, which continues to hold the field, and since admittedly the defendant No.5 resides in the territorial limits of Karachi, he is eligible under the amended Regulation 10(b) of the Election Regulations, 2015 to contest the election of Zone-II Cricket Association Karachi. Consequently, Issue No.II (framed in para 13 above) is decided in the negative, against the plaintiff.

Submissions made in this suit in respect of Regulation 10(a) of the Election Regulations, 2015:

23. Mr. Lakhani, Advocate for the plaintiff had contended that the reliance placed by the learned Adjudicator on S.R.O. 581(1)/2002 was misplaced inasmuch as, the provision under which the said SRO had been issued i.e. sub-section (3) of section 14 of the Pakistan Citizenship Act, 1951, had been declared to unconstitutional by the Lahore High Court in the case of *Umar Ahmed Ghumman v. Government of Pakistan* (PLD 2002 Lah 521), which judgment had not been brought to the notice of the learned Adjudicator. Mr. Tanweer Ashraf Advocate, who appeared in person as one of the members of the Provisional Committee that is managing the affairs of the defendant No.3 (the KCCA), also assisted the Court and contended that judgment in the case of *Umar Ahmed Ghumman supra* had struck-down sub-section (3) of section 14 of the Pakistan Citizenship Act, 1951 and consequently S.R.O. 581(I)/2002 issued thereunder was void. On the other hand, both Mr. Masood Ghani and Mr. Furqan Ali contended that the case of *Umar Ahmed Ghumman* actually supported the defendant No.5. Mr. Furqan Ali contended that the said judgment actually read-down sub-section (1) of section 14 of the Pakistan Citizenship Act, 1951 to hold that a person holding dual nationality does not automatically cease to be a Pakistani citizen.

Finding and decision on submissions made in respect of Regulation 10(a) of the Election Regulations, 2015:

24. Before discussing the case of *Umar Ahmed Ghuman* (PLD 2002 Lah 521), it is necessary to discuss section 14 of the Pakistan Citizenship Act, 1951 which reads as follows:

“14. Dual citizenship of 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.

(1A)

(2)

(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.

(4)

It will be seen that sub-section (3) of section 14 of the Pakistan Citizenship Act, 1951 overrides the disqualification (to be a Pakistani citizen) provided by its sub-section (1) in cases where “a citizen of Pakistan, is also the citizen of such other country as the Federal Government may, by notification in the official Gazette, specify in this behalf” (underlining supplied by me for emphasis). It is pursuant to the underlined portion of sub-section (3) of section 14 that the Federal Government issued S.R.O. 581 (I)/2002 dated 29-8-2002, duly published in the official gazette on 2-9-2002, to include the United States of America to be one of such countries to which sub-section (1) of section 14 would not apply. The said S.R.O. reads :

“S.R.O. 581 (I)/2002. - In exercise of the powers conferred by sub-section (3) of section 14 of Pakistan Citizenship Act, 1951 (II of 1951), the Federal Government is pleased to specify United States of America to be one of the other countries referred to in that sub-section.”

Thus, by virtue of the aforesaid S.R.O. 581 (I)/2002, a Pakistani citizen who is also a citizen of the USA, is excluded from the disqualification of sub-section (1) of section 14 of the Pakistan

Citizenship Act, 1951 and does not cease to be a Pakistani citizen. Therefore, but for the contention of Mr. Lakhani that sub-section (3) of section 14 of the Pakistan Citizenship Act, 1951 had been declared unconstitutional in the case of *Umar Ahmed Ghumman* (not cited before the Adjudicator), the finding of the learned Adjudicator that the defendant No.5 does not cease to be a Pakistani citizen by reason of being a dual citizen of the USA and consequently is not ineligible under Regulation 10(a) of the Election Regulations, 2015, is in accord with the provisions of the Pakistan Citizenship Act, 1951.

25. I now proceed to examine Mr. Lakhani's contention that sub-section (3) of section 14 of the Pakistan Citizenship Act, 1951 had been declared unconstitutional in the case of *Umar Ahmed Ghumman* (PLD 2002 Lah 521). The petitioner in that case was admittedly a dual citizen of Pakistan and USA and was aggrieved of a two-fold finding of the Election Commission of Pakistan against him, viz. (a) that by virtue of section 14(1) of the Pakistan Citizenship Act, 1951, he had ceased to be a Pakistani citizen; and (b) that by virtue of Article 63(1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973, he was disqualified from contesting election to Parliament. After a very informative discourse on the concepts of citizenship, nationality and dual nationality, the Court held essentially that section 14 when read with section 14-A of the Pakistan Citizenship Act, 1951, shows that the disqualification in section 14(1) of the said Act is not automatic but comes into play only when the competent authority of the other country requires the Pakistani citizen to renounce his Pakistani citizenship as a condition to the grant of nationality of that other country, or where the Pakistani citizen voluntarily renounces his Pakistani citizenship to acquire another citizenship.

It may be noted that at the time the case of *Umar Ahmed Ghumman* was heard, S.R.O. 581 (I)/2002 (reproduced above) protecting Pakistani citizenship of a dual citizen of the USA had not come about (see para 32 of the said judgment), and the Court was confronted with the fate of thousands of Pakistanis settled in the USA who may feel compelled to renounce their Pakistani citizenship due to the inaction of the Federal Government to protect them under section 14(3) of the Pakistan Citizenship Act, 1951, which protection had been afforded by the Federal Government to Pakistanis settled for example

in the United Kingdom. Such act, or rather inaction of the Federal Government was held to be discriminatory and violative of the Fundamental Right of equal protection of law afforded to all Pakistani citizens (para 34 of the judgment). Nowhere was section 14(3) of the Pakistan Citizenship Act, 1951 declared unconstitutional. In fact, the judgment had deplored the inaction of the Federal Government for not issuing notification under section 14(3) of the said Act to protect Pakistanis of the USA, and had clarified that the judgment had no bearing on the notifications issued thereunder. The case of *Umar Ahmed Ghumman* was heard on 16-8-2002 and decided on 2-9-2002, which is also the date on which S.R.O. 581 (I)/2002 was published in the official gazette. From that, it appears that the said S.R.O. was notified as a result of the hearing of the said case.

26. The reliance placed on the case of *Umar Ahmed Ghumman* to advance the case of the plaintiff is misconceived, which case in fact advances the case of the defendant No.5. Having concluded as such, I need not discuss whether a declaration of law made by a High Court in its writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 would apply only within the territorial limits of such High Court, which point had been addressed by the learned counsels to some extent for my on my request.

27. Therefore, for what has been discussed in paras 24 to 26 above, I hold that by virtue of S.R.O. 581 (I)/2002 issued under sub-section (3) of section 14 of the Pakistan Citizenship Act, 1951, the defendant No.5 did not cease to be a Pakistani citizen despite being a dual citizen of the USA and did not become ineligible under Regulation 10(a) of Election Regulations, 2015 to contest the election of Zone-II Cricket Association Karachi. Consequently, Issue No.III (framed in para 13 above) is also decided in the negative, against the plaintiff.

28. Mr. Lakhani, Advocate for the plaintiff had also advanced submissions on the ineligibility of the defendant No.5 under Regulation 10(c) & (d) of the Election Regulations, 2015, and the same had been replied to by Mr. Masood Ghani for the defendant No.5. However, since such grounds had never been taken by the plaintiff before the Deputy Election Commissioner nor before the learned

Adjudicator, and since the said are not pure questions of law capable of being raised at any stage, I am not inclined to entertain this challenge on the said grounds.

29. All issues (framed in para 13 above) having been decided against the plaintiff, the suit is dismissed along with CMA No.15/2018. The interim order dated 1-1-2018 is vacated. There is no order as to costs. The Nazir is directed to deliver the sealed envelope of the election result lying in his custody to the Deputy Election Commissioner of the Pakistan Cricket Board for announcement as per law.

JUDGE

Dated: 19th March, 2018