

ORDER SHEET

HIGH COURT OF SINDH, KARACHI

Election Appeal No. 02/2013

Date

Order with signature of Judge

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1. For order on Misc. 166/13
2. For katcha peshi.

30.01.2013

Mr. Abdul Wahab Baloch, advocate for appellant.

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1. Granted subject to all just exceptions.
2. The appellant is contesting By-election from the Constituency of PS-73, Jamshoro-cum-Dadu which is scheduled to be held on 18.02.2013. Respondent No.4 is also a candidate to contest from the said Constituency. At the time of scrutiny of the nomination papers on 26.01.2013 an objection was raised by the appellant that Respondent No.4, apart from being a Pakistani national, is also a

Canadian/American national and is disqualified to contest the election under the provisions of Article 63(1)(c) of the Constitution of Pakistan.

The only material that has been shown to establish that Respondent No.4 is a Canadian/American national is that similar objection was raised earlier when the Hon'ble Supreme Court was seized with the case of Syed Mehmood Akhtar Naqvi vs. Federation of Pakistan and others (PLD 2012 SC 1089) and the Supreme Court directed the Election Commission to re-examine the cases of the Parliamentarians and Members of Provincial Assemblies individually and obtain fresh declaration on oath from them that they do not stand disqualified under Article 63(1) (c) of the Constitution on account of dual nationality. In pursuant to such directions, respondent No.4 resigned from the Provincial seat of Sindh Assembly and was notified as Advisor to the Chief Minister.

The Returning Officer, however, while scrutinizing the papers rejected the objection of the appellant on the ground that no documentary proof in support of such objection has been submitted.

We would have issued notice to Respondent No.4 but since today is the last date for deciding the appeal by this Tribunal as the notification was communicated to this Court at 3.30 pm today and tomorrow this Tribunal will become functus officio, therefore, keeping in view the nature of the objections we direct Respondent No.4 to file affidavit on oath on 31.01.2013 upto 2.00 p.m. before the Provincial Election Commission Sindh that he is not disqualified under Article 63(1)(c) of the Constitution and in case of his failure to do so it shall be presumed that Respondent No.4 holds dual nationality in view of the background in which he resigned from the provincial seat in the wake of above referred decision of the

Supreme Court and the nomination papers of Respondent No.4 shall be deemed to have been rejected.

With the above directions, this appeal stands disposed of in the above terms.

Notice of this order to Respondent 4 through publication in newspaper and electronic media shall be deemed to be sufficient notice of service. A copy of this order shall be communicated to the Returning Officer.

JUDGE

JUDGE

sharif