

2013 S C M R 461
[Supreme Court of Pakistan]
Present: Iftikhar Muhammad Chaudhry, C.J., Gulzar Ahmed and Sh. Azmat Saeed, JJ
Dr. MUHAMMAD TAHIR-UL-QADRI---Petitioner
Versus
FEDERATION OF PAKISTAN through Secretary M/O Law, Islamabad and others---
Respondents

Constitution Petition No.5 of 2013, decided on 13th February, 2013.

(Challenging the Constitution of Election Commission of Pakistan).

(a) Constitution of Pakistan---

---Arts. 218, 63(1)(c) & 184(3)---Constitutional petition under Art.184(3) of the Constitution challenging the constitution of Election Commission of Pakistan---Maintainability---Locus standi of person holding dual citizenship to file a constitutional petition---Scope---Petitioner had failed to make out a case for exercising the discretionary jurisdiction of Supreme Court under Art.184(3) of the Constitution since violation of any of the Fundamental Rights under Chapter 1 of Part II the Constitution had neither been listed in the petition nor established during course of arguments---Petitioner had also failed to prove his bona fides to invoke the jurisdiction of the Supreme Court coupled with the fact that he had no locus standi to claim relief as prayed for in the present petition, inter alia, for the reasons that being a holder of dual citizenship, he was not qualified to contest the election to the Parliament in view of the constitutional bar under Art.63(1)(c) of the Constitution--- Constitutional petition was dismissed in circumstances.

Syed Mehmood Akhtar Naqvi v. Federation of Pakistan PLD 2012 SC 1089 ref.

(b) Constitution of Pakistan---

---Art. 51(2)(c)---Electoral Rolls Act (XXI of 1974), S.6---Person holding dual citizenship---Overseas Pakistanis---Right to vote in general elections conducted in Pakistan---Scope---Overseas Pakistani, whose name had been incorporated in the electoral rolls, could exercise his right of vote, as such right was recognized under the Constitution.

Yasmin Khan v. Election Commission of Pakistan 1994 SCMR 113 ref.

(c) Constitution of Pakistan---

---Arts. 204(3), 218 & 184(3)---Contempt of Court Ordinance (V of 2003, S.3---Constitutional petition under Art.184(3) of the Constitution challenging the constitution of Election Commission of Pakistan---Contempt of Supreme Court---Exercise of restraint by the Supreme Court---Petitioner made uncalled for aspersions against Members of the Bench during his arguments, which prima facie tantamount to undermine its authority calling for action against the petitioner for contempt of court under Art.204(3) of the Constitution read with S.3 of the Contempt of Court Ordinance, 2003---Supreme Court, however, while exercising restraint, decided not to proceed against the petitioner following the principle that jurisdiction for contempt of court had to be exercised sparingly on case to case basis.

Petitioner in person.

Irfan Qadir, A.-G. for Pakistan on Court's Notice and for the Federation (R - 1 & 3).

Muhammad Munir Peracha, Senior Advocate Supreme Court, Mehmood A. Sheikh and Abdul Rehman, Additional D.-G. Legal for Election Commission.

Muhammad Latif Qureshi, Joint Secy. National Assembly for Parliamentary Committee.

Dates of hearing: 11th to 13th February, 2013.

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, C.J.---For reasons to be recorded later it is held that petitioner, Dr. Muhammad Tahir-ul-Qadri has failed to make out a case for exercising the discretionary jurisdiction by this Court under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, for the facts that violation of any of the Fundamental Rights under Chapter 1 of Part II of the Constitution has neither been listed in the petition nor established during course of arguments, despite of insistence by the Bench to do so. The petitioner has also failed to prove his bona fides in view of the facts, which have been noticed at the hearing of the case, to invoke the jurisdiction of this Court coupled with the fact that under the peculiar circumstances he has no locus standi to claim relief as it has been prayed for in the petition, inter alia, for the reasons that being a holder of dual citizenship, he is not qualified (disqualified) to contest the election to the Parliament in view of the constitutional bar under Article 63(1)(c) of the Constitution, which has been interpreted by this Court in the case of Syed Mehmood Akhtar Naqvi v. Federation of Pakistan (PLD 2012 SC 1089).

2. However, it is loudly and clearly observed that as a voter like other overseas Pakistanis, whose names have been incorporated in the Electoral Rolls, he can exercise his right of vote as this right is recognized under the Constitution and has also been held by this Court in the case of Yasmin Khan v. Election Commission of Pakistan (1994 SCMR 113), which was finally disposed of vide judgment in Constitution Petition 26 of 1993 dated 18-12-1993. Thus, the petition is dismissed.

3. Before parting with the short order, it is essential to note that at the time of concluding his arguments on the points noted hereinabove, he started making uncalled for aspersions against the member of the Bench, which are tantamount prima facie to undermine its authority calling for action against him for Contempt of Court under Article 204(3) of the Constitution read with section 3 of the Contempt of Court Ordinance, 2003. However we, while exercising restraint, have decided not to proceed against him following the principle that such jurisdiction has to be exercised sparingly on case to case basis.

MWA/M-8/SC Petition dismissed.