

**P L D 2013 Supreme Court 413**

**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. 213, 218(2)(a), (b) & 184(3)---Constitutional petition under Art.184(3) of the Constitution challenging the appointment of Chief Election Commissioner and Members of Election Commission of Pakistan---Maintainability---Petitioner unable to establish violation of any of his Fundamental Rights---Effect---Petitioner primarily emphasized that the procedure provided in Arts.213 and 218 of the Constitution with regard to appointment of the Chief Election Commissioner as well as the Members of Election Commission had not been followed in letter and spirit---Petitioner neither listed infraction of any of the Fundamental Rights in the petition nor their enforcement had been sought in the prayer clause; and even during the course of arguments the petitioner failed to identify any of the Fundamental Rights, which might have been violated, thus, one of the fundamental requirements of Art.184(3) of the Constitution, namely, the violation of any of the Fundamental Rights, enabling the Supreme Court to exercise jurisdiction conferred by said Article, was apparently missing in the present petition---Burden of proof was upon the petitioner to demonstrate as to which of his Fundamental Rights had been infringed upon but he failed to point out an infraction of any of his Fundamental Rights---Constitutional petition was dismissed accordingly.

Benazir Bhutto v. Federation of Pakistan PLD 1988 SC 416; Muhammad Saifullah Khan v. Federation of Pakistan 1989 SCMR 22; Shehla Zia v. WAPDA PLD 1994 SC 693; Yasmin Khan v. Election Commission of Pakistan 1994 SCMR 113; Al-Jehad Trust v. Federation of Pakistan PLD 1996 SC 324; Asad Ali v. Federation of Pakistan PLD 1998 SC 161; Ardeshir Cowasjee v. Karachi Building Control Authority 1999 SCMR 2883; Wattan Party v. Federation of Pakistan PLD 2006 SC 697 and Sindh High Court Bar Association v. Federation of Pakistan PLD 2009 SC 879 distinguished.

**(b) Constitution of Pakistan---**

---Arts. 213, 218(2)(a), (b), 63(1)(c) & 184(3)---Constitutional petition under Art.184(3) of the Constitution challenging the appointment of Chief Election Commissioner and Members of

Election Commission of Pakistan---Maintainability---Bona fide of petitioner---Scope---Supreme Court observed that the country remained in the clouds of extra-constitutional eras from time to time and finally succeeded in establishing a democratic order in the country through the process of last general elections; that democratic system had continued for a period of 5 years, as the Parliament was about to complete its term and registered voters were ready to elect their representatives in the upcoming elections, which were a few months away; that at such critical stage, no objection or reservation had been shown to appointment of the Chief Election Commissioner and Members of the Election Commission by the citizens, registered voters, members of the National and Provincial Assemblies and members of Senate; that even prospective candidates for the forthcoming elections had also not raised a question of public importance for enforcement of any of their Fundamental Rights, either in the Supreme Court or before any of the Provincial High Courts, for the simple reason that the entire nation was ready for the forthcoming elections; that the Election Commission had also geared up the process of elections and statistical pre-poll preparations had almost been completed; that in such a situation, appointments to the Election Commission had been challenged by a person, who though could exercise his own right to vote but was disqualified from contesting elections in view of the bar contained in Art.63(1)(c) of the Constitution; that in a speech delivered by the petitioner he insisted upon delaying the elections, and to achieve such declared agenda of his, the petitioner also led a Long March; that during the proceedings at one stage petitioner claimed that he filed present petition in the nature of quo warranto, despite admitting that he had no objection(s) to the eligibility or competency of the Chief Election Commissioner and the Members of the Election Commission; that such moulded relief of writ of quo warranto sought by petitioner clearly reflected on his bona fides---Supreme Court further observed that petitioner lacked bona fides in approaching the Court under Art.184(3) of the Constitution; that present petition was geared against the Election Commission, an independent institution and creature of the Constitution that ensured the very strength, survival and continuity of the democratic system; that given the fact that it was election year, the importance of Election Commission was highlighted more than ever and Court had to exercise caution so as not to appear to be partaking in placing restrictions upon the independent and constitutional functions of the Election Commission---Constitutional petition was dismissed accordingly.

Workers Party Pakistan v. Federation of Pakistan PLD 2012 SC 681 ref.

### **(c) Constitution of Pakistan---**

---Arts. 213, 218(2)(a), (b), 63(1)(c) & 184(3)---Constitutional petition under Art.184(3) of the Constitution challenging the appointment of Chief Election Commissioner and Members of Election Commission of Pakistan---Maintainability---Petitioner holding dual citizenship/nationality---Effect---Petitioner has acquired the citizenship of a foreign country and had taken an oath inter alia to pledge his loyalty and allegiance to the foreign country, and as such this disqualified him from contesting elections to Parliament, in view of the bar contained in Art.63(1)(c) of the Constitution---After acquiring the citizenship of another country and pledging his loyalty to that country, petitioner has lost some of his rights including the right to be elected as Member of Parliament, even though he did not lose his Pakistani citizenship as well as other rights granted under the Constitution and the law, as a consequence of his dual nationality---Although acquisition of nationality of any foreign country was not an impediment by itself in

filing a petition under Art.184(3) of the Constitution, but 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 Chap.1 of Part II of 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 accordingly.

**(d) Constitution of Pakistan---**

---Arts. 213, 218(2)(a), (b), 63(1)(c) & 184(3)---Constitutional petition under Art.184(3) of the Constitution challenging the appointment of Chief Election Commissioner and Members of Election Commission of Pakistan---Maintainability---Laches---Effect---Petitioner (who resided abroad) filed present petition about two months after coming to Pakistan, when the general elections were around the corner---Number of bye-elections had been held under the supervision of incumbent Chief Election Commissioner and the Members of the Commission---National Assembly as well as Provincial Assemblies were about to complete their constitutional terms---Electoral rolls by and large had been completed and as such much water had flown under the bridge---Laches were vital in the present case---After having become fully functional, the Election Commission was headed towards holding elections and no one except the petitioner alone, as a voter, had questioned their appointments---Present petition suffered from laches and thus was not maintainable---Constitutional petition was dismissed accordingly.

State Bank of Pakistan v. Imtiaz Ali Khan 2012 PLC (C.S.) 218; Muhammad Azhar Siddiqui v. Federation of Pakistan PLD 2012 SC 774; Dr.Akhtar Hussain Khan v. Federation of Pakistan 2012 SCMR 455 and Air India Ltd. v. Cochin International Airport Ltd. [(2002) 2 SCC 617] ref.

**(e) Constitution of Pakistan---**

---Arts. 204(3), 213, 218(2)(a), (b) & 184(3)---Contempt of Court Ordinance (V of 2003), S. 3--  
-Constitutional petition under Art.184(3) of the Constitution challenging the appointment of Chief Election Commissioner and Members 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.

**(f) Constitution of Pakistan---**

---Art. 51(2)(c)---Electoral Rolls Act (XXI of 1974), S.6---Citizen of Pakistan living abroad holding dual citizenship---Overseas citizen of Pakistan---Right to vote in general elections conducted in Pakistan---Scope---Citizens of Pakistan living abroad, some of whom might be holding dual citizenship, could exercise their right to vote if their names had been incorporated in the electoral rolls---Such right was recognized under the Constitution.

Yasmin Akhtar v. Election Commission of Pakistan 1994 SCMR 113 rel.

Ch. Nasir Iqbal v. Federation of Pakistan (Constitutional Petition No.39 of 2011 etc.) ref.

**(g) Constitution of Pakistan---**

---Art. 218(3)---Election Commission of Pakistan, duty of---Scope---Election Commission of Pakistan had to conduct/organize elections enabling the people to elect their representatives by means of a free and fair electoral process.

**(h) Constitution of Pakistan---**

---Art. 63(1)(c)---Disqualification from membership of Majlis-e-Shoora (Parliament)---Person having dual citizenship---Such a person was expressly prohibited from being elected as member of Parliament under Art.63(1)(c) of the Constitution.

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

**(i) Constitution of Pakistan---**

---Art. 184(3)---Exercise of jurisdiction by Supreme Court under Art.184(3) of the Constitution--Conditions---Original jurisdiction of Supreme Court [under Art.184(3) of the Constitution] was to be exercised on the availability of two conditions i.e. question of public importance and enforcement of any of the Fundamental Rights, subject to discretion of the Court---Essentially, consideration of the Court remained on the existence of public importance, which was to be interpreted depending upon the particular facts raised before it on a case to case basis.

**(j) Constitution of Pakistan---**

---Art. 184(3)--- Constitutional petition filed before the Supreme Court under Art.184(3) of the Constitution---Locus standi of petitioner---Scope---Jurisdiction of the (Supreme) Court [under Art.184(3) of the Constitution]could be invoked individually and collectively by citizen(s) who succeeded in establishing his/their locus standi to achieve the purposes envisaged by the Constitution.

**(k) Constitution of Pakistan---**

---Art. 184(3)---Constitutional petition filed before the Supreme Court under Art.184(3) of the Constitution---Bona fides of petitioner---Scope and proof---Citizen who invoked the jurisdiction of the Supreme Court was bound to satisfy the Court that he had come before the Court with

bona fide intentions and therefore, he had locus standi to seek enforcement of the Fundamental Rights in question---For a person to invoke the jurisdiction of Supreme Court as a public interest litigant, for the enforcement of the Fundamental Rights of a group or a class of persons, he must show on the given facts that he was acting bona fide---Court had to decide, on the given facts, whether petitioner was acting bona fide or not---Bona fides had to be apparent or should be shown from the record---Expression 'bona fide', for the purpose of invoking jurisdiction of Supreme Court under Art.184(3) of the Constitution, had to be applied in contradistinction to the expression 'mala fide' because mala fide, if alleged against any person, was to be proven by bringing admissible evidence on record, whereas to prove bona fide, burden was placed upon the person who had approached the Court and persuaded it to exercise jurisdiction.

Shahid Hussain Qureshi v. Manager SBFC 2001 YLR 454; Waqar Haider Butt, Judge Family Court 2009 SCMR 1243 and Government of West Pakistan v. Begum Agha Abdul Karim Shorish Kashmiri PLD 1969 SC 14 rel.

Ashok Kumar Pandey v. State of West Bengal AIR 2004 SC 280 and Dr. Akhtar Hussain Khan v. Federation of Pakistan 2012 SCMR 455 ref.

#### **(l) Constitution of Pakistan---**

---Art. 184(3)---Constitutional petition filed before the Supreme Court under Art.184(3) of the Constitution---Nature of proceedings of the petition---Scope---Article 184(3) of the Constitution did not mention as to what proceedings should be followed---Nature of proceedings must be judged in light of the purpose, that is, the enforcement of any of the Fundamental Rights---Article 184(3) of the Constitution provided abundant scope for the enforcement of Fundamental Rights of an individual or a group or a class of persons, however, it would be for the Court to generally lay down the contours in order to regulate the proceedings initiated by a group or class from case to case.

#### **(m) Pakistan Citizenship Act (II of 1951) ---**

---S. 14---Constitution of Pakistan, Art.184(3)---Person having dual citizenship---Right of such person to enforce his rights by way of constitutional petition before the Supreme Court---Scope--  
-Person who had acquired dual citizenship could claim his individual rights or other private rights and could also sue for the enforcement of such rights.

#### **(n) Words and phrases---**

---"Bona fide"---Definition.

Corpus Juris Secundum p.387; Chambers 20th Century Dictionary; Law Dictionary, Mosley and Whitley; Stround's Judicial Dictionary and Concise Law Dictionary of Osborn rel.

#### **(o) Constitution of Pakistan---**

---Arts. 184(3) & 199---Constitutional petition, filing of---Limitation period---Laches---Scope--  
-Constitutional bar of limitation was not applicable to the proceedings under Art.199 or Art.184  
of the Constitution, however, insistence was placed on initiating proceedings promptly and  
within a reasonable time to avoid the question of laches.

**(p) Pakistan Citizenship Act (II of 1951)---**

---S. 14---Constitution of Pakistan, Arts. 184(3) & 199---Constitutional petition filed by a  
person having dual citizenship---Maintainability---Acquisition of nationality of any foreign  
country was not an impediment by itself in filing a petition under Art.184(3) or 199 of the  
Constitution.

Petitioner in person.

Irfan Qadir, A.G. for Pakistan on Court Notice and for the Federation (Respondents  
Nos.1 & 3).

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

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

Dates of hearing: 11th to 13th February, 2012.

**JUDGMENT**

**IFTIKHAR MUHAMMAD CHAUDHRY, C J.**---It is the will of the people of  
Pakistan to establish an order wherein the State shall exercise its powers and authority through  
the chosen representatives of the people and wherein the principle of democracy, freedom,  
equality, tolerance and social justice, as enunciated by the Islam, shall be fully observed and to  
achieve the principle and provisions set out in the objective resolution, they have to elect their  
representatives i.e. Members of the National Assembly and Provincial Assemblies and Senate as  
well as Local Government, through the process/procedure of elections to be organized and  
conducted honestly, justly, fairly and in accordance with law, by the Election Commission,  
constituted under the Constitution of Islamic Republic of Pakistan.

2. This petition has been filed under Article 184(3) of the Constitution by the petitioner Dr.  
Muhammad Tahir-ul-Qadri in his personal capacity as a citizen of Pakistan. Following relief has  
been claimed in the petition:--

(1) The appointment of Chief Election Commissioner and four Hon'ble Members of the  
Election Commission of Pakistan is not in accordance with the provisions of Article 213 and 218  
of the Constitution. Hence, all these appointments are void ab initio.

(2) That a direction to respondent No.1 may graciously be issued on an urgent basis to appoint the Chief Election Commissioner and all other Members of the Election Commission of Pakistan immediately in accordance with the procedure laid down in Articles 213(2)(a) and 218(2)(a) and (b) of the Constitution of Islamic Republic of Pakistan, 1973, so that the forthcoming election may not be delayed on any pretext and is conducted, fairly, justly and in accordance with law.

3. The Election Commission of Pakistan (ECP) has to conduct/organize elections enabling the people of Pakistan to elect their representatives by means of a free and fair electoral process. As per prevailing constitutional dispensation, vide notification No.F.3(13)/2010-Estt-I dated 16-6-2011, issued under Article 218(2)(b) of the Constitution, four former Judges of the High Courts were appointed as members of ECP by the President of Pakistan. Thereafter, on the retirement of the then Chief Election Commissioner, incumbent Chief Election Commissioner was appointed vide notification No.F.5(7)/2011-PA(C) dated 16-7-2012. Admittedly, the Commission, after fully becoming operational, performed the duties envisaged under Article 219 of the Constitution i.e. preparing electoral rolls for elections to the National Assembly, the Provincial Assemblies, and revising such rolls annually; organizing and conducting elections to the Senate or to fill up casual vacancies in a House or a Provincial Assembly; appointing Election Tribunals, etc. and is now ready for holding general elections to the National Assembly and the Provincial Assemblies as the general elections are due on the completion of their five year terms in the month of March 2013 under Article 55 of the Constitution. Instant petition has been filed on 7-2-2013, challenging the appointment of Chief Election Commissioner as well as members of ECP. As the petitioner had not established his locus standi to file instant petition, therefore, on 11-2-2013, he was directed to file a concise statement.

4. A perusal of the concise statement dated 14-2-2013 filed vide C.M.A. No. 756/2013 has revealed that he also holds citizenship of Canada, which he has acquired under section 24 of the Canadian Citizenship Act, 1985 as a consequence whereof, he has shown allegiance on oath to the following effect:-

"From this day forward, I pledge my loyalty and allegiance to Canada and Her Majesty Elizabeth the Second, Queen of Canada. I promise to respect our country's Rights and freedoms, to uphold our democratic values, to faithfully observe our laws and fulfill my duties and obligations as a Canadian citizen."

5. Under section 14(1) of the Pakistan Citizenship Act, 1951, if any person is a citizen of Pakistan under the provisions of that 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. However, under subsection (3), the said provision shall not apply 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.

However, for a person with dual citizenship, there is an express prohibition that disqualifies him to be elected as Member of Parliament under Article 63(1)(c) of the Constitution, which reads as under:--

"63. Disqualifications for membership of Majlis-e-Shoora (Parliament).--(1) A person shall be disqualified from being elected or chosen as, and from being, a member of the Majlis-e-Shoora (Parliament), if:--

(a) ... ..

(b) ... ..

(c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State;"

Reliance in this behalf is also made on the case of Syed Mehmood Akhtar Naqvi v. Federation of Pakistan (PLD 2012 SC 1089).

6. Petitioner contended that being a citizen of Pakistan there is no bar to invoke the jurisdiction of this Court under Article 184(3) of the Constitution. Reliance has been placed on the cases of Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416), Muhammad Saifullah Khan v. Federation of Pakistan (1989 SCMR 22), Shehla Zia v. WAPDA (PLD 1994 SC 693), Yasmin Khan v. Election Commission of Pakistan (1994 SCMR 113), Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324), Asad Ali v. Federation of Pakistan (PLD 1998 SC 161), Ardeshir Cowasjee v. Karachi Building Control Authority (1999 SCMR 2883), Wattan Party v. Federation of Pakistan (PLD 2006 SC 697), Sindh High Court Bar Association v. Federation of Pakistan (PLD 2009 SC 879), Bank of Punjab v. Haris Steel Industries (PLD 2010 SC 1109), Al-Jehad Trust v. Lahore High Court (2011 SCMR 1688), Shahid Orakzai v. Pakistan (PLD 2011 SC 365) Workers' Party Pakistan v. Federation of Pakistan (PLD 2012 SC 681) and Umar Ahmed Ghuman v. Government of Pakistan (PLD 2002 Lahore 521).

7. Learned Attorney General stated as follows:--

(a) If the case-law cited by the petitioner is taken to be correct, he has locus standi in this case.

(b) The judgment of 31-3-2009 reported as Sindh High Court Bar Association v. Federation (PLD 2009 SC 879), relied upon by the petitioner is unconstitutional, especially when Supreme Court Bar Association has passed a resolution for revisiting it.

(c) Any judgment of the Supreme Court is not important but the provisions of the Constitution are important and as he has been appointed under Article 100 of the Constitution, therefore, as a Constitutional functionary it is his first and foremost duty to follow the Constitution and any decision of the Court, which runs contrary to the Constitution, he cannot subscribe to that.



(d) Articles 189 and 190 of the Constitution will only apply to those judgments, which are within the confines of Article 175(2) of the Constitution.

(e) As far as the bona fide of the petitioner is concerned, it is something which is not to be proven but bona fides are to be presumed, unless and until mala fides are attributed. And this is exactly what the law of evidence says, that question of good conduct and character is irrelevant unless evidence is given of a bad character in which it becomes relevant. In the instant case the question of bona fides would pale into insignificance and would not be relevant unless we have evidence that all this has been brought with mala fide intention and Courts have held in a number of rulings that mala fides are not only to be stated but they are to be proven.

(f) The petitioner has laid information before this Court and the Court can always take notice of that information irrespective of any bona fides and if the Court feels that there is a law point involved which touches upon Fundamental Rights and is a matter of public importance which has been brought to the notice of the Court then surely the Court on the basis of such information laid before it can assume jurisdiction, which it has done in a number of cases.

(g) There is no mala fide of the petitioner apparent from the record. However, this Court has to examine the question of laches that at this point of time the petitioner has approached this Court. Why has the petitioner not approached this Court at an appropriate time?

8. Mr. Muhammad Munir Peracha, learned counsel who appeared on behalf of the ECP stated that:--

(a) The petition is barred by laches. Therefore, at this stage, discretion may not be exercised by granting relief claimed by the petitioner.

(b) Petitioner has no locus standi to file this petition as neither a request has been made to enforce any Fundamental Right involving question of public importance nor any bona fide has been shown to invoke the jurisdiction of this Court under Article 184(3) of the Constitution.

9. It is the contention of Mr. Muhammad Munir Piracha, learned ASC that petitioner demanded in his first public address, inter alia, that appointment of the Chief Election Commissioner and the Members be set aside for being contrary to constitutional provisions. Subsequently, he arranged Long March and a sitting in Islamabad from 14th to 17th January, 2013 wherein he had put forward the same demand, among others. Having failed to achieve his object, he has initiated instant petition with the prayer noted above. Therefore, mere filing of petition under Article 184(3) of the Constitution itself would not provide him locus standi to seek relief as he has not put forward any question of public importance and the enforcement of fundamental rights. Hence, discretion may not be exercised in his favour.

At one stage, the learned counsel also stated that the petitioner in his first public address after coming to Pakistan raised a slogan, " " (save the State, not politics) and to achieve this object, stated that the postponement of elections for a period of two years would be in the interests of the State.

The petitioner controverted the stand taken by the learned counsel and presented a transcript of his speech, forcefully stating that he had never demanded postponement of elections for a period of two years.

10. The factual aspect of the case as has been alleged by the parties has to be resolved either in view of the pleadings and facts which have been brought on record or by taking into consideration certain constitutional provisions relating to the completion of five year term of Parliament in the month of March, 2013 in terms of Article 55 of the Constitution.

11. It is to be noted that under Article 184(3) of the Constitution, the appointment of Chief Election Commissioner and the members of the ECP have been challenged. Therefore, it would be advantageous to reproduce the text of the provision here:--

184. Original Jurisdiction of Supreme Court. (1) ... ..

(2) ... ..

(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved have the power to make an order of the nature mentioned in the said Article.

A perusal of above noted sub-Article (3) of Article 184 manifests that there are two conditions, on the availability of which, original jurisdiction of this Court is to be exercised i.e. question of public importance and enforcement of any of the Fundamental Rights, subject to discretion of the Court as the words "if it considers" have been prefaced.

12. As per the case-law which has developed so far, the jurisdiction of the Court can be invoked individually and collectively by citizen(s) who succeed(s) in establishing his/their locus standi to achieve the purposes envisaged by the Constitution. In the instant case, the petitioner has relied upon various judgments of this Court to determine his locus standi but he has lost sight of the fact that jurisdiction has to be exercised subject to consideration by the Court that a question of public importance with reference to enforcement of any of the Fundamental Rights has been raised. Essentially, consideration of the Court remains on the existence of public importance, which is to be interpreted depending upon the particular facts raised before it on a case to case basis. A citizen who invokes the jurisdiction of the Court is bound to satisfy the Court that he has come before the Court with bona fide intentions and therefore, he has locus standi to seek enforcement of the Fundamental Rights in question. In the cases relied upon by him, this Court exercised jurisdiction where it was established that violation of any one or more Fundamental Rights were involved. It would be appropriate to note that in the case of Benazir Bhutto v. Federation of Pakistan (PLD 1988 SC 416) this Court held that after all, the law is not a closed shop and even in the adversarial procedure, it is permissible for the next of kin or friends to move the Court on behalf of a minor or a person under disability, or a person under detention or in restraint. Why not then a person, if he were to act bona fide to activate a Court for the enforcement of the Fundamental Rights of a group or a class of persons who are unable to seek relief from the Court for several reasons. Article 184(3) does not

say as to what proceedings should be followed. Whatever its nature may be must be judged in light of the purpose, that is, the enforcement of any of the Fundamental Rights. The said Article provides abundant scope for the enforcement of Fundamental Rights of an individual or a group or a class of persons in the event of their infraction. However, it would be for the Court to generally lay down the contours in order to regulate the proceedings initiated by a group or class actions from case to case. Having regard to the connotation of the words "public importance", it will be for the Supreme Court to consider each case to determine whether an element of "public importance" is involved in the enforcement of Fundamental Rights irrespective of the violation of an individual's rights or the infractions against the rights of a group or a class of persons. The Court granted relief on the ground that the petitioner had succeeded to show the violation of his Fundamental Rights provided under Article 17 of the Constitution. In the case of Muhammad Saifullah Khan v. Federation of Pakistan (1989 SCMR 22), this Court declined to accept the plea of the petitioner with regard to unconstitutionality of certain amendments made in the Delimitation of Constituencies Ordinance, 1988 and Representation of People Ordinance, 1988 and for declaring the constitution of Election Commission to be illegal, on the ground that he invoked the jurisdiction of the Court under Article 184(3) of the Constitution without alleging any infringement of his Fundamental Rights for the enforcement of which he sought to invoke the jurisdiction of the Court. In the case of Shehla Zia v. WAPDA (PLD 1994 SC 693), though the proceedings were initiated on a letter but the relief was granted for the reasons that violation of Article 9 of the Constitution had been proven. In the case of Yasmin Khan v. Election Commission of Pakistan (1994 SCMR 113), the petitioners who were permanent residents of Pakistan but were earning their livelihood abroad, sought enrolment as voters in the electoral rolls. In the case of Al-Jehad Trust v. Federation of Pakistan (PLD 1996 SC 324), the appointment of the Chief Justice of Pakistan and other Judges of the superior judiciary was challenged for being contrary to the mode prescribed in the Constitution for such appointments. It was held that this Court is entitled to take cognizance of a matter which involves a question of public importance with reference to any of the Fundamental Rights conferred by Chapter 1 of Part II of the Constitution, even suo motu, without requiring any formal petition. The relief was granted as the Court found that the petitioner's right of "access to justice for all" enshrined in Article 25 of the Constitution was violated. In the case of Asad Ali v. Federation of Pakistan (PLD 1998 SC 161), relief was granted to the petitioner on the ground that the petitioner had locus standi to approach this Court as his right to have free, fair and equal access to an independent and impartial tribunal granted under Articles 9 and 25 of the Constitution was violated. Proceedings in the case of Ardeshir Cowasjee v. Karachi Building Control Authority (1999 SCMR 2883) were initiated under Article 185(3) of the Constitution against the judgment of Lahore High Court and thus not applicable in the instant case. Further, the petitioner had succeeded in proving a violation of Article 25 of the Constitution as construction of high rise buildings was allowed on an amenity plot in a park. In the case of Wattan Party v. Federation of Pakistan (PLD 2006 SC 697), relief was granted to the petitioners on the ground of violation of Articles 4 and 9 of the Constitution. In the case of Sindh High Court Bar Association v. Federation of Pakistan (PLD 2009 SC 879), the Proclamation of Emergency and issuance of PCO of 2007 was challenged. The Court declared the petition to be maintainable on the ground that violation of Fundamental Rights of the petitioners under Articles 9 and 25 was involved.

13. An analysis of the above referred case-law shows that in all these cases, the Court was inclined to grant relief where the petitioner(s) therein succeeded in establishing the violation of

any of the Fundamental Rights conferred by Chapter 1 Part II of the Constitution. In the instant case, neither violation of any of the Fundamental Rights has been listed in the petition nor established during the course of arguments.

14. It is to be noted that the petitioner has acquired the citizenship of Canada and has taken an oath inter alia to pledge his loyalty and allegiance to Canada, and as such this disqualifies him from contesting elections to Parliament, in view of the bar contained in Article 63(1)(c) of the Constitution which has been elaborately discussed in the case of Syed Mehmood Akhtar Naqvi v. Federation of Pakistan (PLD 2012 SC 1089). It is to be noted that after acquiring the citizenship of another country and pledging his loyalty to that country, he has to lose some of his rights including the right to be elected as Member of Parliament, even though he does not lose his Pakistani citizenship as well as other rights granted under the Constitution and the law, as a consequence of his dual nationality.

15. Similarly, a person who has acquired dual citizenship can claim his individual rights such as the right to acquire property or other private rights and can also sue for the enforcement of such rights. This court has been entertaining such petitions in the past. Reference may be made to Constitution Petition No.15/2007 (Amjad Malik v. Federation of Pakistan). The said petition was clubbed with identical petitions, wherein the action of former President of Pakistan against one of us (Justice Iftikhar Muhammad Chaudhry, Chief Justice of Pakistan) was challenged. [Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan (PLD 2010 SC 61)]. In the said case, the petitioner, Amjad Malik introduced himself as a life member of the Supreme Court Bar Association and a Solicitor-Advocate of the Supreme Court of England & Wales, member of International Bar Association and current chair of Association of Pakistan Lawyers (UK) practicing from his office at 149 Dark Street, Rochadale, OL 11 IEF (UK). He made the following prayer:--

"The leave to move a petition may graciously be granted as it involves a question of public importance as well as interpretation of Article of which the whole nation is concerned, and a larger is formed as respondents have shown blatant disregard to the rule of law, and norms of Constitution and petitioner believes and disputes there is no term as such as 'non functional' Chief Justice of Pakistan as it is only the Honourable Office of the Chief Justice which upholds the supremacy of the Constitution, the custodian and guardian of justice & rule of law and the sooner larger bench settles the actual interpretation of Article 209 and relevant proposition the better it is to avoid any further media trial of the sitting Chief Justice as well as future media trial of the sitting Chief Justice as well as future Chief Justice(s) of Pakistan.

Petitioner fears that filing a reference under Art.209 may be used as ploy with mala fide intentions to remove a pro active Chief Justice in future if the law is not settled now and may create serious legal questions for the independence of judiciary and safety of the work and well being of the judges of the Superior Court.

It is also prayed that direction may be issued to respondent to remove all restraints on the Chief Justice, allow him and his family move freely, access to Chief Justice to Court and restore his protocol and privileges befitting to his office until reference and or the question of law is

settled by this superior court and may be permitted to perform his functions in Court as Chief Justice of Pakistan."

16. It is abundantly clear that for a person to activate the jurisdiction of this Court as a public interest litigant, for the enforcement of the Fundamental Rights of a group or a class of persons, he must show on the given facts that he is acting bona fide. However, it would be for this Court to decide, on the given facts whether he is acting bona fide or not and whether the petition is suffering from laches or not.

17. It is a settled principle of law that mala fides are to be pleaded and proven by the persons so pleading whereas bona fides are always to be apparent or should be shown from the record. It is also settled that the superior Courts exercise discretionary jurisdiction conferred under Articles 184(3) of the Constitution where the petitioner succeeds in establishing his bona fides from the record. Reference may be made to the cases of *Shahid Hussain Qureshi v. Manager SBFC* (2001 YLR 454). Similarly, in the case of *Waqar Haider Butt v. Judge Family Court* (2009 SCMR 1243) this Court has held that constitutional jurisdiction is always discretionary in nature and he who seeks equity must come with clean hands.

18. It may also be noted that the expression 'bona fide', for the purpose of invoking jurisdiction of this Court under Article 184(3) of the Constitution, has to be applied in contradistinction to the expression 'mala fide'. Because mala fides, if alleged against any person, is to be proven by bringing admissible evidence on record, as it has been held in the case of *Government of West Pakistan v. Begum Agha Abdul Karim Shorish Kashmiri* (PLD 1969 SC 14), whereas to prove bona fide, burden is placed upon the person who has approached the Court and persuaded it to exercise jurisdiction, particularly with reference to the circumstances of the instant case. The expression, 'bona fide' has been defined as per dictionary meanings as follows:-

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Corpus Juris Secundum page 387:

Latin literally, "by or in good faith". It has been defined as meaning acting honestly without purpose to defraud; good faith, as distinguished from bad faith; honest; without fraud or unfair dealing; also, in a derived sense, real.

Chambers 20th Century Dictionary:

'In good faith; genuine'. The word 'genuine' means 'natural: not spurious: pure: sincere'.

Law Dictionary, Mosley and Whitley:

Bona fide means 'good faith, without fraud or deceit.'

Stroud's Judicial Dictionary:

'Bona fide' (1) The equivalent of this phrase is 'honestly'.....

Concise Law Dictionary of Osborn:

'Bona fide' - In good faith, honestly, without fraud, collusion or participation in wrongdoing."

While dealing with the question of ""bona fides" of a petitioner, especially in the case of a person approaching the Court in the name of Public Interest Litigation, the Indian Supreme Court in the case of Ashok Kumar Pandey v. State of West Bengal (AIR 2004 SC 280) has held as under:--

"Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs." [Emphasis supplied]

Relying upon the said case, this Court in the case of Dr. Akhtar Hassan Khan v. Federation of Pakistan (2012 SCMR 455) has held that while holding that the petitions are maintainable, the Court has to guard against frivolous petitions as it is a matter of common observation that in the garb of Public Interest Litigation, matters are brought before the Court which are neither of public importance nor relatable to enforcement of a Fundamental Right or public duty.

19. Applying the above stated principle to the facts of instant case, it is to be observed that this country, after having remained in the clouds of extra-constitutional eras from time to time, as has been discussed in the case of Sindh High Court Bar Association (supra) finally succeeded in establishing a democratic order in the country through the process of elections when General Elections were held on 18-2-2008. Thereafter, all the unconstitutional actions of the then Military Regime were declared non est by this Court in the above cited judgment, including the appointment of Judges, who violated the restraint order passed by a seven-member Bench of this Court on 3-11-2007 against the Military Regime and appointment of Judges who were appointed on the recommendations of an unconstitutionally appointed Chief Justice, including the incumbent Attorney General of Pakistan. It is heartening to note that all unconstitutional actions of the Military Regime were also not confirmed by the Parliament, as it is manifest from the 18th Constitutional Amendment. Since then, the democratic system has continued for a period of 5 years, as the Parliament is about to complete its term on or before 18-3-2013, and approximately 80 million registered voters are ready to elect their representatives within the coming few months. For that reason, at this critical stage, no one amongst the 180 to 200 million citizens or

registered voters has come forward to question the appointment of the Chief Election Commissioner and Members of the ECP, who were appointed vide notifications dated 16-7-2012 and 16-6-2011 respectively. At the same time, no objection or reservation has been admittedly shown to such appointments by the 342 incumbent Members of the National Assembly and 104 Members of the Senate as well as 65, 124, 371 and 168 Members of the Provincial Assemblies of Balochistan, KPK, Punjab and Sindh respectively. Nor have the prospective candidates for the forthcoming Elections raised a question of public importance for enforcement of any of their Fundamental Rights, either in this Court or before any of the Provincial High Courts, for the simple reason that the entire nation is fully ready for the forthcoming elections. Further, the ECP has also geared up the process of Elections and statistical pre-poll preparations have almost been completed by taking all necessary steps in accordance with the Constitution and law, as well as the recommendations made by this Court in the cases of *Imran Khan v. Election Commission of Pakistan* (2012 SCMR 448) and *Workers' Party Pakistan v. Federation of Pakistan* (PLD 2012 SC 681). In such a situation, the appointments to the ECP (both the Chief Election Commissioner and Members of the Commission) have been challenged by a person, who though can exercise his own right to vote but is disqualified from contesting Elections in view of the bar contained in Article 63(1)(c) of the Constitution, for the relief which has been noted hereinabove. It may not be out of context to note that in the speech delivered by the petitioner on 23-12-2012 at Lahore (transcript of which he has provided himself), he insisted upon the invocation of Article 254 of the Constitution to delay the elections. Relevant portion thereof is reproduced here:--

20. It is to be noted that the petitioner, to achieve his declared agenda, admittedly led a Long March from Lahore to Islamabad on 14-1-2013, which was concluded after a bilateral agreement dated 16-1-2013 signed between him and the coalition Government. In one of the clauses whereof it was provided that the parties shall examine the dissolution of the ECP. It is not known whether a decision, if any, was taken officially in this behalf, but it seems that following the above events, instant petition has been filed. If the facts and circumstances noted above are put in juxtaposition, no difficulty is experienced in holding that the petitioner lacks bona fides in approaching this Court under Article 184(3) of the Constitution.

21. As the petitioner lacks bona fides, therefore, at one stage he stated that he has instituted instant petition in the nature of quo warranto. We enquired from him as to whether he had any objection(s) to the eligibility or competency of the Chief Election Commissioner and the Members of the Election Commission? He replied that he had no such objection against them. Learned Attorney General for Pakistan also stated that the petitioner has laid information before this Court to exercise/issue a writ in the nature of quo warranto. Suffice it to say that in view of the above noted statement of the petitioner about eligibility and competence of Chief Election Commissioner and Members a writ of quo warranto cannot be issued. For these reasons the Chief Election Commissioner and Members of the ECP have not been made party in this petition. Therefore, the cases noted in the petition, being distinguishable, are not attracted. It must also be explained that in Sindh High Court Bar Association's case (ibid) no writ of quo warranto was issued. The Judges who took oath under PCO and Oath of Office (Judges) Order in violation of the order of this Court dated 3-11-2007 were declared to have rendered themselves liable to action under and in accordance with the Constitution. Resultantly, notices for Contempt of Court

were issued to them and they subsequently submitted their resignations from such positions voluntarily. Additionally, the appointments of the Judges which were made without the requisite consultation of the de jure Chief Justice of Pakistan were declared to be unconstitutional, illegal, void ab initio and of no legal effect. The judges so removed approached this Court by means of review petitions which were dismissed by the judgment dated 13-10-2009 in the case of Justice Khurshid Anwar Bhinder v. Federation of Pakistan (PLD 2010 SC 483). Thus, clearly moulded relief of issuing writ of quo warranto reflects on the bona fides of the petitioner for these added reasons as well.

22. It is now a settled position in our system of administration of justice that relief is not to be denied to the litigants on technical consideration. However, in peculiar circumstances where the Courts, owing a duty to preserve and protect the Constitution, consider that on the one hand, the object of a case and the relief sought from the Court as under Article 184(3) by one person alone as against public at large. The question of maintainability of proceedings would arise that of suffering from an infirmity/hurdle to effect the result of such proceedings and cannot be left unnoticed by the Court. A constitutional bar of limitation is not applicable to the proceedings under Article 199 or Article 184 of the Constitution, however, insistence is placed on initiating proceedings promptly and within a reasonable time to avoid the question of laches.

23. The doctrine of laches has been discussed in detail by this Court in the case of State Bank of Pakistan v. Imtiaz Ali Khan [2012 PLC (C.S.) 218]. Relevant portion from the judgment is reproduced here:--

"30. ... .. Laches is a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its enforcement if it is found by the Court of a law that its case is hit by the doctrine of laches/limitation. Right remains with the party but it cannot enforce it. The limitation is examined by the Limitation Act or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved do not approach the appropriate forum within the stipulated period/time, the grievance though remains but it cannot be redressed because if on one hand there was a right with a party which he could have enforced against the other but because of principle of limitation/laches, same right then vests/accrues in favour of the opposite party.

It is settled principle of our jurisprudence as well that delay defeats equity and that equity aids the vigilant and not the indolent. In the case of Jawad Mir Muhammadi v. Haroon Mirza (PLD 2007 SC 472), a full Bench of this Court has held that laches per se is not a bar to the constitutional jurisdiction and question of delay in filing would have to be examined with reference to the facts of each case; question of delay/laches in filing constitutional petition has to be given serious consideration and unless a satisfactory and plausible explanation is forthcoming for delay in filing , constitutional petition, the same cannot be overlooked or ignored subject to facts and circumstances of each case.

In this very case reference has also been made to words of Lord Camden L.C. from the judgment of Smith v. Clay (1767) 3 Bro. C.C. 639n at 640n wherein it has been observed that "a Court of equity has always refused its aid to stale demands, where a party has slept upon his right and acquiesced for a great length of time; nothing can call forth this Court into activity, but



conscience, good faith, and reasonable diligence, where these are wanting the Court is passive, and does nothing". Cited judgment also refers to a book titled Snell's Equity by John Meghee 13th Edition, wherein at page 35 it has been observed that "the doctrine of laches in Courts of equity is not an arbitrary or a technical doctrine; where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these lapse of time and delay are most material".

In Member (S&R)/Chief Settlement Commissioner v. Ashfaq Ali (PLD 2003 SC 132), this Court has held that "writ jurisdiction is undoubtedly discretionary and extraordinary which may not be invoked by a party who demonstrates a style of slackness and laxity on his part: law is well-settled that a party guilty of gross negligence and laches is not entitled to the equitable relief."

In S.A. Jameel v. Secretary to the Govt. of the Punjab (2005 SCMR 126), this Court while addressing the question of laches has observed that "there is marked distinction between delay in filing of a legal proceedings within the period specified under the provisions of Limitation Act, 1908 and undue time consumed by a party in filing of Constitutional petition, for which no statutory period is prescribed under the law; in the former case, delay of - each day is to be explained by furnishing sufficient cause for enlargement of time and condonation of delay within the contemplation of section 5 of the Limitation Act whereas in the later case lapse of time or the question of laches has to be examined on equitable principles for the reason that the exercise of Constitutional jurisdiction is always discretionary with the Court and the relief so granted is always in the nature of equitable relief in case if the Court finds that the party invoking writ jurisdiction of the High Court is guilty of contumacious lethargy, inaction, laxity or gross negligence in the prosecution or a cause for enforcement of a right, the Court would be justified in non- suiting such person on the premise of laches" (emphasis provided). Hon'ble Mr. Justice Rana Bhagwandas (as he then was), also relied upon the following para of Pakistan Post Office v. Settlement Commissioner (1987 SCMR 1119):--

"There is absolutely no justification to equate laches with statutory bar of limitation. While the former operates as a bar in equity, the latter operates as a legal bar to the grant of remedy. Thus, in the former, all the dictates of justice and equity and balance of legitimate rights are to be weighed, in the latter, subject to statutory relaxations in this behalf nothing is left to the discretion of the Court. It is a harsh law. Thus, passage of time per se brings the statute of limitation in operation, but the bar of laches does not deny the grant of right or slice the remedy unless the grant of relief in addition to being delayed, must also perpetuate injustice to another party. It is also in this very context that the condonation of delay under section 5 of the Limitation Act will be on different harder considerations than those in a case of laches. For, example, while it is essential to explain and condone the delay of each day vis-à-vis statutory limitation, there is no such strict requirement in cases of laches."

The doctrine of laches was also under discussion and dealt with by Privy Council in the judgment reported as John Objobo Agbeyegbe, v. Festus Makene Ikomi (PLD 1953 PC 19)

where the Lord Oaksey quoted the following para from Erlanger v. New Sombrero Phosphate Company (1878 LR 3 AC at page 1279):--

"In Lindsay Petroleum Company v. Hurd (LR 5 PC 239) it is said:

"The doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where, by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases lapse of time and delay are most material. But in every case if an argument against relief, which otherwise not amounting to a bar in any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

In the instant case doctrine of laches will have double force against the respondent-employees because in the first instance they could not prove or show the infringement of any right as held by us in the T preceding paras hereinabove and secondly because they are guilty of laches in approaching the legal forum in for redressal of their grievance, if at all they had a legal and genuine grievance."

In the case of Muhammad Azhar Siddiqui v. Federation of Pakistan (PLD 2012 SC 774), this Court has held that the Supreme Court retains the discretion to deny petitioners who approach the Court after undue delay or with unclean hands and the question as to whether a particular case involves the element of public importance is to be determined by the Court with reference to the facts and circumstances of each case. In the case of Dr. Akhtar Hussain Khan v. Federation of Pakistan (2012 SCMR 455) this Court after relying upon the judgment of the Indian Supreme Court in the case of Air India Ltd. v. Cochin International Airport Ltd. [(2002) 2 SCC 617] has held that in the event of some irregularity in the decision making process, the Court must exercise its discretionary power of judicial review with circumspection and only in furtherance of public interest and not merely for making out a legal point. It should always keep the larger public interest in mind to interfere or not to interfere.

24. As pointed out by Mr. Muhammad Munir Peracha, learned counsel for the Election Commission of Pakistan, the petitioner came to Pakistan on 21-12-2012 and filed the instant petition on 7-2-2013 after almost a period of about two months, when the general elections are just around the corner. A number of bye-elections have been held under the supervision of incumbent Chief Election Commissioner and the Members of the Commission. The National Assembly as well as Provincial Assemblies are about to complete their Constitutional terms, Electoral Rolls by and large have been completed and as such much water has flown under the bridge. In such a situation, the arguments raised by the learned counsel for the Election Commission of Pakistan as well as the learned Attorney General that the petition is hit by laches, appeal to mind.

25. Laches are vital in the instant case, as noted hereinabove, the Election Commission is functioning from the day of the notification dated 6-2-2011 appointing the members, followed by notification dated 16-7-2012 of the appointment of Chief Election Commissioner. After having become fully functional, the Commission is headed towards holding elections and no one except the petitioner alone, as a voter, has questioned their appointments through the instant petition on 7-2-2013 which was taken up for hearing on 11-2-2013. Therefore, arguments of the Attorney General and Mr. Muhammad Munir Piracha, learned ASC in this behalf, in view of the discussion above is accordingly accepted that the petition suffers from laches. Thus, it is held that the petition is not maintainable on this score as well.

26. As far as the other pre-requisite under Article 184(3) of the Constitution is concerned, namely, an element of 'public importance' enabling this Court to exercise such jurisdiction, the petitioner, in addition to proving his bona fides in approaching this Court and seeking relief as has been prayed for by instituting instant petition, has to show that a question of public importance is involved in the matter and that therefore, Fundamental Rights have to be enforced. The expression 'public importance' was interpreted in the cases of Manzoor Elahi v. Federation of Pakistan (PLD 1975 SC 66), Shahida Zaheer Abbasi v. President of Pakistan (PLD 1996 SC 632), Syed Zulfiqar Mehdi v. Pakistan International Corporation (1998 SCMR 793), wherefrom following principles have been determined:--

(a) The term 'public' is invariably employed in contradistinction to the terms private or individual and connotes, as an adjective, something pertaining to or belonging to the people; relating to a nation, State or community. In other words, it refers to something which is to be shared or participated in or enjoyed by the public at large, and is not limited or restricted to any particular class of the community.

(b) The phrase 'public purpose', 'whatever else it may meet must include a purpose, that is an object or aim, in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned'.

(c) It is quite clear that whether a particular case involved the element of 'public importance' is a question which is first to be determined by this Court with reference to the facts and circumstances of each case.

(d) The public importance should be viewed with reference to freedom and liberties guaranteed under Constitution, their protection and invasion of these Rights in a manner which raises a serious question regarding their enforcement irrespective of the fact whether such infraction of right, freedom or liberty is alleged by an individual or a group of individuals.

(e) The issues arising in a case cannot be considered as a question of public importance if the decision of the issues affects only the Rights of an individual or a group of individuals. The issue, in order to assume the character of public importance, must be such that its decision affects the rights and liberties of people at large.

(f) The objective "public" necessarily implies a thing belonging to people at large, the nation, the State or a community as a whole.

(g) If a controversy is raised in which only a particular group of people is interested and the body of the people as a whole or the entire community has no interest, it cannot be treated as a case of public importance.

(h) In all systems of law which cherish individual freedom and liberty and which provide Constitutional safeguards and guarantees in this behalf, any invasion of such freedom in circumstances which raise serious questions regarding the effectiveness and availability of those safeguards, must be regarded as a matter of great public importance."

This Court discussed in the case of *Al-Jehad Trust v. Lahore High Court* (2011 SCMR 1688), all the cases wherein the scope of Article 184(3) with reference to the jurisdiction of this Court was highlighted, and held as under:--

11. We have also examined cases titled *Zafar Ali Shah v. Pervez Musharraf* (PLD 2000 SC 869), *Qazi Hussain Ahmad v. Pervez Musharraf, Chief Executive* (PLD 2002 SC 853), *Sabir Shah v. Shad Muhammad Khan* (PLD 1995 SC 66), *Wattan Party v. Federation of Pakistan* (PLD 2006 SC 697), *Wasim Sajjad v. Federation of Pakistan* (PLD 2001 SC 233), *Muhammad Nawaz Sharif v. President of Pakistan* (PLD 1993 SC 473), *Amanullah Khan v. Chairman Medical Research Council* (1995 SCMR 202), *Zulfiqar Mehdi v. Pakistan International Airlines Corporation* (1998 SCMR 793), *All Pakistan Newspapers Society v. Federation of Pakistan* (PLD 2004 SC 600), *State Life Insurance Employees Federation v. Federal Government of Pakistan* (1994 SCMR 1341), *Muhammad Shahbaz Sharif v. Federation of Pakistan* (PLD 2004 SC 583), *Muhammad Siddique v. Government of Pakistan* (PLD 2005 Supreme Court 1), *Benazir Bhutto v. Federation of Pakistan* (PLD 1988 SC 416), *Javed Jabbar and 14 others v. Federation of Pakistan and others* (PLD 2003 Supreme Court 955). "The ratio of the judgment referred hereinabove is that unless the matter is of public importance relating to the enforcement of any of the Fundamental Rights conferred by Part II, Chapter 1 of the Constitution (Articles 8 to 28), the jurisdiction of the Court under Article 184(3) of the Constitution, cannot be invoked. The mere importance of a matter, without enforcement of any fundamental right or reference to a fundamental right without any public importance, will not attract the jurisdiction of this Court under Article 184(3) of the Constitution. Consequently, we having considered the matter in the light of the law laid down by this Court in the judgments referred hereinabove, find that these petitions under Article 184(3) of the Constitution are not maintainable and we are not persuaded to agree with the assertion that in view of the nature of dispute and importance of the matter, the Court may ignore the objection and decide these petitions' on merits. This may be pointed out that in the light of constitutional mandate as contemplated in Article 184(3) of the Constitution this Court may not entertain a direct petition under Article 184(3) in a matter not involving the enforcement of any of Fundamental Rights mentioned therein. The question raised in the present petitions do not as such relate to the Fundamental Rights conferred by Part II, Chapter 1 of the Constitution and most of these questions even otherwise are speculative and presumptive in nature at this stage. There is clear distinction between Article 199 and Article 184(3) of the Constitution and this Court has repeatedly held that in the matters which do not involve enforcement of the Fundamental Rights of the public at large as envisaged in Article 184 (3) of the Constitution, a direct petition in original jurisdiction is not entertainable." (*Jamat-e-Islami v. Federation of Pakistan* PLD 2008 SC 30).

27. As the facts surrounding the instant petition are rather peculiar and merit a complete appreciation of the various factors involved, it is to be noted at the cost of repetition that the petitioner is a renowned, well reputed and respected religious scholar, jurist and professor of law. However, as per his own declaration in his petition and concise statement submitted before this Court, he is a citizen of Canada. He holds the nationality of Canada and carries a Canadian passport which he uses to travel the world for his frequent international engagements. As per his own admission, he only travels to Pakistan on his Pakistani passport and is otherwise allowed to enter, remain in and treated as a Canadian national throughout the world. As already noted hereinabove, acquisition of nationality of any foreign country is not an impediment by itself in filing a petition under Article 184(3) or 199 of the Constitution. However, there are other circumstances surrounding the matter that aggravate the effect of seeking relief through the enforcement of Fundamental Rights for all citizens of Pakistan. First and foremost, the petition is geared against the election Commission of Pakistan, an independent institution and creature of the Constitution that ensures the very strength, survival and continuity of our democratic system. Given that this is an election year, the importance of the Election Commission is highlighted more than ever and we must be ever more cautious to not even appear to be partaking in placing restrictions upon its independent and Constitutional functions. In this regard, this is certainly a matter of great public concern as it pertains to the deliverance of the right of representation through fair and free elections which has been held to be a key aspect of democracy identified by the Constitution in *Workers Party Pakistan v. Federation of Pakistan* (PLD 2012 SC 681). Therefore, an attack on the constitutional validity of such an important institution cannot be well received from the petitioner.

28. From the perusal of the petition it is clear that the petitioner primarily has emphasized that the procedure provided in Articles 213 and 218 of the Constitution with regard to appointment of the Chief Election Commissioner as well as the Members of ECP has not been followed in letter and spirit. However, neither infraction of any of the Fundamental Rights has been listed in the petition nor enforcement of the same has been sought in the prayer clause; and even during the course of arguments the petitioner has failed to identify any of the Fundamental Rights, which may have been violated. Despite insistence of the Court, the petitioner did not show as to which of the Fundamental Rights had been violated. Thus, one of the fundamental requirements of Article 184(3) of the Constitution, namely, the violation of any of the Fundamental Rights, enabling this Court to exercise jurisdiction conferred by said Article, is apparently missing in the instant case.

29. At this stage, it would be appropriate to consider the scope of Article 184(3) of the Constitution as deliberated upon by this Court in various pronouncements. In the cases of *Benazir Bhutto v. Federation of Pakistan* (PLD 1988 SC 416), it has been held as under:--

"Article 184(3) of the Constitution empowers Supreme Court to enforce the Fundamental Rights where the question of public importance arises in relation thereto. And if looked at from this angle it is hardly of any importance whether the Executive has passed a prejudicial order or not when the infraction of the Fundamental Rights takes place by the operation of the law itself. In this context what would be relevant would be the language of the provisions of the impugned Act itself. It will then not be a question of the Court merely granting a declaration as to the

validity or invalidity of law in the abstract. An enactment may immediately on its coming into force take away or abridge the Fundamental Rights of a person by its very terms and without any further overt act being done. In such a case the infringement of the Fundamental Right is complete co instant the passing of the enactment and, therefore, there can be no reason why the person so prejudicially affected by the law should not be entitled immediately to avail himself of the constitutional remedy. To say that a person, whose fundamental Right has been infringed by the mere operation of an enactment, is not entitled to invoke the jurisdiction of Supreme Court for the enforcement of his right, will be to deny him the benefit of a salutary constitutional remedy which is itself his Fundamental Right. The infractions alleged cannot be regarded as seeking a declaration in the air or asking the Court to decide, in abstract, and for that matter hypothetical or contingent questions."

Similarly, this Court in the case of Muhammad Nawaz Sharif v. President of Pakistan (PLD 1993 SC 473) has held as under:--

Article 184(3) of the Constitution of Pakistan pertains to original jurisdiction of the Supreme Court and its object is to ensure the enforcement of Fundamental Rights referred to therein. This provision is an edifice of democratic way of life and manifestation of responsibility casts on this Court as a protector and guardian of the Constitution. The jurisdiction conferred by it is fairly wide and the Court can make an order of the nature envisaged by Article 199, in a case where a question of public importance, with reference to enforcement of any fundamental right conferred by Chapter 1 of Part II of the Constitution is involved. Article 184(3) is remedial in character and is conditioned by three prerequisites, namely:--

(i) There is a question of public importance.

(ii) Such a question involves the enforcement of a fundamental right, and

(iii) The fundamental right sought to be enforced is conferred by Chapter 1, Part II of the Constitution."

In case of Jamat-e-Islami v. Federation of Pakistan (PLD 2008 Supreme Court 30) following observations have been made:-

31. There are two essential conditions for invoking the jurisdiction of Supreme Court of Pakistan under Article 184(3) of the Constitution. The first condition is that subject matter of the petition under this Article must be of public importance and second condition is that it must relate to the enforcement of any of the Fundamental Rights conferred by Part II, Chapter 1 of the Constitution. We, therefore, in the light of law laid down by this Court on the subject, would like to examine the question whether the present petitions qualify the above test to entertain the same under Article 184(3) of the Constitution."

In the case of Bank of Punjab v. Haris Steel Industries (PLD 2010 SC 1109) relief was granted to the petitioner on the ground that the right of property granted under Articles 9 and 24 of the Constitution were involved, as due to gravest financial scams in the history of Pakistan, the bank stood cheated of an enormous amount of around 11 billions Rupees. In the case of Shahid

Orakzai v. Pakistan (PLD 2011 SC 365) the appointment of the Chairman National Accountability Bureau (NAB) was declared illegal and ultra vires the Constitution and the law on the ground that Article 5(2) of the Constitution mandated an obligation of obedience to the Constitution and law as an inviolable obligation of every citizen. In the case of Al-Jehad Trust v. Lahore High Court (2011 SCMR 1688), a petition was filed under Article 184(3) of the Constitution against initiation of disciplinary proceedings against the District and Sessions Judge/Special Judge (Central) Rawalpindi by the Lahore High Court. This Court declined to entertain the petition on the ground that the jurisdiction, as conferred upon this Court under Article 184(3) of the Constitution, can be exercised only where a question of public importance with reference to the enforcement of any of the Fundamental Rights was involved, which was missing in the said case. In the case of Workers' Party Pakistan v. Federation of Pakistan (PLD 2012 SC 681), the petitioner invoked the original jurisdiction of this Court, questioning the contents of a memo published in a newspaper as being violative of the Fundamental Rights of the petitioners. The Court declared the petitions to be maintainable for the reasons that the issues involved in the case were justiciable and a question of public importance with reference to Fundamental Rights under Articles 9, 14 and 19A of the Constitution had been made out.

30. The upshot of the above discussion is that the burden of proof was upon the petitioner to demonstrate as to which of his fundamental rights had been infringed upon but he failed to point out an infraction of any of his fundamental rights. Thus, judgments relied upon by the petitioner are not attracted to the facts of the instant case.

31. Before parting with the judgment, it is to be noted with regard to the question of extending the right of vote to citizens of Pakistan living abroad, some of whom may be holding dual citizenship, that as a voter, the petitioner can also exercise his right of vote like other overseas Pakistanis whose names have been incorporated in the Electoral Rolls. This right has been recognized under the Constitution and has also been held by this Court in the case of Yasmin Akhtar v. Election Commission of Pakistan (1994 SCMR 113), which was finally disposed of vide judgment dated 18-12-1993 in Constitution Petition No.26/1993. Reference in this regard may also be made to the case Ch. Nasir Iqbal v. Federation of Pakistan (Constitutional Petition No.39/2011 etc.), wherein vide order dated 14-2-2013, the ECP was directed to ensure that all the overseas citizens of Pakistan, who are qualified/eligible for the registration of their votes in accordance with the Electoral Rolls Act, 1974 and the Rules framed thereunder must be registered before the forthcoming elections.

32. Hereinabove are the reasons of our short order of even date, which reads as under:--

"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 26/1993 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-18/S

Petition dismissed