

P L D 2019 Supreme Court 133

Present: Mian Saqib Nisar, C.J., Umar Ata Bandial and Ijaz ul Ahsan, JJ

MUHAMMAD IBRAHIM SHAIKH---Petitioner

Versus

**GOVERNMENT OF PAKISTAN through Secretary Ministry of Defence and others---
Respondents**

Suo Motu Case No.3 and Civil Petition No.53-K of 2018 and Civil Miscellaneous Applications Nos. 6853 and 6854 of 2018, decided on 15th December, 2018.

(Dual Nationality of Hon'ble Judges and Officials of Courts and Government Officials).

(Against the judgment dated 14-12-2017 of the High Court of Sindh, Karachi passed in C.P.S.-1753/2016).

(a) Pakistan Citizenship Act (II of 1951)---

---Ss. 14(1) & 14(3)---Dual citizenship not allowed---Exceptions---List of countries whose citizenship could be acquired without losing citizenship of Pakistan---Discretion of Federal Government to amend said list---Scope---Plain reading of S.14(1) of the Pakistan Citizenship Act, 1951 ('the Act'), clearly showed that as a general rule, a Pakistani citizen who was also a citizen/national of any other country shall lose his citizenship of Pakistan unless he renounced his citizenship/ nationality of the other country---Government of Pakistan had specified certain other countries in terms of S.14(3) of the Act such that on acquisition of citizenship of said countries a citizen of Pakistan did not automatically lose his nationality of Pakistan as per S.14(1) of the Act---No guidelines existed in respect of the discretion available to the Federal Government under S.14(3) of the Act---Unqualified power vested with the Government in such regard was inconceivable in a democratic government working under the Constitution---Discretion ought to be guided and qualified in order to meet the requirements of sound administrative policy---Supreme Court directed that while all the orders passed and notifications issued till date [in terms of S.14(3) of the Act] were to be kept intact and considered valid, the Federal Government shall formulate the guidelines and parameters for the exercise of power under S.14(3) of the Act---Order accordingly.

(b) Pakistan Citizenship Act (II of 1951)---

---S. 14(3)---Constitution of Pakistan, Art. 260(1)---Pakistan Army Act (XXXIX of 1952), S. 10---Pakistan Air Force Act (VI of 1953), S.12---Pakistan Navy Ordinance (XXXV of 1961), S.10---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R.19(1)---Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, R.13---Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, R.11(1)---Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, R.9(4)---Dual nationals---Question as to whether dual nationals could be legally employed in service of Pakistan; employed as civil servants, employed in the Armed Forces, and employed in autonomous/semi-autonomous statutory bodies/organizations and companies etc. which were owned/controlled/governed by the Federal and/or Provincial Governments---

Persons who were dual nationals were essentially citizens of Pakistan who were additionally also citizens of any of the other countries, the citizenship of which was allowed in terms of S.14(3) of the Pakistan Citizenship Act, 1951---No restriction was provided in the Constitution for persons having dual citizenship from being employed in the service of Pakistan---Since persons having dual citizenship were citizens of Pakistan, they fulfilled the requirements for employment as Federal and Provincial civil servants under the applicable rules as well as enrolment in the Army, Air Force and Navy under the applicable Acts--- However with respect to the armed forces (military, naval and air forces and their allied departments), the Secretary, Ministry of Defense, had informed the Supreme Court that recruitment of dual nationals was not permitted therein for which there existed relevant instructions/policies of the Army, Air Force and Navy, and any dual nationals were required to surrender their foreign nationality prior to enrolment for induction in the armed forces of Pakistan---No general prohibition existed against dual nationals being employed by or in autonomous/semi-autonomous statutory bodies/ organizations and companies etc. which were owned/controlled/ governed by the Federal and/or Provincial Governments---Certain restrictions could however exist in the specific statute, law, rule or constitutive document applicable to each body which would have to be examined on a case-to-case basis---Supreme Court directed the Secretary, Ministry of Defense, to continue the exercise to ascertain whether any dual nationals had been recruited in the armed forces on the basis of misdeclaration, concealment or non-disclosure and requisite action be taken in accordance with law by the concerned authority---Matter was disposed of accordingly.

(c) National Database and Registration Authority Ordinance (VIII of 2000)---

---S. 11---National Database and Registration Authority (Pakistan Origin Card) Rules, 2002, R.17(1)---Foreigner's Order, 1951, S.10---Constitution of Pakistan, Arts. 244, 260(1) & Third Sched.---Pakistan Army Act (XXXIX of 1952), S.10---Pakistan Air Force Act (VI of 1953), S.12---Pakistan Navy Ordinance (XXXV of 1961), S.10---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R.19(1)---Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, R.13---Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, R.11(1)---Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, R.9(4)---Persons not citizens of Pakistan but having a Pakistan origin and possessing Pakistan Origin Card ("POC")--- Whether such persons could legally be employed in the service of Pakistan; employed as civil servants, employed in the Armed Forces, and employed in autonomous/semi-autonomous statutory bodies/organizations and companies etc. which were owned/controlled/governed by the Federal and/or Provincial Governments---General permission of working in Pakistan that foreigners had (subject to work permit requirements) was retained by those foreigners of Pakistan origin who held POC---Federal Government (till date) had not exercised its power under S.10(2) of the Foreigner's Order 1951 to invoke the prohibition on employment (on foreigners) in any undertaking of the Government--- Accordingly, at present such concession applied to Federal and Provincial civil servants or persons who were of Pakistan origin and were employed as Federal or Provincial civil servants---While there was no prohibition in the Constitution on persons of Pakistan origin enrolling in the Pakistan Armed Forces, however, by virtue of the respective Acts governing the Pakistan Armed Forces, such persons shall not, except with the permission of the Federal Government, enroll in the Army, Air Force or Navy---Additionally, any person enrolled in

the Armed Forces shall be required to take an oath as specified in Art. 244 read with the Third Sched. of the Constitution---No general prohibition existed for persons of Pakistan origin from being employed by or in autonomous/semi-autonomous statutory bodies/organizations and companies etc. which were owned/controlled/governed by the Federal and/or Provincial Governments---Restrictions may apply generally to certain kinds of employment, irrespective of legal status/ownership/ control of the employer (e.g. by virtue of S.10 of the Foreigner's Order, 1951)---Certain restrictions could exist in the specific statute, law, rule or constitutive document applicable to each body which would have to be examined on a case-to-case basis---Supreme Court directed that the relevant authorities, including the Ministry of Interior, the Directorate General of Passports and Immigration, National Database and Registration Authority (NADRA) and Board of Investment shall review their existing practice and procedures and facilitate the issuance of visa/work permits to all those POC holders who required the same; that as this would affect all the POC holders who were currently working in Pakistan without a visa/work permit, such persons shall apply for the same and the Ministry of Interior shall decide the applications in accordance with law within a period of two months, after which the law shall take its own course; that alternatively, the Federal Government may in conjunction with NADRA consider amending R.17(1) of the National Database and Registration Authority (Pakistan Origin Card) Rules, 2002 to reflect the correct position of the law allowing POC holders to work in Pakistan by virtue of their POC divesting them of any requirement to separately apply for a work visa/permit as foreigners of non-Pakistani origin were required to, and that the Federal Government was to take a final decision in such regard within one month from the issuance of present order---Matter was disposed of accordingly.

(d) National Database and Registration Authority Ordinance (VIII of 2000)---

---Ss. 5(4)(b), 8, 11, 17(3) & 44---National Database and Registration Authority (Pakistan Origin Card) Rules, 2002, R. 17(1)---Rule 17(1) of the National Database and Registration Authority (Pakistan Origin Card) Rules, 2002, validity of---Question as to whether R.17(1) was valid as it provided certain substantive rights which generally ought to be contained in the statute and not in the rules---National Database and Registration Authority (Pakistan Origin Card) Rules, 2002 ["POC Rules"] had been framed in exercise of the powers conferred by S. 44 of the National Database and Registration Authority Ordinance, 2000 read with clause (b) of subsection (4) of Ss. 5, 8 & 11 and sub-section (3) of S.17 thereof---Said provisions of the Ordinance, in particular S.8(2) thereof, authorized the Federal Government to frame rules to provide such class of persons required to be registered under the said Ordinance, for present purposes eligible foreigners of Pakistan origin or eligible family members, with any right, interest, privilege, benefit, reward or other advantage (tangible or intangible) available under law of Pakistan---Framing of the 'POC Rules' 2002 including R.17(1) thereof conferring substantive rights onto certain persons was, thus, a valid exercise of power by the Federal Government.

(e) National Database and Registration Authority Ordinance (VIII of 2000)---

---Ss. 10 & 11---Pakistan Citizenship Act (II of 1951), S. 14(3) --- Dual nationals---Section 11 of the National Database and Registration Authority Ordinance, 2000 authorizing NADRA to issue Pakistan Origin Cards (POC) to dual nationals---Legal anomaly---Dual nationals were, for all intents and purposes, citizens of Pakistan according to the Pakistan

Citizenship Act, 1951---Dual nationals were issued National Identity Cards for Overseas Pakistanis (NICOP) which were identical to the regular National Identity Cards (NICs) issued to those who held only citizenship of Pakistan---All citizens of Pakistan, resident or non-resident (the latter including dual nationals under S.14(3) of the Pakistan Citizenship Act, 1951) were to be issued NICs and holders of such cards were to enjoy the same rights, privileges and benefits, etc. being citizens of Pakistan---In such circumstances S.11 of the National Database and Registration Authority Ordinance, 2000 authorizing NADRA to issue POC to dual nationals by mentioning the phrase "such prescribed class of citizens with dual nationality" created an anomaly---Supreme Court directed the Federal Government to reconsider S.11 of the Ordinance in light of the present anomaly and remove the contradictions arising therefrom in the law---Matter was disposed of accordingly.

(f) Government Servants (Marriage with Foreign Nationals) Rules, 1962---

---Rr. 2(a) & 3---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 19(2)---Punjab Civil Servants (Restriction on Marriages with Foreign Nationals) Rules, 2011, Rr. 3 & 4---Sindh Civil Servants (Restriction on Marriage with Foreign Nationals) Rules, 1982, R.2---Government Servants (Restrictions on Marriages with Foreign Nationals) Rules, 1963, Rr. 3 & 4---Balochistan Government Servants (Marriage with Foreign Nationals) Rules, 2011, R.3---Pakistan Citizenship Act (II of 1951), S. 14(3)---Persons whose spouses were dual nationals i.e. citizens of Pakistan and also citizens of another country---Such persons did not have any restrictions in terms of their employment as a Federal or Provincial civil servant or enrolment in the Army, Air Force or Navy---Since spouses of such persons, being dual nationals, were citizens of Pakistan, they would not be considered to be "foreign nationals" within the meaning of the relevant rules.

(g) Government Servants (Marriage with Foreign Nationals) Rules, 1962 ---

---Rr. 2(a) & 3---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 19(2)---Punjab Civil Servants (Restriction on Marriages with Foreign Nationals) Rules, 2011, Rr. 3 & 4---Sindh Civil Servants (Restriction on Marriage with Foreign Nationals) Rules, 1982, R. 2---Government Servants (Restrictions on Marriages with Foreign Nationals) Rules, 1963, Rr.3 & 4---Balochistan Government Servants (Marriage with Foreign Nationals) Rules, 2011, R. 3---Persons whose spouses were foreigners (of Pakistan or non-Pakistan origin), i.e. not citizens of Pakistan---Certain restrictions were applicable on such persons in terms of their employment as a Federal or Provincial civil servant---In case of the Federation, a government servant who married or promised to marry a foreign national shall be guilty of misconduct and render himself liable to any of the major penalties under the Government Servants (Efficiency and Discipline) Rules, 1973, unless prior permission of the Federal Government had been sought to marry or promise to marry a foreign national of any country recognized by Federal Government---For Punjab, no person, who had married a foreign national shall be appointed to a post unless such restriction had been relaxed by the Provincial Government in case of a person who had married a citizen of India or Bangladesh--Furthermore, a government servant who married or promised to marry a foreign national shall be guilty of misconduct and shall be liable to any of the major penalties under the Punjab Employees (Efficiency, Discipline and Accountability) Act, 2006 unless prior permission of the Government was sought to marry or promise to marry a foreign national of any country recognized by the Federal Government for such purpose---For Sindh, a civil

servant who married or promised to marry a foreign national shall be guilty of misconduct and rendered himself liable to any of the major penalties specified in the Sind Civil Servants (Efficiency and Discipline) Rules, 1973, unless prior permission of the Provincial Government was sought to marry or promise to marry a foreign national of any country recognized by Federal Government---In case of Khyber Pakhtunkhwa, a government servant may, with the prior permission of Government marry or promise to marry a person who was a citizen of India or Bangladesh---For Balochistan, a Government servant who married or promised to marry a foreign national shall be guilty of misconduct and rendered himself liable to removal from Service under the Balochistan Employees' Efficiency and Discipline Act, 2011 or any other law/rules for the time being in force, unless prior permission of the Provincial Government was sought to marry or promise to marry a foreign national of any Country recognized by Federal Government---Furthermore there did not appear to be any restriction on persons who were enrolled in the Army, Air Force or Navy and whose spouses were foreigners (of Pakistani or non-Pakistani origin), i.e. not citizens of Pakistan---However, if there were any internal notifications, office memorandums of SOPs issued by the competent authority providing for certain restrictions in such regard then those shall be accordingly applicable.

(h) National Database and Registration Authority (Pakistan Origin Card) Rules, 2002---

---R. 4(5)---National Database and Registration Authority Ordinance (VIII of 2000)---S. 44--Pakistan Origin Cards ("POC") issued to foreign spouses of citizens of Pakistan---Pre-requisite---Condition of five years of marriage---Legality---According to R.4(5) of the National Database and Registration Authority (Pakistan Origin Card) Rules, 2002 ["the Rules"] as originally promulgated, foreign spouses of citizens of Pakistan were allowed to be issued POC---However, the said R.4(5) was amended vide notification No.4/2/2012-NADRA dated 30.12.2015 according to which issuance of POC to foreign spouses of Pakistani citizens was discontinued---Subsequently considering the immense difficulties faced by foreign spouses of citizens of Pakistan the Ministry of Interior forwarded a summary for the Cabinet (dated 20.02.2018) recommending therein withdrawal of the NADRA notification along with restoration of the corresponding R.4(5) and other rules---Cabinet approved said proposal and resultantly the said NADRA notification was withdrawn, and the rules were restored to their previous/original position---Despite such development the Ministry of Interior (vide letter No.4/2/2012- NADRA dated 08-03-2018) introduced the eligibility condition of five years of marriage (for issuance of POC to foreign spouses) in violation of the approval of the Federal Government (Cabinet) which had stipulated that the rules had been restored to the previous/original position---Since the power to make rules laid only with the Federal Government as per S.44 of the National Database and Registration Authority Ordinance, 2000, the introduction of the condition of five years marriage by the Ministry of Interior was ultra vires, and therefore set aside by Supreme Court.

(i) Pakistan Citizenship Act (II of 1951) ---

---S. 14(3)---Constitution of Pakistan, Art.260(1)---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R.19(1)---Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, R. 13---Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, R. 11(1)---Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, R. 9(4)---Dual nationals

or persons whose spouses were dual nationals or persons whose spouses were foreign nationals (including those of Pakistan origin)---Employment in Government service--- Employment in autonomous/semi-autonomous statutory bodies/organizations and companies, which were owned/controlled/ governed by the Federal and/or Provincial Governments--- Supreme Court presented certain proposals with regard to dual nationals and persons whose spouses were dual nationals or persons whose spouses were foreign nationals that were to be considered by the Parliament.

Following are the proposals presented by the Supreme Court with regard to dual nationals or persons whose spouses were dual nationals or whose spouses were foreign nationals that were to be considered by the Parliament.

Dual nationals fell within the definition of citizens (of Pakistan). It was for the Federal and Provincial Governments to consider whether they should:-

i. Formulate negative list(s) of posts within the Government service to which citizens holding dual nationalities or whose spouses were dual nationals, should not normally be appointed for reasons of safeguarding national security and/or vital national interest, except with the permission of the respective Cabinets;

ii. Place before the Parliament and the respective Provincial Assemblies at the end of each financial year list(s) of Government servants who were dual nationals and/or married to dual nationals, and the posts held by them;

iii. Formulate negative list(s) of posts (decision-making/top managerial posts perhaps) within autonomous/semi-autonomous statutory bodies/organizations and companies etc. which were owned/controlled/governed by the Federal and/or Provincial Governments, to which citizens holding dual nationalities or whose spouses were dual nationals, should not normally be appointed for reasons of safeguarding national security and/or vital national interest, except with the permission of the respective organization or parent department; and

iv. Place before the respective organizations or parent departments at the end of each financial year list(s) of employees of autonomous/semi-autonomous statutory bodies/organizations and companies etc. which were owned/controlled/governed by the Federal and/or Provincial Governments who were dual nationals and/or married to dual nationals, and the posts held by them. With regard to the government servants whose spouses possessed nationalities other than that of Pakistan, i.e. who were foreigners (including those of Pakistan origin), the respective Governments may consider that the proposals mentioned above should also apply to the concerned officers.

(j) National Database and Registration Authority Ordinance (VIII of 2000)---

---S. 11---National Database and Registration Authority (Pakistan Origin Card) Rules, 2002, R. 17(1)---Foreigner's Order, 1951, S. 10---Constitution of Pakistan, Art.260(1)---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 19(1)---Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, R.13---Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, R. 11(1)---Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, R. 9(4)---Foreigners, including those of Pakistani origin who held Pakistan Origin Cards ("POC")---Employment in Government service---Employment in autonomous/semi-autonomous statutory bodies/

organizations and companies, which were owned/controlled/governed by the Federal and/or Provincial Governments---Supreme Court presented proposals with regard to foreigners, including those of Pakistan origin who held Pakistan Origin Cards that were to be considered by the Parliament.

Following are the proposals presented by the Supreme Court with regard to foreigners, including those of Pakistan origin who held Pakistan Origin Cards that were to be considered by the Parliament.

With respect to foreigners, which included those of Pakistan origin who held Pakistan Origin Cards (POC), it was for the Federal and Provincial Governments to consider whether they should:-

i. Impose a blanket ban on employment of non-citizens, i.e. foreigners (of Pakistan or non-Pakistan origin) on employment within the Government service;

ii. The Federal and Provincial Governments should, preferably in conjunction with each other, develop criteria and standard operating procedures with regard to the employment of non-citizens within the Government service where relaxation from the general prohibition was deemed necessary in the public interest. The employment of non-citizens should be subject to approval of the respective Cabinets;

iii. Formulate negative list(s) of posts within autonomous/semi-autonomous statutory bodies/organizations and companies etc. which were owned/controlled/governed by the Federal and/or Provincial Governments, to which non-citizens should not normally be appointed for reasons of safeguarding national security and/or vital national interest, except with the permission of the respective organization or parent department; and

iv. Place before the respective organizations or parent departments at the end of each financial year list(s) of employees of autonomous/semi-autonomous statutory bodies/organizations and companies etc. which were owned/controlled/governed by the Federal and/or Provincial Governments who are non-citizens, and the posts held by them.

(k) Pakistan Citizenship Act (II of 1951) ---

---S. 14(3)---Constitution of Pakistan, Art. 260(1)---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R.19(1)---Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, R.13---Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, R. 11(1)---Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, R.9(4)---Persons employed in Government service or in an autonomous/semi-autonomous statutory body/organization and company etc. owned/controlled/governed by the Federal and/or Provincial Governments---Acquisition of foreign nationality or permanent residence of a foreign country by such persons during employment---Supreme Court observed that in many cases (but not all) the intention to acquire foreign nationality or permanent residence of a foreign country, prima facie indicated an intention to securely dispatch ill-gotten gains procured during (Government) service and to relocate their families and/or themselves during service and/or after retirement; that such persons deserved no leniency, and that after determination by the competent authority, such officials must be given a deadline of either rescinding their foreign nationalities obtained during service or resign from service immediately---Supreme Court

directed that the Federal and/or Provincial Governments should develop criteria and standard operating procedures requiring disclosure of the intent to seek such foreign nationalities and permanent residence permits, etc., and adopt methods to check such instances and enforce penalties for nondisclosure; that such criteria and standard operating procedures could possibly be incorporated into the existing efficiency and discipline rules/regulations etc. by way of amendment or be adopted independently.

In attendance:

Sajid Ilyas Bhatti, Addl. A.G.P. (Assisted by Barrister Minaal Tariq).

Tariq Mehmood Jehangiri, A.G. Islamabad.

Qasim Ali Chohan, Addl.A.G.,Punjab.

Shehryar Qazi, Addl. A.G., Sindh.

Zahid Yousaf Qureshi, Addl. A.G. KPK.

Ayaz Swati, Addl., A.G., Balochistan.

Sajid Ahmed Abro, Secretay Services, Sindh.

Kashif Bara, Dy. Secretary Services, Punjab.

M. Bashir Memon, D.G., FIA.

Dr. M. Rizwan, Director Immigration, FIA.

Qaiser Masood, Addl. Dir. Law, FIA. (For FIA).

Zulfiqar Ali, D.G. Projects, NADRA.

Mujahid Ali Khan, A.D. NADRA.

Umar Ali Khan, A.D. NADRA.

(For NADRA)

On Court's Notice:

Waqar A. Sheikh, Advocate Supreme Court.

Dr. Michele Tariq, Health Deptt. Punjab.

Faisal Shafait, NUST.

Zakir Hussain NUST.

Muhammad Fahim, NUST.

Dr. M. Yousaf Miraj, Health Deptt. Punjab.

Dr. Ashma Khan, Health Deptt. Punjab.

Dr. Naeem Dilawar, Consultant, Labour Deptt. Punjab.

Dr. Ali Raza Khan, Health Deptt. Punjab.

Ms.Farzana Akram (Education Deptt. Punjab).

Adnan Mehmood (NAB).

Sardar Tariq Farid Gopang, Advocate Supreme Court.

Barrister Talha Alizai, Advocate Supreme Court.

Tariq Aziz, Advocate-on-Record (For PARCO)

Mir Afzal Malik, Advocate Supreme Court.

(For Dr. Jamshed Iqbal, Tahir Aziz Khan, Ms. Nabah Ali) (COMSATS).

Amir Iqbal Basharat, Advocate Supreme Court.

Zahoor ul Haq Chishti, Advocate Supreme Court.

(For Dr. M. Shafique).

Ch. Akhtar Ali Advocate-on-Record.

(For Ms. Meena Kharal).

Shahid Khalid, Legal Advisor.

Raja Abdul Ghafoor, Advocate on Record.

(For HEC)

Amici curiae:

Shahid Hamid, Senior Advocate Supreme Court.

Shahzad Ata Elahi, Advocate Supreme Court.

Date of hearing: 24th September, 2018/

JUDGMENT

MIAN SAQIB NISAR, C J.--While hearing Civil Petitions Nos.3334 and 3340 of 2016 pertaining to a service matter, the attention of this Court was drawn to the question of whether or not the petitioners (therein) had secured foreign nationality while they were on deputation; as a consequence vide order dated 17.01.2018 they were required to submit affidavits to the effect that they did not apply for or obtain any foreign nationality. Be that as it may, vide the said order, it was directed as under:-

"...Mr. Sajid Ilyas Bhatti, learned DAG shall get in touch with the Secretary Establishment Division who is directed to provide complete information to this Court by the next date of hearing as to how many civil servants working in BPS-17 and above, both at Federal and Provincial level, have dual nationality. Moreover, the Registrar(s) of the Supreme Court and all the High Courts shall also obtain information from the Hon'ble Judges of the superior Courts and also from the District Courts and to apprise the Court as to how many Judges have dual nationality..."

The instant suo motu case arose out of the order *ibid* (whereas the said petitions were dismissed vide order dated 13.02.2018) and the respective Registrars of the Supreme Court and all the High Courts filed their replies and we took cognizance of the matter regarding dual nationality of all Government employees, both Federal and Provincial, above the rank of BPS-17, including those working in all the Ministries, Divisions, Departments, autonomous and semi-autonomous bodies¹, etc. Vide order dated 05.03.2018 we constituted a Committee headed by the Director General, Federal Investigation Agency (FIA) and including the Chairman, National Database Registration Authority (NADRA); Director General, Immigration and Passports; Secretary, Ministry of Interior; Additional Secretary, Establishment Division; and Member (Administration), Federal Board of Revenue (FBR). The Committee worked hard to collect the requisite data and the respective heads of all the concerned Government departments, etc. were also required to submit duly signed and verified affidavits to this Court that the particulars of all the officers (BPS-17 and above)

working under their administrative jurisdiction had been provided. An executive summary of the final report is scanned as under:-

It transpired that 24 persons working in various Government departments, etc. were foreign nationals; upon issuance of notices some of them appeared and made their submissions (the case to their extent shall be discussed later in this opinion). Be that

as it may, the list of such persons is scanned as under:-

Mr. Khalid Jawaid Khan, ASC, the then learned Attorney General and Mr. Shahid Hamid, Sr. ASC and Mr. Shahzad Ata Elahi, ASC (the latter two were appointed as amici curiae in this case) assisted this Court on the current legal status of dual nationals or those persons who do not hold Pakistani citizenship or who have spouses who are either dual nationals or foreigners and who are employed in the Federal and/or Provincial service and in autonomous statutory bodies or companies which are governed/owned/controlled by the Federal or Provincial Governments and suggested what further steps may be taken in this regard. Their respective submissions for the sake of brevity shall not be recorded separately, rather shall be reflected in the course of this opinion.

Constitutional provisions on the service of Pakistan

2. Article 27(1) of the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution) provides as a fundamental right with specific references to the service of Pakistan, that:-

"No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth:"

[Emphasis supplied]

Article 260(1) of the Constitution defines "service of Pakistan" as under:-

"...any service, post or office in connection with the affairs of the Federation or of a Province, and includes an All-Pakistan Service, service in the Armed Forces and any other service declared to be a service of Pakistan by or under Act of Majlis-e-Shoora (Parliament) or of a Provincial Assembly, but does not include service as Speaker, Deputy Speaker, Chairman, Deputy Chairman, Prime Minister, Federal Minister, Minister of State, Chief Minister, Provincial Minister, Attorney-General, Advocate-General, Parliamentary Secretary, Chairman or member of a Law Commission, Chairman or member of the Council of Islamic Ideology, Special Assistant to the

Prime Minister, Adviser to the Prime Minister, Special Assistant to Chief Minister, Adviser to a Chief Minister or member of a House or a Provincial Assembly;"

The phrase "service of Pakistan" has been elaborately discussed in the judgment reported as Muhammad Mubeen-us-Salam and others v. Federation of Pakistan and others (PLD 2006 SC 602). Articles 240 to 242 of the Constitution, contained in Chapter 1 of Part XII titled "Services", relate to the appointments of persons to the service of Pakistan, whereas the terms and conditions of such persons are to be determined by the Parliament and the Provincial Assemblies as appropriate. The said Articles provide for the creation of Public Service Commissions at the Federal and Provincial level. It is important to note that no specific qualification or disqualification has been prescribed in the Constitution regarding the nationality of persons to be appointed to the service of Pakistan. Therefore, there is neither a constitutional requirement for a person in the service of Pakistan to be a citizen of Pakistan, nor a specific constitutional disqualification in this regard.

3. By way of contrast there are specific constitutional qualifications and disqualifications with respect to elected representatives of the National Assembly, Senate and Provincial Assemblies:-

"62. Qualifications for membership of Majlis-e-Shoora (Parliament): (1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless- (a) he is a citizen of Pakistan;

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-eShoora (Parliament), if:-

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

113. Qualifications and disqualifications for membership of Provincial Assembly. The qualifications and disqualifications for membership of the National Assembly set out in Articles 62 and 63 shall also apply for membership of a Provincial Assembly as if reference therein to "National Assembly" were a reference to "Provincial Assembly".

[Emphasis supplied]

With respect to the appointment of Judges of the Supreme Court and High Courts of Pakistan, Articles 177 and 193 provide:-

"177. Appointment of Supreme Court Judges.

(2) A person shall not be appointed a Judge of the Supreme Court unless he is a citizen of Pakistan...

193. Appointment of High Court Judges.

(2) A person shall not be appointed a Judge of a High Court unless he is a citizen of Pakistan..."

[Emphasis supplied]

The Constitution does not require a person in the service of Pakistan to take oath while assuming office. Only members of the armed forces are required to take oath while assuming office. In this regard, Article 244 of the Constitution and the relevant oath contained in the Third Schedule read as under:-

"244. Oath of Armed Forces. Every member of the Armed Forces shall make oath in the form set out in the Third Schedule.

Third Schedule

Oaths of Office

Members of the Armed Forces

[Article 244]

(In the name of Allah, the most Beneficent,
the most Merciful.)

I, _____ do solemnly swear that I will bear true faith and allegiance to Pakistan and uphold the Constitution of the Islamic Republic of Pakistan which embodies the will of the people, that I will not engage myself in any political activities whatsoever and that I will honestly and faithfully serve Pakistan in the Pakistan Army (or Navy or Air Force) as required by and under the law.

May Allah Almighty help and guide me (A'meen). "

Statutory provisions on the service of Pakistan

4. We now consider whether there are any other statutory provisions governing the service of Pakistan which provide conditions of citizenship / nationality.

Federation of Pakistan

5. The Civil Servants Act, 1973 (Civil Servants Act) does not provide for any citizenship requirements. It is interesting to note that in 2013, the Civil Servants (Amendment) Bill, 2013 was tabled in the Senate in terms of which the following amendment was proposed in Section 9(1) of the Civil Servants Act in the form of a second proviso thereto:-

"Provided further that a civil servant holding dual nationality or citizenship of any foreign country shall not be entitled for promotion to posts in Basic Pay Scale 20 or equivalent and above."

But this Bill was not passed by Parliament.

Rule 13 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 provides that:

"13. A candidate for appointment shall be a citizen of Pakistan:

Provided that this requirement may be relaxed with the approval of the Establishment Division:

Provided further that, in the case of candidates to be appointed on temporary basis to posts in the Pakistan Missions abroad, such relaxation shall not be accorded for a period exceeding one year at a time."

[Emphasis supplied]

6. The Government Servants (Marriage with Foreign Nationals) Rules, 1962 apply to the following persons:-

"1. Short title, application and commencement.-

- (2) They shall apply to every person who is a member of an All-Pakistan Service or who is serving in a civil capacity in connection with the affairs of the Federal Government, but shall not apply to any person who is employed on contract."

Rule 3 of the said Rules provides as under:-

3. Marriage with Foreign nationals prohibited.-(1) Subject to the provisions of sub-rule (2), a government servant who marries or promises to marry a foreign national shall be guilty of misconduct and render himself liable to any of the major penalties under the Government Servants (Efficiency and Discipline) Rules, 1973.

(2) A government servant, may with the prior permission of the Federal Government marry or promise to marry a foreign national of any country recognized by Federal Government.

(3) The grant of permission under sub-rule (2) shall be at the discretion of the Federal Government, and may be subject to such conditions, if any, as it may specify."

[Emphasis supplied]

According to Rule 2(a) of the said Rules, "foreign national" means:-

"2. Definitions.- In these rules, unless there is anything repugnant in the subject or context:-

(a) "foreign national" means a person who is not a citizen of Pakistan;"

[Emphasis supplied]

7. With respect to the armed forces as a general rule, no person who is not a citizen of Pakistan is eligible for employment therein. In this regard, Sections 10, 12 and 10 of the Pakistan Army Act, 1952, the Pakistan Air Force Act, 1953 and the Pakistan Navy Ordinance, 1961, respectively provide as follows:-

"10. Ineligibility of aliens for service in the Army. No person who is not a citizen of Pakistan shall, except with the consent of the Federal Government signified in writing, be granted a commission or warrant or be enrolled in the Pakistan Army.

12. Ineligibility of aliens for enrolment. No person who is not a citizen of Pakistan shall, except with the consent of the Federal Government signified in writing, be granted a commission or a junior commission or be enrolled in the Air Force.

10. Eligibility for employment. No person who is not a citizen of Pakistan shall except with the consent of the Central Government signified in writing, be eligible for appointment or enrolment in the Pakistan Navy."

[Emphasis supplied]

The aforesaid three statutes do not contain any provisions prohibiting or even imposing any restrictions on marriage with foreign nationals, as is the case with the other persons in the service of Pakistan (as mentioned above) and the Provinces (as shall be seen below).

Province of Punjab

8. With respect to the Province of Punjab, the Punjab Civil Servants Act, 1974 does not provide for any citizenship requirements. However, Rule 19(1) of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 requires that:-

"19. (1) No person shall be appointed to a post unless he is a citizen of Pakistan:

Provided that this restriction may be relaxed by Government in suitable cases.

[Emphasis supplied]

9. With respect to spouses of civil servants of the Province of Punjab, Rule 19(2) of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974 provides that:-

19. (2) No person, who has married a foreign national shall be appointed to a post:

Provided that this restriction may be relaxed by Government in case of a person who has married a citizen of India or citizen of Bangladesh."

[Emphasis supplied]

Furthermore, there are the Punjab Civil Servants (Restriction on Marriages with Foreign Nationals) Rules, 2011 which apply to the following:-

"1. Short title, commencement and application,- (3) They shall apply to the civil servants as defined in the Punjab Civil Servants Act 1974 and to such other persons as are regulated by the rules framed under the Act. "

Rules 3 and 4 of the said Rules provide that:-

"3. Prohibition on marriage with Foreign National.- Save as provided in rule 4, a Government Servant who marries or promises to marry a foreign national shall be guilty of misconduct and shall be liable to any of the major penalties under the Punjab Employees (Efficiency, Discipline and Accountability) Act, 2006 (XII of 2006).

4. Permission to marry a foreign national.- (1) A Government servant may, with the prior permission of the Government, marry or promise to marry a foreign national of any country recognized by the Federal Government for the purpose.

(2) The grant of permission under sub-rule (1) shall be at the sole discretion of the Government and shall be subject to such conditions, if any the Government may specify.

(3) The discretion under sub-rule (2) shall be exercised if the circumstances or public interest so warrant and after recording reasons in writing."

[Emphasis supplied]

According to Section 2 of the said Rules, "foreign national" means:-

"2. Definitions.- In these rules, unless the context otherwise requires, the following expressions shall have the meaning hereby respectively assigned to them, that is to say:

(a) "foreign national" means a person who is not a national of Pakistan;"

[Emphasis supplied]

Province of Sindh

10. With respect to the Province of Sindh, the Sindh Civil Servants Act, 1973 does not provide for any citizenship requirements. However, Rule 13 of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 provides that:-

"13. A candidate for appointment shall be a citizen of Pakistan and a domicile of the Province of Sindh.

Provided that this requirement may be relaxed with the approval of the Services and General Administration Department."

[Emphasis supplied]

11. As far as spouses of civil servants of the Sindh Government are concerned, Rule 2 of the Sindh Civil Servants (Restriction on Marriage with Foreign Nationals) Rules, 1982 states as under:-

"2. (1) Subject to the provisions of sub-rule (2), a civil servant who marries or promises to marry a foreign national shall be guilty of misconduct and render himself liable to any of the major penalties specified in the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973.

(2) A civil servant may, with the prior permission of the government, marry or promise to marry a foreign national of any country recognized by Federal Government.

(3) The grant of permission under sub-rule (2) shall be at the discretion of the Government and may be subject to such conditions, if any, as it may specify."

[Emphasis supplied]

Province of Khyber Pakhtunkhwa

12. As regards the Province of Khyber Pakhtunkhwa (KPK), as with the Provinces of Punjab and Sindh, the Khyber Pakhtunkhwa Civil Servants Act, 1973 does not contain any provisions relating to citizenship of civil servants of the Government of KPK. Nonetheless, Rule 11(1) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 provides as follows:-

"11. Eligibility. (1) A candidate for appointment shall be a citizen of Pakistan and bona fide resident of the Khyber Pakhtunkhwa.

Provided that for reasons to be recorded in writing, Government may, in a particular case, relax this restriction."

[Emphasis supplied]

13. With respect to spouses, the West Pakistan Government Servants (Restrictions on Marriages with Foreign Nationals) Rules, 1963² are germane, Rule 1(3) whereof reads as follows:-

"1. Short title, commencement and application:- (3) They shall apply to all Government servants under rule making authority of the Governor of West Pakistan other than the persons employed on contract basis."

Rules 3 and 4 of the said Rules state as under:-

3. Prohibition on marriages with foreign nationals:- Save as provided in rule 4, a Government servant who marries or promises to marry a foreign national shall be guilty of misconduct and shall be liable to be removed from service.

4. Permission to marry a citizen of India:- (1) A Government servant may, with the prior permission of Government marry or promise to marry a person who is a citizen of India.

(2) The grant of permission under sub-rule (1) shall be at the sole discretion of Government and shall be subject to such conditions, if any, as may be specified by Government.

*Note:- This concession is also extended to the nationals of Bangladesh vide Khyber Pakhtunkhwa Notification No.SORI(S&GAD)4-1/80(Vol.III), dated 21.5.97. "

Rule 2(a) of the said Rules defines a "foreign national" as:-

"2. Definition:- In these rules, unless the context otherwise requires, the following expression shall have the meanings hereby respectively assigned to them, that is to say-

(a) "Foreign national" means a person who is not a national of Pakistan."

[Emphasis supplied]

Province of Balochistan

14. Finally, adverting to the Province of Balochistan, as with the other Provinces, the Balochistan Civil Servants Act, 1974 does not contain any provisions with respect to the citizenship of civil servants. However, Rule 9 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 states that:-

"9. (4) A candidate for appointment shall be the citizen of Pakistan and a domicile/local of the Province of Balochistan. "

[Emphasis supplied]

Notably however, unlike the corresponding provisions contained in the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and the Khyber Pakhtunkhwa Civil

Servants (Appointment, Promotion and Transfer) Rules, 1989, there is no provision for relaxation of the foregoing restriction in the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009.

15. As far as spouses are concerned, Rule 1(2) of the Balochistan Government Servants (Marriage with Foreign Nationals) Rules, 2011 provides as under:-

"1. Short title, application and commencement.- (2) They shall apply to every person who is a member of a service of Government of Balochistan or who is serving in a civil capacity in connection with the affairs of the Provincial Government, but shall not apply to any person who is employed on contract basis."

Rule 3 of the Said Rules states that:--

"3. Marriage with Foreign Nationals prohibited.- (1) Subject to the provisions of sub-rule (2), a Government servant who marries or promises to marry a Foreign National shall be guilty of misconduct and render himself liable to remove (sic) from Service under the Balochistan Employees' Efficiency and Discipline Act, 2011 or any other law/rules for the time being in force.

(2) A Government servant may, with the permission of the Government, marry or promise to marry a Foreign National of any Country recognized by Federal Government.

(3) The grant of permission under sub-rule (2) shall be at the discretion of the Government and may be subject to such conditions, if any, as it may prescribe."

[Emphasis supplied]

Rule 2(d) of the said Rules defines "foreign national" as:-

"2. Definitions.- In these rules, unless there is anything repugnant in the subject or context,

(d) "Foreign National" means a person who is not a citizen of Pakistan within the meaning of the Pakistan Citizenship Act 1951 (Act No.II of 1951);"

[Emphasis supplied]

Law relating to autonomous/semi-autonomous bodies/organizations and companies etc. owned/controlled/governed by the Federal and/or Provincial Governments

16. There does not appear to be any general constitutional requirement or general statutory framework with respect to appointment in, and the terms and conditions of service of, persons employed in autonomous/semi-autonomous statutory bodies/organizations and companies etc. which are owned/controlled/governed by the Federal and/or Provincial Governments. Such employees would generally not be considered to be in the "service of Pakistan" and therefore would not be governed by the laws and rules discussed above. We are fortified in this view by the Mubeen-us-Salam case (supra). As such, the specific statute, law, rule or constitutive document applicable to each autonomous/semi-autonomous statutory body/organization and company etc. would need to be examined on an individual basis to identify whether there is any qualification or disqualification with reference to the nationality

of its officers/employees as well as their spouses. By way of example, Rule 8(b) of the Pakistan WAPDA Common Cadre Administrative Posts Service Rules, 1980 provides that: -

"8. Qualifications.- Except as otherwise decided by the Authority, by general or special order:-

(a) No person shall be appointed to any post in the Service by initial recruitment, unless he possesses the qualifications and experience prescribed for the post in column 3 of the Appendix to these Rules.

(b) No person, not already in the service of the Authority, shall be appointed to a post in the Service unless he has satisfied the appointing authority with regard to his character and antecedents and has furnished a certificate of Pakistani Citizenship from the authority competent to issue such certificates in the appropriate form."

[Emphasis supplied]

Law regarding foreign employment of ex-Government servants

17. The provisions of Section 3 of the Ex-Government Servants (Employment with Foreign Governments) (Prohibition) Act, 1966 (Act of 1966) are relevant which read as under:-

"3. Prohibition of employment, etc.-(1) No ex-Government servant shall, except with the previous permission in writing of the Federal Government, or a person or authority authorised by it in this behalf seek or take up employment as an officer or servant of a foreign government or a foreign agency.

(2) No ex-Government servant who is, at the commencement of this Act, in the service of a foreign government or a foreign agency shall, except with the permission in writing of the Federal Government, continue in such service after the expiry of three months from such commencement."

"Ex-Government servant" has been defined in Section 2(a) of the Act of 1966 to mean: -

"...any person who was, at any time, appointed or employed as an officer or servant of the Federal Government or a Provincial Government and has ceased to be so appointed or employed."

The penalty for contravention of Section 3 of the Act of 1966 is provided in Section 4 thereof which reads as under:-

"...imprisonment for a term which may extend to seven years or with fine which may extend to fifty thousand rupees, or with forfeiture of property, or with any two or more of the said punishments."

Laws on citizenship/nationality and dual nationality

18. We shall now advert to the laws pertaining to citizenship and dual nationality. Before proceeding further, the following categorization of the aforementioned persons may prove to be expedient:-

- i. Dual nationals (Category A);
- ii. Those who are not Pakistani citizens but may be of Pakistani original only (Category B); and
- iii. Those whose spouses are either dual nationals or foreigners (Category C).

Article 260 of the Constitution defines "citizen" as under:-

"260. Definitions. (1) In the Constitution, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say, "citizen" means a citizen of Pakistan as defined by law; "

[Emphasis supplied]

19. The Pakistan Citizenship Act, 1951 (Citizenship Act) provides for various types of citizenship including, inter alia, citizenship by birth (Section 4 of the Citizenship Act), by descent (Section 5 of the Citizenship Act), by migration (Section 6 of the Citizenship Act) and by naturalization (Section 9 of the Citizenship Act). However for our purposes, Section 14 of the Citizenship Act is germane which reads as follows:-

14. Dual citizenship or 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.

(IA) Nothing in subsection (1) applies to a person who has not attained twenty-one years of his age:

(2) Nothing in subsection (1) shall apply to any person who is a subject of an Acceding State so far as concerns his being a subject of that State.

(3) Nothing in subsection (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) Nothing in subsection (1) shall apply to a female citizen of Pakistan who is married to a person who is not a citizen of Pakistan.

[Emphasis supplied]

Upon a plain reading of Section 14(1) *ibid*, it is clearly beyond any doubt that as a general rule, a Pakistani citizen who is also a citizen/ national of any other country shall lose his Pakistani citizenship unless he renounces his citizenship/ nationality of the other country. However, there are certain exceptions to this general rule where the said provision shall not apply to a person who:-

- i) Has not attained the age of 21 years [Section 14(1A) ibid];
- ii) Is not a subject of an Acceding State so far as concerns his being a subject of that State [Section 14(2) ibid];
- (iii) Being or having at any time been, a citizen of Pakistan, is also a citizen of the United Kingdom (UK) and Colonies, or of such other country as the Federal Government may, by notification in the Official Gazette, specify in this behalf [Section 14(3) ibid]; and
- iv. Is a female citizen of Pakistan who is married to a person who is not a citizen of Pakistan [Section 14(4) ibid].

In addition to the UK, which is specifically mentioned in Section 14(3) of the Citizenship Act, the Government of Pakistan has specified 18 other countries in terms of Section 14(3) ibid such that on acquisition of citizenship of these countries a Pakistani citizen does not automatically lose his Pakistani nationality as per Section 14(1) ibid. The list of countries³, including the UK, is as under:-

- i) UK
- ii) France;
- iii) Italy;
- iv) Belgium;
- v) Iceland;
- vi) Australia;
- vii) New Zealand;
- viii) Canada;
- ix) Finland;
- x) Egypt;
- xi) Jordan;
- xii) Syria;
- xiii) Switzerland;
- xiv) Netherlands;
- xv) United States of America;
- xvi) Sweden;
- xvii) Ireland;
- xviii) Bahrain: and
- xix. Denmark.

In other words, a Pakistani citizen who acquires the citizenship of a country other than the 19 countries (including the UK) falling under Section 14(3) ibid mentioned above, shall cease to be a Pakistani citizen unless he renounces his other nationality, by making a declaration according to the law of that country. However, it is clear that Pakistani citizens have the right to hold dual nationality, as has been held in the concurring note of Justice Jawwad S.

Khawaja (as he was then) in the judgment reported as Syed Mehmood Akhtar Naqvi v. Federation of Pakistan (PLD 2012 SC 1089):-

"We may clarify that section 14(1) of the Citizenship Act, 1951, confers upon Pakistani citizens the right to hold the citizenship of certain other countries without having to forego their Pakistani citizenship. The right, therefore, of Pakistani citizens to hold dual citizenship, as per law, remains very much a statutory right vested in them."

20. It is pertinent to note that there are no guidelines in respect of the discretion available to the Federal Government under section 14(3) of the Citizenship Act. The statute does not provide the grounds for exercising the executive power of specifying as to which countries Section 14(1) of the Citizenship Act would not apply. This was broadly the argument made by the learned amici curiae in the judgment of the learned Lahore High Court reported as Umar Ahmad Ghumman v. Government of Pakistan and others (PLD 2002 Lahore 521). Regardless of the fact that in the intra-Court appeal filed against the cited judgment the learned Division Bench seized thereof dismissed the writ petition as having been withdrawn, we are unable to subscribe to the view set out in the judgment passed in the writ petition in Umar Ahmad Ghumman's case (supra) that the citizens of Pakistan can retain their citizenship provided the Municipal Law of the other country, nationality of which is sought, does not prohibit dual nationality. This interpretation of linking Pakistani citizenship with reference to the law of another country cannot prevail keeping in mind the spirit and intent of Section 14 supra which is clear from a plain reading thereof. However, we are of the opinion that the unqualified power vested with the Government is inconceivable in the democratic government prevailing in Pakistan under the Constitution. Discretion ought to be guided and qualified in order to meet the requirements of sound administrative policy. Therefore while all the orders passed and notifications issued till date are kept intact and are valid for all intents and purposes, the Federal Government shall formulate the guidelines and parameters for the exercise of power under Section 14(3) supra.

21. At the cost of repetition, persons in Category A are essentially citizens of Pakistan who are additionally also citizens of any of the 19 countries mentioned above. There is no restriction in the Constitution on persons in Category A from being employed in the service of Pakistan. Furthermore, since persons in Category A are Pakistani citizens, they fulfil the requirements for employment as Federal and Provincial civil servants under the applicable rules as well as enrolment in the Army, Air Force and Navy under the applicable Acts, as discussed in detail above. There also does not appear to be any general prohibition on persons in Category A being employed by or in autonomous/semi-autonomous statutory bodies/organizations and companies etc. which are owned/controlled/governed by the Federal and/or Provincial Governments. Certain restrictions could however exist in the specific statute, law, rule or constitutive document applicable to each body which would have to be examined on a case-to-case basis.

Laws pertaining to foreigners (Pakistani and non-Pakistani origin)

22. Section 2(a) of the Foreigners Act, 1946 (Foreigners Act) defines a foreigner as "a person who is not a citizen of Pakistan". Foreigners have been granted certain benefits and some restrictions have also been imposed on them through various laws and rules, etc.

Section 10 of the Foreigners Order, 1951 (Foreigners Order) promulgated under the Foreigners Act imposes certain restrictions on foreigners vis-à-vis employment and reads as follows:-

"10. Restrictions on employment. No foreigner shall without the general or special permission in writing of the civil authority, enter any premises relating to, or be employed in, or in connection with-

(1) Any undertaking for the supply to Government or to the public of light, petroleum, powers or water, or-

(2) Any other undertaking which may be specified by the Central Government in this behalf."

[Emphasis supplied]

According to the Ministry of Interior, it has not exercised its power under Section 10(2) of the Foreigners Order, as is evident from its letter dated 31.07.2018 which is scanned as under:-

Certain restrictions have also been placed on the acquisition of land or landed property in Pakistan by foreigners vide Order dated 09.09.1984 [No. 18/153/84-Poll.E(II)] issued by the Ministry of Interior under Section 3 of the Foreigners Act, 1946 which basically provides that no foreigner shall, directly or indirectly, acquire any land or any interest in land, without the previous written permission of the Federal or Provincial Government. Section 3(d) of the Registration of Foreigners (Exemption) Order, 1966 exempts foreigners in the service of the

Federal or Provincial Government (and his wife and children) from some of the requirements of the Registration of Foreigners Rules, 1966.

23. Within the category of foreigners falls those persons who are not Pakistani citizens but are of Pakistani origin only. Pursuant to the provisions of Section 11 of the National Database and Registration Authority Ordinance, 2000 (Ordinance of 2000) read with the National Database and Registration Authority (Pakistan Origin Card) Rules, 2002 (POC Rules), certain eligible foreigners of Pakistani origin and their eligible family members may obtain a Pakistan Origin Card (POC) on fulfillment of certain qualifications and requirements described in detail in Rules 2(d), 2(e), 3, 4 and 5 of the POC Rules. Rule 17 of the POC Rules confers certain benefits on POC holders, which (Rule) reads as under: -

"17. Benefits for holder of card.- (1) During the validity of a card and without prejudice to any other rights, benefits, privileges or capacities enjoyed by, or available to, the holder of card, every holder of card validly issued to him under these rules-

(a) may enter into Pakistan without a visa from such port or place, by such route and in accordance with such conditions, if any, as are prescribed for citizens of Pakistan under section 13 of the Passports Act, 1974 (XX of 1974);

(b) shall have permission to stay in Pakistan till the validity of the card;

(c) shall, during his stay in Pakistan, be exempt as a foreigner from reporting to or registering with, any law enforcing or other governmental agency to whom or with which such report or registration in the capacity of a foreigner is otherwise required under any law in force in Pakistan;

(d) may open bank accounts anywhere in Pakistan and transact business therein subject to fulfilment of the requirements of any other law for the time being in force;

(e) may, subject to any other law for the time being in force, enter into transactions of purchase and sale of moveable or immoveable property anywhere in Pakistan and deal with and dispose of such property; and

(f) may use the card for establishing and proving his identity anywhere in Pakistan where a National Identity Card is required for the purpose.

(2) The Authority may arrange for other lawful benefits, rights and privileges for holders of card, as it may deem fit, in association with governmental and private organizations or entities in order to incentivize their registration."

[Emphasis supplied]

24. As examined in the earlier portion of this opinion, the Government has not exercised its power under Section 10(2) of the Foreigners Order to invoke the prohibition on employment in any undertaking of the Government. Accordingly, at present the concession applies to Federal and Provincial civil servants or persons who are in Category B being employed as Federal or Provincial civil servants. However, in the discussion that follows in paragraph No.27 below, such restriction may nevertheless be presumed of foreigners and persons in Category B by virtue of the rules framed under the respective Federal and Provincial Acts.

25. Furthermore, while there is no prohibition in the Constitution on persons in Category B enrolling in the Pakistan Armed Forces, however, by virtue of the respective Acts governing the Pakistan Armed Forces, persons in Category B shall not, except with the permission of the Federal Government, enroll in the Army, Air Force or Navy. Additionally, any person enrolled in the Armed Forces shall be required to take an oath as specified in Article 244 read with the Third Schedule of the Constitution (see paragraph No.3 of this opinion).

26. There does not appear to be any general prohibition on persons in Category B being employed by or in autonomous/semi-autonomous statutory bodies/organizations and companies etc. which are owned/controlled/governed by the Federal and/or Provincial Governments. Restrictions may apply generally to certain kinds of employment, irrespective of legal status/ownership/control of the employer (e.g. by virtue of Section 10 of the Foreigners Order as discussed above). Certain restrictions could exist in the specific statute, law, rule or constitutive document applicable to each body which would have to be examined on a case-to-case basis.

27. We find it pertinent to mention that the views set out in paragraphs Nos.24 to 26 hereinabove are subject to the following discussion. Generally speaking, a person who is not a Pakistani citizen and is only of Pakistani origin is by definition a foreigner and thus would be subject to the same benefits, restrictions and limitations in Pakistan as a foreigner of non-Pakistani origin. However, a foreigner of Pakistani origin is eligible to obtain a POC and thereafter enjoy certain rights/benefits specified in paragraph No.23 above. At this juncture we find it appropriate to consider an ancillary issue which potentially has far-reaching practical implications. A bare perusal of the Foreigners Act and the Foreigners Order suggests that the appropriate Government is given the power to invoke the general bar contained in Section 10(1) of the Foreigners Order upon the employment of foreigners in Pakistan. This only restriction on the employment of foreigners in Pakistan is contained in Section 10 of the Foreigners Order as mentioned in paragraph No.22 above. The effect of Section 10 *ibid* which is the law governing foreigners, regardless of their origin, is that they are, unless the appropriate Government specifies their employer to be subject to the statutory restriction and/or for which permission is required. However, it appears that Rule 17 of the POC Rules read with Section 10 of the Foreigners Order specifies only six "permissions" as mentioned in parts (a) to (f) of sub-Rule (1) of Rule 17 *ibid* to have been conferred upon POC holders. These do not include the right to employment in Pakistan (generally, and not specifically with respect to government service). The statutory prohibition under Section 10 of the Foreigners Order accordingly triggers into effect to restrict the privileges excluded in Rule 17 *ibid*. Thus in effect, Rule 17(1) (a) to (f) of the POC Rules places a restriction on POC holders with respect to employment in Pakistan that would not have otherwise been imposed on them had they not applied for a POC and remained as a foreigner of non-Pakistani origin allowed. This appears to be an anomaly whereby foreigners of Pakistani origin are not entitled to work in Pakistan by virtue of their POC whereas foreigners of non-Pakistani origin are (subject to, of course, work permit requirements). The foregoing interpretation of the law as it stands at present would mean that foreigners of Pakistani origin are not allowed to hold any sort of employment in Pakistan by virtue of their POC. We find the said legal position to be illogical, absurd and inherently inconsistent. Therefore we hereby place a beneficial construction on Rule 17(1) *supra* by holding that the general

permission of working in Pakistan that foreigners have (subject to work permit requirements) is retained by those foreigners of Pakistani origin who hold POCs by virtue of the saving clause in the opening portion of Rule 17(1) *ibid* which provides that the holders of such cards would be entitled to the additional benefits provided therein "without prejudice to any other rights, benefits, privileges or capacities enjoyed by, or available to, the holder of card." Thus it is categorically held that holders of POCs are allowed to work in Pakistan just as are any other foreigners (i.e. not entitled to POCs) as defined under the law.

28. Be that as it may, this perhaps explains the list of 24 persons working in various Government departments, etc. submitted by the Committee constituted by this Court, who are considered to be foreign nationals. The foreign nationalities they hold are of countries which are not in the list of 19 countries of which dual nationality is allowed. It appears that the said persons have been able to secure employment on the basis of an identity card number issued to them by NADRA and printed on their POC. Furthermore, it has come to this Court's notice that the relevant Pakistani authorities, including the Board of Investment (BOI), do not issue work permits to POC holders for the very same reason that they (the authorities) are under the impression that such persons are legally entitled to work in Pakistan. This practice was exemplified by Dr. Faisal Shafait, a foreign national (at Serial No. 10 in the list of 24 government officers with foreign nationality), who stated in Court that he personally approached BOI for the issuance of a work visa but his request was turned down on the ground that the BOI had never processed work visas for POC holders as according to them POC holders do not require a work visa and can legally work in Pakistan without the same. It seems that all the public and private organizations, and the general public for that matter, have been oblivious of the true legal position and hence have been employing POC holders and refusing to grant them work permits. Therefore the relevant authorities, including the Ministry of Interior, the Directorate General of Passports and Immigration, NADRA and BOI are directed to review their existing practice and procedures in light of the foregoing position and to facilitate the issuance of visa/work permits to all those POC holders who require the same. As this would affect all the POC holders who are currently working in Pakistan without a visa/work permit, such persons should apply for the same and the Ministry of Interior is directed to decide the applications in accordance with law within a period of two months, after which the law shall take its own course. Alternatively, the Federal Government may in conjunction with NADRA consider amending Rule 17(1) of the POC Rules to reflect the correct position of the law allowing POC holders to work in Pakistan by virtue of their POC divesting them of any requirement to separately apply for a work visa/permit as foreigners of non-Pakistani origin are required to. The Federal Government is required to take a final decision in this regard within one month from the issuance of this order and till such decision is reached, the status quo shall be maintained.

29. There are two more issues pertaining to POC holders. The first is whether Rule 17(1) of the POC Rules is valid as it provides certain substantive rights mentioned above which generally ought to be contained in the statute and not in the rules. The POC Rules have been framed "[i]n exercise of the powers conferred by section 44 of the National Database and Registration Authority Ordinance, 2000 (VIII of 2000), read with clause (b) of subsection (4) of section 5, section 8, section 11 and subsection (3) of section 17 thereof..." which (provisions) read as under:-

"44. Power to make rules.- The Federal Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance:

Provided that...

5. Purpose, objects, functions and power of the Authority.- (4) In particular and without prejudice to the generality of the foregoing powers and functions, the Authority-

(b) may issue or renew, or cause to be issued or renewed, to any prescribed class or class of persons, including citizens, foreigners and emigrants, or to any prescribed class or classes of things, who have got themselves, or who or which have been, registered in the prescribed manner issued cards in the prescribed form and manner and on such criteria and for such period of validity thereof on such terms and conditions as may be prescribed and may receive applications therefor in the prescribed form;

8. Registration of persons, etc.- (1) The Federal Government may by rules provide for the registration of different persons or classes thereof wherever they may be including citizens, foreigners and emigrants, and for different things or classes thereof whatever they may be and along therewith provide for the method of such registration, manner and form of applications to be made therefor, fee or other sum to be charged therefor (sic).

(2) Notwithstanding anything contained in any other law for the time being in force the Federal Government may, by rules, for the purpose of incentivizing registration of a particular class of persons under this Ordinance, provide for any right, interest, privilege, benefit, reward or other advantage, tangible or intangible, available under Pakistan Law, to be extended to, or made available to or withdrawn from such class of persons required to be registered under this Ordinance and such right, interest, privilege, benefit reward or other advantage shall accordingly become extended, or available to or withdrawn from, as the case may be, to such class of persons.

11. Pakistan Origin Cards.- The authority shall issue or renew, or cause to be issued or renewed, in the prescribed manner and on prescribed criteria, terms and conditions, cards to such prescribed class of foreigners and such prescribed class of citizens with dual nationality who have got themselves registered in the prescribed manner, in such form and with such periods of validity thereof upon payment of such fee in such form and manner as may be prescribed, to be called Pakistan Origin Cards and receive applications for registration therefor in the prescribed form.

17. Surrender of cards.- (3) The Authority shall issue such receipt in relation to the card or certificate surrendered under this section in such form and manner and containing such information relating to the person whose card or certificate has been surrendered as may be prescribed."

[Emphasis supplied]

The words "rules" and "prescribe" have been defined in the Ordinance of 2000 as follows:-

"2. Definitions.- In this Ordinance, unless there is anything repugnant in the subject or context,-

(n) "prescribed" means prescribed by rules;

(r) "rules" means rules made under this Ordinance;"

[Emphasis supplied]

The aforementioned provisions of the Ordinance of 2000, in particular Section 8(2) thereof, authorize the Federal Government to frame rules to provide such class of persons required to be registered under the said Ordinance, in this case eligible foreigners of Pakistani origin or eligible family members, with any right, interest, privilege, benefit, reward or other advantage (tangible or intangible) available under Pakistan Law. Therefore the framing of the POC Rules including Rule 17(1) thereof conferring substantive rights onto certain persons was a valid exercise of power by the Federal Government.

30. The second issue is with respect to Section 11 of the Ordinance of 2000 itself which authorizes NADRA to issue (or renew) POCs to "such prescribed class of foreigners and such prescribed class of citizens with dual nationality who have got themselves registered in the prescribed manner..." The vague aspect is the issuance of POCs to citizens with dual nationality as per Section 11 *ibid*. As held in this opinion, dual nationals are, for all intents and purposes, citizens of Pakistan according to the Citizenship Act. This legal position is also evident from the fact that dual nationals are issued National Identity Cards for Overseas Pakistanis (NICOP) which are identical to the regular National Identity Cards (NIC) issued to those who hold only Pakistani citizenship. The legal framework of the Ordinance of 2000 in this regard is as under:-

"10. National Identity Cards.- (1) The Authority shall issue or renew, or cause to be issued or renewed, in such manner and on terms and conditions, subject to every citizen who has attained the age of eighteen years and got himself registered under section 9, a card to be called National Identity Card in such form, with such period of validity upon payment of such fee in such form and manner as may be prescribed:

.....

19. Cards necessary for certain purposes.- (1) No citizen who has attained the age of eighteen years but does not possess or produce a National Identity Card shall be granted a passport, permit or other travel document for going out of Pakistan.

(2) Any officer charged with the duty of conducting the poll at an election to the National Assembly or a Provincial Assembly or to a Municipal Committee, Cantonment Board or other local authority or body may, for the purpose of satisfying himself as to the identity of any person, require such person to produce his National Identity Card.

(3) The Federal Government may, by notification in the Official Gazette, specify any other purpose for which the production of any card or certificate or receipt issued under this Ordinance shall be necessary.

(4) A card including a National Identity Card, issued to a person under this Ordinance shall be proof of his identity as could be established from the contents of such card for any purpose for which his identity is required to be established."

The relevant provisions of the National Database and Registration Authority (National Identity Card) Rules, 2002 (NIC Rules) are reproduced below:-

"5. Registration.- All citizens shall get themselves registered with the Authority in accordance with section 9 of the Ordinance under these rules and the regulations.

2. Definitions.- (1)(d) "citizen" means, for the purposes of these rules, a citizen of Pakistan who has attained the age of eighteen years and includes both a resident and a non-resident citizen;

2. Definitions.- (1)(q) "resident citizen" means a resident citizen under rule 3;

3. Resident citizen.- A citizen shall be a resident citizen if he is not a non-resident citizen.

2. Definitions.- (1)(j) "non-resident citizen" means a non-resident citizen specified in rule 4;

4. Non-resident citizen.- (1) A citizen shall be a non-resident citizen if he,

(a) is an emigrant or intending emigrant;

(b) is, or is intending to be, resident abroad;

(c) holds nationality or citizenship of any other country or state pursuant to subsection (3) of section 14 of the Pakistan Citizenship Act, 1951 (II of 1951); or

(d) holds an emigrant or resident visa, permanent or otherwise, or equivalent authorization, permit or status, as the case may be, of a foreign state or country.

15. Benefits.- (1) Without prejudice to any other rights, benefits, privileges or capacities enjoyed by or available to a non-resident citizen specified in clause (c) of sub-rule (1) of rule 4 who simultaneously holds the nationality or citizenship of any other country or state together with his Pakistani citizenship, such non-resident citizen shall, upon issuance of the card to him in the form set out in Schedule II and during the period of validity of his said card, have the right to enter into Pakistan without a visa from such port or place, by such rout (sic) and in accordance with such conditions, if any, as are prescribed pursuant to section 13 of the Passport Act, 1974 (XX of 1974).

(2) A card validly issued to a non-resident citizen in the form given in Schedule II shall be the conclusive proof of his being a citizen of Pakistan for the purposes of availing protection of the Government of Pakistan in any foreign country or state as a Pakistani citizen. The Federal Government shall recognize, afford and ensure full protection as citizens of Pakistan available under the law to all card holders abroad.

(3) The Authority may arrange for and make available other lawful benefits, rights and privileges for holders of the card, as it may deem fit, in association with

governmental, private organizations or entities in order to incentivize registration of the citizens under these rules."

[Emphasis supplied]

According to the foregoing provisions, all citizens of Pakistan, resident or non-resident (the latter including dual nationals under section 14(3) of the Citizenship Act) are to be issued NICs and holders of such cards are to enjoy the same rights, privileges and benefits, etc. being citizens of Pakistan, with dual nationals enjoying the extra benefit of visa-free entry into Pakistan as per Rule 15 of the NIC Rules. Thus the mere mention of the phrase "such prescribed class of citizens with dual nationality" in Section 11 supra has created an anomaly. This anomalous position has also been candidly conceded by the NADRA officials who stated that an error had occurred when the Ordinance of 2000 was being drafted which had been overlooked and went unnoticed till such time as the NIC Rules and the POC Rules were framed and the system of issuing NICs and POCs was put in place once NADRA was set up and became functional. In light of the above, we find that the Federal Government should reconsider Section 11 of the Ordinance in light of the observations made above to remove the contradictions arising therefrom in the NADRA laws.

31. In light of the above discussion, we now examine the position of the 24 government officers with foreign nationality. We have held that under the existing law such foreigners, albeit of Pakistani origin, are not allowed to become civil servants by virtue of the rules framed under the respective Federal and Provincial Acts, and similarly may not enroll in the Armed Forces by virtue of the respective Acts governing the Pakistan Armed Forces (save, in both cases, where permission has been granted by the competent authority where applicable); however there does not appear to be any general prohibition on such persons being employed by or in autonomous/semi-autonomous statutory bodies/ organizations and companies etc. which are owned/controlled/governed by the Federal and/or Provincial Governments, save for the restrictions contained in Section 10 of the Foreigners Order, 1951. In the absence of any specific restrictions in the specific statute, law, rule or constitutive document applicable to each body, such persons are theoretically entitled to work therein under the existing legal framework, until of course it is reconsidered by the Government (should that be the case). However since the legal position with respect to employment of POC holders was unclear till date with the relevant authorities refusing to issue work visas to such persons, it is hereby held (as we had done in paragraph No.28) that should the Federal Government decide not to make the relevant amendments to Rule 17(1) of the POC Rules, they should apply for work visas and the concerned authority is directed to decide such applications in accordance with law within a period of two months, after which the law shall take its own course. However till the Federal Government takes a decision within one month either way, the status quo shall be maintained. It is worthy to note that at least two of the persons in the list, namely Dr. M. Yousaf Mairaj and Dr. M. Numan at Serials Nos.14 and 15 respectively, have stated that they do not hold Malaysian nationality as stated in the list, rather are Pakistani citizens but only hold Malaysian permanent residency. Be that as it may, they, along with any other person whose name has appeared incorrectly in the list as they hold Pakistani citizenship, are not required to apply for the work permit as mentioned above.

Persons whose spouses have a nationality other than that of Pakistan

32. This category needs to be divided into two sub-categories:-

- i. Persons whose spouses are dual nationals, i.e. the spouses are citizens of Pakistan and also citizens of any of the 19 countries with which Pakistan has arrangements for dual nationality (Category C1);
- ii. Persons whose spouses are foreigners (of Pakistani or non-Pakistani origin), i.e. not citizens of Pakistan (Category C2).

There does not appear to be any restriction on or qualification of persons in Category C1 in terms of their employment as a Federal or Provincial civil servant or enrolment in the Army, Air Force or Navy. Since their spouses are citizens of Pakistan, they will not be considered to be "foreign nationals" within the meaning of the rules specified in paragraphs Nos.6, 9, 11, 13 and 15 above.

33. For persons in Category C2, the following restrictions appear to be applicable in terms of their employment as a Federal or Provincial civil servant:-

- i. For the Federation, a government servant who marries or promises to marry a foreign national shall be guilty of misconduct and render himself liable to any of the major penalties under the Government Servants (Efficiency and Discipline) Rules, 1973, unless prior permission of the Federal Government has been sought to marry or promise to marry a foreign national of any country recognized by Federal Government;
- ii. For Punjab, no person, who has married a foreign national shall be appointed to a post unless this restriction has been relaxed by the Provincial Government in case of a person who has married a citizen of India or Bangladesh; furthermore, a government servant who marries or promises to marry a foreign national shall be guilty of misconduct and shall be liable to any of the major penalties under the Punjab Employees (Efficiency, Discipline and Accountability) Act, 2006 (XII of 2006) unless prior permission of the Government is sought to marry or promise to marry a foreign national of any country recognized by the Federal Government for the purpose;
- iii. For Sindh, a civil servant who marries or promises to marry a foreign national shall be guilty of misconduct and render himself liable to any of the major penalties specified in the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973, unless prior permission of the Provincial Government is sought to marry or promise to marry a foreign national of any country recognized by Federal Government;
- iv. For KPK, a government servant may, with the prior permission of Government marry or promise to marry a person who is a citizen of India or Bangladesh;
- v. For Balochistan, a Government servant who marries or promises to marry a foreign national shall be guilty of misconduct and render himself liable to removal from Service under the Balochistan Employees' Efficiency and Discipline Act, 2011 or any other law/rules for the time being in force, unless prior permission of the Provincial Government is sought to marry or promise to marry a foreign national of any Country recognized by Federal Government.

There does not appear to be any restriction on persons either in Category C1 or C2 who are enrolled in the Army, Air Force or Navy. However if there are any internal notifications, office memorandums or SOPs issued by the competent authority providing for certain restrictions in this regard then they shall be accordingly applicable.

34. While considering the POC Rules with respect to spouses of Pakistani citizens/ foreigners of Pakistani origin, an ancillary matter came to this Court's attention. According to Rule 4(5) of the POC Rules as originally promulgated, foreign spouses were allowed to be issued POCs. The said Rule read as under:-

"4. Eligible foreigner of Pakistan origin.- (5) A foreigner who is married to a citizen of Pakistan shall, till the time he or she remains married to such citizen, also be an eligible foreigner of Pakistan origin:

Provided that in case the citizen of Pakistan to whom such foreigner is married dies during the subsistence of their marriage, such foreigner shall continue to be an eligible foreigner of Pakistan origin till the time he or she contracts a second marriage:

Provided further that such foreigner married to a citizen of Pakistan is-

- (i) not a citizen or national of India;
- (ii) not a citizen or national of a state or country not recognized by Pakistan; and
- (iii) not a citizen of any enemy country:

Provided also that the Federal Government may, in special extraordinary circumstances and upon an application made in this behalf by the concerned person, allow a foreigner married to a citizen of Pakistan not otherwise eligible under the second proviso, to be registered for an issued a card as an eligible foreigner of Pakistan origin and such person shall, upon issuance of the card and till the expiry or early termination of validity thereof for a reason other than such person's ineligibility cured under this proviso, be treated as an eligible foreigner of Pakistan origin for all purposes under these rules."

However, the said rule was amended vide notification No.4/2/2012-NADRA dated 30.12.2015 according to which issuance of POCs to foreign spouses of Pakistani citizens was discontinued. Thereafter, considering the immense difficulties faced by foreign spouses of Pakistani citizens, the Ministry of Interior forwarded a summary for the Cabinet dated 20.02.2018 recommending therein (in paragraph No.5) withdrawal of the aforementioned notification along with restoration of the corresponding rule(s). The Cabinet vide its decision considered the aforesaid summary and approved the proposal contained in paragraph No.5 thereof, resultantly the said notification was withdrawn, and the rules were restored to their previous position. Despite this, the Ministry of Interior vide letter No.4/2/2012- NADRA dated 08.03.2018 introduced the eligibility condition of five years of marriage in violation of the approval of the Federal Government (Cabinet) which had stipulated that the rules had been restored to the previous position as mentioned above. Since the power to make rules lies only with the Federal Government as per Section 44 of the NADRA Ordinance, the introduction of the condition of five years marriage by the Ministry of Interior is ultra vires, and therefore hereby set aside.

Armed forces

35. As far as the armed forces (military, naval and air forces and their allied departments) are concerned, according to the Secretary, Ministry of Defense, recruitment of dual nationals is not permitted therein for which there exist relevant instructions/ policies of the Army, Air Force and Navy; any dual nationals are required to surrender their foreign nationality prior to enrolment for induction in the armed forces of Pakistan. According to him, this position is reflected in the advertisements for recruitment and presently, there are no dual nationals recruited in such forces. However, as directed vide order dated 01.08.2018, the Secretary, Ministry of Defense, is required to continue the exercise to ascertain whether any dual nationals have been recruited in the armed forces on the basis of misdeclaration, concealment or non-disclosure and requisite action be taken in accordance with law by the concerned authority.

36. With respect to General (R) Raheel Sharif, documents were filed showing No Objection Certificates (NOC) from the General Headquarters (GHQ) and the Ministry of Defence, but according to Section 3 of the Act of 1966, it is in fact the Federal Government (or a person or authority authorized by it in this behalf) which can grant permission to an ex-Government servant to seek or take up employment as an officer or servant of a foreign government or a foreign agency; and according to the law laid down by this Court in the judgment reported as Messrs Mustafa Impex, Karachi and others v. The Government of Pakistan through Secretary Finance, Islamabad and others (PLD 2016 SC 808) the Federal Government means the Cabinet and the said judgment was in the field when the NOCs were granted. Vide order dated 07.08.2018, the learned Attorney General for Pakistan and the Additional Secretary, Ministry of Defense were granted time to look into the matter and apply to the Federal Government for an ex -post facto NOC/permission. Let the Secretary, Ministry of Defense file a report in this regard within one month from the issuance of this judgment and in case the requisite NOC is not granted by the Federal Government within such time, the foreign employment of General (R) Raheel Sharif shall cease with immediate effect.

As regards Lt. General (R) Ahmad Shuja Pasha, he has filed a duly signed certificate dated 25.09.2018 which is scanned as under:-

Dual nationality and the issue of divided loyalty

38. Contrary to what many may think, the purpose of this opinion was not to cast any sort of reservation, skepticism or mistrust against dual nationals or foreigners of Pakistani origin. The importance of the overseas Pakistani community cannot be overstated. In Syed Mehmood Akhtar Naqvi's case⁴ (supra), Justice Jawwad S. Khawaja (as he was then) mentioned in his concurring note that:-

"4. In fact, on numerous occasions in the recent past, this Court has expressed the national sentiment of gratitude for our expatriates, estimated to be in the range of 7 to 8 million in number. Most of them, particularly those working in Middle Eastern countries do not hold dual citizenship. These sons and daughters of Pakistan toil in foreign lands, away from their hearths, homes and loved ones and, in the process, provide an economic lifeline to Pakistan in these critical times. In the last financial year, these overseas Pakistanis remitted more than US\$ 13 billion in hard cash, to bolster the economy of the country. This figure is slated to increase in the current financial year. Yet, at times, these hardworking and patriotic Pakistani expatriates receive short shrift and humiliating treatment from government agencies such as the Immigration and other services, Civil Aviation Authority (CAA) and the Overseas Pakistanis Foundation (OPF), when they return to Pakistan after months or even years away from home. This Court has taken suo motu notice (HRC No. 24770-G/2011) of the maltreatment which overseas Pakistanis receive at the hands of such authorities."

In the judgment reported as Ch. Nasir Iqbal and others v. Federation of Pakistan through Secretary Law and others (PLD 2014 SC 72) in which the Supreme Court held that the right to vote of overseas Pakistanis was a fundamental right guaranteed by the Constitution, it was observed that:-

"...the Pakistani citizens living abroad earn money by working there and then send the same in the shape of foreign remittances to the country. In this manner, they contribute to the welfare of the state, well-being of the citizens and good governance of the country by providing financial support through their families living inside Pakistan."

The practical implementation of the right to vote of overseas Pakistanis was ensured recently vide order dated 17.08.2018 passed in Dr. Farhat Javed Siddique and others v. Government of Pakistan and others (Const. P.No.74/2015 etc.).

39. The foregoing is a clear indication of the fact that this Court has always held the interests of overseas Pakistanis in the highest esteem. We acknowledge the services rendered by the overseas community which is not only providing the much needed foreign remittances that contribute to the economy of Pakistan, but immense support by representing Pakistan before various international bodies and organizations. The overseas Pakistani community comprises of professionals including doctors, engineers, solicitors, accountants, etc. who have contributed vastly in their respective professions while gaining respect and credibility for their motherland, Pakistan. We would like to bring it on the record that the nation is proud of its overseas community. With this background in mind, we would like to emphasize that the instant matter in which information was sought about dual nationals holding

important posts in the Government is not directed against those patriotic overseas Pakistanis, rather it was an exercise prompted by the acts of those Pakistani government officials who acquired nationalities of other countries during their tenure without disclosing the same to the Government, and have transferred the proceeds of their corruption abroad, and also relocated their families and themselves post-retirement while continuing to draw pension (themselves and their family members after their death) from the national exchequer. It is such people who have undermined the value of the bona fide overseas Pakistanis. It is clarified that the genuine overseas Pakistanis and their families and children are real assets of Pakistan and are more than welcome, rather we encourage them, to return to Pakistan to work in the public and private sectors to contribute as per their choice and experience.

40. Be that as it may, there can be no two opinions that the issue of dual nationality does raise potential concerns regarding loyalty. At this point it would be relevant to consider Article 5 of the Constitution which reads as under:-

"Loyalty to State and obedience to Constitution and law 5.

(1) Loyalty to the State is the basic duty of every citizen.

(2) Obedience to the Constitution and law is the inviolable obligation of every citizen wherever he may be and of every other person for the time being within Pakistan."

[Emphasis supplied]

In Syed Mehmood Akhtar Naqvi's case⁵ (supra), Justice Jawwad S.Khawaja (as he was then) discussed the concept of divided loyalty by stating in his concurring note that:-

"6. When trying to understand the spirit behind Article 63(1)(c), the first point that needs to be considered is the fiduciary role envisaged for members of Parliament in our Constitution. In a number of judgments, we have emphasized the notion that all state authority is in the nature of a "sacred trust" and its bearers should therefore be seen as fiduciaries. In Muhammad Yasin v. Federation of Pakistan (PLD 2012 SC 132), we held that "holders of public office ... are, first and foremost fiduciaries and trustees for the People of Pakistan. And, when performing the functions of their Office, they can have no interest other than the interests of the honourable People of Pakistan...". Parliamentarians, while acting as trustees and the chosen representatives of the people, take decisions which are often of grave consequence for the protection of the economic, political and over-all national interests of the people of Pakistan. In other words, theirs is a fiduciary duty of the highest order...

7. It is well settled that the foremost obligation of a fiduciary is to show complete loyalty to the principal and to scrupulously avoid situations which may create a conflict of interest in the performance of such duty. Cognizant of this principle, our Constitution requires constitutional functionaries including members of the National Assembly, Senators and members of Provincial Assemblies to solemnly swear that they will "bear true faith and allegiance to Pakistan" and act "always in the interest of the sovereignty, integrity, solidarity, well-being and prosperity of Pakistan." (Third Schedule, Constitution)

8. It should be obvious that holding dual citizenship is likely to create situations for the holder where he faces a conflict of interest in the discharge of fiduciary duty to the people of Pakistan. The conflict of interest is particularly evident when the acquisition of foreign citizenship entails taking an oath of allegiance to the foreign state and renunciation of allegiance to Pakistan ... Clearly, oaths of this nature, do conflict with the fiduciary obligation of unswerving and undivided loyalty to Pakistan and its people. It is hard to see how someone who has openly "renounce[d] and abjure[d]" all allegiance to Pakistan or who has sworn allegiance to a foreign monarch, can then be safely entrusted with the "sacred trust" of protecting the interests of the people of Pakistan. In sum, therefore, acquiring the citizenship of a foreign state does create a serious conflict of interest; such conflict of interest renders a person unsuited for discharging a fiduciary duty as onerous as being a public representative. This is precisely the spirit in which the framers have enacted Article 63(1)(c) of the Constitution, which prevents citizens who acquire the citizenship of another state from entering or remaining in Parliament and in the Provincial Assemblies."

[Emphasis supplied]

Whether dual nationality ought to be recognized or not is a policy decision that varies from country to country. Developed countries such as USA have adopted a general policy of tolerance therefore blanket bans or rules against dual nationality are not in vogue. Instead, there are mechanisms of security clearance evaluations and determinations in accordance with government-wide orders and standards.⁶ However in Pakistan, Section 14 of the Citizenship Act imposing a blanket ban against dual nationality from its very inception indicated a less tolerant approach towards this concept (of dual nationality). It was only 21 years later through the Pakistan Citizenship (Amendment) Act, 1972 that sub-Section (3) was inserted into Section 14 *ibid* permitting dual nationality basically at the pleasure of the Federal Government. At the very least, this indicated a shift in Pakistan's stance regarding dual nationality which should not be considered to be abnormal considering the advantages of dual nationality that cannot be ignored in today's day and age of globalization. Apart from enabling political integration and participation, it allows people to live and work in either of the countries of which they are nationals and facilitates visits and travel to and fro, without forcing one to sever ties with his country of origin (or either country for that matter).

41. The statements regarding dual nationality in the extract reproduced hereinabove do not have a direct bearing on the instant matter which differs somewhat from the issue before the Court in Syed Mehmood Akhtar Naqvi's case⁷ (*supra*) which concerned the Framers' intent and the Constitutional bar against dual nationality on elected representatives. However no such bar exists in the Constitution with respect to the non-elected government officials who are not required to take oath as the others are required to including elected representatives and members of the armed forces. Be that as it may, we cannot lose sight of the fact that divided loyalty does not necessarily mean disloyalty to Pakistan. There are many dual nationals or even foreigners of Pakistani origin for that matter who possess great love and affection for Pakistan and express it in the form of foreign remittances or by working in Pakistan, etc. Nonetheless, a real concern as raised by the opponents of dual nationality is that of divided loyalties leading to potential national security risks. It is in light of both the advantages and disadvantages of dual nationality that leads us to consider the adoption of a

balanced approach where certain important positions in government service and public offices where indeed complete and undivided loyalty to Pakistan is required ought to be restricted to those who are citizens of Pakistan only. At the same time, keeping the door open for the Pakistani diaspora abroad who are an immense source of talent, skills, experience and competence, dual nationals and foreigners of Pakistani origin (and even non-Pakistani origin for that matter) ought to be allowed to work in various public and private sector entities in Pakistan such as health, education, etc. where they can share their wisdom, training, skills and learning and contribute to a better Pakistan.

Proposals

42. This opinion indicates certain concerns which are of such fundamental nature that cannot be addressed through judicial interpretation. Hence the proper course would be for Parliament to consider the following proposals in light of the existing law discussed and the concerns raised herein.

43. Insofar as dual nationals are concerned, they fall within the definition of citizens. It is for the Federal and Provincial Governments to consider whether they should:-

- i. Formulate negative list(s) of posts within the Government service to which citizens holding dual nationalities or whose spouses are dual nationals, should not normally be appointed for reasons of safeguarding national security and/or vital national interest, except with the permission of the respective Cabinets;
- ii. Place before the Parliament and the respective Provincial Assemblies at the end of each financial year list(s) of Government servants who are dual nationals and/or married to dual nationals, and the posts held by them;
- iii. Formulate negative list(s) of posts (decision-making/top managerial posts perhaps) within autonomous/semi-autonomous statutory bodies/organizations and companies etc. which are owned/controlled/governed by the Federal and/or Provincial Governments, to which citizens holding dual nationalities or whose spouses are dual nationals, should not normally be appointed for reasons of safeguarding national security and/or vital national interest, except with the permission of the respective organization or parent department; and
- iv. Place before the respective organizations or parent departments at the end of each financial year list(s) of employees of autonomous/semi-autonomous statutory bodies/organizations and companies etc. which are owned/controlled/governed by the Federal and/or Provincial Governments who are dual nationals and/or married to dual nationals, and the posts held by them.

44. With regard to the government servants whose spouses possess nationalities other than that of Pakistan, i.e. who are foreigners (including those of Pakistani origin), the respective Governments may consider that the proposals mentioned in paragraph No.43(i) to (iv) should also apply to the concerned officers.

45. With respect to foreigners, which include those of Pakistani origin who hold POCs, it is for the Federal and Provincial Governments to consider whether they should:-

- i. Impose a blanket ban on employment of non-citizens, i.e. foreigners (of Pakistani or non-Pakistani origin) on employment within the Government service;

- ii. The Federal and Provincial Governments should, preferably in conjunction with each other, develop criteria and standard operating procedures with regard to the employment of non-citizens within the Government service where relaxation from the general prohibition is deemed necessary in the public interest. The employment of non-citizens should be subject to approval of the respective Cabinets;
- iii. Formulate negative list(s) of posts within autonomous/ semi- autonomous statutory bodies/organizations and companies etc. which are owned/controlled/governed by the Federal and/or Provincial Governments, to which non-citizens should not normally be appointed for reasons of safeguarding national security and/or vital national interest, except with the permission of the respective organization or parent department; and
- iv. Place before the respective organizations or parent departments at the end of each financial year list(s) of employees of autonomous/semi-autonomous statutory bodies/ organizations and companies etc. which are owned/controlled/governed by the Federal and/or Provincial Governments who are non-citizens, and the posts held by them.

46. The Federal Government should also be required to submit annual reports to Parliament with regard to the enforcement/ implementation of the Act of 1966 prohibiting employment of ex-Government servants with foreign governments and agencies.

7. The acquisition of foreign nationalities and permanent residence permits, etc. by citizens during employment in the Government service or autonomous/semi-autonomous statutory bodies/organizations and companies etc. which are owned/controlled/governed by the Federal and/or Provincial Governments, indicates, prima facie, and indeed in many cases (but not all) is, an intention to securely dispatch ill-gotten gains procured during service and to relocate their families and/or themselves during service and/or after retirement. Such individuals deserve no leniency. After determination by the competent authority, such officials must be given a deadline of either rescinding their foreign nationalities obtained during service or resign from service immediately. This is intended to send a strong signal to all officials in the employment of the Government of Pakistan at any level that they must not deceive Pakistan by breaking the trust that they have been bestowed upon by virtue of their office. The necessary rules/regulations in this regard may be made/amended by the Federal and/or Provincial Governments, preferably in conjunction with each other. Furthermore, the Federal and/or Provincial Governments should develop criteria and standard operating procedures requiring disclosure of the intent to seek such foreign nationalities and permanent residence permits, etc., and adopt methods to check such instances and enforce penalties for non-disclosure. Such criteria and standard operating procedures could possibly be incorporated into the existing efficiency and discipline rules/regulations etc. by way of amendment or be adopted independently.

48. Before parting we would like to express our appreciation for the valuable assistance rendered by the learned amici curiae. The instant matter is accordingly disposed of in the foregoing terms. The noted civil miscellaneous applications are also disposed of accordingly.

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49. As has been held above in this opinion, dual nationals are citizens under the Citizenship Act, however in the instant case it was established on the record that the

petitioner failed to disclose the factum of obtaining green card of USA particularly when he was reinstated in government service. The office memoranda issued by the competent authority directing the petitioner to surrender his green card failure of which would result in disciplinary proceedings under the relevant law have been correctly upheld by the learned High Court in its constitutional jurisdiction vide impugned judgment which does not warrant interference by this Court. Besides, according to the documents filed vide C.M.A. No.4428/2018 the petitioner has been issued a show cause notice by the competent authority to which he has responded. Therefore the matter may be dealt with by such authority in accordance with law.

In light of the above, this petition is accordingly dismissed.

MWA/D-5/S

Order accordingly