Form No: HCJD/C-121
ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD (JUDICIAL DEPARTMENT)

W.P. No.3061/2022

Muhammad Sajid

Versus

Imran Ahmed Khan Niazi and another

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	21.05.2024	Syed Hamid Ali Shah, Advocate for the petitioner. Mr. Naeem Haider Panjutha, Muhammad Azhar Siddique, Advocates for the respondent No.1. Mrs. Shaista Tabassum, Assistant Attorney General, for respondent No.2/ECP.

Arbab Muhammad Tahir, J.- This petition was heard on 30.03.2023 by a Larger Bench comprising of one of us (*Mr Justice Arbab Muhammad Tahir, J.*), *Mr Justice Aamer Farooq,* learned Chief Justice and *Mr Justice Mohsin Akhtar*, learned Senior Puisne Judge. Learned counsels for the respondent (*Mr Imran Ahmed Khan Niazi*) had raised objection as to maintainability of the petition, therefore, after hearing extensive arguments of both the sides on this legal point, the judgment was reserved. The Bench was to reassemble for pronouncement of judgment. Perusal of the material available on record reveals that *Mr Justice Mohsin Akhtar Kayani*, learned Senior Puisne Judge had authored and signed his own judgment, to which one of us (*Mr Justice Arbab Muhammad Tahir, J.*) has agreed/concurred. As per judgment of two members of the Larger Bench, the instant petition was "not maintainable". The judgment of the two Members of the Bench refers to a "Draft judgment" authored by the learned Chief Justice, but the same is not part of the record. The said Bench was to reassemble and pronounce the verdict, obviously opinion of the majority as per clause 26 of the Letters Patent of the High Court which provides that if a Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on

any point, such point shall be decided according to the opinion of the majority of the Judges, if there be a majority.

2. Upon reconstitution of the Bench, two of us (*Mr Justice Tariq Mehmood Jehangiri, J.* and *Ms Justice Saman Rafat Imtiaz, J.*) have been included to hear this petition whereas, the learned Chief Justice and *Mr Justice Mohsin Akhtar Kayani*, learned Senior Puisne Judge have been excluded. There is no judicial order on record showing that said learned Members of the Bench may have recused themselves from hearing this petition, particularly when one of them (*Mr Justice Mohsin Akhtar Kayani,* learned Senior Puisne Judge) had authored and signed his own judgment, agreed to by *Mr Justice Arbab Muhammad Tahir, J.* It is pertinent to mention that there is nothing on record that *Mr Justice Mohsin Akhtar Kayani*, learned Senior Puisne Judge may have recused himself from hearing the petition.

3. Perusal of record further shows that before reconstitution of this Bench, one member of the earlier Bench (*Mr Justice Mohsin Akhtar Kayani*, Senior Puisne Judge) had written two office notes (*i.e. one addressed to Secretary to the learned Chief Justice and the other to the Registrar of this Court*) for issuance of cause list so that the Bench reassembles for pronouncement of order of the court. It appears that the Registrar failed to comply with such directions without any plausible explanation. For the sake of convenience both the office notes are reproduced below.-

(Office Note dated 02.05.2023)

> *"With utmost respect, it is submitted that in Writ Petition No.3061/2022 titled "Muhammad Sajid Vs. Imran Ahmad Khan Niazi and another" draft judgment was received from the Hon'ble Chief Justice (the Author Judge). However, the judgment was not assented by me and separate findings have been recorded which are concurred by my learned brother Mr. Justice Arbab Muhammad Tahir, J. The same are submitted herewith in sealed envelop for announcement by tomorrow i.e. 03-05-2023.*
>
> -sd-
> *(MOHSIN AKHTAR KAYANI)*
> *JUDGE*
>
> *Secretary to Hon'ble Chief Justice"*

(Office Note dated 09.05.2023)

"Case bearing Writ petition No.3061 of 2022 titled Muhammad Sajid Vs Imran Ahmed Khan Niazi and another, was heard and reserved for judgment on 30.03.2023 by the Hon'ble Larger Bench, comprising of my lord the Hon'ble Chief Justice, undersigned and my learned brother Arbab Muhammad Tahir, J., judgment whereof has been authored and finalized which was transmitted to Hon'ble Chief Justice, even a note in this regard has been sent on 02.05.2023 to my lord the Hon'ble Chief Justice with request to list the case for announcement on 03.05.2023, despite whereof, case has not yet been listed till todate. On 07.05.2023 speculations were widely shared on social media regarding judgment. Therefore any further delay in release of the judgment singed by two members of the Bench who constitute a majority, could cause aspersion on the outcome of the case and impugn the confidentiality and integrity of the court process and public from the independence of the Court. The case has political ramification in the current scenario. The case has already been notified for announcement hence you are hereby directed to release the judgment of two members Bench today i.e. 09.05.2023 by all means and submit a compliance report, forthwith.

Mohsin Akhtar Kayani
Judge

Registrar:"

4. It is beyond comprehension that despite the repeated requests made in explicit terms by author of the majority judgment, the office failed to issue cause list for pronouncement of judgment, therefore, the judgment authored by *Mr Justice Mohsin Akhtar Kayani*, learned Senior Puisne Judge, agreed to by one of us (*Mr Justice Arbab Muhammad Tahir, J.*), was uploaded on the official website of the Islamabad High Court upon their direction, which too was taken down from the website without their prior approval or consent.

5. There is an "office note" on file, initiated by the learned Chief Justice, wherein while referring to a 'tweet' of a journalist and uploading of the judgment of two members on the website, the learned Chief Justice recused himself from hearing the petition. For the sake of convenience, the same is reproduced below.-

(Office Note dated 10.05.2023)

"The matter was reserved on 30.03.2023, where-after, being the Bench Head and as agreed by other members to the author Judge, sent proposed opinion to the other members of the Bench; however, in return, signed opinions alongwith a note was received, to the effect that judgment be announced on 03.05.2023. The signed opinion was never discussed, which is against the settled practices and judicial norms.

2. On 08.05.2023, my attention was drawn towards tweet by a journalist Shaheen Sehbai which was to the effect that in the instant case, two members have told me (Chief Justice) about their view and the Chief Justice is being pressurized to disqualify Imran Khan. The referred tweet casts aspersions which are frivolous and baseless. Moreover, the tweet is against the law i.e. commenting about the result of a case, when same is pending; also the tweet breaches the privacy of the reserved matter.

3. Today, without the announcement of judgment or issuance of list for announcement or otherwise intimation to parties and their counsels and third Member (Chief Justice) having signed the same, the opinion of two Judges was uploaded alongwith two office notes, which does not constitute judgment of the Court and is against the rules and the norms.

4. In view of the above, since there is no judgment of the Court in the matter in hand, hence I do not wish to be part of the Bench. Office is directed to place the file after doing the needful for reconstitution of the Bench. The signed opinions of the two honourable members with notes shall be sealed."

6. The learned Chief Justice, vide the office note dated 10.05.2023, not only recused himself from hearing the case after sharing his draft judgment (*holding the petition as maintainable*) with co-members and receiving back their separate judgment, but acted as a court of appeal over the judgment of two co-members of the Bench, by issuing directions to the office for reconstitution of the Bench, which had the effect of nullifying judgment of the majority. Three reasons have been offered for dissolution of the Bench, (i) a tweet by a journalist allegedly to be breaching "privacy" of a reserved judgment, (ii) in response to his draft judgment, receiving back signed judgment of two members of the Bench, and (iii) uploading of the judgment of the two co-members on the official website. It is pertinent to mention here that in his office note, the learned Chief Justice has himself

repelled the allegations made by a journalist, by specifically mentioning that the same were *"baseless"*, then how it violated privacy/integrity of a reserved judgment. The alleged breach of privacy or secrecy of a reserved judgment cannot compel the court to abort the process of dispensation of justice to the litigating parties. In fact courts are bound to decide cases in accordance with law and every citizen knows what the law is. We cannot control litigants' thought process to guess the possible outcome of a pending case. Even in the office note, the learned Chief Justice could not point out which particular judicial norm, superior than independence of a judge to form his own opinion, has been violated. In the recent past, we all observed that learned Members of the Larger Bench of the Supreme Court in Suo Motu Case No.01/2023 (*in matter of holding General Elections to the Provincial Assemblies of Punjab and Khyber Pakhtunkhwa*) released their own independent opinions before pronouncement of the order of the Court and were also debated upon in the mainstream electronic/print media, but this was validly not considered as breach of judicial norms and the Bench of the Supreme Court was not dissolved on the ground of "breach of privacy of the judgment". It is admitted in the above reproduced office note of the learned Chief Justice that a judgment was drafted, duly shared with the other co-members, to which they did not agree and rendered their own judgment. To address the point of uploading the judgment without issuance of cause list, it is mentioned here that due to refusal of the Registrar of this Court to issue cause list despite written requests in terms of Order XX CPC by the learned Senior Puisne Judge, the two members of the Bench were compelled to release of their judgment on the official website. The release of the judgment of majority without issuance of cause list was not a "fault" or "lapse" but due to "defiance" of the Registrar of this Court.

7. In the facts and circumstances of this case, the following questions need determination.-

(i) Can this Bench rehear and re-adjudicate a petition, which has been declared to be not

maintainable by a Bench (*comprising of equal members, having the same jurisdiction*), though by majority and whether this Bench is vested with powers to *suo motu* review the judgment of majority *and* arrive at a different conclusion on merits?

(ii) What is the legal effect of the opinion of majority of the earlier Bench, particularly when someone makes speculations regarding final outcome of cases having political consequences.

(iii) Can the Chief Justice use his administrative powers as a tool to suppress dissent?

8. A constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter the "Constitution") is procedurally governed by the provisions of the Code of Civil Procedure, 1908 (hereinafter "C.P.C."). Sub-section (2) of section 9 of C.P.C. defines "judgment" as meaning the statement given by the Judge of the grounds of a decree or order. The points for determination and decision thereon on the basis of available record are the essential features of a judgment/order. The Supreme Court in the case titled *"Raja Muhammad Afzal v. Ch. Muhammad Altaf Hussain and others"* [1986 SCMR 1736], has held that the detailed reasons necessarily include the law and the grounds on which the decision is founded, apart from the reasons appearing from the case set out by the parties. In the case titled *"M.D. Civic Centre Hyderabad v Abdul Majeed & other"* [PLD 2002 S.C. 84], it was held that "judicial pronouncement (judgment) by a Judicial Officer should be based on the evidence/material available on record and the reasons must be outcome of the evidence available on record and on the basis of such reasons conclusion should be drawn and if the order lacks of these ingredients it cannot be termed to be a judicial verdict (judgment) in stricto senso and at the best such pronouncement can be termed to be an administrative order incapable to settle controversy judicially

between the parties. The judgment of the two members of the Larger Bench of this Court has determined a controversy in the light of submissions of the parties and material available on record, which if not disturbed by a competent appellate forum, has to be regarded as a "judgment" and shall not lose its efficacy merely for the reason that the Registrar of this Court refused to issue cause list, despite written request. Hence for all intents and purposes the lis in hand is a decided matter and not open for re-adjudication by the *same forum.*

9. There is no application by any party to the proceedings under any provision of C.P.C. seeking review or rectification of any clerical or arithmetical mistake in the order/judgment. It is settled law that an order/judgment can be reviewed only when an error is apparent on the face of record and it must be so manifest, so clear, that no Court could permit such an error to remain on record. If the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not competent. The circumstance that the view canvassed in the review petition is more reasonable than the view already expressed by the Court in the order of which review is sought would not be sufficient to maintain a review petition. Reliance is placed on the cases titled *"Mahmood Hussain Lark & others v. Muslim Commercial Bank Limited & others"* [2010 SCMR 1036] and *"Syed Wajihul Hassan Zaidi v. Government of the Punjab and others"* [PLD 2004 SC 801].

10. The Supreme Court in the case titled *"Dr Imran Khattak v. Ms Sofia Waqar Khattak, PSO to Chief Justice and others"* [2014 SCMR 122], has held that this Court is not vested with *suo motu* powers. As discussed above, the power of review is also limited, that too cannot be invoked to alter the conclusion drawn on merits. Above all we are not setting in appeal over the original judgment of the Bench. The Bench of three Judges (including one of us) had finally heard the petition on the question of maintainability. As per judgment of two members of the Bench the petition was not maintainable and reasons have been recorded in support thereof, which judgment is available on record, whereas, opinion of one member (the learned Chief Justice)

became the minority view. Unless such findings are disturbed in appeal by an appellate forum and the matter is remanded, we cannot re-adjudicate the same petition again due to the mere fact that composition of the Bench has changed just before pronouncement of the judgment.

11. The Chief Justice of this Court is vested with power to "constitute" benches for hearing of matters coming before him. But the power once exercised, the Chief Justice cannot subsequently alter or modify constitution of such a Bench unless the matter is referred back to him through a judicial order. There is difference between "constitution", "reconstitution" and "dissolution" of benches. This distinction has a very close nexus with the nature and stage of proceedings. If any member of a bench is not available or he has disqualified himself to hear such matter on any ground or the bench refers the matter back to the Chief Justice due to any reason for reconstitution of Bench, then the Chief Justice regains the authority and can pass appropriate orders. But when the matter is heard, arguments are concluded and the case is reserved for judgment then the Chief Justice is divested of the power to transfer the case from one bench to another or reconstitute/dissolve such Bench. It is then regarded as use of administrative power to manipulate outcome of a judicial proceedings. In a nutshell, no power is vested with the learned Chief Justice to reconstitute a Bench once it has been constituted, unless such a Bench requests its reconstitution through a judicial order. The matter becomes more serious when the Chief Justice himself is member of the Bench. He is then aware of the possible outcome of a judicial matter. It becomes even more serious when the learned Chief Justice authors a Judgment and such draft is circulated to co-members of the Bench while the co-members of the Bench show disagreement with opinion of author/Chief Justice, render their own judgment and duly communicate the same to the Chief Justice.

12. Dissent is a "precious right" of a Judge, which he exercises whenever he believes it to be necessary. It is an opportunity for a Judge to express his discontent with the decision handed down by the

co-member(s) of the Bench. It is an ever-present litmus test for the contrary opinion which it must be able to pass again and again. The difference of opinion between members of the Bench cannot be a valid ground for reconstitution of the Bench. Judges as members of a Bench, including the learned Chief Justice, are equally entitled to form their own independent view. Their independence cannot be curtailed through administrative means. The learned Chief Justice has observed in his note that the two members of the Larger Bench after receiving his draft judgment, without consulting him, sent their own signed judgment. Not agreeing with opinion of the Chief Justice and expression of independent view is neither a sin nor violation of any settled practice. Judicial practices evolve for safeguarding the interest of justice, but these practices cannot cage independence of a Judge to form opinion in accordance with law as per his own conscience. The learned Chief Justice had formed an opinion that the petition is maintainable, to which the other two members disagreed. The act of reconstitution of the Larger Bench by the learned Chief Justice, after receiving separate judgment from two co-members of the Bench, *prima facie*, qualifies as stifling the independent judgment of two co-members of the Bench. The learned Chief Justice was free to express his own judicial opinion, but could not have blocked judgment of the majority by a single stroke of his pen on administrative side through reconstitution of the Bench. In this case, the learned Chief Justice, being author of the minority view, could not have used his administrative power to suppress the judgment of the majority.

13. As noted above, the findings of a Judge, if found to be based on defective legal reasoning can be corrected in appeal by appellate authority. Every day we observe that lawyers and litigants after arguing political cases before Benches of this Court talk to the media and express their expectation of getting favourable decision. We cannot carve out an excuse out of such media talk for aborting the process of dispensation of justice. There are two parties to the proceedings, the plaintiff and the defendant. They join proceedings before a Court with the optimism of getting favourable verdict. But the

Court does, what is right and in accordance with law. It may be against the claimant, favourable to the defendant. What if before pronouncement of judgment by the Court, the claimant publically claims that the decision is in favour of the defendant (in order to block a decision in favour of defendant) and posts such opinion on print, electronic or social media. Would the court step back and stop dispensing justice fearing baseless potential allegations of connivance. The cases pending before courts having political consequences are frequently debated upon in the mainstream print/electronic media as well as social media. Can we allow our judicial findings to be controlled by speculations of parties to a case or their proxies and ignore the mandate of law. Obviously not. If this Court starts falling victim of such silly tactics, then we will be allowing evil minds to interfere with and engineer possible outcome of judicial matters, besides making it impossible for the Court to act as independent arbiter of disputes. Every litigant expecting unfavourable decision from a court would publicly level baseless allegations and influence the outcome of judicial proceedings including constitution/dissolution of Benches. If we set such precedents, it will erode public trust and confidence in the rule of law, administration of justice and independence of judiciary.

14. The Supreme Court, in the case titled *"Independent Media Corporation v. Federation of Pakistan, etc."* [PLD 2014 SC 650] while referring to Article 4 of the Code of Conduct prescribed by the Supreme Judicial Council for Judges of the Superior Courts has observed that only such persons can trigger recusal of a Judge from hearing a particular case, who are considered to be close by a Judge. In the referred case, the Supreme Court re-affirmed and reproduced the following passage from the judgment titled *"General (R) Pervez Musharraf v. Nadeem Ahmed (Advocate) and another"* [PLD 2014 SC 585].-

> "6. Judges, it may be noted, do encounter allegations of bias and also receive criticism some of which may be expressed in civil language while others may be through hate speech or outright vilification based on malice. In either event, the

> Judge by training does not allow such vilification to cloud his judgment in a judicial matter. Even extremely derogatory language used against Judges does not, by itself create bias, as is evident from the negligible number of contempt cases based on scandalisation of Judges, (none leading to a sentence) cited in the case titled Baz Muhammad Kakar vs. Federation of Pakistan (PLD 2012 SC 923). Courts, therefore, cannot decide questions of perceived bias by accepting the individual and personal views of an aggrieved petitioner and thus recuse from a case … if a subjective perception of bias could be made a basis for recusal of a Judge … it would be very simple for any litigant not wanting his case to be heard by a particular Judge to start hurling abuses at such Judge and thereafter to claim that the Judge was biased against him."

In the referred case, the Supreme Court further observed that "these instances show that there can be reasons, other than those that meet the eye, which may motivate a remark or comment. If judges do not deal firmly with such remarks (where unfounded) this may encourage unscrupulous or uninformed elements into saying things which may erode the standing, respect and credibility of the Court... Courts are not to succumb to any remark, defamatory or otherwise. It is the conscience of the Judge himself which must determine his decision to sit on a Bench or not."

15. The basis of disqualification for a judge to hear a case is "personal bias or prejudice" of such a nature as would necessarily render him unable to exercise his functions impartially in a particular case, and this must be shown as a matter of fact and not merely as a matter of opinion. In the absence of any constitutional or statutory bar, a Judge is not disqualified merely for the reason that speculations are being made regarding the possible outcome of a judicial matter. Separation of power ensures judicial independence vis-à-vis other pillar of the state as well as within the institution of judiciary. Horizontal independence within a judicial institution is equally important. No judge can attempt to influence the outcome of a matter by trying to affect the opinion of a peer, either directly or indirectly. In

the case titled *"Justice Qazi Faez Esa and others v. President of Pakistan and others"* [PLD 2022 SC 119], it has been held that history is witness to the fact that the fundamental rights, particularly of those who are the most vulnerable, becomes the first causality in societies where the judiciary comprises those who were compromised and thus susceptible to being influenced from those wielding power and influence. The edifice of the judicial independence rests on the assumption that every Judge besides being fair and impartial is fiercely independent and is free to uphold his judicial views. This judicial freedom is fundamental to the concept of the rule of law. Any attempt to muffle judicial independence or to stifle dissent shakes the foundation of a free and impartial judicial system, thus eroding public confidence on which the entire edifice of judicature stands. Public confidence is the most precious asset of this organ of the state, which controls neither the sword nor the purse. A judge whose decisions are dictated not by the fidelity to the letter and spirit of the law but based on what he deems to be palatable to the Government would cause irretrievable damage to the public confidence in the judiciary, and consequently jeopardize its credibility and moral authority. Judges should not be, in the words of Lord Denning, "diverted from their duty by any extraneous influence, nor by hope of reward nor by fear of penalties, nor by flattering praise, nor by indignant approach".

16. The nutshell of the above discussion is that, the learned Chief Justice was not vested with power to dissolve a Bench of which he himself was a member, particularly at a stage when he himself had authored his opinion and shared the same with co-members of the Bench. After receiving the signed judgment from the co-members and realizing that his opinion is the minority, he could have pronounced judgment of the majority rather than blocking the same by way of withholding his already drafted opinion, belated recusal and reconstitution of Bench on the basis reference to some judicial norms. The opinion of the majority could not have been stifled. The Larger Bench comprised of three learned Judges

including the Chief Justice and agreement of two of them on any legal point is the majority. The said judicial opinion/judgment of majority is in field with full force and cannot be nullified through an office note or issuance of a press release on administrative side by the Chief Justice in his administrative capacity. The judgments of the court are based on reasons and material available on record and not the speculations of uncertain characters. Such speculations cannot be allowed to divert the outcome of judicial matters through dissolution / reconstitution of Benches.

17. Under the above peculiar facts and circumstances, we hold that reconstitution of this Bench as without lawful authority. Such reconstitution of Bench, after all members have rendered their judgments, is unprecedented. We cannot re-adjudicate an already decided petition. The earlier Bench was comprising of three learned Judges, wherein the opinion/judgment rendered by *Mr Justice Mohsin Akhtar Kayani, J.,* agreed to by one of us (*Mr Justice Arbab Muhammad Tahir, J.*), dismissing the petition as not maintainable, commands support of the majority. The opinion of the majority was de-sealed in the open court, which shall be released to the parties. The same shall hold the field, obviously subject to an order of the court of appeal, if any.

The above are the reasons for our short order, dated 21.05.2024, reproduced below, which shall be read as integral part of this order.-

> **"**The instant writ petition was filed on 20.08.2022 with the following prayer;
>
> > *"It is most respectfully prayed that this Honorable Court may be pleased to call upon Respondent No.1, to appear and state as to why in violation of Article 62(1)(d)€(f) he submitted a false declaration and affidavit and as to why he should be allowed to be a member of the Parliament following the principle laid down by the Honorable Supreme Court of Pakistan in Imran Ahmed Khan Niazi v. Nawaz Sharif, Prime Minister of Pakistan/Member of National Assembly (PLD 2017 SC 265) may not be de-seated in all*

accumulated consequences for the violation of the relevant provisions of Constitution and law."

2. Initially the writ petition was heard by a Single Bench comprising of Mr. Justice Aamer Farooq, during pendency, he recommended for constitution of Larger Bench on 02.02.2023 which was constituted by him on 09.02.2023 as Chief Justice, comprising of Hon'ble Chief Justice Aamer Farooq, Hon'ble Mr. Justice Mohsin Akhtar Kayani and Hon'ble Mr. Justice Arbab Muhammad Tahir, case was heard, arguments on behalf of both the parties were concluded and two members of the Bench rendered a judgment.

3. Hon'ble Chief Justice Mr. Aamer Farooq vide note dated 10.05.2023, recused himself and passed a direction that the judgment of both the judges should be sealed and subsequently constituted this Bench. Today in open Court in presence of the parties, audience and the journalists, envelope has been de-sealed, it revealed that Hon'ble Justice Mohsin Akhtar Kayani and Hon'ble Justice Arbab Muhammad Tahir, (the latter is member of this Bench) had given a detailed judgment, whereby the instant petition has been dismissed.

4. In view of the judgment by majority of the Bench dismissing the petition, we are of the view that for the reasons to be record later no further proceedings are necessitated. The judgment dated 02.05.2023 and the two notes are appended herewith.**"**

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

(ARBAB MUHAMMAD TAHIR)
JUDGE

I have appended my separate reasons herewith.

(SAMAN RAFAT IMTIAZ)
JUDGE

Saman Rafat Imtiaz, J.- These are my detailed reasons for the short order dated 21-05-2024.

2. This petition was fixed before this Bench on 21-05-2024. A sealed envelope on file was de-sealed in open Court, which disclosed a judgment dismissing the instant petition. Given the peculiar circumstances as aforementioned, it is necessary for this Bench to first and foremost determine whether the matter can be proceeded with before us. To this end, it is necessary to take stock of the case history of the instant matter.

Background

3. The order sheet records that it was previously heard on 30-03-2023 by a Larger Bench of equal number of members comprising *Mr. Justice Aamer Farooq,* the learned Chief Justice; *Mr. Justice Mohsin Akhtar*, the learned Senior Puisne Judge; and one of us (*Mr. Justice Arbab Muhammad Tahir, J.*). The arguments of both the sides concluded on 30-03-2023. The judgment retrieved from the sealed envelope has been authored and signed by *Mr. Justice Mohsin Akhtar Kayani*, learned Senior Puisne Judge on 02-05-2023 holding the instant petition as "not maintainable" and has been agreed/concurred to by one of us (*Mr. Justice Arbab Muhammad Tahir, J.*). The judgment of the two Members of the Bench refers to an order authored by the learned Chief Justice which was not agreed to by the said two members but the same is not part of the record.

4. Perusal of the record further shows that one member of the Bench (*Mr. Justice Mohsin Akhtar Kayani*, Senior Puisne Judge) wrote two office notes, including one to the Registrar of this Court, to issue cause list for pronouncement of order of the court. For the sake of convenience both the office notes are reproduced below.-

(Office Note dated 02.05.2023)

> *"With utmost respect, it is submitted that in Writ Petition No.3061/2022 titled "Muhammad Sajid Vs. Imran Ahmad Khan Niazi and another"* ***draft judgment was received from the Hon'ble Chief Justice (the Author Judge)****. However, the judgment* ***was not assented by me and separate findings***

have been recorded which are concurred by my learned brother Mr. Justice Arbab Muhammad Tahir, J. <u>The same are submitted herewith in sealed envelope for announcement by tomorrow i.e. 03-05-2023.</u>

-sd-

(MOHSIN AKHTAR KAYANI)
JUDGE

<u>Secretary to Hon'ble Chief Justice"</u>

[Emphasis added].

<u>(Office Note dated 09.05.2023)</u>

"Case bearing Writ petition No.3061 of 2022 titled Muhammad Sajid Vs Imran Ahmed Khan Niazi and another, ***was heard and reserved for judgment on 30.03.2023*** *by the Hon'ble Larger Bench, comprising of my lord the Hon'ble Chief Justice, undersigned and my learned brother Arbab Muhammad Tahir, J., judgment whereof has been authored and finalized which was transmitted to Hon'ble Chief Justice, even* ***a note in this regard has been sent on 02.05.2023 to my lord the Hon'ble Chief Justice with request to list the case for announcement on 03.05.2023****, despite whereof, case has not yet been listed till todate. On 07.05.2023 speculations were widely shared on social media regarding judgment. Therefore any further delay in release of the judgment signed by two members of the Bench who constitute a majority, could cause aspersion on the outcome of the case and impugn the confidentiality and integrity of the court process and public from the independence of the Court. The case has political ramification in the current scenario. The case has already been notified for announcement* ***hence you are hereby directed to release the judgment of two members Bench today i.e. 09.05.2023 by all means and submit a compliance report, forthwith.***

Mohsin Akhtar Kayani
Judge

<u>Registrar:"</u>

[Emphasis added].

5. It appears that the Registrar failed to comply with such explicit directions.

6. There is an "office note" dated 10-05-2023 on file, initiated by the learned Chief Justice, whereby the learned Chief Justice has recused himself from hearing the petition. For the sake of convenience, the same is reproduced below.-

<u>(Office Note dated 10.05.2023)</u>

*"**The matter was reserved on 30.03.2023,** where-after, being the Bench Head and as agreed by other members to be*

the author Judge, sent proposed opinion to the other members of the Bench; however, in return, ***signed opinions along with a note was received, to the effect that judgment be announced on 03.05.2023.*** *The signed opinion was never discussed, which is against the settled practices and judicial norms.*

2. On 08.05.2023, my attention was drawn towards tweet by a journalist Shaheen Sehbai which was to the effect that in the instant case, two members have told me (Chief Justice) about their view and the Chief Justice is being pressurized to disqualify Imran Khan. The referred tweet casts aspersions which are frivolous and baseless. Moreover, the tweet is against the law i.e. commenting about the result of a case, when same is pending; also the tweet breaches the privacy of the reserved matter.

3. Today, without the announcement of judgment or issuance of list for announcement or otherwise intimation to parties and their counsels and third Member (Chief Justice) having signed the same, the opinion of two Judges was uploaded alongwith two office notes, ***which does not constitute judgment of the Court*** *and is against the rules and the norms.*

4. ***In view of the above, since there is no judgment of the Court in the matter in hand, hence I do not wish to be part of the Bench. Office is directed to place the file after doing the needful for reconstitution of the Bench. The signed opinions of the two honourable members with notes shall be sealed.****" [Emphasis added].*

7. Thereafter, on 04-07-2023 the Deputy Registrar sought reconstitution of the Bench. The learned Chief Justice reconstituted the Bench vide an administrative order dated 26-07-2023, whereby two of us (*Mr. Justice Tariq Mehmood Jehangiri, J.* and *Ms. Justice Saman Rafat Imtiaz, J.*) were included in this Bench to hear this petition instead of the learned Chief Justice and *Mr. Justice Mohsin Akhtar Kayani*, the learned Senior Puisne Judge.

8. In the facts and circumstances of this case, the following questions need determination.-

(i) Whether the opinion of a majority of the Judges on a Bench constitutes the judgment of the Court?

(ii) Whether a Bench can be reconstituted after the majority has rendered judgment?

(iii) Whether a Bench of equal strength can rehear and re-adjudicate a petition that has been decided by a Bench comprising equal number of members?

(i) Whether the opinion of a majority of the Judges on a Bench constitutes the judgment of the Court?

9. As per clause 26 of the Letters Patent (applicable upon this Court by virtue of Section 5 of the Islamabad High Court Act, 2010) if a Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any points, such points shall be decided according to the opinion of the majority of the Judges, if there be a majority. Clause 26 of the Letters Patent is reproduced herein below:

> *"26. And We do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Lahore in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court, thereof, appointed or constituted for such purpose in pursuance of section one hundred and eight of the Government of India Act, 1915;* ***and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any points, such points shall be decided according to the opinion of the majority of the Judges, if there be a majority,*** *but, if the Judges be equally divided, they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it." [Emphasis added].*

10. Justice Mansoor Ali Shah, in his dissenting note in *Messrs Cherat Cement Co. Ltd., Nowshera and Others vs. Federation of Pakistan through Ministry of Petroleum and Natural Resources and Others*, PLD 2021 Supreme Court 327 elaborated upon the concept of majority opinion as follows:

> ***"It is well-established practice of this Court that when a case is heard by a Bench of two or more Judges, the case is decided in accordance with the opinion of such Judges or of the majority of such Judges. Judgment or order of the Court is pronounced in terms of the majority opinion****;* ***such judgment or order is*** *of the Bench that heard the case and, for that matter,* ***of the Court, and not only of the Judges whose opinion prevailed as a majority opinion.*** *This is why a unanimous opinion of a five-Member Bench on a legal question can be overruled by a majority of four Judges while sitting in a seven-Member Bench. It is the numeric strength of the whole Bench that determines the judicial power of its Members, and not the numbers of the individual Judges in majority." [Emphasis added].*

11. Two members of the former Larger Bench of this Court have decided the point of maintainability of this petition. Thus, the opinion of the two members of the former Larger Bench on the point of maintainability of this petition constitutes the judgment of the Court as such two members were the majority.

12. For removal of any doubt created on account of Order XX, Rule 1(2), C.P.C., it may be borne in mind that by virtue of Section 117, C.P.C., a civil proceeding before a High Court in writ jurisdiction is governed by the provisions of the Code[1] but only to the extent of provisions which are not specially excluded[2]. In this regard it may be noted that Order XLIX, Rule 3 (5), C.P.C., specifically provides that Rules 1 to 8 of Order XX, C.P.C., shall not apply to any High Court in the exercise of its ordinary or extraordinary original civil jurisdiction. Thus the provision of Order XX, Rules 1 to 3, C.P.C. or the principles underlying it are of no avail in view of the express provision made in Order XLIX, Rule 3, C.P.C., which excludes the operation of such rules to proceedings in High Court in the exercise of its ordinary or extraordinary original civil jurisdiction as held by the apex Court in *Mirza Abdul Hameed and others Vs. Member, Board of Revenue-II*, 1986 SCMR 257.

13. Even when applicable, the apex Court has already held in *Muhammad Nadeem Arif Vs. Inspector General of Police, Punjab, Lahore*, 2011 SCMR 408 that the provisions contained in Order XX, Rule 1(2), C.P.C., are directory in nature and not mandatory.

14. Last but not least, it is important to bear in mind that the rules of procedure are the tools to advance the cause of justice and cannot be used to cause miscarriage of justice[3]. In the instant case, it cannot be lost sight of that it is a matter of record that the judgment was not fixed for pronouncement due to the defiance of the Registrar not to issue cause list despite directions to do so and office note to the learned Chief Justice. In such circumstances, the

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[1] *Hussain Bakhsh Vs. Settlement Commissioner, Rawalpindi and others*, PLD 1970 SC 1
[2] *Ardeshir Cowasjee and others Vs. Karachi Building Control Authority and others*, PLD 2004 SC 70
[3] *S.D.O./A.M. Hasht Nagri Sub-Division PESCO, Peshawar Vs. Khawazan Zad*, PLD 2023 SC 174

provisions of Order XX, Rule 1(2), C.P.C., even if applicable, could not have been pressed into service to invalidate the judgment of the majority as it would not serve the cause of justice. Suffice it to say that the Judgment dated 02-05-2023 cannot be nullified on the pretext of Order XX, C.P.C.

(ii) Whether a Bench can be reconstituted after the majority has rendered judgment?

15. Under the Lahore High Court Rules, the Chief Justice of this Court is vested with power to approve the roster to be prepared by the Deputy Registrar from time to time in accordance with which Judges sit singly or in benches of two or more Judges and to nominate the Judges constituting a Division or Full Bench under the Lahore High Court Rules. The relevant Rules are reproduced herein below:

High Court Rules and Orders Volume V
Chapter 3: Jurisdiction

PART A— RULES REGULATING THE PRACTICE OF THE HIGH COURT IN THE HEARING OF CAUSES AND OTHERS MATTERS.

"2. The Judges will sit singly or in benches of two or more Judges in accordance with a roster to be prepared by the Deputy Registrar with the approval of the Chief Justice from time to time."

PART B—JURISDICTION OF A SINGLE JUDGE AND OF BENCHES OF THE COURT.

"4. A Full Bench shall ordinarily be constituted of three Judges, but may be constituted of more than three Judges in pursuance of an order in writing by the Chief Justice.

…

5. ***The Chief Justice shall nominate the Judges constituting a Division or Full Bench.***

…

7. If a majority of a Full Bench of three Judges so determine, by order in writing ***at any time before final decision****, the Full Bench for the decision of any question or case referred to a Full Bench of three Judges shall constituted by four or more Judges according to such direction." [Emphasis added].*

16. Similarly the Chief Justice of Pakistan has the prerogative to constitute benches under Order XI of the Supreme Court Rules, 1980. The Supreme Court in the order reported as Human Rights Case No.14959-K of 2018, PLD 2019 SC 183 while referring to Order XI of the Supreme Court Rules, 1980 explained as follows:

> *"6. The above Rule provides for administrative powers of the Chief Justice to constitute benches.* ***However, once the bench is constituted, cause list is issued and the bench starts hearing the cases, the matter regarding constitution of the bench goes outside the pale of administrative powers of the Chief Justice and rest on the judicial side, with the bench. Any member of the bench may, however, recuse to hear a case for personal reasons or may not be available to sit on the bench due to prior commitments or due to illness. The bench may also be reconstituted if it is against the Rules and requires a three-member bench instead of two. In such eventualities the bench passes an order to place the matter before the Chief Justice to nominate a new bench. Therefore, once a bench has been constituted, cause list issued and the bench is assembled for hearing cases, the Chief Justice cannot reconstitute the bench, except in the manner discussed above.***
>
> ***7. In the absence of a recusal by a member of the Bench, any amount of disagreement amongst the members of the Bench, on an issue before them, cannot form a valid ground for reconstitution of the Bench. Any reconstitution of the Bench on this ground would impinge on the constitutional value of independence of judiciary.*** *The construct of judicial system is pillared on the assumption that every judge besides being fair and impartial is fiercely independent and is free to uphold his judicial view. This judicial freedom is foundational to the concept of Rule of Law. Reconstitution of a bench while hearing a case, in the absence of any recusal from any member on the bench or due to any other reason described above, would amount to stifling the independent view of the judge.* ***Any effort to muffle disagreement or to silence dissent or to dampen an alternative viewpoint of a member on the bench, would shake the foundations of a free and impartial justice system, thereby eroding the public confidence on which the entire edifice of judicature stands.*** *Public confidence is the most precious asset that this branch of the State has. It is also one of the most precious assets of the nation." [Emphasis added].*

17. There is no judicial order on the record of any member of the former Larger Bench recusing himself from hearing the

matter. The only reason for the direction given by the learned Chief Justice for the reconstitution of the Bench vide office note dated 10-05-2023 is his own recusal vide such office note. I do not consider it necessary to evaluate the validity of the reasons for such recusal given therein. Suffice it to say that once the matter has been heard and judgment has been rendered by the majority, the Bench is no longer seized of any matter from which any member of such Bench may recuse himself and any such recusal at such belated stage is a nullity.

18. The fact that the majority had already rendered its opinion is also affirmed by the recusal note dated 10-05-2023 reproduced herein above. In such circumstances the conclusion drawn by way of the recusal note that there is no judgment in hand is contrary to the record and against the provisions of the Letters Patent. Even otherwise, one member of a Bench cannot sit in judgment over whether the opinion of the majority constitutes a judgment or not.

19. Since the recusal by one member of the Bench after rendering of judgment by the majority is of no legal significance, it most certainly does not provide any basis for reconstitution/dissolution of the Bench. It is also important to note that reconstitution of a Bench on account of unavailability of a member or his recusal even at the correct stage of proceedings (i.e. before judgment) would at the most result in the replacement of such member. The recusal by one member can certainly not result in empowering the Chief Justice to oust another member of the Bench. In the instant case, Mr. Justice Mohsin Akhtar Kayani was part of the former Larger Bench who heard the matter and in fact authored what we have hereby held to constitute the judgment of the Court regarding the non-maintainability of the instant petition yet he for unknown reasons has been excluded from this Bench.

20. In a nutshell, the learned Chief Justice was not vested with the power to reconstitute a Bench, particularly at a stage

when he himself had authored his opinion and had received the signed judgment from his co-members who constituted the majority.

(iii) Whether a Bench of equal strength can rehear and re-adjudicate a petition that has been declared not maintainable by a Bench *comprising equal number of members?*

21. The former Larger Bench comprised of three learned Judges. The opinion rendered by *Mr. Justice Mohsin Akhtar Kayani, J.,* agreed to by one of us (*Mr. Justice Arbab Muhammad Tahir, J.*), dismissing the petition as not maintainable constitutes the judgment of the Court which is in the field. In view of the foregoing, the *lis* in hand is a decided matter and not open for re-adjudication by the same forum.

The above are the reasons for our short order, dated 21.05.2024, reproduced below, which shall be read as integral part of this order.-

> **"**The instant writ petition was filed on 20.08.2022 with the following prayer;
>
> > *"It is most respectfully prayed that this Honorable Court may be pleased to call upon Respondent No.1, to appear and state as to why in violation of Article 62(1)(d)€(f) he submitted a false declaration and affidavit and as to why he should be allowed to be a member of the Parliament following the principle laid down by the Honorable Supreme Court of Pakistan in Imran Ahmed Khan Niazi v. Nawaz Sharif, Prime Minister of Pakistan/Member of National Assembly (PLD 2017 SC 265) may not be de-seated in all accumulated consequences for the violation of the relevant provisions of Constitution and law."*
>
> 2. Initially the writ petition was heard by a Single Bench comprising of Mr. Justice Aamer Farooq, during pendency, he recommended for constitution of Larger Bench on 02.02.2023 which was constituted by him on 09.02.2023 as Chief Justice, comprising of Hon'ble Chief Justice Aamer Farooq, Hon'ble Mr. Justice Mohsin Akhtar Kayani and Hon'ble Mr. Justice Arbab Muhammad Tahir, case was heard, arguments on behalf of both the

parties were concluded and two members of the Bench rendered a judgment.

3. Hon'ble Chief Justice Mr. Aamer Farooq vide note dated 10.05.2023, recused himself and passed a direction that the judgment of both the judges should be sealed and subsequently constituted this Bench. Today in open Court in presence of the parties, audience and the journalists, envelope has been de-sealed, it revealed that Hon'ble Justice Mohsin Akhtar Kayani and Hon'ble Justice Arbab Muhammad Tahir, (the latter is member of this Bench) had given a detailed judgment, whereby the instant petition has been dismissed.

4. In view of the judgment by majority of the Bench dismissing the petition, we are of the view that for the reasons to be record later no further proceedings are necessitated. The judgment dated 02.05.2023 and the two notes are appended herewith.**"**

(SAMAN RAFAT IMTIAZ)
JUDGE

JUNAID

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.3061-2022

Muhammad Sajid

Versus

Imran Ahmed Khan Niazi and another.

Petitioner by:	Syed Hamid Ali Shah, Mr. Husnain Ali Ramzan and Mr. Zeeshan Ali Syed, Advocates.
Respondents by:	Mr. Salman Akram Raja, Malik Ghulam Sabir, Mr. Abu Zar Salman Khan Niazi, Malik Nasim Abbas Nasir, Ms. Tabinda Zahra Kalwar and Mr. Ashfaq Ahmed Kharal, Advocates for respondent No.1. Raja Jawad Arsalan, Mr. Usman Rasool Ghumman and Mr. Azmat Bashir Tarar, Assistant Attorney Generals. Mr. Saad Hassan, Advocate, ECP with Zaigham Anees, Law Officer, ECP.
Date of Hearing:	30.03.2023.

.....

MOHSIN AKHTAR KAYANI J. I had the privilege and benefit of going through the order authored by the Hon'ble Chief Justice. However, with utmost humility and respect, I have not been able to persuade myself to the findings and, therefore, my reasoning and findings are as follows:-

2. The petition in hand is in the nature of quo warranto, filed by one Muhammad Sajid, a resident of Islamabad against Imran Ahmed Khan Niazi, Member of the National Assembly. The prayer sought by the petitioner is reproduced below:-

"It is most respectfully prayed that this Honorable Court may be pleased to call upon Respondent No. 1, to appear and state as to why in violation of Article 62(1)(d)(e)(f) he submitted a false declaration and affidavit and as to why he should be allowed to be a member of the Parliament following the principle laid down by the Honorable Supreme Court of Pakistan in Imran Ahmad Khan Niazi v. Nawaz Sharif, Prime Minister of Pakistan/Member of National Assembly (PLD 2017 SC 692) may not be de-seated in all accumulated consequences for the violation of the relevant provisions of Constitution and law".

3. Initially the case in hand was pending before a learned Single Bench, however, the same was later referred to the Larger Bench vide order dated 02.02.2023. The respondent No.1/Imran Ahmed Khan Niazi also raised the question of maintainability of instant writ petition. The learned counsels, besides addressing the question of maintainability, have also touched partly on the merits of the case, being ancillary to the question of maintainability. The objections raised by respondent No.1 and noted by this Court, are as follows:-

- The Respondent is no more holding the public office as Member National Assembly, therefore, a writ of quo warranto cannot be issued against him.
- The declarations sought by the Petitioner require factual inquires, leading to recording of pro & contra evidence of the parties, not permissible in writ jurisdiction.
- The issue involved in the lis in hand has already been decided by this Court in W.P. No.3069/2018 titled "Hafiz Ihtesham Ahmed v. Federation through Federal Secretary, etc." and Election Appeal No.05/2018 titled "Imran Ahmed Khan Niazi v. Returning Officer, Constituency NA-53, Islamabad", therefore, the principles of "res judicata" and "collateral estoppel" are attracted.
- The petition does not disclose any cause of action.

- The foreign judgment cannot be given effect in constitutional jurisdiction, especially when it does not pass the test laid down in Section 13 of the Civil Procedure Code, 1908.
- Insofar as the question of dependency is concerned, there is no acknowledgment or admission on the part of respondent No.1 Imran Ahmed Khan Niazi, that Tyrian Khan White is his dependent.
- The legitimacy of a child Tyrian Khan White could not be questioned in the instant writ petition.
- The effect of affidavit submitted in the year 2017 in compliance of judgment reported as PLD 2018 SC 678 (Speaker National Assembly Vs. Habib Akram) can only be seen to the extent of addressing the question of dependency.
- The office of a party head does not fall within the ambit of "public office".
- The writ of quo warranto requires bonafide of the petitioner and writ could not be granted as a matter of right.

4. The petitioner has raised the following grounds in his petition and has, therefore, sought issuance of writ of quo warranto and declaration:-

i. The respondent No.1/Imran Ahmed Khan Niazi was desirous to contest elections during the 2018 Elections and submitted nomination papers in various constituencies including NA-53, Islamabad, NA-35 Bannu, NA-243 Karachi, NA-95 Mianwali, NA-131, Lahore and NA-95, Mianwali-I.

ii. He filed affidavit accompanied with nomination papers in accordance with the judgment laid down by Supreme Court of Pakistan reported as PLD 2018 SC 678 (Speaker National Assembly Vs. Habib Akram).

iii. That Respondent No.1 has deliberately and willfully failed to declare his daughter Tyrian White in the relevant columns of the Nomination Papers and the Affidavit appended therewith, hence he is not sagacious, righteous, honest and a man of good character in terms of Article 62 of the Constitution. The said article, as Interpreted by various judgments of the Supreme

Courts, prescribes that a candidate shall only qualify to be elected as a member of the National Assembly if he is of good character and is not commonly known as one who violates Islamic Injunctions; and he has adequate knowledge of Islamic teachings and practices; obligatory duties prescribed by Islam as well as abstaining from major sins; he is sagacious, righteous and non-profligate and honest and ameen, there being no declaration contrary by court of law. Therefore, although Petitioner is desirous not to indulge in the personal aspect of a candidate's life, yet, he is compelled to do so as the Constitution and the law command and warrant such intervention there may not be any occasion to shy away from performance of such duty" (ibid).

iv. *The respondent No.1 has neither made the declaration in the nomination papers nor in the Affidavit attached herewith that Tyrian Jade Khan is his child born on 15th June, 1992 (born from his illicit relationship with Ana Luise (Sita) White daughter of the late Lord Gordon White, a flamboyant head and co-founder of the American arm of the giant Industrial Congiomerate Hanson PLC), even though paternity of Respondent No.1 has been confirmed by a judgment on paternity dated 30 July 1997 by the Superior Courts of California.*

v. *The appointment of guardian of Tyrian Khan White alongwith the proceedings duly certified/legalized by the department of State of the United States of America under various case numbers involving the parties Ana Luisa White and Respondent No.1 with reference to a disposed off matter in Superior Courts of Los Angeles, California.*

vi. *The foreign judgments and the documents furnished as evidence in accordance to the provisions of 1984 Order and Section 13 of the Code of Civil Procedure, 1908.*

vii. *The respondent No.1 has given false declaration and sworn on oath a false Affidavit, consequently he cannot be allowed to hold the public office of Member Parliament under Article 62(1)(d) and (c) and Article 63(1)(f) and (p) of the Constitution*

and consequently be restrained to hold the public office as Member of Parliament.

viii. *In the presence of the documents, the foreign judgments, this Hon'ble Court may be pleased to call upon Respondent No.1, father of illegitimate daughter, to answer whether Tyrian Khan White is not his love child i.e. child born out of wedlock, as a result of Respondent No.1's adulterous relationship with Anna Luisa (Sita) White, without marriage.*

ix. *Respondent No.1/Imran Ahmed Khan Niazi executed a declaration in Lahore, Pakistan on 18.11.2004 under penalty of perjury, wherein he declared to serve as guardian himself and nominated Carolina to be appointed as guardian for Tyrian on the ground that this would be in Tyrian's best interest and as per her wishes.*

5. The petitioner essentially has tried to build up his case on two orders i.e. judgment of the foreign Court dated 30.08.1997 (Superior Court of California, Los Angeles) and subsequently affidavit given by respondent No.1 for appointment of guardian dated 18.11.2004 before a foreign court and on the basis thereof wants to establish that the petitioner deliberately omitted to mention his daughter in the affidavit filed alongwith the nomination papers, which amounts to concealment of facts thereby attracting the consequences mentioned in the case reported as ***PLD 2018 SC 678 (Speaker National Assembly Vs. Habib Akram)***. It may be noted that the petitioner wants to build a case on the basis of presumptions and assumptions that *Tyrian Jade Khan White* is the "daughter and dependent" of respondent No.1. In order to decide maintainability the legal effect of the foreign ex-parte judgment and its nexus with regard to the question of dependency in respect of the affidavit submitted by respondent No.1 alongwith his nomination papers needs to considered in light of the admitted facts.

EFFECT OF FOREIGN JUDGMENT

6. Whether any order passed in foreign jurisdiction can be given effect in Pakistan without any qualifying admission by the respondent No.1 and whether the petitioner can assert a right on behalf of another, without any authorization. This question can only be answered in the light of Section 13 of CPC, which deals with the conclusiveness of a foreign judgment. Section 13 of Code of Civil Procedure, 1908, is reproduced below:-

> *13.* ***When foreign judgment not conclusive****. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except.*
> *(a) where it has not been pronounced by a Court of competent jurisdiction;*
> *(b)* ***where it has not been given on the merits of the case;***
> *(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable;*
> *(d) where the proceedings in which the judgment was obtained are opposed to natural justice;*
> *(e) where it has been obtained by fraud;*
> *(f) where it sustains a claim founded on a breach of any law in force in India.*

7. Admittedly, the proceedings before the foreign court i.e. Superior Court of Los Angeles and the order relied upon by the petitioner are ex-parte, attracting the exception mentioned in clause (b) of section 13 of CPC as to its conclusiveness. Furthermore, if it is intended to give effect to such foreign judgment, it shall solely be on the motion of any of the party to the proceedings before the Superior Court of Los Angeles and not at the request of a stranger. Through the petition in hand, the petitioner indirectly wants to assume the role of either of the parties in the proceedings conducted by the Superior Court of Los Angeles without consent of the said contesting parties. The petitioner has

to demonstrate that a ***"Right"*** has accrued in his favour pursuant to the said judgment of a foreign court so as to enforce the same in Pakistan. Even if any right, if accrued to any party pursuant to the said judgment, such right can be agitated before the Court of plenary jurisdiction and not before this Court through writ petition.

8. Thus, the remedies which are available in Pakistan to a person in whose favour a foreign judgment / decree is passed, are firstly, that he can obtain execution of the foreign judgment while proceeding under section 44-A of C.P.C., if the country from which the decree has been obtained is United Kingdom or any reciprocating territory and in that case he can outright obtain execution of that decree from the District Court of concerned District of Pakistan without conducting a fresh trial in Pakistan, secondly, he can file a suit in Pakistan on the basis of the foreign judgment treating it as the cause of action. In that case if the conditions prescribed in section 13 C.P.C. are fulfilled, the judgment is conclusive between the parties and otherwise it operates as *resjudicata* between them and as such Courts in Pakistan are bound by its findings. Such suit however, is to be filed within the period of six years from the date of that judgment as provided under Article 117 of the Limitation Act, 1908, thirdly, he can file a suit on the original cause of action as it does not come to an end after passing of a foreign judgment, but remains intact until and unless that foreign judgment is satisfied. However, if the conditions mentioned in section 13 are not satisfied, then the decree will be open to collateral attack in Pakistan as held in ***1990 MLD 1779 (Emirates Bank International Ltd Vs. Messrs Oosman Brothers and 9 others)***. The presumption under section 14 of CPC is, therefore, dependent on section 13 of CPC and shall not attract if the case falls in one of the exceptions mentioned therein.

9. The reliance placed by my learned brother, the Hon'ble Chief Justice, on the judgment of this Court passed in ***R.F.A No.28 of 2020 (Namoos Zaheer Vs. Azfar Hasnain and another)*** is distinguishable as the facts and circumstances of the case in hand are different. In the *Namoos Zaheer case*, the suit for enforcement of the foreign judgment was filed before the Civil Court whereas, in case in hand, the petitioner directly approached the High Court for disqualification of respondent No.1 on the basis of a foreign judgment mainly on the ground of concealment of fact in the affidavit submitted alongwith nomination papers. The petitioner essentially want us to ignore the whole scheme of law, without resorting to the due course, without appreciating whether any party to the proceedings in foreign judgment is asserting any right on the basis of the said foreign judgment, exercise the extra ordinary jurisdiction vested in this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 by issuing a writ of quo-warranto. The Hon'ble Supreme Court in ***PLD 1975 SC 244 (Salahuddin and 2 Others Vs. Frontier Sugar Mills & Distillery Ltd., Tokht Bhai and 10 others)***, has held that if the remedy sought for is in substance a remedy which is available under the ordinary law then a suit and not by invoking the extraordinary jurisdiction, should be the appropriate course, for, the remedy provided by this Article is not intended to be a substitute for the ordinary forms of legal action.

10. In view of the above discussion, I conclude as follows.-

a) *The foreign judgment falls within the exception contained in section 13(b) of CPC.*

b) *The petitioner is not plaintiff or defendant in a foreign case of Ana Luise White.*

c) *Petitioner is not seeking enforcement of a foreign judgment in terms of Section 13 CPC read with Section 44-A CPC nor filed any civil suit to enforce the ex-parte judgment in Pakistan in terms of Section 9 of CPC, 1908.*

d) The petitioner was not even authorized by Tyrian J. White to claim anything on her behalf pursuant to a judgment of the foreign court in Pakistan.

e) No Pakistani Court has yet passed any decree on the basis of foreign judgment dated 13.08.1997 in Pakistan so as to create a legally vested right in favour of any of the parties after recording of pro and contra evidence of the concerned parties.

SCOPE OF WRIT OF QUO-WARRANTO

11. The scope of writ of quo warranto is an obsolete common law writ issued to inquire from a holder or 'usurper' of a public office as to under what right and authority he assumes the said office. For the issuance of a writ of quo warranto, the existence of the following factors have come to be recognized as conditions precedent:-

i. the office must be public and created by a statute or Constitution itself;
ii. the office must be a substantive one and not merely the function of an employment of a servant at the will during the pleasure of others;
iii. there has been contravention of the Constitution or a statute or statutory instrument by appointing such person to that office.

12. While considering the above requirement, the writ of quo warranto is an extraordinary discretionary jurisdiction, not to be issued as a matter of course as held in ***2023 SCMR 162 (Jawad Ahmad Mir Vs. Prof. Dr. Imtiaz Ali Khan, Vice Chancellor, University of Swabi, District Swabi, Khyber Pakhtunkhwa)***. It is the discretion of the Court to grant or refuse it, according to the facts and circumstances of each case as held in ***2004 SCMR 1299 (Dr. Azim Ur Rehman MEO Vs. Government of Sindh and another)***. However, the Court is not bound to exercise such jurisdiction in cases of minor

discrepancies, sheer curable technicalities or where the approach is doctrinaire, unless it is shown that non-interference would result in grave injustice as held in ***2019 SCMR 1720 (Asif Hassan Vs. Sabir Hussain)***, ***PLD 1969 SC 42 (Dr. Kamal Hussain Vs. Muhammad Sirajul Islam)***. In a writ of quo warranto, it is the duty of the Court to assess the *bona-fide* intention of the relator while exercising the discretionary jurisdiction. The Court has to inquire into the conduct and motive of the relator and it must be satisfied that he is coming to court with clean hands and as an informer of the Court with *bona-fide* intentions as held in ***2016 PLC (C.S) 1335 [Lahore] (Muhammad Shahid Akram Vs. Government of the Punjab)***. The principle that the Court should lean in favour of adjudication of causes on merits, is to be applied only when the person relying on it himself comes to the Court with clean hands and equitable considerations also lie in his favour as held in ***2011 SCMR 374 (Muhammad Arif Vs. Uzma Afzal)***.

13. The Supreme Court of Pakistan in case law reported as ***2023 SCMR 162 (Jawad Ahmad Mir Vs. Prof. Dr. Imtiaz Ali Khan, Vice Chancellor, University of Swabi, District Swabi, Khyber Pakhtunkhwa)*** has held that:-

> *10. At this juncture, it is quite interesting to quote an excerpt from the case of Dr. B. Singh v. Union of India and others, reported as (2004) 3 SCC 363, in which it was held that only a person who comes to the court with bona fide and public interest can have locus standi. Coming down heavily on busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit, either for themselves or as a proxy for others, or for any other extraneous motivation or for glare of publicity. The court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid*

> *mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.*
>
> (emphasis added)

14. The writ of quo warranto is likely to be refused where it is an outcome of malice or ill-will, therefore, it is the duty of the Court to be careful as to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other *malafide* object as held in ***2021 PLC (C.S.) [Islamabad] 1394 (Ayaz Ahmed Khan Vs. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad)***. This Court is mindful of the fact that in a writ of quo warranto, the jurisdiction of the Court is primarily inquisitorial, and thus the Court can undertake such inquiry as it may deem necessary in the facts and circumstances of the case, including the examination of the entire record as held in ***2016 PLC (C.S) 1335 [Lahore] (Muhammad Shahid Akram Vs. Government of the Punjab)***.

PUBLIC OFFICE HOLDER

15. In order to proceed with the maintainability of instant writ petition in the nature of quo warranto, it is necessary to understand the term public office, which has not been defined in the current Constitution, however, previously defined in the Constitution of Pakistan, 1962 and the interim Constitution, 1972 and subsequently it has been subjected to judicial interpretation. The Public office was defined in Constitution of Pakistan, 1962 under Article 242 to include *'any office in the service of Pakistan and membership of an Assembly*.'

16. The Supreme Court in the case of ***PLD 1963 SC 203 (Masud-ul-Hasan v. Khadim Hussain)***, interpreted the public office as an office, which is created by the State, by charter or by statute, when the duties attached to the office are of a public nature. Similarly, in ***PLD 1975 SC 244 (Salahuddin versus Frontier Sugar)*** laid out the test for determining the status of the organization or person concerned as public office. It was held:

> *"The term 'public office' is defined in Article 290 of the Interim Constitution as including any office in the Service of Pakistan and membership) of an Assembly. The phrase 'Service of Pakistan' is defined, in the same) Article, as meaning any service, post or office in connection with the affair of the Federation or of a Province and includes an All-Pakistan Service, any defence service and any other service declared to be a Service of Pakistan by or under Act of the Federal Legislature or of a Provincial Legislature but does not include service as a Speaker, Deputy Speaker or other member of an Assembly. Reading the two definitions together, it becomes clear that the term 'public office', as used in the Interim Constitution, is much wider than the phrase 'Service of Pakistan', and although it includes any office in the Service of Pakistan, it could not really refer to the large number of posts or appointments held by State functionaries at various levels in the hierarchy of Government."*

17. This Court has also been guided with the five-fold test laid down qua the determination of public office while making reference to the case of *Salauddin supra,* the Supreme Court of Pakistan in case law reported as ***(PLD 2021 SC 1 (Justice Qazi Faez Isa versus The President of Pakistan)***, laid down the following criteria:-

> *"It becomes plain from the above cited dictum that there are five main ingredients present in the office of a public servant. These are:*
>
> *a. The office is a trust conferred for a public purpose;*
>
> *b. The functions of the office are conferred by law;*

c. The office involves the exercise of a portion of the sovereign functions of Government whether that be executive, legislative or judicial;

d. The term and tenure of the office are determined by law; and

e. Remuneration is paid from public funds."

EFFECT OF AMENDMENT IN PRAYER

18. This Court during the course of argument has confronted qua status of the Respondent No.1 *viz-a-viz* from the date of filing of petition and subsequently on the date of filing of C.M No.866/2023 in terms of Order VI Rule 17 CPC, wherein petitioner intends to change his own prayer and to add two additional clauses to the following effect:-

That in the wake of subsequent events the amendments are required to be incorporated in the petition. The proposed amendments are required to meet the ends of justice and are such that if allowed, will not change the nature of the case. Following amendments are, therefore, proposed:

I. *"17-A. That the Respondent No.1 by virtue of notification No.F.8(9)/2022-Cord. Vol. III. Dated 19-01-2023 has been declared the returned candidate of National Assembly of Pakistan from NA-45 (kurram-I0 without meeting the requirement of Article 62(I)(f) of the Constitution. By filing false affidavits, the Respondent No.1 is not sagacious, righteous, non-profligate, honest and Ameen. The Respondent's disqualification is permanent and disentitles him from being chosen or elected as member of parliament or being elected as Party Head.*
II. *That prayer of the Petition is required to be amended by adding following prayers:*

"it is further prayed that Respondent No.1 may please be considered disqualified from being elected or chosen as member of the Parliament".

"It is also prayed that Respondent No.1 may please be called to show that under what authority of law he claims to hold a public office of party head and may please be debarred from holding the said office."

19. The above referred amendment if placed in juxtaposition with the original prayer, it will simply change the entire case and the nature of proceedings. Even otherwise it has clearly been established from the record that when writ petition was filed, the case of petitioner was by and large confined to the extent of false declaration and affidavit and prayer was made "as to why he should be allowed as a Member of the parliament", following the principle laid down in ***PLD 2017 SC 265 (Imran Ahmad Khan Niazi Vs. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad)*** and he may not be de-seated. It is an admitted fact on record that the respondent No.1 was no more member of any of the constituency and he subsequently resigned from the office during the pendency of instant writ petition, but he again contested the election from five constituencies and never took oath so as to assume "public office". It has been argued from the petitioner's side that a returned candidate automatically assumes office without taking the oath under Article 65 of the Constitution of Pakistan, 1973 and that Article 65 ibid merely bars a returned candidate to sit or vote in the House (Parliament). This argument is misconceived as, accepting this argument would render Article 65 of the Constitution as redundant. Article 65 of the Constitution unambiguously declares a returned candidate cannot sit or vote in the House before he makes an oath. The functions i.e. sitting in the

House and Voting are essentially connected with assumption of the office by a returned candidate.

20. No doubt respondent No.1 was holder of a public office when the petition in hand was filed, but due to subsequent resignation from the positions, petition has lost its legal effect before this Court. The cause of action and the relief sought by the petitioner through an application under Order VI Rule 17 CPC is altogether different from one already disclosed in the pending petition.

21. Now question arises as to whether at this stage, such application could be allowed to proceed further or the Court can mould the relief as prayed for by the petitioner. At present, the respondent No.1 is not enjoying any public office. It is on record that respondent No.1 has not taken oath in respect of NA-45 Kurram-I and resultantly, he cannot sit or vote in the House due to the bar contained under Article 65 of the Constitution. Hence this writ petition could only be treated and considered on the basis of previous prayer without adding new prayers as referred in C.M No.866/2023 in terms Order VI Rule 17 CPC, especially when no order of this Court was passed, allowing the application under Order VI Rule 17 CPC.

22. The oath of Member of National Assembly in terms of Article 65 declares an elected or chosen representative as a public office holder, otherwise to be just an ordinary citizen person, who has won an election and this aspect has been considered in ***1994 MLD 397 [Lahore] (Zaheer Ahmad Khan, Advocate Vs Mohtarma Benazir Bhutto)***, where status of such person was declared as a 'private person' and writ of quo-warranto could not have been issued against the said person. A similar question came before the Lahore High Court in the supra case, wherein the respondent had not taken oath, and nor was nominated as a member. The Court held that in this eventuality, the status of

the respondent was that of a 'private person', and therefore the writ of quo-warranto could not have been issued against the said person.

> *"5. We have considered the arguments addressed by the petitioner as well as the learned Standing Counsel for Federal Government and have gone through the record as well as the provisions of Articles 199 and 225 of the Constitution of Pakistan, 1973. It is clear from the averments of the writ' petition itself that on the date when the writ petition was filed, the respondents had not taken Oath of the Office nor had been notified as members of the National Assembly, therefore, their status on that date being of private persons holding no public office who were not performing any functions in relation to the Federation, the Provinces or a Local Authority, no writ can be issued against them as per provisions of Article 199(1)(a)(i) of the Constitution of Islamic Republic of Pakistan, 1973 as held in the following cases:-_-*
> *(1) Masudul Hassan v. Khadim Hussain and another PLD 1963 SC 203.*
> *(2) Muhammad Ibrahim Siddiqui v. Thal Industries Corporation Ltd. and another PLD 1974 SC 198."*

PARTY HEAD

23. The petitioner made reliance on the case reported as ***PLD 2018 SC 370 (Zulfiqar Ahmed Bhutta and 15 others versus FOP and others)*** in arguing that a party falls within the purview of public office. In this case, the Supreme Court exhaustively discussed the 'pivotal' functions performed by a party head in connection with the overall functioning of a political party under the provisions of the Elections Act, 2017, including making appointments, deciding upon casting of votes and initiating disciplinary proceedings pertaining to the members of the legislative assembly. In light of these observations, the Court held that it would be 'absurd' to hold that the qualifications and disqualifications applicable to members of the legislative assembly do not apply to him. However, the said judgment does not in any way hold that the office of

a party head would fall within the ambit of public office for the purposes of writ of quo warranto.

24. It must be reiterated at this point that a public office is one which is created by the State, by charter or by statute, when the duties attached to the office are of a public nature, as per the Masud-ul-Hasan case. The case law reported as ***2017 PLC(C.S.) 1142 (Sohail Baig Noori versus High Court of Sindh through Registrar and 2 others)*** reaffirmed this view and held that:

> *"The conditions necessary for issuance of writ of quo warranto are that the office must be public and created by a statute or the Constitution itself …"*
>
> (emphasis added)

25. In the present case, it is not possible to consider the office of a party head as a public office on the basis that it does not perform any delegated sovereign functions of the State and is not created by the Constitution or any Statute. The definition of a Party Head under Article 63A of the Constitution simply states that it is a person declared as such by the Party, without attributing any specific functions to the position and therefore, as there are no clear provisions in the Constitution or the Elections Act, 2017 that establish the office of a party head, it cannot be subject to the writ of quo warranto.

AFFIDAVIT REQUIREMENT

26. The requirement of an affidavit is the basis of the writ petition at the first instance and as per stance of the petitioner the writ of quo warranto is sought on a false declaration made by respondent No.1 in his affidavit in the light of ***PLD 2018 SC 678 (Speaker, National Assembly of Pakistan, Islamabad Vs Habib Akram and others)***. The requirement for a candidate to file a declaration accompanied by an affidavit, is not provided in the Elections Act, 2017. Filing of such an affidavit was the requirement under the Representation of the People Act, 1976 (ROPA), which additionally required a candidate to

declare the names of his/her 'spouse(s) and dependents'. However, the requirement for filing a declaration with an affidavit was waived off under the new enactment i.e. the Elections Act, 2017, which repealed ROPA in terms of Section 241(d) of the Elections Act, 2017, whereas the provision under Elections Act, 2017 pertaining to nomination papers in terms of Section 60 are different, same is as under:-

> ***60. Nomination for election.—(1)*** *---*
> *(2) Every nomination shall be made by a separate nomination paper on Form A signed both by the proposer and the seconder and shall, on solemn affirmation made and signed by the candidate, be accompanied by—*
> *(d) a statement of his assets and liabilities and of his spouse and dependent children as on the preceding thirtieth day of June on Form B.*

27. The above referred requirement was considered by the Supreme Court in *Habib Akram case supra* and incorporated the previous requirement under RoPA and mandated upon a candidate to disclose such information through his/her nomination papers and forms, to *prima facie "facilitate the determination of the qualification or disqualification of a candidate and would lead to greater transparency regarding the credentials of a candidate facilitating the electorate in making a more informative choice."*

28. Furthermore, in order to ensure its compliance, the Supreme Court in the supra judgment held that making a false declaration would entail consequences under the Constitution and law, as well for filing a false declaration before the Court. It held as under:

> *"8. It is clarified that failure to file such Affidavit before the Returning Officer would render the Nomination Papers incomplete and liable to rejection. <u>If the Affidavit or any part thereof is found false then it shall have consequences, as contemplated by the Constitution and the law.</u> Since the Affidavit is required to be filed in pursuance of the orders of this Court, therefore, if any false*

statement is made therein, it would also entail such penalty as is of filing a false affidavit before this Court."

29. While considering the above mandate of the *Habib Akram supra*, where consequences were enumerated in clear words and if it has been proved that false affidavit was filed, the consequences were further elucidated in judgment reported as ***PLD 2018 Supreme Court 578 (Raja Shaukat Aziz Bhatti Vs Major (R) Iftikhar Mehmood Kiani)***, in which a false affidavit as required under RoPA was taken into account and held that a candidate does not remain 'honest and Ameen', and therefore stands disqualified under Article 62(1)(f) of the Constitution. Similar view has also been expressed in ***2018 SCMR 1952 (Sher Baz Khan Gaadhi Vs Muhammad Ramzan)***, where certain material facts were concealed and misstated under oath. The most interesting in this regard in ***PLD 2017 SC 692 (Imran Ahmed Khan Niazi v. Muhammad Nawaz Sharif)***, where the Supreme Court reiterated the same principle and disqualified Mian Muhammad Nawaz Sharif under Article 62(1)(f) of the Constitution for furnishing a false declaration in the following manner:-

"2. It is hereby declared that having failed to disclose his un-withdrawn receivables constituting assets from Capital FZE Jebel Ali, UAE in his nomination papers filed for the General Elections held in 2013 in terms of section 12(2)(f) of the Representation of the People Act, 1976 (ROPA), and having furnished a false declaration under solemn affirmation respondent No. 1 Mian Muhammad Nawaz Sharif is not honest in terms of section 99(f) of ROPA and Article 62(1)(f) of the Constitution of the Islamic Republic of Pakistan, 1973 and therefore he is disqualified to be a Member of the Majlis-e-Shoora (Parliament)."

30. Similarly Sindh High Court in ***2020 CLC [Karachi] 1938 (Moazam Ali Khan Abbasi Vs Federation of Pakistan through Secretary Election Commission of Pakistan)*** also rejected the nomination form of the candidate for his 'active concealment' of property belonging to his wife and children. In

the said case, one of the real daughters of the candidate was not disclosed willfully, while not taking the responsibility of the same as per his own statement that as after divorce by father he is not required to take responsibility of maintenance of his daughter after separation, that there was an active concealment, but if all those facts and test laid down in the above mentioned cases could be considered, there is no such admitted facts available on record to apply in the present case of Imran Ahmed Khan Niazi. In the instant case, neither respondent No.1 nor Tyrian Jade Khan has admitted the alleged question of dependency, rather, alleged by the petitioner. In the absence of such a determination, we, while exercising writ jurisdiction cannot assume Tyrian Jade Khan as dependent of respondent No.1.

CONCEPT OF "DEPENDENT"

31. As discussed above, the declaration and affidavit required to be filed under *Habib Akram case* provides furnishing details of a candidate's 'dependents', therefore it is imperative to expound on the meaning of the expression "dependent". The Supreme Court of Pakistan in ***2001 SCMR 1955 (M.A. Faheemuddin Farhum Vs Managing Director/Member (Water) Wapda, Wapda House, Lahore)*** has highlighted the definition of dependent provided in Black's Law Dictionary Fifth Edition in the following manner:-

> *"Dependent, n. One who derives his or her main support from another. Means relying on, or subject to, someone else for support; not able to exist or sustain oneself, or to perform anything without the will, power or aid of someone else. Generally, for worker's compensation purposes, 'dependent' is one who relies on another for support or favour and one who is sustained by another. One who has relied upon descendant for support and who has reasonable expectation that such support will continue.*
>
> *Dependent, adj. Deriving existence, support, or direction from another; continued, in respect to force or obligation, upon an extraneous act or fact."*

32. Subsequently, in ***PLD 2017 SC 692 (Imran Ahmed Khan Niazi Vs. Muhammad Nawaz Sharif)***, the Supreme Court enunciated upon a 'dependent' to hold that a daughter, who is financially independent would not come under the purview of dependency, and an omission to declare her as a dependent in the nomination paper will not amount to false declaration or active concealment highlighted in para 126 of the said judgment, which is as under:-

> *"126. As far as the issue regarding respondent No. 6 namely Mariam Safdar allegedly being a dependent of her father namely Mian Muhammad Nawaz Sharif is concerned I have found that the material produced before us sufficiently established that respondent No. 6 was a married lady having grown up children, she was a part of a joint family living in different houses situated in the same compound, she contributed towards some of the expenses incurred by the joint family, she submitted her independent tax returns, she owned sizeable and valuable property in her own name, she was capable of surviving on her own and, thus, she could not be termed or treated as a dependent of her father merely because she periodically received gifts from her father and brothers. In this view of the matter nothing turned on respondent No. 1 not mentioning respondent No. 6 as his dependent in the nomination papers filed by him for election to NA-120 before the general elections held in the country in the year 2013."*

In view of the above, nothing has been placed on record to establish that Tyrian Jade Khan is the dependent of the Respondent No.1.

ADMISSION/PRINCIPLE OF ACKNOWLEDGMENT

33. Although the petition in hand is not a civil suit, but learned counsel for the petitioner has pressed the "principle of acknowledgment" while arguing maintainability of the petition and the draft judgment that has been received also refers to the "principle of acknowledgement", therefore, I deem it appropriate to record my reasons/findings.

34. The association of respondent No.1 in the guardianship proceedings or the foreign ex-parte judgment is of no help to the case of the petitioner. The

petitioner failed to produce anything on record that Tyrian Jade Khan White is the "dependent" of respondent No.1. The expression "dependent" has already been elaborated in detail in the light of the precedent law. We while sitting in writ jurisdiction cannot open disputes not agitated before us. We have to proceed in this matter keeping in view the scope of our jurisdiction conferred upon us under Article 199 of the Constitution. We cannot undertake roving and fishing inquiries while exercising writ jurisdiction and assume or presume anything not conclusively determined by any competent forum. The question of acknowledgement becomes relevant and is attracted when any party to the foreign judgment wants to bring the law into motion asserting any of their vested right on the basis of such ex-parte judgment, and that too, before a court of plenary jurisdiction.

35. This Court is of the clear view that in the exercise of writ jurisdiction, this Court cannot enter into the factual inquiries and issue declaration with regard to legitimacy of a child, on the basis of petitioner's stance that Tyrian Jade Khan White is the daughter of the Respondent, who allegedly concealed such fact in the nomination papers. It is not the case of the petitioner that the Respondent No.1 had entered into a marriage contract with the mother of Tyrian Jade Khan White, however, petitioner has mainly relied upon the guardianship proceedings conducted in foreign jurisdiction. In the absence of an allegation of marriage between the mother of Tyrian Jade Khan White and the Respondent, the petitioner is indirectly disputing the *"legitimacy of a child"*, a claim not competent before us, apart from violating the right to privacy of the petitioner and Tyrian Jade Khan White. The Supreme Court in a reported judgment, dated 05.04.2023, passed in ***Civil Petition No.2414-L of 2015 titled "Muhammad Nawaz v. Addl. District Judge, etc."*** has held and observed as follows:-

"The right to privacy involves the protection of individuals from unwarranted intrusion into their personal lives. It safeguards an individual's personal information, communications, family life, and other aspects of their private sphere from unjustified interference by the government, organizations, or other individuals. Privacy is crucial for maintaining personal autonomy, as it allows individuals to make choices and engage in activities without fear of surveillance, judgment, or unauthorized disclosure of their personal information. Though the right to privacy is an integral part of the right to life and liberty, it has been elevated to a separate and independent fundamental right by Article 14 of our Constitution. Privacy, which is the ultimate expression of the sanctity of a person, represents the core of the human personality. It recognizes the ability of each person to make choices and to take decisions on matters intimate and personal to him, and thus protects for him a zone of choice and self-determination. We may also underline that the expression, "privacy of home", used in Article 14 is not restricted to the physical house of a person but covers the entire treasure of his personal life, as the privacy attaches to the person, not to the place where it is associated."

"It is also important to note that Article 128 of the Qanun-e-Shahadat 1984 declares that the fact that any person was born during the continuance of a valid marriage between his mother and any man shall be conclusive proof that he is the legitimate child of that man, unless the husband had refused, or refuses, to own the child."

36. In the absence of a marriage contract between the Respondent and mother of Tyrian Jade Khan White, assuming her as child of Respondent No.1 has far reaching consequences. Furthermore, the order of this Court cannot be based on mere presumptions. The conclusive determination of the question of paternity and legitimacy would require undertaking factual inquiries by presuming the commission of an offence and as a result birth of an illegitimate child. In absence of admission by the respondent No.1, Tyrian Jade Khan White or her (late) mother, no one else has the right to allege illegitimacy. We are living in an extremely polarized society by allowing such practice, we would be opening floodgates and permitting everyone to question the legitimacy of children of others. What if tomorrow persons start approaching this Court

seeking declarations that a person residing in a foreign country is the illegitimate child of anyone living in Pakistan and what if questions are raised with regard to a legitimate child by a stranger that such a child, born during subsistence of the wedlock, was not from a legally married husband of a woman, but due to her extra marital affairs. Should we start conducting involuntary DNA tests in every such petition believing the assertions as true by intruding the liberty and privacy of people? Should we promote negative practices and instead of uplifting civilization and moral standards, contribute to degeneration of the society? The answer is a big "NO". This Court is guardian of the fundamental rights of the citizens and cannot open the door for their violation. It is the "admitted relationship" between Tyrian Jade Khan White with Respondent No.1 that would determine the question of her dependency, which is not the case in hand.

37. Article 199(1) of the Constitution provides that *"subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law... (b) on the application of any person, make an order (ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office.* The issuance of writ of quo warranto is, therefore, subject to the *"satisfaction of this Court"* that no other adequate remedy is provided. Admittedly, the determination of submission of false affidavit before the Supreme Court and the power to file a complaint for prosecution for the same is vested in the same Court under Section 195 of the Code of Criminal Procedure, 1898. Furthermore, the petitioner can file an application for initiation of proceedings under Article 204 of the Constitution read with the Contempt of Court Ordinance, 2003. The Elections Act, 2017 provides extensive mechanism to deal with infirmities/deficiencies in the nomination

papers under Sections 60, 62 and 63 thereof. The option of the petitioner, not to approach competent forums in due course of time before the competent forums provided under the law and instead invoking the extraordinary jurisdiction vested in this Court under Article 199(1)(b)(ii) of the Constitution raises questions as to his bonafides. The Supreme Court in case law reported as ***2011 PLC (CS) 763 (Ghulam Shabbir Vs. Muhammad Munir Abbasi and others)*** has held that while exercising jurisdiction under Article 199(1)(b)(ii) of the Constitution this Court can inquire into the conduct and motive of the petitioner and the relief can be declined if the Court is satisfied that the petitioner has filed the petition with ulterior motives and *malafide* intention.

38. The petitioner through the instant petition has raised the questions relating to legitimacy of a child, and on the basis thereof disqualification of respondent No.1. Through the petition in hand, the petitioner has indirectly intruded upon the privacy of persons and tried to promote negative culture on baseless allegations. The petitioner has raised the question of disqualification without there being any conviction for moral turpitude awarded by a competent court. The petitioner, through the instant false and vexatious petition has attempted to re-agitate the questions which were already adjudicated by this Court. The conduct of the petitioner and the filing of this petition, appears to be for extraneous considerations. The petitioner based the instant petition on baseless and unfounded false allegations. The petition could have been dismissed at the first instance, especially in the light of previous findings of this Court in ***W.P No.3069/2018 titled "Hafiz Ihtesham Ahmed Vs. Federation through Federal Secretary, etc."*** and ***Election Appeal No.05/2018 titled "Imran Ahmed Khan Niazi Vs. Returning Officer, Constituency NA-53, Islamabad***) under the doctrine of *resjudicata* and collateral estoppel. The petitioner consumed the time of this Court, which was

otherwise meant for other litigants waiting for adjudication of their cases. The petitioner placed reliance on the cases of Hafiz Ihtesham Ahmed and Imran Ahmed Khan Niazi, supra, and was in active knowledge that the matter in hand had earlier been adjudicated and decided. He was aware that sitting in writ jurisdiction, we cannot set aside the afore-referred judgment of this Court and the principles of *res judicata* and collateral estoppel are attracted in the case in hand. So far as the question of maintainability of a writ of quo warranto against respondent No.1 being party head is concerned, it is noted that there is no declaration of disqualification already in field against respondent No.1 passed by a competent court of law, therefore, the judgment rendered by the Hon'ble Supreme Court in ***PLD 2018 SC 370 (Zulfiqar Ahmed Bhutta and 15 others v. Federation of Pakistan and others)***, relied upon by the petitioner, is distinguishable in the facts and circumstance of the case in hand.

39. The nutshell of the above discussion is that instant writ petition is not maintainable from the very inception, the same is hereby ***DISMISSED***. This Court, therefore, deprecates the conduct of the petitioner for filing the instant vexatious petition. It is noted that the petitioner should have been mindful of the fact that the Court is not a tool to be used by surrogates motivated for extraneous consideration. I would also like to quote a passage from the judgment rendered by Lord Mansfield in the *case titled* **"R. v. Wilkes [(1770) 4 Burr 2527 = 98 ER 327]**. It has been aptly held that *"The constitution does not allow reasons of State to influence our judgment; God forbid it should! We must not regard political consequences; how formidable so ever they might be: if rebellion was the certain consequence, we are bound to say 'fiat justitia, ruat caelum'* (Let justice be done though the heaven fall).

40. For public convenience the important points of this judgment have been rendered in Urdu.

مندرجہ بالا بحث بر واقعات و قانونی فیصلہ جات کی روشنی میں عدالت ھٰذا کا فیصلہ درج ذیل نکات پر مبنی ہے۔

1۔ Writ of Quo Warranto کے قابلِ عمل اور قابل سماعت ہونے کے لیے سائل کو ایسے غیر متنازعہ امر واقع کو عدالت کے ریکارڈ پر لانا ضروری امر تھا جس سے مزید کسی بھی قسم وضاحت، تفتیش و تحقیقات نہ کرنی پڑے اور وہ امر واقعہ تسلیم شُدہ حقائق پر مبنی ہوں جس سے مسئول علیہ عمران خان کا کسی بھی قسم کا کوئی عمل قانون سے متصادم ہو۔

2۔ سائل کی طرف سے پیش کردہ یکطرفہ ڈگری بابت مقدمہ Ana Luisa White Vs. Imran Khan مورخہ 13 اگست 1997ء جاری کردہ لاس انجلیس اعلیٰ عدالت امریکہ کو زیرِ دفعہ 13 ضابطہ دیوانی 1908ء کی مندرج شرائط سے پاکستانی دیوانی عدالت میں ثابت کرنا قانونی طور پر لازمی امر ہے تاکہ پاکستان میں رائج قانون سے اس فیصلہ کی تصدیق جاری ہو سکے اور اسمیں درج حقائق یقینی طور پر ایک استقرارِ حق کی ڈگری کی صورت میں مسئول علیہ عمران خان کے خلاف پڑھے اور سمجھے جا سکیں جو کہ اس وقت موجود نہ ہیں۔

3۔ غیر ملکی فیصلہ ہائے امریکی عدالت Ana Luisa White Vs. Imran Khan کو صرف وہی فریق پاکستان میں بذریعہ عدالت ہائے دیوانی تقویت دے سکتا ہے جو غیر ملکی عدالت میں خود فریق ہو اور پاکستان میں اس ڈگری کو قابلِ عمل کروانا چاہتا ہے کیوں کہ مسئول علیہ پاکستانی شہری ہے اور پاکستان میں مستقل طور پر رہائش رکھتا ہے جب کہ سائل امریکی فیصلہ میں خود فریق نہ ہے

4۔ غیر ملکی عدالت کی یک طرفہ ڈگری کو عملی طور پر دنیا میں صرف Tyrian Jade Khan White ہی مزید اپنے کسی قانونی حقِ وراثت یا پدریت / ولدیت کے لئے پاکستان میں زیرِ دفعہ 13 ضابطہ دیوانی کے تحت قابلِ استعمال و عمل کروانے کا حق محفوظ رکھتی ہے۔ دیگر کوئی شخص قانونی طور پر ایسا نہ کر سکتا ہے۔

5۔ سائل اپنی رٹ پٹیشن میں کسی بھی قسم کا غیر متنازعہ امر واقعہ ثابت نہ کر سکا ہے۔ جس کے بعد عدالت موجودہ رٹ پٹیشن کو قابلِ پذیرائی کے لئے دیکھ سکتی اور مسئول علیہ سے مزید جوابات کا حصول کر کے فیصلہ کر سکتی۔

6۔ سائل نے رٹ پٹیشن میں 4 مختلف پیراگراف میں مسئول علیہ عمران خان پر الزام زناء، غیر قانونی و ناجائز رشتوں کے الزامات لگائے ہیں جس کا نہ تو وہ خود عینی گواہ / شاہد ہے اور نہ ہی وہ اس کی تصدیق بذریعہ کسی تسلیم شُدہ عدالتی فیصلہ سے ثابت کر سکا ہے۔

7۔ سائل نے مسئول علیہ کی ذاتی زندگی و کردار پر الزامات لگا کر Tyrian Jade Khan White کی زندگی پر بھی سوالیہ نشان اٹھانے کی کوشش کی جس سے اس عورت کی آئندہ زندگی پر گہرے اثرات مرتب ہوں گے جبکہ تمام الزامات قُرآن و سنت کے منافی ہیں اور غیر تسلیم شدہ ہیں جسکا بارِ ثبوت سائل پر ہے۔

8۔ عدالت عالیہ آئین کے آرٹیکل 199 کے تحت متنازعہ امر واقع پر کسی بھی قسم کے استقرارِ حق کا فیصلہ دینے کی مجاز نہ ہے اور نہ ہی ایسے سیاسی فوائد حاصل کرنے والے کسی غیر متعلقہ کارروائی کا حصہ بننا پسند کرتی ہے جس سے معاشرے میں مزید نفرت وبگاڑ کا احتمال ہو۔

9۔ سائل کی تمام رٹ پٹیشن وبحث اس کی بدنیتی کو ثابت کرتی ہے اور وہ کسی بھی طور پر اپنے آپ کو کسی تیسرے فریق کا آلہ کار ہونے سے الگ نہ کر سکا ہے اور نہ ہی اپنی نیک نیتی بر ریکارڈ ثابت کر سکا ہے۔

10۔ مسئول علیہ عمران خان اس وقت کسی بھی طور پر کسی عوامی عہدہ یا ممبر قومی اسمبلی نہ ہے لہذا موجودہ رٹ پٹیشن قابل پذیرائی نہ ہے۔

11۔ مسئول علیہ عمران خان بطور سربراہ پاکستان تحریک انصاف کوئی بھی ایسا فرض سرانجام نہ دے رہا ہے جو Writ of Quo Warranto کے لئے قابل عمل ہوں اور مسول علیہ کو کسی بھی قانون رائج الوقت و آئین کی خلاف ورزی کا مرتکب ثابت کیا جاسکا ہے۔ جو کہ آئین کے آرٹیکل 63, 62, کے زمرے میں آتا ہو۔

12۔ مسئول علیہ عمران خان کا بیان حلفی بمطابق فیصلہ PLD 2018 SC 678 کے تحت صرف اپنی زوجہ اور مالی طور پر تابع محکوم، دست نگر بچوں کو ظاہر کرنا ضروری امر تھا جس کی وضاحت بیان حلفی میں درج ہے جبکہ Tyrian Jade Khan White نہ تو عمران خان کی قانونی طور پر بیٹی ثابت ہوئی نہ ہی مالی طور پر محکوم و تابع ہے لہذا بیان حلفی کے مندرجات درست پائے جاتے ہیں۔

13۔ سائل مسول علیہ عمران خان کے کسی بھی امر سے یہ بات ثابت کرنے میں ناکام رہا ہے کہ Tyrian Jade Khan White اس کی حقیقی اولاد ہے اور مسول علیہ عمران خان نے اپنی نجی و عوامی زندگی میں کبھی اس بات کا اقرار کیا ہے کہ اس نے اپنی زندگی میں Tyrian Jade Khan White کی نگہداشت، حضانت، پرورش کی ذمہ داری خود نبھائی ہے۔ جس سے اس بات کا اظہار ہوتا ہو کہ وہ اس کا باپ ہے۔

14۔ عدالت اس پٹیشن کو مسول علیہ کی نجی زندگی میں مداخلت قرار دیتی ہے اور سائل کی بدنیتی اور معاشرتی بگاڑ پیدا کرنے اور مزید سیاسی انتشار کی فضا قائم کرنے کے حوالے سے اور غیر متنازعہ حقائق ثابت نہ کرنے کی وجہ سے قابل پذیرائی نہ سمجھتی ہے اور رٹ ھذا خارج کی جاتی ہے۔

(MOHSIN AKHTAR KAYANI)
JUDGE

I concur with the reasons/findings rendered by my learned brother *Mr. Justice Mohsin Akhtar Kayani, J.*

(ARBAB MUHAMMAD TAHIR)
JUDGE

RAMZAN

(Office Note : 02.05.2023)

With utmost respect, it is submitted that in Writ Petition No.3061/2022 titled *"Muhammad Sajid Vs. Imran Ahmad Khan Niazi and another"* draft judgment was received from the Hon'ble Chief Justice (the Author Judge). However, the judgment was not assented by me and separate findings have been recorded which are concurred by my learned brother Mr. Justice Arbab Muhammad Tahir, J. The same are submitted herewith in sealed envelop for announcement by tomorrow i.e. 03-05-2023.

(MOHSIN AKHTAR KAYANI)
JUDGE

Secretary to Hon'ble Chief Justice

(Office Note : 09.05.2023)

Case bearing *Writ petition No.3061 of 2022 titled Muhammad Sajid Vs Imran Ahmed Khan Niazi and another*, was heard and reserved for judgment on 30.03.2023 by the Hon'ble Larger Bench, comprising of my lord the Hon'ble Chief Justice, undersigned and my learned brother Arbab Muhammad Tahir, J., judgment whereof has been authored and finalized which was transmitted to Hon'ble Chief Justice, even a note in this regard has been sent on 02.05.2023 to my lord the Hon'ble Chief Justice with request to list the case for announcement on 03.05.2023, despite whereof, case has not yet been listed till todate. On 07.05.2023 speculations were widely shared on social media regarding judgment. Therefore any further delay in release of the judgment singed by two members of the Bench who constitute a majority, could cause aspersion on the outcome of the case and impugn the confidentiality and integrity of the court process and public from the independence of the Court. The case has political ramification in the current scenario. The case has already been notified for announcement hence you are hereby directed to release the judgment of two members Bench today i.e. 09.05.2023 by all means and submit a compliance report, forthwith.

Mohsin Akhtar Kayani
Judge
09.05.2023

Registrar: