

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA

Constt. Petition No.1263 of 2015

Petitioner: Mr. Mahdi Raza, Advocate.
through: Mr. Athar Abbas Solangi Advocate.

Respondents: Mr. Abdul Hamid Bhurgri, Addl. A.G.
Mr. Mushtaq Ahmed Korejo, Standing
Counsel.

Date of hearing: 29.10.2015.

Date of order: 29.10.2015

ORDER:

SalahuddinPanhwar j- Through instant petition, petitioner Mohammad

Ali Mugheri has prayed as follows :-

- a) *to declare that the act of the respondent No.04 for excluding the name of the petitioner from Form-VIII, is illegal, unjustified, violative of the Constitution and the Act, and same is liable to be set-aside,*
- b) *to declare that the petitioner is eligible to contest in the upcoming Local Bodies Elections-2015, for Chairman Union Council-4 Tayyab, Taluka Ratodero district Larkana in the light of order dated:22.10.2015 passed by this Hon'ble Court in CP No.D-1158 of 2015,*
- c) *any other additional relief as this Hon'ble Court may deem fit and proper under the circumstances of the case, and*
- d) *award costs of the petition.*

2. The facts, describing necessary back-ground, are that petitioner and his co-candidate Abid Hussain, submitted joint candidature for seats of Chairman and Vice Chairman, UC-Tayyab, Taluka Ratodero. After completion of nomination process and scrutiny, the joint candidature, so submitted, was accepted by the respondent No.4/Returning Officer UC No. 1 to 6, Ratodero/Divisional Superintendent Postal Service Larkana and even application for allocation of symbol was moved and symbol of "Goat" was also allotted to them.

3. It is further case of the petitioner that 1st October, 2015 was scheduled for *withdrawal* and on such date the petitioner and his co-candidate did not withdraw the joint candidature but subsequently on 17.10.2015 respondent No.4, under the political influence and instructions of ruling party, shown as retired candidates, hence, petitioner was ousted from the election.

4. The learned counsel for the petitioner has argued that act of entertaining retirement application of co-candidate is illegal, null, void, malafide and liable to be restrained; nomination form clearly shows that candidature of both Chairman and Vice-Chairman is dual and both were co-signatories and that 'Act' does not provide any provision for retirement from a duo-candidature. Section 71 of ROPA (Representation of Peoples Act, 1976) does not debar petitioner to contest the Elections, thus, respondent No.4 was not justified in accepting the retirement application of co-candidate.

5. On the other hand, learned AAG as well as learned Standing Counsel for DAG, contended that instant petition is not maintainable under the law; form was rightly withdrawn; laws provide disqualification on this account.

6. Heard the respective parties and examined the material carefully.

7. Before going deep into merits, it would be appropriate and proper to refer Rule-20 of Sindh Local Councils Election (Rules), 2015, which reads as:-

20. (1) Any validly nominated candidate may, by notice in writing signed by him and delivered on or before the withdrawal day to the Returning Officer, either by such candidate in person or by an agent authorized in this behalf in writing by such candidate, withdraw his candidature.

(2) On receiving a notice of withdrawal under sub-rule (1), the Returning Officer shall, if he is satisfied that the signature on the notice is that of the candidate, cause a copy of the notice to be affixed at some conspicuous place in his office.

(3)..... and affix the same at some conspicuous place in his office.

(4) Notwithstanding the rules framed under the Act, the list of contesting candidates finalized under sub-rule(3), the contesting candidate for a seat, may retire his candidature on the day not later than seventy two hours before the start of the poll.

(5) The Returning Officer shall delete the name of the candidate who has withdrawn his candidature under sub-rule(1) from the list of contesting candidates already prepared on Form VIII.

(6) The candidate who retires from contesting the election of Council under sub-rule (4), shall keep the concerned Returning Officer informed of his retirement.

From the language of the above-referred Rule, it appears that at all places in the above 'Rule' the term of 'candidate' has been used in 'singular' as is evident from words 'candidate', 'his' and 'him'. This *prima facie* appears to mean 'joint-candidature' as single one.

8. The first and prime requirement is that of 'withdrawal by candidate in writing' and if the term 'joint-candidature' is also taken as 'singular' it shall require signing of withdrawal by both of them, because when two agree to dress themselves up as 'joint (one)' then they have made their acts / omissions subject to qualify the term 'as one' therefore, *withdrawal* for a joint-candidacy should be joint, else the legislature should not have used 'singular term' for withdrawal of all candidatures, including one of 'joint-candidature'.

9. Further, a reference to Section 24 of the Local Government Act, 2013 is also relevant to understand the issue whereby the rights of joint-candidate have been protected, even in the event of *casual vacancy* 'for any reason', which term (any reason) shall include resignation, disqualification, and death etc. The provision insists that even in such eventuality (falling of vacancy for *any reason*) the joint candidate shall complete tenure. This also means that principle of *sinker* is taken as principle of *sailor*. Reference can be made to the case of *Abid Hussain Bughio v. Election Commission of Pakistan & others*, (Constitutional Petition No.D-1158 of 2015) decided by this Court.

10. In view of what has been discussed above, we are of the clear view that if the rules, referred above, are read together, *as should have been*, the outcome

would be nothing but that principle of *sinker* would not be applicable. We shall take guidance from the case of *Maqbool Ahmed v. Falak Sher Farooqa* (PLD 2003 Lahore-138), wherein term '*joint candidacy*' was defined while holding the principle of *sinker* not applicable as:

'Besides looking at the statutory context to interpret the 'Joint Candidacy', the well-known rules of language can also be made use for the same purpose. One such rule is ejusdem generic. It means general words which follow particular ones normally apply only to such persons or things as are ejusdem generic (i.e of the same genus or class) as of the particular ones. Smith and Bailey on the Modern English Legal System Third Edition page-378). In the present context, the word 'joint' is ejusdem genris to the word which follows i.e 'candidacy'.

Yet another Latin Tag i.e *Noscitur a sociis* would also be very instructive . It means that words derive colour from those words which surround them. It is a fundamental rule in the construction of statutes that associated words explain and limit each other. The meaning of a word may be ascertained by a consideration of the company in which it is found and the meaning of the words which are associated with it. (*Brown v. Chicago N.W.Ry Co.* 78 NW 771).

The distinction between the two Latin tags was graphically explained in *State of Bombay v. Hospital Mazdoor Saba* (AIR 1960 SC 610 and 613 as under:-

'Associated words take their meaning from one and another under the doctrine of Noscitur a sociis, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it. Such doctrine is broader than the maxim ejusdem generic. In fact the later maxim is only an illustration of specific application of the broader maxim noscitur a sociis'.

11. Accordingly, the petition is accepted with direction that the Returning Officer shall allow the petitioner and his co-candidate (who otherwise stood retired) to contest the election and their names shall be included in form VIII thereby letting joint-candidates to sail and sink together while contesting election for which they had agreed while submitting their joint-candidature with such intention/object.

12. Accordingly, instant petition was allowed by short passed on 29.10.2015; as a result acceptance of retirement application of co-candidate by

the respondent No.4 has no legal standing under the law, which is hereby set aside.

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Sajid Akhtar