

ORDER-SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constt. Petition No. D- 1158 of 2015.

Date	Order with signature of Judge
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1. For orders on M. A. No.6009/2015.
2. For Katcha Peshi.

Date of hearing : 16.10.2015.

Date of order : 22.10.2015.

Mr. Athar Abbas Solangi, Advocate for petitioner

Mr. Abdul Hamid Bhurgri, Addl. A.G.

Mr. Mushtaque Ahmed Kourejo, Standing Counsel.

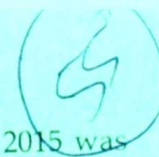
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Through instant petition, petitioner Abid Hussain Bughio  
prayed as follows :-

- a) to declare that the act of the respondent no.4 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-44 Karani, taluka Dokri, district Larkana,*
- c) to declare that in case of duo the one candidate can not withdraw from joint candidature at the cost of another;*
- d) any other additional relief as this Honourable Court may deem fit and proper under the circumstances of the case, and*
- e) award costs of the petition;*

2. The facts, describing necessary back-ground, are that petitioner and his co-candidate Ayaz Ali, submitted joint candidature for seat of Chairman and Vice Chairman, UC-44 Karani, Taluka Dokri. After completion of nomination process and scrutiny, the joint candidature, so submitted, was accepted by the respondent No.4 and even application for allocation of symbol was moved.





3. It is further case of the petitioner that 1<sup>st</sup> October, 2015 was scheduled for *withdrawal* and on such date the petitioner and his co-candidate did not withdraw the joint candidature but on the following date i.e. 02.10.2015 respondent No.4, under instruction of ruling party, received withdrawal application of petitioner's co-candidate Mr. Ayaz Ali Butt in backdate i.e. 01.10.2015; which was accepted and Form-VIII (a list of contesting candidates) was issued, wherein petitioner was shown as contesting candidate for post of Chairman, having **watermelon** as symbol, while for Vice-Chairman the word '**withdrawn**' was written in the column of symbol allocated.

4. The learned counsel for the petitioner has argued that act of entertaining withdrawal application of co-candidate beyond a date, prescribed for withdrawal, 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 withdrawal from a duo-candidature, but the previous Local Bodies Elections held under Sindh Local Government Ordinance, 2001 (SLGO) provided in Rule-16 of SLGE Rules, 2005 which does not provide withdrawal from joint candidature by one at the cost of other. 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 excluding the name of petitioner from Form-VIII.

5. On the other hand, learned AAG assisted by Mr. Irshad Ali R. Chandio, Counsel for applicant/intervenor Muhammad Juman Bughio,



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.

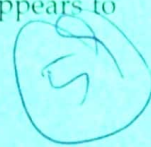
(5) The Returning Officer shall delete the name of the candidate who has withdrawn his candidature under sub-rule(1) from the list of contesting candidates already prepared on Form VIII.

(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 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 have been meant '*joint-candidature*' as single one.



8. Now, the Rule, referred above, can safely be interpreted that for a '*valid withdrawal*' there must be:

- i) *should be in writing;*
- ii) *should be signed by candidate or his duly authorized agent;*
- iii) *the Returning Officer must be satisfied about signature of candidate on withdrawal;*

9. 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, a *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*'.

10. If the intention of the legislature would have been *otherwise*, the legislature would have specified so, which *undisputedly* is not provided, therefore, it would not be within spirit of known principles' interpretation to accept that legislature would allow one to suffer penal consequence for the act of other, even if he is a co-candidate, because it would amount to allowing / letting a maneuver by joining hands with one of the joint-candidates to get technical knockout of the joint-candidature. In short, penalizing the other (depriving *otherwise* a qualified of his right to contest) for no fault on his part particularly, when in such eventuality nothing is provided to protect right of other (joint-candidate), which



otherwise would violate the term 'due process' as defined by honourable Supreme Court of Pakistan in the case reported as 2012 SCMR 1235, wherein it is held that:

- 1) A person shall have notice of proceedings which affect his rights;
- 2) He shall be given reasonable opportunity to defend;
- 3) That the Tribunal or Court before which his rights are adjudicated is so constituted as to give reasonable assurance of his honesty and impartiality, and;
- 4) That, it is a Court of competent jurisdiction....

11. Let us add here that since the law of interpretation insists that interpretation should always be made in 'aid' and not to violate the intention of the legislature. We shall take guidance from the cases of:

Mst. Samra Ashfaq V. Govt. of NWFP through Secretary & Ors, (1996 SCMR 273)

".. Where specific categories mentioned in a statute or Notification are not of the same genus or same family but different and independent in such a situation specific words enumerating subjects, and categories of persons which greatly differ from each other, the *general word will have a different and independent meaning without taking any colour from the specific words preceding or following it.*"

Mumtaz Hussain v. Nasir Khan, (2010 SCMR 1254)

"9. Legislature intents can always be gathered either from the express language of the statute or by necessary implications. If the words of the Statute are themselves clear and unambiguous, no more is necessary to expound those words in their natural and ordinary sense, the words themselves in such a case best declare the intentions of legislature.

10. It is cardinal rule of interpretation that objects *made Reasons of a Statute is to be looked into as an extrinsic aid to find out legislative intent only when the meaning of the Statute by its ordinary language is obscure or ambiguous.* But if the words used in a statute are clear and unambiguous then the Statute itself declares the intention of the Legislature and in such a case it would not be permissible for a Court to



interpret the statute by examining the object and reasons for the Statute question."

Under the *principle of sinker in stricto sensu*, it would not be applicable in matter of *otherwise qualified* joint-candidature, because principle of *sinker* would be applicable only where '*two agree to own consequences of fault of each other*'. One taking a defective title shall come within principle of *sinker*, because he claims under seller and his title *within his active knowledge* is always subject to him (seller). In matter of a joint-candidature, both joint-candidature surely know that *disqualification* of one during election process shall bring him within limitation of *principle of sinker*, but since the nomination is *normally* believed to have been submitted to '*contest election*' and not for a '*subsequent withdrawal*', therefore, one out of two cannot decide the fate and right of his co-candidate by making independent withdrawal when they both *prima facie* never agreed rather they had agreed (submitted nomination) to contest the election. In such eventuality, it is pertinent to mention that the principle should be taken as *principle of sailor* and not that of '*sinker*', meaning thereby that despite such *individual withdrawal* should not result in operate as sword but the qualification of joint-candidature couple with insist by co-candidate to contest the election should be allowed to work as '*Ark*' else it will amount penalizing one for no fault, guilt, act, omission and *even* consent, which, *we are sure* cannot be the object of '*LAW*'.

12. 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*.

13. 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 and illustration of specific application of the broader maxim noscitur a sociis'.*

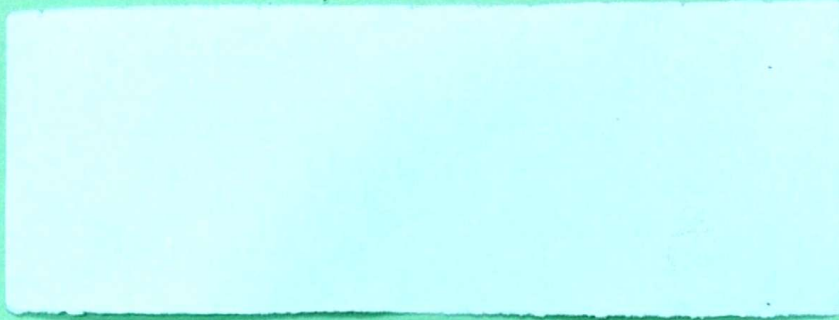
14. Accordingly, the petition is accepted with direction that the Returning Officer shall allow the petitioner and his co-candidate (who



(62)

*otherwise stood qualified*) 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.

15. Accordingly, instant petition is allowed accordingly; as a result subsequent notification regarding declaration of unopposed elected candidates has no legal standing under the law.



Qazi Tahir/\*