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ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
Const. Petition No. D-1092 of 2015

DATE _____ ORDER WITH SIGNATURE OF JUDGE _____

For Katcha Peshi.

09.10.2015


Abdul Rehman A. Bhutto, advocate for the petitioners.
Mr. Mushtaque Ahmed Korejo, Standing Counsel.
Mr. Abdul Hamid Bhurgri, Addl. A.G.
Mr. Safdar Ali Chouri, advocate for Respondent No.5.

Through instant petition, petitioners have assailed the order dated 29.9.2015. For the sake of brevity, relevant portion of order is reproduced as under:-

"I have also perused the record of Res.No.02 Ahmedan for seat of Vice Chairman on 16.09.2015, moved an application before R.O, which he wants to withdraw from candidateship but R.O has not passed any order on his application instead of that application R.O accepted the form on 17.09.2015. Subsequently on 18.09.2015, again the Res.No.02 moved an application that he does not want to withdraw from candidateship due to force given by other party he appeared and signed the application. The contention of candidate is not acceptable because he has already withdrawn from the seat/candidate of Vice Chairman, therefore, his form can not be accepted".

2. It is pleaded that perforce application for withdrawal of nomination form was moved by respondent No.5 before the date of scrutiny but on the date of scrutiny petitioners appeared before Returning Officer and his form was accepted. On second day, he also appeared for return of such previous application. Thereafter respondent No.5 challenged such acceptance through Election Petition No.30/2015. Same was accepted.

3. Learned counsel for the petitioners contends that impugned order is illegal, ab initio, void. Whereas counsel for respondent No.5 contends that such withdrawal was genuine therefore, acceptance by the Returning Officer was illegal.



4. On the other hand, learned Addl. AG Sindh and Standing Counsel contend that Returning Officer was required to examine whether the candidate's such application for withdrawal was genuine as per law this is the requirement and accordingly, Returning Officer rightly accepted nomination form hence impugned order is illegal.
5. Heard learned counsel. Perused the record.
6. Coupled with order as well relevant laws, according to relevant provisions it is pertinent to mention date of scrutiny which was 17.9.2015 whereas such alleged application was moved on 16.9.2015. However, withdrawal date was scheduled as 01.10.20145 hence application for withdrawal before scrutiny was not justified as form was not accepted at that time. Thus, it appears that the learned Appellate Judge has travelled beyond its jurisdiction. Accordingly, impugned order is hereby set aside and the order passed by Returning Officer is maintained.



Judge



Judge