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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
C.P.No.D-1112 of 2015.

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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FOR KATCHA PESHI.

22.10.2015.

Mr. Ahmed Hussain Khoso, advocate for the petitioner.

Messrs Asif Ali Abdul Razak Soomro and Safdar Ali Ghouri,
advocates for respondent No.5.

Mr. Mushtaque Ahmed Kourejo, Standing Counsel.

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

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Through instant petition, the petitioner prays as under :

- a) *That this Honourable Court may be pleased to set aside the impugned order dated 29.9.2015 passed by respondent No.4 to be illegal, unlawful, void and null in law, without any legal justification and against the law of natural justice and violation of law, and liable to be set aside in the larger interest of justice.*

Learned counsel for the petitioner *inter alia* contends that respondent No.5 was defaulter of Water Management Department as well as SEPCO at the time of submission of nomination form, therefore, acceptance of nomination form by Returning Officer and rejection order of Appellate Authority is against the settled principle of law of equity. He further contends that admittedly he has paid outstanding amount before the appellate Authority. In support of his contention he has relied upon the case reported in PLD 2013 Lahore 548.

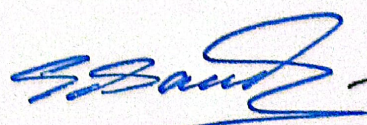
In contra learned counsel for respondent No.5 contends that he was not defaulter of SEPCO but question of outstanding amount of Water Management Department requires proper adjudication whether respondent No.5 was willful defaulter. However, he contends that such amount was paid and received by Mukhtiarkar before Appellate Authority / District & Sessions Judge.

At the outset it would be conducive to refer relevant portion of impugned order :

(47)

"The appellant sought for rejection of nomination form of respondent No.1, merely on the pretext that he is defaulter of SEPCO and Water Management Department, but respondent No.1 placed on record no dues certificate issued by SEPCO authorities showing the payment of bill amounting to Rs.78,456/- paid on 28.9.2015 and receipt regarding payment of Rs.1,58,979/- on behalf of Water Management dues recovered by Mukhtiarkar (Rev.) Thull/Recovery Officer Taluka Thull. Mukhtiarkar (Rev) Thull is also present in the court and submits that; he will submit the amount in proper head of Water Management Department and will submit such receipt thereof by tomorrow. In the light of foregoing circumstances, I am not convinced to the contentions made by learned counsel for the appellant that respondent No.1 is a willful defaulter. Accordingly, appeal stands dismissed with no order as to costs."

After careful consideration of contention raised by the learned counsel for the respective parties and meticulous examination of available record, it reveals that Rs.1,58,979/- were paid by respondent No.5 before Appellate Authority and such amount was received by Mukhtiark (Rev), Thull and further it reveals that Mukhtiakar Thull contended that he will deposit the same before Water Management Department. At this juncture respondent No.5 has also placed cash receipt which shows that he paid amount with regard to outstanding of Water Management on 23rd December, 2013. According to respondent No.5 since he was not defaulter but due to apprehension and likelihood of rejection of form he paid entire amount, thus he acted in bonafide manner therefore, it would not be justified to deprive him from the right of contesting election. Worth to add here issue of acceptance of nomination form by the Returning Officer proceedings in summary manner and in case respondent No.5 is returned candidate, such issue can be agitated before Election Tribunal which provides complete mechanism. Accordingly, instant petition is dismissed.


Judge