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ORDER-SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constt. Petition No. D- 1143 of 2015.

Date of hearing	Order with signature of Judge
15.10.2015.	

Mr. Sabir Ali Shaikh, Advocate for petitioner

Mr. Muhammad Imran Abbasi, Adovcate for respondent no.2

Mr. Abdul Hamid Bhurgri, Addl. A.G.a/w Arshad Haider  
Kumario, DFO, larkana

Mr. Mushtaq Ahmed Korejo, Standing Counsel.

Through instant petition, the petitioner has prayed as follows:-

- a) *That, this Honourable Court may be pleased to direct the respondent no.1 to cancel / reject the nomination papers / forms of respondent no.2 being defaulter;*
- b) *That, this Honourable court may be pleased to direct the respondent no.3 to produce the original record about amount of respondent no.2 as he is defaulter;*
- c) *To award...*
- d) *Any ...*

2. The facts, describing necessary back-ground, are that petitioner and respondent no.2 filed nomination papers for seat of General Council of Town Arija W.No.6. The petitioner filed appeal against acceptance of nomination paper of respondent no.2 on ground that respondent no.2 is defaulter of Forest Department. In reply the respondent no.2 falsely denied on Oath (affidavit) though he was defaulter of Rs.905,000/-. The appeal of petitioner *however* was dismissed.

3. The respondent no.3 (Divisional Forest Officer) in his statement categorically stated that respondent no.2 took 40 acres of forest land in year 2005-06 but did not pay lease money till expiry of lease period i.e year 2010 and even has been continuing with possession of forest land.

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4. Learned counsel for petitioner has stated that respondent no.2 is a defaulter hence his nomination paper is liable to be rejected.

2. The learned counsel for the respondent no.2 insisted that order of appellate authority is legal and nomination paper of respondent no.2 was rightly accepted; he *however* could not rebut the statement of respondent no.3(Forest Officer).

3. The para-3 of the affidavit of respondent no.2, submitted before appellate Authority / District Judge, Larkana, reads as:

*'That, the forest land was leased to me for five years from 2005/2006 to 2010 and same was cancelled in 31.12.2010 and possession was handed over to forest department.'*

In para-4 he stated that:

*'That, I had paid the amount of Rs.310,165/- out of Rs.410,000/- and only amount of Rs.99835/- is out-standing to me, and I paid the same tomorrow and give such receipt before this Honourable Court for kind perusal'.*

4. Though, respondent no.2 had undertaken to clear all liabilities but when asked today *even* he failed to produce receipt / clearance certificate. He (respondent no.2) even could not satisfactorily deny claim of respondent no.3 that an amount of Rs.6166000/- is due against respondent no.2 and that he (respondent no.2) is in illegal possession of Forest land. The respondent no.2 categorically admitted that he was leased out forest land in year 2005-06 but since 2010 he is not in possession of that land.

5. Submitting nomination paper to contest election, *itself* is an undertaking to serve the people therefore, such person must *prima facie* establish to be law-honouring/abiding. The respondent no.2 not only defaulted his obligations without a plea of ignorance of such obligation rather he admits to have active knowledge of his obligations. Not only this, but he is alleged to be in continuous illegal and unauthorized possession of forest land, therefore, his nomination paper was liable to be rejected. Accordingly, the nomination paper of the respondent no.2 was rejected by short order dated 15.10.2015.

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While parting, it is needless to mention here that respondent-no.3 shall proceed against the respondent no.2 for recovery of out-standing amount couple with possession of forest land (government property) which *however* shall be done as per guidelines and directions of this Court and that of Apex Court which are meant to protect the government properties.



Judge

Judge 26/10/2015