

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No. D- 2722 of 2022

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Majid Hussain

Petitioner

VERSUS

Federation of Pakistan
& others

Respondents

Dates of hearing: 11.08.2022

Date of decision: 11.08.2022

Mr. Sanaullah Bhangar, Advocate for Petitioner

Mr. Zaheer Abbas, Law Officer ECP

Toqeer Ahmed Shaikh, Deputy Director Agriculture Extension Hyderabad
(Returning Officer)

ORDER

ADNAN-UL-KARIM MEMON, J.- Through instant petition, the petitioner has challenged the order dated 19.7.2022 passed by respondent No.5 (Returning Officer) whereby on withdrawal of respondent No.6 from the post of Vice Chairman the candidature of petitioner being Chairman was also withdrawn/rejected as being a joint candidate.

2. Mr. Sanaullah Bhangar learned counsel for the petitioner has submitted that the petitioner and respondent No.6 filed joint candidature for the post of Chairman and Vice Chairman UC-142 Town Municipal Corporation Hussainabad Hyderabad. Subsequently, under the influence of ruling party, respondent No.6 moved an application to respondent No.5 for retirement/withdrawal from the post of Vice-Chairman which was accepted, and resultantly the candidature of the petitioner being Chairman UC-142 Town Municipal Corporation Hussainabad Hyderabad was also deemed as withdrawn which is against the law and the orders passed by this Court in various Constitutional petitions at Sukkur Bench. Learned counsel further submitted that the order of respondent No.5 is Coram non-judice, ultra vires without any lawful authority, and has been passed in haste; hence the interference of this court is required as the petitioner has no other remedy except the instant petition.

3. Mr. Zaheer Abbas, learned Law Officer of Election Commission of Pakistan contended that the petitioner submitted the nomination papers for the election of Chairman and Vice Chairman UC-142 Town Municipal Corporation Hussain Abad Hyderabad along with respondent No.6 candidate of Vice Chairman, as joint candidature and the respondent No. 6 was not competent or authorized to withdraw the nomination papers without consent or signature of the candidate of Chairman.

4. We have noticed that respondent No.6 is not interested to defend his case and has chosen to remain absent though served, thus we have no option but to hear this matter in presence of the parties, which is of a summary nature.

5. We have heard learned counsel for the parties present in Court and perused the record with their assistance.

6. The provisions of Section 18(2) (a) of the Sindh Local Government Act, 2013 and the Sindh Local Councils Elections Rules, 2015, the Chairman and Vice Chairman of the Union Council have to contest the election in a panel as joint candidates, they are bound to submit the joint nomination papers signed by both of them as well as their proposer and seconder and the Returning Officer during scrutiny has to accept or reject their nomination papers jointly and not individually. Likewise, for withdrawal of joint nomination papers which were submitted by candidates of Chairman and Vice Chairman while putting their signatures on it, both the said candidates will have to sign the application or notice for withdrawal of their nomination papers before the Returning Officer. Primarily, in an individual capacity, neither the candidate for Chairman nor the candidate for Vice Chairman can withdraw the joint nomination papers submitted by them in the panel as joint candidature.

7. The upshot of the above discussion is that the petitioner being the candidate with respondent No.6 for Chairman/Vice Chairman of Union Committee -142 Town Municipal Corporation Hussain Abad Hyderabad, respondent No.6 has no right to withdraw joint nomination papers on his own without consent and signature of petitioner. For the foregoing reasons, we are of the view that respondent No.5 while passing the order dated 19.7.2022 has committed grave illegality in accepting the request of respondent No.6 for withdrawal of his nomination papers unilaterally, thus caused miscarriage of justice. Resultantly, we finding merit in this petition, allow prayer clause (a) of the petition with directions to the official respondents to publish/notify forthwith the name of the petitioner in the gazette in terms of Section 41(2) of The Sindh Local Government Act, 2013 to contest the ensuing Election accordingly.

JUDGE

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