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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Constitutional Petition No.D-1173 of 2016.

PRESENT:

Mr. Justice Zafar Ahmed Rajput,
Mr. Justice Muhammad Iqbal Kalhoro,

Petitioner : Niaz Ali Buriro & another, through Mr. Sajid Ali Gorar, Advocate.

Respondents : Chief Election Commissioner of Pakistan & others, through Messrs Abdul Hamid Bhurgri, Additional Advocate General and Nisar Ahmed G. Abro, Deputy Attorney General.

Date of hearing : 08.11.2016.

Date of order : 08.11.2016.

ORDER

ZAFAR AHMED RAJPUT, J.- Through instant Petition, the Petitioners, namely, Niaz Ali Buriro and Ameer Ali Sehool, who are joint candidates for the seats of Chairman and Vice Chairman of Municipal Committee, Mehar, District Dadu respectively, seek directions to Chief Election Commissioner of Pakistan (the respondent No.1) to change the District Returning Officer, Returning Officer and Assistant Returning Officer for the reelection to be held on 10.11.2016 at Municipal Committee, Mehar.

It is contended, *inter alia*, by the learned Counsel for the petitioners that previously the petitioners challenged the elections of the Chairman and Vice Chairman, that was held on 24.8.2016 under the supervision of the District Returning Officer/Deputy Commissioner, Dadu, Returning Officer/Assistant Commissioner, Mehar, by filing petition before the respondent No.1 under Section 71 of Sindh Local Government Act, 2013 read with Section 103-AA of Representation of Peoples Act, 1976. As a result of which, the said elections were declared as null and void, vide order dated 05.10.2016 by respondent No.1 holding that the illegal action of Returning Officer to change the polling staff just two days before the day of poll had undermined the whole process of elections and that the conduct of Returning Officer was doubtful from day one and the elections were held in non-transparent manner, so much so the petitioners alongwith their party councilors could not cast their votes on the day of polling, hence it was concluded that the

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elections for the office of Chairman and Vice Chairman were not held transparently, fairly, justly and in accordance with law. And thereafter the respondent No.1 has issued schedule for the re-elections at Municipal Committee, Mehar, to be held on 10.11.2016.

The learned Counsel for the petitioners further submits that although the Returning Officer and Assistant Returning Officer appointed in earlier elections held on 24.8.2016 have now been transferred but District Returning Officer is still holding his office and forthcoming elections will be held under his supervision and from his past conduct the petitioners apprehend that no fair and transparent elections at Municipal Committee, Mehar shall be conducted as he is under the influence of ruling party. He further submits that in this regard the petitioners also moved an application to respondent No.1 on 22.10.2016 (Annexure "F", at page 65 of the memo of petition), praying therein that the elections staff i.e. District Returning Officer, Returning Officer and Assistant Returning Officer appointed vide Notification dated 20.10.2016 from Revenue Department, Govt. of Sindh, may be changed and elections staff may be appointed from Judiciary or Election Commission for fair and transparent elections but no order so far has been passed on the said application, therefore, the instant petition has been filed by the petitioners.

On the other hand, learned Addl. A.G, besides raising legal objection over maintainability of this petition, on the ground that the opposite candidates have not been made party in this petition, has contended that the instant petition has been filed by the petitioners on the basis of only apprehension that on 10.11.2016 free and transparent elections shall not be held because it would be supervised by the same DRO, who was there in previous elections held on 24.8.2016. He further submits that all the staff of previous elections is no more posted in the current elections, hence the apprehension in the mind of petitioners is without any substance.

Learned Deputy Attorney General has adopted the arguments of learned Additional Advocate General.

We have given due consideration to the contentions of learned Counsel for the petitioners as well as learned Additional Advocate General and learned Deputy Attorney General and perused the material available on record.

There is no cavil to the proposition that in the forthcoming elections the role of District Returning Officer is of a supervisory nature. Learned Counsel for the petitioners has failed to bring on record any material showing that in earlier elections held on 24.8.2016, which has been declared by the respondent No.1 as null and void, the District Returning Officer had

performed any role in changing the polling staff two days before the polling day. It is evident from the order of respondent No.1 that such illegal act was done by the Returning Officer, who admittedly has been removed. It appears that entire case of the petitioners here is merely based on apprehension, that in the forthcoming elections, they would not be given a fair chance to contest, and the ground taken by them in this behalf is that the same DRO, who was previously there in the elections, is still on the same position, and to further support the said ground they are citing the order of respondent No.1, who has declared the previous elections as null and void. The question before us is that whether the apprehension of the petitioners is based on any material showing their fear turning into some cogent evidence to justify interference by this Court. We have repeatedly asked learned Counsel that in the process of coming elections whether the DRO has acted in a manner prejudicial to the rights of petitioners, he has replied that since his previous conduct was dubious, he cannot be relied upon this time. It is therefore, obvious that there is no material except the substanceless notion of fear in the mind of the petitioners regarding previous position held by the DRO. We, in the circumstances, cannot order changing of DRO at the nick of time, particularly when, we are aware that the petitioners would be having remedy even after elections are held, if it appears to them that the same were not held in fair and transparent manner.

This petition is, therefore, dismissed being devoid of merit.