

IN THE COURT OF SHAUKAT AHMAD KHAN
SESSIONS JUDGE, ORAKZAI (AT BABER MELA)

ELECTION PETITION NO. : 2/22 OF 2022
 DATE OF INSTITUTION : 06.07.2022
 DATE OF DECISION : 28.07.2022

1. FAZAL KHAN S/O ABDUL KHANAN, GENERAL COUNCILLOR VILLAGE GHOZA DAR, R/O CASTE RABIA KHEL, DISTRICT ORAKZAI
2. ABDUL REHMAN S/O MUHAMMAD AYYUB, GENERAL COUNCILLOR VILLAGE GHOZA DAR, R/O TEHSIL ISMAILZAI DISTRICT ORAKZAI
3. JAVID KHAN S/O JANNAT KHAN, GENERAL COUNCILLOR VILLAGE GHOZA DAR,
4. TAJ MUHAMMAD S/O MUHAMMAD HIWADAR,
5. MUHAMMAD RAHAT SHAH S/O NOKRI SHAH, KISAN COUNCILOR, TEHSIL ISMAILZAI, DISTRICT ORAKZAI

.....
 (PETITIONERS)

-VERSUS-

1. ASFANDYAR, RETURNING OFFICER CENTRAL TEHSIL, ORAKZAI
2. KHIAN ULLAH AFRIDI, PRESIDING OFFICER, POLING STATION GHOZDARA
3. SHAHID IQBAL, R/O CASTE RABIA KHEL, TEHSIL ISMAILZAI, DISTRICT ORAKZAI
4. DOST MUHAMMAD S/O MUHAMMAD RASOOL, TEHSIL ISMAILZAI, DISTRICT ORAKZAI
5. LAL SHADEED S/O DAR KHAN, TEHSIL ISMAILZAI, DISTRICT ORAKZAI
6. JAMSHID KHAN S/O ISRAR, TEHSIL ISMAILZAI, DISTRICT ORAKZAI
7. MUSTAFA KHAN S/O IQBAL KHAN, CASTE RABIA KHEL, YOUTH COUNCILOR, DISTRICT ORAKZAI
8. SATTAR KHAN, TEHSIL ISMAILZAI, DISTRICT ORAKZAI
9. TARIQ S/O NOOR HABIB, TEHSIL ISMAILZAI, DISTRICT ORAKZAI

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 (RESPONDENTS)

Present: DPP, Umar Niaz for the State.

: Hassan Ahmad Khan Advocate for petitioners.


JUDGMENT
 28.07.2022

Attorney for the petitioners present. Preliminary arguments have been already heard.

Shaukat Ahmad Khan
 District & Sessions Judge,
 Orakzai (at Baber Mela)

(2). The petitioners namely, Fazal Khan, Abdul Rehman, Javid Khan, Taj Muhammad and Muhammad Rahat Shah through instant election petition have sought cancellation of the result of the Polling Station, Government Middle School Ghoz Ghar, for the category of General Councillor (Chairmen) Union Council no. 14 Ghoz Ghar and have sought repoll on the said polling station on the grounds, that the polling personnel of the above-named polling station were remained absent on the day of election for about two hours from the polling station, as a result of which the polling could not be started well within time, that the polling was stopped at 04:00 pm instead of 05:00 pm and that after closure of the polling the persons present inside the polling station were not allowed to cast their votes.

(3). After receipt of the instant Election Petition, preliminary arguments heard in the light of the law on point.


Shaikat Ahmad Khan
District & Sessions Judge,
District of Baber Khan

As per Rule 54 of Government of Khyber Pakhtunkhwa Local Government (Conduct of Election) Rule, 2021, the elections can be called in question through election petition made by candidate before the Election Tribunal within 45 days of the publication of the name of returned candidate in the official Gazette and shall be accompanied by a receipt showing that the petitioner has deposited a sum of Rs. 30,000/- for the seat Mayor or Chairman in a scheduled bank in favour of the commission,

as security of the cost of petition. It is evident from the copies of the Forms (XX), (XXI) and form of (XIX) that out of the petitioners namely, Fazal Khan, Abdul Rehman, Javid Khan, Taj Muhammad and Muhammad Rahat Shah are candidates for the election to the seat of General Councillor but the petitioner Rahat Shah is not a candidate for the ibid seat and therefore, does not fall within the definition of petitioner and has wrongly been arrayed as petitioner in the instant election petition.

The names of returned candidates have been published in the official Gazette on 21.05.2022 while the instant election petition has been filed on 06.07.2022 after 47 days, with a delay of 02 days, for condonation of which petitioners have filed application on a previous date on the ground, that they were unaware of the law. But as the ignorance of law is no excuse and no other sufficient ground has been alleged for condonation of delay; therefore, the delay cannot be condoned.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

The petition is neither accompanied by any receipt of the deposit of security amount nor the petitioners have later on submitted any receipt of fee so far.

As per Sub-rule (2) of Rule 57 of the ibid rules the petitioners may sought the following declaration as relief in the election petition.

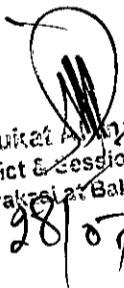
- “a) That the election of the returned candidate is void and petitioner or some other candidate has been elected;
or
b) That the election of the returned candidate is partially void and that fresh poll be ordered in one or more polling stations; or
c) That the election as a whole is void and fresh poll be conducted in the entire constituency.”

But keeping in view of the aforementioned provision of law, the petitioners have not been sought any declaration as mentioned above.

As per Sub-rule (3) of rule 57 of the ibid rules, the Election petition must be accompanied by;

- “a) Complete list of witnesses and their statements on affidavit;
b) Documentary evidence relied upon by the petitioner in support of allegations referred to in clause (b) of sub-rule (1); and
c) Affidavit of service to the effect that a copy of the petition along with documentary evidence have been sent to the entire respondent by registered post or courier service.”

Perusal of case file shows that the instant petition is neither accompanied by list of witnesses nor their statements on affidavit. Similarly, with respect to service of the copies


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of petition upon respondents, though the petitioners have submitted receipt of registered letters but no affidavit as required under sub-clause (c) of clause (3) of Rule 57 regarding service of the copy of petition upon the respondents, have been submitted.

As per sub-rule (4) of Rule 57 of the ibid rules, every election petition and every annexure to that petition shall be signed by petitioner and verified in the manner as laid down in CPC for verification of pleadings. But in the instant case neither the election petition nor any of the annexure has been signed by any of petitioner. Similarly, the verification of the petitioner has been thumb impressed by only one of the petitioners and not in accordance with law.

(4). Hence, in view of what is discussed above, the instant election petition is not maintainable; therefore, dismissed in limini. File of this court be consigned while record be returned.

Pronounced
28.07.2022





SHAUKAT AHMAD KHAN
Sessions Judge/Justice of Peace,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 28.07.2022


SHAUKAT AHMAD KHAN
Sessions Judge/Justice of Peace,
Orakzai at Baber Mela