

*In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.*

BEFORE THE ELECTION TRIBUNAL OF LOWER ORAKZAI

**Election Petition No. 2/22 of 2022**

**Date of institution: 18-04-2022**

**Date of decision: 16.08.2022**

Mst Sameela Jan wife of Maimoon Ali resident of Qaum Bar Muhammad Khel, Tappa Alaat Khel village Sarobi Garhi, District Orakzai.....(**Petitioner**)

...Versus...

1. Returning Officer Tehsil Lower District Orakzai, District Forest Officer Orakzai.
2. Mst Dilharam Jan wife of Farzand Ali village council Trangi representative women councilor, Tehsil Lower District Orakzai.
3. Mst Irshad Begum Candidate, Women Councilor village council Trangi resident of Qaum Bar Muhammad Khel Tappa Alat Khel Tehsil Lower Sarobi Garhi. ....(**Respondents**)

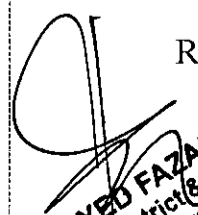
**Election Petition under Rule-54 of The Khyber Pakhtunkhwa Local Councils (Conduct of elections) Rules, 2021.**

**JUDGMENT**

Election petition has been instituted with the stance that 126 votes of males and 81 votes of females have been polled in favour of petitioner at Polling Station Government Higher Secondary School Sarobi Garhi and thus her total votes were supposed to be 207. This count of votes have wrongly been mentioned as 134 by mistakenly considering the figure of 81 as 08. The wrong insertion of figure in form XIX and form XX has converted the status of the petitioner from returned candidate to runner. Declaration has been claimed for recounting of votes of combined Polling Station of Government Higher Secondary School Sarobi Garhi.

2. Respondents have been issued notices for appearance. Respondent No. 2 being returning candidate has appeared in person on 17-05-2022 but remained absent in further proceedings and thus placed and proceeded against ex-parte.

Respondent No. 1 (Returning Officer) presented reply and contended that valid

  
**SAYED FAZAL WADOOD**  
Adm. District & Sessions Judge  
Orakzai at Hangu

46

votes of the petitioner are not being reflected in the statement of count. It has been concluded that if the Election Tribunal is agreed, appropriate direction may be issued.

3. The material propositions of fact and law asserted by one party and denied by other have separately been put into following issues:

- i. Whether petitioner has got cause of action?
- ii. Whether the votes polled in combined polling station of Government Higher Secondary School Sarobi Garhi, Orakzai have wrongly been counted?
- iii. Whether petitioner is entitled for relief prayed for?
- iv. What shall be the operating part of the Judgement?

4. Opportunity of leading evidence was provided to the parties. The petitioner has produced Wasiq Ali as PW-1, Sajid Ali as PW-2 and Irfan Ali as PW-3. On turn, respondent (Returning Officer) has produced record keeper Noorshad Ali as DW-1 and closed his evidence.

5. In light of the pleadings, evidence and professional assistance, the issues have judicially been determined in following terms:

**Issue No. 1:-** Whether petitioner has got cause of action?

Cause of action means the whole of the material facts if which traversed, it would be necessary for petitioner to prove in order to get favorable judgement from the Court. The returned candidate has disappeared and did not contest the election petition; whereas, the contesting respondent No.2 (Returning Officer) has admitted the fact asserted by petitioner and thus this issue needs no determination at all. If the cause of action is being taken in the meaning of locus standi; even then, the petitioner was contesting candidate and has right to call in question the conduct of election and thus having cause of action.

  
**SAYED FAZAL WADOOD**  
 Adcl: District & Sessions Judge  
 Orakzai At Hangu

6. **Issue No. 2:-** Whether the votes polled in combined polling station of Government Higher Secondary School Sarobi Garhi, Orakzai have wrongly been counted?

He who assert must prove is the general principle articulated in Article 117 of the Qanoon-e-Shahadat Order, 1984. Plaintiff has produced 03 witnesses who testified that petitioner has secured 207 votes in combined polling Station of Government Higher Secondary School Sarobi Garhi, Orakzai which has wrongly been shown as 134. The DW-1 (Returning Officer) has also confirmed this fact in his statement. He added that if recounting of the stated combined polling station has been ordered, he will be having no objection. This amounts to an unequivocal admission on part of the respondent. In circumstances, it can safely be concluded that the votes polled in captioned polling station have wrongly been counted.


7. **Issue No. iii:-** Whether petitioner is entitled for relief prayed for?

Discussion over issue No. ii leads the Court to hold that petitioner is entitled for the relief prayed for.

8. **Issue No. iv:-** What shall be the operating part of the Judgement?

For what has been discussed above, this Court holds the view that counting of votes in the combined polling Station of Government Higher Secondary School Sarobi Garhi, Orakzai was wrong and resultantly declared void. Election petition in hand stands allowed subject to deposit of Rs. 5000/- in the Head of Account "C03-Misc Receipts, C038-others, C03870-others (Election Receipts)" in the name of Election Commission of Pakistan; the receipt thereof shall be placed on this file and copy thereof shall be presented to the Office of District Election Commissioner, Orakzai; which, shall not be later than one week of this Order.

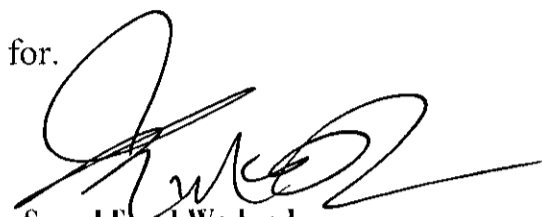
9. The Office of District Election Commissioner Orakzai is directed to recount the votes of combined Polling Station of Government Higher Secondary School Sarobi Garhi, Orakzai, in accordance with law and to proceed further in the light

  
FAYEZ FAZAL WABOOL  
District & Sessions Judge  
Orakzai at Hangu

of such recount of votes. The Returning Officer (District Forest Officer Orakzai) is directed to remain associated during recount of votes so that expected amendments in the consolidated statement of results of the count or any other document shall be ensured.

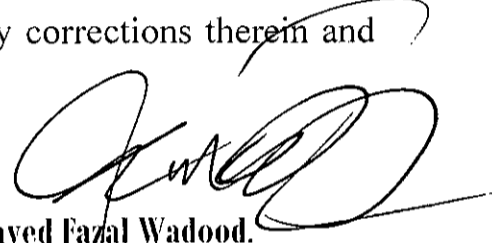
10. File of this Court be consigned to District Record Room, Orakzai after completion and compilation within the span allowed for.

Announced in the open Court  
16.08.2022

  
Sayed Fazal Wadood,  
ADJ, Orakzai at Baber Mela  
Election Tribunal, Lower Orakzai

**CERTIFICATE.**

Certified that this Judgment consists of four (04) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.

  
Sayed Fazal Wadood,  
ADJ, Orakzai at Baber Mela  
Election Tribunal, Lower Orakzai