

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. 7/22 of 2022

Date of institution: 01-06-2022

Date of decision: 30.11.2022

Muhammad Ismail son of Umar Gul resident of Qaum Shekhan, Tappa Umar Zai, Ghiljo, Dera Sultan Nawasi, Tehsil central, District Orakzai.

.....(**Petitioner**)

...Versus...

1. Muhammad Ishaq

2. Abdul Janan

3. Kifayat Ullah

4. Muhammad Ibrahim

5. Muhammad Sharif

6. Muhammad Tariq

7. Pir Gul

8. Saif ul Malook

9. Taza Khan

(All candidates VC-26 Ganda Chan)

10. Returning Officer (DFO Orakzai)

11. Assistant Presiding Officer Government High School Oat Mela

12. Assistant Presiding Officer Government Primary School Tor Samat

13. Assistant Presiding Officer Government Primary School Tor Samat

.....(**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 190 votes have been polled in favour of petitioner and was successful being the top scorer of candidates against the General Category in Village Council No. 26 Ganda Chan.

During course of consolidation, the Returning Officer has declared the Respondent No. 1 as top scorer by illegally excluding the valid votes of the petitioner followed by illegally including votes in the total score of respondent

from eligible list. The consolidation and illegal recounting has paved way of respondent to win the election with one vote as the petitioner had been shown with total votes of 188 and that of respondent as 189. This necessitated presentation of instant Election Petition which is under consideration for its final determination.

It has been prayed that appropriate relief may be granted to the petitioner.

2. Respondents have been issued notices for appearance. Attendance was procured. Respondent No. 1 being returned candidate has appeared in person and presented written statement. It was contended that he has been administered oath and has got no objection over the consolidation and recounting of the Returning Officer. He added that the Court is at liberty to determine the matter in issue and he is not pursuing the case. Returning Officer being Respondent No. 10, presented written statement and stated therein that petitioner has approached him for recounting but for being verbal, his request was not acted upon. He concluded that the plea of petitioner may be considered. He disappeared then and did not participate in proceedings.

3. The material propositions of fact and law asserted by one party and denied by other are required to be put into issues but the documents of the respondents were not giving any such point for framing of issues. The Court was with the options either to announce judgement on the score of parties not in issue or to procure evidence. Consequently, parties were provided opportunity of leading evidence.

4. Seizing the opportunity, the petitioner has produced Umar Hayat as PW-1, Muhammad Idrees as PW-2, Muhammad Aqeel as PW-3 and Muhammad Ismail himself as PW-4. Affidavits of the witnesses; copies of CNICs and other documents have been exhibited from Ex.PW-1/1 to Ex.PW-4/3. Respondents being absent were placed and proceeded against ex-parte and thus the ex-parte

evidence was closed.

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District & Sessions Judge

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5. In light of the pleadings, evidence and professional assistance, the issue of the suit has finally been determined as following. 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.10 has admitted the contents of petition. The fact of contesting election by petitioner is also proved on record and thus it can safely be concluded that petitioner has got cause of action. 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.

6. He who assert must prove is the general principle articulated in Article 117 of the Qanoon-e-Shahadat Order, 1984. Petitioner has produced 04 witnesses who testified that petitioner has secured 190 votes which has wrongly been shown as 188. The Returning Officer (District Forest Officer Orakzai) has also confirmed the fact in his written statement dated 06-06-2022 by stating that the petitioner has verbally requested him for recounting and has admitted him claim as worth considerable. This amounts to an unequivocal admission on part of the respondent. The Respondent No. 1 has appeared before the Court and categorically stated that the Court may decide the matter in issue and that he is not pursuing the proceedings.

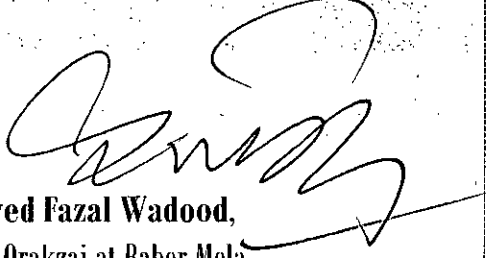
7. For what has been discussed above, this Election Tribunal holds the view that counting of votes in the Village Council No.26 Ganda Chan was wrong and resultantly declared void. Election petition in hand stands allowed.

8. The District Forest Officer Orakzai (Returning Officer) is directed to recount the votes of Village Council No. 26 Ganda Chan Orakzai, on the pattern of consolidation of result in accordance with law and to proceed further in the light of such recount of votes. The District Election Commissioner Orakzai or his

representative not below the Rank of prescribed Gazetted Officer shall remain associated during recount on the pattern of consolidation of results to be followed by ensuring expected amendments in record.

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

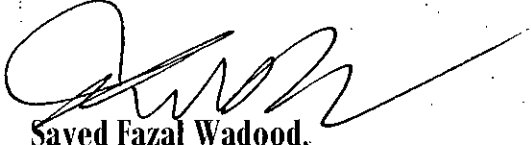
Announced in the open Court
30.11.2022



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