

55

*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. 4/22 of 2022**

**Date of institution: 26-04-2022**  
**Date of decision: 14.10.2022**

Malak Bakht Munir Khan son of Malak Murad Khan resident of Qaum Stori Khel, Tehsil Lower, District Orakzai. ....(**Petitioner**)

...Versus...

1. Alam Zeb son of Yara Din (**Returned Candidate Youth Category**)
2. Ijaz ul Haq son of Muhammad Khan (**Candidate Youth Category**)
3. Javid Khan son of Kashmir Khan (**Candidate Youth Category**)
4. District Sports Officer, Orakzai (**Returning Officer**) Village Council No.1 Anjani, Orakzai.
5. Assistant Returning Officer (**Village Council No.1 Anjani, Orakzai**)

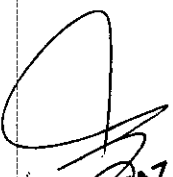
Respondents No. 6 to 10 have been deleted being wrongly impleaded vide Order No.3 dated 17-05-2022

.....(**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 486 votes have been polled in favour of petitioner and was declared successful being the top scorer of candidates against the Youth Category in Village Council No. 1 Anjani Orakzai. During course of consolidation, the Returning Officer has declared the waiting candidate as returned candidate by illegally excluding the petitioner from eligible list. It was added that 475 votes have been shown instead of 486 votes so that a way may be paved for losing the petitioner by three votes and to declare Respondent No.1 as successful candidate. This necessitated presentation of instant Election Petition which is under consideration for its final determination. It has been prayed that appropriated relief may be granted to the petitioner for doing justice.

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

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 initially he has lost the seat by seven votes without proper counting by the Returning Officer. He consequently presented application to the Returning Officer for recounting of the votes. During course of recounting, he was lawfully declared as Returned Candidate and no illegality or irregularity has been committed. Respondents No. 2 and 3 appeared before the Court and recorded conceding statement in favor of the petitioner.

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

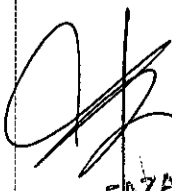
- i. Whether petitioner has got cause of action?
- ii. Whether petitioner has wrongly been excluded as returned candidate during recounting by the RO?
- iii. Whether petitioner is entitled for relief prayed for?
- iv. Relief?

4. Opportunity of leading evidence was provided to the parties. The petitioner has produced Muhammad Tahir as PW-1, Mujahid Khan as PW-2, Abid Naseem as PW-3 and Wajid Ullah as PW-4. Senior Assistant Presiding Officers and Presiding Officers have been examined as PW-5 to PW-8. He himself was examined as PW-9. Affidavits of the witnesses; copies of CNICs and other documents have been exhibited from Ex.PW-1/1 to Ex.PW-8/1. Meanwhile, respondents remained absent and were placed and proceeded against ex-parte.

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

**Issue No. I:-** 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

  
**SAYED FAZAL WADOOD**  
 Addl. District & Sessions Judge  
 Orakzai District Hangu

from the Court. The returned candidate has disappeared and did not contest the election petition; whereas, the contesting respondent No.2 and 3 have admitted the contents of petition as true and correct by recording conceding statement on oath. The fact of contesting election by petitioner is also proved on record 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.

6. **Issue No. II:-** Whether petitioner has wrongly been excluded as returned candidate during recounting by the RO?

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 486 votes which has wrongly been shown as 475. The PW-5 to 8 (Senior Assistant Presiding Officers and Presiding Officers) have also confirmed this fact in their statement by stating that the petitioner has secured 486 votes in initial count being reflected from Form-17 of their respective Polling Stations. 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.

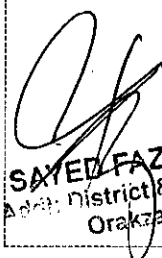
7. **Issue No. iii:-** Whether petitioner is entitled for relief prayed for?

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

8. **Issue No. iv:-** Relief?

For what has been discussed above, this Election Tribunal holds the view that counting of votes in the Village Council No.1 Anjani 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,

  
**SAYED FAZL WADOOD**  
District & Sessions Judge  
Orakzai at Hangu

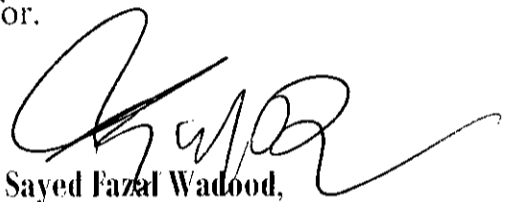
38

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 District Sports Officer Orakzai (Returning Officer) is directed to recount the votes of Village Council No. 1 Anjani 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 Gazette Officer shall remain associated during recount on the pattern of consolidation of results to be followed by ensuring expected amendments in record.

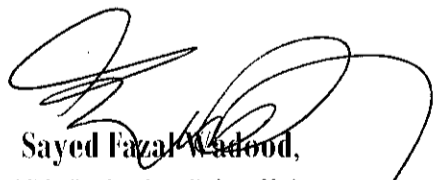
10. File of this Court be consigned to District Record Room, Orakzai after completion and compilation within the span allowed for.

Announced in the open Court  
14.10.2022

  
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