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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. 3/22 of 2022

Date of institution: 19-04-2022

Date of decision: 09.12.2022

Roohul Ameen son of Ameer Jan resident of Ismail Khel, Tehsil Lower,
District Orakzai.(Petitioner)

...Versus...

1. Muhammad Hussain Returning Officer.
2. DRO, District Orakzai.
3. Muhammad Irfan resident of Chapri Feroz Khel, Tehsil Lower, District Orakzai

.....(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 165 votes have been polled in favour of petitioner and was declared successful being the top scorer of candidates against the General Seat in Village Council No. 09 Chapri Feroz Khel. During course of consolidation, the Returning Officer has declared the Respondent No. 3 as on top of the list by illegally excluding the valid votes polled in favor of petitioner. 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 for doing justice.

2. Respondents have been issued notices for appearance. Attendance was procured. Respondent No. 3 Muhammad Irfan being beneficiary candidate has appeared in person and presented written statement. It was contended that during course of consolidation, he was lawfully declared as Returned Candidate and no illegality or irregularity has been committed.


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Addl. District & Sessions Judge
Orakzai at Hangu

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 Middle School Chapri Feroz Khel, 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 himself was examined as PW-1, Mir Ahmad Khan as PW-2, Gul Awar Khan as PW-3, Waseem Akram as PW-4, Kiramat Khan as PW-5. Affidavits of the witnesses; copies of CNICs and other documents have been exhibited from Ex.PW-1/1 to Ex.PW-5/1. On turn, respondents produced Muhammad Hussain Returning Officer as DW-1 who exhibited recounting application as Ex.DW-1/1, attendance sheet as Ex.DW-1/1-x1, final result sheet as Ex.DW-1/1-x2 and first result sheet as Ex.DW-1/2. Respondent No. 3 Muhammad Irfan is examined as DW-2 and thus evidence was closed.

5. In light of the pleadings, evidence and professional assistance rendered by counsel representing parties, the issues have judicially 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 from the Court. On this given criteria, the issue of cause of action does not exist as every preposition is required to be put into separate issue. If cause of action is taken in the meaning of locus standi, the petitioner has appeared in contest of local body election and thus he has right to call in question the proceedings.

6. **Issue No. II:-** Whether the votes polled in combined polling station of Government Middle School Chapri Feroz Khel, 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. Petitioner has produced 05 witnesses who testified that petitioner has secured 165 votes which has wrongly been shown as 161. Returning Officer has stated while recording his statement as DW-1 that there is difference of two votes between the petitioner and contesting respondent. He confirmed this fact that petitioner has initially secured 165 votes and respondent with 164 votes. He further confirmed that the result has been changed during course of recounting. It has also been established as well as admitted that the petitioner and respondent has the difference of just 2 votes and if recounting is allowed, it will resolve the issue. 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 Election Tribunal holds the view that counting of votes in the Local Council VC-No.09 Chapri Feroz Khel Orakzai was wrong and resultantly declared void. Election petition in hand stands allowed.

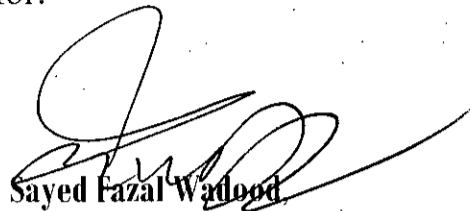
9. The Office of District Sports Officer Orakzai is directed to recount the votes of Local Council VC-No. 09 Chapri Feroz Khel Orakzai, in accordance with law on procedure of consolidation and to proceed further in the light of such recount of votes. The District Election Commissioner Orakzai is directed to remain associated during recount of votes so that expected amendments in the


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consolidated statement of results of the count or any other document as well as correct and fair count of votes shall be ensured.

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

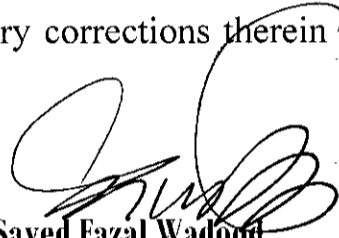
Announced in the open Court
09.12.2022



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

CERTIFICATE.

Certified that this Judgement 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