

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. 6/22 of 2022

Date of institution: 18-05-2022

Date of decision: 29.08.2022

Muhammad Dawood son of Meen Ajab Khan resident of Qaum Mishti, District Orakzai.(Petitioner)

...Versus...

1. Returning Officer, District Orakzai concerned.
2. Ameen Ullah
3. Ameen Zada
4. Ghameen Gul
5. Hayat Khan
6. Khalee
7. Naseeb Gul
8. Nazeer Bat Khan
9. Qadir
10. Shah Nawaz
11. Shafqat
12. Muhammad Yaseen Shah

(All Candidates VC-19 Kach Mama Khel Tagha Saam, 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 174 votes have been polled in favour of petitioner at Kach Mama Khel Mishti Polling Station and was declared successful being within the top three scorers of General Councilor in Village Council No. 19 Tagha Sam. During course of consolidation, the Returning Officer has declared the waiting candidate as one of the top three by illegally excluding the petitioner from eligible list. It was added that 46 votes polled in his favour have been excluded from the count with mala fide of the

SAJED FAZAL WADOOD
District & Sessions Judge
Orakzai at Hangu

respondents including Returning Officer that necessitated presentation of instant Election Petition. It has been prayed that appropriated relief may be granted to the petitioner for doing justice.

2. Respondents have been issued notices for appearance. Attendance was procured. Respondent No. 5 being returned candidate has appeared in person on 23-05-2022 but remained absent in further proceedings and thus placed and proceeded against ex-parte. Respondent No. 1 (Returning Officer) presented reply and contended that he has compiled the results in accordance with the statement of count submitted by Presiding Officers. Petitioner stands at Serial No. 6 and has badly failed to score the required votes for declaration as one of the three General Councilors.

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 Returning Officer has wrongly excluded the votes of petitioner in the process of consolidation?
- 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 Arman Ullah as PW-1 and Muhammad Haneef as PW-2. He himself was examined 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. 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. The returned candidate has disappeared and did not contest the election petition; whereas, the contesting respondent No.1 (Returning Officer) has admitted the fact the contest of election 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.

6. **Issue No. II:-** Whether the Returning Officer has wrongly excluded the votes of petitioner in the process of consolidation?

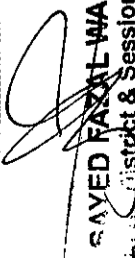
He who assert must prove is the general principle articulated in Article 117 of the Qanoon-e-Shahadat Order, 1984. Petitioner has produced 03 witnesses who testified that petitioner has secured 174 votes in which has wrongly been shown as 128. The DW-1 (Returning Officer) has also confirmed this fact in his statement by stating that the petitioner has secured 174 votes in initial count. He further admits that cutting and over cutting of the Presiding Officer is also reflected on the form. 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 Election Tribunal holds the view that counting of votes in the Village Council No.19 Tagha Sam Orakzai was wrong and resultantly declared void. Election petition in hand stands allowed subject to further deposit of Rs. 2000/- 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

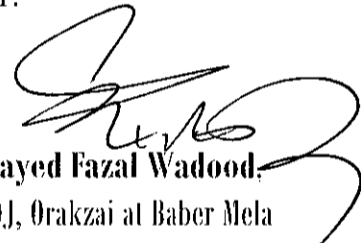

SAYED FAZAL WADOOD
District & Sessions Judge
Orakzai at Hangu

be presented to the Office of District Election Commissioner, Orakzai; which, shall not be later than one week of this Order. It is to bring on record that the deposit of amount in prescribed Head vide Challan dated 24-08-2022 is available on file which reflects that only Rs. 3000/- has been deposited against the required amount of Rs. 5000/- that has been ordered herein to be rectified forthwith.

9. The Office of District Election Commissioner Orakzai is directed to recount the votes of Village Council No. 19 Tagha Sam Orakzai, in accordance with law and to proceed further in the light 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.

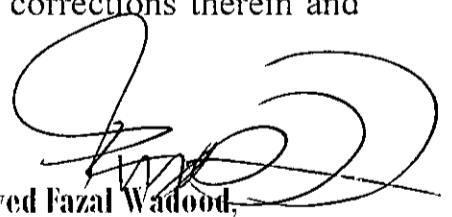
10. File of this Court be consigned to District Record Room, Orakzai after completion and compilation within the span allowed for.

Announced in the open Court
29.08.2022


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