

50

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. 1/22 of 2022

Date of institution: 15-04-2022

Date of decision: 17.09.2022

Zain Ullah son of Muhammad Syed resident of Qaum Mishti, District Orakzai.

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

...Versus...

1. Abdul kabir.
2. Abdul Rehman
3. Dost Ali Khan
4. Eid Badshah
5. Fazal Habib
6. Hakeem Badshah
7. Hakeem Gul
8. Hazrat Bilal
9. Mawas Khan
10. Ajmal
11. Muhammad Ishaq
12. Shabir
13. Muhammad Ullah
14. Muhammad Usman
15. Nadar Khan
16. Sami Ullah
17. Shaheed Khan
18. Sabab Gul
19. Zain Ullah
20. Returning Officer District Forest Officer, Orakzai
21. Assistant Returning Officer Mishti Mela Bazar
22. Assistant Presiding Officer PC-02 Jata Meshti
23. Presiding Officer NC-04 Government Primary School
24. Assistant Presiding Officer Government Primary school Mishti Bazar
25. Presiding Officer Government School Spin Pigha
26. Presiding Officer TC-06, NC-06 Government Primary School Meshti Bazar
27. Presiding Officer

SAYED FAZAL-WADOOD
Magistrate District & Sessions Judge
Orakzai at Hangu

51

28.District Election Officer 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 214 votes have been polled in favour of petitioner at Local Council NC-01, Mishti Bazar and was declared successful being within the top three scorers of General Councilor in Local Council NC-01 Mishti Bazar. 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 70 votes polled in his favour have been excluded from the count with mala fide of the respondents including Returning Officer that necessitated presentation of instant Election Petition. It has been prayed that recounting of all the votes polled in polling stations of constituency concerned may be ordered in the best interest of justice.

2. Respondents have been issued notices for appearance. Attendance was procured. Respondent No. 19 being returned candidate has as contended in reply that he has secured 195 votes against the petitioner and was rightly declared one of the returned candidates. Respondent No. 20 (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. 4 and has failed to score the required votes for declaration as one of the three General Councilors. He added that the difference of votes between the winning and losing candidates is just one vote and if the Tribunal agrees, recounting may be done accordingly.

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

SAYED FAZL WADOOD
District Election Officer
Orakzai

- 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 Muhammad as PW-1, Rahim Ullah as PW-2, Hazrat Bilal as PW-3 and Zain Ullah as PW-4. He himself was examined as PW-3. On turn, respondent No.19 Zain Ullah is examined as DW-1 and closed his evidence.

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. The returned candidate (respondent No.19) has appeared and contest the election petition.

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 04 witnesses who testified that petitioner has secured 214 votes which has wrongly been shown as 194. The respondent No.20 (Returning Officer) has also confirmed this fact in his statement by stating that the petitioner and respondent No.19 has the difference of just a single vote and if recounting is allowed, it will resolve the issue. This amounts to an unequivocal admission on part of the respondent. In circumstances,

AYED FAZAL WADGOD
District & Sessions Judge
Orakzai at Hangu

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.

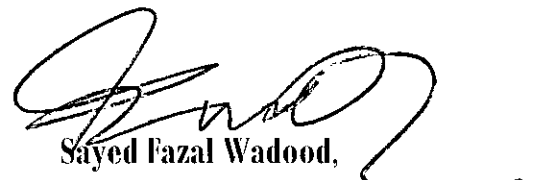
8. **Issue No. iv:-** What shall be the operating part of the Judgment?

For what has been discussed above, this Election Tribunal holds the view that counting of votes in the Local Council NC-No.01 Mishti Bazar Orakzai was wrong and resultantly declared void. Election petition in hand stands allowed.

9. The Office of District Forest Officer Orakzai is directed to recount the votes of Local Council NC-No. 01 Mishti Bazar Orakzai, in accordance with law 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 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
17.09.2022


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