BEFORE THE ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. NISAR AHMED DURRANI, MEMBER
MR. SHAH MOHAMMAD JATOI, MEMBER

Case No. 23(37)/2022-Law

In Ref: **ELECTION PETITION UNDER RULE 54 OF THE KP LOCAL COUNCILS (CONDUCT OF ELECTIONS) RULES, 2021 READ WITH ALL OTHER ENABLING PROVISIONS OF LAW ON THE SUBJECT AGAINST THE CONSOLIDATED RESULTS ISSUED BY THE RESPONDENTS**

Yousaf Khan s/o Mir Sahab Khan r/o Ganderi Khattac, P/O Takht-e-Nasrati Mianki Banda, Tehsil Takhat-e-Nasrati, Karak, KPK

....Petitioner (s)

VERSUS

District Returning Officer, Karak and 23 others.

...Respondent (s)/-

For the Petitioner	:	Mr. Hazrat Ali, Advocate
For the Respondent No. 6	:	Mr. Muhammad Farooq Malik, AHC
For the Respondent No. 20	:	Mr. Mujahid Islam Asif, AHC
Date of Hearing	:	14.03.2022

ORDER

Mr. Nisar Ahmed Durrani, Member.—Petitioner as many as 19 other contested the local bodies election (1st Phase) for the seat of General from constituency Local Council Ganderi Khattak Tehsil Takhat-e-Nasrati, district Karak. Petitioner being aggrieved with the result has filed the instant petition for recounting of votes on the solitary ground that Forms XVII prepared by the Presiding Officers and provided to the polling agents are manipulated/ fabricate by the Returning Officer concerned.

2. On receipt of petition, parties were put on notice to hear their stance. Learned counsel for the petitioner appeared and emphatically contended that petitioner infact attained 597 votes as per Form-XVII prepared and provided by the Presiding Officers on polling day to the polling agents but his votes are deliberately

reduced in Form XX from 597 to 537 by the Returning Officer. He while criticizing the conduct of Returning Officer -192 emphasized that he has changed and manipulated Form (s) XVII with malafide intention and ulterior motives. That principle of fairness and impartiality have been brushed aside by the Returning Officer to bless his favourites. Further added that form XVII is a basic document for preparation and publication of consolidated results but the same have been changed illegally and without any justification. That an application for recounting of votes was made to the Returning Officer but he rejected the same without cogent reasons. He prayed for recounting and rechecking of votes in the interest of justice and fair play.

3. On the other hand learned counsel for the respondent while opposing the petition and contentions of learned counsel for the petitioner contended that no extra forms XVII was provided to the Returning Officer to believe the contention that Returning Officer has prepared new Form XVII and changed the result by himself to favour anyone. That now there are three different Forms XVII, which one can be considered true and correct, it can better be determined by the Election Tribunal after recording of numerous evidence for such determination. That Presiding Officers have even denied from their signatures on Forms XVII submitted by RO which makes the matter more disputed. He while referring sub rule 2 and 3 of rule 9 of Khyber Pakhtunkhwa (Conduct of Elections) Rules, 2021 contended that statutory period has elapsed to dispose of the matter and disputed questions of fact are involved as well, therefore, the matter may be entrusted to the Election Tribunal to probe into the matter.

4. In rebuttal Farooq Khattak, learned counsel for the petitioner came forward and contended that instant matter does not relate to bogus or fake polling but it relates to manipulation qua change of result where figures are changed on Form XVII to increase/decrease votes and thereafter consolidation has been made. He vociferously contended that this Commission inherits the powers to inquire and decide such like matter by itself.

5. We have heard the arguments of learned counsel for the parties and perused the record carefully. Report was sought from Returning Officer vide order dated 22.02.2022. Returning Officer on 02.03.2022 appeared and submitted his report along with copies of Forms XVII. It was found on examination that Forms XVII submitted by the petitioner and annexed with the report Returning Officer were different. It is pertinent to note that result of five constituencies and nine different categories (General, Youth, Peasant) conducted by the same Returning Officer i.e. RO 192 (respondent) has been challenged before us. All the cases were heard on same dates and same situation qua manipulation of Form XVII has been alleged by the petitioners. It transpired on comparison in the instant case that both the aforementioned Forms show different results of some candidates at certain polling stations. For example the votes of Gul Shah Ali Khan as per Form XVII submitted by petitioner at polling station GPS Shobli Banda are 45 but as per Form XVII submitted by the RO, the same are shown 245 therein. Moreover, as per Form XVII submitted by petitioner in respect of above polling station Gul Shah Ali Khan shows 3 votes but as per Form XVII submitted by the RO, the same are shown 103. Similarly, the votes of Shah Jehan as per Form XVII

submitted by petitioner in respect of aforementioned polling stations shows 71 votes but as per Form XVII submitted by the RO, the same are shown 171. From thorough perusal of both Forms XVII submitted by the petitioner and Returning Officer when put juxtaposed, it transpired that out of 20 contesting candidates, votes of Gul Shah Ali Khan, Maqsood ur Rehman, Rehman Gul, Shah Jehan and petitioner Yousaf Khan do not correlate with each other. In such view of the matter, and circumstances vide our order dated 2.03.2022, matter was referred to District Election Commissioner, Karak with the directions to call all the Presiding Officers to authenticate that which Form XVII is true/genuine which they have provided to polling agents or contesting candidates or submitted by the Retuning Officer along with his report.

6. In pursuance of our order dated 02.03.2022, Shahab ud Din, District Election Commissioner, Karak appeared in person on 07.03.2022 and after doing the needful submitted his report. He on appearance contended that he called all the Presiding Officers of Polling Stations No. 1-6 and they submitted certified copies of Forms XVII as well as their respective written statements mentioning the number of votes attained by each contesting candidate. Further submitted that most of the Presiding Officers have denied the Forms which are submitted by the Returning Officer. Further added that comparative statement is prepared as per Forms-XVII & XX submitted by Returning Officer and as per Form-XVII & written statements submitted by concerned presiding officers.

7. On comparison of Form(s) XVII submitted by District Election Commissioner along with his report and submitted by RO, huge difference of votes was noticed. The detail is as under:

Gul Shah Ali Khan				
Sr. No.	**Name of PS**	**As per Form XVII & Written Statement result submitted by POs**	**As per Form XVII & XX submitted by RO**	**Overall difference**
1	Govt. Primary School Wagi Banda (M)	12	112	**550**
2	Govt. Girls Primary School Wagi Banda (F)	3	103	
3	Govt. High School Ganderi Khattak (M)	5	65	
4	Govt. Primary School Ganderi Khattak (F)	2	92	
5	Govt. Primary School Shobli Banda(Combined)	45	245	
6	Govt. Girs Community Model School Nusrat Abad Combined	4	4	
	Total	**71**	**621**	

From perusal of above it reveals that figures 12 is changed to make it 112 by adding figure 1 in the forms submitted by Returning Officer. Similarly, figure (s) 3, 5, 2, 45 are changed in to 103, 65, 92 & 145 respectively in the Forms of RO. Moreover, difference of votes in respect of Maqbool ur Rehman is also noticed as under:

Maqbool ur Rehman				
Sr. No.	Name of PS	As per Form XVII & Written Statement result submitted by POs	As per Form XVII & XX submitted by RO	Overall difference Difference
1	Govt. Primary School Wagi Banda (M)	31	251	
2	Govt. Girls Primary School Wagi Banda (F)	3	103	
3	Govt. High School Ganderi Khattak (M)	26	69	380
4	Govt. Primary School Ganderi Khattak (F)	4	24	
5	Govt. Primary School Shobli Banda(Combined)	132	132	
6	Govt. Girs Community Model School Nusrat Abad Combined	16	16	
	Total	**215**	**595**	

From perusal of above *prima facie* it reveals that figures 31, 3, 26 & 4 are changed as 251, 103, 69 & 24 respectively in the Forms submitted by RO. It further transpires that votes of petitioners are shown less in Form XVII and XX submitted by RO as compared to Form XVII and Statement submitted by PO at Polling station Govt. High School Ganderi Khattak (M). As per Form submitted by RO his votes are shown 250 whereas Forms XVII submitted by Presiding Officer his votes are mentioned 290. Similarly, the votes

of Shah Jehan depicts different picture when both the Forms are compared to the extent of PS Govt. Primary School Shobli Banda (Combined).

8. As for as the contention of learned counsel for the respondent that sufficient time has elapsed and Election Commission cannot decide the matter now, is discussed and decided first. Admittedly, Election Commission is duty bound to ensure that standards of honesty, justness and fairness are met in the election and to take prompt action if such standards are not met out in letter and spirit. Attention is invited to Article 218 (3) of the Constitution of Islamic Republic of Pakistan, 1973 which is further elaborated by the august Supreme Court of Pakistan in number of cases. Reference is made to case PLD 2012 SC 681 (Workers Party Pakistan Vs. Federation of Pakistan etc). Hence the contention of learned counsel does not bear any weight in the instant matter in the circumstances of the case.

9. Now the foremost and expressive question falls for determination is that which forms XVII are correct/true and which are incorrect. Admittedly during the course of arguments it was *prima facie* found that result has been changed/manipulated by increasing or decreasing of votes of candidates as discussed above. But in order to be more clear and for proper appreciation and validity and correctness of Forms, the District Election Commissioner, Karak was asked to call all the Presiding Officers in person and ascertain that which form is correct. In pursuance of directions he called the Presiding Officers, obtained their statements and verified copies of Forms XVII and ultimately

submitted his report before this Commission. It reveals from the report of DEC and Forms XVII attached therewith that Forms XVII submitted by petitioner and attached with the report of DEC (submitted before him by the concerned Presiding Officers) are same and tally with each other. However, Forms XVII submitted by Returning Officer are showing different result as discussed above. Needless to reiterate but is necessary for determination that *prima facie* it reveals that votes of Gul Shah Ali Khan are increased from 71 to 621 by changing and converting figure 12 into 112 at PS Govt. Primary School Wagi Banda (M) , figure 3 is changed as 103 at PS Govt. Girls Primary School Wagi Banda (F) , 5 is converted to 65 at PS Govt. High School Ganderi Khattak (M) , 2 is converted into 92 at PS Govt. Primary School Ganderi Khattak (F) and quite interestingly 45 is converted into 245 by adding figure before 45 at Ps Govt. Primary School Shobli Banda(Combined).

10. In such view of the matter and circumstances of the case, we are of the view that Inquiry Committee be constituted to inquire into the matter to meet the ends of justice. Hence, Inquiry Committee comprising of Mr. Muhammad Raziq, Provincial Election Commissioner, Khyber Pakhtunkhwa, Mr. Khuskahl Zada, Director (Elections), Peshawar, KPK and Mr. Adnan Bashir, Regional Election Commissioner, Kohat be appointed under section 55 (4) read with rule 12 (4) of Khyber Pakhtunkhwa Local Government (Conduct of Elections) Rules, 2021 to conduct fact finding inquiry in the matter under the law with the directions to submit their report in the matter within shortest possible time but

not later than 30 days after the receipt of the Order. The Committee shall highlight the role of accused involved in the corrupt practice including manipulation/ fabrication of Form (s) XVII as well as recommendations for initiating disciplinary or criminal proceedings or both against accused. Moreover, on the receipt of report of inquiry committee, matter be placed before the Commission for further proceedings under the law.

11. We are further unanimous to direct as under:

i) Since the conduct of Mehran Ilyas, Returning Officer has become dubious in the matter hence he be suspended as Additional Assistant Commissioner *(wherever he is posted now)* under section 55 (3) of the Elections Act, 2017 read with rule 12 (3) of Khyber Pakhtunkhwa Local Government (Conduct of Elections) Rules, 2021 till further orders of the Commission and under intimation to this Commission;

ii) Notification of Mehran Ilyas as Returning Officer be also withdrawn forthwith under intimation to this Commission;

iii) District Election Commissioner, Karak be appointed as Returning Officer under section 55 (8) of the Elections Act, 2017 read with rule 12 (7) of Khyber Pakhtunkhwa Local Government (Conduct of Elections) Rules, 2021; &

iv) In the meanwhile, result of constituency in question shall remain withheld.

12. Office to take all follow up actions and also the precedence.

(Nisar Ahmed Durrani)
Member

(Shah Muhammad Jatoi)
Member

Islamabad
The 30th March, 2022