

**BEFORE THE ELECTION COMMISSION OF PAKISTAN**

**PRESENT:**

MR. SIKANDAR SULTAN RAJA, CHAIRMAN  
MR. NISAR AHMED DURRANI, MEMBER  
MR. SHAH MOHAMMAD JATOI, MEMBER

**Case No. 23(43)/2021-Law**

In Ref: **PETITION UNDER SECTION 4, 8, 15, 95(5) & 229 OF THE ELECTIONS ACT, 2017 READWITH RULES 2 AND 47 OF THE KHYBER PAKHTUNKHWA LOCAL GOVERNMENT (CONDUCT OF ELECTION) RULES, 2021**

Irfan Ullah Khan Durrani son of Amir Muhammad Khan r/o Mewa Khel Surrani, Tehsil & District Bannu

Vs.

Provincial Election Commissioner, KPK & others

For the petitioner : Sawal Nazir Khan, Advocate Supreme Court  
alongwith Mr. Fazal-e-Moula, Advocate and the  
Petitioner in person

Date of Hearing : **22.12.2021**

**ORDER**

**Sikandar Sultan Raja, Chairman.**- the present petition has been filed with the contention that he contested the election for the seat of Tehsil Mayor, Bannu Distract Bannu on party ticket of JUI-F and secured highest number of votes i.e. 59,844 as per Form -19 issued by the Returning Officer. The petitioner was waiting for the consolidation of results of count. However, through public notice dated 21.12.2021, by the Returning Officer, without prior intimation initiated the process of re-counting of votes of all 286 polling stations of Tehsil Bannu which is to take place today i.e. 22.12.2021 at 9:00 a.m.

2. The counsel for the petitioner argued that prior to conduct of recount provisions of law have not been followed. There is no application for recount on record to show that recounting is being done on the application of any party. As per the relevant sections of law i.e. sections 95 and 229(5) of the Elections Act, 2017 readwith Rules 2 and 47 of the Khyber Pakhtunkhwa Local Councils (Conduct of Elections) Rules, 2021, recounting can only be done by the Returning Officer when a



challenge in writing is made by a contesting candidate or his election agent and margin of victory is less than five percent of the total cast votes or ten thousand votes whichever is less. In the instant case, no application of any party is on record and also margin of victory is more than ten thousand votes as votes of the petitioner and respondent No. 7 (runner-up) candidate are 59844 and 47398, respectively. Moreover, the results of count by the Presiding Officers have not been challenged before the Returning Officer. Therefore, basic requirements of law in respect of recount have not been complied with and public notice of recount issued by the Returning Officer has no sanctity in the eyes of law. He argued that the RO was under obligation to issue notices to the contesting candidate and their agents with time, date and venue for recounting process.

3. We have heard the learned counsel for the petitioner and have perused the record with his able assistance. From perusal of the record, a prima facie case has been made out for the intervention of this Commission to stop the recounting process. Therefore, it is directed that the process of recount being undertaken today by the RO is stayed. Office to issue notice to the Returning Officer of the subject constituency to seal the record of recounting immediately and appear before the Commission with the record pertaining to the recount i.e. application for recount, notices issued to the candidates/agents and results of recounts. He be informed telephonically without any delay. Notice be also issued to the respondent No. 7/runner-up candidate for the adjourned date. Matter is adjourned for 28.12.2021 at 10:00 a.m.

Sld

**Sikandar Sultan Raja**  
Chairman

Sld

**(Nisar Ahmed Durrani)**  
Member

Sld

**(Shah Mohammad Jatoi)**  
Member

