



STATE ELECTION COMMISSION
UT of Jammu and Kashmir
Nirvachan Bhawan, Rail Head Complex, Jammu
Phone No: 0191-2477519 Fax No- 0191-2477389

ORDER U/S 36 OF JAMMU AND KASHMIR PANCHAYATI RAJ ACT 1989 IN THE CASE OF ELECTION TO DISTRICT DEVELOPMENT COUNCIL DISTRICT KUPWARA, CONSTITUENCY – DRAGMULLA.

ORDER NO: 05/SEC/DDC/2021
DATED: 05/03/2021

The State Election Commission (Election Authority) vide Order No. 53/SEC/Pyt/2020/1868 Dated: 22-12-2020 has withheld the counting of votes in the Dragmulla Constituency of District Development Council, Kupwara. This Order provides the course of action to complete the election process in the aforesaid District Development Council (DDC) Constituency.

The Government of Jammu & Kashmir issued a notification on 29-10-2020 for the conduct of the first ever General Election to District Development Councils being set-up for the first time in all districts of the Union Territory (U.T) of Jammu and Kashmir.

The Election Authority announced an eight-phased election schedule to cover the 20 Districts of the U.T. A separate notification was issued for each of the eight phases specifying names of the constituencies that would go to polls on a particular date, dates of filing, withdrawal and scrutiny of nominations and the date of poll.

The election schedule applicable for conduct of elections to DDC Constituency Dragmulla in District Kupwara is as below:-

| Date of issuance of Gazette notification | Last Date of making nominations | Date of Scrutiny | Date of Withdrawal of candidature | Date of Poll | Date of Counting |
|--|---------------------------------|------------------|-----------------------------------|--------------|------------------|
| 13-11-2020 | 20-11-2020 | 21-11-2020 | 23-11-2020 | 07-12-2020 | 22.12.2020 |

The polling in the aforesaid Constituency was held on 07-12-2020. However, before the counting of votes scheduled on 22-12-2020, a complaint dated 09-12-2020 was received by State Election Commission in respect of Mst. Soomia Sadaf, a contesting candidate (Independent) for DDC Constituency Dragmulla, alleging therein that she is not a *bona fide* Indian citizen. The complainant mentioned that she is a resident of Muzaffarabad, Pok and an illegal entrant into the country and therefore is not a citizen of India. The said complaint was forwarded to the District Panchayat Election Officer, Kupwara by the Election Authority on 09-12-2020 for necessary action. Another communication was addressed to DPEO Kupwara on 16-12-2020 in this regard by the Election Authority.

On 21.12.2020, that is prior to the scheduled counting of votes for the said Dragmulla DDC Constituency, Electoral Registration Officer (ERO), Panchayat (District Panchayat Officer, Kupwara) issued an Order deleting ab-initio name of the aforesaid Mst. Soomia Sadaf from the Panchayat Electoral Rolls. The contents of the said Order of ERO, Panchayat No. DPO/K/52450 Dated: 21-12-2020, are reproduced below:-

“Whereas, State Election Commission has received compliant regarding the status of citizenship of Mst. Soomia Sadaf, Contesting Candidate Drugmulla DDC Constituency, wherein it was alleged, among other things , that , she had entered India through illegal route and she suppressed vital facts regarding her citizenship and

Whereas, complaint was forwarded by the Election Commission to District Panchayat Election Officer Kupwara vide No. PS/SEC/181/2020 Dated: 16/12/2020 and

Whereas , it has also been reported that she had entered wrong information regarding her “place of brith” in Election Commission of India FORM-6 , required for registration as an elector and

Whereas, the issue was taken up with the Block Development Officer Kupwara (AERO-Block Kupwara) who has issued notice to the concerned person vide his letter No: 967-71 Dated: 17/12/2020 to prove here citizenship and

Whereas , in her reply to the notice served upon, Mst. Soomia Sadaf could not produce any valid document to justify her citizenship in Indian part, which

could be taken as authentic as per provisions of Citizenship Act, 1955 read with amendments issued from time to time and citizenship rules 1956, and has therefore entered wrong information in declaration regarding being citizen of India during inclusion in FORM 6.

Whereas as per Citizenship Act 1955, citizenship can be acquired in India by Birth, by descent, by registration and by naturalization and

Whereas it has been learnt that the Mst. Soomia Sadaf has not applied for registration as citizen before any competent authority as provided by Sec 5(1) and has not provided supporting document thereof.

Now, therefore, in terms of rule 21(A) of the Registration of Electors Rules 1960, the name Soomia Sadaf EPIC No. GSx09905432 is treated as deleted ab-initio from Panchayat electoral Roll of Panchayat halqa Batergam.

The candidate is free to file an appeal against this decision before the competent authorities within prescribed time."

*Sd/-
ERO-PanchayatER
(District Panchayat Officer)
(Kupwara)*

After the name of Mst. Soomia Sadaf was deleted from the Panchayat Electoral Rolls, the DPEO/DC Kupwara sought further directions from the Commission/Election Authority vide his communication no. DCK/PS/271/3669 Dated: 21-12-2020 in view of the impending counting of votes.

The Commission/Election Authority, vide communication No. 53/SEC/Pyt/2020/1868 Dated: 22-12-2020, directed the DPEO Kupwara to defer the counting of votes in the DDC Constituency Dragmulla, till further orders. The counting of votes has accordingly been withheld by the Returning Officer concerned.

The Commission/Election Authority sought a status report from the DC Kupwara on 23.02.2021, including the details about appeal, if any, filed by said Mst. Soomia Sadaf against the ERO's Order deleting her name from the Panchayat Electoral Rolls. The District Panchayat Election Officer/DC, Kupwara vide his communication no. DEOK/2021/2022-23 Dated: 24-02-2021 has confirmed that

no appeal has been filed by Mst. Soomia Sadaf, against the ERO's Order deleting her name from the Panchayat Electoral Rolls.

In the above background and by virtue of the Order passed by the Electoral Registration Officer concerned, it is evident that Mst. Soomia Sadaf was ineligible to contest elections from the start of the election process for the said Drugmulla DDC Constituency, in view of the ab-initio deletion of her name from the Panchayat Electoral Rolls.

The nomination secured by Mst. Soomia Sadaf to contest the election by making false declaration about her citizenship of India, a fundamental requirement under our electoral laws, was, therefore, illegal, improper and liable for automatic rejection *ab initio*. Consequently, the polling process undertaken in the said Drugmulla Constituency with Mst. Soomia Sadaf as one of the Contesting Candidates has been totally vitiated. Result is that the votes polled in favour of the eligible candidates (minus Mst. Soomia Sadaf) did not lead to presenting a fair matrix that can form basis for deciding the final outcome of election for Drugmulla Constituency. This, is because it is not possible, except on some mere surmises and conjectures, to ascribe any authentic distribution of votes, polled if any, in favour of Mst. Soomia Sadaf amongst the rest of contesting candidates. Even the Hon'ble Supreme Court of India has consistently desisted from going into such hypothetical exercise in such cases where the nomination of a candidate is held to have been improperly accepted. {see Vashishth Narain Sharma V/s Dev Chand and other (AIR 1954 SC 513; Santosh Yadav V/s Narendeer Sing (AIR 2002 SC 241, etc.)}. The option of counting the votes as polled with direction to Returning Officer not to declare Mst. Soomia Sadaf as elected, should she obtain highest number of votes, is also to be rejected for the reason that the electorate did not have correct and vital information with regard to her ineligibility to contest election on the date electors went to cast their vote(s). The antecedents of contesting candidate have an important bearing on the informed choice of an electorate. Fair election contemplates full disclosure by the candidate of his past so as to give a proper choice to the electorate. A voter speaks out or expresses by casting vote. For this purpose, complete information about the candidate is must. Voter's right to know the antecedents of a candidate contesting election is fundamental and basic in the interest of purity of elections.

Thus, faced with the circumstances where it is not feasible to determine the mandate of the electorate in a fair manner from the votes polled during the



election held for the Dragmulla Constituency, the polling exercise taken place on 07.12.2020 i.e. on the election day with Mst. Soomia Sadaf, as one of the contesting candidates is held as totally vitiated and is accordingly being cancelled hereby. Consequently a re-poll shall be held excluding Mst. Soomia Sadaf, in the Dragmulla constituency to determine the exact will of the electorate.

Mst. Soomia Sadaf, had filed her nomination papers as an independent candidate. The mandate given by the political parties to their respective candidates to contest the election and make appeals to the electorate seeking their votes in the Dragmulla Constituency is however not to be disturbed since this order does not purport to countermand the election but instead calls for a re-poll.

Now therefore, in exercise of the powers conferred under Section 36 of the Jammu and Kashmir Panchayat Raj Act, 1989 *and subject to outcome of any writ petition pending before the Hon'ble High Court*, the Election Authority (State Election Commission) hereby orders as under:-

- 1) The polling held to the DDC Constituency Dragmulla is, hereby, declared as void.
- 2) The candidature of Mst. Soomia Sadaf is hereby cancelled 'ab-initio'.
- 3) There shall be Re-poll in the DDC Constituency Dragmulla District Kupwara (excluding Mst. Soomia Sadaf).
- 4) The re-poll, shall be held by re-drawing the list of contesting candidates after dropping the name of Mst. Soomia Sadaf.
- 5) The re-poll for DDC Constituency Dragmulla District Kupwara shall be conducted under the applicable election rules / guidelines, on a date to be notified by the Election Authority, through a separate order.

Sd/-

State Election Commissioner,
UT of Jammu and Kashmir.


No:- 53/SEC/Pyt/2020

Dated:- 05.03.2021

Copy to:-

- 1) Divisional Commissioner, Kashmir for information.
- 2) Inspector General of Police, Kashmir for information.
- 3) Secretary to Government, Department of Rural Development and PRI, Civil Secretariat, Jammu for information.

- 4) Deputy Commissioner, Jammu for information.
- 5) Deputy Commissioner, Udhampur for information.
- 6) District Panchayat Election Officer/DC Kupwara with instructions to make available a copy of the order to all the contesting candidates.
- 7) Director Rural Development Department, Kashmir for information.
- 8) Relief and Rehabilitation Commissioner, Migrants, J&K, Jammu for information.
- 9) Returning Officer, DDC Constituency Drugmulla, Kupwara for information.
- 10) Deputy Chief Electoral Officer, Kashmir for information.
- 11) Electoral Registration Officer (Panchayat), DDC Constituency Drugmulla, Kupwara.
- 12) Assistant Returning Officer (ARO) Migrant, Jammu, Udhampur and Delhi for information.
- 13) Assistant Chief Electoral Officer, Kashmir for information.
- 14) Incharge Website, IT Section, O/o CEO, J&K to upload the said Notification on official website forthwith.


Officer on Special Duty 5/3/21
State Election Commission,
UT of Jammu and Kashmir.