



STATE ELECTION COMMISSION
UT of Jammu and Kashmir
Nirvachan Bhawan, Rail Head Complex, Jammu
Phone No. 0191-8477519 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 BANDIPORA ,CONSTITUENCY – 'HAJIN-A'

ORDER NO: 06 /SEC/DDC/2021

DATED: 05/03/2021

The State Election Commission (Election Authority) vide Order No. 54/SEC/Pyt/2020/1867 Dated: - 22-12-2020 has withheld the counting of votes in Hajin-A Constituency of District Development Council, Bandipora. This Order provides the course of action required to be taken to complete the election process in the aforesaid District Development Council (DDC) Constituency.

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

The Election Authority announced an eight-phased election to cover the 20 Districts of the UT. 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, filing, withdrawal and scrutiny of nominations and the date of poll.

The election schedule applicable for conduct of elections to DDC Constituency Hajin-A in District Bandipora 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
01-12-2020	02-12-2020	21-11-2020	04-12-2020	19-12-2020	22.12.2020

Before the counting, the Election Authority received copy of the Order issued by Electoral Registration Officer (ERO), Panchayat, Hajin-A vide

no.ERO/HAJIN/Election/2020-21/03-06 Dated:- 21-12-2020 , deleting, *ab-initio*, name of the aforesaid Mst. Shazia Begum from the Panchayat Electoral Roll Halqa Sadunara-A. The contents of the said Order issued vide No ERO/HAJIN/Election/2020-21/03-06 Dated:- 21-12-2020, are reproduced below:-

"Whereas off lately, it came to the notice of this office that Mst. Shazia Begum W/o Mohammad Aslam is not reportedly from this country, as was also circulated in some media Whatsaap groups by the media fraternity, which allegedly transpires that she has entered wrong information in declaration regarding her place of birth/being citizen of India during inclusion in FORM-6 required for registration as elector.

Whereas, this Office issued a notice to Mst. Shazia Begum W/o Mohammad Aslam vide this office Notice No. ERO/HAJIN/Election/2020-21 Dated 18.12.2020 wherein she was directed to submit documentary proof along with the written reply which will substantially prove of being the citizen of India.

Whereas, Mst. Shazia Begum W/o Mohammad Aslam has submitted her report to this office, which was examined in light of the Citizenship Act, 1955 read with amendments issued from time to time & The Citizenship Rules, 1956 as amended from times to time and it was found that she could not substantially prove her citizenship of India and has therefore entered wrong information in declaration regarding being citizen of India during inclusion in FORM-6 deemed to be included in Panchayat electoral roll before 2019.

Whereas, as per the Citizenship Act, 1955 citizenship can be acquired in India by Birth, by descent, by Registration & by Naturalization.

Whereas, it has been learnt that Mst Shazia Begum W/o Mohammad Aslam has not applied for registration as citizen before any competent authority as provided by Sec 5(1) and has not provided supporting document thereof.

Whereas in her reply to the notice served upon, Mst Shazia Begum W/Mohammad Aslam could not produce any valid document to justify her citizenship in Indian part, which could be taken as authentic as per provisions of law.

*Now therefore in terms of Rule 21(A) of the Registration of Electors Rules, 1960, the name Mst. Shazia Begum w/o Mohammad Aslam R/o Banyari Sharki (Sadunara-A) Block Hajin bearing EPIC No. : - LZT0027847 Khana No. 01 made at ward No. 01 Panchayat Halqa Sadunara-A is treated as deleted *ab-initio* from Electoral Roll of Panchayat Halqa Sadunara-A.*



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

*Electoral Registration Officer
(ERO) Hajin.*

After the name Mst. Shazia Begum was deleted from the Electoral Roll of Panchayat Halqa Sadunara-A, the District Panchayat Election Officer (DPEO) Bandipora vide letter no. DPEO/BPR/Election/2020-21/5152-55 Dated: - 21-12-2020 sought instructions from the Commission.

The Commission / Election Authority vide communication no. 54/SEC/Pyt/2020/1867 Dated: - 22-12-2020, directed the DPEO Bandipora to defer the counting of votes in the DDC Constituency, Hajin-A till further orders. The counting of votes has accordingly been withheld by the Returning Officer concerned.

The Commission/Election Authority sought a status report vide no. PS/SEC/74/2021 Dated:- 23-02-2021 from District Panchayat Election officer Bandipora to include the detail about appeal, if any, filed by the candidate Mst. Shazia Begum against the order of ERO referred to above whereby her name was deleted from the Panchayat Electoral Roll. The District Panchayat Election Officer Bandipora vide his communication no. DEO/BPR/2021/5440 Dated:-25-02-2021 has informed that no appeal has been received from Mst Shazia Begum against the EROs 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. Shazia Begum was ineligible for contesting elections from the start of election process for the said DDC Constituency in view of the ab-initio deletion of her name from the Panchayat Electoral Rolls.

The nomination secured by Mst. Shazia Begum 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 rejection ab initio. Under the circumstances the polling process that has been undertaken in the said Hajin-A Constituency with Mst. Shazia Begum as one of the Contesting Candidates has been totally vitiated. Result is that the votes polled in favour of the eligible candidates (minus Mst. Shazia Begum) did not lead to presenting a fair matrix that can form the basis of deciding the outcome of election for Hajin-A Constituency. This, is because it is not possible except on



some mere surmises and conjectures, to ascribe any authentic distribution of votes, if any, polled in favour of Mst. Shazia Begum 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 vs Dev Chand and others (Air 1954 Sc 513; Santosh Yadav vs Narender Singh (Air 2002 Sc 241, etc). The option of counting the votes as polled on 19.12.2020 with direction to Returning Officer not to declare Mst. Shazia Begum as elected, should she obtain highest number of votes, is 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 based on the votes that were polled during the Election held in the Hajin-A Constituency, the polling exercise taken place on 19.12.2020 i.e on the election day with Mst. Shazia Begum, 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. Shazia Begum in the Hajin-A Constituency to determine the exact will of the electorate

Mst. Shazia Begum, 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 Hajin-A 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 the Election Authority (State Election Commission) hereby orders as under:-

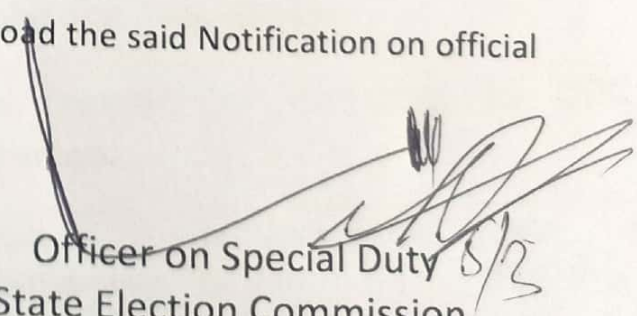
Sd/-
State Election Commissioner,
UT of Jammu and Kashmir.

No:-54/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 Bandipora 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 Hajin-A, Bandipora for information.
- 10) Deputy chief Electoral Officer, Kashmir for information.
- 11) Electoral Registration Officer (Panchayat), DDC Constituency Hajin-A, Bandipora.
- 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
State Election Commission,
UT of Jammu and Kashmir.