

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 49/federal/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 26/8/2019 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohammed Rajab Al-Kubaise who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: khalida Ibrahim Kaliel Abd Al-Rahmin her agent the attorney Firas Sultan Al-khazealii.

The Defendant:

1. The speaker of the parliament/ being in this post - his agents the legal officials the director Salim Taha Yasein and the legal advisor Haytham Majid Salim.
2. Head of the independent high electoral commission (I.H.E.C)/being in this post – his agent the legal official Ahmad Hasan Abd.

The Third Party: the MP Shamail Sahab Matar (her membership validity is under challenge) - her agent the attorney Maath Majeed Alsaadoun.

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Atchraa

The Claim

The agent of the Plaintiff claimed that his client has submitted a challenge to the council of representative (I.C.R.) according to the text of article (52/1st) of the constitution to adjudicate the winning validity of the candidate (Shamail Sahab Matar) of the Decision Coalition in Salah al-Din Governorate for the reasons listed in the challenge draft that is attached to the case petition. On (30/4/2019) the I.C.R in has decided in the session (14) documented by the letter No.(73) on (2/5/2019) paragraph (2) of it that (the approve was not obtained after voting on the challenge submitted by the Mrs khalida Ibrahim Kaliel against the membership validity of the MP Mrs (Shamail Sahab Matar), the injured shall resort to the judiciary), as the decision of the I.C.R. violate the law and affected the rights of his client therefore she challenge it before your estimated court requesting to revoke the membership of the MP (Shamail Sahab Matar) and to revoke her winning in the election, and adopting the winning of the plaintiff for the following reasons:

1. The results of the private polling stations No.(144302, 144305, 14430, 144309) in Salah al-Din governorate were not announced, after being obliged to be counted by the electoral judiciary committee in the federal court of cassation by it decision No.(1484/appeal/2018) issued on 15/8/2018, accordingly it's not known the number of votes the candidate (Shamail Sahab Matar) got, and how much the difference between her and his client the plaintiff, knowing that the announcing the results is one of the most important means of ensuring the transparency of the electoral process.

2. The mentioned cassation court decision in paragraph (1) above included the polling station No.(144309) according to the commission board letter to him, however, when we reviewed the commission office in Salah al-Din, it was found that this box does not exist among the boxes in which the ballot papers were placed, thus this box does not contain any votes, accordingly the submission of this box by the high Commission is a suspicion that needs to be verified with the commission office in Salah al-Din governorate. Therefore he requested the F.S.C. to rule by revoking the membership of the MP (Shamail Sahab Matar), and to revoke her winning in the election, and adopting the winning of the plaintiff (khalida Ibrahim Kaliel) and to burden the defendants the expenses and advocacy fees.

The agents of the defendant the speaker of the parliament being in this post has respond to the case petition by the answering draft dated on (11/6/2019) stating that the process of counting votes and the results of polling stations is a legal and technical process by the Independent High Electoral Commission, and the commission has granted the parliamentary seat to the MP (Shamail Sahab Matar),and the F.S.C. has ratified the election results, as the plaintiff challenge falls under the provisions of the I.H.E.C law and the I.C.R. election law, the plaintiff should have resort her challenge to the competent judiciary committee in the federal court of cassation to make what is necessary about it decision No.(1484/appeal/2018 on 15/8/2018) so the I.C.R. decision dated on (30/4/2019) was in accordance with the law and the constitution, therefore they requested to reject the case and to burden the plaintiff the expenses and advocacy fees. The agent of the second defendant respond to

the case petition with the answering draft dated on (13/6/2019) with the following:

1. The plaintiff has already submitted the case No.(178/federal/2018) before your esteemed court regard the same subject, and the decision was issued to reject the case.
2. After the issuing the election result of the I.C.R. for (2018) under the decision of the Board of Commissioners No.(19), the exceptional minute (25) dated on (18/5/2018), it was clear that each of the candidate (Shamail Sahab Matar) and the objected candidate has obtained (621) votes within the list of the Iraqi Alliance in the governorate of Salah al-Din.
3. According to article (14/5th) of the I.C.R. election law No.(45) for 2013, a ballot was made between the mentioned candidates in the national office of the commission and the candidate (khalida Ibrahim Kaliel) has won.
4. According to the submitted complaints to the commission after the announcing of the election results on (12/5/2018) the Board of Commissioners has decided to revoke group of centers and stations belonging to it throughout Iraq including the following stations (144302, 144305, 144306, 14407, 144309) in the governorate of Salah al-Din for the reason that the voter records for these stations was not received by the Audit Committee and that under the decision of commission board No.(2) of the exceptional minutes (25) on (18/5/2018).
5. After the voters records of the mentioned stations in paragraph (4) the technical committee carried out inspection, scrutiny and verification of these stations and found that there is no indication of any tamper or fraud.

6. Based on what mentioned earlier, the Board of Commissioners has issued the decision No.(5) the regular minuet (31) on (28/5/2018) which included re-count the results of the mentioned centers and stations, and this decision could not be implemented because of the issuance of the third amendment law of the election law No.(45) for 2013, the amended.
7. After the issuance of the third amendment law of the election law, and completing the partial manual counting and sorting process, the results has been announced under the decision of the Board of Commissioners of the assigned judges No.(69) the regular minute (41) on (9/8/2016), this results included the winning of the candidate (khalida Ibrahim Kaniel) as she obtained (625) votes, because the mentioned votes that the Board of Commissioners decided to count was not counted.
8. The candidate (Shamail Sahab Matar) has submitted challenge to the electoral judiciary commission for the reasons that her votes in the mentioned stations and centers was not counted, and the judiciary commission decided by it decision No.(1484/appeal/2018) dated on (15/8/2018) to recount her votes which wasn't counted and to consider it as winner in the election.
9. Your estimated court has ratified the results of the I.C.R. elections of 2018 by the decision No.(57/teh, qaf/2018) on (19/8/2018) and requested to reject the case and to burden the plaintiff the expenses and the advocacy fees.

The court call upon the parties on the scheduled date for the argument, the agent of the plaintiff, the agents of the first defendant and the agent of the second defendant all has attended, and proceed with the argument in presence and publicly, the agent of the plaintiff

repeated what listed in the case petition and requested to judge according to it and to burden the defendants the expenses, the agents of the defendant repeated the answering draft and requested to reject the case, the court reviewed a request from the MP Shamail Al-Obaidy to introduce her as third party in the case to defense her right, during scrutiny the court decided to accept the request, she was assigned to pay the case fees, and she paid it, attended for her, her agent the attorney Maadh majid alsaadun by the power of attorney class (Jim) that is attached to the case petition, the agent of the plaintiff submitted an editorial draft dated on (7/8/2019) explaining his client request and the bases for that request, and requested to bring the cassation dossier from the competent commission to consider the challenge in the federal cassation court, the court reviewed the cassation decision issued by the electoral judicial committee No.(1484/appeal/2018) on (15/8/2018) that was issued based on the challenge submitted by the appellant (Shamail Sahab Matar) against the decision of the Board of Commissioners in the I.H.E.C. No.(69) of regular minute (41) on (9/8/2018), this decision has stated that the process of counting the results of the polling stations in Salah al-Din No.144302, 144305, 144307, 144309 don't effect on the seats distribution in the governorate because there is no voting manipulation in the voting process on the polling day, the court also reviewed the statements of the plaintiff agent and the agent of the second defendant in the session dated on (26/8/2019), as the agent of the second defendant clear that the mentioned number (144309) in the appeal decision of the cassation court is the number of the center and not the number of the station, as the center include number of stations, and that center name is (Al

- Watan Al - Arabi boys school), the counting and sorting has done and reveal the wining of (Shamail Sahab Matar) by the advantage of one vote on than the plaintiff, were she obtained (626) votes and the plaintiff obtained (625) votes, and declared the wining of (Shamail Sahab Matar) in the election, the agent of the third party repeated his statements and former requests, and requested to judge according to it. Whereas nothing left to be said the argument is closed and the decision is issued publicly.

The Decision

During scrutiny and deliberation by the F.S.C., the court found that the agent of the plaintiff has challenged the issued decision from the I.C.R. in the session No.(14) on 30/4/2019 which included reject the plaintiff challenge against the wining validity of the candidate Shamail Sahab Matar in the I.C.R. elections of 2018, requesting to judge by revoking the membership of the mentioned MP and to adopt the wining of his client by the parliamentary seat, the agent of the plaintiff has based his challenge on two points, first; the counting results that made the MP Shamail Sahab win was not announced, second; there is (a station) was mentioned in the issued decision by the judiciary committee in the federal cassation court by the number (144309) although this station does not exist in reality. The F.S.C. has found from the details of the proceedings in the case and the statements of it parties in the session dated on (26/8/2019) that (the station) no.(144309) is a number of electoral center it name is (Al - Watan Al - Arabi boys school) and it's not (station), and this center include number of stations, that regarding first point of the challenge. As for the second point of the challenge regarding not

announcing the election results, it was proved that the winning of the candidate Shamail Sahab was announced as she obtained (626) votes while her oppose the plaintiff obtained (625) votes, as these results was approved by the F.S.C. decision No.(57/teh.qaf/2018 on 19/8/2018). According to that the F.S.C. found that the plaintiff case is not based on Constitution and law substantiations, therefore the court decided to reject the case and to burden the plaintiff the expenses and advocacy fees for the agents of the defendants and the agent of the third party amount of one hundred thousand Iraqi dinars divided on them according to law. The decision has been issued decisively and unanimously according to the provisions of article (94) of the constitution, and article (5) of the F.S.C. law No.(30) for 2005, and issued publicly on 26/8/2019.