



GAHC010156932025



2025:GAU-AS:9476

**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/4051/2025

JESMINA KHATUN
W/O SADDAM HUSSAIN
VILL.- TAKIMARI NATHANTHONGA, P.O.- TAKIMARAI, P.S.- LAKHIPUR
DISTRICT- GOALPARA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE ADDL. CHIEF SECRETARY TO THE GOVT. OF
ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI - 6.

2:THE DISTRICT COMMISSIONER
GOALPARA
P.O.- BALADMARI
GOALPARA
ASSAM.

3:THE ADDL DISTRICT COMMISSIONER

MAGISTRACY BRANCH
GOALPARA
P.O.- BALADMARI
GOALPARA
ASSAM.

4:ASSTT COMMISSIONER
GOLAPARA
P.O.- BALADMARI
GOALPARA
ASSAM.



5:CHIEF EXECUTIVE OFFICER
ZILLA PARISHAD
GOALPARA
ASSAM.

6:BLOCK DEVELOPMENT OFFICER

JALESHWAR
GOALPARA
ASSAM.

7:CHILD DEVELOPMENT PROTECTION OFFICER
LAKHIPUR ICDS PROJECT
LAKHIPUR
GOALPARA
ASSAM

8:ALI HUSSAIN
S/O ABU BAKKAR
VILL.- TIAPARA
P.O.- TAKIMARI
P.S.- LAKHIPUR
DISTRICT GOALPARA
ASSAM

Advocate for the Petitioner : MR H DAS, D BARUAH

Advocate for the Respondent : GA, ASSAM,

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. H Das, Advocate.

For the respondents : Mr. N Goswami, GA

Date of hearing : 23.07.2025
Date of Judgment : 23.07.2025

JUDGMENT & ORDER (ORAL)

1. Heard Mr. H Das, learned counsel for the petitioner. Also heard Mr. N Goswami, learned State counsel and Mr. S Dutta, learned counsel for the P&RD Department.
2. Issue notice, returnable forthwith. Notice is not issued to respondent No. 8 at this stage.
3. The petitioner assails the proceeding initiated based on an application dated 19.05.2025 seeking disqualification of the petitioner as a Gaon Panchayat Member of village 11 No. Takimari, Haguripara. The further challenge is an enquiry report dated 31.05.2025 as well as second complaint filed by the respondent No. 8 and consequential hearing dated 27.06.2025.
4. The important fact necessary for determination of the present writ petition are as follows.
 - I. The petitioner got elected as Gaon Panchayat Member of village 11 No. Takimari, Haguripara under No. 1 Nathongthonga Tiapara Gaon Panchayat under Joleswar Anchalik Panchayat in the district of Goalpara, under the Assam Panchayat Act, 1994.
 - II. The wife of the respondent No. 8 also contested the said election and got defeated. The respondent No. 8 filed an application before the District Commissioner, Goalpara, inter-alia, alleging that the petitioner/ elected candidate is disqualified for being elected as a Member of Gaon Panchayat for the reason of having three children inasmuch as according to the respondent No. 8, the third children

was borne on 22.08.2021.

III. On the basis of such complaint, the District Commissioner, Goalpara conducted an enquiry through an Executive Magistrate, who in turn submitted a report.

IV. The report goes to show that during enquiry, some of the neighbor of the petitioner admitted that the petitioner had two children and some section of the people stated that the petitioner is having three children.

V. It is further revealed in the enquiry that the family member and husband of the candidate also stated that the third daughter, namely, Zenifar Akhtara expired after four months of her birth. However, no death certificate from the Kabarstan certifying such death could be produced by them. According to the report, the enquiry officer also recorded the statement of the Anganwadi Worker who stated that said Zenifar Akhtara is alive and there is a record of her presence. The enquiry officer did not find any record in the office of the Joint Director of Health Services as regards death of the child, however, there was a record of vaccination of the said child in a medical centre.

VI. Thus, it was concluded that the candidate kept her third child in some other place and sworn a false affidavit before the concerned officer and therefore, there is violation of Section 111(2) of the Assam Panchayat Act, 1994 and Rules 62(1), which disqualifies a person to be elected as a Member of Gaon Panchayat.

VII. Thereafter on 05.06.2025, the petitioner filed an application

before the District Commissioner, Goalpara, inter-alia, contending that, though the third child was born, however, the said child died on 02.11.2021, after three months of birth and accordingly, she also submitted birth certificates of first two children and a death certificate from Kabarsthan of the deceased third child.

VIII. Thereafter, based on such application, the District Commissioner sought presence of Child Development Protection Officer, Lakhipur ICDS Project, Lakhipur, workers Aolatoli Anganwadi Centre, Lakhipur and President/ Secretary of Takimari Maragara Kabarsthan, Lakhipur.

IX. Thereafter, a notice of hearing was issued to the petitioner on 24.06.2025 for hearing on 27.06.2025 at 10.30 am.

5. Mr. Das, learned counsel for the petitioner contends that while the matter was at that stage, another complaint was filed by the respondent No. 8 on 24.06.2025. It is contended by the petitioner that the aforesaid hearing was called based on another application filed by the husband of the respondent No. 8.

6. It is also the contention of the petitioner that the petitioner remained present on 27.06.2025 for hearing, pursuant to the notice of hearing dated 24.06.2025, however, the complainant did not appear before the authorities and the matter was adjourned and till date no further communication has been issued, nor any further hearing is fixed and in the meantime, only for the pendency of the application, the first meeting of the Gaon Panchayat was not held.

7. The contention of the petitioner is that the allegation leveled are false and not sustainable and even if any grievance of the defeated candidate is

there, the defeated can very well file election petition and should not be allowed to stall a democratically elected member, to take her oath during pendency of the application filed by the respondent No. 8 at the behest of his wife.

8. Mr. Dutta, learned standing counsel for the P&RD on the other hand contends that the District Commissioner is empowered to decide any complaint of disqualification under the scheme of the Assam Panchayat Act, 1994 (as amended up to date) and therefore, the District Commissioner should be allowed to conclude the proceeding by following due process of law. So far relating to not allowing holding the first meeting of the Gaon Panchayat for the pendency of the application for disqualification. Mr. Dutta fairly submits that pendency of such application shall not obstruct the functioning of duly elected Gaon Panchayat.
9. I have given anxious consideration to the argument advanced by the learned counsel for the parties.
10. Section 111(2) of the Assam Panchayat Act, 1994 outlines the conditions and procedure for disqualification of Panchayat Members, primarily on the ground of having more than two living children from a single or multiple parents, subject to the condition that, such disqualification shall not be applicable in respect those persons, who have more than two children prior to date of commencement of this Act.
11. The condition and procedure of disqualification under Subsection 2 of Section 111 of the Assam Panchayat Act, 1994 are enumerated under Rule 62 of the Assam Panchayat (Constitution) Rules, 1995. Rules 62 (1) (b) empowers the Government or the concerned district authority to remove

any President/ Vice-president or Member of Zila Parishad, Anchalik Parishad and Gaon Panchayat, if he or she is having more than two children from single and multiple parents prior to 19.03.2018 and give birth to an additional child. However, there is an exception to such provision that, when the second child birth are twins and when the first child birth are triplets.

12. In terms of Rules 62(1)(f), the Gaon Panchayat Secretary on receipt of information of such additional child birth, is mandated to inform it to the concerned District Commissioner through the Chief Executive Officer, Zila Parishad. Such provision further prescribes that, thereafter the concerned District Commissioner is to examine the matter and on establishment of fact, is empowered to remove such President, Vice-president, Member etc., under intimation to the State Government, as well as to the Assam State Election Commission.
13. From the aforesaid mandate of law and the procedure prescribed, it is very clear that certain procedure has been laid down under Rule 62 for the removal of a Member of Gaon Panchayat, President, Vice-president etc. and such procedure, when it relates to Gaon Panchayat, is to be initiated at the end of the Gaon Panchayat Secretary, on receipt of information and it is to be routed to the District Commissioner, through the office of the Block Development Officer and the Chief Executive Officer of Zila Parishad.
14. In the case in hand, what is seen is that the information of additional child birth was directly given before the District Commissioner, who in turn conducted an enquiry through the Executive Magistrate. In the considered opinion of this court, though such procedural lapse may not be fatal, however, in the fitness of things such information ought to have been

given by the respondent No. 8 before the Secretary of the concerned Gaon Panchayat.

15. Be that as it may, as the petitioner has already participated on such proceeding, this court will not deal in the present proceeding the effect of violation of such procedure, keeping said question open.
16. Now from the Rule, 62(1)(f) what is seen is that the concerned District Commissioner/ Deputy Commissioner is empowered to examine the matter and such District Commissioner can remove a President, Vice-President, Member of Goan Panchayat concerned, on establishment of fact. Therefore, to have a satisfaction, it shall necessarily require an enquiry and adjudication, may be summery in nature.
17. In the case in hand, it will be not justified, if this court interferes with the procedure inasmuch as the District Commissioner/ Deputy Commissioner is having jurisdiction to conduct an enquiry for proper adjudication/ to get the fact established so as to come into a just conclusion. Therefore, the prayer of the petitioner to interfere with the proceeding is declined. However, at the same time as urged by the learned counsel for the petitioner and as has been noticed by this court that though an enquiry was conducted through an Executive Magistrate and finding of such enquiry may have a bearing on the final decision that may be passed by the District Commissioner, the petitioner shall have a right to get such copy of the enquiry report and must be given a reasonable opportunity of hearing to defend her case.
18. It is true that in the Act, 1994 and the Rules, no specific procedure has been outlined / prescribed for such hearing however in absence of specific

exclusion of right of hearing of the elected candidate against whom disqualification is alleged shall be given a reasonable opportunity of hearing.

19. The principles of natural justice mandates that a reasonable opportunity must be given to a person before taking any action against him. The adjudicating authority must disclose all the material placed before it and must give reasonable opportunity to the affected to submit his/ their case. A fair hearing means that a person against whom an adverse order is passed should be informed of the charges against him giving him an opportunity to submit his explanation to the charges and the person is also have a right to know the material on the basis of which the allegation is proposed to be decide.
20. In the given fact of the present case, what is required to be determined is whether the petitioner was having a living a child in term of Section 111 (2) of the Panchayat Act, 1994 and under Rule 62 (1)(f) inasmuch as it is the case of the petitioner that the third child, died in the meantime. Therefore, an opportunity to the petitioner is required to be given in the given fact of the case. Accordingly, it is directed that though the DC shall be at liberty to proceed with the disqualification proceeding initiated against the petitioner, the copy of the enquiry report and any other materials that is brought on record in support of disqualification shall be furnished to the petitioner and the matter be proceeded thereafter giving reasonable opportunity of hearing to the petitioner.
21. Now, coming to the non-functioning of Panchayat, this court is of the opinion that pendency of a proceeding under Rule, 62 of the Rules read with Section 111 of the Act, 1994, nowhere creates an embargo that



during pendency of such procedure, the Panchayat Member cannot be allowed to take charge of his office or that in view of such pendency, the entire Panchayat cannot be allowed to hold its first meeting. Therefore, it is clarified that the pendency of the proceeding pending before the District Commissioner shall not bar the President/ Vice-President/ Member of the Gaon Panchayat to take their charge on being elected as President/ Vice-President/ Member of the Gaon Panchayat.

22. With the aforesaid determination and direction, the present writ petition stands closed.
23. It is needless to say that the procedure of disqualification is required to be concluded within a reasonable period inasmuch as in the event of disqualification of any of such President/ Vice-President/ Member of a Gaon Panchayat, shall require a re-election and the voters and citizens cannot be deprived of the functioning of their elected representatives, either during pendency of such proceeding or after removal of such elected representative being disqualified inasmuch as in the event of removal they will also have a right to get a new representative elected by them.

JUDGE

Comparing Assistant