

GAHC010080352022



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

Case No. : WP(C)/2860/2022

IBRAHIM ALI
S/O LATE KHORSED ALI, VILL-NICHUKA, P.O. AND P.S.-BARPETA ROAD,
DIST-BARPETA, ASSAM, PIN-781315

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY ELECTION COMMISSIONER, GOVERNMENT OF ASSAM,
HOUSEFED COMPLEX, DISPUR, GUWAHATI-781006

2:THE RETURNING OFFICER (PANCHAYAT ELECTION-2017-2018) BARPETA
CUM DEPUTY COMMISSIONER
BARPETA DISTRICT
P.O.-BARPETA
DIST- BARPETA
ASSAM
PIN-781301

3:THE DISTRICT ELECTION OFFICER (PANCHAYAT ELECTION-2017-2018)
CUM ADDITIONAL DEPUTY COMMISSIONER
BARPETA DISTRICT
P.O.-BARPETA
DIST- BARPETA
ASSAM
PIN-781301

4:THE ASSISTANT RETURNING OFFICER (PANCHAYAT ELECTION 2017-
2018) BARPETA
CUM CIRCLE OFFICER
BARNAGAR REVENUE CIRCLE
SORBHOG
P.O. AND P.S.-SORBHOG

DIST-BARPETA
ASSAM
PIN-781317

5:THE OFFICER IN-CHARGE
BARPETA SADAR POLICE STATION
BARPETA
P.O.-BARPETA
DIST-BARPETA
ASSAM
PIN-781301

6:ANOWAR MONDAL @ BABUL
S/O SHRI FAJOL HOQUE
VILL-SHAHAPUR
P.O. AND P.S.-SORBHOG
DIST-BARPETA
ASSAM
PIN-78131

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioner : Shri M. Ahmed, Advocate.

Advocates for respondents : Shri R. Dubey, Advocate,
Shri M. Barman, Advocate
Shri A. Goyal, Advocate.

Date of hearing : 02.02.2023

Date of judgment : 02.02.2023

1. A judgment and order dated 23.03.2022 passed by the learned President, District Panchayat Election Tribunal, Barpeta in Election Petition No. 38/2019 is the subject matter of challenge.

2. It is the case of the petitioner that nine persons including the petitioner had contested for the post of President of the 46 No. Nichuka Gaon Panchayat under 9 No. Chakchaka Anchalik Panchayat under the Meda Nichuka Zilla Parishad in the district of Barpeta in the Panchayat Election of 2018 in which the respondent no. 6 was declared the winner. However, the allegation of the petitioner is that there were certain forged documents submitted by the respondent no. 6 permitting to his educational qualification for which a police complaint was also lodged. It is the case of the petitioner that in the investigation, materials were found and accordingly, Charge Sheet submitted whereafter the aforesaid Election Petition was filed. It is the specific case of the petitioner that though all the documents were submitted and proved in the Tribunal including certified copies, the learned Tribunal had committed factual error in terming certain documents to be photo copies instead of certified copies. There are other anomalies also which have been pointed out by the petitioner.

3. I have heard Shri M. Ahmed, learned counsel for the petitioner. I have also heard Shri R. Dubey, learned counsel appearing for the respondent nos. 1 to 4, Ms. M. Barman, learned State Counsel appearing for the respondent no. 5 and Shri A. Goyal, learned counsel appearing for the respondent no. 6. The LCR which are called for have also been perused.

4. Before going deep into the merits of the petition, on a careful perusal of the records, it is found that there are factual errors while recording the submission as well as on appreciation of the documents by the learned Tribunal. Accordingly, this Court is of the opinion that instead of taking up the matter on merits, interest of justice would be served if the matter is remitted back to the primary authority to reconsider the

matter by taking into account all the relevant documents in the manner as prescribed by law.

5. With regard to the aspect of exercise of writ jurisdiction, a Constitution Bench of the Hon'ble Supreme Court in the case of ***Nagendra Nath Bora Vs. Commr. of Hills Division and Appeals***, reported in ***1958 SCR 1240 : AIR 1958 SC 398*** has laid down as follows:

“30. That leads us to a consideration of the nature of the error which can be said to be an error apparent on the face of the record which would be one of the grounds to attract the supervisory jurisdiction of the High Court under Article 226 of the Constitution. ...

“The Court issuing a writ certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous.”

“It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error: it must be one which must be manifest on the face of the record.”

6. It is a settled law that in exercise of powers of judicial review it is the decision making process and not the decisions which is the subject matter of scrutiny. While examining the decision making process, a Writ Court may look into the following aspects:

- i. Whether there is any jurisdictional error in passing of the order?
- ii. Whether the relevant factors have been taken into consideration?
- iii. Whether the decision is based on irrelevant and extraneous factors?
- iv. Whether the decision is palpably erroneous?

- v. Whether the decision is such that it does not appeal to the mind of a reasonable person of ordinary prudence?

7. Accordingly, the impugned judgment and order dated 23.03.2022 passed in Election Petition No. 38/2019 so far as dismissing the Election Petition filed by the petitioner is set aside and a fresh decision be taken by considering all the relevant aspects including an opportunity of hearing to the rival parties.

8. The aforesaid exercise be undertaken and completed expeditiously and preferably within a period of 45 days from today.

9. Registry is directed to send back the LCR to the learned Tribunal as indicated above.

10. Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant