

GAHC010159612022



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

Case No. : WP(C)/5265/2022

ASMA BIBI
W/O ABDUL KHALIQUE,
VILL.- BATARASHI,
P.O.- TILLA BAZAR,
WARD NO.3,
P.S. AND DIST.- KARIMGANJ, ASSAM, PIN- 788710.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPTT., DISPUR,
GUWAHATI- 781006.

2:THE SECRETARY
ASSAM STATE ELECTION COMMISSION
DISPUR
HOUSEFED
BELTOLA ROAD
GUWAHATI- 6.

3:THE DEPUTY COMMISSIONER
KAMRUP
ASSAM
PIN- 788710.

4:THE BLOCK DEVELOPMENT OFFICER
NORTH KARIMGANJ BLOCK
KARIMGANJ
PIN- 788710.

5:THE CHIEF EXECUTIVE OFFICER
ZILLA PARISHAD
KARIMGANJ
PIN- 788710.

6:THE PRESIDENT
NORTH KARIMGANJ GAON PANCHAYAT
KARIMGANJ
PIN- 788710

Advocate for the Petitioner : MS. S B CHOUDHURY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

13.09.2023

Heard Mr. S. B. Choudhury, learned counsel appearing for the writ petitioner. Also heard Mr. N. Goswami, learned Government Advocate, Assam appearing on behalf of the respondent No3. Mr. S. Dutta, learned Standing Counsel, P & RD Department, Assam is present on behalf of respondent Nos.1, 4 and 5. None has appeared for the respondent No.2.

2. The writ petitioner herein was elected as a Member of Ward No.3 of North Karimganj Gaon Panchayat in the elections that took place in the year 2018. It appears that the petitioner had six living children on the date of submission of her nomination paper. However, in the mandatory affidavit filed by the petitioner along with her nomination paper, it has been mentioned that she did not have more than 2 (two) living children. Subsequently, a complaint was received by the authorities to the effect that the petitioner had sworn a

false affidavit as a result of which, the Deputy Commissioner of Karimganj i.e. the respondent No.3 had issued a show cause notice to the petitioner to explain her conduct. However, when the petitioner failed to respond to the aforesaid show cause notice, the impugned order dated 07.09.2021 was issued by the respondent No.3 in exercise of power under Rule 62(1)(a) of the Assam Panchayat (Constitution) (Amendment) Rules, 2018, removing the petitioner from the post of Ward Member of Ward No.3 of North Karimganj Gaon Panchayat. Hence, this writ petition.

3. Ms. Choudhury submits that her client is not denying the fact that she had six living children on the date of submission of the nomination paper but as per the amended provision of Section 111 of the Assam Panchayat Act, 1994, the restriction of having not more than two children would be applicable only in cases of children born after the commencement of the Act which is 19.03.2018. Since all the six children born to the petitioner were prior to 19.03.2018, hence, submits Ms. Choudhury, the rigors of the amended provision of Section 111 of the Act of 1994 would not at all be applicable in her case. As such, the learned counsel submits that the impugned order is illegal and hence, liable to be set aside by this Court.

4. Mr. N. Goswami, learned Govt. Advocate, Assam, on the other hand, submits that the issue was not whether the petitioner had more than two children living at the time of her election but the false affidavit sworn by her declaring that she had only two children living at the time of submission of her nomination, which was factually incorrect. Mr. Goswami submits that since the petitioner had sworn a false affidavit and she had also failed to respond to the show cause notice issued by the respondent No.3, the concerned authority was

left with no option but to issue the impugned order.

5. Mr. S. Dutta, learned Standing Counsel, P & RD Department, Assam has referred to the affidavit-in-opposition filed on behalf of the respondent No.5 i.e. the Chief Executive Officer of Karimganj Zilla Parishad which supports the claim of the petitioner that the six children born to her were all prior to the filing of the nomination paper. Therefore, all her children were born before the commencement of the amended provision of the Assam Panchayat (Amendment) Act, 2018 which came into force with effect from 19.03.2018.

6. After hearing the submissions of the learned counsel for the parties, I find that a Ward Member can be disqualified and/or removed from office on the ground of contravention of the provision of Section 111 of the Assam Panchayat Act, 1994, as amended, if he or she had more than two living children. However, the said provision, admittedly, would not be applicable in case of the petitioner since all her children were born prior to coming into force of the amended provision of the Act. If that be so, there can be no doubt about the fact that the petitioner could not have been removed from office due to contravention of Section 111 of the amended Act of 1994.

7. This brings the Court to the next issue as to whether any penal action could be initiated against the petitioner for swearing a false affidavit. There is no serious dispute about the fact that the affidavit sworn by the petitioner at the time of submitting her nomination was false. The explanation submitted by the petitioner's counsel is to the effect that the nomination paper was filled in by someone else and the writ petitioner had merely put her signature. The said explanation of the petitioner's counsel is, however, found to be wholly unacceptable. The petitioner could not have put her signature in an affidavit

without going through the content of the same. If that be so, the petitioner would be liable to face legal consequences for swearing false affidavit.

However, it appears that there is no provision in the Act of 1994 to remove a Ward Member from office for swearing a false affidavit. It may, however, be permissible under the law to call in question the legality and validity of the election of the petitioner as member of the Gaon Panchayat for submitting false affidavit.

8. Rule 62(1)(a) of the Assam Panchayat (Constitution) (Amendment) Rules, 2018 invoked by the respondent No.3 while issuing the impugned order dated 07.09.2021 apparently deals with requirement of furnishing an affidavit that the candidate did not have more than two living children from a single or multiple partner. As per Rule 62(1)(b), a candidate can be removed from the office of President, Vice-President or Member of Zilla Parishad, Anchalik Panchayat and Gaon Panchayat if he or she was having two or more children from single or multiple partners prior to the date of commencement of the amended Act i.e. prior to 19.03.2018. It is, therefore, apparent that the impugned order has been issued on an erroneous interpretation of the provisions of amended Section 111 of the Act of 1994 read with Rule 62(1)(a) of the Assam Panchayat (Constitution) (Amendment) Rules, 2018.

9. The impugned order dated 07.09.2021 is therefore, set aside. The petitioner be forthwith restored back in the post of Ward Member in the Gaon Panchayat in question. It is, however, made clear that this order would not come in the way of the competent authority in initiating appropriate action against the petitioner, in accordance with law, for swearing a false affidavit, if deemed necessary.

Writ petition stands disposed of.

JUDGE

Comparing Assistant