

GAHC010174942023



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

Case No. : WP(C)/4611/2023

RUBIYA AKHTAR CHOUDHURY
W/O- AKHTAR HUSSAIN CHOUDHURY,
VILLAGE- MAJIRGRAM, WARD NO. 06,
P.O.- SONAIMUKH,
DIST.- CACHAR, ASSAM,
PIN- 788119.

VERSUS

ASSAM STATE ELECTION COMMISSION AND 3 ORS
REPRESENTED BY ITS SECRETARY,
DISPUR, GUWAHATI-06, ASSAM.

2:DEPUTY COMMISSIONER AND RETURNING OFFICER
MUNICIPAL ELECTION- 2022
CACHAR
SILCHAR.

3:BIKASH CHETRI
EXECUTIVE MAGISTRATE

MUNICIPAL ELECTION
SONAI

CACHAR
ASSAM.

4:PIYARA BEGUM LASKAR
W/O- AZAD HUSSAIN LASKAR

MAJIRGRAM
WARD NO.-06

P.O.- SONAIMUKH
P.S.- SONAI

DIST- CACHAR
ASSAM

Advocate for the Petitioner : MR. A R TALUKDAR

Advocate for the Respondent : SC, ASEC

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 21/08/2023

Heard Mr. A.R. Talukdar, learned counsel for the writ petitioner. Also heard Mr. R. Dube, learned Standing Counsel, Assam State Election Commission, appearing on behalf of the respondent nos. 1 and 3 and Ms. M. Barman, learned Government Advocate, Assam, appearing for the respondent no. 2.

By filing this writ petition, the petitioner has assailed the order dated 23/06/2023 passed by the learned District Judge, Cachar in Misc. Case No. 20/2022, dismissing the election petition filed by the petitioner calling into question, the election of the respondent no 4 as a Ward Commissioner of Ward No. 6 of Sonai Municipality.

It appears from the materials available on record that the election to the Sonai Municipality was held on 06/03/2022 wherein, the writ petition was also a contestant. The result of the election of Ward Commissioners was declared on 09/03/2022 wherein, the respondent no. 4 was declared to be elected candidate.

As per section 16 of the Assam Municipal Act, 1956, an election petition challenging the election of a Ward Commissioner is required to be instituted before the concerned District Judge within a period of 21 days from the date of declaration of the result. However, in the present case, the

writ petitioner had filed the election petition after 132 days from the date of declaration of the results. The election petitioner was however, accompanied by an application filed under section 5 of the Limitation Act, 1963, for condoning the delay of 111 days in presenting the election petition. It appears that the writ petitioner had submitted some justification explaining the delay. However, while rejecting such application by the impugned order, the learned District Judge has held that the election petition was barred by time.

Mr. Dube has relied upon the decision of the Hon'ble Supreme Court of India rendered in the case of ***Smita Subhash Sawat Vs. Jagdeeshwari Jagdish Amin and others*** reported in ***(2015) 12 SCC 169*** as well as another decision of this Court rendered in the case of ***Anjuwara Ahmed Vs. Nazma Ahmed and 3 others [WP(C) No. 5006/2022]*** to submit that even 1 (one) day's delay in presenting the election petition cannot be condoned under the law. Under the circumstances, Mr. Dube submits that there was no scope for the learned District Judge to entertain the election petition beyond 21 days from the date of declaration of the results. As such, there is no merit in the writ petition and the same is liable to be dismissed *in limine*.

In the case of ***Smita Subhash Sawat (Supra)***, the Supreme Court, while interpreting the similar provisions in Bombay Municipal Corporation Act, 1888, had held that delay in presenting election petition beyond the statutory period, even if it is for 1 (one) day, cannot be condoned.

In the case of ***Anjuwara Ahmed (Supra)***, a similar view has been expressed by this Court in the context of Assam Panchayat Act, 1994 wherein, it was held that an election petition, presented beyond the statutory period of 60 days, was not maintainable and there was no scope for condoning the delay in filing such petition by invoking the provisions under sections 5 and 14 of the Limitations Act.

Having regard to the facts and circumstances of the case, this Court is of the opinion that the ratio laid down in the aforesaid two decisions would be squarely applicable in the facts of the present

case. Mr. Talukdar also could not refute the above contention of the learned counsel for the respondent nos. 1 and 3.

In view of the above, I am of the opinion that there is no merit in this writ petition. The same is accordingly dismissed *in limine*.

No order as to costs.

JUDGE

sukhamay

Comparing Assistant