

GAHC010142292024



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

I.A.(Civil)/2447/2024 in
El.Pet./1/2024

HAFIZ RASHID AHMED CHOUDHURY
S/O LATE MAULANA MAQUBUL ALI CHOUDHURY

R/O HOUSE NO.- 18
P.D. CHALIHA ROAD
HEDEYATPUR
P.O.- SILPUKHURI
P.S.- LATASIL
GUWAHATI
DISTRICT- KAMRUP (METRO)
PIN- 781003.

VERSUS

KRIPANATH MALLAH AND 2 ORS
S/O LATE KRISHNAMOHAN MALLAH
R/O VILLAGE AND P.O.- BIDYANAGAR
DIST.- KARIMGANJ
ASSAM
PIN- 788734.

2:THE ELECTION COMMISSION OF INDIA
REP. BY ITS SECRETARY
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI
PIN- 110001.

3:THE RETURNING OFFICER
NO. 7 KARIMGANJ PARLIAMENTARY CONSTITUENCY

ASSAM
OFFICE OF THE DEPUTY COMMISSIONER
KARIMGANJ
ASSAM
PIN- 788710.

Advocate for : MR K P PATHAK
Advocate for : appearing for KRIPANATH MALLAH AND 2 ORS

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

28.08.2024

Heard Shri K.P. Pathak, learned Senior Counsel assisted by Shri M. Dutta, learned counsel for the applicant- petitioner. Also heard Ms. P. Baruah, learned counsel for the Election Commission of India - respondent nos. 2 & 3 and Shri P. Nayak, learned counsel who has entered appearance for the respondent no.1.

The instant I.A. has been filed under Section 151 of the CPC, r/w Rule 94 of the Conduct of Election Rules, 1961 whereby the applicant - petitioner has prayed for a direction to the pro forma respondent no. 2 & the pro forma respondent no. 3 to preserve the documents, records including voting machines, control units, CCTV footages of no. 7, Karimganj Parliamentary Constituency for the Parliamentary Election held on 26.04.2024.

The learned Senior Counsel has drawn the attention of this Court to the provisions of Rule 94 of the Rules of 1961. He submits that since the challenge to the election of the respondent no. 1 are based on ground which would require the records to be examined and scrutinized, such preservation would be necessary.

Ms. P. Baruah, the learned counsel for the pro forma respondent nos. 2 &

3 submits that her clients are not necessary parties and in fact she has filed two separate I.A.s for striking off the names of the pro forma respondent nos. 2 & 3.

Rule 94 of the Rules of 1961 reads as follows:

“94. Disposal of election papers.

- Subject to any direction to the contrary given by the Election Commission or by a competent Court or tribunal-

(a) the packets of unused ballot papers shall be retained for a period of six months and shall thereafter be destroyed in such manner as the Election Commission may direct;

the voting machines kept in the custody of the district election officer under sub-rule (1A) of rule 92 shall be retained intact for such period as the Election Commission may direct and shall not be used at any subsequent election without the previous approval of the Election Commission;

(b) the other packets referred to in sub-rule (1) of rule 93 shall be retained for a period of one year and shall thereafter be destroyed:

[Provided that packets containing the counterfoils of used ballot papers and the printed paper slips, if any, shall not be destroyed except with the previous approval of the Election Commission;]

(c) all other papers relating to the election shall be retained for such period as the Election Commission may direct.”

The aforesaid provision makes it amply clear that appropriate directions can be issued for preservation of the records connected to the challenge of the particular election.

Since the election of the respondent no.1 is the subject matter of challenge, this Court is of the opinion that interest of justice would be served if appropriate directions are issued under the aforesaid provision of law.

Accordingly, the I.A. stands allowed by directing the pro forma respondent nos. 2 & 3 to preserve the documents, records including voting machines, control units, CCTV footages of no. 7, Karimganj Parliamentary Constituency for the Parliamentary Election held on 26.04.2024

I.A. accordingly stands disposed of.

JUDGE

Comparing Assistant