GAHC010154642026

2026:GAU-AS:15406

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

Case No. : WP(C)/3940/2026

AZIZUR RAHMAN
SON OF AKBAR ALI VILLAGE-MAHERIPAR, PO-KALIADINGA PS-JURIA,
DISTRICT-NAGAON ASSAM PIN-782124

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI, PIN-781006

2:THE DISTRICT COMMISSIONER
NAGAON
PO AND PS-NAGAON
DISTRICT- NAGAON ASSAM
PIN-782001

3:THE CHIEF EXECUTIVE OFFICER
NAGAON ZILLA PARISHAD
PO AND PS-NAGAON
DISTNAGAON ASSAM
PIN-782001

4:THE DEPUTY CHIEF EXECUTIVE OFFICER
NAGAON ZILLA PARISHAD
PO AND PS-NAGAON
DIST- NAGAON ASSAM
PIN-782001

5:THE ASSISTANT COMMISSIONER
NAGAON
C/OOFFICE OF THE DISTRICT COMMISSIONER

PO AND PS-NAGAON
DISTRICT- NAGAON ASSAM
PIN-782001

6:THE BLOCK DEVELOPMENT OFFICER
BAGARIGURI DEVELOPMENT BLOCK
PO AND PSJURIA
DISTRICT-NAGAON ASSAM
PIN782124

7:THE SECRETARY
MAHERIPAR GAON PANCHAYAT
PO-KALIADINGA
PS-JURIA
DISTRICTNAGAON ASSAM PIN-78212

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocates for the Petitioner(s): Mr. MK Hussain

Advocates for the Respondent(s) : Mr. S. Dutta,
Standing Counsel
P & RD

Mr. M Chetia

Govt. Advocate

Date on which judgment was reserved : NA

Date of pronouncement of judgment : **12.10.2026**

Whether the pronouncement is of the

Operative part of the judgment? : Yes

Whether the full judgment has been

pronounced? : No

JUDGMENT AND ORDER (ORAL)

Heard Mr. MK Hussain, the learned counsel appearing on behalf of the petitioner. Also heard Mr. S. Dutta, the learned Standing Counsel for the P & RD Department and Mr. M Chetia, the learned Government Advocate, who appears on behalf of the State respondents.

2. The petitioner herein is aggrieved by the order dated 07.07.2026 passed by the District Commissioner, Nagaon whereby the petitioner was disqualified under Section *111(2)(f) of the Assam Panchayat Act, 1994* (for short, 'the Act of 1994') on the ground that as per the report of the Chief Executive Officer, Nagaon Zilla Parishad, wherein an enquiry was conducted as regards the minor marriage of the petitioner who was the elected Gaon Panchayat Member of Ward No.4 of 139 No. Meheripar Gaon Panchayat under Bagariguri Development Block and thereby the marriage was in violation to the provisions of the *Prohibition of Child Marriage Act (PCMA), 2006.*

3. It has been submitted at the Bar that the issue involved in the instant writ petition is squarely covered by the judgment and order dated 23.02.2026 passed in the case of ***Aysha Khatun Vs. State of Assam & 5 Others*** reported in ***2026 (3) GLT 102***.

4. The brief facts leading to the filing of the instant case, as it appears from the materials on record are that the petitioner contested for the post of Ward Member from Ward No.4 of Meheripar Gaon Panchayat in the Nagaon District. The petitioner was thereafter declared to be a winning candidate.

5. It is the case of the petitioner that while functioning as an elected Member of Ward No.4 of Meheripar Gaon Panchayat in the Nagaon District, the impugned order dated 07.07.2026 was passed without giving him a reasonable opportunity of being heard. The said order dated 07.07.2026 was communicated to the petitioner by the respondents on 22.07.2026 through the Secretary of Meheripar Gaon Panchayat, whereby the petitioner was disqualified and removed from the post of Gaon Panchayat Member of Ward No.4 of 139 No. Meheripar Gaon Panchayat under Bagariguri Development Block on the alleged ground of violation of the provisions of *Section 111(2)(f) of the Act of 1994*, read with *Rule 62(4)(b) and (c) of the Assam Panchayat (Constitution) Rules of 1995* (for short, 'the Rules of 1995'). Being aggrieved, the petitioner has challenged the said order before this Court by filing the present writ petition.

6. The learned Coordinate Bench of this Court, vide order dated

29.07.2026, while issuing notice, in the interim ordered that the operation of the impugned order dated 07.07.2026 shall remain in abeyance till the returnable date.

7. In the backdrop of the above facts, the question that arises is whether the judgment of this Court in the case of ***Aysha Khatun (supra)*** covers the issues involved in the present writ petition.

8. It is relevant to take note of that the petitioner was disqualified vide the impugned order dated 07.07.2026 on the ground that the petitioner had incurred disqualification in terms with *Section 111(2)(f) of the Act of 1994* read with *Rule 62(4)(b) and (c) of the Rules of 1995*. A further perusal of the impugned order reveals that an inquiry was conducted, during the course of which it was found that the petitioner's date of birth was 31.01.1999 and the date of birth of his son Foridur Rahman appears to be 07.08.2016 indicating that he became a father while still a minor, thereby giving rise to a case involving child marriage.

9. The materials on record would show that the impugned order is in violation to the *Principles of Natural Justice inasmuch as* on 02.01.2026, Smti Silpirekha Pandit, ACS, Assistant Commissioner, Nagaon submitted the report and the impugned order was passed.

10. Be that as it may, the question arises as to whether the respondent No. 2 at all had the jurisdiction to pass the impugned order dated 07.07.2026.

11. It is apparent from the records that the disqualification alleged existed on the date of submission of the nomination paper i.e. on 12.04.2025 by the petitioner and the impugned order dated 07.07.2026 was passed without considering the fact that the alleged disqualification is prior to 07.08.2016 and Section 111(2)(f) of the Act of 1994 (as amended) came into force on 19.10.2023 without having retrospective effect.

12. This Court, in this regard, finds it relevant to take note of another judgment passed by this Court on 13.03.2026 in the case of ***Sri Ferdaus Rahman Mazumder Vs State of Assam & 6 Others***, reported in ***2026:GAU-AS:3725*** wherein this Court had deduced the ratio laid down in the case of ***Aysha Khatun (supra)*** in conjunction with the relevant provisions of the Constitution of India, the Act of 1994 and the Rules of 1995. Paragraph No.48 of the said judgment being relevant is reproduced hereinunder:-

> "*48. The following propositions may be culled out from the observations made by this Court in the case of Aysha Khatun (supra) read with the provisions of the*

Constitution, Act of 1994 and Rules of 1995.

(A) Article 243F of the Constitution stipulates when a candidate would be disqualified for being chosen as and for being a member of the Panchayat.

(B) Section 111 of Act of 1994 however uses the expressions "elected or co-opted" and "and remain". There appears to be a reason for doing so in as much as Section 111 of the Act of 1994 not only speaks of being a Member of the Panchayat, but also to be elected or co-opted and remain as President or Vice President of Zilla Parishad, Anchalik Panchayat and Gaon Panchayat.

(C) The proposition so laid down in Aysha Khatun (supra) has to be understood in the context of as election and to remain as Member of the Panchayat that would be election and to remain as Member of Zilla Parishad, Anchalik Panchayat and Gaon Panchayat. This is so because to be chosen as a Member of the Panchayat, the person has to be elected in an election conducted by the State Election Commission constituted in terms with Article 243K of the Constitution read with Section 114 of the Act of 1994. The bar contained in Article 243-O of the Constitution read with Section 129 of the Act of 1994 is only in respect to elections conducted by the State Election Commission.

However, election to the posts of President and Vice President of the Gaon Panchayat, Anchalik Panchayat as well Zilla Parishad are outside the purview of the State Election Commission or even the electoral process conducted by the State Election Commission.

The posts of President and Vice President of the Gaon Panchayat, Anchalik Panchayat as well as Zilla Parishad are held under the control and supervision of the District Commissioner or any officer delegated by the District Commissioner as would be apparent from a perusal of Section 6, 37 and 70 of the Act of 1994 read with Rules 46, 48 and 50 of the Rules of 1995.

(D) In the case of Aysha Khatun (supra), this Court categorically held that in respect of a disqualification which existed at the time of submission of the nomination paper, the said would come within the purview of improper acceptance of the nomination paper. This Court further held that an improper acceptance of the

nomination paper whereby the election of the returned candidate have been materially effected being a ground for declaration of the election to be void, the improper acceptance of the nomination paper, being a part of the election process, the same has to be challenged by way of an election petition by presenting the same before the Election Tribunal within the period of 60 days from the date of declaration of the results of the election. This Court also held that the District Commissioner had no jurisdiction and competence to decide the question of disqualification for being a Member of Panchayat if such disqualification existed at the time of submission of the nomination."

13. Upon applying the aforementioned principles of law laid down by this Court in the case of ***Sri Ferdaus Rahman Mazumder (supra)***, it is the opinion of this Court that as the impugned order dated 19.12.2025 related to a disqualification pertaining to Section 111(2) of the Act of 1994 read with Rule 62(4)(b) and (c) of the Rules of 1995 and the said disqualification was existing at the time of filing of the nomination paper by the petitioner, the District Commissioner, Dhubri, therefore, had no jurisdiction to decide the disqualification of the petitioner.

14. Accordingly, the writ petition stand disposed of with the following observations and directions:

(i) The impugned order dated 07.07.2026 as well as all consequential action(s) taken on the basis of the impugned order dated 07.07.2026 are set aside and quashed.

(ii) No costs.

JUDGE

Comparing Assistant