GAHC010155722026

2026:GAU-AS:12956

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

Case No. : WP(C)/3968/2026

ABDUR RAHMAN
SON OF MAYNAL HOQUE, PERMANENT RESIDENT OF VILLAGE CHAGOICHARA PT.-I, P.O. DHUBRI, P.S. DHUBRI, PIN - 783324, DISTRICT DHUBRI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR, GUWAHATI - 781006.

2:THE DISTRICT COMMISSIONER
DHUBRI DISTRICT - DHUBRI
ASSAM. PIN -783324

3:THE CHIEF EXECUTIVE OFFICER
DHUBRI ZILLA PARISHAD
DHUBRI
DISTRICT - DHUBRI
ASSAM. PIN -783324.

4:ATIUR RAHMAN
SON OF ABDUL ALI
RESIDENT OF VILLAGE - BIDYAPARA PART - II
P.O. A.M. CO. ROAD
P.S. AND DISTRICT - DHUBRI
ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

For the petitioner — Mr. SSS Rahman, Adv

For the Respondents : Mr. S Dutta, SC, PNRD
: Mr. K Mohammed, (R-4)

Date of reserve of the judgment : N/A
Date of pronouncement of judgment : 05.11.2026

Whether the pronouncement is of the operative part of the judgment? : N/A

Whether the judgment has been pronounced? : N/A

JUDGMENT & ORDER (ORAL)

1. The petitioner has approached this Court, assailing the order dated 23.07.2026 passed by respondent No. 2, whereby the petitioner was declared disqualified from holding the office of Ward Member of 73 No. Moritchar Gaon Panchayat with immediate effect. The impugned order further observed that the seat is to be treated as vacant henceforth.

2. The order was passed based on an application filed by respondent No. 4, inter alia, alleging that the petitioner has more than two children from multiple partners and does not have the required educational qualification. Admittedly, the third child was born on 04.06.2025.

3. The facts are not in dispute.

The petitioner contested the Panchayat election after his nomination

was accepted as valid on 11.04.2025, and he was subsequently duly elected as the Ward Member of the concerned ward.

4. The complaint was filed with the allegations as recorded hereinabove. An inquiry was conducted, and a report was submitted. Based on the report, the District Commissioner passed the impugned order, declaring the petitioner disqualified and removing him from office.

5. The District Commissioner exercised such power under Section 111 of the Assam Panchayat Act, read with Rule 62 of the Assam Panchayat (Constitution) Rules, 1995.

6. Section 111 of the Assam Panchayat Act prescribes the disqualification of membership of Panchayat institutions. Rule 62 of the Rules, 1995 provides the procedure for dealing with such disqualification. However, the existence of a statutory disqualification and the authority competent to adjudicate a dispute concerning such disqualification are two distinct issues. The authority exercising statutory power must act within the remit prescribed by the Constitution and the parent enactment.

7. Article 243F of the Constitution of India deals with disqualification for membership of a Panchayat and provides that such authority may determine questions of disqualification as provided by law made by the State Legislature.

8. On the other hand, Article 243-O provides that no election to a Panchayat shall be called in question except by an election petition presented to the authority and in the manner prescribed by law.

9. In the opinion of this Court, these two provisions are to be read together so that the power to determine a disqualification is exercised consistently with the constitutional scheme governing the electoral process.

10. There is a distinction between a disqualification incurred during the tenure of the elected office and an allegation that the elected candidate was ineligible to contest the election in the first instance. When the allegation is that a candidate suffered a disqualification on the date of filing the nomination, the challenge, in substance, relates to the acceptance of nomination and, consequently, to the validity of the election. Such a dispute cannot be converted into a proceeding to remove an elected member merely because the alleged disqualification is discovered after the election. However, the situation and considerations differ when a person, having been validly elected after contesting the election, subsequently incurs a disqualification during the tenure of office.

11. The Division Bench has authoritatively considered this distinction in ***Minu Begum v. State of Assam*** **(WA No. 174/2026, decided on 08/06/2026)**. The Division Bench examined the interplay between Article 243F and Article 243O of the Constitution of India, Section 111 and Section 129 of the Assam Panchayat Act, 1994, and Rule 62 of the Assam Panchayat (Constitution) Rules, 1995.

The Division Bench held that where the foundation of the proceeding is an allegation that the returned candidate suffered from a disqualification on the date of filing of nomination, the dispute

essentially concerns the validity of the election, and the acceptance of a nomination is an integral stage of the electoral process, and a challenge to such acceptance must be pursued through an election petition before the competent Election Tribunal within the period prescribed by law.

12. It further held that Rule 62 cannot be construed as conferring on a District Commissioner parallel jurisdiction to adjudicate such a dispute after the election has concluded.

13. The Division Bench also opined that the District Commissioner's jurisdiction depends on the nature of the dispute, not on the date on which the disqualification is discovered. The subsequent discovery of information concerning an alleged pre-existing disqualification does not change the character of the dispute or confer jurisdiction on an authority that could not otherwise entertain it.

14. In the present case, the impugned order proceeds on the allegation that the petitioner acquired disqualification by having more than two children after being elected as Ward member. Thus, the conclusion recorded by the District Commissioner is based on an alleged disqualification after filing the nomination papers and after being elected.

15. Admittedly, the last date of filing nomination was 11.04.2025; the petitioner was notified as elected on 12.05.2025 and the third child was born on 04.06.2025, thereby acquiring disqualification. That being the position, the District Commissioner has the requisite jurisdiction and competence to exercise its powers

under Section 111 read with Rule 62.

16. The ground of the petitioner that no reasonable opportunity of hearing was given does not advance the matter any further in view of the undisputed facts that a notice was issued to the petitioner on 08.10.2025, and the petitioner responded to such notice by his reply dated 22.10.2025. In his reply, and also before this Court, the petitioner contended that the third child was born during the currency of his tenure; however, the child was born to his second wife after his divorce from his first wife, and therefore the disqualification was not triggered. Thus, it is admitted that the third child was born after the petitioner was elected as a member of the concerned ward.

17. Section 111 makes no distinction between a child born from a divorced wife and a child born from the second wife subsequent to such divorce. Section 111 triggers disqualification for having more than two children from single or multiple partners. Marriage or divorce is irrelevant in this context. Therefore, the petitioner's contention is not tenable in law.

18. Accordingly, for the reasons recorded hereinabove, the present writ petition is devoid of merit. Accordingly, the same stands dismissed.

19. The interim order passed earlier stands vacated.

JUDGE

Comparing Assistant