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2026:GAU-AS:15170

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

Case No. : WP(C)/4766/2026

MORZINA KHATUN
W/O SHOHIDUR RAHMAN, R/O VILL KATIAR ALGA PT. IV, P.O. NILOKHIA, P.S. SOUTH SALMARA, DISTRICT- DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS, NEW DELHI

2:THE STATE OF ASSAM
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI- 06

3:THE ASSAM STATE ELECTION COMMISSION
STATE ELECTION COMMISSION
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI- 06

4:THE DISTRICT COMMISSIONER
DHUBRI
OFFICE OF THE DISTRICT COMMISSIONER
DIST- DHUBRI
ASSAM

5:JESMINA KHATUN
D/O- LT BAHEZ ALI

R/O VILL- KATIAR ALGA PT IV
P.O.- NILOKHIA
P.S.- SOUTH SALMARA
DIST.- DHUBRI
ASSA

Advocate for the Petitioner : MR. SURAJIT DAS, A MISHRA,MR SARFRAZ NAWAZ

Advocate for the Respondent : DY.S.G.I., MS. U BARUAH(C.G.C.)R1,GA, ASSAM,SC, A S E C,SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 08-10-2026

1. Heard Mr. S. Das, learned counsel for the petitioner. Also heard Ms. U Baruah, learned CGC for the respondent No.1; Mr. S Dutta, learned Standing counsel, Panchayat & Rural Development Department for respondent No.2; Mr. R Dubey, learned standing counsel, Assam State Election Commission for the respondent No.3 and Ms. M Barman, learned Jr. Govt. Advocate appearing for respondent No.4.

2. The petitioner has approached this Court assailing the order dated 22.07.2025, bearing Memo No. DDP-38/2025/Pt/107, issued by the District Commissioner, Dhubri, whereby she has been declared disqualified from holding the office of Ward Member of Ward No. 09 of 34 Nilokhia Gaon Panchayat, on the allegation that she furnished a forged certificate in support of her educational qualification at the time

of filing of her nomination for the Panchayat Election held in 2025.

3. The facts are not in dispute. The petitioner contested the Panchayat election after her nomination was accepted and was duly elected as Ward Member of Ward No. 09 of 34 Nilokhia Gaon Panchayat.

Subsequently, on a complaint alleging that the educational certificate she furnished was forged, an inquiry was conducted, and a report dated 03.07.2025 was submitted.

Based on the said report, the District Commissioner passed the impugned order declaring her disqualified and removing her from the elected office.

4. The petitioner contends that the impugned order is without jurisdiction, as the allegation relates to her eligibility on the date of filing her nomination and therefore concerns the validity of the election itself. It is submitted that such a dispute can be adjudicated only through an election petition in accordance with the Assam Panchayat Act, 1994.

5. The learned counsel for the petitioner has also contended that the inquiry report and the materials relied upon were not furnished to her, and she was not afforded an effective opportunity to rebut the allegation.

6. The private respondent, on the other hand, seeks to sustain the action taken against the petitioner on the allegation

of submission of a forged educational certificate.

In the alternative, the private respondent has also prayed that, if the impugned order is set aside for want of jurisdiction, liberty may be granted to approach the Election Tribunal by presenting an election petition, and this Court may condone the delay that occurred during the pendency of the present petition.

7. I have given anxious consideration to the arguments advanced by the learned counsel for the parties and also perused the materials available on record.

8. Section 111 of the Assam Panchayat Act prescribes the disqualification for membership of Panchayat institutions. Rule 62 of the Assam Panchayat (Constitution) 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.

9. Article 243-F of the Constitution deals with disqualification for membership of a Panchayat and provides that such authority may determine questions of disqualification and do so in such manner as may be provided by law made by the State Legislature.

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

These 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 elected office and an allegation that an 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 the nomination and, consequently, to the validity of the election. Such a dispute cannot be converted into a proceeding to remove the elected member merely because the alleged disqualification is discovered after the election.

However, the situation and considerations are different 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 vs. State of Assam*** (WA No.

174/2026, decided on 08.06.2026).

The Division Bench examined the interplay between Article 243-F and Article 243-O of the Constitution of India, Sections 111 and 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 the nomination, the dispute essentially concerns the validity of the election and that 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. It was further held that Rule 62 cannot be construed as conferring upon a District Commissioner a parallel jurisdiction to adjudicate such a dispute after the election has concluded.

12. The Division Bench further held that the jurisdiction of the Deputy Commissioner/District Commissioner 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 upon an authority, which could not otherwise have entertained it.

13. In the present case, the impugned order itself proceeds on the allegation that the educational certificate furnished by the petitioner along with her nomination papers was forged and that, therefore, she was ineligible to contest the election. The conclusion recorded by the District Commissioner is based on an alleged disqualification at the stage of nomination, and it is not that the petitioner incurred any disqualification after the election.

14. Applying the law laid down by the Division Bench in ***Minu Begum*** **(*supra*)**, the dispute raised against the petitioner is essentially one concerning the validity of the election. The District Commissioner could not assume jurisdiction under Section 111 of the Assam Panchayat Act, read with Rule 62 of the Rules, to adjudicate the allegation that the petitioner's nomination ought not to have been accepted. Such a course would permit the electoral process to be reopened through an administrative proceeding, contrary to the constitutional and statutory scheme.

15. The seriousness of the allegation concerning the authenticity of the educational certificate does not alter the position as regards jurisdiction. Whether the certificate was forged and whether the petitioner possessed the required educational qualification are matters on which this Court is not required to express any opinion, and such allegations may be

proceeded with as permissible under law.

16. Thus the question before this Court is the jurisdiction and competence of the District Commissioner to decide the dispute and remove the petitioner from her elected office through the procedure adopted.

In view of the law laid down by the Division Bench in *Minu Begum*, the answer must be in the negative. The District Commissioner lacked the jurisdiction and competence to decide the dispute and remove the petitioner from her elected office through the procedure adopted.

17. As to the prayer of the private respondent seeking liberty to approach the Election Tribunal and condonation of delay in exercising the power of judicial review, it requires consideration.

18. Section 129(b) of the Assam Panchayat Act provides that no election to a Panchayat shall be called in question except by an election petition presented to the Tribunal within sixty (60) days from the date of declaration of the election results. In this view, the period prescribed by the statute is an integral part of the remedy provided for challenging an election.

19. In ***Minu Begum,*** the Division Bench considered this very aspect and declined the request to reserve liberty to initiate election proceedings after the limitation period expired. It held that the Constitutional Court cannot enlarge the

jurisdiction of the Election Tribunal by judicial direction or revive a remedy that the statute regards as extinguished.

20. The aforesaid principle laid down by the Division Bench squarely applies to the private respondent's prayer. Once the prescribed period for presenting an election petition has expired, the setting aside of an order passed by an authority lacking jurisdiction cannot furnish a fresh opportunity to challenge the election beyond the period prescribed by the statute itself.

21. For the reasons stated hereinabove and in view of the law laid down by the Division Bench in ***Minu Begum* (*supra*),** this Court is of the considered view that the impugned order dated 22.07.2025 cannot be sustained in law.

22. Accordingly, the impugned order dated 22.07.2025 passed by the District Commissioner, Dhubri, declaring the petitioner disqualified and removing her from the office of Ward Member of Ward No. 09 of 34-Nilokhia Gaon Panchayat, is hereby set aside and quashed.

It is directed that the District Commissioner shall forthwith allow the petitioner to act as an elected member of the concerned ward.

23. While parting with the records, it is made clear that this Court has not examined or expressed any opinion on the factual correctness of the allegation concerning the educational

certificate furnished by the petitioner, and the merits of the said allegation are not determined.

24. The writ petition stands disposed of in the above terms. No order as to costs.

JUDGE

Comparing Assistant